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ADMINISTRATION OF JUSTICE – Reconstruction of records – Prayer for reconstruction of the records – The State/Opp.party authority denied reconstruction of the record on the grounds that record has been wasted, as in the meantime 48 years have been elapsed – Whether the prayer of the petitioner can be accepted?

Held: Yes – Law has already been settled in a case between Arjun Padhi Vs. State reported in AIR 1952 (Orissa) 237 that, "*when the record of a pending case is lost or destroyed, the Court or Authority has inherent power to reconstruct its records on the basis of its authenticated copies and the reconstructed records shall have the same efficacy/force as that of the original record.*"

So, in view of the principles of law enunciated in the ratio of the above decision, the Tahasildar, Ganjam (Opp. Party No.4) is required to be directed to reconstruct the records of OLR Case No.8 of 1977 on the basis of the authenticated copies thereof supplied either by the petitioner or through other source and to act on the basis of previous orders passed in that OLR Case No.8 of 1977.

Tarini Gouda V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1372

CENTRAL UNIVERSITY ACT, 2009 – Section 18 (6) r/w Para 10 (f) UGC Regulation, 2018 – Regularization of Contractual Lecturers/ Assistant Professors – Pursuant to the advertisements/notices issued by the authorities of Central University of Odisha, petitioners were engaged as Guest Faculty/Junior Consultant/ Lecturer on Contract basis vide different orders starting from 15.07.2015 to 05.06.2018 – It is admitted that, the appointment was made against the regular sanctioned posts and the petitioners have the required qualification to teach at under Graduate and Post Graduate level – Whether the petitioners continuing in regular sanctioned post are eligible for regularization/ absorption.

Held: Yes – All the petitioners were engaged on temporary basis as Lecturer on Contract pursuant to the selection process initiated by the University vide Annexure-E series to the counter affidavit – Taking into account the fact that the petitioners were all engaged as Lecturer on contract against sanctioned regular post in terms of the selection process initiated under Annexure-E series and petitioners since possess the required qualification to hold the post of Asst. Professor on regular basis, placing reliance on the decisions so cited (supra), this Court is of the view that petitioners are eligible and entitled to get the benefit of absorption in their respective posts in which they are engaged vide orders issued under Annexure-1 series.

Sushant Kumar & Ors. V. Central University of Odisha, Koraput & Ors.
2025 (II) ILR-Cut…… 1256

CIVIL PROCEDURE CODE, 1908 – Section 21 – The appellants have never raised their objection before the learned Trial Judge, more so at the earliest opportunity – The appellants raised such objection at the stage of Appeal – Whether question on jurisdiction can be raised in appeal when such particular contention was not raised before the trial court at the first instance.

Held: It is immaterial here that whether the parties have raised their objection or not, and when the statute itself makes the Court (District Delegate) nonfunctional upon raising of contentions further proceeding of the District Delegate ignoring the mandatory provisions of the statute is treated as without jurisdiction touching the very foundation of the proceeding and thus, renders the decision as a nullity – It is such a defect that cannot be cured by the consent of the parties and regardless of the objections raised by the party – The further proceeding being violative of the statutory mandate envisaged under Section 288 of the Indian Succession Act, the entire adjudication subsequent to the framing of issue is rendered as a nullity and void form that stage.

Upendra Kumar Mohapatra & Anr. V. Pradip Kumar Mohapatra & Ors.
2025 (II) ILR-Cut…… 1116

CIVIL PROCEDURE CODE, 1908 – Section 24 – Transfer of matrimonial proceeding – Petitioner/husband has filed C.P. No. 339 of 2023 for restitution of conjugal life, before the Judge Family Court, Puri – The Opp. Party/wife has filed C.P. No. 196 of 2023 for divorce, before the Judge, Family Court, Jagatsinghpur – The wife presently serving as an Assistant Teacher at Maa Uttarayani Vidyapitha, Satasankha under the district of Puri, which is hardly around 25 K.Ms away from the Court of the Judge, Family Court, Puri – Whether the proceeding pending before the different Court between the parties raising common question of fact and law should be tried together.

Held: Yes – The prayer made in the C.Ps, being contrary to each other, this Court is of the view that both the said proceedings should be tried together to avoid multiplicity in trial and conflicting decisions.

This Court is inclined to allow the prayer made in the transfer petition.

Necessary directions were given to the Judge Family Court, Jagatsinghpur, to transmit the case record and Judge Family Court, Puri to complete the proceeding by giving an opportunity of hearing to both the parties.

Priyadarshan Dash V. Sagarika Satapathy
2025 (II) ILR-Cut…… 1322

CIVIL PROCEDURE CODE, 1908 – Order 18, Rule 17 – Recall of witness – The learned Civil Judge (Jr. Division) allowed an application filed at the behest of Opposite Party Nos. 1 to 4 and imposed cost which is not conditional – The petitioner/plaintiff received the cost with protest – Whether receipt of cost with protest extinguished the right to challenge an order on the ground of principle of estoppel.

Held: No – If it is a conditional order and the cost is accepted, rule of estoppel applies and not otherwise – If by exercise of discretionary power, any such cost is awarded, allowing of application would not make the decision in the nature of a conditional order – In other words, where there is no conditional order, even though, the cost was received by the party, it has every right to challenge the decision and the same is not extinguished.

Prabhakar Sahoo & Ors. V. Sesadev Sahoo & Ors.
2025 (II) ILR-Cut…… 1176

CIVIL PROCEDURE CODE, 1908 – Order 18, Rule 17 – Learned Civil Judge (Jr. Division) allowed an application filed at the behest of Opposite Party Nos. 1 to 4 seeking recall of Opposite Party No. 11 (Legal heir of defendant No.5) to examine as a witness from their side – The ground set forth in the application and the document which is sought to be confronted to the legal heir of D.W. 5 has neither been pleaded in the W.S. nor was relied upon by defendant Nos. 1 to 4 and such a question is beyond the subject matter of the suit – It is further alleged that no counter claim is filed questioning the decree in T.S. No. 288 of 2000 where defendant No.5 was a party – Whether allowing an application under Order 18 Rule 17 is tenable when the document which is sought to be confronted to D.W. 5 has neither been pleaded in W.S. nor was relied upon by defendant Nos. 1 to 4.

Held: No – To reiterate, recall of DW 5, in the peculiar facts and circumstances of the case, is unwarranted, especially when, there is no any challenge to the decree in T.S. No.288 of 2000 considering the fact that the same ended in a compromise, hence, there is absolutely no justification at all.

Prabhakar Sahoo & Ors. V. Sesadev Sahoo & Ors.
2025 (II) ILR-Cut…… 1176

CIVIL PROCEDURE CODE, 1908 – Order 21, Rule 97 – Resistance/ obstruction to delivery of possession – The petitioners who are not parties to the suit filed an application under Order 21, Rule 97 of CPC claiming right over the suit schedule land while opposing the decree passed in T.S. No. 3/180 of 2000/1980 and execution thereof initiated against Opposite Party No. 11 for ejectment therefrom – It is further alleged that fraud was practiced by Opp. Party Nos. 1 to 10 and their predecessor – The application filed under Order 21 Rule 97 of CPC was not allowed to adduce evidence leading to the passing of the impugned order – Whether rejection of an application under Order 21 Rule 97 of CPC is sustainable.

Held: No – Since title is claimed over the suit schedule property by the petitioners and the same is likely to be included as a part of the decreetal property, if the decree is sought to be executed at the instance of opposite party Nos. 1 to 10, such grievance of the petitioners is necessarily to be examined by the learned court below while dealing with an application in terms of Order 21, Rules 97 to 103 CPC – Such an indefeasible right of the petitioners which is statutorily not allowed by way of a separate suit with resistance to the delivery of possession of the suit property in favour of opposite party Nos.1 to 10 is not infringed upon or extinguished and therefore, the application in terms of Order 21, Rules 97 to 103 CPC shall have to be examined and disposed of as per law by receiving evidence in that regard before considering disposal of Execution Case No. 12 of 2001.

Amareswar Sahoo & Ors. V. Rani Bewa & Ors.

2025 (II) ILR-Cut…… 1188

CONSTITUTION OF INDIA, 1950 – Article 14 r/w Rule 18 (3) and 18 (6) of Orissa Civil Services (Pension) Rules, 1992 – As per Rule 18(3) of 1992 Rules, the period of service rendered in work-charged establishment shall qualify for pension whereas in the case of job contract employees, the shortfall of qualifying service should be taken into consideration but not the entire service period – Effect of.

Held: No – Now, let us examine the text & context of Sub-Rule (3) of Rule 18: This provision admittedly relates to work-charged establishment, as distinguished from job contract – The last portion of the said Rule, i.e., *"…. the period of service so rendered in work-charged establishment shall qualify for pension under this rule.*" makes the intent of the Rule Maker as clear as Gangetic waters – It says that the entire service in the work-charged establishment shall be reckoned for the purpose of pension and not just for the purpose of computing the qualifying service – The contention that Sub-Rule (6) should be read on par with Sub-Rule (3), cannot be countenanced without manhandling at

least one of them – The work-charged establishment and job contract are poles asunder – The terms & conditions of service are not the same for these two classes of employees and therefore the Rule Maker justifiably treated them separately – Arguably equating one with the other would amount to treating the un-equals as equal and that spurns at the ratio of *E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.*

State of Odisha & Ors. V. Krushna Chandra Mallick & Anr.
2025 (II) ILR-Cut…… 1101

CONSTITUTION OF INDIA, 1950 – Article 21 – Right to livelihood – Two batch of Writ Petition filed before the Hon'ble Court – The petitioners of the second batch of Writ Petition were engaged pursuant to the advertisement dated 09.12.2011 – Such engagement made beyond the limit of 50% reservation and held to be illegal basing on the judgment passed by the Division Bench of this court in the previously referred Writ Petitions – The D.P.C. recast the select list to exclude the candidates engaged in excess of the 50% limit and include the petitioner of the first Writ Petition – The Authority passed the Order dated 29.08.2019 for disengagement of candidates engaged in excess of the 50% limit – The engagement of petitioners of the second batch was the result of mistake committed by the authority and not a case where they obtained engagement by adopting any unfair means or misrepresentation of fact – Whether the disengagement is sustainable when the engagement of petitioners was done mistakenly & the authority has not adopted any unfair means.

Held: It is the long settled position of law that right to livelihood is included in the right to life guaranteed under Article 21 of the Constitution of India.

This Court also takes note of the fact that the engagement of the Petitioners (of the second batch) was the result of mistake committed by the authorities and not a case where they obtained engagement by adopting any unfair means or misrepresentation of facts etc – It would be entirely iniquitous to simply thrown them out at this distance of time.

This Court is of the considered view that the services of the Petitioners, who are only 17 in number, can be protected by creating same number of supernumerary posts to be abolished upon their superannuation – It is needless to mention that this exercise would not entail a heavy burden on the State exchequer – Besides it would conform to the underlying principle of a welfare State like India where the Government is treated as model employer – Moreover, this would not cause prejudice to any person.

Debasmita Panda & Ors. V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1198

CONSTITUTION OF INDIA, 1950 – Arts. 226 & 227 – Writ petition – Maintainability – Alternative remedy – Whether writ petition is maintainable where the provision of alternative remedy is available.

Held: Yes – The present writ petition is squarely maintainable as it concerns the unconstitutional deprivation of the petitioners' property rights under Article 300A through allegations of fraudulent alienation and arbitrary disbursal of compensation; without notice, consent, or due process – The existence of an alternate remedy does not preclude the exercise of writ jurisdiction in this case, which falls squarely within the recognised exceptions namely, violation of natural justice, actions taken without jurisdiction, and infringement of constitutional rights.

Srimati Sethy & Ors. V. Competent Authority & Land Acquisition Officer, NH-6 (49), Keonjhar & Ors.
2025 (II) ILR-Cut…… 1132

CONSTITUTION OF INDIA, 1950 – Article 227 – Writ Appeal – Disciplinary Proceeding – Scope of interference – Petitioner challenges the punishment of two black marks – The learned single Bench held the penalty of two black marks as proper and in consonance with law – Petitioner filed the present Writ Appeal challenging the order of the learned single Bench – Whether the findings of learned single Bench should be interfered with.

Held: No – The appellate Court should not interfere with the order of the single Bench as it found that though the facts invite two plausible views out of which one having adopted by the single Bench, but the other was equally applicable – The appellate Court should refuse to interfere with the order of the single Bench if out of two plausible views, one has been adopted.

Sarangadhar Panigrahi V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1030

CRIMINAL PROCEDURE CODE, 1973 – Section 439 r/w Article 21 of Constitution of India, 1950 – Right to life, Personal liberty and speedy trial – Bail – The petitioner is in the Judicial Custody since 27.04.2019 for the offences U/Ss.120-B/420/409 r/w Sections 4/5/6 of Prize Chits & Money Circulation schemes (Banning) Act, 1978 – More than six years have elapsed but charge has not been framed – Delay in trial & long detention in custody – Whether the petitioner is entitled to bail when there is delay in trial.

Held: Yes – The detention of the Petitioner in the present case beyond six years without charge being framed infringes his right to speedy trial as guaranteed under Article 21 of the constitution of India and he thereby, is entitled to bail on that score.

This Court, therefore, considers that the Petitioner is entitled to bail pending trial on stringent conditions since two of the co-accused persons as referred to the above standing on similar footing have already been granted bail.

Biswajit Bera V. Republic of India
2025 (II) ILR-Cut…… 1333

CRIMINAL TRIAL – The appellants have been convicted and sentenced U/s. 147/149/323/325 of IPC – While assailing the judgment learned counsel appearing for the appellants contended that the eye witness to the occurrence are the related witness and the evidence of such witnesses are not to be relied on – It is also contended that even though in the FIR, it is alleged that the injured was taken to the hospital by one Bharat Bhoi, but he was not examined as an witness – It is stated by appellant that the FIR was drafted by some other person not by the informant – It is contended that there is discrepancies in the medical and ocular evidence and there is no seizure of the alleged weapons used in the assault – Whether the order of conviction requires interference though there is contradictions and inconsistencies in the evidence of the witness.

Held: No – This Court is also unable to accept the contention of the learned counsel for the appellants that the conviction and sentence is not sustainable because of the discrepancies in the statement of P.Ws., as the same does not create any doubt about the truthfulness of the witnesses – Placing reliance in the decision in the case of *Smt. Shamim and Narayan Chetanram Chaudhury* as cited supra, it is the view of this Court that any such minor discrepancy is not contradiction in the statement of witnesses and the same is not fatal for the case.

In view of the aforesaid analysis, this Court finds no illegality or irregularity with the impugned order of conviction and sentence passed by the learned trial court vide the impugned judgment dt.26.07.2007 – Accordingly, this Court is not inclined to interfere with the same and dismiss the appeal.

Naba Kishore Mallick & Ors. V. State of Odisha
2025 (II) ILR-Cut…… 1278

DOCTRINE OF PROPORTIONALITY – The Petitioner was blacklisted/ debarred from participating in any future tender for a period

of five years – Whether debarment to participate in any future tender for a period of five years from the date of the order is against the doctrine of proportionality.

Held: Yes – We find some discrepancies in the charge sheet submitted by the investigating officer on the basis of an FIR lodged by the officials, the copies thereof have been heavily relied upon by the contesting opposite parties so far as the time of entering into office and leaving the same.

Based upon the discrepancies, we feel that imposition of debarment for a period of five years is too harsh and offends the doctrine of proportionality.

On *Ex debito justitiae*, we set aside the remaining period of blacklisting taking into account that the said order of blacklisting shall be operative till the date of this judgment.

Artatran Bhuyan V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1042

DOCTRINE OF READING DOWN – When the doctrine of reading down may be invoked.

Held:- This doctrine may be invoked and applied if the statute is silent, ambiguous or admits more than one interpretation – But where it is express, and clearly mandates to take certain action or to mean certain things, the function of the Court is to interpret it plainly – In the absence of challenge, ordinarily courts do not permit the invocation of this doctrine to alter the policy content of a statute – Ordinarily this doctrine is invoked to trim the contours of law which otherwise suffers from the vice of over inclusiveness or such other infirmity and therefore is falling foul of a higher legal norm such as the parent Constitution, the statute, etc.

State of Odisha & Ors. V. Krushna Chandra Mallick & Anr.
2025 (II) ILR-Cut…… 1101

GUIDELINES FOR RECRUITMENT MEDICAL EXAMINATION IN CENTRAL ARMED POLICE FORCES AND ASSAM RIFLES, 2022 – Petitioner applied for Constable (General Duty) in Central Armed Police Forces (CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy – He qualified in different tests but declared medically unfit by the doctor for having Haemorrhoids – The Board opined that "external Haemorrhoid" presented @ 7 O'clock – Petitioner also get himself examined at Sadar Hopital, Chaibasa and MGM Medical College & Hospital, Jamshedpur and the reports reveal that he is not suffering from

any Haemorrhoid but it is a skin tag – Petitioner does not suffer from Haemorrhoid with bleeding – Whether the rejection of candidature of the petitioner is tenable in law.

Held: No – On a bare perusal of the opinion of the medical examination boards, it is explicitly clear that the Petitioner does not suffer from Haemorrhoid with bleeding – As such, treating him as unfit by the impugned report at Annexure-9 in the light of the finding of the Review Medical Examination Board at Annexure-16 is out of non-application of mind and therefore, liable to be set aside and it is so directed.

On a perspicuous analysis of the materials on the record and submissions of the learned counsels for parties, this Court is of the considered view that the Petitioner is diagnosed as suffering from Haemorrhoid without any report justifying either internal or external bleeding entailing his disqualification which is also evident from the medical certificates under Annexure-10 and 11 and the report of review Medical Board No.2 at Annexure-16 declaring absence of any Haemorrhoid qua the Petitioner – As such, the report at Annexure-9 declaring the Petitioner as "unfit" is quashed.

Hence, the Opposite Parties are hereby directed to appoint the Petitioner as Constable (General Duty) in Central Armed Police Forces (CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau Examination, 2022 within a period of three month from the date of receipt/submission of the copy of the judgment

Ankit Kumar V. Union of India & Ors.

2025 (II) ILR-Cut…… 1231

HINDU MARRIAGE ACT, 1955 – Section 24 – *Pendente lite maintenance* – The petitioner and the Opposite Party are wife and husband in relation – Both have litigated against each other, the petitioner has filed C.P. No. 468 of 2021, U/Ss. 18,20 of the Hindu Adoption and Maintenance Act, 1956 for grant of maintenance to and daughter, husband has filed C.P. No. 340 of 2022 for divorce – Petitioner/wife claims *pendente lite maintenance* and litigation expenses in an application under Section 24 of the Hindu Marriage Act, 1955, where as she is getting ₹20,000/- per month as interim maintenance and daughter is getting ₹3000/- and ₹7,000/- per month towards maintenance and study expenses respectively – Whether such maintenance is sufficient for the sustenance of the petitioner and daughter.

Held: Yes – It is relevant that the petitioner has not only litigating with the OP in the present proceeding, but also she has filed independent proceedings in CP No.468 of 2021 and proceeding under DV Act and has also approached this Court in different proceedings and, therefore,

the interim maintenance as granted in CP No.468 of 2021 can be considered to be sufficient for the sustenance of the petitioner and her daughter.

Looking at the claim as advanced by the petitioner and taking into consideration the facts involved in this case, this Court considers that a sum of Rs.25,000/- to the petitioner for litigation expense would meet the ends of justice. Accordingly, the petitioner is required to pay only Rs.25,000/- towards lump sum litigation expenses, but this Court, however, confirms the order passed by the learned trial Court in rejecting the claim for grant of *pendente lite maintenance* in view of the fact that the petitioner and her daughter are being ordered to be paid for a sum of Rs.30,000/- in toto towards interim maintenance in CP No.468 of 2021.

Ananya Routray V. Dr. Nihar Ranjan Ray
2025 (II) ILR-Cut…… 1326

INDIAN PENAL CODE, 1860 – Sections 147 & 148 – When would the offence under Section 148 of the Indian Penal Code attract?

Held: When there is rioting simplicitor, offence is punishable under section 147 of I.P.C. – When such rioting is committed by a particular accused or persons having deadly weapons or with anything which, used as a weapon of offence is likely to cause death, offence is punishable under section 148 of I.P.C.

The offence under Section 148 of I.P.C. is an aggravated form of the offence under Section 147 of I.P.C. – Section 147 of I.P.C. deals with the punishment for the offence of rioting, whereas Section 148 of I.P.C. deals with the punishment for the offence of rioting being armed with deadly weapon – If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under Section 148 of I.P.C.

Bhagya @ Bhagirathi Bisoi & Ors. V. State of Odisha
2025 (II) ILR-Cut…… 1050

INDIAN PENAL CODE, 1860 – Sections 149, 34 – Vicarious liability – Thirteen appellants have filed this appeal out of whom A-4, A-5, A-8, A-11, A-13 are dead – The learned trial Court found A-1, A-2, A-3, A-4 & A-5 guilty under Sections 148/302/149 of IPC and they were sentenced to undergo rigorous imprisonment (R.I.) for life for the offences under Sections 302/149 of IPC – The learned counsel for the Appellants stated that in view of the evidence of two eye witnesses though implication of A-2 and A-3 was consistent, so far as A-1 is concerned, even though P.W. 18 has implicated him in the assault but P.W. 14 is totally silent relating to any assault made by A-1 to the said

deceased – Whether Appellant No. 1 should be given benefit of doubt on the plea that one of the eye witnesses was totally silent relating to any assault made by the Appellant No. 1.

Held: No – Since it is apparent that A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana along with A-5 Bidu @ Bidyadhar Naik (dead) being armed with sharp cutting weapons came together to the spot and assaulted to the deceased Panchu Naik on vital parts of the body and thereby committed his murder and left the spot together, we are of the view that they shared common intention to commit such murder.

Section 149 of I.P.C. has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 I.P.C.) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object – For common object, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment; it is enough if it is adopted by all the members and is shared by all of them – In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members.

Bhagya @ Bhagirathi Bisoi & Ors. V. State of Odisha
2025 (II) ILR-Cut…… 1050

INDIAN PENAL CODE, 1860 – Section 306 – Abetment of suicide – Deceased committed suicide by hanging on 02.09.2021 – Investigation report alleged that the deceased was in regular telephonic contact with the petitioner, and she was often seen in a state of distress – It was alleged that deceased committed suicide due to the said reason – Whether criminal liability U/s. 306 IPC is attributable against the petitioner.

Held: No – In the present case, the death of a young woman by suicide is, without doubt, a deeply unfortunate and heart-rending incident – However, when assessed in light of the settled legal position, the materials on record do not disclose any act or omission on the part of the Petitioner that could be construed as instigation or active abetment.

Courts must exercise great caution before attributing criminal culpability in cases of suicide, especially when such attribution may arise solely from strained personal equations – The law demands not only sensitivity towards the victim but also fairness and subjectivity in

determining the liability of the accused – In that light, allowing the continuation of the criminal proceeding against the Petitioner, despite the absence of the foundational ingredients of abetment, would be unjust – Compassion cannot replace legal scrutiny, and fairness must guide the dispensation of justice.

Biswajeet Mandal V. State of Odisha & Anr.

2025 (II) ILR-Cut…… 1342

INDIAN SUCCESSION ACT, 1925 – Chapter IV of Part IX – The probate proceeding was instituted before the learned District Judge and it was delegated to the Court of the Principal Senior Civil Judge – The case was further sub-delegated to the Court of Additional Senior Civil Judge by the Principal Senior Civil Judge – The appellants challenge the jurisdiction of learned 2nd Additional Senior Civil Judge to decide the probate proceeding – Whether under the provisions of the Indian Succession Act, 1925, the jurisdiction to grant Probate in respect of a Will can be exercised by a Delegate Court when the case becomes contentious and such District Delegate Court has the power to Sub-Delegate it to another Court amid the trial.

Held: No – So far as sub-delegation made to the Addl. Senior Civil Judge, as alleged by the Appellants to be impermissible under the law, it is the well settled principle that authority cannot be delegated unless expressly authorized in this behalf – There is no quarrel over this settled principle.

It is true that, as per definition enumerated in sub-section 2(b) of the Orissa Civil Courts Act, the Court of Civil Judge (Sr. Division) includes the court of Addl. Civil Judge (Sr.Division). But this is for the purpose of appeal and other provisions relating to suits which can at no stretch be considered to include the purpose of District Delegate defined in Section 265 of the Indian Succession Act to sub-delegate the proceedings under Part-IX of the said Act to Additional Senior Civil Judge.

Upendra Kumar Mohapatra & Anr. V. Pradip Kumar Mohapatra & Ors.

2025 (II) ILR-Cut…… 1116

INDIAN SUCCESSION ACT, 1925 – Sections 286, 288 r/w Section 2(b) of Orissa Civil Courts Act, 1984 – The District Judge delegates the proceeding to the Court of Principal Civil Judge (Senior Division) as per Section 18 of the Orissa Civil Courts Act – The Principal Civil Judge further transferred the proceeding to Additional Senior Civil Judge to deal with the same – What is the duty of the Delegate Court when the proceeding turns contentious as per the provisions of Chapter IV of Part IX of the Indian Succession Act, 1925.

Held: A thorough analysis of all such provisions contained in Chapter-IV of Part IX of the Indian Succession Act, gives an unambiguous theory that when the District Delegate Court has no authority to deal with the contentious issues raised in the Probate Proceeding and in such event when the case turns to be a contentious one, it has to be returned to the Presentor along with all the testimonials in order to make him present to the District Judge again or in other words, it is to be returned to the District Judge where the District Judge has to proceed in terms of the provisions contained in said Chapter.

Unfortunately, this has not been followed in the instant case and instead of returning the plaint, learned trial Judge proceeded on merit to decide the contentious issue, which is in contravention to the provisions of the Indian Succession Act as afore-stated – Considering such irregularity on the part of the learned Addl. Senior Civil Judge, it is felt appropriate to send back the matter to District Judge for adjudication.

Upendra Kumar Mohapatra & Anr. V. Pradip Kumar Mohapatra & Ors.

2025 (II) ILR-Cut…… 1116

LAND ACQUISITION ACT, 1894 – Section 18 – Reference – Govt. of Odisha by Gazette Notification dated 11.03.2005 under Sections 4(1) and 17(4) of the Land Acquisition Act, 1894 notified acquisition of land for construction of New Railway line from Haridaspur to Paradip – Lands of the Opposite Parties were notified for acquisition – Appellant company was incorporated for creating project specific Special Purpose Vehicle (SPV) – A reference was made to the Court of Civil Judge (Senior Division), Jajpur under Section 18 of the 1894 Act without arraying the Appellant company a party and the reference was disposed of vide the impugned judgment – Whether the impugned judgment is tenable in law.

Held: No – The impugned order dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No.11 of 2009 is set aside and quashed.

Haridaspur-Paradip Railway Company Ltd. V. Surendra Samal & Ors.

2025 (II) ILR-Cut…… 1154

LAW OF TORT – Strict liability – Death due to electrocution – The deceased Sanatan Nayak came in contact with a snapped live wire lying on the road, which led to his death due to electrocution – The deceased was the sole earning member of the family – Petitioner prayed for compensation of ₹2,00,000/- – Whether the electricity distribution

companies are strictly liable for the loss of life of husband of Petitioner No. 1.

Held: Yes – The Court is of the considered view that by application of the principle of strict liability, the Opposite Parties- Distribution Company are strictly liable for the death of deceased and are liable to pay compensation to the Petitioners.

This Court deems it proper to direct the Opposite Parties to pay an interim compensation of Rs.2,00,000/-(Rupees Two lakhs) to the Petitioners within a period of two months from the date of this judgement. The aforesaid shall carry interest @8% from the date the incident took place till payment of such amount as directed hereinabove. In the event the payment is made after expiry of the aforesaid time stipulation, the compensation amount shall carry interest @12% till the date of actual payment is made to the Petitioners.

Umamani Nayak & Ors. V. CEO, TPNODL, Balasore & Ors.
2025 (II) ILR-Cut…… 1224

LIMITATION ACT, 1963 – Section 5 – Condonation of Delay – Delay of 6540 days for filing of Appeal before the OEA authority – The ground, the petitioners are poor, illiterate and ignorant of law was taken for condonation of delay – Petitioners are in continuous possession of the case land – They were always busy in labour work to maintain their livelihood – They came to know about the settlement only when they received summons in the civil suit – Whether the ground, the petitioners are poor, illiterate and ignorant of law can be considered as *"sufficient cause"* to condone the inordinate delay.

Held: No – The explanation offered, as stated above in the petition for condonation of delay, cannot be termed as "*cause*" much less any "*sufficient cause*" to condone the inordinate delay.

Sarat Kumar Baral & Ors. V. State of Odisha represented by the Principal Secretary, Revenue Odisha, Cuttack & Ors.
2025 (II) ILR-Cut…… 1077

NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138 – Necessary conditions required to be fulfilled to file a valid complaint – Explained.

Ashim Kumar Ghosh V. Hafiz Khan
2025 (II) ILR-Cut…… 1347

NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 141 – Complaint under the Act – The complainant has miserably failed to

establish that petitioner was the proprietor of the cold storage in question and has issued the cheque as its drawer – Whether the essential ingredients of the offence U/s. 138 of the N.I Act are made out against the petitioner in absence of any material on record to indicate that he was in charge or responsible for the conduct of the business of the cold storage at the relevant time or had authorized the transaction in question.

Held: No – Mere mention of his name as proprietor, without supporting documentary evidence or allegations establishing direct or vicarious liability, cannot fasten criminal responsibility upon him – In such circumstances, the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act are, prima facie, not made out against the Petitioner, and continuation of the proceedings against him would amount to abuse of the process of law.

Ashim Kumar Ghosh V. Hafiz Khan

2025 (II) ILR-Cut…… 1347

ORISSA CIVIL SERVICES (PENSION) RULES, 1992 r/w Amendment Rule, 2001 – Rule 18(6) – Appeals filed by the job contractor employees – Their services were regularized in a phased and normative basis – Prayer to count their entire pre-regularization services for the purpose of pension – Learned single Judge allowed the prayer and directed to count the entire service period for the purpose of pension – State's intra-court appeals against the same came to be negative by the Coordinate Bench – Matters were carried further to the Apex Court and the order of the Coordinate Bench was set aside – All these cases have been rendered for consideration afresh – Whether the entire pre-regularization period of job contract employees should be counted for pension.

Held: No – A plain reading of the Rule shows its intention, scope, condition & limitation – It provides for the grant of pension even to the persons who are employed by job contract; for that he has to be brought over to a regular establishment which is pensionable; the pensionablity is made dependent upon his satisfying the qualifying service, which we are told, is 10 years – While computing this qualifying period, the services rendered by such persons before being brought over to regular establishment shall be counted – However, this is subject to the rider that such service shall be counted only to fill the shortfall of ten years and not beyond.

The expressions employed in Sub-Rule (6) namely, "*so much of his job contract service period*" followed by "*would render him eligible for pensionary benefits*" unmistakably shows clear intent of the provision that what is countable is the shortfall of qualifying service and not entire service, i.e. pre-regularization service plus regular service – If the Rule

Maker intended what learned advocates for the employees have been submitting, the text of this rule would have been much different – Courts can interpret Rules and they cannot rewrite them.

State of Odisha & Ors. V. Krushna Chandra Mallick & Anr.
2025 (II) ILR-Cut…… 1101

ODISHA EDUCATION (RECRUITMENT & CONDITIONS OF SERVICE OF TEACHERS AND MEMBERS OF THE STAFF OF AIDED EDUCATIONAL INSTITUTIONS) RULES, 1974 – Rule 21, r/w Section 7(6) of the Odisha Education Act, 1969 – The sub-collector passed the order on 23.01.2025, placing petitioner under suspension – The college has no Governing Body – The State Government nominated the Sub-Collector, Jajpur as president of the institution – Whether the Sub-Collector, purportedly acting as the president of the Governing Body of the college is competent to place the petitioner under suspension.

Held: Yes – It goes without saying that law does not envisage a vacuum – If the argument of the Petitioner is accepted and the impugned action of the Sub-Collector is set aside, it would create a vacuum in that there would be no authority to take disciplinary action against an errant employee even if the situation so demands – This could not have been the intention of the legislature while framing the 1974 Rules – It is for such purpose that the legislature in its wisdom empowered the Director to act as disciplinary authority in case of refusal or neglect of the Governing Body to do so.

The Sub-Collector never acted on his own but under the express directions of the Special Secretary, who is authorized to act as a Director – So even if it is held that the Sub-Collector was not functioning as the President of the Governing Body, the same is of no consequence as it would mean that he had merely communicated what the Special Secretary (authorized to act as a Director) had asked him to – So it is not a case of any disciplinary action being taken by the Sub-Collector as President of the Governing Body.

This Court is left with no doubt that the impugned order, though issued by the Sub-Collector cannot be interfered with on the ground of absence of authority – Even if it is accepted that he was no longer the President of the Governing Body or that he had no power to initiate any disciplinary action acting as such, the same will not take away the express instruction of the Special Secretary, authorized to act as Director, and the Sub-Collector must be deemed to have merely communicated the same in the form of the impugned order – This Court is therefore, not persuaded to interfere with the same.

Sudhir Kumar Rout V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1206

ODISHA HINDU RELIGIOUS ENDOWMENTS ACT, 1951 – Section 19-A r/w Rule 4-A of the OHRE Rules, 2012 – Property in question was purchased by the Petitioner vide registered sale deed (RSD) No. 6133 dated 12th August, 1992 from the Deity Sri Dadhibaman Jew Bije, Nijagaon – The petitioner did not take any step for mutation of the property in his name – The RoR continued to be in the name of the Deity till date – When petitioner intended to sell the property for legal necessity, an obligation was raised requiring permission under Section 19-A of the OHRE Act – Whether, in the above circumstance, a permission is required under Section 19-A of the OHRE Act for alienation of the property.

Held: No – The registered sale deed dated 12th August, 1992 still remains valid being unquestioned till date – Once the sale dated 12th August, 1992 made in favour of the Petitioner or execution of the RSD is treated valid, then the question of permission to resell the same by the Petitioner is not required – It is for the reason that the sale in favour of the Petitioner was effected since August, 1992 when Rule 4-A of the Odisha Hindu Religious Endowments Rules were not in force, meaning thereby that there was no restriction for sale of the land belonging to a private Deity – The Bijesthala of the Deity as mentioned at Nijagruha itself indicates the fact of acceptance of the deity as private one for the purpose of sale of land in question, and the same being unquestioned at any point of time, the permission to get no objection certificate under Section 19-A is not required.

Sri Dadhibaman Jew Bije Nijagaon & Anr. V. Commissioner of Endowments, Odisha
2025 (II) ILR-Cut…… 1111

ODISHA HINDU RELIGIOUS ENDOWMENTS ACT, 1951 – Sections 30, 79 r/w Section 4, 5 of OHRE Act, 1939 r/w provisions of Madras Hindu Religious Endowment Act, 1926 – The ancestor of the petitioner was recognized as Hereditary Trustee (in short HT) of the Deity vide judgment of learned District Judge in Original Petition filed under the provision of Madras Hindu Religious Endowments Act, 1926 – Petitioner being the grandson of original Hereditary Trustee applied to recognize him as Hereditary Trustee – Learned Commissioner held that Patitapaban, the father of the petitioner, being not recognized as Hereditary Trustee, the claim of the petitioner to be recognized as Hereditary Trustee couldn't be entertained – Whether permanent

vacancy in the office of the Hereditary Trustee of the religious institution should be filled up by way of succession.

Held: Yes – Since Jogi Rana was undisputedly recognized as the HT of the institution under the provisions of the Madras Hindu Religious Endowments Act, 1926, such action/recognition is saved by virtue of Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939 and Section 79 (2)(a) of the Act – Hence, recognition of Jogi Rana as HT of the case institution does not become redundant either by lapse of time or by substitution of Act – These material aspects were not taken into consideration by learned Commissioner while adjudicating the petition under Section 30 of the Act.

Upon a vacancy in the office of the HT, it is the duty of learned Commissioner to recognize the successor next in line to succeed to the said office, unless he acquires any disqualification – In that view of the matter, the observation made by learned Commissioner to the effect that the claim of the Petitioner has become redundant is not sustainable – The claim of the Petitioner is still alive and should be considered in terms of Section 30 of the Act.

Bansidhar Rana V. Commissioner of Endowments, Odisha,Bhubaneswar & Ors.

2025 (II) ILR-Cut…… 1085

ODISHA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Section 7(1) r/w Section 9 of the Code of Civil Procedure, 1908 – An eviction notice U/s. 7(1) of the Orissa Prevention of Land Encroachment Act was issued on 17.11.2016 to the petitioner with the direction to vacate the encroached Government land within 30 days – A Civil Suit was pending before the Civil Judge (Jr. Division), Dhamnagar for declaration of right, title and interest in respect of the same property – Whether the revenue authority has the jurisdiction to decide the question of title.

Held: No – It is further settled that revenue authorities do not have jurisdiction to decide questions of title – Where a bona fide dispute exists regarding the right, title, and interest in a property, the Government or revenue authorities cannot assume ownership through summary proceedings – Such disputes inherently involve complex issues of law and fact, which cannot be appropriately resolved by summary processes.

Therefore, where a bona fide dispute exists over the title to property, summary proceedings by revenue authorities cannot constitute the proper forum for adjudication – Such disputes fall within the domain of civil courts, which have the jurisdiction to determine rights, titles, and other consequential reliefs.

Dinabandhu Behera V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1126

ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Premature retirement – Admittedly, there is not even one sporadic adverse remark in the CCR/PARs of the petitioner – The petitioner has not been found guilty in any of the disciplinary proceedings but he was "cautioned to be careful in future" – However, this is not the prescribed punishment in the extant Rules – At the most, it is advisory in character and therefore cannot be constructed as an adverse remark – The petitioner earned career progression on regular basis as obtaining in the hierarchy – He was granted promotion to District Judge Selection Grade – Whether the order of premature retirement of the petitioner even after he was accorded promotion to Selection Grade is sustainable.

Held: No – It sounds strange that on 23.02.2022 the "Full Court/Review Committee" resolved to prematurely retire the petitioner, there being absolutely no change of circumstance after he was accorded promotion to Selection Grade.

We repeat that there were absolutely no adverse entries in the CCRs/PARs of petitioner.

Sanjaya Kumar Sahoo V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1090

ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Rule 44 Sub Rule (1) – The petitioner has been retired prematurely at the age of 55 years, whereas the age of retirement is 60 – The pre-conditions prescribed in Rule 44 of the Rules 2007 had not been followed while imposing the punishment of premature retirement – Whether the order of premature retirement is sustainable.

Held: No – The pre-conditions, which rule prescribes for causing premature retirement of a Judicial Officer, are: (i) He should have attained the age of 50 years; (ii) Governor has to have consultation with the High Court; & (iii) three months' prior notice or three months' pay & allowances in lieu of such notice – It hardly needs to be stated that cutting short tenure of public office is a serious matter; such decisions have to be consistent with the intent of Makers of the Constitution as lurking in Article 16 – Though right to public employment is not guaranteed, once a citizen is duly employed, he cannot be whimsically removed – Therefore, the power to prematurely retire is in the nature of

an exception and the sine qua non for exercising such power has to be strictly complied with – Appreciably, there is no much divergence of opinions at the Bar in this regard.

Sanjaya Kumar Sahoo V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1090

PRINCIPLE OF APPROBATE AND REPROBATE – The petitioner received the cost with protest imposed by the learned Civil Judge (Jr. Division) while allowing an application under Order 18 Rule 17 filed by defendant Nos. 1 to 4 – Whether challenging an impugned order after receipt of cost with protest attracts the doctrine of approbate and reprobate.

Held: No – It is settled law that a party cannot be allowed to take the benefits of the part of the order and register complaint at the same time since it is based on the doctrine that a person may not approbate and reprobate but where the order is not conditional, even though the cost is received under protest, it would not take away the rights of the party to challenge the order on merits. A conditional order cannot be challenged and hence, rule of estoppel would apply but not where discretionary power has been exercised while awarding the cost.

Prabhakar Sahoo & Ors. V. Sesadev Sahoo & Ors.
2025 (II) ILR-Cut…… 1176

PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 2, 3, 24 & 70 – Offences under the Act – Present case has been filed U/s. 528 of the BNSS, 2023 to quash the proceeding under the PML Act – Schedule offences already been quashed – Prayer for quashing of the '*proceeds of crime*' – Whether proceedings under PML Act can be continued against the petitioners when the schedule offences forming the basis of the proceedings have been quashed.

Held: No – In view of the law laid down in judgement passed by the Hon'ble Apex Court in the case of "*Vijay Madan lal Chaudhary & Ors. Vs. Union of India & Ors.*" (supra) and "*Indrani Patnaik vs. Enforcement Directorate*" (supra) and on the basis of ratio of other judgments as discussed above, the only conclusion that could be arrived at is that the proceedings against Petitioner No.1 under PMLA, 2002 cannot be maintained and are liable to be quashed – Because, no schedule offence exists against him, hence he can't be related to the alleged proceeds of crime – However, in respect of Petitioner No.2, the situation is somewhat different – It appears from the observation made by the coordinate bench of this Court dated 23.09.2022, the predicative offence vis-à-vis the Petitioner No.1 was quashed solely on technical

grounds – At the same time, the complicity of Petitioner No.2, i.e., the firm in the commission of the crime has been highlighted – An inescapable inference that could be drawn from the judgment is that by using the Partnership firm (Petitioner No.2) as a shield, the crime appears to have been committed – Therefore, the complaint U/s.45 of PMLA against the firm survives particularly under the aid of Section 70 of PMLA.

Md. Intekhab Alam & Anr. V. Assistant Director, Enforcement Directorate, Government of India, Bhubaneswar

2025 (II) ILR-Cut…… 1359

PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 2, 3, 24 & 70 – Proceeding under the Act – Whether proceeding under the Act can be initiated against the firm, company etc. separately without the individual members or partners of the company or firm.

Held: Yes –'*Persons'* as defined U/s.2(1)(s)(4) includes a firm – Thus, for the purpose of the offence of money laundering defined U/s.3 of PMLA, 2002, a firm in its individual capacity and in separation to its partners can be made an accused – The intent of the legislature is very much clear that the purpose of PMLA, 2002 is to prevent the creation and circulation of *'proceeds of crime'* and remove the 'proceeds of crime' which have entered into the mainstream economy – Therefore, legislature in its wisdom has brought under the purview of the offence of money laundering, the juristic personalities like companies and firms severally and individually – The basic rationale behind such enactment is to prevent the use of firms and companies to launder the black money generated as *'proceeds of crime'* by the associates of the company/firm in their personal capacity, however, using the shield of the company/firm.

Md. Intekhab Alam & Anr. V. Assistant Director, Enforcement Directorate, Government of India, Bhubaneswar

2025 (II) ILR-Cut…… 1359

PRINCIPLES OF NATURAL JUSTICE – The authority issued show cause notice to the petitioner inviting his reply to the alleged misdeed – The petitioner submitted his reply – The response to the said show cause was not found satisfactory – The authority passed the order of blacklisting the petitioner for a period of five years – Whether the plea of violation of principles of natural justice is maintainable when the petitioner received the show cause notice and replied accordingly.

Held: No – We did not find that the challenge on the ground of violation of the principles of natural justice is sustainable.

Artatran Bhuyan V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1042

PRINCIPLES OF NATURAL JUSTICE – The Authority/ Committee prematurely retired the petitioner without affording an opportunity of hearing – Whether an order of punitive nature could have been passed without giving an opportunity of hearing.

Held: No – The answer has to be in the negative – Records do not reveal any reasons as to why no disciplinary inquiry was initiated nor was any opportunity afforded – We hasten to add that the requirement of hearing arises only because of imperative principles of natural justice, and not on account of requirement of a 3-month notice prescribed in Rule 38 – It hardly needs to be stated that payment of three months emoluments dispenses with such a notice – Admittedly, they are paid in this case.

Sanjaya Kumar Sahoo V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1090

PREVENTION OF CORRUPTION ACT, 1988 – Section 19 r/w Section 197 of Code of Criminal Procedure, 1973 – Sanction – Offence U/s. 13(2) r/w section 13 (1) (d) of the P.C Act & section 120-B of the Penal Code –Rejection of discharge petition is under challenge – Order challenged mainly on the grounds of, absence of sanction, delay in taking cognizance etc. – The petitioner was a public servant at the time of alleged incident and neither sanction was obtained during his service tenure, nor the approval of the Government was taken even after retirement – F.I.R was registered on dated 10.07.2003, closure report filed on 08.08.2006(after three years of alleged incident) & the petitioner retired from service on dated 30.12.2009 – The trial court took cognizance of the case on 02.09.2017 with the observation that if prima facie case is there, the probative value of the material placed on record cannot be gone into – Petitioner contended that, prosecution deliberately waited for his retirement to avoid the rigors of the sanction & after 14 years of the incident, cognizance was taken – Whether the order rejecting the discharge petition even without taking into consideration of the plea of absence of sanction is sustainable under the law.

Held: No – It is no more res integra that the sanction under Section 197 of the Cr. P.C. is mandatory for taking the cognizance of the penal offence against a public servant even after retirement from the service – The learned Court below has taken the cognizance by not following the required procedural safeguard – The Court below has also not taken into consideration that the closure report filed in the connected case has also been accepted, and the case is put to a quietus – It has also escaped from

the notice of the Court that this is a case whereby no inference could be drawn regarding the loss to the exchequer, as there exists sufficient cause for recovery of the alleged excess payment, which has been allegedly claimed to be the loss to the exchequer.

Ashok Kumar Das V. State of Odisha (Vigilance)
2025 (II) ILR-Cut…… 1351

PRE-ARREST BAIL – Prevention of Corruption Act, 1988 (as amended in 2018) – Section 7 r/w Sections 8, 9 & 10 r/w Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 – Allegation against the petitioner, who is a Senior Indian Administrative Service Officer, is that he had played a pivotal role in the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. demanding and obtaining a sum of ₹ 10 lakhs from one Santosh Moharana, Director, M/s. Penta A Studio Pvt. Ltd. as an illegal gratification for clearing the project bills – A trap was laid on 07.12.2024 and the alleged bribe amount of ₹ 10 lakhs was recovered from the vehicle of one Debadutta Mohapatra – The petitioner had acquaintance with D. Mohapatra and he made a phone call from the phone of named accused Chanchal Kumar Mukherjee and prevailed upon said D. Mohapatra to receive bribe amount of ₹ 10 lakhs – On the basis of CFSL report the voice in the call made to D. Mohapatra matched with the voice sample of the petitioner recorded voluntarily – Whether the case of the Petitioner merits consideration for grant of anticipatory bail.

Held: No – There is no dispute at the Bar that the Petitioner had volunteered to give the voice sample which allegedly matched with the voice in the call received by Debadutta Mohapatra, from whose vehicle the alleged money given as bribe was recovered – This Court cannot lose sight of the fact that the Petitioner in this case is a highly ranked officer of Indian Administrative Service and was well aware of his Constitutional Rights – Even bereft of such material the damage of both the iPhones of the Petitioner and omissions of his wife, who is also a working lady, to state about the two lockers which were unearthed during ongoing probe and access to the said lockers, just few days before CBI could come to know of it and the lockers having found empty by CBI cannot be brushed aside, as being urged – The exact amount of Rs.10 lakhs found when the named accused was taken into custody in tune with the information which was recorded earlier on the basis of which the investigation started also lends credence to the case of the prosecuting agencies – It is also alleged that Petitioner's daughter received a MacBook and a luxury watch worth Rs.1,46,700/- on 6.8.2024 from Debadutta Mohapatra from whom the bribe amount was recovered, as noted – Such allegation is refuted, inter alia, on the ground that there is no seizure to the said effect.

Considering that the Petitioner is a Senior Officer in the rank of Indian Administrative Service, this Court finds force in the submission of the learned counsel for the CBI that his interrogation being "ensconced" by an order of anticipatory bail would be a fruitless exercise in the light of the materials unearthed.

Accordingly, the ABLPAL stands rejected.

Petitioner preferred an appeal in the Hon'ble Supreme Court of India in SLP (Crl) No. 11426 of 2025 and the Special Leave Petition was dismissed.

Bishnupada Sethi V. Central Bureau of Investigation
2025 (II) ILR-Cut…… 1244

PROPERTY LAW – Undivided Hindu joint family property – Legal partition of the property not made – Transfer/sale of such property by one or two co-parceners without the consent of other co-parceners – Whether such transfer is valid.

Held: In the absence of a legal partition of the property in question, the transferors of the impugned sale deeds cannot transfer any defined portion of joint property nor can the purchaser take possession of such specific land – At best, the purchaser steps into the shoes of the transferor and may seek partition, but cannot claim possession simpliciter – The law is equally clear that no one can transfer a better title than they possess. Therefore, any sale deed purporting to convey specific demarcated land from within unpartitioned coparcenary property is legally void to the extent it exceeds the seller's undivided share, and is not merely voidable.

Srimati Sethy & Ors. V. Competent Authority & Land Acquisition Officer, NH-6 (49), Keonjhar & Ors.
2025 (II) ILR-Cut…… 1132

PROPERTY LAW – Undivided property of Scheduled Caste & Scheduled Tribe – Alienation of such property by one or more coparceners without the consent of others – Guidelines issued for regulating such alienation.

Srimati Sethy & Ors. V. Competent Authority & Land Acquisition Officer, NH-6 (49), Keonjhar & Ors.
2025 (II) ILR-Cut…… 1132

REGISTRATION ACT, 1908 – Section 71 – Refusal to registration – Oral refusals – Whether Sub-Registrar has power to refuse orally to receive the sale deed for registration.

Held: No – It is very fundamental in law that, Sub-Registrar cannot orally refuse to receive the sale deed for registration. He is bound to receive the same as per law, but, he can refuse to register the same if, the same is not legally permissible for registration. The Sub-Registrar has no jurisdiction or authority under law to refuse to accept any sale deed which is presented before him for registration.

Sauri Jena V. Sub-Registrar, Baranga & Anr.

2025 (II) ILR-Cut…… 1374

SERVICE JURISPRUDENCE – Arrear Salary – Claim – Limitation – The learned single Judge has directed the appellant-institution to fix the pay of Respondent No. 3 as per the AICTE Rules for the post of instructor from the date of his initial appointment i.e. 1985-86 till his retirement – Whether claim for arrear salary is subject to limitation.

Held: Yes – Applying the principle laid down in *Tarsem Singh*, the petitioner, having retired in 2008 and filed the writ petition in 2010, would be entitled to claim arrears of salary under the UGC or AICTE Guidelines only for the three years preceding the date of filing the writ petition – It is apparent on record that the petitioner had not been continuously agitating the claim through timely representations or legal action, the relief for arrears of salary cannot extend to the entire period from the date of appointment or even from the date of entitlement under the revised pay scales.

Management of Sanjay Memorial Institute of Technology V. State of Orissa & Ors.

2025 (II) ILR-Cut…… 1070

SERVICE JURISPRUDENCE – Denial of regularization of service – Petitioners, Non-ITI, have been engaged to work as Helper through outsourcing agency are denied regularization in service notwithstanding the bipartite settlement dated 08.06.2010, by virtue of which other similarly Non-ITI workers engaged through outsourcing agency were regularized – Whether the order dated 04.01.2020, by which the petitioners are denied regularization of service is tenable in law.

Held: No – In view of above discussions with conspectus of legal approach of various Courts, this Court has no option but to observe that the decision of the Board in the 45th Meeting and the 49th Meeting held on 02.09.2015 and 24.09.2016 as reflected in the Letter dated 04.01.2020 (Annexure-8) is not in consonance with law and cannot be countenanced – Having thus observed, the decisions of the Board in its 45th Meeting dated 02.09.2015 and reaffirmed in its 49th Meeting dated 24.09.2016 are set aside – It is, therefore, directed that the competent authorities may

take up the claim of the petitioners and consider their case for regularisation in service or absorb them in service.

Pabitra Kumar Mallick & Ors. V. Central Electricity Supply Utility of Odisha & Ors.
2025 (II) ILR-Cut…… 1290

SERVICE JURISPRUDENCE – Disciplinary Proceeding – Judicial Review – Whether the Writ Court can interfere with the quantum of punishment imposed by disciplinary authority.

Held: Yes – The Court may interfere, if the punishment is disproportionate to the misconduct and striking at the conscience of the Court.

Sarangadhar Panigrahi V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1030

SERVICE JURISPRUDENCE – Disciplinary Proceeding – Termination/ removal – Reinstatement – The petitioner was reinstated in service with effect from 01.09.2010, imposing the punishment to the effect that he will not be entrusted with duties related to financial matter & liable to pay a penalty of ₹5,000/- which is to be realized in five installments – It was also ordered that the period of removal to be treated as suspension – Nowhere in the said order, it has been indicated that the period of removal i.e. from 01.04.1997 till 01.09.2010 shall not be treated as continuous service for the purpose of increment and other financial benefits – Whether the petitioner is entitled to all service benefits including increment in absence of any specific observation made in the order of punishment.

Held: Yes – In absence of any specific observation made in the order dated 27.08.2010, vide which the Petitioner was reinstated in service with effect from 01.09.2010, this Court is of the view that the Petitioner's period of suspension/termination/removal should have been taken into consideration for the purposes of increment and financial benefits at par with other co-employees – This Court is of further view that the Petitioner is entitled to all the benefits, including increments, which were being extended in favour of his counterparts from time to time.

Gandaram Bhoi V. Regulated Market Committee, Dunguripali & Ors.
2025 (II) ILR-Cut…… 1317

SERVICE JURISPRUDENCE – Disengagement – Petitioner worked as a computer programmer in the District Rural Development Agency,

Kandhamal – As per the agreement entered into by the petitioner with DRDA, Kandhamal, he was terminated every year on 28th February and re-engaged on 1st March but he was disengaged on 13th January, 2017 and not re-engaged thereafter – The reason is that he did not report to duty on 5th December, 2016 – The petitioner sent his leave application on 05.12.2016 at 14.03 hours along with the outdoor ticket of the MKCG Medical College – Whether the petitioner had sufficient cause not to resume his duties on 05.12.2016.

Held: Yes – In considered opinion of this Court, the petitioner had just and sufficient reasons not to be able to join on 05.12.2016 and remain on leave having suffered fracture of lateral end of clavicle (left collar bone) and was further advised rest to left upper limb for one month – The reasons are sufficient, on medical grounds to remain on leave with effect from 5.12.2016 – The authorities failed to take into consideration this relevant aspect when they took a decision to disengage the petitioner from service.

In view of the finding that the petitioner had sufficient reasons on medical ground not to resume duties on 05.12.2016, which was not taken into consideration by the authorities the disengagement order dated 13.01.2017 is set aside and quashed – The order dated 17.06.2017 (Annexure-6) being a consequence of order dated 13.01.2017, issued rejecting the representation of the petitioner to reengage him is also set aside and quashed.

As a consequence of setting aside the order dated 13.01.2017 as well as the consequential order dated 17.06.2017, the petitioner, if makes any application for re-engagement, same shall be considered without being any way influenced with the earlier orders which have been set aside by this judgment.

Alok Kumar Nayak V. State of Odisha & Ors.

2025 (II) ILR-Cut…… 1171

SERVICE JURISPRUDENCE – Regularization – The petitioners are working as sweeper, uninterruptedly for almost two decades – Though sanctioned posts are there, the service of petitioners were never regularized – Whether the service of petitioners should be regularized.

Held: Yes – This Court is of the considered view that the rejection of the prayer of the petitioners by the Opposite Party No.2 in the impugned order under Annexure-18 is highly illegal and arbitrarily and the same is unsustainable in law – Accordingly, order dated 31.07.2023 under Annexure-18 is hereby quashed – Further while allowing the writ petition this Court directs the opposite parties to regularize service of the petitioners in the post of Sweeper as against the available vacancy in

such post – In the event no such posts are available this Court further directs that supernumerary posts be created to regularize the service of the petitioners to accommodate the petitioner and such creation of post shall continue till the petitioners retire from service.

Bharat Naik & Ors. V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1218

SERVICE JURISPRUDENCE – Scope of Judicial Review – The petitioner has been prematurely retired at the age of 55 years – Whether Writ Court has jurisdiction/scope to review the decision taken by the Full Court.

Held: Yes – A Writ Court exercising original jurisdiction in a service dispute would be committing a grave error if it declines indulgence only on the ground that the impugned action is founded on the administrative opinion of Full Court – It all depends upon errors demonstrable from the records – *Much is not necessary to discuss and less is insufficient to leave it unsaid.*

Sanjaya Kumar Sahoo V. State of Odisha & Ors.
2025 (II) ILR-Cut…… 1090

WORDS & PHRASES – Explanation and Excuse – Difference between – Explained.

Sarat Kumar Baral & Ors. V. State of Odisha represented by the PRINCIPAL Secretary, Revenue Odisha, Cuttack & Ors.
2025 (II) ILR-Cut…… 1077

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2025 (II) ILR-CUT-1030

SARANGADHAR PANIGRAHI
V.
STATE OF ODISHA & ORS.

[W.A NO. 3171 OF 2024]

15 MAY 2025

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

Issues for Consideration

1. Whether the findings of learned single Bench should be interfered with.
2. Whether the Writ Court can interfere with the quantum of punishment imposed by the disciplinary authority.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Article 227 – Writ Appeal – Disciplinary Proceeding – Scope of interference – Petitioner challenges the punishment of two black marks – The learned single Bench held the penalty of two black marks as proper and in consonance with law – Petitioner filed the present Writ Appeal challenging the order of the learned single Bench – Whether the findings of learned single Bench should be interfered with.

Held: No – The appellate Court should not interfere with the order of the single Bench as it found that though the facts invite two plausible views out of which one having adopted by the single Bench, but the other was equally applicable – The appellate Court should refuse to interfere with the order of the single Bench if out of two plausible views, one has been adopted. (Para 20)

(B) SERVICE JURISPRUDENCE – Disciplinary Proceeding – Judicial Review – Whether the Writ Court can interfere with the quantum of punishment imposed by disciplinary authority.

Held: Yes – The Court may interfere, if the punishment is disproportionate to the misconduct and striking at the conscience of the Court. (Para 23)

Citations Reference

State of Andhra Pradesh v. S. Sree Rama Rao, **AIR 1963 SC 1723;** Union of India v. H.C. Goel, **AIR 1964 SC 364;** State of Orissa v. Bidyabhusan Mohapatra, **AIR 1963 SC 779;** Union of India v. Upendra Singh, **(1994) 3 SCC 357;** B.C. Chaturvedi v. Union of India, **(1995) 6 SCC 749;** Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh, **(1997) 3 SCC 657;** State Bank

of India v. Ram Lal Bhaskar, **(2011) 10 SCC 249;** Union of India v. P. Gunasekaran, **AIR 2015 SC 545;** United Bank of India v. Biswanath Bhattacharjee, **(2022) 13 SCC 329;** State Bank of India v. K.S. Vishwanath, **(2022) 15 SCC 190;** Union of India v. Constable Sunil Kumar, **(2023) 3 SCC 622 – referred to.**

List of Acts

Constitution of India, 1950; Code of Criminal Procedure,1973; Indian Penal Code, 1860; Indian Evidence Act, 1872.

Keywords

Disciplinary Proceeding; Punishment of two black marks; Order of Disciplinary Authority; Interference of the Writ Court; Judicial Review; Disproportionate punishment; Shockingly disproportionate; Misconduct; Violation of the principle of natural justice.

Case Arising From

Judgment dated 16th July 2024 passed in W.P.(C) No. 317 of 2020.

Appearances for Parties

For Appellant : Mr. D.N. Pattnaik

For Respondents : Ms. A. Dash, ASC

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The instant appeal is at the behest of a delinquent officer assailing the judgment dated 16th July, 2024 passed by the single Bench allowing W.P.(C) No.6339 of 2020 and dismissing W.P.(C) No.317 of 2020.

2. The aforementioned writ petitions were filed by the appellant challenging the disciplinary proceedings initiated on the basis of diverged charges which culminated into an order of imposing a penalty of a black mark. So far as W.P.(C) No.6339 of 2020 is concerned, the same originated on the basis of a charge leveled against the appellant on failure to arrest the accused namely, Trigat Kharsel in a dowry harassment case and facilitated the said accused to escape from the police station on the night of 22nd/23rd June, 2011. The additional charge was also framed against the appellant on failure to take any action against the Constable Manoj Hota, who allegedly misbehaved with the victim.

3. W.P.(C) No.317 of 2020 ensued from another order of punishment of two black marks in relation to the charges pertaining to failure to take appropriate steps as required in law to be adhered to by an investigating officer.

4. The aforementioned charges are succinctly jotted down which would be elaborately discussed in the latter portion of this judgment for the simple reason that in respect of the punishment imposed upon the appellant in relation to a dowry harassment case, the single Bench interfered with the quantum of the punishment on the premise of violation of principles of natural justice and disproportionate to the charge thereby shocking the conscience of the Court. The State has not assailed the said order by filing an independent appeal nor has filed any cross objection in the instant appeal as both the writ petitions were disposed of by a common judgment. For the reason aforesaid, we do not delve to go into the nitty-gritty of the observations made in respect of those charges and confine our scrutiny to the findings returned by the single Bench in respect of the other charges which were held by the authorities to have been proved and the penalty of two black marks were imposed which has been held by the single Bench to be proper and in consonance with law.

5. In order to bring clarity in pursuit of ascertaining the legality and the correctness in the finding of the single Bench, a prelude to initiation of a disciplinary proceeding is required to be adumbrated. The charge-sheet dated 31st May, 2013 was issued to the appellant alleging that during the investigation of Titilagarh P.S. Case No.104 of 2011, the appellant miserably failed to arrest the accused namely, Duryodhana Behera, nor informed the SDJM, Titilagarh or the High Court on his involvement in a rape case. The said charge-sheet further proceeds that the appellant did not take any steps to seize the apparel of the accused nor conducted the medical examinations of both the accused and the victim, which tantamount to a gross misconduct and negligence in discharge of the solemn duty cast upon the investigating officer during investigation. Such dereliction on the part of the appellant facilitates the said accused to be enlarged on bail. After service of the charge-sheet, further time was sought by the appellant to respond by offering his explanation to the said charges with an additional prayer for supply of the necessary documents including the base report of one Shri D.K. Purohit. Subsequently, the explanation was submitted on 12th July, 2013, which was not found satisfactory and the inquiry was directed to commence against the appellant. Another representation was made on 13th September, 2013 for supply of the said base report which was duly responded to by the higher officials with categorical instruction to supply the copy of the same to the appellant. The base report dated 12th September, 2012 was supplied to the appellant, but the insistence was made for supply of a base report dated 6th September, 2012. The written defence was submitted after receiving the base report dated 12th September, 2012 taking a multiple defences with the prayer to drop such charges against the appellant. The competent authority did not find such written defence satisfactory and the guilt of the appellant to the aforementioned charges was upheld *vide* order dated 23rd September, 2018. The said order was communicated to a higher authority who concurred with the finding of the inquiry officer and issued a second show-cause notice as to why the report of the inquiry

officer be not accepted. Subsequently, the punishment by imposing two black marks was issued against the appellant. Though the further representation was made, but ultimately the writ petition came to be filed, which is dismissed by the single Bench.

