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ORISSA HIGH COURT, CUTTACK

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Smt. Dr. JEEVANJYOTI RATH, *Registrar (Administration)*

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Held: Yes – In the light of the reconciliation, the absence of a serious societal impact, and the need to avoid unnecessary legal hardship, it is appropriate to quash the proceedings, allowing both parties to move forward with their lives without further legal encumbrances – This approach ensures that justice is served in a fair, compassionate and practical manner, in line with the established principles of law.

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Held: Yes – The principles as stated in the code of civil procedure are also applicable to the writ proceeding.

Malaya Ranjan Dash V. Register General, Hon'ble High Court of Orissa, Cuttack & Ors.
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Held: Judicial Review is permissible only to the extent of finding whether the process in reaching the decision has observed correctly and not the decision itself as such.

The stand taken in the counter affidavit by the opposite parties that merely because an officer was good in past, he is good for all times to come, is not acceptable and that the past conduct of an officer is no guarantee that he would not commit any misconduct and from such angle, the past reputation and assessments were of no concern for the present or future grading/assessment, cannot be legally accepted – We are of the view that the authorities should not keep their eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier.

Malaya Ranjan Dash V. Register General, Hon'ble High Court of Orissa, Cuttack & Ors.
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CONSTITUTION OF INDIA, 1950 – Article 226 r/w Section 12(5) Clause (d) of Section 10(1) of the Industrial Disputes Act, 1947 – It is the case of the Petitioner that the management has illegally retired him from his service with effect from 02.04.2021 taking his date of birth as 03.04.1963 and he should have retired three years later if his date of birth would have been taken as 03.04.1966 and therefore, he is entitled to the consequential service benefits – Petitioner challenged the action of management before the concerned Labour Authority by filing a complaint – Petitioner was unsuccessful in his complaint – The petitioner approached the Civil Court, Bhadrak, but he failed – The petitioner approached the learned Labour Court – The learned Labour Court after analyzing the oral as well as documentary evidence came to hold that the action of the management cannot be termed as illegal, rather justified – Whether High Court in exercise of its power under Articles 226 & 227 of the Constitution of India has any scope to interfere with the order passed by the Industrial Tribunal/Labour Court.

Held: No – In view of the settled principle, this Court, while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India should not interfere with the findings of fact recorded by the Labour Court unless there is an apparent error on the face of the award shocking the conscience of the Court and the findings given in the award are perverse or unreasonable either based on no evidence or based on illegal/unacceptable evidence or against the weight of evidence or outrageously defies logic so as to suffer from irrationality or the award has been passed in violation of the principles of natural justice – If the Labour Court erroneously refused to advert to admissible material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned findings, the same can be interfered by a writ of certiorari – Adequacy of evidence cannot be looked into in the writ jurisdiction but consideration of extraneous materials and non-consideration of relevant materials can certainly be taken into account – Findings of fact of the Labour Court should not be disturbed on the ground that a different view might be possible on the said facts – Inadequacy of evidence or the possibility of reading the evidence in a different manner, would not amount to perversity.

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COVID WARRIOR DEATH – Financial Assistance – Family Welfare Department Notification No. 17197 dated 20.07.2020 r/w Corrigendum No. 17941, dated 29.07.2020 – The husband of the petitioner was serving as pharmacist in the District Headquarters Hospital, Rayagada since 01.07.2020 – While serving as such he was diagnosed with COVID-19 infection and died – As per the letter dated 12.09.2020 of the Chief District Medical Officer, the deceased was drafted for Covid-19 related work in isolation ward and Flu clinic of DHH, Rayagada – The Opposite Party rejected the prayer for declaration of death of deceased husband as COVID warrior on the ground

that he was drafted for routine duties at Drug Distribution Center and as he was not drafted for COVID-19 management duty involving direct contract with COVID-19 patient, the proposal does not satisfy the mandatory conditions prescribed under the Notification – Whether the deceased who was deployed for duty at Drug Distribution Center at District Headquarters Hospital during COVID-19 and died due to infection of COVID-19 positive is entitled to the benefit as per resolution dated 04.08.2020.

Held: Yes – We need to mention here that even if the contention of the Opposite Parties is accepted to the effect that the deceased was deployed for duty at Drug Distribution Centre then also his exposure to contact with COVID-19 infected patients cannot be ruled out in course of discharging his duties as he has to distribute the drugs/medicines to different persons either at the distribution centre or by going to different places of the Hospital including the patient's wards – Therefore, his exposure towards direct contact with COVID-19 patients in course of discharging his duties as a Pharmacist is very much probable – So, looking from either way, particularly, when the Chief District Medical & Public Health Officer, Rayagada has certified that the deceased was drafted for COVID-19 related work, we find merit in the contention of the writ petitioner to get such financial assistance in terms of FD Resolution dated 4.8.2020.

E. Meerabai Patro V. State of Odisha & Ors.
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CRIMINAL JURISPRUDENCE – Right to Fair Trial – The Convict's contention that the trial proceedings were vitiated owing to lack of effective and adequate legal representation – Effect of.

Held – The right to a fair trial is not the privilege of the accused but a right that is equally essential for the prosecution and, more importantly, for society at large, to ensure that justice is both done and seen to be done – The trial Court, therefore, was under an even greater obligation to ensure that the trial proceedings were conducted with the strictest regard to fairness and due process – Regrettably, the record reflects a complete abdication of that responsibility – In cases of such grave nature, perfunctory manner of conducting the cases not only undermine the faith of the public in the criminal justice system but also risk irreparable miscarriage of justice – Such lapses strike at the heart of the right to a fair trial and cannot be countenanced – This Court is thus left with no alternative but to hold that the trial stands vitiated in its entirety.

State of Odisha V. Sanjeeb Kerketta
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CRIMINAL PROCEDURE CODE, 1973 – Section 311 r/w Art 21 of Constitution of India – The accused statement recorded under Section 311 of the Code is a defective, inadequate and has divorced the sanctity of the above provision – The statement of the accused U/s. 313 of the code is neither

exhaustive nor comprehensive – The principles concerning the examination of the accused U/s. 313 Cr.P.C is discussed

Held – The trial Court must specifically, distinctly, and separately put each material circumstance appearing in evidence against the accused – The purpose of such examination is not perfunctory; it is to provide the accused a meaningful opportunity to explain the circumstances against him – Failure to properly frame and put material circumstances constitutes a serious irregularity and can vitiate the trial if it has caused prejudice – Mere bulk questioning or vague aggregation of circumstances does not satisfy this requirement – Each incriminating circumstance must be individually addressed – The omission, unless shown to be curable without causing failure of justice, entitles the accused to appropriate remedial directions, including the possibility of remand – This principle underscores the substantive, rather than procedural, character of the right under Section 313 CrPC, firmly rooted in the guarantee of a fair trial under Article 21 of the Constitution.

State of Odisha V. Sanjeeb Kerketta

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CRIMINAL TRIAL – Circumstantial circumstance – The appellant was convicted for the offence punishable under sections 302/201 of IPC – There is no direct evidence – The case is based on circumstantial evidence – The Doctor notices three injuries on the body of the deceased and opined the death to be asphyxia due to throttling – It is also noticed by the Doctor (P.W.5) that there is fracture of the cricoid cartilage and upper three tracheal ring which is ante-mortem in nature – The dead body of the deceased was found in the room where the appellant and deceased were staying together – But the appellant did not offer any explanation in his statement recorded U/s. 313 of Cr.P.C. – Whether absence of any explanation by the appellant in his statement recorded under Section 313, Cr.P.C. proves the guilt by completing the chain of circumstances.

Held: Yes – In the case at hand, since the dead body of the deceased was found in the room where the appellant and the deceased were staying together and it is a case of homicidal death, the appellant was last seen with the deceased prior to the occurrence and also after the occurrence and no explanation has been offered in his statement recorded under Section 313 Cr.P.C., we are of the view that, in view of the circumstantial evidence appearing on record, it can be said that the chain of circumstance is complete and there is no escape from the conclusion that the crime of murder was committed by the present appellant and therefore the learned trial court has rightly found the appellant guilty under Section 302 IPC.

Lochan Maharana V. State of Odisha

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CRIMINAL TRIAL – The accused was found guilty and sentence to death under Section 376-A and 302 of the Indian Penal Code – On perusal of trial

Court record it reveals that the convict was initially represented by an advocate appointed through legal aid – The said counsel failed to appear consistently during material stage of the trial; including the cross-examination of key prosecution witnesses – It is further evident that no meaningful and substantial defence was put forth on behalf of the convict – No defence evidence was led, and no final arguments appear to have been made with the diligence expected of counsel entrusted with safeguarding the right of an accused facing serious charges – Whether the interference of this Court is warranted, where it is found that there is a deficiency of legal assistance to the convicts on the aspects of his defence.

Held, Yes – It is well-settled that an accused facing serious charges particularly one under Section 302 IPC and section 6 of POCSO Act, carrying the possibility of life imprisonment or death must be afforded the fullest opportunity to defend himself through competent and diligent legal representation – In the instant case, the conduct of defence counsel and the trial proceedings fall woefully short of this standard – The prejudice to the Convict is not speculative; it is borne out from the record – In our considered opinion, the Convict has demonstrated substantial prejudice arising from the inadequacy of legal representation – The trial, as conducted, cannot be said to have been a fair trial in the eyes of law.

State of Odisha V. Sanjeeb Kerketta

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CRIMINAL TRIAL – The appellant is convicted for the offence U/s. 450/366/376(2)(i)/376(A)/302/201 of IPC and U/s. 6 of the POCSO Act – Upon a cumulative evaluation of the record, the Court finds that the trial proceeding were affiliated by multiple and grave irregularities, including improper and inadequate examination under section 313 CrPC, failure to consider mitigating circumstances at sentencing and denial of distinct and fair sentence hearing – Whether the multiple irregularities vitiated the trial Court proceeding.

Held, Yes – Taken together the irregularities, they reveal a trial conducted in a perfunctory, mechanical and constitutionally impermissible manner – The Court issued appropriate direction to trial Court.

State of Odisha V. Sanjeeb Kerketta

2025 (II) ILR-Cut…… 75

CRIMINAL TRIAL – The Appellant was convicted for commission of an offence punishable under Section 302 of IPC – The learned Trial Court on the basis of circumstantial evidence came to the conclusion that the appellant was the author of the crime – Out of eighteen witnesses examined on the behalf of the prosecution, P.Ws. 4 to 12 have not supported the prosecution case and they have been declared hostile – From the evidence of P.W. 2 & P.W. 3, it does not appear that on the date of occurrence, the appellant was present in his house with the deceased, much less any quarrel ensued between the two for

any reason whatsoever on that day – There is also no fingerprint expert's report – The chemical examination report has not been proved in this case – Whether the chain of circumstances has been completed to hold the appellant guilty for the offence.

Held: No – In view of the settled position of law that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person, in the case in hand, it cannot be said that cumulative effect of the circumstances negatives the innocence of the appellant and bring the offence home beyond all reasonable doubt – Therefore, we are of the view that the learned trial Court was not justified in convicting the appellant under section 302 of the Indian Penal Code.

Pari @ Paria Nayak V. State of Odisha

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DEMAND OF INTEREST – The demand for payment of interest @ 9% from the date of filing of the return is raised against the petitioner by the Joint Commissioner of Sales Tax, CT & GST Circle – The challenge is made to the said demand on multiple grounds including that the spat of litigations initially poured in docket of this Court assailing the demand of the entry tax under the Orissa Entry Tax Act, 1999 – The same was decided in favour of the assessee – The matter has now travelled to the Apex Court both at the behest of the Department as well as some of the assessees – Interim order is passed against the department not to take any coercive step for non-deposit of the interest/principal amount in respect of the petitioners who have filed the Special Leave Petition before the Supreme Court – Whether the petitioner is entitled to get benefit of interim order passed by Hon'ble Supreme Court of India in a *lis* filed by another petitioner.

Held: No – Since there is no express order of stay of operation of the said order and the petitioner being not an applicant in any of the special leave petitions pending before the Supreme Court, we do not find any justification in extending the benefit of the interim order at this stage – Furthermore, in order to bring equilibrium between the rights of the parties, any deposit as demanded would sub serve the justice as the same would be subject to an outcome of the decision taken by the Apex Court provided it inures to the benefit of all the assessees whether they approached the Apex Court or not – We are conscious that because of the confusion having created in the mind of the several assessees on the applicability of the interim order, we feel that an opportunity should be given to the petitioner to deposit the said demand within two months from today – Such deposit shall be without prejudice to the rights and contentions of the parties.

M/s. Indera Motors, Rourkela V. The Commissioner of Commercial Taxes, CT & GST, Odisha & Ors.

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EVIDENCE ACT, 1872 – Section 106 – According to evidence of different witnesses the Respondent stayed with the deceased in the same room along with their children on that fateful night – None of the children of the deceased and accused have been examined by the Prosecution – Prosecution has also not explained any reason for their non-examination – They might have been the best witnesses to throw light on the commission of murder of the deceased or what happened in the room in that night – Whether the right of the accused to remain silent can be infringed by aid of such presumption taken under Section 106 without *prima facie* satisfaction of the burden of proof on the prosecution.

Held: No – It cannot be denied on the part of the prosecution to discharge their initial burden of establishing *prima facie* case regarding guilt of the accused beyond all reasonable doubt and the law is well settled that the presumption would not be of any help to the prosecution unless the initial burden of *prima facie* case against the accused is discharged by the prosecution.

State of Odisha V. Tatung Munda

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EVIDENCE ACT, 1872 – Section 106 – Upon whom the burden of proof of lies when the crime was committed inside a house?

Held: When the crime was committed inside a house, the initial burden is, no doubt, on the prosecution to establish its case, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as required in the case of circumstantial evidence – The burden would be comparatively lighter character, and 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 premises that burden to establish its case lies entirely upon the prosecution and there is no duty at all of an accused to offer an explanation.

Thus, in view of Section of 106 of the Evidence Act, the prosecution has to lead evidence to substantiate its accusation, and it facts within the special knowledge of the accused are not satisfactorily explained it is a factor against the accused.

Lochan Maharana V. State of Odisha

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GENERAL RULES AND CIRCULAR ORDERS (GRCO) OF THE HIGH COURT OF JUDICATURE, CIVIL (VOL. II) – Part III Column No. VIII and Column No. 7 of Part IV – Principles of statutory interpretation – Recording of adverse remark in the Confidential Character Roll is the subject matter of challenge in the Writ petition as the G.R.C.O. (Civil) Vol.II, Part IV Column No. 7 notes prescribed procedure for recording annual Confidential Character Roll of Judicial officers – The concerned authority has not followed

the guidelines/procedure as enumerated in the GRCO – Whether the guidelines mentioned in the Note in part IV of GRCO (Civil Vol-II) is mandatory or directory.

Held: – We are of the humble view that since it is mentioned in the note that while filling up the column relating to "integrity", the guidelines should be followed, the legislative intent in framing such guidelines to give remark on integrity of a Judicial Officer which is the bedrock of the judicial institution essential for compliance with democracy and the Rule of law, the consequence that is likely to follow if the prescribed formalities of guidelines are not followed while mentioning "doubtful integrity" in the C.C.R. in a casual or mechanical manner, in our humble view, such guidelines are to be considered in the nature of a condition precedent in filling up the column relating to integrity and thus mandatory.

Malaya Ranjan Dash V. Register General, Hon'ble High Court of Orissa, Cuttack & Ors.

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INDIAN PENAL CODE, 1860 – Sections 313, 493 – The appellant has been convicted for the offences U/s. 313 and 493 of IPC – The appellant kept physical relationship with the victim under pretext of marriage and accordingly the victim become pregnant – On coming to know that the victim has become pregnant for four months, the appellant administered some medicines on 03.03.1991 to the victim and thereby caused termination of the pregnancy – Whether the judgment of learned Trial Court should be interfered when the evidence of P.Ws. has not been discarded in cross-examination by the appellant/accused.

Held: No – This Court after going through the evidence of the victim-P.W.2 vis-à-vis the evidence of the Doctor-P.W.7, finds that the victim clearly implicated the accused-appellant for having sexual relationship with her and administering the medicine to terminate the pregnancy on 03.03.1991 – Since the evidence of P.W. 2 has not been discarded in her cross-examination by the appellant-accused, this Court in view of such uncontroverted evidence of the victim coupled with the statement of P.W. 1, 3 and 7, is of the view that the appellant has been rightly sentenced to undergo the imprisonment vide the impugned judgment dated 12.02.1993 – Accordingly, this Court finds no illegality or irregularity with the judgment dated 12.02.1993 and is not inclined to interfere with the same.

However, while not being inclined to interfere with the same, taking into account the incident being of the year 1991 and since in the meantime more than 33 years have passed, this Court directs for release of the appellant under the provisions of Probation of Offenders Act, 1958.

Dolagobinda Jena V. State of Orissa

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INDUSTRIAL DISPUTES ACT, 1947 – Sections 2(s), 2(j) – Workman – The State Management challenged the award of learned Labour Court on the ground that the Opposite Party No. 1 being engaged as a cook attached to the hostel under the S.T. and S.C. Development Department does not come under the purview of definition of workman as defined under section 2(s) of the Industrial Disputes Act – Whether the hostel of an Educational Institution comes under the definition of industry as defined U/s. 2(j) of Industrial Disputes Act and the Opposite Party No. 1 being appointed as a cook in the said institution comes under the definition of workman.

Held: Yes – In view of the definition of "Workman" as defined under Section 2(s) so also the definition of 'industry' as defined under Section 2(j) of the I.D. Act and the settled position of law, this Court is of the view that the Petitioner Management is an Industry and the Opposite Party No.1 is a Workman under the I.D. Act.

State of Orissa V. Rajkishore Sethi & Anr.
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INTERPRETATION OF STATUTES – Principle relating to reverse burden of proof – Discussed.

State of Odisha V. Tatung Munda
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LAW OF CONTRACT – Contractual obligation – Petitioner, being a contractor, was awarded a government contract for constructing a Railway Over Bridge at Malatipatapur to Puri Konark Road, Odisha – Original cost of the contract was ₹63,87,82,051/- with completion date 02.06.2015 – The petitioner completed the entire project on 30.04.2015 i.e. prior to the stipulated date – There was an incentive clause for incentive payment for early completion on a graduated scale from 1% to 10% of the contract value – Petitioner claims 2.5% incentive but it was rejected on the ground that "Bridge works are not eligible for incentive" under the amended 2015 policy – Whether the denial of the incentive by the Opposite Parties is inconsistent with the principles of contractual obligation.

Held: Yes – The law of contracts rests on a simple but inviolable premise: agreements, once made, must be kept – This principle is not a relic of rigid formalism but the foundation upon which trust in commerce and governance alike depends – In public contracts, the government is not just a participant but a steward of its own word, bound to the rigor of the obligations it has assumed – To permit discretion where none is bargained for is to introduce uncertainty where certainty is paramount – It would reduce obligations to suggestions, leaving performance at the mercy of unilateral will – The power to contract is not the power to escape, and authority cannot be used as a tool to revise what has been freely undertaken – If a contract is to mean anything at all, it must be enforced as made, not as later convenience might dictate - Considering the facts and circumstances of the case, this Court finds merit in

the petitioner's claim – The Government's refusal to grant the incentive is unwarranted and inconsistent with established principles of contractual obligation – The opposite parties are directed to within THREE months from the presentation of this judgment – In case of non-compliance, the petitioner shall be entitled to interest at the rate of 8% per annum until the payment is made – This Court expects timely implementation of this order to uphold justice and equity.

M/s. Panda Infraprojects (India) Pvt. Ltd. V. State of Odisha & Ors.
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MAXIM – Doctrine of *Contra Proferentem* – This principle is invoked when ambiguity arises in a contractual term drafted by one party – In essence, it applies only when it is undeniably evident that a party either authored the ambiguous clause or played a significant role in shaping its language – This principle is enshrined in the UNIDROIT Principles of International Commercial Contracts, specifically outlined in Article 4.6, which states the following: "*..if contract terms supplied by one party are unclear, an interpretation against that party is preferred*."

M/s. Panda Infraprojects (India) Pvt. Ltd. V. State of Odisha & Ors.
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MOTOR VEHICLES ACT, 1988 – Section 166 – The appellant challenges the award of learned Tribunal solely on the ground that the driver of the offending vehicle was acquitted from the charges of rash and negligent driving in the Judgment passed by the learned S.D.J.M., and this was specifically urged before the learned Tribunal to absolve the appellant from the liability – Whether the appellant could be absolved from liability in view of acquittal of the driver of the offending vehicle by the competent Court of law.

Held: No – In the case at hand there is no dispute regarding accident or earning of the deceased who was a Government servant and hence merely because the driver of the offending vehicle was acquitted in a criminal trial that would not *ipso facto* disentitle the Claimant from claiming compensation consequentially does not absolve the Appellant from the liability to pay.

Assistant Engineer, Agriculture D.P.A.P., Phulbani V. Arnapurna Nayak & Ors.
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MOTOR VEHICLES ACT, 1988 – Section 166 – Quantum of compensation – Whether the quantum of compensation should be affected due to acquittal of the driver of the offending vehicle.

Held: No – It needs no reiteration that underlining principle of deciding a claim case by the learned Tribunal is signally different from that of conducting a criminal trial or a civil proceeding – It is a benevolent legislation

and the only guiding principle is that the claimant of a tragic accident should not be deprived of on technical grounds and the Courts in a higher position in the ladder of hierarchy, should be slow in interfering with the compensation awarded if it passed the test of just compensation unless there is manifestation of arbitrariness in the process of adjudication.

Assistant Engineer, Agriculture D.P.A.P., Phulbani V. Arnapurna Nayak & Ors.

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NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 42 & 52-A – Non-compliance of the mandatory provisions – Offence U/s. 20(b)(ii) (C) of the Act – In the present criminal appeal the order of sentence passed by the trial court is challenged – The accused pleaded that the impugned order passed by the trial court suffers from non-compliance of mandatory provisions of the Act – The case being a trap case, none of the witnesses either reveal about sending a copy of information to the official superior nor was the information recorded in a book/diary prescribed for it – The prosecution witnesses never disclosed that the samples were drawn in the presence of the Magistrate and the safe custody of sample was also not established – Further the brass seal used in sealing sample at the spot was not produced in the Court – Whether the order of conviction is sustainable.

Held: No – This Court hardly finds the prosecution to have led clear, cogent and reliable evidence to prove the safe custody of the samples so also compliance of Section 42 of the Act beyond all reasonable doubt and thereby, the only consequence emerges is that the prosecution is not successful in establishing its case against the appellant-convict beyond all reasonable doubt.

Dambarudhara Dash v. State of Odisha

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ODISHA CIVIL SERVICES (PENSION) RULES, 1992 – Rule 42(1) – Petitioner made representation seeking voluntary retirement from service along with grant of all consequential retirement benefits – State government rejected the representation on the ground that it will affect larger public interest and there is dearth of faculties in medical colleges – Whether rejection of an application for voluntary retirement on the ground of larger public interest is sustainable.

Held: No – The case of the Petitioner is to be considered in the light of the provisions contained in Rule 42 of the OCS (Pension) Rule 1992 – Moreover, such Rule doesn't provide for a window to the Opposite Parties to take into consideration any other factor while considering the VRS application of the Petitioner.

This Court has no hesitation in coming to a conclusion that the Opposite Parties have committed an illegality by rejecting the application of

the Petitioner seeking VRS from service – On such grounds, the writ application filed by the Petitioner is bound to succeed – Accordingly, the impugned orders under Annexure-14 dated 08.02.2024 and under Annexure-15 dated 09.02.2024 are hereby quashed.

Dr. Rabi Narayan Dhar V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 144

ODISHA CIVIL SERVICES (PENSION) RULES, 1992 – Rule 46 (3) – Petitioner while working as RT Constable was discharged from service on the ground of unauthorized absence – Prayer of the petitioner for compassionate allowance in terms of Rule 46 was rejected – The authority denied the special allowances on the ground that he had rendered only 16 years of service whereas the qualifying service was only 12 years 8 month and 29 days – Whether non-consideration of an application for compassionate allowance in case of discharge from service on the ground of unauthorized absence is sustainable under law.

Held: No – In rejecting the prayer for compassionate allowance by the impugned order, the authority failed to notice as the very heading of the rule indicates that the same is compassionate allowance and so far as the earlier conduct of the Petitioner during service is inconsequential and more so when on analysis of the materials on record, does not fall within the parameter as fixed by the Apex Court to disentitle the Petitioner to claim compassionate allowance – It does not augur well for a model employer to compare the degree of deprivation suffered by an incumbent while considering the claim for compassionate allowance.

The authorities are directed to grant such compassionate allowance in terms of Rule 46 of OCS (Pension) Rules within a period of four months from the date of receipt/production of copy of this judgment.

Pramod Kumar Sarangi V. State of Orissa & Ors.
2025 (II) ILR-Cut…… 158

ORISSA GRAMA PANCHAYATS ELECTION RULES, 1965 – Rule 51 – Recounting of votes – Petitioner has assailed the correctness of judgment passed by the District Judge in Election Appeal wherein the decision of the Election Tribunal allowing the recounting of votes has been overruled – The Opposite Party No.1 pleaded that the application for recounting of votes has not been made as per Rule 51 of the Rules i.e. the application for recounting has been made before the declaration of result – Hence, such application is not legally tenable whereas the petitioner pleaded that the application has been made after the declaration of the result – There is deficiency in evidence to accept such plea - Whether Opposite Party No.2 has complied Rule 51 of the Rules, 1965 while allowing the application for re-counting of votes.

Held: Considering the totality of the evidence on record, it shall have to be concluded that by the time of recounting of ballot papers in respect of Ward

Nos. 9 & 10, the result had already been declared – So, the conclusion is also that there is due compliance of Rule 51 of the Rules – The Court holds that there has been no deviation from the Rules, while considering the request for recounting of votes - Hence, the decision of learned court below is susceptible to revision and therefore, shall have to be overturned.

Radharani Behera V. Sitarani Senapati & Anr.
2025 (II) ILR-Cut…… 127

ODISHA HOME GUARDS ACT, 1961 – Section 3(1) r/w Odisha Home Guards Rules, 1962 and Executive Instruction issued by the Commandant-General of Home Guards dated 03.07.2014 – As per the circular prior approval of Commandant General is necessary for appointment of "members of Home Guards" by the Commandant – The petitioner is a selected candidate pursuant to an Advertisement dated 12.04.2016 – After completion/ appointment, the proceeding of the Enrolment Board was sent to the Commandant-General, Home Guards for approval but it was refused on the ground that prior approval was not taken from the Directorate General – Whether refusal to accord "approval" to the Selection Board/ Appointment Board/ Enrolment Board, after conclusion of process of selection is sustainable with reference to Section 3 of the 1961 Act.

Held: No **–** The reason as cited by the Commandant-General for not according approval is flimsy, vague and untenable inasmuch as Section 3 of the HG Act does not envisage "prior approval" of the Director General.

Subala Kumar Nayak V. Commandant-General of Home Guards, Cuttack & Anr.
2025 (II) ILR-Cut…… 179

ORISSA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Sections 8A & 12 – Petitioner's father was in possession of the suit land belonging to one Rajiv Panda who had been granted the land by the then ruler – After the death of his father, petitioner continued the possession – In 1954, State Government acquired it for the purpose of establishment of a steel plant – Petitioner's name was recorded as a forcible occupier in the remark column of the Record of Rights (ROR) – Due to interference by a private individual, the petitioner filed a suit for declaration of right, title and interest and the suit was decreed – Mutation case was filed for mutation but the Tahasildar did not effect mutation – Mutation appeal was filed and the appellate authority directed the correction of R.O.R – Matter was placed before the Board of Revenue and the order of the appellate authority was rejected – Despite petitioner's request and order of the Sub-collector, Panposh in Encroachment Appeal No. 5/93, the Tahasildar instead of referring the matter U/s. 8A of the OPLE Act, transmitted the case record to the Collector, Sundargarh, who cancelled the order of the Appellate Court – Again the Tahasildar had filed Revenue Revision case No. 2 of 2020 which was disposed of by the Collector quashing the order of the Sub-collector passed in Revenue Appeal No. 25 of 2016 – Whether any revenue authority can file a revision or challenge an Appellate Court's decision.

Held: No – The Act does not provide any provision allowing the Tahasildar to challenge the Sub-divisional Officer's decision through a revision petition before the Collector, especially when he is a revenue authority and an integral part of the process leading up to that decision.

Harsh Kumar Primus Lakra V. State of Orissa & Ors.
2025 (II) ILR-Cut…… 91

ORISSA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Section 8A – Whether a Tahasildar must refer a proceeding in which a person is found to be in continuous possession of a piece of land for more than 30 years, to the Sub-divisional Officer.

Held: Yes **–** The statutory scheme under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, that once the Tahasildar finds an individual to have been in continuous possession of the land for more than thirty years, the case must be referred to the Sub-divisional Officer.

Harsh Kumar Primus Lakra V. State of Orissa & Ors.
2025 (II) ILR-Cut…… 91

ODISHA SURVEY AND SETTLEMENT RULES, 1962 – Rules 41, 42 & 43 – Petitioner was the applicant in Mutation Case No. 10183 of 2023 – Vide the impugned order dated 17.08.2024, the Tahasildar, Jatni recalled his earlier orders dated 14.01.2024 and 13.02.2024 passed in Mutation Case Nos. 13607 of 2023 and 10183 of 2023 respectively, thereby rejecting applications in both the above Mutation Cases – Whether the order dated 17.08.2024 passed by the Tahasildar, Jatni (O.P. No. 2) in Judicial Misc. Case No. 05 of 2024 is a final order and as such appealable under Rule 42 of the Odisha Survey and Settlement Rules, 1962.

Held: Yes – In view of the clear provision that appeal shall lie from the final order under Rule 41, it has to be held that the order impugned in the writ petition is appealable under the Rules, 1962 inasmuch as in the case at hand the final order dated 17.08.2024 in rejecting the Mutation Case No. 10183 of 2023 filed by the petitioner.

Durga Madhab Harichandan V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 115

ORISSA SURVEY AND SETTLEMENT ACT, 1958 – Section 12(b), 15(b) – Remand of the revision by the authority for inquiry and correction of the mutation ROR – Whether order of remand issued by the Commissioner for its disposal by Tahasildar, Bhubaneswar is tenable under law.

Held: No – To conclude, the Court is of the humble view that, remand of which, is held not permissible, an analogous hearing of both the proceedings by opposite party No.1 would serve the purpose and meet the ends of justice.

Bikala Barik V. Commissioner of Settlement & Consolidation, Odisha, Bhubaneswar & Ors.

2025 (II) ILR-Cut…… 119

ORISSA SURVEY AND SETTLEMENT ACT, 1958 – Section 15(b) – The Act provides that the application shall have to be made within a year from the date of final publication under section 12(b) for revision of record of right or any portion thereof – Whether a revision can be entertained after the stipulated time as mentioned in Section 15(b) of the Act.

Held, Yes - The settled position of law is that the delay should not always be fetal in so far as a revision filed U/s. 15(b) of the Act is concerned and what is more important is to ensure a hearing on the principle of *ex debito justitiae*, while considering the competing rights of the parties involved.

Bikala Barik V. Commissioner of Settlement & Consolidation, Odisha, Bhubaneswar & Ors.

2025 (II) ILR-Cut…… 119

PROPERTY LAW – Principle of Natural Justice – On the basis of final decree passed in the Civil suit, applications for mutation of case land were filed by petitioners before the Tahasildar who allowed the above two mutation cases of the petitioners – Two new khatas were prepared in the name of the Petitioners accordingly – Subsequent thereto on the basis of an Order passed in Misc. Case filed by Opp. Party No. 4, the Tahasildar cancelled the R.O.R. of the Petitioners without issuing any notice to the Petitioners and without giving any opportunity of hearing to the Petitioners – Whether cancellation of Record of Right (ROR) of the petitioners without issuing any show cause notice is sustainable.

Held: No – It is settled propositions of law that, if any case or in an matter, an order is passed to the detriment of the interest of any party, the said party must be given a reasonable opportunity to show-cause before passing of that order, for no other reason, but only in order to comply the principle of natural justice.

The impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No. 30 of 2023 by the Tahasildar, Baripada (O.P. No.3) is a nullity, as the same has been passed in contravention with the principles of natural justice.

Padma Manajari Devi & Ors. V. State of Odisha & Ors.

2025 (II) ILR-Cut…… 254

PROPERTY LAW – Protection of Deity's property – Suit filed for injunction simpliciter – Trial Court dismissed the suit – First Appellate Court allowed the appeal and thereby set aside the judgment and decree passed by the trial Court - The forefather of the defendants were the Bhag tenants of the

suit properties under the plaintiff/ Deity – The defendants have not become able to establish that they are Bhag tenants of the suit properties under the plaintiff/ Deity – Whether the plaintiff can seek the relief for permanent injunction against the defendants.

Held: Yes – The properties belonging to a minor like Deity requires protection – For which, it is the obligation of the state and its instrumentalities as well as the Court to protect the interest of the Deity, as the Deity is a perpetual minor.

Kalia Sethy (dead) & Ors. V. Sri Sri Balaji Mahaprabhu
2025 (II) ILR-Cut…… 247

REASON – Absence of reason while rejecting the representation of petitioner – The petitioner filed a representation before the authority seeking to expunge the adverse remark made in his C.C.R. and upgrade the CCR – The representation filed by the petitioner was rejected without assigning any reason – Whether the rejection of representation without assigning any reason is sustainable under law.

Held: No – While considering the representation for expunction of adverse remark, reason should be assigned – The reasons may not be elaborate but brief reasons should be assigned for rejecting the representation – Thus we are of the humble view that rejection of the representation of petitioner is not sustainable in the eye of law.

Malaya Ranjan Dash V. Register General, Hon'ble High Court of Orissa, Cuttack & Ors.
2025 (II) ILR-Cut…… 9

SERVICE JURISPRUDENCE – Withholding of retirement dues – Petitioner challenges the order of withholding the retirement dues to the tune of ₹25,29,028.00 – No proceeding was pending at the time of retirement of the petitioner from the service – There is no dispute that the show cause notice was issued to the petitioner after his retirement from service – Whether withholding of retirement dues in absence of any proceeding is sustainable under the law.

Held: No – It is the settled position of law that without initiating a proceeding against the present Petitioner the Opposite Party-Corporation could not have withheld the amount as is due and admissible to the Petitioner on his retirement since such a conduct would be absolutely illegal and void.

This Court is of the view that the order dated 07.12.2023 under Annexure-1 is unsustainable in law – Similarly, the conduct of the Opposite Parties in withholding the dues of the Petitioner is absolutely illegal as the same does not adhere to the established principle of service jurisprudence.

SOCIETIES REGISTRATION ACT, 1860 (ODISHA AMENDMENT ACT, 2012) – Section 3A, 12-D – In the present Writ petition, the order of Inspector General of Registration, cancelling the registration of the petitioner/Association is under challenge – The Opposite Party No.1 (IGR) cancelled the registration on the ground of deliberate misrepresentation of facts by the members of the Association as the name of the Association is similar to the existing Association (Opp. Party No.2) – However, the petitioner pleaded that the authority failed to comply with the mandatory provisions of section 12-D of the Act, in terms of which the petitioner/Association should have given chance to change the name – Whether the impugned order is tenable in law..

Held: No – This Court is of the view that, despite an erroneous finding that name of the petitioner Association nearly resembles to the name of Opposite Party Association, as admittedly no such opportunity was accorded to the petitioner Association, the impugned order being passed without following due procedure of law, is illegal and unjustified – Hence, deserves to be set aside.

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2025 (II) ILR-CUT-1

M/s. INDERA MOTORS, ROURKELA
V.
THE COMMISSIONER OF COMMERCIAL TAXES, CT & GST, ODISHA & ORS.

[W.P.(C) NO. 6382 OF 2025]

08 APRIL 2025

[HARISH TANDON, C.J. & B. P. ROUTRAY, J.]

Issue for Consideration

Whether the petitioner is entitled to get benefit of interim order passed by the Hon'ble Supreme Court of India in a *lis* filed by another petitioner.

Headnotes

DEMAND OF INTEREST – The demand for payment of interest @ 9% from the date of filing of the return is raised against the petitioner by the Joint Commissioner of Sales Tax, CT & GST Circle – The challenge is made to the said demand on multiple grounds including that the spat of litigations initially poured in docket of this Court assailing the demand of the entry tax under the Orissa Entry Tax Act, 1999 – The same was decided in favour of the assessee – The matter has now travelled to the Apex Court both at the behest of the Department as well as some of the assessees – Interim order is passed against the department not to take any coercive step for non-deposit of the interest/principal amount in respect of the petitioners who have filed the Special Leave Petition before the Supreme Court – Whether the petitioner is entitled to get benefit of interim order passed by Hon'ble Supreme Court of India in a *lis* filed by another petitioner.

Held: No – Since there is no express order of stay of operation of the said order and the petitioner being not an applicant in any of the special leave petitions pending before the Supreme Court, we do not find any justification in extending the benefit of the interim order at this stage – Furthermore, in order to bring equilibrium between the rights of the parties, any deposit as demanded would sub serve the justice as the same would be subject to an outcome of the decision taken by the Apex Court provided it inures to the benefit of all the assessees whether they approached the Apex Court or not – We are conscious that because of the confusion having created in the mind of the several assessees on the applicability of the interim order, we feel that an opportunity should be given to the petitioner to deposit the said demand within two months from today – Such deposit shall be without prejudice to the rights and contentions of the parties. (Para 9)

List of Acts

Orissa Entry Tax Act, 1999

Keywords

In rem, In persona, Interim order, *Intra vires,* Demand of interest.

Case Arising From

Letter No. 2327/CT & GST dated 05.02.2025 issued by the Joint Commissioner of Sales Tax, CT & GST Circle, Rourkela II, Panposh.

Appearances for Parties

For Petitioner : Mr. Sidhartha Ray, Sr. Adv., Mr. K.K. Sahoo.
For Opp. Parties : Mr. Sunil Mishra, Senior Standing Counsel

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The demand for payment of interest @ 9% from the date of filing of the return is raised against the petitioner by the Joint Commissioner of Sales Tax, CT & GST Circle, Rourkela II, Panposh vide letter No.2327/CT & GST dated 05.02.2025.

2. The challenge is made to the said demand on multiple grounds including that the spate of litigations initially poured in docket of this Court assailing the demand of the entry tax under the Orissa Entry Tax Act, 1999 (OET Act) and the same was decided in favour of the assessee upholding their contention was held to be *intra vires* and further directions were passed in relation to the modalities of the transactions ensued within and outside the State of Odisha.

3. The matter travelled to the Apex court and an interim order was passed directing the assessee to pay 1/3rd of the demand and the rest portion of the demand was kept in abeyance until the final decision is taken. It is not in dispute that a civil appeal was disposed of by the Supreme Court on 28th March, 2017 upholding the vires of the Act and the competence of the department to impose tax in relation to the transactions as specified therein.

4. Despite the decision having taken by the Apex Court, the litigation did not receive quietus as batch of writ petitions were filed before this Court, assailing the decision to imposition of the interest from the period as demanded by the department. Admittedly, the petitioner was one of the litigants in the said batch of writ petitions which were disposed of on 15th March, 2023 with two directions; firstly, the remaining amount equivalent to 2/3rd of the demand shall be paid with an interest from the date of the order of the Supreme Court. Secondly, so far as the interregnum period from the date of filing of the return till the judgment of the Supreme court as aforesaid, compensatory interest @ 9% shall be charged on the assessee by the department.

5. The matter has now travelled to the Apex Court both at the behest of the Department as well as some of the assessees and the leave have already been granted and the civil appeal is now pending. It is not in dispute that the interim order to the effect that no coercive step shall be taken against the assessee-petitioner, who approached the Supreme Court, is also passed.

6. The petitioner contends that since the Apex court has passed an interim order as aforesaid, it would inure to the benefit of all the assessees whether made party in the civil appeal or not as such order is to operate in rem or not in personem. According to learned Senior Counsel appearing for the petitioner, since the Apex court is in seisin of the matter and an interim order has been passed, the Department cannot raise demand on interest for such interregnum period. It is further submitted that the remaining 2/3rd amount of tax along with the interest has already been deposited by the petitioner after the judgment of the Supreme Court and, therefore, the petitioner cannot be termed as a defaulter in discharge of its obligation foisted upon it under the statute.

7. Mr. Sunil Mishra, learned Standing Counsel appearing for the opposite party-Department refuted the contentions of the petitioner in contending that the petitioner has not approached the Apex Court against the order of this Court passed on 15th March, 2023 and, therefore, cannot reap the benefit of the interim order. In other words, it is sought to be contended that the interim order is restricted to the petitioners, who have filed the special leave petition before the Supreme Court and, therefore, to be construed as an order in personem and not in rem. It is further submitted that once the writ petitioner has accepted the order of the Court dated 15th March, 2023 having not challenged before the apex court, the instant writ petition is in fact filed seeking review of the said order, which is impermissible in law.

8. On the conspectus of the aforesaid submission so advanced, it is no longer in dispute that a batch of writ petitions including the writ petition filed by petitioner were disposed of by a common judgment passed by this Court on 15th March, 2023 and the petitioner till date has not assailed the said order before the Apex Court.

9. We have not been taken to any material that the operation of the said order is stayed by the Apex Court but the interim order is passed against the department not to take any coercive step for non-deposit of the interest/principal amount in respect of the petitioner of the said special leave petition. Whether the High Court was within its competence to direct the compensatory interest to be levied on the assessee for the interregnum period between the date of filing of the return and the judgment of the Apex Court, is a matter to be decided by the Apex Court. Since there is no express order of stay of operation of the said order and the petitioner being not an applicant in any of the special leave petitions pending before the Supreme Court, we do not find any justification in extending the benefit of the interim order at this stage. Furthermore, in order to bring equilibrium between the rights of the parties, any deposit as demanded would sub serve the justice as the

same would be subject to an outcome of the decision taken by the apex Court provided it inure to the benefit of all the assessees whether they approached the apex Court or not. We are conscious that because of the confusion having created in the mind of the several assessees on the applicability of the interim order, we feel that an opportunity should be given to the petitioner to deposit the said demand within two months from today. Such deposit shall be without prejudice to the rights and contentions of the parties.

10. With these observations, the writ petition is disposed of. No order as to costs.

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

Result of the case:
Writ Petition disposed of.

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2025 (II) ILR-CUT-4

E. MEERABAI PATRO
V.
STATE OF ODISHA & ORS.

[WRIT APPEAL NO. 320 OF 2024]

07 APRIL 2025

[HARISH TANDON, C.J. & B.P. ROUTRAY, J.]

Issue for Consideration

Whether the deceased who was deployed for duty at Drug Distribution Center at District Headquarters Hospital (DHH) during Covid-19 and died due to infection of COVID-19 positive is entitled to the benefit as per the resolution dated 04.08.2020.

Headnotes

COVID WARRIOR DEATH – Financial Assistance – Family Welfare Department Notification No. 17197 dated 20.07.2020 r/w Corrigendum No. 17941, dated 29.07.2020 – The husband of the petitioner was serving as pharmacist in the District Headquarters Hospital, Rayagada since 01.07.2020 – While serving as such he was diagnosed with COVID-19 infection and died – As per the letter dated 12.09.2020 of the Chief District Medical Officer, the deceased was drafted for Covid-19 related work in isolation ward and Flu clinic of DHH, Rayagada – The Opposite Party rejected the prayer for declaration of death of deceased

husband as COVID warrior on the ground that he was drafted for routine duties at Drug Distribution Center and as he was not drafted for COVID-19 management duty involving direct contract with COVID-19 patient, the proposal does not satisfy the mandatory conditions prescribed under the Notification – Whether the deceased who was deployed for duty at Drug Distribution Center at District Headquarters Hospital during COVID-19 and died due to infection of COVID-19 positive is entitled to the benefit as per resolution dated 04.08.2020.

Held: Yes – We need to mention here that even if the contention of the Opposite Parties is accepted to the effect that the deceased was deployed for duty at Drug Distribution Centre then also his exposure to contact with COVID-19 infected patients cannot be ruled out in course of discharging his duties as he has to distribute the drugs/medicines to different persons either at the distribution centre or by going to different places of the Hospital including the patient's wards – Therefore, his exposure towards direct contact with COVID-19 patients in course of discharging his duties as a Pharmacist is very much probable – So, looking from either way, particularly, when the Chief District Medical & Public Health Officer, Rayagada has certified that the deceased was drafted for COVID-19 related work, we find merit in the contention of the writ petitioner to get such financial assistance in terms of FD Resolution dated 4.8.2020. (Para 11)

List of Acts

Odisha Civil Services (Compassionate Ground) Rules, 1964; Odisha Civil Services (Pension) Rules 1992; Constitution of India, 1950

Keywords

COVID warrior; Death due to Covid-19 infection; Financial assistance.

Case Arising From

Judgment dated 08.02.2024 of the learned Single Judge passed in W.P.(C) No. 28054 of 2022.

Appearances for Parties

For Appellant : Mr. S. Pattanaik
For Respondents : Mr. B. Dash, A.G.A.

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Heard Mr. S. Pattanaik, learned counsel for the Appellant and Mr. B. Dash, learned Additional Government Advocate for State-Respondents.

2. Present appeal is directed against the impugned judgment dated 08.02.2024 of learned Single Judge passed in W.P.(C) No.28054 of 2022, wherein the prayer of the Petitioner to release financial assistance in terms of FD Resolution dated 4.8.2020 is rejected.

3. The admitted case of the parties is that, the deceased namely, Ashok Kumar Patro was serving as a Pharmacist in the District Headquarter Hospital, Rayagada since 1.7.2020. While serving as such, he was diagnosed with COVID-19 infection and hospitalized on 3.9.2020. He died on 11.9.2020 due to COVID-19 infection.

4. The dispute is regarding release of financial assistance in favour of the widow of the deceased in terms of the Government of Odisha Resolution No.22099, dated 4.8.2020 of Finance Department.

5. The widow of the deceased is the writ petitioner and the present Appellant. Government of Odisha in Finance Department issued Resolution dated 4.8.2020 declaring support to personnel in active line of duty fighting COVID-19 pandemic and their families to provide incentive package under the Odisha Civil Services (Compassionate Ground) Rules, 1964 in the case of Government employees covered under the OCS (Pension) Rules 1992, who succumbed to COVID-19 in line of duty in active deployment by the State authorities. But when the Petitioner applied for financial assistance being the widow of the deceased, the same was finally rejected vide Letter No.17825 dated 22.06.2021 stating that the deceased's death cannot be declared as COVID Warrior Death.

6. As per Health and Family Welfare Department Notification No.17197, dated 20.7.2020 read with Corrigendum No.17941, dated 29.07.2020, the Eligibility and Mandatory Conditions of Eligibility have been provided as follows:-

> **"B. ELIGIBILITY**
>
> Any person engaged in COVID-19 related work drafted by Government of Odisha or any of its agencies, who are not eligible for insurance coverage under the guidelines issued by Government of India vide their D.O. letter No.Z-21020/16/2020 – PH Dt.30.03.2020 is eligible for such financial assistance to be given to their spouse or next of kin. It shall cover the following categories of personnel engaged in COVID-19 related duties by Government of Odisha or any of its agencies
>
> 1. Employees of State Government, Urban and Rural Local Bodies, PSUs, Autonomous Organisations, Societies under different Departments of the Government
>
> 2. Any private person or volunteer
>
> 3. Elected representatives
>
> 4. Any person hired by Government/its authorized agencies through a professional agency on contract/daily wage basis.
>
> **C. MANDATORY CONDITIONS OF ELIGIBILITY**

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

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

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

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

7. According to the Opposite Parties, the deceased was drafted for routine duties at Drug Distribution Centre before being diagnosed with COVID-19 infection. As he was not drafted for COVID management duty involving direct contact with COVID-19 patients, the proposal does not satisfy the mandatory conditions prescribed under Notification dated 20.7.2020.

8. Learned Single Judge held in the impugned judgment that, since the deceased was not drafted for COVID management related duties he is not coming under the purview of the guidelines, the case of the Petitioner to declare him (the deceased) as COVID Warrior is rejected.

9. It is seen from letter dated 12.9.2020 of the Chief District Medical & Public Health Officer, Rayagada (Annexure-1 to the writ petition), who is the controlling authority in respect of the deceased as a Pharmacist, that, the deceased was drafted for COVID-19 related work in Isolation Ward and Flu Clinic of District Headquarter Hospital, Rayagada. For immediate reference, the contents of said letter dated 12.9.2020 is re-produced below.

"To

The Collector & District Magistrate
Rayagada

Sub:- Death of Late Ashok Kumar Patra, Pharmacist, DHH Rayagada COVID Warrior at Sum Covid Hospital, Bhubaneswar due to COVID-19.

Sir,

With reference to the subject cited above I am to intimate that Late Ashok Kumar Patra, Pharmacist, DHH Rayagada was drafted for COVID-19 related work in isolation ward and FLU Clinic of DHH Rayagada. While on duty he was tested COVID positive on 01.09.2020. He got himself admitted at SUM COVID Hospital, Bhubaneswar on 03.09.2020. He was undergoing treatment and was declared dead on 11.03.2020 at 06.40 PM. The Cause of death is COVID-19.

The dead body of the COVID Warrior Late Ashok Kumar Patra, Pharmacist may be cremated with due honor as martyr as per government guideline.

Hence necessary steps may be taken in this regard and commissioner, Bhubaneswar Municipal Corporation may be intimated to do the needful.

The request letter of the pharmacist association is enclosed herewith

Yours faithfully

Chief District Medical
& Public Health Officer, Rayagada"

However in the impugned order dated 22.6.2021 (Annexre-10 to the writ petition), it is stated that the deceased was not drafted for COVID management related duties and hence he may not be declared as COVID Warrior.

10. It needs to be mentioned here that a counter affidavit has been filed through the Additional Secretary to Government in Health & Family Welfare Department, Government of Odisha and in the said counter affidavit the State-Opposite Parties did not deny or dispute the letter of the Chief District Medical & Public Health Officer, Rayagada dated 12.9.2020 regarding the duties assigned to the deceased. The State-Opposite Parties also did not deny the averments of the Petitioner made in this regard at paragraph 3 of the writ petition. It is simply stated in the counter affidavit at paragraph 4 that, the State-Opposite Parties have no comments to offer with regard to the averments made in paragraphs 1 to 8 of the writ petition.

11. An affidavit dated 6.3.2025 has also been filed by the Chief District Medical & Public Health Officer, Rayagada in the present appeal, where nothing has been stated either denying or disputing his letter dated 12.9.2020 (Annexure-1 to the writ petition). Therefore it is established from the averments made and the materials produced on record that the deceased-husband of the Petitioner was drafted for COVID-19 related work and he was tested COVID-19 positive while on duty and died due to the same on 11.9.2020. If this is taken into account, the Eligibility and Mandatory Conditions of Eligibility as per Notification dated 20.7.2020 of the Health and Family Welfare Department, Government of Odisha are found satisfied in respect of the deceased to declare him as COVID Warrior.

Apart from the above, we need to mention here that even if the contention of the Opposite Parties is accepted to the effect that the deceased was deployed for duty at Drug Distribution Centre then also his exposure to contact with COVID-19 infected patients cannot be ruled out in course of discharging his duties as he has to distribute the drugs/medicines to different persons either at the distribution centre or by going to different places of the Hospital including the patient's wards. Therefore, his exposure towards direct contact with COVID-19 patients in course of discharging his duties as a Pharmacist is very much probable. So, looking from either way, particularly, when the Chief District Medical & Public Health Officer, Rayagada has certified that the deceased was drafted for COVID-19 related work, we find merit in the contention of the writ petitioner to get such financial assistance in terms of FD Resolution dated 4.8.2020. Learned Single Judge has failed to appreciate the duty discharged and assigned to the deceased before his infection and death, and the impugned judgment is set aside accordingly. The State-Respondents

are directed to extend the benefits in favour of the Appellant (the widow) providing such financial assistance to her as per Government of Odisha Finance Department Resolution dated 4.8.2020.

12. The Writ Appeal is allowed to the above extent.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Appeal allowed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-9

MALAYA RANJAN DASH
V.
REGISTRAR GENERAL,
HON'BLE HIGH COURT OF ORISSA,
CUTTACK & ORS.

[W.P.(C) NO. 28873 OF 2023]

02 MAY 2025

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

Issues for Consideration

1. Whether the guidelines mentioned in the Note, in Part IV of GRCO (Civil) Volume-II is mandatory or directory while assessing the integrity of a judicial officer.
2. Whether Civil Procedure code is applicable to the Writ Petition.
3. Whether Judicial Review is maintainable against an assessment of the conduct of a Judicial Officer made by the Full Court.
4. Whether the rejection of representation without assigning any reason is sustainable under law.

Headnotes

(A) GENERAL RULES AND CIRCULAR ORDERS (GRCO) OF THE HIGH COURT OF JUDICATURE, CIVIL (VOL. II) – Part III Column No. VIII and Column No. 7 of Part IV – Principles of statutory interpretation – Recording of adverse remark in the Confidential Character Roll is the subject matter of challenge in the Writ petition as the G.R.C.O. (Civil) Vol.II, Part IV Column No. 7 notes prescribed procedure for recording annual Confidential Character Roll of Judicial officers – The concerned authority has not followed the guidelines/procedure as enumerated in

the GRCO – Whether the guidelines mentioned in the Note in part IV of GRCO (Civil Vol-II) is mandatory or directory.

Held: – We are of the humble view that since it is mentioned in the note that while filling up the column relating to "integrity", the guidelines should be followed, the legislative intent in framing such guidelines to give remark on integrity of a Judicial Officer which is the bedrock of the judicial institution essential for compliance with democracy and the Rule of law, the consequence that is likely to follow if the prescribed formalities of guidelines are not followed while mentioning "doubtful integrity" in the C.C.R. in a casual or mechanical manner, in our humble view, such guidelines are to be considered in the nature of a condition precedent in filling up the column relating to integrity and thus mandatory. (Para 9)

(B) CODE OF CIVIL PROCEDURE, 1908 – Section 141 and Order VIII Rule 5 r/w Article 226 of the Constitution of India – From the affidavit given by the Special Officer (Administration) it is clear that there is no specific denial of the averments taken in the writ petition regarding non-following of the notes on procedure and guidelines appended there in while filling up the column relating to integrity rather the reply appears to be vague – As per the Order VIII Rule 5 in absence of a specific denial in the Counter Affidavit to the assertions made in the Writ Petition, it can safely be concluded that there is no denial of the facts stated in the Writ Petition – Whether Code of Civil Procedure is applicable to the Writ Petition.

Held: Yes – The principles as stated in the code of civil procedure are also applicable to the writ proceeding. (Para 10)

(C) CONSTITUTION OF INDIA, 1950 – Article 226 – Power of Judicial Review against an assessment of the conduct of a Judicial Officer made by a full Court.

Held: Judicial Review is permissible only to the extent of finding whether the process in reaching the decision has observed correctly and not the decision itself as such. (Para 10)

The stand taken in the counter affidavit by the opposite parties that merely because an officer was good in past, he is good for all times to come, is not acceptable and that the past conduct of an officer is no guarantee that he would not commit any misconduct and from such angle, the past reputation and assessments were of no concern for the present or future grading/assessment, cannot be legally accepted – We are of the view that the authorities should not keep their eyes totally closed towards the overall

estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. (Para 12)

(D) REASON – Absence of reason while rejecting the representation of petitioner – The petitioner filed a representation before the authority seeking to expunge the adverse remark made in his C.C.R. and upgrade the CCR – The representation filed by the petitioner was rejected without assigning any reason – Whether the rejection of representation without assigning any reason is sustainable under law.

Held: No – While considering the representation for expunction of adverse remark, reason should be assigned – The reasons may not be elaborate but brief reasons should be assigned for rejecting the representation – Thus we are of the humble view that rejection of the representation of petitioner is not sustainable in the eye of law. (Para 11)

Citations Reference

Nazir Ahmed -Vrs.- Emperor**, A.I.R. 1936 PC 253;** Bishwanath Prasad Singh -Vrs.- State of Bihar and Others**, (2001) 2 Supreme Court Cases 305;** Dev Dutt -Vrs.- Union of India and Others, **(2008) 8 Supreme Court Cases 725;** M.S. Bindra -Vrs.- Union of India and Others, **(1998) 7 Supreme Court Cases 310;** State of U.P. -Vrs.- Yamuna Shankar Misra and Another**, (1997) 4 Supreme Court Cases 7;** State of Haryana and Anr.-Vrs.-Raghubir Dayal, **(1995) 1 Supreme Court Cases 133;** May George -Vrs.-Special Tehsildar and Ors., **(2010) 13 Supreme Court Cases 98;** Delhi Airtech Services Pvt. Ltd. And Another -Vrs.- State of U.P. and Another**, (2011) 9 Supreme Court Cases 354;** Union of India (UOI) Vs. Agarwal Iron Industries), **(2014) 15 Supreme Court Cases 215;** Badat and Co.-Vrs.- East India Trading Co. **A.I.R. 1964 S.C. 538;** Thangam and Ors. -Vrs.- Navamani Ammal, **(2024) 4 Supreme Court Cases 247;** Cherukuri Mani-Vrs.-Chief Secretary, Government of Andhra Pradesh and Ors., **(2015) 13 Supreme Court Cases 722;** Syed T.A. Naqshbandi and Ors.-Vrs.-State of Jammu & Kashmir and Ors., **(2003) 9 Supreme Court Cases 592;** State of Punjab-Vrs.- Bhag Singh, **(2004) 1 Supreme Court Cases 547;** Breen -Vrs.- Amalgamated Engg. Union, **(1971) 1 All ER 1148;** Alexander Machinery (Dudley) Ltd. -Vrs.- Crabtree, **1974 ICR 120 (NIRC);** Chairman, Disciplinary Authority, Rani Lakshmit Bai Kshetriya Gramin Bank -Vrs.- Jagdish Saran Versheny and Ors.**, (2009) 4 Supreme Court Cases 240;** S.T. Ramesh -Vrs.- State of Karnataka and Another**, (2007) 9 Supreme Court Cases 436 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Constitution of India, 1950. General Rules and Circular Orders (GRCO) Civil, Vol-II

Keywords

Assessment of Integrity, Recording of Adverse Remark, Confidential Character Roll, Statutory Interpretation, Applicability of Civil Procedure Code to the Writ Petition, Shall, Should, Must, Mandatory, Absence of reason, Judicial Review.

Case Arising From

Letter No. 15738 dated 21/12/2022 and letter dated 21/12/2022.

Appearances for Parties

For Petitioner : Mr. Ashok Mohanty, Sr. Adv.
Mr. Prafulla Kumar Rath, Sr.Adv.
For Opp. Parties : Mr. Pitambar Acharya, Advocate General
Mr. Aurobinda Mohanty, A.S.C.

Judgment/Order

Judgment

S.K. SAHOO, J.

English author and humorist Douglas Adams said, "To give real service, you must add something which cannot be brought or measured with money, and that is sincerity and integrity". "If you have integrity, nothing else matters. If you don't have integrity, nothing else matters", said Alan K. Simpson, an American politician.

Judiciary is an institution whose foundations are based on honesty, integrity and public trust. Integrity is the hallmark of judicial discipline. Dispensation of justice is akin to discharge of a pious duty. A Judge, like Caesar's wife, must be above suspicion. Judicial service cannot afford to suffer in the hands of a person of doubtful integrity. A Judge must be a person of high standards, impeccable integrity and unimpeachable independence, honest to the core with high moral values, must adhere to a higher standard of probity and ethically firm. Judicial conduct must not be beyond the pale. A slightest dishonesty, whether it is monetary, intellectual or institutional by a Judicial Officer may have disastrous effect. Democracy to thrive and the Rule of law to survive require every Judge to discharge his judicial functions with integrity, impartiality and intellectual honesty.

Recording of adverse remarks in the Confidential Character Roll (hereinafter 'C.C.R.') along with C.C.R. Grading as 'average' for the period from 01.01.2021 to 31.12.2021 is the subject matter of challenge in this writ petition filed by the petitioner Malaya Ranjan Dash, who is an officer in the rank of Orissa Superior Judicial Service and prayer has been made to quash the adverse entry made in his C.C.R. which was communicated to him vide impugned letter no.15738 dated 15th October 2022 under Annexure-7 as well as the letter dated 21st December 2022 under Annexure-10 rejecting his prayer to expunge the adverse remark in his C.C.R.

2. The factual matrix of the case, as appears from the record, is that the petitioner got selected in the written test for the post of District Judge directly from the Bar in the year 2010, attended the interview on 4th September 2010 and came out successful and became topper among four candidates selected for the post of District Judge through direct recruitment from the Bar in that year.

It is the case of the petitioner that during his entire service career, the petitioner had remained sincere, committed to his work and had performed his job to the utmost satisfaction of higher authorities and till initiation of disciplinary proceeding, he had never received any adverse comment/remark from the High Court. It is the further case of the petitioner that after successful completion of five years in the cadre of District Judge, he was granted Selection Grade Scale of pay with effect from 15th December 2015 and on satisfactory performance in the said cadre, he was further granted Super Time Scale of pay with effect from 3rd August 2017 by this Court. During his tenure as Addl. District & Sessions Judge in four different stations and as Principal District & Sessions Judge at four districts of Odisha consecutively for around seven years, the petitioner was appreciated by the Administrative Judges of those stations/districts and he truly believed that he must have received CCR grading of high rank from them and even during his stint in Orissa High Court as Registrar General, the performance of the petitioner was appreciated by the then Hon'ble Chief Justice and other puisne Judges of the Court.

A disciplinary proceeding was initiated against the petitioner and two other officers vide D.P. No.3/2021 on the charges of committing (a) Gross misconduct (b) Dereliction in duty (c) Administrative indiscipline while dealing with judicial records and (d) Failure to maintain absolute integrity and honesty, under Rule 3 of the Odisha Government Servants' Conduct Rules, 1959 on the allegation/imputations that while working as Registrar General, High Court of Orissa on 26th February 2021, without making the Chief Justice informed, he approved a note sheet of the then Deputy Registrar (Judicial) and thereby instructed for registration of a Suo Motu proceeding on the basis of an unsigned order bearing the date 24th February 2021 purported to be of the Division Bench of this Court and accordingly, Registry of the High Court registered Suo Motu Writ Petition (Civil) No.7943 of 2021 "Registrar (Administration), Orissa High Court -versus- Chief Secretary, Govt. of Odisha and others" and sent notices to the opposite parties enclosing copies of the above unsigned order. The Office of the Advocate General, Odisha received the notice and copy of such notice was also received by the office of one of the Amicus Curiae Mr. Manoranjan Mohanty, which act/omission of the petitioner lowered the majesty of the High Court and it amounts to gross misconduct, dereliction of duty and administrative indiscipline and thereby he failed to maintain absolute integrity and honesty.

It is the case of the petitioner that pursuant to the note sheet leading to the registration of the above mentioned Suo Motu writ petition, he submitted his

explanation as to under which circumstances, it was approved and stated that the same was an inadvertent mistake on his part as he was neither vetted by the then Deputy Registrar (Judicial) nor could focus that he was acting upon a copy of the order without signature. Even he could not sense that there was dissenting opinion of one of the Hon'ble Judges of the Bench, as the note sheet was placed before him after two days of the date of the order unaccompanied with that part of the dissenting order.

It is the further case of the petitioner that being not satisfied with the written note of defence as filed by the petitioner, an enquiry committee was constituted and the Enquiring Authority after inquiry submitted the enquiry report holding the petitioner and co-delinquent Shri Janmejay Das guilty of three charges i.e. (a) Gross Misconduct (b) Dereliction of Duty and (c) Administrative indiscipline while dealing with judicial records, but at the same time, he was exonerated from the charge of "failure to maintain absolute integrity and honesty". The Enquiring Authority was also pleased to recommend the punishment of reduction to the lower grade in the pay and vide notification no.2100 dated 21st December 2022, the petitioner was awarded with major penalty of reduction to a lower grade i.e. Selection Grade (SG) in the rank of District Judge as envisaged in sub-rule (vi) of Rule 13 of the OCS (CCA) Rules, 1962 and further clarified that upon reduction to the lower grade of Selection Grade, the pay of the petitioner will be fixed at the initial scale of Selection Grade with entitlement of annual increments in the Selection Grade with further stipulation that his up-gradation to the next higher grade in the Super Time Scale would be considered after five years.

Pursuant to the Notification No.2100 dated 21st December 2022, the State Govt. in the Department of Home in its order No.6950 dated 16th February, 2023 re-fixed the revised judicial scale of 2022 at Rs.1,63,030/- in Cell No.1 of Level J-6 (Selection Grade) of the pay matrix w.e.f. 21st December, 2022 with further stipulation that the up-gradation to the next higher grade in the Super Time Scale would be considered after five years from the date 21st December 2022.

It is the further case of the petitioner that while he was functioning as Presiding Officer, Industrial Tribunal, Rourkela, he was served with a confidential letter no.15738 dated 15.10.2022 vide Annexure-7 from the opp. party no.3 communicating extracts from the remarks recorded in his C.C.R. with C.C.R. grading for the period from 1st January 2021 to 31st December 2021 by this Court which reads as follows:

1.	Personal relation, quality of relationship with superior officers, colleagues, subordinates, learned members of the Bar and Public	Calculative
2.	Integrity	Doubtful. Does not inspire confidence
3.	Grading	Average

It is the further case of the petitioner that G.R.C.O. (Civil) prescribes the procedure for recording of C.C.R. of the Judicial Officers. Before filling of the column no.7 which says about integrity, note in the instruction and guidelines appended therein are to be followed, but without following the procedure in the G.R.C.O. (Civil), adverse remark in the C.C.R. of the petitioner was recorded, which is ex-facie illegal and not sustainable in the eyes of law.

It is the further case of the petitioner that he filed a representation on 01.11.2022 before this Court seeking to expunge the adverse remark against him and also to upgrade the C.C.R. grading to any higher grade taking into account his sincerity, honesty, probity, commitment and devotion to duty among similar other factors as deem fit and proper, otherwise, it will not only put a stigma in his career but also subject him to great hardship and put a scar on his soul forever, even without doing anything blemished. The representation filed by the petitioner was rejected by this Court without assigning any reason whatsoever and the said fact was communicated to the petitioner vide letter no.19921 dated 21st December 2022 (Annexure-10).

It is the further case of the petitioner that the entry made in the CCR for the year 2021 cannot be said to be justified as the prior to such entry, the petitioner had served ten years in judicial service and never received any such adverse entry in C.C.R. Pursuant to the incident of approval of the note sheet regarding registration of a Suo Motu Case No.7943 of 2021 without intimation of the Hon'ble the Chief Justice, the petitioner was transferred as District Judge, Rayagada where the petitioner hardly worked for five months that too during COVID-19 period in restrictive functioning of the Court and then his service was placed under the State Government, in the Labour and ESI Departments as Presiding Officer, Industrial Tribunal. Nothing had been brought to the notice of the petitioner over such year or thereafter regarding any material which could cast doubt on the integrity of the petitioner. As regards to the charge in D.P. No.03 of 2021 that the petitioner had failed to maintain absolute integrity and honesty in performance of his job, was found to be not proved by the Enquiring Authority.

It is the further case of the petitioner that prior to the recording of such C.C.R., the petitioner was not granted with sufficient opportunity in writing or by informing him of the deficiency, if any, noticed for improvement thereby causing serious prejudice to the petitioner and hence, the action of the opposite parties in labeling him as an officer of 'doubtful integrity' and other remarks are not sustainable in law.

It is the further case of the petitioner that even though the impugned orders were passed on 15th October 2022 and 21st December 2022 respectively and the re-fixation of salary was made on 16.02.2023, but sometimes thereafter, the petitioner was transferred from Rourkela to Bolangir and after collecting all the relevant materials for the preparation of the writ petition which took some time, because of

which there was some delay in preferring the writ petition and further because the petitioner is a judicial officer in the cadre of District Judge, due to his hectic schedule, he could not prefer the writ petition in promptitude and accordingly, after sometime, the writ application was filed.

3. In response to the notice, all the opp. parties being represented by the Special Officer (Administration), High Court of Orissa has filed their counter affidavit in the writ petition wherein it is stated that the petitioner was not sincere nor committed in his work nor performed his job to the utmost satisfaction of higher authorities. It is stated that the opp. parties have no knowledge if the petitioner was appreciated by the Hon'ble Administrative Judges while he was functioning as Addl. District & Sessions Judge or Principal District Judge in different stations, but the performance of the petitioner as the then Hon'ble Chief Justice. It is not known if the petitioner was appreciated by the other Hon'ble Judges of this Court. It is stated that the petitioner had submitted his initial reply to the show cause and subsequent to the initiation of D.P. No.3 of 2021, the petitioner submitted his written statement of defence. Thereafter, Enquiring Authority was appointed to enquire into the charges levelled against the petitioner and two other co- delinquents. There was, however, no constitution of any inquiry committee. It is further stated that the Enquiring Authority after due inquiry submitted the report and the Disciplinary Authority considering the findings therein and the various statutory provisions under Rules 15(10)(i)(a) and 15(10)(i)(b) of OCS (CCA) Rules, 1962, submitted by the petitioner and taking into account all other relevant aspects has awarded penalty as stated above. It is stated that the penalty was imposed on the petitioner taking into consideration the gravity of misconduct which is neither disproportionate nor illegal as alleged and the penalty as inflicted was lawful and keeping in view the magnitude of the guilt. It is stated that the adverse remarks were made by the Reporting Authority -cum- Chief Justice of the High Court in the C.C.R. of the petitioner by following due procedure after taking all the aspects into consideration and the same was neither illegal nor does it require any interference by Registrar General of this Court was never appreciated by the this Court. It is stated that the representation dated 21.11.2022 of the petitioner was duly considered and was rejected and the factum of rejection was communicated to the petitioner. It is further stated that due procedure has been followed by the Reporting Authority while recording the CCR of the petitioner for the year 2021 and therefore, it cannot be said that the recording has been made without any reason or it suffers from non- application of mind. It is stated that the case of the petitioner that the entries made in the CCR of the petitioner for the year 2021 are not justified because he had never received any adverse entry in his last ten years in the Judicial Service, is erroneous. Entry in CCR is made after taking all the relevant aspects of the officer concerned into consideration. It is further stated that the incident of approval of the note sheet was a misconduct as has been concluded by the Hon'ble Enquiring Authority in D.P. No.3 of 2021 wherein the magnitude of guilt of the petitioner has been discussed with due elaboration and

merely because the department was unsuccessful in bringing home the charge that the petitioner had failed to maintain absolute integrity and honesty, the same cannot be a circumstance not to make an adverse entry in the CCRs. It is stated that the case of the petitioner that merely because an officer was good in past, he is good for all times to come, is not acceptable. The past conduct of an officer is no guarantee that he would not commit any misconduct and from such angle, the past reputation and assessments were of no concern for the present or future grading/assessment. It is further stated that the grounds taken by the petitioner seems to be more frictional than real and therefore, the petitioner is not entitled for the reliefs claimed.

4. When the matter was taken up for hearing on 21.03.2025 and Mr. Asok Mohanty, learned Senior Advocate appearing for the petitioner placed GRCO (Civil) Volume-II under the heading of 'Notes on Procedure for Recording Annual Confidential Character Roll of Judicial Officers' which is a part of Form No.(S)-33 wherein procedure has been laid down regarding the guidelines to be followed in filling up the column relating to 'integrity' and submitted that such procedure has not been followed in the case of the petitioner, we directed the Special Officer (Administration) of this Court who has filed the counter affidavit, to file an affidavit specifically stating therein as to whether the guidelines as laid down in such notes have been followed or not and if so, all the relevant documents to that effect be placed along with the affidavit. Since, the impugned letter under Annexure-7 relates to recording of remarks in the Confidential Character Roll along with C.C.R. grading for the period from 01.01.2021 to 31.12.2021 and in that period, the petitioner acted as Registrar General of this Court, District and Sessions Judge, Rayagada so also as the Presiding Officer, Industrial Tribunal, Rourkela, we also directed the Special Officer (Administration) to produce before us the copies of the C.C.R. of the petitioner of the concerned authority/Administrative Judges for the period from 01.03.2021 to 09.03.2021, 15.03.2021 to 06.08.2021 and 11.08.2021 to 31.12.2021. We also asked the Special Officer (Administration) to produce the records of grading in the C.C.R. of the petitioner for the year 2019 and 2020.

The learned counsel for the petitioner filed a memo on 21.03.2025 with the intimation regarding grading of C.C.R. for the year 2022 and 2023 communicated to him by Special Officer (Administration) dated 03.09.2024 which shows the grading of the petitioner for the year 2022 was 'very good' and for the year 2023 was also 'very good'.

In pursuance of such order dated 21.03.2025, an affidavit has been filed by the Special Officer (Administration) along with the records of C.C.R. in grading of the petitioner for the year 2019 and 2020 so also the C.C.R. of the petitioner for the period from 03.01.2021 to 08.03.2021, 15.03.2021 to 06.08.2021 and 11.08.2021 to 31.12.2021. The remarks of the Full Court in the C.C.R. of the petitioner for the year 2019 (I) is 'very good' and for the year 2019 (II) is 'very good'. The remarks of the Full Court in the C.C.R. of the petitioner for the year 2020 (I) is 'very good' and the

grading given by the Hon'ble Chief Justice in the C.C.R. of the petitioner from 05.06.2020 to 02.01.2021 is 'outstanding'.

In the C.C.R. of the petitioner from 04.01.21 to 08.03.2021, the Hon'ble Chief Justice in column no.(i) which relates to 'state of health and special personality', column no.(ii) which relates to 'report on the officer's qualities', column no.(iii) which relates to 'report on officers abilities', column no.(iv) which relates to 'report on knowledge and performance' and column no.(vii) which relates to 'attitude and potential', has given his remarks as 'Good'. In column no.(v) which relates to 'Defect, if any, noticed', the remark has been as 'None'. However, under the heading of 'integrity' in column no.(viii), the remark has been given as 'Doubtful. Does not inspire confidence' and under the heading of 'Grading' in column no.(ix), the remark has been given as 'Average'.

In the C.C.R. of the petitioner for the period from 15.03.21 to 12.07.2021, the Judge-in-Charge of the district, who is also the Enquiring Authority has given his remarks on dated 21.03.2022 in column no.1(a) which relates to 'Conduct of business in Court and Office' as 'satisfactory', in column no.1(b) which relates to 'quality of judgment etc.' as 'good', in column no.2 which relates to 'quantity of work' as 'sufficient', in column no.8(II) which relates to 'overall assessment of officers with reference to his/her judicial administrative work and ability, reputation and character, strength and shortcomings and also by drawing to the qualities etc.' as 'capable and efficient' and even in column no.9 which relates to 'grading' as 'good'. However, in column no.4 which relates to 'personal relation, quality of relationship with superior officers, colleagues, subordinates, learned members of Bar and Public', remark has been given as 'calculative' and in column no.7 which relates to 'integrity', remark has been given as 'doubtful'.

In the C.C.R. of the petitioner from 11.08.2021 to 31.12.2021, the grading has been given as 'very good'.

In affidavit dated 03.04.2025 filed by the Special Officer (Administration) pursuant to the order dated 21.03.2025, which was filed on 04.04.2025, it is stated that the guidelines that has been enumerated in the GRCO (Civil) Volume-II, Part-VI under the heading of 'Notes on Procedure for Recording Annual Confidential Character Roll of Judicial Officers' provides for maintaining secret record/register of the concerned Judicial Officer, whose activities give rise to suspicion of integrity and further provide for making a note as to the fact and circumstance touching the integrity of the concerned officer. The secret record/register is to be submitted by the Hon'ble Administrative Judge of the District to the Hon'ble Chief Justice in case of officers belonging to the cadre of O.S.J.S. (Sr. Branch) without delay. It is further stated that the deponent had no scope to access to nor he had the custody of any such secret record/register at any point of time. It is further stated that since during the period from 03.01.2021 to 08.03.2021, the petitioner was working as Registrar General of this Court, the remarks regarding his integrity in the relevant columns has

been recorded by the then Hon'ble Chief Justice. Similarly, during the period from 15.03.2021 to 06.08.2021, the petitioner was working as District and Sessions Judge, Rayagada and the remarks regarding his integrity has been recorded by the then Hon'ble Administrative Judge of Rayagada and both the C.C.Rs. along with the C.C.R. for the period from 11.08.2021 to 31.12.2021 were placed before the Hon'ble Full Court for consideration and has been duly considered.

5. Mr. Asok Mohanty and Mr. Prafulla Kumar Rath, learned Senior Advocates appearing for the petitioner contended that the GRCO (Civil) Volume-II prescribed the procedure for recording of Annual C.C.R. of the Judicial Officers. The column no.(viii) in Part-III of the form which is to be filled up by Hon'ble the Chief Justice and column no.7 in Part-IV of the form which is to be filled up by the Judge-in-Charge of the district, which relates to 'integrity' of the Judicial Officer, it is mentioned therein 'please see note in the instruction and guidelines appended'. In the notes on procedure for recording C.C.R., it is specifically mentioned as to what are the guidelines to be followed in filling up the column relating to 'integrity', but without following such procedure, adverse remarks has been recorded in the CCR of the petitioner, which is ex-facie illegal and not sustainable in law. The representation of the petitioner dated 1st November, 2022, which was filed vide Annexure-9 before this Court seeking to expunge the adverse remarks against him and also to upgrade the C.C.R. grading to any higher grade was rejected on 21st November, 2022 without assigning any reason whatsoever and the same was communicated to the petitioner on 21st December, 2022. It is strenuously argued that by assigning reasons while taking a decision on the representation, it would show how the authority concerned has applied its mind and there must be a rational nexus between the facts considered and conclusion reached. Non-recording of the reasons for the rejection of the representation to expunge the adverse remarks cannot be sustained in the eyes of law. It is further argued that there was no material before this Court in making the adverse entry regarding the integrity of the petitioner and prior to recording of such C.C.R., the petitioner was not granted opportunity in writing by informing him of the deficiency, if any, noticed for improvement and thus, the action of the opposite parties in leveling him as an Officer of doubtful integrity and other adverse remarks are not sustainable in the eyes of law. While recording an entry on the integrity of the petitioner, the past reputation of the petitioner and assessments made over the past years has not been taken into account and thus, the impugned letter dated 15.10.2022 under Annexure-7 and impugned order dated 21.12.2022 under Annexure-10 are liable to be quashed. Reliance has been placed in the cases of **Nazir Ahmed -Vrs.- Emperor reported in A.I.R. 1936 PC 253**, **Bishwanath Prasad Singh -Vrs.- State of Bihar and Others reported in (2001) 2 Supreme Court Cases 305**, **Dev Dutt -Vrs.- Union of India and Others reported in (2008) 8 Supreme Court Cases 725, M.S. Bindra -Vrs.- Union of India and Others reported in (1998) 7 Supreme Court Cases 310** and **State of U.P. -Vrs.- Yamuna Shankar Misra and Another reported in (1997) 4 Supreme Court Cases 7**.

6. Mr. Pitambar Acharya, learned Advocate General in his inimitable style, being ably supported by Mr. Aurobinda Mohanty, learned Additional Standing Counsel argued that there is no dispute that the C.C.R. should accurately reflect on the performance, conduct, behaviour and potential of the judicial officer for the period under report. Remark under integrity column cannot be made in a casual or mechanical manner. Since the forms prescribed under Part-III and Part-IV in recording the C.C.R. clearly states that while filling up the column 'integrity', note in the instruction and guidelines appended are to be seen and the guidelines indicate the detail procedure to be followed in filling up such column, if this Court comes to the conclusion that such guidelines have not been followed before making the adverse entry in such column, then the petitioner is entitled to get the relief as sought for.

7. Adverting to the contentions raised by the learned counsel for the both the parties, before proceeding further, since the adverse entry in C.C.R. is in issue, it would be apt and appropriate to extract the relevant provision of G.R.C.O (Civil) Vol.-II which deals with the recording of C.C.R. of the Judicial Officers.

Form No. (S)-33 has got six parts. Part-III and Part- IV of the forms are relevant in this case. Part-III of the form as per note is to be filled up by Hon'ble the Chief Justice in case of Registrars of High Court, inter alia, by the Registrars in case of officers working in the Registry of the High Court and Government and head of institution in case of officers on deputation to them. Part-IV of the form is to be filled up by the Judge-in-charge of the district in case of officers belonging to the cadre of O.S.J.S. (Sr. Branch) except the officers of the Registry of the High Court. Part-IV of the form is also to be filled up by the District Judges and officers of the rank of O.S.J.S. (Sr. Branch) in case of certain category of Judicial Officers. Column no.(viii) of Part-III of the form so also column no.7 of Part-IV of the form deals with remark on 'integrity' to be given by Hon'ble the Chief Justice and Judge-in-charge of the district respectively. In both the forms, in the said two columns, within bracket, it is mentioned, 'Please see note in the instruction and guidelines appended'. In the 'Notes on procedure for recording Annual C.C.R roll of Judicial Officers', it is stated under the heading 'Note' under Column no.4 that the following guidelines should be followed in filing up column relating to 'integrity':-

> **(a)** The Judge-in-charge of the district/Reporting Authority/District Judge should maintain secret records/registers of all the concerned judicial officers whose activities give rise to suspicion of integrity making a note as to the fact and circumstance which come to his knowledge touching the integrity of the concerned officer.
>
> **(b)** Whenever the Judge-in-charge of the district/Reporting Authority/District Judge receives such information, he shall indicate in the record whether the information reveals a definite fact susceptible of formal proof, or a mere vague allegation not susceptible of formal proof, but a suspicion or doubt exists. Where a fact is capable of formal proof, the officer will make a proper inquiry. If the officer concerned

clears up his position, the matter will not be further pursued and a note will be made in the secret record that the concerned officer is able to clear up the position. If, however nothing is proved against the officer concerned, the Reporting Authority/District Judge will take such action against him as may be called for having regard the gravity of the proved fact and the Judge-in-charge of the district will place the matter before the Full Court recommending for necessary action. Where, however, the allegations are vague, the Judge-in- charge of the District/Reporting Authority/District Judge shall indicate to the concerned officer the allegations and circumstances which have come to his knowledge and require the concerned officer to furnish an explanation. If the Judge-in-charge of the District/Reporting Authority/District Judge is satisfied with the explanation, he will make a note of the fact in the secret record. If the explanation is not considered satisfactory and proof may be available, he will utilize that as fact or circumstance which come to his knowledge as a circumstance which creates a doubt about the integrity of the officer.

(c) The Judge-in-charge of the District/Reporting Authority/District Judge shall indicate to the concerned officer as to what are his general reputation about the standard of living of the concerned officer. If the concerned officer fails to explain the circumstance, that can form the basis for an observation that the integrity of the concerned officer is doubtful.

(d) The column in which the integrity certificate is required to be recorded, the Judge-in-charge of the District/Reporting Authority/District Judge shall give a certificate indicated below –

"Nothing has come to my knowledge which casts any reflection on the integrity of.....His general reputation and honesty are good and I certify his integrity."

(e) There should be no disposition to deal with ground of integrity certificate as above in casual or mechanical fashion.

(f) Where any adverse report regarding the reputation of an officer touching his integrity or honesty is received, the concerned superior officer should keep a general watch over the standard of living and in case there is evidence that the concerned officer lives beyond his means for which there is no apparent satisfactory explanation and evidence is forthcoming, he should be asked to explain how he is in a position to do so. Unless the superior officer is satisfied with the explanation, he should report the question of integrity to the concerned authority.

(g) If adverse integrity certificate is given, the connected records questioning the integrity should be sent for consideration to the Judge-in-charge of the District in case of officers subordinate to the District Judges/by the Accepting Authority in case of officers on deputation to Government or other institutions to the Chief Justice/by the Judges-in-charge of the districts in case of officers belonging to the cadre of O.S.J.S. (Sr. Branch) and in case of officers below the cadre of O.S.J.S. (Sr. Branch) with the remarks to the Hon'ble the Chief Justice without delay.

(h) The Judge-in-charge of the District/Reporting Authority/District Judge shall indicate on record the source and gist of information reason for his an opinion of the officer having evil reputation.

(i) If as a result of follow-up action, doubt of suspicion are neither cleared nor confirmed, the officer's conduct should be watched for a period of six months and thereafter action be taken as indicated above.

Role of Judge-in-charge of the District in filling up column relating to 'integrity':

8. In view of the above guidelines, the maintenance of secret records by the Judge-in-charge of the district making a note as to the fact and circumstance which comes to his knowledge touching the integrity of the concerned Judicial Officer is necessary. The secret record shall indicate whether the information reveals a definite fact susceptible of formal proof, or a mere vague allegation not susceptible of formal proof, but a suspicion or doubt exists. The Judge-in-charge of the district will make a proper inquiry where a fact is capable of formal proof. In the inquiry, if the Judicial Officer concerned clears up his position, the matter will not be further pursued and a note will be made in the secret record that the concerned officer is able to clear up the position. If in the inquiry, nothing is proved against the Judicial Officer concerned, having regard to the gravity of the charge, the Judge-in-charge of the district will place the matter before the Full Court recommending for necessary action. The Judge-in-charge of the district shall indicate to the concerned Judicial Officer where the allegations are vague, the allegations and circumstances which have come to his knowledge and require the concerned Judicial Officer to furnish an explanation. The Judge-in-charge of the district, if satisfied with the explanation, will make a note of the fact in the secret record. If the explanation furnished by the Judicial Officer is not considered satisfactory and proof may be available, the Judge-in-charge of the district will utilize that as fact or circumstance which come to his knowledge as a circumstance which creates a doubt about the integrity of the officer. The Judge-in-charge of the district shall indicate to the concerned Judicial Officer as to what are his general reputations about the standard of living. If the concerned officer fails to explain the circumstance, the same can form the basis for an observation that the integrity of the concerned officer is doubtful. Where any adverse report regarding the reputation of a Judicial Officer touching his integrity or honesty is received, the Judge-in-charge should keep a general watch over the standard of living of the concerned Judicial Officer. In case there is evidence that the concerned Judicial Officer lives beyond his means for which there is no apparent satisfactory explanation and evidence is forthcoming, he should be asked by the Judge- in-charge to explain how he is in a position to do so. Unless the Judge-in-charge is satisfied with the explanation, he should report the question of integrity to the concerned authority. If adverse integrity certificate is given, the connected records questioning the integrity should be sent by the Judges-in-charge of the districts in case of officer belonging to the cadre of O.S.J.S. (Sr. Branch) and in case of officer below the cadre of O.S.J.S. (Sr. Branch) with the remarks for consideration to the Hon'ble the Chief Justice without delay. The Judge-in-charge of the district shall indicate on record, the source and gist of information, reason for his

opinion of the Judicial Officer having evil reputation. If as a result of follow-up action, doubt or suspicion are neither cleared nor confirmed, the conduct of the Judicial Officer shall be watched for a period of six months and thereafter action be taken as indicated above.

Whether the guidelines mentioned in the 'Note' in filling up the column relating to 'integrity' are mandatory or directory?:

9. In 'Principles of Statutory Interpretation', 15th Edition, 2023, Justice G.P. Singh, at page 304 states as follows:

> "As approved by the Supreme Court: "The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other". "For ascertaining the real intention of the Legislature", points out Subbarao, J, "the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered". If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory. But all this does not mean that the language used is to be ignored, but only that the prima facie inference of the intention of the legislature arising from the words used may be displaced by considering the nature of the enactment, its design and the consequences flowing from alternative constructions. Thus, the use of the words 'as nearly as may be' in contrast to the words 'at least' will prima facie indicate a directory requirement, negative words a mandatory requirement 'may' a directory requirement and 'shall' a mandatory requirement."

Justice G.P. Singh in the same edition of the abovementioned book, at page 320, stated that the use of the word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of a statute, will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas the word 'may' confers a discretionary power. But that by itself is not decisive and the Court may, having regard to the context and consequences, come to the conclusion that the part of the statute using 'shall' is also directory. The use of word 'must' in place of 'shall' will itself be sufficient to hold the provision to be mandatory and it will not be necessary to pursue the enquiry any further. The use of

word 'should' instead of 'must' may not justify the inference that the provision is directory if the context shows otherwise.

In the case of **State of Haryana and Anr. -Vrs.- Raghubir Dayal reported in (1995) 1 Supreme Court Cases 133**, the Hon'ble Supreme Court has observed as follows:

> "5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

In the case of **May George -Vrs.- Special Tehsildar and Ors. reported in (2010) 13 Supreme Court Cases 98**, the Hon'ble Supreme Court held as follows:

> "15. While determining whether a provision is mandatory or directory, in addition to the language used therein, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve. It may also be necessary to find out the intent of the legislature for enacting it and the serious and general inconveniences or injustice to persons relating thereto from its application. The provision is mandatory if it is passed for the enabling the doing of something and prescribes the formalities for doing certain things.
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> xx xx xx xx xx
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> 25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance of the provision could render entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non- compliance of the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the

legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

In the case of **Delhi Airtech Services Pvt. Ltd. and Another -Vrs.- State of U.P. and Another reported in (2011) 9 Supreme Court Cases 354**, the Hon'ble Supreme Court held as follows:

"122. The distinction between mandatory and directory provisions is a well accepted norm of interpretation. The general rule of interpretation would require the word to be given its own meaning and the word 'shall' would be read as 'must' unless it was essential to read it as 'may' to achieve the ends of legislative intent and understand the language of the provisions. It is difficult to lay down any universal rule, but wherever the word 'shall' is used in a substantive statute, it normally would indicate mandatory intent of the legislature.

123. Crawford on 'Statutory Construction' has specifically stated that language of the provision is not the sole criteria; but the Courts should consider its nature, design and the consequences which could flow from construing it one way or the other.

124. Thus, the word 'shall' would normally be mandatory while the word 'may' would be directory. Consequences of non-compliance would also be a relevant consideration. The word 'shall' raises a presumption that the particular provision is imperative but this *prima facie* inference may be rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction.

xx xx xx xx xx

131....it is clear that it may not be possible to lay down any straitjacket formula, which could unanimously be applied to all cases, irrespective of considering the facts, legislation in question, object of such legislation, intendment of the legislature and substance of the enactment. In my view, it will always depend upon all these factors as stated by me above. Still, these precepts are not exhaustive and are merely indicative. There could be cases where the word 'shall' has been used to indicate the legislative intent that the provisions should be mandatory, but when examined in light of the scheme of the Act, language of the provisions, legislative intendment and the objects sought to be achieved, such an interpretation may defeat the very purpose of the Act and, thus, such interpretation may not be acceptable in law and in public interest. Keeping in mind the language of the provision, the Court has to examine whether the provision is intended to regulate certain procedure or whether it vests private individuals with certain rights and levies a corresponding duty on the officers concerned. The Court will still have to examine another aspect, even after holding that a particular provision is mandatory or directory, as the case may be, i.e., whether the effect or impact of such non-compliance would invalidate or render the proceedings void ab initio or it would result in imposition of smaller penalties or in issuance of directions to further protect and safeguard the interests of the individual against the power of the State. The language of the statute, intention of the legislature and other factors stated above decide the results and impacts of non-compliance in the facts and circumstances of a given case, before the Court can

declare a provision capable of such strict construction, to term it as absolutely mandatory or directory."

In the light of the aforesaid discussions, we are of the humble view that since it is mentioned in the note that while filling up the column relating to 'integrity', the guidelines should be followed, the legislative intent in framing such guidelines to give remark on integrity of a Judicial Officer which is the bedrock of the judicial institution essential for compliance with democracy and the Rule of law, the consequence that is likely to follow if the prescribed formalities of guidelines are not followed while mentioning 'doubtful integrity' in the C.C.R. in a casual or mechanical manner, in our humble view, such guidelines are to be considered in the nature of a condition precedent in filling up the column relating to integrity and thus mandatory.

Whether the procedural guidelines have been followed while filling up the integrity column of C.C.R.:

10. Specific ground has been taken in the writ petition that before filling up the column no.7 of the prescribed form and recording the adverse remark in the C.C.R. of the petitioner which says about integrity, note in the instruction and guidelines appended therein were not followed and thus, such entry is ex- facie illegal and not sustainable in the eyes of law.

In the counter affidavit filed by the opposite parties, it is stated that the adverse remarks were made by the Reporting Authority -cum- Chief Justice of the High Court in the C.C.R. of the petitioner by following due procedure after taking all the aspects into consideration and the same was neither illegal nor does it require any interference by this Court. It is further stated that due procedure has been followed by the Reporting Authority while recording the C.C.R. of the petitioner for the year 2021. Nothing has been stated about the adverse entry made by the Judge-in-charge of the district.

Basing on the submission of Mr. Asok Mohanty, learned Senior Advocate that procedure as has been laid down regarding the guidelines to be followed in filling up the column relating to 'integrity' has not been followed in the case of the petitioner, vide order dated 21.03.2025, we directed the Special Officer (Administration) of this Court who has filed the counter affidavit, to file an affidavit specifically stating therein as to whether such guidelines have been followed and if so, all the relevant documents to that effect be placed along with the affidavit.

The Special Officer (Administration) pursuant to the order dated 21.03.2025, in affidavit dated 03.04.2025 which was filed on 04.04.2025, stated that the guidelines that has been enumerated in the G.R.C.O. (Civil) Volume-II provides for maintaining secret record/register of the concerned Judicial Officer, whose activities give rise to suspicion of integrity and further provide for making a note as to the fact and circumstance touching the integrity of the concerned officer. The

secret record/register is to be submitted by the Hon'ble Administrative Judge of the District to the Hon'ble Chief Justice in case of officers belonging to the cadre of O.S.J.S. (Sr. Branch) without delay and thus, the deponent had no scope to access to or had the custody of any such secret record/register at any point of time. The affidavit did not specifically state whether the guidelines have been followed or not while filling up the column relating to integrity and the relevant documents to that effect were also not placed along with the affidavit.

From the aforesaid reply in the form of affidavit given by the Special Officer (Administration), it is clear that there is no specific denial of the averments taken in the writ petition regarding non-following of the notes on procedure and guidelines appended therein while filling up the column relating to integrity, rather the reply appears to be vague. Order VIII Rule 5 of the Code of Civil Procedure provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except against a person under disability. In view of such provision, in absence of a specific denial in the counter affidavit to the assertions made in the writ petition, it can safely be concluded that there is no denial of the facts stated in the writ petition. We are aware that the explanation to section141 of the Code of Civil Procedure provides that the provisions of Code of Civil Procedure shall not be applicable to the writ petition. However, the principles as stated in the Code of Civil Procedure are also applicable to the writ proceedings. (Ref: **(2014) 15 Supreme Court Cases 215, Union of India (UOI) Vs. Agarwal Iron Industries**). In the case of **Badat and Co.-Vrs.- East India Trading Co. reported in A.I.R. 1964 S.C. 538,** it is held that the written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary. In the case of ***Thangam and Ors. -Vrs.- Navamani Ammal reported in (2024) 4 Supreme Court Cases 247,*** it is held that Order VIII Rules 3 and 5 Code of Civil Procedure clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 Code of Civil Procedure provides that even the admitted facts may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General Rule is that the facts admitted, are not required to be proved. The requirements of Order VIII Rules 3 and 5 Code of Civil Procedure are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the Respondent can always try to read one line from one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

In the case of **Nazir Ahmad** (supra), it is held that where a power is given to do a certain thing in a certain way, things must be done in that way or not at all and that other methods of performance are necessarily forbidden. In the case of **Cherukuri Mani -Vrs.- Chief Secretary, Government of Andhra Pradesh and Ors. reported in (2015) 13 Supreme Court Cases 722**, the Hon'ble Supreme Court held that where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.

In the case of **Syed T.A. Naqshbandi and Ors.-Vrs.- State of Jammu & Kashmir and Ors. reported in (2003) 9 Supreme Court Cases 592**, considering the scope of judicial review of an assessment of the conduct of a Judicial Officer approved by a Full Court, the Hon'ble Supreme Court observed that judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the materials by the courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system.

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

> "33….Suffice it to observe that the well- recognized and accepted practice of making annual entries in the confidential records of subordinate official by superiors has a public policy and purposive requirement. It is one of the recognised and time-tested modes of exercising administrative and disciplinary control by a superior authority over its subordinates. The very power to make such entries as have potential for shaping the future career of a subordinate officer casts an obligation on the High Courts to keep a watch and vigil over the performance of the members of subordinate judiciary. An assessment of quality and quantity of performance and progress of the judicial officers should be an ongoing process continued round the year and then to make a record in an objective manner of the impressions formulated by such assessment. An annual entry is not an instrument to be wielded like a teacher's cane or to be cracked like a whip. The High Court has to act and guide the subordinate officers like a guardian or elder in the judicial family. The entry in the confidential rolls should not he a reflection of personal whims, fancies or prejudices, likes or dislikes of a superior. The entry must reflect the result of an objective assessment coupled with and effort at guiding the judicial officers to secure an improvement in his performance where need be; to admonish him with the object of removing for future, the shortcoming found; and expressing and appreciation with an idea of toning up and maintaining the imitable qualities by affectionately patting on the back of meritorious and deserving. An entry consisting of a few words, or a sentence or two, is supposed to reflect the sum total of the impressions formulated by the inspecting Judge who had the opportunity of forming those impressions in his mind by having an opportunity of watching the judicial officer round the period under review. In the very nature of things, the process is complex and the formulation of impressions is a result of multiple factors

> simultaneously playing in the mind. The perceptions may differ. In the very nature of things there is a difficulty nearing an impossibility in subjecting the entries in confidential rolls to judicial review. Entries either way have serious implications on the service career. Hence the need for fairness, justness and objectivity in performing the inspections and making the entries in the confidential rolls."

Keeping in view the aforesaid principles, we find that the process/procedure as enumerated in the guidelines have not been followed in reaching at the decision that the petitioner is of doubtful integrity and thereby filling up the column in the C.C.R. relating to integrity either in Part-III of the form by Hon'ble the Chief Justice or in Part-IV of the form by the Judge-in-charge of the district. We are further of the view that since the guidelines are required to be followed and it is mandatory, Hon'ble the Chief Justice or the Judge-in-charge of the district could not have made the adverse entry in the column relating to integrity without following such guidelines.

In the case of **Yamuna Shankar Misra** (supra), it is held as follows:-

> "7. It would, thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to a public servant to improve excellence. Article 51-A(j) enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Given an opportunity, the individual employee strives to improve excellence and thereby efficiency of administration would be augmented. The officer entrusted with the duty to write confidential reports, has a public responsibility and trust to write the confidential reports objectively, fairly and dispassionately while giving, as accurately as possible, the statement of facts on an overall assessment of the performance of the subordinate officer. It should be founded upon facts or circumstances. Though sometimes, it may not be part of the record, but the conduct, reputation and character acquire public knowledge or notoriety and may be within his knowledge. Before forming an opinion to be adverse, the reporting officers writing confidentials should share the information which is not a part of the record with the officer concerned, have the information confronted by the officer and then make it part of the record. This amounts to an opportunity given to the erring/corrupt officer to correct the errors of the judgment, conduct, behaviour, integrity or conduct/corrupt proclivity. If, despite being given such an opportunity, the officer fails to perform the duty, correct his conduct or improve himself, necessarily the same may be recorded in the confidential reports and a copy thereof supplied to the affected officer so that he will have an opportunity to know the remarks made against him. If he feels aggrieved, it would be open to him to have it corrected by appropriate representation to the higher authorities or any appropriate judicial forum for redressal. Thereby, honesty, integrity, good conduct and efficiency get improved in the performance of public duties and standard of excellence in services constantly rises to higher levels and it becomes a successful tool to manage the services with officers of integrity, honesty, efficiency and devotion."

Prior to the recording of such adverse C.C.R., the petitioner was not granted opportunity in writing or by informing him of the deficiency, if any, noticed for improvement. The Superior Authority should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. Passing of such remarks/

comments without affording a hearing to the subordinate officer is clearly violative of the principle of natural justice and thus, we are of the view that serious prejudice has been caused to the petitioner.

Clause 5(a) of the notes on procedure for recording Annual C.C.R.of Judicial Officers of G.R.C.O. (Civil) (Vol.II) states that, the Reporting Authority/ District Judge under whom a Judicial Officer is working for more than four months must record C.C.R. of the officer. The fixation of the period for more than four months to record the C.C.R. has got a purpose as such period was thought sufficient to evaluate the overall performance and efficiency of a Judicial Officer as a whole. In the case of the petitioner, the Hon'ble Chief Justice under whom the petitioner was working as Registrar General of this Court from 04.01.21 to 08.03.2021 which was barely for two months and few days has recorded the C.C.R. of the petitioner but the date on which such C.C.R. was recorded is not there as no date has been given below the signature of the Hon'ble Chief Justice or anywhere in the Part-III of the form. Similarly, the Judge-in-charge of district Raygada under whom the petitioner was working as District and Sessions Judge, Rayagada for the period of from 15.03.2021 to 12.07.2021, which is less than four months has recorded the C.C.R. of the petitioner and given his remarks in Part-IV of the form on 21.03.2022.

Rejection of representation:

11. The petitioner filed a representation on 01.11.2022 vide Annexure-9 before this Court seeking to expunge the adverse remark made in his C.C.R. and also to upgrade the C.C.R. grading for the period from 01.01.2021 to 31.12.2021 taking into account his sincerity, honesty, probity, commitment and devotion to duty among similar other factors as deem fit and proper, otherwise, it will not only put a stigma in his career but also subject him to great hardship and put a scar on his soul forever, even without doing anything blemished.

The representation filed by the petitioner was rejected by this Court without assigning any reason whatsoever and the said fact was communicated to the petitioner vide letter under Annexure-10.

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

> "37. We further hold that when the entry is communicated to him, the public servant should have a right to make a representation against the entry to the authority concerned, and the authority concerned must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible."

The Hon'ble Supreme Court in the case of **State of Punjab -Vrs.- Bhag Singh reported in (2004) 1 Supreme Court Cases 547**, observed as follows:

> "6. Even in respect of administrative orders, Lord Denning, M.R. in ***Breen -Vrs.- Amalgamated Engg. Union, reported in (1971) 1 All ER 1148*** observed:
>
> 'The giving of reasons is one of the fundamentals of good administration.'
>
> In ***Alexander Machinery (Dudley) Ltd. -Vrs.- Crabtree, reported in 1974 ICR 120 (NIRC)*** it was observed:
>
> 'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.'
>
> Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

Without assigning any reasons in Annexure-10, the petitioner was kept in darkness. The petitioner had legitimate expectation that his representation would be given due weightage and considered in a fair decision-making process. Principle of fairness has an important place in the law of judicial review. Once reasons would have been assigned, the petitioner could have known as to why his representation was rejected. In the case of **Chairman, Disciplinary Authority, Rani Lakshmit Bai Kshetriya Gramin Bank -Vrs.- Jagdish Saran Versheny and Ors. reported in (2009) 4 Supreme Court Cases 240**, it is held that while considering the representation for expunction of adverse remark, reasons should be assigned. The reasons may not be elaborate but brief reasons should be assigned for rejecting the representation.

Thus, we are of the humble view that rejection of the representation of the petitioner vide Annexure-10 is not sustainable in the eyes of law.

Judicial scrutiny on adverse remarks in C.C.R. of thepetitioner:

12. The remarks of the Full Court in the C.C.R. of the petitioner for the year 2019 (I) is 'very good' and for the year 2019 (II) is 'very good'. The remarks of the Full Court in the C.C.R. of the petitioner for the year 2020 (I) is 'very good' and the grading given by the Hon'ble Chief Justice in the C.C.R. of the petitioner from 05.06.2020 to 02.01.2021 is 'outstanding'. The grading of the petitioner for the year 2022 was 'very good' and for the year 2023 was also 'very good'. In the C.C.R. of

the petitioner from 11.08.2021 to 31.12.2021, the grading has been given as ‘very good’.

In the C.C.R. of the petitioner from 04.01.21 to 08.03.2021, the Hon'ble Chief Justice in column no.(i) which relates to ‘state of health and special personality’, column no.(ii) which relates to 'report on the officer’s qualities’, column no.(iii) which relates to ‘report on officers abilities’, column no.(iv) which relates to ‘report on knowledge and performance’ and column no.(vii) which relates to ‘attitude and potential’, has given his remarks as ‘Good’. In column no.(v) which relates to ‘Defect, if any, noticed’, the remark has been as ‘None’. However, under the heading of ‘integrity’ in column no.(viii), the remark has been given as ‘Doubtful. Does not inspire confidence’ and under the heading of ‘Grading’ in column no.(ix), the remark has been given as ‘Average’. Similarly, in the C.C.R. of the petitioner for the period from 15.03.21 to 12.07.2021, the Judge-in-Charge of the district has given his remarks on dated 21.03.2022 in column no.1(a) which relates to ‘Conduct of business in Court and Office’ as ‘satisfactory’, in column no.1(b) which relates to ‘quality of judgment etc.’ as ‘good’, in column no.2 which relates to ‘quantity of work’ as ‘sufficient’, in column no.8(11) which relates to ‘overall assessment of officers with reference to his/her judicial administrative work and ability, reputation and character, strength and shortcomings and also by drawing to the qualities etc.’ as ‘capable and efficient’ and even in column no.9 which relates to ‘grading’ as ‘good’. However, in column no.4 which relates to ‘personal relation, quality of relationship with superior officers, colleagues, subordinates, learned members of Bar and Public’, remark has been given as ‘calculative’ and in column no.7 which relates to ‘integrity’, remark has been given as ‘doubtful’.

The learned counsel for the petitioner urged that the performance of the petitioner has been consistently of high quality and he has been graded as “very good”, “very good”, “very good” and “outstanding” in 2019 and 2020, “very good”, “very good” in 2022 and 2023 and from 11.08.2021 to 31.12.2021, his grading was ‘very good’. The two months in which he was the Registrar General of this Court i.e. from 04.01.21 to 08.03.2021, the Hon’ble Chief Justice has given his remarks in five columns as "Good" and in one column, he has mentioned that no defect was noticed, but all the same, adverse remark has been given in column relating to 'integrity' and grading has been given as 'average'. Similarly, the Hon’ble Judge-in-charge of district Raygada has given positive remarks in all other columns of C.C.R. except column no.4 where he has mentioned in ‘calculative’ and column no.9 where integrity has been remarked as ‘doubtful’. According to the learned counsel, no one becomes dishonest all of a sudden particularly when he was so good all through.

In the case of **M.S. Bindra** (supra), the relevant para is extracted hereunder:

> “13. While viewing this case from the next angle for judicial scrutiny, i.e., want of evidence or material to reach such a conclusion, we may add that want of any material is almost equivalent to the next situation that from the available materials,

> no reasonable man would reach such a conclusion. While evaluating the materials, the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim *"nemo firut repente turpissimus"* (no one becomes dishonest all of a sudden) is not unexceptional but still it is a salutary guideline to judge human conduct, particularly in the field of administrative law. The authorities should not keep their eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity", it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label "doubtful integrity".

In the case of **S.T. Ramesh -Vrs.- State of Karnataka and Another reported in (2007) 9 Supreme Court Cases 436**, it is held as follows:-

> "40. The confidential report is an important document as it provides the basic and vital inputs for assessing the performance of an officer and further achievements in his career. This Court has held that the performance appraisal through C.Rs. should be used as a tool for human resource development and are not to be used as a fault finding process but a developmental one. Except for the impugned adverse remarks for a short period of about 150 days, the performance of the appellant has been consistently of high quality with various achievements and prestigious postings and meritorious awards from the President of India. We have already seen that the appellant has been graded as "very good", "excellent" and "outstanding" throughout his career. It is difficult to appreciate as to how it could become adverse during the period of 150 days for which the adverse remarks were made."

In view of the principles laid down in the aforesaid two decisions of the Hon'ble Supreme Court, we find sufficient force in the submission of the learned counsel for the petitioner. The stand taken in the counter affidavit by the opposite parties that merely because an officer was good in past, he is good for all times to come, is not acceptable and that the past conduct of an officer is no guarantee that he would not commit any misconduct and from such angle, the past reputation and assessments were of no concern for the present or future grading/assessment, cannot be legally accepted. We are of the view that the authorities should not keep their eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier.

CONCLUSION:

13. In view of the foregoing discussions, we are of the view that the adverse entry made in the C.C.R. of the petitioner which was communicated to him vide impugned letter no.15738 dated 15th October 2022 under Annexure-7 as well as the letter dated 21st December 2022 under Annexure-10 rejecting his prayer to expunge

the adverse remark in his C.C.R. cannot be sustained in the eyes of law and therefore, the same are quashed.

Accordingly, the writ petition is allowed.

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

Result of the case:
Writ Petition allowed.

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2025 (II) ILR-CUT-34

PARI @ PARIA NAYAK
V.
STATE OF ODISHA

[JCRLA NO. 49 OF 2013]

18 FEBRUARY 2025

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

Issue for Consideration

Whether the extra-judicial confession is reliable and trustworthy to convict the appellant.

Headnotes

CRIMINAL TRIAL – The Appellant was convicted for commission of an offence punishable under Section 302 of IPC – The learned Trial Court on the basis of circumstantial evidence came to the conclusion that the appellant was the author of the crime – Out of eighteen witnesses examined on the behalf of the prosecution, P.Ws. 4 to 12 have not supported the prosecution case and they have been declared hostile – From the evidence of P.W. 2 & P.W. 3, it does not appear that on the date of occurrence, the appellant was present in his house with the deceased, much less any quarrel ensued between the two for any reason whatsoever on that day – There is also no fingerprint expert's report – The chemical examination report has not been proved in this case – Whether the chain of circumstances has been completed to hold the appellant guilty for the offence.

Held: No – In view of the settled position of law that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other

person, in the case in hand, it cannot be said that cumulative effect of the circumstances negatives the innocence of the appellant and bring the offence home beyond all reasonable doubt – Therefore, we are of the view that the learned trial Court was not justified in convicting the appellant under section 302 of the Indian Penal Code. (Para 15)

List of Acts

Indian Penal Code, 1860

Keywords

Circumstantial evidence; Extra-judicial confession; Fingerprint expert; Chemical examination report.

Case Arising From

Judgment and order dated 18.07.2008 passed by the learned Additional Sessions Judge, Khurda in S.T. Case No.118 of 2006.

Appearances for Parties

For Appellant : Mr. Asish Chandra Rath
For Respondent : Mr. Jateswar Nayak, AGA

Judgment/Order

Judgment

BY THE BENCH,

The appellant Pari @ Paria Nayak faced trial in the Court of learned Additional Sessions Judge, Khurda in S.T. Case No.118 of 2006 for commission of offence punishable under section 302 of the Indian Penal Code (hereafter 'I.P.C.') on the accusation that he committed murder of his mother Sankhi Nayak (hereafter "the deceased") in the afternoon on 15.04.2006.

The learned trial Court vide impugned judgment and order dated 18.07.2008 found the appellant guilty of the offence charged and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- (Rupees ten thousand), in default, to undergo further R.I. for six months.

Prosecution Case:

2. P.W.1 Trinath Naik, the maternal uncle of the appellant lodged the F.I.R. before the Inspector-in-Charge of Khurda Police Station on 15.04.2006 stating therein that the deceased was his sister and the appellant was the son of the deceased. The deceased and the appellant were staying in village Guditangi constructing a thatched house in a government land since three years prior to the occurrence. Nine months prior to the occurrence, the appellant got married but within ten days of marriage, his wife left the matrimonial home and went to her

father's place as he subjected his wife to physical cruelty. Since that day, the appellant became more aggressive and most of the time, he used to quarrel with the deceased and was also assaulting her and threatening her with dire consequences. The informant on many a occasion compromised the dispute between the deceased and the appellant. On the previous night of the occurrence, the appellant so also the deceased had gone to watch the opera show which was organized in the village on the eve of Pana Sankrati and returned home. On the day of occurrence, a quarrel ensued between the appellant and the deceased and the appellant assaulted to the deceased. After coming to know about the same, the informant came to the house of the appellant and tried to subside the matter. At about 5.00 p.m., while the informant was proceeding to purchase the vegetables, he found that the cattle were pulling straws from the thatch of the deceased. He drove the cattle away and entered inside the house and found the deceased was lying dead with bleeding injury and a sickle was lying at that place and there was cut injury on the neck of the deceased and the appellant was not found in the house. P.W.1 suspected that in connection with providing food to the appellant, there was dispute between the mother and the son and the appellant cut the neck of the deceased by a sickle out of anger and thereafter absconded. The informant also ascertained from the co-villagers that they heard the shout of the appellant with the deceased in the afternoon.

The informant intimated the matter to the Ward Member and came to the Police Station where his oral report was reduced to writing and it was read over and explained to him and he put his signature on the written report.

On the basis of the F.I.R. presented by P.W.1, Khurda P.S. Case No.131 dated 15.04.2006 was registered under section 302 of the Indian Penal Code against the appellant.

P.W.18 Nimain Charan Sethy, the Inspector-inCharge of Khurda Police Station after registering the case, took up the investigation. He visited the spot on the very day at about 8.00 p.m. which was the house of the deceased and the appellant. He sent requisition to the Scientific Officer. During his visit to the spot, he found the deceased was lying dead with cut injury on her throat in a pool of blood and the wearing apparels of the deceased were also blood-stained. One iron sickle with wooden handle having stains of blood was also lying near the dead body. The house of the appellant was kept guarded till the arrival of scientific team on 16.04.2006. The scientific team collected photographs from the spot, blood stained earth, sample earth etc. and the iron sickle which were seized as per the seizure list vide Ext.4 by P.W.18. The Investigating Officer also prepared the spot visit note vide Ext.8. He held inquest over the dead body and prepared inquest report vide Ext.2. The dead body was sent for postmortem examination. On 16.04.2006, the appellant was arrested from the house of one Mana Nayak and his wearing apparels were also seized as per seizure list, Ext.3. The appellant was forwarded to the Court of the learned S.D.J.M., Khurda on 16.04.2006. The seized sickle was sent to the Medical

Officer who conducted the postmortem examination over the dead body of the deceased, who gave his opinion that external injury noticed on the person of the deceased was possible by such sickle. The I.O. received the post mortem report, sent the sickle and other articles to S.F.S.L., Rasulgarh for examination and report. On completion of investigation, on 10.07.2006, chargesheet was submitted against the appellant under section 302 of I.P.C.

Framing of Charges

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

Prosecution Witnesses, Exhibits and Material Objects:

4. In order to prove its case, the prosecution examined eighteen witnesses in toto.

P.W.1 Trinath Naik is the informant in the case and he is the maternal uncle of the appellant and brother of the deceased. He stated that the appellant was frequently assaulting his mother (deceased) prior to the occurrence and he suspected that the appellant might have committed murder of the deceased. He also proved the F.I.R. marked as Ext.1 and the inquest report marked as Ext.2.

P.W.2 Manu Naik stated that the appellant and his mother were staying together at Goditangi by constructing a house in a government land about three years back. He heard from the informant (P.W.1) that the mother of the appellant was murdered in her house and after getting such information, he came to the house of the appellant and saw the deceased was lying dead and there was cut injury on her neck which was bleeding and one sickle was lying near the dead body stained with blood.

P.W.3 Hadu Naik was the Ward Member of the village and in his presence, the inquest was held and he also proved the inquest report vide Ext.2. He stated that P.W.1, the informant told him that the appellant had assaulted the deceased prior to the incident and that he suspected that the appellant might have committed the murder of the deceased.

P.W.4 Dukhishyam Naik, P.W.5 Satya Naik, P.W.6 Pabana Naik, P.W.7 Manoranjan Nayak, P.W.8 Mana Nayak, P.W.9 Kashinath Bhoi, P.W.10 Bijaya @ Bijaya Kumar Naik, P.W.11 Mathura Naik and P.W.12 Sudarsan Naik have not supported the prosecution for which they were declared hostile by the prosecution.

P.W.13 Rabi Kumar Naik is a witness to the inquest over the dead body of the deceased and proved the inquest report vide Ext.2.

P.W.14 Dr. Prafulla Kumar Panda was attached to D.H.H. Khurda as Gyneac Specialist, who on police requisition conducted postmortem examination over the dead body of the deceased. He stated that the cause of death was asphyxia due to cut of throat including trachea (wind pipe) by a sharp cutting weapon. The age of the injury and time since death to postmortem examination was within 18 to 36 hours. He proved the postmortem examination report vide Ext.4.

P.W.15 Ramesh Chandra Harichandan was the constable attached to Khurda police station who escorted the dead body of the deceased for post mortem examination and proved the dead body challan vide Ext.6. He is also a seizure witness in whose presence the wearing apparels of the deceased, i.e. one red with white printed cotton saree with blood stain marks, one white saya with blood stain marks and sample blood of the deceased were seized by the IIC, Khurda police station. He also proved the seizure list which was marked as Ext.7.

P.W.16 Prasanna Kumar Senapati was working as Laboratory Asst. in District Forensic Science Laboratory, Khurda. He stated that on police requisition, he accompanied the Investigating Officer and on the spot, he found the deceased was lying dead on the floor of her kitchen room towards the eastern side. He also stated that from the spot, he collected blood stained earth, sample earth, one red colour nylon rope with blood stain mark and one iron sickle with wooden handle having blood stain mark and handed the same to the I.O. He also proved the spot visit report vide Ext.8. He is also a witness to the seizure of articles collected by him seized by the I.O. as per seizure list vide Ext.9.

P.W.17 Banshidhar Bhoi was the A.S.I. at S.F.S.L., Rasulgarh, Bhubaneswar who is witness to the seizure of one sickle having stained with blood, one plastic rope having blood stained, sample earth and blood stained as per seizure list vide Ext.9.

P.W.18 Nimain Charan Sethy was the Inspector-in-Charge of Khurda Police Station, who is the investigating officer in the case.

The prosecution also exhibited fourteen documents. Ext.1 is the F.I.R., Ext.2 is the inquest report, Ext.3 is the seizure list, Ext.4 is the postmortem examination report, Ext.5 is the opinion of the doctor, Ext.6 is the dead body challan, Ext.7 is the seizure list, Ext.8 is the spot visit report of P.W.16, Ext.9 is the seizure list, Ext.10 is the photographs of deceased.

The prosecution also proved six materials objects. M.O.I is the red with white printed saree (cotton) with blood stain marks, M.O.II is the white saya with blood stain marks, M.O.III is the packet containing blood stained earth, M.O.IV is the packet containing sample earth, M.O.V is the red colour nylon rope and M.O.VI is the iron sickle with wooden handle having blood stain mark.

Defence Plea

5. The defence plea of the appellant was one of complete denial and it was specifically pleaded that on the date of occurrence, he was not present in the house and he has been falsely entangled in the case.

Findings of the Trial Court:

6. The learned trial Court on a careful analysis of the evidence on record adduced by the witnesses, came to the conclusion that the death of the deceased was homicidal in nature. The Court found the following eight circumstances against the appellant:

(i) The accused and the deceased were residing in one house (P.W.1 and P.W.2);

(ii) The house of the deceased was situated at an isolated place. (P.W.18);

(iii) The accused was in the habit of picking up quarrel with the deceased on previous occasions (P.W.1);

(iv) Soon after the occurrence, the accused was found absent from the house (P.W.1 and P.W.8);

(v) On the same night of the occurrence, at night, the accused had been to the house of P.W.8, wherefrom he was arrested by the Police (P.W.8);

(vi) There were cut injuries on the neck and throat of the deceased (P.Ws.1, 2, 3, 4, 7, 14 and 18);

(vii) One iron sickle (M.O.VI) was found lying near the dead body of the deceased. (P.Ws.1, 2, 3, 4, 7 and 18);

(viii) According to the opinion of the Medical Officer, the external injuries were possible by iron sickle, which was sent by the I.O. to the Medical Officer for examination (P.W.14).

On the basis of the aforesaid circumstantial evidence, the learned trial Court came to the conclusion that the chain of circumstance is complete and it leads to the conclusion that in all probability, the appellant was the author of the crime and accordingly, held the appellant guilty under section 302 of the Indian Penal Code.

Submissions of the Parties:

7. Mr. Asish Chandra Rath, learned counsel appearing for the appellant argued that there is no dispute that in view of the evidence of the doctor and the other materials available on record that the deceased died a homicidal death, her dead body was found inside her house, one sickle was also found near the dead body, the cause of death was on account of cut injury to the throat of the deceased and the doctor has opined that the injury found on the throat of the deceased was possible by the sickle, but there is no cogent evidence on record that on the date of occurrence, the appellant was present in the house much less he was last seen in the company of the deceased prior to the occurrence. Learned counsel further argued that there are evidence available on record that prior to the date of occurrence, the appellant was not staying in his house and he was staying in the house of his aunt from where he

was arrested. The learned counsel further argued that even though the scientific team visited the spot and collected some articles but the finger prints, if any, found on the articles were not taken nor the finger prints of the appellant was collected and sent to the Finger Print Expert for comparison. Though the iron sickle and other articles were sent for chemical examination, but the chemical examination report has not been proved. According to Mr. Rath, from the evidence available on record, even if it is held that the appellant was frequently assaulting the deceased prior to the occurrence, in absence of any other clinching evidence particularly relating to his presence on the date of occurrence in the house, the circumstances proved cannot be a ground to hold that the appellant was the author of the crime.

8. Mr. Jateswar Nayak, learned Additional Government Advocate, on the other hand, supported the impugned judgment and argued that the circumstantial evidence adduced by the prosecution as has been established by the witnesses are very clinching and all the circumstances taken together form a complete chain and therefore, the learned trial Court has rightly found the appellant guilty under section 302 of the Indian Penal Code.

9. Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that there is no direct evidence as to who committed the murder of the deceased, when and how and the prosecution case hinges on circumstantial evidence. It is well established rule of criminal justice that fouler the crime, the higher should be the degree of proof. A moral opinion howsoever strong or genuine cannot be a substitute for legal proof. When a case is based on circumstantial evidence, a very careful, cautious and meticulous scrutinization of the evidence is necessary and it is the duty of the Court to see that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature and all the links in the chain of events must be established clearly beyond reasonable doubt and established circumstances should be consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence. Whether the chain of events is complete or not would depend on the facts of each case emanating from the evidence. The Court should not allow suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed away by emotional consideration.

Whether the deceased met with homicidal death:

10. Let us first assess the evidence on record to see how far the prosecution has successfully established that the deceased met with a homicidal death or not.

Apart from the inquest report (Ext.2), the evidence of P.W.14 Dr. Prafulla Kumar Panda is very relevant in this respect. He conducted the post mortem examination over the dead body of the deceased on 16.04.2006 at District Headquarters Hospital, Khurda and made the following observations:

External injuries:

(i) Incised wound elliptical in shape 5" x 4" x 3" and deep into the neck with blood tinged appearance and blood clots and haemorrhage;

(ii) Trachea was incised completely in the middle and haemorrhagic;

(iii) Abrasion 1/2" x ½" x ¼" on the left lower eye lid.

All the above three injuries were opined to be ante mortem in nature and the duration of the injury was within 18 to 36 hours.

Internal injuries:

Liver, Spleen, kidneys, brain, lungs were intact and pale. Vessels of the neck were incised and antemortem in nature. Heart was empty.

The doctor has opined as per his report vide Ext.4 that the cause of death was asphyxia due to cut on the throat including trachea (wind pipe) by a sharp cutting weapon. The age of the injury and time since death to post mortem examination was within 18 to 36 hours.

The learned counsel for the appellant has not challenged the findings of the post mortem report.

After perusing the evidence on record, the post mortem examination report (Ext.4) and the evidence of the doctor (P.W.14), we are of the humble view that the prosecution has proved the death of the deceased to be homicidal in nature and therefore, the finding of the learned trial Court on this aspect is quite justified.

11. Out of eighteen witnesses examined on behalf of the prosecution, P.Ws.4 to 12 have not supported the prosecution case and they have been declared hostile.

P.W.1, the informant is related to both the deceased as well as the appellant and he has stated that on the day of occurrence, he had come to the house of the appellant when he found that the cattle were pulling straws from the thatched roof of the house of the appellant and he drove out the cattle and found the dead body of the deceased was lying inside the house and there was cut injury on the neck of the deceased and a sickle was lying near the dead body, but the appellant was not present in the house. He has further stated that the appellant was frequently assaulting the deceased prior to the incident. In the cross-examination, he has stated that he had gone to the house of the appellant fifteen days prior to the occurrence and on that day, the appellant had gone to the house of his aunt, Kanak Naik of village Rajib Nagar and was staying there and the police arrested him there. He further stated that his village is at a distance of 25 kms away from the village Rajib Nagar. The prosecution has not examined the aunt Kanak Naik to disprove this evidence which has been elicited in the cross-examination of the P.W.1.

Even though in the F.I.R., P.W.1 has stated that on the date of occurrence also, the appellant had assaulted the deceased and he had been to the house of the appellant to subside the matter, but in Court, his evidence is totally silent in that respect. He has stated that he had not read the contents of the F.I.R. and he could not

say about the contents of the F.I.R. The first information report is never treated as a substantive piece of evidence. It can only be used for corroborating and contradicting its maker when he appears in Court as a witness. The contents of the F.I.R. have not been confronted to P.W.1. Therefore, from the evidence of P.W.1, the presence of the appellant in his house with the deceased on the date of occurrence has not been proved.

P.W.2 and P.W.3 have simply stated to have seen the dead body of the deceased was lying in her house with cut injury on the neck and a sickle was lying by the side of the body. P.W.3 was the Ward Member and he has stated that P.W.1 told him that the appellant had assaulted the deceased prior to the incident. However in the cross-examination, he has stated that he had not received any allegation as the Ward Member against the appellant that he had assaulted his mother (deceased) prior to the incident.

Therefore, from the evidence of P.W.2 and P.W.3, it does not appear that on the date of occurrence, the appellant was present in his house with the deceased much less any quarrel ensued between the two for any reason whatsoever on that day.

12. The Scientific Officer (P.W.16) has stated that he visited the spot as per police requisition on 16.04.2006 being accompanied by the Investigation Officer and found the deceased was lying dead and from the spot, he collected some articles and one Mr. S.K. Swain, Finger Print Sub-Inspector and B.D. Bhoi, A.S.I. Photography were also present. The I.O. also seized some articles which were produced before him at the spot on being collected by P.W.16. The packets were marked as M.O.III, M.O.IV, M.O.V and M.O.VI. However, there is no evidence adduced by the Investigating Officer that after the appellant was arrested on 16.04.2006 from the house of Mana Naik, any steps were taken to collect the finger prints of the appellant, rather he has specifically stated in the cross-examination that he had not collected the specimen finger print impression of the appellant. Some materials collected from the spot along with the wearing apparels of the appellant so also the deceased were sent for chemical examination to the State Forensic Science Laboratory, Rasulgarh, Bhubaneswar on 26.06.2006 through Court, but the chemical examination report has not been proved in this case. There is also no finger print expert's report.

13. The learned trial Court, basing on the evidence of P.W.1 and P.W.8, has held that soon after the occurrence, the appellant was found absent from the house. P.W.1 has not stated at all to have seen the appellant in his house on the date of occurrence. He has stated that when he found the dead body of the deceased lying inside her house with bleeding from her neck, the appellant was not present. The evidence of P.W.8 is silent in that respect and she stated that the appellant came to her house in the night of occurrence, took night meal and remained in her house and in that night, the police arrested him and took him to the police station. No other

witness has stated about the presence of the appellant on the date of occurrence in his house in the company of the deceased.

14. Even though the prosecution has successfully proved that the deceased met with a homicidal death and a sickle which was found near the dead body inside the house of the deceased could have caused the injury on the throat of the deceased, but in absence of any other clinching material on record particularly with respect to the presence of the appellant in the company of the deceased at the time of occurrence, it is very difficult to say that the prosecution has successfully established the appellant to be the author of the crime.

Conclusion:

15. In view of the settled position of law that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person, in the case in hand, it cannot be said that cumulative effect of the circumstances negatives the innocence of the appellant and bring the offence home beyond all reasonable doubt. Therefore, we are of the view that the learned trial Court was not justified in convicting the appellant under section 302 of the Indian Penal Code.

Accordingly, the impugned judgment and order of the learned trial Court is hereby set aside. The JCRLA is allowed. The appellant is acquitted of the charge under section 302 I.P.C.

The petitioner shall be released forthwith from jail custody, if he is not required to be detained in any other case.

16. Before parting with the case, we would like to put on record our appreciation for Mr. Asish Chandra Rath, the learned counsel for the appellant for rendering his valuable help and assistance towards in arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Jateswar Nayak, learned Additional Government Advocate.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter JCRLA allowed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-43

LOCHAN MAHARANA
V.
STATE OF ODISHA

[JCRLA NO. 1 OF 2008]

17 APRIL 2025

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

Issue for Consideration

Whether absence of any explanation to the statement recorded under Section 313 of Cr.P.C. proves the guilt of an accused/Appellant by completing the chain of circumstances.

Headnotes

(A) CRIMINAL TRIAL – Circumstantial circumstance – The appellant was convicted for the offence punishable under sections 302/201 of IPC – There is no direct evidence – The case is based on circumstantial evidence – The Doctor notices three injuries on the body of the deceased and opined the death to be asphyxia due to throttling – It is also noticed by the Doctor (P.W.5) that there is fracture of the cricoid cartilage and upper three tracheal ring which is ante-mortem in nature – The dead body of the deceased was found in the room where the appellant and deceased were staying together – But the appellant did not offer any explanation in his statement recorded U/s. 313 of Cr.P.C. – Whether absence of any explanation by the appellant in his statement recorded under Section 313, Cr.P.C. proves the guilt by completing the chain of circumstances.

Held: Yes – In the case at hand, since the dead body of the deceased was found in the room where the appellant and the deceased were staying together and it is a case of homicidal death, the appellant was last seen with the deceased prior to the occurrence and also after the occurrence and no explanation has been offered in his statement recorded under Section 313 Cr.P.C., we are of the view that, in view of the circumstantial evidence appearing on record, it can be said that the chain of circumstance is complete and there is no escape from the conclusion that the crime of murder was committed by the present appellant and therefore the learned trial court has rightly found the appellant guilty under Section 302 IPC.

(Para 12)

(B) INDIAN EVIDENCE ACT, 1872 – Section 106 – Upon whom the burden of proof of lies when the crime was committed inside a house?

Held: When the crime was committed inside a house, the initial burden is, no doubt, on the prosecution to establish its case, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as required in the case of circumstantial evidence – The burden would be comparatively lighter character, and 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 premises that burden to establish

its case lies entirely upon the prosecution and there is no duty at all of an accused to offer an explanation. (Para 12)

Thus, in view of Section of 106 of the Evidence Act, the prosecution has to lead evidence to substantiate its accusation, and it facts within the special knowledge of the accused are not satisfactorily explained it is a factor against the accused. (Para 15)

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Indian Evidence Act, 1872.

Keywords

Circumstantial evidence; Last seen together; Chain of circumstances; Statement of the accused; Burden of proof.

Case Arising From

Judgment and order of conviction dated 17.05.2007 passed by the learned Sessions Judge, Keonjhar in Sessions Trial Case No. 160 of 2006.

Appearances for Parties

For Appellant : Ms. Bhaktisudha Sahoo (Amicus Curiae)
For Respondent : Mr. Sarat Kumar Pradhan, A.S.C.

Judgment/Order

Judgment

BY THE BENCH,

1. The Appellant namely Lochan Maharana faced trial in the court of the learned Sessions Judge, Keonjhar in Sessions Trial Case No.160 of 2006 for the offence punishable under Sections 302/201, IPC on the accusation that, on 18th May, 2006 at about 11.00 AM at village Dandasenaposi under Pandapada P.S. of district Keonjhar, he committed murder of his wife Mouna Maharana (hereinafter 'the deceased') and caused certain evidence connecting to the said offence to disappear. Learned trial court, vide judgment and order dated 17th May, 2007 found no evidence against the Appellant Lochan Maharana so far as the charge under Section 201 of the IPC is concerned and accordingly acquitted him of the said charge. However, the learned trial court found the Appellant guilty under Section 302 of the IPC and sentenced him to undergo imprisonment for life.

2. First Information Report was lodged by one Dasarathi Nag, S.I. of Police, who is also the Officer-in-Charge of Pandapada P.S. On the basis of the information of Lochan Maharana (accused-Appellant), Pandapada P.S. U.D. Case No.6 dated 18.05.2006 was registered, wherein it is stated that on 18.05.2006 at about 11.00

AM when he (Lochan) returned home from his work and asked his wife (the deceased) to serve rice to him, he found her dead, and accordingly he called the neighbours. During the course of enquiry in the U.D. Case by the ASI Mr. Gadadhar Dalei, as per the direction of the informant (P.W.7), inquest was held over the dead body of the deceased and the dead body was sent for post-mortem examination and then the informant (P.W.7) took charge of the enquiry. During the course of enquiry, he received the Post-Mortem Report, wherein the doctor (P.W.5) noticed the followings –

> (i) One old scar at right to midline anteriorly size ½" x ¼" in neck;
>
> (ii) One lacerated wound of 3" x 1.5" x .5" on lateral leg below knee which is post-mortem in nature;
>
> (iii) Bruise on either side of middle of neck, anteriorly 3" x 3" which is ante-mortem in nature;
>
> (iv) On dissection, I noticed larynx intact and its mucus membrane show haemorrhagic infiltration, cricoid cartilage and upper three tracheal ring fracture and congested and blood fell inside it, which is ante-mortem in nature;

Basing on the above finding, the cause of death has been opined by the doctor (P.W.5) to be asphyxia due to throttling.

3. Accordingly, the informant (P.W.7) lodged F.I.R. against the appellant accusing him to have committed murder of the deceased. On the basis of the F.I.R., Pandapada P.S. Case No.40 dated 25.06.2006 was registered under Section 302/201 of the IPC and the I.O. (P.W.7) himself took up the investigation of the case. During the course of investigation, he visited the spot, examined witnesses, arrested the appellant on 26.06.2006, seized his wearing apparels under Seizure List - Ext.6, collected the blood samples and nail-clippings and forwarded the appellant to court. The nail-clippings and blood samples, etc. were seized under Seizure List – Ext.7 and, on his transfer, the charge of investigation was handed over to one Somanath Jena, Sub-Inspector of Police, who sent the Exhibits to the S.F.S.L., Rasulgarh, Bhubaneswar through Court and received the Chemical Examination Report under Ext.9 and, on completion of the investigation, charge-sheet was submitted under Section 302/201, IPC against the appellant. After submission of charge-sheet, the case was committed to the court of sessions after following due procedure, where the learned trial court framed charges against the appellant, who pleaded denial of the charges and claimed for trial.

4. In order to prove its case, the prosecution examined seven witnesses and also exhibited 10 documents in total. The defence plea of the appellant is one of denial of the charges.

5. Learned trial court, after assessing the evidence of the witnesses, came to hold that, from the evidence of P.W.2 as well as P.W.3, it appears that the appellant was in the company of the deceased in his house where the dead body of the

deceased was found, but the appellant did not offer any explanation in his statement recorded under Section 313, Cr.P.C., which proves the guilt of the appellant. Learned trial court further held that the Doctor (P.W.5) noticed three injuries on the body of the deceased and opined the death to be asphyxia due to throttling. However, since none of the witnesses deposed that the appellant did anything to destroy the evidence, the learned trial court acquitted him of the charge under Section 201, I.P.C. However, it found the appellant guilty under Section 302 of the IPC.

6. Ms. Bhaktisudha Sahoo, learned Amicus Curiae appearing on behalf of the appellant, argued that, since there is no direct evidence in the case and the case is based on circumstantial evidence, and in a case based on circumstantial evidence, motive assumes paramount significance, and the prosecution has failed to establish any motive on the part of the appellant to commit murder of the deceased, and the evidence of P.Ws.2 and 3 only speaks about the last seen, on the basis of such evidence, the learned trial court should not have held the appellant guilty of the charge, merely because the appellant has not offered any explanation in his statement recorded under Section 313, Cr.P.C, and it cannot be said that the chain of circumstances is so complete unerringly to prove the guilt of the appellant. Therefore, she submits that it is a fit case where the benefit of doubt should be extended in favour of the appellant. She further submitted that, the inquest report indicates that it was a case of suicidal poisoning, which goes contrary to the post-mortem findings, and therefore the benefit of doubt should be extended in favour of the appellant.

7. Learned counsel for the State on the other hand supporting the impugned judgment, submitted that, P.W.2 has specifically stated that the appellant took the deceased towards the village on the date of occurrence at about 12 noon and when he returned home from forest at about 3.30 PM, the dead body of the deceased was found. Similarly, P.W.3 has also stated that the dead body of the deceased was found in the room where she was staying with the appellant, and the appellant was present at the spot. Learned counsel for the State further submitted that, the doctor (P.W.5) has noticed injuries on the person of the deceased and specifically opined that the cause of death was asphyxia due to throttling, and when the appellant was with the company of the deceased and when the occurrence took place inside the room where both of them were staying together and it was a case of homicidal death, in view of Section 106 of the Evidence Act, it was required on the part of the appellant to offer explanation as to how the deceased died. He having failed to establish the same, the learned trial court has rightly applied such provision and came to hold that the appellant is responsible for the death of the deceased, and accordingly convicted him under Section 302, IPC.

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

P.W.1 is the father of the deceased. The deceased was married to the appellant about three years ago and had two sons. The appellant was unemployed, took intoxicants, and often quarrelled with and assaulted her. On the morning of the incident, P.W.1 and the accused's mother (Srimati) went to collect forest leaves. Srimati told him there had been a quarrel the previous night. On returning around 3 p.m., he found his daughter dead. Though the appellant was present, he did not say anything. In his cross-examination, P.W.1 confirmed that the marriage between the appellant and his daughter was by mutual consent and by their own accord. He never visited their house. The villagers told him that the deceased took poison, but he doesn't know the real cause of death.

P.W.2 is a neighbour of the appellant. She accompanied the deceased to the forest on the morning of the incident. Around noon, the appellant arrived, quarreled with the deceased, and took her back to the village. When P.W.2 returned at 3:30 p.m., the deceased was already dead. She saw the appellant at 4 p.m., but he said nothing. In her cross examination, she states that the appellant's family lived together and appeared happy. She doesn't know the cause of death.

P.W.3 is the sister of the appellant. His house is adjacent to the appellant's. The appellant and the deceased usually stayed in one room and the mother and sister in another. She saw the deceased's body around 12 noon in the room shared by the couple. The appellant was present but did not speak to her. In her cross-examination, she mentions that the appellant was in habit of taking Ganja. Their family looked happy. He brought a jeep to take the deceased to the hospital.

P.W.4 is a neighbour of the appellant. He saw the deceased going to the forest in the morning but did not see the appellant and learned of her death around 3 p.m. In his Cross examination, he stated that he has no direct knowledge of the case and did not see the dead body.

9. Adverting to the contentions raised by the learned counsels for the respective parties, there is no dispute that the inquest over the dead body of the deceased has been conducted by P.W.6, who was ASI of Police attached to Pandapada P.S., vide Pandapada P.S. U.D. Case No.6/06 dated 18.05.2006. On perusal of the Inquest Report under Ext.3, we find that, in Column No.9, the opinion of the witnesses as to the cause of death of the deceased has been mentioned, wherein it is stated that the exact cause of death is not known, and number of witnesses have signed below it. However, in Column No.10, where the opinion of the police officer as to the cause of death is required to be mentioned, it is recorded that the cause of death of the deceased was due to suicidal poisoning. However, final opinion has to be obtained from the post-mortem report. There is nothing on record as to who reported to the ASI of Police at the time of the inquest that the cause of death of the deceased was due to suicidal poisoning. Therefore, we cannot give much importance on this opinion, which is mentioned in Column No.10, more particularly when the doctor (P.W.5), who has conducted the post-mortem

examination of the deceased on 19.05.2006 in the District Headquarters Hospital, noticed a number of injuries on the person of the deceased, including fracture of the cricoid cartilage and upper three tracheal rings which is ante-mortem in nature, and opined that the cause of death is asphyxia due to throttling. The doctor has specifically stated in his cross-examination that throttling means by pressing by hand, and in this case the strangulation was from front side, and he denied to the suggestion given by the learned defence counsel that his finding is erroneous; rather he confirmed that the death of the deceased was due to throttling. Therefore, on the basis of the evidence of the doctor (P.W.5), we are of the view that the learned trial court has rightly come to the conclusion that the deceased died of asphyxia due to throttling.

10. Now coming to the evidence of the other witnesses, we find that P.W.2 – Padmini Maharana has stated that, on the date of occurrence she along with the deceased had been to forest to collect Kendu leaves in the morning hours, as she is the neighbour of the appellant. She further deposed that, at about 12 noon the accused-appellant came to the forest and quarreled with the deceased and took her to the village. She further stated that when she returned from forest at about 3.30 p.m., by that time the deceased was dead and she saw the appellant at about 4.00 p.m. Nothing has been elicited in the cross-examination to disbelieve the last seen evidence, which has been adduced by this witness. Though suggestion has been given to P.W.2 that the deceased died due to poisoning, but she denied to such suggestion. P.W.3 has stated that the appellant and the deceased usually stay in one room and the mother and sister of the appellant usually stay in another room and when he saw the dead body of the deceased in the room, at that point of time the appellant was also present at the spot. P.W.1, who is the mother of the deceased, has stated that the appellant used to quarrel with the deceased and assault her and she had been to forest to collect Kendu leaves, and when she returned from the forest at about 3.00 pm, by that time the deceased was dead and the appellant was present in the house. Therefore, from the evidence of these three witnesses, i.e. P.Ws.1, 2 and 3, it appears that the appellant brought the deceased to the village from the forest at about 12 noon and he was present in the house where the dead body of the deceased was found at about 3.30 p.m., and it is a case of homicidal death. The appellant reported the matter in the Police Station, but during the enquiry in U.D. Case, it was found that it is a case of homicidal death and accordingly F.I.R. was lodged. As rightly held by the learned trial court that, in the 313 Cr.P.C. statement, the appellant has not offered any explanation as to how the deceased died a homicidal death when he was in her company.

11. Section 106 of the Evidence Act deals with burden of proving the fact especially within the knowledge, and this Section is not intended to relieve the

prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. Where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts unless the accused by use of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. If the explanation offered by the accused shows reasonable doubt on the prosecution story, he would be entitled to an acquittal. Thus, in view of Section 106 of the Evidence Act, the prosecution has to lead evidence to substantiate its accusation, and if facts within the special knowledge of the accused are not satisfactorily explained, it is a factor against the accused.

12. When the crime was committed inside a house, the initial burden is, no doubt, on the prosecution to establish its case, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as required in the case of circumstantial evidence. The burden would be comparatively lighter character, and 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 premises that burden to establish its case lies entirely upon the prosecution and there is no duty at all of an accused to offer an explanation. In the case at hand, since the dead body of the deceased was found in the room where the appellant and the deceased were staying together and it is a case of homicidal death, the appellant was last seen with the deceased prior to the occurrence and also after the occurrence and no explanation has been offered in his statement recorded under Section 313 Cr.P.C., we are of the view that, in view of the circumstantial evidence appearing on record, it can be said that the chain of circumstance is complete and there is no escape from the conclusion that the crime of murder was committed by the present appellant and therefore the learned trial court has rightly found the appellant guilty under Section 302 IPC.

13. Accordingly, the impugned judgment and order of conviction dated 17.05.2007 against the appellant Lochan Maharana under Section 302 IPC and the sentences passed thereunder stands confirmed. The Jail Criminal Appeal being devoid of merit stands dismissed.

14. As it appears from record, the appellant was directed to be released on bail vide order of this Court dated 18.12.2018. Hence, the appellant is directed to surrender forthwith before the learned trial court, failing which the learned trial court shall take immediate steps for his arrest and remanding him to jail custody to serve the sentence.

15. Before parting with the case, we would like to put on record our appreciation to Ms. Bhaktisudha Sahoo, learned counsel, who has been engaged as Amicus Curiae for the appellant Lochan Maharana in rendering her valuable help

and assistance towards arriving at the decision above mentioned. She shall be paid a sum of Rs.10,000/- (Rupees Ten Thousand) from the High Court Legal Aid Services Committee. This Court also appreciates the valuable help and assistance provided by Mr. Sarat Kumar Pradhan, learned Addl. Standing Counsel for the State.

16. The trial Court's record with a copy of this judgment be sent down to the concerned Court forthwith for information and necessary compliance.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter JCRLA dismissed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-51

DEBENDRA NATH MAHANA
V.
THE PRESIDING OFFICER, LABOUR COURT, BHUBANESWAR & ANR.

[W.P.(C) NO. 22781 OF 2024]

29 APRIL 2025

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

Issue for Consideration

Whether High Court in exercise of its power under Articles 226 & 227 of the Constitution of India has any scope to interfere with the order passed by the Industrial Tribunal/Labour Court.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 226 r/w Section 12(5) Clause (d) of Section 10(1) of the Industrial Disputes Act, 1947 – It is the case of the Petitioner that the management has illegally retired him from his service with effect from 02.04.2021 taking his date of birth as 03.04.1963 and he should have retired three years later if his date of birth would have been taken as 03.04.1966 and therefore, he is entitled to the consequential service benefits – Petitioner challenged the action of management before the concerned Labour Authority by filing a complaint – Petitioner was unsuccessful in his complaint – The petitioner approached the Civil Court, Bhadrak, but he failed – The petitioner approached the learned Labour Court – The learned Labour Court after analyzing the oral as well as documentary evidence came to hold that the action of the management cannot be termed as illegal,

rather justified – Whether High Court in exercise of its power under Articles 226 & 227 of the Constitution of India has any scope to interfere with the order passed by the Industrial Tribunal/Labour Court.

Held: No – In view of the settled principle, this Court, while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India should not interfere with the findings of fact recorded by the Labour Court unless there is an apparent error on the face of the award shocking the conscience of the Court and the findings given in the award are perverse or unreasonable either based on no evidence or based on illegal/unacceptable evidence or against the weight of evidence or outrageously defies logic so as to suffer from irrationality or the award has been passed in violation of the principles of natural justice – If the Labour Court erroneously refused to advert to admissible material evidence or had erroneously admitted in-admissible evidence which has influenced the impugned findings, the same can be interfered by a writ of certiorari – Adequacy of evidence cannot be looked into in the writ jurisdiction but consideration of extraneous materials and non-consideration of relevant materials can certainly be taken into account – Findings of fact of the Labour Court should not be disturbed on the ground that a different view might be possible on the said facts – Inadequacy of evidence or the possibility of reading the evidence in a different manner, would not amount to perversity. (Para 14)

Citations References

Syed Yakoob Vrs. K.S. Radhakrishnan, **A.I.R. 1964 S.C. 477;** Hari Vishnu Kamath Vrs. Ahmad Ishaque, **A.I.R. 1955 S.C. 233**; Nagendra Nath Vrs. Commr. of Hills Division, **A.I.R. 1958 S.C. 398**; Kaushalya Devi Vrs. Bachittar Singh, **A.I.R. 1960 S.C. 1168**; Sadhu Ram Vrs. Delhi Transport Corporation, **A.I.R. 1984 S.C. 1467;** Chandavarkar Sita Ratna Rao Vrs. Ashalata S. Guram, **(1986) 4 Supreme Court Cases 447;** M/s. Pepsico India Holding Pvt. Ltd. Vrs. Krishna Kant, **(2015) 4 Supreme Court Cases 270;** B.S.N.L. Vrs. Bhurumal, **A.I.R. 2014 S.C. 1188 – referred to.**

List of Acts

Constitution of India, 1950; Industrial Disputes Act, 1947

Keywords

Scope of interference; Correction of date of birth; Forged document; Conscience of the Court; Management.

Case Arising From

Award dated 28.03.2024 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No.22 of 2022.

Appearances for Parties

For Petitioner : Mr. Mr. Satyabrata Mohanty
For Opp. Parties : Ms. G.B. Priya, Mr. Aswini Kumar Sahoo (O.P. 2)

Judgment/Order

Order

BY THE BENCH

This matter is taken up through Hybrid arrangement (video conferencing/ physical mode).

2. Heard learned counsel for the petitioner and learned counsel for the opposite party no.2.

3. This writ petition has been filed by the petitioner seeking for quashing the award dated 28.03.2024 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No.22 of 2022.

4. From the impugned award, it appears that the Government of Odisha, Labour & ESI Department, invoking the power under Section 12(5) Clause (d) of Section 10(1) of the Industrial Disputes Act, 1947 sent the following reference for adjudication vide Memo dated 03.09.2022 which reads as under:

> "Whether the action of the Management of M/s. Ferro Alloys Corporation Limited, Charge Chrome Plant, D.P. Nagar, Randia, Bhadrak in making altercation/ correction of date of birth of workman Sri Debendranath Mahana unilaterally at the fag end of his service and retiring him from service w.e.f. 2.4.2021 basing on such altered date of birth is legal and/or justified? If not, to what relief the workman Sri Mahana is entitled?"

5. The factual matrix of the case reveals that the petitioner, being a technical qualified person was appointed as a Fitter-Mechanical (Boiler Attendant) by the management and attached to the complainant, the opposite party no.2 M/s. Ferro Alloys Corporation Limited and he joined on 14.06.1993 under the management and he was a regular employee. The management, taking into account his School Leaving Certificate maintained his Service Book so also other official Registers by mentioning his date of birth as 03.04.1966. In his ESI Card and Aadhaar Card also, this date of birth was mentioned as such.

It appears that a show cause notice was issued to the petitioner by the opposite party no.2 management for allegedly furnishing the false information/ manipulating the forged documents in support of his date of birth at the time of employment.

It is the case of the petitioner that such show cause was issued to him by the management on being misled by his elder brother namely Surath Mahana. He submitted a detailed reply to the show cause notice. Thereafter, the petitioner

received a letter dated 05.01.2021 from the Senior Manager (P & A) of the management wherein it is mentioned that his date of birth has been reckoned as 03.04.1963 and accordingly, he would be retiring from his service on 02.04.2021 on completion of 58 years of age. Though a request was made on behalf of the petitioner before the Senior Manager (P & A) not to consider his date of birth as 03.04.1963 instead of 03.04.1966, but the Senior Manager expressed his inability to do so.

The petitioner approached the concerned Labour Authority and filed a complaint petition before the DLC, Bhadrak in which the notices were issued to the management of the opposite party no.2. However, he was unsuccessful in his complaint petition. Therefore, he approached this Court as well as the Civil Court, Bhadrak, but there also, the petitioner failed and ultimately the management of the opposite party no.2 retired the petitioner from his service with effect from 02.04.2021.

It is the case of the petitioner that the management has illegally retired him from his service with effect from 02.04.2021 taking his date of birth as 03.04.1963 and he should have retired three years later if his date of birth would have been taken as 03.04.1966 and therefore, he is entitled to the consequential service benefits.