6. The counsel for the appellant has vociferously submitted that the charge-sheet was submitted without supplying the base report and, thus, there is an apparent violation of the principles of natural justice. It is further submitted that at the time of lodging FIR, the victim did not disclose any element to constituting a rape under Section 376 of the Indian Penal Code (IPC) which would be revealed from her statement that she voluntarily eloped with the accused having developed a romantic relationship. It is arduously submitted that the victim was major at the time of commission of the offence and capable of giving consent for a physical relationship. It is vehemently submitted that the appellant has taken all reasonable care as required by a responsible investigator contemplated under the relevant provision of the Code of Criminal Procedure (Cr.P.C.) and, therefore, cannot be punished for a misconduct which on the face of it has not been committed. It is thus submitted that after the investigation was shifted to another officer, subsequently Section 376 of the IPC was included, but the accused was exonerated of committing any offence under the said charging Section by the sessions Court. In order to impress upon the Court, it is submitted that the appellant had been awarded two hundred different rewards as a best officer having an unblemished service career and, therefore, it is inconceivable that the appellant would commit any misconduct in discharge of the duties.

7. On the other hand, the State-respondents have refuted the contention of the appellant to the extent of violation of principles of natural justice. According to the learned Additional Standing Counsel for the State, the appellant was given ample opportunity to defend the disciplinary proceeding and the authority did not found such explanation to be satisfactory and imposed the punishment of two black marks which cannot be said to be irrational and/or unreasonable. It is further submitted that the documents, which are irrelevant and not considered by the authority in the process of arriving at the guilty to the charges, if not supplied, shall not vitiate the disciplinary proceeding nor would come within the purview of the violation of principles of natural justice. It is arduously submitted that the writ Court should not interfere into the punishment nor should act as an appellate Court to re-appreciate the evidence, but must confine its scrutiny to the violation of the principles of natural justice or statutory Rules applicable in this regard. It is thus submitted that there is no infirmity and/or illegality in the judgment of the single Bench in refusing to interfere with the punishment imposed upon the appellant and, therefore, the appeal warrants dismissal.

8. On the conspectus of the facts and submissions so advanced, it would be apposite to recapitulate the scope and jurisdiction of the writ Court exercising power under Article 226 of the Constitution of India in relation to a disciplinary proceeding

and the punishment imposed by the competent authority on the perceived misconduct against the delinquent. The three Judge Bench of the Supreme Court in case of ***State of Andhra Pradesh v. S. Sree Rama Rao, AIR 1963 SC 1723*** succinctly held that the power under Article 226 of the Constitution of India cannot be infused with the power bestowed upon the appellate authority or the appellate Court and the safeguard is to be made in particular to a disciplinary/departmental inquiry conducted by the authorities against his officer for misconduct. The writ Court exercises such jurisdiction emanating from Article 226 of the Constitution of India in the limited sphere where the natural justice is manifestly violated in the following:

> *"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charred against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."*

9. The apex Court in the above noted decision though restricted the interference with the department/disciplinary proceeding on the violation of principles of natural justice, but was further conscious that if in pursuit of finding the delinquent guilty of misconduct, the authority proceeded on the basis of some evidence, the interference must be avoided. However, in another judgment of the

apex Court rendered in ***Union of India v. H.C. Goel, AIR 1964 SC 364,*** the apex Court highlighted the concept of perversity in arriving at the conclusion provided the same is apparent on the face of the record. It expanded the horizon of the interference concerning the departmental proceeding where the conclusion reached by the disciplinary authority suffers from patent error on the face of the record or such authority proceeded on the basis of a notion uncorroborated by any evidence.

10. The constitution Bench of the apex Court in ***State of Orissa v. Bidyabhusan Mohapatra, AIR 1963 SC 779*** unequivocally held that the power of the disciplinary authority in imposing punishment against the delinquent officer should not ordinarily be opened to scrutiny on the gravity of this stabulous misconduct. It was held that if the inquiry officer or the disciplinary authority arrived at the finding on the basis of the evidence or the material placed before it in establishing the charges of misconduct, it does not invite an interference by the writ Court simplicitor on the basis that some of the findings offends the principles of natural justice.

11. However, in ***Union of India v. Upendra Singh***, ***(1994) 3 SCC 357***, the apex Court held that though the High Court exercising jurisdiction under Article 226 of Constitution of India is not bound by the technical rules as followed in United Kingdom for issuance of the prerogative writs, yet the basic principles keeping in mind the broad aspect thereof in regulating the exercise thereof should ordinarily be ensured.

12. Notwithstanding the basic principles adhered by the English Courts in issuance of the prerogative writs, the Courts of our country have uniformly adopted a restraint in exercise of powers under Article 226 of the Constitution of India within the limited compass and not to be blended with the powers inhered into an appellate Court; more precisely, the writ Court should not act as an appellate Court to go deep in re-appreciating the evidence or reappraisal of an evidence which is within the domain of the disciplinary authority and such apparent line of distinction should not be blurred. The apex Court in case of ***B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749*** promoted the aforesaid aspect in the following:

> *"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion*

receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

13. The aforesaid principles of law is reinstated and reiterated in a subsequent decision rendered by the apex Court in ***Rae Bareli Kshetriya Gramin Bank v. Bhola Nath Singh***, ***(1997) 3 SCC 657*** in the following:

"6. Under these circumstances, the question arises whether the High Court would be correct in law to appreciate the evidence and the manner in which the evidence was examined and to record a finding in that behalf. Judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In this case, no such errors were pointed out nor any finding in that behalf was recorded by the High Court. On the other hand, the High Court examined the evidence as if it is a court of first appeal and reversed the finding of fact recorded by the enquiry officer and accepted by disciplinary authority. Under these circumstances, the question of examining the evidence, as was done by the High Court, as a first appellate court, is wholly illegal and cannot be sustained."

14. In ***State Bank of India v. Ram Lal Bhaskar, (2011) 10 SCC 249***, the apex Court while reiterating the principles of law enunciated from the reports as relied hereinabove, unequivocally held that it is not proper on the part of the writ Court to go into the nuances of the evidence and upon re-appreciating the same interfered with the decision of the disciplinary authority that such view is not acceptable. It is highlighted that the moment the conclusion is arrived by the disciplinary authority on the basis of some evidence, the High Court under Article 226 of the Constitution of India should not substitute itself into the position of a disciplinary authority and arrive at the conclusion that the decision is unacceptable in the following:

"12. *This Court has held in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] : (AIR pp. 1726-27, para 7)*

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not

violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence."

13. *Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct."*

15. The apex Court in case of ***Union of India v. P. Gunasekaran***, ***AIR 2015 SC 545*** exhaustedly called out the principles relating to interference in a matter pertaining to a disciplinary proceeding and the scope and jurisdiction to be exercised in this regard in the following:

"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

16. The law enunciated by the apex Court in the earlier reports is reiterated in a subsequent decision rendered by the apex Court in ***United Bank of India v. Biswanath Bhattacharjee, (2022) 13 SCC 329*** that the writ Court should not act as an appellate Court nor should re-appreciate the evidence delving deep into it in order to find out whether the conclusion of the disciplinary authority is proper. It is further held that though the rule of evidence or adherence to the provisions of the Evidence Act does not in *stricto sensu* applies to a domestic tribunal, yet the scrutiny of the writ Court should be limited to the extent of fairness and the reasonableness. The adequacy or inadequacy of the evidence or its reliability cannot be a ground for interference provided that the conclusion so arrived withstand on the parameters of the wednesbury principle.

"19. Other decisions have ruled that being a proceeding before a domestic tribunal, strict rules of evidence, or adherence to the provisions of the Evidence Act, 1872 are inessential. However, the procedure has to be fair and reasonable, and the charged employee has to be given reasonable opportunity to defend himself (ref : Bank of India v. Degala Suryanarayana [Bank of India v. Degala Suryanarayana, (1999) 5 SCC 762 : 1999 SCC (L&S) 1036] a decision followed later in Punjab & Sind Bank v. Daya Singh [Punjab & Sind Bank v. Daya Singh, (2010) 11 SCC 233 : (2010) 2 SCC (L&S) 758]). In Moni Shankar v. Union of India [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court outlined what judicial review entails in respect of orders made by the disciplinary authorities : (Moni Shankar case [Moni Shankar v. Union of India, (2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] , SCC p. 492, para 17)

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been

taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidence, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere.

20. *This Court struck a similar note, in State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584 : (2011) 1 SCC (L&S) 721] , where it was observed that : (SCC p. 587, para 7)*

"7. ... If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record."

17. In a recent decision rendered in the ***State Bank of India v. K.S. Vishwanath*, *(2022) 15 SCC 190***, the apex Court upon taking into consideration the earlier decision touching upon the point of interference by the writ court in a departmental proceeding adopted the ratio as laid down therein that the writ Court should not act as an appellate Court nor to re-appreciate the evidence.

18. What emanates from the ratio laid down in the catena of decisions referred hereinbefore that the writ Court exercises the powers under Article 226 of the Constitution of India in relation to a departmental proceeding within the limited contour and does not act as an appellate Court in its ordinary sense. The inquiry officer or a disciplinary authority is not strictly guided by the provisions of the Evidence Act, but should act in a reasonable manner eradicating the sense in the mind of a delinquent that he had not been provided an adequate opportunity to defend the charges. The re-appreciation and/or reappraisal of the evidence by the writ Court under Article 226 of the Constitution of India should be guarded against and the moment the writ Court found that the conclusion of the disciplinary authority is based upon some evidence, the interference should be avoided.

19. However, the writ Court is not denuded of its power to interfere in a departmental proceeding, if the finding of the authority is found to be perverse i.e., based on no evidence or on the test of reasonableness. The power of the writ court is not brindled in the event the finding is such that no reasonable man is expected to take on the basis of the same. The writ Court can interfere and quash the departmental proceeding provided such proceeding is initiated or continued in

blatant violation of the statutory rules applicable in this regard. There should be a strict adherence to the principles of natural justice and the decision of the disciplinary authority must pass the muster of fairness, transparency and the reasonability test.

20. The aforesaid principles are mere illustrative and not exhausted as there may be a situation where the interference becomes inevitable in securing the ends of justice. The aforesaid principles become stricter before the appellate Court against the order of the single Bench. The appellate Court should not interfere with the order of the single Bench as it found that though the facts invite two plausible views out of which one having adopted by the single Bench, but the other was equally applicable. The appellate Court should refuse to interfere with the order of the single Bench if out of two plausible views, one has been adopted.

21. Based upon the broad principles as discussed hereinabove, the single Bench has categorically held that the contention of the appellant that the base report dated 6th September, 2012 does not form the foundational basis for initiating the proceedings against the appellant, but upon the base report dated 12th September, 2012 which was duly supplied to the appellant with the opportunity to give explanation. The authorities clearly found that despite the victim having disclosed the elements relating to a commission of an offence under Section 376 of the IPC, yet the appellant did not incorporate the same which was subsequently incorporated after the investigation was transferred to another investigating officer. The fact finding authority further held that the medical examination of the accused and the victim in order to corroborate the statement of the victim girl on the commission of an offence was not done properly which was an ardent duty of the investigating officer.

22. Mere exoneration of an accused to be charged under the aforesaid charging Section in absence of any proof does not exonerate the appellant from the charge of dereliction in discharge of the duties. Since the authorities have relied on the evidence and there are sufficient *prima facie* materials available on the record, such finding does not warrant any interference under Article 226 of the Constitution of India.

23. So far as the proportionality of the penalty imposed upon the appellant is concerned, the law is well settled that the Court should not lightly interfere with the quantum of the punishment imposed by the disciplinary authority except on the ground of perversity or irrationality manifest on the face of it. The Court may interfere, if the punishment is disproportionate to the misconduct and striking at the conscience of the Court. The reliance can aptly be made to a decision of the apex Court in case of ***Union of India v. Constable Sunil Kumar, (2023) 3 SCC 622*** wherein it is held:

> *"**11.** Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In Surinder Kumar [CRPF v. Surinder Kumar, (2011) 10 SCC 244 : (2012) 1 SCC (L&S) 398] while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in Union of India v. R.K. Sharma [Union of India v. R.K. Sharma, (2001) 9 SCC 592 : 2002 SCC (Cri) 767] that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution.*
>
> ***12.** Applying the law laid down by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under Article 226 of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent."*

24. We would be failing in our duty in not recording a discordant which we perceived in course of a hearing and from the judgment rendered by the single Bench that so far as the interference with the other charges leveled against the appellant is concerned, the single Bench has in fact interfered with it, both upon re-appreciating the evidence as well as on the ground of disproportionality. Since the State did not challenge the same by filing a counter appeal or a cross-objection, we do not intend to make any comment thereupon.

25. In view of the discussions made hereinabove, the appeal sans merit and is accordingly dismissed. No order to costs.

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

Result of the case:
Appeal dismissed.

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2025 (II) ILR-CUT-1042

SHRI ARTATRAN BHUYAN
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 37383 OF 2021]

24 JULY 2025

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

Issues for Consideration

1. Whether debarment to participate in any future tender for a period of five years from the date of the order is against the doctrine of proportionality.

2. Whether the plea of violation of principles of natural justice is maintainable when the petitioner received the show cause notice and replied accordingly.

Headnotes

(A) DOCTRINE OF PROPORTIONALITY – The Petitioner was blacklisted/ debarred from participating in any future tender for a period of five years – Whether debarment to participate in any future tender for a period of five years from the date of the order is against the doctrine of proportionality.

Held: Yes – We find some discrepancies in the charge sheet submitted by the investigating officer on the basis of an FIR lodged by the officials, the copies thereof have been heavily relied upon by the contesting opposite parties so far as the time of entering into office and leaving the same. (Para 18.1)

Based upon the discrepancies, we feel that imposition of debarment for a period of five years is too harsh and offends the doctrine of proportionality. (Para 18.2)

On *Ex debito justitiae*, we set aside the remaining period of blacklisting taking into account that the said order of blacklisting shall be operative till the date of this judgment. (Para 19)

(B) PRINCIPLES OF NATURAL JUSTICE – The authority issued show cause notice to the petitioner inviting his reply to the alleged misdeed – The petitioner submitted his reply – The response to the said show cause was not found satisfactory – The authority passed the order of blacklisting the petitioner for a period of five years – Whether the plea of violation of principles of natural justice is maintainable when the petitioner received the show cause notice and replied accordingly.

Held: No – We did not find that the challenge on the ground of violation of the principles of natural justice is sustainable. (Para 18.1)

Citations Reference

State of Odisha and Ors. vs. Panda Infraproject Ltd., **(2022) 4 SCC 393;** Grosons Pharmaceuticals (P) Ltd. vs. State of U.P. & Ors., **(2001) 8 SCC 604;** Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association, **(2007) 4 SCC 669 – referred to.**

List of Acts

Odisha Public Works Department Code

Keywords

Principles of natural justice; Doctrine of proportionality; Blacklisting; Show cause notice; Reply to show cause; Debarment; *Ex debito justitiae*; Civil death.

Case Arising From

Order dated 10th August 2021 passed by the Chief Engineer (Mechanical), Water Resources, Odisha.

Appearances for Parties

For Petitioner : Mr. Gouri Mohan Rath
For Opp.Parties : Ms. Aishwarya Dash, A.S.C.

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The writ petition is at the behest of a blacklisted contractor challenging the order dated 10th August, 2021 passed by the Chief Engineer (Mechanical), Water Resources, Odisha by which he was debarred from participating in any future tender for a period of five years from the date of the said order.

2. The writ petition contains the narration of the facts and is primarily founded upon an assertion that the authorities proceeded with the pre-determined mind as the petitioner flagged several misdeeds against the officials in dealing with the tenders floated from time to time by the said department and also acted contrary to the provisions relatable to blacklisting of a contractor contained in Odisha Public Works Department Code ("OPWD Code").

3. The genesis of the initiation of a show cause notice originated on an incident of entering into the office premises of the Mechanical Division beyond the office hours at 7.15 P.M. by the proprietor of M/s. Urmila Steel Fabrication and an attempt to snatch away some important online tender papers from the estimator of the said division by the said proprietor. Immediately an FIR was registered on 25th

March, 2021 in Nayapalli Police Station reporting the aforesaid incident of 24th March, 2021 and the investigation was undertaken by the Investigating Officer after verifying the truthfulness of the statements contained in the said FIR on the basis of the CCTV footage. The Investigating Officer submitted the charge sheet and the said matter is still pending before the jurisdictional Court.

4. A preliminary inquiry was conducted and a show cause notice was issued to the petitioner on 22nd April, 2021, but instead of filing a response, the petitioner approached this Court by filing W.P.(C) No. 16786 of 2021 challenging the said show cause notice being not in conformity with the provisions relating to blacklisting of a contractor contained in OPWD Code. This Court refused to interfere with the said show cause notice and dismissed the said writ petition. Since no reply was filed, the proposal was forwarded to the Government for initiating a process for blacklisting of the petitioner on perceived misbehavior/threatening the departmental supervisory officer while he was discharging his duties and finalizing the tender process.

5. After getting the approval, a further show cause notice was issued on 16th July, 2021 seeking reply from the petitioner as to why he should not be blacklisted. The petitioner responded to the said 2nd show cause notice and took a specific plea that the initiation of a proceeding for blacklisting is tainted with malice being an outcome of several complaints having lodged against the officials of their misdeeds in relation to several contracts. It was further highlighted that the proceeding against some of the officials were also initiated, but no final decision has been taken thereupon. It is further indicated in the said reply that the CCTV footage would reveal the truth and, therefore, the same is required to be provided to the petitioner. Apart from the same, the report of the preliminary inquiry which formed the basis of the initiation of the said proceeding and the recording of the statements of several persons should also be forwarded to the petitioner, so that the comprehensive reply can also be made.

6. Instead of submitting all the documents to the petitioner, the proceeding for blacklisting the petitioner was proceeded with and the impugned order was passed on the basis of the statements of seven numbers of co-employees. The order impugned reveals that the petitioner obstructed the staff to discharge their public duties and tried to forcibly peruse the financial documents in respect of different participants of the tender and also misbehaved with several employees which is found to be true as the charge sheet was submitted by the Investing Officer after investigation on the basis of an FIR lodged against the petitioner.

7. The counsel for the petitioner vociferously submitted that the impugned order of blacklisting against the petitioner for a period of five years from the date of the said order, i.e. 10th August, 2021 is an act of malice founded upon the earlier complaints made against the officials of the said department in awarding the contracts to several persons and, therefore, the order, blacklisting the petitioner, is

liable to be quashed and set aside. It is fervently submitted that the order impugned in the writ petition is an outcome of a pre-determined mind and in blatant violation of the principles of natural justice as the documents which is relied upon by the authority in passing the impugned order was never supplied to the petitioner despite a request having made in this regard. It is thus submitted that debarment from participating in a future tender not only deprives a person an opportunity to participate in a public contract, but involves serious civil consequences amounting to civil death and, therefore, the authorities ought to have followed not only the provisions of the OPWD Code, but also the principle of natural justice, which in the instant case is apparently lacking.

8. Per contra, the Additional Standing Counsel submitted that because of the serious misdeeds of the petitioner beyond the office hours, i.e. 7.15 P.M. on 24th March, 2021, the proceeding for blacklisting the petitioner was initiated following all the procedures provided in the OPWD Code and, therefore, the order impugned in the instant writ petitioner does not suffer from any infirmity and/or illegality. It is further submitted that the authorities followed the principles of natural justice upon issuing a show cause notice to the petitioner inviting his reply to the alleged misdeed and the response to the said show cause was not found satisfactory on the basis of the materials available to the authorities. It is strenuously argued that once the recourses to the provisions of OPWD Code in issuing the show cause notice is undertaken by the authority and the reply was given by such contractor, it fulfills the principle of natural justice as held by the apex Court in the case of ***State of Odisha and others vs. Panda Infraproject Limited*** reported in ***(2022) 4 SCC 393***. It is further submitted that the impugned order reflects the elaborate reasons and, therefore, the plea of pre-determined mind is unsustainable. To buttress the aforesaid submission, reliance is placed upon the judgment of the apex Court in the case of ***Grosons Pharmaceuticals (P) Ltd. vs. State of U.P. and others***, reported in ***(2001) 8 SCC 604***. The counsel for the State further relies upon the investigation done by the Investigating Officer on the FIR having lodged for the incident happened on 24th March, 2021 wherein the Investigating Officer has found the ingredients under the charging sections and submitted the charge sheet before the jurisdictional Court for trial, which would corroborate the misdeed of the petitioner in threatening the officers and interfering in discharging their official duties. It is thus submitted that no case for interference is warranted in the instant case.

9. On the backdrop of the aforesaid facts emerged from the record, the point involved in the instant writ petition is whether the order dated 10th August, 2021 issued by the authority warrants interference having not only violative of the principles of natural justice, but also departed from the provisions relatable thereto for the blacklisting contained in OPWD Code.

10. It is beyond cavil of doubt that a fundamental principle embraced in a civilized jurisprudence is that a person cannot be condemned nor can be affected by

any action without affording a reasonable opportunity to defend himself. The person against whom any action is taken affecting his right is entitled to know the reason for initiation of such proceeding, so that an adequate opportunity is given to him to respond. It is, therefore, essential to issue a notice containing the grounds on which the authority intended to proceed against the person with clarity, precision and explicit as an ambiguous narration of grounds is regarded as denial of an opportunity. The aforementioned principles assume greater importance in the context of blacklisting of a person as it invites not only civil death, but debarment of a person an opportunity to participate in the matter of a public contract. In this regard, the Courts of the country have highlighted the implied principle of rule of law that every order having an impact on civil consequences should adhere to the principles of natural justice. It is thus an elementary principle of natural justice that a party who suffers the adverse consequences of deprivation to participate in public contract is afforded with adequate and reasonable opportunity to defend.

11. Once the statutory provisions are placed for blacklisting of a person or in other words debarment from participating in a contractual field with the Government or its instrumentalities, the strict adherence thereto should be ensured. Therefore, the notice to show cause must clearly and explicitly contain the incident, which led to the initiation of the proceeding in pursuit of blacklisting a person from participating in a future tender. One of the cardinal principles in this regard is an adequate opportunity to defend should not only be ensured, but seems to be ensured by providing all the materials which forms the foundation of misdeeds or misbehavior or an act contemplated in the statutory provision.

12. In ***Grosons Pharmaceuticals (P) Ltd.*** (supra), the apex Court was considering a case where the contractor who was engaged in a small scale industry of manufacturing and selling drugs was found to have committed several irregularities and the vigilance report corroborated the same. The show cause notice was issued and adequate opportunity to defend was provided and the challenge was made on the ground of non-adherence of the principles of natural justice. The challenge was further founded upon the non-speaking order, which was found by the apex Court untenable on the facts discerned from the record in the following paragraphs.

> *"2. Learned counsel appearing for the appellant, urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show cause notice were based along with show cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State government and the said relationship is not governed by any statutory Rules. There is no statutory rule which requires that an approved contractor cannot be blacklisted without giving an opportunity of show cause. It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an*

order was to observe the principle of audi alteram partem which is one of the facet of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based was not the requirement of principle of audi alteram partem. It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and he did reply to the show cause which was duly considered by the State Government. We are, therefore, of the view that that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice.

3. It was then urged that the impugned order blacklisting the appellant does not contain any reasons and, therefore, the order is invalid. We do not find any merit in the submission. The High Court summoned the entire record and found that elaborate reasons were recorded by the State Government while passing the order blacklisting the appellant. The High Court further recorded a positive finding that the State Government has passed the impugned order after recording elaborate reasons and summary of which is contained in the impugned order."

13. In the case of ***Panda Infraproject Limited*** (supra), the order of blacklisting debarring the participant in a bid for any work undertaken by the Government of Odisha for an indefinite period was challenged by the contractor on two-fold grounds. Firstly, there was a violation of the principles of natural justice and secondly, the permanent debarment offended the principle of proportionality. In the said given case, the contractor was awarded a contract for construction of a flyover over the railway level crossing and a ten-metre slab of the flyover collapsed at the level crossing, which resulted in loss of one life and the injuries to 11 other persons. A high-level inquiry was conducted and a committee in the comprehensive report found that the said contractor did not submit the formwork design and adopted his own arrangement, which led the collapse of a junk from the under-construction flyover. The report further revealed that the quality assurance has not been maintained in terms of the codes and manuals as well as agreement and a lot of discrepancies in the workmanship were found. A show-cause notice was issued, which was duly replied by the contractor and ultimately, the contractor was blacklisted with immediate effect for rest of his life.

13.1. The apex Court, in the backdrop of the gravity of a misdeed, held that an order of blacklisting after service of show-cause notice and reply duly filed meets the requirement of the natural justice and, therefore, it cannot be perceived that the authorities proceeded with predetermined mind. However, the apex Court on the doctrine of proportionality held that the blacklisting for rest of the period or permanently is too harsh and reduced the period of blacklisting to five years from the date of the order of blacklisting.

13.2. The law enunciated in the above report exposits that before a person is blacklisted, he must be afforded an opportunity of hearing, being a fundamental principle of natural justice and the period of blacklisting must be judged in a rational

and reasonable manner in commensurate with the charges leveled against the contractor. The debarment to participate in a public contract permanently is against the doctrine of proportionality as no person would be deprived of or be subjected to prejudice for all time to come.

14. Blacklisting of a contractor has an impact on the privilege and advantage of entering into a lawful relationship with the Government or its instrumentality for his livelihood in the form of a gain. It is an ardent duty of the Government to ensure a fair, transparent and reasonable action by giving a person an adequate opportunity to represent its case. It is a solemn duty of the Government while making a public procurement for constructing a social and economic infrastructure for a systematic growth at all levels and, therefore, a person, who is found to have indulged in unethical practices or done some misdeeds, tantamounting to a misconduct, the blacklisting is one of the effective tools to eliminate such defiant bidders from the selection process. It further ensures to inculcate a sense of discipline by putting a sanction on the firms from trading and entering into the public contracts. Although such powers are inhere and ingrained into the Government or its officials, it also brings a greater responsibility in adhering to the principle of fair play, providing an equal opportunity to defend and above all, maintain the proportionality in awarding the tenure of debarment in commensurate with the misdeed/misconduct of the contractor.

15. On the doctrine of proportionality, the judgment of the apex Court in case of ***Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association*** reported in ***(2007) 4 SCC 669*** can be gainfully applied wherein it is held that though the doctrine of proportionality is a principle of the administrative law, but that does not give unhindered power to the authorities to use a 'sledge- hammer to crack a nut'. It is further highlighted that the punishment should not be too extreme than the gravity of crime as the writ court seldom interferes with the imposition of penalty in the form of blacklisting provided the method or a manner in which a decision-maker has ordered his priorities in reaching a conclusion or arriving at a decision.

16. It is to be borne in mind that the order of blacklisting not only causes prejudice to the commercial person *in praesenti* but have a dent to carry for all time to come having a resultant effect of a civil death.

17. Precisely for such reason, the apex Court in case of ***Panda Infraproject Limited*** (supra) reduced the period of blacklisting having found opposed to the doctrine of proportionality despite the grave and serious lapses found against the contractor and reduced the same to five years with an avowed object of avoiding the permanent civil death in a commercial field.

18. Although in the instant case, the blacklisting is for a definite duration i.e. five years, but there is no fetter on the part of the Court to apply the doctrine of proportionality apart from the principles of natural justice to be adhered to. The narration of facts as adumbrated hereinbefore does not create any ambiguity in our mind

that the contractor was served with the copy of the show-cause notice and adequate opportunity to file reply was afforded to him. In fact, the reply was given disclosing several material facts relating to the misdeeds of the officials against whom he blew the whistle and action has been taken by the higher official being the outcome of the present misconduct. The CCTV footage put at the relevant portion of the office and the statements of seven persons were duly recorded, which leads to impeccable evidence that the petitioner entered into the office and left the same. A plea was taken that reliance was put on the CCTV footage and the statements of seven persons, which were never supplied to the petitioner, tantamount to violation of the principles of natural justice, the authority did not accept the same and solely on the basis of the facts, passed an order of blacklisting for a period of five years.

18.1 In ***Panda Infraproject Limited*** (supra), the apex Court ruled out the plea of natural justice, the moment the show-cause notice was given and adequate opportunity to give reply was afforded. Going by the ratio as laid down in the said report, we do not find that the challenge on the ground of violation of the principles of natural justice is sustainable. However, we find some discrepancies in the charge sheet submitted by the investigating officer on the basis of an FIR lodged by the officials, the copies thereof have been heavily relied upon by the contesting opposite parties so far as the time of entering into the office and leaving the same. The show-cause discloses that the petitioner entered at around 7.15 P.M. after the official hours and tried to snatch away some important online tender paper files from the estimators and also misbehaved with them. On the other hand, the charge sheet discloses that the CCTV footage revealed that the petitioner entered into the office at 6.53 P.M. on 24th March, 2021 and left the same at 6.55 P.M. Such being the discrepancies noticed as no CCTV was installed inside the office room, we cannot rule out the allegation of misconduct having allegedly committed within two minutes inside the office room.

18.2 Based upon the discrepancies, we feel that imposition of debarment for a period of five years is too harsh and offends the doctrine of proportionality. Nearly four-year period has elapsed when the matter is pending before this Court and, therefore, we feel that it would cause a greater hardship if the order of blacklisting is allowed to operate a full period of five years. The petitioner has already been deprived to participate in any tender from the date of the order of blacklisting until the date of this Judgment, which in our opinion, has percolated a message in the petitioner a sense of responsibility and to maintain an orderly behavior while dealing with the Government officials.

19. On *Ex debito justitiae,* we set aside the remaining period of blacklisting taking into account that the said order of blacklisting shall be operative till the date of this judgment.

20. Accordingly, the writ petition is disposed of.

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

Result of the case:
Writ Petition disposed of.

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2025 (II) ILR-CUT-1050

BHAGYA @ BHAGIRATHI BISOI & ORS.
V.
STATE OF ODISHA

[CRIMINAL APPEAL NO. 321 OF 1996]

01 JULY 2025

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

Issues for Consideration

1. Whether Appellant No. 1 should be given benefit of doubt on the plea that one of the eyewitnesses was totally silent relating to any assault made by Appellant No. 1.

2. When would the offence under Section 148 of the Indian Penal Code attract?

Headnotes

(A) INDIAN PENAL CODE, 1860 – Sections 149, 34 – Vicarious liability – Thirteen appellants have filed this appeal out of whom A-4, A-5, A-8, A-11, A-13 are dead – The learned trial Court found A-1, A-2, A-3, A-4 & A-5 guilty under Sections 148/302/149 of IPC and they were sentenced to undergo rigorous imprisonment (R.I.) for life for the offences under sections 302/149 of IPC – The learned counsel for the Appellants stated that in view of the evidence of two eye witnesses though implication of A-2 and A-3 was consistent, so far as A-1 is concerned, even though P.W. 18 has implicated him in the assault but P.W. 14 is totally silent relating to any assault made by A-1 to the said deceased – Whether Appellant No. 1 should be given benefit of doubt on the plea that one of the eye witnesses was totally silent relating to any assault made by the Appellant No. 1.

Held: No – Since it is apparent that A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana along with A-5 Bidu @ Bidyadhar Naik (dead) being armed with sharp cutting weapons came together to the spot and assaulted to the deceased Panchu Naik on vital parts of the body and thereby committed his murder and left the spot together, we are of the view that they shared common intention to commit such murder. (Para 9)

Section 149 of I.P.C. has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 I.P.C.) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the

common object – For common object, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment; it is enough if it is adopted by all the members and is shared by all of them – In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. (Para 11)

(B) INDIAN PENAL CODE, 1860 – Sections 147 & 148 – When would the offence under Section 148 of the Indian Penal Code attract?

Held: When there is rioting simplicitor, offence is punishable under section 147 of I.P.C. – When such rioting is committed by a particular accused or persons having deadly weapons or with anything which, used as a weapon of offence is likely to cause death, offence is punishable under section 148 of I.P.C.

The offence under Section 148 of I.P.C. is an aggravated form of the offence under Section 147 of I.P.C. – Section 147 of I.P.C. deals with the punishment for the offence of rioting, whereas Section 148 of I.P.C. deals with the punishment for the offence of rioting being armed with deadly weapon – If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under Section 148 of I.P.C. (Para 12)

Citations Reference

Chittarmal -Vrs.- State of Rajasthan, **(2003) 24 Orissa Criminal Reports (SC) 664;** Dhanna -Vrs.- State of Madhya Pradesh, **(1996) 10 Supreme Court Cases 79;** Jai Singh @ Bandu and Another -Vrs.- State of Maharashtra,**1996 Supreme Court Cases (Cri) 672;** Bhanwar Singh and Ors. -Vs.- State of M.P., **(2008) 16 Supreme Court Cases 657;** Mizaji and Anr. -Vs.- State of U.P., **AIR 1959 SC 572;** Gangadhar Behera and Ors. -Vs.- State of Orissa, **AIR 2002 SC 3633;** Daya Kishan -Vs.- State of Haryana**, (2010) 5 Supreme Court Cases 81;** Sikandar Singh -Vs.- State of Bihar, **(2010) 7 Supreme Court Cases 477;** Debashis Daw -Vs.- State of W.B., **(2010) 9 Supreme Court Cases 111;** Masalti -Vs.- State of Uttar Pradesh, **AIR 1965 SC 202;** K.M. Ravi and Ors.-Vs.- State of Karnataka, **(2009) 16 Supreme Court Cases 337;** State of U.P. -Vs.- Krishanpal and Ors., **(2008) 16 Supreme Court Cases 73;** Amerika Rai and Ors. -Vs.- State of Bihar, **(2011) 4 Supreme Court Cases 677;** Charan Singh -Vs.- State of U.P., **(2004) 4 Supreme Court Cases 205;** Ramachandran and Ors. -Vs.- State of Kerala, **(2011) 9 Supreme Court Cases 257;** Nanda Kishore -Vs.- State, **A.I.R. 1961 Orissa 29;** In re Mathuswami Goundan and Ors., **A.I.R. 1942 Mad. 420 – referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Common object; Unlawful assembly; Constructive liability; Vicarious liability; Rioting; Joint liability; Dying declaration.

Case Arising From

Judgment and order dated 22.11.1996 passed by the 1st Additional Sessions Judge, Berhampur in S.C. No.44 of 1993/S.C. No.273/93 G.D.C.

Appearances for Parties

For Appellant : Mr. Saroj Kumar Routray, Amicus Curiae
For Respondent : Mr. Sarat Chandra Pradhan, A.S.C.

Judgment/Order

Judgment

BY THE BENCH,

This Criminal Appeal was filed by thirteen appellants i.e. Bhagya @ Bhagirathi Bisoi (A-1), Babu @ Babula Naik (A-2), Basant Naik @ Bapana (A-3), Aruna Naik (A-4), Bidu @ Bidyadhar Naik (A-5), Dillip Naik (A-6), Lambodar Naik (A-7), Anjan @ Ranjan Naik (A-8), Promod Naik (A-9), Pruthibi Naik (A-10), Bijuli Naik (A-11), Bishnu Bisoi @ Naik (A-12) and Bira Naik (A-13), out of which A-4 Aruna Naik, A-5 Bidu @ Bidyadhar Naik, A-8 Anjan @ Ranjan Naik, A-11 Bijuli Naik and A-13 Bira Naik are dead and vide order dated 27.08.2024, this appeal has been directed to be abated in respect of those appellants.

The thirteen appellants who have preferred this appeal along with six other accused persons faced trial in the Court of learned 1st Additional Sessions Judge, Berhampur in S.C. No.44 of 1993/ S.C. No.273/93 G.D.C. for commission of offences punishable under sections 148/302/149 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that on 05.03.1993 at about 10.00 a.m. at the embankment of Kansari Sahi Tank of Jagmohan Gram Panchayat, they formed an unlawful assembly and in prosecution of common object of such assembly, they committed the offence of rioting being armed with deadly weapons kati, sword, iron rod, pharsa etc. and thereby committed murder of Panchu Naik and Igni Naik (hereinafter 'the deceased persons').

The learned trial Court vide impugned judgment and order dated 22.11.1996 acquitted six accused persons. However, A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik, A-3 Basant Naik @ Bapana, A-4 Aruna Naik and A-5 Bidu @ Bidyadhar Naik were found guilty under sections 148/302/149 of the I.P.C. and they were sentenced to undergo R.I. for life for the offence under section 302/149 of the I.P.C., however, no separate sentence has been awarded for their conviction under section 148 of the I.P.C. So far as appellant nos.6 to 13 are concerned, it was held

that that they had the knowledge being members of unlawful assembly that an offence of culpable homicide was likely to be committed and accordingly, they were found guilty under sections 304 Part-II/149 of the I.P.C. and sentenced to undergo R.I. for five years each and to undergo R.I. for one year each for the offence under section 148 of the I.P.C. and both the sentences were directed to run concurrently.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.11) lodged by Habuli Naik (P.W.14) on 05.03.1993 before the Inspector in-charge of Aska police station, in short, is that there was a civil dispute between the parties for which cases were instituted including a proceeding under section 107 of Cr.P.C. and on the date of occurrence i.e. 05.03.1993, the deceased Panchu Naik along with his father deceased Igni Naik had come to the spot which was the embankment of Kansari Sahi tank of Jagmohan Grampanchayat to cut some trees and while they were cutting the trees, at about 10 a.m., the accused persons being armed with sharp cutting weapons like kati, pharsa, axe etc. reached there. Deceased Panchu Naik was assaulted by A-2 Babu @ Babula Naik, A-3 Basant Naik @ Bapana and A-6 Dillip Naik by means of sharp cutting weapons on different parts of his body. The deceased Igni Naik was also assaulted by A-1 Bhagya @ Bhagirathi Bisoi, A-12 Bishnu Bisoi and others by sharp cutting weapons. As a result of such assault, both the deceased sustained injuries and thereafter, they were shifted to Aska Hospital for treatment and on the way, the deceased Panchu Naik died at Mundamorei Bus Stand and the deceased Igni Naik was admitted in Aska Hospital for treatment and then P.W.14 came to Aska police station to lodge the F.I.R.

On the oral report of P.W.14, Prafulla Chandra Barik (P.W.28), the Inspector in-charge of Aska police station reduced it into writing and registered as Aska P.S. Case No.34 dated 05.03.1993 for the offences under sections 148/302/307/149 of the I.P.C. against 21 accused persons and directed S.I. of police Sri Lokanath Sahu (P.W.25) to take up investigation of the case.

P.W.25, the I.O. during investigation examined the informant (P.W.14), visited the Govt. Hospital, Aska where the deceased Igni Naik was being hospitalized and he issued requisition to the Medical Officer requesting to record the dying declaration of the deceased Igni Naik. P.W.25 then visited the village Mundamorei where he found the dead body of the deceased Panchu Naik and held inquest over the dead body and prepared the inquest report vide Ext.7/1. He collected the blood stained earth, sample earth from the place of occurrence and seized the same as per seizure list Ext.16. Then he examined some witnesses, sent the dead body of the deceased Panchu Naik for post mortem examination to F.M.T. Department, M.K.C.G. Hospital, Berhampur. He arrested some of the accused persons and examined the A-3 Basant Naik @ Bapana and seized one sword suspected to have stained with blood from the possession of the said appellant vide seizure list Ext.12/1. At the instance of the A-12 Bishnu Bisoi @ Naik, one knife was seized from his house as per seizure list Ext.13/1. Similarly, at the instance of

A-4 Aruna Naik (dead), one tangia was seized as per seizure list Ext.14/1. At the instance of A-5 Bidu @ Bidyadhar Naik (dead), one Parsuram tangia stained with blood was seized as per seizure list Ext.15/1. The I.O. received telephonic message about the death of the deceased Igni Naik from the Medical Officer on 06.03.1993 and he visited Aska Hospital, held inquest over the dead body and prepared the inquest report vide Ext.18 and sent the dead body for post-mortem examination. The I.O. after post mortem examination, received the wearing apparels of the deceased Panchu Naik and seized it under the seizure list Ext.6/1. He also seized the wearing apparels of the deceased Igni Naik under the seizure list Ext.5/1. On 13.03.1993, the I.O. arrested Bibhisan Naik (acquitted by the trial Court) and forwarded him to the Court. He received information that the Medical Officer (P.W.1) has recorded the dying declaration of the deceased Igni Naik.

P.W.28 took over charge of investigation from P.W.25 on 15.03.1993, examined some witnesses, sent the seized articles to S.F.S.L., Rasulgarh for chemical analysis. On completion of investigation, he submitted charge sheet on 30.05.1993 against the appellants and other accused persons.

Framing of Charges:

3. After submission of charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charges against the appellants and other accused persons as aforesaid and since the appellants and other accused persons refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prosecute them and establish their guilt.

Prosecution Witnesses, Exhibits and Material Objects:

4. During the course of trial, in order to prove its case, the prosecution has examined as many as twenty eight witnesses.

P.W.1 Dr. Seikh Jebrail was the Medical Officer, Govt. Hospital, Aska, who treated the deceased Igni Naik in the hospital and recorded his dying declaration (Ext.1/1) on police requisition. He noticed seven incised wounds on different parts of body of the deceased and opined that such injuries were possible by sharp cutting weapon and the impact of all the injuries taken together was sufficient to cause death.

P.W.2 Bala Raju Das, P.W.3 Radha Naik, P.W.4 Dillip Kumar Mishra, P.W.5 Somonath Sahu, P.W.6 Damodar Mohanty, P.W.7 Duryadhan Sahu, P.W.13 Santosh Muni, P.W.16 Bali Naik, P.W.17 Tara Naik, P.W.19 Niladri Naik, P.W.20 Udayanath Sahu, P.W.21 Jalandhar Naik, P.W.23 Somanath Naik and P.W.24 Mohan Naik pleaded their ignorance about the case.

P.W.8 Dr. Syamaghan Biswal was the Medical Officer, Govt. Hospital, Aska who treated the deceased Igni Naik when he was admitted into the hospital on 05.03.1993 where the deceased died on 06.03.1993. He prepared the bed head tickets.

P.W.9 T. Bairagi and P.W.10 Prafulla Kumar Mohapatra were the constables attached to Aska P.S., who were deputed to village Mundamorei and they brought the dead body to the hospital for post mortem examination.

P.W.11 Pravakar Nahak was the Havildar attached to Aska P.S., who was deputed to village Mundamorei to watch the dead body.

P.W.12 G. Trinath Rao was the constable attached to Aska P.S. who carried the dead body of the deceased Igni Naik to Purushottampur Hospital for post mortem examination and also produced the wearing apparels of the deceased before O.I.C.

P.W.14 Habuli Naik is the informant in the case and he is an eye witness to the occurrence.

P.W.15 Lokanath Naik found the dead body of the deceased Panchu Naik on the main road of village Mundamorei near a tea stall at 4.00 p.m. in a bleeding condition.

P.W.18 Debaki Naikani is the widow of the deceased Igni Naik and mother of the deceased Panchu Naik and she is an eye witness to the occurrence.

P.W.22 Kuntala Naikani is the mother-in-law of the deceased Panchu Naik and she is a post-occurrence witness.

P.W.25 Lokanath Sahu is the Investigating Officer in the case.

P.W.26 Dr. Asutosh Mohapatra was the Medical Officer who conducted the post mortem examination over the dead body of the deceased Igni Naik and proved his report vide Ext.20.

P.W.27 Dr. Nayan Kishore Mohanty was the Asst. Professor, F.M.T. Department, M.K.C.G. Medical College, Berhampur who conducted post-mortem examination over the dead body of the deceased Panchu Naik and proved his report vide Ext.21.

P.W.28 Prafulla Chandra Barik was the I.I.C. of Aska P.S. who reduced the oral statement of informant (P.W.14) into writing on 05.03.1993 and directed P.W.25 to take up investigation of the case and subsequently he took over investigation from P.W.25 and on completion of investigation, submitted charge sheet.

The prosecution exhibited twenty four documents. Ext.1/1 is the dying declaration, Ext.2/1 is the injury report, Ext.3 is the bed head ticket, Ext.4/1 is the report of P.W.1, Ext.7/1 is the inquest report, Exts.9, 9/1 & 9/2 are the bed head tickets, Ext.10 is the report of P.W.8, Ext.11 is the F.I.R., Ext.16 is the seizure list, Ext.17 is the dead body challan, Ext.18 is the inquest report, Ext.19 is the dead body challan, Ext.20 is the post mortem report of deceased Igni Naik, Ext.21 is the post mortem report of Panchu Naik, Ext.22 is the opinion of P.W.27, Ext.23 is the forwarding letter and Ext.24 is the chemical examiner report.

The prosecution also proved four material objects. M.O.I is the pharsa, M.O.II is the sword, M.O.III is the axe and M.O.IV is the bhujali.

Defence Plea:

5. The defence plea of the appellants was that on account of civil dispute, they have been falsely entangled in the case. The defence has examined two witnesses in its behalf.

Findings of the Trial Court:

6. The learned trial Court after assessing the evidence on record, came to hold that the prosecution has successfully established that both the deceased died homicidal death and mainly relying on the eye witnesses account of P.W.14 and P.W.18 coupled with the dying declaration (Ext.1/1) recorded by the Medical Officer (P.W.1), though acquitted six accused persons, but found the appellant nos.1 to 5guilty under section 302/149 of the I.P.C. holding that the deceased Panchu received pharsa, sword, kati blows from them which caused bodily injuries sufficient to cause death in ordinary course of nature. So far as the deceased Igni is concerned, learned trial Court has excluded the evidence of the eye witnesses and holding the dying declaration of deceased Igni made before the doctor (P.W.1) to be true and reliable, found that A-1 Bhagya @ Bhagirathi Bisoi, A-3 Basant Naik @ Bapana and A-5 Bidu @ Bidyadhar Naik (dead) to be liable for his murder. The learned trial Court found the Appellant nos.6 to 13 guilty under sections 304 Part-II/149 of the I.P.C. holding that being the members of unlawful assembly, they had knowledge that an offence of culpable homicide was likely to be committed by them being present at the spot and using the weapons. It was further held that the accused persons formed an unlawful assembly in prosecution of their common object to commit the murder of both the deceased, who were cutting trees and were armed with weapons and as such they are liable under section 148 of I.P.C. and accordingly, all the appellants were found guilty under section 148 of I.P.C.

Contentions of the Parties:

7. Mr. Saroj Kumar Routray, learned Amicus Curiae appearing for the appellants argued that there are contradictions in the evidence of two eye witnesses i.e. P.W.14 and P.W.18 relating to the participation of the appellants in the assault of the two deceased and though A-6 Dillip Naik, A-10 Pruthibi Naik and A-12 Basant Naik have been found guilty under section 304 part-II/149 of the I.P.C., but none of the eye witnesses have attributed any specific overt act against these three appellants except stating that they came to the spot being armed with deadly weapons for which they were held guilty under section 148 of I.P.C. Learned Amicus Curiae further submitted that though the A-7 Lambodar Naik and A-9 Pramod Naik have been found guilty under section 304 Part-II/149 of the I.P.C., but in the dying declaration of the deceased Igni Naik recorded by P.W.1, the names of A-7 and A-9 did not find place which was relied upon by the learned trial Court and the eye witnesses have not stated that these two appellants participated in the assault of the

deceased Panchu Naik and therefore, the learned trial Court was not justified in convicting appellant nos.6, 7, 9, 10 and 12 under sections 304 Part-II/149 of the I.P.C. merely because they were in the unlawful assembly holding weapons. Learned Amicus Curiae further submitted that in view of the available materials on record, it is the fit case where the benefit of doubt should be extended in favour of the appellants.

Mr. Sarat Kumar Pradhan, learned Additional Standing Counsel appearing for the State of Odisha, on the other hand, supported the impugned judgment and submitted that even though there are some contradictions in the evidence of the two eye witnesses i.e. P.W.14 and P.W.18 relating to the specific overt act attributed against different appellants, but otherwise, their evidence is consistent and therefore, it is not a case to interfere with the impugned judgment and order of conviction and as such the appeal should be dismissed.

Whether the deceased persons met with homicidal death?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, let us first examine the evidence on record as to how far the prosecution has proved that both the deceased met with homicidal death.

The evidence of P.W.27, the doctor, who conducted the post mortem examination over the dead body of the deceased Panchu Naik on 06.03.1993 in F.M.T. Department, M.K.C.G. Medical College & Hospital indicates that he noticed the following injuries:

External Injuries:

1. Cut wound 21 cm. x 3 cm. x cranial cavity deep exposing the skull bone underlying with a cut fracture of 9 cm. long through which the brain matter was coming out on the frontal region more towards right situated 14.5 cm. above and back to glabella. Matting of scalp hair with blood present;

2. Cut wound 3 cm. x 0.6 cm. x scalp thickness on the right frontal region 8 cm. above the mid-point of right eye brow. Matting of scalp hair with blood present;

3. Cut wound 9 cm. x 1 cm. involving the skull bone underlying with a cut fracture of 9 cm. long on the left parietal region mostly towards vertex 12 cm. above the root of the left ear. Matting of scalp hair with blood present;

4. Pressure abrasion 9 cm. x 0.7 cm. situated on the right deltoid region 4 cm. below the lateral end of right clavicle;

5. Abrasion 2 cm. x 2 cm. at the back of right elbow soiled with dust and sand particles;

6. One ‘L’ shaped abrasion, the vertical limb of ‘L’ measures 9 cm. and horizontally limb of ‘L’ measures 3 cm. situated on the right lateral side of the abdomen and lower chest;

7. Cut wound spindle shaped regular margins with acute angle at both ends placed obliquely on the back towards right including the mid-line of size 7 cm. x 2 cm. x muscle and spine of vertebra deep situated 14 cm. below the tip of 7th cervical spine corresponding to 7th thoracic vertebra;

8. Abrasion 2 cm. x 1 cm. in the centre of which there was a punctured wound of 1 cm. x 0.5 cm. with regular margins and acute angles at both extremities vertically placed on the right ankle 11 cm. above the lateral malleolus and 1.5 cm. in front. The wound has involved the muscles of the lateral aspect of right leg and has gone up to 3 cm. deep;

9. Cut wound 2 cm. x 1 cm. x muscle deep placed on the outer aspect of right ankle 9 cm. above the lateral malleolus and 1 cm. back to the injury no.3;

10. Cut wound 3 cm. x 1 cm. with regular margins which has involved upto bone deep where the underlying fibula bone along with the upper portion of lateral malleolus of right ankle was exposed and has been fractured into three pieces;

11. Punctured wound 1 cm. x 0.5 cm. x 3 cm. muscle deep with muscle involvement on the medial aspect of left leg 17 cm. below the medial condyle of the left tibia. Dry blood-stains were sticking to it;

12. Parallel bruise 2 in nos. each measuring 12 cm. x 1 cm. with intervening normal skin of 1 cm. adjacent to each other reddish violet in colour placed horizontally on the right side back just below and in front of right scapula;

13. Parallel bruise 10 cm. x 1 cm. with 1 cm. intervening normal skin on the outer aspect of right side chest wall corresponding to 7th rib.

Internal Injuries:

1. Corresponding to external injury no.1, there was a cut fracture of 9 cm. long from its right extremity a fissure fracture extends outwards and downwards on right half of the frontal bone for 5 cm. and on its left extremity, the left fronto-pareital suture was separated. The left side frontal scalp on its under surface looks contused. The under surface of the scalp corresponding to the external cut wound the margins were contused. The meninges underlying was cut for 9 cm.;

2. Corresponding to external injury no.2, the under-surface scalp wound margins were contused;

3. Corresponding to external injury no.3, there was a cut fracture of 9 cm. along with shelving of posterior bony cut margins in relation to anterior cut margin on the bone. The meninges underlying the cut fracture was intact. The scalp wound margins on its under surface was contused;

4. The right temporal muscles in its anterior half was contused and infiltrated with extravasated clotted blood corresponds to external scalp wound no.1 on its extension;

5. Corresponding to external injury no.7, there was a cut injury to the muscles on the back at the wound site which travels downwards and forwards to involve the 7th thoracic spine of the vertebra causing fracture of the spinous process and lateral process of 7th thoracic vertebra with extravasation and infiltration of blood around the fracture site and the muscles surrounding it. The covering on the spinal cord and the spinal cord itself has been contused at the corresponding site;

6. Corresponding to external injury no.8, there was cut wound on the muscles at the corresponding site with extravasation and infiltration of blood;

7. Corresponding to external injury no.10, the underlying fibula bone at its lower end with the upper portion of malleolus has been fractured and was associated with extravasation and infiltration of blood around the fracture site;

8. Corresponding to external injury no.11, the punctured would has gone upto 3 cm. deep in the muscles where there was extravasation and infiltration of blood;

9. There was fracture of tibia bone of left leg its middle with extravasated clotted blood surrounding the fracture site;

10. There was a thin layer of subdural haemorrhage on the left side hemisphere;

11. The brain on its right frontal lobe was cut for 5 cm. downwards involving the sagittal border of left frontal lobe. The brain looks pale. The dimension of brain cut was 9 cm. x 1 cm. x 4 cm.

P.W.27 has opined that the external and internal injuries were ante mortem in nature and all the injuries were fatal in ordinary course of nature to cause death. He further opined that the external injury nos.1, 2 & 3 and their corresponding internal injuries were fatal and sufficient to cause death. He further opined that death was due to injury to vital organ like brain i.e. craniocerebral injuries and the time since death was about 24 to 30 hours since the time of post-mortem examination. He further opined that external injury nos.1, 2, 3, 7, 9 and 10 might have been caused by any heavy or moderately heavy cutting weapons. The pressure abrasion i.e. external injury no.4 might have been caused by the edge of the some cutting weapon. The external injury nos.5 and 6 might have been caused by falling on any hard and rough and blunt surface or object. The external injury nos.8 and 11 might have been caused by any pointed weapon having cutting edge on either side. The parallel bruises i.e. injury nos.12 and 13 could have been caused by lathi blow. He proved the post mortem examination report vide Ext.21.

Nothing has been brought out in the cross examination of P.W.27 by the learned defence counsel to disbelieve his testimony.

Similarly, P.W.26, the doctor who conducted the post mortem examination of the deceased Igni Naik on 07.03.1993 in Addl. P.H.C. has noticed the following injuries:

1. One sharp cutting injury of size 8 cm. x 0.5 cm.x 1 cm. situated over left side back of the chest;

2. One sharp cutting injury of size 8 cm. x 0.5cm. x 1 cm. situated over left side back of the chest;

3. One sharp cutting injury 5 cm. x 0.5 cm. x 2 cm. situated over right side chest wall back;

4. Another sharp cutting injury 5 cm. x 0.5 cm. x 2 cm. situated over right side back of the chest wall;

5. Sharp cutting injury 2 cm. x 0.5 cm. x 1 cm. situated over left side chest wall;

6. Sharp cutting injury 3 cm. x 2 cm. x 3 cm. situated over left elbow with dislocation of left elbow joint.

He has opined that the injuries nos.1 to 6 were ante mortem in nature and caused by sharp cutting weapons. The cause of death was due to haemorrhage on account of multiple injuries and the nature of death was homicidal. Time since death was more than 18 hours. He has proved the post mortem report marked as Ext.20.

Nothing has been elicited in the cross-examination of P.W.26 by the learned defence counsel to disbelieve his testimony.

Therefore, apart from the inquest report of both the deceased and other evidence available on record, the medical evidence adduced by P.W.26 and P.W.27 coupled with the findings in the post mortem examination reports (Exts.20 and 21), we are of the view that the learned trial Court is quite justified in holding both the deceased, namely, Panchu Naik and Igni Naik died homicidal death, which is also not challenged by the learned counsel for the appellants.

Assessment of evidence of eye witnesses P.W.14 and P.W.18:

9. The two star witnesses examined on behalf of the prosecution are P.W.14 Habuli Naik and P.W.18 Debaki Naikani and they are the eye witnesses to the occurrence.

P.W.14 has stated that the accused persons came in a body by holding different weapons like axe, kati, tangia, sword and they arrived near deceased Panchu Naik, who was working with him. A-3 Basant Naik dealt a pharsa blow on the head, A-2 Babu @ Babula Naik dealt a sword blow on the back and A-5 Bidu @ Bidyadhar Naik (dead) dealt axe blow to the leg of the deceased Panchu Naik, for which he fell down on the ground due to assault.

So far as the deceased Igni Naik is concerned, P.W.14 has stated that A-1 Bhagya @ Bhagirathi Bisoi dealt a steel sword blow on the left hand, A-4 Aruna Naik (dead) dealt kati blow on the back, A-11 Bijuli Naik (dead) dealt kati blow on the back, A-9 Pramod Naik dealt a small kati blow on the leg of the deceased Igni Naik respectively. He has further stated that he was present at one side of the place of the assault and seen the entire occurrence. He further stated that after the occurrence, the accused persons fled away from the spot and the injured persons were found lying on the ground in a pool of blood and he along with others carried the injured persons to MundaMorei Bus stand and while they were so carrying to Aska Hospital for treatment, deceased Panchu Naik succumbed to his injuries at MundaMorei Bus stand and they left the dead body of the deceased Panchu Naik at the Bus stand and carried the injured Igni Naik to Aska Hospital for treatment and admitted him in the hospital and then he came to Aska police station and lodged the verbal report before the police.

In the cross-examination, it has been elicited about the civil dispute between the parties and it has also been elicited that this witness is a party to 107 Cr.P.C. proceeding which was there between the parties. Though some confrontations have been made by the learned defence counsel with respect to the previous statement made by this witness before the investigating officer, but we find there are no such

material contradictions in the evidence and therefore, the evidence of P.W.14 has not been shattered in the cross-examination.

P.W.18 Debaki Naikani was the widow of the deceased Igni Naik and mother of the deceased Panchu Naik. She has stated that the accused persons came by holding weapons to the spot and she was present on the ridge of the tank at that time. She further stated that A-1 Bhagya @ Bhagirathi Bisoi dealt a sword blow on the head, A-2 Babu @ Babula Naik dealt a pharsa blow on the neck, A-3 Basant Naik @ Bapana dealt sword blow to the left side neck and A-5 Bidu @ Bidyadhar Naik (dead) dealt kati blow on the head of the deceased Panchu Naik respectively, who fell down on the ridge sustaining injuries throughout his body.

So far as her husband deceased Igni Naik is concerned, she has stated that the accused Dura dealt kati blow on the left hand, A-9 Pramod Naik dealt a razor blow on the back, A-4 Aruna Naik dealt chella blow to the waist, A-7 Lambodar Naik dealt pharsa blow to the back and A-5 Bidu @ Bidyadhar Naik dealt chella blow to the abdomen of her husband respectively, who fell down on the ground with severe bleeding injuries. She has further stated that after the assault, the accused persons fled away from the spot and her husband was shifted to Aska hospital for treatment and her son Panchu Naik died at MundaMorei bus stand and her husband died on the next day during course of his treatment.

In the cross-examination of P.W.18, the defence has elicited that the accused persons were twenty one in numbers and after assaulting her son Panchu Naik, they came to her husband Igni Naik and all the accused persons dealt four to five strokes with their weapons. She further stated that appellants were holding eight to ten axes and also similar number of katis. Some confrontations were made with reference to her previous statement recorded by the I.O. (P.W.25), but we find that there are no such material contradictions in the evidence of P.W.18 and therefore, the evidence of P.W.18 relating to the participation of some of the appellants in the assault of the deceased has not been shaken in the cross-examination.

Learned Amicus Curiae argued that so far as the assault on deceased Panchu Naik is concerned, in view of the evidence of two eye witnesses, though the implication of A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana is consistent, but so far as A-1 Bhagya @ Bhagirathi Bisoi is concerned, even though P.W.18 has implicated him in the assault and stated that he started the assault by dealing sword blow on the head of the deceased Panchu Naik, but P.W.14 is totally silent relating to any assault made by the A-1 Bhagya @ Bhagirathi Bisoi to the said deceased. It is the further submission of the learned Amicus Curiae that since the A-1 Bhagya @ Bhagirathi Bisoi has been implicated by only one of eye witnesses i.e. P.W.18 in the assault of the deceased Panchu Naik, for which he was found guilty under section 302/149 of the I.P.C., he should be given benefit of doubt.

Mr. Sarat Chandra Pradhan, learned Addl. Standing Counsel, on the other hand, submitted that both the witnesses were at different places and watching the occurrence and there were number of accused persons being armed with different

weapons and in such a scenario, the possibility of P.W.14 missing of assault by A-1 Bhagya @ Bhagirathi Bisoi is probable and therefore, merely because P.W.14 has not implicated A-1 Bhagya @ Bhagirathi Bisoi in the assault of the deceased Panchu Naik, the evidence of P.W.18 in that respect cannot be disbelieved, more particularly, when the doctor (P.W.27) has noticed corresponding injury on the head, which is possible by sharp cutting weapon.

After carefully examining the evidence of two eye witnesses i.e P.W.14 and P.W.18, we are of the humble view that possibility of the assault by A-1 Bhagya @ Bhagirathi Bisoi on the deceased Panchu Naik going unnoticed by P.W.14 is probable since there were number of accused persons present at the spot and they were holding different weapons. When participation of A-1 Bhagya @ Bhagirathi Bisoi as deposed to by P.W.18 has not been shaken in the cross-examination and it is getting corroboration from the medical evidence, the same cannot be disbelieved merely because the other eye witness i.e. P.W.14 has omitted to name him in the assault of the deceased Panchu Naik. Therefore, we find from the materials available on record that the three appellants i.e. A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana along with A-5 Bidu @ Bidyadhar Naik (dead) are liable for the commission of murder of deceased Panchu Naik and the oral evidence coupled with the medical evidence is clinching in nature in that respect. Though the learned trial Court has also found the involvement of A-4 Aruna Naik (dead) in such murder, but we do not find any material in that respect. Therefore, the number of active participants in such murder has gone down to four. Since it is apparent that A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana along with A-5 Bidu @ Bidyadhar Naik (dead) being armed with sharp cutting weapons came together to the spot and assaulted to the deceased Panchu Naik on vital parts of the body and thereby committed his murder and left the spot together, we are of the view that they shared common intention to commit such murder.

In case of **Chittarmal -Vrs.- State of Rajasthan reported in (2003) 24 Orissa Criminal Reports (SC) 664**, it is held as follows:-

> "14. It is well settled by a catena of decisions that Section 34 as well as Section 149 deal with liability for constructive criminality i.e. vicarious liability of a person for acts of others. Both the sections deal with combinations of persons who become punishable as sharers in an offence. Thus they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or pre-concert. Though there is substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more, do an act and intend to do it, both Sections 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the

substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it involves a common intention, then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses commission of an offence in furtherance of the common intention of them all."

In the case of **Dhanna -Vrs.- State of Madhya Pradesh reported in (1996) 10 Supreme Court Cases 79**, it is held as follows:-

"7. The High Court found that there was no unlawful assembly as the strength of the assembly was insufficient to constitute it into "unlawful assembly". But if the court enters upon a finding that any of the remaining persons who participated in the crime had shared common intention with the main perpetrators of the crime, the court is not helpless in seeking the aid of Section 34 (I.P.C.) to enter a conviction against such persons arraigned as accused. This is despite the difference between the scope of Section 34 and Section 149. Yet they have some resemblance between each other and are to some extent overlapping (**Barendra Kumar Ghosh -Vs.- Emperor : AIR 1925 PC 1**).

8. Legal position on this aspect remained uncertain for a time after this Court rendered a decision in Nanak Chand -Vs.- The State of Punjab: (1955) 1 SCR 1201. But the doubt was cleared by a Constitution bench of this Court in **William Slaney -Vs.- State of M.P. : AIR 1956 SC 116,** where this Court observed at para 86, thus;

"Sections 34, 114 and 149 of the Indian Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable. In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant."