6. It is the case of the management opposite party No.2 that the petitioner was initially appointed as a Trainee under the management vide Appointment Letter dated 12.06.1993 and subsequently, his service was regularized on 04.07.1994 in the post of Fitter. The Transfer Certificate, which was produced by the petitioner while joining the service was stated to have been issued by the Head Master, Brahmapur High School, Icchapur, District- Bhadrak, in which the date of birth of the petitioner was mentioned as 03.04.1966. However, later, it was found to be fabricated. The management wrote a letter to the Head Master of that School for inquiring about the genuineness of the Certificate and the Head Master gave his reply and clarified that such a Transfer Certificate was not issued to the person concerned by his institution and from the Admission Register of the School, the date of birth of the petitioner was found to be 03.04.1963. Thereafter, the show cause notice was issued to the petitioner. Ultimately when the petitioner came to know that the documents available in the High School indicates that his date of birth is 03.04.1963 and not 03.04.1966, on his own, he requested the management to correct his date of birth as 03.04.1963 and accordingly, basing on his admission, the management not only corrected the date of birth as 03.04.1963 for all purposes but also taking a lenient view, imposed a minor punishment on him by stoppage of one increment with effect from July, 2012.

It is the case of the opposite party no.2 that for such conduct of the petitioner in submitting the false information, he would have been inflicted with a major punishment of dismissal from service, but the same was not done. Not only

the petitioner approached the DLC, Bhadrak with regard to the correction of his date of birth, but also this Court by filing W.P.(C) No.8907 of 2021. Since no action was taken by the DLC, Bhadrak, the petitioner approached this Court in W.P.(C) No.8907 of 2021 and this Court directed the DLC, Bhadrak to conclude the proceeding and accordingly, DLC, Bhadrak submitted a failure report before the appropriate Government. The petitioner also preferred C.S. No. 232 of 2021 for correction of his date of birth before the learned Civil Judge, (Sr. Division), Bhadrak along with an interim application vide I.A. No. 163 of 2021, but the learned Court dismissed the interim application on the ground that the petitioner has admitted regarding the date of birth as 03.04.1963 and thereafter his Civil Suit was also dismissed.

7. Before the Labour Court, Bhubaneswar, the petitioner filed rejoinder to the reply filed by the Management wherein it is averred that the management conducted the purported inquiry behind his back and the petitioner was unduly coerced by the authorities of the management to sign on some typed papers prepared by the management and the same was shown to be his purported reply, which was not signed by him, rather it was with a fear of losing of job.

8. The learned Labour Court framed the following issues on the basis of the pleadings:-

> "1. Whether the action of the management of M/s Ferro Alloys Corporation Ltd., Charge Chrome Plant, D.P. Nagar Randia, Bhadrak in making altercation/correction of date of birth of workman Sri Debendranath Mahana unilaterally at the fag end of his service and retiring him from service w.e.f. 2.4.2021 basing on such altered date of birth is legal and/or justified?
>
> 2. If not, to what relief the workman Sri Mahana is entitled?"

9. Before the learned Labour Court, both the parties adduced oral as well as documentary evidence. The learned Labour Court came to hold that in view of non-filing the Matriculation Certificate, which is the best piece of evidence in the present case, so also the original of Ext.8 by the petitioner, the documents under Ext.3 i.e. the provisional National Trade Certificate of the petitioner and Ext.5, the Aadhaar Card of the petitioner wherein his date of birth has been shown as 03.04.1966 cannot be taken into account. The Court further held that Ext.8 is a forged document basing on which the date of birth of the petitioner was considered as 03.04.1966 in his service record so also the record of the management at the time of his joining on being produced by the petitioner. The Court also took into account the Admission Register of the School which reflects date of birth of the petitioner to be 03.04.1963. This has been held by the learned Civil Judge (Senior Division), Bhadrak in I.A. No.163 of 2021. Ext. A which is a letter of the Head Master of the Brahmapur High School, Icchapur, District-Bhadrak wherein it has been mentioned that as per the school record, the actual date of birth of the petitioner is 03.04.1963.

Analyzing the oral as well as the documentary evidence, the Court came to hold that the action of the management, opposite party no.2 in retiring the petitioner from his service with effect from 02.04.2021 by altering/correcting his date of birth as 03.04.1963 cannot be termed as illegal, rather justified and accordingly, the petitioner was held to be not entitled to any relief as claimed by him.

10. Learned counsel for the petitioner argued that the case has been instituted by the management basing on the complaint of his elder brother namely Surath Mahana. On account of the property dispute, such type of complaint was filed against the petitioner and the management should not have considered such complaint and basing on the report of the Head Master of the School, the management should not have held the date of birth of the petitioner to be 03.04.1963 particularly when not only in the Transfer Certificate but also in the provisional National Trade Certificate vide Ext.3 and also in the Aadhaar Card of the petitioner, the date of birth has been mentioned as 03.04.1966.

11. Learned counsel for the opposite party no.2, on the other hand, supported the stand of the management taken in the written statement filed before the Labour Court and submitted that a very lenient view was taken by the management by just stoppage of one increment instead of removing the petitioner from his service on the ground of filing the forged documents at the time of entry into service. It is further argued that the matter has been duly inquired into after receiving the complaint and it was found to be correct and the Head Master of the School, after verification of the School Admission Register found that the date of birth of the petitioner was not 03.04.1966 but 03.04.1963 and therefore, the management rightly corrected the date of birth in the service record and all the concerned records and accordingly, the petitioner has retired from his service with effect from 02.04.2021 and there is no illegality in the same.

12. Adverting to the submissions made by the learned counsel for the respective parties, we find that there has been an admission made by the petitioner regarding the correction of his date of birth to 03.04.1963 after the report from the Head Master of the School was received and he has unsuccessfully challenged the correction of the date of birth to 03.04.1963 not only before the DLC, Bhadrak but also before the learned Civil Judge, Sr. Division, Bhadrak in the Civil Suit and there is no further challenge to the order of the learned Civil Court and therefore, once the same has attended finality and the petitioner was satisfied with the order of the learned Civil Judge and accordingly basing on the corrected entry made in the service book, he was allowed to retire after attaining the age of 58 years on 02.04.2021, it cannot be said that the opposite party no.2 management has committed any wrong.

13. At this stage, it is necessary to discuss the scope of interference with the order passed by the Industrial Tribunal/ Labour Court by this Court in exercise of its power under Articles 226 and 227 of the Constitution of India.

In the case of **Syed Yakoob -Vrs.- K.S. Radhakrishnan reported in A.I.R. 1964 S.C. 477**, a Constitution Bench of the Hon'ble Supreme Court held as follows:-

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

The Hon'ble Supreme Court in the case of **Sadhu Ram -Vrs.- Delhi Transport Corporation reported in A.I.R. 1984 S.C. 1467** has held as follows:-

> "3. We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. That the questions

> decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management...."

In the case of **Chandavarkar Sita Ratna Rao -Vrs.- Ashalata S. Guram reported in (1986) 4 Supreme Court Cases 447**, it is held as follows:-

> "21. It is true that in exercise of jurisdiction under Article 227 of the Constitution, the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 227 of the Constitution to look into the fact in the absence of clear cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest of injustice."

In the case of **M/s. Pepsico India Holding Pvt. Ltd. -Vrs.- Krishna Kant reported in (2015) 4 Supreme Court Cases 270**, it is held that the High Court in the guise of exercising its jurisdiction normally should not interfere under Article 227 of the Constitution and convert itself into a Court of appeal.

In the case of **B.S.N.L. -Vrs.- Bhurumal reported in A.I.R. 2014 S.C. 1188**, it is held that the findings of fact by the Central Government Industrial Disputes -cum- Labour Court (CGIT) are not be interfered with by the High Court under Article 226 of the Constitution. Interference is permissible only in cases where the findings are totally perverse or based on no evidence. Insufficiency of evidence cannot be a ground to interdict the findings as it is not the function of the High Court to re-appreciate the evidence.

14. In view of the settled principle, this Court, while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India should not interfere with the findings of fact recorded by the Labour Court unless there is an apparent error on the face of the award shocking the conscience of the Court and the findings given in the award are perverse or unreasonable either based on no evidence or based on illegal/unacceptable evidence or against the weight of evidence or outrageously defies logic so as to suffer from irrationality or the award has been passed in violation of the principles of natural justice. If the Labour Court erroneously refused to advert to admissible material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned findings, the same can be interfered by a writ of certiorari. Adequacy of evidence cannot be looked into in the writ

jurisdiction but consideration of extraneous materials and non-consideration of relevant materials can certainly be taken into account. Findings of fact of the Labour Court should not be disturbed on the ground that a different view might be possible on the said facts. Inadequacy of evidence or the possibility of reading the evidence in a different manner, would not amount to perversity.

15. After going through the reasonings assigned by the learned Labour Court, we do not find any infirmity or illegality in the same so as to be interfered with in this writ petition.

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

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

Result of the case:
Writ Petition dismissed.

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2025 (II) ILR-CUT-59

STATE OF ORISSA
V.
RAJKISHORE SETHI & ANR.

[W.P.(C) NO. 2492 OF 2011]

24 MARCH 2025

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

Issues for Consideration

1. Whether the hostel of an Educational Institution comes under the definition of industry as defined under Section 2(j) of the Industrial Disputes Act, 1947.
2. Whether Opposite Party No. 1 having been appointed as a cook in the educational institution comes under the definition of workman.
3. Whether the Industrial Tribunal is the proper forum to challenge the retrenchment order passed against the cook engaged in an educational institution.

Headnotes

(A) INDUSTRIAL DISPUTES ACT, 1947 – Sections 2(s), 2(j) – Workman – The State Management challenged the award of learned Labour Court on the ground that the Opposite Party No. 1 being engaged as a cook attached to the hostel under the S.T. and S.C. Development Department does not come under the purview of

definition of workman as defined under section 2(s) of the Industrial Disputes Act – Whether the hostel of an Educational Institution comes under the definition of industry as defined U/s. 2(j) of Industrial Disputes Act and the Opposite Party No. 1 being appointed as a cook in the said institution comes under the definition of workman.

Held: Yes – In view of the definition of "Workman" as defined under Section 2(s) so also the definition of 'industry' as defined under Section 2(j) of the I.D. Act and the settled position of law, this Court is of the view that the Petitioner Management is an Industry and the Opposite Party No.1 is a Workman under the I.D. Act. (Para 13)

(B) ADMINISTRATIVE TRIBUNALS ACT, 1985 – Section 28 r/w Section 2(k) of the INDUSTRIAL DISPUTES ACT, 1947 – The Opposite Party was engaged as a cook in the hostel under S.T. and S.C. Development Department – Whether the Industrial Tribunal is the proper forum to challenge the retrenchment order passed against the cook engaged in an educational institution.

Held: Yes.

Citations Reference

Gopal Chandra Sao & Others Vs. Chief Engineer & Basin Manager, Baitarani, Subarnarekha & Budhabalanga Basin, Laxmiposi & Others, **2003 (II) OLR – 244 ;** Co-operative Urban Bank Ltd., Parlakhemundi Vs. Presiding Officer, Labour Court, Jeypore & Others, **2010 (Supp.-I) OLR – 772;** Project Director, IDCWD Project, Jeypore Vs. Sri Kailash Chandra Jena, **2008 (Supp.-I) OLR – 405;** Bangalore Water Supply & Sewerage Board Vs. A. Rajappa & Others, **AIR 1978 SC 548;** The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar Vs. Prasanna Kumar Sethi, **W.P.(C) No.20644 of 2017, Judgment dated 11.03.2025;** Workman of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation, **(1985) 4 SCC 71;** U.P. Drugs & Pharmaceuticals Co. Ltd. Vs. Ramnuj Yadav & Others, **(2003) 8 SCC 334;** Haryana State Electronics Development Corporation Ltd. & Others Vs. Mamni, **2006 AIR SCW 2979;** Dena Bank Vs. Ghanshyam, **(2001) 5 SCC 169;** Hindustan Zinc Ltd. Vs. Industrial Tribunal & Another, **(2001) 10 SCC 211 – referred to.**

List of Acts

Industrial Disputes Act, 1947; Administrative Tribunals Act, 1985.

Keywords

Continuous service; Workman; Retrenchment; Regularization of service

Case Arising From

Award dated 20th July, 2009 passed by the learned Presiding Officer, Labour Court, Bhubaneswar in Industrial Dispute Case No. 50 of 2004.

Appearances for Parties

For Petitioner : Mr. Swayambhu Mishra, ASC
For Opp. Parties : None

Judgment/Order

Judgment

BY THE BENCH.

1. This matter is taken up through hybrid mode.

2. Award dated 20th July, 2009 (Annexure-1) passed by the learned Presiding Officer, Labour Court, Bhubaneswar (for brevity 'Labour Court') in Industrial Dispute Case No.50 of 2004 is under challenge in this writ petition, whereby the Opposite Party No.1- Workman has been directed to be reinstated in service with a lump sum amount of Rs.20,000/- towards back wages.

3. Parties are described as per their respective status before learned Labour Court for the sake of convenience in discussion. None appears for the Opposite Party No.1-Workman on call.

4. The admitted facts on record, which led to filing of the writ petition, are that, the Workman was appointed by the Management as Cook, vide order dated 10.12.1998 on a consolidated salary of Rs.2800/- per month in Kuntala Kumari Sabat Girls' Hostel, Unit-II, Bhubaneswar till the appointment of a regular employee. Accordingly, he joined the duty in the said hostel. While working as such, vide order dated 03.04.1999, the Management revised the mode of engagement of the Workman on 44 days basis on a monthly wage of Rs.780/- with one weekly off day or Rs.1020/- per month in lieu of the weekly off days with retrospective effect from 11.12.1998. Accordingly, his salary was reduced from Rs.2800/- per month to Rs.780/- or Rs.1020/- per month, as the case may be. But before issuance of the said revised engagement order, the Workman had already been paid salary @ Rs.2800/- per month for three months from his date of joining, i.e., 11.12.1998. While working as such, the Workman approached the Orissa Administrative Tribunal, Bhubaneswar in O.A. No.131 of 2001 for regularisation of his service. The said O.A. was disposed of vide order dated 08.02.2001 with a direction that if any regular selection is held for filling up of a post of a regular Cook in the said hostel, the Workman (Applicant in O.A. No.131 of 2001) having served in the Institution for a period of pretty long time, be allowed to compete with others in the regular selection, provided he possesses the minimum educational qualification prescribed for the post with further

direction that till such regular selection is made, the Applicant may be allowed to continue as an ad hoc Cook subject to the conditions detailed in the said order.

4.1 However, instead of acting in terms of the observation made in order dated 08.02.2001, passed in O.A. No.131 of 2001, the services of the Workman were terminated on 22.03.2001 without giving one month's prior notice or one month's salary in lieu of notice period so also compensation in terms of Section 25-F of the Industrial Disputes Act, 1947 (for brevity 'the I.D. Act').

5. Being aggrieved by the said action of the Management, the Workman raised an industrial dispute. Conciliation being failed and a report being sent to the Labour and Employment Department, Government of Odisha, the appropriate Government, in exercise of power conferred under sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the I.D. Act, vide order dated 30th June, 2004, referred the matter to the learned Labour Court for adjudication of the dispute by answering the following reference;

> *"Whether the termination of employment of Sri Raj Kishore Sethi, Ex-Cook of Kuntala Kumar Sabat, Adibasi Girls Hostel by the Director, S.T. & S.C. Development Department with effect from 25.03.2001 is illegal and/or justified? If not to what relief Sri Sethi is entitled?*
>
> The matter so referred was registered as I.D. Case No.50 of 2004.

6. Being noticed, the Workman filed his statement of claim reiterating the facts detailed above. In addition to the above, a stand was also taken before the learned Labour Court, Bhubaneswar that while reducing his salary so also terms of engagement, the Management did not follow the pre-conditions prescribed under Section 9-A of the I.D. Act. Allegation of violation of Section 25-H of the I.D. Act was also made by the Workman.

7. Being noticed, the Management filed its written statement admitting the facts alleged in the claim statement filed by the Workman. Further, it was admitted that the Workman has been paid remuneration @ Rs.2800/- per month for the period from 11.12.1998 to 03.04.1999 and thereafter Rs.1020/- per month till 10.11.2000 as per the revised Management Order No.11735 dated 29.03.2000. A further stand was also taken before the learned Labour Court that the Workman was engaged on 44 days basis and there must be a gap in between two spells of engagement. A stand was also taken in the written statement that the Workman was engaged as temporary Cook on the condition that the engagement is purely temporary and can be terminated at any time without issuing any notice or assigning reason thereof. As his services were no more required by the Government, the Workman was disengaged from service and no fresh appointment has been made in his place. Hence, Section 25-H of the I.D. Act is not applicable to the case of the Workman. A stand was also taken before the learned Labour Court that since the Workman was engaged on 44

days basis, he has not worked continuously for one year. As such, Section 25-F of I.D. Act is not applicable.

8. Based on the pleadings and evidence on record, the learned Labour Court, vide the impugned award held that even if it is accepted that the Workman was being appointed for a period of 44 days in each spell and there was a gap of one day between two spells of appointment, still it cannot be said that he had not worked for more than 240 days during the preceding 12 calendar months from the date of his termination. Further, it was held that the Workman was entitled to prior notice or notice pay so also retrenchment compensation in terms of Section 25-F (b) of the I.D. Act. As, admittedly, no notice or notice pay or compensation, as provided under Section 25-F (a) and (b) of the I.D Act, was given to the Workman at the time of retrenchment, his retrenchment from service with effect from 22.03.2001 was illegal and unjustified.

8.1 While answering Issue No. II as to what relief the Workman is entitled to, the learned Labour Court directed the Management to reinstate the Workman in service. However, a lump sum amount of Rs.20,000/- was awarded in lieu of back wages.

9. Being aggrieved by such award, the present writ petition has been preferred by the State-Management basically on the ground that the Opposite Party No.1 being engaged as a Cook attached to the hostel under the S.T. and S.C. Development Department, does not come under the purview of definition of 'Workman' under Section 2(s) of the I.D. Act. Hence, the provisions under the I.D. Act are not applicable to the case at hand. A further ground has been urged in the writ petition that the Cook-cum-Attendants of residential schools run under S.T. and S.C. Development Department are neither covered under the I.D. Act nor the Minimum Wages Act. That apart, since the Workman was engaged temporarily on 44 days basis as Cook on a consolidated pay in different spells from 11.12.1998 to 10.11.2000, unless the award passed by the learned Labour Court is set aside, that would unsettle the settled position of law. Thus, the impugned award being per se illegal, deserves to be set aside.

9.1 Further, it is urged that the State Government, at present, is passing through acute financial stringency and if the impugned award passed by the learned Labour Court is allowed to prevail, it will result in financial burden on the State exchequer.

10. Though not raised by the Management either before the learned Labour Court in its written statement or in the present writ petition, Mr. Mishra, learned Additional Standing Counsel for the State, submits that Kuntala Kumari Sabat Adivasi Girls' Hostel being run by the Management, i.e., Director, S.T. and S.C. Development Department, Bhubaneswar, is not an industry as defined under Section 2(j) of the I.D. Act.

11. Mr. Mishra further submits that since the Workman was engaged for a fixed tenure on 44 days basis in different spells, the precondition prescribed under Section 25-F of the I.D. Act was not required to be complied with in view of the provision enshrined under Section 2(oo) (bb) of the I.D. Act. However, learned Labour Court failed to take note of the said legal provisions. Thus, finding recorded by learned Tribunal that the action of the Management in terminating the services of the Workman is illegal and unjustified, is perverse.

12. Though learned Counsel for the Workman is absent on call, it is ascertained from the record that, apart from filing Counter Affidavit on 19th August, 2011, a date chart-cum-notes of submission has been filed by the learned Counsel for the Workman along with the photocopies of the case laws reported in 2003 (II) OLR – 244 ***(Gopal Chandra Sao and others Vs. Chief Engineer and Basin Manager, Baitarani, Subarnarekha and Budhabalanga Basin, Laxmiposi and others),*** 2010 (Supp.-I) OLR–772 ***(Co-operative Urban Bank Ltd., Parlakhemundi Vs. Presiding Officer, Labour Court, Jeypore and others),*** and 2008 (Supp.-I) OLR – 405 ***(Project Director, IDCWD Project, Jeypore Vs. Sri Kailash Chandra Jena). We think it proper to take the same into consideration for adjudication.***

12.1. In the written notes of submission filed by learned Counsel for the Workman, it has been urged that though in the claim statement filed by the Workman before learned Labour Court, it was specifically averred that his termination amounts to retrenchment within the meaning of Section 2 (oo) of the I.D. Act., the same has not been specifically traversed by the Management. Hence, principle of non-traverse comes into play which speaks that pleadings not traversed specifically are deemed to be admitted. Therefore, the Management is deemed to have admitted that termination of Workman amounts to retrenchment. Further, it has been urged in the written notes of submission that in view of the settled position of law, giving appointments on 44 days basis with some artificial breaks was adopted by the Management in order to deprive the Workman from getting the benefit under Section 25-F of the I.D. Act and therefore, exclusion clause (bb) under Section 2 (oo) is not attracted to such cases.

12.2 Discussing the issue raised by Mr. Mishra, learned ASC that the Opposite Party No.1 is not a 'workman', it has been urged in the written notes of submission of the Workman that the Management, in para-2 and 4 of the written statement filed before the learned Labour Court, admitted that the Opposite Party No.1 is a Workman. So far as industry is concerned, relying on the Seven Judges Bench Judgment of the Hon'ble Supreme Court, reported in AIR 1978 SC 548 ***(Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others),*** it has been urged in the written notes of submission that, as held by the Supreme Court in the said case, "industry" as defined in Section 2(j) of the I.D. Act, has a wide import and three golden tests are to be satisfied for declaring an institution to be an industry, viz, (i) there must be systematic activity; (ii) there must be cooperation between the

employer and the employees and (iii) the activity should be made for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. In the instant case, all the three conditions are fulfilled.

12.3 It has also been stated that in view of the ratio in ***Bangalore Water Supply and Sewerage Board*** (supra), educational institutions are treated as "industry" and hostel being an integral part of the educational institution, is to be treated as an industry and it cannot be said that the employer was/is discharging its sovereign functions.

12.4 It is further urged in the written notes that this Court has clarified that even in a Government Organization, if an employee wants to challenge the action of the employer regarding retrenchment, then the appropriate remedy is to be invoked under the provisions of the I.D. Act. Therefore, even if the Workman had earlier approached the Orissa Administrative Tribunal for regularization of his service, he is not debarred from approaching the forum under the I.D. Act relating to his retrenchment and the plea taken in that regard by the Management, is not sustainable.

12.5 It has also been urged in the written notes of submission that this Court, vide order dated 31.03.2011, stayed the operation of the award dated 20.07.2009 under Annexure-1 subject to payment of wages at the rate of last pay drawn to the Workman with effect from April, 2011 and it was directed to pay the same within first week of each month. However, the Management stopped paying the wages from March, 2014. Hence, in view of the Judgment of this Court in Co-operative Urban Bank Ltd., (supra), the writ petition is liable to be dismissed.

13. So far as the points urged before this Court that the establishment, in which the Workman was working, is not an Industry and the Opposite Party No.1 is not a Workman, as defined under Section 2(s) of the I.D. Act, admittedly, such points were never raised before the learned Labour Court in the written statement. For the first time, such points have been urged before this Court. That apart, in view of the definition of 'Workman' as defined under Section 2(s) so also the definition of 'industry' as defined under Section 2(j) of the I.D. Act and the settled position of law, this Court is of the view that the Petitioner Management is an Industry and the Opposite Party No.1 is a Workman under the I.D. Act.

14. So far as the point as to approaching the Industrial Tribunal, instead of Orissa Administrative Tribunal, it would be apt to reproduce below Section 28 of the Administrative Tribunals Act, 1985 (for brevity 'the Act, 1985') for ready reference;

> "**28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution**.— On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service

matters concerning members of any Service or persons appointed to any Service or post, [**no court except**—

(a) the Supreme Court; or

(b) **any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force**,

shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters." (Emphasis supplied)

15. From the said provision under Section 28 of the Act, 1985, it is amply clear that the Administrative Tribunal so also Industrial Adjudicator have concurrent jurisdiction in relation to recruitment and matters concerning recruitment to any service or post or service matter concerning members of any service or persons appointed to any service or post. Admittedly, the Opposite Party No.1- Workman approached the Odisha Administrative Tribunal for regularisation of his service. After disposal of the said O.A. on 08.02.2001, his services being illegally terminated with effect from 25.03.2001 despite direction/observation made by the Odisha Administrative Tribunal, he chose to approach the forum under the I.D. Act, which is permissible in terms of provisions under Section 28 of the Act, 1985.

16. That apart, in Gopal Chandra Sao and others (supra), this Court referring to Section 15 of the Act, 1985, held that, as the Petitioners' grievances are only with respect to the retrenchment and they are coming within the definitions of 'Workman' as defined in Section 2(s) of the I.D. Act and the dispute qualifies to the term 'industrial dispute' as defined in Section 2(k) of the said Act; therefore, proper forum for the Petitioners would be the Industrial Tribunal and if they claim for regularisation in service while challenging to the order of retrenchment, then it is the State Administrative Tribunal, which has got the jurisdiction in view of the provision in Section 15 of the Act, 1985.

17. Further, though the Management in its written statement filed before the learned Labour Court specifically pleaded about filing of O.A. No.131 of 2001 by the Opposite Party No.1-Workman so also disposal of the said O.A. vide order dated 08.02.2001, never took a stand as to maintainability of the reference made by the appropriate Government at the instance of the Workman. However, in view of the provision under the Act, 1985, as quoted above, the point urged before this Court as to maintainability of the reference and legality of the award pursuant to such reference is unsustainable.

18. So far as the point urged before this Court that the engagement of the Workman was on 44 days basis with a consolidated remuneration of Rs.780/- per month with one weekly off day or Rs.1020/- per month in lieu of the weekly off days and exclusion of the action of the Management in retrenching the Workman in view of Section 2(oo) (bb) of the I.D. Act, it would be apt to reproduce below para-3

of the written statement filed by the Management before the learned Labour Court in I.D. Case No.50 of 2004.

> *"**3**. The aforesaid Office Order No.35140 dt. 10.12.98 was superseded vide erstwhile Welfare Department O.O. No.11596 dt. 3.4.99 (copy at Annexure-'B') basing on the Circular No.18988 dt. 30.7.98 regarding payment of remuneration of the Cook-cum-Attendants/Daftaries/Attendants engaged as temporary basis under the Welfare Department Institutions (copy at Annexure-'C'). **Accordingly Sri Sethi was engaged on 44 days basis with a consolidated remuneration of Rs.780/- p.m. with one weekly off day or Rs.1020/- p.m. in lieu of weekly off days as provided under the Minimum Wages Act**. That the averment that the 1st party management has reduced the pay of the workmen from Rs.2800/- p.m., to Rs.780/- , Rs.1020/- p.m. by mala fide and arbitrary order is baseless. **It is a fact that Sri Sethi has been paid remuneration @ Rs.2800/- p.m. for the period from 11.12.98 to 3.4.99 and thereafter Rs.1020/- p.m. till 10.11.2000 as per the revised Management Order No.11735 dt. 29.3.2009 (copy at Annexure-'D')."*** *(Emphasis supplied)*

19. As has been admitted in the written statement filed before learned Labour Court, though the Workman was engaged as a temporary Cook with a consolidated pay of Rs.2800/- per month vide Office Order No.35140 dt. 10.12.98, the same was superseded vide Welfare Department Office Order No.11596 dated 03.04.1999, based on the circular No.18988 dated 30th July, 1998 regarding payment of remuneration of the Cook-cum-Attendants/Daftaries/Attendants engaged on temporary basis under the Welfare Department Institutions. That apart, it has been specifically admitted in the said paragraph that the Workman was paid his remuneration @ Rs.2800/- per month for the period from 11.12.1998 to 03.04.1999 and thereafter @ Rs.1020/- per month till 10.11.2000, as per the revised Management Order dated 29.03.2000. In view of such admission in the written statement, it is amply clear that the Workman, apart from being engaged on 44 days basis, was also working on weekly off days, for which he was paid Rs.1020/- per month instead of Rs.780/- per month from 03.04.1999 till 10.11.2000.

20. Further, in para-5 of the written statement it was pleaded by the Management before learned Labour Court that the Workman was engaged on 44 days basis and there must be a gap between each period of engagement. However, the Management failed to adduce any evidence to substantiate such stand taken before the learned Labour Court. Rather, as stated above, it was admitted before learned Labour Court that the Workman was working from 11.12.1998 till 10.11.2000 continuously, that too on weekly off days also.

21. So far as continuous service as defined under Section 25-B of the I.D. Act, in a recent Judgment dated 11.03.2025, this Court in W.P.(C) No.20644 of 2017 ***(The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar Vs. Prasanna Kumar Sethi)***, discussed the definition of continuous service as defined under section 25-B of the I.D. Act referring to the Judgments of the Supreme Court in ***Workman of American Express International Banking Corporation Vs.***

Management of American Express International Banking Corporation; (1985) 4 SCC 71, so also in ***U.P. Drugs & Pharmaceuticals Co. Ltd. Vs. Ramnuj Yadav and others;*** (2003) 8 SCC 334 and held that uninterrupted working for 240 days in the preceding twelve months from the date of termination of service is not necessary to constitute "continuous service". Even though a Workman has not worked for more than 240 days during the preceding twelve months of his retrenchment/termination, if he has worked for more than 240 days in any of the preceding years, he would be deemed to be in continuous service and his retrenchment would be illegal, if the same has not been done by the employer without adhering to the provisions of the I.D. Act.

22. In similar facts and circumstances, where the Workman was appointed as a Cook on ad hoc basis and being engaged on 89 days basis on three occasions and on 44 days basis on ten occasions, relying on the decision of the Hon'ble Supreme Court in ***Haryana State Electronics Development Corporation Ltd. and others Vs. Mamni,*** reported in 2006 AIR SCW 2979, this Court held that such action of the Petitioner-Management was not bona fide and it was adopted to deprive the Opposite Party-Workman from availing the benefit under Section 25-F of the I.D. Act. As such, in view of the ratio in the case of ***Haryana State Electronics Development Corporation Ltd*** (supra), action of the Management in terminating the Workman will not fall within the scope of Section 2(oo) (bb) of the I.D. Act.

23. Further, the stand of the Management that it was not a case of retrenchment in view of section 2(oo)(bb) of the I.D. Act, has been advanced before this Court for the first time. Such stand was neither taken in the written statement filed before the learned Labour Court nor the impugned award shows that any evidence was led by the Management to substantiate such a plea. Hence, this Court is of the considered view that it is not open for the Petitioner-Management to raise such a new plea at this stage.

24. Admittedly, the Workman was appointed as a Cook vide order dated 10.12.1998 till the appointment of a regular Cook. The Odisha Administrative Tribunal (OAT), vide order dated 08.02.2001, in O.A. No.131 of 2001, also directed the Management to allow the Workman to compete with others in the regular selection process, provided he possesses minimum educational qualification prescribed for the said post. A further direction was given to allow the Workman to continue as ad hoc Cook till such regular selection is made. It is not the case of the Management that pursuant to the said order passed by the OAT, a regular selection process was held by giving due opportunity to the Workman to compete with others and a Cook was selected and appointed in such position/post, where the Workman was working. Rather, a plea has been taken in the written statement before learned Labour Court so also before this Court that after disengaging the Workman, nobody has been engaged in the said post/position as a Cook in the said hostel. It has further been admitted in the written statement, as detailed above, that the Workman was

continuously working on 44 days basis including weekly off days. Hence, this Court is of the considered opinion that such action of the Management cannot be brought under the ambit of exclusion clause (bb) under Section 2(oo) of the I.D. Act to debar the Workman from the protection under Section 25-F of the I.D. Act.

25. The Workman took a stand to dismiss the writ petition for non-compliance of Section 17-B of the I.D. Act. In ***Dena Bank Vs. Ghanshyam;*** (2001) 5 SCC 169, it is held by the Hon'ble Supreme Court that the wages last drawn, in terms of Section 17-B of the I.D. Act, has to be paid to the Workman from the date of award during pendency of the matter before High Court or Supreme Court. Though in the present case, the impugned award was passed on 20th July, 2009, but in view of the order dated 31.03.2011 in the present writ petition, the Opposite Party No.1-Workman was paid wages last drawn with effect from the said date. As the said payment was stopped by the State-Petitioner with effect from March, 2014, Misc. Case No.21515 of 2014 was filed by the Workman. Considering the plea taken, this Court on 17.01.2023, directed for compliance of the previous order and file compliance Affidavit. On being so directed, the State-Petitioner filed an Affidavit on 21.09.2023 indicating therein that an amount of Rs.1,12,200/- has been paid to the Workman for the period from April, 2014 to May, 2023. Admittedly, the Workman has not been paid wages last drawn by him from 20th July, 2009, i.e., from date of award, till 30.03.2011 and also for the subsequent period from June, 2023 till date.

26. On perusal of the Judgment in ***Co-operative Urban Bank Ltd., Parlakhemundi*** (supra), it is apparent that no such view has been taken by the coordinate Bench for dismissal of the writ petition on the ground of non-compliance of Section 17-B of the I.D. Act. Rather, Hon'ble Supreme Court in ***Hindustan Zinc Ltd. Vs. Industrial Tribunal and another***, reported in (2001) 10 SCC 211, held that the High Court was not justified in dismissing the writ petition for noncompliance of the Section 17-B of the I.D. Act and ought to have dealt with the merits of the case.

27. In view of the discussions and observations made in the foregoing paragraphs, there being no infirmity and illegality in the impugned award, the writ petition stands dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

28. As the impugned award passed in I.D. Case No.50 of 2004 has been confirmed, it is made clear that the Opposite Party No.1- Workman, on his reinstatement, shall be entitled to all the benefits for the post award period, what he would have been entitled to had he been reinstated in service, till the date of his actual reinstatement.

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

Result of the case:
Writ Petition dismissed.

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2025 (II) ILR-CUT-70

STATE OF ODISHA
V.
TATUNG MUNDA

[GCRLA NO. 66 OF 2003]

15 APRIL 2025

[B.P. ROUTRAY, J. & MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether the right of the accused to remain silent can be infringed by aid of adverse presumption taken under Section 106 without *prima facie* satisfaction of the burden of proof on the prosecution.

Headnotes

(A) INDIAN EVIDENCE ACT, 1872 – Section 106 – According to evidence of different witnesses the Respondent stayed with the deceased in the same room along with their children on that fateful night – None of the children of the deceased and accused have been examined by the Prosecution – Prosecution has also not explained any reason for their non-examination – They might have been the best witnesses to throw light on the commission of murder of the deceased or what happened in the room in that night – Whether the right of the accused to remain silent can be infringed by aid of such presumption taken under Section 106 without *prima facie* satisfaction of the burden of proof on the prosecution.

Held: No – It cannot be denied on the part of the prosecution to discharge their initial burden of establishing *prima facie* case regarding guilt of the accused beyond all reasonable doubt and the law is well settled that the presumption would not be of any help to the prosecution unless the initial burden of *prima facie* case against the accused is discharged by the prosecution. (Para 8)

(**B) INTERPRETATION OF STATUTES** – Principle relating to reverse burden of proof – Discussed. (Para 9)

Citations Reference

Sawal Das v. State, **AIR 1974 SC 778;** M. Krishna Reddy v. State, **(1992) 4 SCC 45;** State of M.P. v. Balveer Singh, **2025 SCC Online SC 390;** Hanumant v. State of Madhya Pradesh, **AIR 1952 SC 343;** Sharad Birdhi Chand Sarda v. State of Maharashtra, **1984 AIR 1622;** State of M.P. v. Balveer Singh, **2025 SCC online SC 390 – referred to.**

List of Acts

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

Keywords

Criminal trial; Presumption; *Prima Facie*; Homicidal death; Right of an accused; Adverse presumption; Reverse burden proof.

Case Arising From

Judgment dated 2nd June, 2001 of learned Sessions Judge, Keonjhar passed in S.T. Case No. 135 of 1997.

Appearances for Parties

For Appellant : Mr. B.L. Tripathy, A.S.C.

For Respondent : Mr. Biswajit Nayak, Amicus Curiae

Judgment/Order

Judgment

B.P. ROUTRAY, J.

1. Heard Ms. B.L. Tripathy, learned Additional Standing Counsel for the State and Mr. B. Nayak, learned Amicus Curiae for the Respondent.

2. The charge was for commission of offence under Section 302 of the Indian Penal Code.

3. According to the prosecution case the Respondent committed murder of his wife by throttling, on the night of 4th November, 1996.

4. The admitted fact remains that the deceased and the Respondent were wife and husband staying at village Ladapani under Nayakote Police Station in the district of Keonjhar in the same house. They had four children staying along with them before the occurrence took place. It is alleged that on the evening of 4th November, 1996 the deceased along with her husband (present Respondent – accused) slept in a separate room in their house along with their children and in the morning the deceased was found dead. The matter was reported to the police and UD case No.5 dated 5th November, 1996 was registered. Inquest was held and the dead body was sent for post mortem examination. Upon post mortem examination the report of the doctor was received with his opinion that the death is due to homicidal throttling. So, on receipt of such report from the post mortem doctor (P.W.6), the UD case was registered as a case of murder being numbered as Nayakote P.S. Case No.1 of 1997 dated 4th February, 1997. The investigation in the UD case was conducted by P.W.10 and upon registration of the cognizable case, the investigation was taken up by P.W.11 who at that point of time was working as

Officer-in-Charge of Nayakote Police Station. The accused was arrested on 29th April, 1997 and forwarded to custody.

The Respondent – accused took the plea of denial and stood his trial being charged for the offence of commission of murder.

5. Prosecution examined 11 witnesses and adduced 8 documents in support of their case, whereas the defence did not adduce any evidence.

6. Among the witnesses examined for prosecution, P.W.1 is the informant, P.W.6 is the doctor who conducted post mortem examination, P.W.10 is the investigating officer in respect of the UD case and P.W.11 is the investigating officer of the police case after it registered as a case of murder.

7. What is relevant here to describe at the outset that finding the deceased dead on the morning of 5th November, 1996, P.W.1 reported the matter to the police which was registered as UD case. At that time the Respondent – accused contended that he does not know anything about the cause of death of the deceased. Subsequently finding that the cause of death is asphyxia due to homicidal throttling, suspicion was centered on the accused, who stayed with the deceased in the same room on that occurrence night. The opinion given by the doctor upon post mortem examination is not contradicted nor rebutted despite a comprehensive cross-examination was put to P.W.6. According to P.W.6, he found crescentric shaped bruise mark on front side of neck which is consistent with homicidal throttling taking note of breadth and length of such mark. It is confirmed by P.W.6 during his cross-examination that the crescent shape of mark on the neck is possible by pressure with any hard substance like palm and fingers. Except such mark on the dead body of the deceased no further external injury could be noticed and as per opinion of the doctor (P.W.6) the body was partially decomposed and skin was peeled out. It was also noticed that frothy discharge came out from the nostril mixed with blood, associated with defecation and bleeding from vagina. Thus, based on all such symptoms and signs marked on the dead body the opinion of the post mortem doctor regarding cause of death as homicidal could not be disturbed to opine otherwise. It is also agreed by the prosecution that the death of the deceased is due to asphyxia by homicidal throttling. Upon examination of all such facts including the opinion of the doctor, we confirm such finding of P.W.6 in favour of the prosecution case that the deceased died homicidal death.

8. Next coming to see the complicity of Respondent as the author of murder of the deceased, it is found from the record that no direct evidence is available there to rope the Respondent for the alleged offence. It is true that according to evidence of different witnesses, the Respondent stayed with the deceased in the same room along with their children on that fateful night. P.W.8, the brother of the deceased has stated in his evidence that the Respondent and deceased slept with the children in their

house in a separate room. This is corroborated by different other witnesses viz. P.W.1 (the informant), P.W.2, 3, 4, 7, 8 and 9.

It is true that as per the principles under Section 106 of the Evidence Act an adverse presumption has to be drawn against the accused and the burden is on the person whose special knowledge is there. When the accused fails to explain or gives false explanation as to what happened in that room in the occurrence night when he was present along with the deceased, such presumption adverse to the accused has to be taken. At the same time it cannot be denied on the part of the prosecution to discharge their initial burden of establishing prima facie case regarding guilt of the accused beyond all reasonable doubt and the law is well settled that the presumption would not be of any help to the prosecution unless the initial burden of prima facie case against the accused is discharged by the prosecution. (See ***Sawal Das v. State, AIR 1974 SC 778 : M. Krishna Reddy v. State, (1992) 4 SCC 45)***

9. In ***State of M.P. v. Balveer Singh, 2025 SCC online SC 390,*** the Supreme Court taking note of several earlier decisions have explained the principles relating to application of reverse burden of proof on the accused based on the principles noted in section 106 of the Indian Evidence Act. It is observed by the Supreme court that;

> **78.** To recapitulate the foregoing : What lies at the bottom of the various rules shifting the *evidential burden* or burden of introducing evidence in proof of one's case as opposed to the *persuasive burden* or burden of proof, i.e., of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams—Proof of Guilt, Ch. 7, page 127 and following) and the interesting discussion—para 527 negative averments and para 528 — "require affirmative counter-evidence" at page 438 and foil, of *Kenny's outlines of Criminal Law*, 17th Edn. 1958.
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> **79.** But Section 106 has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only to the accused but also to others, if they happened to be present when it took place. The intention underlying the act or conduct of any individual is seldom a matter which can be conclusively established; it is indeed only known to the person in whose mind the intention is conceived. Therefore, if the prosecution has established that the character and circumstance of an act suggest that it was done with a particular

intention, then under illustration (a) to this section, it may be assumed that he had that intention, unless he proves the contrary.

80. A manifest distinction exists between the burden of proof and the burden of going forward with the evidence. Generally, the burden of proof upon any affirmative proposition necessary to be established as the foundation of an issue does not shift, but the burden of evidence or the burden of explanation may shift from one side to the other according to the testimony. Thus, if the prosecution has offered evidence, which if believed by the court, would convince them of the accused's guilt beyond a reasonable doubt, the accused, if in a position, should go forward with countervailing evidence, if he has such evidence. When facts are peculiarly within the knowledge of the accused, the burden is on him to present evidence of such facts, whether the proposition is an affirmative or negative one. He is not required to do so even though a *prima facie* case has been established, for the court must still find that he is guilty beyond a reasonable doubt before it can convict. However, the accused's failure to present evidence on his behalf may be regarded by the court as confirming the conclusion indicated by the evidence presented by the prosecution or as confirming presumptions which might arise therefrom. Although not legally required to produce evidence on his own behalf, the accused may therefore as a practical matter find it essential to go forward with proof. This does not alter the burden of proof resting upon the prosecution [See : *Balvir Singh v. State of Uttarakhand, 2023 SCC OnLine SC 1261 and Anees v. State Govt. of NCT,* 2024 INSC 368] **iv. *What is "prima facie case"* (foundational facts) in the context of Section 106 of the Evidence Act?"**

10. As in the instant case because the death has been proved as per medical evidence as homicidal in nature by strangulation, the burden cannot come on the accused to explain satisfactorily regarding circumstances that happened in the night. The right of the accused to remain silent cannot be infringed by aid of such presumption taken under Section 106 without prima facie satisfaction of the burden of proof on the prosecution. It is to be noticed here that it is not the accused alone stayed with the deceased in the room on the occurrence night but along with them four children of theirs' had also stayed. This is the clear evidence brought on record by P.W.8. But it is seen that none of the children of the deceased and accused have been examined by the prosecution. Prosecution has also not explained any reason for their non-examination who could have been the best witnesses to throw light on the commission of murder of the deceased or what happened in the room in that night. No such dubious part on the subsequent conduct of the accused is noticed. Without finding anything suspicious at the crime scene, the Unnatural Death case was registered and continued till receipt of post-mortem examination report suggesting homicidal death of the deceased. No other circumstance suspecting guilt of the accused could be brought by prosecution against the accused.

11. Upon thorough verification of the materials brought on record it is seen that nothing more than the statements of the witnesses regarding staying of the deceased and accused in that night has been surfaced by the prosecution. In a case of

circumstantial evidence, unless the chain is complete and all such circumstances do speak against the innocence of the accused, the guilt of the accused cannot be said to have been established beyond all reasonable doubt. The principles of circumstantial evidence have been well settled starting from the case ***Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343, Sharad Birdhi Chand Sarda v. State of Maharashtra, 1984 AIR 1622 and State of M.P. v. Balveer Singh, 2025 SCC online SC 390.***

12. We do not find any chain of circumstances complete in the present case to establish guilt of the Respondent beyond all reasonable doubts. Rather, as opined by learned trial Judge, the accused is entitled for benefit of doubt. In the circumstances, upon analysis of all such evidences, in our opinion the prosecution has failed to establish the charge against the Respondent beyond all reasonable doubts and as such we do not find any reason to interfere with the order of acquittal.

13. The appeal is dismissed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal dismissed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-75

STATE OF ODISHA
V.
SANJEEB KERKETTA

[DSREF NO. 2 OF 2023]
AND
SANJEEB KERKETTA V. STATE OF ODISHA
[IN JCRLA NO. 142 OF 2023]

23 APRIL 2025

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

Issues for Consideration

1. Whether the interference of this Court is warranted, where it is found that there is a deficiency of legal assistance to the convicts on the aspects of his defence.
2. Whether multiple irregularities vitiated the Trial Court proceeding.

Headnotes

(A) CRIMINAL TRIAL – The accused was found guilty and sentence to death under Section 376-A and 302 of the Indian Penal Code – On

perusal of trial Court record it reveals that the convict was initially represented by an advocate appointed through legal aid – The said counsel failed to appear consistently during material stage of the trial; including the cross-examination of key prosecution witnesses – It is further evident that no meaningful and substantial defence was put forth on behalf of the convict – No defence evidence was led, and no final arguments appear to have been made with the diligence expected of counsel entrusted with safeguarding the right of an accused facing serious charges – Whether the interference of this Court is warranted, where it is found that there is a deficiency of legal assistance to the convicts on the aspects of his defence.

Held, Yes – It is well-settled that an accused facing serious charges particularly one under Section 302 IPC and section 6 of POCSO Act, carrying the possibility of life imprisonment or death must be afforded the fullest opportunity to defend himself through competent and diligent legal representation – In the instant case, the conduct of defence counsel and the trial proceedings fall woefully short of this standard – The prejudice to the Convict is not speculative; it is borne out from the record – In our considered opinion, the Convict has demonstrated substantial prejudice arising from the inadequacy of legal representation – The trial, as conducted, cannot be said to have been a fair trial in the eyes of law. (Para 16)

(B) CODE OF CRIMINAL PROCEDURE, 1973 – Section 311 r/w Art 21 of Constitution of India – The accused statement recorded under Section 311 of the Code is a defective, inadequate and has divorced the sanctity of the above provision – The statement of the accused U/s. 313 of the code is neither exhaustive nor comprehensive – The principles concerning the examination of the accused U/s. 313 Cr.P.C is discussed

Held – The trial Court must specifically, distinctly, and separately put each material circumstance appearing in evidence against the accused – The purpose of such examination is not perfunctory; it is to provide the accused a meaningful opportunity to explain the circumstances against him – Failure to properly frame and put material circumstances constitutes a serious irregularity and can vitiate the trial if it has caused prejudice – Mere bulk questioning or vague aggregation of circumstances does not satisfy this requirement – Each incriminating circumstance must be individually addressed – The omission, unless shown to be curable without causing failure of justice, entitles the accused to appropriate remedial directions, including the possibility of remand – This principle underscores the substantive, rather than procedural, character of the right under Section 313

Cr.PC, firmly rooted in the guarantee of a fair trial under Article 21 of the Constitution. (Para 19)

(C) CRIMINAL JURISPRUDENCE – Right to Fair Trial – The Convict's contention that the trial proceedings were vitiated owing to lack of effective and adequate legal representation – Effect of.

Held – The right to a fair trial is not the privilege of the accused but a right that is equally essential for the prosecution and, more importantly, for society at large, to ensure that justice is both done and seen to be done – The trial Court, therefore, was under an even greater obligation to ensure that the trial proceedings were conducted with the strictest regard to fairness and due process – Regrettably, the record reflects a complete abdication of that responsibility – In cases of such grave nature, perfunctory manner of conducting the cases not only undermine the faith of the public in the criminal justice system but also risk irreparable miscarriage of justice – Such lapses strike at the heart of the right to a fair trial and cannot be countenanced – This Court is thus left with no alternative but to hold that the trial stands vitiated in its entirety. (Para 23)

(D) CRIMINAL TRIAL – The appellant is convicted for the offence U/s. 450/366/376(2)(i)/376(A)/302/201 of IPC and U/s. 6 of the POCSO Act – Upon a cumulative evaluation of the record, the Court finds that the trial proceeding were affiliated by multiple and grave irregularities, including improper and inadequate examination under section 313 CrPC, failure to consider mitigating circumstances at sentencing and denial of distinct and fair sentence hearing – Whether the multiple irregularities vitiated the trial Court proceeding.

Held, Yes – Taken together the irregularities, they reveal a trial conducted in a perfunctory, mechanical and constitutionally impermissible manner – The Court issued appropriate direction to trial Court. (Para 24)

Citations Reference

Ashok vs. State of Uttar Pradesh, **[2024] 12 S.C.R. 335;** Chaluvegowda & Ors. vs. State, **(2012) 13 SCC 538;** Anokhilal vs. State of Madhya Pradesh, **[2019] 18 S.C.R. 1196;** Raj Kumar vs. State (NCT of Delhi), **2023 SCC OnLine SC 609;** Bachan Singh vs. State of Punjab, **(1980) 2 SCC 684,** Machhi Singh vs. State of Punjab, **AIR 1983 SC 957;** Santa Singh vs. State of Punjab, **(1976) 4 SCC 190;** Sovaran Singh Prajapati vs. State of Uttar Pradesh, **2024 SCC OnLine SC 402;** Sovaran Singh Prajapati vs. The State of Uttar Pradesh, **2025 SCC OnLine SC 351 – referred to.**

List of Acts

Code of Criminal Procedure, 1973, Constitution of India, 1950

Keywords

Deficiency of legal assistance to accused, Interference of the Court, Power of the Court, Right to defence, Statement of the Accused, Defective record of Accused statement, Right to fair trial

Case Arising From

Judgment & Order of Conviction dated 19th of October, 2023 passed by Shri Mahendra Kumar Sutradhar, Additional District Judge-cum-Presiding Officer, Special Court under POCSO Act, Sundargarh, in Special G.R. Case No.93 of 2016/Trial No.34 of 2020, for the offence under sections 450/366/376(2)(i) /376(A)/302/201 of the Indian Penal Code, 1860 and under section 6 of the POCSO Act.

Appearances for Parties

For Appellant : Mr. P. S. Nayak, AGA

For Condemned Prisoner: Mr. P. Mohanty

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. The present reference under Section 366 of the Code of Criminal Procedure, 1973, has been submitted by the learned Additional District Judge-cum-Presiding Officer, Special Court under the POCSO Act, Sundargarh (hereinafter referred to as "the trial Court"), in Special G.R. Case No. 93 of 2016 / Trial No. 34 of 2020, seeking confirmation of the death sentence imposed on the Condemned Prisoner/Accused, Sanjeeb Kerketta (hereinafter referred to as "the Convict"), by judgment and order dated 19.10.2023. Accordingly, DSREF No. 02 of 2023 has been registered.

The Convict, Sanjeeb Kerketta, has also preferred JCRLA No. 142 of 2023, assailing the self-same judgment and order of conviction passed by the learned trial Court, wherein he was found guilty and sentenced to death under Sections 376-A and 302 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). He was further sentenced to undergo rigorous imprisonment for twenty years and to pay a fine of Rs. 5,000/- each for the offences punishable under Section 376(2)(i) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), and to undergo rigorous imprisonment for five years and to pay a fine of Rs. 3,000/- each for the offences punishable under Sections 201, 450, and 366 of the IPC.

2. The prosecution case in brief is that on 21.10.2016, at around 11:00 p.m., while the widow-informant and her 4-5-year-old younger daughter were asleep in

their house, someone entered the house and abducted the informant's daughter. The informant chased the culprit, but he managed to escape into the darkness with the child. Upon the hue and cry raised by the informant, neighbours gathered and searched for the victim but were unable to trace them. Based on the written report of the informant, P.W.29, the Investigating Officer (I.O.) registered Town P.S. Case No.184 dated 22.10.2016 vide Ext.11 and commenced the investigation.

3. In the course of investigation, after registration of the FIR on 22.10.2016, S.I. Binodini Naik initially took up the investigation. Recognising the gravity of the offence, P.W.29 assumed charge of investigation on 24.10.2016. During the investigation, the I.O. visited the place of occurrence and recorded the statements of material witnesses under Section 161 CrPC. On 25.10.2016, based on an information from a WESCO officer, a dead body suspected to be that of the missing child was discovered from an under-construction house, where the informer and his staff had been to provide electrical connection. The dead body was identified by the complainant and other witnesses, and an Identification Memo was prepared vide Ext.21. Subsequently, inquest was conducted in presence of an Executive Magistrate and witnesses vide Ext.2. During spot inspection, a brown colour Reebok money purse was recovered from the scene containing identity documents of the Accused-Convict Sanjeeb Kerketta, which was seized under seizure list in Ext.12. On 26.10.2016, the Accused-Convict was apprehended at his residence. His confessional statement was recorded under Section 27 of the Indian Evidence Act vide Ext.13. Based on the disclosure, a green Tshirt stained with blood was recovered and seized (M.O.-I, seizure list Ext.12). Medical examination of the deceased was conducted by P.W.5, who opined that the cause of death was neuro-hemorrhagic shock due to injuries to the genital tract. The post-mortem report is annexed in Ext.10. A subsequent query report was furnished clarifying the causative link between the injuries and the violent sexual assault vide Ext.40. Further, the biological samples of the deceased and the Convict were collected and sent for chemical examination. A memory card containing the video recording of the accused's confession was seized and marked as Ext.3. A compact disc containing photographs and videography of the spot and post-mortem was seized through seizure list marked as Ext.6. The I.O. also seized the Paribar Bibarani Register (family register) from the Anganwadi Centre to establish the age of the deceased vide seizure list Ext.1. After collecting all the material evidence, and receiving reports from RFSL and Medical Officers, the charge sheet was submitted on 09.02.2017 under Sections 450, 366, 376(2)(i), 376(A), 302, 201 IPC and Section 6 of the POCSO Act against the Convict to face trial.

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

5. To bring home the charge, the prosecution examined 35 witnesses in all.

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

7. Mr. P. S. Nayak, learned AGA submits that the prosecution has successfully proved the guilt of the Convict beyond reasonable doubt by leading credible, consistent, and trustworthy evidence. He emphasised that the Convict was last seen together with the deceased child at about 11:00 p.m. on the night of occurrence, which was witnessed by P.W.1, the mother-Informant herself, as he fled away with the child. The immediate raising of alarm and the prompt lodging of the FIR excluded any possibility of concoction. He further argues that the wallet of the Convict recovered from the spot where the dead body was found, the confession made by the Convict, and the recovery of the green shirt with blood stains, forms a strong incriminating circumstance against him. The Convict failed to offer any plausible explanation under Section 313 Cr.P.C. regarding how the victim came to be last seen in his company and subsequently recovered dead, thereby attracting an adverse inference against him. The learned AGA also contended that the medical as well as the scientific evidence supported the prosecution case. As to the issue of motive, Mr. Nayak submits that even though motive assumes lesser significance in cases based on direct or strong circumstantial evidence, the facts of the case reveal that the Convict, being acquainted with the informant, and the extra-judicial confession made to P.W.26, the elder sister of the deceased child, only points towards the hypothesis that the Convict had an opportunity and evil intent to commit the offence. Regarding procedural objections, Mr. Nayak asserted that the Convict had been provided with adequate legal representation throughout the trial. The fact that the Convict chose not to cross-examine certain witnesses during recall under Section 311 Cr.P.C. was his own tactical decision and cannot be used to allege any procedural unfairness. Mr. Nayak submits that relying on the unbroken chain of circumstances, such as last seen together, wallet of the Convict with his picture, recovery of the bloodstained green shirt at the instance of the accused, failure to explain incriminating circumstances, scientific and medical evidence, and the motive, the trial Court rightly convicted the accused-Convict. He finally concludes his argument by submitting that given the gruesome nature of the crime committed against a 5year-old girl child, the case falls within the “rarest of rare” category, warranting the affirmation of the death penalty awarded by the learned trial Court.

8. Mr. P. Mohanty, learned counsel appearing on behalf of the Convict argues that the trial against the Convict was vitiated by grave procedural irregularities, violating his fundamental right to a fair trial under Article 21 of the Constitution. He submits that foremost, the Convict was deprived of adequate and effective legal representation during the trial. The accused-Convict could not engage a counsel for himself. Although on several occasions, counsels were appointed for him, the representation remained purely formal as there was no serious or meaningful

defence conducted which was in clear violation of the guidelines passed by the Hon'ble Apex Court. He further argues that the appointed counsel failed to safeguard the Convict's interests by not cross-examining critical prosecution witnesses even when an opportunity was afforded under Section 311 CrPC. Mr. Mohanty contends that when P.W.6, P.W.7, and P.W.12 were recalled for further cross-examination, no questions were posed, and the chance to challenge the prosecution's case was effectively abandoned. Such non-representation at vital stages of trial rendered the proceeding unfair and caused irremediable prejudice to the Convict. Mr. Mohanty further points out that the accused statement recorded under Section 313 CrPC is defective, inadequate, and has divorced the sanctity of the above provision. The incriminating circumstances, including the DNA evidence, alleged recoveries, and the so-called last seen theory, were not properly put to the Convict, depriving him the opportunity to offer his explanation and defence. He asserts that, it is a settled principle of law that a conviction cannot be based on circumstances not explained to the accused during his examination under Section 313 CrPC. Mr. Mohanty argues that apart from these procedural infirmities, the circumstantial evidence is neither conclusive nor forms an unbroken chain leading only to the guilt of the accused, the last seen evidence is s haky, with an unexplained gap between the time the child went missing and the recovery of her body, and the recoveries made at the instance of the accused are doubtful, lacking a proper chain of custody, and were neither spontaneous nor convincingly proved. He further highlights that the DNA report categorically records that there was no match between the blood sample of the Convict and the vaginal swab and clothes of the deceased, thereby negating the prosecution's version. Mr. Mohanty concludes his argument by stating that despite the glaring lapses, the learned trial Court proceeded to convict the accused-Convict on fragile and speculative evidence, and he is hence entitled to the benefit of doubt and deserves to be acquitted.

9. This Court has heard the learned counsel for the Accused/Convict as well as the learned AGA for the State at length and has carefully gone through the entire lower Court records (LCR) including the evidence of the prosecution witnesses, documents proved through exhibits, and the statement of the accused recorded under Section 313 of the Code of Criminal Procedure (CrPC). Upon such scrutiny, we find that serious procedural irregularities have occurred, which go to the root of the matter and have caused grave prejudice to the Convict.

10. At the outset, it is pertinent to address the Convict's contention that the trial proceedings were vitiated owing to the lack of effective and adequate legal representation. The right to a fair trial, a cornerstone of criminal jurisprudence, is intrinsically linked to the right of the accused to be represented by competent counsel. The Convict has asserted that the deficiencies in legal assistance have occasioned a miscarriage of justice, warranting interference by this Court.

11. A perusal of the trial Court record reveals that the Convict was initially represented by an advocate appointed through legal aid. However, the said counsel failed to appear consistently during material stages of the trial, including the cross-examination of key prosecution witnesses. It is further evident that no meaningful or substantial defence was put forth on behalf of the Convict. Witnesses were either not cross-examined at all, or cross-examined in a perfunctory and mechanical manner, failing to elicit contradictions or inconsistencies that could have aided the defence. No defence evidence was led, and no final arguments appear to have been made with the diligence expected of counsel entrusted with safeguarding the rights of an accused facing serious charges.

To elaborate, the order sheets of the trial Court starkly depict the persistent lack of proper legal representation:

- **21.10.2016** – Date of occurrence.
- **22.10.2016** – First Information Report (FIR) registered.
- **26.10.2016** – Appellant arrested.
- **02.03.2017** – Charge sheet received; cognizance taken by the learned Magistrate.
- **16.05.2017** – Police papers supplied to the accused.
- **28.08.2017** – Neither any Vakalatnama was filed on behalf of the accused nor any State Defence Counsel (SDC) appointed until this date. Advocate Smt. Kalpana Maity was appointed as SDC. On the same day, hearing on the question of charge was conducted, charges were framed, and subsequently, Smt. Kalpana Maity filed a withdrawal memo which was accepted by the Court.
- **22.09.2017** – Advocate J.K. Thakur appointed as SDC.
- **01.11.2017** – Advocate J.K. Thakur filed a withdrawal memo, which was accepted the same day.
- **08.03.2018** – Advocate D. Mohapatra appointed as SDC.
- **03.04.2018** – Advocate D. Mohapatra filed a withdrawal memo, which was accepted.
- **24.05.2018** – Advocate Rajiv Kumar Haider appointed as SDC.
- **01.08.2018** – Advocate Rajiv Kumar Haider did not appear and over telephone communication refused to conduct the defence.
- **04.12.2018** – Advocate K.L. Sen appointed as SDC.
- **28.02.2020** – Case record transferred to the Court of the learned Additional District Judge-cum-Special Court (POCSO), Sundargarh.
- **03.03.2020** – Prosecution witnesses (PWs) 1 and 2 examined.
- **01.03.2021** – On the appellant's application, the Court directed DLSA, Sundargarh to appoint a new SDC.
- **16.08.2021** – Advocate Smt. Kalpana Maity re-appointed as SDC; on the same day, PW-3 was examined. The appellant also prayed for supply of fresh police papers, having misplaced the earlier set.
- **20.03.2023** – Advocate Kalpana Maity filed a withdrawal memo, which was accepted. Advocate Raghunath Panda appointed as new SDC.
- **27.03.2023** – The appellant himself prayed for appointment of Advocate Raghunath Panda.

- **29.03.2023** – No prosecution witnesses available; matter adjourned to 25.04.2023 for hearing.
- **01.08.2023** – Learned Special Public Prosecutor filed an application under Section 311 CrPC to recall P.W.5 (Dr. Sarat Chandra Naik). Application heard on the same day; no objection raised by the SDC. P.W.5 was recalled, further examined, cross-examined and discharged.
- **01.09.2023** – Prosecution filed memo declining further evidence. Prosecution evidence closed. The appellant was examined under Section 313 CrPC.
- **19.10.2023** – Judgment pronounced in open Court and sentence awarded on the same day.

12. In the matter of ***Ashok vs. State of Uttar Pradesh*** reported in **[2024] 12 S.C.R. 335**, the Hon'ble Supreme Court laid down directives with regard to the responsibilities of Public Prosecutors and the appointment of defence counsel through legal aid, held as under –

> "**23**. Our conclusions and directions regarding the role of the Public Prosecutor and appointment of legal aid lawyers are as follows:
>
> **a.** It is the duty of the Court to ensure that proper legal aid is provided to an accused; b. When an accused is not represented by an advocate, it is the duty of every Public Prosecutor to point out to the Court the requirement of providing him free legal aid. The reason is that it is the duty of the Public Prosecutor to ensure that the trial is conducted fairly and lawfully;
>
> **c.** Even if the Court is inclined to frame charges or record examination-in-chief of the prosecution witnesses in a case where the accused has not engaged any advocate, it is incumbent upon the Public Prosecutor to request the Court not to proceed without offering legal aid to the accused;
>
> **c.** It is the duty of the Public Prosecutor to assist the trial Court in recording the statement of the accused under Section 313 of the CrPC. If the Court omits to put any material circumstance brought on record against the accused, the Public Prosecutor must bring it to the notice of the Court while the examination of the accused is being recorded. He must assist the Court in framing the questions to be put to the accused. As it is the duty of the Public Prosecutor to ensure that those who are guilty of the commission of offence must be punished, it is also his duty to ensure that there are no infirmities in the conduct of the trial which will cause prejudice to the accused;
>
> **d.** An accused who is not represented by an advocate is entitled to free legal aid at all material stages starting from remand. Every accused has the right to get legal aid, even to file bail petitions;
>
> **f.** At all material stages, including the stage of framing the charge, recording the evidence, etc., it is the duty of the Court to make the accused aware of his right to get free legal aid. If the accused expresses that he needs legal aid, the trial Court must ensure that a legal aid advocate is appointed to represent the accused;
>
> **g.** As held in the case of ***Anokhilal***, in all the cases where there is a possibility of a life sentence or death sentence, only those learned advocates who have put in a minimum of ten years of practice on the criminal side should be considered to be appointed as amicus curiae or as a legal aid advocate. Even in the cases not covered by the categories mentioned above, the accused is entitled to a legal aid advocate who has good

knowledge of the law and has an experience of conducting trials on the criminal side. It would be ideal if the Legal Services Authorities at all levels give proper training to the newly appointed legal aid advocates not only by conducting lectures but also by allowing the newly appointed legal aid advocates to work with senior members of the Bar in a requisite number of trials;

h. The State Legal Services Authorities shall issue directions to the Legal Services Authorities at all levels to monitor the work of the legal aid advocate and shall ensure that the legal aid advocates attend the Court regularly and punctually when the cases entrusted to them are fixed;

i. It is necessary to ensure that the same legal aid advocate is continued throughout the trial unless there are compelling reasons to do so or unless the accused appoints an advocate of his choice ;

j. In the cases where the offences are of a very serious nature and complicated legal and factual issues are involved, the Court, instead of appointing an empanelled legal aid advocate, may appoint a senior member of the Bar who has a vast experience of conducting trials to espouse the cause of the accused so that the accused gets best possible legal assistance;

k. The right of the accused to defend himself in a criminal trial is guaranteed by Article 21 of the Constitution of India. He is entitled to a fair trial. But if effective legal aid is not made available to an accused who is unable to engage an advocate, it will amount to infringement of his fundamental rights guaranteed by Article 21;

l. If legal aid is provided only for the sake of providing it, it will serve no purpose. Legal aid must be effective. Advocates appointed to espouse the cause of the accused must have good knowledge of criminal laws, law of evidence and procedural laws apart from other important statutes. As there is a constitutional right to legal aid, that right will be effective only if the legal aid provided is of a good quality. If the legal aid advocate provided to an accused is not competent enough to conduct the trial efficiently, the rights of the accused will be violated."

It is further held in ***Chaluvegowda & Ors. vs. State*** reported in ***(2012) 13 SCC 538*****:**

"**18.** The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for an accused is presumed to be innocent until proved to be otherwise in a fairly conducted trial. This right would include that he be defended by a competent counsel. The provision of an amicus curiae for an accused, in case the accused is unable to engage an advocate to conduct his defence, is to ensure the goal of a fair trial which is a guarantee provided in the Constitution. We may recall the often quoted passage of Potter Stewart "Fairness is what justice really is".

19. The right to be represented by a lawyer must not be an empty formality. It must not be a sham or an eyewash. The appointment of an amicus curiae for the defence of an accused person must be in true letter and spirit, with due regard to the effective opportunity of hearing that is to be afforded to every accused person before being condemned. The due process of law incorporated in our constitutional system demands that a person not only be given an opportunity of being heard before being condemned, but also that such opportunity be fair, just and reasonable."

13. Upon a holistic appreciation of the record and applying the principles laid down by the Hon'ble Supreme Court in **Ashok vs. State of Uttar Pradesh** (*Supra*)

and **Chaluvegowda & Ors. vs. State** (*Supra*), it is manifest that the Convict was deprived of adequate legal representation since the very initiation of the trial, as well as at multiple critical stages thereof. Furthermore, on 28.08.2017, it was noted that neither any Vakalatnama had been filed by the accused nor had any State Defence Counsel (SDC) been appointed. Consequently, Advocate Smt. Kalpana Maity was appointed as the SDC to represent the accused-Convict. On the same day, the Court heard arguments from both sides on the question of charge, perused the case record, and formally framed the charge. However, later that day, the newly appointed SDC, Smt. Kalpana Maity, filed a withdrawal memo, which was accepted by the Court immediately.

The absence of counsel on significant dates, the mechanical manner of cross-examination, the failure to contest the prosecution's evidence, and the lack of any proactive defence strategy together cumulatively prejudiced the Convict's case. We note that the trial Court, although recording the absence or passivity of counsel on various dates, did not take any corrective measures to ensure that the Convict's right to a fair trial was safeguarded. Not only was the Convict deprived of effective and meaningful legal representation at various stages of the trial, but the record further reveals an even more disturbing feature that none of the orders of the trial Court reflect that the appointed SDCs were ever furnished with the complete case records for perusal or preparation. The Court's duty under Section 304 CrPC is not discharged by mere appointment; it must vigilantly versee that the legal assistance provided is real, that the counsel is given sufficient time and opportunity to understand the case, examine the materials on record, and prepare an effective defence. The absence of any record showing that the case materials were supplied to the successive SDCs appointed during the course of trial further reinforces the conclusion that the appellant was denied the substantive benefit of legal assistance, thereby rendering the trial wholly unfair and vitiated.

14. The Hon'ble Supreme Court in the matter of ***Anokhilal vs. State of Madhya Pradesh*** reported in **[2019] 18 S.C.R. 1196**, to this effect has observed the following –

> "In the present case, the Amicus Curiae, was appointed on 19.02.2013, and on the same date, the counsel was called upon to defend the accused at the stage of framing of charges. One can say with certainty that the Amicus Curiae did not have sufficient time to go through even the basic documents, nor the advantage of any discussion or interaction with the accused, and time to reflect over the matter. Thus, even before the Amicus Curiae could come to grips of the matter, the charges were framed. The concerned provisions viz. Sections 227 and 228 of the Code contemplate framing of charge upon consideration of the record of the case and the documents submitted therewith, and after *'hearing the submissions of the accused and the prosecution in that behalf'*. If the hearing for the purposes of these provisions is to be meaningful, and not just a routine affair, the right under the said provisions stood denied to the appellant.
>
> In our considered view, the trial Court on its own, ought to have adjourned the matter for some time so that the Amicus Curiae could have had the advantage of sufficient time to

> prepare the matter. The approach adopted by the trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful
>
> ***
>
> In V.K. Sasikala vs. State Represented by Superintendent of Police25 a caution was expressed by this Court as under:
>
> "23.4 While the anxiety to bring the trial to its earliest conclusion has to be shared it is fundamental that in the process none of the well- entrenched principles of law that have been laboriously built by illuminating judicial precedents are sacrificed or compromised. In no circumstance, can the cause of justice be made to suffer, though, undoubtedly, it is highly desirable that the finality of any trial is achieved in the quickest possible time ."
>
> 18. Expeditious disposal is undoubtedly required in criminal matters and that would naturally be part of guarantee of fair trial. However, the attempts to expedite the process should not be at the expense of the basic elements of fairness and the opportunity to the accused, on which postulates, the entire criminal administration of justice is founded. In the pursuit for expeditious disposal, the cause of justice must never be allowed to suffer or be sacrificed. What is paramount is the cause of justice and keeping the basic ingredients which secure that as a core idea and ideal, the process may be expedited, but fast tracking of process must never ever result in burying the cause of justice."

15. A further ground of prejudice arises from the ineffective representation by the SDC when key prosecution witnesses were recalled under Section 311 of the Code of Criminal Procedure, 1973. On 01.08.2023, upon the application filed by the learned Special Public Prosecutor, P.W.5, the doctor who conducted the post-mortem examination, was recalled and further examined. However, despite the opportunity being available, the learned SDC appointed to represent the accused failed to cross-examine the witness. This omission assumes serious significance, given that cross-examination is a vital safeguard of the accused's rights and an indispensable feature of a fair trial. It enables the defence to test the veracity and credibility of prosecution witnesses and to expose any inconsistencies or weaknesses in the prosecution's case. The Hon'ble Supreme Court has time and again emphasised that the failure of defence counsel, particularly Court-appointed counsel, to discharge their duties diligently amounts to a violation of the accused's right to effective legal representation. In the present case, the inaction of the defence counsel deprived the accused of a meaningful and effective defence, thereby resulting in manifest injustice.

16. It is well-settled that an accused facing serious charges particularly one under Section 302 IPC and section 6 of POCSO Act, carrying the possibility of life imprisonment or death must be afforded the fullest opportunity to defend himself through competent and diligent legal representation. In the instant case, the conduct of defence counsel and the trial proceedings fall woefully short of this standard. The prejudice to the Convict is not speculative; it is borne out from the record. In our

considered opinion, the Convict has demonstrated substantial prejudice arising from the inadequacy of legal representation. The trial, as conducted, cannot be said to have been a fair trial in the eyes of law.

17. Another irregularity pointed out by the defence is that the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, is neither exhaustive nor comprehensive. The opportunity provided under Section 313 CrPC is not a mere formality but a substantive and valuable right conferred upon the accused. It is intended to afford the accused a fair opportunity to offer an explanation against the evidence led by the prosecution. The omission to properly and fairly examine the accused under Section 313 CrPC constitutes a material irregularity which strikes at the root of a fair trial, thereby vitiating the proceedings to that extent.

18. The Hon'ble Supreme Court in the matter of ***Raj Kumar vs. State (NCT of Delhi)*** reported in **2023 SCC OnLine SC 609**, has laid down the principles concerning the examination of the accused under Section 313 CrPC, as under:

> "**17**. The law consistently laid down by this Court can be summarised as under :
>
> (i) It is the duty of the trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;
>
> (ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;
>
> (iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;
>
> (iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;
>
> (v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;
>
> (vi) In case such irregularity is curable, even the appellate Court can question the accused on the material circumstance which is not put to him;
>
> (vii) In a given case, the case can be remanded to the trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC; and
>
> (viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

19. As laid down above, the trial Court must specifically, distinctly, and separately put each material circumstance appearing in evidence against the accused. The purpose of such examination is not perfunctory; it is to provide the accused a

meaningful opportunity to explain the circumstances against him. Failure to properly frame and put material circumstances constitutes a serious irregularity and can vitiate the trial if it has caused prejudice. Mere bulk questioning or vague aggregation of circumstances does not satisfy this requirement. Each incriminating circumstance must be individually addressed. The omission, unless shown to be curable without causing failure of justice, entitles the accused to appropriate remedial directions, including the possibility of remand. This principle underscores the substantive, rather than procedural, character of the right under Section 313 Cr.PC, firmly rooted in the guarantee of a fair trial under Article 21 of the Constitution.

20. Upon perusal of the case record in the instant case, we note this with concern that the questions put to the Convict under Section 313 CrPC were excessively lengthy, spanning pages after pages, and covered multiple factual circumstances in a single breath. The purpose of examination under Section 313 CrPC is to afford the accused a real opportunity to explain the evidence against him. In the present case, the manner of questioning deprived the accused of that substantive opportunity. It is also disgusting to note that the learned trial Court did not even make an endeavour to understand the predicament of the accused-Convict, whether he could rationally answer if the entire evidence were placed before him, not filtering out the specific pieces of evidence to be utilised against him, including the entire evidence of the Investigating Officer.

21. It is further placed on record that pursuant to the order passed by this Court on 12.02.2025, that the mitigating circumstances of the Convict including his background, psychological condition, pre-conviction and post-conviction conduct have been furnished and are now part of the court record. This Court notes with concern that no such enquiry was undertaken by the trial Court at the stage of sentencing. In a case where the death penalty is under consideration, the law mandates that the sentencing Court must meaningfully weigh the aggravating and mitigating circumstances, and make an informed assessment of the possibility of the convict's reformation and rehabilitation, as held in ***Bachan Singh vs. State of Punjab*** reported in **(1980) 2 SCC 684**, and ***Machhi Singh vs. State of Punjab*** reported in **AIR 1983 SC 957**. The grievous nature of the offence, though highly relevant, cannot alone justify the imposition of the ultimate penalty without a genuine inquiry into the individual circumstances of the offender. The failure to undertake such a balancing exercise and the omission to consider the available mitigating materials constitute a serious irregularity, vitiating the sentencing process.

22. This Court further records its concern that the conviction and the hearing on sentence were both conducted on the same day. The defence was given no meaningful opportunity to prepare submissions on mitigation or to place materials relevant to sentencing before the Court. In trials involving the death penalty, it is a constitutional imperative, as laid down in ***Santa Singh vs. State of Punjab*** reported

in **(1976) 4 SCC 190** and reaffirmed in ***Sovaran Singh Prajapati vs. State of Uttar Pradesh*** reported in **2024 SCC OnLine SC 402**, that a separate, substantive hearing on sentence must be held, distinct from the stage of conviction. The right to a fair opportunity to present mitigating factors is not a matter of procedure alone but touches upon the right to life itself under Article 21 of the Constitution. By rushing the sentencing proceedings without granting adequate time or opportunity to the defence, the trial Court undermined this basic safeguard, vitiating the sentencing process. Such an approach not only violates the rights of the accused but also undermines the constitutional commitment to fair trial standards that all courts are bound to uphold.

23. Upon a cumulative evaluation of the record, this Court finds that the trial proceedings were afflicted by multiple and grave irregularities, including improper and inadequate examination under Section 313 CrPC, failure to consider mitigating circumstances at sentencing, and denial of a distinct and fair sentencing hearing. Each of these deficiencies, standing alone, would be sufficient to occasion serious prejudice. Taken together, they reveal a trial conducted in a perfunctory, mechanical, and constitutionally impermissible manner. The right to a fair trial is not the privilege of the accused but a right that is equally essential for the prosecution and, more importantly, for society at large, to ensure that justice is both done and seen to be done. The trial Court, therefore, was under an even greater obligation to ensure that the trial proceedings were conducted with the strictest regard to fairness and due process. Regrettably, the record reflects a complete abdication of that responsibility. In cases of such grave nature, perfunctory manner of conducting the cases not only undermine the faith of the public in the criminal justice system but also risk irreparable miscarriage of justice. Such lapses strike at the heart of the right to a fair trial and cannot be countenanced. This Court is thus left with no alternative but to hold that the trial stands vitiated in its entirety.

24. In view of the serious procedural lapses noticed in the present case, this Court deems it appropriate to reiterate that trial Courts are under a binding duty to:

> i. Appoint competent defence counsel at the earliest and ensure continuous, effective legal representation throughout the trial;
>
> ii. Provide sufficient time and opportunity for the defence to prepare before framing charges and before recording evidence;
>
> iii. Record in specific terms that defence counsel have been furnished the complete case records for preparation.
>
> iv. Frame each material circumstance distinctly and simply during examination under Section 313 CrPC;
>
> v. Hold an independent, substantive sentencing hearing, particularly where the death penalty is contemplated;
>
> vi. Conduct a real and meaningful balancing exercise between aggravating and mitigating circumstances at the stage of sentencing;

The procedural safeguards are not ornamental; they are constitutional imperatives designed to ensure that justice is not only done but seen to be done.

25. This Court expects all the trial Courts to remain alive to the fact that the duty to conduct trials in accordance with the law becomes all the more heightened when dealing with allegations involving heinous offences punishable with death or life imprisonment. A cavalier or casual approach to such trials not only imperils the rights of the accused but also erodes the legitimacy of the criminal justice system itself. Courts must remain ever vigilant to uphold the constitutional guarantee of fairness, diligence, and due process at every stage of the proceedings. Lapses of the kind noticed herein must be avoided at all costs.

26. We do not approve of the trial conducted by the learned Additional District Judge-cum-Presiding Officer, Special Court (POCSO), Sundargarh, in the instant case, with such fundamental lapses in dealing with matters of importance in a Sessions trial.

27. In view of cumulative effect of the serious procedural irregularities highlighted above, and placing reliance on the decision of the Hon'ble Supreme Court in ***Sovaran Singh Prajapati vs. The State of Uttar Pradesh***, reported in **2025 SCC OnLine SC 351**, where the Hon'ble Court emphasised that where grave procedural irregularities have vitiated the trial and have occasioned a miscarriage of justice, a de novo trial becomes imperative to uphold the sanctity of criminal proceedings, this Court is of the considered opinion that a fresh trial is the only course available in the present case.

28. Accordingly, the conviction and sentence passed against the Convict are set aside. The matter is remanded to the trial Court for a de novo trial from the stage of framing of charges. The trial Court shall ensure that the accused is afforded effective legal assistance, that all prosecution witnesses are examined afresh, and that the accused is properly examined under Section 313 CrPC, with each material circumstance put to him clearly, distinctly, and separately. In the event, the Court finds it necessary, may also make endeavour by attracting the notice of the prosecution agency for engagement of a special prosecutor having adequate experience and acumen to represent the Condemned Prisoner/Convict.

29. The trial Court is further directed to conduct the trial expeditiously and conclude it within a period of six months from the date of receipt of a copy of this order, if there be no legal impediment. The trial Court shall at every stage be mindful of its solemn duty to uphold the rights of both the victim and the accused, ensuring that the administration of criminal justice does not suffer further indignity.

30. It is further clarified that the discussion undertaken by this Court has been strictly limited to the issue of procedural irregularity. Nothing stated herein shall be construed as an expression on the merits of the case, which shall be independently

considered by the trial Court during the de novo trial, uninfluenced by any observations made in this judgment.

31. Accordingly, the DSREF is answered.

32. In view of the answer made to this DSREF and its disposal setting aside the impugned judgment and order, the JCRLA stands disposed of.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter DSREF disposed &
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief) JCRLA disposed of.

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2025 (II) ILR-CUT-91

HARSH KUMAR PRIMUS LAKRA
V.
STATE OF ORISSA & ORS.

[W.P.(C) NO. 21512 OF 2024]

13 MARCH 2025

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

Issues for Consideration

1. Whether any revenue authority can file a revision or challenge an Appellate Court's decision.
2. Whether a Tahasildar must refer a proceeding in which a person is found to be in continuous possession of a piece of land for more than 30 years, to the Sub-divisional Officer.

Headnotes

(A) ORISSA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Sections 8A & 12 – Petitioner's father was in possession of the suit land belonging to one Rajiv Panda who had been granted the land by the then ruler – After the death of his father, petitioner continued the possession – In 1954, State Government acquired it for the purpose of establishment of a steel plant – Petitioner's name was recorded as a forcible occupier in the remark column of the Record of Rights (ROR) – Due to interference by a private individual, the petitioner filed a suit for declaration of right, title and interest and the suit was decreed – Mutation case was filed for mutation but the Tahasildar did not effect mutation – Mutation appeal was filed and the appellate authority

directed the correction of R.O.R – Matter was placed before the Board of Revenue and the order of the appellate authority was rejected – Despite petitioner's request and order of the Sub-collector, Panposh in Encroachment Appeal No. 5/93, the Tahasildar instead of referring the matter U/s. 8A of the OPLE Act, transmitted the case record to the Collector, Sundargarh, who cancelled the order of the Appellate Court – Again the Tahasildar had filed Revenue Revision case No. 2 of 2020 which was disposed of by the Collector quashing the order of the Sub-collector passed in Revenue Appeal No. 25 of 2016 – Whether any revenue authority can file a revision or challenge an Appellate Court's decision.

Held: No – The Act does not provide any provision allowing the Tahasildar to challenge the Sub-divisional Officer's decision through a revision petition before the Collector, especially when he is a revenue authority and an integral part of the process leading up to that decision. (Para 14)

(B) ORISSA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Section 8A – Whether a Tahasildar must refer a proceeding in which a person is found to be in continuous possession of a piece of land for more than 30 years, to the Sub-divisional Officer.

Held: Yes – The statutory scheme under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, that once the Tahasildar finds an individual to have been in continuous possession of the land for more than thirty years, the case must be referred to the Sub-divisional Officer. (Para 14)

Citations Reference

U.P. Abhas Evam Vikash Parisad & Another v. Friends Coop. Housing Society Ltd. & Another, **1995 Supp (3) SCC 456;** Gulam Sarawar v. State of Orissa, **2011 (11) OLR 903;** Sri Parbinram Phukan & Anr. v. State of Assam & Ors, **2015 (3) SCC 605;** Hindustan Times & Others v. State of U.P. & Anr., **2003 (1) SCC 591;** K.T. Plantation Private Limited & Another v. State of Karnataka, **2011 (9) SCC 146**; State of Haryana v. Mukesh Kumar & Ors., **2011 (10) SCC 404 – referred to.**

List of Acts

Orissa Prevention of Land Encroachment Act, 1972.

Keywords

Continuous possession; Compensation; Refer to the Sub-divisional Officer; Referable.

Case Arising From

Order dated 21.06.2024 passed by the Collector, Sundargarh in Revenue Revision No. 02 of 2020.

Appearances for Parties

For Petitioner : Mr. Bharat Kumar Mishra

For Opp. Parties : Mr. Sonak Mishra, A.S.C.

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Petitioner, who claims to have been in continuous possession of the disputed property for over forty years, has filed the present Writ Petition challenging the order dated 21.06.2024, passed by the Collector, Sundargarh, in Revenue Revision No. 02/2020.

2. The Petitioner further seeks a direction from this Court to the Opposite Party Nos.1 to 4 to compensate the Petitioner for the loss suffered due to the demolition of his house pursuant to their order.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The Petitioner's father had rendered personal service to one Rajiv Panda, the original owner of the suit land, who had been granted the land by the then ruler. The land, initially waterlogged and unfit for habitation, was made habitable by the Petitioner's father through the investment of labor and money, followed by the construction of a 'Jhumpuri' house. After his father's death, the Petitioner continued residing on the land, where he built seven houses, three pucca shop rooms, a well, and a garden.

(ii) In 1954, the land was purportedly acquired by the State Government for the establishment of a steel plant. However, since the land was not needed for the plant, it was surrendered back to the Government.

(iii) In 1970, the Petitioner's name was recorded as a forcible occupier in the remark column of the R.O.R. for Mouza Rourkela Town, Unit No. 38, Durgapur, under Khata No. 4, Plot Nos. 123/285 and 123/286, totaling an area of A 1.200 decimals.

(iv) Subsequently, due to an interference by a private individual on the suit land, the Petitioner filed the Title Suit No. 2 of 1980, seeking a declaration of his right, title, and interest in the disputed property. The Civil Court granted a decree in favor of the Petitioner, affirming his right, title, and interest in the land. However, the State Government was not made a party to the suit.

(v) Based on the declaration made by the Civil Court, the Petitioner filed the Mutation Case No. 308/91 before the Tahasildar. In the Mutation Case No. 308/91, although the Revenue Inspector reported the Petitioner's possession since 1961, the Tahasildar did not effect the mutation.

(vi) On appeal in Mutation Appeal No. 3/92, the appellate authority directed the correction of the R.O.R. However, the matter was later placed before the Board of Revenue by the Collector, where the order of the appellate authority was rejected, effectively ending the mutation proceedings.

(vii) In the meantime, an Encroachment Case No. 678/93 was initiated by the Tahasildar. In response, the Petitioner filed O.J.C. No. 3910 of 1993 along with Misc. Case No. 4361/93 before this Court, which passed an order on 26.07.1993 directing the Tahasildar to dispose of the encroachment proceedings by the end of 1993.

(viii) In the Encroachment proceeding, the Tahasildar passed an order of eviction despite the Petitioner requesting the matter be referred to the Sub-Collector under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972.

(ix) The Petitioner then filed an appeal before the Sub-Collector, Panposh in Encroachment Appeal No. 5/93. After considering documentary evidence and conducting a spot visit with the Revenue Inspector, the appellate authority confirmed the Petitioner's long possession of the land. It was found that the Petitioner was in possession of Anabadi Khata No. 4, Plot Nos. 123/285 and 123/286, totaling 0.98 decimals. The Sub-Collector observed several procedural lapses by the Tahasildar, including the failure to visit the site and ascertain the period of possession and directed the Tahasildar to take necessary actions in accordance with the provisions of the Orissa Prevention of Land Encroachment Act, 1972. After receiving the appellate court's order, the Tahasildar conducted a further inquiry and, being satisfied with the Petitioner's long possession, confirmed that the matter was a referable proceeding, in line with the appellate court's observations.

(x) In Misc. Case No. 290/93 (arising out of Appeal No. 5/93), the fixed rent was determined, and the Tahasildar was directed to correct the R.O.R. and to receive the rent, etc., as per the order dated 30.12.1993.

(xi) Despite the Tahasildar acknowledging that the proceeding was referable, he did not refer it to the Sub-Collector as required. Instead, he transmitted the case record to the Collector, Sundargarh, who cancelled the appellate court's order.

(xii) In response, the Petitioner filed a writ petition in O.J.C. No. 1456/1994, which was allowed by this Court. This Court quashed the Tahasildar's and Collector's orders, stating that they were made without due application of mind. The Tahasildar was directed to proceed in accordance with law, specifically under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, to refer the case to the Sub-Collector if the encroacher's possession was proven to be continuous and undisputed for over 30 years.

(xiii) Despite this Court's order, the Tahasildar failed to take steps to refer the matter to the Sub-Collector as per Section 8A of the Orissa Prevention of Land

Encroachment Act, 1972. From 1994 to 2005, the matter remained pending, causing severe hardship to the Petitioner, especially regarding the extension of his 'Jhumpuri' house. When asked, the Tahasildar repeatedly claimed that the case record was missing, and ultimately stated that he could not proceed without it.

(xiv) The W.P. (C) No. 15654/2005 was filed by the Rourkela Local Displaced Association for the restoration of surplus land in their favor. This Court granted an order of status quo in Misc. Case No. 15417/05 (Arising out of W.P. (C) No. 15654/2005).

(xv) The Petitioner filed W.P.(C) No. 11467/05, and on 05.01.2006, this Court directed the Tahasildar to reconstruct the case record and dispose of the matter in accordance with its previous directions within six months, with the Petitioner's cooperation.

(xvi) The petitioner submitted all the certified copies, including those of the writ petitions, as requested by the Tahasildar, and filed a petition to refer the matter to the appellate Court under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972. However, on 25.01.2006, the Tahasildar passed an order stating that, due to the status quo order from this Court in W.P.(C) No. 15654/05, no further steps could be taken until the disposal of the writ petition.

(xvii) By Order No. 13, dated 10.04.2007, this Court modified the interim order dated 20.12.2005 passed in Misc. Case No. 15417/05 (arising out of W.P. (C) No. 15654/2005), allowing the continuation of ongoing construction work.

(xviii) On 11.05.2008 and 13.05.2008, the Tahasildar ordered the demolition the petitioner's houses and other structures. In response, the petitioner filed W.P.(C) No. 7902/08 and a contempt petition, but the Court dismissed the contempt petition on 19.04.2017, stating there was no order of status quo in the writ petition involved and that the matter had already been disposed of, resulting in a fresh cause of action.

(xix) On 02.12.2008, this Court, in response to the petitioner's grievance that the Tahasildar had demolished the house despite the status quo order, directed the appointment of a Commissioner to ascertain the physical situation of the land. Mr. Biren Sankar Tripathy was appointed as the Commissioner and directed to visit the site on 13.12.2008 and submit a report regarding whether the petitioner's house was demolished by any of the officers involved in the case. The petitioner was directed to pay Rs. 5,000/- in advance for the Commissioner's expenses.

(xx) In the meantime, the Tahasildar, Rourkela, vide order dated18.03.2009, after hearing the parties, dismissed Encroachment Case No. 678 of 1993 and rejected the petition to refer the matter to the Sub-collector under Section8A of the Orissa Prevention of Land Encroachment Act, 1972, and also came to a finding that the Petitioner was not at all in possession of the land in question.

(xxi) The Petitioner filed W.P.(C) No. 6302/2009, which was dismissed by this Court on 27.10.2016, with the observation that such dismissal would not preclude the Petitioner from preferring an appeal.

(xxii) The Petitioner subsequently filed Revenue Appeal No. 25/2016 before the Sub-Collector, seeking a direction to the Tahasildar to refer the case to the

Appellate Court for settlement of the encroached land under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972. However, during the pendency of the appeal, the Petitioner filed W.P.(C) No. 8656/2017 before this Court, seeking compensation for the land occupied by various authorities, which allegedly left the Petitioner homeless and without compensation. This Court dismissed the writ petition on 12.05.2017, holding that the claim for compensation was premature, as the appeal concerning the Petitioner's rights was still pending.

(xxiii) The petitioner then filed Writ Appeal No. 167/2017, and this Court, after deliberating upon the issues, confirmed the dismissal of the Writ Petition, observing that the petition was premature due to the pending appeal.

(xxiv) As the appellate court had not disposed of the matter even after two years, the petitioner filed the W.P.(C) No. 15557/2018 before this Court. After considering the issue, this Court passed an order on 05.12.2018, directing the Appellate Court to dispose of the appeal within two months.

(xxv) Following this, the appellate authority, on 21.12.2019, passed an order based on the earlier order of 10.9.1993 in Encroachment Appeal No. 5/1993. The appellate authority confirmed the petitioner's possession of the land for a period exceeding the statutory duration, stating that the petitioner had perfected their rights under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972and Rules. The order directed the Tahasildar to take necessary actions as per the provisions of the Act and Rules.

(xxvi) Upon receiving the order from the appellate authority, the Tahasildar directed a spot visit to be conducted by the Additional Tahasildar and Revenue Supervisor. During the visit, it was found that the petitioner's land had been occupied by various authorities, such as the Rourkela Municipal Corporation Market Complex and a Railway Overbridge, leaving no land available. The Tahasildar observed that while the matter is a referable proceeding under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, the same is not applicable as the suit land is no longer in the possession of the encroacher.

(xxvii) The Petitioner, filed a W.P.(C) No. 29370/2020 before this Court seeking adequate compensation. In the counter affidavit, the Opposite Parties stated that the Tahasildar had filed the Revision Case No.2/2020 before the Collector, Sundargarh against the order of the Sub-Collector, Panposh vide Appeal No.25/2016.This Court directed the Petitioner to pursue the matter before the Revisional Court and return to this Court after its disposal.

(xxviii) Accordingly, the petitioner pursued the matter in the Revision Case No.2/2020 before the Collector but no order was passed even after one year. The Petitioner subsequently filed Writ Petition being W.P.(C) No.26260/2023 before this Court, seeking a direction for the expeditious disposal of the Revision Petition. This Court directed the disposal of the Revision Petition within six weeks from the receipt of the order.

(xxix) The petitioner had further filed W.P.(C) No.38961 of 2023 during the pendency of Revenue Revision Case No.2/2020, seeking compensation for being deprived of land and demolition of structures without authority or notice. This Court

disposed of the petition, directing the Revisional Court to dispose of the matter within six weeks and, subject to the revision outcome, the Collector, Sundargarh, to decide on the compensation within four months.

(xxx) Upon receiving this Court's order, the Collector finally disposed of the Revision Case, holding that the Revision is maintainable and quashing the Sub-Collector (Panposh) order in Revenue Appeal No. 25/2016. The Collector noted that the disputed land had been contested repeatedly, and the petitioner failed to provide any supporting documentation for their claim.

(xxxi) Aggrieved by this, the petitioner has filed the present writ petition, asserting that he has perfected his right, title, and interest over the suit land for more than 30 years and has been unlawfully and arbitrarily evicted, with his houses, shops, etc., illegally demolished. The petitioner seeks either restoration of the suit land along with damages or adequate and suitable compensation from the State, as per Article 300A of the Constitution of India.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The petitioner submits that he has had lawful and uninterrupted possession of the land and has consistently demonstrated his right, title, and interest in the disputed property. Having perfected his right, title, and interest over the suit land for more than 30 years, in accordance with Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, the petitioner was unlawfully and arbitrarily evicted from the land, thereby violating his established legal rights.

(ii) The petitioner contended that during the pendency of proceedings, the authorities unlawfully demolished the petitioner's houses and shop rooms and evicted the petitioner from the land without any legal authority or prior notice, thereby violating the petitioner's legal rights. In order to assert his right to shelter, the petitioner relied on the decision in ***U.P. Abhas Evam Vikash Parisad & Another v. Friends Coop. Housing Society Ltd. &Another.***[1]

(iii) The petitioner contended that the filing of the Revision Case by the Tahasildar before the Collector was illegal, as Section 8A(2) of the Orissa Prevention of Land Encroachment Act, 1972 clearly states that no revenue authority can file a revision or challenge an appellate Court's decision. Further, the Collector's order allowing the same is in complete violation of the judgment passed by this Court in the case of ***Gulam Sarawar v. State of Orissa.***[2]

(iv) The petitioner contended that the Opposite Parties have deliberately harassed the petitioner, a poor tribal, by filing an illegal and wrongful Revision Case, to which they have no entitlement, either under the law or as per settled legal principles. (v) The petitioner submits that, as per settled law, the suit land should either be restored to the petitioner along with all damages, or the State (Opposite

[1] 1995 Supp (3) SCC 456.
[2] 2011 (11) OLR 903.

Party Nos. 1, 2, 3, and 4) should be directed to pay adequate and suitable compensation, in accordance with the principles established by the Supreme Court and under Article 300A of the Constitution of India. In order to buttress this entitlement under Article 300-A of the Constitution of India, the petitioner relied on the observations of the Supreme Court in ***Sri Parbinram Phukan & Anr. v. State of Assam & Ors[3], Hindustan Times & Others v. State of U.P. & Anr[4] and K.T. Plantation Private Limited & Another v. State of Karnataka[5].***

(vi) The petitioner contended that even if the petitioner is occupying land without authorization, the right to shelter is a fundamental right under Article 19(1)(e) and Article 21 of the Constitution of India. The petitioner further contended that the right to property is a constitutional right and a basic human right that cannot be taken away without legal sanction.

(vii) The petitioner contended that he has been residing on the disputed land since his father's time, with a dwelling, well, and garden, as documented in Mutation Appeal No. 3/92 and Encroachment Appeal No. 5/1993, following a spot visit. Despite his possession being recorded as forcible, it was not contested by the opposing parties in the settlement courts. The petitioner and his family have lived on the land since 1960, while he worked at Larsen & Toubro (L&T) from 1982. Upon learning about the Railway Overbridge construction, he purchased land in Kansbahal and gradually moved his family. However, he continued to reside at Durgapur until his eviction, as per the reports of the Tahasildar and Revenue Supervisor.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

5. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:

(i) The petitioner’s claim is without merit, as the suit land is disputed in nature. The petitioner’s assertion of continuous possession or residence on the land is factually incorrect and cannot be substantiated.

(ii) The land in question was acquired in the year 1954-55 for the establishment of Hindustan Steels Limited, now known as Rourkela Steel Plant. According to the available records in the ADM office, Rourkela, Khata Nos. 24 and 9 of Mouza-Durgapur were acquired for the Rourkela Steel Plant, and compensation was paid to the then recorded tenant. However, the available records do not indicate any mention of the petitioner’s father, Habil Lakra, in relation to possessing the land in question.

(iii) Regarding TC No. 2 of 1980, the matter pertains to a dispute between the petitioner and a private individual. While the land is registered in the name of the State Government, the petitioner has failed to implead any relevant authority of the

[3] 2015 (3) SCC 605.
[4] 2003 (1) SCC 591.
[5] 2011 (9) SCC 146

State Government as a party to the proceedings. Consequently, the judgment and decree passed in the said suit are not binding on the present Opposite Parties.

(iv) After a gap of thirteen years, an encroachment case bearing No. 678/1993 was initiated by the then Tahasildar. Consequently, the petitioner's claim of undisputed possession of the land is factually inaccurate. As per the report submitted by the Revenue Inspector, Rourkela, on 02.03.2009 in Encroachment Case No. 678/1993, the petitioner was not residing on the land in question at that time. Instead, he was employed at Larsen & Toubro Ltd., Kansbahal, where he was provided accommodation in Quarter No. 01, Block No. 20, FType, New LIC Colony, Kansbahal, and was residing there.

(xxxii) Since the petitioner holds land in village Kansbahal under Khata No. 191 in Rajgangpur Tahasil, with Kisam-Gharabari, the petitioner cannot be considered a homestead-less person eligible to avail the benefits under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972.

(v) The petitioner was employed by Larsen & Toubro Ltd., Kansbahal, from April 1982 to October 2006, and owned property in Kansbahal Village. This contradicts his claim of being a poor tribal, thereby rendering his claim for compensation legally untenable. Furthermore, it is significant to note that the petitioner has changed his name multiple times and provided inconsistent residential addresses, as evidenced by the letter dated 11.12.2008 from L&T, his former employer.

(vi) The petitioner's claim that his house, shops, well, garden, and trees were demolished without proper notice is inaccurate. The report from the Revenue Inspector, Raghunathpali, dated 02.03.2009, clearly states that the petitioner was not residing on the disputed land at the time. Instead, other individuals were occupying the land during the construction of the Railway Overbridge.

(vii) It is evident that the petitioner applied for the land before the Assistant Settlement Officer, Sambalpur, during the DP stagefor the land to be allotted to DAV Farm. However, as DAV Farm was not in possession of the land, and the land belonged to the government following its surrender by HSL Company to the state, the settlement authority placed plot numbers 123/285 and 123/286 under the government's Anabadi Khata. A note of possession was subsequently recorded in the petitioner's name. Therefore, the petitioner's claim of possessing the land prior to 1954 is unfounded and misleading. The petitioner merely succeeded in having his name inserted against the said plots through an objection petition, but he was never in actual or physical possession of the land.

(viii) It is a well-established legal principle that an entry in the ROR, particularly in the remarks column, does not, by itself, confer any legal right, title, or interest over the land unless accompanied by actual possession. A mere entry in the ROR does not create or extinguish any right, title, or interest.

(ix) Article 300A of the Constitution of India clearly states that no person shall be deprived of their property except by the authority of law. However, in the present case, the land in question is encroached government land, which does not fall within the purview of Article 300A of the Constitution of India. Therefore, the petitioner's claim under this provision is not tenable.

(x) There is no bar on the filing of a revision petition by a revenue authority against the order of an appellate court if it is found that such an order is in violation of settled law. Furthermore, as the custodian of government land, the Tahasildar/Addl. Tahasildar is legally competent to take necessary steps for its protection.

(xi) There is no justifiable reason to interfere with the order dated 21.06.2024 passed by the Collector, Sundargarh in Revenue Revision No. 2/2020, as the Revisional Authority has passed the order after duly considering the materials available on record and in strict adherence to the prevailing Act and Rules.

IV. COURT'S REASONING AND ANALYSIS:

6. Heard Learned Counsels for the parties and perused the documents placed before this Court.

7. At the outset, it is pertinent to emphasize that the right to property is recognized as a human right.

8. In ***State of Haryana v. Mukesh Kumar & Ors.***[6]**,** the Supreme Court observed that human rights have traditionally encompassed individual rights such as the right to health, right to livelihood, right to shelter, and right to employment. However, human rights have now acquired a multifaceted dimension, and the right to property is also considered an integral part of this evolving framework.

9. The present writ petition challenges the order dated 21.06.2024, passed by the Collector, Sundargarh, in Revenue Revision No. 02/2020, wherein the Collector set aside the order of the Sub-Collector, Panposh, on a revision petition filed by the Tahasildar.

10. The primary question that arises for determination in the present case is whether the filing of the Revision Case before the Collector by the Tahasildar was illegal and whether, the Tahasildar being a revenue authority, such a revision was maintainable at their behest under the Orissa Prevention of Land Encroachment Act, 1972.

11. To determine this issue, it is necessary to analyze Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, which reads as follows:

"8A. Settlement of land in cases of encroachment for more than thirty years.

1. Where in the course of any proceeding instituted under Sections 4, 6, 7 or 8 against any person unauthorisedly occupying any land it is proved by such person that he has been in actual, continuous and undisputed occupation of the land for more than thirty years by the date of institution of the proceeding, the Tahasildar shall refer the case to the Sub-divisional Officer.

2. On receipt of a reference under Sub-section (1) the Sub-divisional Officer shall give the Department of the State Government (other than the Revenue Department) to which

[6] 2011 (10) SCC 404

the land belongs, an opportunity to show cause against the settlement of the land and may make such further enquiry as he deems necessary.

3. If after making such enquiry the Sub-divisional Officer is satisfied that such person has been in such occupation of the land as aforesaid, he may by order, settle the land with him and every such settlement shall be subject to such conditions, regarding assessment and payment of rent (including arrears of rent) as may be prescribed by rules made under this Act."

12. Further, the provisions pertaining to appeal and revision are provided under Section 12 of the Orissa Prevention of Land Encroachment Act, 1972, which states:

"12. Appeal and Revision

(1) An appeal from any decision or order made under this Act by the Tahsildar shall lie to the Sub-divisional Officer.

(2) The Collector may revise a decision or order made by a Sub- divisional Officer under Sub-section (1) 1[or under Section 7 or Section 8-A.]

(3) The [Revenue Divisional Commissioner] having jurisdiction may call for and examine the records of any proceedings under this Act before any officer in which no appeal or revision lies and if such officer appears-

a. to have exercised a jurisdiction not vested in him by law; or

b. to have failed to exercise a jurisdiction so vested; or

c. while acting in the exercise of his jurisdiction, to have contravened some express provision of law affecting the decision on the merits, where such contravention has resulted in serious miscarriage of justice, it may, after giving the parties concerned a reasonable opportunity of being heard, pass such orders as it deems fit.
(4) Pending the disposal of any appeal or revision, the Sub-divisional Officer, the Collector or the [Revenue Divisional Commissioner], as the case may be, may stay the execution of the decision or order appealed against or sought to be revised."

13. A perusal of the above provisions reveals that while the Act empowers the Collector to revise an order passed under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, it does not explicitly specify who is entitled to file or maintain such a revision.

14. The statutory scheme under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, that once the Tahasildar finds an individual to have been in continuous possession of the land for more than thirty years, the case must be referred to the Sub-divisional Officer. However, the Act does not provide any provision allowing the Tahasildar to challenge the Sub-divisional Officer's decision through a revision petition before the Collector, especially when he is a revenue authority and an integral part of the process leading up to that decision.

15. Permitting such a revision would not only disrupt the hierarchical framework established under the Act but would also amount to an impermissible extension of jurisdiction beyond what is statutorily prescribed.

16. It is further noted that the disputed land has already been utilized for public infrastructure, including a Railway Overbridge and the Rourkela Municipal Corporation Market Complex, leaving no land available for settlement. This Court finds it contradictory that the Tahasildar, having issued the demolition order himself and having found continuous possession until demolition, now seeks to evade responsibility by asserting that the petitioner's possession was not continuous or that Section 8A of the Orissa Prevention of Land Encroachment Act, 1972, is inapplicable.

17. Despite the Tahasildar's attempt to dispute the petitioner's possession, the factual findings from the spot inquiry tell a different story. The findings of the spot inquiry categorically establish the petitioner's continuous possession of the land, thereby making the case referable under Section 8A of the Orissa Prevention of Land Encroachment Act, 1972.

V. CONCLUSION:

18. In light of the foregoing discussions and the material placed before this Court, the order of the Sub-Divisional Officer is found to be legally sound and is hereby upheld. Consequently, the order passed by the Collector is set aside.

19. Accordingly, this Writ Petition is hereby **allowed.**

20. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by: Shri Pravakar Ganthia, Editor-in-Chief

Result of the case: Writ Petition allowed.

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2025 (II) ILR-CUT-102

M/s. PANDA INFRAPROJECTS (INDIA) PVT. LTD.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 7422 OF 2021]

28 MARCH 2025

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

Issue for Consideration

Whether the denial of the incentive by the Opposite Parties is inconsistent with the principles of contractual obligation.

Headnotes

(A) LAW OF CONTRACT – Contractual obligation – Petitioner, being a contractor, was awarded a government contract for constructing a

Railway Over Bridge at Malatipatapur to Puri Konark Road, Odisha – Original cost of the contract was ₹63,87,82,051/- with completion date 02.06.2015 – The petitioner completed the entire project on 30.04.2015 i.e. prior to the stipulated date – There was an incentive clause for incentive payment for early completion on a graduated scale from 1% to 10% of the contract value – Petitioner claims 2.5% incentive but it was rejected on the ground that "Bridge works are not eligible for incentive" under the amended 2015 policy – Whether the denial of the incentive by the Opposite Parties is inconsistent with the principles of contractual obligation.

Held: Yes – The law of contracts rests on a simple but inviolable premise: agreements, once made, must be kept – This principle is not a relic of rigid formalism but the foundation upon which trust in commerce and governance alike depends – In public contracts, the government is not just a participant but a steward of its own word, bound to the rigor of the obligations it has assumed – To permit discretion where none is bargained for is to introduce uncertainty where certainty is paramount – It would reduce obligations to suggestions, leaving performance at the mercy of unilateral will – The power to contract is not the power to escape, and authority cannot be used as a tool to revise what has been freely undertaken – If a contract is to mean anything at all, it must be enforced as made, not as later convenience might dictate - Considering the facts and circumstances of the case, this Court finds merit in the petitioner's claim – The Government's refusal to grant the incentive is unwarranted and inconsistent with established principles of contractual obligation – The opposite parties are directed to within THREE months from the presentation of this judgment – In case of non-compliance, the petitioner shall be entitled to interest at the rate of 8% per annum until the payment is made – This Court expects timely implementation of this order to uphold justice and equity. (Paras 28-30)

(B) MAXIM – **Doctrine of *Contra Proferentem*** – This principle is invoked when ambiguity arises in a contractual term drafted by one party – In essence, it applies only when it is undeniably evident that a party either authored the ambiguous clause or played a significant role in shaping its language – This principle is enshrined in the UNIDROIT Principles of International Commercial Contracts, specifically outlined in Article 4.6, which states the following: "..*if contract terms supplied by one party are unclear, an interpretation against that party is preferred*." (Para 23)

Citations Reference

Michigan Rubber (India) Limited v. State of Karnataka & Others, **(2012) 8 SCC 216;** BP Refinery (Westernport) Pty Ltd v. The Shire of Hastings,

[1978] 52 AJLR 20; Delhi Cloth and General Mills Co. Ltd. v. K.L. Kapur, **AIR 1958 PUNJAB 93;** Attorney General of Belize v. Belize Telecom Ltd., **[2009] UKPC 10;** M.P. Sugar Mills v. State of U.P., **AIR 1979 SC 621;** State of Madhya Pradesh v. M/s Sew Construction Ltd. & Ors., **Civil Appeal No. 8571/2022 arising out of SLP (C) No. 907/2020 – referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Contract; Agreement; Incentive; Incentive claim; Incentive payment; Contractual obligation.

Case Arising From

Order dated 19.01.2021 passed by the Executive Engineer, Puri (R & B) Division followed by Government in Works Department's order dated 06.05.2021 and order dated 10.05.2021 of the Commissioner-cum-Secretary to government in Works Department.

Appearances for Parties

For Petitioner : Mr. Merusagar Samantaray with Mr. S. Dwibedi, Ms. J.J. Jyoti

For Opp. Party(s): Mr. Prabhu Prasanna Behera, ASC

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. In this Writ Petition, the Petitioner seeks a direction from this Court to issue a writ of mandamus directing the opposite parties to release 7.5% of the entire work executed by the petitioner, as per Clause 120, Sub-Clause 2.4 of the contract. Additionally, the petitioner prays for a declaration that the retrospective application of the 2015 circular is illegal and that the petitioner's claim should be considered based on the agreement executed in 2014.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

(i) The petitioner, a contractor, was awarded a government contract for constructing a Railway Over Bridge along with a bridge over Kanchi Nallah at CH.0/350 on the proposed road from NH-203 at Malatipatapur to Puri Konark Road NH-203A (Puri Bypass) in Puri District, Odisha.

(ii) The contract was awarded at 3% excess over the amount put to tender, and the agreement was executed on 03.03.2014 under Agreement No. 48 P1 of 2013-14.

The original cost of the contract was Rs. 63,87,82,051, with a stipulated completion date 02.06.2015.

(iii) The contract contained a specific incentive clause under Clause 120, Sub-Clause 2.4.1, which entitled the contractor to an incentive payment for early completion of the work before the stipulated date. The incentive was structured on a graduated scale from 1% to 10% of the contract value, depending on how much earlier the work was completed.

(iv) The petitioner completed the entire project, including additional work, on 30.04.2015, well ahead of the stipulated deadline of 02.06.2015. Hence, he is claiming an incentive of 2.5% of the contract value as per the agreed terms.

(v) The petitioner received all payments due for the executed work, and the opposite parties claim that the payments were made in full and final settlement. The incentive claim for early completion was initially considered but was ultimately rejected due to the petitioner allegedly not fulfilling the stipulated conditions required to claim an incentive.

(vi) The opposite parties argue that the claim sidelines the Government Order under Note-I of Para 3.5.5. of OPWD Code Vol. I, which does not include bridge works for incentive eligibility.

(vii) The OPWD Code Vol. I, as amended in 2004 and 2006, states that only buildings, PH works (Rs. 40 Lakh Minimum), Road Works (Rs. 3 crore Minimum), and irrigation works (Rs. 10 Crore Minimum) qualify for incentives.

(viii) Since the petitioner's contract involves bridge work, the government contends that no incentive was applicable as per the codal provisions.

(ix) A government office memorandum (No. 1046/W) dated 28.01.2015 amended Para 3.5.5 Note-III of OPWD Code Vol. I, making both road and bridge works eligible for incentives. However, this amendment was effective only from 28.01.2015, meaning any project executed under earlier agreements (before this date) would not qualify for an incentive. Since the petitioner's contract was signed on 03.03.2014, the opposite parties argue that his claim cannot be entertained under the revised policy.

(x) The petitioner's incentive claim was officially rejected by the Executive Engineer, Puri (R&B) Division, through an order dated 19.01.2021, followed by the Government in Works Department's order dated 06.05.2021, and finally by the Commissioner-cum-Secretary to Government, Works Department, through an order dated 10.05.2021. The rejection was based on the reasoning that "Bridge Works are not eligible for incentive" under the amended 2015 policy, which was not applicable retrospectively to the petitioner's contract executed in 2014.

(xi) The petitioner asserts that additional work amounting to 15.07% over the original contract was executed and required extra time, which should be considered for the incentive. However, the opposite parties argue that the additional work was duly approved by the competent authorities, and payments were made accordingly. They further contend that the petitioner never formally applied for an extension of

time as required under Clause 4 of the contract. Since no extension was sought or granted, the claim of extra time for additional work is an afterthought and lacks merit.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The incentive clause (Clause 120, Sub-Clause 2.4.1) is clear and unambiguous, entitling the petitioner to a 2.5% incentive for completing the project ahead of schedule. The opposite parties' arbitrary reduction of the incentive to 2% is in direct violation of the contract terms and constitutes a breach of contractual obligations.

(ii) The rejection of the incentive claim is based on a 2015 government circular, whereas the petitioner's contract was executed in 2014. The circular cannot be applied retrospectively to deny benefits that were already contractually agreed upon. The opposite parties' reliance on an ex-post facto policy is illegal and unconstitutional.

(iii) The denial of incentive violates Article 14 (Right to Equality), as similarly placed contractors have received their incentives while the petitioner has been arbitrarily denied the same. The arbitrary and unilateral reduction of the incentive violates Article 19(1)(g) (Right to Business and Trade) by imposing unjustified financial hardship on the petitioner. The withholding of contractual dues without justification violates Article 300A (Right to Property), as it deprives the petitioner of its legitimate earnings.

(iv) The Orissa High Court, in its order dated 09.04.2021, had directed the authorities to reconsider the claim. The opposite parties failed to comply with the direction in a fair and just manner, instead reiterating the baseless rejection.

(v) The petitioner had a legitimate expectation of receiving the full 2.5% incentive as per the clear contract terms and past practices. The arbitrary denial without justification frustrates the petitioner's legitimate expectation, violating the principles of fairness and natural justice.

(vi) Initially, the government accepted the incentive claim and even considered processing it. However, after the petitioner produced the 2013 amendment, which supported the incentive claim, the government changed its stand. The government's reliance on Note-I of the OPWD Code is an afterthought to deny a legitimate entitlement.

(vii) Note-III, inserted via notification dated 08.11.2013, expressly provides for an incentive for early completion of any project. The government misleadingly relies on Note-I, which was later amended in 2015 but has no impact on Note-III. The contract itself contains a clause (Clause 2.4.1) allowing incentives for early completion, making it contractually binding on the government.

(viii) The government cannot selectively interpret road work as excluding bridge work. Bridges facilitate transportation just as roads do, and classifying them separately to deny incentives is arbitrary and irrational.

(ix) Under Clause 10 of the contract, any additional work extends the completion period proportionately. Since the petitioner completed the work 19.29% ahead of the adjusted completion schedule, it is entitled to an incentive of 7.5% of the total contract value.

(x) The petitioner invested heavily in manpower, machinery, and material procurement to complete the work early as per the government's urgent request. The State has benefitted from the petitioner's efficiency and diligence in completing the project before the Nabakalebar festival, yet refuses to honor its contractual commitment.

(xi) Contractual provisions cannot be arbitrarily overridden by codal provisions, especially when the contract explicitly provides for incentives. The terms of the agreement are sacrosanct, and any ambiguity must be resolved in favor of the contractor.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the State Mr. Prabhu Prasanna Behera made the following submissions in support of his contentions:

(i) The opposite parties assert that the writ petition is not maintainable either in law or on facts. The petitioner has allegedly suppressed material facts and presented false and baseless allegations to justify the claim.

(ii) The incentive provision outlined in Para 3.5.5 Note-I of OPWD Code Vol. I excludes bridge works from incentive eligibility. The contract was executed under Agreement No. 48 P1 of 2013-14 on 03.03.2014, before the amended government memorandum of 28.01.2015, which first allowed incentives for bridge works. Since incentive for bridge work was not permitted at the time of contract execution, the petitioner's claim was legally untenable.

(iii) The Office Memorandum No. 1046/W dated 28.01.2015 introduced the incentive scheme for bridge works with prospective effect. The petitioner's attempt to claim benefits under this amendment is contrary to settled legal principles, as retrospective application of policies is not permissible unless expressly provided.

(iv) The petitioner has already received full payment for all work done, including deviations and additional work. The government contends that there was no objection from the petitioner at the time of final settlement. The petitioner's claim for extra incentive at this stage is an afterthought.

(v) The petitioner's reliance on legitimate expectation is misplaced, as there was no representation or assurance by the government that he would be granted an incentive. The contract and government norms at the time of execution did not include incentives for bridge works, so there was no enforceable expectation.

(vi) The Works Department's orders rejecting the claim were passed in compliance with existing rules and were legally justified. The petitioner's contract was governed by the pre-2015 provisions, under which bridge works were not eligible for incentive. The rejection of the petitioner's claim was not arbitrary but was based on codal stipulations

IV. COURT'S REASONING AND ANALYSIS:

5. Heard Learned Counsel for parties and perused the documents placed before this Court.

6. The core issue in the present case revolves around the petitioner's claim for an incentive under Clause 120, Sub-Clause 2.4.1 of the Contract, on the premise of completing the contractual work ahead of schedule. The opposite parties assert that, at the time of execution of the agreement in 2014, bridge works were not covered under the incentive scheme prescribed by the OPWD Code. Although a subsequent amendment in 2015 extended such benefits to bridge works, the same was prospective in nature. Given that the petitioner's contract predates this amendment, his claim was rejected. In light of the foregoing, the principal question for determination before this Court is whether the petitioner is legally entitled to claim the incentive.

7. Before addressing the substantive issues, it is essential to delineate the contours of judicial intervention in matters concerning government contracts and tenders. It is well settled that such review is limited in scope. However, judicial restraint does not imply judicial indifference. While courts do not sit in appeal over administrative decisions in contractual matters, they remain obligated to ensure that such decisions are free from arbitrariness, unfairness, or an abuse of discretion. The authority of this Court to intervene in matters of tenders and government contracts under Article 226 has been aptly provided by the Supreme Court in ***Michigan Rubber (India) Limited v. State of Karnataka and Others***[7]. In this case, the Court has expounded upon the limits and scope of judicial review in this domain. The relevant excerpts are produced below:

> *"23. From the above decisions, the following principles emerge:*
>
> *(a) the basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national priorities;*
>
> *(b) fixation of a value of the tender is entirely within the purview of the executive and courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by Courts is very limited;*
>
> *(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted;*

[7] (2012) 8 SCC 216.

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by Court is very restrictive since no person can claim fundamental right to carry on business with the Government.

24. Therefore, a Court before interfering in tender or contractual matters, in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone; or whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached"; and

(ii) Whether the public interest is affected. If the answers to the above questions are in negative, then there should be no interference under Article 226"

8. The abovementioned precedent makes it clear that judicial intervention in contractual matters is rare, warranted only when government action veers into arbitrariness, irrationality, or a departure from settled legal principles. The Court's role is not to reshape agreements but to ensure that the State and its agencies operate with fairness, transparency, and fidelity to the law. Here, the petitioner insists that the incentive clause is unambiguous and that his claim was unjustly denied based on a policy introduced after the contract was signed. The opposing side counters that, at the time of execution, the governing provisions offered no such incentive for bridge works, making the petitioner's reliance on later amendments legally unsound. The Court must now determine whether the rejection of the claim stems from a legitimate reading of the contract and applicable rules or whether it reflects an arbitrary exercise of power. If the decision stands on firm legal ground, judicial restraint is imperative. If, however, it rests on a flawed or unjust interpretation, the law must intervene to set matters right.

9. At this juncture, a thorough examination of the relevant contract clauses is essential to understand the dispute and determine whether any violation has occurred. The relevant excerpt is produced below:

"Clause 120. ADDENDUM TO THE CONDITION OF P1 CONTRACT.

XX XX XX

Clause- 2.4. Bonus for early completion

Clause- 2.4.1. Amendment to Para- 3.5.5(v) Note-III of OPWD Code, Vol-I by inclusion-

For availing incentive clause in any project which is completed before the stipulated date of completion, subject to other stipulations it is mandatory on the part of the concerned Executive Engineer to report the actual date of completion of the project as soon as possible through fax or email so that the report is received within 7 days of such completion by the concerned SE, CE & the Administrative Department. The Incentive for timely completion should be on a graduated scale of one percent to 10 percent of the

contract value. Assessment of incentives may be worked out for earlier completion of work in all respect in the following scale.

"Before 30% of contract period = 10% of Contract Value

Before 20 to 30% of contract period = 7.5% of Contract Value

Before 10 to 20% of contract period = 5% of Contract Value

Before 5 to 10% of contract period = 2.5% of Contract Value

Before 5% of contract period = 1% of Contract Value"

10. On 28.01.2015, Para 3.5.5 of the OPWD Code, Volume-I was amended through Office Memorandum No. 1046/W issued by the Government of Odisha, Works Department. The relevant excerpt is produced below:

"After careful consideration Government have been pleased to make an amendment to Note-I of Para-3.5,5 of OPWD Code, Volume-I by way of substituting "Road Work" at Sl.No.2 with "Road Work/Bridge Work" (excluding the project funded by MoRTH, Govt, of India).

1. This shall take effect from the date of issue of this Office Memorandum.

2. This has been concurred in by the Finance Department vide their U.O R No 145-ACSF dt. 08.01.2015."

11. The perusal of the abovementioned clauses and the subsequent amendment makes it clear that the petitioner's claim for incentive finds support in the language of Clause 120 Sub-Clause 2.4.1 of the contract, which does not explicitly exclude bridge works from its ambit. At the time of execution, the prevailing OPWD Code may not have expressly provided for such an incentive, but neither did it categorically prohibit its application to bridge works.

12. The contract before this Court lends itself to two possible interpretations. The opposite parties urge a narrow reading, contending that the 2015 amendment marks the first recognition of bridge works within the incentive scheme, thereby excluding them from its purview prior to that date. The petitioner, on the other hand, advances a more purposive interpretation, asserting that the amendment does not introduce a new entitlement but merely affirms what was always implicit. The absence of any express exclusion of bridge works, coupled with the broader objective of rewarding efficiency, suggests that the amendment serves to clarify rather than to create. The question, then, is whether the contract ought to be read in a manner that rigidly confines its scope or in a way that best gives effect to its underlying purpose.

13. In such a scenario, it becomes essential for this Court to examine the jurisprudence surrounding implied terms in contracts. The seminal case of ***BP Refinery (Westernport) Pty Ltd v. The Shire of Hastings***[8] serves as a guiding

[8] [1978] 52 AJLR 20

authority on this subject. The Privy Council in this case laid down the fivefold test for implying terms into a contract. The relevant excerpts are produced below:

> *"…for a term to be implied, the following conditions (which may overlap) must be satisfied:*
> *1. it must be reasonable and equitable;*
> *2. it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;*
> *3. it must be so obvious that it 'goes without saying';*
> *4. it must be capable of clear expression;*
> *5. it must not contradict any express term of the contract."*

14. The precedent firmly establishes that a contract must be construed in a manner that upholds the evident intentions of the parties. There are instances where certain aspects may be inadvertently omitted or where the parties, though aligned in purpose, may fail to articulate their mutual understanding with precision. In such circumstances, the Court may, in the interest of business efficacy, imply a term to ensure that the contract remains functional and accords with commercial logic. The objective is not to rewrite the agreement but to give effect to what the parties, as rational actors, would have intended had the matter been expressly considered at the time of contracting.

15. One of the seminal cases, where the abovementioned principle has been interpreted is the case of ***Delhi Cloth and General Mills Co. Ltd. v. K.L. Kapur***[9] wherein it was held that the implication of term in contract can be made only where it is necessary in order to give efficacy to transaction which is intended by both parties. The relevant excerpts are produced below:

> *"The Courts, however, have recognized the danger of undue elasticity, and have circumscribed its limits. Based upon the presumed intention of the parties, it may not contradict or vary the express terms of the agreement. Nor can it be used simply to render the contract rather more attractive in the eyes of reasonable men.*
>
> *It is for the parties, not for the judges, to determine the nature of their liabilities. The doctrine can be invoked only if an obligation, clearly intended as such, must fail to take effect unless obvious oversight is remedied; and, even so, the judges will supply the minimum necessary to save the contract from shipwreck."*

16. At paragraph 27 of the Judgment, Justice Kapur held as follows:

> *"The existence of judicial power to remedy an omission arises "not under the pressure of external circumstances, but in order to repair an intrinsic failure, of expression" and whenever there is an omission due to inadvertence or clumsiness of draftsmanship, the Courts, it has been held, may remedy this omission. This judicial power was asserted and justified in (1889) 14 PD 64. Bowen, L.J. stated the law at page 68 to be:*

[9] AIR 1958 PUNJAB 93

".....

*In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen * * * The question is what inference is to be drawn where the parties are dealing with each other on the assumption that the negotiations are to have some fruit, and where they say nothing about the burden of this unseen peril, leaving the law to raise such inferences as are reasonable from the very nature of the transaction."*

17. While numerous precedents have examined the principle of business efficacy, the case of ***Attorney General of Belize v. Belize Telecom Ltd.***[10] offers a particularly precise perspective, cautioning against allowing the doctrine to assume an independent force beyond its intended scope. In this case, Lord Hoffmann notably observed the following:

"The danger lies, however, in detaching the phrase, "necessary to give business efficacy" from the basic process of construction of the instrument. It is frequently the case that a contract may work perfectly well in the sense that both parties can perform their express obligations, but the consequences would contradict what a reasonable person would understand the contract to mean. Lord Steyn made this point in the Equitable Life case (at p 459) when he said that in that case an implication was necessary "to give effect to the reasonable expectations of the parties." (Emphasis supplied.

18. The aforementioned judicial precedents make it amply clear that when it comes to the principle of business efficacy to contractual interpretation, courts must balance a strict textual approach with a pragmatic understanding of commercial efficacy. Where a contractual term is open to two interpretations, courts generally lean toward the one that promotes fairness and aligns with the broader objectives of the agreement. Equally significant is the need to uphold the reasonable expectations of the parties, interpreting and enforcing contracts in good faith and in line with their intended purpose.

19. The petitioner argues that Clause 120, Sub-Clause 2.4.1 of the Contract does not expressly exclude bridge works from the incentive scheme. In contrast, the opposite parties maintain that bridge works were never eligible, interpreting the 2015 amendment as the creation of a new entitlement rather than a clarification of an existing one. This position, however, invites a fundamental question: did the amendment merely formalize an understanding already inherent in the original agreement? A more purposive reading of the clause suggests that the absence of an explicit exclusion supports the petitioner's view.

20. The petitioner's position gains further support when considering the principle that commercial contract must be construed in a manner that upholds the reasonable expectations of the parties. The incentive clause, as worded, does not

[10] [2009] UKPC 10

specify exclusions. Had the intention been to exclude bridge works, an express provision to that effect would have been expected. The subsequent amendment, while clarifying the applicability of incentives to bridge works, does not necessarily imply a prior exclusion but could instead reflect a formal acknowledgment of an already implicit right.

21. Another principle that weighs in favour of the petitioner is the doctrine of promissory estoppel, a well-established tenet of contract law. While not novel in its application, its essence was succinctly captured by the Division Bench of the Supreme Court in ***M.P. Sugar Mills v. State of U.P.***[11] , where it was articulated in the simplest yet most profound terms:

> *"Where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect, a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."*

22. This case affirms that when a party, through words or conduct, induces another to act on a particular understanding, equity requires that the representation be honoured. The government, having introduced an incentive scheme that did not expressly exclude bridge works, cannot now impose a retrospective limitation. Commercial actors structure their investments and commitments based on assurances, whether express or implied, that are woven into their agreements. If the state were permitted to withdraw such implicit assurances at a later stage, it would not only unsettle commercial certainty but also weaken confidence in government contracts.

23. Another crucial aspect of this case is the application of the doctrine of *Contra Proferentem*. This principle is invoked when ambiguity arises in a contractual term drafted by one party. In essence, it applies only when it is undeniably evident that a party either authored the ambiguous clause or played a significant role in shaping its language. This principle is enshrined in the UNIDROIT Principles of International Commercial Contracts, specifically outlined in Article 4.6, which states the following:

> *"..if contract terms supplied by one party are unclear, an interpretation against that party is preferred."*

24. Similarly, the Principles for European Contract Law (PECL) in terms of Article 5.103 stipulate the following:

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[11] AIR 1979 SC 621.

"..where there is doubt about the meaning of a contract term not individually negotiated, an interpretation of the term against the party who supplied it is to be preferred."

25. When the principles outlined above are applied to the present case, it becomes evident that the doctrine of Contra Proferentem weighs against the opposite parties. The government, as the drafter of the contract, had the opportunity to exclude bridge works from the ambit of Clause 120 Sub-Clause 2.4.1 had it so intended. The failure to do so leaves room for a reasonable interpretation that the incentive scheme was not inherently restricted to road works alone. If ambiguity exists, it must be construed against the party that authored the contract. To hold otherwise would be to permit the State to introduce exclusions post hoc, rewriting the agreement in a manner that disadvantages the contractor while absolving itself of obligations that could be fairly inferred from the contract's language.

26. This doctrine is no mere rule of form but a barrier against encroachment. When the government speaks in contract, it speaks with power, and with power comes the duty of precision. Its words must stand as written, not bent by discretion to serve a later purpose. In public procurement, the State is no ordinary merchant but a steward of fairness, bound to the discipline of its own bargains. To allow one party to reshape obligations at will is to dissolve the contract itself, casting it adrift from the anchorage of law.

27. In ***State of Madhya Pradesh v. M/s Sew Construction Ltd. &Ors***[12], the Court reaffirmed the settled principle: the terms of a contract, once agreed upon, bind both parties in letter and spirit. The government, despite its authority, holds no special privilege in the execution and enforcement of contracts. It cannot unilaterally impose new conditions during the course of performance, for to do so would undermine the certainty and fairness that contract law demands. The relevant excerpts are produced below:

"In the context of discretion, we may reiterate this principle. The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract."

28. The law of contracts rests on a simple but inviolable premise: agreements, once made, must be kept. This principle is not a relic of rigid formalism but the foundation upon which trust in commerce and governance alike depends. In public contracts, the government is not just a participant but a steward of its own word,

[12] Civil Appeal No. 8571/2022 arising out of SLP (C) No. 907/2020.

bound to the rigor of the obligations it has assumed. To permit discretion where none is bargained for is to introduce uncertainty where certainty is paramount. It would reduce obligations to suggestions, leaving performance at the mercy of unilateral will. The power to contract is not the power to escape, and authority cannot be used as a tool to revise what has been freely undertaken. If a contract is to mean anything at all, it must be enforced as made, not as later convenience might dictate.

V. CONCLUSION:

29. Considering the facts and circumstances of the case, this Court finds merit in the petitioner's claim. The Government's refusal to grant the incentive is unwarranted and inconsistent with established principles of contractual obligation.

30. Accordingly, the Writ Petition is allowed, and the opposite parties are directed to grant the incentive within THREE months from the presentation of this judgment. In case of non-compliance, the petitioner shall be entitled to interest at the rate of 8% per annum until the payment is made. This Court expects timely implementation of this order to uphold justice and equity.

31. Interim order, if any, passed earlier stands vacated.

Headnotes prepared by: *Result of the case:*
Shri Pravakar Ganthia, Editor-in-Chief Writ Petition allowed.

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2025 (II) ILR-CUT-115

DURGA MADHAB HARICHANDAN
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 6049 OF 2025]

10 APRIL 2025

[M.S. SAHOO, J.]

Issue for Consideration

Whether the order dated 17.08.2024 passed by the Tahasildar, Jatni (O.P. No.2) in Judicial Misc. Case No. 05 of 2024 is a final order and as such appealable under Rule 42 of the Odisha Survey and Settlement Rules, 1962.

Headnotes

ODISHA SURVEY AND SETTLEMENT RULES, 1962 – Rules 41, 42 & 43 – Petitioner was the applicant in Mutation Case No. 10183 of 2023 –

Vide the impugned order dated 17.08.2024, the Tahasildar, Jatni recalled his earlier orders dated 14.01.2024 and 13.02.2024 passed in Mutation Case Nos. 13607 of 2023 and 10183 of 2023 respectively, thereby rejecting applications in both the above Mutation Cases – Whether the order dated 17.08.2024 passed by the Tahasildar, Jatni (O.P. No. 2) in Judicial Misc. Case No. 05 of 2024 is a final order and as such appealable under Rule 42 of the Odisha Survey and Settlement Rules, 1962.

Held: Yes – In view of the clear provision that appeal shall lie from the final order under Rule 41, it has to be held that the order impugned in the writ petition is appealable under the Rules, 1962 inasmuch as in the case at hand the final order dated 17.08.2024 in rejecting the Mutation Case No. 10183 of 2023 filed by the petitioner. (Para 6)

List of Acts

Odisha Survey and Settlement Act, 1958; Odisha Survey and Settlement Rules, 1962.

Keywords

Condonation of delay; Major Settlement; Final order.

Case Arising From

Order dated 17.08.2024 passed by the Tahasildar, Jatni (O.P.No.2) in Judicial Misc. Case No. 05 of 2024.

Appearances for Parties

For Petitioner : Mr. A.C. Panda
For Opp. Parties : Mr. D. Mohanty, AGA

Judgment/Order

Judgment

M.S. SAHOO, J.

The petitioner in the writ petition aggrieved by the order dated 17.08.2024 passed by the Tahasildar, Jatni (O.P. No.2) in Judicial Misc. Case No. 05 of 2024, challenges the same seeking a direction to set aside the order. By the said order the Tahasildar recalled his earlier orders dated 14.01.2024 and 13.02.2024 passed in Mutation Case Nos. 13607 of 2023 and 10183 of 2023 respectively, thereby rejecting applications for Mutation Case Nos. 13607 of 2023 and 10183 of 2023. It is stated that the petitioner was applicant in Mutation Case No. 10183 of 2023. Learned counsel refers to the operative portion of the impugned order dated 17.08. 2024 passed by the Tahasildar, Jatni which is quoted herein :

> *"Keeping in view the above, facts & evidence the order dtd. 14. 01.2024 and 13.02.2024 passed in Mutation Case No. 13607/23 and 10183/23 is hereby recalled and the case No. 13607/23 & 10183/23 is rejected, the ROR bearing No.721/805 is hereby cancelled. Hence I am inclined to allow the misc petition in favour of the petitioner with direction to the R.K. to revoke back the area Ac0.805dec, of plot no. 1099/2374/2407 and area Ac0.322 dec. of plot No. 1099/2374 from khata 721/805 of mouza-Padanpur and record the suit area in Khata No.252 in plot No. 1099 of mouzaPadanpur."*

2. To challenge the order it is submitted that the order dated 17.08.2024 passed by the Tahasildar is not a final order and not appealable under Rule 42 of the Odisha Survey and Settlement Rules, 1962 (hereinafter the OSS Rules, 1962). The petitioner who had filed the Mutation case earlier i.e. Mutation Case No. 10183 of 2023 was not given opportunity of hearing in the subsequent proceeding initiated by the Tahasildar to recall the order dated 13.02.2024.

3. To support the contention that the order dated 17.08.2024 is not appealable under Rule 42 of the Odisha Survey and Settlement Rules, 1962, it is submitted that appeal lies against any 'final order' made under Rule 41 and the order passed by the Tahasildar dated 17.08.2024 cannot be said to be the final order.

4. Mr. Mohanty, learned AGA in response resubmits that the proceeding i.e. Judicial Misc. Case No. 05 of 2024 was initiated as would be evident from the order passed by the Tahasildar (Annexure-3) after filing of the W.P.(C) No. 17926 of 2023. In the said writ petition which is stated to be pending before this Court, the order dated 25.11.2022 passed by the Assistant Settlement Officer, Rental Colony, Bhubaneswar functioning at Major Settlement, Jobra, Cuttack in Misc. Case No. 34 of 2022 directing to record the land in question in favour of the opposite party nos.4 to 10 was challenged.

It is submitted by the learned counsel for petitioner that the petitioner has not been arrayed as a party in the pending W.P.(C) No. 17926 of 2023.

5. To appreciate the contentions of the learned counsel for the petitioner, the Rules 41, 42 and 43 of OS & S Rules, 1962 are referred to and reproduced herein :

> ***"41. Manner of disposal of mutation applications.***- *The mutation applications and the petitions of objection, if any, shall be disposed of after giving the parties an opportunity of being heard and the enquiry to be so held shall be summary in nature.*
>
> ***42. Appeal.*** *(1) An appeal from any final order made under Rule 41 shall lie (i) if the original order was made by an Assistant Settlement Officer exercising the powers of the Tahasildar under those rules and working under the administrative control of the Settlement Officer, to the Settlement Officer; and*
>
> *(ii) if the original order was made by any other officer exercising the powers of the Tahasildar under these rules, to Subdivisional Officer.*
>
> *(2) Every such appeal must be presented within thirty days from the date of the order appealed against.*
>
> xxx xxx xxx

> ***43. Review.-*** *Any person considering himself aggrieved by any decision under this Chapter may apply within thirty days from the date of the decision for a review of the order to the Officer, who passed the said order on the ground of any mistake or error apparent on the face of the record and the Officer may, after giving to the parties interested a reasonable opportunity of being heard, pass such order thereon as he thinks fit."*

6. In view of the clear provision that/appeal shall lie from the final order under Rule 41, it has to be held that the order impugned in the writ petition is appealable under the Rules, 1962 inasmuch as in the case at hand the final order would be the order dated 17.08.2024 in rejecting the Mutation case No.10183 of 2023 filed by the petitioner.

7. It is submitted by learned counsel for petitioner that the petitioner was to file the appeal within thirty days from the date of order i.e. 17.08.2024. The petitioner in good faith pursued the remedy by filing writ petition before this Court, petition having been filed on 10.02.2025.

Learned counsel for the petitioner further submits that if directed and leave is granted by this Court : petitioner shall file appeal as prescribed in the statute before appellate authority under Rule 42 of the O.S. & S. Rules, 1962 and the period of delay that would be for filing appeal may be condoned by this Court exercising extra-ordinary as well as equitable jurisdiction.

8. Having heard learned counsel for the petitioner, learned AGA for the State-O.Ps. and considering the materials on record as well as the provisions of the Odisha Survey & Settlement Rules, 1962 read with the Act, 1958, it is directed that if the petitioner moves the appellate authority within six weeks by filing a properly constituted appeal along with a petition for condonation of delay in filing the appeal against the order passed by the Tahasildar dated 17.08.2024 in Judicial Misc. Case No. 05 of 2024, the same shall be considered on merits after condoning the period of delay.

9. Since it has been brought to the notice of this Court that in W.P.(C) No. 17926 of 2023 challenging the order dated 25.11.2022 passed by the Assistant Settlement Officer, Rental Colony, Bhubaneswar functioning at Major Settlement, Jobra, Cuttack in Misc. Case No. 34 of 2022, is still pending, the parties to the present writ petition shall find their remedy if so advised in the said petition.

10. The writ petition is accordingly disposed of.

Headnotes prepared by:
Shri Pravakar Ganthia, Editor-in-Chief

Result of the case:
Writ Petition disposed of.

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2025 (II) ILR-CUT-119

BIKALA BARIK
V.
COMMISSIONER OF SETTLEMENT & CONSOLIDATION, ODISHA, BHUBANESWAR & ORS.

[W.P.(C) NOS. 16405 OF 2018 & 13334 OF 2024]

03 APRIL 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

1. Whether order of remand issued by the Commissioner for its disposal by Tahasildar is tenable under law.

2. Whether a revision can be entertained after expiry of the stipulated time as mentioned in Section 15(b) of the Survey and Settlement Act, 1958.

Headnotes

(A) ORISSA SURVEY AND SETTLEMENT ACT, 1958 – Section 12(b), 15(b) – Remand of the revision by the authority for inquiry and correction of the mutation ROR – Whether order of remand issued by the Commissioner for its disposal by Tahasildar, Bhubaneswar is tenable under law.

Held: **No** – To conclude, the Court is of the humble view that, remand of which, is held not permissible, an analogous hearing of both the proceedings by opposite party No.1 would serve the purpose and meet the ends of justice. (Para 11)

(B) ORISSA SURVEY AND SETTLEMENT ACT, 1958 – Section 15(b) – The Act provides that the application shall have to be made within a year from the date of final publication under section 12(b) for revision of record of right or any portion thereof – Whether a revision can be entertained after the stipulated time as mentioned in Section 15(b) of the Act.

Held, Yes - The settled position of law is that the delay should not always be fetal in so far as a revision filed U/s. 15(b) of the Act is concerned and what is more important is to ensure a hearing on the principle of *ex debito justitiae*, while considering the competing rights of the parties involved. (Para 10)

Citations Reference

Kashi Prasad Modi Vrs. Chaitanya Dev and Radhakanta Dev Bada Matha, Puri, **W.P.(C) No. 3229 of 2016 dated 20th July, 2023;** Shri Raja Laxmi

Dyeing Works Vrs. Rangaswamy Chettiar, **(1980) 4 SCC 259;** Krushna Chandra Mahakul Vrs. State of Orissa and others, **2003 (II) OLR 306;** Durga Charan Roul and Others Vrs. Bhagirathi Roul and Others, **2017 SCC OnLine Ori 896;** Siba Prasad Sahu Vrs. Revenue Divisional Commissioner (Central Division), Cuttack and Others, **2007 (Supp. I) OLR 281;** Sarat Chandra Sahu Vrs. Commissioner of Land Records and Settlement, Orissa, Cuttack and Others, **(1996) 82 CLT 321;** Harihar Mohapatra and Others Vrs. Commissioner of Land Records and Settlement, Orissa and Others, **1998 (II) OLR 495;** Smt. Bijaya Chatterjee Vrs. Commissioner, Land Records and Others, **2000 II OLR 349 – referred to.**

List of Acts

Orissa Survey and Settlement Act, 1958

Keywords

Remand; Delay; Limitation, Revision, Correction of Mutation ROR, Final Publication Revisional authority

Case Arising From

Orders passed in Revision Petition No. 363 of 2013 and Revision Petition No. 1556 of 2014.

Appearances for Parties

For Petitioner : Mr. B. Tripathy

For Opp. Parties : Mr. R. Pradhan, ASC (O.P. Nos.1 & 2)
Mr. D.R. Bhokta, (O.P. Nos.3 to 6)
Mr. B. Biswal, (O.P. Nos.7 to 9)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Both the writ petitions are clubbed together for a common disposal.

2. Instant writ petitions are at the behest of the petitioner challenging the correctness, legality and judicial propriety of the impugned orders as per Annexures-1 and 2 passed in connection with Revision Petition No.363 of 2013 and Revision Petition No.1556 of 2014 purportedly in exercise of powers under Section 15(b) of Orissa Survey and Settlement Act, 1958 (hereinafter referred to as 'the Act') on the grounds inter alia that the same are untenable in law and hence, liable to be interfered with and set aside with consequential directions issued in that regard.

3. In fact, the petitioner filed W.P.(C) No.16405 of 2018 challenging the decision in the revisions, however, it stands confined to the impugned order in Revision Petition No.363 of 2013, whereas, W.P.(C) No.13334 of 2024 is related to

the dismissal of Revision Petition No.1556 of 2014. So, to say, the petitioner is aggrieved by the remand of the revision by order dated 19th June, 2013 in Revision Petition No.363 of 2013 for inquiry and correction of the Mutation RoR by a decision of the learned Tahasildar, Bhubaneswar. The petitioner is equally affected by such decision of the Revisional Authority in dismissing the other proceeding i.e. Revision Petition No.1556 of 2014 and hence, therefore, the writ petitions are filed.

4. Briefly stated, the facts pleaded on record from the side of the petitioner are as follows. It is stated that the case land appertains to Sabik Khata No.197 and Plot Nos. 945 and 946 correspond to Mutation Khata No.474/4428, Plot Nos. 1410 and 1412 measuring Ac.0.220 decimal and Ac.0.110 decimal and further correspond to Hal Khata No.205 and Plot Nos.1410 and 1412 and as per Sabik Settlement Khata No.197, the same stood recorded in the names of one Bula Jena and Muli Jena but the latter died issueless in the state of jointness and thus, the former alone succeeded the interest thereof. It is further pleaded that as per the record of rights, there was an entry of oral mortgage in the remarks column, which had no legal force and said Bula Jena exercising absolute ownership and possession over the plots in question, sold the same to one Maheswar Barik, namely, predecessor of the petitioner and opposite party Nos.7 to 9 through a sale deed (RSD No.1579) dated 14th March, 1952 but the record could not be corrected in Hal settlement of 1973, on the basis of such purchase, hence, the case land was allowed to be recorded in favour of the successors of the Sabik recorded tenants, namely, Dhukhishyam, Trilochan and Rabindranath, who are the predecessors of opposite party Nos. 3(a) to (e) to 6 but, despite such record of right, the purchaser, namely, Maheswar Barik continued to physically possess the same during his life time and after his death, the petitioner and opposite party Nos.7 to 9 and while matter stood thus, opposite party No.6 somehow by fraud and misrepresentation managed to obtain a registered Power of Attorney from the other heirs of late Maheswar Barik without their knowledge, as per and in terms of which, he was not authorized to transfer but was to manage the property, however, when failed, the original Power of Attorney was returned to the executants and was finally, cancelled by a deed dated 23rd May, 2012. It is also pleaded that in spite of such deed of cancellation, opposite party No.6 behind the back of the executants alienated the case land by a sale deed dated 11th February, 2013 in favour of his wife and another, namely, opposite party Nos.10 and 11 respectively. It is pleaded that the Power of Attorney and subsequent transfer by the sale deed of the year, 2013 are all acts of fraud and hence, vitiated and in so far as the case land is concerned, the petitioner and opposite party Nos. 7 to 9 are continuing in physical possession of the same peacefully, uninterruptedly and continuously without any disturbance and so called the vendees, namely, opposite party No.10 and 11 do not derive any title and possession over the same and at best being the purchasers of a joint undivided property, remedy for them lies in a suit for partition and not otherwise. In the aforesaid backdrop, one revision was filed by the LRs of late Maheswar Barik against such successors of Bula Jena and considering

the same order dated 19th June, 2013 in Revision Case No.363 of 2013 was passed with a direction and remand for the learned Tahasildar, Bhubaneswar-II to hold inquiry at the field level and thereafter, to dispose of the matter according to law. The other proceeding in Revision Petition No.1556 of 2014 was initiated at the behest of the petitioner in respect of the Hal Khata No.205, Plot Nos. 1411 and 1413 corresponding to Sabik Khata No.36, Plot Nos.946 and 948, in total, measuring an area of Ac.0.34 decimals. As earlier stated, the revision filed by the LRs of late Maheswar Barik was disposed of with a remand, whereas, the one filed by the petitioner was dismissed on such other grounds besides limitation. The learned Board of Revenue and Commissioner of Settlement and Consolidation, Bhubaneswar, Odisha disposed of the respective revisions in exercise of powers under Section 15(b) of the Act. Both the impugned orders under Annexures-1 and 2 respectively are under challenge by the petitioner.

5. Opposite party Nos.3 to 6 filed counter affidavits and it is pleaded therein that the revision proceedings are in respect of different parcels of the land and as such, there is no resemblance in the Sabik record of rights vis-à-vis description of schedule properties. It is claimed that Revision Petition No.363 of 2013 is filed by the LRs of late Maheswar Barik through their Power of Attorney Holder to record their names in respect of Plot Nos. 1410 and 1412, Hal Khata No.205 corresponding to Sabik plots of Khata No.197 on the basis of the sale deed i.e. RSD No.1579 of 1952 as their predecessor had purchased the same from the Sabik recorded tenant, namely, Bula Jena but as the Hal record of rights in respect thereof are published in the names of the latter's successors, the proceeding was set in motion and in exercise of jurisdiction under Section 15(b) of the Act, the case was remanded back for inquiry and disposal by the learned Tahasildar, Bhubaneswar and after the disposal of the revision, Mutation Case No. 17860 of 2013 was initiated and after notice and general proclamation, the record of rights in respect of the land in question was corrected with the issuance of Mutation RoR in favour of opposite party Nos.10 and 11 since, they purchased the same through a registered sale deed dated 11th February, 2013. The further pleading is that the petitioner was never in picture at any point of time and was also not arrayed as a party in Revision Petition No.363 of 2013 arising out of OSS Case No.479 of 2011 on account of his identity not as the son of late Maheswar Barik and considering the facts and circumstances of the case, learned Member, Board of Revenue, Odisha dismissed the revision filed by him arising out of OSS Case 728 of 2018 and such a decision is, hence, perfectly justified, inasmuch as, the petitioner is a stranger and impersonated himself as the son of late Maheswar Barik with a demand to record his name along with other LRs in respect of the plots appertaining to Hal Khata No.205. It is stated that Sabik RoR in respect of the schedule land stood jointly recorded in the names of one Kanakamali Dei and Damodar Ray but the petitioner claims Bula Jena and Muli Jena as the recorded tenants and in such view of the matter, Revision Petition No.1556 of 2014 was dismissed upon verifying the evidence on record. At last, it is

pleaded that the writ petition is not maintainable, since, the revision filed by the petitioner was defective with improper description of plots corresponding to Sabik RoR published in the year 1930-31, which was the reason for learned Board of Revenue, Odisha to dismiss the proceeding, again on the ground that there is inordinate delay of 40 years in filing the same, hence, therefore, the impugned order therein does not suffer from any impropriety. With such other facts pleaded on record, the plea of the petitioner has been refuted by opposite party Nos.3 to 6 with a contention that the Power of Attorney was duly executed and thereafter, opposite party No.6 alienated the case land in favour of opposite party Nos.10 and 11, which cannot be said to have been held behind the back of the executants or without their knowledge and hence, void ab initio. A copy of the Power of Attorney is referred to as at Annexure-A/3 besides the rent receipts (B/3 series) in respect of Hal RoR Khata No.205 and corresponding to Mutation Khata No.474/4428. With the above grounds, opposite party Nos.3 to 6 pleaded for dismissal of the writ petitions in limine.