9. It is, therefore, open to the Court to take recourse to Section 34 of I.P.C. even if the said section was not specifically mentioned in the charge and instead Section 149 I.P.C. has been included. Of course, a finding that the assailant concerned had a common intention with the other accused is necessary for resorting to such a course. This view was followed by this Court in later decisions also. **Amar Singh -Vs.- State of Haryana :AIR 1973 SC 2221, Bhoor Singh and Anr. -Vs.- State of Punjab : AIR 1974 SC 1256.**"

Similar view was also taken in the case of **Jai Singh @ Bandu and Another -Vrs.- State of Maharashtra reported in 1996 Supreme Court Cases (Cri) 672**, wherein it is held that omission to frame a charge or departure from the charge cannot invalidate conviction unless prejudice has been caused.

Thus, the conviction of the A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik @ Bapana is altered from section 302/149 of the I.P.C. to section 302/34 of the I.P.C.

10. Coming to the assault on the deceased Igni Naik, learned Amicus Curiae argued that P.W.14 has implicated appellants i.e. A-1 Bhagya @ Bhagirathi Bisoi and A-9 Promod Naik apart from the appellants A-4 Aruna Naik and A-11 Bijuli Naik (who are now dead) in the assault of the deceased and it is stated that A-1 Bhagya @ Bhagirathi Bisoi used steel sword and assaulted on the left hand of the deceased and A-9 Pramod Naik assaulted by a kati on the leg of the deceased, whereas P.W.18 has not whispered that A-1 Bhagya @ Bhagirathi Bisoi dealt any blow to the deceased Igni Naik and though she has implicated A 7 Lambodar Naik in the assault of Igni Naik, but the same has not been deposed to by P.W.14. She also implicated A-4 Aruna Naik and A-5 Bidu @ Bidyadhar Naik in the assault, who are now dead. He further argued the learned trial Court has not placed any reliance on the oral evidence adduced by these two eye witnesses relating to the assault on the deceased Igni Naik rather placed reliance on the dying declaration of the deceased Igni Naik recorded by P.W.1 vide Ext.1/1 in which only the implication of A-1 Bhagya @ Bhagirathi Bisoi, A-3 Basant Naik @ Bapuni and A-5 Bidu @ Bidyadhar Naik (dead) are there. He further argued that there is no clinching evidence against A-6, A 7, A-9, A-10 and A-12 to hold them guilty under section 304 Part-II/149 of I.P.C. and therefore, they should be acquitted of such offence.

Mr. Pradhan, learned counsel for the State argued that the learned trial Court has rightly not placed reliance on the evidence of two eye witnesses so far as the assault on the deceased Igni Naik is concerned, but accepted the dying declaration of the deceased Igni Naik recorded by P.W.1, but since it has been proved that A-6, A-7, A-9, A-10 and A-12 were the members of unlawful assembly and came to the spot being armed with deadly weapons in the company of other accused persons who directly participated in the assault of the deceased persons, therefore, apart from the offence under section 148 of I.P.C., they were held guilty under section 304 Part-II/149 of I.P.C. as they had knowledge being the members of the unlawful assembly that an offence of culpable homicide was likely to be committed by using deadly weapons and therefore, the conviction of A-6 Dillip Naik, A-7 Lambodar Naik, A-9 Promod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bishoi @ Naik is justified.

Whether the dying declaration of the deceased Igni Naik is believable?

11. On perusal of the dying declaration recorded by P.W.1, the Medical Officer, we find that he not only treated the the deceased Igni Naik but also referred the case to M.K.C.G. Medical College & Hospital and on the request of the police, recorded the dying declaration in which the deceased implicated only three persons in his assault i.e. A-1 Bhagya @ Bhagirathi Bisoi, A-3 Basant Naik @ Bapana and A-5 Bidu @ Bidyadhar Naik. The doctor has enquired about the mental condition of the deceased and found it to be normal. He further stated that at the time of such recording, only hospital staff was present apart from two to three police personnel.

He stated to have handed over the dying declaration sheet to police on requisition. P.W.1 was the treating doctor and there is no evidence that the deceased was tutored by anyone to make such declaration and that in view of the injuries sustained by him, he could not have made any statement or dying declaration. Nothing has been elicited in the cross-examination to dislodge the evidence of P.W.1 relating to dying declaration. Therefore, it is clear that there is nothing in the dying declaration against A-6 Dilip Naik, A-7 Lambodar Naik, A-9 Promod Naik, A-10 Pruthibi Naik and A 12 Bishnu Bisoi @ Naik. Though the name of A-9 Promod Naik finds place in the assault of the deceased Igni Naik in the evidence of P.W.14 and the names of A-7 Lambodar Naik and A 9 Pramod Naik find place in the assault of the deceased Igni Naik in the evidence of P.W.18, but since the names of these appellants do not find place in the dying declaration of the deceased Igni Naik, no importance can be attached to the evidence of P.W.14 and P.W.18 relating to the implication of A-7 Lambodar Naik and A-9 Pramod Naik in the assault of the deceased Igni Naik.

Therefore, except the mere presence of A-6 Dillip Naik, A-7 Lambodar Naik, A-9 Pramod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bishoi @ Naik in the unlawful assembly being armed with weapons, there is no evidence of any specific overt act against them either in the assault of deceased Panchu Naik or deceased Igni Naik. There is no evidence that they played any active role in the occurrence of assault. There is no evidence of any active mind on their part in furtherance of their common object. There is no material to come to a finding that they knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. There is no sufficient evidence on record to show that they intended to or knew the likelihood of commission of such offending act.

Section 149 of I.P.C. has essentially two ingredients viz. (i) offence committed by any member of an unlawful assembly consisting five or more members and (ii) such offence must be committed in prosecution of the common object (under Section 141 I.P.C.) of the assembly or members of that assembly knew to be likely to be committed in prosecution of the common object. For common object, it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment; it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part, the offence committed must be connected immediately with the common object of the unlawful assembly of which the accused were members. (Ref: **Bhanwar Singh and Ors. -Vs.- State of M.P. : (2008) 16 Supreme Court Cases 657**). Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under second part of Section 149 I.P.C. if it can be held that the offence was such as the members knew was likely to be committed. The expression 'know' does not mean a mere possibility, such as might or might not happen. For instance, it is a matter of common knowledge that if a body of persons go armed to take forcible possession of the land, it would be right to say that someone is likely to be killed and all the members of the unlawful assembly must be aware of that likelihood and would be

guilty under the second part of Section 149 I.P.C. There may be cases which would come within the second part, but not within the first. The distinction between the two parts of Section 149 I.P.C. cannot be ignored or obliterated. (Ref: **Mizaji and Anr. -Vs.- State of U.P. : AIR 1959 SC 572; Gangadhar Behera and Ors. -Vs.- State of Orissa : AIR 2002 SC 3633**). However, once it is established that the unlawful assembly had common object, it is not necessary that all persons forming the unlawful assembly must be shown to have committed some overt act. For the purpose of incurring the vicarious liability under the provision, the liability of other members of the unlawful assembly for the offence committed during the continuance of the occurrence, rests upon the fact whether the other members knew before hand that the offence actually committed was likely to be committed in prosecution of the common object. (Ref: **Daya Kishan -Vs.- State of Haryana : (2010) 5 Supreme Court Cases 81; Sikandar Singh -Vs.- State of Bihar : (2010) 7 Supreme Court Cases 477; Debashis Daw -Vs.- State of W.B. : (2010) 9 Supreme Court Cases 111**). The crucial question for determination in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects specified by Section 141 of I.P.C. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons which were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly. (Ref: **Masalti -Vs.- State of Uttar Pradesh : AIR 1965 SC 202**). In **K.M. Ravi and Ors. -Vs.- State of Karnataka reported in (2009) 16 Supreme Court Cases 337**, the Hon'ble Supreme Court observed that mere presence or association with other members alone does not per se be sufficient to hold every one of them criminally liable for the offences committed by the others unless there is sufficient evidence on record to show that each intended to or knew the likelihood of commission of such an offending act. Similarly in **State of U.P. -Vs.- Krishanpal and Ors. reported in (2008) 16 Supreme Court Cases 73**, the Hon'ble Supreme Court held that once a membership of an unlawful assembly is established, it is not incumbent on the prosecution to establish whether any specific overt act has been assigned to any accused. Mere membership of the unlawful assembly is sufficient and every member of an unlawful assembly is vicariously liable for the acts done by others either in prosecution of common object or members of assembly knew were likely to be committed. In **Amerika Rai and Ors. -Vs.- State of Biharreported in (2011) 4 Supreme Court Cases 677**, the Hon'ble Supreme Court opined that for a member of unlawful assembly having common object what is liable to be seen is as to whether there was any active participation and the presence of all the accused persons was with an active mind in furtherance of their common object. The law of vicarious liability under Section 149 I.P.C. is crystal clear that even the mere presence in the unlawful assembly, but with an active mind, to achieve the common object makes such a person vicariously liable for the acts of the unlawful assembly. In the case of **Charan Singh -Vs.- State of U.P. reported in (2004) 4 Supreme Court Cases 205**, it is held that the crucial

question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141 of I.P.C. The word 'object' means the purpose or design and in order to make it 'common', it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression 'in prosecution of common object' as appearing in Section 149 I.P.C. has to be strictly construed as equivalent to 'in order to attain the common object'. It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. In the case of **Bhanwar Singh -Vs.- State of Madhya Pradesh reported in (2008) 16 Supreme Court Cases 657**, the Hon'ble Supreme Court held that the common object of the unlawful assembly in question depends firstly on whether such object can be classified as one of those described in Section 141 I.P.C. Secondly, such common object need not be the product of prior concert, but as per established law, may form on the spur of the moment. Finally, the nature of this common object is a question of fact to be determined by considering nature of arms, nature of the assembly, behaviour of the members, etc. Where general allegations are made against a large number of persons, the Court would categorically scrutinise the evidence and hesitate to convict the large number of persons if the evidence available on record is vague. It is obligatory on the part of the Court to examine that if the offence committed is not in direct prosecution of the common object, it yet may fall under second part of Section 149 I.P.C., if the offence was such as the members knew was likely to be committed. Further inference has to be drawn as what was the number of persons; how many of them were merely passive witnesses; what were their arms and weapons. Number and nature of injuries is also relevant to be considered. "Common object" may also be developed at the time of incident. (Ref: **Ramachandran and Ors. -Vs.- State of Kerala : (2011) 9 Supreme Court Cases 257**).

In view of the settled position of law as discussed above and the materials available on record, the conviction of A 6 Dillip Naik, A-7 Lambodar Naik, A-9 Promod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bishoi @ Naik under section 304 Part II/149 of I.P.C. is not sustainable in the eyes of law and hence set aside.

Conviction of the appellants under section 148 I.P.C.

12. The evidence of the two eye witnesses i.e. P.W.14 and P.W.18 indicate that appellants along with others came in a body by holding different weapons like axe, kati, tangia and sword. It is of course correct that except the accused persons who participated in the assault of the two deceased, it has not been stated specifically

about the nature of weapons held by the other accused persons. However, no questions have been put by the defence in that respect in the cross-examination nor it has been brought out that any of the accused persons were not armed with any deadly weapons.

When there is rioting simplicitor, offence is punishable under section 147 of I.P.C. When such rioting is committed by a particular accused or persons having deadly weapons or with anything which, used as a weapon of offence is likely to cause death, offence is punishable under section 148 of I.P.C. 'Rioting' has been defined under section 146 of I.P.C. which lays down that whenever force or violence is used by an unlawful assembly, or any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of offence of rioting.

The offence under Section 148 of I.P.C. is an aggravated form of the offence under Section 147 of I.P.C. Section 147 of I.P.C. deals with the punishment for the offence of rioting, whereas Section 148 of I.P.C. deals with the punishment for the offence of rioting being armed with deadly weapon. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under Section 148 of I.P.C. (Ref: **Nanda Kishore -Vs.- State : A.I.R. 1961 Orissa 29** and **In re Mathuswami Goundan and Ors. : A.I.R. 1942 Mad. 420**). A person cannot be found guilty under Section 148 of I.P.C. unless he actually holds a dangerous weapon. Hence unless that condition is satisfied, he cannot be held constructively guilty under Section 148 of I.P.C. by reason of Section 149 of I.P.C. It is not necessary for the prosecution to prove that the accused persons who were armed with deadly weapons used such weapons to convict them under section 148 of I.P.C. When force or violence is used by an unlawful assembly or by any member thereof in prosecution of the common object of such assembly, the offence of rioting as described under section 146 of I.P.C. is attracted and each member of such assembly is to be held guilty for such offence and out of such members of unlawful assembly, the persons who were armed with deadly weapon or anything which used as a weapon of offence, is likely to cause death can be held liable for the offence under section 148 of I.P.C. Section 349 of I.P.C. defines „force". As soon as force or violence is used, the offence of rioting is complete.

In view of the evidence of the eye witnesses, it is apparent that A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik, A-3 Basanta Naik @ Bapanna, A-6 Dillip Naik, A-7 Lambodar Naik, A-9 Pramod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bisoi @ Naik were armed with deadly weapons being the members of the unlawful assembly and even though out of them only A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basanta Naik @ Bapanna have used the deadly weapons in the assault of the deceased but all of them can be held guilty under section 148 of I.P.C. Therefore, the conviction of these appellants under section 148 of the I.P.C. stands confirmed.

The learned trial Court while convicting A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basanta Naik @ Bapanna under section 148 of I.P.C. has not imposed any separate sentence, however, while holding A-6 Dillip Naik, A-7 Lambodar Naik, A-9 Promod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bisoi @ Naik guilty under section 148 of I.P.C., sentenced each of them to undergo R.I. for one year. These appellants were on bail during trial and after conviction, they were also released on bail in this appeal. In view of the fact that more than 32 years have passed since the date of occurrence, keeping in view their age at present, we reduce the sentence imposed under section 148 of the I.P.C. to period already undergone.

Conclusion:

13. In view of the foregoing discussions, A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik and A-3 Basant Naik@ Bapana are found guilty under section 302/34 of I.P.C. The sentence passed by the learned trial Court for the offence under section 302/149 of the I.P.C. is awarded for the offence under section 302/34 of I.P.C. The conviction of these three appellants under section 148 of the I.P.C. stands confirmed, but as held by the learned trial Court, no separate sentence is imposed for such offence.

The conviction of A-6 Dillip Naik, A-7 Lambodar Naik, A-9 Pramod Naik, A-10 Pruthibi Naik and A-12 Bishnu Bisoi @ Naik under section 304 Part-II/149 of the I.P.C. is set aside. However, their conviction under section 148 of the I.P.C. stands confirmed, but the sentence passed thereunder by the learned trial Court is reduced to period already undergone.

A-1 Bhagya @ Bhagirathi Bisoi, A-2 Babu @ Babula Naik, A-3 Basant Naik @ Bapana who are on bail as per the order of this Court dated 10.05.2004 in Misc. Case No.218 of 2003 are directed to surrender within a period of four weeks from today to undergo the sentence, failing which, the learned trial Court shall take coercive steps for their arrest.

In the result, Criminal Appeal is allowed in part.

Before parting with the case, we would like to put on record our appreciation to Mr. Saroj Kumar Routray, the learned Amicus Curiae for rendering his valuable help and assistance towards arriving at the decision above mentioned. The learned Amicus Curiae shall be entitled to his professional fees which is fixed at Rs.10,000/- (rupees ten thousand only). This Court also appreciates the valuable help and assistance provided by Mr. Sarat Chandra Pradhan, learned Additional Standing Counsel. The trial Court records with a copy of this judgment be communicated to the concerned Court forthwith for information and necessary action.

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

Result of the case:
Criminal Appeal allowed in part.

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2025 (II) ILR-CUT-1070

MANAGEMENT OF SANJAY MEMORIAL INSTITUTE OF TECHNOLOGY
V.
STATE OF ORISSA & ORS.

[W.A. NO. 152 OF 2018]

09 JULY 2025

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

Issue for Consideration

Whether claim for arrear salary is subject to limitation.

Headnotes

SERVICE JURISPRUDENCE – Arrear Salary – Claim – Limitation – The learned single Judge has directed the appellant-institution to fix the pay of Respondent No. 3 as per the AICTE Rules for the post of instructor from the date of his initial appointment i.e. 1985-86 till his retirement – Whether claim for arrear salary is subject to limitation.

Held: Yes – Applying the principle laid down in *Tarsem Singh***,** the petitioner, having retired in 2008 and filed the writ petition in 2010, would be entitled to claim arrears of salary under the UGC or AICTE Guidelines only for the three years preceding the date of filing the writ petition – It is apparent on record that the petitioner had not been continuously agitating the claim through timely representations or legal action, the relief for arrears of salary cannot extend to the entire period from the date of appointment or even from the date of entitlement under the revised pay scales. (Para 16)

Citations Reference

Janet Jeyapaul -Vrs.- SRM University and others, **(2015) 16 Supreme Court Cases 530;** Jaminikanta Das & others -Vrs.- Governing Body of Sanjaya Memorial Institute of Technology & others, **84 (1997) Cuttack Law Times 483;** Union of India -Vrs.- Tarsem Singh, **(2008) 8 Supreme Court Cases 648;** Shishuvihar Shaishanik Sanstha Chalisgaon & Anr. -Vrs.- The State of Maharashtra & Ors., **2024 LiveLaw (Bom) 566 – referred to.**

List of Acts

Constitution of India, 1950; Orissa Revised Scale of Pay Rules, 1998.

Keywords

Continuing wrong; Scale of pay; Limitation; Claim for arrear salary.

Case Arising From

Judgment dated 14.03.2018 passed by the learned Single Judge in W.P. (C) No. 9492 of 2010.

Appearances for Parties

For Appellant : Mr. L. Samantaray

For Opp. Parties : Mr. Partha Sarathi Nayak, AGA (Resp. Nos.1 & 2)
Mr. B.K. Mohanty (Resp. No. 3)

Judgment/Order

Judgment

S.S. MISHRA, J.

The present Writ Appeal arises out of the judgment dated 14.03.2018 passed by the learned Single Judge in W.P.(C) No.9492 of 2010, whereby the writ petition filed by Respondent no.3, Subash Chandra Mishra, was allowed. The learned Single Judge has directed the appellant-institution to fix the pay of Respondent no.3 as per the AICTE Rules for the post of Instructor from the date of his appointment (1985-86) till his retirement, and to disburse the differential arrear salary and consequential pensionary benefits, if any, accrued on such refixation.

2. Heard Mr. L. Samantaray, learned counsel appearing for the appellant, Mr. Partha Sarathi Nayak, learned Additional Government Advocate for the State-Respondent nos.1 & 2 and Mr. Bijaya Kumar Mohanty, learned counsel for the Respondent no.3.

3. The appellant-Sanjay Memorial Institute of Technology (SMIT), is a technical institution established at Brundaban Vihar, Ankushpur, near Berhampur in the district of Ganjam, Odisha. The institution is recognized by the All India Council for Technical Education (AICTE) and is approved by the Government of Odisha. The Respondent no.3, Subash Chandra Mishra, was appointed as an Instructor (Welder) at SMIT on 14.10.1983 after completing his High School Certificate (HSC) examination and acquiring the ITI (Welding) trade qualification.

4. Upon his appointment, the Respondent no.3 was allowed to draw salary as per the terms outlined in his appointment letter, which specified a pay scale of Rs.300-8-30810-385-LB-12-442-14-470, along with usual Dearness Allowance (DA) and Additional Dearness Allowance (ADA) as admissible to State Government employees. The appointment was described as purely temporary and terminable with one month's notice from either side.

5. It is the case of Respondent no.3 that while he was receiving the salary according to the appointment order until 1985-86, the Management did not allow him to draw the enhanced salary as per the Government of Odisha Regulations from time to time thereafter. He claimed that he was assured by the authorities that the

differential salary would be paid at the time of his superannuation. However, his pay was not revised periodically and he continued to receive his monthly salary at the discretion of the Management.

6. Learned counsel for the appellant-SMIT, on the other hand, contended that as a private unaided institution, it is not bound by the revised pay scales applicable to government employees. The Management asserted that salary payments are governed solely by the terms of the appointment letter and the decisions of the governing body, not by government regulations or AICTE guidelines. Furthermore, the institution maintains that the post of Instructor (Welder) in an ITI is governed by the rules and regulations of the National Council for Vocational Training (NCVT), not the AICTE, which applies to diploma and degree level institutions and teaching facilities.

7. The Respondent no.3 retired from service on 24.06.2008 at the age of 58, on attaining age of superannuation. Upon retirement, he did not receive the enhanced salary or any consequential pensionary benefits. In 2010, two years after his retirement, he filed W.P.(C) No.9492 of 2010 before this Court, seeking the release of his differential salary and benefits as per AICTE and government regulations.

8. In the Writ Petition, the Respondent no.3 put forth a case that since SMIT is a technical institution recognized by both the AICTE and the Government of Odisha, he was entitled to receive the salary sanctioned for his post under the relevant regulations. He provided a calculation sheet of the outstanding dues and pointed out that he had been deprived of his legitimate entitlements.

9. The institution, in its counter-affidavit, reiterated its position that the appointment of the Respondent no.3 was contractual and that he was only entitled to the pay scale mentioned in his appointment letter. It also argued that the claim was time-barred, as the writ petition was filed two years after retirement and covered a period extending back to 198586. Additionally, the institution emphasized that the AICTE was not a party to the proceedings, and an application to implead the AICTE had been dismissed by the Court.

10. The learned Single Judge in W.P.(C) No.9492 of 2010 by judgment dated 14.03.2018, allowed the Writ Petition. The Court held that the Respondent no.3 was entitled to the pay scale at par with government employees as per the Orissa Revised Scale of Pay Rules and also under the AICTE, given the institution's affiliation. The learned Single Judge directed the appellant-SMIT to fix the pay of the Respondent no.3 in accordance with the AICTE Rules from the date of his appointment (1985-86) until retirement and to disburse the differential arrear salary and any pensionary benefits accrued from such re-fixation.

11. Aggrieved by the learned Single Judge's order, the appellant-SMIT filed the present Writ Appeal, challenging the direction to pay the Respondent no.3 as per the AICTE scale and contesting the applicability of AICTE Rules to his post. The appellant also questioned the maintainability of the writ petition, the correctness of

the learned Single Judge's findings, and the time-barred nature of the Respondent no.3's claim.

12. The Respondent nos.1 & 2, the State of Odisha and the Director, Technical Education & Training, in their counter affidavit, clarified that SMIT is a private unaided institution and that matters of staff appointment, salary payment, and service conditions are internal affairs of the institution, over which they have no control or responsibility. They asserted that they were not necessary parties to the dispute.

13. On the basis of the pleadings and contesting position taken by the writ petitioner and the opposite parties, the learned Single Judge culled out two issues i.e. **(i)** Whether the writ petition is maintainable against the Opposite Party nos.3 & 4 institution? **(ii)** Whether the petitioner is entitled to arrear salary under the Revised Scale of Pay as per the U.G.C. or A.I.C.T.E. Guidelines?

14. To answer the point no.(i), the learned Single Judge has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Janet Jeyapaul -Vrs.- SRM University and others***, reported in ***(2015) 16 Supreme Court Cases 530*** and the judgment of the Division Bench of this Court in ***Jaminikanta Das & others -Vrs.- Governing Body of Sanjaya Memorial Institute of Technology & others***, reported in ***84 (1997) Cuttack Law Times 483***. The learned Single Judge by analysing the settled position of law arrived at the conclusion that the appellant-institution is an instrumentality of "State" under Article 12 of the Constitution of India, hence, amenable to the writ jurisdiction. In paragraph-14 of the impugned judgment, the conclusion is drawn up, which reads as under:-

> *"14. Not only this, but also the aforesaid decision of this Court was also followed in similar question in W.P.(C) No.3175 of 2006. Learned counsel for the opp. Parties 3 and 4 relied upon the decision of the learned Single Bench of this Court in W.P.(C) No.6990 of 2016 in the case of* ***Prafulla Kumar Mishra vs. State of Orissa and others (supra)****, where the learned Single Judge observed that Sanjaya Memorial Institution of Technology is not the State within the meaning of Article 12 of the Constitution and as such the writ application is not maintainable. In that case this Court has not referred to the decision of the Hon'ble Apex Court and the Division Bench of this Court have not been placed before this Court as the learned Single Judge of this court had not discussed the word "authority" as available in Article 226 of the Constitution. Hence, with due respect the decision of the learned Single Judge of this Court is distinguished and as such the same is not applicable to the fact and circumstances of the case."*

We have heard both parties at length in regard to the maintainability of the writ petition. We are completely in agreement with the conclusion arrived at by the learned Single Judge that the appellant-institution is "State" under Article 12 of the Constitution of India, hence, inescapably amenable to writ jurisdiction.

15. In so far as the point no.(ii) is concerned, the learned Single Judge has heavily relied upon the appointment letter of the Respondent no.3, which reads as under:-

> *"18. The appointment letter vide Annexure-1 which is also admitted by the Opp. Parties 3 and 4 is placed below for reference:-*
>
> *"Office of the Sanjaya Memorial Institute of Technology, At/P.O. Ankuspur, ViaKukudakhandi, Dist-Ganjam.*
>
> *No._____/83. Dated 14.10.83*
>
> ***Office Order***
>
> *Sri Subha Chandra Mishra, Misra Engineering, Berhampur is appointed as welder Instructor and remain in-charge of fabrication in the scale of Rs.300-8-308-10-358-LB-12-442-14-470/-* ***per month with usual D.A. and A.D.A. as admissible to the Govt. servants of Orissa****. The appointment is temporary and terminable with one month's notice from either side in liew thereof.*
>
> *He should join his appointment forthwith.*
>
> *He should come with his welding Transformer with him which will be returned after we procure our own transformer.*
>
> *Sd/- B. Nayak*
> *30.9.83*
> *President"*

The recitation in the appointment letter that the Respondent no.3 is entitled to usual D.A. and A.D.A. as admissible to the government servant of Orissa assumes importance. The learned Single Judge has also relied upon the service book maintained by the institution in regard to the Respondent no.3 and arrived at a finding that the institution has maintained the service book as that of a government servant. The service book as maintained and the appointment letter clearly lead to the only reference that the scale of pay as admissible to the government servant was intended to be available to the Respondent no.3. The learned Single Judge by taking into consideration the entire materials on record while answering the issue no.2 has arrived at the following conclusion:-

> *"21. The copy of the Service Book also shows that the petitioner has been given annual increments time to time and the service has been verified from time to time as per procedure applicable in Government service. Besides this, the petitioner has been allowed revised scale of pay with effect from 1.1.2006 and also it appears that on attaining the age of superannuation was relieved from duties on 31.7.2008. When the Service Book is maintained showing revision of scale and on the date of superannuation he was allowed to retire, the contention of the learned counsel for Opp. Parties 3 and 4 that the petitioner was paid consolidated pay and the job was temporary one, is untenable.*
>
> *xxx xxx xxx xxx*
>
> *23. In view of the aforesaid analysis, this Court is of the view that the petitioner is not only entitled to the scale of pay at per with the Government employees as per*

the Orissa Revised Scale of Pay Rules framed from time to time but also entitled to receive the same under the A.I.C.T.E. as the institute of Opp. Parties 3 and 4 is affiliated to A.I.C.T.E. Point No.II is answered accordingly."

Accordingly, the learned Single Judge went on to give the following relief to the Respondent no.3, which reads thus:-

"25. It has been observed that the scale of pay at par with the Government servant of the petitioner has been revised, but the revised scale of pay under the A.I.C.T.E. has not been released. At the same time in the counter affidavit the Opp. Parties 3 and 4 have taken the stand that the petitioner is not entitled to any amount that the contractual amount mentioned in the appointment letter. In fact from Annexure-2, it appears that the petitioner has been paid some salary at the discretion of SMIT, but neither according to the Orissa Revised Scale of Pay Rules nor the A.I.C.T.E. Rules. So, it is axiomatic to observe that the petitioner is entitled to the scale of pay of an Instructor as payable in the institution affiliated to A.I.C.T.E. as claimed by the petitioner. So, this Court direct the Opp. Parties 3 and 4 to fix up the pay in accordance with A.I.C.T.E. Rules for the post of Instructor from the date of his appointment i.e. 1985-86 till his retirement and make disbursement of the differential arrear salary. It is needless to say that after re-fixation of salary, pensionary benefits, if any, accrued on refixation be re-fixed on the last pay drawn and differential arrear amount be released to the petitioner by Opp. Parties 3 and 4. The entire exercise be completed by Opp. Parties 3 and 4 within a period of four months from today."

16. We do not see any perversity or illegality in the conclusion drawn by the learned Single Judge. Taking into consideration the conclusion and appreciation drawn by the learned Single Judge, in view of the limited scope of the jurisdiction in so far as Writ Appeal is concerned, we prefer not to interfere with the judgment dated 14.03.2018 passed by the learned Single Judge in W.P.(C) No.9492 of 2018. However, it is relevant to take into consideration the law laid down by the Hon'ble Supreme Court in ***Union of India -Vrs.- Tarsem Singh*** reported in ***(2008) 8 Supreme Court Cases 648*** establishing the principle that while a continuing wrong may exist in the context of service matters (such as pay fixation), the claim for arrears of salary is subject to limitation. The Court held that monetary claims should ordinarily be restricted to a period of three years preceding the date of filing the writ petition, except in cases where the employee has been continuously pursuing the claim through representations or legal proceedings without undue delay. Relevant part of the said judgment reads as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the

grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

The Bombay High Court, in a recent Division Bench decision in the case of ***Shishuvihar Shaishanik Sanstha Chalisgaon & Anr. -Vrs.- The State of Maharashtra & Ors.***, reported in ***2024 LiveLaw (Bom) 566***, reiterated that even if the right to proper salary is a continuing one, the arrears claim is limited to three years preceding the petition. The Court specifically applied the Tarsem Singh (supra) principle and restricted the claim for salary arrears to this period. Applying the above principle, the petitioner, having retired in 2008 and filed the writ petition in 2010, would be entitled to claim arrears of salary under the UGC or AICTE Guidelines only for the three years preceding the date of filing the writ petition. It is apparent on record that the petitioner had not been continuously agitating the claim through timely representations or legal action, the relief for arrears of salary cannot extend to the entire period from the date of appointment or even from the date of entitlement under the revised pay scales.

17. In light of the aforementioned observation, the judgment of the learned Single Judge dated 14.03.2018 is modified to the extent that the Respondent no. 3 is only entitled to the arrears of salary confined to the period of 3 years.

18. Accordingly, the Writ Appeal is disposed of.

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

Result of the case:
Writ Appeal disposed of.

—— o ——

2025 (II) ILR-CUT-1077

SARAT KUMAR BARAL & ORS.
V.
STATE OF ODISHA
REPRESENTED BY THE PRINCIPAL SECRETARY,
REVENUE ODISHA, CUTTACK & ORS.

[W.P.(C) NO. 5301 OF 2025]

04 JULY 2025

[K.R. MOHAPATRA, J. & MURAHARI SRI RAMAN, J.]

Issue for Consideration

Whether the ground, the petitioners are poor, illiterate and ignorant of law can be considered as *"sufficient case"* to condone the inordinate delay of 6540 days.

Headnotes

(A) LIMITATION ACT, 1963 – Section 5 – Condonation of Delay – Delay of 6540 days for filing of Appeal before the OEA authority – The ground, the petitioners are poor, illiterate and ignorant of law was taken for condonation of delay – Petitioners are in continuous possession of the case land – They were always busy in labour work to maintain their livelihood – They came to know about the settlement only when they received summons in the civil suit – Whether the ground, the petitioners are poor, illiterate and ignorant of law can be considered as *"sufficient cause"* to condone the inordinate delay.

Held: No – The explanation offered, as stated above in the petition for condonation of delay, cannot be termed as "*cause*" much less any "*sufficient cause*" to condone the inordinate delay. (Para 12.1)

(B) WORDS & PHRASES – Explanation and Excuse – Difference between – Explained. (Para 12.1)

Citations Reference

Chief Postmaster General and Ors. Vrs. Living Media India Limited and Anr., **AIR 2012 SC 1506;** Krushna Chandra Behera Pradhan and Anr. Vs. Government of Odisha, **2024 (II) ILR-CUT-936;** Sheo Raj Singh (Dead) through LRs. and Ors. Vs. Union of India and Anr., **(2023) 10 SCC 531 – referred to.**

List of Acts

Limitation Act, 1963**.**

Keywords

Limitation; Inordinate delay; Condonation of delay; Cause; Sufficient cause; Explanation; Excuse; Bebandobasta.

Case Arising From

Order dated 2nd January, 2025 passed by the Additional District Magistrate, Dhenkanal (Opposite Party No.3) in Misc. Case No. 14 of 2024 (arising out of OEA Appeal No.17 of 2021).

Appearances for Parties

For Petitioners : Mr. Srinibash Satapathy

For Opp. Parties : Mr. Saurjya Kanta Padhi, Sr. Adv.,
Mr. Bibhu Prasad Das

Judgment/Order

Judgment

BY THE BENCH,

1. This matter is taken up through hybrid mode.

2. The Petitioners, in this writ application, seek to assail the order dated 2nd January, 2025 (Annexure-9) passed by the Additional District Magistrate, Dhenkanal (Opposite Party No.3) in Misc. Case No. 14 of 2024 (arising out of OEA Appeal No.17 of 2021), whereby an application under section 5 of the Limitation Act filed by the Petitioners along with the Memo of Appeal was rejected and thereby the OEA Appeal was dismissed being barred by limitation.

3. Mr.Satapathy, learned counsel for the Petitioners submits that the Petitioners are natives of village-Mangalpur. They are in occupation of land pertaining to Plot No.590, Khata No.9 to an extent of Ac.16.25 decimal of Kisam Taiala Dui situated in Mauza- Saptasajya under Dhenkanal Sadar Tahasil in the district of Dhenkanal (for brevity, 'the case land'). They have planted cashew trees and are earning their livelihood from the usufructs. The Petitioners-villagers are in possession of the case land since 1944. As the rent of the case land was not settled, Bebandobasta Case No.784 (54) of 1997 was initiated on the file of Tahasildar, Dhenkanal Sadar. The Opposite Party No.5 clandestinely managed to record the case land in her name in the said Bebandobasta Case. The case land was originally recorded in the name of late Gaurendra Pratap Singhdeo under 'Bebandobasta' status. Thus, the Opposite Party No.5 being his daughter-in-law has no right to get the case land settled in her name. He further submits that the case land was recorded under 'Jungle' Kisam in the Sabik Record of Right. Thus, it could not have been settled in favour of the Opposite Party No.5 otherwise. No public notice or proclamation was made before settlement of the case land in favaour of Opposite Party No.5 under 'rayati' status. Since there was no public notice, the Petitioners did not have any occasion to know

about the settlement. When the matter stood thus, the Opposite Party No.5 filed Civil Suit No.90 of 2012 in the Court of learned Civil Judge (Senior Division), Dhenkanal for a decree of permanent injunction against some of the Petitioners. On receipt of copy of the plaint, the Petitioners came to know about the settlement made in favour of the Opposite Party No.5 and filed an Appeal before the Sub-Collector, Dhenkanal, registered as OEA Appeal No.2 of 2013, challenging the order of settlement. In the Appeal Memo, the Petitioners have vividly described the reasons for delay in filing the Appeal challenging the order of settlement made in favour of Opposite Party No.5 vide order dated 15th March, 2003 passed by learned Additional Tahasildar, Dhenkanal in Bebandobasta Case No.784(54)/1997. Along with the Appeal Memo, Petitioners had also filed an application for condonation of delay providing sufficient cause for delay in filing the Appeal. When the Appeal was so pending before the Sub-Collector, Dhenkanal, Petitioners realized that the Appeal was not maintainable before the said forum. Thus, they filed OEA Appeal No.17 of 2021 before the Additional District Magistrate, Dhenkanal. The Additional District Magistrate, Dhenkanal considering the case of the Petitioners remitted the matter to the Additional Tahasildar, Dhenkanal for fresh adjudication of Bebandobasta Case No.784(54) of 1997 vide order dated 6th July, 2023. The Opposite Party No.5 being aggrieved by said order preferred W.P.(C) No.623 of 2024 before this Court, which was disposed of vide order dated 12th June, 2024 with the following direction:-

> *"On perusal of the order sheet of OEA Appeal No.17 of 2021 and materials available on record, this Court finds that an application under Section 5 of the Limitation Act though filed by the Opposite Party Nos.5 to 18 for condonation of delay in filing the said appeal, but the same was not considered before disposal of the appeal on merit. Law is well settled that before condonation of delay, the appeal cannot be entertained on merit. As submitted by Mr. Dash, learned counsel for the Petitioner, there is delay of 6540 days in filing the appeal. Being conscious of the fact that the appeal is filed in delay, Opposite Party Nos.5 to 18 had also filed an application under section 5 of the Limitation Act. Thus, Additional District Magistrate was under legal obligation to consider the petition for condonation of delay before taking of the appeal on merit. Hence, the entire proceeding in the appeal is vitiated. It further appears from the record that although the objection was filed by the Petitioner to the petition for condonation of delay and appeal memo, the same was not taken into consideration by Additional District Magistrate while adjudicating the appeal.*
>
> *In that view of the matter, this Court feels that no fruitful purpose will be served by keeping the matter pending before this Court awaiting response from the Opposite Parties, who have not yet appeared. Moreover, it will cause further delay in disposal of the matter.*
>
> *In view of the discussions made above, we have no hesitation to hold that the entire proceeding in appeal is vitiated and in consequence thereof the impugned order under Annexure-1 is not sustainable and is accordingly set aside. The matter is remitted to Additional District Magistrate, Dhenkanal to adjudicate the matter afresh by taking up the limitation petition for condonation of delay giving*

opportunity of hearing to the parties concerned at the threshold. In the event, the delay is condoned, the Court may proceed with the appeal on merit considering the objection and other materials to be produced and providing opportunity of hearing to the parties concerned.

xxx xxx xxx"

Pursuant to the direction of this Court, the Additional District Magistrate took up OEA Appeal No.17 of 2021 afresh along with the petition for condonation of delay.

4. Mr. Satapathy, learned counsel drew our attention to the petition for condonation of delay filed along with the Appeal Memo in OEA Appeal No.17 of 2021. The said petition reads as under:-

"The humble petition on behalf of the appellants:- Most respectfully begs to state as follows:-

1. That, the appellants have filed this appeal to set aside the impugned land settlement order passed by the Additional Tahasildar in B.B. Case No.784(54)/97.

2. That, the appellants are poor and illiterate men, they do not know the process and procedure of law. They are in continuous possession of the case land. They are always busy in their labour works to maintain their livelihood, otherwise their family must have in starvation hence they could not get time to prefer the appeal in time. When the respondent and her men and agents tried to dispossess appellants they came to know about the illegal settlement of case land in the name of the respondent and prefer the appeal. When on serious illegality and fraud an order has been passed that order can be set aside at any time, procedural law like limitation will not come as a bar to set aside that order.

P R A Y E R

Therefore, it is prayed that would be kind enough to condone the delay in filing the appeal in the larger interest of justice.

xxx xxx xxx"

5. The Additional District Magistrate pursuant to the direction of this Court took up the petition for condonation of delay, i.e., Misc. Case No.14 of 2024 and passed the impugned order dated 2nd January, 2025 (Annexure-9).

6. Mr. Satapathy, learned counsel for the Petitioners submits that the impugned order under Annexure-9 is cryptic and nonspeaking. The grounds taken by the Petitioners in their Appeal Memo as well as limitation petition were not taken into consideration while rejecting the petition.

6.1 Reiterating his submission, Mr. Satapathy, learned counsel for the Petitioners submits that when the Opposite Party No.5 practicing fraud managed to record the case land in her favour, the delay should not come on the way to consider the OEA Appeal on merit as fraud vitiates everything. It is his submission that the Petitioners were not aware about the order of settlement as it was made without

following due procedure of law. They came to know about the same only when they received summons in Civil Suit No.90 of 2012 from the Court of the learned Civil Judge (Senior Division), Dhenkanal along with a copy of the plaint. Thus, the delay of 6540 days as pointed out by learned Additional District Magistrate will not come on the way to entertain the Appeal on merit. He, therefore, prays for setting aside the order dated 2nd January, 2025 (Annexure-9) passed by the Additional District Magistrate in remitting the matter for fresh adjudication of Misc. Case No.14 of 2024 for condonation of delay providing opportunity of hearing to the parties.

7. Mr. Padhi, learned Senior Advocate appearing along with Mr. Das, learned counsel for the Opposite Party No.5 submits that the Additional District Magistrate, Dhenkanal has committed no error in rejecting the petition for condonation of delay. The Petitioners have not shown any cause much less any sufficient cause to condone the inordinate delay of 6540 days in filing the OEA Appeal before the Additional District Magistrate, Dhenkanal. It is his submission that length of delay may not be a ground for consideration. But the Petitioners should have shown sufficient cause for condonation of such inordinate delay. The Petitioners have made mere excuses in the petition for condonation of delay to the effect that they are poor and ignorant about the procedure of law. They also stated that they were busy in earning their livelihood; thus, they could not prefer the Appeal in time. Those cannot be grounds for condonation of delay. Although it is elaborately submitted by Mr. Satapathy, learned counsel for the Petitioners that they came to know about the settlement of case land in favour of Opposite Party No.5 upon receipt of summons in Civil Suit No.90 of 2012, but in the petition for condonation of delay, they took a plea that when the Opposite Party No.5 and her henchmen tried to evict them from the case land, they came to know that the case land has been settled in her favour practicing fraud.

7.1 Mr. Padhi, learned Senior Advocate relies upon the decision in the case of Office of the ***Chief Postmaster General and others Vrs. Living Media India Limited and another, AIR 2012 SC 1506***, wherein, Hon'ble Supreme Court has categorically observed that while considering the petition for condonation of delay, the Courts should take into consideration the grounds stated in the petition for condonation of delay and whether the same are sufficient to condone such delay or not.

8. It is the submission of Mr. Padhi, learned Senior Advocate that the settlement made in favour of Opposite Party No.5 was in accordance with law as would be apparent from the order-sheet in Bebandobasta Case No.784 (54) of 1997 (Annexure-7). Due procedures have been followed and public objection was invited. Vide order dated 22nd February, 2003, the Additional Tahasildar, Dhenkanal has categorically stated that although notice was duly served and objections were called for, no objection was received from any quarter. Opposite Party No.5 is the daughter-in-law of the tenant, late Gaurendra Pratap Singhdeo, the original recorded tenant under Bebandobasta status. Thus, no error has been committed by Additional

Tahasildar, Dhenkanal in settling the case land under rayati status in favour of the Opposite Party No.5 vide order dated 15th March, 2003 in Bebandobasta Case No.784 (54) of 1997. It is further submitted that settlement in favour of Gaurendra Pratap Singhdeo was never challenged by the Petitioners. The Bebandobasta case was only initiated for settlement of rent. Thus, the Petitioners being rank outsiders have no locus standi to challenge the order of settlement of rent in favour of Opposite Party No.5 under rayati status. He, therefore, prays for dismissal of the writ petition.

9. Heard learned counsel for the parties. Perused the materials on record.

10. Upon hearing learned counsel for the parties and on perusal of the record, it is apparent that assailing the order of settlement of rent in respect of the case land dated 15th March, 2003 in favour of Opposite Party No.5 in Bebandobasta Case No.784 of 1997, the Petitioners preferred Appeal before the Sub-Collector, Dhenkanal in OEA Appeal No.2 of 2013. The said Appeal is stated to be still pending.

11. Mr. Satapathy, learned counsel for the Petitioners fairly submits that the Appeal being not maintainable before the said forum, an application/memo was filed before the Sub-Collector, Dhenkanal for withdrawal of the said Appeal. However, no order on the said application/memo has yet been passed by the Sub-Collector, Dhenkanal. In that process, delay of 6540 days has occurred in preferring the Appeal. However, the Petitioners being advised, filed appeal being OEA Appeal No.17 of 2021 before the Additional District Magistrate, Dhenkanal challenging the order of settlement. Although it is submitted by Mr. Satapathy, learned counsel for the Petitioners that the Petitioners came to know about the settlement of the case land in favour of Opposite Party No.5 when they received summons in Civil Suit No.90 of 2012, but no such averments has either been made in the Appeal Memo (OEA Appeal No.17 of 2021) filed before the Additional District Magistrate, Dhenkanal or in the petition for condonation of delay. On the other hand, it is stated by the Petitioners in the petition for condonation delay that when the Opposite Party No.5 and her henchmen tried to evict/dispossess them from the case land, they came to know about the settlement made in favour of Opposite Party No.5. It further appears from the submission of Mr. Satapathy, learned counsel that the Petitioners have alleged fraud against the Opposite Party No.5 in getting the case land settled in her favour. Law is well-settled that the fraud has to be alleged specifically. No specific averments/allegations have been made in the Appeal Memo with regard to act of fraud allegedly played by Opposite Party No.5 in settling the case land in her favour.

12. Perusal of the Appeal Memo in OEA Appeal Case No.17 of 2021 and Misc. Case No.14 of 2024 filed for condonation of delay does not make out any case for condonation of delay, inasmuch as, no ground as submitted by Mr. Satapathy, learned counsel for the Petitioners before this Court was raised before the Additional

District Magistrate, Dhenkanal either in the Appeal Memo or in the petition for condonation of delay. Thus, the Additional District Magistrate, Dhenkanal, had no occasion to deal with such contentions as raised by the Petitioners before this Court.

12.1 The explanation offered, as stated above in the petition for condonation of delay, cannot be termed as 'cause' much less any 'sufficient cause' to condone the inordinate delay. These are mere excuses and not explanation. In the case of ***Krushna Chandra Behera Pradhan and another Vs. Government of Odisha***, reported in ***2024 (II) ILR-CUT-936***, this Court relying upon the ratio in the case of ***Sheo Raj Singh (Dead) through Lrs. and others Vs. Union of India and another***, reported in ***(2023) 10 SCC 531*** has explained the difference between 'explanation' and 'excuse', which reads as under:-

> *"7. From an analysis of the submissions made by learned counsel for the parties and on perusal of the record more particularly the ground taken in the petition under Order IX Rule 13 CPC under Annexure-6, it is crystal clear that those are not the explanations but mere excuses of the State Government. As held in Sheo Raj Singh (supra), there is a distinction between 'explanation' and 'excuses'. It is held therein that condonation of delay being a discretionary power available to Courts, exercise of discretion must necessarily depend upon sufficiency of the cause and degree of acceptability of the explanation, the length of delay being immaterial. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being offered, delay of shortest range may not be condoned whereas in certain other cases delay of long period can be condoned if the explanation is satisfactory and acceptable . Of course, Courts must distinguish between 'explanation' and 'excuse'. Explanation is designed to give someone all of the facts and lay out a cause for something. It helps clearly the circumstances of a particular event and allows the person to point out that something that has happened is not his fault. Care must however be taken to distinguish an 'explanation' from an 'excuse'. Although common people tend to see 'explanation' and 'excuse' in same parlance and struggled to find out the difference between the two, but the Court of law has the obligation to find out that distinction which though fine, is real. An excuse is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something just an 'excuse' would imply that 'explanation' offered is believed not to be true. Thus, the Hon'ble Supreme Court has observed that length of delay is not a matter of consideration but the explanation that is offered has a dominant role in considering the case of the parties in taking a decision for condonation of delay. The Hon'ble Supreme Court has also observed that a delay whatsoever minimal may be, should not be condoned on a mere excuse. In the instant case, on a bare perusal of the petition under Order IX Rule 13 CPC, it appears that the Government has admitted its negligence stating that for the negligence of the officials, the State should not suffer. The officials being employees of the State, State Government has a vicarious liability for the loss caused by its officials. Further, no explanation for condonation of delay much less any sufficient cause is offered in the petition under Order IX Rule 13 CPC, only because an ex-parte decree has been passed declaring right, title and interest of the*

Petitioners over a valuable piece of land, the same cannot be a ground to condone the inordinate and un- explained delay of more than 12 years."

(emphasis supplied)

In the aforesaid case law, this Court relying upon the case of ***Sheo Raj Singh (supra)***, held that there is a distinction between 'explanation' and 'excuse'. Explanation is designed to give someone all of the facts and lay out a cause for something. It helps clearly the circumstances of a particular event and allows the person to point out that something that has happened is not his fault. An excuse on the other hand is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something just an 'excuse' would imply that 'explanation' offered is believed not to be true. In ***Sheo Raj Singh (supra)***, it has also been stated the length of delay being immaterial sometimes, due to want of sufficient cause being shown or an acceptable explanation being offered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable.

13. On perusal of the case record more particularly the impugned order, it appears that the Additional District Magistrate pursuant to the direction of this Court, vide order dated 12th June, 2024 in W.P.(C) No.623 of 2024, took up the matter for condonation of delay and passed the impugned order.

14. Upon hearing learned counsel for the parties and on perusal of the record, we do not find any infirmity in the impugned order under Annexure-9 in refusing to condone the inordinate delay of 6540 days in filing the Appeal.

15. Accordingly, the writ petition, being devoid of merit, stands dismissed. In the facts and circumstances, there shall be no order as to cost.

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-1085

BANSIDHAR RANA
V.
COMMISSIONER OF ENDOWMENTS, ODISHA, BHUBANESWAR & ORS.

[W.P.(C) NO. 12953 OF 2023]

15 JULY 2025

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

Issue for Consideration

Whether permanent vacancy in the office of the Hereditary Trustee of the religious institution should be filled up by way of succession.

Headnotes

ODISHA HINDU RELIGIOUS ENDOWMENTS ACT, 1951 – Sections 30, 79 r/w Section 4, 5 of OHRE Act, 1939 r/w provisions of Madras Hindu Religious Endowment Act, 1926 – The ancestor of the petitioner was recognized as Hereditary Trustee (in short HT) of the Deity vide judgment of learned District Judge in Original Petition filed under the provision of Madras Hindu Religious Endowments Act, 1926 – Petitioner being the grandson of original Hereditary Trustee applied to recognize him as Hereditary Trustee – Learned Commissioner held that Patitapaban, the father of the petitioner, being not recognized as Hereditary Trustee, the claim of the petitioner to be recognized as Hereditary Trustee couldn't be entertained – Whether permanent vacancy in the office of the Hereditary Trustee of the religious institution should be filled up by way of succession.

Held: Yes – Since Jogi Rana was undisputedly recognized as the HT of the institution under the provisions of the Madras Hindu Religious Endowments Act, 1926, such action/recognition is saved by virtue of Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939 and Section 79 (2)(a) of the Act – Hence, recognition of Jogi Rana as HT of the case institution does not become redundant either by lapse of time or by substitution of Act – These material aspects were not taken into consideration by learned Commissioner while adjudicating the petition under Section 30 of the Act.

(Para 10)

Upon a vacancy in the office of the HT, it is the duty of learned Commissioner to recognize the successor next in line to succeed to the said office, unless he acquires any disqualification – In that view of the matter, the observation made by learned Commissioner to the effect that the claim of the Petitioner has become redundant is not sustainable – The claim of the

Petitioner is still alive and should be considered in terms of Section 30 of the Act. (Para 11)

List of Acts

Odisha Hindu Religious Endowments Act, 1939; Orissa Hindu Religious Endowments Act, 1951; Madras Hindu Religious Endowments Act, 1926.

Keywords

Hereditary Trustee; Recognition; Succession; Permanent vacancy.

Case Arising From

Order dated 26th Feb 2018, passed by learned Commissioner of Endowments in O.A. No. 264 of 2011.

Appearances for Parties

For Petitioner : Mr. Manmaya Ku. Dash
For Respondent : Mr. Amit Ku. Nath (O.P. No. 1)

Judgment/Order

Judgment

BY THE BENCH,

1. This matter is taken up through hybrid mode.

2. The Petitioner in this writ petition seeks to assail the order dated 26th February, 2018 (Annexure-4) passed by learned Commissioner of Endowments, Odisha, Bhubaneswar (for brevity 'learned Commissioner') in O.A. No.264 of 2011, rejecting an application under Section 30 of the Odisha Hindu Religious Endowments Act, 1951 (for brevity 'the Act'), refusing to recognize the Petitioner as the Hereditary Trustee (HT) of the religious institution, namely, Sri Sri Tara Tarini Goddess bije, Taratarini Hills in the district of Ganjam (for brevity 'the Deity').

3. Mr. Dash, learned counsel for the Petitioner submits that the ancestor of the Petitioner, namely, Jogi Rana was recognized as HT of the Deity vide judgment dated 25th October, 1935 passed by learned District Judge, Ganjam in Original Petition No.21 of 1935 filed under the provisions of Madras Hindu Religious Endowment Act, 1926. Said Jogi Rana was the grandfather of the Petitioner. Jogi Rana had four sons, namely, Patitapaban, Mrutunjaya, Ananta and Magata. The Petitioner is the one of sons of Patitapaban. Patitapaban did not take any step to recognize him as HT of the Deity. When the dispute arose with regard to recognition of the Petitioner as the HT of the Deity, he filed an application under Section 30 of the Act (OA No.264 of 2011). Learned Commissioner holding that Patitapaban, the father of the Petitioner being not recognized as the HT, claim of the Petitioner to be recognized as HT could not be entertained.

3.1 The Petitioner also challenges the observation made by learned Commissioner to the effect that when the Hereditary Trusteeship of the forefathers of the present Petitioner could not be established as HT except Jogi Rana, the grandfather, the question of claim of the Petitioner as the HT is forfeited due to lapse of time and change of substitution of the Act in place of Madras Hindu Religious Endowments Act, 1926 under which Jogi Rana was recognized as HT of the Deity.

4. Mr. Dash, learned counsel for the Petitioner draws attention to the provisions under Sections 79 (2)(a) of the Act, which reads as under:

> *"**79. Repeal and affect of repeal of the Odisha Hindu Religious Endowments Act, 1939**:– (1) The Odisha Hindu Religious Endowments Act, 1939, (Odisha Act IV of 1939) is hereby repealed.*
>
> ***(2)** Notwithstanding the repeal of the Odisha Hindu Religious Endowments Act, 1939 (Odisha Act IV of 1939)*
>
> ***(a)** all rules made, notification issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the State Government or 1[the Commissioner] under the said Act, shall in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall have effect accordingly;"*

4.1. He further draws attention of this Court to Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939, which read as under:

> *"**4. Repeal of enactments:-** The Madras Hindu Religious Endowments Act. II of 1926, the Religious Endowments Act XX of 1863, the Bengal Charitable Endowments Public Buildings and Escheats Regulation, 1810 and the the Charitable and the Religious Trusts Act, XIX of 1920 (here-inafter referred to as the said Acts), so far they apply to the religious endowments in Orissa, to which this Act applies, are hereby repealed.*
>
> ***5. Validity of Action taken, notifications and orders issued under the repealed enactments:-*** (i) All actions taken and all things done, the notifications issued and orders made under and in pursuance of the said Acts, shall be deemed to have been validly taken, done, issued or made.
>
> *(ii) All proceedings taken under the said Acts may be continued under this Act, in so far as they are not inconsistent with the provisions of this Act.*
>
> *(iii) Any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Acts pending at the time of the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act."*

4.2. He, therefore, submits that recognition of Jogi Rana, the grandfather of the Petitioner as HT of the Deity under the provisions of Madras Hindu Religious Act, 1926, has the relevance in recognizing the Petitioner as the HT of the institution. By lapse of time and substitution of the Act, such recognition does not become otiose. He further submits that the Petitioner has never acquired any disqualification under Section 29 of the Act, to be recognized as HT of the Deity. These material aspects were lost sight of by learned Commissioner while adjudicating the matter. Hence, he

prays for setting aside the impugned order under Annexure-4 and to remit the matter to learned Commissioner for fresh adjudication of O.A. No.264 of 2011.

5. Mr. Nath, learned counsel appearing for learned Commissioner, vehemently objects to the submission made by Mr. Dash, learned counsel for the Petitioner. It is his submission that a Scheme under Section 42 of the Act has been settled for the case institution. Clause-3 of the Scheme reads as under:

> *"The said institution with its endowments shall be administered by a Board of Trustees not exceeding five in number, out of whom one shall be the Hereditary Trustee and the rest shall be appointed by the Commissioner of Endowments, as far as practicable, from among the persons to which cult the institution belongs, who shall hold office for such period not exceeding five years, as may be fixed by him."*

He, therefore, submits that as per the provisions under Section 3 of the Scheme, the term of the HT is five years. No step, whatsoever, was taken by Patitapaban, the father of the Petitioner to recognize him as the HT. Thus, question of recognition of the Petitioner, who is next in line as HT, does not arise at all. He, therefore, submits that the writ petition merits no consideration and is liable to be dismissed.

6. Notice on Opposite Party Nos.3 to 9 has been dispensed with vide order dated 28th October, 2024 on the prayer of Mr. Dash, learned counsel for the Petitioner, as no relief is claimed against them.

7. Heard learned counsel for the parties. Perused the provisions of law cited and materials placed by learned counsel for the parties.

8. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the case of the Petitioner squarely falls under the provisions of Section 30 of the Act, which deals filing up vacancies in the office of HT and reads as under:

> ***"30. Filing up of Vacancies in the Office of hereditary Trustee:–*** *When a permanent vacancy occurs in the Office of the hereditary Trustee of such Religious institution the next in the line of succession shall be entitled to succeed to the Office.*
>
> *(2) When a temporary vacancy occurs in such an Office by reason of the suspension of the hereditary Trustee under Sub-Section (1) of Section 28 or by reason of his ceasing to hold Office under the provisions of Section 29, the next in the line of succession shall be appointed to discharge the functions of the Trustee until his disability ceases.*
>
> *(3) When a permanent or temporary vacancy occurs in such an Office and there is a dispute respecting the right of succession to the Office, or when such vacancy cannot be filled up immediately or when a hereditary Trustee is minor and has no legally constituted guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as such guardian, the Commissioner may appoint a fit person to discharge the functions of the Trustee of the institution until the disability of the hereditary Trustee ceases or another hereditary Trustee succeeds to the Office or for such shorter term as the Commissioner may direct. The Commissioner shall have power to remove such interim Trustee for the reasons specified in Section 28."*

Thus, when a permanent vacancy occurs in the office the HT of the religious institution, the next line of succession shall be entitled to succeed to the office.

9. The provisions under Clause-3 of the Scheme relates to constitution of Board of the Trustees. The said clause provides that one of the HT shall be nominated to the Trust Board of the Institution, whereas, Section 30 of the Act deals with filling up vacancy in the office of HT of a religious institution. Section 30 of the Act neither is in conflict nor in contradiction with the Scheme and it can never be. The Trust Board should not be confused with the office of HT. More than one HT may be recognized to fill up the vacancy of the office of the HT of a religious institution. In the instant case, only one of them will be in the Trust Board as per Clause-3 of the Scheme

10. Since Jogi Rana was undisputedly recognized as the HT of the institution under the provisions of the Madras Hindu Religious Endowments Act, 1926, such action/recognition is saved by virtue of Sections-4 and 5 of the Odisha Hindu Religious Endowments Act, 1939 and Section 79 (2)(a) of the Act. Hence, recognition of Jogi Rana as HT of the case institution does not become redundant either by lapse of time or by substitution of Act. These material aspects were not taken into consideration by learned Commissioner while adjudicating the petition under Section 30 of the Act.

11. Upon a vacancy in the office of the HT, it is the duty of learned Commissioner to recognize the successor next in line to succeed to the said office, unless he acquires any disqualification. In that view of the matter, the observation made by learned Commissioner to the effect that the claim of the Petitioner has become redundant is not sustainable. The claim of the Petitioner is still alive and should be considered in terms of Section 30 of the Act.

12. Accordingly, the impugned order under Annexure-4 being not sustainable is set aside and the matter is remitted to learned Commissioner of Endowments, Odisha, Bhubaneswar for fresh adjudication of O.A. No.264 of 2011 filed under Section 30 of the Act providing opportunity of hearing to the parties concerned.

13. Since the petition under Section 30 of the Act was filed in the year, 2011, learned Commissioner of Endowments, Odisha, Bhubaneswar shall do well to adjudicate the same expeditiously.

14. With the aforesaid observation and direction, this writ petition is accordingly disposed of. In the facts and circumstances of the case, there shall be no order as to costs.

Urgent certified copy of this judgment be granted on proper application.

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-1090

SANJAYA KUMAR SAHOO
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 11654 OF 2022]

11 JULY 2025

[DIXIT KRISHNA SHRIPAD, J. & MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

1. Whether the order of premature retirement is sustainable.
2. Whether Writ Court has jurisdiction/scope to review the decision taken by the Full Court.
3. Whether the order of premature retirement of the petitioner even after he was accorded promotion to Selection Grade is sustainable.
4. Whether an order of punitive nature could have been passed without giving an opportunity of hearing.

Headnotes

(A) ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Rule 44 Sub Rule (1) – The petitioner has been retired prematurely at the age of 55 years, whereas the age of retirement is 60 – The pre-conditions prescribed in Rule 44 of the Rules 2007 had not been followed while imposing the punishment of premature retirement – Whether the order of premature retirement is sustainable.

Held: No – The pre-conditions, which Rule prescribes for causing premature retirement of a Judicial Officer, are: (i) He should have attained the age of 50 years; (ii) Governor has to have consultation with the High Court; & (iii) three months' prior notice or three months' pay & allowances in lieu of such notice – It hardly needs to be stated that cutting short tenure of public office is a serious matter; such decisions have to be consistent with the intent of Makers of the Constitution as lurking in Article 16 – Though right to public employment is not guaranteed, once a citizen is duly employed, he cannot be whimsically removed – Therefore, the power to prematurely retire is in the nature of an exception and the sine qua non for exercising such power has to be strictly complied with – Appreciably, there is no much divergence of opinions at the Bar in this regard. (Para 1-C)

(B) SERVICE JURISPRUDENCE – Scope of Judicial Review – The petitioner has been prematurely retired at the age of 55 years – Whether Writ Court has jurisdiction/scope to review the decision taken by the Full Court.

Held: Yes – A Writ Court exercising original jurisdiction in a service dispute would be committing a grave error if it declines indulgence only on the ground that the impugned action is founded on the administrative opinion of Full Court – It all depends upon errors demonstrable from the records – *Much is not necessary to discuss and less is insufficient to leave it unsaid*. (Para 2-b)

(C) ODISHA SUPERIOR JUDICIAL SERVICE AND ODISHA JUDICIAL SERVICE RULES, 2007 – Premature retirement – Admittedly, there is not even one sporadic adverse remark in the CCR/PARs of the petitioner – The petitioner has not been found guilty in any of the disciplinary proceedings but he was "cautioned to be careful in future" – However, this is not the prescribed punishment in the extant Rules – At the most, it is advisory in character and therefore cannot be constructed as an adverse remark – The petitioner earned career progression on regular basis as obtaining in the hierarchy – He was granted promotion to District Judge Selection Grade – Whether the order of premature retirement of the petitioner even after he was accorded promotion to Selection Grade is sustainable.

Held: No – It sounds strange that on 23.02.2022 the "Full Court/Review Committee" resolved to prematurely retire the petitioner, there being absolutely no change of circumstance after he was accorded promotion to Selection Grade. (Para 3-d)

We repeat that there were absolutely no adverse entries in the CCRs/PARs of petitioner. (Para 3-e)

(D) PRINCIPLES OF NATURAL JUSTICE – The Authority/ Committee prematurely retired the petitioner without affording an opportunity of hearing – Whether an order of punitive nature could have been passed without giving an opportunity of hearing.

Held: No – The answer has to be in the negative – Records do not reveal any reasons as to why no disciplinary inquiry was initiated nor was any opportunity afforded – We hasten to add that the requirement of hearing arises only because of imperative principles of natural justice, and not on account of requirement of a 3-month notice prescribed in Rule 38 – It hardly needs to be stated that payment of three months emoluments dispenses with such a notice – Admittedly, they are paid in this case. (Para 4-b)

Citations Reference

DAVIS v. MILLS, **194 US 451 (1904)**; Arun Kumar Gupta v. State of Jharkhand, **(2020) 13 SCC 355**; UOI v. M. E. Reddy, **(1980) 2 SCC 15**; Baldev Raj Chhada v. UOI, **AIR 1981 SC 70**; Gujurat v. Umedbhai M Patel,

(2001) 3 SCC 314; UOI v. Dulal Dutta, **(1993) 2 SCC 179**; Pradeep Kumar Pattnaik v. State of Odisha, **[WP(C) No. 19416 of 2014]**; State of U.P. v. Vijay Kumar Jain, **(2002) 3 SCC 641**; Pyare Mohn Lal v. State of Jharkhand, **(2010) 10 SCC 693**; District Bar Association Dehradun v. Ishwar Shandilya, **2023 SCC OnLine SC 45**; High Court of Patna v. Shyam Deo Singh, **(2014) 4 SCC 773** – **referred to**.

List of Acts

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

Keywords

Compulsory retirement; Premature retirement; Principle of natural justice; Promotion without stigma; *Prima facie; Punctus punctilio;* Age of superannuation; Absolute right; Absolute power.

Case Arising From

Government Notification No. 8351/HS dated 11.03.2022

Appearances for Parties

For Petitioner : M/s. (Dr.) Purusottam Chuli, P. Nath, A. Routray, (Dr.) S. Patnaik and (Ms.) S. Patnaik

For Opp.Parties : Mr. Prabhu Prasanna Behera, A.S.C.

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Petitioner, a Judicial Officer (then a Family Court Judge), is invoking the Writ Jurisdiction of this Court for calling in question the Government Notification No. 8351/HS dated 11.03.2022 (Annexure-1), whereby he has been prematurely retired from service at the age of 55 years, normal age of superannuation being 60.

(II) Foundational Facts:

(i) Petitioner joined the District Judiciary on 17.11.1997 as Addl. Civil Judge (Jr. Dn.)-cum-Judicial Magistrate Second Class. He was granted ACP-II Scale of Pay vide order 15.10.2009. He earned his first promotion as Sub-Divisional Judicial Magistrate on 03.06.2010. His second promotion to the cadre of Civil Judge (Sr. Dn.) was vide order dated 11.02.2011. A little later, he was granted ACP-II Pay Scale with retrospective effect from 16.11.2007 vide order dated 20.07.2011.

(ii) Petitioner was granted next promotion to the post of Chief Judicial Magistrate vide order dated 01.08.2013 and later to that of District Judge vide order dated 29.07.2015. In 2017 his performance having been reviewed at the age of 50 years, he was allowed to continue. He got Selection Grade w.e.f. 09.08.2020 vide notification dated 29.01.2021 issued by this Court on the administrative side. However, he came to be prematurely retired at the age of 55 years whilst presiding over the Family Court at

Nabarangpur vide impugned notification dated 11.03.2022. After service of notice, the opposite parties having entered appearance through their counsel filed their counter to resist the petition.

(III) Submissions on behalf of the Petitioner, as concised by us:

(i) Petitioner is a meritorious candidate with the spotless service of District Judiciary and his service credentials are unimpeachable by any standards, more particularly the normative ones promulgated in Rule-44 of The Odisha Superior Judicial Service and Odisha Judicial Service Rules, 2007 (hereafter called "2007 Rules").

(ii) In respect of subject allegations, disciplinary proceedings came to be dropped without imposing any punishment prescribed under the extant Rules and once that having happened, the same could not be treated as the material impeaching credentials of the petitioner.

(iii) Petitioner earned several promotions and that after the review of his credentials, the Review Committee decided to continue him in service beyond 50 years. Very importantly, within a short period reckoned from the grant of Time Scale/Promotion, he could not have been asked to quit the service.

(iv) When an employee is granted promotion, whatever arguable black spots that obtained in the Service Records do pale away and therefore there is absolutely no justification for compulsorily retiring the petitioner in a premature way.

(v) Lastly, the extant Rule provides for notice and therefore without such notice the petitioner being asked to retire is in violation of the principles of natural justice, especially when the impugned order has stigmatic elements, notwithstanding its apparent innocuous appearance.

(IV) Contentions urged on behalf of opposite parties:

(i) The Jurisdictional Committee on the administrative side of this Court and the Full Court having examined the matter have taken the decision to prematurely retire and that being the bedrock of the impugned order, this Court exercising limited supervisory jurisdiction should loathe to interfere in matters like this.

(ii) The impugned decision is a product of collective factors, namely: disciplinary proceedings in D.P. No.2 of 2007; Night Watchman's allegation as to caste aspersions & use of filthy language; complaint of District Bar Association and boycott of petitioner's Court because of his unruly behavior, unfair practice & non-supply of cause list.

(iii) Grant of promotions does not erase adverse remarks entered in the Service Records of an employee; in any event, petitioner does not have unblemished service records, as sought to be projected before the Court;

(iv) A Judicial Officer is not just another public servant; he discharges sovereign functions of the State and therefore the standard of his conduct has to be much higher; even a thick doubt as to the integrity would justify premature retirement, as has happened in this case.

(v) The impugned order is not stigmatic; it has been made in the public interest after scrupulously following the normative procedure promulgated in the extant Rules

applicable to the case and no prejudice is caused to the petitioner, who draws full pension and all terminal benefits.

(vi) Lastly, the principles of natural justice do not apply to cases of the kind and even otherwise granting of an opportunity of hearing would not have brought about a different end product and therefore no case on that count is made out by the petitioner.

(V) We have heard learned counsel for the parties and perused the petition papers. We also looked into the records furnished in Sealed Cover. Advertence to relevant of the Rulings cited at the Bar, is also made. We are inclined to grant limited relief to the petitioner, as under and for the following reasons:

(1) As to the Statutory Scheme providing for premature retirement:

(a) The 2007 Rules have been promulgated by the Governor of Odisha in exercise of power conferred by the Proviso to Article 309 read with Articles 233, 234 & 235 of the Constitution of India. Rule 42 prescribes 60 years as the age of superannuation. Rule 44 provides for premature retirement in public interest. This Rule, being relevant to the case at hand, is reproduced below:-

> *"**44. Retirement in public interest**-(1) Notwithstanding anything contained in these rules the Governor shall, in consultation with the High Court, if he is of the opinion that it is in the public interest so to do, have absolute right to retire any member of the service who has attained the age of fifty years, by giving him/her notice of not less than three months in writing or three months pay and allowances in lieu of such notice.*
>
> *(2) Whether any officer of the service should be retired in public interest under Sub-rule (1) shall be considered at least three times, that is, when he is about to attain the age of fifty years, fifty five years and fifty eight years:*
>
> *Provided that nothing in Sub-rule (2) shall be construed in public interest as preventing the Governor to retire a member of the service at any time after he/she attains the age of fifty years on the recommendation of High Court under Sub- rule (1)."*

(b) In the ordinary circumstances, every Judicial Officer shall retire on attaining the age of superannuation which Rule 42 fixes to be 60 years. This one sentence Rule has the following text:

> *"**42. Age of superannuation**- The age of superannuation of an officer of the service shall be sixty years.*

This Rule in a normal way guarantees every Judicial Officer the right to hold and continue in office till he completes the age of 60 years. It hardly needs to be stated that the cases of termination of service by virtue of disciplinary action do not fall within the parameters of this Rule. Rule 44 is in the nature of an exception to the general norm promulgated in Rule 42. Sub-Rule (1) of Rule 44 vests "absolute right" in the Governor of the State to retire any Member of Judicial Service in public interest. The expression "absolute right" is an anathema to the Rule of Law. In a constitutionally ordained Welfare State, there is nothing like "absolute right" or "absolute power", and the very text & context of this Rule makes it abundantly clear that the adjective 'absolute' remains on the Rule Book as an ornamental relic of

bygone Colonial Era. Rule 42 prescribes certain conditions, which the Governor is required to satisfy himself.

(c) The pre-conditions, which Rule 42 prescribes for causing premature retirement of a Judicial Officer, are: (i) He should have attained the age of 50 years; (ii) Governor has to have consultation with the High Court; & (iii) three months‟ prior notice or three months‟ pay & allowances in lieu of such notice. It hardly needs to be stated that cutting short tenure of public office is a serious matter; such decisions have to be consistent with the intent of Makers of the Constitution as lurking in Article 16. Though right to public employment is not guaranteed, once a citizen is duly employed, he cannot be whimsically removed. Therefore, the power to prematurely retire is in the nature of an exception and the sine qua non for exercising such power has to be strictly complied with. Appreciably, there is no much divergence of opinions at the Bar in this regard.

(2) As to the scope of judicial review in matters of premature retirement:

(a) The vehement contention of learned State Counsel appearing for the opposite parties that a Writ Court cannot undertake a deeper examination of the matter like this, as if it is an appellate authority, is too broad a proposition. We are not exercising appellate power, because we do not have such power granted under the subject Rules or under any other law. The case at hand is not an appeal, is also not disputed. That being said, a worthy cause brought before the Court cannot be turned down by quoting some jurisprudential theories. It was Justice Oliver Wendell Holmes, who in ***DAVIS v. MILLS***[1], observed as under:

> *"Constitutions are intended to preserve practical and substantial rights, not to maintain theories…"*

The above observation cannot be lost sight of, when Writ Jurisdiction is invoked by the aggrieved citizens. We also have to bear in mind that litigants come to Court inevitably and with no joy at heart, for obvious reasons. A Writ Court has to be doubly sure before sending them back, empty handed. This is not to say that in every case, regardless of its intrinsic merits, indulgence should be sought, conventional limitations obtaining in the realm of Law of Writs, notwithstanding.

(b) It again would be too farfetched an argument that whenever the Full Court of a High Court on the administrative side takes a decision, an Island of Immunity from judicial review, is created. We hasten to add that such a decision by its very nature raises a high presumptive validity, is also true. Learned State Counsel is right in drawing our attention to ***Arun Kumar Gupta v. State of Jharkhand***[2], which restricts judicial review whilst examining decisions of Screening Committee & Standing Committee comprising of Senior Judges of the High Court. Obviously,

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[1] 194 US 451 (1904)

[2] (2020) 13 SCC 355

these limitations do apply with more vigor to the Resolutions of Full Court. We also appreciate the fair stand taken up by both the sides that this case be heard and decided at our hands on merits, one of us (Justice M.S. Sahoo) being a party to the Full Court decision, notwithstanding. Administrative decision is one thing and judicial determination is another. There is difference between them in terms of approach, nature, quality & content. This is not to belittle the deliberations that happen in a Full Court meeting. A Writ Court exercising original jurisdiction in a service dispute would be committing a grave error if it declines indulgence only on the ground that the impugned action is founded on the administrative opinion of Full Court. It all depends upon errors demonstrable from the records. *Much is not necessary to discuss and less is insufficient to leave it unsaid.*

(c) Both the sides have cited a plethora of rulings and that since we do not have quarrel with their *ratio decedendi*, reference to most of them is avoidable. In ***UOI v. M. E. Reddy***[3], it is said that compulsory retirement causes no prejudice to the official, since he draws full pension and other terminal benefits, which would provide solace to him even if he feels a bit hurt. In ***Baldev Raj Chhada v. UOI***[4], it is observed that the order to retire can be passed on a broad principle as to whether a rationale mind in the trade might conceivably be satisfied that the compulsory retirement of the official is necessary in public interest. The Apex Court faltered such an order on the ground that vital materials relevant to the decision such as, 14 years of spotless service, absence of any adverse entries for the preceding five years, crossing of efficiency bar, etc. were ignored. In State of ***Gujurat v. Umedbhai M Patel***[5], it is observed that the order of compulsory retirement shall not be passed as a short cut to avoid departmental enquiry when such course is more desirable, and that if the officer was given a promotion despite adverse entries made in the confidential record, that is a fact weighing in favour of the official, and that compulsory retirement shall not be imposed as a punitive measure. In ***UOI v. Dulal Dutta***[6], it is ruled that such an order need not invariably be a speaking order, since it is made on subjective satisfaction of the competent authority.

(d) A Coordinate Bench of this Court in ***Pradeep Kumar Pattnaik v. State of Odisha***[7] decided on 04.04.2022 surveyed the growth of law relating to premature retirement and observed at Para-14 as under:

> *"14. xxxx The Officer in question did not have an unblemished service record and for many years, his rating was „Average". It is entirely possible that he received his promotions in due course, but the parameters that weigh with the Court when it comes to retaining a Judicial Officer in service after attaining the ages of fifty years, fifty-five*

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[3] (1980) 2 SCC 15

[4] AIR 1981 SC 70

[5] (2001) 3 SCC 314

[6] (1993) 2 SCC 179

[7] [WP(C) No. 19416 of 2014]

years and fifty-eight years would be based on a review of the entire service career of the Officer and not just on a few years of performance. In that sense, the grant of promotion a few months earlier to the review of such performance would not ipso facto preclude such a review for the purposes of the decision to be taken regarding compulsory retirement of such Officer."

In ***State of U.P. v. Vijay Kumar Jain***[8], it is held that the vigor or sting of an adverse entry does not get wiped out while considering the case for compulsory retirement. In ***Pyare Mohn Lal v. State of Jharkhand***[9], it is observed that the authority has to consider the "entire service records" of the official while assessing whether it is desirable to part ways with him, despite granting of promotion disregarding the adverse entries. One single adverse entry as to integrity may justify premature retirement.

3. As to service credentials of the petitioner & arbitrariness in impugned action:

(a) Learned counsel for the petitioner vehemently submitted and that is not much disputed that: petitioner has put in a long service from 17.11.1997 to 11.03.2022, i.e., the date of the impugned order and he earned promotion to the post of Sub-Divisional Judicial Magistrate in 2010, Civil Judge (Sr. Dn.) in 2011, Chief Judicial Magistrate in 2013, District Judge in 2015 & Selection Grade District Judge in 2021. These promotions are on the basis of merit-cum-seniority. He was allowed to continue in service in 2017, pursuant to recommendation of the Review Committee, after he attained 50 years. All this is founded on the decision/opinion of the Full Court itself. We repeat that petitioner was promoted to the position of Selection Grade District Judge vide notification dated 29.01.2021 issued by the High Court itself. The impugned order of premature retirement is essentially founded on the subject Full Court decision dated 23.02.2022. That being the position, what grave thing happened during the short period between 29.01.2021 & 23.02.2022, remains a riddle wrapped in enigma. Thus, the first pillar of the structure of the impugned order is shaken.

(b) The vehement submission of learned State Counsel that the decision to prematurely retire the petitioner is taken keeping in view the spotted service records, is bit difficult to countenance. Reasons for this are not far to seek: Admittedly, there is not even one sporadic adverse remark in the CCRs/PARs of the petitioner all these years. It is not that he has been found guilty in any of the disciplinary proceedings. True it is that he was "cautioned to be careful in future". However, this is not a prescribed punishment in the extant Rules. At the most, it is advisory in character and therefore cannot be construed as an adverse remark. What punitive action was taken, pursuant to complaint of the Bar Association, is also not demonstrated. If Lawyers boycotted his Court, that is deprecable, since they do not have such a right,

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[8] (2002) 3 SCC 641

[9] (2010) 10 SCC 693

other avenues availing for redressal vide ***District Bar Association Dehradun v. Ishwar Shandilya***[10],. Contra contention if accepted amounts to placing premium on illegality. 'Judging is difficult', said U.S. Judge Richard A Posner. And being a judge is also. Nowadays, judicial functions by their very nature have become sensitive for several reasons, one of them being unregulated social media. It is not uncommon that even tall judges of unimpeachable integrity at times suffer the ire of public and face red eye of a section of the Bar. Unless the material is loaded to the CCR/PAR as an adverse entry in due process, no Judicial Officer can be put to prejudice.

(c) We have perused the original records by opening the sealed cover. They reveal the fact that the petitioner earned career progression on regular basis as obtaining in the hierarchy; he was granted promotion to District Judge Selection Grade, vide notification dated 29.01.2021; this was done on the recommendation of the Jurisdictional Committee that comprised of judges of this Court, followed by the Resolution of Full Court. The Review Committee, after due deliberation, recommended his retention in service in terms of Sub-Rule (1) of Rule 44 of 2007 Rules after he attained 50 years. Even this was accepted by the Full Court and accordingly he was continued in the service.

(d) At the stage of Statutory Review of petitioner's performance for his retention in service, the following were available on record:

(i) Petitioner had average ratings in the ACRs during the initial five years of service;

(ii) Inquiry vide DP No.2 of 2007 had ended in exoneration, asking him to be "cautious in future";

(iii) Inquiry into Night Watchman's allegation of caste aspersions & use of filthy words was dropped vide Minutes dated 24.12.2009 after receiving discrete report;

(iv) Inquiry into anonymous complaint of the year 2015 of District Bar Association was dropped vide Minutes dated 03.11.2016;

(v) Inquiry as to misconduct with the Bar Members that led to boycott of his Court (such boycott itself being legally impermissible) was dropped vide Minutes dated 10.09.2018.

(vi) Full Court approved Jurisdictional Committee recommendation and accordingly petitioner came to be promoted as Selection Grade District Judge vide Notification dated 29.01.2021.

It sounds strange that on 23.02.2022 the "Full Court/Review Committee" resolved to prematurely retire the petitioner, there being absolutely no change of circumstance after he was accorded promotion to Selection Grade. By and large, the fact matrix of petitioner's case matches with that of ***High Court of Patna v. Shyam Deo Singh***[11], and also the legal principles laid down therein.

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[10] 2023 SCC OnLine SC 45

[11] (2014) 4 SCC 773

(e) There is one striking aspect in the matter: Allegations were received regarding manipulation of depositions, of asking the advocates to arrange for women & money. Despite such wild allegations, no disciplinary proceedings were drawn up. The Apex Court in Umedbhai supra has observed that an order of compulsory retirement cannot be passed as a short cut to avoid departmental inquiry, when such course is eminently desirable. It also said that if the officer was given a promotion, despite adverse entries in ACRs, that is a fact weighing in his favour. ***In Shyam Deo Singh*** supra it is ruled that subsequent promotions would have the effect of wiping out adverse remarks. We repeat that there were absolutely no adverse entries in the CCRs/PARs of petitioner.

4. **As to punitive nature of impugned order and violation of principles of natural justice:**

(a) Learned State Counsel vehemently controverted the submission of petitioner's counsel that the impugned order is not only arbitrary but has abundant elements of punitive nature. Let us examine this: The order *ex facie* looks innocuous, is true. However, a deeper examination would reveal its true nature & effect, because of the following stand taken up by the opposite parties:

> (i) Petitioner had thrown some caste aspersions on and used filthy words against a Night Watchman of the Court in Jharsuguda.
>
> (ii) Petitioner had shown unruly behaviour qua Bar Members, and that he was asking them to arrange for women & money for penning favourable orders, and that he was receiving cash & kind.

At least, the above allegations are as wild as can be, is not disputable. Along with other the said allegations too entered the decision making process that eventually culminated into the impugned order of premature retirement, stands obviated. In fact, in the written submissions dated 24.06.2025 filed on behalf of opposite parties, the said allegations are specifically mentioned at pages 2 & 3. We repeat that these being wild allegations against a sitting Judicial Officer, ought to have been enquired into by constituting a disciplinary proceeding.

(b) While adjudging the nature of orders of impugned kind, one can lift the veil to see the true picture. Reference to above allegations abound in the records furnished to us in the sealed cover. Even otherwise, these allegations are specifically pleaded by the opposite parties, as already mentioned above. A compulsory retirement is no substitute for holding a disciplinary inquiry and that such decisions cannot be taken as a punitive measure vide ***Umedbhai*** supra. Be that as it may, once an action is punitive then the question arises as to whether such an order could have been passed without giving an opportunity of hearing to the official. The answer has to be in the negative. Records do not reveal any reasons as to why no disciplinary inquiry was initiated nor was any opportunity afforded. We hasten to add that the requirement of hearing arises only because of imperative principles of natural

justice, and not on account of requirement of a 3-month notice prescribed in Rule 38.It hardly needs to be stated that payment of three months emoluments dispenses with such a notice. Admittedly, they are paid in this case.

5. **As to the nature of relief to be granted to the petitioner:**

(i) Petitioner has put in a pretty long service, having earned multiple promotions, the last one being to the post of District Judge Selection Grade. Whatever allegations were leveled against him, were dropped after being looked into and after securing the reports at the hands of quarters that be. The Jurisdictional Committees comprising of Senior Judges of this Court, having seen the allegations & dropped disciplinary proceedings, had recommended his case for promotion after promotion in due course and the Full Court accepted the same. Petitioner successfully crossed the review at the age of 50 years in 2017 and the last promotion was conferred on him in 2021. It is only thereafter the decision is taken to prematurely retire him from service and accordingly he has been, by virtue of impugned order.

(ii) The case of petitioner as to impugned order being punitive and having stigmatic elements is to an extent demonstrated from the record and also from the pleadings of the parties. Sages of law have said that what is stated in the pleadings draws the battle-lines and therefore can be construed meaningfully, unless otherwise diluted. *Prima facie*, no such rebuttal material avails on papers at our hands. Grievance of the petitioner as to violation of principles of natural justice also needs to be addressed. Further, his stand that he has spotless service records or otherwise, has to be ascertained, with the aid of records. Who is grieving before us, is not just an ordinary public servant, but a Presiding Officer of a Court, who discharges functions involving abundant elements of *sovereign powers* and they have enormous implications to the public in general and to the litigants in particular. Integrity of a judicial officer is not *punctus punctilio* of the market place. It has to be unimpeachable. In cases like this, one cannot straightway seek reinstatement in service or grant of monetary benefits in lieu thereof, per se because the impugned order is being set at naught. Therefore, in the fitness of things, matter merits a fresh look at and from the stage of Jurisdictional Committee of Review, of course after giving an opportunity of representation to the petitioner.

In the above circumstances, this petition succeeds in part; a *Writ of Certiorari* issues quashing the impugned order of premature retirement of the petitioner. Matter is remitted back for consideration afresh keeping open all contentions, in the light of observations herein above made. Costs made easy.

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

Result of the case:
Petition succeeds in part.

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2025 (II) ILR-CUT-1101

STATE OF ODISHA & ORS.
V.
KRUSHNA CHANDRA MALLICK & ANR.

[W.A. NO. 17 OF 2023]
WITH BATCH
[W.A. NOS. 551, 771, 1232, 1292, 1835 OF 2023 AND 373 & 2473 OF 2024]

15 JULY 2025

[DIXIT KRISHNA SHRIPAD, J. & MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

1. Whether entire pre-regularization period of job contract employees should be counted for pension.

2. When the doctrine of reading down may be invoked.

Headnotes

(A) ORISSA CIVIL SERVICES (PENSION) RULES, 1992 r/w Amendment Rule, 2001 – Rule 18(6) – Appeals filed by the job contractor employees – Their services were regularized in a phased and normative basis – Prayer to count their entire pre-regularization services for the purpose of pension – Learned single Judge allowed the prayer and directed to count the entire service period for the purpose of pension – State's intra-court appeals against the same came to be negative by the Coordinate Bench – Matters were carried further to the Apex Court and the order of the Coordinate Bench was set aside – All these cases have been rendered for consideration afresh – Whether the entire pre-regularization period of job contract employees should be counted for pension.

Held: No – A plain reading of the Rule shows its intention, scope, condition & limitation – It provides for the grant of pension even to the persons who are employed by job contract; for that he has to be brought over to a regular establishment which is pensionable; the pensionablity is made dependent upon his satisfying the qualifying service, which we are told, is 10 years – While computing this qualifying period, the services rendered by such persons before being brought over to regular establishment shall be counted – However, this is subject to the rider that such service shall be counted only to fill the shortfall of ten years and not beyond. (Para 5.4)

The expressions employed in Sub-Rule (6) namely, *"so much of his job contract service period"* followed by *"would render him eligible for pensionary benefits"* unmistakably shows clear intent of the provision that what is countable is the shortfall of qualifying service and not entire service,

i.e. pre-regularization service plus regular service – If the Rule Maker intended what learned advocates for the employees have been submitting, the text of this rule would have been much different – Courts can interpret Rules and they cannot rewrite them. (Para 5.5)

(B) CONSTITUTION OF INDIA, 1950 – Article 14 r/w Rule 18 (3) and 18 (6) of Orissa Civil Services (Pension) Rules, 1992 – As per Rule 18(3) of 1992 Rules, the period of service rendered in work-charged establishment shall qualify for pension whereas in the case of job contract employees, the shortfall of qualifying service should be taken into consideration but not the entire service period – Effect of.

Held: No – Now, let us examine the text & context of Sub-Rule (3) of Rule 18: This provision admittedly relates to work-charged establishment, as distinguished from job contract – The last portion of the said Rule, i.e., "…. *the period of service so rendered in work-charged establishment shall qualify for pension under this rule."* makes the intent of the Rule Maker as clear as Gangetic waters – It says that the entire service in the work-charged establishment shall be reckoned for the purpose of pension and not just for the purpose of computing the qualifying service – The contention that Sub-Rule (6) should be read on par with Sub-Rule (3), cannot be countenanced without manhandling at least one of them – The work-charged establishment and job contract are poles asunder – The terms & conditions of service are not the same for these two classes of employees and therefore the Rule Maker justifiably treated them separately – Arguably equating one with the other would amount to treating the un-equals as equal and that spurns at the ratio of ***E.P. Royappa v. State of Tamil Nadu,*** **AIR 1974 SC 555**. (Para 5.6)

(C) DOCTRINE OF READING DOWN – **When the doctrine of reading down may be invoked.**

Held:**-** This doctrine may be invoked and applied if the statute is silent, ambiguous or admits more than one interpretation – But where it is express, and clearly mandates to take certain action or to mean certain things, the function of the Court is to interpret it plainly – In the absence of challenge, ordinarily courts do not permit the invocation of this doctrine to alter the policy content of a statute – Ordinarily this doctrine is invoked to trim the contours of law which otherwise suffers from the vice of over inclusiveness or such other infirmity and therefore is falling foul of a higher legal norm such as the parent Constitution, the statute, etc. (Para 5.7)

Citations Reference

State of Odisha v. Nityananda Biswal, **WP(C) No. 14244 of 2006 disposed of on 07.04.2014;** Bhgban Pattanayak v. State of Orissa, **T.A. No. 11/1993,**

of the Orissa Administrative Tribunal; Nityanand Biswal v. State of Odisha, **O.A. No.3020(C)/2003 decided on 25.03.2011;** State of Orissa v. Nityananda Dash, **W.P.(C) No. 11503 of 2008;** State v. Sudhansu Sekhar Jena, etc., **SLP(C) No.2176 of 2024;** D.S. Nakara v. Union of India, **AIR 1983 SC 130;** Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar, **AIR 1958 SC 538;** E.P.Royappa v. State of Tamil Nadu, **AIR 1974 SC 555;** Minerva Mills v. UOI, **AIR 1980 SC 1789;** Indira Neheru Gandhi v. Raj Narain, **AIR 1975 SC 2299 – referred to.**

List of Acts

Orissa Civil Services (Pension) Rules, 1991 read with Amendment Rule, 2001; Constitution of India, 1950.

Keywords

Job contract employee; Pre-regularization period; Doctrine of reading down; Work charged employee; Pensionary benefits; Qualifying service; Qualifying period.

Case Arising From

Order dated 28.02.2022 passed in WPC (OAC) No. 2730 of 2017; order dated 22.09.2022 passed in WPC (OAC) No. 2843 of 2018; order dated 03.03.2022 passed in WPC (OAC) No. 1410 of 2017; order dated 17.02.2022 passed in WPC (OAC) No. 1522 of 2012; order dated 13.02.2023 passed in WP(C) No. 3748 of 2023; order dated 24.11.2022 passed in WP(C) No. 30089 of 2022; order dated 11.08.2022 passed in WP(C) No. 35734 of 2021 and order dated 21.09.2021 passed in WP(C) No. 29103 of 2021.

Appearances for Parties

For Appellants : Mr. Pitambar Acharya, Advocate General
with M/s. Satyabrata Mohanty & Debaraj Mohanty, AGA

For Respondents : M/s. Prafulla Ku. Mohapatra & S.C. Sahoo
(W.A. No. 17 of 2023)
M/s. Biswaranjan Das & A.P. Ray (W.A. No. 551 of 2023)
None (W.A. Nos.771, 1232,1292,1835 of 2023 and 373 & 2473 of 2024)

Judgment/Order

Judgment

D.K. SHRIPAD, J.

All these intra-court appeals by the State and its functionaries seek to call in question the orders rendered by learned Single Judges of this Court in the subject writ petitions whereby a Writ of Mandamus has been issued to the appellants herein to extend all the benefits in favour of respondent-employees in terms of the direction

in WP(C) No. 14244 of 2006 (***State of Odisha v. Nityananda Biswal***) disposed of on 07.04.2014. In that case, a direction was issued to count entire pre-regularization service for the purpose of pension.

2. These cases have a checkered history. Its brief narration will not be out of place:

(i) The public service in the State of Odisha comprises of regular employees, work-charged employees, job contractors & the like. These appeals relate to the class of job contractors. The services of most of these employees, we are told at the Bar, are regularized, in a phased manner by and large on a normative basis. The Settlement Class-IV Job Contract Employees Union had filed OJC No. 2147 of 1991, which was decided on 24.03.1991, inter alia, holding that denial of pension to these employees amounted to unfair practice violative of Article 14 of the Constitution of India. In the said case of the Union, a Coordinate Bench of this Court had said "…. This part, for the purpose of calculating the pensionary benefit, so much of their earlier service period shall be reckoned, even if there had been breaks in their employment, so as to make them eligible for pension. The necessity of giving this direction has been felt because, if service rendered after regularization alone shall be counted for pensionary benefit, most of the present incumbents would be denied the same, because to earn pension, ten years minimum service is necessary, which most of the incumbents at hand would not put in after regularization as they would retire before completing this period having been appointed two decades back."

(ii) For the implementation of this order, the State Government issued an Office Memorandum dated 12.12.1997 to the effect that the date of regularization shall be reckoned for computing a ten-year qualifying service for pension, subject to the condition that so much of pre-regularization service as would satisfy the shortfall of the said qualifying service, would be counted. This condition was laudably stipulated inasmuch as any job contract employee who has put in a minimum pre-regularization service of ten years should also be benefited. However, this beneficial condition was not extended to the claim for gratuity.

(iii) Presumably because of fiscal implications of the Coordinate Bench judgment fallowed by 1997 Office Memorandum, a provision, namely, Sub-Rule (6) came to be introduced to Rule 18 of the Orissa Pension Rules, 1992 to lend statutory credence to the said OM. We shall be discussing Rule position of the matter a bit later. Misconstruing these rules, the Orissa Administrative Tribunal in T.A. No. 11/1993 between ***Bhgban Pattanayak v. State of Orissa*** held that the entire pre-regularization service of job contract employees should be counted for the purpose of pension. This was reiterated in O.A. No.3020(C)/2003 between ***Nityanand Biswal v. State of Odisha*** decided on 25.03.2011. We are told that State's challenge to the same before another Coordinate Bench ended in vain, even at the level of Apex Court.

(iv) Strangely, in All Orissa Settlement and Land Consolidation Non-Gazetted Technical Officers' Association v. State of Odisha OA No.3665 (C) of 2001 decided on 25.03.2011, the very same Tribunal having construed Sub-Rule(6) of Rule 18 agreed with the State's contention and held that the job contract employees could not claim to count their entire pre-regularization service for the purpose of pension. Another Coordinate Bench of this Court in ***State of Orissa v. Nityananda Dash*** in W.P.(C) No.11503 of 2008 upheld similar contention of the State and thereby dismissed the claim of employees with the observation that the State Government should consider if any further concession can be made

to the employees. The Government having considered this aspect, vide order dated 02.07.2022, stuck to its position, may be because of enormous financial implications.

(v) In OA No.2730(C) of 2017, the State Administrative Tribunal was moved by one of the respondent-employees, namely, Sri Krushna Chandra Mallick seeking a direction to the State to extend to him similar benefits of pension, as has been directed in OA No.3020(C) of 2003, i.e., Nityananda Biswal's case. Other respondent-employees had also moved Original Applications on the similar line. On the abolition of the Tribunal, these cases stood transferred to this Court and various Single Judge Benches, having allowed the same, directed the State Government to count the entire service rendered by the job contract employees for the purpose of pension. State's intra-court appeals against the same came to be negatived by the Coordinate Benches. Matters were caried further to the Apex Court in State v. Sudhansu Sekhar Jena, etc. [SLP(C) No.2176 of 2024] which having considered the same made a common order dated 21.02.2005 allowing the subject SLPs and thereby setting aside the Coordinate Bench orders. All these cases along with other have been remanded for consideration afresh in the light of certain observations. That is how, the appeal papers are placed at our hands.

3. **Learned Advocate General's submissions on behalf of the State:**

(i) There are decisions on both the sides of the spectrum, one set according benefit of entire pre-regularization service and the other restricting the benefit only to the qualifying service; the matter having travelled to the Apex Court, has been remanded to this Court for consideration afresh; since both the cases of spectra have been duly examined by the Apex Court and only thereafter remand is made, these appeals need to be adjudged on their intrinsic merits uninfluenced by the conflicting decisions of Coordinate Benches and of the State Administrative Tribunal, as it then was.

(ii) The right of job contract employees' postretirement to the terminal benefits is regulated by the 1992 Rules in general and Rule 18(6) in particular and there being no challenge to these, no benefit larger than what has been envisaged under the Scheme of Rules can be granted to the employees. These Rules having been promulgated *inter alia* under the proviso to Article 309 of the Constitution, not only have statutory force but enjoy presumptive validity. The impugned orders of the learned Single Judges run counter to these Rules and therefore are unsustainable.

(iii) The impugned orders of the learned Single Judges have far reaching implications on the Public Exchequer; regulation of conditions of pension to the employees is a matter of policy and therefore the policy considerations should animate the Court judgments, and nothing else. Courts cannot rewrite State Policies, more particularly when budgetary aspects are involved in the matter and that the State Policies are evolved, a host of factors entering the fray.

4. **Submissions made on behalf of the employees:**

(i) The impugned orders have been structured by the learned Single Judges after taking into consideration all aspects of the matter and therefore there is no justification for indulgence in the subject appeals.

(ii) Orders in question are consistent with at least a set of judgments of this Court which directed reckoning of even pre regularization service of job contract employees; other set of

judgments, having come at a later point of time and being in variance with the earlier ones, lack precedential value and therefore they are liable to be ignored.

(iii) Contention of the State, if countenanced, would bring into existence two sets of job contract employees, inasmuch as in terms of earlier judgments already pension has been sanctioned after counting entire pre-regularization service and thus act of the State would be discriminatory and violative of Article 14 of Constitution of India. All pensioners of a cadre constitute one homogenous class and splitting them into sub-classes is impermissible.

(iv) Pension is not a bounty, it is a valuable right of the retirees vide **D.S. Nakara v. Union of India,**[1]; and therefore Sub-Rule(6) of Rule 18 should be construed on par with Sub-Rule(3); in any circumstance the said Sub-Rule(6) should be read down, even if it is not challenged, consistent with pro-workmen Directive Principles enshrined in Part-IV of the Constitution.

5. Having heard learned counsel for the parties and having perused the appeal papers we are inclined to grant indulgence in the matter as under and for the following reasons:

5.1. The first submission of learned AG that there have been cases on both sides of the spectrum and the Apex Court having all that has remanded the matter for consideration afresh merits acceptance. The Apex Court in its order dated 21.02.2025 has referred to a catena of decisions of Coordinate Benches, of learned Single Judges and of the erstwhile State Administrative Tribunal. For the ease of reference, the same are enlisted below:

(i) DB judgment of this Court in OJC No.2147 of 1991 between Settlement Class-IV Job contract employees Union, Balasore v. State of Orissa decided on 24.03.1993.

(ii) OAT judgment in T.A. No.11 of 1993 between Bhagaban Pattnaik v. State of Orissa decided on 21.10.1994.

(iii) OAT judgment in O.A. No. 3030(C) of 2003 between Nityanand Biswal v. State of Orissa decided on 14.01.2004.

(iv) OAT judgment in O.A. No.3665(C) of 2001 between All Orissa Settlement and Land Consolidation Non-Gazetted Technical Officers Association v. State of Orissa decided on 25.03.2011.

(v) DB judgment of this Court in WP(C) No.11503 of 2008 between State of Orissa v. Nityanand Das.

(vi) SB judgment of this Court in WPC(OAC) No.2276 of 2012 between Judhistir Padhy v. State of Odisha decided on 19.04.2022.

(v) SB judgment of this Court in WPC(OAC) No.3741 of 2015 between Chintamani Panda v. State of Odisha decided on 08.08.2022.

(vi) SB judgment of this Court in WPC(OAC) No.2622 of 2015 between Pitambar Hota v. State of Odisha decided on 08.08.2022.

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[1] AIR 1983 SC 130

5.2. We also agree with learned AG's further submission that the Apex Court having examined both the sets of judgments, namely, one holding in favour of the employees and the other agreeing with the contention of the State, has remanded the matter for fresh consideration and therefore we should decide the matter afresh keeping at a bay the observations in all those judgments, be they favourable to the employees or to the State. The contention advanced on behalf of the employees that this Court should be guided by earlier set of decisions that upheld their case for counting entire pre-regularization service for the purpose of pension, is liable to be rejected for the simple reason that the Apex Court in Sudhansu Sekhar Jena supra having considered amended Rule 18 vide Sub-Rule (3) of 1992 Rules has specifically observed at Paragraph-6 as under:

> *"All the same, on 21.10.1994, the Orissa Administrative Tribunal in* ***Bhagaban Pattnaik v. State of Orissa (T.A. No.11/1993)****, on a total misinterpretation and reading of* ***Job Contract Employees Union*** *(Supra) case, held that the entire period of Job Contract Employment should be considered for calculation of pension. This ruling was followed by the Tribunal when it ordered inclusion of entire period of Job Contract Employment ordered inclusion of entire period of Job Contract Employment in calculation of pension in* ***Nityanand Biswal v. State of Orissa & Ors.*** *... Clearly, the Tribunal had misinterpreted the ratio of Job Contract employees Union case. ... "*

With the above observation, it is relevant to state, the Apex Court consciously did not put the matter to rest but remanded the matter for *de novo* consideration. Therefore, it is imperative for us to undertake that exercise. We hasten to add that we have perused the decisions referred to by the Apex Court, is beside the point.

5.3. Learned counsel for the employees are right in submitting that in view of **D.S. Nakara** *supra* pension is not a bounty. It is a consideration for the past service and becomes payable after employee demits the office ordinarily on attaining the age of superannuation. It is a provision for the evening of his life. However, when the right to pension is regulated by law, namely, the 1992 Rules herein, Courts have to scrupulously follow the same while adjudging *inter alia* the rights of pensioners, its jural corelative resting on the shoulders of the State. Since it is contended from the side of employees that their full service in the work charged establishment are counted under Sub-Rule (3) of Rule 18, the corresponding provision, namely, Sub-Rule (6) should also be accordingly construed, we are reproducing the text of both these Sub-Rules:

> *"(3) Notwithstanding anything contained in clauses (i) and (ii) of sub-rule (2) a person who is initially appointed by the government in a work-charged establishment for a period of five years or more and is subsequently appointed to the same or another post in a temporary or substantive capacity in a pensionable establishment without interruption of duty, the period of service so rendered in work-charged establishment shall qualify for pension under this rule."*

Came to be loaded to Rule 18 in 2001 by way of amendment to 1992 Rules. It has the following text:

> *"(6) Notwithstanding anything contained in clause(i) & (iii) of sub-rule (2), a person who is initially appointed in a job contract establishment, and is subsequently brought over to the post created under regular/pensionable establishment, so much of his job contract service period shall be added to the period of his qualifying service in regular establishment and would render him eligible for pensionary benefits."*

5.4. Legislations and Sub-ordinate Legislations enjoy presumptive validity vide ***Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar,***[2] although the degree of such presumption is comparatively low in the case of latter. When no challenge is laid to the vires of instruments of law like the sub-Rules in question, Courts cannot ignore them on the halfhearted submission at the Bar that the same are unjust & unreasonable. Now, let us examine what exactly sub Rule (6) says. It has the following building blocks: job contract establishment; person initially appointed in such establishment; subsequently he being brought over to the post in regular/ pensionable establishment; qualifying service in regular establishment; eligibility for pensionary benefits. A plain reading of the Rule shows its intention, scope, condition & limitation. It provides for the grant of pension even to the persons who are employed by job contract; for that he has to be brought over to a regular establishment which is pensionable; the pensionablity is made dependent upon his satisfying the qualifying service, which we are told, is 10 years. While computing this qualifying period, the services rendered by such persons before being brought over to regular establishment shall be counted. However, this is subject to the rider that such service shall be counted only to fill the shortfall of ten years and not beyond.

5.5. The above can be illustrated like this. Mr. 'A' entered job contract on 01.04.1995; he was brought over to regular service on 01.05.2005; he retired from service on 30.06.2010. He thus has put in ten years of service before regularization and five years of regular service. He cannot claim that his fifteen years of service should be counted for computing this pensionary benefits. For the purpose of qualifying service for pension, he has apparently a regular service of five years which is obviously short of ten years. To make this shortfall good, the years of service he had rendered before regularization would be reckoned. This is the purport of Sub-Rule (6). The expressions employed in Sub-Rule (6) namely, "*so much of his job contract service period*" followed by "*would render him eligible for pensionary benefits*" unmistakably shows clear intent of the provision that what is countable is the shortfall of qualifying service and not entire service, i.e. pre-regularization service plus regular service. If the Rule Maker intended what learned advocates for

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[2] AIR 1958 SC 538

the employees have been submitting, the text of this rule would have been much different. Courts can interpret Rules and they cannot rewrite them.

5.6. Now, let us examine the text & context of Sub-Rule (3) of Rule 18: This provision admittedly relates to work-charged establishment, as distinguished from job contract. The last portion of the said Rule, i.e., "…. *the period of service so rendered in work-charged establishment shall qualify for pension under this rule.*" makes the intent of the Rule Maker as clear as Gangetic waters. It says that the entire service in the work-charged establishment shall be reckoned for the purpose of pension and not just for the purpose of computing the qualifying service. The contention that Sub-Rule (6) should be read on par with Sub-Rule (3), cannot be countenanced without manhandling at least one of them. The work-charged establishment and job contract are poles asunder. The terms & conditions of service are not the same for these two classes of employees and therefore the Rule Maker justifiably treated them separately. Arguably equating one with the other would amount to treating the un-equals as equal and that spurns at the ratio of ***E.P. Royappa v. State of Tamil Nadu***[3]**,**.

5.7. The vehement submission of learned counsel for the employees that Sub-Rule (6) of Rule 18, though is not challenged, should be read down to count entire pre-regularization service for the purpose of pension, is difficult to accept. Reasons for this are not far to seek: Firstly, this provision is not put in challenge and therefore there is nothing to rebut its presumptive validity. There is not even a plea taken in the writ petition of the employees warranting invocation of the doctrine of reading down. This doctrine may be invoked and applied if the statute is silent, ambiguous or admits more than one interpretation. But where it is express, and clearly mandates to take certain action or to mean certain things, the function of the Court is to interpret it plainly. In the absence of challenge, ordinarily courts do not permit the invocation of this doctrine to alter the policy content of a statute. Ordinarily this doctrine is invoked to trim the contours of law which otherwise suffers from the vice of over inclusiveness or such other infirmity and therefore is falling foul of a higher legal norm such as the parent Constitution, the statute, etc. It is relevant to see what the Apex Court observed in ***Minerva Mills v. UOI,***[4]**:**

> *"64. … The device of reading down is not to be resorted to in order to save the susceptibilities of the law makers, nor indeed to imagine a law of one's liking to have been passed. One must at least take the Parliament at its word …*
>
> *65. … If the Parliament has manifested a clear intention to exercise an unlimited power, it is impermissible to read down the amplitude of that power so as to make it limited. The principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature The above observations broadly"*

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[3] AIR 1974 SC 555

[4] AIR 1980 SC 1789

5.8. Learned Advocate General is right in telling us that Rules of the kind which provide for pensionary benefits to the employees are evolved as a matter of State Policy taking into inter alia account the purse size of the Government and other collateral factors. A lot of working experience and the lessons drawn from it enter the fray of making. It hardly needs to be reiterated that judiciary being a coordinate branch of the State has to respect the policy decisions of other organs, especially in the absence of challenge thereto, consistent with the doctrine of separation of powers which is held to be a Basic Feature of the Constitution vide Indira ***Neheru Gandhi v. Raj Narain,***[5]. The contention of employees that in terms of earlier orders, a section of them has already been given the benefit of counting full service and therefore not extending the said facility to these would be discriminatory, does not merit acceptance. Even in concluded matters, Apex Court in Sudhansu Sekhar Jena supra has specifically reserved liberty to the State to prefer review petitions in the matters that have been already concluded in SLP/Civil Appeals. This observation will find at Paragraph-21of the judgment. We are told by the learned AG that such review petitions are already in the making, specific time for filing them having been fixed, by the Apex Court itself.

We are not unmindful of cases wherein the employees might have been granted regularization long after they were due for it. There may be cases wherein with the judicial intervention the dates of regularization of service are altered to the advantage of employees. What would happen to such cases, has not been discussed by us, since that is not the pleaded case before us in these appeals.

In the above circumstances, these appeals having common law and facts are allowed; the impugned orders of the learned Single Judges are set at naught; the writ petitions filed by the respondent-employees are dismissed.

Costs made easy.

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

Result of the case:
Writ Appeals allowed.

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[5] AIR 1975 SC 2299

2025 (II) ILR-CUT-1111

SRI DADHIBAMAN JEW BIJE NIJAGAON & ANR.
V.
COMMISSIONER OF ENDOWMENTS, ODISHA

[W.P.(C) NO. 956 OF 2025]

29 APRIL 2025

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

Issue for Consideration

Whether permission is required under Section 19-A of the Odisha Hindu Religious Endowment Act, 1951 for alienation of Deity property even after sale of such property under the registered deed.

Headnotes

ODISHA HINDU RELIGIOUS ENDOWMENTS ACT, 1951 – Section 19-A r/w Rule 4-A of the OHRE Rules, 2012 – Property in question was purchased by the Petitioner vide registered sale deed (RSD) No. 6133 dated 12th August, 1992 from the Deity Sri Dadhibaman Jew Bije, Nijagaon – The petitioner did not take any step for mutation of the property in his name – The RoR continued to be in the name of the Deity till date – When petitioner intended to sell the property for legal necessity, an obligation was raised requiring permission under Section 19-A of the OHRE Act – Whether, in the above circumstance, a permission is required under Section 19-A of the OHRE Act for alienation of the property.

Held: No – The registered sale deed dated 12th August, 1992 still remains valid being unquestioned till date – Once the sale dated 12th August, 1992 made in favour of the Petitioner or execution of the RSD is treated valid, then the question of permission to resell the same by the Petitioner is not required – It is for the reason that the sale in favour of the Petitioner was effected since August, 1992 when Rule 4-A of the Odisha Hindu Religious Endowments Rules were not in force, meaning thereby that there was no restriction for sale of the land belonging to a private Deity – The Bijesthala of the Deity as mentioned at Nijagruha itself indicates the fact of acceptance of the deity as private one for the purpose of sale of land in question, and the same being unquestioned at any point of time, the permission to get no objection certificate under Section 19-A is not required. (Para 8)

Citations Reference

Radhakanta Deb and another v. Commissioner of Hindu Religious Endowments Odisha, **(1981) 2 SCC 226 – referred to.**

List of Acts

Odisha Hindu Religious Endowments Act, 1951; Orissa Hindu Religious Endowments Rules, 2012.

Keywords

No Objection Certificate; Sale; Permission; Marfatdar; Bijesthala; Nijagruha; Nijagaon.

Case Arising From

Order of refusal of learned Commissioner of Endowments, Odisha dated 28th October, 2024.

Appearances for Parties

For Petitioners : Mr. Gopinath Mishra

For Opp.Party : Ms. P. Naidu

Judgment/Order

Judgment

BY THE BENCH,

1. Heard Mr. G. Mishra, learned counsel for the Petitioners and Ms. P. Naidu, learned counsel for Endowment authorities.

2. The order of refusal of learned Commissioner of Endowments, Odisha dated 28th October, 2024 to grant 'No Objection Certificate' in terms of Section 19-A of the Odisha Hindu Religious Endowments Act (OHRE Act) is subject matter of challenge in present writ petition.

3. The admitted facts remain that the property in question was purchased by the Petitioner vide registered sale deed (RSD) No.6133 dated 12th August, 1992 from the Deity Shri Dadhibamana Dev, Bije Nijagaon-Nijagruha, Marfat Sri Nabakishore Sundara and Chandramani Sundara, though the record of right (RoR) reflects recording of the case land in the name of Shri Dadhibaman Jew, Bije Nijagaon, marfat Gautam Sundara, Naba Kishore Sundara and Braja Bandhu Sundara. It is true that the RSD dated 12th August, 1992 executed in favour of the Petitioner remains undisputed and the Petitioner did not take any step for mutation of the property in his name pursuant to the registered sale deed. The RoR continued to be in the name of the Deity till date. In the meantime Rule 4-A of the Odisha Hindu Religious Endowments Rules came into force with effect from 28th March, 2012 vide notification dated 23rd June, 2012 and prior to that Section 19-A of the OHRE Act was inserted vide Odisha Amendment Act No.22 of 1989 which remains as it is without the prescribed rules, i.e. Rule 4-A, till 28th march 2012.

4. According to the Petitioner, when he intended to resale the property for his legal necessity, an objection was raised requiring permission under Section 19-A of the OHRE Act for the reason that the record of rights denotes the name of the Deity in respect of the case land. When the Petitioner applied for permission under Section

19-A to grant 'No Objection Certificate', the same was refused vide impugned order dated 28th October, 2024 of the Commissioner on the ground that the Petitioner has failed to establish that the Deity is not a public religious institution.

5. Mr. Mishra submits that another portion from the same patch of land owned by same Deity purchased by another person along with the Petitioner in the year 1992 was sold pursuant to the direction of this court dated 12th January 2023 passed in WP(C) No. 21091 of 2018 (Smt. Tamala Das v. State of Odisha and Others), wherein this court have held that said Petitioner is entitled for issuance of 'No Objection Certificate' in terms of Rule 4-A. The relevant portions of said judgment of this court dated 12th January, 2023 are reproduced below:-

> "8. On behalf of the Commissioner there is contention that though record in the Record of Rights is a rebuttable presumption nevertheless, the entry in appropriate column is 'Nijagaon' implying worship of the deity by the villagers, making it a public deity. This was what weighed with the Commissioner in making impugned order. On the other hand we have, the Registering Officer duly appointed under the Registration Act, 16 of 1908 had registered said sale deed dated 12th August, 1992, sometime after the inserted by Odisha Amendment Act no.22 of 1989 provision of section 19-A. We looked at official translation of the deed and found that there is description of the deity being vendor therein both as 'Nijagaon' as well as 'Nijagruha'. It is clear that the registering authority, on having had the sale deed presented for registration, found that the deity was private but the villagers permitted to also participate in worship. We infer as such since, the enquiry report was in favour of petitioner. By Sumit (supra) it was said that there was no procedure for applying for permission. Here we reproduce paragraph 23 from the judgment.
>
> *23. As this Court has already found that the Rules are silent with regard to the procedure to be followed by the Commissioner in case an application is made under Section 19-A of the Act, and no specific form is prescribed as mentioned in the section for granting a "No Objection Certificate, this Court is of the affirmative view that until such procedure is laid down in the Rules by way of amendment and the form is prescribed for grant of "No Objection Certificate', the Registering Authority cannot insist upon production of a "No Objection Certificate" from the Commissioner under Section 19-A of the Act and, therefore, the said Section 19-A cannot be operated in its present form.*
>
> *Xxx .... Xxx .... Xx ....*
>
> 11. Our interpretation of sub-rule (3) in rule 4A is that prima facie view can be taken by the Commissioner on receiving objection. The view is necessitated by existence of objection. It follows that the rule contemplates, where there is no objection, the exercise of taking a prima facie view, provided for by sub-rule (3), becomes unnecessary. In other words, on receiving the objection and after reasonable opportunity of hearing to the parties, the Commissioner can be prima facie satisfied that the institution in question is not a public religious institution, for which no sanction under section 19 of the Act is required. He shall then grant 'No Objection' certificate in prescribed form. The provision in sub-rule (3) indicates three factors. The application is by a religious institution claiming to be a private one. Receipt of objection and reasonable opportunity of hearing to the parties given. The application was by petitioner, purchaser of the deity's land, not a religious institution claiming to be a private one. The second two factors are in conjunction. Hence, our view that in absence of objection, the exercise

provided for by sub-rule (3) is not necessary. More so because, sub-rule (3) is worded in enabling the Commissioner to grant 'No Objection' certificate in spite of objection filed.

12. There is another aspect of the controversy in the case. Petitioner's registered deed dated 12th August, 1992 is a duly executed registered deed of conveyance. By it was sold schedule property for consideration Rs.25,560/- and petitioner placed in peaceful possession of all the purchased property. Vendor was marfatdar of the deity. As aforesaid, the deed mentioned description of vendor deity as being both 'Nijagaon' and 'Nijagruha'. View taken in Sumit (supra) was that until procedure is laid down by the rules and form is prescribed for grant of 'No Objection' certificate, the registering authority cannot insist upon production thereof issued by the Commissioner or the delegate, under section 19A. Petitioner's submission that pursuant to this view there was insertion by amendment, rule 4A could not be rebutted. In the circumstances, the view was acted upon. The situation gave sanctity to petitioner's purchase by sale deed dated 12th August, 1992, executed and registered prior to 28th March, 2012, date from which the rule was given effect. Thus, petitioner's application to transfer her purchased land cannot be said to belong to the deity, as duly conveyed away on 12th August, 1992. In acting as required under sub-rule (3) in rule 4A the Commissioner must be confined to prima facie finding regarding whether 'No Objection' certificate can be issued. It is not a procedure for pronouncing validity of title documents presented for the purpose.

13. We are satisfied that petitioner is entitled to have registration of deed on issuance of 'No Objection' certificate per procedure under rule 4A for registration to be effected in compliance of section 19-A."

It is thus submitted by Mr. Mishra, relying on the aforesaid ruling, that the Commissioner is bound to grant 'No objection' in respect of the land in question in favour of the petitioner.

6. Ms. Naidu on the other hand submits that in absence of any mention of Nijagruha in the RoR, insertion of the same in the RSD cannot be counted to the benefit of the Petitioner to substantiate his case that the Deity in question is a private one. In absence of any declaration in terms of Section 41 of the OHRE Act, at this stage only for the reason that the Bijesthali of the Deity is mentioned as Nijagruha in the RSD would not entitle the Petitioner to get 'No Objection Certificate' treating the Deity as private one. It is further submitted by Ms. Naidu that to avoid legal sanction for sale of the property it is deliberately mentioned in the sale deed that the Bijesthali is at Nijagruha. But we do not find force on such submission of Ms. Naidu since no objection was raised to that effect either at appropriate point of time or even before the Commissioner.

7. It is true that to declare the Deity whether private or public, certain guiding factors have to be looked into. As held in the case of ***Radhakanta Deb and another v. Commissioner of Hindu Religious Endowments Odisha, (1981) 2 SCC 226*** the guidelines prescribed are as follows:-

"1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;

2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the

management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;

3) Whether, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his descendents, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

4) Whether the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

8. As stated above, in the case at hand, it is admitted that the Petitioner is the purchaser of the land in question in the year 1992 from the Deity through the Marfatdars. The registered sale deed dated 12th August, 1992 still remains valid being unquestioned till date. Once the sale dated 12th August, 1992 made in favour of the Petitioner or execution of the RSD is treated valid, then the question of permission to resale the same by the Petitioner is not required. It is for the reason that the sale in favour of the Petitioner was effected since August, 1992 when Rule 4-A of the Odisha Hindu Religious Endowments Rules were not in force, meaning thereby that there was no restriction for sale of the land belonging to a private Deity. The Bijesthala of the Deity as mentioned at Nijagruha itself indicates the fact of acceptance of the deity as private one for the purpose of sale of land in question, and the same being unquestioned at any point of time, the permission to get no objection certificate under Section 19-A is not required.

9. The other aspect is that had the Petitioner been applied for mutation of the case land in his favour pursuant to the RSD dated 12th August, 1992 he would not have required any no objection certificate for reselling the land. So when it is admitted at present that the validity of sale deed dated 12th August, 1992 cannot be questioned and the recitals made therein retains its sanctity till date, the permission required under 19-A read with Rule 4-A ought to have been granted in favour of the Petitioner by the Commissioner. As such we are inclined to set aside the impugned order and further direct the Commissioner of Endowments to issue 'No Objection Certificate' in favour of the Petitioner in terms of Section 19-A.

10. With aforesaid observation and direction the writ petition is disposed of.

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

Result of the case:
Writ Petition disposed of.

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2025 (II) ILR-CUT-1116

UPENDRA KUMAR MOHAPATRA & ANR.
V.
PRADIP KUMAR MOHAPATRA & ORS.

[FAO NO. 395 OF 2018]

03 JUNE 2025

[B. P. ROUTRAY, J.]

Issues for Consideration

1. Whether under the provisions of the Indian Succession Act, 1925, the jurisdiction to grant Probate in respect of a Will can be exercised by a Delegate Court when the case becomes contentious and such District Delegate Court has the power to Sub-Delegate it to another Court amid the trial.

2. What is the duty of the Delegate Court when the proceeding turns contentious as per the provision of Chapter IV of Part IX of the Indian Succession Act, 1925.

3. Whether the question on jurisdiction can be raised in appeal when such contention was not raised before the trial court at the first instance.

Headnotes

(A) INDIAN SUCCESSION ACT, 1925 – Chapter IV of Part IX – The probate proceeding was instituted before the learned District Judge and it was delegated to the Court of the Principal Senior Civil Judge – The case was further sub-delegated to the Court of Additional Senior Civil Judge by the Principal Senior Civil Judge – The appellants challenge the jurisdiction of learned 2nd Additional Senior Civil Judge to decide the probate proceeding – Whether under the provisions of the Indian Succession Act, 1925, the jurisdiction to grant Probate in respect of a Will can be exercised by a Delegate Court when the case becomes contentious and such District Delegate Court has the power to Sub-Delegate it to another Court amid the trial.

Held: No – So far as sub-delegation made to the Addl. Senior Civil Judge, as alleged by the Appellants to be impermissible under the law, it is the well settled principle that authority cannot be delegated unless expressly authorized in this behalf – There is no quarrel over this settled principle.

(Para 11)

It is true that, as per definition enumerated in sub-section 2(b) of the Orissa Civil Courts Act, the Court of Civil Judge (Sr. Division) includes the

court of Addl. Civil Judge (Sr.Division). But this is for the purpose of appeal and other provisions relating to suits which can at no stretch be considered to include the purpose of District Delegate defined in Section 265 of the Indian Succession Act to sub-delegate the proceedings under Part-IX of the said Act to Additional Senior Civil Judge. (Para 12)

(B) INDIAN SUCCESSION ACT, 1925 – Sections 286, 288 r/w Section 2(b) of Orissa Civil Courts Act, 1984 – The District Judge delegates the proceeding to the Court of Principal Civil Judge (Senior Division) as per section 18 of the Orissa Civil Courts Act – The Principal Civil Judge further transferred the proceeding to Additional Senior Civil Judge to deal with the same – What is the duty of the Delegate Court when the proceeding turns contentious as per the provisions of Chapter IV of Part IX of the Indian Succession Act, 1925.

Held: A thorough analysis of all such provisions contained in Chapter-IV of Part IX of the Indian Succession Act, gives an unambiguous theory that when the District Delegate Court has no authority to deal with the contentious issues raised in the Probate Proceeding and in such event when the case turns to be a contentious one, it has to be returned to the Presentor along with all the testimonials in order to make him present to the District Judge again or in other words, it is to be returned to the District Judge where the District Judge has to proceed in terms of the provisions contained in said Chapter. (Para 8)

Unfortunately, this has not been followed in the instant case and instead of returning the plaint, learned trial Judge proceeded on merit to decide the contentious issue, which is in contravention to the provisions of the Indian Succession Act as afore-stated – Considering such irregularity on the part of the learned Addl. Senior Civil Judge, it is felt appropriate to send back the matter to District Judge for adjudication. (Para 13)

(C) CODE OF CIVIL PROCEDURE, 1908 – Section 21 – The appellants have never raised their objection before the learned Trial Judge, more so at the earliest opportunity – The appellants raised such objection at the stage of Appeal – Whether question on jurisdiction can be raised in appeal when such particular contention was not raised before the trial court at the first instance.

Held: It is immaterial here that whether the parties have raised their objection or not, and when the statute itself makes the Court (District Delegate) nonfunctional upon raising of contentions further proceeding of the District Delegate ignoring the mandatory provisions of the statute is treated as without jurisdiction touching the very foundation of the proceeding and

thus, renders the decision as a nullity – It is such a defect that cannot be cured by the consent of the parties and regardless of the objections raised by the party – The further proceeding being violative of the statutory mandate envisaged under Section 288 of the Indian Succession Act, the entire adjudication subsequent to the framing of issue is rendered as a nullity and void form that stage. (Para 17)

Citations Reference

P.J.Francis vrs. P.L.Verghese, **(1956) 2MLJ 288**; Atma Ram Vrs. Janki and others, **AIR 1998 HP 14**; Mangulal Chunilal vrs. Manilal Maganlal and others, **AIR 1968 SC 822**; Sahni Silk Mills(P) Ltd vs Employees State Insurance Corporation, **(1994) 5 SCC 346**; Koopilan Uneen's daughter Pathumma and others v. Koopilan Uneen's Son Kuntalan Kuty dead by LRs. and others, **1981(3) SCC 589**; K. Shankar Rao Dora vrs. T. Boishnab Dora and others, **1986 OnLine Ori 167**; Kiran Singh vrs. Chaman Passwan, **AIR 1954 SC 340** – **referred to**.

List of Acts

Indian Succession Act, 1925; Code of Civil Procedure, 1908; Orissa Civil Courts Act, 1984; Employees' State Insurance Corporation Act, 1948; Suits Valuation Act, 1887; Notification dated 22nd November 1961; Bengal, Agra and Assam Civil Courts Act, 1887.

Keywords

Probate; Probate proceeding; Probate of registered Will; Delegate; District Delegate Court; Letters of administration; Jurisdiction; Sub-delegation; Presentor; Contentious issue.

Case Arising From

Judgment dated 30.1.2018 passed by the learned 2nd Addl. Senior Civil Judge, Bhubaneswar, Khurda in C.S. No. 456/2012 (T).

Appearances for Parties

For Appellants : Mr. R. Mohanty, Sr. Adv.