6. Heard Mr. Tripathy, learned counsel for the petitioner, Mr. Bhokta, learned counsel for opposite party Nos.3 to 6, Mr. Biswal, learned counsel for opposite party Nos.7 to 9 and Mr. Pradhan, learned ASC for opposite party No.1 and 2.

7. Mr. Tripathy, learned counsel for the petitioner would submit that on the one hand, the revision is filed by the LRs of late Maheswar Barik was entertained followed by a remand by an order dated 19th June, 2013 of learned Member, Board of Revenue, Odisha but on the other hand, the proceeding in Revision Petition No. 1556 of 2014 corresponding to OSS Case No. 728 of 2018 was dismissed on the ground of delay and laches with a conclusion that the schedule land has not been described in consonance with the Sabik record of rights. The contention is that without knowledge of the petitioner and opposite party Nos.7 to 9 and despite the fact that they are also the LRs of late Maheswar Barik, who continued to possess the plots in question, the other named LRs, such as, Musi Barik, Bhimsen Barik and Sadananda Barik executed the Power of Attorney in favour of opposite party No.6 in the year, 2004 through a deed dated 7th June, 2004 and though, it was cancelled on 23rd May, 2012, the alienation was effected in favour of opposite party Nos.10 and 11. Any such disposal of the case land on the strength of a Power of Attorney executed in favour of opposite party No.6 followed by a cancellation in the year, 2012 is invalid and in so far as the possession is concerned, it is still with the petitioner and opposite party Nos.7 to 9 being the successors of late Maheswar Barik.

8. As earlier stated, Revision Petition No.363 of 2013 was disposed of by order dated 19th June, 2013 with a remand, whereas, the revision of the petitioner was dismissed by order dated 5th June, 2018 by learned Commissioner of Settlement and Consolidation, Bhubaneswar, Odisha. Admittedly, the petitioner was not a party to the proceeding in Revision Petition No.363 of 2013 filed by the other LRs of late

Maheswar Barik. In fact, the status of the petitioner is questioned by opposite party Nos.3 to 6 by claiming that he is not the son of late Maheswar Barik. As far as, the decision in Revision Petition No.1556 of 2014 is concerned, it was held that there are inconsistencies in Sabik plot details vis-à-vis the case land recorded as the RoR published on 7th February, 1931 neither indicated the name of Bula Jena nor anything about the oral mortgage and that apart, there is no any evidence on record to show that the petitioner to be the son of late Maheswar Barik and he failed to successfully counter the defence of opposite party Nos.3 to 6 besides, no sufficient reason was shown for condoning delay of 40 years.

9. As far as the delay in filing of the revision is concerned; to consider such a question, it is necessary to refer to Section 15 of the Act and the same is extracted hereinbelow:

> *"15. The Board of Revenue may in any case direct-*
>
> *(a) of its own motion the revision of any record-of-rights, or any portion of a record-of-rights at any time after the date of final publication under sub-section (2) of section 12 but not so as to affect any order passed by a Civil Court under section 24;*
>
> *(b) on application, made within two years from the date of final publication under sub-section (2) of section 12, the revision of record-of-rights or any portion thereof whether within the said period of two years or thereafter but not so as to affect any order passed by a Civil Court under section 24:*
>
> *Provided that no such direction shall be made until reasonable opportunity has been given to the parties concerned to appear and be heard in the matter."*

Section 15(b) of the Act provides that the application shall have to be made within a year from the date of final publication under Section 12(b) for revision of record of rights or any portion thereof, whether, within the said period or thereafter and the same can be entertained by the Board of Revenue.

10. Law is no more res integra that revision can be entertained even after one year as stipulated in Section 15(b) of the Act. In **Kashi Prasad Modi Vrs. Chaitanya Dev and Radhakanta Dev Bada Matha, Puri**, this Court in W.P.(C) No.3229 of 2016 by a decision dated 20th July, 2023 held and concluded that an application under Section 15(b) of the Act, beyond one year not to be time barred, in view of the expression 'or thereafter'. It is held therein that maintainability of revision after the period of one year of final publication under Section 12(b) of the Act is permissible, since such an exercise is essentially an act of scrutiny in order to remove any defect or grant of relief upon improper exercise of jurisdiction by a lower Court. A decision of the Apex Court in **Shri Raja Laxmi Dyeing Works Vrs. Rangaswamy Chettiar (1980) 4 SCC 259** is referred to therein, which is to the effect that revisional jurisdiction is analogous to a to a power of superintendence and may sometimes is exercised even without it being invoked by a party and the conferment of such jurisdiction is generally for the purpose of keeping the Tribunals sub-ordinate to the Revisional Authority within the bounds of their jurisdiction to

make them act according to the well-defined principles of justice. With a reference to Sections 34 and 35 of the Act, this Court in **Kashi Prasad Modi** (supra) held that the revision is maintainable. In the case at hand, the petitioner demanded the delay to be condoned in terms of Section 5 of the Limitation Act. In **Krushna Chandra Mahakul Vrs. State of Orissa and others 2003 (II) OLR 306**, a Division Bench of this Court held that Section 5 of the Limitation Act applies where any appeal or application is filed with delay condonable provided sufficient cause is shown to exist but under Section 15(b) of the Act, there is no such requirement and therefore, even if, the revisioner has not been able to explain sufficiently the delay in filing of the application, the same cannot be thrown out on such ground of delay and in each case, the Authority entertaining the revision shall have to consider as to whether ends of justice required the application to be received beyond the period of one year or as to whether any valuable right as accrued to some other party on account of delay, for which, it should not be entertained. Similarly, in **Durga Charan Roul and others Vrs. Bhagirathi Roul and others 2017 SCC OnLine Ori 896**, this Court analyzed Section 15(b) of the Act with regard to entertainability of the application beyond one year limit without showing any cause and emphasized the importance of balancing procedural rules with substantive justice. So therefore, the settled position of law is that the delay should not always be fatal in so far as a revision filed under Section 15(b) of the Act is concerned and what is more important is to ensure a hearing on the principle of *ex debito justitiae*, while considering the competing rights of the parties involved.

11. The LRs of late Maheswar Barik filed the revision in 2013 and the other revision by the petitioner in 2014. The legality of the alienation in favour of opposite party Nos.10 and 11 by opposite party No.6 on the basis of a Power of Attorney subsequently cancelled has been questioned by the petitioner by stating that the deed dated 7th June, 2004 was not within his knowledge and opposite party Nos.7 to 9. Such alienation through a sale deed in 2013 by opposite party No.6 is questioned with a claim that the petitioner and opposite party Nos.7 to 9 are continuing in possession of the case land and since, the same was achieved through a Power of Attorney cancelled on 23rd May, 2012, opposite party Nos.10 and 11 did not derive any interest in respect thereof. As earlier mentioned, the *locus standi* of the petitioner is challenged by the other LRs of late Maheswar Barik justifying the impugned decision of opposite party No.1 in Revision Petition No. 1556 of 2014 corresponding to OSS Case No.728 of 2018. As far as the revision proceeding before the learned Member, Board of Revenue, Odisha is concerned, it has suffered a remand for a decision by the learned Tahasildar, Bhubaneswar, namely, opposite party No.2, which in the considered view of the Court is impermissible. This Court in **Siba Prasad Sahu Vrs. Revenue Divisional Commissioner (Central Division), Cuttack and others 2007 (Supp. I) OLR 281** held that the revision cannot be remanded for its disposal by the Tahasildar, rather it shall have to be entertained by the Revisional Authority to give finality to the dispute between the parties. In earlier

decisions of this Court in **Sarat Chandra Sahu Vrs. Commissioner of Land Records and Settlement, Orissa, Cuttack and others (1996) 82 CLT 321** and **Harihar Mohapatra and others Vrs. Commissioner of Land Records and Settlement, Orissa and others 1998 (II) OLR 495** referred to in **Smt. Bijaya Chatterjee Vrs. Commissioner, Land Records and others 2000 II OLR 349,** it has been concluded that the revision under the Act cannot be remanded for final decision and the Commissioner may call for a report from the Tahasildar instead and hence, quashed such remand. In the case at hand, Revision Petition No.363 of 2013 has been remanded with a direction to opposite party No.2 to hold an inquiry and to dispose of the matter according to law. Of course, such remand by an order dated 19th June, 2013 is not under question but considering the plea of the petitioner in Revision Petition No.1556 of 2014 with the claim vis-a-vis the case land though held to be not properly described with reference to Sabik Record of Right of 1930-31, the Court is of the view that not only there be a need for a fresh decision by opposite party No.1 with respect to Revision Petition No.363 of 2013, a disposal to be achieved along with Revision Petition No.1556 of 2014 considering the plea advanced by the respective parties. In view of the settled law as discussed hereinbefore on limitation and remand of a revision, the Court is inclined to restore both the proceedings for an analogous hearing and disposal according to law providing an opportunity for the petitioner to remove all such defects in the revision filed by him with regard to the Sabik Record of Rights in respect of the suit schedule properties, whether to be one and the same or separate and at the same time, proving the *locus standi* as his status as the son of late Maheswar Barik is disputed by opposite party No.6. To conclude, the Court is of the humble view that despite delay in filing of the revision by the petitioner and when the other one is of 2013, remand of which, is held not permissible, an analogous hearing of both the proceedings by opposite party No.1 would serve the purpose and meet the ends of justice.

12. Hence, it is ordered.

13. In the result, the writ petitions stand allowed with a direction to opposite party No.1 to dispose of the proceedings in Revision Petition No.363 of 2013 and Revision Petition No.1556 of 2014 after proper notices to all the parties involved followed by a decision at the earliest preferably within three months from the date of receipt of a copy of this judgment taking into account the discussions and observations made herein before and as a logical sequitur, the impugned orders dated 19th June, 2013 and 5th June, 2018 passed therein are hereby set aside.

14. In the circumstances, there is no order as to the costs.

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

Result of the case:
Writ Petitions allowed.

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2025 (II) ILR-CUT-127

RADHARANI BEHERA
V.
SITARANI SENAPATI & ANR.

[W.P.(C) NO. 5652 OF 2024]

21 APRIL 2025

[R.K. PATTANAIK, J.]

Issue for Consideration

Whether Opposite Party No.2 has complied Rule 51 of the Rules, 1965 while allowing the application for re-counting of votes.

Headnotes

ORISSA GRAMA PANCHAYATS ELECTION RULES, 1965 – Rule 51 – Recounting of votes – Petitioner has assailed the correctness of judgment passed by the District Judge in Election Appeal wherein the decision of the Election Tribunal allowing the recounting of votes has been overruled – The Opposite Party No.1 pleaded that the application for recounting of votes has not been made as per Rule 51 of the Rules i.e. the application for recounting has been made before the declaration of result – Hence, such application is not legally tenable whereas the petitioner pleaded that the application has been made after the declaration of the result – There is deficiency in evidence to accept such plea - Whether Opposite Party No.2 has complied Rule 51 of the Rules, 1965 while allowing the application for re-counting of votes.

Held: Considering the totality of the evidence on record, it shall have to be concluded that by the time of recounting of ballot papers in respect of Ward Nos. 9 & 10, the result had already been declared – So, the conclusion is also that there is due compliance of Rule 51 of the Rules – The Court holds that there has been no deviation from the Rules, while considering the request for recounting of votes - Hence, the decision of learned court below is susceptible to revision and therefore, shall have to be overturned.

(Para 22)

Citations Reference

Maria Margarida Sequeira Fernandes & others Vrs. Erasmo Jack De Sequeira, **(2012) 5 SCC 370;** Santosh Hazari Vrs. Purushottam Tiwari, **(2001) 3 SCC 179;** T.A. Ahammed Kabeer Vrs. A.A. Azeez and others, **(2003) 5 SCC 650;** P.K.K. Shamsudeen Vrs. K.A.M. Mappillai Mohindeen and others, **AIR 1989 SC 640;** Independent Sugar Corporation Limited Vrs. Girish Sriram Juneja and Others, **Civil Appeal No.6071 of 2023 disposed**

of on 29th January, 2025; A.R. Antulay Vrs. Ramdas Sriniwas Nayak and another, **AIR 1984 SC 718;** Sharif-ud-Din Vrs. Abdul Gani Lone, **AIR 1980 SC 303 – referred to.**

List of Acts

Orissa Grama Panchayats Election Rules, 1965.

Keywords

Application for recount; Recounting of votes; Compliance of Rule 51.

Case Arising From

Judgment dated 4th March, 2024 passed by the learned District Judge, Balasore in Election Appeal (FAO) No. 91 of 2023.

Appearances for Parties

For Petitioner : Mr. Goutam Misra, Sr. Adv.
For Opp. Parties : Mr. C.M. Singh, ASC, Mr. S.K. Mishra, Sr. Adv. (O.P. 1)

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant writ petition is filed by the petitioner assailing the correctness, legality and judicial propriety of the impugned judgment dated 4th March, 2024 passed in connection with Election Appeal (FAO) No.91 of 2023 vide Annexure-6 by learned District Judge, Balasore overruling the decision dated 26th September, 2023 in Election Misc. Case No. 01 of 2022 as at Annexure-4 on the grounds inter alia that the same has been rendered on an erroneous interpretation of the provisions of Orissa Grama Panchayats Election Rules, 1965 (hereinafter referred to as 'the Rules') and furthermore, in absence of any material to declare opposite party No.1 as the elected candidate to the post of Sarpanch of Grama Panchayat in question, hence, therefore, it is liable to be interfered with and set aside, thereby, upholding the findings and conclusion reached at by learned Civil Judge, Senior Division, Jaleswar.

2. Bereft of unnecessary details, the facts in brief are that pursuant to the notification dated 11th January, 2022 of the State Election Commissioner, election to the post of Sarpanch of the concerned Gram Panchayat was declared, to which, the petitioner and opposite party No.1 filed their nomination papers and it was held on 16th February, 2022 and the result was announced on 28th February, 2022 but in the meanwhile, an application for recounting by the petitioner was moved before opposite party No.2 and it was allowed and with the exercise concluded, the petitioner and opposite party No.1 found to have secured 1851 and 1949 votes respectively, as a result of which, the former was declared as the returned candidate,

whereafter, the latter challenged the election result by filing Election Misc. Case No.01 of 2022 before the Court of learned Junior Civil Judge, Jaleswar and it led to the passing of the judgment dated 26th September, 2023 as at Annexure-4. Being aggrieved by the aforesaid decision, opposite party No.1 preferred an appeal before learned District Judge, Balasore in Election Appeal (FAO) No.91 of 2023 and it was disposed of vide Annexure-6, whereby, the petitioner was unseated and in turn, she was declared elected, a decision, which is currently under challenge.

3. The pleading on record is that opposite party No.1 had herself requested for recounting of votes before the Court, nonetheless, it was allowed by opposite party No.2 on the request of the petitioner after the election and when the ultimate aim and objective of every trial is to find out and ascertain the truth and when such recount of votes revealed it, the petitioner could not have been unseated and that too, on the basis of wrong interpretation of the Rules. The further contention is that the impugned decision as per Annexure-6 reversing the judgment of the Trial Court suffers from error apparent on the face of record, as the petitioner through her polling agent had submitted an application for recount before opposite party No.2, which is a part of the Court's record but learned District Judge, Balasore failed to appreciate the same and also the margin of the votes and hence, the election result could not have been overturned morefully when the endeavor of a Court should always be to reveal the truth as technicalities should not stand on the way in view of the dictum of the Apex Court in **Maria Margarida Sequeira Fernandes & others Vrs. Erasmo Jack De Sequeira (2012) 5 SCC 370.** The further pleading on record is that the learned Court below failed to take cognizance of yet another decision of the Apex Court in **Santosh Hazari Vrs. Purushottam Tiwari (2001) 3 SCC 179,** wherein, it has been categorically held that while reversing a judgment of a Trial Court, the First Appellate Court should necessarily deal with and delve into the factual aspects of the subject matter in dispute.

4. Opposite party No.1 filed counter affidavit and denied all the averments and contentions advanced by the petitioner in the writ petition and affidavits and pleaded that the same are misconceived both in law and on facts and hence, are liable to be dismissed, especially when, the petitioner has not approached this Court with clean hands and suppressed the material facts connected to the case. The further pleading is that no application for recounting was filed in accordance with Rule 51 of the Rules after declaration of the result as per subsection(1) thereof in Form No. 8-B and the decision of opposite party No.2 for recount of the votes is, hence, illegal and untenable in law. The contention is that due to such unlawful recounting of votes allowed by opposite party No.2, which is in derogation of Rule 51, declaration of the petitioner as the winning candidate to the post of Sarpanch of the Grama Panchayat is invalid, the same having materially affected the result of the election.

5. A rejoinder affidavit is filed to the counter of opposite party No.1 and the facts earlier pleaded have been reiterated by the petitioner claiming that the

impugned decision of the learned Court below has resulted in gross miscarriage of justice as thereby she has been unseated, despite her having been democratically elected as the Sarpanch and was duly declared so at the end of election.

6. No reply affidavit is filed by opposite party No.2.

7. Heard Mr. Goutam Misra, learned Senior Advocate for the petitioner, Mr. Singh, learned ASC for the State and Mr. S.K. Mishra, learned Senior Advocate for opposite party No.1.

8. Mr. Misra, learned Senior Advocate for the petitioner cited the decisions of the Apex Court in **T.A. Ahammed Kabeer Vrs. A.A. Azeez and others (2003) 5 SCC 650** and **Maria Margarida Sequeira Fernandes** (supra) to contend that the impugned judgment as per Annexure-6 cannot be sustained in law. The contention of Mr. Misra, learned Senior Advocate is that as per the settled law in **T.A. Ahammed Kabeer** (supra), once jurisdiction to order recount found to have been rightly exercised, the Court cannot refuse to give effect to its result merely because the same is at variance with the pleadings. The further contention is that recount has been allowed by opposite party No.2 after the election was over and hence, on any such ground of erroneous procedure followed, the result of such recounting cannot be ignored. Referring to the decision in **Maria Margarida Sequeira Fernandes** (supra), Mr. Misra, learned Senior Advocate would submit that the Court's attempt is to unearth the truth and in the case at hand, as the truth stood revealed due to recounting, the decision of the Trial Court could not have been set at naught in appeal.

9. On the other hand, Mr. Mishra, learned Senior Advocate for opposite party No.1 would submit that the learned Court below did not commit any error or illegality and as such, the impugned decision is perfectly justified for the reason that no application for recount of votes was made as per the Rules and furthermore, it was permitted by opposite party No.2 and was per se illegal, since, it was prior to the declaration of election result. Due to such flagrant violation of the Rules in place, the contention of Mr. Mishra, learned Senior Advocate is that the decision of the Court of first instance was rightly set aside by learned Court below. The further contention is that even though any such application was moved by opposite party No.1 for a recount of votes before the Trial Court, it cannot justify the decision upon such recounting, which has been allowed without following the procedure contemplated under law. The argument is that if a law allows a particular thing to be done in a way, it shall have to be accomplished in that way only and not otherwise and since, opposite party No.2 having exercised the jurisdiction not in accordance with the Rules, the petitioner cannot be allowed to take advantage of the result declared and learned Court below, rightly, therefore, overturned the decision and correctly declared opposite party No.1 as the elected candidate to the post of Sarpanch. In reply and response to the plea of waiver or tacit approval to the recounting by and at the instance of opposite party No.1, it is contended that such an

argument is untenable in view of the observation of the Court in **P.K.K. Shamsudeen Vrs. K.A.M. Mappillai Mohindeen and others AIR 1989 SC 640.** It is, in fact, contended that the recounting has been ordered contrary to the statutory mandate and in particular, Rule 51 of the Rules and therefore, it cannot be given effect to and the Apex Court in the aforesaid decision held that even when counting has been ordered, the result of the same cannot influence the ultimate outcome of the election as long as the very order for such recount is illegal. With the above contentions, the decision of learned District Judge, Balasore under Annexure-6 is sought to be justified by Mr. Mishra, learned Senior Advocate for opposite party No.1.The Court recorded the submission of Mr. Singh, learned ASC for the State.

10. In **P.K.K. Shamsudeen** (supra), it is held and observed that an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced and not from the result emanating from such recount. For better appreciation and proper understanding with regard to law on recounting of votes, it would be apposite to make a mention of the relevant extract of the above decision and hence, the same is reproduced herein below:

> "13. Thus, the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hindsight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot, the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the re-count of votes being ordered by the Election Tribunal and in the interest of justice, a Tribunal or Court should not order the recount of votes."

11. In the above decision, the petitioner therein neither made any such averments in the election petition filed under the Tamil Nadu Panchayats Act, 1958 nor adduced evidence of any such nature as could have made the Tribunal reach at a prima facie satisfaction that there was adequate justification for the secrecy of ballots being breached and the factors, such as, the elected candidate had accepted the correctness of the recount and that, he had conceded his defeat and wanted a reelection to be held cannot constitute justifying material in law for the initial order of recount of votes. Such is the view of the Apex Court with a conclusion that the order of recount of votes cannot validate an election outcome, if recounting was held but without any basis or justification. In the aforesaid case, the Tribunal's order of recount of votes was allowed in absence of any specific averments and production of evidence and hence, under such circumstances, the Apex Court had the occasion to

hold that the exercise of jurisdiction and the order of recount cannot be justified, even though, the elected candidate accepted the correctness of the same and did not challenge it.

12. In the case at hand, recount of votes was even applied for by opposite party No.1 before the Trial Court but the same was disallowed. It is brought to the notice of the Court that such recounting was requested on occasions more than once but opposite party No.1 was unsuccessful and it was never challenged thereafter and according to Mr. Misra, learned Senior Advocate for the petitioner, it would amount to a waiver. The recount of votes was allowed by opposite party No.2 rather and such an exercise actually reversed the outcome as opposite party No.1 polled less numbers of votes than the petitioner. The challenge to the decision on recount of votes is based on the following grounds, such as, for the said purpose, no application was made by the petitioner as per and in accordance with Rule 51 of the Rules and secondly, the request for the same was received before the election result was declared.

13. Mr. Mishra, learned Senior Advocate for opposite party No.1 refers to the record and decision of the learned Court below with regard to the very admission of the petitioner for having requested for recounting before the result was announced. The contention is that when the Rules have not been followed and there has been illegality committed by opposite party No.2 on recount of votes, the result of such recounting cannot be allowed to prevail upon and influence the result of such election.

14. In **T.A. Ahammed Kabeer** (supra), the law on recount of votes has been discussed and reaffirmed the decision that a Court would permit recounting only upon a clear case having been made out. It is profitable to Court the law discussed by the Apex Court on the aforesaid point and it is as hereunder:

> "28. It is true that a recount is not to be ordered merely for the asking or because the court is inclined to hold a recount. In order to protect the secrecy of ballots, the court would permit a recount only upon a clear case in that regard having been made out. To permit or not to permit a recount is a question involving jurisdiction of the court. Once a recount has been allowed, the court cannot shut its eyes on the result of recount on the ground that the result of recount as found is at variance with the pleadings. Once the court has permitted recount within the well-settled parameters of exercising jurisdiction in this regard, it is the result of the recount, which has to be given effect to.
>
> 29. So also, once the court exercises its jurisdiction to enter into the question of improper reception, refusal or rejection of any vote, or the reception of any vote which is void by reference to the election result of the returned candidate under Section 100 (1)(d)(iii), as also as to the result of the election of any other candidate by reference to Section 97 of the Act and enters into scrutiny of the votes polled, followed by recount, consistently with its findings on the validity or invalidity of the votes, it cannot refuse to give effect to the result of its findings as to the validity or

> invalidity of the votes for the purpose of finding out the true result of recount though the actual finding as to validity or otherwise of the votes by reference to number may be at variance with the pleadings. In short, the pleadings and proof in the matter of recount have relevance for the purpose of determining the question of jurisdiction to permit or not to permit recount. Once, the jurisdiction to order recount is found to have been rightly exercised, thereafter, it is the truth as revealed by the result of recounting that has to be given effect to."

15. The ratio decided in the above case is that if upon exercise of jurisdiction with a satisfaction that the question of improper reception, refusal or rejection of any votes, recounting has taken place and a Court enters into the scrutiny of votes polled following recount, it cannot thereafter refuse to give effect to the result thereof, though, the actual finding as to the validity or otherwise may be at variance with the pleadings on record. The decision (supra) is in a way not applicable for the reason that such is not the case herein that the recounting has been ordered by the Court of first instance and subsequently, the outcome of such recount is found to be inconsistent with the pleading of the petitioner. An analogy is sought to be drawn by Mr. Misra, learned Senior Advocate for the petitioner on the premise that the result after recounting, since revealed the truth, should not be disturbed. The challenge is, rather, to the process followed by opposite party No.2 in allowing the recount of votes without proper application filed. In the aforesaid decision, the claim was found factually different than on pleading and it was revealed at the end upon recounting of votes and under such circumstances, the Apex Court held that the result with such findings on recount cannot be ignored even though the original claim was not in consonance with the pleading on record.

16. The other decision referred to hereinbefore in **Maria Margarida Sequeira Fernandes** (supra) was in the context of a gratuitous possession being the basis for seeking injunction and therein, the Apex Court held and observed that truth is a guiding star in the judicial process and such was the observation as against the background of facts that the appellant therein claimed to be not in possession of her own property for more than two decades despite her having a valid title over the same. However, with due respect, the Court is of the view that the above case law has no relevance in the present set of facts. If the contention of Mr. Misra, learned Senior Advocate for the petitioner would be accepted with reference to the decision (supra), it would mean and suggest that recounting by a Court even in absence of any evidence of compulsive nature and a prima facie case made out for recounting, the decision towards the same would have to be validated upon result of it being received. If a foundation is laid and thereafter, recount of votes is permitted and subsequent there to, the result is found to be different than the original claim of the petitioner, it is not to affect such result. In other words, the result of recounting shall have to be accepted irrespective of the pleadings on record found to be at variance, which is what has been held by the Apex Court in **T.A. Ahammed Kabeer** (supra).

17. Learned Court below overruled the decision in favour of the petitioner predominantly referring to Rule 51 of the Rules and her admission in the show cause to the effect that the request for recount of votes was made prior to the declaration of result. Upon a reading of the evidence led by the respective parties, it is made to reveal that upon dissatisfaction with regard to the counting of votes in respect of Ward Nos.9 & 10, such an application was moved by the petitioner's husband, he being her polling agent. In the show cause of the petitioner, it is pleaded that after counting of total votes polled and before declaration of result, request was made to opposite party No.2 for recounting and the latter being satisfied with the complaint, exercised the discretion and allowed it. Such claim of the petitioner heavily weighed in the mind of the learned Court below to reach at a conclusion that recounting of votes was demanded at a time, when the result was not declared. But, from the very reading of the evidence of the petitioner examined as OPW.2, it would appear that after the counting was over and it was known to both the sides with respect to the total votes polled that she requested for recounting. The dispute is over the fact that the result had not been declared by then, when recounting was entertained and ordered. From the evidence of record, it would further reveal that there was declaration of election result revealing the total numbers of votes polled by each of the candidates, as per which, the petitioner secured 1850 of votes and opposite party No.1 polled 1854. The declaration is claimed to be as per Form No.8-B. That apart, opposite party No.2 filed a show cause before the learned Civil Judge, Jaleswer and claimed that the result had been published and then, the recounting of votes was held. A copy of the result sheet is marked as Ext.1 from the side of opposite party No.1 and the same revealed more number of votes polled by her than the petitioner and the election result was declared on 28th February, 2022. Even though, such is the show cause to the effect that the request for recount of votes was made before the declaration of result but as per the petitioner examined as OPW.2, the result sheet i.e. Ext.1 proved it otherwise. The contention of opposite party No.2 with a show cause reply is that the recount of votes was held after the result was announced and declared in Form No.8-B. If any such request was made to opposite party No.2 for recounting before the result was declared, the total numbers of votes polled by the candidates would not have been made known to the candidates in the fray.

18. Without any doubt, Rule 51 of the Rules insists upon that recount of votes is to be entertained after the declaration of the election result. It is also statutorily mandated that an application for recounting shall have to be made to the Election Officer after such result was announced. In the case of the petitioner, it is pleaded that there was such a request in writing received by opposite party No.2 in the evening hours of the Election Day and the same is proved with an endorsement thereon. A copy of the application for recounting of votes is marked as Ext. B by the petitioner and her signature over the same as Ext. A. If such is the evidence on record, it would not be proper to entertain any serious doubt regarding such request by the petitioner for recounting to have been made in writing, as is claimed by

opposite party No.1. Upon considering the evidence as a whole, it has to be held that for recount of votes, an application was received by opposite party No.2 and it was not before the declaration of result but sometime, thereafter. Too much importance and reliance has been given to the show cause of the petitioner and for such admission that recounting of votes was applied before the result was declared. Considering the materials on record, one could reach at a conclusion that there was declaration of the election outcome with the result sheet released and thereafter, the recount of votes was entertained. In absence of any specific evidence to the contrary that by the time, the result was declared on 28th February, 2022, opposite party No.2 had already received the request for recount, rather, on the basis of the materials on record, it has to be concluded that the same was only after its announcement and not at any time before.

19. Though, the Court is not inclined to accept the grounds advanced from the side of the petitioner, it is still in favour of overruling the conclusion reached at by learned court below for the reasons discussed herein before besides the following, hence, needs further elaboration. One of the grounds already discussed is that the recounting of votes at the instance of opposite party No.1 held and carried out by opposite party No.2 was without any application in writing as per Rule 51 of the Rules but on a careful reading of the evidence received from both the sides, it is reiterated that an application was received from the petitioner, the fact which was admitted by opposite party No.2. In fact, in the counter filed by opposite party No.2 before the court of learned Civil Judge, Jaleswar, it is specifically stated that such an application was received by him for recounting of votes only in respect of Ward Nos.9 & 10 and so was held. Even a copy of the application was marked as Ext. B from the side of the petitioner shown to have been received from the petitioner. It has been a denial from opposite party No.1 that recounting of votes in respect of the concerned Wards was entertained by opposite party No.2 without an application in writing as mandated under law. On an overall reading of the entire evidence including the stand of opposite party No.2, it is evident that recounting of votes for the Wards in question at the behest of the petitioner was held only after receiving an application in writing from her husband. So, therefore, such a contention from the side of opposite party No.1 is totally misplaced. The further ground of challenge are to the following, namely, no justifiable ground existed for opposite party No.2 to allow recounting of votes besides the one that it was held when the result of the election was yet to be declared. The above grounds are indeed with reference to Rule 51 of the Rules. It is claimed by opposite party No.1 that opposite party No.2 was to assign reasons in writing as per Rule 51(4) of the Rules before allowing the votes to be recounted in respect of Ward Nos. 9 & 10. Even, though, such is the ground raised by opposite party No.1, no specific evidence was led in support thereof that opposite party No.2 did not have any reason to direct recounting of votes. Whereas, opposite party No.2 pleaded in the counter that upon receiving the application from the petitioner, recounting of votes was allowed apparently on a subjective

satisfaction being reached at, in that regard. It was for opposite party No.1 to confront opposite party No.2 demanding the latter to submit such evidence in support of the plea that there were just reasons to allow further counting of votes. It was never confronted to opposite party No.2 at the time when the evidence was received in the election proceeding. An attempt should have been made by opposite party No.1 with such confrontation made to opposite party No.2 to convince the Court that there was no such reasons ever existed for the votes to be recounted. So, therefore, in absence of any such material on record, the inevitable conclusion would be to the effect that opposite party No.2 was fully satisfied with the request for recounting of votes, he having received the application therefor. Hence, with the evidence on record received from both the sides, without any specific material regarding such a claim to have been proved prima facie, the only view one could subscribe that opposite party No.2 rather had the reasons to allow counting of votes in respect of the Wards on a request received from the petitioner.

20. The second limb of argument is that the recounting of votes was received and allowed at a stage, it was premature and the same was before declaration of the result of the election and as earlier discussed, learned court below considered the same to be a plea sufficient to disallow the further counting of votes with a conclusion that opposite party No.2 committed an illegality as a result. As far as, Rule 51 of the Rules is concerned, as per sub-rule (2) thereof, a candidate or in his absence, the polling agent may apply in writing to the Election Officer to recount the votes either wholly or in part stating the grounds for the same but it shall be after declaration of the result under sub-rule (1) as per Form Nos.8 and 8-B. Such is the procedure, which is clearly stipulated in Rule 51 of the Rules, which means recounting of votes requested by one of the parties to the election to the post of Sarpanch shall have to be entertained with the publication of result sheet as per Form No.8-B. In the case, at hand, the claim is that before the result was declared, the application for recounting of votes was received but the same was vehemently denied by the petitioner and opposite party No.2. As earlier stated, learned court below overruled the decision of learned Civil Judge, Jaleswar only upon the ground that opposite party No.2 allowed recounting of votes when the election process was not over with the declaration of its result as statutorily required in terms of Rule 51(2) of the Rules.

21. Law is well settled that a particular procedure shall have to be followed in a way, the same is prescribed. The Apex Court in **Independent Sugar Corporation Limited Vrs. Girish Sriram Juneja and others** in Civil Appeal No.6071 of 2023 disposed of on 29th January, 2025 discussed in detail with a earlier case laws on the above principle referring to the decision in **A.R. Antulay Vrs. Ramdas Sriniwas Nayak and another AIR 1984 SC 718** and held that one should be mindful of the legal doctrine that where a statute requires to do a certain thing in a certain manner, it must be done in that particular manner or not done at all. One more decision in

Sharif-ud-Din Vrs. Abdul Gani Lone AIR 1980 SC 303 referred to therein, it is held that in order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question has to subserve and its design and the context in which it is enacted; if the object of a law is to be defeated by non-compliance with it, the same has to be regarded as mandatory; whenever, a statute prescribes a thing to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.

22. The contention of Mr. Mishra, learned Senior Advocate for opposite party No.1 is that opposite party No.2 failed to advert to the above doctrine since the recounting of votes was allowed before the election result was declared. The ground of challenge is that when the petitioner was not aware of the result of the election, a plea for recounting of votes could not have been held to be justified but still, it was allowed by opposite party No.2. In the earlier part of the judgment, the Court held that the votes have been recounted after the result was declared in Form 8-B. Such a conclusion was reached by the Court after taking judicial notice of the evidence on record in its entirety. As stated before, opposite party No.2 in the counter filed before the Court clearly and categorically pleaded that the result was declared in respect of the GP with opposite party No.1 having secured more number of votes than the petitioner, whereafter, the application for further counting was received and the same was entertained. If the evidence of opposite party No.1 as PW.1 is gone through, it would again reveal that as per the result sheet, she secured 1854 votes as against 1850 polled in favour of the petitioner. In fact, the evidence is to the effect that opposite party No.2 declared opposite party No.1 as the Sarpanch of the GP but at the same time, it is deposed that before declaration of the result, without any proper application, the recounting of votes/ballots was allowed. On the one hand, it is claimed that the result was declared with such evidence received from opposite party No.1 as PW. 1 on the other hand, the claim is that the result was not yet declared, by the time, when recounting was allowed and that too, without any application filed and received from the petitioner. The earlier discussion reveals that the petitioner through her husband, namely, polling agent had requested opposite party No.2 with an application filed seeking recounting of votes. If such an application had been received by opposite party No.2 and as according to opposite party No.1 in her affidavit evidence that the same was after the result was announced and she was declared the Sarpanch of the GP, the conclusion would be that the result was known to both the sides and was announced with the result sheet in Form No.8-B being published. Interestingly, a copy of the result sheet is marked as Ext.1 by opposite party No.1. Rather, it is made to suggest from the evidence received from the side of opposite party No.1 that there was declaration of the result as per Ext.1 and thereafter, the recounting of votes was held. The evidence of opposite party No.1 further reveals that she had even requested for recounting of votes ballot

papers. In so far as, Ward Nos.9 & 10 are concerned, on a perusal of Exts.5, 6 and 7, it would be revealed that on account of such votes being recounted, opposite party No.1 polled less number of votes, than earlier secured by her. As concluded before, learned court below was influenced by the show cause of the petitioner, wherein, it was pleaded that after counting of total votes hold but before declaration of the result, since, was dissatisfied with the process of votes being polled in favour of the parties, had requested opposite party No.2 for recounting and after the latter was satisfied, the said exercise was carried out. As, it is already mentioned earlier, opposite party No.2 out rightly declined any such receiving application by him before the announcement of the result of the election. According to the Court, the entire evidence is to be examined with reference to the pleadings on record. From the evidence of opposite party No.1, as discussed before, the total number of votes polled by her and the petitioner was known to them with the result sheet issued as per Form No.8-B. In fact, there is deficiency in evidence to accept any such plea of opposite party No.1 that before the result was declared opposite party No.2 had already received the application. In view of the denial of opposite party No.2 in categorical terms and evidence of opposite party No.1 to the effect that the result was declared and she was announced as the Sarpanch of the GP, it is difficult to accept such a plea. Rather, the evidence is suggestive of the fact that a request in writing was received from the petitioner and the recounting was held after the result of the election was published. It could be that the petitioner may have requested for further counting after counting of ballot papers with informal declaration of result and before the result sheet was published. But then, it would be an assumption to claim that the request for recounting of votes was not ripe and hence, was premature. But, considering the totality of the evidence on record, it shall have to be concluded that by the time of recounting of ballot papers in respect of Ward Nos.9 & 10, the result had already been declared. So, the conclusion is also that there is due compliance of Rule 51 of the Rules. The Court holds that there has been no deviation from the Rules, while considering the request for recounting of votes. Hence, the decision of learned court below is susceptible to revision and therefore, shall have to be overturned.

23. At the cost of repetition, it is reiterated that a law has to be followed scrupulously without any dilution with a proof on record that there is substantial compliance of the same. It is not that a rule of law is defeated and still recounting of votes to be justified blindly following the catchphrase-‘truth must prevail’. According to the Court, the truth is to really prevail but it should not be at the cost of a law to apply and govern and despite substantial prejudice being caused to the adversary. Having said that and considering the material evidence and the rival contentions advanced, the ultimate view of the Court is that the decision of learned Civil Judge, Jaleswar is to be upheld.

24. Hence, it is ordered.

25. In the result, the writ petition stands allowed. As a necessary corollary, the impugned judgment dated 4th March, 2024 passed in Election Appeal (FAO) No.91 of 2023 under Annexure-6 by learned District Judge, Balasore is hereby set aside, thereby, affirming the decision dated 26th September, 2023 in Election Misc. Case No. 01 of 2022 as at Annexure-4. However, in the circumstances, there is no order as to costs.

Headnotes prepared by :
Sri Jnanendra Ku. Swain (Judicial Indexer)
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case :
Writ petition allowed.

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2025 (II) ILR-CUT-139

PRALOV PARIJA
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 15567 OF 2024]

16 APRIL 2025

[ADITYA KUMAR MOHAPATRA, J.]

Issue for Consideration

Whether withholding of retirement dues in absence of any proceeding is sustainable under the law.

Headnotes

SERVICE JURISPRUDENCE – Withholding of retirement dues – Petitioner challenges the order of withholding the retirement dues to the tune of ₹25,29,028.00 – No proceeding was pending at the time of retirement of the petitioner from the service – There is no dispute that the show cause notice was issued to the petitioner after his retirement from service – Whether withholding of retirement dues in absence of any proceeding is sustainable under the law.

Held: No – It is the settled position of law that without initiating a proceeding against the present Petitioner the Opposite Party-Corporation could not have withheld the amount as is due and admissible to the Petitioner on his retirement since such a conduct would be absolutely illegal and void.

(Para 11)

This Court is of the view that the order dated 07.12.2023 under Annexure-1 is unsustainable in law – Similarly, the conduct of the Opposite

Parties in withholding the dues of the Petitioner is absolutely illegal as the same does not adhere to the established principle of service jurisprudence.

(Para 12)

Citations Reference

Shyama Sundar Sahoo v. Odisha State Warehousing Corporation and Another, **W.P.(C) No. 21066 of 2024 decided on 06.03.2025;** Satyanarayan Sahu v. State of Odisha and Others, **W.P.(C) No.4141 of 2016 decided on 15.12.2022– referred to.**

List of Acts

Constitution of India, 1950

Keywords

Show cause notice; Departmental proceeding; Retirement; Retiral dues.

Case Arising From

Order of rejection dated 07.12.2023 passed by Managing Director, Odisha State Ware Housing Corporation (OSWHC) as well as order dated 01.03.2023 passed by Secretary, OSWHC.

Appearances for Parties

For Petitioner : Mr. Rudra Narayan Parija

For Opp. Parties : Mr. M.R. Patra, ASC (For O.P.1),
Mr. Braja Kishore Sahoo (For O.P.3)

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. Heard the learned counsel for the Petitioner as well as the learned counsel for the Opposite Party No.3-Orissa State Ware Housing Corporation. Perused the pleadings of the respective parties as well as the documents annexed thereto. Counter affidavit filed by the Opposite Party No.3-Corporation in Court today is taken on record.

2. By filing the present writ petition, the Petitioner seeks to challenge the order of rejection dated 07.12.2023 passed by the Opposite Party No.2-Managing Director, Odisha State Ware Housing Corporation, Bhubaneswar as well as the order dated 01.03.2023 passed by the Opposite Party No.3-Secretary, Odisha State Warehousing Corporation, Bhubaneswar thereby withholding the retirement dues of the Petitioner to the tune of Rs.25,29,028.00 under Annexure-2 and for a further direction to the Opposite Parties to release such amount in favour of the Petitioner forthwith.

3. The case of the Petitioner, as has been pleaded in the writ petition, is that originally the Petitioner entered into the service in the year 1995 and joined as Assistant Superintendent under Opposite Party No.2-Corporation. Thereafter, on attaining the age of superannuation the Petitioner has retired from service w.e.f. 31.07.2022. Several months after the retirement of the Petitioner from service, the Opposite Party-Corporation issued a notice of show cause to the Petitioner under Annexure-4 to the writ petition on 03.02.2023. The Petitioner filed his reply promptly on 07.02.2023. Despite the reply of the Petitioner, the Opposite Parties, denying all the allegations, have withheld the C.P.F. dues of the Petitioner to the tune of Rs. 25,29,028.00 vide order dated 01.03.2023.

4. Being aggrieved by such conduct of the Opposite Parties, the Petitioner approached this Court by filing W.P.(C) No.30257 of 2023. This Court, vide order dated 04.10.2023, disposed of the said writ petition by granting liberty to the Petitioner to approach the Opposite Party No.2 by filing a detailed representation with a corresponding direction to the Opposite Party No.2 to consider the same in accordance with law and to dispose of the same within a stipulated period of time. Further, while disposing of the previous writ petition, this Court has also observed that in the event the Opposite Party No.2 found that no inquiry or proceeding has been initiated against the Petitioner and in the absence of any other legal impediment, the Opposite Party No.2 shall take steps to disburse the retiral dues of the Petitioner as expeditiously as possible. After disposal of the writ petition, the Petitioner approached the Opposite Parties by filing a representation on 12.10.2023 under Annexure-9 to the writ petition.

5. Learned counsel for the Opposite Party-Orissa State Ware Housing Corporation, at this juncture, contended that the representation of the Petitioner was considered pursuant to the order passed by this Court on 04.10.2023 in the earlier writ petition. He further contended that by passing a speaking and reasoned order, the representation of the Petitioner has been disposed of vide order dated 07.12.2023 under Annexure-1 to the writ petition. Learned counsel for the Opposite Party-Corporation further contended that since the Corporation has suffered a loss which very well relates to the period during which the Petitioner was In-Charge of Store, as such the loss amount is to be recovered from the Petitioner since the job of safe keeping of the stored items in the warehouse was the responsibility of the Petitioner.

6. Learned counsel for the Opposite Party No.3 further contended that initially an opportunity was provided to the Petitioner to file his reply by issuing show cause notice to the Petitioner and it is only after considering such reply, a decision has been taken to withhold the retiral dues of the Petitioner to the tune as has been indicated hereinabove. He further contended that the aforesaid facts are evident from the order dated 07.12.2023 which has been filed as Annexure-1. In such view of the matter, learned counsel for the Opposite Party-Corporation contended that the

Opposite Party-Corporation has not committed any illegality in rejecting the representation of the Petitioner.

7. In reply to the aforesaid contention of the learned counsel appearing for the Opposite Party-Corporation, learned counsel for the Petitioner emphatically argued that before issuing an order of recovery, the Opposite Parties have not conducted any proceeding. He further submitted that a show cause notice was issued to the Petitioner after several months of his retirement. Therefore, the fact that no proceeding was pending at the time of retirement of the Petitioner from service is not disputed by anybody. Learned counsel for the Petitioner further contended that no disciplinary/departmental proceeding could have been initiated against the Petitioner after his retirement from service.

8. In the aforesaid context, learned counsel for the Petitioner referred to the judgment of this Court in ***Shyama Sundar Sahoo v. Odisha State Warehousing Corporation and another (W.P.(C) No.21066 of 2024*** decided on 06.03.2025) and submitted before this Court that in respect of the very same Corporation and involving an identical issue, this Court has already taken a view that no proceeding can be initiated after retirement of the employee, as the same is not permissible in the relevant service rules. In paragraph-21 of the aforesaid judgment, it has been held that:

> *"In view of the aforesaid finding that no Disciplinary Proceeding was initiated against the Petitioner either while he was in service or after his retirement, this Court has no hesitation to hold that no such proceeding could have been initiated against the Petitioner as the Regulation, 1985 does not permit initiation of any such proceeding against an employee after his retirement. Thus, this Court holds that no proceeding whatsoever has been initiated against the Petitioner before imposing a major penalty in shape of Regulation 18(1)(iv). Moreover, no penalty under Regulation -18 can be imposed without initiating a proceeding for imposition of a major penalty. Therefore, the impugned order dated 21.08.2023 under Annexure-6 is completely without jurisdiction and the same is liable to be quashed. Accordingly, the same is hereby quashed."*

Therefore, referring to the aforesaid judgment, the learned counsel for the Petitioner contended that the conduct of the Opposite Parties in withholding the retiral dues of the Petitioner to the tune as has been indicated hereinabove is illegal and arbitrary and not in conformity with the relevant service rules.

9. Learned counsel for the Petitioner further referred to a decision of this Court in the matter of ***Satyanarayan Sahu v. State of Odisha and others*** (W.P.(C) No.4141 of 2016 decided on 15.12.2022. On perusal of the said judgment, it appears that the dispute involved in the said case is somewhat similar to the facts involved in the present writ petition. In the aforesaid writ petition, the very same Corporation, as in the present matter, was the Opposite Party in the said case. In SatyanarayanSahu's case (*supra*), the dispute was regarding illegal withholding of retiral dues to the tune of Rs.14,59,116/- by the Opposite PartyCorporation. The coordinate Bench of this

Court, vide judgment dated 15.12.2022, after analyzing the facts and legal position in detail, allowed the writ petition and the impugned communication dated 10.04.2014 was quashed and Opposite Parties were directed to release the retiral dues of the Petitioner within a period of four weeks along with the interest @ 10% from the date it became due till the date of actual payment.

10. Having heard the learned counsels appearing for the respective parties and on a careful analysis of the factual background of the present case, this Court is of the view that in the present writ petition, the issue that is required to be adjudicated by this Court is as to whether the conduct of the Opposite Parties in withholding a sum of Rs.25,29,028.00 is supported by any statutory sanction? Admittedly, as has been argued by the learned counsels appearing for the parties, there is no dispute that the shows cause notice was issued to the Petitioner after his retirement from service. Thus, there is no doubt in coming to a conclusion that at the time of retirement, no proceeding whatsoever was pending against the present Petitioner.

11. Moreover, in view of the judgment of this Court referred to hereinabove, no proceeding is initiated against the Petitioner after his retirement from service. It is also settled position of law that without initiating a proceeding against the present Petitioner the Opposite Party-Corporation could not have withheld the amount as is due and admissible to the Petitioner on his retirement since such a conduct would be absolutely illegal and void. Moreover, on a careful scrutiny of the office order dated 07.12.2023, this Court observes that the justification/reasoning that has been given for withholding the retirement benefit of the Petitioner is not convincing and that on the basis of such reasoning, it cannot be said that the Petitioner is responsible for the loss, if any, sustained by the Corporation. At least there is no such finding which is of binding nature that the Petitioner is to be blamed for such loss sustained by the Corporation.

12. In view of the aforesaid analysis of facts as well as the legal position, this Court is of the view that the order dated 07.12.2023 under Annexure-1 is unsustainable in law. Similarly, the conduct of the Opposite Parties in withholding the dues of the Petitioner is absolutely illegal as the same does not adhere to the established principle of service jurisprudence.

13. In the aforesaid facts and circumstances, this Court has no hesitation in quashing the impugned order dated 07.12.2023 under Annexure-1. Accordingly, the same is hereby quashed. Further, the Opposite Parties are directed to sanction and disburse the retiral dues of the Petitioner as is due and admissible to him within a period of six weeks from the date of communication of a certified copy of this judgment along with 6% interest thereon from the date it became due till the date of actual payment.

14. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition allowed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-144

Dr. RABI NARAYAN DHAR
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 21060 OF 2024]

16 APRIL 2025

[ADITYA KUMAR MOHAPATRA, J.]

Issue for Consideration

Whether rejection of an application for voluntary retirement on the ground of larger public interest is sustainable.

Headnotes

ODISHA CIVIL SERVICES (PENSION) RULES, 1992 – Rule 42(1) – Petitioner made representation seeking voluntary retirement from service along with grant of all consequential retirement benefits – State government rejected the representation on the ground that it will affect larger public interest and there is dearth of faculties in medical colleges – Whether rejection of an application for voluntary retirement on the ground of larger public interest is sustainable.

Held: No – The case of the Petitioner is to be considered in the light of the provisions contained in Rule 42 of the OCS (Pension) Rule 1992 – Moreover, such Rule doesn't provide for a window to the Opposite Parties to take into consideration any other factor while considering the VRS application of the Petitioner. (Para 33)

This Court has no hesitation in coming to a conclusion that the Opposite Parties have committed an illegality by rejecting the application of the Petitioner seeking VRS from service – On such grounds, the writ application filed by the Petitioner is bound to succeed – Accordingly, the impugned orders under Annexure-14 dated 08.02.2024 and under Annexure- 15 dated 09.02.2024 are hereby quashed. (Para 35)

Citations Reference

State of Uttar Pradesh v. Achal Singh, **(2018) 17 SCC 578;** State of Haryana & ors. vs. S.K. Singhal, **(1999) 4 SCC 293;** Dr. Manoranjan Mallik v. State of Odisha & Ors., **W.P. (C) No. 9003 of 2024 – referred to.**

List of Acts

Odisha Civil Services (Pension) Rules, 1992; Right to Information Act, 2005; Constitution of India, 1950.

Keywords

Voluntary retirement; Rejection; Larger public interest; Dearth of faculties; Consequential retirement benefits.

Case Arising From

Order dated 08.02.2024 passed by State Government as well as Consequential Order dated 09.02.2024 passed by the Director, PGIMER, Capital Hospital, Bhubaneswar.

Appearances for Parties

For Petitioner : Mr. Sameer Kumar Das
For Opp. Parties : Mr. U.C. Jena, A.S.C.

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. The Petitioner has filed the present writ application with a prayer to quash the order dated 08.02.2024 of the OP No.1- State Government, under Annexure-14 and the consequential order dated 09.02.2024 of the OP No.3- Director, PGIMER, Capital Hospital, Bhubaneswar, under Annexure- 15 and further to direct the OP No.1- State Government to allow the Petitioner to avail voluntary retirement from his service along with grant of all consequential retirement benefits.

FACTS

2. The factual background leading upto filing of this writ application as pleaded by the Petitioner, in gist is that, the Petitioner started his service as an Asst. Surgeon in Class-II service under Odisha Medical and Health Services (*hereinafter*, "OHMS") cadre on 01.07.1996. Thereafter, he was selected and recommended by the Odisha Public Service Commission (*hereinafter*, "OPSC") for appointment as a Lecturer (Junior Teacher) in Orthopaedics Surgery and was posted at SCB Medical College and Hospital, Cuttack (*hereinafter*, "SCBMCH, Cuttack") on 14.02.2003. Pursuant to the recommendation of OPSC, the Petitioner joined in the OMES cadre

with continuity of his past service and with pay protection and other benefits on 17.02.2003.

3. In the course of employment, the Petitioner was posted to different medical colleges by transfer and worked as Asst. Professor and Associate Professor at SCBMCH, Cuttack and VIMSAR, Burla respectively. Subsequently, the Petitioner was promoted to the post of Professor in Orthopedics on 20.10.2020 and he joined as Professor in Orthopedics, at B.B. Medical College and Hospital, Koraput on 21.10.2020.

4. Finally, after rendering his services as a doctor for decades, the Petitioner submitted application for voluntary retirement in terms of ***Rule-42 of Odisha Civil Services (Pension) Rules, 1992*** on 27.12.2023, citing health ailment and some private/personal difficulties. The application for voluntary retirement was forwarded to OP No.3 Director, PGIMER, by letter no. 278 dated 27.12.2023. On receipt of the application for voluntary retirement of the Petitioner, OP No.3- Director, PGIMER, transmitted it to OP No. 2- DMET, and eventually, OP No.2- DMET, forwarded the application for voluntary retirement of the Petitioner to OP No.1- State Government, for its acceptance with a specific note that, the Petitioner has completed more than 27 years of Government service and that there is no departmental or criminal proceeding pending against the Petitioner, by letter dated 20.01.2024.

5. While recommending the application for voluntary retirement of the Petitioner from Government service, the OP No.2- DMET in Memo no. 1018 dated 20.01.2024 directed OP No.3- Director, PGIMER, to furnish the original medical certificates pertaining to the treatment of the Petitioner, the information with regard to pendency of departmental/ vigilance proceeding against the Petitioner and the original service book of the Petitioner for verification. Complying with the aforesaid direction, OP No.3- Director, PGIMER, by its letter no. 535 dated 08.02.2024, directed the Petitioner to comply with the directions of the OP No.2- DMET. The Petitioner instantly produced all the required papers on the very same date before OP No.3- Director, PGIMER and resultantly, OP No.03- Director, PGIMER, transmitted the required information and documents to OP No.2- DMET, by its letter no. 537 dated 08.02.2024.

6. But before receipt of the required documents as submitted by the Petitioner, OP No.1- State Government, rejected the representation of the Petitioner for voluntary retirement from government service, by its letter no. 3796 dated 08.02.2024, on the ground that it will affect larger public interest and there is dearth of faculties in medical colleges. The aforesaid decision of OP No.1- State Government, was communicated to the Petitioner by OP No.3- Director, PGIMER, by letter no. 548 dated 09.02.2024. Being aggrieved by the rejection of his application under Rule- 42 of OCS (Pension) Rules, 1992, for voluntary retirement, the Petitioner has filed the present writ application.

7. Heard Mr. Sameer Kumar Das, learned counsel representing the Petitioner and Mr. UC Jena, learned Additional Standing Counsel. Perused the writ application and the documents annexed thereto.

SUBMISSIONS FOR THE PETITIONER

8. Mr. Sameer Kumar Das, learned counsel representing the Petitioner, at the outset submitted that, the order of OP No.1 dated 08.02.2024, rejecting the application of the Petitioner for voluntary retirement is illegal, arbitrary, whimsical and discriminatory. It was submitted that ***Rule- 42 of the OCS (Pension) Rules, 1992***, provides that a person at any time after completion of 20 years of government services, may by submitting a notice of not less than 3 months, to the appointing authority, apply for voluntary retirement from service. He further added that, it is also specifically provided in the proviso of the Rule that the appointing authority generally accepts all such applications where there is no disciplinary proceeding or a criminal proceeding pending or contemplated against a government servant for imposition of major penalty.

9. Thereafter, Mr. Das drew the attention of the court to ***Rule- 42 of the OCS (Pension) Rules, 1992***, which reads as-

> **"42.Voluntary Retirement on completion of 20 years Qualifying Service-**
>
> (1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.
>
> (2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority.
>
> NOTE-Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case or (b) in which prosecution is contemplated or have launched in a Court of Law against the Government servant concerned. If it is proposed to accept the notice of voluntary retirement in such cases, approval of the Government should be obtained:
>
> Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date that of expiry of the said period.
>
> (3)(a) A Government servant desirous of retiring under sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reason therefor.
>
> (b) On receipt of a request under clause (a), the appointing authority subject to the provision of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if he is satisfied that the curtailment

of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) This rule shall not apply to a Government servant who retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation-For the purpose of the rule the expression "appointing authority" shall means the authority which is competent to make appointment to the service or post from which Government servant seeks voluntary retirement

(5) The qualifying service as on the date of intended retirement of the Government servant retiring under this rule, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not any case exceed twenty five years and it does not take him beyond the date of superannuation with effect from 01.12.2008. (Vide Finance Department Notification No.24142/F., dtd.04.09.2015)

(6) The pension and retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as specified under rule 48 and the increase not exceeding five years in his qualifying service not entitle him to any notional fixation of pay for the purposes of calculating pension and gratuity."

Mr. Das, submitted that, on a plain reading of Rule- 42(1) & (2) and the note appended thereto, it can be concluded that acceptance of the application for voluntary retirement is a rule, but the rejection thereof is an exception to the general rule. Only in the event of pendency of disciplinary or criminal proceeding, application for voluntary retirement may be rejected or denied. He further contended that there is no other ground available to the appointing authority under the Rule- 42 to reject an application for voluntary retirement except on pendency of any proceeding or that the employee concerned has not completed 20 years of service. It was submitted by Mr. Das that, the Petitioner has uninterruptedly and without any blemish, has competed 27 years of service under the State Government and he has an unblemished service record, and that the case of the Petitioner complies with all the statutory requirement for availing voluntary retirement and he has an unblemished service record with no criminal or departmental proceeding either initiated or pending against him. Therefore, the OP No.1- State Government had no legal reason to reject the case of the Petitioner seeking voluntary retirement from service.

10. Learned counsel for the Petitioner further contended that, the ground assigned for rejection of the application of the Petitioner for voluntary retirement was that, there is involvement of larger public interest owing to dearth of faculties in the Government Medical Colleges and Hospital and P.G. Institutes of the State, are absolutely baseless and unwarranted. He further substantiated the grounds, by

stating that ***Rule- 42*** doesn't prescribe "larger public interest" as a ground for rejecting application of voluntary retirement. He further argued that, even if without conceding, but admitting only for argument sake, that such ground of "larger public interest" is available with the state, then it should be applied to all the employees and not in isolation or selectively to the Petitioner. Additionally it was contended that, the OP No.1- State Government has accepted as many as five cases of the similar nature in the year of 2023 and is regularly accepting applications of voluntary retirement of the teacher of the Government Medical Colleges each year. He also submitted that, had there been any larger public interest involved or there is a dearth of faculties, numerous teachers of Government Medical Colleges, should not have been allowed voluntary retirement. Thus, the Opposite Parties by adopting a selective method have violated the principles envisaged in the Article- 14 and 16 of the Constitution of India.

11. Mr. Das, in support of his aforementioned plea, submitted that the Petitioner has obtained the information from the Government under ***Right to Information Act, 2005*** through one of his relatives Sri Sitakanta Mohanty. Such information discloses that numerous doctors including faculties in Government Medical Colleges have been allowed voluntary retirement under ***Rule- 42 of OCS (Pension) Rules, 1992***. He further laid emphasis that the law is no more *res integra* that all the decision of the government should be equitable. When other similarly situated persons including one person namely Dr. Arpita Priyadarshini, Prof. & HOD Department of Physiology, SJMCH, Puri, has been allowed voluntary retirement on 12.10.2023, the Petitioner cannot be singled out and discriminated by rejecting his application for VRS.

12. On merits of the Petitioner's application seeking VRS, Mr. Das, submitted that, in view of consistent suffering of the Petitioner, he is on rest on the advice of his doctor. The Opposite Party No.2- DMET, Odisha in letter dated 09.07.2024, directed the Petitioner to appear before the medical board and after such examination, the medical board has allowed the Petitioner to take rest. Moreover, due to his consistent suffering, the Petitioner is unable as to perform his duties properly and unable as such to serve neither the public nor the Government to the best of his abilities. Therefore, in such situation, it is in the interest of all, to grant voluntary retirement to the Petitioner.

ARGUMENT ON BEHALF OF OP No.1

13. Per contra, Mr. U.C. Jena, learned Additional Standing Counsel, appearing on behalf of the OP No.1- State of Odisha, submitted that the application of the Petitioner for voluntary retirement dated 27.12.2023 has been rejected by the Government vide Letter No. 3796 dated 08.02.2014, because there is acute shortage of faculties in the Government Medical Colleges & Hospitals of the State and the Department is in a very precarious position to the fulfil the prescribed Minimum Standard Requirements (MSRs) of the National Medical Council (*hereinafter*

"NMC"), in respect of minimum number of faculties to be in position in Government Medical Colleges.

14. Learned A.S.C., further stated that, upon promotion to the rank of Professor, Orthopaedics, the Petitioner was posted as Professor, Orthopaedics at BBMCH, Balangir vide Heath and Family Welfare Department Order No. 23997 dated 20.10.2020. After joining at BBMCH, Balangir on 21.10.2020, the Petitioner submitted various representations on 16.01.2023, 22.05.2023 and 18.09.2023 for transfer from BBMCH, Balangir. Being a senior Professor having vast experience and expertise in the field of Orthopaedics, the Petitioner was transferred and posted against the vacant post of Professor, Orthopaedics at PIGMER and Capital Hospital, Bhubaneswar, the standalone Post Graduate Institute in the State Capital, vide Notification No. 27367 dated 09.11.2023. In compliance with the said notification dated 09.11.2023, the Petitioner has submitted his joining report on 13.11.2023 at PIGMER and Capital Hospital, Bhubaneswar. But after joining there, he remained on frequent leaves on various grounds starting from 30.12.2023. This aspect was brought to the notice of the OP No.2- DMET by the OP No.3- Director, PGIMER and Capital Hospital, Bhubaneswar, vide Letter No. 3333 dated 04.07.2024 expressing the difficulties/ problems being faced at PGIMER & CH in patient care; in Post Graduate Education as well as in departmental and administrative functions.

15. Learned counsel for the petitioner further highlighted the fact that, the Petitioner was directed to appear before the Standing Medical Board- cum- CDM & PHO, Cuttack, vide Letter dated 09.07.2024 issued by the DMET. The Standing Medical Board was convened on 03.08.2024, and the Petitioner duly appeared on the scheduled date. After proper examination of the Petitioner by the Standing Medical Board, the Petitioner was advised 1 month rest. Pursuant to the report of the standing Medical Board, the DMET again vide Letter No. 15723 dt.30.08.2024 directed the Petitioner to appear before the Standing Medical Board on 03.09.2024 i.e. exactly after one month. Instead of appearing before the standing Medical Board, vide E-mail communication dated.01.09.2024, the Petitioner again requested for extension of leave for an additional period of 4 weeks which was rejected by the DMET vide Letter No. 17114 dt.12.09.2024 and the Petitioner was directed to resume duty on or before 17.09.2024 positively. However, it was submitted by the Learned ASC that, instead of resuming the duty, the Petitioner is still continuing under leave.

16. It was reiterated by Mr. Jena, learned ASC, that the Petitioner has applied for voluntary retirement on 27.12.2023 which was rejected vide letter no. 3796/H dated 08.02.2024 in lager public interest owing to dearth of faculties in the Government Medical College and Hospitals and a leading PG Institutes of the State. Subsequently, the Petitioner represented again for taking voluntary retirement from service for the second time on 29.07.2024 on the same ground of illness of self and

the said representation has not been considered and was rejected by Department Letter no. 24040/H, dated 17.09.2024.

17. Furthermore, referring to ***Rule- 42(1) of OCS (Pension) Rules*** learned counsel for State submitted such provision lays down that, at any time after a government servant has completed twenty years of qualifying service, he/she may seek retirement, by giving a notice of not less than three months in writing to the appointing authority. Further, ***Rule- 42(2) of the OCS (Pension) Rules*** provides that the notice of voluntary retirement given under sub- rule (1) shall require acceptance by the appointing authority. He also stated that from the perusal of the provisions, it becomes apparent that an employee does not have an unfettered right to voluntary retirement by merely serving a notice of three months to the appointing authority. Rather, voluntary retirement would be granted subject to acceptance of the notice by the appointing authority, as provided in the relevant rules.

18. While substantiating his argument further, learned counsel for State contended that, the meeting of 'VR Committee', which was constituted to scrutinize the representations of the faculties of OMES Cadre seeking Voluntary Retirement/ Resignation, was held on 01.02.2024 & 27.08.2024 to consider the voluntary retirement application of the Petitioner along with representation of other faculties. After due deliberation, the committee unanimously recommended not to permit VR to faculties as there was acute shortage of doctors in the Government Medical College & Hospitals of the State and that the department was in a tight position to fulfil the MSRs as prescribed by NMC.

19. Mr. Jena, learned counsel for the State, to support his submissions, placed reliance on the case of ***State of Uttar Pradesh v. Achal Singh, reported in (2018) 17 SCC 578***, in which the State of Uttar Pradesh had declined to accept the voluntary retirement applications of certain doctors on the ground of public interest. He added that at Paras- 36,37,41,42 and 43 of the judgment, the Hon'ble Supreme Court taking into consideration similar provisions in the UP- Rules and similar factual background as is involved in the present case has upheld the decision of the State of Uttar Pradesh in disallowing voluntary retirement to the doctors and has further held that the State has not committed any illegality in rejecting VRS applications submitted by the doctors.

20. Additionally, it was contended by the learned counsel for the State that, the Directive Principles of State Policy as enshrined under Articles 36-51 in Part IV of the Constitution of India outlines the state's duties to ensure the right to health, such as improving Public Health, protecting the health of mothers and infants, securing the health of workers, etc. In order to fulfil these duties, the State Government is taking steps for providing universal and affordable healthcare services to the people of the State, by establishing 12 Medical Colleges and Hospitals, 2 PG Institutes and is in the process to open 2 new Medical Colleges at Talcher and Phulbani. Since there is acute shortage of faculties in the Government Medical Colleges and

Hospitals in the State, the State Government is finding it difficult to fulfil the MSR as prescribed by the NMC with respect to minimum number of faculties to be recruited in Government Medical Colleges for getting approval of NMC. In view of contentions, provisions referred and precedents relied on, he further submitted that the order of rejection of the application for voluntary retirement of the Petitioner, by OP No.1- State Government, is legal and is in conformity with spirit of Rule- 42 of OCS (Pension) Rules, 1992. Ultimately, learned counsel for the State urged that the writ application of the petitioner be dismissed in limine.

REPLY ARGUMENTS FOR THE PETITIONER

21. Countering the arguments made by Mr. Jena, Mr. Das learned counsel for the Petitioner submitted that, the ground of so called larger public interest owing to dearth of faculties in government medical colleges and hospitals is nothing but an attempt by the Opposite Parties to draw sympathy of this Court and to justify their conduct. Due to non- filing of the vacant position of faculties in different government medical colleges and hospitals despite availability of good number of eligible candidates, an artificial scarcity of doctors/ faculties has been created by the government. He further stated that, the rules provide that the authorities should fill up the faculty position each year through OPSC. But there are still several vacancies. Such vacancies are being filled up on *ad hoc* or contractual basis, creating havoc in the medical institutions of the State. He also added that when the state government is contemplating to open medical colleges in almost all districts and as of now there are about 10 medical colleges throughout the state, hardly any steps are being taken by the state to fill up such vacancies on regular basis by conducting recruitment drives through the OPSC at regular intervals. Thus, the Opposite Parties are logically and legally estopped to put the blame on the petitioner, which is a direct result of their failure to fill up vacancies on regular basis.

22. In the course of his submission, he drew the attention of this court's decision in ***W.P.(C) No. 14270 of 2024***, wherein only after interference of this court, the faculty position in the rank of Associate Professor in Government Medical Colleges have been filled up by giving promotion to the existing Assistant Professors. The dearth of faculties in government colleges and hospitals is due to the inaction of the government itself, and the state government cannot be allowed to take advantage of its own inaction, he added.

23. Mr. Das, vehemently argued that, the Petitioner belongs to the Department of Orthopaedics and therefore, no one else other than him knows his own suffering. The Petitioner is not in a position to work as per the norms of the Government and he won't be able to give complete justice to not only to his job but to the patients as well. He further submitted that the vacancy which is likely to ocuur, in the event of retirement of the Petitioner from service, can very well be filled up by many brilliant doctors who are ready and willing to serve the state and the public, subject to condition that they are eligible for the appointment.

24. In reply to the case law in State of ***Uttar Pradesh v. Achal Singh, reported in (2018) 17 SCC 578***, relied upon by Mr. Jena, Learned ASC, was contended that, the same has no application to the facts of the present case. The above noted reported case was decided on different set of facts and different set of rules altogether. Whereas, the present writ application is required to be adjudicated strictly in terms of ***Rule 42 of the OCS (Pension) Rules, 1992***, and on the basis of the principle flowing from the rule, i.e., "*acceptance of the application for voluntary retirement is a rule, but the cancellation is an exception.*" Therefore, in view of the arguments made, pleadings submitted, provisions of law referred to and legal principles relied on, Mr. Das prayed before the court to quash the order of rejection of the application of the Petitioner for voluntary retirement under Annexure 14 & 15 and to grant voluntary retirement to the Petitioner.

ISSUES FOR CONSIDERATION

25. Having regard to the submissions made by the learned counsel for the Petitioner and learned Additional Standing Counsel and, on a careful scrutiny of the materials placed before this Court, it is observed that this Court is required to examine the impugned rejection order strictly in the light of provisions contained in ***Rule- 42 of Odisha Pension Rules, 1992*** and within the four corners of the said Rule. It would be profitable to mention here that the OCS (Pension) Rules, 1992 is a set of Rules frames under Article- 309 of the Constitution of India. Thus, the same is not executive instruction/ guidelines. Such Rule has definitely a statutory flavour.

ANALYSIS OF THIS COURT

26. While considering the case of the Petitioner, this court by applying the provisions contained in Rule-42, which is the only provision that governs the subject of voluntary retirement from Government service in the State of Odisha, observes that the aforesaid rule provides that any government servant who has completed 20 years of qualifying service is eligible to submit an application for taking voluntary retirement from service. Moreover, while submitting such application the Govt. servant is required to give a notice of not less than three months to the Appointing Authority. It is not disputed by either side that the Petitioner is having eligibility to make such an application, given that he has completed more than 20 years of service and, that he had given a notice as required under Rule-42 (1) of the OCS (Pension) Rules, 1992.

For better appreciation of the Rules, **Rule- 42 of the OCS (Pension) Rules, 1992**, is quoted herein below-

> ***"42.Voluntary Retirement on completion of 20 years Qualifying Service-***
>
> (1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority.

NOTE-Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case or (b) in which prosecution is contemplated or have launched in a Court of Law against the Government servant concerned. If it is proposed to accept the notice of voluntary retirement in such cases, approval of the Government should be obtained:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date that of expiry of the said period.

(3) (a) A Government servant desirous of retiring under sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reason therefor.

(b) On receipt of a request under clause (a), the appointing authority subject to the provision of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if he is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) This rule shall not apply to a Government servant who retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation-For the purpose of the rule the expression "appointing authority" shall means the authority which is competent to make appointment to the service or post from which Government servant seeks voluntary retirement

(5) The qualifying service as on the date of intended retirement of the Government servant retiring under this rule, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not any case exceed twenty five years and it does not take him beyond the date of superannuation with effect from 01.12.2008. (Vide Finance Department Notification No.24142/F., dtd.04.09.2015)

(6) The pension and retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as specified under rule 48 and the increase not exceeding five years in his qualifying service not entitle him to any notional fixation of pay for the purposes of calculating pension and gratuity."

27. With regard to the grounds for seeking voluntary retirement under Rule-42, this Court is of the considered view that Rule-42 of the OCS (Pension) Rules, 1992

does not specify the ground on which an application can or cannot be made by the Government servant to the Appointing Authority for seeking voluntary retirement. Therefore, this Court has no hesitation in coming to a conclusion that the provision contained in Rule-42 (1) is an open provision subject to condition that the Govt. servant seeking voluntary retirement must have completed 20 years of qualifying service and must have given a notice of not less than three months to the Appointing Authority. Although, it is pertinent to mention that the minimum period of notice required can be waived by the Appointing Authority subject to the provisions contained in other sub-rules of Rule-42. Since the same is not the subject matter of dispute in the present writ application, this Court is not dealing with such aspects in the present case.

28. Coming back to the facts of the present case, this Court observes that the Petitioner has minimum qualifying service period required for making an application for voluntary retirement. Further, it appears that he had given a notice of not less than three months to the Appointing Authority as required under Rule-42 (1) of the OCS (Pension) Rules, 1992. However, voluntary retirement is subject to the acceptance of the same by the Appointing Authority. At this juncture, this Court would like to refer to the Note which has been appended to Rule- 42 of OCS (Pension) Rules, 1992. The Note appended to Rule- 42(2) provides that generally the application seeking voluntary retirement by any Govt. employee may be accepted by the Appointing Authority. However, two exceptions have been specifically carved out under which the Appointing Authority is under no legal obligation to accept the voluntary retirement of the Govt. servant generally. Those two exceptions have also been specifically referred to in the preceding paragraphs.

29. On a careful consideration of the factual background of the Petitioner's case and on the basis of the materials placed before this court, this Court is of the considered view that the Opposite Party No.1 while rejecting the application of the Petitioner has not taken the ground of pendency of Disciplinary Proceeding or any prosecution having been contemplated or having been launched against the Petitioner. Therefore, the two exceptions carved out in the note to the general rule of accepting the VRS, subject to the satisfaction of the twin conditions laid down in Rule-42, do not apply to the facts of the present Petitioner's case. Therefore, the case of the Petitioner does not fall within the exceptions as carved out in the note. As such, this Court has no hesitation in coming to a conclusion that the case of the Petitioner would be governed by the general principle as laid down in Rule-42, and as a result, such VRS application of the Petitioner should have considered keeping in view the Rule-42 and not on any extraneous ground.

30. With regard to the judgment relied upon by the learned Additional Standing Counsel reported in ***(2018) 17 SCC 578***, this Court on a careful reading of the said judgment observes that the main question that fell for consideration before the Hon'ble Supreme Court in the above-mentioned judgment was as to whether under

Rule-56 of the U. P. Fundamental Rules, an employee has an unfettered right to seek voluntary retirement by serving a notice of three months to the State Govt. or whether the State Govt. under the explanation attached to Rule-56 of the U. P. Fundamental Rules, is authorized to decline the prayer for voluntary retirement, under Clause-(c) of Rule-56 of the said rules, in the public interest. On a careful reading of the above-mentioned judgment, this Court observes that the judgment rendered by the Hon'ble Supreme Court in ***Achal Singh***'s case (supra) was decided under a different provision of Rule than the Rule applicable to the case of the present Petitioner.

31. So far ***Achal Singh***'s case is concerned, the Hon'ble Supreme Court was examining Clause-(c) of Rule-56 of the Fundamental Rules applicable to the employees of the State of Uttar Pradesh. The said Clause-(c) of Rule-56 confers a right is conferred on the appointing authority to require any government servant to retire after attaining the age of fifty years by giving a notice of three months, and a right on the government servant to voluntarily retire after attaining the age of 45 years or on completion of a qualifying service period of 20 years, by giving a notice of three months to the appointing authority. However, the explanation appended to the Rule-56 of Fundamental Rules of State of Uttar Pradesh provides that the decision of the Appointing Authority under clause-(c) shall be in the negative if it appears to the said authority such acceptance is against public interest. Moreover, the explanation (2) to Rule-56 of the U. P. Fundamental Rules further defines the materials that are to be taken into consideration by the Appointing Authority in order to determine whether the voluntary retirement under Rule-56(c) is in public interest. In the case of ***Achal Singh***, the Hon'ble Supreme Court on a detailed analysis of the Fundamental Rules framed by the U.P. State Government, has categorically held that the State Govt. has the power to decline the prayer for voluntary retirement considering the public interest as provided in the rules, especially in the context of the public interest as provided in the explanation to Rule-56 of the U.P. Fundamental Rules.