For Respondents : Mr. B. Bhuyan, Sr. Adv.

Judgment/Order

Judgment

B. P. ROUTRAY, J.

1. Present appeal is directed against the order of dismissal passed in Probate Proceeding.

2. The Appellants being the plaintiffs filed Test Case No.16/ 2006 before the Court of learned District Judge, Khurda at Bhubaneswar praying for Probate of Registered Will No.101 dated 9th November 2004 executed in their favour by their

grandfather, late Abhiram Moharapatra. Respondent No.2 to 4 are the daughters of Abhiram Mohapatra and Respondent No.1 is his only son. Plaintiffs are the sons of Respondent No.1. Abhiram Mohapatra died on 2nd May 2005. According to the plaintiffs, late Abhiram Mohapatra bequeathed his entire 1/4th share, which was determined falling in his favour as per the decree passed in partition suit in O.S.No.24/13 of 1981/1979 between the four brothers – Abhiram, Parsuram, Abakash and Bijay Ram – sons of Hrusikesh Mohapatra, in favour of the plaintiffs-Appellants. The Probate Court, i.e. 2nd Addl. Senior Civil Judge, Bhubaneswar did not believe the contentions of the plaintiffs and accordingly refused to Probate the Will in their favour. Said impugned judgment of 2nd Addl. Senior Civil Judge is under challenge in the present appeal.

3. Before delving into the factual merits of contentions of the parties, it is important to note here that the Appellants do not question the impugned judgment on merits but limits their challenge as to the jurisdiction of learned 2nd Addl. Senior Civil Judge as to his competency to decide the Probate Proceeding. Mr. Mohanty, learned Senior Counsel appearing for the Appellants confines his challenge to this technical aspect only with further submission to reserve his right regarding challenge of factual merits.

4. It is submitted on behalf of the Appellants that a Probate Proceeding instituted before the learned District Judge and delegated to the Court of Principal Senior Civil Judge cannot be further sub-delegated to the Court of Addl. Senior Civil Judge by the Principal Senior Civil Judge. That apart, the District Delegate Court can only decide the non-contentious Probate Proceedings and as per the provisions under Section 286 of the Indian Succession Act 1925, the District Delegate cannot grant Probate when there are contentions as to the grant of the Probate and in such cases the District Delegate Court has to proceed in terms of the provisions of Section 288 of Indian Succession Act 1925 to return the proceeding to the Court of District Judge. Since in the instant case, Respondent No.2 to 4, who are daughters of the alleged testator, have entered to contest the very execution of the Will in question, the District Delegate more less the Addl. Senior Civil Judge, is ousted of the jurisdiction to decide on the question of grant of Probate. It is the only District Judge, who is authorized in such matters of grant of Probate involving contentious issues, and not the District Delegate.

5. This submission of the Appellants is countered by Respondent No.2 to 4 on the ground that since the Appellants did not raise their objection before the Addl. Senior Civil Judge with regard to his jurisdiction at the earliest, the Appellants are precluded from raising such objection before the Appellate Court. To support their contention, Respondent No. 2 to 4 take aid of provisions contained in Section 21 of the Civil Procedure Code. It is further submitted that as per the provisions contained in Section 2(b) of the Odisha Civil Courts Act, the Civil Judge (Senior Division) includes Addl. Civil Judge (Senior Division). Therefore, the submissions put-forth

by the Appellants on the question of jurisdiction of Addl. Senior Civil Judge, be whatever may is it, is not sustainable in the eye of law to fault the judgment of the 2nd Addl. Senior Civil Judge on this aspect at the present stage.

6. As stated earlier, the question raised in the present appeal is with regard to said technical aspect on the jurisdiction of learned Addl. Senior Civil Judge to entertain the Probate Proceeding. From the submissions and counter submissions of the parties, the points fall for determination, are as follows:

> (i) Whether under the provisions of the Indian Succession Act, 1925, the jurisdiction to grant Probate in respect of a Will can be exercised by a Delegate Court when the case becomes contentious and further, whether such District Delegate Court has the power to Sub-Delegate it to another Court amid the trial?
>
> (ii) What is the duty of the Delegate Court when the proceeding turns as contentious as per the provisions of Chapter-IV of the Indian Succession Act, 1925?
>
> (iii) Whether such question of initial jurisdiction can be raised in appeal when such particular contention was not raised before the trial court at the first instance?

7. To get answers, the provisions contained in Chapter IV of Part IX of the Indian Succession Act, 1925 are to be looked into at the outset. Chapter IV prescribes the practice and procedure in granting/revoking Probates and letters of administration.

Section 264 confers jurisdiction on the District Judge in granting and revoking Probate and Section 266 speaks of powers of District Judge as to grant of Probate and administration. Section 265 confers power on the District Judge to appoint delegate to deal with non-contentious cases. Section 276 speaks of contents of the petition for Probate and Section 283 delegates the power of the Court. Sections 286 and 288 read as follows:

> "286. **District Delegate when not to grant probate or administration**- A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.
>
> *Explanation*.-"Contention' means the appearance of anyone in person, or by his recognized agent, or by a leader duly appointed to act on his behalf, to oppose the proceeding.
>
> xxx xxx xxx
>
> 288. Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.- In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents which may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge, unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do. And, in that case, the same shall be sent by him to the District Judge."

8. A thorough analysis of all such provisions contained in Chapter IV of Part IX of the Indian Succession Act, gives an unambiguous theory that when the District Delegate Court has no authority to deal with the contentious issues raised in the Probate Proceeding and in such event when the case turns to be a contentious one, it has to be returned to the Presentor along with all the testimonials in order to make him present to the District Judge again or in other words, it is to be returned to the District Judge where the District Judge has to proceed in terms of the provisions contained in said Chapter.

In ***P.J.Francis vrs. P.L.Verghese, (1956) 2MLJ 288***, it has been stated that,

> "4. This Court, in pursuance of that power, issued a notification in 1939 to the effect that all Subordinate Judges do take cognizance of any proceedings under the Indian Succession Act, 1925 which cannot be disposed of by District Judges, It is probably on the strength of this notification that the Subordinate Judge felt that he was clothed with authority. But the difficulty is that it is not open to the High Court to issue any notification which is contrary to the provisions, of Section 265(1). That being the case no notification issued by the High Court could clothe a Subordinate Judge as a delegate of the District Judge to issue letters of administration in contentious matters. There is no doubt whatever that the case in question is a contentious one. Such being the case when once a contest is raised with regard to an application for letters of administration, the duty of the Subordinate Judge was to have returned it for presentation to the proper Court on the ground that he had no jurisdiction. That procedure has not been followed in this case. As Mr.Raghavan says it is due to the fact that, through in vague terms the objection to jurisdiction was taken in the counter, it does not seem to have been made the subject-matter of an issue for decision or argued before the learned Subordinate Judge. But the fact that the parties did not raise the question as to want of jurisdiction or even acquiesced in the jurisdiction of a Court would not confer on the Court a jurisdiction which it has not See the decision of the Privy Council in Ledgard v. Bull I.L.R.(1886) All. 191 (P.C.) and in Minakshi v. Subramaniya MANU/PR/0040 /1887."

9. In respect of our High Court, there is a notification dated 22nd November 1961, which is reproduced below:-

> "NOTIFICATION
> The 22nd November, 1961
>
> No.159A.. In exercise of the powers conferred by Section 23 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act 12 of 1887), the High Court are pleased to authorize the Courts of all Principal Subordinate Judges to try and dispose of proceedings for grant of probates and letters of administration under the Indian Succession Act, 1925 (Act 39 of 1925), transferred to their files by the District Judge.
>
> By order of the High Court
>
> Sd/- .. .."

It is to be mentioned here that prior to coming into force of the Orissa Civil Courts Act 1984, the Bengal, Agra and Assam Civil Courts Act, 1887(Act 12 of 1887) was operational and the aforesaid notification dated 22nd November 1961 is continued to be in force by virtue of the Savings Clause in Section 23 of the Orissa Civil Court's Act 1984. This Court in a decision reported in (2008) 105 CLT 844

have held that the Civil Judge (Sr. Division) can grant Probate or letters of administration if there is no contention and also if the same is transferred to him by the District Judge in view of Section 18(1) of the Orissa Civil Courts Act, 1984.

10. The High Court of Himachal Pradesh in ***Atma Ram Vrs. Janki and others, AIR 1998 HP 14***, have held that bare perusal of Sections 265, 286 and 288 of the Indian Succession Act left no doubt that whenever there was contention in an application for probate, District Delegate had no jurisdiction to proceed with matter and he should return application to applicant for presenting same to the District Judge.

11. So far as sub-delegation made to the Addl. Senior Civil Judge, as alleged by the Appellants to be impermissible under the law, it is the well settled principle that authority cannot be delegated unless expressly authorized in this behalf. There is no quarrel over this settled principle (*See* : *Mangulal Chunilal vrs. Manilal Maganlal and others, AIR 1968 SC 822*). The Supreme Court in ***Sahni Silk Mills(P) Ltd vsEmployees State Insurance Corporation, (1994) 5 SCC 346,*** a matter relating to imposition of damages under Section 85-B of the Employees' State Insurance Corporation Act, 1948 have ruled that sub-delegation of powers in terms of the provisions of Section 94-A of E.S.I.C.Act to impose damages is not permitted in absence of any specific power for sub-delegation. It is observed as follows:

> "4. The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim delegatus non potest delegare is not being applied specially when there is question of exercise of administrative discretionary power.
>
> 5. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In Barium Chemicals Ltd. v. Company Law Board, this Court said in respect of sub-delegation:
>
> "Bearing in mind that the maxim delegates non protest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."
>
> Again in Mangulal Chunilal v. Manilal Maganlal, while considering the scope of Section 481(1)(a) of the Bombay Provincial Municipal Corporation Act (59 of

1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid Section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer to whom such functions were delegated could not further delegate the same to another.

6. In Halsbury's Laws of England, 4th edition, Vol-I, in respect of sub-delegation of powers it has been said:

"In accordance with the maxim delegatus non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, (H. Lavender & Sons Ltd. v. Minister of Housing and Local Government [1970] 3All ER 871 unless subdelegation of the power is authorised by express words or necessary implication (Customs and Excise Comrs. v. Cure and Deeley Ltd. 1962 (1) QB 340K, [1961] 3aLLer 641 and Mungoni v. A.S.G. of Northern Rhodesia[1960]1 All ER 446 etc. There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising subdelegation and the same may be said of any power to the exercise of which the designated body should address its own mind. Allam & Co. v. Europa Poster Services Ltd.[1968]1 All ER 626…… "

12. It is true that, as per definition enumerated in sub-section 2(b) of the Orissa Civil Courts Act, the Court of Civil Judge (Sr. Division) includes the court of Addl. Civil Judge (Sr.Division). But this is for the purpose of appeal and other provisions relating to suits which can at no stretch be considered to include the purpose of District Delegate defined in Section 265 of the Indian Succession Act to sub-delegate the proceedings under Part-IX of the said Act to Additional Senior Civil Judge. Admittedly, in the instant case, the District Judge delegated the proceeding to the Court of Principal Civil Judge (Senior Division) as per Section 18 of the Orissa Civil Courts Act and then it was not the Court of Addl. Senior Civil Judge to deal with the proceeding. Had it been the case that Probate Proceeding was delegated to the Addl. Senior Civil Judge by the District Judge himself then it would have been otherwise to include the Court of Addl. Senior Civil Judge as the District Delegate. But here it is not so and it is admitted that the Principal Civil Judge (Sr.Division) has further transferred the proceeding to Addl. Senior Civil Judge to deal with the same. This, in my humble opinion, is not permissible in terms of the provisions contained in Section 265 of the Indian Succession Act read with Section 18 of the Orissa Civil Courts Act and notification dated 22nd November 1961.

13. The important question is therefore remains that when the Probate Proceeding became contentious as admitted by the learned trial court in the impugned judgment (at Para-6), then it had to be followed the provisions in Section 286 and 288 of the Indian Succession Act to return the application to the Presentor to be presented before the District Judge. Unfortunately, this has not been followed in the instant case and instead of returning the plaint, learned trial Judge proceeded on merit to decide the contentious issue, which is in contravention to the provisions of the Indian Succession Act as afore-stated. Considering such irregularity on the

part of the learned Addl. Senior Civil Judge, it is felt appropriate to send back the matter to District Judge for adjudication.

14. But before that, the point enumerated at paragraph- 6(iii) above, has to be answered. It is the submission of Respondent No.2 to 4 that the Appellants have never raised their objection before the learned trial Judge, more so at the earliest opportunity, and therefore they are precluded from raising such objection at this stage in the appeal. Reliance placed to provisions contained in Section 21 of the CPC by the respondents in this regard is answered by the Appellants that the same is not applicable to the present case when the question of jurisdiction is under challenge.

15. Section 21 of the CPC mandates that no objection to the place suing or to the pecuniary limits of the jurisdiction shall be allowed by any appellate court unless such objection was taken in the court in the first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. Thus the objection to the bar of jurisdiction as per Section 21 of the CPC is primarily in respect of place of suing and pecuniary limits. Law is no more *res integra* to settle the principle with regard to objection to jurisdictional factors in terms of Section 21 of the CPC (*See*: *Koopilan Uneen's daughter Pathumma and others v. Koopilan Uneen's Son Kuntalan Kuty dead by Lrs. And others, 1981(3) SCC 589*). But it is not the case here as to the objection with regard to territorial jurisdiction or pecuniary jurisdiction. It is the case where the very continuation of the proceeding after it turns to be contentious is found violative of the statutory provisions under the Indian Succession Act 1925. It is reiterated here that the proceeding is admittedly a contentious one and therefore has to be dealt with following provisions in Section 286 and 288 of the Indian Succession Act.

16. It is the fundamental principle that a decree passed by a Court without jurisdiction is a nullity. This Court in ***K. Shankar Rao Dora vrs. T. Boishnab Dora and others, 1986 OnLine Ori 167,*** while dealing with related provisions in Section 21(2) of the CPC and Section 11 of the Suit Valuation Act have observed that, the principle underline the provision is that when a case has been tried by a Court on merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it has resulted in failure of justice and the policy of legislature has been to treat the objections to jurisdiction both territorial and pecuniary as technical and not opened for consideration by an appellate court unless there has been a prejudice on the merits.

But as stated above, instant case is where the jurisdiction of the Addl. Senior Civil Judge is ceased upon raising contentions by the respondent and the Court is bound to return the plaint to be presented before the District Judge. Therefore, the provisions regarding territorial or pecuniary jurisdiction of the Court is not concerned in the case at hand and rather it involves the question of cessation of jurisdiction upon such eventuality when contentions are raised by the respondents in

the Probate Proceeding. In ***Kiran Singh vrs. Chaman Passwan, AIR 1954 SC 340,*** it is observed that, "it is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is to sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of the parties".

17. What is wrong in the instant case is that learned Addl. Senior Civil Judge proceeded further in the proceeding even by knowing the same to be in contest ignoring the provisions contained in Sections 286 and 288 of the Indian Succession Act. As per Section 272 of the Indian Succession Act, Probate may be granted by the District Delegate in any case where there is no contention. When contentions are raised, it is imperative on the part of the District Delegate not to grant Probate but to proceed to return the application to be presented before the District Judge. Such defect on the part of the Addl. Senior Civil Judge to proceed further despite contentions are being raised to make the proceeding contentious in nature is definitely beyond the limits of Addl. Senior Civil Judge leaving such defect in his own jurisdiction. Proceeding further in contentious proceedings of Probate to decide the case on merit is definitely beyond the jurisdiction of Addl. Senior Civil Judge and the statute mandates that a Probate Proceeding has to be returned to be presented before the District Judge upon raising of contentions. It is immaterial here that whether the parties have raised their objection or not, and when the statute itself makes the Court (District Delegate) nonfunctional upon raising of contentions further proceeding of the District Delegate ignoring the mandatory provisions of the statute is treated as without jurisdiction touching the very foundation of the proceeding and thus, renders the decision as a nullity. It is such a defect that cannot be cured by the consent of the parties and regardless of the objections raised by the party. The further proceeding being violative of the statutory mandate envisaged under Section 288 of the Indian Succession Act, the entire adjudication subsequent to the framing of issue is rendered as a nullity and void form that stage. Thus, point no.3 is answered accordingly.

18. In the given circumstances discussed above and for the reasons stated, the impugned judgment is set aside and the matter is sent to the District Judge at Bhubaneswar to decide the same afresh from the stage of framing of issues. The entire record shall be transmitted to the District Judge within two weeks from the date of receipt of copy of this order. The District Judge is further directed to decide the case afresh, as expeditiously as possible, following due procedure of law.

19. The Appeal is disposed of.

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

Result of the case:
Appeal disposed of.

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2025 (II) ILR-CUT-1126

DINABANDHU BEHERA
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 5239 OF 2018]

AND

JAGABANDHU BEHERA V. STATE OF ODISHA & ORS.
[W.P.(C) NO. 5240 OF 2018]

30 MAY 2025

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

Issue for Consideration

Whether the Revenue Authority has jurisdiction to decide the question of title.

Headnotes

ODISHA PREVENTION OF LAND ENCROACHMENT ACT, 1972 – Section 7(1) r/w Section 9 of the Code of Civil Procedure, 1908 – An eviction notice U/s. 7(1) of the Orissa Prevention of Land Encroachment Act was issued on 17.11.2016 to the petitioner with the direction to vacate the encroached Government land within 30 days – A Civil Suit was pending before the Civil Judge (Jr. Division), Dhamnagar for declaration of right, title and interest in respect of the same property – Whether the revenue authority has the jurisdiction to decide the question of title.

Held: No – It is further settled that revenue authorities do not have jurisdiction to decide questions of title – Where a bona fide dispute exists regarding the right, title, and interest in a property, the Government or revenue authorities cannot assume ownership through summary proceedings – Such disputes inherently involve complex issues of law and fact, which cannot be appropriately resolved by summary processes. (Para 11)

Therefore, where a bona fide dispute exists over the title to property, summary proceedings by revenue authorities cannot constitute the proper forum for adjudication – Such disputes fall within the domain of civil courts, which have the jurisdiction to determine rights, titles, and other consequential reliefs. (Para 13)

Citations Reference

State of A.P. v. Manjeti Laxmi Kantha Rao, **(2000) 3 SCC 689;** Govt. of A.P. v. Thummala Krishna Rao, **(1982) 2 SCC 134 – referred to.**

List of Acts

Odisha Prevention of Land Encroachment Act, 1972; Code of Civil Procedure, 1908.

Keywords

Hatpatta; Ekpadia; Encroachment; Eviction; Eviction notice; Govt. Land.

Case Arising From

Eviction order passed by the Tahasildar, Dhamnagar in OPLE Case No. 9 of 2016, the appellate order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No.154 of 2016, and the revisional order passed by the Collector, Bhadrak in O.P.L.E. Revision No.9 of 2017 – W.P. (C) 5239 of 2018.

&

Eviction order passed by the Tahasildar, Dhamnagar in O.P.L.E. Case No.10 of 2016, the appellate order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No.155 of 2016, and the revisional order passed by the Collector, Bhadrak in O.P.L.E. Revision No.10 of 2017 - W.P.(C) No.5240 of 2018.

Appearances for Parties

For Petitioners : Mr. Sukanta Ku. Nayak-2

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

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. Since common questions of fact and law are involved in the above-mentioned Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court finds it appropriate to treat W.P. (C) No. 5239 of 2018 as the lead case for the proper adjudication of these matters.

2. The Petitioner, in W.P. (C) No. 5239 of 2018 challenges the eviction order passed by the Tahasildar, Dhamnagar in O.P.L.E. Case No. 9/16, the appellate order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No.154/16, and the revisional order passed by the Collector, Bhadrak in O.P.L.E. Revision No.9/17.

3. Similarly, the petitioner in W.P.(C) No.5240 of 2018 challenges the eviction order passed by the Tahasildar, Dhamnagar in O.P.L.E. Case No.10/16, the appellate order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No.155/16, and the revisional order passed by the Collector, Bhadrak in O.P.L.E. Revision No.10/17.

I. FACTUAL MATRIX OF THE CASE:

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

(i) The suit land, M.S. Plot No. 847 measuring Ac. 0.23 dec under Khata No. 815, corresponding to C.S. Plot No. 625 measuring Ac. 0.23 dec under Khata No. 242 of Mouza

Dakshinbad, District Bhadrak, was originally recorded in the name of the ex-intermediary, Md. Moulabi Jafar Hossain.

(ii) The ex-intermediary had issued a *Hatapatta* in favour of the Petitioner's father, who was paying rent to him.

(iii) After the abolition of the estate, the ex-intermediary submitted an *Ekpadia* in favour of the Petitioner's father, in whose name the T.L. was opened. The Petitioner's father thereafter paid rent to the Government. Upon his death, the Petitioner came into possession of the suit land.

(iv) During the Hal Settlement operation, the suit plot was recorded in the name of the Government under the 'Abadajogya Anabadi' Khata.

(v) Subsequently, the Tahasildar initiated encroachment proceedings against the Petitioner in O.P.L.E. Case No. 9/16.

(vi) Upon becoming aware of the encroachment case, the Petitioner filed a suit for declaration of right, title, interest, and possession before the learned Civil Judge, Jr. Division, Dhamnagar, vide C.S. No. 16/17. Simultaneously, the Petitioner contested the encroachment proceedings on the ground that the same were not maintainable in view of the pending civil suit.

(vii) On 17.11.2016, the Tahasildar issued an eviction notice to the Petitioner, directing him to vacate the suit plot within 30 days from the date of receipt of the notice.

(viii) The Petitioner preferred an appeal bearing O.P.L.E. Appeal No.154/16 before the Sub-Collector, Bhadrak, which was dismissed on 13.06.2017.

(ix) Against the appellate order, the Petitioner preferred a revision petition bearing O.P.L.E. Revision Case No. 9/17 before the Collector, Bhadrak, which was dismissed by order dated 09.02.2018.

(x) Aggrieved by the aforementioned orders, the Petitioner has approached this Court seeking appropriate relief.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The Petitioner contended that it is a settled principle of law that questions relating to the title of either party can only be adjudicated by the Civil Court and not in summary proceedings under the Orissa Prevention of Land Encroachment Act, 1972.

(ii) The Petitioner submitted that the R.O.R. does not confer any right, title, or interest. He claimed title over the suit land on the basis of a *Hatapatta* and T.L., and therefore, the authorities under the Orissa Prevention of Land Encroachment Act, 1972 erred in law by treating the disputed land as Government land solely on the basis of the Hal R.O.R., which is incorrect and illegal.

(iii) The Petitioner further submitted that it is immaterial whether the encroachment case was initiated prior to or after the filing of the civil suit. It is a settled principle of law that where there is a dispute regarding right, title, and interest in the suit land, only the Civil Court has jurisdiction to decide such issues.

(iv) The Petitioner submitted that, since a civil suit for declaration of right, title, interest, and possession in respect of the suit plot is pending before the learned Civil Judge, Jr. Division, Dhamnagar, the authorities under the Orissa Prevention of Land Encroachment Act, 1972, lack jurisdiction to proceed with eviction while the title of the Government over the suit land remains disputed.

(v) The Petitioner contended that the orders passed by the authorities under the Orissa Prevention of Land Encroachment Act, 1972, are illegal and arbitrary, particularly as the Tahasildar seeks to evict the Petitioner from the suit plot despite the pending suit and the dispute over title.

(vi) The Petitioner submitted that, according to the encroachment proceedings, he is alleged to have encroached upon an area measuring Ac. 0.01 decimal, where he has constructed a thatched house and resides with his family members. Eviction from the said area would render the Petitioner and his entire family homeless, as they have no other residential accommodation.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

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

(i) The Petitioner has encroached upon Government land by constructing a *kuchha* house. Consequently, the Revenue Inspector of Dhamnagar submitted a requisition in Form 'G' for initiation of encroachment proceedings under the provisions of the Orissa Prevention of Land Encroachment Act, 1972, recorded as L.E. Case No. 9/16. Following due process, an eviction notice under Section 7(1) of the Orissa Prevention of Land Encroachment Act, 1972 was issued on 17.11.2016 to the Petitioner, directing him to vacate the encroached Government land within 30 days of receipt of the notice.

(ii) The suit land is recorded under the 'Abadayogya Anabadi Khata' and is, therefore, protected in the public interest. Accordingly, the land cannot be settled in favour of the Petitioner, who is liable for eviction in accordance with the procedures prescribed under the Orissa Prevention of Land Encroachment Act, 1972.

(iii) A Civil Suit bearing No. 16/2017 was pending before the Civil Judge, Jr. Division, Dhamnagar, for declaration of right, title, and interest. However, the Tahasildar, exercising powers under the Orissa Prevention of Land Encroachment Act, 1972, is not subordinate to the Civil Court. Therefore, the Civil Judge, Jr. Division, has no jurisdiction under law to restrain the statutory authority, the Tahasildar, Dhamnagar, from evicting the encroacher from Government land under Section 41(b) of the Specific Relief Act.

IV. COURT'S REASONING AND ANALYSIS:

7. Heard learned counsel for the parties and perused the materials on record.

8. It is a well-settled position of law that, in terms of Section 9 of the Code of Civil Procedure, 1908, civil courts shall have jurisdiction to try all suits of a civil nature, excluding those in respect of which such jurisdiction is either expressly barred or is excluded by necessary implication.

9. The exclusion of the jurisdiction of civil courts is not to be readily inferred. There exists a presumption in favour of the subsistence of such jurisdiction. Where

the question arises as to whether civil court jurisdiction is excluded, the legislative intent must be carefully examined. Further, where statutory provisions have not been complied with, or where basic standards of judicial procedure have been disregarded, the civil courts will continue to have jurisdiction notwithstanding any exclusion.

10. The Supreme Court in ***State of A.P. v. Manjeti Laxmi Kantha Rao***[1] observed as replicated hereinunder:

> *"5. The normal rule of law is that civil courts have jurisdiction to try all suits of civil nature except those of which cognisance by them is either expressly or impliedly excluded as provided under Section 9 of the Code of Civil Procedure but such exclusion is not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the civil courts to try a civil suit. The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it…"*

11. It is further settled that revenue authorities do not have jurisdiction to decide questions of title. Where a bona fide dispute exists regarding the right, title, and interest in a property, the Government or revenue authorities cannot assume ownership through summary proceedings. Such disputes inherently involve complex issues of law and fact, which cannot be appropriately resolved by summary processes.

12. This principle was reaffirmed by the Supreme Court in ***Govt. of A.P. v. Thummala Krishna Rao***[2], while considering a case under the Andhra Pradesh Land Encroachment Act, 1905. The Supreme Court observed that summary proceeding under the act can only be initiated where unauthorised occupation of government property is not disputed. It was observed:

> *"8. …If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title..."*

13. Therefore, where a bona fide dispute exists over the title to property, summary proceedings by revenue authorities cannot constitute the proper forum for adjudication. Such disputes fall within the domain of civil courts, which have the jurisdiction to determine rights, titles, and other consequential reliefs.

14. In the instant factual matrix, the Petitioner has asserted that his father held a *Hatapatta* in his favour and was duly paying rent to the erstwhile intermediary.

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[1] (2000) 3 SCC 689.
[2] (1982) 2 SCC 134.

Following the abolition of the estate, the intermediary issued an *Ekpadia* in favour of the Petitioner's father, in whose name the T.L. was opened. Subsequently, the Petitioner's father continued to pay rent to the Government. Upon his death, the Petitioner succeeded to possession of the suit land. Contrary to these facts, the land was erroneously recorded in the name of the State during the Hal Settlement, a factual inaccuracy which led to the initiation of encroachment proceedings against the Petitioner.

15. Consequently, the Petitioner approached the civil court seeking a declaration of his right, title, and interest in the suit property. He also sought a declaration that the encroachment proceedings initiated by the revenue authorities were not maintainable, as a suit for declaration of right, title, interest, and possession in respect of the suit land was already pending before the Civil Judge, Junior Division, Dhamnagar.

16. Upon careful analysis of the facts and circumstances, this Court finds that the core issues raised involve a bona fide dispute concerning the right and title to the suit property, a matter beyond the jurisdiction of the encroachment proceedings initiated under the Orissa Prevention of Land Encroachment Act, 1972. The revenue authorities, who conduct summary procedures, are not competent to adjudicate such complex disputes of title.

17. Furthermore, faced with a bona fide dispute, the State was not entitled to determine ownership in its own favour and proceed with eviction through summary proceeding.

V. CONCLUSION:

18. In light of the foregoing, the proper and competent forum to adjudicate the issues raised by the parties, including declaration of right, title, interest, and possession, is the civil court. Therefore, the eviction order passed by the Tahasildar, Dhamnagar in O.P.L.E. Case No. 9/16, the order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No. 154/16, and the order of the Collector, Bhadrak in O.P.L.E. Revision No. 9/17 are hereby set aside.

19. Similarly, in W.P.(C) No. 5240 of 2018, the eviction order passed by the Tahasildar, Dhamnagar in O.P.L.E. Case No. 10/16, the appellate order passed by the Sub-Collector, Bhadrak in O.P.L.E. Appeal No. 155/16, and the revisional order passed by the Collector, Bhadrak in O.P.L.E. Revision No. 10/17 are hereby set aside.

20. Accordingly, both the Writ Petitions are **allowed**.

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

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

Result of the case:
Writ Petitions allowed.

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2025 (II) ILR-CUT-1132

SRIMATI SETHY & ORS.
V.
COMPETENT AUTHORITY & LAND ACQUISITION OFFICER, NH-6 (49), KEONJHAR & ORS.

[W.P.(C) NO. 22749 OF 2024]

18 JULY 2025

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

Issues for Consideration

1. Whether writ petition is maintainable where the provision of alternative remedy is available.

2. Transfer/sale of Hindu joint family property by one or two co-parceners without the consent of other co-parceners. Whether such transfer is valid.

3. Transfer/sale of the Scheduled Caste or Scheduled Tribe property by one or more co-parceners without the consent of others – Whether such transfer is valid.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Arts. 226 & 227 – Writ petition – Maintainability – Alternative remedy – Whether writ petition is maintainable where the provision of alternative remedy is available.

Held: Yes – The present writ petition is squarely maintainable as it concerns the unconstitutional deprivation of the petitioners' property rights under Article 300A through allegations of fraudulent alienation and arbitrary disbursal of compensation; without notice, consent, or due process – The existence of an alternate remedy does not preclude the exercise of writ jurisdiction in this case, which falls squarely within the recognised exceptions namely, violation of natural justice, actions taken without jurisdiction, and infringement of constitutional rights. (Para 13)

(B) PROPERTY LAW – Undivided Hindu joint family property – Legal partition of the property not made – Transfer/sale of such property by one or two co-parceners without the consent of other co-parceners – Whether such transfer is valid.

Held: In the absence of a legal partition of the property in question, the transferors of the impugned sale deeds cannot transfer any defined portion of joint property nor can the purchaser take possession of such specific land – At best, the purchaser steps into the shoes of the transferor and may seek

partition, but cannot claim possession simpliciter – The law is equally clear that no one can transfer a better title than they possess. Therefore, any sale deed purporting to convey specific demarcated land from within unpartitioned coparcenary property is legally void to the extent it exceeds the seller's undivided share, and is not merely voidable. (Para 28)

(C) PROPERTY LAW – Undivided property of Scheduled Caste & Scheduled Tribe – Alienation of such property by one or more coparceners without the consent of others – Guidelines issued for regulating such alienation. (Para 36)

Citations Reference

State of Haryana v. Karnal Distillery, **AIR 1977 SC 781;** Chancellor v. Bijay Ananda Kar, **AIR 1994 SC 579;** Whirlpool Corporation v. Registrar of Trademarks, Mumbai, **1998 (8) SCC 1;** Harbanslal Sahnia v. Indian Oil Corporation Ltd., **(2003) 2 SCC 107;** Radha Krishna Industries v. State of Himachal Pradesh, **2021 SCC OnLine SC 334;** Kavita Kanwar v. Mrs Pamela Mehta and Others, **AIR 2020 SC 2614;** Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese, **(2022) 7 SCC 90;** Ramdas vs. Sita Bai and others, **2009 (7) SCC 444;** M.V.S. Manikyala Rao v. M. Narasimhaswami & Ors., **AIR 1966 SC 470;** Siddeshwar Mukherjee v. Bhubaneswar Prasad Narayan Singh, **AIR 1953 SC 487;** Dharmendra Singh Parihar v. Ramgopal Chaudhary, **2023 SCC OnLine MP 293;** Ahamad Khan v. Bhaskar Datt Pandey, **2024 SCC OnLine MP 5157;** Sk. Golam Lalchand v. Nandu Lal Shaw, **2024 SCC OnLine SC 2456 – referred to.**

List of Acts

Constitution of India, 1950; Code of Civil Procedure, 1908; Transfer of Property Act, 1882; Orissa Land Reforms Act, 1960; Arbitration and Conciliation Act, 1996; National Highways Act, 1956.

Keywords

Maintainability of writ petition; Alternative remedy; Unconstitutional deprivation; Right to property; Fraudulent alienation; Arbitrary disbursal of compensation; Violation of natural justice; Infringement of constitutional right; Hindu joint family property; Alienation/ Transfer of property; Legal partition; Coparcenary; Possession simpliciter; Demarcated property; Consent of other members; Rule of self-restraint; Fraudulent transfer; Alienation of undivided property by members of the Scheduled Castes or Scheduled Tribes; Joint coparcenary property.

Case Arising From

Order dated 19.03.2024 passed by the District Judge, Keonjhar in C.M.A. No. 01 of 2024 in Execution Case No. 75 of 2019 (arising out of Arbitration

Award dated 24.11.2018 in Arbitration Misc. Case No. 13 of 2017 and L.A. Case No. 79 of 2017).

Appearances for Parties

For Petitioners : Mr. Dayananda Mohapatra, Sr. Adv., &
Mr. Tarun Kanta Pattanayak

For Opp.Parties : Smt. Jyotsnamayee Sahoo, ASC
Mr. Sourya Sundar Das, Sr. Adv., Mr. Soumya Mishra &
Mr. Umesh Chandra Mohanty

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Petitioners, through this Writ Petition, seek to challenge the Order dated 19.03.2024 passed by the District Judge, Keonjhar in C.M.A. No. 01/2024 in Execution Case No. 75/2019 (arising out of Arbitration Award dated 24.11.2018 in Arbitration Misc. Case No. 13/2017 and L.A. Case No. 79/2017), whereby the petition filed under Section 47 read with Order XXI Rules 97, 101 and Section 151 of the Code of Civil Procedure, 1908 was rejected.

2. The Petitioners, though admittedly not parties to the original proceedings, are the legal heirs of the original landowners and have a substantive interest in the land acquired under the National Highways Act, 1956, specifically land notified under Section 3-A and compensation determined under Section 3-G(5). The impugned Order is alleged to have been obtained by fraud and misrepresentation, excluding the Petitioners who are necessary parties with valid legal rights.

3. It is argued that despite these rights, the Executing Court dismissed the application, solely on the ground of prior litigation before this High Court and Supreme Court and the delay in the execution process, without proper judicial application of mind. The rejection is ex facie perverse, contrary to statutory provisions, and warrants interference.

4. Accordingly, the impugned Order dated 19.03.2024 is liable to be set aside with appropriate directions for impleadment of the Petitioners in the execution proceedings and for proper adjudication in accordance with law.

I. FACTUAL MATRIX OF THE CASE:

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

(i) The petitioners in the present matter are Scheduled Caste women belonging to a pardanshin community, residing in a remote tribal area of Keonjhar district.

(ii) The land in question, described in Schedule “B”, is the ancestral property originally held by one Late Nabei Sethy, who belonged to the Mitakshara School of Hindu Law. He held absolute right, title, and interest over this land, which was duly recorded in his name in

the Hal/Major Settlement Record of Rights. Upon his demise, his estate devolved upon his legal heirs: three sons, namely Kalakar, Pumachandra, and Moheswar, and three daughters, namely Parbati @ Srimati, Saraswati, and Malati (the latter being one of the present petitioners). Accordingly, the property left behind by Late Nabei Sethy, including the Schedule "B" land, became undivided coparcenary property among his successors.

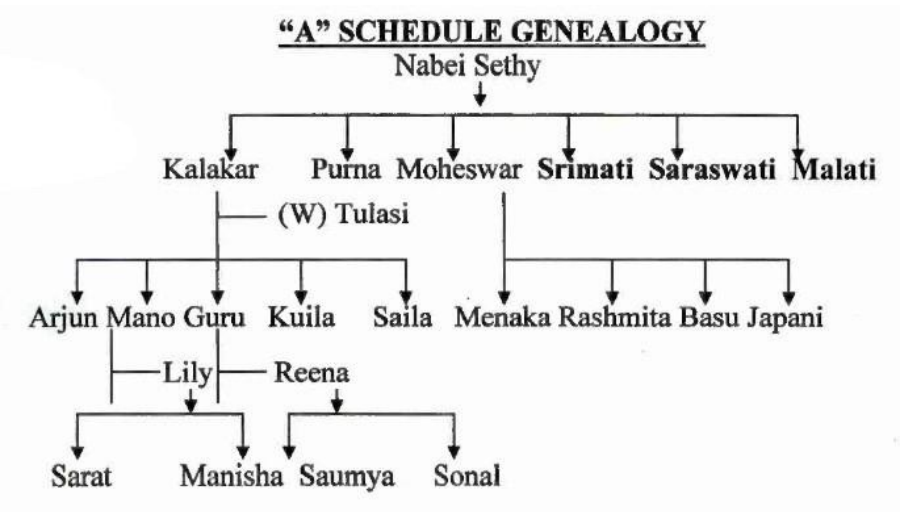
(iii) The Schedule "B" land is situated under the jurisdiction of the Collectorate of Keonjhar District, within the Office of the SubRegistrar, Keonjhar, P.S. Town, in the village of Baniapat Khuntapada. The land is recorded in Hal/Major Settlement under Khata No. 50 and comprises a total area of 4 acres and 400 decimals. The specific plots and their respective areas are as follows:

Plot No.	**Area**
130	A0.300 dec
135	A0.200 dec
136	A0.190 dec
137	A0.180 dec
138	A0.170 dec
139	A0.090 dec
142	A0.090 dec
143	A0.220 dec
144	A0.210 dec
145	A0.120 dec
148	A0.090 dec
149	A0.210 dec
150	A0.050 dec
229	A0.100 dec
230	A0.140 dec
231	A0.190 dec
232	A0.070 dec
237	A0.120 dec
238	A0.110 dec
245	A0.100 dec
249	A0.180 dec
250	A0.200 dec
251	A0.180 dec
252	A0.240 dec
253	A0.150 dec
254	A0.280 dec
257	A0.160 dec
258	A0.060 dec

(iv) During Kalakar's lifetime, his son Manoranjan predeceased him in the year 2011, leaving behind his wife Lily, son Sarat, and daughter Manisha. Kalakar passed away in the year 2015, leaving his wife Tulasi, sons Arjun and Gurucharan, daughters Kuila and Saila, and the legal heirs of his deceased son Manoranjan. Similarly, Moheswar died leaving

behind his daughters Menak, Rashmita, Minka @ Japani, and son Basudeb. Gurucharan, one of Kalakar's sons, passed away on 26.11.2023, survived by his wife Reena, son Saumya Ranjan, and daughter Sonali. Despite the passage of time, no partition has taken place among the legal heirs, and the Schedule "B" land continues to be possessed by various heirs according to personal convenience without any formal demarcation or division.

(v) The Genealogy of the Sethy Family is produced hereinbelow:



(vi) It is submitted that Shri Dillip Kumar Pati ("Opp. Party No. 3") became aware that a portion of the Schedule "B" land, referred to as Schedule "C", was likely to be acquired by the Government of India for the construction of a bypass under National Highway No. 6. The three sons of Late Nabei Sethy i.e. Kalakar, Moheswar, and Pumachandra, thereafter executed various registered sale deeds in favour of Shri Dillip Kumar Pati and one Balaram Patra. These include:

a. RSD No. 11001101369 dated 13.06.2011, executed by the Opp . Party No.3, Sri Dillip Kumar Pati had purchased the land from Kalakar, Maheswar and Puna without taking the consent of their 3 sisters (present petitioners) who are the daughters of Late Nabei Sethy beyond their share.

b. RSD No. 11001200410 dated 02.03.2012, executed by Tulasi Sethy (W/o Late Kalakar Sethy) and Maheswar Sethy, in favour of Balaram Patra.

c. RSD No. 11001300363 dated 14.03.2013, whereby the same land was re-transferred by Balaram Patra to Dillip Kumar Pati.

d. RSD No. 11001300596 dated 27.04.2013, executed by Maheswar Sethy.

e. RSD No. 11001301285 dated 11.09.2013, executed by Purna Sethy, S/o Late Nabei Sethy, in favour of Balaram Patra.

f. RSD No. 11001400328 dated 25.02.2014, whereby Balaram Patra transferred the land to Dillip Kumar Pati.

(vii) Relevant permissions were obtained from the Sub-Collector, Keonjhar in respect of some of these transactions, including Anumati Nos. 29/12 and 27/12.

(viii) Subsequently, the Government of India issued Gazette Notification No. S.O. 3424(E) dated 16.12.2015 and Declaration No. S.O. 2036(E) dated 09.06.2016 for acquisition of Schedule "C" land for National Highway purposes. Compensation amounting to ₹6,96,09,267.00 was disbursed to Dillip Kumar Pati and others. Thereafter, pursuant to an appeal under Misc. Arbitration Case No. 3/2017, the Arbitrator-cum-Collector, Keonjhar granted an enhanced compensation of ₹ 21,08,72 ,530.00/-

(ix) Meanwhile, when Dillip Kumar Pati and certain co-sharers attempted to interfere with the petitioners' possession over the unpartitioned land, the petitioners instituted C.S. No.105/2017 before the Civil Judge (Senior Division), Keonjhar seeking partition. The suit was eventually withdrawn when they were promised appropriate compensation. The petitioners are now arrayed as defendants in C.S. No. 9/2018 filed by others. They also initiated C.M.A. No. 01/2024 before the learned District Judge, Keonjhar under Section 47 read with Order XXI Rules 97 and 101 and Section 151 CPC, arising out of Execution Case No. 75/2019.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

6. Learned counsel for the Petitioners earnestly made the following submissions in support of his contentions:

(i) The petitioners submit that as Class I legal heirs of Late Nabei Sethy, they continue to hold undivided coparcenary rights over the Schedule "B" property while the Opposite Party No.3 tries to dispossess them of their rightful property.

(ii) They contend that the six sale deeds executed between 2011 and 2014, many of which involved one Balaram Patra, a BPL cardholder and daily labourer, were executed without their knowledge or consent, and are therefore void ab initio. These transactions, they argue, do not convey valid legal title or interest to the vendees.

(iii) Specifically, the petitioners argue that:

a. The sale deeds executed between 2011 and 2014, particularly those involving Balaram Patra, a daily labourer and BPL cardholder, raise concerns of procedural irregularity and lack of bona fide consideration.

b. In RSD No. 11001200410 dated 02.03.2012, executed by Tulasi Sethy and Maheswar Sethy in favour of Balaram Patra, the consideration amount of ₹72,00,000/- was not supported by any recital as to mode of payment (cash or cheque). Both executants were illiterate and affixed thumb impressions.

c. The subsequent sale by Balaram Patra to Dillip Kumar Pati under RSD No. 11001300363 dated 14.03.2013 for ₹79,20,000 cited "medical treatment" as the reason, although no supporting records were annexed.

d. The petitioners submit that the RSD No. 11001300596 dated 27.04.2013, executed by Maheswar Sethy in favour of Dillip Kumar Pati, similarly does not disclose the manner of payment of the consideration of ₹45,65,000/-.

e. In RSD No. 11001301285 dated 11.09.2013, another transaction was executed between Purna Sethy and Balaram Patra for ₹67,65,000/-. However, no mention is made regarding the source of funds or payment mechanism, which the petitioners argue is questionable given Balaram Patra's financial profile as a BPL.

f. This was followed by RSD No. 11001400328 dated 25.02.2014, wherein Balaram Patra transferred the land to Dillip Kumar Pati for ₹1,23,00,000/- citing repayment of loan and medical expenses. The petitioners raise doubt over the capacity of a BPL cardholder to engage in such high-value transactions.

(iv) Notwithstanding this, it is submitted that the revenue records were mutated in favour of Opposite Party No. 3 in connivance with revenue authorities and by suppressing the petitioners' lawful rights.

(v) It is further submitted that the sale deeds reflect various procedural irregularities, including lack of recitals regarding consideration paid, absence of credible documentation of financial capacity of the purchaser(s), and discrepancies in the stated reasons for transfer.

(vi) The petitioners assert that the illiteracy of some of the executants, coupled with the absence of any formal partition, rendered the sale deeds beyond the legal authority of the sellers. In particular, the petitioners never alienated their 50% share in Ac. 1.44 dec or Ac. 1.23 dec of land and were never party to the relevant transactions. Moreover, the alleged consideration amounts, ranging from ₹45,65,000/- to over ₹1 crore, are not substantiated by credible evidence, especially given the financial background of some of the individuals involved.

(vii) The petitioners initiated C.S. No. 105/2017 seeking partition but, upon being misled by representations and promises made by Dillip Kumar Pati following the government's land acquisition notification, they withdrew the suit. Thereafter, Gurucharan, son of Late Kalakar, instituted C.S. No. 9/2018, which remains pending, wherein the petitioners are arrayed as Defendants Nos.3, 9, and 10. Despite this, the land in question was subsequently acquired by the Government of India for construction of National Highway No. 6, and substantial compensation was paid exclusively to Dillip Kumar Pati and others without the knowledge or involvement of the petitioners. Initially, an amount of ₹6,96,09,267.00/- was disbursed; thereafter, on appeal, an enhanced compensation amount of ₹21,08,72,530.00 was granted by the Arbitrator-cum-Collector, Keonjhar. The petitioners assert that, being entitled to at least a one-sixth share in the said property and compensation, their exclusion amounts to an arbitrary and unconstitutional deprivation of property under Article 300A of the Constitution.

(viii) In light of this, the petitioners filed W.P.(C) No. 10075/2024 before this Court, which was disposed of by order dated 25.04.2024 with a direction to Opposite Party No. 1 to decide on the apportionment of both original and enhanced compensation in L.A. Case No. 79/2013. It is only thereafter that the petitioners came to understand the extent of fraudulent mechanisms adopted by Dillip Kumar Pati in concert with certain officials and co-sharers; both to effect illegal mutation in his favour and to alienate land even while partition proceedings were pending. They allege that the process involved manipulation of official records, concealment of material facts, and misrepresentation of ownership rights.

(ix) Therefore, the petitioners contend that the entire course of action undertaken by Opposite Party No.3 amounts to systematic usurpation of their legal rights, achieved through deceit, coercion, and abuse of administrative machinery. They claim to have been deprived of both ancestral land and legitimate compensation without due process of law. These actions, they submit, warrant judicial intervention not only to safeguard their proprietary rights but also to prevent the further erosion of constitutional protections guaranteed to marginalized and vulnerable citizens.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

7. *Per contra*, learned counsel for the Opp. Parties earnestly made the following submissions in support of his contentions:

(i). It is submitted that the present Writ Petition is not maintainable in the eye of law. This writ petition arises from an application filed by the petitioners under Section 47 read with Order XXI Rules 97 and 101 and Section 151 of the Code of Civil Procedure before the learned District Judge, Keonjhar, in Execution Case No. 75 of 2019. This application was registered as C.M.A. No. 01 of 2024, wherein the petitioners prayed for setting aside the arbitral award passed in favour of this deponent (the decree-holder) in Misc. Arbitration Case No. 13 of 2017 and for issuance of a fresh award.

(ii). The learned Executing Court, upon hearing the parties and examining the record, dismissed the said application by a reasoned and detailed order, rightly characterizing the same as frivolous and an abuse of process. The core findings of the Executing Court were that the petitioners were well aware of the proceedings and had earlier instituted Civil Suit No. 105 of 2017 before the Civil Judge (Senior Division), Keonjhar, raising similar grievances. However, that suit was withdrawn with a categorical statement that no further legal proceedings would be initiated in connection with the properties in question.

(iii). Despite having knowledge of the proceedings from the inception, the petitioners never took steps to implead themselves as parties to the original arbitral proceedings. Furthermore, the matter has already been adjudicated at multiple levels, including by this Court and the Supreme Court. The present application was filed after an inordinate and unexplained delay of nearly five years from the initiation of proceedings, with no credible justification. It is evident that the petition was moved merely to delay the execution proceedings.

(iv). The Arbitration and Conciliation Act, 1996 provides a complete statutory framework for challenging an arbitral award. Section 31 deals with the form and contents of the award, Section 34 provides for filing an application to set aside an award, and Section 37 lays down the appellate remedy. If a party aggrieved by an award does not file an application under Section 34 within the prescribed time, the award attains finality under Section 35 and becomes enforceable as a decree under Section 36 of the Act. In the present case, no application under Section 34 was ever filed by the petitioners, nor did they object during the relevant stages of the acquisition process. As such, they are now estopped from raising objections at the execution stage, which is governed solely by the provisions of Order XXI of the CPC. Once the award is final and the execution has commenced, the procedural law applicable is that of the CPC, not the parent Act of 1996.

(v). Order XXI Rule 97 deals with resistance or obstruction to possession, Rule 98 with the order after adjudication, and Rules 99 to 101 deal with claims to possession and the powers of the executing court in adjudicating such claims. Rule 103 further stipulates that such adjudications shall be treated as decrees and shall be subject to appeal. Accordingly, the impugned order is deemed to be a decree under law, and hence, an appeal lies therefrom. In the presence of a statutory appeal remedy, the writ petition under Article 226 of the Constitution is not maintainable. The Supreme Court has time and again held that writ jurisdiction cannot be invoked where alternate efficacious remedies exist. The writ petition ought to be dismissed with exemplary costs to deter litigants from filing vexatious and forum-shopping applications.

(vi). It is also pertinent to note that when the writ petition was first listed on 17.09.2024 under the Fresh Admission category, this Hon'ble Court had directed the counsel for the petitioners to satisfy the Court on the maintainability of the petition in view of the availability of the appellate remedy. Instead of responding to this direction, the petitioners appeared through proxy counsel citing the illness of the arguing counsel and later took advantage of the change in bench composition to file the present interim application, which has unfortunately resulted in the passing of an interim order to their advantage. This conduct is not only reprehensible but clearly indicative of an attempt to mislead the Court and stall the lawful execution of the award.

(vii). Moreover, the petitioners have earlier filed W.P.(C) No. 17406 of 2024 before the Division Bench of this Court seeking similar reliefs, in which even interim relief was declined. They also filed CMP No. 28339 of 2024 challenging the same subject matter now urged in this writ petition, which was dismissed by the Registry. This amounts to forum shopping and an abuse of the process of law. The petitioners cannot be permitted to reopen issues that have been settled or withdrawn by them earlier, including in C.S. No. 105 of 2017 which they voluntarily withdrew before the National Lok Adalat after a settlement, expressly stating that they had no further claim over the disputed land.

(viii). It is also on record that after the death of Nabei Sethy, there was a family partition between his heirs on 19.01.2011, and the petitioners' brothers lawfully sold their respective shares to the Opposite Party No. 3, including the acquired lands. The Gazette Notification for acquisition was published in 2015 and the award was enhanced in 2018. Yet the petitioners remained silent and initiated proceedings only in 2024, clearly indicating malafide intent.

(ix). Further, the petitioners are already arrayed as defendants in C.S. No. 9 of 2018 but failed to file their written statements and were set ex parte. They have also moved an application under Order VI Rule 16 CPC in that suit admitting that the suit schedule land has vested in the Central Government and is not divisible. This very admission, juxtaposed with the reliefs sought herein, reveals a duplicitous and opportunistic approach aimed solely at frustrating lawful possession and compensation of the answering respondent.

(x). The Supreme Court in ***State of Haryana v. Karnal Distillery***[1] and ***Chancellor v. Bijay Ananda Kar***[2] has held that writ relief cannot be granted to a petitioner who approaches the court with unclean hands or suppresses material facts. The conduct of the petitioners herein squarely falls within that prohibition.

(xi). It is further submitted that the National Highways Authority of India (NHAI), Opposite Party No. 4, attempted to implead itself in the Execution Case No. 75 of 2019 by filing an application under Order I Rule 10(2) CPC, which was rejected. The NHAI pursued CMP No. 116 of 2024 before this Hon'ble Court, and then SLP(C) No. 13681 of 2024 before the Supreme Court, both of which were dismissed. The petitioners, in collusion with NHAI, are now seeking to reopen issues settled by the Apex Court itself, which is impermissible.

(xii). Lastly, the application by the petitioners for reference under Section 3H(4) of the NH Act was rejected by the competent authority in view of their previous conduct and withdrawal of civil suit. The petitioners have challenged that rejection in W.P.(C) No. 17406 of 2024 pending before the Division Bench. Having failed to secure interim relief there, they are now attempting a backdoor entry through the present writ petition.

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[1] AIR 1977 SC 781
[2] AIR 1994 SC 579

(xiii). In view of the aforementioned facts and judicial precedents, the present Writ Petition is wholly misconceived, malafide, and not maintainable in law. It deserves to be dismissed with exemplary costs for abuse of process and repeated forum shopping.

IV. COURT'S REASONING AND ANALYSIS:

8. Before adverting on the merits of the instant petition, this Court finds it apposite to discuss the settled law with regards to the "rule of alternate remedy" and its judicial exposition.

9. While the existence of an alternate remedy is a relevant consideration, it is not an absolute bar to the exercise of writ jurisdiction. The rule of alternate remedy is a rule of self-restraint and not a jurisdictional limitation. Writ jurisdiction may still be invoked where the remedy provided by statute is not efficacious, where fundamental rights are violated, where principles of natural justice have been breached, or where the proceedings are wholly without jurisdiction or are vitiated by mala fides. Thus, the existence of an alternate forum does not preclude the High Court from exercising its constitutional powers when the circumstances so warrant.

10. In ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai,***[3] a two judge Bench of this Court after reviewing the case law on this point, noted that the writ jurisdiction of the High Courts is discretionary and is limited by the principle of exhaustion of equal and efficacious alternate statutory remedies. While as a general principle, exhaustion of equal and efficacious alternate statutory remedies is mandatory, there are certain exceptions and the High Courts do entertain writs and adjudicate matters basis principles. The relevant paragraphs are produced hereinbelow:

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on (1998) 8 SCC 1 ("Whirlpool") some old*

[3] 1998(8) SCC 1, 1998 (8)

decisions of the evolutionary era of the constitutional law as they still hold the field." (emphasis supplied)

11. Following the dictum of the Supreme Court in Whirlpool (supra), in ***Harbanslal Sahnia v. Indian Oil Corporation Ltd.,***[4] the Apex court noted that

> *"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

12. In ***Radha Krishna Industries v. State of Himachal Pradesh,***[5] the Supreme Court laid down a set of guiding principles governing the exercise of writ jurisdiction under Article 226 of the Constitution, particularly in the context of availability of alternative remedies, disputed questions of fact, and the scope of judicial discretion. The principles that emerge from the decision are as follows:

> *"(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
>
> *(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
>
> ***(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; (d) the vires of a legislation is challenged;***
>
> ***(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case*** *though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*
>
> *(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and*

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[4] (2003) 2 SCC 107

[5] 2021 SCC OnLine SC 334

> ***(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."***
>
> (Emphasis supplied)

13. The present writ petition is squarely maintainable as it concerns the unconstitutional deprivation of the petitioners' property rights under Article 300A through allegations of fraudulent alienation and arbitrary disbursal of compensation; without notice, consent, or due process. The existence of an alternate remedy does not preclude the exercise of writ jurisdiction in this case, which falls squarely within the recognised exceptions namely, violation of natural justice, actions taken without jurisdiction, and infringement of constitutional rights. The petitioners, as co-parceners, were unlawfully excluded from both ownership and compensation without their express consent that stands affirmed by the very submissions of Opposite Party No. 3.

14. Now, the procedural irregularities shall be addressed in due course, however, at the outset, it is necessary to consider the foundational question: whether the properties in question were capable of lawful alienation in the first place, and if so, whether Opposite Party No. 3 could assert any exclusive right, title, or possession over any specific plot therein.

15. This inquiry assumes significance in view of the admitted position that the Schedule "B" land forms part of a consolidated and unpartitioned ancestral estate, governed by the principles of coparcenary under Hindu law. In such circumstances, absent a formal partition, no individual co-sharer could have conveyed valid title to a defined portion of the property, and any purported transfer in favour of Opposite Party No. 3 would, at best, be subject to the undivided rights of all coparceners, including the petitioners.

16. It is no longer res integra in transfer of property jurisprudence that a person cannot convey a better title than what he has. It was laid down by the Supreme Court in ***Kavita Kanwar v. Mrs Pamela Mehta and Others,***[6] where the testatrix purported to bequeath certain immovable properties through a registered Will in favour of respondent. However, the testatrix neither held any right, title, nor interest in the said properties. The principal bequeathing clause in the Will thus suffered from fundamental uncertainty and was declared void by the court. It was observed as under:

> "30.6. *It remains trite that no one can convey a better title than what he had; as expressed in the maxim: 'Nemo dat quod non habet'. [See, for example, Narinder Singh Rao vs. Air Vice-Marshal Mahinder Singh Rao & Ors., (2013) 9 SCC 425,* ***where the testatrix had bequeathed property in excess to her share and this Court held that the bequest has to be treated only to the extent of the share held by the of***

[6] AIR 2020 SC 2614

> ***testatrix.] The testatrix never had any right over the property belonging to the appellant and could not have conveyed to respondent No.1 any property which was of the ownership of the appellant or which might be acquired or raised by the appellant in future by her own funds.*** *On this ground alone, the Will in question is required to be considered void as per Section 89 of the Succession Act, when the principal bequeathing stipulation in the Will suffers from uncertainty to the hilt."*
>
> (Emphasis supplied)

17. Similarly, in ***Umadevi Nambiar v. Thamarasseri Roman Catholic Diocese,***[7] on death of their father, the property devolved upon his two daughters, Mrs. Umadevi Nambiar, the Appellant, and her sister. The sister sold the property without the consent of the Appellant or a valid partition. Observing this, the Supreme Court held as following:-

> *"19. It is a fundamental principle of the law of transfer of property that "no one can confer a better title than what he himself has" (Nemo dat quod non-habet). The appellant's sister did not have the power to sell the property to the vendors of the respondent. Therefore, the vendors of the respondent could not have derived any valid title to the property. If the vendors of the respondent themselves did not have any title, they had nothing to convey to the respondent, except perhaps the litigation."*

18. However, a reference should be made to Section 44 of the Transfer of Property Act, 1882 which deals with 'transfer by one co-owner'. Plain reading of section 44 suggests that as such there is no legal embargo restricting a co-owner from selling his undivided share without consent of the other co-owners. But it may be noted that in such cases since no legal partition has been effected, it is not practically possible to handover possession to the purchaser as his share can't be properly demarcated.

19. In ***Ramdas vs. Sita Bai and others,***[8] the Supreme Court was considering the case of the appellant who had bought land from a co-tenure holder one Sudam, of a property of which the defendant no.1, his sister, Sitabai was co-sharer. The transfer was made without the consent and knowledge of the defendant/Respondent. The Court considered the legality of such a transfer and held that Sudam could not have sold off more than his share nor he could have delivered possession of the property till its partition. It was held that under the Transfer of Property Act, a purchaser cannot have a better title than what his vendor had. The court considered judgements rendered by it earlier in ***M.V.S. Manikyala Rao v. M. Narasimhaswami & Ors.,***[9]and ***Siddeshwar Mukherjee v. Bhubaneswar Prasad Narayan Singh,***[10] and the Court observed as follows:-

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[7] (2022) 7 SCC 90
[8] 2009 (7) SCC 444
[9] AIR 1966 SC 470
[10] AIR 1953 SC 487

> *"15. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in M.V.S. Manikayala Rao Vs. M. Narasimhaswami & Ors. [AIR 1966 SC 470], wherein this Court stated as follows:*
>
> *"Now,* ***it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co- parcener whose share he had purchased."***
>
> *16. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court byplacing reliance upon an earlier judgment of this Court in Sidheshwar Mukherjee Vs. Bhubneshwar Prasad Narain Singh & Ors. [AIR 1953 SC 487], wherein this Court held as under:-*
>
> ***"All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour*** (Emphasis added)
>
> *17. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of cosharer may be a subject matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court."*

20. In ***Dharmendra Singh Parihar v. Ramgopal Chaudhary,***[11] the Madhya Pradesh High Court elucidated that a co-sharer in joint or unpartitioned property has the legal right to alienate only their undivided share in the property, but not any specific or demarcated portion thereof. In the absence of a valid partition or relinquishment of rights by other co-sharers, any transfer purporting to convey more than the transferor's own share is invalid to that extent. The relevant portion is as follows:

> *"22. The Courts below have rightly held that in absence of any relinquishment of share by the defendants No. 3 to 5, they were also equally entitled for their share and have rightly apportioned the property in eight equal shares amongst the plaintiffs and the defendants No. 2 to 5. It is true that a co-sharer can alienate his share but cannot alienate any specific piece of un-partitioned property. Since the defendant No.2 had only 1/8th share in the property in disputed, therefore, both the Courts below have rightly held that the sale deed executed in favour of the appellant/defendant No.1 by defendant No.2 is valid only to the extent of share of defendant No.2. It has been rightly held the sale deed is null and void in excess of*

[11] 2023 SCC OnLine MP 293

share of defendant No.2 and accordingly, the decree of permanent injunction to that extent has also been rightly issued."

21. In ***Ahamad Khan v. Bhaskar Datt Pandey,***[12] a division bench of the Madhya Pradesh High Court reiterated the long standing heard a matter wherein the subsequent purchaser/appellant was transferred with the entire suit property by the transferor/co-owner via sale deed despite there existing other co-owners. Moreover, the share of the transferor was not determined in the suit property. While transferring the suit property, it was claimed by the transferor that initially his uncle and father had equal share in the property. Before his uncle's death, he (uncle) had gifted his share to transferor's father, and after the death of the transferor's father, it was claimed that the transferor became the absolute owner of the property as his sisters had also relinquished her share in the suit property.

22. The Court held that if the disputed property was indeed Joint Hindu Family property, a specific piece of land could not be alienated by a coparcener or co-sharer without partition, and at the most, the petitioners could only claim a share in the property, not any specific portion of the land. The relevant excerpt is produced hereinbelow:

"Although a coparcener or co-sharer can alienate to the extent of his share but he cannot alienate any specific piece of land. Therefore, at the most the petitioners can be said to have purchased a share of coparceners/Co-sharer still they are not entitled for any specific piece of land."

23. Thus, it is clear that when there exist various co-owners in the property, then the subsequent purchaser of the suit property cannot acquire right, title and interest in the whole of the suit property solely based on the sale deed executed by one co-owner/transferor. The transferors who are the brothers and other relatives of the petitioners was only entitled to share his part in the suit property and not the entire suit property with the appellant. Therefore, the appellant could not claim ownership over the entire suit property but only to the extent of the share held by the transferor.

24. It is thus settled that an undivided share in a joint family property cannot be sold off by one of the co-sharers without there being any partition by metes and bounds. Even if there is an assertion that an oral partition took place, the value of the property involved in the partition being more than hundred rupees, such oral partition is not permissible. Registration of such partition was also required. If the partition has not been proved by independent and competent witnesses before the court of law, such partition could not be said to have taken place at all. The Counsel for the Opp. Party No.3 has contended that the concerned property has been partitioned in 2011. However, he does not say in his order that the share of the

[12] 2024 SCC OnLine MP 5157

Vendee was proved to have been determined by a family partition by such witnesses.

25. The facts of this case are a glaring example of failure to exercise jurisdiction by the Revenue Authorities to consider the validity of the sale deeds set up by the brothers of the petitioner of a joint holding which had mentioned definite boundaries demarcating the share of vendors allegedly sold off to the vendee without the family settlement being proved at any stage of the proceedings.

26. In ***Sk. Golam Lalchand v. Nandu Lal Shaw,***[13] the Court observed that the actions of the transferor to sale the entire suit property (where the other co-owners also had interest) could not bind the other co-owners as it would tantamount to depriving them from their valid share in the suit property. The relevant share is produced hereinbelow:

> *"20. In this view of the matter, the entire property purchased by the two brothers late Salik Ram and late Sita Ram in the year 1959 vide Exh.1 continued to be the joint property in which both of them had equal rights. On their death, the same devolved upon their respective heirs and legal representatives including Brij Mohan, his three sisters on one side and plaintiff-respondent Nandu Lal, his three brothers and five sisters on the other side. Thus,* ***Brij Mohan alone was not competent to execute a sale of the entire property in favour of the defendantappellant S.K. Golam Lalchand, that too without its partition by metes and bounds.***
>
> *21. Since the suit property has many co-owners including the plaintiff-respondent Nandu Lal and Brij Mohan, the defendant-appellant S.K. Golam Lalchand could not have acquired right, title and interest in the whole of the suit property solely on the basis of the sale deed dated 19.05.2006 executed by Brij Mohan. The said sale deed, if at all, in accordance with Section 44 of the Transfer of Property Act, 1882 may be a valid document to the extent of the share of Brij Mohan in the property and defendant-appellant* ***S.K. Golam Lalchand is free to take remedies to claim appropriate relief either by suit of partition or by suit of compensation and damages against Brij Mohan."*** (Emphasis supplied)

27. Coming to the facts of the case, the Schedule "B" property is an admitted co-parcenary asset, forming part of a joint and unpartitioned estate devolving from Late Nabei Sethy. No formal partition has ever taken place, and the petitioners, as co-parceners, continue to hold undivided rights in the property. The transfer of specific plots from within this joint estate to Opposite Party No. 3, purportedly through sale deeds executed by certain male co-parceners without the knowledge or consent of the petitioners, raises serious legal infirmities and cannot, in law, convey exclusive title or possession.

28. In the absence of a legal partition of the property in question, the transferors of the impugned sale deeds cannot transfer any defined portion of joint property nor

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[13] 2024 SCC OnLine SC 2456

can the purchaser take possession of such specific land. At best, the purchaser steps into the shoes of the transferor and may seek partition, but cannot claim possession *simpliciter*. The law is equally clear that no one can transfer a better title than they possess. Therefore, any sale deed purporting to convey specific demarcated land from within unpartitioned coparcenary property is legally void to the extent it exceeds the seller's undivided share, and is not merely voidable.

29. In the present case, Opposite Party No. 3 claims to have acquired absolute rights over defined plots of land by virtue of sale deeds executed by certain male co-sharers. However, there is no evidence of any lawful family settlement, registered partition, or mutual relinquishment by the petitioners. On the contrary, the petitioners being daughters and coparceners were not made party to any such transaction.

30. Ordinarily, Opposite Party No. 3, having purchased the undivided share of certain co-parceners, could have worked out his rights only by instituting a suit for partition, and any right to possession would arise only upon specific allotment of share pursuant to such partition. However, the legal position acquires a more complex dimension when viewed in light of Section 22 of the Orissa Land Reforms Act, 1960, which places restrictions on the transfer of immovable property belonging to members of Scheduled Castes and Scheduled Tribes.

31. Given that the petitioners belong to a Scheduled Caste community and the impugned transfers were made in favour of individuals not belonging to Scheduled Castes, the legality of the alienation in favour of Opposite Party No. 3 is further circumscribed by the statutory safeguards under Section 22 of the Orissa Land Reforms Act, which aims to prevent the unauthorized transfer of land from members of Scheduled Castes to non-SC individuals. Such transactions are subject to strict scrutiny to ensure they do not result in circumvention of protective provisions intended to guard against exploitation of marginalized communities.

32. Section 22 of the Orissa Land Reforms Act reads as provided:

> *"22. Restriction on alienation of land by Scheduled Tribes-*
>
> *(1) any transfer of holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of-*
>
> *(a)) a person belonging to a Schedule Tribe; or*
>
> *(b) A person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer;"*

33. Section 22(5) of OLR Act stipulates that the provisions contained in Sub-section (1) to (4) shall apply mutatis mutandis, to the transfer of a holding or part thereof a raiyat belong to the Scheduled Caste.

34. Admittedly, permission was erroneously granted by the Revenue Authorities for the execution of the impugned sale deeds by certain co-parceners in favour of Balaram Patra and Dillip Kumar Pati, the former being a person belonging to the

Scheduled Caste community and the latter not. This irregularity becomes particularly significant given the undisputed fact that the Schedule "B" property remains undivided ancestral coparcenary land, in which the petitioners, who also belong to the Scheduled Caste community, continue to hold subsisting and undivided rights. The sale transactions were carried out without any lawful partition and in complete disregard of the petitioners' interests.

35. In such a scenario, where a portion of unpartitioned ancestral property belonging to Scheduled Caste co-parceners is alienated without their consent, even if the transferee is also from a Scheduled Caste background, the transaction still violates the protective spirit of the law. However, when such land is subsequently transferred to a person outside the Scheduled Caste community, as in the case of Dillip Kumar Pati, the legal infirmity deepens. The transfer not only circumvents the safeguards under the Orissa Land Reforms Act and other protective statutes, but also raises a serious concern of property being diverted from a constitutionally protected group to a nonentitled individual under a veil of procedural legality. Allowing such transactions to stand would defeat the very object of the legislative scheme, which seeks to protect SC/ST landholders from exploitation and unauthorized dispossession. If a single co-sharer, regardless of community, acting without formal partition and without the consent of other co-parceners, is permitted to alienate defined plots, it would amount to unlawful deprivation of rights guaranteed to other coparceners, particularly those from historically disadvantaged communities. Such transactions, particularly when facilitated or overlooked by revenue officials, strike at the heart of the statutory protections and cannot be sustained in law.

36. Based on the legal principles derived from statutory provisions and established Supreme Court jurisprudence on co-parcenary rights, the following legal guidelines may be framed for regulating the alienation of undivided property by members of the Scheduled Castes or Scheduled Tribes:

(i). A Scheduled Caste or Scheduled Tribe co-parcener cannot legally transfer or alienate any specific portion of joint coparcenary property in the absence of a formal partition among all the co-parcenors, either through mutual agreement reduced to writing and registered, or by a decree of a competent civil court.

(ii). In case such partition cannot be effectuated, any proposed alienation of a specific property of an undivided share by an SC/ST co-parcener shall be preceded by the express, informed consent of all other co-parceners belonging to the SC/ST community. The transferor must establish that all interested coparceners have agreed to such sale.

(iii). Where the transferee does not belong to a Scheduled Caste or Scheduled Tribe, the sale of land by an SC/ST co-parcener shall be permissible only with the prior permission of the competent revenue authority, and only after verifying:

a). That the transferor has a defined and partitioned share in the property;

b). If not, the transferor has obtained express consent of the other co-parcenors of the specified cumulative property.

c). That the transfer does not affect the livelihood, dwelling rights, or subsistence of any other SC/ST co-parcener;

d). That the transaction is not in circumvention of Section 22 or any other protective legislation.

(iv). Revenue authorities shall not grant permission for alienation unless:

a). The title of the transferor over the portion proposed to be transferred is clearly demarcated and partitioned;

b). All co-parceners' rights have been adjudicated or acknowledged through a registered partition deed or a civil court decree;

c). Independent inquiry has been conducted to rule out any suppression of material facts or manipulation of records.

(v). No mutation in favour of the transferee (particularly a nonSC/ST transferee) shall be effected in revenue records unless the transferor produces proof of lawful partition and/or consent of other SC/ST co-parceners, or a declaratory decree recognizing his exclusive title.

(vi). Any sale or alienation of joint property in violation of the above principles shall be deemed void ab initio and not merely voidable. The burden shall lie on the transferee to prove that the transaction complied with all legal requirements and protected the interests of other SC/ST co-parceners.

(vii). Where any sale is found to have been made in breach of these guidelines, the competent authority may suo moto initiate cancellation proceedings under the Orissa Land Reforms Act or other relevant laws, and take steps to restore possession to the rightful SC/ST co-parceners.

37. Thus, the claim of Opposite Party No. 3 over any specific portion of the said land is legally untenable, not only due to the absence of partition by metes and bounds, but also because the transaction runs afoul of the protective intent underlying Section 22 of the Orissa Land Reforms Act.

38. In addition to that, Proviso to sub-section 1 stipulates that in case of a transfer by sale, the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Caste willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

39. However, the series of transactions culminating in the transfer of undivided ancestral land to Opposite Party No. 3 raises serious concerns suggestive of a potentially orchestrated pattern of irregularity and procedural manipulation. Between 2011 and 2014, a sequence of high-value sale deeds appears to have been executed, involving one Balaram Patra, a daily labourer and BPL cardholder with no discernible financial means, as an intermediary through whom substantial tracts of land were transferred to Dillip Kumar Pati. These sale deeds, reflecting consideration amounts such as ₹72,00,000, ₹79,20,000, ₹67,65,000, and even ₹1,23,00,000, notably lack any reference to banking instruments, payment receipts,

or credible financial documentation, thereby casting considerable doubt on the authenticity of the transactions.

40. It is particularly troubling that the original executants of the impugned sale deeds, namely Tulasi Sethy and Maheswar Sethy, were both illiterate individuals who affixed thumb impressions on the documents. There is nothing on record to suggest that adequate safeguards were put in place to ensure their informed consent or understanding of the legal consequences of such transactions. This raises a legitimate apprehension as to whether these individuals were taken advantage of in the absence of legal or independent assistance.

41. It is difficult to reconcile how a person of limited means, such as Balaram Patra, could have entered into multiple transactions involving crores of rupees within a span of months, citing broad and unsupported justifications like "medical treatment" and "loan repayment." The subsequent resale of these lands to Opposite Party No. 3, often in close proximity to the original purchases, gives rise to a strong suspicion that these transactions were not bona fide sales, but rather a contrived mechanism to construct a legal facade in favour of Opposite Party No. 3, particularly in view of the subsequent land acquisition and disbursement of compensation. While conclusive findings would require further inquiry, the sequence and structure of events bear the appearance of a carefully engineered arrangement designed to exclude lawful co-parceners, including the petitioners.

42. The role of the revenue authorities in this chain of events is deeply concerning. Instead of exercising vigilance in safeguarding the rights of Scheduled Caste co-parceners, the authorities appear to have acted with undue haste and inadequate scrutiny. Permissions for transfer were granted without probing into the financial capacity of the purchaser or the legal status of the land. Mutation entries were made without notifying or consulting other co-parceners who stood to be materially affected. These administrative lapses, when viewed collectively, suggest more than mere negligence; they raise a reasonable apprehension of institutional complicity or, at the very least, wilful blindness. The failure of the revenue machinery to discharge its statutory obligations calls for urgent judicial scrutiny and accountability.

43. The entire transaction, therefore, reeks of illegality, fraud, and abuse of process. It is not just a case of a buyer exploiting legal loopholes, but of an institutional machinery actively failing those it is dutybound to protect. The High Court cannot turn a blind eye to what is effectively a disenfranchisement of Scheduled Caste co-parceners through bureaucratic complicity and legal subterfuge.

44. In light of the foregoing analysis, it is evident that the transfers effected in favour of Opposite Party No. 3 are legally unsustainable to the extent that they purport to convey specific demarcated plots from an undivided coparcenary estate, and to the extent they disregard the lawful rights of the petitioners, who remain co-parceners with undivided interest in the Schedule "B" property. The impugned sale

deeds, executed without partition, without consent, and under highly questionable circumstances, cannot confer exclusive ownership upon the vendee and are, therefore, liable to be declared void ab initio.

45. The consequential benefits flowing from these transactions, particularly the receipt of compensation pursuant to land acquisition, must be reconsidered in light of the petitioners' rightful entitlement to an apportioned share.

46. Accordingly, the petitioners, being Scheduled Caste women from a vulnerable socio-economic background, cannot be lawfully divested of their ancestral property through backdoor transactions carried out without their knowledge or consent. If co-parceners belonging to Scheduled Castes are not restored to possession of their rightful share and if mechanisms are not enforced to prevent the exploitation of SC landholders by economically or socially dominant entities, it would not only subvert the legislative intent of protective statutes but also disturb the fragile peace in Scheduled Areas. The law must intervene to uphold equity, prevent dispossession, and reinforce the constitutional promise of justice for the historically marginalized.

V. CONCLUSION:

47. Having considered the pleadings, perused the record, and heard learned counsel for the parties, and for the reasons recorded in the foregoing judgment, this Court finds that the sale deeds executed in favour of Opposite Party No. 3 in respect of Schedule "B" property, being ancestral and unpartitioned coparcenary land, were executed in contravention of established legal principles and in disregard of the rights of the petitioners, who are undisputed co-parceners belonging to a Scheduled Caste community. The series of transactions leading to the alienation of land in favour of Opposite Party No. 3 appear to be tainted with procedural impropriety, lack of bona fide consideration, and material suppression of facts, rendering the entire chain of title highly questionable.

48. It is hereby declared that the sale deeds executed in favour of Opposite Party No. 3, in so far as they pertain to specific and defined portions of Schedule "B" property without partition by metes and bounds, are void ab initio and confer no right, title, or interest upon the said Opposite Party No. 3. Consequently, no interest, possession, or proprietary entitlement shall be deemed to have lawfully vested in Opposite Party No. 3 in respect of any part of the Schedule "B" land.

49. All transactions and derivative rights, if any, emanating from the impugned sale deeds executed between 2011 and 2014 in relation to the Schedule "B" land are held to be vitiated. Such transactions, having been made without partition, without consent of all coparceners, and in violation of statutory protections applicable to members of the Scheduled Castes, shall be treated as non-est in law and shall not form the basis for any mutation, possession, or claim by any party, private or institutional.

50. The National Highways Authority of India (NHAI), or any other agency tasked with disbursal of compensation under the Land Acquisition Act or the National Highways Act, is hereby directed not to release any compensation amount to Opposite Party No. 3 or his nominees in respect of the Schedule "C" land being part of the unpartitioned Schedule "B" estate. NHAI may proceed to recover any award that has been disbursed into the account of Opposite Party No.3.

51. The NHAI shall instead initiate a process of apportionment, with notice to and participation of all recorded co-parceners of the original holder, Late Nabei Sethy, including the petitioners herein. The disbursement of compensation shall be made strictly in accordance with the undivided shares as may be determined either through mutual settlement or through adjudication in appropriate proceedings.

52. The competent revenue authorities are directed to place the mutation entries made in favour of Opposite Party No.3 under suspension until such time as lawful partition is carried out and a final determination of title is made with respect to the Schedule "B" land.

53. The Collector, Keonjhar is directed to cause an inquiry into the manner in which permissions for the sale of coparcenary property were granted without scrutiny, and how mutation and other revenue entries were effected in favour of a private individual in the absence of due process and consultation with all interested parties, particularly members of the Scheduled Caste community. Appropriate disciplinary proceedings, if warranted, shall be initiated against the erring revenue officials involved.

54. Liberty is granted to the petitioners and other co-parceners to initiate appropriate proceedings for partition or declaration of title before the competent civil court, if so advised, and to seek such consequential reliefs as may be available in law.

55. The Writ Petition is, accordingly, allowed in the above terms. No order as to costs.

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

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-1154

HARIDASPUR-PARADIP RAILWAY COMPANY LTD.
V.
SURENDRA SAMAL & ORS.

[LAA NO. 110 OF 2018]

22 APRIL 2025

[M.S. SAHOO, J.]

Issue for Consideration

Whether the impugned judgment dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No. 11 of 2009 is tenable in law.

Headnotes

LAND ACQUISITION ACT, 1894 – Section 18 – Reference – Govt. of Odisha by Gazette Notification dated 11.03.2005 under Sections 4(1) and 17(4) of the Land Acquisition Act, 1894 notified acquisition of land for construction of New Railway line from Haridaspur to Paradip – Lands of the Opposite Parties were notified for acquisition – Appellant company was incorporated for creating project specific Special Purpose Vehicle (SPV) – A reference was made to the Court of Civil Judge (Senior Division), Jajpur under Section 18 of the 1894 Act without arraying the Appellant company a party and the reference was disposed of vide the impugned judgment – Whether the impugned judgment is tenable in law.

Held: No – The impugned order dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No.11 of 2009 is set aside and quashed. (Para 32)

Citations Reference

Pitambar Sahoo v. Angul-Sukinda Railway Limited, **2016 (II) ILR-CUT 212 : (2016) (II) OLR 27;** State of Haryana v. Chandra Mani, **(1996) 3 SCC 132 (para-11);** U.P. Awas Evam Vikash Parishad v. Gyan Devi, **AIR 1995 SC 724: (1995) 2 SCC 326;** Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition), Neyvely, **(1995) 1 SCC 221 : AIR 1995 SC 1004;** Union of India v. Special Tehsildar, (ZA), **1996 (2) SCC 332;** Delhi Development Authority v. Bhola Nath Sharma (Dead) by L.Rs. and others, **(2011) 2 SCC 54 : AIR 2011 SC 428;** Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane and another, **(2019) 12 SCC 650 – referred to.**

List of Acts

Land Acquisition Act, 1894; Companies Act, 1956; Limitation Act, 1963; Constitution of India, 1950; Rules of the High Court of Orissa, 1948.

Keywords

Land acquisition; Land acquisition process; Valuation of land; Reference.

Case Arising From

Judgment dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No. 11 of 2009.

Appearances for Parties

For Appellant : Mr. S.S. Mohanty

For Respondents : Mr. A.K. Tripathy (Respondent Nos. 1 to 4)
Mr. S. Swain. AGA (*proforma* Respondent Nos.5 & 6)

Judgment/Order

Judgment

M.S. SAHOO, J.

Present LAA is listed and taken up along with LAA Nos.111 and 112 of 2018. All the parties to the respective appeals are represented by the same learned counsel. The facts of the appeals are identical as they arise from the same land acquisition process, for construction of Haridaspur-Paradip New Broad Gauge Railway Line. Issues are also similar and identical. The question of law is also the same to be decided by this Court. LAA No.110 of 2018 was heard as the lead case. For effective utilization of available time all the appeals were taken up and heard together. The learned counsel for the parties who represented the parties in all the cases were heard at length. This appeal is disposed of by noting the contentions and arguments urged in all the appeals taken together.

I.A. No. 157 of 2023

2. In the I.A. the petitioner, a Company incorporated under the Companies Act, 1956 namely, Haridaspur-Paradeep Railway Company Limited (HPRCL) is seeking leave to appeal. The Company was not arrayed as a party in a referral proceeding u/s. 18 of the Land Acquisition Act, 1894 before the learned Civil Judge (Sr. Division), Jajpur. By seeking leave the award is sought to be challenged in appeal. The I.A. has been filed under Rule 5, Chapter VII of the Rules of the High Court of Orissa, 1948 by the intending appellant Company with a prayer to grant leave to appeal against the award dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No. 11 of 2009.

3. The brief background of LA before the learned court below leading to the present LAA is that Govt. of Odisha by Gazette Notification dated 11.03.2005 u/s.

4(1) and 17(4) of the LA Act, 1894 notified acquisition of land for construction of New Railway line from Haridaspur to Paradip ("The New Rly Line" for short). Lands of the opposite parties, Ac.0.028 decs were notified to be acquired. Appellant HPCRL was incorporated for creating project specific Special Purpose Vehicle (SPV). The 'New Railway Line' was included in the National Rail Vikas Yojana being largely a non-budgetary initiative that envisages public-private partnership model of financing and implementation of railway infrastructure. Concession agreement dated 20.12.2007 was entered into between the Ministry of Railways, Govt. of India with the appellant HPRCL.

4. Learned counsel appearing for the opposite parties refers to the counter affidavit filed by O.Ps.1 to 4 wherein at paragraph 3 it is stated that appellant-petitioner himself admitted that East Coast Railway was the party in the referral court. It is further submitted that East Coast Railway has not filed any appeal challenging the award.

5. In considered opinion of this Court on the face of the pleadings and the judgment that was rendered and is under challenge, it would be evident that neither East Coast Railway nor the present petitioner-appellant were made parties. It is evident from the counter to the I.A. filed on behalf of opposite parties that conspicuously, they have not stated that the Ministry of Railways (MoR) or East Coast Railway or the appellant company (Special Purpose Vehicle) were made answering parties in the proceeding before the Civil Court in the reference U/s.18 of LA Act, 1894. The cause-title of judgment and the lower court records indicate that these entities were not made party.

6. By the award the learned Civil Judge (Senior Division), Jajpur, decided the reference made by the Land Acquisition Officer u/s. 18 of the L.A. Act, 1894. The judgment dealt with valuation of the land that was acquired for and on behalf of the petitioner SPV and/or East Coast Railay without they being arrayed as party.

7. The petitioner seeking leave to appeal relies on the decision of this Court dated 29.04.2018 passed by a coordinate Bench in *LA No. 47 of 2015* in the matter of ***Pitambar Sahoo v. Angul-Sukinda Railway Limited : 2016 (II) ILR-CUT 212 : (2016) (II) OLR 27***, wherein it was held that the Special Purpose Vehicle (SPV) : a company that has entered into agreement with the Ministry of Railways, Govt. of India is a person interested as would be defined under section 3(b) of the LA Act and can maintain the appeal under section 54 of the said Act. It is submitted by learned counsel for the petitioner that neither the SPV nor the East Coast Railway were made parties as would be evident from the cause title of the judgment passed in L.A. Case, as a result they were not aware of the proceeding nor did they have any scope to present their version before the referral court.

8. Learned counsel Mr. Tripathy appearing for the opposite parties submits that the decision rendered in ***Pitambar Sahoo*** *(supra)* is distinguishable on facts but he does not deny the fact that it is evident from the judgment in the reference rendered

by the learned Civil Judge (SD), Jajpur, that the respondents chose to make the District Collector and District Magistrate of Jajpur (O.P. No.1), the Land Acquisition Collector under LA Act (O.P. No.3) and the contractor executing the construction work, i.e., Rail Vikas Nigam Limited (RVNL), a separate corporate entity as O.P. No.2.

In considered opinion of this Court mentioning 'East Coast Railway' in the address of RVNL does not turn out to make East Coast Railway a party to the case.

9. Learned trial Judge in the LA case also has not delved into the aspect whether any of the opposite parties were project proponents or they were the requisioning authority for land acquisition that was the subject matter of adjudication. The issues framed by the learned Referral/Trial Court in its judgment indicates the same and are reproduced :

> "(i) whether the petitioners are entitled to receive any higher rate of award/ compensation ?
>
> (ii) what is the fair market value of the land acquired on the date of acquisition ?
>
> (iii) whether the petitioner are entitled to any other relief (s) ?"

10. Somehow, the judgment in its ordering portion or any of its earlier paragraphs does not refer to who will deposit the enhanced amount of compensation before the LAO Collector. The list of witnesses examined on behalf of petitioners indicates that no witness was examined on behalf of opposite parties Special LAO nor any written statement was filed on behalf of the Special LAO. "Working sheet of the acquired land" was produced on behalf of Opp. Paty-L.A. Collector marked as Ext.A. Apparently, contest to pay the enhanced amount as claimed or any contest to the basis of determination of enhanced amount has not been disclosed in the judgment.

11. No material is brought to the notice of this Court by appellants or the respondent-opposite party LAO to show that East Coast Railway and the Company were made parties or were heard in he proceeding u/s.18 of the Act before the Court below. It is also neither pleaded nor demonstrated before this Court if impletion of East Coast Railway and/or the intending intervenor Company in the proceeding u/s 18 would have prejudiced the appellants or the Land Acquisition Officer in any manner. The Special Land Acquisition Officer opposing the intervention by the intervener company is rather baffling, as the Special LAO is not an affected party who would pay the compensation if it is enhanced.

In view of the above discussions, the petition seeking leave to appeal is allowed and leave granted.

The appeal at the instance of petitioner shall be heard and dealt with in accordance with law.

The I.A. stands disposed of.

I.A. No. 48 of 2018

12. Application has been filed under section 5 of the Limitation Act for condonation of delay of 108 days in filing the appeal.

13. In the objection filed on behalf of the respondent opposite parties to the petition for condonation of delay, it is contended that delay cannot be condoned if the appeal is filed at the behest of the Government entities.

The appellant-petitioner relies on the decision of the Supreme Court in the case of ***State of Haryana v. Chandra Mani***, *reported in* ***(1996) 3 SCC 132*** *(para-11)*. The Supreme Court held that in each and every case the delay in approaching the Court cannot be treated as a straight jacket and explanation to condone the delay cannot be rejected. It is held it depends on facts and circumstances of each of the case.

14. In the case at hand the facts are somewhat striking. The land acquisition is made at the instance of the East Coast Railways and/or for a Special Purpose Vehicle [SPV : Haridaspur-Paradip Railway Company Ltd. HPCRL], a company incorporated to execute the rail track laying and allied development project. Neither the railway nor the special purpose vehicle have been made parties before the court adjudicating the reference under Section 18 of Land Acquisition Act, 1894.

The reasons for the referral Court to entertain a reference without the requisitioning authority/Company executing the project being made parties and to proceed to adjudicate is unfathomable to say the least. The statutory authorities under the Land Acquisition Act who undertake the process of acquisition like the Collector and District Magistrate of the district and the Land Acquisition Collector, who are neither the project proponents nor the requisitioning authority, are made parties in the reference. The contractor engaged to construct the project is also made a party. The contractor engaged filed written statement. From the judgment it is apparent that the learned court did not deal with the factual aspect as to whether the project proponent or authority requisitioning the acquisition of the land were parties before it and were heard. The facts are so glaring that the appeal needs to be considered on its own merit. Applying the principle as held in ***State of Haryana v. Chandra Mani*** *(supra)* delay of 108 days in filing the appeal is condoned.

The I.A. is allowed and disposed of.

LAA No. 110 of 2018

15. The appeal has been listed along with the I.As. for orders, as the I.A seeking leave to appeal and for condonation of delay have been allowed. It is agreed by learned counsel for the appearing parties that after about seven years of filing the appeal, endeavour should be made for final hearing of the appeal.

Accordingly, the appeal is taken up for hearing.

16. Heard learned counsel for the appellant and the respondents as well as the learned AGA for proforma respondents.

Admit.

Mr. Tripathy, learned counsel who has entered appearance on behalf of the respondents in the connected I.As those have been dealt with and disposed of today submits that he has instructions to appear in the appeal and has already filed Vakalatnama on 25.06.2019 which is on record.

Accordingly no further notice needs to be issued to the respondents who are already represented.

In view of the order that is going to be passed in the present L.A.A., no notice is issued to the respondent no.7 (Chief Engineer, Construction RVNL), who was the opposite party no.2 before the learned referral court.

17. The appeal has been filed u/s. 54 of the L.A. Act, 1894 read with S.50(2) of the said Act challenging the Judgment dated 07.02.2018 passed by learned Civil Judge (Senior Division), Jajpur in L.A. Case No. 11 of 2009 adjudicating and answering a reference under section 18 of the L.A. Act.

18. Heard Mr. S. S.Mohanty, learned counsel for the appellant, Mr. Tripathy, learned counsel for respondents 1 to 4 and Mr. S. Swain, learned AGA for proforma respondents 5 & 6.

Learned counsel for the appellant reiterates his submissions made in the connected I.As. as noted above. It is submitted by learned counsel for appellant that they are a Company Registered under the Companies Act, 1956 : a Special Purpose Vehicle (SPV) incorporated to undertake and implement the project for which land was acquired for i.e. Haridaspur-Paradip New Broad Gauge Rail Link project. The judgment in LA Case No. 11 of 2009 passed by the learned Senior Civil Judge, Jajpur dated 07.02.2018 would indicate that the present appellants were not made parties in the said proceeding. State of Odisha and Land Acquisition Zone Officer-cum-LA Collector were made opposite parties no.1 and 3 respectively and the contractor company executing the work of construction of the railway line i.e. RVNL (Rail Vikas Nigam Limited) was arrayed as opposite party no.2.

19. Learned counsel for the appellant refers to the averments made by the appellant in their reply dated 15.01.2025 filed on 16.01.2025 in response to the counter of the respondents in LAA No. 110 of 2018. He relies on para-5 thereof which quotes clause 3 of the MoU/concession agreement dated 12.12.2007 entered into between the appellant and the Union of India represented by Ministry of Railways. Para 5 is reproduced herein :

> "5. That Clause No.3 of the Memorandum of Understanding (MoU) <u>explicitly stipulates that the land required for the project shall be acquired by East Coast Railway at the expense of the Special Purpose Vehicle (SPV). The relevant clause is reproduced hereinbelow for ready reference :</u>

"3. The land for the project shall be acquired by the East Coast Railway at the cost of the SPV. RVNL will arrange to lease out the land to the SPV at appropriate terms and conditions as decided manually. The Land and existing assets, if any, will continue to be the property of Ministry of Railways."

20. Learned counsel for the respondents submits that the respondents had impleaded opposite party no.2, who had filed written statement before the referral court. He supports the award. It is submitted that opposite party no.2, (RVNL) before learned Senior Civil Judge in the LA Case had filed written statement. But he fairly concedes that neither the project proponent: East Coast Railway nor any other requisitioning authority for land acquisition were made parties in the L.A. Case as is evident from the judgment. The judgment does not refer to any of the opposite party as the requisitioning authority or the SPV for whom the land was acquired.

21. Learned Additional Government Advocate appearing on behalf of the proforma respondent nos.5 and 6 submits that as far as payment of compensation is concerned, the District Collector-cum-District Magistrate and Land Acquisition Collector have their role as the statutory authorities to the extent the LA Act provides. They are authorities under the statute, undertake the process of acquisition as per requisition of the Project Proponent. At best they can facilitate determination, deposit and disbursal of compensation as prescribed by the statute and also awarded by the referral court. The amount/enhancement (if any) is deposited with the authorities by the project proponent/requisitioning authority to be paid to the land oustees.

22. It is submitted by the learned counsel for the respondent nos.1 to 4 that the matter is pending since 2018, the LA case was initiated in the year 2009, fifteen years have passed and the present appellants by filing the appeal have challenged the award on the ground of not joining them as parties in the proceeding before the referral court. It is submitted no useful purpose would be served in keeping the appeal pending before this Court in absence of the written statement of the present appellant. The respondents would also have difficulty as they have to defend their case that was made in the reference in absence of the written statement of present appellants.

Learned counsel submits that the matter may be remanded with a further prayer that it should be directed to be taken up and disposed of expeditiously.

23. Learned counsel for the appellant submits that for achieving the ends of justice and for effective adjudication, the appellants would not oppose such a prayer. He further submits that the appellants undertake that they shall cooperate in the proceeding if they are allowed to be impleaded as a party.

24. In ***U.P. Awas Evam Vikash Parishad v. Gyan Devi: AIR 1995 SC 724: (1995) 2 SCC 326***, constitution Bench of five Hon'ble Judges of the Supreme Court held as quoted herein [at paragraphs-48 to 56 of SCC]:

"48. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.

49. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

50. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

51. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

52. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

53. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

54. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

55. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

56. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority w:uld apply to a company too."

[Underlined to supply emphasis]

25. In ***Neyvely Lignite Corporation Ltd. v. Special Tahsildar (Land Acquisition), Neyvely : (1995) 1 SCC 221 : AIR 1995 SC 1004*** a Bench of three Hon'ble Judges of the Supreme Court had the occasion to decide and lay down who can be 'persons interested' in terms of section 3(b) of the Land Acquisition Act, 1894 and also in the context of the sections 18, 26, 50(2) and 54 of the Act. Upon discussing the law as laid down in the earlier decisions rendered by the Supreme Court (SCC-paragraphs 11, 12, 13, 14 and 15) it was held as quoted herein:

"12. It is true that Section 50(2) of the Act gives to the local authority or the company right to adduce evidence before the Collector or in the reference under Section 18 as it was specifically stated that in any proceedings held before the Collector or the Court, the local authority or the company may appear and adduce evidence for the purpose of determining the amount of compensation. However, it has no right to seek reference. Based thereon, the contention is that the limited right of adduction of evidence for the purpose of determining the compensation does not carry with it the right to participate in the proceedings or right to be heard or to file an appeal under Section 54. We cannot limit the operation of Section 3(b) in conjunction with sub section (2) of Section 50 of the Act within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice. The consistent thread that runs through all the decisions of this Court starting from Himalayan Tiles case [(1980) 3 SCC 223 : (1980) 3 SCR 235] is that the beneficiary, i.e., local authority or company, a cooperative society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to

xxx xxx xxx

Moreover in the language of Order 1 Rule 10 CPC, in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1 Rule 10 CPC. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution.

13. The reasons are not far to seek. It is notorious that though the stakes involved are heavy, the Government plead or the instructing officer do not generally adduce, much less proper and relevant, evidence to rebut the claims for higher compensation. Even the cross-examination will be formal, halting and ineffective. Generally, if not invariably the governmental agencies involved in the process take their own time and many a time in collusion, file the appeals after abnormal or inordinate delay. They remain insensitive even if the States (sic Stakes) involved run into several crores of public money. The courts insist upon proper explanation of every day's delay. In this attitudinal situation it would be difficult to meet strict standards to fill the unbridgeable gaps of the delay in filing the appeals and generally entails dismissal of the appeals at the threshold without adverting to the merits of the hike in the compensation. On other hand if the notice is issued to the local authority etc. it/they would participate in the award proceedings under Sections 11 and 18, adduce necessary and relevant evidence and be heard before the Collector and the court before determining compensation. For instance that

without considering the evidence in the proper perspective, the court determined the compensation.

14. If there is no right of hearing or appeal given to the beneficiary and if the State does not file the appeal or if filed with delay and it was dismissed, is it not the beneficiary who undoubtedly bears the burden of the compensation, who would be the affected person? Is it not interested to see that the appellate court would reassess the evidence and fix the proper and just compensation as per law? For instance the reference court determined market value at Rs 1,00,000 while the prevailing market value of the land is only Rs 10,000. Who is to bear the burden? Suppose State appeal was dismissed due to refusal to condone the delay, is it not an unjust and illegal award? Many an instance can be multiplied. But suffice it to state that when the beneficiary for whose benefit the land is acquired is served with the notice and brought on record at the stage of enquiry by the Collector and reference court under Section 18 or in an appeal under Section 54, it/they would be interested to defend the award under Section 11 or Section 26 or would file an appeal independently under Section 54 etc. against the enhanced compensation. As a necessary or proper party affected by the determination of higher compensation, the beneficiary must have a right to challenge the correctness of the award made by the reference court under Section 18 or in appeal under Section 54 etc. Considered from this perspective we are of the considered view that the appellant Company is an interested person within the meaning of Section 3(b) of the Act and is also a proper party, if not a necessary party under Order 1 Rule 10 of the CPC. The High Court had committed manifest error of law in holding that the appellant is not a person interested. The orders of the High Court are accordingly set aside.

15. Since the writ petitions filed by the appellants were dismissed, we set aside the orders and direct the High Court to treat them as appeals properly filed under Section 54 of the Act and be dealt with along with the appeals filed by the State pending disposal in the High Court. In the pending references under Section 18, in the Court of the Subordinate Judge, Cuddalore, it is directed to order impleading the appellant as a party-respondent and would give reasonable opportunity to cross-examine the witness examined by the claimants and to examine witnesses on its behalf to rebut the evidence for higher compensation, the appellant is entitled to be heard in support of the determination of just and proper compensation. In this view, the need to implead the appellant as a party-respondent in the pending appeals in the High Court does not arise." [Underlined to supply emphasis]

26. The principles enunciated in ***Neyvely Lignite*** *(supra)* have been reiterated in the subsequent decisions as would be indicated herein.

In ***Union of India v. Special Tehsildar (ZA) : 1996(2) SCC 332*** the Supreme Court allowed the prayer of the beneficiary to be impleaded as a party in the regular First Appeals pending before the High Court following ***U.P. Awas Evam Vikash Parishad (supra)*** (paras 10 and 11 of the SCC).

"10. It is an admitted case that the appeals are pending against the order passed by the subordinate court on reference having been made under Section 18 of the Act. The appellants wanted to be impleaded as a party in the said appeals. The proper and the only course which should have been adopted was to have applied to the

appellate court for being impleaded as a party. Instead of doing this, writ petitions for writs of certiorari under Article 226 of the Constitution of India were filed. Presumably, it must have been contended that the appellants should have been impleaded as respondents as they were interested parties because the acquisition was being effected at their expenses and for their benefits. Further, no effective relief could, possibly, have been sought by the appellants against the respondents. What was, in fact, desired by the appellants was an order of the Court for being impleaded in the appeals which were pending before the High Court. The collateral proceedings under Article 226 of the Constitution of India could not have been instituted and as already observed, the only remedy which was available to the appellants was to apply, in the pending appeals, to be impleaded as a party by moving an appropriate interim application. The High Court unnecessarily entertained writ petitions and gave a detailed judgment on the question which, in fact, it could not consider when dealing with a petition under Article 226 of the Constitution of India. This question should have been considered only if the proper application was filed in the pending appeals for being impleaded as a party. We may here observe that while dealing with merits of the case, the High Court did not have the benefit of the judgment of this Court in U.P. Awas Evam Vikas Parishad case [(1995) 2 SCC 326] and the other judgments referred to therein.

11. For the reason that the writ petition for being impleaded as a party in regular first appeals, which were pending, was not a proper remedy, the said writ petitions filed by the appellants have to be dismissed. Such dismissal will not be regarded as affecting the rights of the appellants in applying to the High Court by moving proper applications in the pending appeals for being impleaded as a party. Such applications may, if the appellants desire, be filed within two months and in case, the same are filed, they will be considered and disposed of by the High Court in accordance with law, keeping in view the law laid down by this Court in U.P. Awas Evam Vikas Parishad case [(1995) 2 SCC 326] and the other decisions which had been relied upon therein." [Underlined to supply emphasis]

27. In ***Delhi Development Authority vs. Bhola Nath Sharma (Dead) by L.Rs. and others : (2011) 2 SCC 54 : AIR 2011 SC 428*** both ***U.P. Awas Evam Vikash Parishad*** *(supra)* and ***Neyvely*** *(supra)* were followed and applied, holding that Delhi Development Authority was a person interested within meaning of S.3(b) therefore, entitled to participate in proceedings before Land Acquisition Collector as well as before High Court in the subsequent appellate proceeding when the High Court enhanced the compensation at the instance of land owners. It was observed that the High Court erred in enhancing compensation without directing the land owners to implead Delhi Development Authority to enable it to contest the case : Paragraphs 25, 29, 32 and 42 to 44 of SCC.

"25. The definition of the expressions "local authority" and "person interested" are inclusive and not exhaustive. The difference between exhaustive and inclusive definitions has been explained in P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348] in the following words : (SCC p. 356, para 19)

"19. ... A particular expression is often defined by the legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that 'definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition'. (See Gough v. Gough [(1891) 2 QB 665 (CA)] ; Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , SCC p. 717, para 72.) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes', on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions'. [See Dilworth v. Commr. of Stamps [1899 AC 99 : (1895 99) All ER Rep Ext 1576] (Lord Watson); Mahalakshmi Oil Mills v. State of A.P. [(1989) 1 SCC 164 : 1989 SCC (Tax) 56] , SCC p. 170, para 11.] The use of the words 'means and includes' in Rule 2(b) would, therefore, suggest that the definition of 'college' is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time."

29. Undisputedly, DDA is an authority constituted under Section 3 of the 1957 Act for promoting and securing development of Delhi according to plan and for this purpose it has the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage, etc. Therefore, it is clearly covered by the definition of the expression "local authority".

32. Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the Collector or the court for determining the amount of compensation and to show that claim made by the landowner for payment of compensation is legally untenable or unjustified. This is possible only if the Collector or the court concerned gives notice to the local authority or the company concerned. If notice is not given, the local authority or the company cannot avail the opportunity envisaged in Section 50(2) to adduce evidence for the purpose of determining the amount of compensation. Therefore, even though the plain language of that section does not, in terms, cast a duty on the Collector or the court to issue notice to the local authority or the company to appear and adduce evidence, the said requirement has to be read as implicit in the provision, else the same will become illusory.

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42. In view of the above discussion, we hold that:

(i) DDA falls within the definition of the expressions "local authority" [Section 3(aa)] and "person interested" [Section 3(b)] of the Act;
(ii) DDA was entitled to participate in the proceedings held before the Land Acquisition Collector;
(iii) the failure of the Land Acquisition Collector to issue notice to DDA and give an opportunity to it to adduce evidence for the purpose of determining the amount of compensation payable to the landowners was fatal to the award passed by him;
(iv) DDA was entitled to notice and opportunity to adduce evidence before the Reference Court could enhance market value of the acquired land entitling the respondents to claim higher compensation and, as no notice or opportunity was given to DDA by the Reference Court, the judgments rendered by it are liable to be treated as nullity;
(v) the Division Bench of the High Court also committed serious error by further enhancing the amount of compensation payable to the contesting respondents without requiring them to implead DDA as party-respondent so as to enable it to contest their prayer for grant of higher compensation.

43. In the result, the appeals are allowed. The impugned judgment of the Division Bench of the High Court as also the judgments of the Reference Court are set aside and the matters are remitted to the Reference Court for deciding the two references afresh after giving opportunity of hearing to the parties, which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation. The Reference Court shall decide the matter without being influenced by the observations contained in the judgment of the High Court and this judgment." [Underlined to supply emphasis]

28. In ***Vidarbha Irrigation Development Corporation v. Santosh Janba Warghane and another : (2019)12 SCC 650***, the principles laid down in ***Neyvely Lignite*** *(supra)* were reiterated and were applied to hold that the petitioner Vidarbha Irrigation Development Corporation being beneficiary of land acquisition is a necessary party and could file an appeal against award passed by reference court. The decision of the High Court to the contrary was reversed as the High Court had refused to grant leave to appeal to the Corporation against the award passed by the reference court.

29. The appellants rely on the decision rendered by a coordinate Bench in ***Pitambar Sahoo v. Angul-Sukinda Railway Limited : 2016 (2) ILR Cut. 212, 2016(II) OLR 27:*** wherein the coordinate Bench has dealt with the memorandum of understanding/concession agreement in extenso to hold that as per the agreement entered between the East Coast Railway and the Company, the Company (SPV) was liable to indemnify all actions, suits, claims, demands and proceedings. It was held that the one who is under obligation or liable to indemnify against all actions, suits, claims, demands and proceedings has a right to be heard in it which has become more expedient when neither Union of India : Ministry of Railways nor the East coast Railways have been impleaded as a party to the reference. The decision of the coordinate Bench has attained finality as it has not been challenged/altered by any subsequent decision.

30. The principles enunciated in the judgments rendered by the Supreme Court as indicated and discussed above can be summarized as follows:

(i) The right conferred by Section 50(2) of the L.A. Act, 1894 carries with it the right to be given adequate notice by the L.A. Collector as well as the reference Court before whom the acquisition proceedings are pending.

(ii) The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the L.A. Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the L.A. Act.

(iii) Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

(iv) The local authority is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the L.A. Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

(v) In the event of enhancement of amount of compensation by the reference Court if the Government does not file an appeal the local authority can file an appeal, against the award in the High Court after obtaining leave of the Court.

(vi) In an appeal in the High Court as well as in the Supreme Court filed by a person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal.

(vii) A Company for whom land is being acquired has the same right as a local authority under Section 50(2) the principles applicable to a local authority as noted above would also apply to a Company.

(viii) The operation of Section 3(b) in conjunction with sub section(2) of Section 50 of the L.A. Act cannot be limited within a narrow compass. The right given under sub-section (2) of Section 50 is in addition to and not in substitution of or in derogation to all the incidental, logical and consequential rights flowing from the concept of fair and just procedure consistent with the principles of natural justice.

(ix) The beneficiary who undoubtedly bears the burden of compensation is an interested person within the meaning of Section 3(b) of the Act and is also a proper party if not a necessary party under Order 1 Rule 10 of CPC.

It would be error of law if it is held that a beneficiary Company is not a person interested.

(x) The definition of expression "local authority" and "person interested" are inclusive and not exhaustive. Inclusive definition used in a statute enlarge the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares they shall include.

(xi) Denial of the right to be impleaded as a party and to be heard as a person interested, is in negation of fair and just procedure offending Article 14 of the Constitution of India.

(xii) Section 50(2) represents statutory embodiment of one of the facets of the rules of natural justice. The object underlying this section is to afford an opportunity to the local authority or company to participate in the proceedings held before the L.A. Collector or the court for determining the amount of compensation and to show that claim made by the landowner for payment of compensation is legally untenable or unjustified.

31. It has to be observed that the learned counsel for the appellants and the learned AGA for the Special LAO could not point out as to how by impleading the project proponent East Coast Railway and/or Haridashpur-Paradip Rly. Company the appellants-land losers or the Special Land Acquisition Officer would have been prejudiced in any manner in the proceeding before the Court below.

32. Having heard learned counsel for the appellant, learned counsel for the respondent nos.1 to 4, the learned Additional Government Advocate for the proforma respondent nos.5 and 6, in view of the discussions above and applying the law laid down by the Supreme Court as summarized above and applying the principles enunciated by this Court in ***Pitambar Sahoo*** *(supra)* the LAA is allowed. The impugned order dated 07.02.2018 passed by the learned Civil Judge (Senior Division), Jajpur in L.A. Case No.11 of 2009 is set aside and quashed. The L.A. Case No.11 of 2009 is restored for adjudication afresh by the jurisdictional court in the manner as directed herein below.

32.1 The parties in the present appeal shall appear before the learned court of jurisdiction as the L.A. Case No.11 of 2009 earlier pending before the learned Civil Judge (Senior Division), Jajpur as the said L.A. Case has been restored to file.

32.2 It is further directed that the learned District Judge, Jajpur shall do well to find out after necessary enquiry the Court of jurisdiction which can decide the LA case, as it is submitted by the learned counsel for the respondents and also agreed by the learned counsel for the appellant that at present the jurisdiction is distributed between three courts : Courts of Civil Judge (Senior Division) : at Jajpur, at Jajpur Road and at Chandikhole in the district of Jajpur. The learned District Judge shall

inform in the administrative side the court having jurisdiction to take up immediately the matter as restored.

32.3 The respondents 1 to 4 shall appear before the learned referral court through their learned counsel. The appellants shall file petition for impleading themselves as parties before the learned court that would be in seisin of the matter after the case is assigned. The petition for impleading appellants shall be allowed and they shall be impleaded as opp. parties. The learned court shall also issue notice / inform the learned counsel for the present respondent nos.1 to 4 regarding the next date. As a matter of abundant caution intimating the next date notice be issued to the present appellant in the following address as indicated in the cause title :

> *"Haridaspur-Paradip Railway Company Limited represented through its Managing Director, at J/7, Pal Heights, Jayadev Vihar, Bhubaneswar, District Khurda."*

The incumbent Managing Director/Authorised Officer of the company shall respond to such notice themselves/through their counsel.

33. The learned referral Court shall expedite the matter without granting unnecessary adjournments. The respondents and the appellant undertake to appear on each date and cooperate for disposal of the reference.

Registry shall communicate copy of this judgment to the learned District Judge, Jajpur for necessary action.

34. It is clarified that no part of this judgment and order remanding the matter for adjudication regarding enhancement shall be treated to be expression of any opinion on the merits of the respective claims and contentions of the parties.

35. The appeal is allowed with further directions as indicated above, There shall be no orders towards costs.

36. This Court records its appreciation of the learned counsel for the appellant as well as learned counsel for the respondents and the learned Additional Government Advocate for their able assistance to the Court in finally hearing, deciding and disposing of the Land Acquisition Appeal that has been pending for more than seven years.

Post Script

Before parting with the matter it would be apt to put on record certain economic aspects which are significant, though may not have a direct bearing on the process of adjudication and the conclusion that may be arrived at. National Rail Vikas Yojana is largely a non-budgetary initiative that envisages public-private partnership model of financing and implementation of railway infrastructure. The said 'Yojana' has been envisaged for speedy development of rail infrastructure which includes de-bottlenecking of Golden Quadrilateral (a 5,846 Km. National Highway Project connecting four key cities Delhi, Kolkata Chennai and Mumbai)

providing rail connectivity and developments of rail corridors to hinter lands. The Special Purpose Vehicle is a result of a Memorandum of Understanding signed on 16th October, 2003 between Ministry of Railways and Rail Vikas Nigam Limited creating project specific SPV. Haridaspur-Paradip Railway Line Project was sanctioned by Ministry of Railways and was identified to be undertaken under the 'Yojana'. The shareholders agreement for Haridaspur-Paradip Railway Company Limited (HPRCL) was signed on 11.10.2006 by Govt. of Odisha, large Public Sector Undertakings like Rail Vikas Nigam Limited (RVNL), Steel Authority of India Limited (SAIL), Paradip Port Trust (PPT) and also Public Limited Companies like ESSEL Mining and Industries Ltd. (EMIL), Jindal Steel and Power Ltd. (JSPL), MSP Steel and Power Ltd. (MSPL), POSCO India Private Ltd.(POSCO). The concession agreement was entered into to take over the responsibility for implementation of the Haridaspur-Paradip New Railway Line including necessary finances for the project.

Public-private partnership for large infrastructure projects which are capital intensive is neo-normal. Financing of important infrastructure projects has gradually shifted to be non-budgetary initiative. In many instances for infrastructure projects public-private partnership model of financing has become the preferred mode.

A Court applying various principles in adjudicating a matter may have to look for functional objectives of such arrangements to finance projects. Substantial cost of infrastructure project like a New Railway line is for payment of compensation for acquisition of land by State in exercise of power of eminent domain. Economic implications of judicial pronouncements are significant. HPRCL shall bear the cost of enhancement of compensation for acquisition. Complex financial arrangements need not be rearranged as it is not the purpose of adjudication. Rather, complex long term contracts involving finance, like the concession agreement to construct railway link should be predictably and credibly enforced even when entangled in litigation.

Viewed from such a perspective, participation of project proponent and the company implementing the project as proper parties is essential in any proceeding before a Court where cost of land acquisition is an issue to be adjudicated.

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

Result of the case:
LAA allowed.

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2025 (II) ILR-CUT-1171

ALOK KUMAR NAYAK
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 26103 OF 2017]

24 APRIL 2025

[M.S. SAHOO, J.]

Issue for Consideration

Whether the petitioner had sufficient cause not to resume his duties on 05.12.2016.

Headnotes

SERVICE JURISPRUDENCE – Disengagement – Petitioner worked as a computer programmer in the District Rural Development Agency, Kandhamal – As per the agreement entered into by the petitioner with DRDA, Kandhamal, he was terminated every year on 28th February and re-engaged on 1st March but he was disengaged on 13th January, 2017 and not re-engaged thereafter – The reason is that he did not report to duty on 5th December, 2016 – The petitioner sent his leave application on 05.12.2016 at 14.03 hours along with the outdoor ticket of the MKCG Medical College – Whether the petitioner had sufficient cause not to resume his duties on 05.12.2016.

Held: Yes – In considered opinion of this Court, the petitioner had just and sufficient reasons not to be able to join on 05.12.2016 and remain on leave having suffered fracture of lateral end of clavicle (left collar bone) and was further advised rest to left upper limb for one month – The reasons are sufficient, on medical grounds to remain on leave with effect from 5.12.2016 – The authorities failed to take into consideration this relevant aspect when they took a decision to disengage the petitioner from service. (Para 12)

In view of the finding that the petitioner had sufficient reasons on medical ground not to resume duties on 05.12.2016, which was not taken into consideration by the authorities the disengagement order dated 13.01.2017 is set aside and quashed – The order dated 17.06.2017 (Annexure-6) being a consequence of order dated 13.01.2017, issued rejecting the representation of the petitioner to reengage him is also set aside and quashed. (Para 13)

As a consequence of setting aside the order dated 13.01.2017 as well as the consequential order dated 17.06.2017, the petitioner, if makes any application for re-engagement, same shall be considered without being

any way influenced with the earlier orders which have been set aside by this judgment. (Para 14)

List of Acts

Code of Civil Procedure, 1908.

Keywords

Disengagement; Re-engagement; Representation; Agreement; Contractual; Computer Programmer.

Case Arising From

Letter dated 13.01.2017 issued by the Collector and Chief Executive Officer (CEO), District Rural Development Agency (DRDA), Kandhamal (O.P. No. 3).

Appearances for Parties

For Petitioner : Mr. P.C. Mohapatra

For Opp. Parties : Mr. D. Mohanty, A.G.A.

Judgment/Order

Judgment

M.S. SAHOO, J.

1. The petitioner entered into an agreement to work as a Computer Programmer with his employer District Rural Development Agency, Kandhamal represented by O.P. No. 3 along with opposite parties 4 and 5. The agreement contained the following clause:

> *"The post of Computer Programmer may be terminated every year on 28th February AN and renewed from 2nd March in such a manner that there is one day break on March every year subject to their satisfactory performance."*

2. The issue boils down to petitioner's challenge to his disengagement by letter dated 13.01.2017 issued by the Collector and Chief Executive Officer (CEO), District Rural Development Agency, (DRDA), Kandhamal (O.P. No.3) under the Government of Panchayatraj Department.

3. Learned counsel for the petitioner submits that the petitioner was terminated every year on 28th February, 2013, 2014, 2015 and 2016. Re-engaged on 1st March, 2013, 2014, 2015 and 2016. He was disengaged on 13th January, 2017 and not re-engaged thereafter. It is submitted that the disengagement of the petitioner was purportedly for the reason that he did not report to duty on 5th December, 2016. The apparent reason has been disclosed in the letter dated 13.01.2017 which refers to the letter of Block Development Officer (BDO), Tumudibandha (O.P.No.5) dated

16.12.2016 which indicated that after postponement of mass strike by the computer programmers, the petitioner did not report for duty by 05.12.2016.

4. The learned Additional Government Advocate appearing for the opposite parties supports the disengagement order, inter alia, on the grounds that the petitioner's engagement is contractual as per the agreement entered into between the employer and the petitioner, i.e., Annexure-1. The learned AGA refers to the counter affidavit, particularly in response to the application of the petitioner dated 05.12.2016 annexed to the writ petition marked as Annexure-3. It encloses the outdoor ticket of MKCG Medical College & Hospital, Berhampur. The outdoor ticket indicates the following : 03-Orthopedic OPD Card No. 21176685, Registration No.030133, dated 5th December, 2016, countersigned by the doctor consulted at the OPD, giving the details of the provisional diagnosis, advice regarding further medical examination to be undertaken, medicines to be taken and also the advice *"Rest to (L) upper limb for one month"*. The said annexure encloses the leave application of the petitioner dated 05.12.2016. The leave application encloses copy of the printout of electronic-mail (e-mail) sent from petitioner's e-mail id : alok1plb@gmail.com to e-mail ori-tumudibandh@nic.in. and Ashok Gouda agouda9@gmail.com. The e-mail also shows the two attachments i.e., images in jpg format of the leave application dated 05.12.2016 and the outdoor ticket of MKCG Medical College and Hospital as described in detail above.

5. The learned AGA refers to paragraphs-8, 9, 10 and 15 of the counter affidavit. Perusal of paragraph-8 of the counter affidavit would indicate that the averments made in paragraph-4 of the writ petition regarding forwarding of the leave application enclosing the OPD ticket as well as e-mail are denied by stating : *"... no such leave application has ever been received in the office of the opposite party no.5..."*

The learned AGA then submits that the Collector had disengaged the petitioner and he was not disengaged by the Block Development Officer.

6. Paragraph-9 of the counter affidavit indicates that the disengagement was pursuant to the letter dated 03.12.2016 passed by the Director opposite party no.2 (Annexure-2). Further paragraph-10 of the counter affidavit goes to show that the disengagement order was issued on 13.01.2017 referring to the order of the Director, Panchayatraj dated 03.12.2016 regarding postponement of the mass strike by the Computer Programmers and resumption of duty on 05.12.2016.

7. On perusal of the averments made in the counter of the O.Ps. it is seen that whether the e-mail was received by the addressee, whether the e-mail id is correct have not been answered/mentioned or disputed in the counter. The denial is regarding receipt of the leave application and in fact without any statement denying receipt of the e-mail with attachments. In considered opinion of this Court nothing turns on the averments of the opposite party no.5 that the leave application was never received in absence of any denial or dispute regarding the e-mail sent by the

petitioner. It has to be also noticed the petitioner was himself working as computer programmer of the organization handling e-mail of the organization, he is aware of e-mail id etc.

8. Further, the disengagement of the petitioner was attributed to he not joining duty on 05.12.2016 which is also the stand of the opposite party no.5 in paragraph-9 of the counter and also the reasoning given in the order dated 13.01.2017 of the Collector and CEO.

9. The order dated 13.01.2017 issued by the Collector and CEO, DRDA refers to the report of the Block Development Officer that the petitioner did not join duty on 05.12.2016 after resumption of work as the mass strike by the computer programmers was called off. Further, it refers to the Government in Panchayatraj Department letter dated 03.12.2016 (Annexure-2) which had provided *"In view of the above, if the Computer Programmers do not report to their duty on or before 5th December 2016, you are hereby directed to terminate their services with immediate effect."*

The said letter of the Government dated 03.12.2016 was addressed to all the Collectors with copies to all the Block Development Officers for information and necessary action. The BDO following that letter had issued the report to the Collector on 06.12.2016 enclosed to the counter marked as Annexure-B/5 which indicates the following :

> *" In inviting a reference to the letter on the subject cited above, I am to say that Sri Alok Kumar Nayak, C.P. of this office who is on mass strike has not reported to duty till 5th December, 2016. Due to his prolonged absence, the day to day work of the Block has received a serious setback during this peak working season."*

10. Since absence from duty on 05.12.2016 till he joined in January, 2017 is also the case of the petitioner, now it remains to be seen whether he had valid reasons to remain absent, whether the reasons are justifiable and lastly whether the authorities while passing the order have dealt with the said aspect.

11. The leave application was sent by e-mail along with the outdoor ticket of the MKCG Medical College which contains details of the treatment, the provisional diagnosis, further advice. The e-mail dated 05th December, 2016 was sent at 14.03 hours by g-mail, with subject 'unable to resume duty' addressed to the e-mail ids ori-tumudibandh@nic.in. and agouda9@gmail.com along with the two attachments, i.e. the OPD/outdoor ticket, outpatient's department ticket, OPD ticket and the leave application.

The Civil Procedure Code O.5 Rule-9:Sub Rule-3, after 1999 amendment recognizes service of summons by electronic mail service. Taking a cue it has to be held that the electronic mail (e-mail) containing leave application and hospital

outdoor ticket as attachments, was duly sent as the opposite parties have not disputed or denied such e-mail.

12. In considered opinion of this Court, the petitioner had just and sufficient reasons not to be able to join on 05.12.2016 and remain on leave having suffered fracture of lateral end of clavicle (left collar bone) and was further advised rest to left upper limb for one month. The reasons are sufficient, on medical grounds to remain on leave with effect from 5.12.2016. The authorities failed to take into consideration this relevant aspect when they took a decision to disengage the petitioner from service. As the events have unfolded thereafter, the disengagement order was issued on 13.01.2017 which has been served by the process server on 20.1.2017 as contended by the opposite party referring to document annexed to the counter affidavit marked as Annexure-C/5 which contains endorsement in Oriya made by the server who served on the petitioner.

13. In view of the finding that the petitioner had sufficient reasons on medical ground not to resume duties on 05.12.2016, which was not taken into consideration by the authorities the disengagement order dated 13.01.2017 is set aside and quashed. The order dated 17.06.2017 (Annexure-6) being a consequence of order dated 13.01.2017, issued rejecting the representation of the petitioner to reengage him is also set aside and quashed.

14. As a consequence of setting aside of the order dated 13.01.2017 as well as the consequential order dated 17.06.2017, the petitioner, if makes any application for re-engagement, same shall be considered without being any way influenced with the earlier orders which have been set aside by this judgment.

15. The writ petition is allowed and disposed of with the aforesaid observations. In the facts and circumstances of the case there shall be no orders towards costs. Ordered accordingly.

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

Result of the case:
Writ Petition allowed.

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2025 (II) ILR-CUT-1176

PRABHAKAR SAHOO & ORS.
V.
SESADEV SAHOO & ORS.

[CMP NO. 1086 OF 2024]

17 JUNE 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

1. Whether allowing an application under Order 18 Rule 17 of the Code of Civil Procedure, 1908 is tenable when the document which is sought to be confronted to D.W. 5 has neither been pleaded in W.S. nor was relied upon by Defendant Nos. 1 to 4.

2. Whether receipt of cost with protest extinguished the right to challenge an order on the ground of principle of estoppel.

3. Whether challenging an impugned order after receipt of cost with protest attracts the doctrine of approbate and reprobate.

Headnotes

(A) CODE OF CIVIL PROCEDURE, 1908 – Order 18, Rule 17 – Learned Civil Judge (Jr. Division) allowed an application filed at the behest of Opposite Party Nos. 1 to 4 seeking recall of Opposite Party No. 11 (Legal heir of defendant No.5) to examine as a witness from their side – The ground set forth in the application and the document which is sought to be confronted to the legal heir of D.W. 5 has neither been pleaded in the W.S. nor was relied upon by defendant Nos. 1 to 4 and such a question is beyond the subject matter of the suit – It is further alleged that no counter claim is filed questioning the decree in T.S. No. 288 of 2000 where defendant No.5 was a party – Whether allowing an application under Order 18 Rule 17 is tenable when the document which is sought to be confronted to D.W. 5 has neither been pleaded in W.S. nor was relied upon by defendant Nos. 1 to 4.

Held: No – To reiterate, recall of DW 5, in the peculiar facts and circumstances of the case, is unwarranted, especially when, there is no any challenge to the decree in T.S. No.288 of 2000 considering the fact that the same ended in a compromise, hence, there is absolutely no justification at all. (Para 13)

(B) CODE OF CIVIL PROCEDURE, 1908 – Order 18, Rule 17 – Recall of witness – The learned Civil Judge (Jr. Division) allowed an application filed at the behest of Opp. Party Nos. 1 to 4 and imposed cost which is not conditional – The petitioner/plaintiff received the cost

with protest – Whether receipt of cost with protest extinguished the right to challenge an order on the ground of principle of estoppel.

Held: No – If it is a conditional order and the cost is accepted, rule of estoppel applies and not otherwise – If by exercise of discretionary power, any such cost is awarded, allowing of application would not make the decision in the nature of a conditional order – In other words, where there is no conditional order, even though, the cost was received by the party, it has every right to challenge the decision and the same is not extinguished.

(Para 16)

(C) PRINCIPLE OF APPROBATE AND REPROBATE – The petitioner received the cost with protest imposed by the learned Civil Judge (Jr. Division) while allowing an application under Order 18 Rule 17 filed by defendant Nos. 1 to 4 – Whether challenging an impugned order after receipt of cost with protest attracts the doctrine of approbate and reprobate.