32. The Hon'ble Supreme Court has also referred to Article-47 and 51 (a) of the Constitution of India. On a careful analysis of the aforesaid judgment, this Court further observes that in para-42 of the above-mentioned judgment, the Hon'ble Supreme Court while referring to some of the earlier judgments of the Hon'ble Supreme Court has categorically observed that it would depend upon the scheme of the rules as to whether the application for voluntary retirement is to be accepted or not by the Appointing Authority. It has also been observed that each and every judgment has to be considered in the light of the provisions which came up for consideration and question it has decided, language employed in the rules, and it cannot be said to be of general application as already observed by the Hon'ble Supreme Court in the case of ***State of Haryana & ors. vs. S.K. Singhal*** reported in ***(1999) 4 SCC 293.***

33. Reverting back to the facts of the case at hand and keeping in view the legal requirement, the case of the Petitioner is to be considered in the light of the provisions contained in Rule-42 of the OCS (Pension) Rules, 1992. Moreover, such Rule doesn't provide for a window to the Opposite Parties to take into consideration any other factor while considering the VRS application of the Petitioner. As such, this Court has no hesitation to come to a conclusion that the judgment in ***Achal Singh***'s case, which has been heavily relied upon by the learned Additional Standing Counsel, is not applicable to the facts of the present case as the same was considered and decided under the provisions contained in Rule-56(C) of the Fundamental Rules meant for U.P. State Govt. employees and the explanation appended thereto.

34. In the facts and circumstances of the present case, this court would like to refer to view taken by this court in the case of ***Dr. Manoranjan Mallik v. State of Odisha & Ors., W.P. (C) No. 9003 of 2024***, wherein the Petitioner's representation under Rule 42 for voluntary retirement from service was rejected citing the ground of dearth of faculties in the medical colleges in the State of Odisha on the ground of public interest. In the above noted case, this court in para- 26 of the judgment observed as follows:-

> "26. In view of the aforesaid analysis of law as well as keeping in view the factual matrix involved in the present writ application, this Court is of the considered view that Rule-42 of the OCS (Pension) Rules, 1992 does not specifically provide any ground on which an application seeking voluntary retirement from govt. service can be made by any of the govt. servant. Moreover, in view of the Note appended to Rule-42 (2) such application seeking for VRS is to be accepted generally and the exception to such general provision has also been provided in the Note appended to the said Rule. So far the present Petitioner is concerned, there is no dispute that the Petitioner complies with the minimum requirement for making such application and he has followed the procedure of giving a notice of not less than three months. Therefore, the Opposite Parties are not within their authority in rejecting the application of the Petitioner seeking VRS on the ground of dearth of faculties in the medical colleges in the State of Odisha and the ground of public interest involved in the present case. Moreover, such a ground is not available to the Opposite Parties in view of the specific provisions contained in Rule-42. xxx."

35. Therefore, in view of the aforesaid analysis of law as well as keeping in view the factual matrix involved in the present writ application, this Court has no hesitation in coming to a conclusion that the Opposite Parties have committed an illegality by rejecting the application of the Petitioner seeking VRS from service. On such grounds, the writ application filed by the Petitioner is bound to succeed. Accordingly, the impugned order under Annexure-14 dated 08.02.2024 and under Annexure- 15 dated 09.02.2024 is hereby quashed. Further, the Opposite Party No.1 is directed to accept the VRS of the Petitioner with effect from the date of expiry of the three months' notice period calculated from the date of his initial application, which was admittedly submitted on 27.12.2023. In other words, the relationship of the employer and employee of the Petitioner with the Govt. of Odisha shall come to

an end on completion of three months' notice period with effect from the date 27.03.2024. Moreover, it is made clear that if the Petitioner is continuing in service and discharging his duties, he shall be paid his salary and other emoluments for the period for which he has rendered his services. However, for all practical purposes, the relationship of the employer and employee shall come to an end w.e.f. 27.03.2024. Accordingly, the Opposite Parties are directed to process the claim of the Petitioner for grant of retiral dues as well as pensionary benefits as is due and admissible to the Petitioner in the light of the aforesaid observation within a period of three months from the date of communication of a certified copy of this judgment.

36. Accordingly, the writ petition succeeds, however, there shall be no order as to cost.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition succeeds.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-158

PRAMOD KUMAR SARANGI
V.
STATE OF ORISSA & ORS.

[W.P.(C) NO.20389 OF 2023]

07 APRIL 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether non-consideration of an application for compassionate allowance in case of discharge from service on the ground of unauthorized absence is sustainable under law.

Headnotes

ODISHA CIVIL SERVICES (PENSION) RULES, 1992 – Rule 46 (3) – Petitioner while working as RT Constable was discharged from service on the ground of unauthorized absence – Prayer of the petitioner for compassionate allowance in terms of Rule 46 was rejected – The authority denied the special allowances on the ground that he had rendered only 16 years of service whereas the qualifying service was only 12 years 8 month and 29 days – Whether non-consideration of an application for compassionate allowance in case of discharge from service on the ground of unauthorized absence is sustainable under law.

Held: No – In rejecting the prayer for compassionate allowance by the impugned order, the authority failed to notice as the very heading of the rule indicates that the same is compassionate allowance and so far as the earlier conduct of the Petitioner during service is inconsequential and more so when on analysis of the materials on record, does not fall within the parameter as fixed by the Apex Court to disentitle the Petitioner to claim compassionate allowance – It does not augur well for a model employer to compare the degree of deprivation suffered by an incumbent while considering the claim for compassionate allowance. (Para 13)

The authorities are directed to grant such compassionate allowance in terms of Rule 46 of OCS (Pension) Rules within a period of four months from the date of receipt/production of copy of this judgment. (Para 16)

Citations Reference

Mahendra Dutta Sharma Vs. Union of India & ors.**, (2014) 11 SCC page 684 – referred to.**

List of Acts

Odisha Civil Services (Pension) Rules, 1992

Keywords

Compassionate allowance; Application; Rejection; Unauthorized absence; Discharge; Model employer; Special Consideration; Degree of deprivation.

Appearances for Parties

For Petitioner : Mr. S.K. Rath
For Opp. Parties : Mr. Sidharth Prasad Das, ASC

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard learned counsel for the Petitioner and learned counsel for the State.

2. The Petitioner who was working as a RT Constable assails the impugned order at Annexure-16 by which his prayer for compassionate allowance in terms of the Rule 46 of OCS (Pension) Rules, 1992 was rejected.

3. The brief facts which are germane for just adjudication are indicated thus:-

The Petitioner joined as a RT Constable on 05.08.1983 and by order dated 07.09.1993, he was promoted to the rank of ASI and it is submitted that because of supervening circumstances the Petitioner could not attend the medical Board and he was reverted to his previous rank of Constable. Thereafter, the Petitioner remained

on leave and since he did not appear before the medical Board, a charge memo was issued and thereafter ultimately by order dated 31.01.2000, the Petitioner was discharged from service on the ground of unauthorized absence. Assailing the same, the Petitioner preferred an appeal before the IG, but the same was rejected by order dated 22.05.2012 and challenging the same, the Petitioner moved the Orissa Administrative Tribunal, Cuttack Bench, Cuttack and on the abolition of the Tribunal the docket was transferred to this Court and numbered as W.P.(C) (OAC) No.4373 of 2012 and by order dated 18.10.2022, while not entertaining with the order of discharge passed by the Appellate Authority this Court directed to consider the case of the Petitioner for payment of "compassionate allowance". The operative portion of the said order is extracted hereunder:-

> "Since the Petitioner after completing more than 16 years of service was dismissed from his service vide the order of discharge, this Court is of the view that lenient view shall be taken by the Opp. Parties while considering the claim of the Petitioner for such grant of compassionate allowance. The Opp. Party No. 2 shall also take into consideration the decision of the Hon'ble Apex Court reported in the case of ***Mahendra Dutta Sharma Vs. Union of India & ors. (2014) 11 SCC page 684***".

Thereafter, in terms of the same, the Petitioner filed an application before the Superintendent of Police Signal, Odisha for grant of such compassionate allowance vide Annexure-14, since the same was not disposed of within the time stipulated, a contempt petition was moved which was disposed of by order dated 31.03.2023 (Annexure-15). Admittedly, by the impugned order at Annexure-16, the prayer of the Petitioner for grant of compassionate allowance having been rejected, the present writ petition was filed.

4. It is submitted by the learned counsel for the Petitioner, Mr. Rath that the order of rejection suffers from gross non application of mind and is against the underlying principle for enactment of Rule 46 of OCS (Pension) Rules, 1992 and is against the dictum of Apex Court in the case of ***Mahinder Dutt Sharma*** (Supra), as referred to in the earlier order of this Court. Hence, the order is liable to be set aside.

5. Learned counsel for the State, Mr. Das, ASC on the other hand referring to the counter affidavit filed, submits that there is no illegality in the impugned order and since the case of the Petitioner does not come under the category which qualifies for "special consideration" and as such, his prayer has been rejected and in doing so the authorities have indicated the reasons as to why the Petitioner is not similarly circumstanced with the Petitioner in the reported case of Mahinder Dutt Sharma. Hence, he seeks dismissal of the writ petition.

6. Before adverting to the rival contention, this Court feels it appropriate to quote Rule 46 of OCS (Pension) Rules, 1992 dealing with compassionate allowance. The same reads as under:-

> **"46. Compassionate Allowance-**

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity: Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-third of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (I) shall not be less than the amount of minimum pension admissible.

(3) On receipt of the order of the competent authority removing an officer from service for misconduct, insolvency, or inefficiency the Head of Office, if he proposes to grant compassionate allowance shall fill in the application form for pension and send the same to the Accountant-General for necessary action after due concurrence of Finance Department. The Head of Office shall not wait for receiving the application from the Officer."

7. On a bare perusal of the said Rules, it can be seen that while formulating the same, the legislature was conscious of the fact that they apply to a Government Servant who is dismissed or removed from his service and forfeited his pension and gratuity. In Sub-Rule (3) of Rule 46 of OCS (Pension) Rules, 1992, it has been stated that the Head of Office shall not wait for receiving the application from the Officer in deserving cases. There cannot be a more patent expressive wisdom of the legislature in drafting a benevolent provision.

8. So far as the guidelines for grant of compassionate allowance is concerned, this Court respectfully refers to the judgment of the Apex Court in the case of ***Mahinder Dutt Sharma (Supra),*** wherein while cautioning that the determination of a claim based under Rule 41 of the Pension Rules, 1972 therein, is only illustrative, the Apex Court has delineated 5 situations under which such allowance can be denied. For convenience of reference the same is extracted hereunder:-

"XXX XXX XXX

14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

14.1 (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2 (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is

untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3 (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4 (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5 (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

XXX XXX XXX"

Hence, the case at hand has to be examined on the touchstone of the principles as laid down in the case ***Mahinder Dutt Sharma (Supra).***

9. The ground of discharge of the Petitioner was only on account of unauthorized absence. And, if seen factually, it is worth noting that in ***Mahinder Dutt Sharma (Supra)***, the service record of the Petitioner therein has been dealt with in paragraph-10 of the said judgment of the Apex Court. The same is quoted hereunder:-

"10. By an order dated 25.4.2005, the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi, rejected the prayer made by the appellant for the grant of compassionate allowance. The operative part of the order dated 25.4.2005, rejecting the appellant's claim for compassionate allowance is being extracted hereunder:-

"4. As regards your claim for compassionate allowance, you do not have unblemished record because you have been found absent on several occasions and your period was treated as 'Leave Without Pay'. You were also censured during the tenure of your service and certain other punishments also exist in your service

> record. Hence due to indifferent service record and the facts of the case no compassionate allowance can be granted."

10. In the memorandum of appeal the Petitioner has also mentioned about his service career which reads as under:-

> "Besides this throughout my service career I have got 5 rewards (subject to verification of the Service Book), and one good service mark, (with cash award of Rs. 50/- from DIG of Police Technical), one commendation from GRP establishment Cuttack on 13.9.1985"
>
> This above has not been controverted.

11. On perusal of the impugned order of rejection at Annexure-16, it is seen that the special allowance was denied to the Petitioner inter alia on the ground that he had rendered only 16 years of service of which qualifying service was only 12 years 8 months and 29 days, unlike in the case of ***Mahinder Dutt Sharma (Supra),*** who had rendered 25 years of service which is "pensionable". And, reversion of the Petitioner has also weighed with the authorities and it is also said that the Petitioner has not suffered any tragedy like Mahinder Dutt Sharma, Petitioner in the reported case.

12. Per contra, learned counsel for the Petitioner submits that the personal misery of the Petitioner has been outlined in the memorandum of appeal. Hence, it cannot be said that the Petitioner did not face the challenges unlike the Petitioner in the reported case before the Apex Court.

13. In rejecting the prayer for compassionate allowance by the impugned order, the authority failed to notice as the very heading of the rule indicates that the same is compassionate allowance and so far as the earlier conduct of the Petitioner during service is inconsequential and more so when on analysis of the materials on record, does not fall within the parameter as fixed by the Apex Court to disentitle the Petitioner to claim compassionate allowance. It does not augur well for a model employer to compare the degree of deprivation suffered by an incumbent while considering the claim for compassionate allowance.

14. In fact, this Court is of the considered view that if the service record of the present Petitioner is compared with that of the Petitioner before the Apex Court, it cannot be said that the Petitioner has worse record.

15. In such view of the matter, considering the submissions as made and the materials on record and evaluating the same on the touchstone of the judgment of the Apex Court in the case of ***Mahinder Dutt Sharma (Supra),*** while being conscious of the fact that the same is not illustrative as rightly cautioned by the Apex Court, this Court is persuaded to hold that the impugned order at Annexure-16 rejecting the prayer of the Petitioner for compassionate allowance, is not sustainable. Accordingly, Anneuxre-16 is set aside.

16. The authorities are directed to grant such compassionate allowance in terms of Rule 46 of OCS (Pension) Rules within a period of four months from the date of receipt/production of copy of this judgment.

17. Before parting with the case, this Court places on record its appreciation for the valuable and dispassionate assistance rendered by the learned Additional Standing Counsel, Mr. S.P. Das in analysing the provisions of compassionate allowance.

18. The writ petition thus stands disposed of. No costs.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition disposed of.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-164

THE ASSISTANT ENGINEER, AGRICULTURE D.P.A.P., PHULBANI
V.
ARNAPURNA NAYAK & ORS.

[MACA NO. 398 OF 2015]

08 APRIL 2025

[V. NARASINGH, J.]

Issues for Consideration

1. Whether the appellant could be absolved from liability in view of acquittal of driver of the offending vehicle by the competent Court of law.
2. Whether the quantum of compensation should be affected due to acquittal of the driver of the offending vehicle.

Headnotes

(A) MOTOR VEHICLES ACT, 1988 – Section 166 – The appellant challenges the award of learned Tribunal solely on the ground that the driver of the offending vehicle was acquitted from the charges of rash and negligent driving in the Judgment passed by the learned S.D.J.M., and this was specifically urged before the learned Tribunal to absolve the appellant from the liability – Whether the appellant could be absolved from liability in view of acquittal of the driver of the offending vehicle by the competent Court of law.

Held: No – In the case at hand there is no dispute regarding accident or earning of the deceased who was a Government servant and hence merely

because the driver of the offending vehicle was acquitted in a criminal trial that would not *ipso facto* disentitle the Claimant from claiming compensation consequentially does not absolve the Appellant from the liability to pay.

(Para 9)

(B) MOTOR VEHICLES ACT, 1988 – Section 166 – Quantum of compensation – Whether the quantum of compensation should be affected due to acquittal of the driver of the offending vehicle.

Held: No – It needs no reiteration that underlining principle of deciding a claim case by the learned Tribunal is signally different from that of conducting a criminal trial or a civil proceeding – It is a benevolent legislation and the only guiding principle is that the claimant of a tragic accident should not be deprived of on technical grounds and the Courts in a higher position in the ladder of hierarchy, should be slow in interfering with the compensation awarded if it passed the test of just compensation unless there is manifestation of arbitrariness in the process of adjudication. (Para 7)

Citations Reference

Reshma Kumari and others vrs. Madan Mohan and another, **2013 (II) TAC 369 (SC);** Sarla Verma vrs. Delhi Transport Corporation, **2009 (3) Supreme 487;** Pallab Kumar Ray vrs. Ratikanta Senapati & another, **2015 (3) TAC 858 (Ori.);** National Insurance Co. Ltd. vrs. Chamundeswari, **Civil Appeal No. 6151 of 2021 disposed of on 01.10.2021;** Ranjeet & another vrs. Abdul Kayam Neb & another, **SLP(C) No.10351 of 2019 dated 25.02.2025**; Om Parkash Batis vrs. Ranjit, **2008 ACJ 1700 (SC);** N.K.V. Bros. (P) Ltd. vs. M. Karumai Ammal and Ors. dia vs. Prafulla Kumar Samal, **(1980) 3 SCC 457;** Mathew Alexander vs. Mohammed Shafi and Ors., **(2023) 13 SCC 510;** Mangla Ram vs. The Oriental Insurance Co. Ltd. and Ors., **(2018) 5 SCC 656 – referred to.**

List of Acts

Motor Vehicles Act, 1988; Indian Penal Code, 1860.

Keywords

Benevolent legislation; Quantum of compensation; Test of just compensation; Liability.

Case Arising From

MAC Case No. 793 of 2006 passed by the 2nd M.A.C.T, Cuttack.

Appearances for Parties

For Appellant : Mr. B. Jalli, Sr. Panel Counsel
For Respondents: Mr. D. Pattnaik

Judgment/Order

Judgment

V. NARASINGH, J.

Respondents as Claimants being L.Rs of Bankanidhi Nayak filed MAC Case No.793 of 2006 in the court of learned 2nd M.A.C.T., Cuttack under Section 166 of the Motor Vehicles Act, 1988 claiming compensation to the tune of Rs.25,00,000/- on account of the unfortunate death of said Bankanidhi Nayak, who is the husband of Respondent No.1 and father of Respondent Nos.2 and 3, while travelling in a Jeep bearing registration number OR-12-0843 which belonged to Opposite Party No.1 (Appellant herein).

2. It is apt to note here that in respect of the said accident a case was registered by Phiringia Police under Sections 279/304-A IPC corresponding to G.R. Case No.178 of 2006 on the file of learned S.D.J.M, Phulbani. The basis for claiming quantum of compensation was that the deceased was working at the relevant time as S.I of Schools at Kotagarh Block and earning monthly salary of Rs.16,290/-. The present Appellant being the owner of the offending vehicle, admittedly not being insured, filed written statement and contested the claim. On the pleadings of the parties, following issues were framed:

> "1. Whether due to rash and negligent driving of the driver of the offending vehicle bearing registration No.OR-12-0843 (Jeep), the accident took place and in that accident the deceased Bankanidhi Nayak succumbed to the injuries ?
>
> 2. Whether the petitioners are entitled to get compensation, and if so, to what extent ?
>
> 3. Whether the opposite parties or any of them are/is liable to pay the compensation ?
>
> 4. To what relief, if any, the petitioners are entitled ?"

And witnesses were examined on behalf of both sides. Several documents were admitted into evidence being marked as exhibits on behalf of the Claimants as well as Respondents of which most vital ones are the pay particulars of the deceased Ext.11 and certified copy of G.R. Case No.178 of 2006 on the file of learned S.D.J.M., Phulbani arising out of Phiringia P.S. Case No.32 of 2006 acquitting the driver from the offence under Sections 279/304-A IPC. Certified copy of the judgment in G.R. Case No.178 of 2006 (Ext.A) marked on behalf of the owner Opposite Party No.1 (Appellant herein).

On an analysis of the evidence on record, taking into account that the deceased was working as S.I of Schools which was not controverted, pay particulars of the deceased vide Ext.11 and considering that the deceased was drawing Rs.17,105/- per month as a salary at the relevant period, his age and relying on the judgment of the Apex Court in the case of **Reshma Kumari and others vrs. Madan Mohan and another**, 2013 (II) TAC 369 (SC) relating to future prospect

and the judgment of the Apex Court in the case of **Sarla Verma vrs. Delhi Transport Corporation**, 2009 (3) Supreme 487 regarding multiplier, learned Tribunal awarded a compensation of Rs.23,22,596/- together with simple interest at the rate of 6% per annum with effect from the date of filing of the claim petition.

3. Though several grounds have been raised in the memorandum of appeal and urged at the time of hearing of the appeal, the main plank of submissions of the learned Senior Panel Counsel Mr. Jalli is that admittedly the driver of the offending vehicle was acquitted of the charges of rash and negligent driving by the judgment passed by the learned S.D.J.M., Phulbani in G.R. Case No.178 of 2006 (Ext.A) and this was specifically urged before the learned Tribunal to absolve the Appellant from liability. But while deciding the lis, learned Tribunal though referred to such stand of the Appellant but failed to give any finding on the said issue. Hence, on that count the impugned award being the outcome of non-application of mind is liable to be set aside. It is also urged that the quantification is otherwise on the higher side bereft of any rationale and therefore, is liable to be interfered with. The quantification of interest is also challenged on the ground of being on the higher side at the relevant time.

4. Mr. Pattnaik, learned counsel for the Respondents 1 to 3, the LRs of the deceased supported the award. He submitted that the same does not merit any interference taking into account the evidence on record relating to income and referring to the judgment governing the field. He relied on the judgments in the case of **Pallab Kumar Ray vrs. Ratikanta Senapati & another**, 2015 (3) TAC 858 (Ori.), **National Insurance Co. Ltd. vrs. Chamundeswari** in Civil Appeal No.6151 of 2021 disposed of on 01.10.2021 and **Ranjeet & another vrs. Abdul Kayam Neb & another** (SLP(C) No.10351 of 2019 dated 25.02.2025) to resist the claim of the Appellant (Opposite Party No.1 before the learned Tribunal) that since the driver of the offending vehicle owned by them was acquitted from the criminal trial they are absolved of their liability.

5. In the case of Pallab Kumar Ray (supra), this Court referred to the judgment of the Apex Court reiterating the principle that the standard of proof in a claim application under the Motor Vehicles Act is summary in nature and provisions of the Civil Procedure Code or Evidence Act are not strictly applicable to such proceeding. The Tribunal must take care to see that the innocent victims should not suffer and the Court should not succumb to the niceties of law. (**Om Parkash Batis vrs. Ranjit**, 2008 ACJ 1700 (SC).

This Court in the said judgment disapproved the approach of the learned Tribunal in deciding the claim like conducting a criminal trial.

5-A. The judgment in **Chamundeswari** (supra) is also to the same effect that the primacy must be given to the evidence adduced before the learned Tribunal rather than the contents of the FIR.

5-B. In **Ranjeet** (supra) the Apex Court held that once a charge sheet has been filed, no further evidence is required to prove that the vehicle was being negligently driven by the driver.

6. Mr. Jalli, learned Senior Panel Counsel referring to the judgments cited submitted that in all the cases, there is nothing on record to indicate, as in the case in hand, that the driver of the offending vehicle was acquitted in criminal trial and as such judgments cannot be of any assistance to the cause of the Respondents.

7. It is trite that a judgment has to be applied in the facts of each case. It needs no reiteration that underlining principle of deciding a claim case by the learned Tribunal is signally different from that of conducting a criminal trial or a civil proceeding. It is a benevolent legislation and the only guiding principle is that the claimant of a tragic accident should not be deprived of on technical grounds and the Courts in a higher position in the ladder of hierarchy, should be slow in interfering with the compensation awarded if it passed the test of just compensation unless there is manifestation of arbitrariness in the process of adjudication.

8. In the context of quantification of compensation under the Motor Vehicles Act in cases where the driver is not charge sheeted or acquitted, the following judgments of the Apex Court are referred to:

> **"I. N.K.V. Bros. (P) Ltd. vs. M. Karumai Ammal and Ors. dia vs. Prafulla Kumar Samal** reported in **(1980) 3 SCC 457**
>
> **II. Mathew Alexander vs. Mohammed Shafi and Ors., (2023) 13 SCC 510**
>
> **III. Mangla Ram vs. The Oriental Insurance Co. Ltd. and Ors., (2018) 5 SCC 656"**

In **N.K.V. Bros. (P) Ltd.** (supra) the Apex Court held as follows :

> "The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A, IPC is more drastic than negligence sufficient under the law of tort tort to create liability. The quantum of compen-sation was moderately fixed and although there was, perhaps, a case for enhancement, ement, the the High Court dismissed the the cross-claims cross- also. Being ques-tions of fact, we are obviously unwilling to to reopen the holdings on culpability and compensation"

In **Mathew Alexander** (supra) the Apex Court while referring to the judgments of *N.K.V. Bros. (P) Ltd.* and *Bimla Devi v. Himachal RTC, (2009) 13 SCC 530* observed that,

> "xxx xxx xxx
>
> 12. In this context, we could refer to the judgments of this Court in N.K.V. Bros. (P) Ltd. v. M. Karumai Ammal[2], wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was

observed that culpable rashness under Section 304-A IPC is more drastic than negligence under the law of torts to create liability. Similarly. in Bimla Devi v. Himachal RTC[3] ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident…..

xxx xxx xxx"

In **Mangla Ram** (supra) the Hon'ble Supreme Court held that while dealing with the claim petition in terms of Section 166 of the Motor Vehicles Act, 1988, the Tribunal stricto sensu is not bound by the pleadings of the parties, its function is to determine the amount of fair compensation. The Court restated the legal position that the claimants were merely to establish their case on the touchstone of preponderance of probability and standard of proof beyond reasonable doubt cannot be applied by the Tribunal while dealing with the motor accident cases. In other words, the approach of the Tribunal should be holistic analysis of the entire pleadings and evidence by applying the principles of preponderance of probability. In this regard it is observed that the filing of charge sheet against the driver prima facie points towards his complicity in driving the vehicle rashly and negligently. It has been further observed that even when the accused were to be acquitted in the criminal case, the same ought not to have any effect on the assessment of the liability required in respect of motor accident cases by the Tribunal.

9. In the case at hand there is no dispute regarding accident or earning of the deceased who was a Government servant and hence merely because the driver of the offending vehicle was acquitted in a criminal trial that would not ipso facto disentitle the Claimant from claiming compensation consequentially does not absolve the Appellant from the liability to pay.

10. On a conspectus of the evidence on record this Court is of the considered view that the impugned award including the interest component being just and the basis of such award also not being arbitrary and based on sound appreciation of fact and law does not warrant any interference.

11. The appeal is accordingly dismissed.

12. The Appellants are directed to deposit the compensation in terms of the award passed by the learned Tribunal and disburse the same amongst the Claimants proportionately as per the award within a period of six weeks from the date of receipt/production of a copy of this order.

13. On production of proof regarding deposit of the modified amount before the Tribunal, the statutory deposit along with accrued interest be refunded to the Insurance Company on proper application.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Appeal dismissed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-170

DOLAGOBINDA JENA
V.
STATE OF ORISSA

[CRA NO. 55 OF 1993]

17 FEBRUARY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the judgment of learned Trial Court should be interfered when the evidence of P.Ws. has not been discarded in cross-examination by the appellant/ accused.

Headnotes

INDIAN PENAL CODE, 1860 – Sections 313, 493 – The appellant has been convicted for the offences U/s. 313 and 493 of IPC – The appellant kept physical relationship with the victim under pretext of marriage and accordingly the victim become pregnant – On coming to know that the victim has become pregnant for four months, the appellant administered some medicines on 03.03.1991 to the victim and thereby caused termination of the pregnancy – Whether the judgment of learned Trial Court should be interfered when the evidence of P.Ws. has not been discarded in cross-examination by the appellant/accused.

Held: No – This Court after going through the evidence of the victim-P.W.2 vis-à-vis the evidence of the Doctor-P.W.7, finds that the victim clearly implicated the accused-appellant for having sexual relationship with her and administering the medicine to terminate the pregnancy on 03.03.1991 – Since the evidence of P.W. 2 has not been discarded in her cross-examination by the appellant-accused, this Court in view of such uncontroverted evidence of the victim coupled with the statement of P.W. 1, 3 and 7, is of the view that the appellant has been rightly sentenced to

undergo the imprisonment vide the impugned judgment dated 12.02.1993 – Accordingly, this Court finds no illegality or irregularity with the judgment dated 12.02.1993 and is not inclined to interfere with the same. (Para 6)

However, while not being inclined to interfere with the same, taking into account the incident being of the year 1991 and since in the meantime more than 33 years have passed, this Court directs for release of the appellant under the provisions of Probation of Offenders Act, 1958. (Para 6.1)

Citations Reference

Thulia Kali Vs. State of Tamilnadu**, (1972) 3 SCC 393;** Ram Chandra Bhagat v. State of Jharkhand, **(2013) 1 SCC 562;** Arun Singh and Others Vrs. State of Uttar Pradesh, **(2020) 3 SCC 736 – referred to.**

List of Acts

Indian Penal Code, 1860; Probation of Offenders Act, 1958; Code of Criminal Procedure, 1973.

Keywords

Deceit; Pretext of marriage; Physical relationship; Interested witnesses; Independent witnesses.

Case Arising From

Judgment dated 12.02.1993 passed by the Assistant Sessions Judge, Anandapur in S.T. Case No. 32/107 of 1992.

Appearances for Parties

For Appellant : Mr. S.K. Jena
For Respondent : Mr. S.P. Das, ASC

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard Mr. S.K. Jena, learned counsel for the appellant and Mr. S.P. Das, learned Addl. Standing Counsel for the State.

3. The present Appeal has been filed *inter alia* challenging the order of conviction and sentence passed by learned Assistant Sessions Judge, Anandpur in S.T. Case No.32/107 of 1992. Vide the said judgment, the appellant herein has been convicted and sentenced to undergo R.I. for 10 years and pay a fine a Rs.500/- in default R.I. for 3 (three) months for the offences U/s.313 of the Indian Penal Code.

The appellant is also convicted to undergo R.I. for 3 (three) years and pay a fine of Rs.500/- in default R.I. for 3 (three) months for the offence U/s493 of the Indian Penal Code.

4. While assailing the impugned judgment, learned counsel appearing for the appellant contended that basing on the complaint lodged by the father of the victim before the S.D.J.M., Anandpur, 1CC Case No.33 of 1991 was registered. In the said complaint case, since cognizance was taken for the offences U/s.313/493 of IPC, the matter was committed to the Court of Sessions and after such commitment, charge was framed against the present appellant for the offences U/s.313/493 of IPC. The matter thereafter was transferred to the Court of learned Asst. Sessions Judge, Anandpur in S.T. Case No.32/107 of 1992 for trial.

4.1. It is contended that the complaint case was filed by the father of the victim in 1CC Case No.33 of 1991 with the allegation that the appellant kept physical relationship with the victim under pretext of marriage and accordingly the victim became pregnant for 4 (four) months. It is contended that on coming to know that the victim has become pregnant, the appellant administered some medicines on 03.03.1991 to the victim and thereby causing termination of the pregnancy.

4.2. It is contended that even though in the complaint petition so filed, allegation was made that the appellant administered some medicines on the victim on 03.03.1991, but the complaint petition was only filed on 22.03.1991 and delay in making the complaint was not satisfactorily explained. It is accordingly contended that in absence of any explanation given by the complaint with regard to such delay, the complaint petition should not have been entertained. In support of the aforesaid submission, learned counsel for the appellant relied on the decision reported in (1972) 3 SCC ***(Thulia Kali Vs. State of Tamilnadu),*** Page-393. Hon'ble Apex Court in Para-12 of the decision has held as follows:-

> *"12. It is in the evidence of Valanjiaraju that the house of Muthuswami is at a distance of three furlongs from the village of Valanjiaraju. Police Station Valavanthi is also at a distance of three furlongs from the house of Muthuswami. Assuming that Muthuswami PW was not found at his house till 10.30 p.m. on March 12, 1970, by Valanjiaraju, it is not clear as to why no report was lodged by Valanjiaraju at the police station. It is, in our opinion, most difficult to believe that even though the accused had been seen at 2 p.m. committing the murder of Madhandi deceased and a large number of villagers had been told about it soon thereafter, no report about the occurrence could be lodged till the following day. The police station was less than two miles from the village of Valanjiaraju and Kopia and their failure to make a report to the police till the following day wouldtend to show that none of them had witnessed the occurrence. It seems likely, as has been stated on behalf of the accused, that the villagers came to know of the death of Madhandi deceased on the evening of March 12, 1970. They did not then know about the actual assailant of the deceased, and on the following day, their suspicion fell on the accused and accordingly they involved him in this case. First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report*

can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, step-son of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it."

4.3. It is also contended that no evidence was laid by the P.W. 1 that the written report since was not accepted by the local police, the complaint was filed. Therefore, the complaint petition at the threshold should not have been entertained. It is also contended that even though the learned Trial Court held the victim as a minor girl aged about 13 years in the year 1991, but no single document was produced in support of her age.

4.4. It is also contended that prior to taking cognizance for the offences under Section 493/313 of the Indian Penal code, learned SDJM since never followed the provisions contained U/s.210 of the Cr.P.C.. Therefore, the order taking cognizance and consequential framing of charge with the order of conviction and sentence is not sustainable in the eye of law. It is also contended that age of the victim was never proved with due determination of her age by conducting ossification test by a medical officer. Therefore, it cannot be said that the victim was a minor by the time the alleged incident occurred in the year 1991.

4.5. Learned counsel for the Appellant also contended that all the witnesses examined by the prosecution starting from P.W. 1 to 6 are all interested witnesses and no independent witnesses were examined in support of the charge framed against the appellant. It is also contended that since I.O. of the case has not been examined it caused prejudice to the appellant.

4.6. It is contended that the ingredients of Section 493 of IPC having not been proved by the prosecution, conviction and sentence of the appellant for the offence U/s.493/313 of IPC cannot sustain in the eye of law.

4.7. Making all these submissions, learned counsel for the appellant contended that the impugned order of conviction and sentence passed vide judgment dated 12.02.1993 is illegal and unsustainable in the eye of law and requires interference of this Court. It is also contended that by virtue of the order passed on 03.08.1993, petitioner is continuing on bail and in the meantime more than 31 years have passed and there is no allegation that the appellant has violated any of the terms and conditions of the bail.

4.8. A further submission was also made that taking into account age of the appellant at the time of commission of offence, the appellant will now be aged about more than 63 years. Therefore, a lenient view be taken and if at all the order of conviction and sentence is upheld by this Court, the appellant be extended with the benefit of Probation of Offenders Act, 1958.

5. Mr. S.P. Das, learned Addl. Standing Counsel on the other hand basing on the available materials, contended that in view of the evidence laid by the prosecution more particularly the evidence of P.W. 2- victim, the appellant has been rightly convicted and sentenced for the offences U/s.313/493 of IPC. It is contended that in the evidence laid by the P.W. 2 in her cross-examination, implication of the accused appellant in the alleged offence is fully proved and on the face of the such statement of the victim, no further corroboration is required with examination of any other witness lest independent witnesses. Statement made by the victim in her cross-examination reads as follows:-

> *"3. Except the accused no other person had access to my house. The accused had instructed me not to disclose about this fact of marriage to me by garlanding. I had never gone to the house of the accused. I informed the accused about stoppage of my menstruation. The accused told that I conceived. I started suffering soon after the stoppage of the menstrual cycle.*
>
> *4. I felt weak in my body. I did not take any medicine at that time. I did not complain about the weakness of my body to my parents.*
>
> *5. The bijesthali of the deity Thanapati is situated in the middle of the village basti. There are residential houses near the bijesthali of the deity. After the sun-set i.e. about evening time the accused garlanded me. The accused used to cohabit with me taking advantage of the absence of my parents. The accused used to cohabit with me during day time as well as night time.*
>
> *6. The neighbours knew about our relationship. None of the neighbours had ever objected. It is not a fact that the accused was not pulling on well with my father prior to the incident. It is not a fact that my father and uncle had ever assaulted the accused prior to the incident.*
>
> *7. Dhruba Jena, Barinia Jena, and the accused are our neighbours. The accused resides after 2 to 3 houses of our house. I have never disclosed about our relationship to any of the family members of accused. It is not a fact that the accused never married me by garlanding, cohabited with me, gave medicines resulting miscarriage.*

8. It is not a fact that I did not state before the committing court that the accused was always enticing me to marry and that the accused gave me the tablets with the impression that those would improve my health condition; and that my father came to my house in the evening that day and that I got myself treated under Dr. Bal, M.O., Fakirpur P.H.C.; and that Dr. Bal disclosed about termination of 4 months pregnancy.

9. I have never disclosed about my relationship to any of my girlfriends. It is not a fact that Panas Jena and others were in visiting terms to my house.

10. Panas Jena happens to be my Godbrother(Dharam Bhai)."

5.1. It is also contended that evidence of the victim-P.W. 2 has been well corroborated by his father who was examined as P.W. 1 and by the mother who was examined as P.W. 3. In Para-6 of her cross-examination, P.W. 3 has submitted as follows:-

***"6.** P.W. 1 informed the matter to police after about 4 days of the incident. P.W. 2 was taken to hospital after 6 days of the incident. It is not a fact that the accused did not marry P.W. 2 in the temple of the deity Thanapati by garlanding and that P.W. 2 did not conceive through the accused and that there was no termination of pregnancy on the 4th month of her pregnancy."*

5.2. It is also contended that P.W. 1 in his evidence in chief in Para-4 clearly stated about the alleged incident committed by the appellant-accused. Statement of P.W. 1 in Para-4 of the evidence reads as follows:-

"4. On Monday I removed Kuma to Fakirpur P.H.C. Dr. Bal who treated my daughter Kuma told that Kuma had carried and on account of administration of medicine the pregnancy terminated. Dr. Bal also gave some medicines to check bleeding. I ascertained the matter from my daughter Kuma. Kuma told that she became pregnant on account of her co-habitation with the accused and the accused gave her tablets for her illness as a result, there was abortion. The accused gave the tablet my daughter Kuma with an impression that those are vitamin tablets and would be helpful for removing her weakness. I had reported the matter to police orally but no action was taken. I filed the complaint before the Court of learned S.D.J.M."

5.3. Learned Addl. Standing Counsel further basing on the evidence laid by P.W. 7, who happens to be the Doctor, contended that in his evidence P.W. 7 clearly admitted that with taking of Chloroquine Tablet, there is possibility of abortion. Statement of the P.W. 7 in Para-1, 2 and 5 reads as follows:-

***"1.** On 4.3.91 I was M.O., Fakirpur P.H.C. On that day, I treated Kuma Jena, D/o-Tapa Jena of Vill-Akarua as an outdoor patient vide O.P.D. No.28191 dtd.4.3.1991. The patient complained that there was bleeding from her vagina. I examined her and found product of conception present at cervix. I prescribed medicines. I suspected the victim to have taken tablets like Chloroquine. The case was an incomplete abortion which revealed from my diagnosis. Ext-1 is the O.P.D. ticket. Ext-1/1 is my signature. Ext-2 is the prescription.*

***2.** Pregnancy of 4 months can be terminated by taking chloroquine tablets. The pregnancy was in the process of termination at the time of my examination.*

5. *If one would swallow chloroquine tablets, then there is possibility of abortion. Effectiveness of a tablet depends upon the age of pregnancy and the dose."*

5.4. Placing reliance on the evidence laid by the P.Ws., more particularly evidence of victim-P.W. 2 and the Doctor-P.W. 7, learned Addl. Standing Counsel contended that the appellant has been rightly convicted and sentenced which requires no interference. Learned Addl. Standing Counsel in support of his aforesaid submission relied on the decision reported in ***(2013) 1 SCC 562 (Ram Chandra Bhagat v. State of Jharkhand).*** Hon'ble Apex Court in Para-17, 18 & 19 of the decision has held as follows:

"17. Stroud's Judicial Dictionary (5th Edn.) explains "deceit" as follows:

"Deceit.—'"Deceit", deceptio, fraus, dolus, is a subtle, wily shift or device, having no other name; hereto may be drawn all manner of craft, subtilly, guile, fraud, wilinesse, slight, cunning, covin, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but offence'."

Black's Law Dictionary (8th Edn.) explains "deceit" thus:

"Deceit, n.—(1) The act of intentionally giving a false impression <the juror's deceit led the lawyer to believe that she was not biased>. (2) A false statement of fact made by a person knowingly or recklessly (i.e. not caring whether it is true or false) with the intent that someone else will act upon it."

In The Law Lexicon by P. Ramanatha Aiyar (2nd Edn., Reprint 2000), "deceit" is described as follows:

"Deceit.—Fraud; false representation made with intent to deceive; „Deceit, "deception of fraud" is a subtle, wily shift or device, having no other name. In this may be included all manner of craft, subtlety, guile, fraud, wiliness, slight, cunning, covin, collusion, practice and offence used to deceive another may be by any means, which hath none other proper or particular name but offence"."

18. "Deceit", in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that misleads another or causes him to believe what is false.

19. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved

— (a) deceit causing a false belief of existence of a lawful marriage, and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawfully married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC."

5.5. Learned Addl. Standing Counsel relied on another decision of the Hon'ble Apex Court reported in ***(2020) 3 SCC 736 (Arun Singh and Others Vrs. State of Uttar Pradesh)***. Hon'ble Apex Court in Para-18 to 23 of the decision has held as follows:

"18. Section 493 reads as under:

"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.— Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

19. A plain reading of the section goes to show that in order to constitute an offence under this section, it has to be demonstrated that a man has deceitfully caused any woman, who is not lawfully married to him, to believe that she is lawfully married wife and thereby to cohabit with him. In other words, the accused must induce a woman, not lawfully married to him, to believe that she is married to him and as a result of such misrepresentation, woman should believe that she was lawfully married to the man and thus there should be cohabitation or sexual intercourse.

20. A three-Judge Bench of this Court in Ram Chandra Bhagat v. State of Jharkhand [Ram Chandra Bhagat v. State of Jharkhand, (2013) 1 SCC 562 : (2013) 1 SCC (Cri) 551] after analyzing the provisions of Section 493 IPC, has observed as under: (SCC pp. 565 & 568, paras 7 & 19)

"7. ... Upon perusal of Section 493 IPC, to establish that a person has committed an offence under the said section, it must be established that a person had deceitfully induced a belief to a woman, who is not lawfully married to him, that she is a lawfully married wife of that person and thereupon she should cohabit or should have had sexual intercourse with that person. Looking at the aforestated section, it is clear that the accused must induce a woman, who is not lawfully married to him, to believe that he is married to her and as a result of the aforestated representation, the woman should believe that she was lawfully married to him and there should be cohabitation or sexual intercourse as a result of the deception.

19. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of Section 493 can be said to be fully satisfied when it is proved

— (a) deceit causing a false belief of existence of a lawful marriage, and (b) cohabitation or sexual intercourse with the person causing such belief. It is not necessary to establish the factum of marriage according to personal law but the proof of inducement by a man deceitfully to a woman to change her status from that of an unmarried to that of a lawfully married woman and then make that woman cohabit with him establishes an offence under Section 493 IPC."

21. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.

22. Deceit can be said to be a false statement of fact made by a person knowingly and recklessly with the intent that it shall be acted upon by another who on believing the same after having acted thereupon suffers an injury. It is an attempt to deceive and includes such declaration and statement that misleads others or causes him to believe which otherwise is false and incorrect.

23. In other words, to constitute an offence under Section 493 IPC, the allegations in the FIR must demonstrate that the appellant had practised deception on the daughter of the complainant causing a false belief of existence of lawful marriage and which led her to cohabit with him."

6. Having heard learned counsel for the parties and after going through the materials available on record, this Court finds that prosecution case was set in motion with initiation of a complaint case in 1CC Case No.33 of 1991 before the learned SDJM, Anandpur. As found, since cognizance was taken against the accused-appellant for the offence U/s.313/493 of IPC, the matter was committed to the Court of Sessions. As found, charge was framed against the appellant for the offence U/s.313/493 of the IPC and prosecution in order to prove the case, examined 7 nos. of P.Ws. This Court after going through the evidence of the victim-P.W.2 vis-à-vis the evidence of the Doctor-P.W.7, finds that the victim clearly implicated the accused-appellant for having sexual relationship with her and administering the medicine to terminate the pregnancy on 03.03.1991. Since the evidence of P.W. 2 has not been discarded in her cross-examination by the appellant-accused, this Court in view of such uncontroverted evidence of the victim coupled with the statement of P.W. 1, 3 and 7, is of the view that the appellant has been rightly sentenced to undergo the imprisonment vide the impugned judgment dated 12.02.1993. Accordingly, this Court finds no illegality or irregularity with the judgment dated 12.02.1993 and is not inclined to interfere with the same.

6.1. However, while not being inclined to interfere with the same, taking into account the incident being of the year 1991 and since in the meantime more than 33 years have passed, this Court directs for release of the appellant under the provisions of Probation of Offenders Act, 1958. This Court accordingly directs the appellant to appear before the learned Asst. Sessions Judge, Anandpur for his release under the provisions of Probation of Offenders Act, 1958, within a period of 1 (one) month from the date of receipt of this order. On such surrendering of the appellant, learned

Asst. Sessions Judge shall do the needful in terms of the provisions contained under the Probation of Offenders Act, 1958.

7. The Appeal accordingly stands disposed of.

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

Result of the case:
Appeal stands disposed of.

—— o ——

2025 (II) ILR-CUT-179

SUBALA KUMAR NAYAK
V.
COMMANDANT-GENERAL OF HOME GUARDS, CUTTACK & ANR.

[W.P.(C) NO. 20096 OF 2016]

17 APRIL 2025

[MURAHARI SRI RAMAN, J.]

Issue for Consideration

Whether refusal to accord "approval" to the selection Board/ Appointment Board/Enrolment Board, after conclusion of process of selection is sustainable with reference to section 3 of the 1961 Act.

Headnotes

ODISHA HOME GUARDS ACT, 1961 – Section 3(1) r/w Odisha Home Guards Rules, 1962 and Executive Instruction issued by the Commandant-General of Home Guards dated 03.07.2014 – As per the circular prior approval of Commandant General is necessary for appointment of "members of Home Guards" by the Commandant – The petitioner is a selected candidate pursuant to an Advertisement dated 12.04.2016 – After completion/ appointment, the proceeding of the Enrolment Board was sent to the Commandant-General, Home Guards for approval but it was refused on the ground that prior approval was not taken from the Directorate General – Whether refusal to accord "approval" to the Selection Board/ Appointment Board/ Enrolment Board, after conclusion of process of selection is sustainable with reference to Section 3 of the 1961 Act.

Held: No – The reason as cited by the Commandant-General for not according approval is flimsy, vague and untenable inasmuch as Section 3 of the HG Act does not envisage "prior approval" of the Director General.

(Para 13.2)

Citations Reference

Srinibas Jena Vrs. Janardan Jena, **AIR 1981 Ori 1 = 50 (1980) CLT 337;** Ashok Leyland Ltd. Vrs. State of Tamil Nadu, **(2004) 3 SCC 1;** Surinder Singh Vrs. Central Government, **(1986) 4 SCC 667;** Jantia Hill Truck Owners Assn. Vrs. Shailang Area Coal Dealer & Truck Owner Assn., **(2009) 8 SCC 492;** Union of India Vrs. Bhim Sen Walaiti Ram, **(1969) 3 SCC 146;** Vijayadevi Navalkishore Bhartia Vrs. Land Acquisition Officer, **(2003) 5 SCC 83;** Sunny Abraham Vrs. Union of India, **(2021) 9 SCR 892;** Ashok Kumar Sahu Vrs. Union of India, **(2006) Supp.4 SCR 394;** Mohammad Ali Vrs. State of Uttar Pradesh, **AIR 1958 All 681;** Saheed Sporting Club Vrs. Kalyan Ray Choudhury, **2008 (Supp.-II) OLR 917 (Ori);** Kali Prasad Mishra Vrs. State of Odisha, **AIR 2023 Ori 165;** Orient Paper Mills Ltd. Vrs. Union of India, **AIR 1969 SC 48;** Union of India Vrs. Somasundaram Viswanath, **1988 Supp.3 SCR 146;** SK Nausad Rahaman Vrs. Union of India, **2022 LiveLaw (SC) 266;** State of U.P. Vrs. Babu Ram Upadhyaya, **AIR 1961 SC 751;** State of Tamil Nadu Vrs. Hind Stone, **AIR 1981 SC 711;** Punit Rai Vrs. Dinesh Chaudhary, **(2003) 8 SCC 204;** Union of India Vrs. Naveen Jindal, **(2004) 2 SCC 510;** State of Kerala Vrs. Chandra Mohan, **(2004) 3 SCC 429;** Bishamber Dayal Chandra Mohan Vrs. State of U.P., **AIR 1982 SC 33;** M.S.P.L. Ltd. Vrs. State of Karnataka, **2022 LiveLaw (SC) 886;** Union of India Vrs. Hansoli Devi, **(2002) Supp. (2) SCR 324;** Nairin Vrs. University of St. Andrews, **1909 AC 147;** Ram Rattan Vrs. Parma Nand, **AIR 1946 PC 51;** S. Narayanaswami Vrs. G. Panneerselyam, **AIR 1972 SC 2284;** Ku. Sonia Bhatia Vrs. State of U.P., **(1981) 2 SCC 585 = AIR 1981 SC 1274;** Nelson Motis Vrs. Union of India, **AIR 1992 SC 1981;** Vemareddy Kumaraswamy Reddy Vrs. State of A.P., **(2006) 2 SCC 670 – referred to.**

List of Acts

Odisha Home Guards Act, 1961, Odisha Home Guards Rules, 1962.

Keywords

Prior approval; Approval; Subject to; Permission.

Case Arising From

Advertisement issued on 12.04.2016 questioning the propriety of decision taken by the Commandant-General-Inspector General of Police, Fire Services, Home Guards & Civil Defence, Odisha.

Appearances for Parties

For Petitioner : M/s. Manoja Kumar Khuntia, Gyana Ranjan Sethi, J.K. Digal, Ms. Babita Kumari Pattanaik

For Opp. Parties : Mr. Dayanidhi Lenka, AGA

For Interveners : M/s. Bibhuti Bhusan Swain & Sunil Kumar Swain

Judgment/Order

Judgment

M.S. RAMAN, J.

The petitioner, a selected candidate in pursuance of Advertisement dated 12.04.2016, questions propriety of decision taken by the Commandant-General-Inspector General of Police, Fire Services, Home Guards and Civil Defence, Odisha), Cuttack in refusing to accord approval to the proceeding of Appointment Board/Selection Board/Enrolment Board for appointment of Home Guards (selected candidates) as sought for by the Commandant of Home Guards, Bolangir, by way of the instant writ petition invoking provisions of Articles 226 and 227 of the Constitution of India.

Facts:

2. The opposite party No.2 issued an Advertisement dated 12.04.2016 inviting application from eligible candidates for appointment of Home Guards against eighty one posts in Bolangir district. Twenty three out of eighty one posts are reserved for women candidates. The eligibility criteria provided for:

i. candidate must have attained the age of 20 years as on 01.01.2016;

ii. candidate must have passed at least Lower Primary Examination in Odia language;

iii. candidate must be physically fit.

2.1. The petitioner applied for appointment/enrolment in the post of Home Guard in response to said Advertisement. The Selection Board/Appointment Board/Enrolment Board (for convenience, "Board") constituted under the Chairmanship of Commandant, Home Guards, Bolangir, upon medical test being conducted with respect to candidates and verification of other conditions of eligibility, selected eight one candidates out of two thousand one hundred and twenty candidates who applied for enrolment as Home Guard. The name of the petitioner finds place at serial No.25 of the said list of successful candidates.

2.2. After completion of the selection process, for the purpose of enrolment/appointment, the proceeding of Enrolment Board was sent to the Commandant-General of Home Guards for approval on 13.06.2016. Nonetheless,

the same has been refused on the ground that *"prior approval was not taken"* from the Directorate General.

2.3. On 26.10.2016 the Commandant of Home Guards issued further Advertisement dated 26.10.2016 inviting applications for enrolment of Home Guards against sixty seven posts.

2.4. Hence, this writ petition has been filed invoking provisions of Article 226/227 of the Constitution of India.

Counter affidavit of the opposite parties:

3. The Commandant, Home Guards, Bolangir by way of advertisement dated 12.04.2016 invited applications from the candidates without prior approval of the Commandant-General, Home Guards, Odisha as required under Section 3 of the Odisha Home Guards Act, 1961 (for brevity, "HG Act").

3.1. After obtaining prior approval from the State Home Guards Headquarters, Odisha, Cuttack *vide* Letter No.3852/HGs, dated 07.10.2016, Advertisement dated 26.10.2016 was published for enrolment of Home Guards against sixty seven vacancies for which selection process was undertaken during 18.11.2016 to 21.11.2016.

3.2. Under such circumstances, the latter Advertisement, being in consonance with *sine qua non* requirement envisaged under Section 3 of the HG Act read with Instruction contained in Circular dated 03.07.2014, no fault can be attributed to such Advertisement, pursuant which selection process has already been completed.

Hearing:

4. This Court on 06.12.2016 passed the following order:

> *"W.P.(C) No.20096 of 2016*
>
> *Learned counsel for the petitioner is directed to serve two extra sets of the brief on learned Additional Government Advocate for the State, who shall appear on behalf of opposite party Nos.1 and 2 and take instruction in the matter.*
>
> *List this matter on 10.01.2017. Counter affidavit, if any, be filed in the meantime.*
>
> ***
>
> *Misc. Case No.18517 of 2016*
>
> ***It is directed that the result published pursuant to Order dated 30.09.2016, under Annexure-4, shall be subject to result of the writ petition.***
>
> *Misc. Case is disposed of.*
>
> ****"*

4.1. Sri Dayanidhi Lenka, learned Additional Government Advocate pressed into service I.A. No.1852 of 2025 filed by the opposite parties seeking to vacate aforesaid Order dated 06.12.2016.

4.2. When the matter is taken up for consideration of said interlocutory application filed at the instance of opposite parties, Sri Manoja Kumar Khuntia, learned counsel appearing for the petitioner submitted that as the pleadings are completed and exchanged between the counsel for respective parties, the writ petition, being pending since 2016, can be disposed of on short point, i.e., whether prior approval of the Commandant-General of Home Guards was required to be taken before appointment by the Commandant of Home Guards or such approval was required to be taken by the Commandant prior to initiation of enrolment process for appointment of Home Guards.

4.3. Sri Bibhuti Bhusan Swain, learned Advocate appearing for interveners by way of I.A. No.6058 of 2025, would submit that the intervention petition of Sanjib Kumar Maharana, Lokeswar Mishra, Lalit Kumar Rout and Jyoti Ranjan Naik, successful candidates whose names found place in the select list in connection with the Advertisement dated 12.04.2016, could not be issued with the appointment orders in view of the fact that the Commandant-General did not accord approval. He has, therefore, no objection for disposal of the writ petition at this stage and would support the arguments advanced by Sri Manoja Kumar Khuntia, learned counsel for the petitioner.

4.4. Hence, on the consent of counsel for the respective parties, this matter was taken up for final hearing on 15.04.2025.

4.5. Heard Sri Manoja Kumar Khuntia and Ms. Babita Kumar Pattnaik, learned Advocates for the petitioner; Sri Bibhuti Bhusan Swain, learned Advocate for the intervener-petitioners and Sri Dayanidhi Lenka, learned Additional Government Advocate representing the opposite parties.

4.6. On conclusion of hearing, the matter stood reserved for preparation and pronouncement of Judgment/Order.

Rival contentions and submissions:

5. Sri Manoja Kumar Khuntia, learned Advocate submitted that there is no requirement under the HG Act read with the Odisha Home Guards Rules, 1962 ("HG Rules", abbreviated) for obtaining prior approval to initiate recruitment/enrolment process, but it is the requirement for seeking approval of the Commandant-General by the Commandant of Home Guards for the purpose of appointment.

5.1. It is, thus, argued by Sri Manoja Kumar Khuntia, learned Advocate that the Board having initiated enrolment process for appointment of Home Guards by way of Advertisement dated 12.04.2016 and proceeded to select eighty one candidates as per vacancy position, there was no illegality in such process. In order to comply with the terms of Section 3 of the HG Act read with Rule 4 of the HG Rules, the

Commandant of Home Guards sought for approval for the purpose of "appointment".

5.2. However, the Commandant-General of Home Guards on misreading and erroneous interpretation of the statutory provisions, refused to accord approval to the selection made by the duly constituted Board.

6. *Per contra,* Sri Dayanidhi Lenka, learned Additional Government Advocate vehemently contended that "prior approval" is concomitant factor contemplated under Section 3 of the HG Act and such mandatory requirement being not satisfied by the Commandant, the selection proceeding of the Board suffers infirmity. In absence of "prior approval" of the Commandant-General entire proceeding of Board stands vitiated, being vulnerable.

6.1. The Commandant of Home Guards is not empowered to issue advertisement to fill up posts of Home Guards without "prior approval" of the Commandant-General of Home Guards in view of Instructions contained in Circular No.N-1-2012/6714/HGs, dated 03.07.2014, which clearly impressed upon all concerned for obtaining prior approval. It is stipulated therein that absence of prior approval would render the appointment/reappointment void *ab initio.*

6.2. Therefore, he prayed for dismissal of the writ petition.

Discussions and analysis:

7. Relevant provisions of the Odisha Home Guards Act, 1961, lay down as follows:

> *"An Act to provide for the constitution of the Home Guards in the State of Odisha*
>
> *WHEREAS it is expedient to provide a volunteer Organisation for use in emergencies and for other purposes in the State of Odisha;*
>
> ***
>
> *2. Constitution of Home Guards and appointment of Commandant-General and Commandant.—*
>
> *(1) The State Government shall constitute for the areas notified under sub-section (3) of Section 1 a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property and public safety and for such other functions as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.*
>
> *(2) The State Government shall appoint a Commandant-General of the Home Guards in whom shall vest general supervision and control of the Home Guards in the State and may also appoint a Deputy Commandant-General to whom the Commandant-General may delegate such of his powers as he may consider necessary for supervision, control and training of the Home Guards.*
>
> *(3) The State Government shall also appoint a Commandant for the Home Guards in each district.*
>
> *3. Appointment of Members.—*

(1) ***Subject to the approval of the Commandant-General****, the Commandant may* ***appoint*** *as members of the Home Guards with in his jurisdiction such number of persons,* ***who are fit and willing to serve****, as may from time to time be determined by the State Government and* ***may appoint*** *any such member to any office of Command in the Home Guards.*

(2) Notwithstanding anything contained in sub-section (1) the Commandant-General may appoint any such member to any such office as aforesaid under his control.

*****

10. Rules.—

(1) The State Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following 5 matters, namely:

(a) the exercise by any officer of the Home Guards of the powers conferred by Section 4 on the Commandant and Commandant General;

(b) the exercise of control by officers of the Police Force over members of the Home Guards ,when acting in aid of the Police Force;

(c) the Organization, appointment, conditions of service, functions discipline, arms, accoutrements ,and clothing of members of the Home Guards and the manner in which they may be called out for service; and

(d) any other matter required, or expressly or impliedly authorized, by this Act to be prescribed by rules."

8. Rules so far as relevant for the present purpose prescribed under the Odisha Home Guards Rules, 1962 read thus:

"2. Definitions.—

In these rules unless the context otherwise requires:

(i) 'Act' means the Odisha Home Guards Act, 1961;

(ii) 'Commandant-General', 'Deputy Commandant-General' and 'Commandant' respectively mean Commandant-General, Deputy Commandant-General and Commandant of Home Guards appointed under Section 2;

(iii) 'Form' means a form appended to these rules;

(iv) 'Home Guards' means the Home Guards constituted under Section 2;

(v) 'Member of the Home Guards' means a member appointed under Section 3;

(vi) 'Section' means a section of the Act.

3. Appointment of members of Home Guards.—

No person shall be appointed as a member of the Home Guards:

(a) Unless he has attained the age of twenty and has not completed the age of sixty years;

(b) Unless he has passed at least the lower primary examination in any language; and

(c) Unless he has been medically examined and is in the opinion of the Commandant physically fit:

Provided that the Commandant-General or the Deputy Commandant-General, if so authorized by the Commandant-General, may in suitable cases relax the condition prescribed in Clauses (a) and (b).

4. Application for appointment.—

A person desiring to be appointed as member of the Home Guards, shall make an application in Form 'A'.

*****

8. Term of office.—

The term of office of a member of the Home Guards shall be three years:

Provided that if any such member is found to be medically unfit to continue as a member of Home Guards his appointment may be terminated before the expiry of the aforesaid term of office:

Provided further that a person appointed as a member of the Home Guards shall be eligible for re-appointment.

9. Limit of age for a member of the Home Guards.—

No member of the Home Guards shall continue to be such member after completion of the age of 60 years:

Provided that the Commandant-General, or the Commandant may relax the age-limit in suitable cases.

*****

13. Powers of the Commandant.—

(1) The Commandant shall exercise general supervision and control over the working of all the units and co-ordinate the work of the Home Guards within the district under his jurisdiction and shall be directly responsible to the Commandant-General for the efficient working, discipline, administration and training of the member of Home Guards.

(2) Subject to the supervision and control of the Commandant, any officer of the Home Guards authorized by the Commandant in this behalf may exercise the powers conferred on the Commandant in such circumstances as the Commandant may specify.

****"*

9. Harmonious reading of aforesaid provisions would lead to show that in terms of Section 3 of the HG Act members of Home Guards, who are fit and willing to serve, may be appointed by the Commandant, subject to the approval of the Commandant-General. The words "who are fit and willing to serve" makes it abundantly clear that after a candidate is found fit and willing to serve by the Commandant, the approval of the Commandant-General would be necessary for "appointment".

9.1. Further reading of Rule 3 of the HG Rules gives one to understand that certain conditions are required to be fulfilled for the purpose of appointment as a member of the Home Guards. The Commandant-General or the Deputy Commandant-General, if so authorized by the Commandant-General, is empowered in suitable cases to relax the condition(s) prescribed.

9.2. It is, therefore, unequivocal that it is for the purpose of "appointment", not for the initiation of process of selection/enrolment prior approval is a *sine qua non* condition.

9.3. Such view of this Court gets fortified by the following instructions issued by the Commandant-General of Home Guards *vide* Annexure-A/2 of the counter affidavit as relied upon by the learned Additional Government Advocate:

> *"RM/FAX*
>
> *To : All Commandant, Home Guards*
>
> *Info : All Range IGPs/DIGs of Police*
>
> *From : IGP, FS, HGs and CD, Odisha, Cuttack*
>
> *No. N-1-2012*/6714/HGs, dated 03.07.2014 U/C
>
> *Ref.: Appointment/Reappointment of Home Guards in District Home Guards Organisation.*
>
> *As prescribed in Section 3(1) of the Odisha Home Guards Act, 1961, the Commandants* ***shall appoint*** *the* ***members of Home Guards*** *within his jurisdiction* ***subject to prior approval of the Commandant-General****, Home Guards. As such, if there are any appointment/reappointment of Home Guards without prior approval of the Commandant-General, those shall be treated as void ab initio. Necessary action in this matter may please be taken accordingly."*

9.4. Glance at said Circular, it manifests that prior approval of Commandant-General is necessary for appointment of "members of Home Guards" [means a member appointed under Section 3 as defined under Rule 2(v) of the Home Guards Rules] by the Commandant.

9.5. Thus, there being no inhibition for proceeding with the selection of the candidates "for" appointment of members of Home Guards by the Board chaired by the Commandant. However, conjoint reading of the provisions of Section 3 of the HG Act read with the HG Rules as extracted hitherto coupled with the Circular demonstrates that emphasis is on the word "appoint"/"appointment", but not the process of selection of members of Home Guards for appointment.

10. Section 3 of the HG Act which is pivot for argument that the selection process being conducted within the authority of Commandant, without assigning any plausible reason the Commandant-General should not have refused to accord approval.

10.1. It does, therefore, require examination of purport of "subject to" in the expression "Subject to the approval of the Commandant-General, the Commandant may appoint as members of the Home Guards" as employed in said Section 3.

10.2. Full Bench of this Court in the case of *Srinibas Jena Vrs. Janardan Jena, AIR 1981 Ori 1 = 50 (1980) CLT 337* interpreted the effect of "subject to" in the following manner:

"No doubt, the opening paragraph of Section 4 says that the ensuing consequences are till the close of the consolidation operation, but it also says that the ensuing consequences are "subject to the provisions of this Act". ***The words "subject to" mean "conditional upon". These words should be given a reasonable interpretation, an interpretation which would carry out the intention of the legislature****."*

10.3. In *Ashok Leyland Ltd. Vrs. State of Tamil Nadu, (2004) 3 SCC 1* the Hon'ble Supreme Court noticed the expression 'subject to' as defined in *Black's Law Dictionary, Fifth Edition, page 1278*, which is as follows:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for".

10.4. In *Surinder Singh Vrs. Central Government, (1986) 4 SCC 667*, it has been observed as follows:

"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh Vrs. Central Government, (1961) 63 Punj LR 75. The Division Bench in Bishan case, (1961) 63 Punj LR 75 took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction-sale. In our opinion the view taken by the High Court is incorrect. ***Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.***

In T. Cajee Vrs. U. Jormanik Siem, AIR 1961 SC 276 = (1961) 1 SCR 750, the Supreme Court reversed the order of the High Court whereby the order of District Council removing Siem, was quashed by the High Court on the ground that the District Council had not framed any rules for the exercise of its powers as contemplated by para 3(1)(g) of 6th Schedule to the Constitution. The High Court had taken the view that until a law as contemplated by para 3(1)(g) was made there could be no question of exercise of power of appointment of a Chief or Siem or removal either. Setting aside the order of the High Court, a Constitution Bench of this Court held that the administration of the district including the appointment or removal of Siem could not come to a stop till regulations under para 3(1)(g) were framed. The view taken by the High Court that

there could be no appointment or removal by the District Council without framing of the regulation was set aside. Similar view was taken by this Court in B.N. Nagarajan Vrs. State of Mysore, AIR 1966 SC 1942 = (1966) 3 SCR 682 and Mysore State Road Transport Corpn. Vrs. Gopinath, AIR 1968 SC 464 = (1968) 1 SCR 767. In U.P. State Electricity Board Vrs. City Board, Mussoorie, (1985) 2 SCC 16 = AIR 1985 SC 883 = (1985) 2 SCR 815 validity of fixation of Grid Tarrif was under challenge. Section 46 of the Electricity (Supply) Act, 1948 provide that tariff known as the Grid Tariff shall be fixed from time to time in accordance with any regulations made in that behalf. Section 79 of the Act conferred power on the Electricity Board to frame regulations. The contention that Grid Tariff as contemplated by Section 46 of the Electricity (Supply) Act could not be fixed in the absence of any regulations laying down for fixation of tariff, and that the notification fixing tariff in the absence of such Regulations was illegal, was rejected and this Court observed: (SCC pp. 20-21, para 7)

'It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made is this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. ***We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff****.'*

7. As noted earlier Sections 8 and 20 of the Act provides for payment of compensation to displaced persons in any of the forms as specified including by sale to the displaced persons of any property from the compensation pool and setting off the purchase money against the compensation payable to him. Section 16 confers power on the Central Government to take measures which it may consider necessary for the custody, management and disposal of the compensation pool property. The Central Government had therefore ample powers to take steps for disposal of pool property by auction-sale and for that purpose it had authority to issue administrative directions. Section 40(2)(j) provides for framing of rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. ***Neither Sections 8, 16, 20 nor Section 40 lay down that payment of compensation by sale of the pool property to a displaced person shall not be done unless rules are framed.*** *These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotment of pool property to them in accordance with rules, if any.* ***Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. If the legislative intent was that until and unless rules were framed power conferred on the authority under Sections 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of rules, could not be a condition precedent for the exercise of power.*** *'*

****"*

10.5. The Hon'ble Supreme Court of India in *Jantia Hill Truck Owners Assn. Vrs. Shailang Area Coal Dealer & Truck Owner Assn., (2009) 8 SCC 492*[13] was pleased to make following authoritative pronouncement:

> *"The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose.* ***It is true that for the said purpose rules may have to be framed. It is, however, a well-settled principle of law that even in a case where the statute provides for certain things to be done, subject to rules, any action taken without framing the rules would not render any (sic. that) action invalid. If a statute is workable even without framing of the rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.*** *Non-compliance with the provisions relating to "laden weight" and "unladen weight" being penal in nature must be held to be imperative in character."*

10.6. In the light of above principle as laid down by the Hon'ble Supreme Court of India, if provisions of Section 3 of the HG Act is scrutinised, necessary corollary would be that the power of appointment of members of Home Guards is vested with the Commandant, but the same is conditional upon approval of the Commandant-General. No pre-fix like the word "prior" does appear before the term "approval" finds place. In absence of requirement under Section 3 for obtaining "prior approval" of Commandant-General for the purpose of constitution of Board and selection of members of Home Guards by it, entire proceeding cannot be said to be "irregular" as held by the Commandant-General *vide* Letter dated 09.09.2016 (Annexure-3). Reading of provisions of Section 3 of the HG Act read with Rule 4 of the HG Rules makes it clear that necessitous of approval of the Commandant-General would arise at the stage of making "appointment" of members of the Home Guards by the Commandant, but not for the purpose of selection process/enrolment process.

11. This now takes this Court to examine legal perspective of the term "approval", as it is strenuously argued by Sri Dayanidhi Lenka, learned Additional Government Advocate, that for sole ground reflected in the Letter dated 09.09.2016 of the Commandant-General that "prior approval was not taken from this Directorate General and the Appointment Board of Home Guards was done in an irregular manner" would vitiate selection process. Stemming on instruction contained in the Circular dated 03.07.2014 of the Commandant-General addressed to all Commandants *vide* Annexure-A/2 enclosed to the counter affidavit, the learned Additional Government Advocate insisted to refuse to consider favourably the contention of Sri Manoja Kumar Khuntia, learned Advocate for the petitioner that such Circular, being not statutory in nature, the same being directory and not in

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[13] The effect of "subject to" as laid down in *Surinder Singh Vrs. Central Government, (1986) 4 SCC 667* and *Jantia Hill Truck Owners Assn. Vrs. Shailang Area Coal Dealer & Truck Owner Assn., (2009) 8 SCC 492* has been referred to in *State of M.P. Vrs. Rakesh Sethi, (2020) 7 SCR 734.*

consonance with the provisions of Section 3 of the HG Act, cannot be basis for refusal for according approval. It is also urged by the learned counsel for the petitioner that under misconceived notion of necessity for "prior approval" even for selection of members of the Home Guards, the Commandant-General has observed that the Appointment Board of Home Guards was formed "in an irregular manner". Such irrational and illogical appreciation of provision of Section 3 of the HG Act would obliterate the decision communicated in the Letter dated 09.09.2016.

11.1. Having noticed the effect and impact of the expression "subject to" as discussed above, the exposition of the term "approval" needs discussion.

11.2. Section 3 of the HG Act and Rule 3 of the HG Rules emphasise the word "appoint". There is no express prohibition spelt out therein with respect to constitution of the Selection Board/Appointment Board/Enrolment Board, by whatever name called. It is also not restricted by way of express provision with respect to conduct of examination of the persons for selection of members of Home Guards for appointment. It is manifest from Rule 3 of the HG Rules, that prior to "appointment" as a member of the Home Guards a candidate must have attained the age of twenty years and has not completed the age of sixty years; he should have passed at least the Lower Primary Examination in any language (Odia language as per Advertisement); and such candidate has been medically examined and is in the opinion of the Commandant physically fit. Section 3 empowers the Commandant to appoint members of Home Guards, but subject to approval of the Commandant-General. Thus, the statutory requirement is unambiguous that prior to appointment under Section 3, a candidate must have been found eligible in terms of conditions stipulated in Rule 3, which is the domain of the Commandant. However, at the time of "appointment" the necessity for according approval by the Commandant-General arises.

11.3. Circular dated 03.07.2014 issued by the Commandant-General makes it very clear that "the Commandant shall appoint the members of Home Guards within his jurisdiction subject to prior approval of the Commandant-General". Here also the emphasis is on the word "appoint". The word "approval" comprehends also post-facto approval. Therefore, restrictive meaning attached by way of instruction contained in the Circular for "prior" approval is to be eschewed.

11.4. Section 3 of the HG Act only employs the word "approval", which term is contradistinguished from the word "permission". There is nothing in the language of the said provision to suggest that such "approval" is required to be construed as "prior approval". This Court takes note of certain decisions to have benefit of understanding the true purport of "approval".

11.5. In *Union of India Vrs. Bhim Sen Walaiti Ram, (1969) 3 SCC 146* a Constitution Bench of the Hon'ble Supreme Court of India considered provision requiring approval by the authority concerned and held,

"On behalf of the appellants it was contended by Dr Sayed Muhammed that the respondent was under a legal obligation to pay one-sixth of the annual fee within seven days of the auction under clause 21 of Rule 5.34 and it was due to his default that a re-sale of the excise shop was ordered. Under clause 22 of Rule 5.34 the respondent was liable for the deficiency in price and all expenses of such re-sale which was caused by his default. We are unable to accept this argument. The first portion of clause 21 requires the "person to whom the shop has been sold" to deposit one-sixth of the total annual fee within seven days. But the sale is deemed to have been made in favour of the highest bidder only on the completion of the formalities before the conclusion of the sale. Clause 16 of Rule 5.34 states that "all sales are open to revision by the Chief Commissioner". Under clause 18, the Collector has to make a report to the Chief Commissioner where in his discretion he is accepting a lower bid. Clause 33 of the Conditions, Ex. D-28, states that "all final bids will be made subject to the confirmation by the Chief Commissioner who may reject any bid without assigning any reasons". It is, therefore, clear that the contract of sale was not complete till the bid was confirmed by the Chief Commissioner and till such confirmation the person whose bid has been provisionally accepted is entitled to withdraw his bid. When the bid is so withdrawn before the confirmation of the Chief Commissioner the bidder will not be liable for damages on account of any breach of contract or for the shortfall on the re-sale. An acceptance of an offer may be either absolute or conditional. ***If the acceptance is conditional the offer can be withdrawn at any moment until absolute acceptance has taken place.*** *This view is borne out by the decision of the Court of Appeal in Hussey Vrs. Hornepayne, [L.R.] 4 App. Cas. 311 = (1878) 8 Ch D 670 at 676. In that case V offered land to P and P accepted "subject to the title being approved by my solicitors". V later refused to go on with the contract and the Court of Appeal held that the acceptance was conditional and there was no binding contract and that V could withdraw at any time until P's solicitors had approved the title. Jossel M.R., observed at p. 626 of the report as follows:*

'The offer made to the plaintiff of the estate at that price was a simple offer containing no reference whatever to title. The alleged acceptance was an acceptance of the offer, so far as price was concerned, subject to the title being approved by our solicitors'. There was no acceptance of that additional term, and the only question which we are called upon to decide is, whether that additional term so expressed amounts in law to an additional terms or whether it amounts, as was very fairly admitted by the counsel for the respondents, to nothing at all, that is, whether it merely expresses what the law would otherwise have implied. ***The expression 'subject to the title being approved by our solicitors' appears to me to be plainly an additional term. The law does not give a right to the purchaser to say that the title shall be approved by any one, either by his solicitor or his conveyancing counsel, or any one else.*** *All that he is entitled to require is what is called a marketable title, or, as it is sometimes called, a good title.* ***Therefore, when he puts in 'subject to the title being approved by our solicitors', he must be taken to mean what he says, that is, to make a condition that solicitors of his own selection shall approve of the title****.'*

It was submitted on behalf of the appellant that the phrase "person to whom a shop has been sold" in clause 21 of Rule 5.34 means a "person whose bid has been provisionally accepted". It is not possible to accept this argument. As we have already shown the first part of clause 21 deals with a completed sale and the second part deals with a situation where the auction is conducted by an officer lower in rank than the Collector. In the latter case the rule makes it clear that if any person whose bid has been accepted by the officer presiding at the auction fails to make the deposit of one-sixth of the annual fee, or if he

refuses to accept the licence, the Collector may re-sell the licence, either by public auction or by private contract and any deficiency in price and all expenses of such re-sale shall be recoverable from the defaulting bidder. In the present case the first part of clause 21 applies. It is not disputed that the Chief Commissioner has disapproved the bid offered by the respondent. If the Chief Commissioner had granted sanction under clause 33 of Ex. D-23 the auction sale in favour of the respondent would have been a completed transaction and he would have been liable for any shortfall on the re-sale. As the essential pre-requisites of a completed sale are missing in this case there is no liability imposed on the respondent for payment of the deficiency in the price."