Held: No – It is settled law that a party cannot be allowed to take the benefits of the part of the order and register complaint at the same time since it is based on the doctrine that a person may not approbate and reprobate but where the order is not conditional, even though the cost is received under protest, it would not take away the rights of the party to challenge the order on merits. A conditional order cannot be challenged and hence, rule of estoppel would apply but not where discretionary power has been exercised while awarding the cost. (Para 17)

Citations Reference

Savithramma Vrs. Nagarathna and others**, AIR 2020 Karnataka 134;** Rashmi Rekha Purohit @ Panda Vrs. Rajeswari Panda and others**, 2023 (I) CLR 1036;** Vadiraj Naggappa Vernekar Vrs. Sharadchandra Prabhakar Gogate**, AIR 2009 SC 1604;** Ananda Behera and others Vrs. Nilkamal Behera and others, **AIR 1975 Orissa 173;** Sk. Zahural Islam Vrs. Tanweer Jahan Begum and others, **AIR 2000 Orissa 140;** U.K. Ghosh Vrs. M/s. Voltas Ltd. and another, **AIR 1994 Orissa 131;** Salem Advocate Bar Association, T.N. Vrs. Union of India **(2005) 6 SCC 344;** Jodhpur Gums & Chemicals Pvt. Ltd. Vrs. Punjab National Bank and others, **AIR 1999 Raj 38;** Amar Singh Vrs. Perhlad and others**, AIR 1989 P&H;** Sayed Zaharul Haque Vrs. State of Orissa and others**, 2004 (Supp.) OLR 786;** Fast Cool Services Vrs. P. Shanthakumari, **MANU/TN/0202/2000;** Union of India and others Vrs. N. Murugesan and others**, (2022) 2 SCC 25;** Bijendra Nath Srivastava Vrs. Mayank Srivastava and others, **1994 AIR SCW 3615 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Principle of acquiescence; Doctrine of estoppel; Doctrine of approbate-reprobate; Discretionary power; Without protest; Without prejudice to the right; Conditional order; Protest; Acceptance of cost.

Case Arising From

Order dated 20th July, 2024 passed by learned Civil Judge (Junior Division) 2nd Court, Cuttack in connection with C.S. No.62 of 2005 (I).

Appearances for Parties

For Petitioners : Mr. D. Dhal

For Opp. Parties : Mr. R.K. Swain

Judgment/Order

Judgment

R. K. PATTANAIK, J.

1. Instant petition is filed by the petitioners assailing the impugned order dated 20th July, 2024 passed in connection with the suit in C.S. No.62 of 2005(I) by learned Civil Judge, Junior Division 2nd Court, Cuttack as at Annexure-6, whereby, an application under Order 18 Rule 17 CPC at the behest of opposite party Nos.1 to 4 seeking recall of opposite party No.11 examined as a witness from their side was allowed on the grounds inter alia that such a decision is not legally tenable, hence, liable to be interfered with in the interest of justice.

2. Briefly stated, the suit is instituted by the petitioners against opposite party No.1 to 4 and original defendant No.5 for a declaration of them having the right, title and interest including possession over and in respect of the suit schedule land and to permanently injunct the latter, who in case found to be in possession, to recover such possession with the process of Court and such other reliefs as entitled under law. The contesting defendants challenged the suit of the petitioners. In fact, defendant Nos.1, 2 and 4 filed a common WS and a separate one by defendant No.3. In so far as original defendant No.5 is concerned, no defence was filed by him. On the death of defendant No.5, he was substituted by opposite party No.11 and others. The evidence from both the sides was concluded and thereafter, opposite party Nos.1 to 4 moved the application under Order 18 Rule 17 CPC requesting therein to recall opposite party No.11 examined as DW 5 for a specific purpose to confront certain facts with reference to the decree passed in T.S. No.288 of 2000 in juxtaposition to another decree dated 5th December, 1990 in T.S. No.304 of 1989 with a plea that the same is absolutely necessary for a just decision in the suit. Even though, an objection was received from the petitioners to entertain such recall, as it was at the

fag end of the suit pending at the stage of argument, learned court below allowed the application exercising powers under Order 18 Rule 17 CPC with recall of DW 5 subject to cost payable to the other side by the impugned order dated 20th July, 2024 i.e. Annexure-6. The said decision of allowing recall of opposite party No.11 for the purpose of further examination in the hands of opposite party Nos.1 to 4 and legality thereof is under question by the petitioners.

3. Heard Mr. Dhal, learned counsel for the petitioners and Mr. Swain, learned counsel for opposite party Nos.1 to 4.

4. According to Mr. Dhal, learned counsel for the petitioners, defendant Nos.1, 2, 3 and 4 contested the suit and not original defendant No.5 and he was also set ex-parte and later died on 17th September, 2007 during the pendency of the suit, whereafter, his legal heirs defendant Nos.5 (a) to 5 (g) were substituted and in spite of summons issued to them, none chose to contest either and all were also set ex-parte and during and in course of hearing of the suit, plaintiff No.4 was examined as PW 1, cross examined and discharged and the evidence from the side of the plaintiffs was closed and thereafter, the defendants led evidence and it was closed on 22nd April, 2024 and then the argument was commenced from both the sides on different dates, but in course of such argument, the conducting counsel for defendant Nos.1 to 4 informed the learned court below that the consent was being taken from him, in response to which, notice was issued to defendant Nos.1 to 4, who ultimately appeared, engaged another counsel and thereafter, on 5th July, 2024, such an application under Order 18 Rule 17 CPC as at Annexure-4 to recall DW 5 was filed solely to confront him about the compromise decrees in both the suits, such as, T.S. No.304 of 1989 and T.S. No.288 of 2000, to which, an objection was filed on 16th July, 2024, a copy of which is at Annexure-5 and upon hearing of the parties, learned court below finally passed the impugned order i.e. Annexure-6 allowing recall of DW 5 but it is not unwarranted.

5. The petitioners challenged the correctness of the above decision on the following grounds, such as, (i) the ground set forth in the application and the document which is sought to be confronted to DW 5 have neither been pleaded in the WS nor relied upon by defendant Nos.1 to 4; (ii) such a question is beyond the subject matter of the suit; (iii) the contesting defendants have filed the application in order to fill up the lacuna through DW 5; (iv) no counter claim is filed questioning the decree in T.S. No.288 of 2000 marked as Ext.1 in the suit; (v) no justifiable grounds exist for non-production of such a document earlier even at the time of examination of DW 5; (vi) no questionnaire is furnished along with the application under Order 18 Rule 17 CPC; and (vii) such a move is at the end of the trial, hence, therefore, it is not maintainable and thus, could not have been entertained by learned court below and therefore, the impugned order under Annexure-6 deserves to be set aside. Since, cost was imposed and it was received under a protest, Mr. Dhal, learned counsel would further submit that the petitioners do have the right to question the decision of learned court below. In support of the grounds advanced,

Mr. Dhal, learned counsel relies on the following decisions, such as, **Savithramma Vrs. Nagarathna and others AIR 2020 Karnataka 134; Rashmi Rekha Purohit @ Panda Vrs. Rajeswari Panda and others 2023 (I) CLR 1036; and Vadiraj Naggappa Vernekar Vrs. Sharadchandra Prabhakar Gogate AIR 2009 SC 1604** concerning the powers of the Court under Order 18 Rule 17 CPC and **Ananda Behera and others Vrs. Nilkamal Behera and others AIR 1975 Orissa 173** along with **Sk. Zahural Islam Vrs. Tanweer Jahan Begum and others AIR 2000 Orissa 140** on the point of cost having been received with a protest and its aftereffects. The contention is that learned court below could not have exercised jurisdiction allowing recall of DW 5 as it was unnecessary and even not permissible within the framework of law especially at the end of the suit, furthermore when, no legal basis or foundation was laid while seeking such recall for further examination with reference to the earlier decrees in the other two suits and in so far as, the right to challenge the impugned decision i.e. Annexure-6 is concerned, it was not extinguished Page 7 of 30 notwithstanding receipt of the cost, which in any case, was under protest.

6. On the contrary, Mr. Swain, learned counsel for opposite party Nos.1 to 4 submits that recall of DW 5 is needed to effectively adjudicate the suit and since, he was to be confronted about the earlier decrees especially with regard to the signature of original defendant No.5 which did not match with the one in the other and therefore, considering the same and the significance and since the rights of the parties vis-à-vis the suit schedule land depends on it, learned court below did not commit any serious wrong or error in directing further examination of DW 5 even though none of the substituted LRs of original defendant No.5 contested the suit. Mr. Swain, learned counsel further submits that the petitioners are estopped from challenging the order under Annexure-6 for the reason that cost of Rs.500/- awarded by learned court below was received by them and refers to a memo dated 1st August, 2024 as at Annexure-1 to the counter affidavit of opposite party Nos.1 to 4. The contention is that when the petitioners received the cost, they are not permitted to challenge the Page 8 of 30 decision under Annexure-6 as one cannot approbate and reprobate at the same time since it is prohibited under law.

7. In reply and response to the above, Mr. Dhal, learned counsel for the petitioners reiterated the grounds pleaded on record and submits that receipt of cost of Rs.500/- by the petitioners under protest does not take away the invaluable right to question the correctness of the impugned order i.e. Annexure-6. It is further submitted that the petitioners possess the rights to challenge recall of DW 5 for the fact that the cost was paid and received with a protest and refers to a certified copy of the memo dated 1st August, 2024 filed before the learned court below in contrast to the memo i.e. Annexure-1 to the counter affidavit of opposite party Nos.1 to 4 with the contention that the same is a public document and hence, admissible as per Section 74 and 76 of the Indian Evidence Act and a presumption is attached to the same in view of Section 77 and 79 thereof and hence, the petitioners though having

received the cost, it was without any prejudice to their rights to challenge Annexure-6, hence, are not estopped under law.

8. As earlier stated, original defendant No.5 did not contest the suit and during pendency of the suit, he died and DW 5, namely, opposite party No.11 is one of the substituted LRs of him and the latter and the other LRs were set ex-parte as well. In fact, the original defendant No.5 instituted the suit in T.S. No.304 of 1989 and the same ended in a compromise. The said suit was filed against one Narendra Moharana as the sole defendant and in view of the compromise between them, a decree was drawn up in terms of Annexure-3 to the counter affidavit of opposite party Nos.1 to 4. Similarly, the other suit in T.S. No.288 of 2000 instituted by plaintiff No.1, original defendant No.2, defendant No.3 and others against original defendant No.5 and others culminated in a compromise decree as per Annexure-2 of the above counter affidavit. Both the suits stood disposed of upon compromise between the respective parties. So far as, the present suit is concerned, it is instituted by the plaintiffs against opposite party Nos.1 to 4, who were not parties to the earlier suits but claimed to have acquired interest in respect of the suit schedule property, in the meanwhile. Since Page 10 of 30 original defendant No.5 was a party to both the suits and he is succeeded by opposite party No.11 and others and the latter was examined as DW 5, in order to confront the compromise decree in T.S. No.288 of 2000 and about the truthfulness vis-à-vis involvement of original deceased defendant, whose signature is alleged to be not matching with the one in T.S. No.304 of 1989, such a request was made in terms of Order 18 Rule 17 CPC and ultimately, it has led to the passing the impugned order i.e. Annexure-6. The conclusion of learned court below is that even when the suit is on the verge of disposal, recall or re-summon of a witness to prove a fact or document is permissible and any such recall of DW 5 is not to put the petitioners to any expense as the latter would have the opportunity to cross-examine him with reference to any such document marked as exhibit and hence, allowed the same, however, imposed cost payable to the plaintiffs.

9. In fact, Order 18 Rule 17 CPC deals with recall and examination of a witness which is a discretionary power for the court to exercise, if it deems fit in a given set of facts. Furthermore, Section 165 of the Indian Evidence Act allows a court to exercise such a power to put any question to a witness and Order 18 Rule 17 CPC reserves such a right to recall a witness for the said purpose. The right to recall is not restricted to the Court on its own motion but may be exercised at the instance of a party. But ordinarily, no such examination is allowed without the leave of the Court. Law is well settled that if cogent reasons exist, recall of a witness can be allowed. When a party omits to examine a witness on a question of law due to inadvertence, such witness may be recalled. The production of evidence not previously known or which could not be produced despite due diligence and the provision in respect thereof as per Rule 17 A of Order 18 CPC was omitted by CPC (Amendment) Act, 1999 w.e.f. 1st July, 2002 which was to the effect that the same

was permissible provided despite exercise of diligence, a party was not in a position to submit the evidence, hence, to move the Court even at a later stage. Since such a provision is no more in existence having been omitted in view of Section 27(iii) of CPC (Amendment) Act, 1999, a Court on being moved Page 12 of 30 seeking recall of a witness or production of any such evidence shall have to be entertained and examined in terms of Order 18 Rule 17 CPC leaving the discretionary power to be exercised by it depending on the facts of each particular case. If it is held necessary to recall a witness either for further examination or cross-examination, as the case may be, the intent and purport of Order 18 Rule 17 CPC is to be understood. It is not that on the drop of a hat, any such application seeking recall or re-summon of witness is to be allowed by a Court, which has the discretionary power to consider the same. A discretion lies with the Court must have to be exercised judiciously and not at its whim or caprice.

10. In **Vadiraj Naggappa Vernekar** (supra), the Apex Court held and observed that the dominant purpose of exercising power under Order 18 Rule 17 CPC is to enable a Court, while trying a suit, to clarify any doubts, which it may have with regard to the evidence led by the parties but not to fill up any lacunae left behind. In the facts and circumstances of the said case, the Apex Court declined to consider recall and re-examination of the witness with the conclusion that such an exercise is not within the scheme of Order 18 Rule 17 CPC with a conclusion that power to recall any witness in terms of said provision may be exercised sparingly and in appropriate cases and not as a general rule merely on the ground that such a course of action is not likely to cause any prejudice to the parties. In view of the settled legal position, at the time of recall of a witness, a Court trying the suit should be alive to the fact that recall of a witness or allowing a party to lead further evidence with such recall or re-summon should not be routinely entertained or in a casual manner, unless and until, a case is made out with a conclusion that the same is essentially necessary for a just decision in the suit having regard to the evidence already led by the parties thereto. Whether the learned court below had a right approach in allowing further examination of DW 5 upon such recall is to be examined keeping in view the objective of law with reference to the discretionary jurisdiction exercisable under Section 165 of the Indian Evidence Act read with Order 18 Rule 17 CPC.

11. Indisputably, the evidence is closed from both the sides and thereafter, defendant Nos.1 to 4 moved the application seeking recall of DW 5. In the considered view of the Court, such an exercise is still open notwithstanding closure of evidence and the suit being pending at the stage of argument provided it falls within the parameters of Order 18 Rule 17 CPC. In **Savithramma** (supra), the Karnataka High Court held that since the plaintiff moved an application under Order 18 Rule 17 CPC when the suit was set down for arguments, rejection of the same in absence of any convincing and cogent reasons is perfectly justified. It has been held therein that justifiable ground was not made out while seeking further examination

of the witness, when it was at the fag end of the trial. Therefore, it has to be concluded that if a case is made out for any such recall under Order 18 Rule 17 CPC, the Court has the power to entertain the same even when the suit is on the verge of disposal but such examination shall have to be subject to the law of evidence. It is to be reiterated that there is no absolute bar or restraint under law from entertaining any such recall of a witness. A discretionary power lies with a court to be exercised either suo motu or at the instance of a party to the suit but with a rider that the same is just and really necessary. In the case of **Rashmi Rekha Purohit @ Panda** (supra), this Court concluded that there was no pleading in respect of the documents sought to be produced nor was any ground made out for acceptance of the same as evidence at a belated stage of the suit, hence, therefore, it was rightly disallowed dismissing the application filed under Order 7 Rule 14 CPC. The above decision has been referred to by Mr. Dhal, learned counsel for the petitioners to contend that in absence of any such pleading with regard to the earlier suits even challenging any of the decrees therein, recall of DW 5 could not have been allowed by learned court below when the evidence from both the sides had already been concluded and arguments were being presented with the suit about to be disposed of. Even though, it was with regard to production of documents with reference to Order 7 Rule 14 CPC, essentially, the argument advanced by Mr. Dhal, learned counsel referring the above case law is on the premise that recall of DW 5 without any such basis or foundation and even in absence of any counter-claim in the WS of opposite party Nos.1 to 4, while questioning the decree in T.S. No.288 of 2000 was not right and justified.

12. At this juncture, the Court is to examine the reason behind such recall of DW 5 and what prevailed upon learned court below to allow the same. Was it proper on the basis of the pleading on record and evidence led by the parties to allow recall of DW 5 for further cross-examination? The need and purpose of recall of a witness in terms of Order 18 Rule 17 CPC shall have to be in lines of the principles discussed by the Apex Court time and again and reiterated in **Vadiraj Naggappa Vernekar** (supra). At the cost of repetition, it is to be reminded that exercise of power under Order 18 Rule 17 CPC is to be exercised sparingly and only in appropriate cases and not in a routine manner. On a reading of the impugned order at Annexure-6, the Court finds that learned court below referring to the decisions in **U.K. Ghosh Vrs. M/s. Voltas Ltd. and another AIR 1994 Orissa 131; Salem Advocate Bar Association, T.N. Vrs. Union of India (2005) 6 SCC 344;** and **Jodhpur Gums & Chemicals Pvt. Ltd. Vrs. Punjab National Bank and others AIR 1999 Raj 38** reached at a conclusion that full opportunity should be provided to the parties to lead evidence and since recall of a witness may be allowed even for adducing documentary evidence, any such recall of DW 5 since unlikely to subject the plaintiffs to any expense or costs and the inconvenience would be more for the defendants instead, allowed the application dated 5th July, 2024 with cost payable to the plaintiffs. As earlier discussed, Order 18 Rule 17-A CPC is no more in the statute book and was omitted w.e.f. 1st July, 2002 and notwithstanding such a

provision being there, according to the decision in **Salem Advocate Bar Association, T.N.**, it was not to disentitle production of evidence at a later stage. On a sincere reading of the citations referred to by learned court below, the conclusion would be that recall of a witness, whether to be permissible or otherwise, is to be duly examined by a court and it would entirely depend on the facts and circumstances of each case. In fact, in **U. K. Ghosh** case, this Court observed that there can be no straightjacket formula in the matter of recall of a witness, rather, the judicial discretion to be exercised with the ultimate aim that the parties get opportunity to present their cases and the Court is able to adjudicate it properly. In **Jodhpur Gums & Chemicals Pvt. Ltd** referred to by learned court below, the witnesses were allowed to be re summoned on an application by the plaintiff bank to prove certain documents left unexhibited due to a lapse of the conducting counsel engaged by them as revealed from the conclusion of learned court below, wherein, Rajasthan High Court was pleased to dismiss the revision and declined to interfere with the order of the lower court. Though, the decisions have been discussed with the relevant extracts reproduced by learned court below as further revealed from Annexure-6 but towards the end, it has been concluded that such a recall is not to put the plaintiffs to any greater inconvenience in comparison to defendant Nos.1 to 4, who are rather to bear the expenses upon such recall of DW 5 with the former having been an opportunity to cross examine the witness. The Court does not find any discussion from Annexure-6 as to the specific need felt in recall of DW 5. It is not that on a request received from defendant Nos.1 to 4, the recall of DW 5 was to be allowed. Even learned court below concluded that the plaintiffs would not have to bear the expenses but still directed such recall with a cost of Rs.500/- payable to them. The Court does not really find any reason being assigned by learned court below, while allowing recall of DW 5. Rather from the application under Order 18 Rule 17 CPC, the Court finds that said witness was sought to be recalled to confront the involvement of original defendant No.5 and the latter's signatures found inconsistent in both the decrees of the earlier suits. The question is, whether, on such a ground, recall of DW 5 was to be allowed. In both the suits, as earlier stated, decrees resulted after the parties reached at compromise. The contesting defendants are not parties to the said suits either. The compromise decree is not under challenge in the present suit. A copy of such decree in T.S. No.288 of 2000 is already marked as an exhibit in the suit. Whether, there was any involvement of original defendant No.5 with any such plea advanced by defendant Nos.1 to 4, in the humble view of the Court, cannot be the basis to confront the same to DW 5. The original defendant No.5 was a party to both the suits and upon compromise, the decrees have been passed therein. Admittedly, there is no counter-claim in the WS questioning the decree in T.S. No.288 of 2000. Interestingly, according to the petitioners, the rights vis-à-vis the suit schedule property are in no way affected by the compromise decree in any of the suits earlier instituted and disposed of. It is not denied that defendant Nos.1 to 4 ever challenged the compromise decree in T.S. No.288 of 2000 on any such ground with reference to the other suit i.e. T.S. No.304 of 1989. Under the

above circumstances, when there is absence of any pleading to counter the compromise decree in T.S. No.288 of 2000, rather, the claim of the petitioners is that their rights are not affected by the earlier decrees, in absence of any such specific need to confront the said decree to DW 5, who is one of the successors of original defendant No.5, the conclusion of the Court is that recall, as has been allowed by learned court below, was not justified at all and the same is not in conformity with Order 18 Rule 17 CPC. No basis or any foundation has been laid by defendant Nos.1 to 4 without any pleading on record and that apart, when there has been no challenge to the compromise decree of the year 2000, any such recall of DW 5 to confront the same is rather unnecessary. Any such further examination of DW 5 by defendant Nos.1 to 4 is to expand the scope of the suit beyond the pleadings. Under what circumstances, the decree in T.S. No.288 of 2000 was arrived at with the participation of original defendant No.5, in the considered view of the Court, is beyond the domain of the suit and therefore, it is not at all necessary to confront any such fact to DW 5 vis-à-vis verification of signature of his late father therein on comparison with the decree in T.S. No.304 of 1989.

13. To reiterate, recall of DW 5, in the peculiar facts and circumstances of the case, is unwarranted, especially when, there is no any challenge to the decree in T.S. No.288 of 2000 considering the fact that the same ended in a compromise, hence, there is absolutely no justification at all. The inter se dispute between the parties in the suit at hand is to be examined on its own merit on the anvil of the past events with the compromise decrees in place. As it is already discussed that defendant Nos.1 to 4 Page 22 of 30 have not challenged the decree in T.S. No.288 of 2000, what purpose would it serve with the recall of DW 5 and therefore, it has to be concluded that such decision by learned Court below as per Annexure-6 does not stand to any logic.

14. The challenge to the impugned order i.e. Annexure-6 is opposed by defendant Nos.1 to 4 on the ground that such a right stood extinguished for the plaintiffs having received the cost. Mr. Dhal, learned counsel for the petitioners contends that the cost was received with protest clearly revealed from the certified copy of the memo filed before the learned Court below. In such view of the matter, it is contended that the petitioners are not estopped from questioning the correctness of the impugned decision vide Annexure-6. On the other hand, Mr. Swain, learned counsel for opposite party Nos.1 to 4 claims that the petitioners cannot be permitted to blow hot and cold for having accepted the cost and simultaneously questioning the decision on recall.

15. In **Ananda Behera** (supra), an ex parte decree was set aside awarding cost in favour of the plaintiff, who accepted the same but with a receipt filed carrying an endorsement 'without prejudice to file revision', hence, held therein that the party clearly did not relinquish its right to challenge the same, inasmuch as, it never approbated a part of the order by physical receipt of the cost. When at the time of receipt of the amount, it had therefore explicitly reserved a right to challenge the

decision under Order 9 Rule 13 C.P.C. Without objection the cost was when received by the defendants, it was held in **Sk. Zahural Islam** (supra) that they are estopped from challenging the order allowing the amendment of plaint. Mr. Dhal, learned counsel for the petitioners, hence, submits that whenever, there is receipt of cost with a protest, right of the party accepting the same to challenge the order is not extinguished. On the contrary, Mr. Swain, learned counsel for opposite party Nos.1 to 4 refers to a decision of the Punjab and Haryana High Court in **Amar Singh Vrs. Perhlad and others AIR 1989 P&H** to contend that approbate and reprobate is not permitted under law and therefore, the petitioners, in spite of having received the cost under a protest, have relinquished any such right to challenge the impugned order i.e. Annexure-6. In fact, a copy of the memo produced in Court from the side of opposite party Nos.1 to 4 did not reveal any such protest received from the petitioners while accepting the cost but a certified copy of another disclosed it otherwise. The Court is to rely upon and accept the certified copy of the memo received by learned Court below in support of the proof of receipt of cost by the petitioners but under a protest. In **Amar Singh** (supra), it has been held that when the application for amendment under Order 6 Rule 17 CPC was allowed with cost and it was accepted, allowing any such challenge to such an order would amount to nullifying the effect of acceptance of costs, as in such circumstances, a party cannot be allowed to approbate and reprobate. In the same decision, it is also held that there was no restriction not to accept the cost since two options are available, one to accept it and to treat the order as correct; or not to accept, instead to challenge the decision and a party having elected one of the options exercising the choice and having received the cost, lodging of protest at the time of such receipt is meaningless. In **Sayed Zaharul Haque Vrs. State of Orissa and others 2004 (Supp.) OLR 786**, this Court held that the ex parte award was set aside subject to payment of costs and the cost having been received, the petitioner therein was estopped from challenging the order. In a decision of Madras High Court in the case of **Fast Cool Services Vrs. P. Shanthakumari MANU/TN/0202/2000**, it has been held that condonation of delay with costs having been accepted by one of the parties, such party cannot challenge the decision later on. In the above decision, it has been discussed that the rule is based on application of the doctrine that a person may not approbate and reprobate at one time. At the same time, the significance of expression 'under protest' was discussed therein and it was concluded that merely receiving cost with protest is not to change the position and principle of estoppel would therefore, apply in such cases with such a conclusion that receiving cost despite protest amounts to nothing unless explained away. On the principles of acquiescence, a decision of the Apex Court in **Union of India and others Vrs. N. Murugesan and others (2022) 2 SCC 25** is cited at the Bar. One more case law in **Bijendra Nath Srivastava Vrs. Mayank Srivastava and others 1994 AIR SCW 3615** is referred to by Mr. Swain, learned counsel for opposite party Nos.1 to 4, wherein, there is a discussion of principle of estoppel. On a sincere reading of the above decision, the Court finds that the Apex Court while dealing with a challenge

to an amendment subject to payment of costs held and observed that if the party has accepted the cost and where the decision is in the nature of a conditional order, the rule of estoppel would apply and in such a case, it is always open to a party not to accept the benefits of cost and thus to avoid the consequence of being deprived of right to challenge the same on merits, however, the principle would not apply to a case where the direction for payment of costs is not a conditional one on which the application is allowed rather costs to have been awarded independently in exercise of the discretionary power, because in such a case, the party, who has been awarded costs has no opportunity to waive the right to question the validity or correctness of the order. In the said case, even though the cost was received upon amendment to an objection to the arbitration award, since it was not a conditional order and the same was challenged and was also carried in appeal, the Apex Court concluded that the principle of estoppel arising from acceptance of costs so as to preclude a party from challenging validity of the order cannot be invoked. Essentially, it has been held that when costs have been awarded not as a condition precedent allowing amendment but by way of exercise of discretionary power of a court and it has been accepted by a party, for acceptance of costs, such party would not be precluded from challenging the validity of the decision.

16. According to the Court, the conduct of a party is important and at the same, the tenor of the order. Laying too much of emphasis on the expression 'under protest' or 'without prejudice to the right' while accepting the costs is not likely to change the position. If it is a conditional order and the cost is accepted, rule of estoppel applies and not otherwise. If by exercise of discretionary power, any such cost is awarded, allowing of application would not make the decision in the nature of a conditional order. In other words, where there is no conditional order, even though, the cost was received by the party, it has every right to challenge the decision and the same is not extinguished. Having discussed the settled position of law on the point involved, the Court is of the view that right to question the legality and judicial propriety of the impugned order at Annexure-6 would depend on its nature and whether the cost to have been awarded as a condition precedent while allowing recall of D.W.2 or it was merely in exercise of discretionary power to compensate the plaintiffs for the delay and inconvenience caused to them.

17. As discussed earlier, learned Court below without considering the need and necessity towards recall of DW 5 in absence of any specific plea and challenge to the earlier compromise decree in T.S. No. 288 of 2000 with reference to another decree dated 5th December, 1990 in T.S. No.304 of 1989, simply allowed defendant Nos.1 to 4 to re-summon the witness for further examination and it was with a conclusion that the plaintiffs would not have to bear the expenses or cost, rather, defendant Nos.1 to 4 and there would not be prejudice either as the plaintiffs would have the opportunity to cross-examine him on the documents exhibited. It is settled law that a party cannot be allowed to take the benefits of the part of the order and register complaint at the same time since it is based on the doctrine that a person

may not approbate and reprobate but where the order is not conditional, even though the cost is received under protest, it would not take away the rights of the party to challenge the order on merits. A conditional order cannot be challenged and hence, rule of estoppel would apply but not where discretionary power has been exercised while awarding the cost. In the case at hand, on a reading of Annexure-6, it would not be incorrect to claim that the same is not a conditional order, rather, learned Court below exercised wisdom and allowed the costs to be paid to the plaintiffs despite a conclusion that the expenses would be borne by defendant Nos.1 to 4 and not by them. On a conspectus of the decisions referred to hereinbefore, the Court reaches at an inescapable conclusion that the petitioners even though received the cost and it was admittedly under protest but for the reason that the impugned order i.e. Annexure-6 is not a conditional one instead the cost was awarded in exercise of discretionary power, the petitioners, for that matter, cannot be precluded from challenging the same since the rule of estoppel does not apply and the right to question any such recall is not in any way infringed upon or extinguished.

18. Hence, it is ordered.

19. In the result, the petition stands allowed. As a logical sequitur, the impugned order dated 20th July, 2024 passed in connection with C.S. No.62 of 2005(I) as at Annexure-6 is set aside for the reasons discussed herein before with a direction for the learned Civil Judge, Junior 2nd Court, Cuttack to proceed to dispose of the suit at the earliest as per and in accordance with law.

20. In the circumstances, however, there is no order as to costs.

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

Result of the case:
CMP allowed.

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2025 (II) ILR-CUT-1188

AMARESWAR SAHOO & ORS.
V.
RANI BEWA & ORS.

[CMP NO. 572 OF 2025]

17 JUNE 2025

[R. K. PATTANAIK, J.]

Issue for Consideration

Whether rejection of an application of the petitioners U/o. 21, Rule 97 of the Code of Civil procedure is sustainable.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order 21, Rule 97 – Resistance/ obstruction to delivery of possession – The petitioners who are not parties to the suit filed an application under Order 21, Rule 97 of CPC claiming right over the suit schedule land while opposing the decree passed in T.S. No. 3/180 of 2000/1980 and execution thereof initiated against Opposite Party No. 11 for ejectment therefrom – It is further alleged that fraud was practiced by Opp. Party Nos. 1 to 10 and their predecessor – The application filed under Order 21 Rule 97 of CPC was not allowed, to adduce evidence leading to the passing of the impugned order – Whether rejection of an application under Order 21 Rule 97 of CPC is sustainable.

Held: No – Since title is claimed over the suit schedule property by the petitioners and the same is likely to be included as a part of the decreetal property, if the decree is sought to be executed at the instance of opposite party Nos. 1 to 10, such grievance of the petitioners is necessarily to be examined by the learned court below while dealing with an application in terms of Order 21, Rules 97 to 103 CPC – Such an indefeasible right of the petitioners which is statutorily not allowed by way of a separate suit with resistance to the delivery of possession of the suit property in favour of opposite party Nos.1 to 10 is not infringed upon or extinguished and therefore, the application in terms of Order 21, Rules 97 to 103 CPC shall have to be examined and disposed of as per law by receiving evidence in that regard before considering disposal of Execution Case No. 12 of 2001.

(Para 12)

Citations Reference

Sameer Singh and another Vrs. Abdul Rab and others, **(2015) 1 SCC 379;** Jini Dhanrajgir and another Vrs. Shibu Mathew and another, **AIR 2023 SC 2567;** Brahmdeo Chaudhary Vrs. Rishikesh Prasad Jaiswal & another**, AIR 1997 SC 856** – **referred to**.

List of Acts

Code of Civil Procedure, 1908.

Keywords

Execution case; Fraud; Misrepresentation; Indefeasible right; Delivery of possession; Dispossession.

Case Arising From

Order dated 19th Feb 2025 passed by the learned Civil Judge (Sr. Division) Nimapada in CMA Misc. Case No. 141 of 2015 arising out of Execution Case No. 12 of 2001 corresponding to T.S. No. 3/180 of 2000/1980.

Appearances for Parties

For Petitioners : Mr. D. Mohapatra, Sr. Adv.
For Opp.Parties : Mr. S. K. Mishra, Sr. Adv.

Judgment/Order

Judgment

R. K. PATTANAIK, J.

1. Instant petition is filed by the petitioners challenging the correctness of the impugned order dated 19th February, 2025 as at Annexure-3 passed in connection with CMA Misc. Case No.141 of 2015 arising out of Execution Case No.12 of 2001 corresponding to T.S. No.3/180 of 2000/1980 by learned Civil Judge (Senior Division), Nimapada, whereby request to adduce evidence in support of the claim upon an application moved under Order 21 Rule 97 CPC by them was declined on the grounds inter alia that such a decision is erroneous and legally untenable.

2. In fact, the petitioners, who are not parties to the suit instituted by opposite party Nos.1, 2, original defendant Nos.3 and 4, 5 and 6, original defendant Nos.7 and 8 along with defendant Nos.9 to 11, knocked the doors of learned court below with an application under Order 21 Rule 97 CPC claiming right over the suit schedule land while opposing the decree in T.S. No.3/180 of 2000/1980 and execution thereof initiated against opposite party No.11 for ejectment therefrom with a plea that such decree and its execution be declared as void and inoperative pleading on record that one Sankar Sahoo and opposite party No.11 were and have been in possession of 19 links x 40 links of land each with the claim that the predecessors of the opposite parties and proforma opposite parties allowed both of them to run their shops from over Sabik Plot Nos.706 and 778 upon payment of rent for Ac.0.01 decimal each, however, during Consolidation operation, the name of Sankar Sahoo was recorded in the parcha with a remark 'Jabardakhal' and in respect of Brundaban Sahoo as 'be ayin kharid sutre dakhal' against LR Plot Nos.778 and 778/1708 respectively with both the plots recorded under Land Register Khata No.159 situate in Mouza-Dhumal. The further pleading is that the recorded owners of the land agreed upon the request received from Sankar Sahoo and Brundaban Sahoo to sell away Ac.0.01 decimal each corresponding to Sabik Plot No.706 with the execution of the registered sale deeds on 4th February, 1982. It is claimed that said Sankar Sahoo after having purchased the land constructed an asbestos house and thereafter, a pucca building over the same in the year 1995 and Brundaban Sahoo similarly raised construction over the land acquired by him. It is alleged that on the land of the petitioners and proforma opposite parties in the direction of North-South with a length of 13 links and breadth of 40 links, there exists two hatched rooms being let out to different tenants, hence, therefore, the length of the plot in question is 51 links with 35 links in breath on the Southern side running from East-West with a total area of Ac.0.02 decimals which corresponds to Consolidation Khata No. 322 Plot No.819 measuring an Ac.0.01 decimal and Consolidation Khata

No.260, Plot No.818 with an area of Ac.0.01 decimal but in view of the Consolidation parcha, the opposite parties' predecessor, namely, Sankar Sahoo filed Objection Case No.4287 of 1981 under Section 9(3) of the OCH & PFL Act to record their names in respect of Ac.0.01 decimal vis-à-vis LR Plot No.778 under Khata No.159 and also for increase of land from Ac.0.01 decimal to Ac.0.02 decimal and according to the petitioners, even though, the purchase was in respect of Ac.0.01 decimal, whereafter, the Consolidation Authority recorded Ac.0.01 decimal only and then the Provisional Consolidation Scheme was confirmed on 1st April, 1986 and even though such request was rejected, a review was filed in Misc. Case No.1 of 1986 under Section 48 of the OCH & PFL Act and therein, the learned Consolidation Officer, Gop-Kakatpur by order dated 25th June, 1986 increased the area to Ac.0.02 decimal though the purchase was for Ac.0.01 decimal acquired through void registered sale deed in 1982. The petitioners contend that such an order is grossly erroneous and without jurisdiction, as against which, opposite party No.11, namely, Brundaban Sahoo filed Consolidation Revision No.2853 of 1989 before the learned Commissioner, Consolidation but it was dismissed by order dated 20th June, 1995. The contention is that the purchase of Ac.0.01 decimal by Sankar Sahoo under the sale deed dated 4th February, 1982 having been admitted by him, the learned authorities below grossly erred in directing Ac.0.02 decimal to be recorded and any such decision challenged by opposite party No.11 is illegal and without jurisdiction and though OJC No. 5489 of 1983 was filed against it, the same was not entertained due to absence of any error apparent on the face of the order in question. The further claim is that notwithstanding the above, both Sankar Sahoo and opposite party No.11 were in possession of 19 links x 40 links of land each and as far as the decision of the consolidation authorities are concerned, it has been on account of fraud and misrepresentation and hence, to direct Ac.0.02 decimal to be recorded in favour of opposite party Nos.1 to 10 or for that matter, with Sankar Sahoo being their predecessor-in-interest becomes void ab initio.

2.1. According to the petitioners, late Sankar Sahoo instituted the suit against opposite party No.11 only and after it was decreed, the latter preferred Title Appeal No.32/21 of 2002-2001 against the decree dated 27th January, 2001 but learned lower appellate court affirmed the decision by a judgment dated 27th July, 2006. It was further challenged in Second Appeal No.405 of 2006 and the same was also dismissed. As a result and in view of the dismissal of the second appeal, opposite party No.11 was directed to surrender the possession. In the suit and appeal neither petitioners nor proforma opposite parties were made parties and all along the possession of Sankar Sahoo with respect of Ac.0.02 decimal was erroneously confirmed notwithstanding him having purchased Ac.0.01 decimal only. It is alleged that fraud was practiced by opposite party Nos.1 to 10 and their predecessor and ultimately, an area of Ac.0.02 decimal was recorded and with such a decision, no land is left to be occupied by opposite party No.11, hence, the petitioners have been compelled to file the application under Order 21 Rule 97 CPC for adjudication by learned court below in CMA Misc. Case No.141 of 2000 but unfortunately, evidence

was not allowed to be adduced leading to the passing of the impugned order i.e. Annexure-3. It is pleaded that the decree is void and inexecutable and in the facts and circumstances of the case, the decision under challenge dated 19th February, 2025 in Execution Case No.12 of 2001 arising out of the suit is liable to be interfered with in the interest of justice. Such is the pleading on record while demanding receipt of evidence from the petitioners opposing the execution of the decree.

3. Heard Mr. Mohapatra, learned Senior Advocate for the petitioners and Mr. Mishra, learned Senior Advocate for the opposite parties.

4. Mr. Mohapatra, learned Senior Advocate for the petitioners would submit that the petitioners are the successors of the original recorded owner and are in possession of a portion of Plot No.818, which stood recorded in the name of opposite party No.11 and since in view of the decree sought to be executed in respect of Ac.0.02 decimal of land, it is apprehended that they might lose the part of the property in their possession and therefore, such an application under Order 21 Rule 97 CPC was moved. It is contended that the decree holders filed CMP No.303 of 2016 challenging the impletion of the petitioners in the execution proceeding and it was disposed of by order dated 24th June, 2016 with a direction to treat the application so moved as one under Order 21 Rule 97 CPC and to dispose it of after providing an opportunity of hearing to the respective parties. It is also contended that the petitioners approached this Court in CMP No.138 of 2017 when stay of execution proceeding was refused and therein, execution of the decree was directed to be kept in abeyance till disposal of the application under Order 21 Rule 97 CPC. Mr. Mohapatra, learned Senior Advocate submits that the petitioners besides the above application have instituted the suit in CS No.238/96 of 2016/2013 against the LRs of the decree holder, namely, Sankar Sahoo and also opposite party No.11, who is the judgment debtor seeking a declaration that the sale deeds executed in their favour in 1982 as void with such other reliefs. The contention of Mr. Mohapatra, learned Senior Advocate is that in course of hearing, the petitioners requested the learned court below to permit them to adduce oral and documentary evidence but with the conclusion that consolidation record stands in the name of the decree holder declined to entertain the same. Being aggrieved by the decision, the petitioners, as according to Mr. Mohapatra, learned Senior Advocate, have now challenged the same for the reason that the decree holder was and is in possession of 19 links x 40 links of land instead of Ac.0.02 decimal and similarly, opposite party No.11 to an extent of 760 square links and behind Plot No.818, they are in possession of 520 square links (13 links x 40 links) and in total, 2040 square links of land is available and in case, Ac.0.02 decimal is allowed in favour of opposite party Nos.1 to 10, it would cover 2002 square links leaving no land to be possessed by them and opposite party No.11 and therefore, having regard to the fact that the decree is under execution, learned court below was required to examine it with evidence received but the application under Order 21 Rule 97 CPC was followed by the impugned

order i.e. Annexure-3 ignoring the settled position of law that such determination of the issues involved shall have to be in terms of Order 21 Rule 101 CPC and not by a separate suit. While advancing such an argument, Mr. Mohapatra, learned Senior Advocate refers to the following decisions, such as, **Sameer Singh and another Vrs. Abdul Rab and others (2015) 1 SCC 379** and **Jini Dhanrajgir and another Vrs. Shibu Mathew and another AIR 2023 SC 2567**. The contention is that the learned court below is required to adjudicate upon all such questions pertaining to the suit plot arising between the parties, since the petitioners genuinely apprehend their dispossession from the part of the plot to the South in case the execution of the decree is allowed to be accomplished.

5. Mr. Mishra, learned Senior Advocate for the opposite parties, on the other hand, submits that the learned court below did not seriously err or commit any wrong in denying further evidence to be led by the petitioners for the fact that the decree is to be executed in respect of the land measuring Ac.0.02 decimal recorded in the name of the predecessor-in-interest of opposite party Nos.1 to 10 confirmed by this Court in Second Appeal No.405 of 2006. It is contended that the petitioners do not have rights to challenge the decree and resist its execution since the same is against opposite party No.11. It is further submitted that the consolidation record stands in favour of opposite party Nos.1 to 10 being the successors of late Sankar Sahoo and the suit was decreed against opposite party No.11 was upheld in Title Appeal No.32/21 of 2002-2001 by learned District Judge, Puri and finally in Second Appeal No.405 of 2006 and hence, at this distant point of time, the petitioners claim with a demand to adduce evidence on any such ground as has been advanced could not have been entertained by learned court below and rightly, therefore, the application under Order 21 Rule 97 CPC was followed by the impugned order at Annexure-3.

6. Admittedly, the petitioners instituted a separate suit in CS No.238/96 of 2016/2013 against opposite party Nos.1 to 10 and opposite party No.11 challenging the execution of the sale deeds dated 4th February, 1982 and simultaneously to declare the judgment and decree in TS No.3/180 of 2000/1980 and the appellate decree to be not binding to them and proforma defendants therein and further to direct handing over of schedule 'B' property by opposite party Nos.1 to 10 with such other consequential reliefs besides costs. Since the execution is levied by opposite party Nos.1 to 10 arising out of the suit in TS No.3/180 of 2000/1980 confirmed in appeal, the application under Order 21 Rule 97 CPC was moved by the petitioners, who were not made parties in the suit as though they are the successors of the original recorded owner in respect of the plot in question. The contention of the petitioners is that late Sankar Sahoo, namely, predecessor-in-interest of opposite party Nos.1 to 10 since purchased Ac.0.01 decimal situate over Plot No.819 and to its north, there is a Govt. land, any such execution in respect of Ac.0.02 decimal is likely to include Plot No.818 which is partly in possession of opposite party No.11 to the extent of Ac. 0.01 decimal (19 links x 40 links) and the remainder with the

petitioners and opposite party Nos.12 to 16 measuring 13 links x 35 links with no separate plot being recorded. The apprehension of the petitioners is that in view of the decree in the suit although confirmed in appeal and thereafter in Second Appeal No.405 of 2006, for the fact that late Sankar Sahoo acquired interest over Ac.0.01 decimal, any such execution is to diminish the area of Plot No.818 which is to cover a portion thereof in their possession, the fact which has been lost sight of by learned court below as according to Mr. Mohapatra, learned Senior Advocate appearing for them. In reply and response to the above, Mr. Mishra, learned Senior Advocate for the opposite parties would submit that a separate suit has been instituted and the dispute raised by the petitioners is beyond the scope and ambit of Order 21 Rule 97 CPC and it cannot be adjudicated upon by learned court below by receiving evidence in that regard.

7. In fact, Order 21 Rule 97 CPC stipulates that any such resistance to delivery of possession in favour of the decree holder or purchaser, as the case may be, shall be made by an application in terms of sub-rule (1) thereof and the same to be adjudicated upon in accordance with the subsequent provisions specified. Rule 101 of order 21 CPC further stipulates that all questions including such questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rules 97 or 99 or their representatives and relevant to the adjudication of the applications shall be determined by the court dealing with it and not by a separate suit and for the said purpose, notwithstanding, anything to the contrary contained in any other law, such court shall be deemed to have jurisdiction to decide the questions involved. Such a provision has been made by way of an amendment in 1976. A separate suit is statutorily barred. But, in case of a decree holder seeking recovery by dispossessing a non-judgment debtor, such an application opposing the action shall have to be made in accordance with Order 21 Rule 99 of CPC. Upon determination of the questions referred to in Rule 101 CPC, the court shall, in accordance with such determination, proceed to pass orders on the application according to Order 21 Rule 98 subject to sub-rule(2) thereof. Order 21 Rule 103 CPC specifies that where any such application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and be subject to the same as if it were a decree. On a reading of the above provisions, it is understood that resistance to delivery of possession may be objected not only by the judgment debtor but also, a stranger, who may register an independent claim vis-à-vis right, title and interest in the decreetal property before he is actually dispossessed. In other words, even a non-judgment debtor can equally agitate a claim for adjudication in terms of Order 21 Rule 99 CPC. In the instant case, the petitioners are non-judgment debtors, who are apprehensive of dispossession in case the decree in favour of opposite party Nos. 1 to 10 is allowed to be enforced and executed.

8. An objection is raised to the maintainability of the application under Order 21 Rule 97 CPC at the instance of the petitioners on the ground that a suit is instituted

by them is pending adjudication and disposal. As earlier stated, the petitioners have already approached the court of learned Civil Judge (Junior Division), Nimapara in C.S. No. 238/96 of 2016/2013 challenging the validity of the sale deeds executed in the year 1982 in favour of the predecessors-in-interest of opposite party Nos. 1 to 10 and opposite party No.11 and to deliver possession of schedule 'B' property more fully described therein to them and pro-forma defendants. Notwithstanding the suit being filed, the petitioners moved the application under Order 21 Rule 97 CPC which is in fact after the order of this Court in CMP No. 303 of 2016. The petitioners claim that in view of the decree in favour of opposite party Nos. 1 to 10 and as dispossession is contemplated vide Execution Case No. 12 of 2001, the application opposing it in terms of Order 21 Rule 97 CPC was filed. The record reveals that the decree holders filed CMP No. 303 of 2016, however, the same was withdrawn in order to allow them to contest the application of the petitioners including questioning maintainability of the proceeding under Order 21 Rule 97 CPC and since there was no adjudication on such application, direction was issued by order dated 24th June, 2016 for the learned court below to consider all such contentions of the respective parties, while disposing it of in accordance with law.

9. As stated earlier, the application under Order 21 Rule 97 CPC was dismissed by the learned court below while disposing of CMA Misc. Case No. 141 of 2015. In view of 1976 amendment to the CPC, a separate suit is barred and any such dispute over right, title and interest including possession shall have to be duly examined by the court as per Rule 97 of Order 21 CPC. As already discussed before, a third-party intervention and obstruction to the execution of decree is maintainable. Earlier to the amendment of 1976, an inquiry was required to be made by the Executing court on an application in terms of Order 21 Rule 97 CPC and it was concerned only with the question of possession of the obstructer and likewise, upon an application by a person other than the judgment debtor as per Rule 99 thereof but after the Amendment Act, Rules 98 to 106 have been introduced which are in conformity with the legislative policy of entrusting the determination of all questions including questions as to the title of the party concerned by the Executing court. The principal feature of the amendments by 1976 Act is that all questions including the question on title in the property arising between the parties to the proceeding under Rules 97 or 99 must be determined by the Executing court and not left to be decided by way of a separate suit. The scope of the proceeding has hence been widened so as to include all questions relevant to the adjudication of the application including the title vis-à-vis the property which could have properly been raised in a suit under the erstwhile Rule 103.

10. Even though, in the case at hand, the petitioners instituted a separate suit, it could well be opposed on the ground that the questions to right, title and interest over the suit schedule property is needed to be examined and adjudicated upon in terms of Order 21 Rule 97 or Rule 99 CPC. Law is well settled that the claim of a stranger, who apprehends dispossession or has already been dispossessed from the

immovable property in execution of a decree being an objector may make an application, under Order 21 Rules 97 to 103 CPC to be entertained by the Executing court, who shall have the authority to adjudicate all the questions related to right, title or interest arising between the parties. So, therefore, irrespective of any such suit to have been filed by the petitioners since dispossession is anticipated, in the considered view of the Court, they do have the rights to object to it with an application moved in terms of Order 21 Rule 99 CPC and hence, the objection of Mr. Mishra, learned Senior Advocate for the opposite parties in that behalf cannot be sustained. In **Sameer Singh** (supra), the Apex Court while considering similar questions dealing with applications moved under Order 21 Rules 97, 99 & 101 CPC held and observed that the Executing court has the authority to adjudicate all such questions in controversy in respect of the property arising between the parties pertaining to right, title or interest in respect thereof and it also includes a claim of a stranger. On a reading of the aforesaid decision in which a reference has been made to an earlier case law in **Brahmdeo Chaudhary Vrs. Rishikesh Prasad Jaiswal & another AIR 1997 SC 856**, it has been further held that the self-contained Code enjoins the Executing court to adjudicate the lis including the dispute over right, title or interest vis-à-vis the immovable property and the intent and purpose is primarily to avoid multiplicity of proceedings.

11. In **Jini Dhanrajgir** (supra**),** It has been held and concluded that the claim regarding right, title and interest in respect of the decreetal property cannot be thrown out at the threshold since it is well within one's right to contest the application under Order 21 Rule 97 CPC and since evidence is required to be led before it, the Executing court is required to consider the objections not in the sense that the decree cannot be executed but on the premise that a prima facie case to have been set up for an enquiry to be conducted. It is further held therein that upon determination of the questions referred to in Rule 101 of Order 21 CPC, the Executing court is to proceed in the manner mandated by Rule 98 thereof. In other words, in view of the above decisions, any such application under Order 21 Rule 97 or Rule 99 CPC being received, the Executing Court is to proceed to deal with the contentious issues involved between the parties even at the behest of a stranger in accordance with law upon receiving evidence to be led by the respective parties.

12. Mr. Mishra, learned Senior Advocate for the opposite parties would submit that the decree has been upheld all along and finally confirmed with the disposal of Second Appeal No. 405 of 2006 and hence, it is required to be executed against the judgment debtor but the petitioners have been set up to frustrate the same. As earlier stated, the petitioners have not been made parties in the suit instituted by and against the judgment debtor only. Irrespective of any such challenge to the sale deeds executed in 1982 by way of a suit, the petitioners as apprehend dispossession for the reason that the decree sought to be executed is in respect of an area beyond the land purchased by late Sankar Sahoo and it is likely to include the southernmost part of the plot No. 818 which has not been disposed of by their predecessor being the

original recorded owner, it is needed to be examined by the learned court below. In the peculiar facts and circumstances of the case, even though there is a decree in favour of opposite party Nos. 1 to 10 and it has reached finality, the same does not debar the petitioners to resist delivery of possession of the decreetal property in view of the claim that any such execution is likely to dispossess them from over 13 links x 35 links of land forming a part of plot No. 818. Since title is claimed over the suit schedule property by the petitioners and the same is likely to be included as a part of the decreetal property, if the decree is sought to be executed at the instance of opposite party Nos. 1 to 10, such grievance of the petitioners is necessarily to be examined by the learned court below while dealing with an application in terms of Order 21 Rules 97 to 103 CPC. Such an indefeasible right of the petitioners which is statutorily not allowed by way of a separate suit with resistance to the delivery of possession of the suit property in favour of opposite party Nos.1 to 10 is not infringed upon or extinguished and therefore, the application in terms of Order 21 Rule 97 to 103 CPC shall have to be examined and disposed of as per law by receiving evidence in that regard before considering disposal of Execution Case No. 12 of 2001. Such is the settled legal position reiterated by the Apex Court in **Gini Dhanrajgir** (supra) and hence, for the learned court below to hold that the application is not to be entertained considering the fact that the statement of petitioner No.1 confirms the possession of the plot by the decree holders and that the record of right stands with them thereby disallowing the petitioners to lead evidence opposing likely dispossession is not sustainable in law.

13. Hence, it is ordered.

14. In the result, the petition stands allowed. As a necessary corollary, the impugned order dated 19th February, 2025 as at Annexure-3 passed in connection with CMA Misc. Case No.141 of 2015 arising out of Execution Case No.12 of 2001 Corresponding to T.S. No.3/180 of 2000/1980 is hereby set aside with the direction for learned Civil Judge (Senior Division), Nimapada to freshly consider early disposal of the CMA on merit and in accordance with law upon receiving evidence from the respective parties. In the circumstances, however, there is no order as to costs.

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

Result of the case:
CMP allowed.

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2025 (II) ILR-CUT-1198

DEBASMITA PANDA & ORS.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 15465 OF 2020]

WITH

[W.P.(C) NO. 16237 OF 2019]

AND

[W.P.(C) NOS. 16408, 16762, 16765, 16766, 16768, 16770, 16771, 16773, 16774, 16776, 16778, 16779, 17346, 17500, 18019 & 18020 OF 2019]

05 APRIL 2025

[SASHIKANTA MISHRA, J.]

Issues for Consideration

Whether the disengagement is sustainable when the engagement of petitioners was done mistakenly & the authority has not adopted any unfair means.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 21 – Right to livelihood – Two batch of Writ Petition filed before the Hon'ble Court – The petitioners of the second batch of Writ Petition were engaged pursuant to the advertisement dated 09.12.2011 – Such engagement made beyond the limit of 50% reservation and held to be illegal basing on the judgment passed by the Division Bench of this court in the previously referred Writ Petitions – The D.P.C. recast the select list to exclude the candidates engaged in excess of the 50% limit and include the petitioner of the first Writ Petition – The Authority passed the Order dated 29.08.2019 for disengagement of candidates engaged in excess of the 50% limit – The engagement of petitioners of the second batch was the result of mistake committed by the authority and not a case where they obtained engagement by adopting any unfair means or misrepresentation of fact – Whether the disengagement is sustainable when the engagement of petitioners was done mistakenly & the authority has not adopted any unfair means.

Held: It is the long settled position of law that right to livelihood is included in the right to life guaranteed under Article 21 of the Constitution of India.

(Para 11)

This Court also takes note of the fact that the engagement of the Petitioners (of the second batch) was the result of mistake committed by the authorities and not a case where they obtained engagement by adopting any unfair means or misrepresentation of facts etc – It would be entirely iniquitous to simply thrown them out at this distance of time. (Para 12)

This Court is of the considered view that the services of the Petitioners, who are only 17 in number, can be protected by creating same number of supernumerary posts to be abolished upon their superannuation – It is needless to mention that this exercise would not entail a heavy burden on the State exchequer – Besides it would conform to the underlying principle of a welfare State like India where the Government is treated as model employer – Moreover, this would not cause prejudice to any person. (Para 14)

Citations Reference

M.Nagaraj and others vs. Union of India and others, **AIR 2007 SC 71;** Shradhanjali Jena, Subhashree Jena vs. Amar Chhatoi, State of Odisha and others, **W.P.(C) Nos.7504, 1593 and 3453 of 2014;** Olga Tellis vs. Bombay Municipal Corporation and others, **1986 AIR 180;** Union of India and Ors. v. Parul Debnath and Ors., **(2009) 14 SCC 173– referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Reservation; Limit of 50%; Right to life & livelihood; Engagement; Disengagement; Unfair; Misrepresentation

Case Arising From

Challenging the advertisement issued on 09.12.2011 by the Collector-cum-Chief Executive, Zilla Parishad, Mayurbhanj inviting applications for engagement as Sikshya Sahayaks in different education districts of Mayurbhanj.

Appearances for Parties

For Petitioners : Mr. B. Routray, Sr. Adv., Mr. J. Biswal, Mr. S.D. Routray, Mr. B. Singh (W.P.(C) 15465/2020)

Mr. M.R. Padhi, Mr. R.C. Jena (W.P.(C) 16237,16765, 16774, 18019, 18020 /2019)

Mr. N. Lenka, Mr. L. Sahu (W.P.(C) 16408/2019)

Mr. M.K. Mohanty, Mr. R.C. Jena, Mr. M.R. Padhi (W.P.(C) 16762/2019)

Mr. R.C. Jena, Mr. M.K. Mohanty (W.P.(C) 16766, 16768, 16770, 16771,/2019)

Mr. R.C. Jena, Mr. M.K. Mohanty & Mr. M.R. Padhi (W.P.(C) 16773, 16776, 16778,16779, 17500/2019)

For Opp. Parties: Mr. S.N. Patnaik, AGA (W.P.(C) Nos. 15465 OF 2020 and 16237, 16408, 16762, 16765, 16766, 16768, 16770, 16771, 16773, 16774, 16776, 16778, 16779, 17346, 17500, 18019 & 18020 of 2019)

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

All these Writ Petitions involve common facts and law and being heard together, are being disposed of by this common judgment.

2. Be it noted at the outset that these Writ Petitions can be categorized into two groups. The first group, comprising of one Writ Petition being W.P.(C) No.15465/2020 has been filed by persons belonging to unreserved category who were selected as Sikshya Sahayaks pursuant to advertisement dtd.09.12.2011 against posts in the +2 C.T. category in Betonoti Education District, but have not been able to join because of interim orders passed in other batch of Writ Petitions.

The Second group is a batch of Writ Petitions being WP(C) Nos.16408/2019, 16762/2019, 16765/2019, 16766/2019, 16768/2019, 16770/2019, 16771/2019, 16773/2019, 16774/2019 16776/2019, 16778/2019, 16779/2019, 17346/2019, 17500/2019, 18019/2019 and 18020/2019, except WP(C) No. 16237/2019 filed by persons already engaged as Sikshya Sahayaks (against SEBC vacancies) since 2012. The Petitioner in W.P.(C) No.16237/2019 was engaged against SC vacancy, whose engagement was sought to be terminated in view of the judgment passed by this Court on 09.1.2018 in W.P.(C) No.22234/2012. All these persons have been continuing on the strength of interim orders passed by this Court.

3. The facts of the case lie in a narrow compass. An advertisement was issued on 09.12.2011 by the Collector-cum-Chief Executive, Zilla Parishad, Mayurbhanj inviting applications for engagement as Sikshya Sahayaks in different education districts of Mayurbhanj. 145 posts were notified for +2 C.T. category in Betnoti education district. The Petitioners of both groups of Writ Petitions were applicants. On conclusion of the selection process, the Petitioners of the second batch were found suitable for engagement and accordingly were engaged as per order issued by the Collector, Mayurbhanj on 21.12.2012. As per the resolution of the Government, these persons, upon completion of 3 three years of service have been engaged as Jr. Teacher. The Petitioners of the first Writ Petition were not successful and their names found place in the waiting list. The final merit list so published was

challenged by several persons before this Court in W.P.(C) No.22234/2012 on the ground that the same was in violation of the reservation policy and the ratio decided by the Supreme Court in the case of ***M.Nagaraj and others vs. Union of India and others;*** AIR 2007 SC 71. By order darted 9.1.2018, a division bench of this Court, basing on the judgment rendered in an earlier batch of cases namely, State of Odisha and others, ***Shradhanjali Jena, Subhashree Jena vs. Amar Chhatoi, State of Odisha and others*** being ***W.P.(C) Nos.7504, 1593 and 3453 of 2014,*** held that reservation beyond 50% of the posts is not valid. In the instant case, since the advertisement provided for reservation up to 27% for SEBC candidates thereby taking the total percentage of reservation beyond 50%, the engagement of the candidates in excess of the 50% limit was held to be illegal. Accordingly, by order dtd.6.2.2019, the District Project Coordinator, S.S. Mayurbhanj prepared a fresh merit list on the premise that 15 candidates (Petitioners of the second batch) were required to be disengaged. Accordingly, order of disengagement was also issued on 29.8.2019 in respect of the said 15 persons along with three other persons whose names were not reflected in office order dated 29.8.2019. Said orders are impugned in the second batch of Writ Petitions and as already stated, on the strength of interim orders passed therein, 14 candidates along with three others who have approached this Court are still continuing.

4. The first Writ Petition has been filed by persons, who were called upon for verification of documents for their engagement as Sikshya Sahayaks in view of the recasting of the select list by order dated 29.8.2019 of the D.P.C. These persons have prayed to direct the Opp. Parties to issue order of engagement in their favour in view of recasting of the select list.

5. Heard Mr. Budhadev Routray, learned Senior counsel with Mr. J. Biswal, Mr. S.D.Routray and B. Singh for the petitioners of the first Writ Petition, and Mr. Manoj Kumar Mohanty, Mr. R.C.Jena and Mr. Niranjan Lenka learned counsel for the Petitioners in the second batch of Writ Petitions. Also heard Mr. S.N.Patnaik, learned Addl. Government Advocate for the State.

6. Mr. B. Routray, learned Senior Advocate would argue that once the Division Bench of this Court held the engagement of the persons in excess of 50% limit as bad in law, said persons have no legal right to continue in employment. On the contrary, the persons who were wrongly deprived of selection and engagement have now become eligible for engagement consequent upon recasting of the select list. But, because of interim orders of protection passed by this Court in favour of the petitioners of the second batch of Writ Petitions, they are deprived of their legitimate right of being engaged. Mr. Routray further submits that because of the mistake committed by the authorities, the Petitioners have been deprived of their rightful due since 2011.

7. Mr. M.K.Mohanty, learned counsel appearing for the Petitioners in the second batch of Writ Petitions would argue that said Petitioners cannot be disengaged as they were engaged after a due selection process. Mistake if any in

applying the principles of reservation lies entirely with the authorities concerned and cannot be attributed to the Petitioners. Mr. Mohanty alternatively argues that even otherwise considering the fact that the Petitioners have continued to discharge duties since 2012 and have also become over-aged for public employment cannot simply be thrown out as it would seriously affect their right to livelihood. He therefore, submits that there being adequate vacancies available, the Petitioners of the first Writ Petition can be adjusted against the same without disturbing these Petitioners, some of whom are presently nearing retirement.

8. Mr. S.N. Patnaik, learned Addl. Government Advocate would submit that the judgment passed by the Division Bench having become final there is no option left with the authorities but to implement the same. As such, engagements are required to be made strictly as per the recast select list. The Petitioners of the first Writ Petition deserve to be engaged but for the interim orders passed in the second batch of Writ Petitions. As regards the availability of vacancies to adjust the Petitioners of the first Writ Petition, Mr. Patnaik submits that the vacancies that have not been advertised cannot be filled up with other candidates or candidates already engaged on the basis of the previous select list.