11.6. In *Vijayadevi Navalkishore Bhartia Vrs. Land Acquisition Officer, (2003) 5 SCC 83* it has been observed that,

"From the scheme of the Act, it is seen that the power of inquiry under Section 11 vests with the Collector who has to issue notice to the interested persons and hear the interested persons in the said inquiry. He also has to determine the measurements of the land in question and on the basis of the material on record decide the compensation which in his opinion should be allowed for the land and if need be, he can also apportion the said compensation amongst the interested persons. The nature of inquiry which statutorily requires the interested parties of being heard and taking a decision based on relevant factors by the Collector shows that the inquiry contemplated under Section 11 is quasi-judicial in nature, and the said satisfaction as to the compensation payable should be based on the opinion of the Collector and not that of any other person. Section 11 under the Act has not provided an appeal to any other authority as against the opinion formed by the Collector in the process of inquiry conducted by him. ***What is provided under the proviso to Section 11(1) is that the proposed award made by the Collector must have the approval of the appropriate Government or such officer as the appropriate Government may authorise in that behalf. In our opinion, this power of granting or not granting previous approval cannot be equated with an appellate power.***

Black's Law Dictionary, 6th Edn., defines "approval" to mean an act of confirming, ***ratifying****, assenting, sanctioning or consenting to some act or thing done by another.* ***In the context of an administrative act, the word "approval" in our opinion, does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. It will be doing violence to the scheme of the Act if we have to construe and accept the argument of the learned counsel for the respondents that the word approval found in the proviso to Section 11(1) of the Act under the scheme of the Act amounts to an appellate power. On the contrary, we are of the opinion that this is only an administrative power which limits the jurisdiction of the authority to apply its mind to see whether the proposed award is acceptable to the Government or not. In that process for the purpose of forming an opinion to approve or not to approve the proposed award the Commissioner may satisfy himself as to the material relied upon by the Collector but he cannot reverse the finding as if he is an Appellate Authority for the purpose of remanding the matter to the Collector as can be done by an Appellate Authority; much less can the Commissioner exercising the said power of prior approval give directions to the statutory authority in what manner he should accept/appreciate the material on record in regard to the compensation payable.*** *If such a power of issuing direction to the Collector by the Commissioner under the provision of law referred to hereinabove is to be accepted then it would mean that the Commissioner is empowered to exercise the said power to substitute his opinion to that of the Collector's opinion for the purpose of fixing the compensation, which in our view is opposed to the language of Section 11 of the Act.*

Therefore, we are of the opinion that the Act has not conferred an appellate jurisdiction on the Commissioner under Section 15(1) proviso of the Act. This conclusion of ours is further supported by the scheme of the Act and Section 15-A of the Act which is also introduced in the Act simultaneously with the proviso to Section 11(1) under Act 68 of 1984. By this amendment, we notice that the Act has given a power akin to the appellate power to the State Government to call for any records or proceedings of the Collector before any award is made for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the irregularity of such proceedings and to pass such other order or issue such direction in relation thereto as it may think fit. Therefore it is not as if the acquiring authority, namely, the appropriate Government even if aggrieved by the fixation of compensation by the Collector has no remedy. It can very well exercise the power under Section 15-A and pass such orders as it thinks fit, of course, after affording an opportunity to such person who is likely to be prejudicially affected by such order of the appropriate Government, therefore, it is clear that the statute when it intended to give appellate or revisional power against the finding of the Collector in the fixation of compensation it has provided such power separately in Section 15-A of the Act. Therefore, in our opinion, if the Commissioner while considering the proposed award of the Collector under the proviso to Section 11(1) of the Act to grant or not to grant approval thinks that the order of the Collector cannot be approved, he can at the most on the administrative side bring it to the notice of the appropriate Government to exercise its power under Section 15-A of the Act, but he cannot as in the present case on his own exercise the said power because that power under Section 15-A is confined to the appropriate Government only. Therefore we have to negative the argument of Mr Joshi that it is open to the Commissioner while considering the grant of approval to exercise the power either found in Section 15-A of the Act or similar power exercising his jurisdiction under proviso to Section 11(1) of the Act."

11.7. The Hon'ble Supreme Court in *Sunny Abraham Vrs. Union of India, (2021) 9 SCR 892* clarified with respect to "prior approval" *vis-à-vis* "permission" as follows:

"7. The Delhi High Court in the appellant's case primarily examined the issue as to whether having regard to the aforesaid Rules, a charge sheet or charge memorandum could be given ex-post facto approval or not. The main distinguishing feature between the case of the appellant and that decided in Union of India and Ors. Vrs. B.V. Gopinath, (2013) 14 SCR 185 is that in the facts of the latter judgment, the subject charge memorandum did not have the ex-post facto approval. Stand of the respondents is that there is no bar on giving ex-post facto approval by the Disciplinary Authority to a charge memorandum and so far as the present case is concerned, such approval cures the defect exposed in Gopinath's case. On behalf of the appellant, the expression "non est" attributed to a charge memorandum lacking approval of the Disciplinary Authority has been emphasized to repel the argument of the respondent authorities.

8. The respondents' argument was accepted by the High Court mainly on two counts. First, there was no ex-post facto approval to the charge memorandum in Gopinath's case. ***Approval implies ratifying an action and there being no requirement in the concerned Rules for prior approval, ex-post facto approval could always be obtained.*** *On this point, the cases of Ashok Kumar Das and Others Vrs. University of Burdwan and Others, (2010) 3 SCC 616 and Bajaj Hindustan Limited Vrs. State of Uttar Pradesh and Others, (2016) 12 SCC 613 are relevant. As regards the charge memorandum being declared non est, it was held by the High Court:*

'26. However, question would arise whether this ratio would be applicable for as per the respondents as in Union of India and Ors. Vrs. B.V. Gopinath reported as (2013) 14 SCR 185, the Supreme Court has used the term "non est". The expression non est can be used as non est inventus or non est factum, which means a denial of the execution of an instruction sued upon. Non est inventus is a Latin phrase which means "he is not found". [See Black's Dictionary 8th Edition at page 1079-1980]. Indeed it could be argued that the use of the expression would indicate that the charge sheet was illegal and void for want of approval.' (quoted verbatim from the copy of the judgment as reproduced in the paperbook)

The cases of Ashok Kumar Das (supra) and Bajaj Hindustan Limited (supra) were referred to for the proposition that the approval includes ratifying an action, which obviously could be given ex-post facto. *The following passage from the case of Bajaj Hindustan Limited (supra) was quoted in the judgment under appeal:*

'7. As is clear from the above, the dictionary meaning of the word "approval" includes ratifying of the action, ratification obviously can be given ex post facto approval. Another aspect which is highlighted is a difference between approval and permission by the assessing authority that in the case of approval, the action holds until it is disapproved while in other case until permission is obtained. In the instant case, the action was approved by the assessing authority. ***The Court also pointed out that if in those cases where prior approval is required, expression "prior" has to be in the particular provision.*** *In the proviso to sub-section (1) of Section 3-A word "prior" is conspicuous. For all these reasons, it was not a case for levying any penalty upon the appellant. We, therefore, allow this appeal and set aside the impugned judgment [Bajaj Hindustan Ltd. Vrs. State of U.P., Misc. Single No. 3088 of 1999, order dated 30-9-2004 (All)] of the High Court as well as the penalty. No order as to costs.' (quoted verbatim from the copy of the judgment as reproduced in the paperbook).*

9. The following passage from the case of Ashok Kumar Das (supra) has also been quoted in the judgment under appeal:

'11. In Black's Law Dictionary (Fifth Edition), the word "approval" has been explained thus:

'Approval.—

The act of confirming, ratifying, assenting, sanctioning, or consenting to some act or thing done by another.'

Hence, approval to an act or decision can also be subsequent to the act or decision.

12. In U.P. Avas Evam Vikas Parishad, 1955 Supp. (3) SCC 456, this Court made ***the distinction between permission, prior approval and approval****. Para 6 of the judgment is quoted hereinbelow:*

'6. This Court in Life Insurance Corpn. of India Vrs. Escorts Ltd., (1986) 1 SCC 264, considering the distinction between "special Permission" and "general permission", previous approval" or "prior approval" in para 63 held that:

*'63. *** we are conscious that the word 'prior' or 'previous' may be implied if the contextual situation or the object and design of the legislation demands it, we find no such compelling circumstances justifying reading any such implication into Section 29 (1) of the Act.'*

Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become

effective until permission is obtained. But permission subsequently granted may validate the previous Act, it was stated in Lord Krishna Textiles Mills Ltd. Vrs. Workmen, AIR 1961 SC 860, that the Management need not obtain the previous consent before taking any action. ***The requirement that the Management must obtain approval was distinguished from the requirement that it must obtain permission, of which mention is made in Section 33(1)****.'*

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15. The words used in Section 21 (xiii) are not "with the permission of the State Government" nor "with the prior approval of the State Government", but "with the approval of the State Government". If the words used were "with the permission of the State Government", then without the permission of the State Government the Executive council of the University could not determine the terms and conditions of service of non-teaching staff. ***Similarly, if the words used were "with the prior approval of the State Government", the Executive Council of the University could not determine the terms and conditions of service of the non-teaching staff without first obtaining the approval of the State Government. But since the words used are "with the approval of the State Government", the Executive Council of the University could determine the terms and conditions of service of the non-teaching staff and obtain the approval of the State Government subsequently and in case the State Government did not grant approval subsequently, any action taken on the basis of the decision of the Executive council of the University would be invalid and not otherwise.*** *" (quoted verbatim from the copy of the judgment as reproduced in the paperbook).*

10. As it has already been pointed out, the High Court sought to distinguish the case of B.V. Gopinath (supra) with the facts of the present case on the ground that in the case of the appellant, the Disciplinary Authority had not granted approval at any stage and in the present case, ex-post facto sanction of the charge memorandum or charge sheet was given when the departmental proceeding was pending. The High Court found such approach to be practical and pragmatic, having regard to the fact that the departmental proceeding had remained pending in the case of the appellant and evidences had been recorded. The High Court thus considered the fact that in the case of B.V. Gopinath (supra), the proceeding stood concluded whereas in the appellant's case, it was still running when ex-post facto approval was given. That was the point on which the ratio of B.V. Gopinath (supra) was distinguished by the High Court.

11. We do not think that the absence of the expression "prior approval" in the aforesaid Rule would have any impact so far as the present case is concerned as the same Rule has been construed by this Court in the case of B.V. Gopinath (supra) and it has been held that charge sheet/charge memorandum not having approval of the Disciplinary Authority would be non est in the eye of the law. Same interpretation has been given to a similar Rule, All India Services (Discipline and Appeal) Rules, 1969 by another Coordinate Bench of this Court in the case of State of Tamil Nadu Vrs. Promod Kumar, IPS and Another, (2018) 17 SCC 677] (authored by one of us, L. Nageswara Rao, J). Now the question arises as to whether concluded proceeding (as in the case of B.V. Gopinath) and pending proceeding against the appellant is capable of giving different interpretations to the said Rule. The High Court's reasoning, referring to the notes on which approval for initiation of proceeding was granted, is that the Disciplinary Authority had taken into consideration the specific charges. The ratio of the judgments in the cases of Ashok Kumar Das (supra) and Bajaj Hindustan Limited (supra), in our opinion, do not apply in the facts of the present case. ***We hold so because these***

authorities primarily deal with the question as to whether the legal requirement of granting approval could extend to ex-post facto approval, particularly in a case where the statutory instrument does not specify taking of prior or previous approval. *It is a fact that in the Rules with which we are concerned, there is no stipulation of taking "prior" approval. But since this very Rule has been construed by a Coordinate Bench to the effect that the approval of the Disciplinary Authority should be there before issuing the charge memorandum, the principles of law enunciated in the aforesaid two cases, that is Ashok Kumar Das (supra) and Bajaj Hindustan Limited (supra) would not aid the respondents. The distinction between the prior approval and approval simplicitor does not have much impact so far as the status of the subject charge memorandum is concerned."*

11.8. The Supreme Court of India in *Ashok Kumar Sahu Vrs. Union of India, (2006) Supp.4 SCR 394* distinguished the perception of "acceptance", "approval" and "ratification" as follows:

*"**The expression 'approval' presupposes an existing order.** 'Acceptance' means communicated acceptance. A distinction exists between the expressions 'approval' and 'acceptance'. Whereas in the latter, an application of mind on the part of the competent authority is sine qua non, approval of an order only envisages statutory entitlement. **Approval of an order is required as directed by the statute. It can be given a retrospective effect.** Even valid contract comes into being only after the offer is accepted and communicated. Where services of an employee are dispensed with, the order takes effect from the date when it is communicated and not from the date of passing of the order. [See State of Punjab Vrs. Amar Singh Harika, AIR 1966 SC 1313].*

*We are, however, not oblivious of the fact that under certain circumstances, **the expression, 'approval' would mean to accept as good or sufficient for the purpose of intent. Ratification is noun, of the verb 'ratify'. It means the act of ratifying, confirmation, and sanction. The expression 'ratify' means to approve and accept formally.** It means to conform, by expressing consent, approval or formal sanction. 'Approve' means to have or express a favourable opinion of to accept as satisfactory. In the instant case, there was no question of any ratification involved as wrongly assumed by the High Court. [See Maharashtra State Mining Corpn. Vrs. Sunil, son of Pundikarao Pathak, (2006) 5 SCC 96]."*

11.9. In *Mohammad Ali Vrs. State of Uttar Pradesh, AIR 1958 All 681* the concept of "approval" has been discussed as follows:

*"6. When a person is employed under a power which is to be exercised subject to the approval of a higher authority or the Government, the appointment holds good so long as the higher authority or the Government has not disapproved of it. **There is a distinction between an appointment with the permission of a higher authority or the Government, and an appointment subject to the approval of the higher authority or the Government. An appointment which is to be made with the permission of a higher authority or the Government cannot be made unless the permission is first obtained, but an appointment which can be made subject to the approval of a higher authority or the Government may be made and will be rendered invalid only when it is disapproved by the higher authority.** This distinction was pointed out by a Full Bench of this Court in Shakir Husain Vrs. Chandoolal, AIR 1931 All 567 (A). Sir Shah Sulaiman, Acting Chief Justice, as he then was, observed:*

'Ordinarily the difference between the approval and permission is that in the first the act holds good until disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently obtained may all the same validate the previous act.'

7. ***But as the appointment is subject to the approval of the higher authority or the Government the appointment though valid till it is disapproved is nebulous and cannot be deemed to perfect and binding. In the case of such appointment the appointing authority must ordinarily have the power of rescinding the appointment before it has been approved by the higher authority.*** *In our judgment the provisions of Section 9 of the U.P. Municipalities Act do not apply such nebulous appointment, and, in the present case, the State Government having disapproved of the appointment of the appellant, the appellant cannot be heard to say that the order passed by the State Government should be quashed by issuing an order in the nature of a writ."*

11.10. A Division Bench of this Court in *Saheed Sporting Club Vrs. Kalyan Ray Choudhury, 2008 (Supp.-II) OLR 917 (Ori)* has made the following clarification:

"The settled legal proposition referred to above, makes it clear that where there is a requirement of approval by the statutory authority, proposal/acceptance of a bid/ resolution etc. remains inoperative till it is approved. It becomes effective only after accord of approval."

11.11. The legal proposition as exposited in the foregoing discussion leaves no doubt to say that the expression 'approval' presupposes an existing order and approval of an order only envisages statutory entitlement as distinguished from the term "acceptance" which requires application of mind. Approval of an order is required as directed by the statute. It can be given a retrospective effect/post-facto. Where prior approval is required, expression "prior" has to be incorporated in the particular provision. In the context of an administrative act, the word "approval" does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. In that process for the purpose of according approval, the Commandant-General cannot reverse the finding/decision of the Board, as he is not vested with the power of the Appellate Authority. Needless to say that the requirement that the Commandant must obtain "approval" is distinguished from the requirement that "permission" must be obtained. In Section 3 of the HG Act the word "prior" is conspicuously absent. Therefore, no infirmity or irregularity could be imputed to the proceedings of the Board chaired by the Commandant and seeking approval after selection list is prepared could not said to be irregular. The Commandant-General under a mistaken impression that prior approval was necessary has in his Letter dated 09.09.2016 refused to accord approval. It is to be appreciated that the Commandant has sent the Selection Board/Appointment Board/Enrolment Board proceeding for approval of the Director General. Of course, till approval is accorded, the selection list remains inoperative, but it cannot be said that said selection process is vitiated, as the word "approval" can comprehend not only "pre-facto", but also "post-facto" approval.

Conclusion:

12. The crux of the matter revolves round whether the Commandant-General could refuse to accord "approval" to the Selection Board/Appointment Board/Enrolment Board proceeding after conclusion of process of selection, but before the appointment being given by the Commandant, on the specious ground that no prior approval was taken with reference to Section 3 of the Odisha Home Guards Act, 1961?

13. To consider such question, the following communications available at Annexure-2 and Annexure-3 of the writ petition are required to be taken into account:

"Odisha Home Guards,
District Headquarters, Balangir
NO. 192/HG Date 13.06.2016

To

The Commandant-General, HGs
Odisha, Cuttack
Enrolment of outsiders as Home Guards.

Regarding submission of proceeding of the Enrolment Board for a

In inviting reference to the above cited subject, this is to intimate vacancy of Home Guards available in this district, enrolment procedure of our Homegaurds was conducted by an Enrolment Board from 03.05.2016 to 19.05.2016, Headquarters, Bolangir. As per the instructions communicated vide State Home Circular order No.24/2016, out of 87 vacancies, 06 posts of Home Guards have been kept vacant to accommodate cases of discharged Home Guards if any for re-appointment. The board recommended the cases of 81 outsiders for their enrolment as Home Guard in different PSs/Ops of the district according to the vacancies available as on 01.05.2016.

The proceeding of the Enrolment Board is sent herewith for favour of kind necessary approval please.

Sd/-13.06.2016
Commandant
Home Guard
Bolangir

*** *** ***

Directorate General
Fire Service, Home Guards and Civil Defence, Odisha
Nuapatna, Cuttack – 753 001

No. N-128-2015/3502/HGS., Date 09.09.2016

To

The Commandant,
Home Guards, Bolangir.

Ref.: Your Letter No. 192/HG, dated 13.06.2016 and No.297/HG, dated 25.08.2016.

Sub: Regarding approval of the Selection Board proceeding for appointment of Home Guards.

I am directed to intimate that Commandant-General, Home Guards has been pleased not to approve your proposal for appointment of 81 (Eighty one) persons as Home Guards in Bolangir district Homeguards organization ***as prior approval was not taken from this Directorate General*** *and the Appointment Board of Home Guards was done in an irregular manner.*

Sd/-
L.G.P.F.S.,
HGs & CD,
Odisha, Cuttack."

13.1. As is apparent from above communications that the Commandant having completed selection process in connection with Advertisement dated 12.04.2016, submitted the proceeding of Selection Board/ Appointment Board/Enrolment Board to the Commandant-General as required under Section 3 of the HG Act for according "approval". The Commandant-General on the contrary has refused to accord "approval" on the ground that no "prior approval" was taken from the Directorate General.

13.2. Having regard to the enunciation of legal position of the terms "subject to" and "approval" as discussed *supra*, the reason as cited by the Commandant-General for not according approval is flimsy, vague and untenable inasmuch as Section 3 of the HG Act does not envisage "prior approval" of the Director General. It is at the time of appointment the Commandant (Appointing Authority) sought for approval and rightly, because of the term "subject to" contained in Section 3 of the HG Act. In view of law laid down by the Courts, it is unequivocal that the Commandant-General should not have acted as the Appellate Authority.

13.3. From the exposition of law it is untrammelled legal consequence that "approval" presupposes that there is already a statutory framework in place which grants certain rights or entitlements and when one speaks of approval in legal terms, it is about recognizing and affirming what has already been legislated or ordered. On the contrary, "acceptance" necessitates cognitive engagement and deliberation on the part of the accepting party, which involves evaluating the implications of what is being accepted and making an informed decision based on that evaluation.

13.4. Even if prior approval is not taken, the selection proceeding of the Board could be accorded post facto by ratification in view of one of the meanings of "approval" as suggested by different pronouncements is "ratification". The expression 'ratify' means to approve and accept formally. A Division Bench of this Court considered the meaning and purport of the term "ratification" in the case of *Kali Prasad Mishra Vrs. State of Odisha, AIR 2023 Ori 165* and observed:

"29. Black's Law Dictionary, Seventh Edition, page 1268 defines the term 'ratification' as confirmation and acceptance of a previous act, thereby making the act valid from the moment it was done. Concise Law Dictionary, by P.G. Osborn, published by Sweet and Maxwell, 1927 explains "ratification" as the act of adopting a contract or other transaction by a person who was not bound by it originally, e.g., because it was entered

into by an "unauthorised agent". Ratification cannot take place where the party who professes to ratify a transaction was not in existence when it took place.

30. The Latin maxim "Omnis ratihabitio retrorahitur et mandato priori aequiparatur", means that every ratification is dragged back and treated as equal to a command or previous authority. In simple terms, it means that "doctrine of ratification" comes into picture if a person has done something on behalf of another person without any authority, knowledge or consent, then if such "other person" ratifies the same, then the same result would come as if the act was done on his own."

13.5. The argument of Sri Dayanidhi Lenka, learned Additional Government Advocate as advanced based on instruction contained in the Circular dated 03.07.2014 that the Commandant should have adhered to the terms of such Circular does not hold water. The Circular indicates requirement of "prior approval" of the Commandant-General for appointment of members of Home Guards. In this context it is to be noted that the manner in which it is sought to be read is misdirected inasmuch as there is no requirement of "prior approval" envisaged under the statute. It may require to be stated emphatically that any instruction by way of Circular which is contrary to statutory provision has no force of law.

13.6. It is trite *vide, Orient Paper Mills Ltd. Vrs. Union of India, AIR 1969 SC 48* that no authority however high placed can control the decision of a judicial or a *quasi* judicial authority. In *Union of India Vrs. Somasundaram Viswanath, 1988 Supp.3 SCR 146* it has been succinctly held that *"If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules made under proviso to Article 309 of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to Article 309 of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails"*. See also, *SK Nausad Rahaman Vrs. Union of India, 2022 LiveLaw (SC) 266*.

13.7. It is also well-settled that 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. Vrs. Babu Ram Upadhyaya, AIR 1961 SC 751; State of Tamil Nadu Vrs. Hind Stone, AIR 1981 SC 711*].

13.8. In *Punit Rai Vrs. Dinesh Chaudhary, (2003) 8 SCC 204*; *Union of India Vrs. Naveen Jindal, (2004) 2 SCC 510* and *State of Kerala Vrs. Chandra Mohan (2004) 3 SCC 429*, it has been held that executive instructions cannot be termed as law within the meaning of Article 13(3)(a) of the Constitution of India. In *Bishamber Dayal Chandra Mohan Vrs. State of U.P., AIR 1982 SC 33* it is observed that, the difference in a statutory order and an executive order observing that executive instruction issued under Article 162 of the Constitution of India does not amount to

law. However, if an order can be referred to a statutory provision and held to have been passed under the said statutory provision, it would not be merely an executive fiat but an order under the statute having statutory force for the reason that it would be a positive State made law. So, in order to examine as to whether an order has a statutory force, the Court has to find out and determine as to whether it can be referred to the provision of the statute.

13.9. Statutes are to be read in their plain language and not otherwise. Reference may be had to *M.S.P.L. Ltd. Vrs. State of Karnataka, 2022 LiveLaw (SC) 886.* In *Union of India Vrs. Hansoli Devi, (2002) Supp.(2) SCR 324*, it has been stated thus:

> *"Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective."*

13.10. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver. In *Nairin Vrs. University of St. Andrews, 1909 AC 147*, it is held that,

> *"Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice."*

13.11. In *Ram Rattan Vrs. Parma Nand, AIR 1946 PC 51*, it is held as follows:

> *"The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation. In the present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."*

13.12. In *S. Narayanaswami Vrs. G. Panneerselyam, AIR 1972 SC 2284*, the Court held that *"where the statute's meaning is clear and explicit, words cannot be interpolated".*

13.13. In *Ku. Sonia Bhatia Vrs. State of U.P., (1981) 2 SCC 585 = AIR 1981 SC 1274*, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance. It is a well-settled law of interpretation that when the words of the

statute are clear, plain or unambiguous, *i.e*., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. In this regard, reference may be made to *Nelson Motis Vrs. Union of India, AIR 1992 SC 1981*.

13.14. In *Vemareddy Kumaraswamy Reddy Vrs. State of A.P., (2006) 2 SCC 670*, the Supreme Court held that,

> *"It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."*

13.15. There is nothing in Section 3 of the Odisha HG Act to read "approval" as if "prior approval". Given the principles of interpretation of statute and legal exposition as to "approval", the word "prior" could not be prefixed in the instructions by way of Circular which leads to construction of distorted meaning. Thus, to this extent the instruction that to appoint the members of Home Guards, the Commandant is required to have "prior approval" is contrary to express provisions of the statute and no power has been granted to the Commandant-General to issue such Circular by pre-fixing the word "prior" before the word "approval".

13.16. Under above premises, the reason assigned by the Commandant-General in the Letter dated 09.09.2016 that since there was absence of "prior approval", the proceeding for selection of members of Home Guards by the Selection Board/Appointment Board/Enrolment Board becomes "irregular" does not stand to reason.

14. In the wake of above discussion, analysis of factual and legal position on different aspects, the refusal to accord "approval" on solitary ground that no "prior approval" was sought for by the Commandant is bereft of rationality and thereby the Letter dated 09.09.2016 issued by the Directorate General, Fire Service, Home Guards and Civil Defence, Odisha cannot be countenanced. Therefore, the same is liable to be quashed. Hence, this Court does so.

15. *Ergo*, the opposite parties are directed to follow the consequences of such quashment of Letter dated 09.09.2016 (Annexure-3) refusing to accord "approval" to the proceeding of the Selection Board/Appointment Board of Home Guards and carry out the consequential effect and extend benefits to the selected candidates in connection with Advertisement dated 12.04.2016 (Annexure-1).

15.1. Needless to observe that the entire process is hoped to be concluded within a period of three months from date.

16. In the result, the writ petition stands disposed of in the above terms, but in the circumstances, there shall be no order as to costs.

17. As a result of disposal of the writ petition, all pending interlocutory applications, if any, shall stand disposed of.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Writ Petition disposed of.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-204

KENDRIYA VIHAR APARTMENT OWNERS' ASSOCIATION, PHASE-II, KHURDA & ANR.
V.
I.G.R.-CUM-REGISTRAR OF SOCIETIES, ODISHA & ORS.

[W.P.(C) NO. 30447 OF 2023]

24 DECEMBER 2024

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether order of cancellation of registration of Association passed by the Opp. Party No. 1 is sustainable when no opportunity was given to the petitioner u/s. 12-D of the Societies Registration (Amendment) Act, 1860.

Headnotes

SOCIETIES REGISTRATION ACT, 1860 (ODISHA AMENDMENT ACT, 2012) – Section 3A, 12-D – In the present Writ petition, the order of Inspector General of Registration, cancelling the registration of the petitioner/Association is under challenge – The Opposite Party No.1 (IGR) cancelled the registration on the ground of deliberate misrepresentation of facts by the members of the Association as the name of the Association is similar to the existing Association (Opp. Party No.2) – However, the petitioner pleaded that the authority failed to comply with the mandatory provisions of section 12-D of the Act, in terms of which the petitioner/Association should have given chance to change the name – Whether the impugned order is tenable in law..

Held: No – This Court is of the view that, despite an erroneous finding that name of the petitioner Association nearly resembles to the name of Opposite Party Association, as admittedly no such opportunity was accorded to the petitioner Association, the impugned order being passed without following due procedure of law, is illegal and unjustified – Hence, deserves to be set aside. (Para 30)

Citations Reference

Pritam Singh Vs. Registrar of Firm and Society and Another, **2015 SCC OnLine Del 8732 – referred to.**

List of Acts

Societies Registration Act, 1860; Societies Registration (Odisha Amendment) Act, 2012; Real Estate Regulation Authority Act, 2016; Indian Contract Act, 1872; Odisha Apartment (Ownership & Management) Act, 2023; Odisha Apartment (Ownership & Management) Ordinance, 2023; Orissa Apartment Ownership Rules, 1982; Indian Contract Act,1872.

Keywords

Society registration; Association; Cancellation of registration; Resemblance of name; Compensation; Residential complex; Project.

Case Arising From

Order dated 17.08.2023 passed by the Inspector General of Registration, Odisha.

Appearances for Parties

For Petitioners : Mr. G. Mishra, Sr. Adv., Mr. A.K. Dash
For Opp. Parties : Dr. R. Mohanty, Authorized Representative of O.P. 2.

Judgment/Order

Judgment

S.K. MISHRA, J.

1. This Writ Petition has been preferred by the Petitioner-Association, for quashing of the order dated 17.08.2023 passed by the Inspector General of Registration, Odisha, shortly, 'IGR', vide which the registration of the Petitioner's Association has been cancelled.

2. The factual matrix of the case is that, the Central Government Employee Welfare Housing Organisation, in short, 'CGEWHO', initiated a housing project at Mouza-Beguniabarehi, P.S.-Tamando, Bhubaneswar in the year 2007, which was to be completed in two phases. Phase-I (comprising of 256 flats) was completed in the year 2013 and the respective allotees constituted a Society by the name and style of "Kendriya Vihar Resident Welfare Association", shortly hereinafter, 'Opposite Party-Association', bearing Regd No. 2134-19 dated 17.05.2016. Phase- II (Comprising of 240 flats) was completed in the year 2019 and the respective allotees formed another Society under the name and style of "Kendriya Vihar Apartment Owners' Association Phase-II (KV AOA-II) i.e. Petitioner's Association, and the

same was also registered with the Odisha Real Estate Regulatory Authority, shortly, 'ORERA', vide Registration No.206/18202000014 of 2020-21 dated 13.07.2020.

A dispute arose between the two Associations, when the Opposite-Party-Association requested the Opposite Party No.1 to cancel the registration of the Petitioner- Association vide letters dated 16.08.2020 and 02.09.2022 on the grounds that Phase-I and Phase-II of the residential complex share common boundaries with no clear demarcation so also the names of both the Associations are mischievously similar in violation of Section 3A of the Societies Registration Act, 1860, in short, 'The Act, 1860'. Show cause notice was also issued to the Petitioner-Association on 25.01.2023 and a detailed reply was submitted by the Petitioner No.2. But the Opposite Party No.1, without considering the same and in a display of gross arbitrariness and complete non-application of mind, ordered the cancelation of the registration of the Petitioner-Association vide order dated 09.02.2023 mainly on the ground that the address furnished by the Petitioner-Association in its Memorandum suggests it to be at 'Bengunbarehi, Khurda, Pin Code- 751028', which is also theaddress of Opposite Party-Association and this amounted to deliberate misrepresentation of facts by the members of Petitioner-Association. The Petitioner challenged the said order before this Court vide W.P.(C) No.5281 of 2023 and the same was disposed of by this Court quashing the order dated 09.02.2023 and directing the IGR (Opposite Party No.1) to consider the matter afresh and pass an order after hearing the relevant parties.

The coordinate Bench, while dealing with W.P.(C) No.5281 of 2023, observed that it is ascertained from the Form-B application dated 18.11.2019 filed by the Petitioner for separate registration of Phase-II under the RERA Act, 2016 that several plots within the limits of Janla having PIN Code-752054 were mentioned, whereas, address of Petitioner-Society, as per its Registration Certificate dated 13.07.2020, to be having PIN Code-751028. The coordinate Bench was of the view that no inquiry had been made regarding the issue of misrepresentation of address before cancellation of the registration of Petitioner-Society. Accordingly, the impugned order dated 09.02.2023, cancelling the registration of the Petitioner's Society, was set aside on the said ground without further adjudicating whether commonality found by the impugned order would prevent separate registration of the Societies.

Pursuant to the directions of this Court, both the parties appeared before the IGR (Opposite Party No.1) and filed their respective submissions along with all the relevant documents. However, the IGR, vide order dated 17.08.2023, again cancelled the registration of the Petitioner-Association on the ground of deliberate misrepresentation of facts and closely resembling the Opposite Party- Association in name. Hence, this writ petition.

3. The said order passed by the IGR has been challenged mainly on the grounds that, though the names of both the Associations are different on the face of

it, the IGR failed to consider the fact that merely sharing the term 'Kendriya Vihar' in their names does not make the two Associations identical. Apart from the same, the presence of the term Phase-II in the name of the Petitioner-Association definitively differentiates it from the Opposite Party-Association, as it makes it abundantly clear that the same has been constituted exclusively by the members of Phase-II Kendriya Vihar Housing Society. Further, the term 'Kendriya Vihar', being a generic term, is used for several housing projects of CGEWHO across the country. Thus, no single Society/ Association can claim exclusivity over the said term and mere usage of the said term by another Association would not make their names identical.

A ground has also been urged by the Petitioner-Association that, there is no bar under law against the formation and registration of separate Societies/ Associations for different phases of the same residential complex in terms of Section 3 of the RERA Act, 2016, which categorizes every individual phase of a residential complex to be a standalone project, separate from the other phases. Since Phase-II of Kendriya Vihar Housing Society has been registered under the RERA Act, 2016, it has to be considered as a distinct project from Phase-I, which has not been registered under the said Act, 2016. Thus, both the Associations are to be construed as separate real estate projects in the interest of justice.

A further ground has been taken by the Petitioner-Association that, the validity of the Petitioner-Association has already been established by the Odisha Real Estate Regulatory Authority (ORERA). However, the Opposite Party-Association filed Complaint Case No.119 of 2021 under Section 31 of the RERA Act, 2016 against the promoter and the builder of the residential complex as well as against the present Petitioner No.2 and the same was disposed of by ORERA vide order dated 18.05.2023 holding the validity of formation of Petitioner-Association with an observation that two separate Societies can be formed for Phase-I and Phase-II of the same residential complex, which is binding on Opposite Party No.1. Thus, it is not open for the IGR to revisit the validity of the formation of the Petitioner-Association. Further, though the Order dated 18.05.2023 was brought to the notice of Opposite Party No.1 by the Petitioners vide their reply under Annexure-8, the Opposite Party No.1 (IGR) has completely ignored the said order so also no reference to the said order has also been made in the impugned order.

It is the case of the Petitioner-Association that, there are six separate registered Associations in the residential complex under the CGEWHO Project (Kendriya Vihar) at Khargar, Navi Mumbai. Thus, when six different societies can exist within the same residential complex under the same scheme, there is absolutely no impediment for the existence of the Petitioner-Association for Phase-II of the residential complex in Bhubaneswar.

Further, the observation of the Opposite Party No.1 that both the Associations are functioning in the same campus is incorrect, as the office of the

Opposite Party- Association is functioning in the community centre, whereas the office of the Petitioner-Association is functioning from a building located in Phase-II of the residential complex.

No attempt was made by the Petitioner-Association to mislead or misrepresent the facts mentioning the address of the Association to be under the PIN Code No.751028, instead of 752054. As Tamando Branch Office was upgraded to Sub- Office with effect from 01.01.2018 and assigned with PIN Code No. 751028, Phase-II of the residential complex fell within the jurisdiction of Tamando S.O. Hence, the Petitioner-Association had submitted application for its registration mentioning the said PIN number, which was subsequently clarified by the Sr. Superintendent of Post Office, Bhubaneswar. Apart from the same, the Photographs under Annexure-12 also reveal that the offices of both the Associations are located in separate buildings and catering to the needs of the residents of their respective Phases.

It is also the case of the Petitioner that, the Opposite Party No.1 (IGR) failed to comply with the mandatory provision of Section 12-D of the Societies Registration Act, 1860, in terms of which the Petitioner-Association should have been given a chance to change the name of the Association, prior to taking the extreme step of cancellation of registration.

Moreover, due to the impugned order dated 17.08.2023, the day to day maintenance activities of all the residents of Phase-II has come to a grinding halt making them unable to use their hard earned money for maintenance purposes.

4. Being noticed, a common Counter Affidavit has been filed by the contesting Opposite Party Nos.2 & 3 opposing to the prayers made in the Writ Petition. It has been stated that the Petitioner Association, instead of applying to the ADM, Bhubaneswar-cum-Addl. Registrar of Societies, made an application to the Opposite Party No.1 (IGR) misrepresenting the fact that the Petitioner-Association operates throughout the State of Odisha and it is not a Society with deceptively similar name as that of Opposite Party-Association, operating in the same campus so also the fact that Petitioner is a mere Association of flat owners formed in connivance with certain officers of CGEWHO.

It is the stand of the Opposite Parties that, pursuant to the order dated 13.03.2023 passed by this Court in W.P(C) No. 5281 of 2023, preferred by the Petitioner, the issue regarding PIN Code was inquired into and it was found that the delivery jurisdiction of Kendriya Vihar was changed from Mahura Post Office-752054 to Tamando Office- 751028, which is same for both the Petitioner-Association and the Opposite Party No.2-Association. Further, the Opposite Party No.1, being satisfied that the Petitioner-Association was registered contrary to the provisions of section 3A of Society Registration Act, cancelled its registration under section 12-D of Societies Registration Act,1860 (Odisha Amendment Act, 2012) vide order dated 17.08.2023 holding that the name of Petitioner-Association

resembles the name of the Opposite Party-Association, being done with an intention of deceiving members of the existing Society so also the Registering Authority by misrepresentation of facts.

Further, the Petitioner Association failed to array the CGEWHO, the Promoter of Kendriya Vihar, as an essential party to the writ petition, in order to hide their corrupt practice of illegal construction creating common facilities, dividing the residents by creation of deceptively similar Association and making unjust enrichment from the project, selling car parking places as well as providing various amenities to Phase-II at the cost of the Opposite Party- Association.

It is also the stand of the Opposite Parties that, the Promoter of the CGEWHO obtained a single plan approval from Bhubaneswar Development Authority, shortly, 'BDA', vide Order dated 31.3.2008 to construct 496 dwelling units in 31 Nos of S+4 towers comprising 32 nos. of Type-A flats, 224 nos. of Type-B, 128 nos. of Type-C and 112 nos. of Type-D flats over 10.136 acres of land at Begunia Barehi on the outskirts of Bhubaneswar. Further, during the construction of both the Phases, the CGEWHO issued separate 'Technical Brochures' for Phase-I and Phase-II allottees containing the conditions that, on completion of Phase-I of the project, the allottees would form and register one Association i.e. Opposite Party-Association. Subsequently, on completion of Phase-II, all members of Phase-II shall automatically become member of the existing Association of the Opposite Party No.2 to form a new Governing Body to manage entire affairs of the housing project, named as Kendriya Vihar.

It is also the stand of the Opposite Parties that, as per Section 14(4) of Odisha Apartment (Ownership and Management) Ordinance, 2023, there shall be a single Association of allottees in the project provided further that in every such case, where separate Associations are proposed to be formed, the Promoter shall delineate clearly separate common areas and facilities for each such Association. However, in the Kendriya Vihar Project, Bhubaneswar there has been no separate common areas/facilities for two different Phases, constructed by common approval order of BDA. As both the Phases have single common facilities so also having no demarcation of the entire land of 10.136 acres between the Phases to seek separate registration before the Opposite Party No.1, formation of two Associations of allottees in the same project is bad in law.

Further, it is evident from the letter of ADM, Bhubaneswar dated 29.06.2020, addressed to IGR, Odisha that the Petitioner had applied for registration of their Association as a State Level Registration even though the Petitioner-Association has no State wide activities, which establishes that though the Petitioner is a mere Association of flat owners, it had provided misleading information to the IGR, Odisha while applying for the said registration.

It is further stand of the Opposite Parties that, though condition no. 30 of the BDA's Plan approval provides that the common stilt parking and other common

space shall not be partitioned or sold out, the Developer, in connivance with the Petitioner-Association, has constructed an office space in the stilt area of Tower D4 violating the said condition of the plan approval and the same had also been suppressed by the Petitioner while applying for registration of their Association before the IGR.

Further, the Opposite Parties, denying the averments made in the writ petition, have stated that the Kendriya Vihar Project at Kharghar, Mumbai, being single phase project, has no similarities with the Kendriya Vihar, Bhubaneswar. Further, though it is evident from the BDA approval that there was a single approval letter, in the RERA order dated 18.05.2023 it has been incorrectly mentioned about two separate plan approvals for Phase-I and Phase-II so also the registration of Phase-II as a standalone project with the ORERA Authority. It is a matter of dispute in the ORERA Case No. 83 of 2023, in which the ORERA Authority has observed serious irregularities vide an interim order dated 22.08.2023.

Moreover, as there is an alternative remedy available for the Petitioner-Association under Section 11 A of the Society Registration (Odisha Amendment) Act, 2021, the main dispute as to existence of two Associations in the same premises with deceptively similar names is not amenable for writ jurisdiction. The writ petition is not maintainable for non- joinder of CGEWHO, being a necessary party.

5. In addition to this, a further Additional Affidavit has also been filed by the Opposite Party Nos. 2 & 3, opposing to the prayer of the Petitioner Association, stating therein that the Petitioner, while applying for registration of its Association, furnished a false declaration that there is no other registered society with the above name in the same village, which is deliberate misrepresentation and suppression of facts, as the Opposite Party-Association, bearing similar name and same objective, existed in the same locality. It also frequently certified that there is no other registered Society/Association in the above name in Phase-II campus of Bhubaneswar-751028. It has been further stated that, by virtue of Odisha Apartment (Ownership and Management) Act, 2023, overriding all other statutes relating to the formation of Associations in the apartment in Orissa, the Petitioner's reliance on the ORERA order dated 18.05.2023 in Complaint Case No.119 of 2021 is devoid of merit so also in view of judgment dated 15.05.2024 passed by Odisha Real Estate Appellate Tribunal, the observation of ORERA is erroneous. Further, in AOCC No. 10 of 2021, the Adjudicating Authority, vide order dated 16.02.2022, also observed that there is no evidence of existence of two different phases in Kendriya Vihar.

6. In response to the same, the Petitioner Association has also filed an Additional Affidavit denying the stand of the Opposite Party-Association, stating therein that the said Association had filed the Complaint Case No.83 of 2023 before ORERA praying for cancellation of the registration certificate issued in favour of the Petitioner-Association which was dismissed by the ORERA Authority vide order dated 09.02.2024 and the registration of the Petitioner-Association remained

validated. Further, the Adjudicating Officer, ORERA has confirmed only the grant of compensation vide order dated 18.07.2023 without considering anything regarding the validity of the formation and functioning of the Petitioner-Association. The Adjudicating Officer, in A.O.C.C No. 10 of 2021, is not entitled to determine any question other than compensation, as has been clarified by the Real Estate Appellate Tribunal, Bhubaneswar. Thus, the single line observation by the Adjudicating Officer regarding separation of projects of both the Phases, having no value, stands automatically repealed.

7. Learned Senior Counsel for the Petitioner, reiterating the facts stated in the writ petition so also drawing attention of this Court to the errors in the impugned order, submitted that the observation of the IGR (Opposite Party No.1) as to functioning of both the Associations in the same campus is incorrect, as the Opposite Party- Association is functioning in the Community Centre, whereas the Office of the Petitioner-Association is functioning from a building located in Phase-II of the residential complex as clarified from the Photographs of the residential complex under Annexure-12. Further, both the Associations, being catered to different phases, do not overlap the area of operation of each other, as it is evident from the letter of BDO, Bhubaneswar, dated 29.02.2020, addressed to Addl. District Magistrate, Bhubaneswar, which indicates that the Petitioner-Association is functioning at Kendriya Vihar Phase-II and there is no other organization of the same name at the same place.

8. Learned Senior Counsel for the Petitioner, relying on the Judgment of Delhi High Court in **Pritam Singh Vs. Registrar of Firm and Society and Another**, reported in 2015 SCC OnLine Del 8732, submitted that as there is absolutely no bar under law against the formation and registration of separate Societies/Associations for different Phases of the same residential complex, the cancellation of the registration of the Petitioner-Association on the ground that it is functioning/operating in the same premises, as that of the Opposite Party-Association, being illegal, warrants interference of this Court.

9. Learned Senior Counsel for the Petitioner, drawing attention of this Court to the documents appended as Annexure-11, submitted that since there are six separate registered Associations in the residential complex under CGEWHO Project (Kendriya Vihar) at Kharghar, Navi Mumbai, there is absolutely no impediment for the existence of the Petitioner-Association for Phase-II of the residential complex in Bhubaneswar.

10. Further, drawing attention this Court to the provisions under Section 3 of the RERA Act, 2016, learned Senior Counsel for the Petitioner submitted that since Phase-I and Phase-II of Kendriya Vihar Residential Society, Bhubaneswar have been clarified by law to be separate real estate projects, it is reasonable and expedient in the interest of justice to have two separate Societies/Associations for governing the affairs of each of the two phases so also it is clarified from the

provision of Section 14(5) of the Odisha Apartment (Ownership and Management) Act, 2023 that where there are multiple phases in a building/residential complex/project, there has to be a separate Association for the allottees of each of the phase/project and the Association of one Phase/Project cannot represent the allottees of another Phase.

11. Learned Senior Counsel for the Petitioner further submitted that the entire case of the Opposite Party Association is relied on the point mentioned in the Technical Brochures floated by the CGEWHO that, after the completion of Phase-I of the Project, allottees would form and register an Association so also after the completion of Phase-II, allottees of the said Phase would automatically become members of the previous Association. However, a brochure is merely in the nature of a prospectus or an advertisement without having legal enforceability. If the contents of the same overrides the statutory provisions dealing with the same issue, that would be in violation of Section 23 of Indian Contract Act, 1872. Further, the brochures had been issued prior to the introduction of the RERA, 2016. After enactment of the RERA Act, 2016, Phase-II of Kendriya Vihar automatically and mandatorily became a separate real estate project. Thus, formation of a separate Association is mandatorily required for managing the affairs of Phase-II, which has also been mandated by the provisions of the Odisha Apartment (Ownership and Management) Act, 2023. Hence, the Phase-II of Kendriya Vihar has to be treated as a separate project from Phase-I so also a separate Association has to be formed to manage the affairs of Phase-II and the formation of the Petitioner-Association is completely legal and valid.

12. The Opposite-Party Association, instead of engaging a Counsel, authorized the former President of the Association namely, Dr. R.N. Mohanty, to represent the Opposite Party No.2 & 3 and to argue on their behalf. Mr. Mohanty submitted that the present writ petition is the second one preferred by the Petitioner Association on the selfsame issue challenging the order dated 17.08.2023 passed by the IGR who acted in conformity with the order passed by this Court vide order dated 13.03.2023 in W.P.(C) No.5281 of 2023. The Opposite Party No.1 conducted de-novo inquiry into all the relevant records, including the issue regarding PIN Code. Only after being convinced as to the registration of the Petitioner-Association to be contrary to the provisions of Section 3A of Society Registration Act, it cancelled the registration of Petitioner-Association under Section 12-D of the Act, 1860 vide order dated 17.08.2023 with a conclusion that the Petitioner-Association got the Society registered by deceiving members of the existing Society i.e. Opposite Party-Association, as well as the Registering Authority by misrepresentation. Thus, the formation of a second Association in the Kendriya Vihar Bhubaneswar Project not only violates the conditions laid down in both the Technical Brochures issued by CGWEHO but also in violation of Section 14(4) of the Odisha Apartment (Ownership and Management) Act, 2023.

13. Mr. Mohanty, the Authorised Person for the Opposite Party Association, further submitted that CGEWHO purchased 10.136 acres of land from private land owners in Mouza Begunia Barehi, Bhubansewar through two sale deeds No. 11582 and 11594, both dated 11.06.2006. Thereafter, it floated Bhubaneswar Housing Scheme inviting applications from different category of people with defined prioritization. Allotment letters were issued to the successful candidates in March, 2007 demanding payment of 1st installment and after one year of the pronouncement, CGEWHO obtained plan approval of the Project from the BDA for construction of 496 flats in 31 Nos S+4 Blocks vide letter dated 31.03.2008. Subsequently, through an Article of Agreement dated 22.10.2008 enforced between CGEWHO and the Contractor, CGEWHO decided to complete the project construction in two Phases i.e. Phase-I comprising 256 flats, including all of 32 Nos of 1-BHK (Type-A), 112 units of 2-BHK(Type-B), 64 units of 3-BHK (Type-C) and 48 units of 3-BHK + SR (Type-D), leaving remaining 240 units comprising only Type-B, Type-C and Type-D flats to be constructed during Phase-II. In addition to the same, all the amenities such as Entry/Exit Gate, Sewerage Treatment Plan, Gardens, Community Hall, Compound Wall are also common to both the Phases having no official demarcation of land between the parties. While the construction of the Phase-I was commenced from December, 2008, the Promoter-CGEWHO announced the construction of Phase-II in December, 2009 inviting applications for allotment of the remaining 240 units so also demanded payment of 1st installment from the successful allottees of Phase-II vide letter dated 07.06.2010.

Further, the allottees of Phase-I formed the Opposite Party- Association in the name of Kendriya Vihar Residents Welfare Association registered on 17.05.2016 by the ADM-cum-Additional Registrar of Societies at Bhubaneswar. But the allottees of Phase-II managed to register the Petitioner-Association deceptively similar and contrary to law with the Opposite Party No. 1, suppressing the material facts, in violation of essential condition of amalgamation to form a single and integrated project of Kendriya Vihar so also in breach of the terms and conditions of the project.

Mr. Mohanty further submitted that, since both the phases of Kendriya Vihar Project are inseparable, having all common amenities and further there has been no demarcation of the entire land of 10.136 acres between the phases to seek separate registration before the IGR, formation of two Associations of allottees in the same project is bad in law.

14. Since the impugned order has been passed pursuant to order dated 13.03.2023 passed in W.P.(C) No.5281 of 2023, before dealing with issue, it would be apt to reproduce paragraph Nos.9 & 10 of the said order.

> *"**9.** It appears from the form-B application dated 18th November, 2019, for registration under the Act of 2016 in respect of Phase-II that several plots were mentioned in it. All these plots were said to come within limit of post office Janla having pin code 752054.* ***However, address of petitioners' Society, as per its certificate of registration dated***

13th July, 2020 gives, inter alia, pin code to be 751028. There does not appear to be inquiry made regarding this, in the finding of misrepresentation of address given for cancellation of registration of the society of petitioners*. In the circumstances, it is not necessary to delve further for adjudicating whether commonality found by impugned order would prevent separate registration of the societies.*

10. *There appears on the face of impugned order material irregularity, in omitting to consider the facts urged before it as available from the materials on record. In the circumstances, impugned order is set aside and quashed. Application of opposite party no.2, for cancellation of registration in respect of petitioners' society, is restored to the authority. Upon hearing given to petitioners and opposite party no.2, opposite party no.1 will pass fresh order, to dispose of the application."* ***(Emphasis supplied)***

15. Similarly, before dealing with the points urged by the parties, it would be apt to extract below the relevant paragraphs of the impugned order dated 17.08.2023 passed by the I.G.R., Odisha-cum-Registrar of Societies.

*"**17.08.2023***

xxxx xxxx xxxx

As per the Judgment of Hon'ble High Court, Odisha, hearing was made, petitioner (KVAOA-II) and opposite party no.2 (KVRWA) on 25.05.2023. Both the association were asked vide letter No.xVII-158/2021-2395, dated 01.06.2023 to submit their Notes of Submission. Further on perusal of the documents available on record, field enquiry report of the Dy. IGR, upon hearing and notes of submission of both the associations, it was found that: Both the associations KVRWA and KVAOA-II are functioning in the same premises. ***KVRWA was registered on 17.05.2016 much earlier to KVAOA-11 which was registered on 15.07.2020. However, the application for registration of KVAOA-11 stated that there is no other Registered Society with the above name in the same locality.*** *The issue raised in the Judgment of Hon'ble High Court regarding PIN Code was inquired into and found that the delivery jurisdiction of Kendriya Vihar was changed from Mahura Post Office-752054 to Tamando Post Office-751028 by the Department of Post, Bhubaneswar Division vide their notification No.G-1/Ch-IOV/09, dated 15.10.2019. This establishes that the present postal PIN Code of both the associations is same and existence of KVAOA-II in a different locality with respect to KVRWA is incorrect. Contrary to the submission by the petitioner in the application for registration of KVAOA-II that the association office is operating at Community Center, the field inquiry report revealed that the office of KVAOA-II is functioning in the same campus. The Bye-laws of both KVRWA and KVAOA-II are almost similar and having same objective of managing the affairs of Kendriya Vihar Housing Society. In view of the above it is evidence that there was deliberate misrepresentation of facts while applying for the registration of KVAOA-II at State level.*

Section 3A of Societies Registration (Odisha Amendment) Act, 2012 states that "No Society shall be registered by a name which, in the opinion of the Registrar of Societies is undesirable, being a name identical with or, which in the opinion of the Registrar of Societies so nearly resembles the name by which any other existing society has been previously registered under this Act as to deceive the public or members of either society."

In the instant case both the societies bear the nomenclature identical with each other and are existing in the same campus*. KVRWA was registered in the year 2016 which is*

a previously registered society under the Societies Registration Act, 1860 and KVAOA-II was registered in the year 2020 under the Societies Registration Act, 1860 with I.G.R, Odisha-cum- Registrar of Societies.

Now, in exercising the powers conferred under Section 12-D of Societies Registration Act, 1860 (Odisha Amendment, 2012) after being convinced that the registration in the name of Kendriya Vihar Apartment Owners Association-11 which nearly resembles the name of previously registered Kendriya Vihar Residents Welfare Association was done with an intention of deceiving members of the existing society as well as registering authority by misrepresentation of facts*, the registration of Kendriya Vihar Apartment Owners Association (KVAOA-II) bearing the registration no.206/18202000014 OF 2020-21 dated 13.7.2020 is hereby cancelled.*

The case is disposed of as per order of the Hon'ble High Court dated 13.03.2023 is hereby complied with." ***(Emphasis supplied)***

16. From the relevant portion of the impugned order, as extracted above, it is amply clear that the I.G.R cancelled the registration of the Petitioner Association on the following grounds

i) Both the Associations KVRWA and KVAOA-II are functioning in the same premises.

ii) KVRWA was registered on 17.05.2016 much earlier to KVAOA-II, which was registered on 13.07.2020. However, the application for registration of KVAOA-II stated that there is no other Registered Society with the above name in the same locality.

iii) Being directed by this Court and after inquiring into the matter, it is found that the delivery jurisdiction of Kendriya Vihar was changed from Mahura Post Office allotted with PIN Code-752054 to Tamando Post Office allotted with PIN Code-751028 by the Department of Post, Bhubaneswar Division vide their notification dated 15.10.2019, which establishes that the postal PIN Code of both the Associations is same and existence of KVAOA-II in a different locality with respect to KVRWA is incorrect.

iv) The submission made by the KVAOA-II in its application for registration that office of the Association is operating at Community Centre, is within the same campus.

v) Bye-laws of both KVRWA and KVAOA-II are almost similar and having same objective of managing the affairs of Kendriya Vihar Housing Society.

vi) There was a deliberate misrepresentation of facts while applying for the registration of KVAOA-II at State level.

With the said observation and referring to Section 3A of the Societies Registration (Odisha Amendment) Act, 2012, shortly, hereinafter "the Act, 2012" and exercising powers conferred under Section 12-D of the said Act, the registration in the name of KVAOA-II was cancelled with an observation that the said name nearly resembles the previously registered KVRWA and the same was done with an intention of deceiving members of the existing Society as well as registering Authority by misrepresentation of facts.

17. As in the impugned Order, there is a reference to Section 3A and Section 12-D of the Societies Registration Act, 1860 (Odisha Amendment, 2012), it would be apt to reproduce below the said legal provisions for ready reference.

> *"3-A. Prohibition against registration of societies with undesirable names.- No society shall be registered by a name which, in the opinion of the Registrar, is undesirable, being a name which is identical with, or which in the opinion of the Registrar,* ***so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or members of either society.....****"*
>
> **(*Emphasis supplied*)**
>
> *"12-D. Registrar's power to cancel registration in certain circumstances.-*
>
> *Notwithstanding anything contained in this Act, the Registrar may, by order in writing, cancel the registration of any society on any of the following grounds, namely:-*
>
> *(a) the registration of the society, or its name or change of name is contrary to the provisions of this Act or of any other law for the time being in force; or*
>
> *(b) its activities or, proposes activities have been, or are subversive of the objects of the society or opposed to public policy; or*
>
> *(c)* ***the registration certificate has been obtained by misrepresentation of fact of fraud; or***
>
> *(d) the society fails to comply the direction issued under sub-section (4) of section 12-A:*
>
> ***Provided that no order of cancellation of registration of any society shall be passed until the society has been given a reasonable opportunity of altering its name or objects*** *or of showing cause against the action proposed to be taken in regard to it."-*
>
> *Orissa Act 6 of 2013, S.4 (w.e.f. 21-2-2013)"* ***(Emphasis supplied)***

18. At this juncture, it would be appropriate to extract below the contents of the complaint dated 02.09.2022 made by the Opposite Party Association before the I.G.R., based on which the proceeding was initiated for cancellation of registration of the Petitioner Association.

> *"KENDRIYA VIHAR RESIDENTS WELFARE ASSOCIATION (KVRWA)*
> *Regd. No.2134-19/of 201-2017*
> *E-mail: kvrabbsr@gmail.com*
>
> *Ref No.KVRWA/2021-23/* *Dated:02.09.2022*
> *BY MAIL/SPEED POST*
>
> *To*
> *The Inspector General of Registration Odisha*
> *2nd Floor, Board of Revenue Building*
> *Chandichowk*
> *Cuttack-753002*
>
> *Sub: Untold sufferings due to violation of section 3A of Societies Registration Act, 1860. Request urgent action regarding*
>
> *Ref :1. Registration of Kendriya Vihar Residents Welfare Association (KVRWA) under Regn. No.2134-19 of 2016-2017 dated 17.05.2016 with ADM, Bhubaneswar*
>
> *2. Registration of Kendriya Vihar Apartment Owners Association Phase-II (KV AOA-II) under Regn. No. 206/18202000014 2020-2021 dated 13.7.2020 with I.GR., Cuttack.*

Sir,

The Central Govt. Employees Welfare Housing Organisation (CGEWHO) *has constructed 496 dwelling units in 31 towers after obtaining an approval from BD vide approval letter no.3035/BP/BDA/Bhubaneswar dated 31-3- 2008. For convenience of construction, the CGEWHO completed the construction in 2 phases. Although valid Completion Certificate from Competent Authority is yet to be obtained by CGEWHO. The Phase-I comprising 256 flats in 16 towers was completes in 2013 whereas the Phase-2 comprising 240 flats in 15 towers was completed in 2018.*

As per the provisions laid by CGEWHO in form of Technical brochure the allottees of Phase-I formed an Association (KVRWA) which was registered on 17.05.2016 with ADM, Bhubaneswar as cited under Ref-1.

Secondly, as per the same provisions laid by CGEWHO in form of technical Brochure, the allottees of Phase-2 should have enrolled as members of the existing Association i.e. KVRWA as the entire Project construction has ONE entry, One STP, ONE Community Centre, ONE boundary wall and above all there is no demarcation of land for phase-1 or phase-2 separately.

However mischievously and manipulatively, the CGEWHO facilitated the Phase-2 allottees to form another separate Association in the name of Kendriya Vihar Apartment Owners Association Phase-11 (KV AOA- 11) and got it registered with 1GR, Cuttack as cited at Ref-2 above in complete violation of section 3A of Societies Registration Act, 1860 and its amendments which states

'No society shall be registered under a name which is identical with, or too nearly resembles, the name of any other society or any body corporate which has been previously registered or incorporated under this Act or any other law for the time being in force, as the case may be'.

We hereby submit that since the time the second Association is registered with IGR, Cuttack in the same premise for the same objective, there has been recurring problems and difference in management of overall affairs particularly management of common facilities e.g. STP, Main Gate entry exit, repair of common boundary wall etc. Regularly there are difference of opinions and even verbal duels among the persons engaged for maintenance activities. In such a situation, there are security breaches causing unauthorized entries by outsiders. Even till date, we could not have been able to introduce Gate management system due to differences of opinions by two managements.

Extreme case happened on 30.08.2022 when some person from Phase-2 broke open the lock of community centre which is under complete control of KVRWA since 2015. Police has to intervene and the matter has not been resolved yet. All these untoward incidents are happening only because of CGEWHO facilitated Phase-2 allottees to form a separate Association (KV AOA II) and registered with IGR, Cuttack. It will not be out of place to mention that initially, the Phase-2 allottees had approached ADM cum Additional Registrar of Societies, Bhubaneswar for registration to which the ADM rightfully had declined in view of contradiction with section 3A of SRA Act, 1860.

Anticipating such trouble and inconvenience, KVRWA had requested your good office to kindly review the registration of KV AOA-II earlier. ***Additionally, a group of allottees had also submitted a memorandum before you on 16.8.2020 exhaustively detailing the ground situation (enclosed for reference)****.*

Sir, the allottees staying inside the campus are predominantly senior citizens and such troubles are disturbing peace and tranquility of the campus.

We therefore sincerely request you to kindly make an on- the-spot analysis and cancel the registration of KV AOA-II till separate boundary wall with separate facilities are made by CGEWHO for Phase-2 allottees.

Anticipating an urgent action in this regard". Encl – As above

Sincerely yours
Sd/-
(D.K. Behera)
Secretary, KVRWA

(Emphasis supplied)

19. From the pleadings so also submission made by the learned Counsel for the parties and the complaint made by the Opposite Party Association, the contents of which have been extracted above, it is amply clear that the main dispute and differences between the Petitioner-Association and the Opposite Party-Association is regarding formation of two Associations pertaining to the same project i.e. Kendriya Vihar Project, as in Clause 2.1 of the Technical Brochure of the Phase-I it has been mentioned that the project is being undertaken in two phases. Phase-I is consisting of 256 DUs and after completion of Phase-II, the whole complex shall be amalgamated as one.

However, so far as the present lis is concerned, this Court is to examine as to whether the I.G.R was justified to cancel the registration of the Petitioner Association on the grounds urged in the impugned order.

So far as the observation made by the I.G.R that both the Societies beyond the nomenclature are identical with each other, on a cursory glance at the names reveals that they are different on the face of it. The Petitioner Association's name is "Kendriya Vihar Apartment Owners' Association Phase-II (KV AOA-II), whereas the name of the Opposite Party Association is "Kendriya Vihar Resident Welfare Association". When the names of the Associations consist of categorically different terms like "Resident Welfare Association" and "Apartment Owners' Association Phase-II", by no reasonable stretch of imagination, the said two names can be said to be identical or even remotely resembling each other. Merely sharing the terms of "Kendriya Vihar" in their names, does not make the two Associations identical. The presence of the term "Phase-II" in the name of the Petitioner-Association indisputably differentiates it from the Opposite Party Association, as it makes it abundantly clear that the same has been constituted exclusively by the members of Phase-II Kendriya Vihar Housing Society. On the other hand, the Opposite Party-Association consists exclusively of the members of Phase-I and admittedly the said Association had been constituted long before the completion of the Phase-II and handing over of the flats.

Apart from the same, as is revealed from the pleadings and documents on record, "Kendriya Vihar" is a generic term and is used for several housing projects of CGEWHO across the country. This Court is of the view that no single Society/Association can claim exclusivity over the said term and mere usage of the said term by any Association would not make their names identical.

20. So far as functioning of both the Associations in the same premises/residential complex, admittedly, the Real Estate (Regulation and Development) Act, 2016, shortly, hereinafter 'RERA", came into force after completion of Phase-I of Kendriya Vihar Housing Society. Hence, in terms of Section 3 of the said Act, 2016, the builder i.e. CGEWHO, was bound to obtain registration under the said Act, 2016 for construction of Phase-II of Kendriya Vihar Housing Society. At this point, it would be apt to reproduce below the explanation to Section 3 under RERA Act, 2016.

> *"**Section 3**-……*
> *Explanation.- For the purpose of this section, **where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.**" **(Emphasis supplied)***

21. Hence, this Court is of the view that in view of the said provisions under the RERA Act, 2016, Phase-I and Phase-II of Kendriya Vihar Residential Society, Bhubaneswar are to be construed as separate real estate projects. It was reasonable and expedient in the interest of justice to have two separate Societies/Associations for governing the affairs of each of the two phases. Registration of the Petitioner Association for Phase-II of the residential complex is not barred under any provision of law.

22. That apart, as is evident from the order dated 18.05.2023 passed by RERA Authority in Complaint Case No.119 of 2021, a complaint was made by the Opposite Party Association regarding transfer of common area in favour of the Opposite Party Association notifying percentage of interest of each flat owner, to refund the amount collected from the allottees against stilt parking, to create two separate campus identified by boundary wall for Phase-I and another for Phase-II of the project and to provide separate gate, separate STP and separate common facilities to each Phase. While dealing with the said complaint, the Odisha Real Estate Regulatory Authority passed the said order directing the Respondents to provide separate entry and exist, separate community hall and separate amenities in terms of the agreement to Phase-I and Phase-II of the project separately within a period of six months, to transfer the common area of each Phase separately in favour of the concerned Association and to hand over the management thereof separately. However, while dealing with the said complaint made by the present Opposite Party Association, the RERA Authority observed as follows:-

> *"xxxxx xxxxx xxxxx*

So it is amply clear that two societies can be formed, one for phase-1 and another for phase-11 in the same project*. The formation of association and registration thereof, is valid in view of the decision of the Hon'ble High Court, but subject to decision to be taken relating to cancellation by the IGR-cum-Registrar of Societies.* ***1n our humble opinion, formation of society for phase-11 does not violate the terms of agreement, provided the promoter makes separate provision for amenities for both the phases separately****. This issue is answered accordingly.*

xxxxx xxxxx xxxxx

Even if, there is certain clauses contrary to this, still the same will be considered as illegal in view of the provision of the Real Estate (Regulation and Development) Act, 2016, which categories the construction of a separate phase as a "stand- alone real estate project". ***1n that view of the matter, we are of the considered view that the promoter/respondent is responsible to provide all amenities i.e. separate entry and exit and separate community hall to both the phases separately. 1n case any of the amenity, is found inseparable, then it will be managed by both the association jointly.***

xxxxx xxxxx xxxxx

The complainant wants to retain the management with regard to amenities available now in phase-

I. Though his claim relating to declaration of phase-II association as illegal, is not accepted, still he can maintain the relief regarding retaining of common area. To this extent, the complainant can be provided the relief which is a part of the relief sought for in the complaint petition. These issues are answered accordingly. Hence, it is ordered".

(Emphasis supplied)

23. During hearing, Mr. Mohanty, the authorized person of the Opposite Party Association made a submission before this Court that the Opposite Party Association has already moved appropriate application before the RERA for implementation/execution of the said order.

24. So far as issue regarding PIN Code, the impugned order indicates that being directed by this Court, an inquiry being made with regard to PIN Code, it was ascertained that the Department of Post, Bhubaneswar Division, vide its notification dated 15.10.2019, changed the delivery jurisdiction of Kendriya Vihar from Mahura Post Office, having PIN Code-752054 to Tamando Post Office, having PIN Code-751028. Admittedly, when the Opposite Party Association applied for its registration before the I.G.R., the PIN Code of the Kendriya Vihar was '752054', whereas when the present Petitioner-Association applied for its registration, delivery jurisdiction of Kendriya Vihar had already been changed to Tamando Post Office having PIN Code-751028. Hence, this Court is of the view that such an information furnished by the Petitioner Association in its application regarding its PIN Code to be '751028', allegedly to give an impression that its existence is in a different locality and amounts to misrepresentation of facts, is incorrect.

25. So far as the view taken by I.G.R. that bye-laws of both the Associations are almost similar and having same object of managing the affairs of Kendriya Vihar Housing Society and such a point comes under the ambit of misrepresentation of

facts, on perusal of bye-laws of both the Associations, which have been appended to the Writ Petition, it is revealed that both the bye-laws are different as to the terms and conditions regarding eligibility of members, procedures for grant of membership, removal of membership etc. and such observation of the I.G.R., being contrary to the contents of the bye-laws of both the Associations, is perverse and such observation of the I.G.R., cannot be brought under the mischief of "deliberate mis-representation of facts".

26. So far as findings regarding resemblance of names of both the Associations so also doing so with an intention to deceiving members of the existing Society as well as the Registering Authority, as would be evident from the record so also bye-laws of both the Societies, the alleged intention of deceiving members of the Opposite Party Association as well as misrepresentation of facts before the Registering Authority, it is amply clear from clause-7 of the bye-laws of Petitioner-Association that a person who owns an apartment and has taken possession of it in Kendriya Vihar Phase-II, Begunia Barehi, Bhubaneswar-751028 and has executed respective declarations pursuant to the bye-laws and in consonance with the provisions of Orissa Apartment Ownership Rules, 1982 and is competent to contract as per the Indian Contract Act, 1872, is eligible to be a member of the said Association. Clause 7 under the heading "Eligibility Conditions for membership of the bye-laws of the Petitioner Association" is extracted below, for ready reference.

> *"**Eligibility Conditions for Membership***
>
> ***7.** A person to be a member of the Association shall satisfy the following eligibility conditions:*
>
> *(i) **He/She who owns an apartment and has taken possession of it in Kendriya Vihar Phase 11, Begunia Barehi, Bhubaneswar- 751028** and has executed respective declarations pursuant to the Bye-laws and in consonance with the provisions of Orissa Apartment Ownership Act, 1982;*
>
> *(ii) He/She who is competent to contract as per Indian Contract Act, 1872;"*
>
> ***(Emphasis supplied)***

27. So far as Opposite Party Association is concerned, as per clause-5(iii) of its bye-laws, every person, who owns an apartment in Kendriya Vihar, Begunia Barehi, Bhubaneswar- 752054 and has executed respective declarations pursuant to the said bye-laws and in consonance with the provisions of Odisha Apartment Act, 1982, shall be a member of the said Association.

28. Admittedly, as on the date of Registration of Opposite Party Association, the RERA Act, 2016 had not come into effect. Explanation under section 3 of the said Act, 2016 mandates that where the real estate project is to be developed in phases, every such Phase shall be considered as a stand alone real estate project and the Promoter shall obtain registration under the said Act, 2016 for each Phase separately. Hence, this Court is of the view that the Petitioner Association, under the changed circumstances so also in view of the applicability of RERA Act, 2016, was

justified to apply to the I.G.R. for its registration under the Act, 1860 and after due verification, it's application got allowed and it was registered under the said Act, 1860. The bye-laws of both the Associations are very clear and rather the bye-laws of the Petitioner Association confines its membership to the owners of the apartment, who have taken possession of it in Kendriya Vihar Phase-II, Begunia Barehi, Bhubaneswar-751028. Hence, this Court is of the view that the observation made by the I.G.R in the impugned order that the Petitioner Association had an intention to use the name of Kendriya Vihar Owners' Association Phase-II, which nearly resembles the name of previously registered Association i.e. Kendriya Vihar Residents Welfare Association, with an intention of deceiving the members of the existing Society as well as the Registering Authority is incorrect and based on surmises and conjunctures, having no such allegation made by the Opposite Party Association in its complaint dated 02.09.2022 so also earlier complaint made by some of the members of the Opposite Party Association dated 16.08.2020, as at Annexure-2 series to the said effect that the Petitioner Association has intentionally done so to deceive the members of Opposite Party Association by misrepresentation of facts.

29. Apart from the same, as is evident from the letter No.792 dated 29.02.2020; a report being called for, the Block Development Officer, Bhubaneswar submitted a report to the A.D.M., Bhubaneswar, pursuant to which the registration of the Petitioner Association was allowed. The contents of the said letter, being relevant, are extracted below:

"ପଞ୍ଚାୟତ ସମିତି କାର୍ଯ୍ୟାଳୟ, ଭୁବନେଶ୍ୱର"

BLOCK OFFICE, BHUBANESWAR, DIST-KHURDA, ORISSA- 751014
Email:-ori-bhubanswar@gramsat.nic.in

Letter No.792 Date: 29/02/2020

To
The Additional District Magistrate, Bhubaneswar
Sub: Registration of Society named "KENDRIYA VIHAR APARTMENT OWNERS ASSOCIATION".

Ref: Memo No.555 Dated 13.02.2020 of A.D.M. Bhubaneswar.

Sir,

With reference to the letter and subject cited above, I am to inform that the organization named ***"KENDRIYA VIHAR APARTMENT OWNERS ASSOCIATION", functioning at- Kendriya Vihar Phase-2 Begunia barahi, Bhubaneswar, Dist-Khordha. There is no other organization in the same name at same place.***

Hence, the proposal for registration of the society may be considered thereof.

Yours faithfully,
Sd/-
Block Development Officer,
Bhubaneswar"

(Emphasis Supplied)

It is not the case of the Opposite Party Association that the B.D.O., Bhubaneswar, being biased, gave an incorrect report recommending therein to consider the proposal for registration of the Petitioner Association.

30. Admittedly the impugned order has been passed by the I.G.R. for alleged violation of Section 3A of the Act, 1860, exercising his powers under Section 12-D of the Act, 1860 (Odisha amendment, 2012), which has been extracted above. Proviso under the said section mandates that no order of cancellation of registration of any Society shall be passed until the Society has been given a reasonable opportunity of altering its name or object. The I.G.R. was of the view that the aims and objects of both the Associations are almost similar and the name of the Petitioner Association nearly resembles to the name of the Opposite Party Association, with an intention to deceive the members of the existing Opposite Party Association/Society. In view of the said clear provisions enshrined under Section 12-D of the Act, 1860, (Odisha Amendment, 2012), the I.G.R. ought to have given reasonable opportunity to the Petitioner Association to alter its name so also its objects. Apart from the views taken by this Court in the foregoing paragraphs, this Court is also of the view that, despite an erroneous finding that name of the Petitioner Association nearly resembles to the name of the Opposite Party Association, as admittedly no such opportunity was accorded to the Petitioner Association, the impugned order being passed without following due procedure of law, is illegal and unjustified. Hence, deserves to be set aside.

31. In view of the reasons detailed above, the impugned order dated 17.08.2023 passed by the I.G.R is hereby set aside. The certificate of registration dated 13.07.2020, as at Annexure-1 series, issued in favour of the Petitioner Association, which stood cancelled vide the impugned order dated 17.08.2023 passed by the I.G.R., is hereby restored in favour of the Petitioner Association.

32. It is made clear that quashing of the impugned order dated 17.08.2023 passed by the I.G.R. so also restoration of the registration of the Petitioner Association shall not preclude the Opposite Party Association to pursue its remedy for implementation of the order dated 18.05.2023 passed by the RERA in Complaint Case No.119 of 2021 in accordance with law.

33. Accordingly, the Writ Petition stands disposed of.

Headnotes prepared by :
Sri Jnanendra Ku. Swain (Judicial Indexer)
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case :
Writ petition disposed of.

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2025 (II) ILR-CUT-224

DAMBARUDHARA DASH
V.
STATE OF ODISHA

[CRLA NO. 650 OF 2024]

18 MARCH 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether prosecution has complied the mandatory provision provided under the Narcotic Drugs and Psychotropic Substances Act, 1985 and whether the order of conviction passed by the learned Trial Court is sustainable.

Headnotes

NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985 – Sections 42 & 52-A – Non-compliance of the mandatory provisions – Offence U/s. 20(b)(ii) (C) of the Act – In the present criminal appeal the order of sentence passed by the trial court is challenged – The accused pleaded that the impugned order passed by the trial court suffers from non-compliance of mandatory provisions of the Act – The case being a trap case, none of the witnesses either reveal about sending a copy of information to the official superior nor was the information recorded in a book/diary prescribed for it – The prosecution witnesses never disclosed that the samples were drawn in the presence of the Magistrate and the safe custody of sample was also not established – Further the brass seal used in sealing sample at the spot was not produced in the Court – Whether the order of conviction is sustainable.

Held: No – This Court hardly finds the prosecution to have led clear, cogent and reliable evidence to prove the safe custody of the samples so also compliance of Section 42 of the Act beyond all reasonable doubt and thereby, the only consequence emerges is that the prosecution is not successful in establishing its case against the appellant-convict beyond all reasonable doubt. (Para 12)

Citations Reference

Karnail Singh Vrs. State of Haryana, **(2009) 8 SCC 539 – referred to.**

List of Acts

Narcotic Drugs & Psychotropic Substances Act, 1985; Code of Criminal Procedure, 1973.

Keywords

Non-compliance of the mandatory provisions; Safe custody; search and seizure; Reliable information; Narcotic drug; Psychotropic substance; Controlled substance; Forfeiture; Conveyance; Certification; Recovery; Chemical examination report; Specimen seal.

Case Arising From

Judgment dated 17.06.2024 passed by the learned Addl. Sessions Judge-cum-Special Judge, Athagarh in Special Case No.05 of 2022 arising out of Excise Mobile-II, Cuttack P.R. No.78 of 2022-23.

Appearances for Parties

For Appellant : Mr. B.C. Ghadei
For Respondent : Mr. S.K. Rout, Addl. PP

Judgment/Order

Judgment

G. SATAPATHY, J.

1. This criminal appeal by the convict is directed against the impugned judgment dated 17.06.2024 passed by the learned Addl. Sessions Judge-cum-Special Judge, Athagarh in Special Case No.05 of 2022 arising out of Excise Mobile-II, Cuttack P.R. No.78 of 2022-23 convicting the appellant for commission of offence punishable U/S. 20(b)(ii)(C) of Narcotics Drugs and Psychotropic Substances Act, 1985 (in short, "the Act") and sentencing him to undergo Rigorous Imprisonment (RI) for 10 years and to pay a fine of Rs.1,00,000/- in default whereof, to undergo RI for a further period of 1 year with benefit of set off of pre-trial detention against the substantive sentence.

2. The prosecution case in a nutshell is that on 23.07.2022 at about 4.30 A.M., while PW.4-Sanjeet Barla, Inspector of Excise was performing patrolling duty at Kuspangi road along with staff, received reliable information that a Mahindra Bolero is coming from Khuntuni side carrying Contraband Ganja and accordingly, PW.4 reduced the said information into writing and immediately informed the Superintendent of Excise, Cuttack over phone. At about 5.15 AM, PW.4 and staff noticed one Bolero jeep coming from Khuntuni side and they accordingly, stopped the vehicle near Banadurga Temple near Bali Chowk for verification and found the accused driver-cum-convict along with one packet on the seat of the driver and two other packets on the middle seat of the vehicle behind the driver seat. PW.4 then searched the bags and recovered 21Kgs of Contraband Ganja each from the three bags; all total 63Kgs of Contraband Ganja in presence of witnesses. PW.4 accordingly, procured one independent witness PW6-Satyajit Sahu and seized the Contraband articles and arrested the convict and produced him along with the seized

Contraband article before the learned Special Judge, Athagarh. PW.4 also made prayer to the concerned Court for drawing of sample and accordingly, the samples were drawn and sent to the Excise Divisional Laboratory, Central Division, Cuttack through PW.1-Manmath Singh. Further, PW.4 also took up the investigation of the case which culminated in submission of Prosecution Report (PR) against the convict for commission of offence punishable U/S.20(b)(ii)(C) of the Act.

2.1. Finding prima facie materials, the learned Special Judge, Athagarh took cognizance of the offence U/S.20 (b) (ii) (C) of the Act and proceeded further resulting in the trial in the present case, when the convict pleaded not guilty to the charge for commission of aforesaid offence. In the course of trial, the prosecution examined altogether 06 witnesses, proved 21 documents under Exts.P-1 to 21 and identified Material Objects MO-I to MO-V including the samples as against the oral evidence of four witnesses DWs.1 to 5. In the course of trial, the plea of the convict was denial simplicitor and false implication. In addition, the convict also took a plea in his statement U/S.313 of CrPC that on the relevant day and time, while he was returning to Bhubaneswar from Naktideol after dropping the passenger, he was caught at Tangi Tollgate and the Excise staff demanded Rs.30,000/- from him, but when he denied they took Rs.20,000/- from his money purse, but when he protested, they planted a false case against him.

2.2. On conclusion of trial, after analyzing the evidence on record upon hearing the parties, the learned trial Court passed the impugned judgment convicting the appellant and sentenced him to the punishment indicated supra. Being dissatisfied with the conviction and sentence, the convict has preferred this appeal.

3. In the course of hearing, Mr. Bikram Chandra Ghadei, learned counsel for the appellant, however, strongly criticizes the impugned judgment by arguing that not only the impugned judgment is unsustainable in the eye of law, but also the same has been rendered without appreciating the evidence on record. It is further submitted by him that the mandatory procedure of Sections 42 & 52-A of the Act has not been complied with by the Excise Officials, but ignoring such non-compliance, the learned trial Court has proceeded to convict the appellant. Mr. Ghadei also points out that the sample was sent to the chemical laboratory on 23.07.2022, but it was received by the Asst. Chemical Examiner-cum-PW.5 on 25.07.2022 and the safe custody of the sample was never established by the prosecution and therefore, the prosecution case being suspicious and tainted, the conviction together with sentence of the appellant is violative of his right to liberty. It is also argued by Mr. Ghadei that the brass seal which was used in sealing the Contraband articles has never been produced before the Court and there are material contradictions in the evidence of witnesses and therefore, the conviction of the appellant is unsustainable and liable to be set aside. Accordingly, Mr. Ghadei prays to allow the appeal by acquitting the convict of the charge.

3.1. On the other hand, Mr. S.K. Rout, learned Addl. Public Prosecutor, however, supporting the impugned judgment submits that the recovery of Contraband Ganja from the exclusive and conscious possession of the appellant having been established by the prosecution, no fault can be attributed to the prosecution and the prosecution having duly complied with the mandatory provisions of the Act, the conviction of the appellant cannot be said to be unsustainable in the eye of law. He further submits that not only PW.4 has established the recovery of Contraband Ganja from the exclusive possession of the appellant, but also has established the compliance of Sections 42 as well as 52-A of the Act and, therefore, the appeal being unmerited is liable to be dismissed. Accordingly, Mr. Rout prays to dismiss the appeal.

4. After having considered the rival submissions upon perusal of record, since the appellant challenges his conviction not only for erroneous appreciation of evidence, but also for non-compliance of the mandatory provisions of Act, this Court now embarks upon the oral testimony of the witnesses to examine the legality of the conviction of the appellant. In sequence, coming to the testimony of witnesses, it is reminded that once again the independent witness to the search and seizure has become hostile to the prosecution case as it appears from the evidence of PW.6 that on 23.07.2022, while he was in his house, the staff of Excise Office, Cuttack came and called him without assigning any reason and he accompanied with him to the office of Excise Department near the Krushak Bazar, Cuttack and there the Excise staff gave him some forms and asked to sign thereon and accordingly, he put his signature on the papers as per their instruction. It is, however, his categoric evidence that he does not know anything more about the case. True it is that the independent witness has not supported the prosecution case and even his cross-examination by the prosecution after declaring him hostile has yield no result, but still then the prosecution can establish its case against the accused through the evidence of other witnesses.

5. PWs.1 to 3 are the three Excise Constables, who had taken part in the raid along with PW.4 and PWs. 2 & 3 have testified more or less alike, but differently on materials point of recording information by PW4, in the Court, however, their evidence transpires that in the course of performing patrolling duty at Kuspangi road, at about 4.30 A.M PW.4 got information that a Bolero carrying Ganja is coming and PW.4 sent the information record receipt to the Superintendent of Excise through Constable Gajanan Behera (PW.3) and they, accordingly, detained the said vehicle bearing Regd. No.OD-15-C-0900 and recovered the Contraband article, but PW.1 being another Constable, who had accompanied the patrolling party has testified in the Court that in the course of patrolling, the Inspector of Excise detected a case of Ganja and after compliance of recovery and other procedure, at about 4.15 PM, the Inspector directed him to produce the collected sample before the Asst. Chemical Examiner, Excise Divisional Laboratory, Cuttack

along with a command certificate. His evidence, however, does not reveal about PW4 recording any information and sending a copy thereof to immediate official superior, although he is a member of raiding party. Further, the evidence of PW2 does not transpire with regard to PW4 recording any information. On the other hand, PW3 who is also a member of raiding party deposed about PW4 recording the information into writing and submitting the same to Superintendent of Excise. It is, therefore, very confusing inasmuch as PWs. 1 to 3 has stated differently with regard to recording of information and sending a copy thereof to next higher official by PW4 and the evidence of none of the witnesses ever reveal about sending a copy of information to the official superior which is mandatory in nature U/S. 42(2) of the Act.

6. This being the evidence of the official witnesses accompanying PW.4, this Court now considers it imperative to see the evidence of PW.4, who has deposed before the Court that on the day (23.07.2022) at about 4.30 AM when he along with the staff were performing patrolling duty at Kuspangi road, received a reliable information about transportation of Ganja in a Mahendra Bolero which is coming from Khuntuni side and he reduced the information into writing at about 4.50 A.M. and immediately informed the Superintendent of Excise, Cuttack about the said information over phone and he commanded the Excise constable-PW3Gajanan Behera to produce the information record receipt before the Superintendent of Excise. Accordingly, PW.4 has exhibited the information so prepared by him under Ext.P-14, but fact remains that Section 42 of the Act prescribes the procedure for taking down the secret information received by the Excise official/ or officials referred to in that Section, however, such information ordinarily be recorded in a book/diary prescribed for it, but no such information has been recorded by PW4 in any book/diary prescribed for it. On the other hand, perusal of Ext.P-14 reveals that information has been recorded on a printed form under the heading **"Information Recorded Receipt"** in which there are four sub-headings, such as; (i) date and time of information record, (ii) place of information recorded, (iii) name of the informer, and (iv) information recorded by whom along with another sub-heading without any number as "recorded information". The evidence of none of the witnesses has made it very clear about the recording of information in a book, much less the evidence of PW1 transpires nothing about receipt of information by PW4 and reducing such information by him into writing, whereas the evidence of PW2 does not transpire about PW4 reducing the secret information into writing, however, PW3 has testified that PW4 had received information of NDPS case and reduce the same into writing. It is not to be forgotten that PWs. 1 to 3 had accompanied PW4 at the time of detection of the case, but all these witnesses had spoken differently with regard to receipt of information and reducing such information into writing to prove compliance of Sec. 42 of the Act.

7. Be it noted, compliance of Section 42 of the Act is not an empty formality and it is a mandatory procedure prescribed for detection, search and seizure of Contraband Articles on a particular contingency and it lays down the procedure when any officer referred to in Section 42 of the Act has reason to believe either from personal knowledge or information given by any person and taken down in writing that any narcotic drug or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter V-A of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset enter into and search any such building, conveyance or place, seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reasoned to believe to be liable to be confiscation under this Act xx xxx xx and detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act, provided further that if such officer has reason to believe that a search warrant or authorization cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, **he may enter and search** such building, **conveyance** or enclosed place **at any time between sunset and sunrise after recording the grounds of his belief.** In this case, the admitted evidence discloses that the vehicle was detected after 5 AM, but it was not clarified by the prosecution by leading clear and cogent evidence that the detection and search of the vehicle was done after sunrise and, therefore, taking into the fact of detection of contraband in this case at 5.15 AM, it can be said that the detection was before sunrise and thus, PW.4 can search and detain such persons without any warrant, after recording his grounds of belief in terms of 2nd proviso to Sec. 42 of the Act, but in that event, he has to mandatorily send the copy of the recording of grounds for his belief to his immediate official superior within 72 hours. True it is that PW4 has exhibited one printed form filled up in handwriting under Ext.P-11 towards proof of recording of grounds for his belief to search the vehicle without warrant, but the prosecution evidence never reveals about sending a copy thereof to immediate official superior with regard to searching the vehicle without any warrant before sunrise as mandatorily required U/S. 42(2) of the Act. In this case, the evidence of PW.4 never reveals about the compliance of Section 42(2) of the Act because the copy of the information which was taken down in writing should have been sent to the higher authority, but the evidence of PW.4 only reveals about sending of information to the Superintendent Excise through PW.3.

8. Apropos the subject, compliance of Sec. 42 is mandatory and the legislature has incorporated the provision of Sec. 42 of the Act to check the interested and overzealous prosecution of innocent person accused of offence under the Act and the

requirement of compliance of aforesaid provision is in essence intended to prevent false accusation against innocent person. However, there is no straight jacket formula to prove the compliance of Sections 42(1) and (2) of the Act, but looking at the standard of proof in criminal prosecution and the provision of Sec. 3 of the Indian Evidence Act, 1872 as to how a fact is considered to be proved, the prosecution in this case is obliged to establish that the empowered Officer on receipt of secret information had reduced it into writing in the concerned register or diary and prove such writings through the concerned Officer either by producing such original register or diary, but in case such register/diary is not available or could not be produced due to some valid reason(s), then by producing a certified copy or an authenticated extract copy of such entry, which is of course to be established that such extract copy is duly authenticated by the Officer making such entry. Similarly, for compliance of Sec. 42(2) of the Act, it is to be established that the copy of such entry was in fact sent to the immediate Official superior of the empowered Officer, but mere saying/deposing in evidence about sending a copy thereof is not sufficient to demonstrate compliance of Sec. 42(2) of the Act and it must be more than that. No inflexible guidelines can be prescribed for prove of compliance of Sec. 42(2) of the Act, but the mode of sending copy of secret information; such as dispatch register, postal receipts, e-mail copy would be considered a few for sending the copy of it and additionally, prove of receipt/ delivery of it by or to official superior would lend assurance for prove of sending of the copy since sending a copy thereof as referred to in Sec.42(2) of the Act is obviously meant for the knowledge of superior Officers and the legislature has never intended for mere sending copy of such information without the same being received by the superior Officer or delivery of it to him. The aforesaid provision is enacted to prevent misuse of the Act and thereby, sending a copy thereof to immediate Official superior is obviously meant to check the arbitrary use of power under the Act by the empowered Officer. In this case, the testimony of witnesses never discloses about sending of a copy of the recording of grounds for his belief by PW4 with regard for searching the vehicle and the convict before sunrise without any warrant. In a case of this nature, where the personal liberty of a person is at a stake, which can be curtailed on successful compliance of Sec. 42(2) of the Act, the prosecution is required to bring all documents on record and examine all the witness to prove the compliance of Sec. 42/42(2) of the Act, however, the prosecution cannot afford to leave any document or witness, which would create a genuine suspicion in proving the compliance of Sec. 42 of the Act. In order to prove compliance of Sec. 42(2) of the Act, the prosecution has proved Ext. P-14, which of course only contains the signature of Superintendent of Excise, but nothing has been endorsed to show that the Superintendent of Excise had in fact received the same. Further, no one is examined from the Office of Superintendent of Excise about receipt of Ext. P-14 nor has any document or Receipt Register been proved to establish the compliance of Sec. 42(2) of the Act and in absence of such proof, a genuine suspicion arises in the mind of the Court.

9. In regard to compliance of Sec. 42 of the Act, this Court considers it to be useful to refer to the decision in ***Karnail Singh Vrs. State of Haryana; (2009) 8 SCC 539***, wherein a constitutional Bench of five Judges of Apex Court in paragraph-35(a) to (d), which are very much relevant for this case, has held as under:-

> *"35. In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:*
>
> *(a) The officer on receiving the information of the nature referred to in sub-section(1) of Section 42 from any person* ***had to record it in writing in the register concerned*** *and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).*
>
> *(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation,* ***he could take action as per clauses (a) to (d)*** *Section 42(1) and thereafter,* ***as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.***
>
> *(c) In other words, the compliance with the requirements of Sections 41 (1) and 42(2) in regard to writing down the information received and* ***sending a copy thereof*** *to the superior officer should normally precede the entry, search and seizure by the officer.* ***But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period that is after the search, entry and seizure. The question is one of urgency and expediency.***
>
> *(d) While total non-compliance with requirements of sub-sections (1) and (2) of section 42 is impermissible, but delayed compliance with satisfactory explanation about the delay will be acceptable compliance with section 42.xx xx xx"*

10. Further, the evidence never discloses the time when the information was received nor such information has been stated in any diary, so also names of the persons who refused to be a witness to the search and seizure has not been recorded and nothing brought on record to show that the provision of Sec. 42 of the Act was substantially complied with. Further, there is absolutely no evidence to suggest that the copy of the grounds of belief to search without warrant before sunrise which was stated to be taken down in writing by PW4 has been sent to official superior. Thus, the prosecution has not been able to prove compliance of mandatory provision of Sec. 42 of the Act which by itself renders prosecution of the appellant vulnerable. In the aforesaid facts and circumstance and on a conspectus of evidence on record, this Court neither found any information recorded by PW.4 in any prescribed book nor was a copy thereof sent to the higher authority within 72 hours which is mandate of Section 42(2) of the Act. Accepting for a moment but not admitting the information

taken down in writing under Ext.P-14 as the compliance of Section 42 of the Act, it appears that a copy thereof has never been sent to the immediate higher authority. Except Ext.P-14, there is no other proof regarding compliance of Section 42 of the Act and this Court, therefore, considers it not proper to accept Ext.P-14 towards compliance of Section 42 & 42(2) of the Act.

11. Adverting to the sampling, it appears that PW.4 has testified that he sealed those packets by putting his personal brass seal marks and handed over the brass seal to the independent witness-Satyajit Sahoo by executing zimanama, but PW.6-Satyajit Sahoo has disowned the same about receiving any brass seal. The testimony of PW.4 further transpires that he prayed the Court for drawing of sample and by order of the learned Special Judge, Athagarh, he produced the seized articles before the learned S.D.J.M., Athagarh for collection of sample and the learned S.D.J.M., Athagarh collected the sample in two packets containing 50Grams each from the 3 packets and marked the sample packets with letter A-1, A-2; B-1, B-2 and C-1, C-2 respectively and thereafter, the learned S.D.J.M., Athagarh, handed over the sample packets along with the forwarding report for production of the same before the Excise Divisional Laboratory, Cuttack and he(PW4) sent the sample through constable Manmath Singh(PW.1) to the Central Divisional Laboratory, Cuttack on the very same day i.e. 23.07.2022. Section 52-A of the Act provides the procedure for disposal of seized narcotic drugs and psychotropic substances and Section 52-A(2) of the Act provides that in case the officers referred to in Section 53 of the Act makes an application to any Magistrate for the purpose of certifying the correctness of the inventory so prepared; or taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn, the Magistrate shall, as soon as may be, allow the application. In this case, there is hardly any evidence with regard to certification of the correctness of any list of samples so drawn. Further, the evidence of PW1 discloses that PW.4 detected a case of Ganja and after compliance of recovery and other procedure at about 4.15 PM, PW.4 directed him to produce the collected samples before the Asst. Chemical Examiner, Excise Divisional Laboratory, Cuttack along with a command certificate. The evidence of PW.1 never discloses that the samples were drawn in the presence of learned S.D.J.M., Athagarh or the learned S.D.J.M., Athagarh has drawn any sample. The only evidence forthcoming from PW.1 is that he collected the sample from Inspector of Excise from the place of detection which is contrary to the evidence of PW.4 that the samples were handed over to PW.1 after it was drawn by the learned S.D.J.M., Athagarh. Additionally, PW.5-Asst. Chemical Examiner has stated in his evidence that on 25.07.2022, he received the sample, but the sample was admittedly collected and sent on 23.07.2022. What cannot be lost sight of is that PW.5 has admitted in his cross-examination that he received the sample packets from PW.4 instead of PW.1. Besides, the evidence of PW.1 transpires that on his

arrival on 23.07.2022, the Excise Divisional Laboratory was closed and he informed PW.4 about the fact and PW.4 accordingly communicated to PW.5 over phone and as per his instruction, he returned back with the sample to the office and kept it in the Excise Malkhana and as the next day was Sunday, on Monday i.e. on 25.07.2022 at 10.30 A.M., PW.1 produced the sample before PW.5. Had it been a fact, what prevented PW.4 not to disclose the same in his evidence nor had any evidence been led by the prosecution to prove that the sample so collected by the learned S.D.J.M., Athagarh on 23.07.2022 was in safe custody till it was produced before PW.5 on 25.07.2022 eliminating tampering or suspicion. The aforesaid evidence gives a glue picture of the prosecution about not being able to establish the safe custody of the sample nor was it established that the samples were not tampered which assumes significance in view of the fact that the brass seal used in sealing sample at the spot was not produced in the Court. Accordingly, the safe custody of the sample is found to have not been established by the prosecution. It is also admitted by PW5 that he received the samples from PW4 on 25.07.2022, but the consistent case of the prosecution is that samples were sent to PW5 through PW1 who admitted that the samples were kept in Excise Malkhana, however, no document was produced by the prosecution to show that the samples were kept in Malkhana from 23.07.2022 to 25.07.2022. The evidence of PW4, however, transpires that the samples were collected by the learned SDJM and handed over to PW4 on 23.07.2022, but there is no evidence to show that the samples were handed over in sealed condition to PW4. Further, the chemical examination report does not reveal with whose seal the samples were sealed, although it has been stated therein that the seals are intact and identical with the specimen seal given on the forwarding memo of the Court. It is, therefore, very clear that the prosecution has not been able to establish the safe custody of the sample packets during its transit from the Court on 23.07.2022 to 25.07.2022 when it were produced before PW5.

12. In view of the aforesaid facts and circumstance and taking into account the admitted evidence on record, this Court hardly find the prosecution to have led clear, cogent and reliable evidence to prove the safe custody of the samples so also compliance of Section 42 of the Act beyond all reasonable doubt and thereby, the only consequence emerges is that the prosecution is not successful in establishing its case against the appellant-convict beyond all reasonable doubt.

13. In the result, the appeal stands allowed on contest, but in the circumstance there is no order as to costs. Consequently, the impugned judgment of conviction and order of sentence dated 17.06.2024 passed by the learned Addl. Sessions Judge-cum-Special Judge, Athagarh are, hereby, set aside.

14. It is stated at the Bar that the appellant is in custody and he, thereby, be set at liberty forthwith, if his detention is not otherwise required in any other case.

15. Since the appellant is in jail custody, warrant of release on appeal in Form No.(M)78 of GR & CO, (Criminal) Vol-II be immediately sent to the Officer-in-

charge of the concerned jail through e-mail or any other faster communication mode in view of the Rule 155 of the GR & CO,(Criminal) Vol-I.

Headnotes prepared by : *Result of the case :*
Sri Jnanendra Ku. Swain (Judicial Indexer) Appeal allowed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-234

FAYAZUDDIN KHAN @ BADAL KHAN
V.
STATE OF ODISHA & ORS.

[CRLMC NO. 3850 OF 2024]

04 MARCH 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether offences under the POCSO Act can be quashed on the basis of compromise between the parties.

Headnotes

BHARATIYA NAGARAIK SURAKSHA SANHITA, 2023 – Section 528 r/w Section 482 of the Code of Criminal Procedure, 1973 – Quashing of the Criminal Proceeding – Offences under sections 363/366/376(2)(n) of IPC & Section 06 of the POCSO Act – During pendency of the trial, the Petitioner & Opposite Party No.3 entered into marital relationship after the latter attained the age of majority & they are living together as husband & wife – The wife has expressed her willingness not to prosecute the matter further – The Opposite Party contended that offences under the POCSO Act cannot be quashed merely on the basis of compromise between the parties – Whether offences under the POCSO Act can be quashed on the basis of compromise between the parties.

Held: Yes – In the light of the reconciliation, the absence of a serious societal impact, and the need to avoid unnecessary legal hardship, it is appropriate to quash the proceedings, allowing both parties to move forward with their lives without further legal encumbrances – This approach ensures that justice is served in a fair, compassionate and practical manner, in line with the established principles of law. (Para 16)

Citations Reference

Ramji Lal Bairwa & Another v. State of Rajasthan & Others, **2024 SCC OnLine SC 3193;** Rosalin Rout and Anr. V. State of Odisha and Anr, **2024 SCC OnLine Ori 1339;** In Re: Right to Privacy of Adolescents, **Suo Moto WP(C) No. 3 of 2023 – referred to.**

List of Acts

Bharatiya Nagaraik Suraksha Sanhita, 2023; Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Protection of Children from Sexual Offences Act, 2012.

Keywords

Quashing of the Criminal Proceeding; Compromise between the parties; Gravity of the offence; Reconciliation; Marital relationship; Doctrine of balancing the needs of justice and the rights of the parties.

Case Arising From

P.S. Case No. 60 of 2022, corresponding to T.R. Case No. 135 of 2022, pending before the learned Additional Sessions Judge-cum-Special Court under the POCSO Act, Nayagarh.

Appearances for Parties

For Petitioner : Mr. Amitav Tripathy

For Opp. Parties : Mr. Bibekanda Nayak, AGA

Judgment/Order

Judgment

S.S. MISHRA, J.

The petitioner has filed the present application under Section 528 of the BNSS, 2023 r/w Section 482 of the Cr.P.C., 1973, seeking quashing of the criminal proceedings arising out of Nayagarh P.S. Case No. 60 of 2022, corresponding to T.R. Case No. 135 of 2022, pending before the learned Additional Sessions Judge-cum-Special Court under the POCSO Act, Nayagarh.

2. The prosecution case originates from an FIR lodged by the informant on 10.05.2022, alleging that on 09.05.2022, the petitioner kidnapped her minor daughter (Opposite Party No.3) and took away gold ornaments and cash of Rs.8,000/- from their house.

3. Based on these allegations, Nayagarh P.S. Case No. 60 of 2022 was registered under Sections 363/366/376(2)(n) of the Indian Penal Code, 1860 (IPC)

read with Section 6 of the POCSO Act. Upon completion of the investigation, a charge sheet was filed, and the learned trial court took cognizance of the offences.

4. During the pendency of the trial, the petitioner and Opposite Party No.3 entered into a marital relationship after the latter attained the age of majority. They are now living together as husband and wife, and the informant (Opposite Party No.2) has expressed her willingness not to prosecute the matter further.

5. Mr. Tripathy, the learned counsel for the petitioner submits that the entire case was based on a love affair between the petitioner and Opposite Party No.3, which was opposed by their families due to religious differences. Consequently, both the petitioner and Opposite Party No.3 left their respective homes and later solemnized their marriage.

6. It is further submitted that at the time of the alleged incident, Opposite Party No.3 was a minor, and due to that, the police rescued her and handed over to her parents. However, upon attaining majority, she voluntarily married the petitioner, and they are now living together happily.

7. Learned Counsel for the petitioner contends that continuation of the criminal proceedings would serve no useful purpose, as the alleged victim does not support the prosecution case, and the matter has been amicably resolved between the parties. Even all the family members of the Opposite Party No.3 after having agreed to the alliance, will not support prosecution case.

8. It is also submitted that the informant (Opposite Party No.2) has no objection to quash the proceedings and is ready to submit an affidavit before this Court stating the same.

9. Mr. Nayak, the learned Additional Government Advocate appearing for the State of Odisha opposes the prayer for quashing on the ground that serious offences under Sections 376(2)(n) IPC and Section 6 of the POCSO Act have been invoked against the petitioner.

10. Relying on the judgment of the Hon'ble Supreme Court in ***Ramji Lal Bairwa & Another v. State of Rajasthan & Others***[14], Mr. Nayak has contended that cases involving offences under the POCSO Act cannot be quashed merely on the basis of a compromise between the parties, as offences are considered to be the crimes against society at large and not just against an individual victim. He further submits that indulgence by this Court at this stage would cause defeat of the object of the POCSO Act.

11. Learned counsel for the State submits that even if the victim and her family do not wish to proceed with the case, the gravity of the offence and the legislative

[14] 2024 SCC OnLine SC 3193

intent behind the POCSO Act necessitate that the trial be conducted in accordance with law.

12. The applicability of the principle laid down in the recent Judgment of the Hon'ble Apex Court in ***Ramji Lal Bairwa v. State of Rajasthan*** (supra) vis-à-vis the present case needs to be delve upon. The Hon'ble Supreme Court has held as under:-

> *"25. Thus, in unambiguous terms this Court held that before exercising the power under Section 482, Cr. P.C. the High Court must have due regard to the nature and gravity of the crime besides observing and holding that heinous and serious offences could not be quashed even though a victim or victim's family and the offender had settled the dispute. This Court held that such offences are not private in nature and have a serious impact on the society. Having understood the position of law on the second question that it is the bounden duty of the court concerned to consider whether the compromise is just and fair besides being free from undue pressure we will proceed to consider the matter further. A bare perusal of the impugned order dated 04.02.2022 would reveal that the High Court has erred in not bestowing proper consideration the law laid down in Gian Singh's case (supra) while rendering the same. The impugned order would reveal that the allegations contained in the subject FIR was not at all even adverted to, before quashing the same. We have referred to the allegations which are of serious nature revealed from the FIR. The complaint in this case is annexed to the FIR produced in this proceeding as Annexure P-1. In the said complaint which led to the registration of the FIR reads thus:—*
>
> *"Hence my report may be lodged and action may be taken against the offender xxx as he is making pressure on me not to lodge report."*
>
> *32. In the decision relied on by the High Court to quash the proceedings viz., Gian Singh's case (supra) and the decision in Laxmi Narayan's case (supra) in unambiguous terms this Court held that the power under Section 482, Cr. P.C. could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the society.* ***When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from a teacher, it cannot be simply described as an offence which is purely private in nature and have no serious impact on the society."***

Apparently the facts of the present case are distinguishable from those addressed in the cited case. In this instance, the victim and the accused have entered into a marital relationship and are now living a happy married life. This fundamentally alters the nature of the dispute, as the parties have reconciled their differences and moved forward with their lives. However in the case of ***Ramji Lal*** (supra) a teacher has taken the sexual advantage from a minor girl. Sexual exploitation and adolescent love affair by its nature is distinguishable. Adolescent love is a conceptual romantic relationship often lead to sexual encounter. However, there is no element of coercion, force or manipulation to drag someone to indulge in sexual activities for personal gratification. If the accused is in a dominating position

of power or trust, coerces, forces or manipulates another into sexual activities for personal gratification, financial gain or any other benefit that could only be a case of exploitation. But same age group adolescents falling in love, eloped and married shouldn't be criminalized. In such circumstances, the principles laid down in the judgment by this court in ***Rosalin Rout and Anr. V. State of Odisha and Anr***[15]**.** Case, which emphasizes the importance of personal reconciliation and the potential to allow quashing of proceedings where the relationship has been restored, should be considered. The facts here do not involve heinous or grave offences that have a significant societal impact rather the case remained in the personal realm, and thus, it would be more appropriate to apply these principles to the current matter, as the reconciliation reflects a positive resolution. In addition, it can also be said that the compromise between the parties is in alignment with the guidelines provided in the ***Rosalin Rout*** (supra) judgment.

13. The ***Rosalin Rout*** (supra) case underscores the importance of ensuring that the compromise is genuine, voluntary, and free from any undue pressure, while also taking into account the nature of the offence, age of the accused and victim and the relationship between the parties. In this case, the victim and accused have not only reconciled but have entered into a marital relationship and are living a harmonious life, which supports the notion that the compromise is fair and in accordance with the principles laid out in the ***Rosalin Rout*** (supra) judgment. This indicates that the resolution between the parties is just and should be considered favorably in the interest of justice. For ready reference guidelines called out in the judgment of Rosalin Rout (supra) is quoted thus:-

> *"33. It is thus seen that the important and relevant factors that weighed in the minds of different Constitutional Courts relating to sexual offences against the minor centered around the following factors:*
>
> *i) Age of victim & accused and/or age difference between them.*
>
> *ii) Nature of relationship between victim and the accused including Trustee or fiduciary relationship.*
>
> *iii) The nature, magnitude, and consequences of the crime.*
>
> *iv) Cases wherein the allegations reek of force, depravity, perversity, or cruelty.*
>
> *v) Consensual relationships ending in marriage.*
>
> *vi) Consensual relationships that start with assurance/expectation of marriage but do not materialize in marriage due to family disapproval, change in circumstances or other reasons.*
>
> *vii) Parties are not interested to prosecute the cases further and jointly approached the court for quashing of proceedings.*
>
> *viii) The possibility of conviction in the backdrop of parties having come to an agreed terms and not willing to prosecute the case further.*

[15] 2024 SCC OnLine Ori 1339

ix) The criminal prosecution will result in injustice to the victims and its closure would only promote their well-being.

x) The continuance of the criminal proceedings and the participation of the victim in that proceedings would adversely affect the mental, emotional, and educational well-being of the victim and protracted trial may possibly stigmatize the victim herself. xi) The natural disposition and instinct of the victim who has settled in her life with the accused husband to protect her husband and her present and future progenies in the best interest of the family.

xii) In the cases where trial is at advance stage and evidence of the victim has already been recorded, High Court should be circumspect while exercising plenary jurisdiction under section 482 Cr.P.C The conditions for exercising the jurisdiction under Section 482 Cr.P.C for quashing the criminal proceedings in such cases cannot be exhaustively postulated, therefore, every case has to be dealt with on its own facts in the light of parameters enumerated hereinabove."

14. It's abundantly clear that in cases involving sexual exploitation, there is no question of quashing the proceedings; as such offences have serious implications for both the victim and society. However, where an adolescent love has evolved into a relationship that is now recognized and approved by societal norms, as seen in this case, the situation differs significantly. The fact that the victim and accused have entered into a marital relationship and are living a happy and peaceful life reflects a genuine reconciliation, which can be seen as a natural progression in such circumstances. In such instances, where the relationship has been matured to marriage and accepted by society, quashing the proceedings is not only justifiable but may also be in the interest of upholding the principles of reconciliation and personal autonomy, as emphasized in the ***Rosalin Rout*** (supra) judgment. It would be appropriate to reproduce paragraph 31 of the Judgment; which reads as under:

"31. The POCSO Act was enacted with the ultimate objective of prohibiting non-consensual and forced sexual relationships with children, including child sexual abuse and sexual harassment. While the stringent provisions of the POCSO Act have contributed positively to reducing instances of sexual violence against children, they have also led to an increase in vindictive litigation, with false cases being filed against individuals under the act. However, it was never the legislature's intention to prosecute romantic relationships between young adults. The doctrine of balancing needs to be pressed to service, while evaluating the facts of each individual case and exercising the jurisdiction under Section 482 Cr.P.C. The High Court, under its inherent powers, can interpret and harmonize these provisions to ensure effective implementation of both statutes while safeguarding the rights of the accused and the victim."

Running a trial against the petitioner in this case would amount to an abuse of the process of law, particularly given the fact that the victim and the petitioner have entered into a marital relationship and are living together in harmony. Sending the man to prison would not only be unjust but would also work against the best interests of the victim, as it could disrupt the peaceful life they have built together.

The continuation of legal proceedings under these circumstances serves no legitimate purpose and would only perpetuate unnecessary hardship to both the parties. In light of their reconciliation and the societal approval of their relationship, it would be more appropriate to quash the proceedings, allowing them to move forward with their lives without the burden of legal interference. Similar view has been echoed by Hon'ble Supreme Court by orally observing in the recent case ***In Re: Right to Privacy of Adolescents***[16] , wherein the court observed as under:

> *"This is one case [where] because of the fault of the system, this man will get benefit. He will not get benefit because he has done something good, but to protect the victim and the child"*

15. In light of the judgments cited and the discussions made above, it becomes evident that the present case is distinguishable from the typical instances where heinous or grave offences are involved, as outlined in ***Ramji Lal Bairwa v. State of Rajasthan*** (supra). The fact that the victim and accused have entered into a marital relationship and are living a harmonious life significantly alters the nature of the dispute. The principles laid down in the Rosalin Rout (supra) case, which emphasizes the importance of personal reconciliation, should apply here, especially considering that the relationship between the parties has been restored and is now recognized by societal norms.

The Rosalin Rout (supra) judgment underscores the need for the court to evaluate each case individually, taking into account factors like the nature of the offence, the willingness of the parties to reconcile, and the impact of continuing legal proceedings on the victim. In this case, where the parties have chosen to reconcile and lead a married life together, continuing the trial or sending the accused to prison would be an abuse of the process of law. It would disrupt the well-being of both the victim and the accused and serve no constructive purpose.

Additionally, the observations made in ***In Re: Right to Privacy of Adolescents*** (supra) align with this view, emphasizing the need to protect the victim's well-being and prevent further harm from vindictive litigation. The doctrine of balancing the needs of justice and the rights of the parties involved should be applied, and in this case, quashing the proceedings is not only justifiable but would also promote the interests of justice and societal harmony.

16. Therefore, in light of the reconciliation, the absence of a serious societal impact, and the need to avoid unnecessary legal hardship, it is appropriate to quash the proceedings, allowing both parties to move forward with their lives without further legal encumbrances. This approach ensures that justice is served in a fair, compassionate, and practical manner, in line with the established principles of law.

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[16] In Suo Moto WP(C) No. 3/2023

17. Therefore, the criminal proceeding in Nayagarh P.S. Case No. 60 of 2022, corresponding to T.R. Case No. 135 of 2022, pending before the learned Additional Sessions Judge-cum-Special Court under the POCSO Act, Nayagarh and the consequential proceedings arising therefrom qua the present petitioner are quashed. Accordingly, the CRLMC is allowed.

Headnotes prepared by : *Result of the case :*
Sri Jnanendra Ku. Swain (Judicial Indexer) CRLMC allowed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-241

AVIJIT BASTIA & ANR.
V.
STATE OF ODISHA & ANR.

[CRLMC NO. 4498 OF 2024]

10 APRIL 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

What are the essential factors while summoning an accused under Section 358 of the BNSS, 2023 r/w Section 319 of the Cr.P.C.,1973.

Headnotes

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 – Section 528 r/w Section 482 of the Code of Criminal Procedure, 1973 – Prayer for quashing of the order of summon – In the present case the order of summons issued against the petitioners by the learned Trial Court while allowing the application for addition of the accused under Section 358 of BNSS r/w Section 319 of the Cr.P.C. is under challenge on the grounds that pre-existing materials from the charge sheet cannot form the basis of summoning an accused and the cross-examination version of the witnesses is essential to be taken into consideration – Whether the grounds raised by the petitioner before summoning the accused U/s.358 of BNSS r/w section 319 of Cr.P.C. is essentials.

Held: No – At this stage, it is jurisdictionally forbidden for the High Court to delve upon the quality, quantity and trustworthiness of the witnesses deposed against the petitioners – Once material worth summoning an accused born on record, the trial Court shall exercise its power U/s.319 Cr.P.C. to summon the accused and afford the opportunity of fair trial in accordance with the law.

(Para 18)

Citations Reference

Hardeep Singh vs. State of Punjab, **(2014) 3 SCC 92;** Sarojben Ashwinkumar Shah vs. State of Gujarat, **(2011) 13 SCC 316;** Hetram vs State of Rajasthan, **2024 INSC 903;** Mohit @ Sonu & Another v. State of Uttar Pradesh & Another, **(2013) 7 SCC 789;** N. Manogar vs. The Inspector of Police, **2024 LiveLaw (SC) 197 – referred to.**

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Code Criminal Procedure, 1973; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Keywords

Prima facie evidence; Pre-existing materials; Cross-examination version of the witnesses; Speedy trial; Addition of an accused; Summon to an Accused

Case Arising From

Order dated 09.09.2024 passed by the learned Sessions-cum-Special Judge, Jagatsinghpur in C.T. Case No. 329 of 2023 arising out of Biridi P.S. Case No. 350 of 2023.

Appearances for Parties

For Petitioners : Mr. Rakesh Behera
For Opp. Parties : Mr. S.N. Biswal, ASC

Judgment/Order

Judgment

S.S. MISHRA, J.

The petitioners have filed the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) [corresponding to Section 482 CrPC], seeking quashing of the order dated 09.09.2024 passed by the learned Sessions-cum-Special Judge, Jagatsinghpur in C.T. Case No. 329 of 2023 arising out of Biridi P.S. Case No. 350 of 2023, whereby the learned Trial Court by allowing the application of the prosecution under Section 358 BNSS, summoned the petitioners to face the trial.

2. The case originates from an FIR lodged on 10.12.2023 by Opposite Party No. 2 (informant) at Biridi P.S., alleging that the occurrence took place on 10.12.2023 at about 11:30 AM on a public road in front of the Petitioners' house. A marriage function was being celebrated in the family of Anil Mallick, which the complainant attended. At that time, accused Biswajit Bastia, Avijit Bastia, and Jagatjeet Bastia were passing through the spot on a motorcycle. The complainant's

son, Susanta, was standing by the roadside when the accused stopped near him and allegedly stated, "Kandara Bahaghara Kan Dekhiba, Sala ku Chuin le Chuan Heba".

3. Upon Susanta's objection, Biswajit Bastia allegedly inflicted a fist blow on his face, while Avijit and Jagatjeet Bastia also assaulted him, causing him to fall to the ground. The complaint led to an investigation, during which the police did not find sufficient material to charge-sheet the Petitioners (Avijit and Jagatjeet Bastia).

4. The police, after investigation, filed a chargesheet only against Biswajit Bastia under Sections 294, 323 of IPC read with Sections 3(1)(r), 3(1)(s), and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The present petitioners were not charge-sheeted due to lack of substantiated evidence against them.

5. The case was committed to the learned District & Sessionscum-Special Judge, Jagatsinghpur, and registered as C.T. Case No. 329 of 2023. Cognizance was taken on 02.02.2024, and charges were framed against the charge-sheeted accused on 26.06.2024. The trial commenced, and seven witnesses were examined.

6. At this stage, the prosecution moved an application under Section 358 BNSS, seeking to add the petitioners as accused persons based on the depositions of PWs 1, 2, 3, and 4. The learned Trial Court allowed the application on 09.09.2024, summoning the petitioners as additional accused.

7. Aggrieved by the said order, the petitioners have approached this Court, contending that the impugned order suffers from legal infirmities and is liable to be quashed.

8. Mr. Behera, learned Counsel appearing for the petitioners submitted that the impugned order dated 09.09.2024, summoning them under Section 319 CrPC, is legally unsustainable. The power under Section 319 CrPC is extraordinary and should be exercised only when strong, cogent evidence emerges during trial, establishing direct involvement. However, in the present case, the learned Trial Court has mechanically relied on prosecution witnesses depositions without identifying any fresh evidence justifying the summoning of the Petitioners. This is contrary to the principles laid down in ***Hardeep Singh vs. State of Punjab [(2014) 3 SCC 92]***, where the Hon'ble Supreme Court held that summoning under Section 319 CrPC requires a higher standard than prima facie evidence, nearing the threshold of conviction.

9. Furthermore, relying on the judgement of the Hon'ble Supreme Court in ***Sarojben Ashwinkumar Shah vs. State of Gujarat [(2011) 13 SCC 316]*** submitted that pre-existing materials from the chargesheet cannot form the basis for summoning an accused under Section 319 CrPC. In the present case, the prosecution witnesses have merely reiterated the allegations made during the investigation, without introducing any new substantive evidence. The learned Trial Court also

failed to consider that the cross-examination version of the witnesses is essential to be taken into consideration before invoking Section 319 CrPC. In that regard, he relied upon ***Hetram vs. State of Rajasthan [2024 INSC 903]***. The contradictions in evidence further weaken the prosecution's case, rendering the summoning order legally flawed.

10. The Petitioners also submitted that there is no independent corroboration of the allegations, particularly regarding Section 3 of the SC/ST (PoA) Act, which requires the act to have been committed in public view. The absence of neutral witnesses was the reason the Investigating Officer did not charge-sheet the Petitioners initially. Moreover, summoning the Petitioners at an advanced stage of trial, after seven out of nine charge-sheeted witnesses have been examined, violates their right to a speedy trial and causes unnecessary delay.

11. Given that the learned Trial Court has failed to apply the principles laid down by the Hon'ble Supreme Court and has acted contrary to settled law, the Petitioners pray that this Hon'ble Court quash the impugned order summoning them under Section 319 CrPC and grant any other relief deemed just and proper in the interest of justice.

12. Mr. Biswal, learned Additional Standing Counsel, appearing for the State, opposing the petition, argued that the impugned order is legally sound and does not warrant interference. It is submitted that the Trial Court has rightly exercised its power under Section 358 BNSS, as testimonies of the witnesses during trial sufficiently implicated the petitioners in the alleged offences.

13. The prosecution relied on ***Mohit @ Sonu & Another v. State of Uttar Pradesh & Another [(2013) 7 SCC 789],*** wherein the Supreme Court have held that a revisional remedy under Sections 397/401 CrPC should be preferred over a petition under Section 482 CrPC unless there is a gross miscarriage of justice. In Mohit (supra), the Hon'ble Supreme Court observed:

> *"28. So far as the inherent power of the High Court as contained in Section 482 CrPC is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that the inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged."*

14. It is further argued that the degree of satisfaction for summoning an additional accused is not as stringent as required for conviction but should be higher than the prima facie standard applied at the stage of framing charges. Since the Trial Court found sufficient material suggesting the petitioners' complicity, the exercise of discretion under Section 358 BNSS was justified.

15. I have carefully gone through the material placed before this Court and evaluated the material in the light of judgement cited at the bar. The names of the present petitioners were found mentioned in the FIR. Specific overt acts were attributed to them. However, when the police examined the witnesses, the witnesses had given a blurred picture regarding the incident. Therefore, the Investigating Officer (IO) exonerated the present petitioners and filed a chargesheet against the principal accused. However, during the progression of the trial, as many as seven witnesses have specifically taken the name of the petitioners and attributed overt acts against them. The evidence of these witnesses in unison have implicated the petitioners, for brevity. Those evidences are not reproduced herein.

16. Learned counsel for petitioners has attempted to point out contradictions in the evidence of those witnesses and emphatically drew the attention of the Court regarding the material that came in the cross-examination. Following contradictions are highlighted by the petitioners are worth reproducing.

> *"2. For that, there are discrepancies in depositions 1,2,3 and 4 vital points which suspicion. As to the role the petitioners P.W.3 has stated paragraph of his deposition-*
>
> *……..At that time, Biswajit, Abhijeet and Jagatjit were proceeding to their house. Finding me they started abusing me as "Kandara, Maghia"…….*
>
> *P.W.4 has stated in Paragraph 1 of her deposition-*
>
> *……..At that time, Biswajit, Abhijeet and Jagatjit were passing in front of our house on the road. On finding my husband, Biswajit stated that "Kandara Bahaghara Dekhile Amara Jaati Jiba"*
>
> *As to the duration of the occurrence, P.W.3 has stated in paragraph 7 of his cross-examination that-*
>
> *"…..The entire incident continued for 5 to 7 minutes."*
>
> *P.W.2 has stated in paragraph 6 of his cross- examination that-*
>
> *".....Occurrence continued for 10-15 minutes....."*
>
> *As to who tore the saree of P.W.4, P.W.4 has stated in paragraph 2 of her deposition that*
>
> *"…..When I intervened, Biswajit twisted my left hand and pushed at my neck, tore my saree and blouse……"*
>
> *P.W.1 has stated in paragraph 2 of his deposition that-*
>
> *".....When my daughter in law intervened to save her husband, the three accused persons assaulted her and twisted her hands. They also removed her saree to some extent...."*
>
> *As to previous enmity between the complainant and the petitioners P.W.3 has stated in his crossexamination at paragraph 5 that-*
>
> *"I had previous enmity with the accused one year prior to this occurrence...."*
>
> *P.W.1 has stated in his cross-examination at paragraph 5 that-*
>
> *"the above three persons had no prior enmity with my son...."*

17. The nature of evidence which has come on record undoubtedly brings the complicity of petitioners into the crime. At this stage, while exercising jurisdiction

under Section 528 of BNSS, the Court is forbidden to delve upon the merits of evidence by appreciating the same. The only test at this stage to sustain the impugned order is to arrive at a satisfaction as to whether enough material has come on the record to summon the witness or not. The Court need not weigh the quality of evidence which would eventually lead to conviction, but the evidence should be a little higher than the prima facie standard. In the case of ***N. MANOGAR vs. THE INSPECTOR OF POLICE, 2024 LiveLaw (SC) 197***, the Constitution Bench of the Hon'ble Supreme Court significantly refering to its prior decision in ***Hardeep Singh v State of Punjab & Ors., (2014) 3 SCC 92*** has held:

> *"Power Under Section 319 Code of Criminal Procedure is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the magistrate or the sessions judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence laid before the court that such power should be exercised and not in a casual and cavalier manner." "Thus we hold that though only a prima facie case is to be established from the evidence laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power Under Section 319 Code of Criminal Procedure."*
>
> *"The High Court failed to appreciate that the discretionary powers under Section 319 of the CrPC ought to have been used sparingly where circumstances of the case so warrant. In the present case, the Trial Court Order was well reasoned and did not suffer from any perversity. Moreover, the materials on record could not be said to have satisfied the threshold envisaged under Hardeep Singh (Supra) i.e., more than a prima facie case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction."*

18. In my considered view, the evidence brought by the prosecution unescapably warrants the summoning of the accused persons. At this stage, it is jurisdictionally forbidden for the High Court to delve upon the quality, quantity and trustworthiness of the witnesses deposed against the petitioners. Once material worth summoning an accused born on record, the trial Court shall exercise its power under Section 319 CrPC to summon the accused and afford the opportunity of fair trial in accordance with law.

19. In view of the foregoing discussion on material facts on record and Judgments cited by the parties at the bar, this Court is not inclined to interfere with the impugned order as no legal infirmity is found prominently warranting to exercise the jurisdiction under Section 482 CrPC.

20. This CRLMC is accordingly dismissed.

Headnotes prepared by : *Result of the case :*
Sri Jnanendra Ku. Swain (Judicial Indexer) CRLMC dismissed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

2025 (II) ILR-CUT-247

KALIA SETHY (DEAD) & ORS.
V.
SRI SRI BALAJI MAHAPRABHU

[S.A. NO. 76 OF 1997]

03 APRIL 2025

[A.C. BEHERA, J.]

Issue for Consideration

Whether the plaintiff can seek the relief for permanent injunction against the defendants.

Headnotes

PROPERTY LAW – Protection of Deity's property – Suit filed for injunction simpliciter – Trial Court dismissed the suit – First Appellate Court allowed the appeal and thereby set aside the judgment and decree passed by the trial Court - The forefather of the defendants were the Bhag tenants of the suit properties under the plaintiff/ Deity – The defendants have not become able to establish that they are Bhag tenants of the suit properties under the plaintiff/ Deity – Whether the plaintiff can seek the relief for permanent injunction against the defendants.

Held: Yes – The properties belonging to a minor like Deity requires protection – For which, it is the obligation of the state and its instrumentalities as well as the Court to protect the interest of the Deity, as the Deity is a perpetual minor. (Para 18)

Citations Reference

Sri Mangala Thakurani Bije, Kakatpur and others Vrs State of Orissa and others, **2010 (Supp.-II) OLR 992 & 110 (2010) CLT 574 (at Para 5);** Sri Brajabandhu Pati Vrs Collector-cum-Trustee, Debattar, Dhenkanal and others, **2010 (Supp.-I) OLR 734 & 2010 (I) CLR 27 (at Para 10);** Arnapurna Dibya Vrs Anadi, **45 (1977) CLT 461 (B.R.),** Niranjan Mekap and others Vrs. State of Orissa and Others, **2015(I) CLR 998 (at Para 34);** Rekhaben Vrs Patel Baldev Amrutlal, **2023 (3) CCC 2 (Gujarat)** – referred to.

List of Act

Code of Criminal Procedure, 1973; Tenancy Act; Orissa Estates Abolition Act, 1951; Orissa Land Reforms Act, 1960.

Keywords

Bhag Chasi (Bhag tenant); Occupancy rights; Occupancy raiyats; Obligation of State; Perpetual minor; Injunction simpliciter; Maintainability; Peaceful Possession; Permanent Injuction; Person under disability; Tenancy right.

Case Arising From

Judgment and decree dated 20.01.1997 and 04.02.1997 respectively passed by the First Appellate Court in T.A No. 105 of 1977 (82/1980).

Appearances for Parties

For Appellants : Mr. S.S. Rao, Sr. Adv., Mr. B.K. Mohanty
For Respondent : None

Judgment/Order

Judgment

A.C. BEHERA, J.

This second appeal has been preferred against the reversing judgment.

2. The appellants in this second appeal were the defendants before the Trial Court in the suit vide T.S. No.115 of 1973 and respondents before the First Appellate Court in the First Appeal vide T.A. No.105 of 1977 (82/1980).

The respondent-Deity in this second appeal was the sole plaintiff before the Trial Court in the suit vide T.S. No.115 of 1973 and appellant before the First Appellate Court in the First Appeal vide T.A. No.105 of 1977 (82/1980).

3. The suit of the plaintiff-Deity (respondent in the second appeal) vide T.S. No.115 of 1973 against the defendants (appellants in the second appeal) was a suit for injunction simpliciter.

4. According to the case of the plaintiff-Deity, the suit properties are the properties of the plaintiff-Deity and the usufructs/products of the said properties are used as the feeding of the "Abhyagats" from the "Prasad" offered to the plaintiff-Deity.

In the year 1940, the father of the defendant Nos.1 & 2 and uncle of the defendant No.3 i.e. Raghu Sethi was engaged as Bhag chasi (Bhag tenant) in respect of the suit properties by the plaintiff-Deity and accordingly, Raghu Sethi was cultivating the suit properties on Bhag basis and he was providing the Bhag of the products of the suit properties to the plaintiff-Deity. That Raghu Sethi died in the year 1962. After the death of Raghu Sethi, the plaintiff-Deity through its marfatdar kept the suit properties for personal cultivation of the Deity engaging labourers.

When in the year 1971, the marfatdar of the plaintiff-Deity became ill and undergone treatments at Berhampur Hospital, during that time, taking advantage of

the absence of the marfatdar from the village, the defendant No.3 tried to create disturbances in the suit properties. For which, a proceeding under Section 144 of the Cr.P.C., 1973 was started and thereafter, the said proceeding under Section 144 of the Cr.P.C. was converted to a proceeding under Section 145 of the Cr.P.C., 1973. Subsequently, the said proceeding under Section 145 of the Cr.P.C. was dropped and R.I., Jakar Firka was appointed as a receiver of the suit properties. For which, the plaintiff-Deity filed the suit against the defendants praying for restraining them (defendants) from entering into the suit properties and from creating disturbances in the peaceful possession of the plaintiff-Deity in the suit properties.

5. Having been noticed from the Trial Court in the suit, the defendants challenged the same by filing their joint written statement taking their stands *inter alia* therein denying the averments made by the plaintiff-Deity in its plaint that, Raghu Sethi (father of the defendant Nos.1 & 2) and Brundaban Sethi (father of the defendant No.3) were cultivating the suit properties originally as raiyats having their occupancy right in the same and they were in cultivating possession of the suit properties throughout. After the death of Brundaban Sethi, his son i.e. defendant No.3 Budhia Sethi inherited the tenancy right of his father Brundaban Sethi in the suit properties and he (defendant No.3 Budhia Sethi) jointly cultivated the suit properties with Raghu Sethi. Subsequently, the suit properties were divided between them i.e. between their two branches into two equal shares. Accordingly, the defendant No.3 was cultivating half and the father of the defendant Nos.1 & 2 i.e. Raghu Sethi was cultivating half of the suit properties according to the distributions made between them.

When Raghu Sethi died, his sons i.e. defendant Nos.1 & 2 succeeded to the half share of their father Raghu Sethi in the suit properties and cultivated the same like their father. Accordingly, the defendants have their occupancy rights in the suit properties. Their such rights in the suit properties under the Tenancy Act are statutorily protected. The defendant No.4 (Anadi Sethi) is the son of the defendant No.3, though he (defendant No.4) is entitled to his tenancy right in the suit properties, but he is staying away from the village of the suit properties due to his employment as a teacher in Phulbani District. The plaintiff-Deity is not at all in possession and enjoyment over the suit properties. For which, the plaintiff is not entitled to the relief i.e. permanent injunction or any other relief against them (defendants).

Therefore, the suit filed by the plaintiff-Deity is not maintainable under law.

The further case of the defendants was that, the suit filed by the plaintiff-Deity is not maintainable before the civil Court, because the proper Court for adjudication of the disputes between the parties is the Revenue Court. The right of the plaintiff-Deity in the suit properties has already been extinguished as per the provisions of Orissa Estates Abolition Act as well as Orissa Land Reforms Act. For which, they (defendants) are the occupancy raiyats of the suit properties and they

(defendants) are in possession over the same. The plaintiff-Deity has no interest or possession in the suit properties. For which, the suit of the plaintiff-Deity is liable to be dismissed against them (defendants).

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 6 (six) numbers of issues were framed by the Trial Court in the suit vide T.S. No.115 of 1973 and the said issues are:-

I S S U E S

(i) Whether the plaintiff is in possession over the suit land?

(ii) Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

(iii) Whether the defendants are tenants and they are in cultivating possession of the suit land as claimed by them?

(iv) Whether the Court has jurisdiction to entertain this suit?

(v) Whether the suit is not maintainable?

(vi) To what other relief?

7. In order to substantiate the aforesaid relief i.e. injunction sought for by the plaintiff against the defendants before the Trial Court in the suit vide T.S. No.115 of 1973, altogether 7 numbers of witnesses were examined on behalf of the plaintiff-Deity as P.Ws.1 to 7 and series of documents were exhibited from the side of the plaintiff-Deity as Exts.1 to 8/d.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendants examined 6 (six) witnesses from their side including defendant No.3 as D.W.6 and exhibited series of documents on their behalf vide Exts.A to Y/2.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the Record, the Trial Court answered all the issues against the plaintiff-Deity and in favour of the defendants and basing upon the findings and observations made by the Trial Court in all the issues against the plaintiff-Deity and in favour of the defendants, the Trial Court dismissed the suit of the plaintiff on contest against the defendant Nos.1 to 3 & 5 and *ex parte* against the defendant No.4 as per its judgment and decree dated 13.10.1977 and 04.11.1977 respectively assigning the reasons that,

> *the plaintiff-Deity is not in possession over the suit properties, but the defendants are cultivating the said suit properties as tenants under the plaintiff-Deity. For which, the plaintiff-Deity is not entitled for the relief i.e. permanent injunction against the defendants*.

9. On being dissatisfied with the aforesaid judgment and decree of the dismissal of the suit of the plaintiff-Deity vide T.S. No.115 of 1973 passed by the Trial Court on dated 13.10.1977 and 04.11.1977 respectively, the plaintiff-Deity challenged the same preferring the First Appeal vide T.A. No.105 of 1977 (82/1980)

being the appellant against the defendants arraying them (defendants) as respondents.

10. After hearing from both the sides, the First Appellate Court allowed that First Appeal of the plaintiff-Deity vide T.A. No.105 of 1977 (82/1980) on contest against the defendants/respondents and set aside the judgment and decree of the dismissal of the suit passed by the learned Trial Court as per its judgment and decree dated 20.01.1997 and 04.02.1997 respectively on the ground that,

> *though the predecessor of the defendants i.e. Raghu Sethi was the Bhag tenant in respect of the suit properties under the plaintiff-Deity, but after the death of Raghu Sethi, the defendants were not inducted as Bhag tenants in the suit properties on behalf of the plaintiff-Deity, for which, as per law, the plaintiff-Deity is the owner of the suit properties and the plaintiff-Deity is also in possession over the suit properties, for which, the plaintiff-Deity is entitled for the decree of permanent injunction against the defendants and accordingly, the learned First Appellate Court decreed the suit vide T.S. No.115 of 1973 of the plaintiff-Deity against the defendants and restrained them (defendants) permanently from interfering into the peaceful possession of the plaintiff-Deity in the suit properties*.

11. On being aggrieved with the aforesaid judgment and decree dated 20.01.1997 and 04.02.1997 respectively passed by the First Appellate Court in T.A. No.105 of 1977 (82/1980) in favour of the plaintiff-Deity and against the defendants, they (defendants) challenged the same by preferring this second appeal being the appellants against the plaintiff-Deity arraying plaintiff-Deity as respondent.

12. This Second Appeal was admitted on formulation of the following substantial questions of law i.e.-

> *(i) Whether the materials available in the records are going to show that, the defendants are possessing the suit properties as Bhag tenants under the plaintiff-Deity and whether they (defendants) are in lawful possession over the suit properties?*
>
> *(ii) Whether the learned First Appellate Court has acted illegally and with material irregularity in holding that, the defendants are not in possession over the suit properties, as Bhag tenants under the plaintiff-Deity?*
>
> *(iii) Whether the judgment and decree passed by the First Appellate Court is contrary to the law and evidence available in the record?*
>
> *(iv) Whether the judgment and decree passed by the First Appellate Court in passing the decree of the suit in favour of the plaintiff and against the defendants is sustainable under law?*

13. I have already heard only from the learned counsel for the appellants (defendants), as none appeared from the side of the respondent (plaintiff-Deity) for hearing of the second appeal.

14. When, all the above four formulated substantial questions of law are interlinked having ample nexus with each other according to the pleadings of the

parties and judgments and decrees passed by the Trial Court and First Appellate Court, then all the four formulated substantial questions of law are taken up together analogously for their discussions hereunder.

15. It is the concurrent findings of the Trial Court and First Appellate Court on facts after appreciation of oral and documentary evidence of the parties that, the plaintiff-Deity is the owner of the suit properties.

It was the findings of the learned Trial Court in its judgment and decree that, the defendants are the Bhag tenants of the suit properties under its landlord i.e. the plaintiff-Deity, to which, the First Appellate Court reversed in its judgment and decree and held that, the defendants have not become able to establish that, they are the Bhag tenants of the suit properties under the plaintiff-Deity. For which, the learned First Appellate Court passed the decree i.e. permanent injunction against the defendants.

16. Now the question arises, whether the defendants are cultivating the suit properties as Bhag tenants under its landlord i.e. the plaintiff-Deity or not?

As per the Section 2(21) of the Orissa Land Reforms Act, 1960, a minor land owner comes within the purview i.e. "person under disability".

It is the settled propositions of law that, Deity is a perpetual minor.

17. Here in this suit/appeal at hand, when the plaintiff is a Deity, then as per law, the plaintiff (Sri Sri Balaji Mahaprabhu) is a perpetual minor.

It is very fundamental in law that, when a Deity is a perpetual minor, then in a suit or in a proceeding, the Deity is to be represented through some or by human agency. Because, the Deity is a juristic person.

18. The properties belonging to a minor like Deity requires protection. For which, it is the obligation of the State and its instrumentalities as well as the Court to protect the interest of the Deity, as the Deity is a perpetual minor.

On this aspect the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-

> (i) In a case between ***Sri Mangala Thakurani Bije, Kakatpur and others Vrs State of Orissa and others*** reported in ***2010 (Supp.-II) OLR 992*** & ***110 (2010) CLT 574*** (at Para 5), deity is a perpetual minor and it has to be represented through some human agency. Land belong to the deity & not to the Marfatdars.
>
> (ii) In a case between ***Sri Brajabandhu Pati Vrs Collector-cum-Trustee, Debattar, Dhenkanal and others*** reported ***2010 (Supp.-I) OLR 734 and 2010 (I) CLR 27*** (at Para 10), deity is a perpetual minor and the property belonging to a minor requires protection, it is the obligation of the authorities to protect the interest of the minor.
>
> (iii) In a case between ***Arnapurna Dibya Vrs Anadi*** reported in ***45 (1977) CLT 461 (B.R.),*** the lands belong to deity of which a widow was the Marfatdar. Held for purposes of determination of the resumable and non-resumable land sit is immaterial whether the

marfatdar is a widow or a person under disability. It is the deity and not the marfatdar who is the land lord.

(iv) In a case between ***Niranjan Mekap and others Vrs. State of Orissa and others*** reported in ***2015(I) CLR 998 (at Para 34),*** deity being a perpetual minor, it is the primary duty of the State and its authorities to protect the interest of the deity. In case of any allegation of failure on the part of the State and its instrumentalities to do so, finally, the Court has to protect the interest of the deity, who is a perpetual minor.

19. The defendants have not pleaded in their pleadings (written statement) projecting them as the Bhag tenants of the suit properties under its landlord i.e. plaintiff-Deity, rather they (defendants) have claimed their ownership in their written statement over the suit properties taking their stands in their pleadings that, their predecessors i.e. Raghu Sethi and Brundaban Sethi were originally cultivating the suit properties as raiyats having their occupancy rights in the suit properties and after their death, the occupancy rights of their predecessors i.e. Raghu Sethi and Brundaban Sethi devolved upon them (defendants), as they (defendants) are their successors. For which, according to the pleadings of the defendants, they (defendants) are the occupancy raiyats of the suit properties and they (defendants) are the owners of the same and as such, they (defendants) are possessing the suit properties as owners.

20. When, it is the concurrent findings of both the Courts i.e. Trial Court and First Appellate Court on facts in their respective judgments and decrees after thorough appreciation of the pleadings as well as oral and documentary evidence of the parties that, the plaintiff-Deity is the owner of the suit properties and when the defendants have not claimed/pleaded in their pleadings (written statement) that, they are the Bhag tenants of the suit properties under the plaintiff-Deity, then at this juncture, the findings/observations made by the First Appellate Court in its judgment and decree reversing the findings and observations of the Trial Court and held that, the defendants are not the Bhag tenants of the suit properties under the plaintiff-Deity. So, it cannot be held that, the aforesaid findings and observations made by the First Appellate Court reversing the findings and observations made by the Trial Court are unreasonable.

21. As per the discussions and observations made above, when it is held that, the plaintiff-Deity is the owner of the suit properties, for which, the possession of the plaintiff-Deity over the suit properties is not unlawful. Therefore, the suit for injunction simpliciter filed by the plaintiff-Deity against the defendants cannot be held as not maintainable under law.

For which, in other words, it can be held that, the suit for injunction filed by the plaintiff-Deity against the defendants is maintainable under law.

On this aspect, the propositions of law has already been clarified by the Hon'ble Courts in the ratio of the decision between ***Rekhaben Vrs Patel Baldev***

Amrutlal reported in ***2023 (3) CCC 2 (Gujarat)***, once the possession is lawful, suit for injunction simpliciter is maintainable.

22. When, as per the discussions and observations made above, it is held that, the suit for injunction simpliciter filed by the plaintiff-Deity against the defendants in respect of the suit properties is maintainable under law and when the findings and observations made by the First Appellate Court in its judgment and decree are not unreasonable, then at this juncture, the question of interfering with the same through this second appeal filed by the appellants (defendants) does not arise.

Therefore, there is no merit in the appeal of the appellants (defendants). The same must fail.

23. In result, the second appeal filed by the appellants (defendants) is dismissed on merit, but without cost.

The judgment and decree passed by the First Appellate Court in T.A. No.105 of 1977 (82/1980) setting aside the judgment and decree passed by the Trial Court in T.S. No.115 of 1973 is confirmed.

Headnotes prepared by: *Result of the case:*
Smt. Madhumita Panda, Law Reporter Second Appeal dismissed.
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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2025 (II) ILR-CUT-254

PADMA MANJARI DEVI & ORS.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NOS. 15461 & 15462 OF 2023]

17 APRIL 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether cancellation of Record of Right (ROR) of the petitioners without issuing any show cause notice is sustainable.

Headnotes

PROPERTY LAW – Principle of Natural Justice – On the basis of final decree passed in the Civil suit, applications for mutation of case land were filed by petitioners before the Tahasildar who allowed the above two mutation cases of the petitioners – Two new khatas were prepared in the name of the Petitioners accordingly – Subsequent thereto on the basis of an Order passed in Misc. Case filed by Opp. Party No. 4, the

Tahasildar cancelled the R.O.R. of the Petitioners without issuing any notice to the Petitioners and without giving any opportunity of hearing to the Petitioners – Whether cancellation of Record of Right (ROR) of the petitioners without issuing any show cause notice is sustainable.

Held: No – It is settled propositions of law that, if any case or in an matter, an order is passed to the detriment of the interest of any party, the said party must be given a reasonable opportunity to show-cause before passing of that order, for no other reason, but only in order to comply the principle of natural justice. (Para 6)

The impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No. 30 of 2023 by the Tahasildar, Baripada (O.P. No.3) is a nullity, as the same has been passed in contravention with the principles of natural justice. (Para 8)

Citations Reference

Banambar Das Vrs. Pitambar Das & Others, **2010 (1) OLR 700**; Satyajit Sahoo Vrs. State of Orissa & Others **2016 (1) OLR 325**; Johra & Others Vrs. State of Haryana & Others, **2019 (1) CCC (S.C.) 12** – **referred to.**

Keywords

Mutation Case; Cancellation of ROR; Opportunity of hearing; Principle of natural justice.

Case Arising From

Order dated 11.04.2023 passed by Tahasildar, Baripada (O.P. No. 3) in Misc. Case No. 30 of 2023.

Appearances for Parties

For Petitioners : Mr. B. Bhuyan, Sr. Adv., Ms. S. Sahoo
For Opp. Parties : Mr. G. Mohanty, S.C. (O.Ps. 1-3),
Mr. K. Choudhury, Mr. L.K. Maharana,
Mr. A.N. Bhattacharya (O.P. 4)

Judgment/Order

Judgment

A.C. BEHERA, J.

1. Since both these writ petitions have arisen out of one order vide Order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3) and since, the same petitioners have filed both the writ petitions, then, both the writ petitions have been taken up together analogously for their final disposal through this common Judgment.

2. The factual backgrounds of both the writ petitions, which prompted the petitioners for filing of the same are that, on the basis of the final decree passed in the suit vide C.S. No.366 of 2022, two applications for mutation of the case land vide Mutation case Nos.529 of 2023 and 530 of 2023 were filed by the petitioners before the Tahasildar, Baripada (O.P. No.3) and the Tahasildar, Baripada (O.P. No.3) allowed the above two mutation cases of the petitioners on dated 14.03.2023 and on the basis of the said order dated 14.03.2023 passed by the O.P. No.3, two new Khatas were prepared vide Khata No.154/683 in Mouja Swarupvilla and Khata No.67/49 in Mouja Tadkisole in the name of the petitioners.

Subsequent thereto, on the basis of an order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 filed by the O.P. No.4 (Prativa Manjari Devi), the Tahasildar, Baripada (O.P. No.3) cancelled the said newly created R.o.Rs. vide Khata Nos.154/683 and 67/49 (those were prepared in the name of the petitioners after mutation) without issuing any notice to the petitioners and without giving any opportunity of being heard to the petitioners.

For which, after knowing about such order of cancellation of their R.o.Rs. vide Khata Nos. 154/683 and 67/49 as per order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3), they (petitioners) challenged the same by filing these two writ petitions against the O.Ps praying for quashing the said order dated 11.04.2023 Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3).

3. I have already heard from the learned counsels of both the sides.

4. On the basis of the rival submissions of the learned counsels of both the sides, the crux of these writ petitions is that,

> "whether the impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3) and cancellation/correction of the R.o.Rs vide Khata Nos.154/683 and 67/49 from the name of the petitioners to the name of O.P. No.4 is sustainable under law?

5. It is the undisputed case of the parties that, prior to cancellation of the R.o.Rs vide Khata Nos.154/683 and 67/49, the said R.o.Rs were in the name of the petitioners and the said R.o.Rs were prepared on the basis of the final order dated 14.03.2023 passed in Mutation case Nos.529 of 2023 and 530 of 2023 as per the final decree passed in C.S. No.366 of 2023 in favour of the petitioners, but, the said R.o.Rs vide Khata Nos. 154/683 and 67/49 (those were prepared in the name of the petitioners) have been cancelled/corrected from the name of the petitioners to the name of the O.P. No.4 without issuing any notice to the petitioners and without giving any opportunity of being heard to the petitioners, which is evident from the impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3).

6. It is the settled propositions of law that, if in any case or in any matter, an order is passed to the detriment of the interest of any party, the said party must be given a reasonable opportunity to show-cause before passing of that order, for no other reason, but, only in order to comply the principles of natural justice.

7. On this aspect, the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

> (i) In a case between ***Banambar Das Vrs. Pitambar Das & Others*** reported in ***2010 (1) OLR 700*** that, whenever an order is passed to the detriment of a party, that party must be given a reasonable opportunity to show-cause and being heard.
>
> (ii) In a case between ***Satyajit Sahoo Vrs. State of Orissa & Others*** reported in ***2016 (1) OLR 325*** that, if a decision is rendered, which affects a party, it would amount to clear violation of the principles of natural justice and an order passed in violation of salutary provision of natural justice would be a nullity.
>
> (iii) In a case between ***Johra & Others Vrs. State of Haryana & Others*** reported in ***2019 (1) CCC (S.C.) 12*** that, no order can be passed by any Court in any judicial proceedings against any party to such proceedings without hearing and giving such party an opportunity of hearing.

8. Here in this matter at hand, when, the impugned order dated 11.04.2023 (Annexure 7) has been passed by the Tahasildar, Baripada (O.P. No.3) in Misc. Case No.30 of 2023 cancelling the R.o.R vide Khata Nos.154/683 and 67/49 from the name of the petitioners to the name of the O.P. No.4 affecting the interest of the petitioners without giving any opportunity to the petitioners for filing show-cause and without giving any opportunity of being heard to the petitioners, then at this juncture, by applying the principles of law enunciated in the ratio of the above decisions of the Hon'ble courts and Apex Court, it is held that, the impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3) is a nullity, as the same has been passed in contravention with the principles of natural justice

For which, the impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 by the Tahasildar, Baripada (O.P. No.3) cannot be sustainable under law. So, the impugned order (Annexure 7) is liable to be quashed (set aside).

9. Therefore, there is merit in the writ petitions filed by the petitioners. The same must succeed.

10. In result, these writ petitions filed by the petitioners are allowed.

11. The impugned order dated 11.04.2023 (Annexure 7) passed in Misc. Case No.30 of 2023 passed by the Tahasildar, Baripada (O.P. No.3) is quashed (set aside).

12. Accordingly, both the writ petitions filed by the petitioners are disposed of finally.

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

Result of the case:
Writ Petitions disposed of.

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