9. This Court finds that there is no dispute as regards the facts of the cases. Admittedly, the Petitioners of the second batch of Writ Petitions were engaged pursuant to the advertisement dtd.09.12.2011. Such engagement being beyond the limit of 50% reservation was held to be illegal basing on the judgment passed by the Division Bench of this Court in the previously referred Writ Petitions. Said Petitioners have not questioned the correctness of the judgment of the Division Bench before the higher forum. Even otherwise, as per the ratio decided in the case of ***M. Nagraj (supra),*** the limit of reservation is 50% and any engagement in excess of such limit is bad in law. To such extent therefore, the order dtd.6.2.2019 passed by the D.P.C. in recasting the select list to exclude the candidates engaged in excess of the 50% limit as also the order of disengagement dtd.29.8.2019 cannot be faulted with in any manner whatsoever. On the other hand, the recasting of the select list by order dtd.6.2.2019 has resulted in inclusion of the Petitioners of the first Writ Petition for engagement which is in line with the ratio decided in ***M.Nagraj (supra),*** as followed by the judgment of the Divison Bench. The recasting of the select list and the letter dt.29.8.2019 calling upon the candidates for document verification for their engagement cannot also be faulted with. Therefore, the first Writ Petition can only be allowed by directing the authorities to issue orders of engagement in favour of the Petitioners without any further delay.

10. This takes the Court to the question as to what would happen to the Petitioners of the second batch of Writ Petitions. Ordinarily, this Court having found no illegality in the impugned order of disengagement would not be persuaded to interfere therewith. However, this Court cannot also lose sight of the fact that the Petitioners of the second batch of Writ Petitions have been continuing as Sikshya Sahayaks/Jr. Teachers for nearly 13 years by now. As argued by Mr.Mohanty, the

mistake in preparing the selection list contrary to law cannot be attributed to them by any means and yet, they are faced with imminent termination of their services. As stated at the bar, all of them have become age-barred for any future public employment and some of them are also nearing the age of superannuation. This is an unusual situation that needs to be addressed with utmost sensitivity, as giving effect to the impugned order would entail throwing out these 17 Petitioners to fend for themselves.

11. It is the long settled position of law that right to livelihood is included in the right to life guaranteed under Article 21 of the Constitution of India. In the case of ***Olga Tellis vs. Bombay Municipal Corporation and others,*** 1986 AIR 180, the Supreme Court had the following words to say in this context;

> "As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since, they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in Baksey

> [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329] ."

12. This Court also takes note of the fact that the engagement of the Petitioners (of the second batch) was the result of mistake committed by the authorities and not a case where they obtained engagement by adopting any unfair means or misrepresentation of facts etc. It would be entirely iniquitous to simply thrown them out at this distance of time. Mr. Mohanty has suggested that there being availability of large number of vacancies, the petitioners of the first Writ Petition can be easily adjusted against the same. But as contended by learned State counsel, which this Court concurs with, it would amount to appointment against vacancies that have not been notified nor any selection process initiated. It would be contrary to the fundamental principles of service jurisprudence.

13. What relief then can be granted to the Petitioners of the second batch of Writ Petitions? This Court takes note of the fact that the said Petitioners are only 17 in number and belong to Betnoti education district. Faced with an almost similar situation, a division Bench of this Court in W.P.(C) No.5050/2012 held as follows;

> *"For giving effect to our order dated 15.12.2011 passed in WP(C) No.20249 of 2009 and the batch of connected writ petitions, in our considered opinion, it would be proper for the State Government not to dispense with the services of the petitioners who have admittedly worked for 5-6 years on their appointment for no fault of theirs. Termination of their services at this stage would result in great hardship to them and their families. Therefore, it would be appropriate for the State Government to create a separate cadre for them for their continuance on adhoc basis, as a one-time measure and to adjust them against future vacancies of their respective categories. Recruitment to the future vacancies by way of new/fresh advertisement should take care of the adjustment of the petitioners and similarly situated persons and the vacancies so advertised shall be reduced to the extent of such adjustments/regularization of the petitioners category-wise."*

14. Adopting the principle and pious intent underlined in the aforementioned order, this Court is of the considered view that the services of the Petitioners, who are only 17 in number, can be protected by creating same number of supernumerary posts to be abolished upon their superannuation. It is needless to mention that this exercise would not entail a heavy burden on the State exchequer. Besides it would conform to the underlying principle of a welfare State like India where the

Government is treated as model employer. Moreover, this would not cause prejudice to any person.

15. It is to be noted that it is not entirely unprecedented for making such arrangement, namely creating supernumerary posts to prevent loss of livelihood of persons while giving effect to judicial pronouncement in favour of others. The Supreme Court has recognized this principle in various cases. In **Union of India and Ors. v. Parul Debnath and Ors. (2009) 14 SCC 173,** it was held as follows;

> *"On the question of creation of supernumerary posts, it may be indicated that while it is no doubt true that creation of posts is the prerogative of the executive, in order to meet certain special exigencies such a course of action has been resorted to by this Court and in our view this is one such case where such a direction does not need any intervention."*

16. For the foregoing reasons therefore, the first Writ Petition is allowed. The Opp. Parties are directed to issue orders of engagement in favour of said Petitioners without any further delay. It is made clear that their engagement shall relate back to the date on which the Petitioners of the second batch of the Writ Petitions were first engaged, though the same shall be without any financial benefits, but the period shall count towards notional continuity of service for all other service benefits.

17. The second batch of Writ Petitions are disposed of by directing the Opp. Party-authorities to create supernumerary posts equal to the number of Petitioners of the second batch of writ petitions and to adjust them against such posts. It is made clear that this order shall not act as a precedent for other candidates and the supernumerary posts shall stand abolished from the date the incumbents retire on superannuation or otherwise vacate the post.

18. With these observations, the Writ Petitions are disposed of

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

Result of the case:
Writ petition allowed & Disposed of.

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2025 (II) ILR-CUT-1206

SUDHIR KUMAR ROUT
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 7203 OF 2025]

04 JULY 2025

[SASHIKANTA MISHRA, J.]

Issues for Consideration

Whether the Sub-Collector, purportedly acting as the president of the Governing Body of the college is competent to place the petitioner under suspension.

Headnotes

ODISHA EDUCATION (RECRUITMENT & CONDITIONS OF SERVICE OF TEACHERS AND MEMBERS OF THE STAFF OF AIDED EDUCATIONAL INSTITUTIONS) RULES, 1974 – Rule 21, r/w Section 7(6) of the Odisha Education Act, 1969 – The sub-collector passed the order on 23.01.2025, placing petitioner under suspension – The college has no Governing Body – The State Government nominated the Sub-Collector, Jajpur as president of the institution – Whether the Sub-Collector, purportedly acting as the president of the Governing Body of the college is competent to place the petitioner under suspension.

Held: Yes – It goes without saying that law does not envisage a vacuum – If the argument of the Petitioner is accepted and the impugned action of the Sub-Collector is set aside, it would create a vacuum in that there would be no authority to take disciplinary action against an errant employee even if the situation so demands – This could not have been the intention of the legislature while framing the 1974 Rules – It is for such purpose that the legislature in its wisdom empowered the Director to act as disciplinary authority in case of refusal or neglect of the Governing Body to do so.

(Para 13)

The Sub-Collector never acted on his own but under the express directions of the Special Secretary, who is authorized to act as a Director – So even if it is held that the Sub-Collector was not functioning as the President of the Governing Body, the same is of no consequence as it would mean that he had merely communicated what the Special Secretary (authorized to act as a Director) had asked him to – So it is not a case of any disciplinary action being taken by the Sub-Collector as President of the Governing Body. (Para 14)

This Court is left with no doubt that the impugned order, though issued by the Sub-Collector cannot be interfered with on the ground of absence of authority – Even if it is accepted that he was no longer the President of the Governing Body or that he had no power to initiate any disciplinary action acting as such, the same will not take away the express instruction of the Special Secretary, authorized to act as Director, and the Sub-Collector must be deemed to have merely communicated the same in the form of the impugned order – This Court is therefore, not persuaded to interfere with the same. (Para 15)

Citations Reference

Sri Satya Sai Seva Organization and another Vs. State of Odisha and others**, (2008) 2 OLR-432;** Girija Shankar Mohapatra vs. State of Odisha and others, **(W.P.(C) No. 30343/2020) – referred to.**

List of Acts

Odisha Education Act, 1969; Odisha Education (Recruitment & Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974.

Keywords

Authorized Person; Disciplinary action; Governing Body; Disciplinary Authority; Suspension;

Case Arising From

The order dated 23.01.2025 passed by Sub-Collector-cum-President, Governing Body of Abhimanyu Samant Singhar (Degree) College, Balia

Appearances for Parties

For Petitioner : Mr. Sameer Ku. Das, Mr. P.K. Behera
For Opp. Parties : Mr. S.N. Patnaik, AGA(O.P. Nos.1 to 3),None (O.P.4)

Judgment/Order

Judgment

SASHIKANTA MISHRA, J.

The Petitioner seeks to challenge the order dated 23.1.2025 passed by Sub-Collector, Jajpur-cum-President, Governing Body of Abhimanyu Samant Singhar (Degree) College, Balia (herein after, the College), whereby he was placed under suspension pending drawl of disciplinary proceeding against him for negligence in Government duty as also for absconded.

2. Shorn of unnecessary details, the facts of the case are that the Petitioner was appointed as a Lecturer in History by the Governing Body of the College on

22.4.1992 and joined as such on 27.4.1992. The appointment of the Petitioner was approved by the Government. The College was bifurcated into +2 and +3 wings pursuant to order dtd.8.4.2016 passed by this Court in W.P.(C) No.22530/2012. The Petitioner, being the senior-most teaching staff was approved as Principal-in-charge of the College by order dated 12.1.2017 of the Director of Higher Education. Again on 02.8.2019, the Petitioner was approved as Principal-in-charge-cum-Secretary of the Degree College in supersession of the earlier order. On 23.12.2024, the State Government issued a Notification exercising power under Section 7(6) of the Odisha Education Act, 1969, inter alia, dissolving the Governing bodies of all Non-Government Aided Degree Colleges and directing the Sub-Collector of the Sub Division concerned to temporarily act as President of the Governing Body until further orders. In the meantime, a complaint was lodged by a girl student of the College alleging misbehavior by a Lecturer. An F.I.R. being filed also against the Petitioner, he appeared before the concerned Court and was released on bail. The Sub-Collector however, passed the impugned order on 23.1.2025 placing him under suspension. It is stated that such order is entirely without jurisdiction as the Sub-Collector, in view of the settled position of law, cannot take any disciplinary action against an employee of the College, a power available only to the Governing Body as per Rule 21 of the Odisha Education (Recruitment and conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (for short "1974 Rules"). The Sub-Collector cannot function as the disciplinary authority in the absence of the Governing Body. Citing the above facts, the Petitioner has approached this Court with the following prayer;

> "Under the above circumstances, it is therefore humbly prayed that the Hon'ble Court be graciously pleased to quash the office order no. 1058 dtd: 23.01.2025 of the Sub-Collector, Jajpur (Opp. Party No.3) under Annexure-8 as it is without jurisdiction and authority and in clear violation of Rule-21 of the 1974 Rules and the judgments of this Hon'ble Court in W.P.(C) No. 34453 of 2021 disposed of on 03.01.2024 (Baijayanti Nayak Vs. State of Odisha and others) and Sri Satya Sai Seva Organization and another Vs. State of Odisha and others, reported in (2008) 2 OLR-432;
>
> And/or pass any other writ/writs, order/orders/direction/directions in the fitness of the case.
>
> And for this act of kindness as in duty bound the petitioner shall ever pray."

3. Counter affidavit has been filed on behalf of the State-Opp. Party No.1. It is stated that the incident arising out of the complaint lodged by a +3 final year girl student came to the knowledge of the Opp.Party No.1 to the effect that she had been molested by one Bidyadhar Dhal, Lecturer of the said College, and the Petitioner being the Principal had protected said Bidyadhar Dhal. As such, an F.I.R. was lodged by the victim before Ramachandrapur Police Station. Having regard to the above facts, the Special Secretary of the Department requested the Regional Director of Education to cause an inquiry. An inquiry was conducted following the procedure

laid down under The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal Act) 2013. In the said inquiry, it was ascertained that the victim was sexually harassed on 06.1.2025 during conduct of Physics practical examination by Bidyadhar Dhal, a Lecturer. Though the matter was intimated to the Principal i.e. the present Petitioner over phone, the victim could not meet him but he instructed another faculty member to mediate and settle the issue by approaching the victim with assurance of grant of good marks in the ensuing semester examination. The Petitioner also asked the faculty member to prevent the victim from lodging any police complaint against the accused Lecturer. The victim however did not accept such request for which the Petitioner did not allow her to appear in the examination on 15.1.2025. She therefore wrote the examination under police protection. The matter having gained adverse publicity in the print and social media, the petitioner remained on leave from 18.1.2025 on the ground of his wife's illness. It thus came to light that the Petitioner, instead of working for the interest of girl students acted in assistance of the accused lecturer and tried to suppress the matter by not taking any action against him. Moreover, the victim was not given any opportunity of hearing, rather she was threatened and allured not to report the matter to the authority. The inquiry committee therefore, suggested to draw proceeding against the Petitioner for taking exemplary action against him. Under such circumstances, the Sub-Collector, who was appointed temporarily to work as President of the Government Body, vide Notification dated 23.12.2024 issued the impugned order suspending the Petitioner from duty. It is further stated that the Sub-Collector has the authority to take disciplinary action under Rule 21 of the 1974 Rules. The order of suspension was an administrative step to contain the growing law and order situation.

4. The Petitioner filed a rejoinder reiterating the averments made in the Writ Petition. It is stated that he is in no way involved in the sexual harassment matter. Moreover, he has been released on bail by the competent court. He was unnecessarily dragged into the criminal case. The allegation that he did not take appropriate action is completely false and baseless and the inquiry report cannot be accepted as the same was conducted behind his back. The Petitioner could not have taken any action against a co-lecturer in the absence of the Governing Body. It is also stated that Notification dated 23.12.2024 has no application as per the ratio decided by this Court in the case of ***Sri Satya Sai Seva Organization and another Vs. State of Odisha and others,*** (2008) 2 OLR-432 and for the stipulation contained in the Notification itself that it would not apply to a College of which any case relating to Governing Body is sub-judice. At the relevant time W.P.(C) No.39349/2023 filed by one Basanta Kumar Jena challenging the nomination of Sub-Collector as President on an earlier occasion was pending. Said Writ Petition was ultimately disposed of on 22.1.2025 by quashing the nomination of the Sub Collector to act as President with further direction to the Government to take decision on the recommendation of the Collector, Jajpur for reconstitution of the Governing Body.

5. Heard Mr. S.K.Das, learned counsel for the Petitioner and Mr. S.N.Patnaik, learned A.G.A. for the State.

6. Mr. Das assails the impugned order by submitting that it is no longer res integra that the Sub-Collector nominated to act as President of the Governing Body has no power to act as the Governing Body itself, which is the disciplinary authority. The College in question has no Governing Body. The Collector, Jajpur recommended three names but instead of acting upon the same, the State Government nominated the Sub-Collector, Jajpur as President by order dtd.22.11.2023. Said order was set aside by a co-ordinate Bench (W.P.(C) No.39349/2023). No further action has been taken by the Government pursuant to such order. Mr.Das therefore, argues that the Sub Collector is no longer the President of the Governing Body. As regards the Government Notification dtd.23.12.2024, Mr. Das would argue that the same is not applicable in the present case. It specifies that the institutions of which cases relating to Governing Body are sub-judice are not covered by the Notification. Admittedly, W.P.(C) No.39349/2023 was pending as on 23.12.2024. Ultimately, the appointment of the Sub-Collector as President being set aside, he had no authority as on 23.1.2025 to issue the impugned order. Mr. Das however, fairly admits that as per Rule 21(1) of the 1974 Rules, the Director himself can initiate disciplinary proceeding or impose any penalty on an employee in the event there is no Governing Body or the Governing Body neglects to do so. In the instant case, the Director has not placed the Petitioner under suspension. Therefore, the order of the Sub-Collector is wholly without jurisdiction. Mr. Das has cited the following judgments to buttress his contentions;

> "(1) Sri Satya Sai Seva Organization and another Vs. State of Odisha and others, reported in (2008) 2 OLR-432;
>
> (2) Smt. Kamalini Dhal Vs. State of Odisha and others passed in W.P.(C) No. 17174 of 2015 disposed of on 23.02.2016;
>
> (3) Dr. Uttam Kumar Rout Vs. State of Odisha and others passed in W.P.(C) No.7797 of 2012 disposed of on 26.03.2014;
>
> (4) Surendra Mahanta Vs. State of Odisha and others disposed of on 08.08.2022 in W.P.(C) No. 20396 of 2018;
>
> (5) Baijayanti Nayak Vs. State of Odisha and others (W.P.(C) No. 34453 of 2021 disposed of on 03.01.2024)."

7. Mr. S.N. Patnaik, on the other hand, would argue that the arguments advanced by the Petitioner's counsel is based on misconception inasmuch as even if the order dtd.22.11.2023 nominating the Sub-Collector to act as President of Governing Body was set aside by the Co-ordinate Bench, the Notification dtd.23.12.2024 would automatically be applicable to the Petitioner College for the reason that the bar regarding pendency of a case relating to Governing Body was automatically removed by disposal of the Writ Petition (W.P.(C) No.39349/2023) on 22.1.2025. So, as on 23.1.2025, the date on which the impugned order was issued,

there was no case pending. As per said Notification, the Sub-Collector was directed to act temporarily as the President of the Governing Body until further orders. As regards, the settled position of law cited by the Petitioner's counsel that the Sub-Collector as President cannot function as the Governing Body, Mr. Patnaik would argue that Rule 21 of the 1974 Rules empowers the Director to initiate disciplinary action against an employee of the Institution. As per office order dtd.20.10.2020 followed by the Office order dtd.11.5.2021 of the Government in the Department of Higher Education, Special Secretary/Addl. Secretary/Joint Secretary/Deputy Secretary working as Branch head of non-Government Colleges (Teaching-1) Section of the Department have been authorized to act as Director for dealing with the subjects covered under 1974 Rules.

In the instant case, after taking note of the allegations levelled and the facts ascertained in the inquiry conducted, the Special Secretary to Government vide order dtd.22.1.2025 instructed the President-cum-Sub-Collector to take immediate disciplinary action against the persons concerned on the basis of inquiry report or any other prima facie evidence. He was also instructed to assign the charge of Principal to the next senior faculty member. Mr. Patnaik concludes his arguments by submitting that the allegations of sexual misconduct levelled by a girl student of the College are grave and serious and, prima facie, the Petitioner, despite being in a position of authority as the Principal was complicit and guilty of not taking proper action at the relevant time.

8. In view of the facts narrated and the rival contentions advanced by the parties as narrated above, it is evident that the first point that falls for consideration of this Court is, whether the Sub Collector, purportedly acting as the President of the Governing Body of the College, was competent in law to place the Petitioner under suspension pending drawl of disciplinary proceeding against him.

9. To answer this, it would be apposite to mention that the Sub-Collector was nominated to act as President of the Governing Body by order dtd. 11.12.2023. In the case of ***Sri Satyasai Seva (supra)*** followed in several decisions of this Court, it has been held that the Sub-Collector can only function as the President of the Governing Body, but cannot act as the Governing Body. In other words, the Sub-Collector may function as the President but lacks power to initiate or take disciplinary action against an employee. The order dtd.22.11.2023 was challenged before this Court in W.P.(C) No.39349/2023 by another person. A co-ordinate Bench of this Court set aside the nomination on the ground that the Government, acting on the recommendation of the Collector for reconstitution of the Governing Body has no power under Rule 25 of the Odisha Education (Establishment, recognition and Management of Private Colleges) Rules, 1991 (for short 1991 Rules) to nominate the Sub-Collector as the President. Learned State counsel has heavily relied upon the subsequent Notification dtd.23.12.2024 whereby the Governing Body of all non-Government Aided Educational Institutions was dissolved and the Sub-Collector of the concerned Sub-division (for Colleges situated

outside the District Headquarters) was directed temporarily to act as President of the Governing Body until further orders. According to learned State counsel, even if the order dtd.22.11.2023 was quashed, the Notification dated 23.12.2024 automatically comes to the picture as on 23.1.2025. This Court is unable to accept such argument for the reason that the Notification dated 23.12.2024 is in respect of those institutions of which the Governing Body was functioning. The language used is as follows:

> "In exercise of powers conferred under proviso to Sub-Section (6) of Section-7 of the Orissa Education Act, 1969, pending reconstitution of the Governing Bodies or the Managing Committees, the Government after careful consideration have been pleased to dissolve the Governing Bodies or Managing Committees of all Non-Government Aided Degree Colleges of Odisha……". (Emphasis added)

This implies, the Governing Bodies, wherever they existed were dissolved. This would also mean that the Notification will have no application in respect of Institutions of which the Governing Bodies had already been dissolved. For such institutions, the Notification dated 23.12.2024 would be redundant as there was no Governing Body to dissolve, which is an affirmative and positive action taken by the Government. So, the argument that the Notification dated 23.12.2024 would automatically apply after the earlier Notification was set aside by this Court is untenable more so, as the same would also run contrary to the judgment of the Co-ordinate Bench. So, there is force in the submission of the learned counsel for the Petitioner that the Sub Collector acting as the President of the Governing Body could not have placed the Petitioner under suspension.

10. The factual position, in the instant case, is however different as the matter cannot be set at rest merely by invoking the general principle that the Sub Collector cannot initiate any disciplinary action against an employee. Fact remains that the impugned order was issued not out of the blue by the Sub-Collector but on the express direction of the Special Secretary to the Government in the Higher Education Department who, as already stated, is authorized to act as the Director in terms of 1974 Rules. It would be apposite at this stage to refer to the relevant letters of the Government i.e., 20.10.2020 and 11.5.2021, both of which are reproduced below:

> "GOVERNMENT OF ODISHA
> DEPARTMENT OF HIGHER EDUCATION
> No. HE-NGCE(T-II)-MISC-22-2020-34042/HE.,
> Dated 20-10-2020
> **OFFICE ORDER**
>
> In pursuance to Rule 2 (b) of Odisha Education (Recruitment and Condition of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974, Government have now been pleased to authorise the Special Secretary/ Additional Secretary/ Joint Secretary/ Deputy Secretary, working

as Branch Head of the Non-Govt. College Establishment (Teaching-1) Section of the Higher education Department, to act as Director for dealing with the subjects covered under the said Rules in respect of teaching and administrative staff of aided educational institutions.

However, Director (Higher Education) will continue to exercise his power under the said Rules, as the Director, in respect of the non-teaching staff of these aided educational institutions.

By Order of Governor

Commissioner-cum-Secretary to Govt.
Higher Education Department.

xxx xxx xxx xxx xxx."

"GOVERNMENT OF ODISHA
DEPARTMENT OF HIGHER EDUCATION

NO. HE-NCET 2-MISC-0040-2020/20027/HE, Bhubaneswar
dated the 11.05.2021

From
Saswat Mishra, IAS
Principal Secretary to Government

To
Principals (All 488-Category and 662-Category Aided Colleges)

Sub : Service Conditions/Transfer & Posting of Teaching Staffs of Non-Government Aided Colleges

Sir/Madam,

Directorate of Higher Education was integrated with the Department of Higher Education vide this Department Notification No. 22850, Dated 30.10.2019. Consequent upon the integration and restructuring of this Department, Special Secretary/ Additional Secretary/Joint Secretary /Deputy Secretary acting as the Branch Head of the Non-Government College Establishment (Teaching-1) Section of Higher Education Department has been authorized to act as Director for dealing with subjects like transfer, posting and service conditions in respect of teaching and administrative staff of aided educational institutions as per Rule 2(b) of The Odisha Education (Recruitment and Condition of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, W.P.(C) No. 7203 of 2025 Page 18 of 27 1974 and Rule 2(b) of The Odisha Aided Education Institutions Employees Common Cadre and inter transferability Rules, 1979 vide this Department Office Order No.34042/HE, Dated 20.10.2020 and Order No.16524/HE, Dated 08.04.2021 respectively.

Similarly, as per Office Order No.24810, Dated.27.07.2020, Government in Higher Education Department have declared Special Secretary/ Additional Secretary/Joint Secretary/Deputy Secretary acting as the Branch Head of the Non-Government College Establishment (Teaching-1) Section as the Competent

Authority, instead of Director (Higher Education), to accord necessary approval for appointment of Principal-in-Charge of Aided Colleges and issue order empowering the Principal-in-Charge to make all financial transactions on behalf of the college.

However, as was the practice earlier, correspondences are still being made with the Director (Higher Education) which causes dislocation and delay in disposal of the cases. In view of this, you are hereby advised to henceforth make all correspondences on the above-mentioned subject matters with the Branch Head of the Non-Government College Establishment (Teaching-1) Section of the Higher Education Department, instead of Director (Higher Education).

Yours faithfully

Principal Secretary to Government

xxx xxx xxx xxx xxx."

Thus, it is evident that the Special Secretary in the department of Higher Education was authorized to act as Director at least in respect of matters concerning the 1974 Rules.

11. In this context, it is highly significant to note that the impugned letter was preceded by letter dtd.22.1.2025 of the Special Secretary (copy enclosed as Annexure-C/1 to the counter affidavit) requesting the Regional Director of Education to cause inquiry as per 2013 Act, which was also issued to the Sub Collector under a Memo containing the following instructions:

"Copy forwarded to the President-cum-Sub Collector, GB of Abhimanyu Samant Singhar (Degree) College, Balia <u>with a request to take immediate disciplinary action against the accused faculties on the basis of ICC Report or any other prima facie evidence</u>."

He is also requested to assign the charge of principal to the next senior faculty member and submit seniority-cum-suitability report in the prescribed format for appointment of principal and delegation of financial power." (Emphasis added)

These instructions cannot simply be ignored in the context of the present case.

12. It would be apposite to refer to Rule 21(1) of the 1974 Rules at this stage, the relevant portion of which is re-produced below;

"21(1) Disciplinary authorities-(1) The Director may impose any of the penalties specified in Rule 20 on any employee:

Provided that the Director shall not initiate any disciplinary proceeding unless the Managing Committee or the Governing Body, as the case may be, refuses or neglects to take disciplinary action against any employee."

13. It goes without saying that law does not envisage a vacuum. If the argument of the Petitioner is accepted and the impugned action of the Sub-Collector is set

aside, it would create a vacuum in that there would be no authority to take disciplinary action against an errant employee even if the situation so demands. This could not have been the intention of the legislature while framing the 1974 Rules. It is for such purpose that the legislature in its wisdom empowered the Director to act as disciplinary authority in case of refusal or neglect of the Governing Body to do so. In a similar but slightly different context, this Court, in the case of ***Girija Shankar Mohapatra vs. State of Odisha and others (W.P.(C) No30343/2020)*** held as follows;

> *"21. Now, coming to the question of competence of the Sub-Collector in preparing the draft charges against Girija Shankar Mohapatra in the capacity of Special Officer and of the Director in approving such charges, it has been argued that no authority other than the governing body has the power to initiate and take disciplinary action against a staff and that the Director has only an advisory jurisdiction in terms of Rule 22(12) of the 1974 Rules. This Court is unable to accept the above arguments – firstly, for the reason that if such is the interpretation then a vacuum would be created inasmuch as there would be no one competent to take disciplinary action against an errant employee till reconstitution of the governing body. Such a proposition would be absurd as there can be no vacuum in law. Reference to Rule-21 of 1974 Rules would indicate that the Director is competent to impose the penalty specified in Rule-20 with the proviso that the Director shall not initiate any disciplinary proceeding unless the governing body refuses or neglects to take disciplinary action against any employee. For immediate reference, Rule 21(1) of 1974 Rules is quoted hereinbelow:*
>
> *"21(1) The Director may impose any of the penalties specified in rule 20 on any employee: Provided that the Director shall not initiate any disciplinary proceeding unless the Managing Committee or the Governing Body, as the case may be, refuses or neglect to take disciplinary action against any employee."*
>
> *22. Read as a whole, the interpretation according to this Court of the above provision would be that ordinarily it is the governing body which is competent to initiate disciplinary proceeding against an employee. But if it neglects or refuses to do so, the Director can himself initiate a disciplinary proceeding. The power to impose penalties is however, vested on the Director subject to the proviso. On the same analogy, in the absence of a governing body the Director can initiate the proceeding and impose penalties on an employee. Reference in this regard may be had to the decision of this Court in the case of* ***Dr. Upendra Sahoo vs. State of Odisha and others; 2015 (Supp.1) OLR 1104*** *wherein the following observations are noteworthy:-*
>
> *"12. From the above order of the High Court, it is crystal clear that this Court gave a clear direction to the opposite party no.2 therein, i.e., the Director, Higher Education, Bhubaneswar to conclude the disciplinary proceeding initiated against the petitioner within a period of four months with further direction to pay the arrear subsistence allowance entitled to the petitioner within a period of two months from the date of communication of the order. It is needless to submit here that Rule-21 of 74 Rules also makes it clear that if Governing Body is unable to conclude a*

proceeding the Director can exercise the power of Disciplinary authority hence and conclude the proceeding. In the present case in absence of a Governing Body the Director was directed to conclude the disciplinary proceeding. On conclusion of the Disciplinary proceeding at his end following Sub-rule 2(b) of Rule 21 on his recommendations the Government Body ought to have imposed any of the penalties specified in Rule 20 on the petitioner. xxx xxx xxx

(Emphasis supplied)"

23. Obviously, if any other interpretation would be made, it would render the very object of the provision otiose inasmuch as it would entail a situation where, as already stated, there would be no authority competent to take action against an errant employee. In other words, a vacuum! The above could not have been the object of the statute. It is well settled that the Court must construe the statute to promote its object and to serve the purpose for which it had been enacted and not deface its very purpose. Reference in this regard may be had to the judgment of the Supreme Court in the case of ***RBI v. Peerless General Finance & Investment Co. Ltd.;*** *(1987) 1 SCC 424, where the following observations are noteworthy:*

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."

24. Further, a statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object. Further, the Courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative. Reference in this regard may be had to the judgment of the Supreme Court in the case of Tinsukhia Electric Supply Co. Ltd. v. State of Assam, where the following observations are noteworthy.

The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is

not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co. [(1904) 2 Ch 352: 16 TLR 429 : 83 LT 274] Farwell J. said: (pp.360-61)

"Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to clear them void for uncertainty."

14. Learned counsel for the Petitioner has accepted the above position in the note of arguments filed in the case, but has argued that the Director has not placed the Petitioner under suspension or instituted any disciplinary proceeding against him. For the reasons already indicated, this Court is unable to accept this argument. As already stated, the Sub-Collector never acted on his own but under the express directions of the Special Secretary, who is authorized to act as a Director. So even if it is held that the Sub-Collector was not functioning as the President of the Governing Body, the same is of no consequence as it would mean that he had merely communicated what the Special Secretary (authorized to act as a Director) had asked him to. So it is not a case of any disciplinary action being taken by the Sub-Collector as President of the Governing Body. Merely designating himself as such in the impugned order cannot serve to alter the factual position that he was acting on the directions of the Special Secretary, who was competent in law to do so.

15. Thus, from a conspectus of the facts, law, contentions raised and the discussion made, this Court is left with no doubt that the impugned order, though issued by the Sub-Collector cannot be interfered with on the ground of absence of authority. Even if it is accepted that he was no longer the President of the Governing Body or that he had no power to initiate any disciplinary action acting as such, the same will not take away the express instruction of the Special Secretary, authorized to act as Director, and the Sub-Collector must be deemed to have merely communicated the same in the form of the impugned order. This Court is therefore, not persuaded to interfere with the same.

16. For the foregoing reasons therefore, the Writ Petition fails and is therefore, dismissed. There shall be no order as to cost.

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-1218

BHARAT NAIK & ORS.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 9324 OF 2024]

14 JULY 2025

[A.K. MOHAPATRA, J.]

Issue for Consideration

Whether service of the petitioners should be regularized.

Headnotes

SERVICE JURISPRUDENCE – Regularization – The petitioners are working as sweeper, uninterruptedly for almost two decades – Though sanctioned posts are there, the service of petitioners were never regularized – Whether the service of petitioners should be regularized.

Held: Yes – This Court is of the considered view that the rejection of the prayer of the petitioners by the Opposite Party No.2 in the impugned order under Annexure-18 is highly illegal and arbitrarily and the same is unsustainable in law – Accordingly, order dated 31.07.2023 under Annexure-18 is hereby quashed – Further while allowing the writ petition this Court directs the opposite parties to regularize service of the petitioners in the post of Sweeper as against the available vacancy in such post – In the event no such posts are available this Court further directs that supernumerary posts be created to regularize the service of the petitioners to accommodate the petitioner and such creation of post shall continue till the petitioners retire from service. (Para 18)

Citations Reference

State of Karnataka –v.- Uma Devi, **(2006) 4 SCC 1;** Basanta Kumar Barik vs State of Odisha and Others, **WPC(OA) No.616 of 2017 decided on 26.11.2021;** Sitaram Behera vs. State of Odisha and Others; **W.P.(C) No.8236 of 2024;** Jaggo v. Union of India and others, **2024 SCC Online SC 3826;** Sripal and Another V. Nagar Nigam, Gaziabad **(decided on 31st January, 2025) in Civil Appeal No.8158-8179 of 2024) – referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Regularization; Vacant post; Sanctioned Post; Supernumerary Post;

Case Arising From

Order dated 31.07.2020 passed by Opp. Party No. 2.

Appearances for Parties

For Petitioners : Mr. Rabinarayan Nayak
For Opp. Parties : Mr. D. Lenka, A.G.A.

Judgment/Order

Judgment

A.K. MOHAPATRA, J.,

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).

2. By filing the present writ application the petitioners have approached this Court for the second time with a prayer for a regularization of their service. The petitioners who are working as sweeper uninterruptedly for almost two decades under the administrative control the Superintendent SVPPGIP (Sishu Bhawan), Cuttack have prayed for quashing of the impugned order under Annexure-18 and to issue a writ of mandamus directing the Opposite Party No.2 to regularize the service of the petitioner w.e.f. the date of completion of six years of service as sweepers under the administrative control of Opposite Party No.2.

3. The factual background leading to filing of the present writ application, in a nutshell, is that on 21.09.2005 an advertisement was published by the Office of the Opposite party No.2 inviting applications for appointment to the post of Sweepers at Sishu Bhawan, Cuttack. As per advertisement two posts belonging to SEBC category and one post belonging to SC & ST category each and two posts for UR category were advertised under Annexure-1 to the writ application. Pursuant to the aforesaid advertisement the petitioners along with others participated in the selection process. Finally the petitioners were selected and they were appointed as Sweepers at Sishu Bhawan, Cuttack vide appointment letter dated 24.11.2015 under Annexure-2 to the writ application.

4. While the petitioners were discharging their duties as Sweepers diligently and sincerely, the Opposite Party No.2 wrote a letter to the DMET, Odisha on 22.08.2011 with a request to regularize the service of the petitioners under Annexure-3 to the writ application. However, such issue was kept pending at the level of the DMET, Odisha and no final decision was taken thereon. While this was the position, the G.A. & P.G. Department, Govt. of Odisha issued resolution dated 17.09.2013 containing provisions for regularization of existing contractual Group-C & D employees subject to the fact that the persons who are being regularized are not holding any post in contravention of any statutory rules or executive instruction. Thereafter, another resolution was published on 16.01.2014 with regard to regularization of service of Group-C & D employees by the G.A. & P.G. Department, Govt. Odisha. In the said resolution certain eligibility criteria have been laid down with regard to the regularization of service of such adhoc/temporary Group-C & D employees.

5. The averments made in the writ application further reveals that the Opposite Party No.2 recommended the case of the petitioners for regularization of their service to the Office of the DMET, Odisha. Further, it appears that the Office of the DMET, Odisha forwarded such application to the Government. The aforesaid facts is evident from the letter No.694 dated 13.01.2015 under Annexure-8 issued by the Director of Health Services, Odisha to the Government. Such letter has been written in the context of regularization of contractual service Group-C & D employees working under the Administrative Control of H. & F.W. Department. Govt. of Odisha. The relevant annexure to such letter reveals the name of the Opposite Party No.2 - Institution at serial No.3 and the same reveals that post involved as "Sweeper" and that their regularization has been certified by the appointing authority and recommendation has been made to the Government.

6. The documents annexed to the writ application further reveals that several communications were made with the government with regard to the regularization of service of the petitioners. Cross-correspondences were going on between the government and the Opposite Party No.2 for long time, but no final decision has been taken with regard to the regularization of the service of the petitioners. Being aggrieved by the executive inaction in regularizing the service of the present petitioners, the petitioners earlier approached this Court by filing in W.P.(C) No.28197 of 2022. This Court disposed of the said writ application vide order dated 21.11.2022 thereby directing the Opposite Party No.2 to consider the case of the petitioners in the light of law laid down by the Hon'ble Supreme Court in the case of Secretary***, State of Karnataka –v.- Uma Devi,*** reported in ***(2006) 4 SCC 1*** and ***Basanta Kumar Barik vs State of Odisha and others*** by this Court decided in ***WPC(OA) No.616 of 2017*** decided on ***26.11.2021*** within a stipulated period of time.

7. After disposal of the above noted writ application the petitioners approached the Opposite Party No.2 by filing a detailed representation under Annexure-13 to the writ petition. The said representations have been rejected by the Opposite Party No.2. Since the order passed by this Court was not implemented, the petitioners were constrained to file two contempt application before this Court bearing CONTC No.1926 of 2023 & CONTC No.4506 of 2023. Finally vide order dated 31.07.2023 the Opposite Party No.2 considering the representation of the petitioners, and finally rejected the prayer of the petitioners for regularization of their service. Being aggrieved by such rejection order as well as the inaction of the opposite parties in not regularizing the services of the petitioners in the post of Sweepers, the petitioners have once again approached this Court by filing the present writ application.

8. Learned counsel for the petitioners at the outset contended that the petitioners were duly selected and appointed by following a valid selection procedure. He further submitted that although sanctioned posts were there, the services of the petitioners were never regularized. In support of his contention learned counsel for the petitioners specifically referred to the documents annexed to the writ application

to submit before this Court that the Opposite Party No.2 had recommended the case of the petitioners for regularization of their service and eventually the same was sent to the government for approval. Contrary to such stand, the Opposite Party No.2 has passed the impugned order under Annexure-18 rejecting the prayer of the petitioners for regularization of their service. On such ground, learned counsel for the petitioners further contended that the impugned order under Annexure-18 is unsustainable in law.

9. In course of his argument learned counsel for the petitioners further contended that taking into consideration the fact that the petitioners have been working uninterruptedly as Sweepers for more than two decades the case of the petitioners should have been considered and their services should have been regularized by now. In the aforesaid context, learned counsel for the petitioners drawing attention of this Court to the judgment of this bench in ***Sitaram Behera vs. State of Odisha and others; W.P.(C) No.8236 of 2024*** contended that the case of the petitioners is squarely covered by ratio laid down by this Court in the abovenoted judgment.

10. He also referred to latest judgments of the Hon'ble Supreme Court which have also been taken note of by this Court in ***Sitaram Behera's Case*** *(Supra)*. Particularly referred to the judgment of the Hon'ble Supreme Court in ***Jaggo v.*** Union of India and others, ***reported in*** 2024 SCC Online SC 3826, in ***Sripal and another V. Nagar Nigam, Gaziabad (decided on 31st January, 2025) in Civil Appeal No.8158-8179 of 2024).*** By drawing attention of this Court to the ratio laid down in the above noted judgments learned counsel for the petitioners emphatically argued that the case of the petitioners is squarely covered by such ratio and accordingly the Opposite Parties be directed to regularize the service of the petitioners as expeditiously as possible.

11. A counter affidavit has been filed on behalf of the State-Opposite Party Nos.1 & 2 and in the counter affidavit which has been sworn by the Superintendent of SVPPGIP (Sishu Bhawan) wherein an initial objection has been taken with regard to the maintainability of the writ application. Further, counter affidavit reveals that in terms of notification of the labour and employment department, Govt. of Odisha dated 29.12.2001 the petitioners were provisionally engaged as Sweepers on daily wage basis against the abolition of six numbers of regular Sweeper posts by the Government. It has also been mentioned that such appointment on daily wages basis were subject to the petitioners furnishing an undertaking that they shall not claim any regular scale of pay and other allowances. The counter affidavit further discloses that the Opposite Parties have stated that the petitioners are not covered under the resolution of the Govt. dated 17.09.2013. On a close scrutiny of the Para-6 of the counter affidavit it appears that the opposite parties have also taken a stand that the cases of the petitioners for regularization of their service could not be placed before the high level committee for consideration of their case for regularization of their service as the engagement of the petitioners were against the abolition of similar number of regularized posts on daily wage basis.

12. The Opposite Parties in Para-7 of the counter affidavit have categorically admitted that the petitioners on being engaged on daily wage basis in the year 2005 have been discharging duties continuously till now. It has also been stated that they do not come under the G.A. & P.G. resolution dated 17.09.2013 and as such it is not feasible on the part of opposite parties to regularize the service of the petitioners on completion of six years of service on contractual basis and that the representation of the petitioners has already been rejected by the H & F.W. Department, Govt. of Odisha vide order dated 04.11.2016 pursuant to the order passed by the learned Administrator Tribunal. It has also been stated that the ratio laid down by the Hon'ble Supreme Court on the case of ***Umadevi's Case*** *(Supra)* shall not apply to the case of the petitioners with regard to the recommendation made by the Opposite Party No.2 for regularization of the service of the petitioners. It has been stated in the counter affidavit that the Opposite Party No.2 had sought for certain clarification by such letter and as such the same does not justify the claim of the petitioners for regularization of their service.

13. In reply to the order passed by this Court in the earlier writ application it has been stated in the counter affidavit that the representation of the petitioners has been disposed of by passing a speaking and reasoned order by taking into consideration the judgment of the Hon'ble Supreme Court as has been mentioned in the said representation. Furthermore, the representation of the petitioners having been disposed of by passing a speaking order, the same does not call for any interference of this Court at this stage. Accordingly, it has been prayed that the writ application is liable to be dismissed as the same is devoid of merit.

14. Heard learned counsel for the petitioners as well as learned counsel for the State. Perused the pleadings of the respective parties well as documents file by either side.

15. On a careful analysis of the pleadings of the respective parties and further taking note of the submissions made by learned counsels from both sides, this Court found that the petitioners by filing the present writ application have basically prayed for regularization of their service as Sweepers under the Opposite Party No.2. On the factual side it appears that the petitioners who were appointed in the year 2005 on being duly selected remains un-controverted. The question, now therefore, falls for adjudication in the present writ application is as to whether the petitioners who were appointed on daily wage basis on being duly selected and are discharging their duties for almost two decades are entitled to be regularized in service. The petitioners were admittedly working under the administrative control of the Opposite Party No.2 i.e. a well-known Children's Hospital of the State. The nature of the work they were performing as sweeper is perennial in nature there is no doubt about such fact. In the aforesaid factual backdrop, this Court is of the considered view that the case of the petitioners is squarely covered by the ratio laid down by the Hon'ble Supreme Court in the judgment in ***Jaggo'case*** *(supra)* and ***Sripal's case*** *(supra).*

16. Moreover, this Court had an occasion to analyze the aforesaid judgment of the Hon'ble Supreme Court in the matter of ***Sitaram Behera vs. State of Odisha and others; W.P.(C) No.8236 of 2024.*** In ***Sitaram Behera's Case*** *(Supra)*, the petitioners were initially engaged as casual labourer w.e.f. 21.10.1990 and despite discharging such duties for several decades uninterruptedly their services were not being regularized. This Court after analysing the factual scenario involved in that case. further taking note of the law laid down by the Hon'ble Supreme Court in the abovenoted two judgments has categorically come to a conclusion that the practice adopted by the Opposite Parties in engaging persons on temporary/ad hoc basis for a long period, particularly keeping in view the fact that the work they were discharging is perennial in nature, such practice amounts to unfair labour practice. Additionally, it has also been categorically observed that the Opposite Parties-State cannot allowed to use the judgment of the Hon'ble Supreme Court ***Umadevi's case*** *(supra)* as a seal to cover up the illegalities committed by them by engaging persons by back door entry method and at the same time allowing them to continue in service for several decades. Finally, the said writ petition was allowed by this Court by quashing the impugned rejection order dated 02.02.2024 under Annexure-6 and with a further direction to the Opposite Party No.2 to regularize the service of the petitioners by absorbing the petitioners against any Group-D post.

17. Reverting to the facts of the present case, this Court found that the petitioners on being duly selected were engaged on daily wage basis after abolition of six number of regular posts. However, they were allowed to continue for almost two decades for a meager salary on daily wage basis. It is not disputed that they were continuing uninterruptedly and were discharging their duties to the satisfaction of the higher authorities. Their very continuance for such a longtime is a testament in itself of the fact that the duties they were performing are perennial in nature. In the aforesaid factual backdrop, this Court is of the view that the case of the petitioners is squarely covered by the ratio laid down in ***Sitaram Behera's Case*** *(Supra).*

18. In view of the aforesaid analysis of factual position as well as taking note of the law governing the field through various judgments of the Hon'ble Supreme Court as well as this Court and keeping in view the law laid down by this Court in ***Sitaram Behera's Case*** *(Supra)*, this Court is of the considered view that the rejection of the prayer of the petitioners by the Opposite Party No.2 in the impugned order under Annexure-18 is highly illegal and arbitrarily and the same is unsustainable in law. Accordingly, order dated 31.07.2023 under Annexure-18 is hereby quashed. Further while allowing the writ petition this Court directs the opposite parties to regularize service of the petitioners in the post of Sweeper as against the available vacancy in such post. In the event no such posts are available this Court further directs that supernumerary posts be created to regularize the service of the petitioners to accommodate the petitioner and such creation of post shall continue till the petitioners retire from service. Let the aforesaid direction be carried out within a period of three months from the date of communication of a copy of today's judgment.

19. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

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

Result of the case:
Writ Petition allowed.

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2025 (II) ILR-CUT-1224

Smt. UMAMANI NAYAK & ORS.
V.
CEO, TPNODL, BALASORE & ORS.

[W.P.(C) NO. 5875 OF 2008]

28 JULY 2025

[A.K. MOHAPATRA, J.]

Issue for Consideration

Whether the electricity distribution companies are strictly liable for the loss of life.

Headnotes

LAW OF TORT – Strict liability – Death due to electrocution – The deceased Sanatan Nayak came in contact with a snapped live wire lying on the road, which led to his death due to electrocution – The deceased was the sole earning member of the family – Petitioner prayed for compensation of ₹2,00,000/- – Whether the electricity distribution companies are strictly liable for the loss of life of husband of Petitioner No. 1.

Held: Yes – The Court is of the considered view that by application of the principle of strict liability, the Opposite Parties- Distribution Company are strictly liable for the death of deceased and are liable to pay compensation to the Petitioners. (Para 19)

This Court deems it proper to direct the Opposite Parties to pay an interim compensation of Rs.2,00,000/-(Rupees Two lakhs) to the Petitioners within a period of two months from the date of this judgement. The aforesaid shall carry interest @8% from the date the incident took place till payment of such amount as directed hereinabove. In the event the payment is made after expiry of the aforesaid time stipulation, the compensation amount shall carry interest @12% till the date of actual payment is made to the Petitioners. (Para 20)

Citations Reference

Ryland v. Fletcher, **1868 Law Reports (3) HL 330;** M.P. Electricity Board v. Shail Kumari and Others, **(2002) 2 SCC 162;** Dusmanta Samal v. State of Orissa, **W.P.(C) No. 14548 of 2016 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Negligence; Strict liability; Compensation; Doctrine of Non-traverse; Law of Tort; Electrocution death; Electric Shock

Case Arising From

Seeking indulgence of the Hon'ble Court to award the compensation due to electrocution death of husband of the petitioner.

Appearances for Parties

For Petitioners : Mr. Bijay Ku. Mohanty
For Opp. Parties : Mr. P.K. Mohanty, Sr. Adv. &
Mr. P. Mohanty (for TPNODL)

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. The Petitioners who are the wife and three sons of the deceased Sanatan Nayak, have filed the present writ petition with a prayer before this Court to order the Opposite Parties- Electricity Distribution Company, to pay the Petitioners compensation of Rs. 2,00,000/- with 12 % interest per annum. It is the plea of the Petitioners that, due to the negligence of the Opposite Parties in properly maintaining the electric wires, deceased Sanatan Nayak, came in contact with a snapped live wire lying on the road, which led to his death due to electrocution. As the deceased was the sole earning member of the family, his death has not only caused emotional pain and agony to the Petitioners but also grave financial hardship. Therefore, the Petitioners have prayed this Court to grant them monetary compensation as a means of respite to their financial hardship as no quantum of monetary relief can ever compensate the untimely loss of life of a family member.

FACTUAL MATRIX

2. The brief factual background adverted in the writ petition is that, on 06.07.2007 at around 05:30 PM, when the deceased Sanatan Nayak was going to the market; he unknowingly came in contact with puddle of water which was charged with electricity because a live L.T. line wire had snapped and had fallen into the puddle of water on the road. As a result, the deceased got electrocuted and sustained serious injuries. He was rescued by the villagers and was admitted in the District Headquarter Hospital, Balasore. However, he succumbed to his injuries on the same evening.

3. Later on, post mortem and inquest was conducted on 07.07.2007. Subsequently, Khantapada UDPS Case No. 24/2007 was registered to this effect by lodging FIR under Annexure-1 to the writ petition. After completion of investigation, the A.S.I. Khantapada submitted the 'Final Report of Unnatural or Sudden Death Sent to Magistrate under Section- 174 of Cr.P.C.' under Annexure- 4 to the writ petition, with the finding that the death of the deceased Sanatan Nayak was caused due to electrocution as a result of snapping of live electric L.T. lines.

4. The Petitioners had approached the Opposite Parties- Distribution Company for grant of monetary compensation for causing death of the deceased by their negligence, however, the Opposite Parties- Distribution Company have not taken any step in this regard. Being aggrieved by the inaction of the Opposite Parties-Distribution Company, the Petitioners has filed the present writ petition with a prayer before this Court to order the Opposite Parties-Distribution Company to pay compensation of Rs. 2,00,000/- with 12 % interest per annum for causing death of the deceased due to their negligence.

5. It is pertinent to note here that, the writ petition was originally filed against North Eastern Electricity Supply Company of Odisha *(hereinafter "NESCO")* as the Opposite Parties, which was the authorized company responsible for distribution of electricity in Balasore district, at the time of death of the deceased. However, subsequently the distribution of electricity in the Balasore District was taken over by Tata Power Northern Odisha Distribution Limited *(hereinafter "TPNODL").* Therefore, by order of this court in I.A. No. 13555 of 2023 dated 06.08.2024, amendment to the cause title was allowed, by impleading TPNODL as the Opposite Parties in place of NESCO.

<u>SUBMISSION FOR PETITIONERS</u>

6. Mr. Bijay Kumar Mohanty, learned counsel appearing on behalf of the Petitioners at the outset contended that, the death of Sanatan Nayak was caused due to negligence of the Opposite Parties as because the Opposite Parties have failed to discharge their duty of properly maintaining the L.T. electric wires in Sergarh village, Balasore. He also submitted that the L.T. line wire in the village snapped and fell on the road's pod water and charged the water. When Sanatan Nayak was going to the market on 06.07.2007 at around 05:30 PM, he unknowingly stepped on the charged wire as he was unable to see the snapped wire lying on the road due to darkness. As a result, he got electrocuted and was admitted in the District Headquarter Hospital, Balasore. He eventually succumbed to his injuries in the same evening.

7. Learned Counsel for the Petitioners thereafter submitted that, Khantapada UDPS Case No. 24/2007 was registered by lodging FIR under Annexure- 1 to the writ petition. Subsequently, post mortem and inquest proceedings was also carried out. He apprised the Court that the Inquest Report under Annexure- 2 to the writ petition states the cause of death to be 'due to electric shock' and the Post Mortem

Report under Annexure- 3 to the writ petition states that the definite cause of death could not be ascertained. However, it was added in the report that the death might be due to hemorrhage due to injury of brain and lacerated wound of face. Thereafter, he drew the attention of the court to the "Final Report of a case of Unnatural and Sudden Death Sent to Magistrate under Section 174 of Cr.P.C." submitted by the ASI Khantapada P.S. under Annexure- 4 to the writ petition and stated that the ASI in the report declares that the cause of death of deceased is due to Electric Shock.

8. Further referring to the aforesaid report, learned counsel for the Petitioners stated that, the ASI has reflected in the final report that upon query being made by him about the injuries found on the body of the deceased, the Medical Officer who conducted the Post Mortem over the dead body of the deceased opined that the *"injury can be possible due to electric shock and also cause death of a person."* Relying on finding of the Inquest Report under Annexure- 2 to the writ petition; Post Mortem report under Annexure- 3 to the writ petition and the Final Report under Annexure-4 to the writ petition; the learned counsel for the Petitioners submitted that there is no doubt that the death of Sanatan Nayak was indeed caused by electrocution as the deceased accidentally came in contact with live snapped electric wire lying on the road and which was not visible to the naked eye.

9. Learned Counsel for the Petitioners further contended that, the electric L.T. lines were drawn to the Sergarh village quite long time ago. As they were not maintained properly by the Opposite Parties- Distribution Company, the electric wires were not strong enough to withstand the pressure of even mild wind. He further stated that, despite of several complaints and requests by the residents of Sergarh village, the Opposite Parties-Distribution Company having knowledge of the foreseeable potential danger that the ill- kept electric wires posed on the locality, did not take any steps to change the old wires. He submitted that , due to the failure of Opposite Parties-Distribution Company in properly discharging their duties and responsibility, an innocent man lost his life and a family not only lost a beloved family member but also the sole breadwinner.

10. Learned Counsel for the Petitioners submitted that the deceased was 54 years old and was working as a daily labourer. He was earning Rs. 2100/- per month and was maintaining a family consisting of his wife and two sons. His death has put the family in grave financial hardship and now it is the responsibility of the Opposite Parties-Distribution Company to adequately compensate the grieving family in monetary terms. In the course of the arguments, the learned counsel for the Petitioners, brought the OERC (Compensation to Victims of Electrical Accidents) Regulation, 2020 to the notice of the court and stated that the Petitioners are entitled to compensation in terms of the aforesaid regulation.

11. Learned Counsel for the Petitioners appraised the Court that the Opposite Parties- Distribution Company by admitting their negligence and liability, had paid a sum of Rs.10,000/- to the Petitioners to perform last rites of the deceased and had assured them to pay a just and proper compensation later. However, due to delay in such payment, the Petitioners approached the Opposite Parties/Distribution Company

several times, however, the Opposite Parties/Distribution Company did not take any steps in this regard. Thereafter, on 06.08.2007, the Petitioners sent a legal notice to the Opposite Parties/Distribution Company under Annexure- 5 to the writ petition with a request to pay the compensation. The aforesaid notice was duly received by the Opposite Parties- Distribution Company on 07.08.2007 as is evident from the postal receipts along with A/D under Anneexure-6 series to the writ petition. However, the Opposite Parties- Distribution Company neither gave any reply to the said notice nor paid any compensation.

12. The poor and helpless Petitioners, having no other recourse against such inaction of the Opposite Parties- Distribution Company, have filed the present writ petition with a prayer before the Court to order the Opposite Parties-Distribution Company to pay compensation of Rs. 2,00,000/- with 12 % interest per annum to the Petitioners.

ANALYSIS BY THE COURT

13. Heard Mr. Bijay Kumar Mohanty, the learned counsel for the Petitioners and Mr. P. Mohanty, Learned Counsel for Opposite Parties- Distribution Company. Perused the writ petition and documents annexed thereto as well as the case laws cited.

14. It is pertinent to note that, the Opposite Parties- Distribution Company were given several opportunities by the Court to deny the averments made and plea taken by the Petitioners, however, the Opposite Parties have not filed any counter affidavit although Mr. P. Mohanty participated in the hearing and opposed the prayer of the Petitioners. This amounts to implied admission of the facts pleaded in the writ petition by the Opposite Parties- Distribution Company by virtue application of the *doctrine of non- traverse.* Therefore, the Court considers the plea and averments of the Petitioners as narrated in the writ petition supported by documents as annexures. Some of the documents are public documents.

15. After analysis of the admitted facts present before this court, the Court is of the considered view that there is ample material on record in the form of Inquest Report under Annexure- 2, Post Mortem Report under Annexure-3 to the writ petition and Final Report under Annexure-3 writ petition, to hold that the death of the deceased Sanatak Nayak was caused due to electrocution. Such documents being public documents are admissible in evidence.

16. In light of the above observation, the court finds it beneficial to discuss the principle of strict liability under the "law of tort". The principle of strict liability as propounded in the famous case of ***Ryland v. Fletcher,*** reported in ***1868 Law Reports (3) HL 330,*** lays down that-

> *"the person who, for his own purpose, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does so he is prima facie answerable for all the damage which is the natural consequence of its escape."*

Therefore, rule of strict liability essentially attaches the liability on the undertakers of the hazardous activities, to compensate for damages caused, irrespective of any carelessness on their part. The basis of liability is the foreseeable risk inherent in the very nature of the activities.

17. The Apex Court as well as this Court has consistently held the electricity distribution companies strictly liable for any loss of life, limb or property resulting due to the supply and distribution of electricity and has awarded compensation to the victims and their families. In the case of ***M.P. Electricity Board v. Shail Kumari and others,*** reported in ***(2002) 2 SCC 162,*** by applying the rule of strict liability, Apex Court awarded compensation to the widow and dependants of the deceased, who died due to electrocution by coming in contact with a snapped live electric wire lying on the road. The court made the following observation thus,

> *"7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.*
>
> ***8.*** *Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability cast on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."*

18. Similarly, in the case of ***Dusmanta Samal v. State of Orissa*** arising out of ***W.P.(C) No. 14548 of 2016,*** a coordinate bench of this Court by applying the principle of strict liability, awarded compensation to the father of the deceased who died due to electrocution by coming in contact with a charged electric pole which was maintained by the Opposite Party. The court held that-

"23.Keeping in view the precedents cited above, the materials placed on record and the observation made, the court is of the considered view that, the prayer made by the Petitioners is sustainable. The opposite parties are engaged in a hazardous activity, and they will be strictly liable for the loss of life that had occurred due to their undertaken activity. The judiciary as the guardian of the Constitution and the protector of fundamental rights has never shied away from trying to make good of what is lost in monetary terms. It is universal truth that loss of human life can never be compensated by bringing back a dead young man to life, however, the bereaved family can be compensated in monetary terms for the loss of income sustained by such family due to untimely death of a young member of the family."

CONCLUSION

19. Therefore, in the light of the arguments advanced, case laws cited and the admitted fact that the death was caused due to electrocution by coming in contact of a snapped L.T. line electric wire lying on the road and the fact that the Opposite Parties-Distribution company had the statutory responsibility of distribution and supply of electricity in the locality, the court is of the considered view that by application of the principle of strict liability, the Opposite Parties- Distribution Company are strictly liable for the death of deceased and are liable to pay compensation to the Petitioners.

20. Coming to the quantum of compensation, the learned counsel for the Petitioners has brought the 'OERC (Compensation to Victims of Electrical Accidents) Regulations, 2020' which came into force on 30.05.2020, to the notice of the court. But the aforesaid regulation won't apply to the present case as the death occurred in the year 2007. However, the court deems it proper to refer to the scale of compensation laid down in the aforesaid regulation. As per regulation 5 of the aforesaid regulations, the quantum of compensation payable in the event of a loss of human life has been fixed to the tune of Rs.4,00,000/- (Rupees Four Lakhs) per person. As such, keeping in view the aforesaid regulation and keeping in view the prayer made in the writ petition particularly with regard to the quantum of compensation, this Court deems it proper to direct the Opposite Parties to pay an interim compensation of Rs. 2,00,000/-(Rupees Two lakhs) to the Petitioners within a period of two months from the date of this judgement. The aforesaid shall carry interest @8% from the date the incident took place till payment of such amount as directed hereinabove. In the event the payment is made after expiry of the aforesaid time stipulation, the compensation amount shall carry interest @12% till the date of actual payment is made to the Petitioners. Further, liberty is granted to the Petitioners to pursue other suitable remedies in the common law forum for higher compensation, if so advised.

21. Writ petition stands disposed of in favor of the Petitioners. However, there shall be no orders as to cost.

Necessary modification in the Judgment has been carried out pursuant to the order of Hon'ble Court *vide* Order No. 13 dated 19.08.2025 in I.A. No. 13803 of 2025

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

Result of the case:
Writ petition disposed of

—— o ——

2025 (II) ILR-CUT-1231

ANKIT KUMAR
V.
UNION OF INDIA & ORS.

[W.P.(C) NO. 27732 OF 2023]

22 APRIL 2025

[V. NARASINGH, J.]

Issues for Consideration

Whether rejection of the candidature of petitioner is tenable in law.

Headnotes

GUIDELINES FOR RECRUITMENT MEDICAL EXAMINATION IN CENTRAL ARMED POLICE FORCES AND ASSAM RIFLES, 2022 – Petitioner applied for Constable (General Duty) in Central Armed Police Forces (CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy – He qualified in different tests but declared medically unfit by the doctor for having Haemorrhoids – The Board opined that "external Haemorrhoid" presented @ 7 O'clock – Petitioner also get himself examined at Sadar Hopital, Chaibasa and MGM Medical College & Hospital, Jamshedpur and the reports reveal that he is not suffering from any Haemorrhoid but it is a skin tag – Petitioner does not suffer from Haemorrhoid with bleeding – Whether the rejection of candidature of the petitioner is tenable in law.

Held: No – On a bare perusal of the opinion of the medical examination boards, it is explicitly clear that the Petitioner does not suffer from Haemorrhoid with bleeding – As such, treating him as unfit by the impugned report at Annexure-9 in the light of the finding of the Review Medical Examination Board at Annexure-16 is out of non-application of mind and therefore, liable to be set aside and it is so directed. (Para 13-A)

On a perspicuous analysis of the materials on the record and submissions of the learned counsels for parties, this Court is of the considered view that the Petitioner is diagnosed as suffering from Haemorrhoid without any report justifying either internal or external bleeding entailing his disqualification which is also evident from the medical certificates under Annexure-10 and 11 and the report of review Medical Board No.2 at Annexure-16 declaring absence of any Haemorrhoid qua the Petitioner – As such, the report at Annexure-9 declaring the Petitioner as "unfit" is quashed. (Para 15)

Hence, the Opposite Parties are hereby directed to appoint the Petitioner as Constable (General Duty) in Central Armed Police Forces

(CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau Examination, 2022 within a period of three month from the date of receipt/submission of the copy of the judgment. (Para 17)

Citations Reference

Prashan Kumar Vrs. Union Of India & Others, **W.P.(C) No.9761of 2023 & CM APPL. No. 37461 of 2023;** Aman Kumar Jha Vrs. Union Of India & Ors, **W.P.(C) No.10995/2023 & CM APPL. 42619 / 2023;** Davala China Raja Vrs Union of India & Ors, **W.P.(C) No. 38982 Of 2022;** Suchitra Sethi Vrs Union Of India & Others, **W.P.(C) No.16120 of 2016;** Pasupuleti Venkateswarlu vs. The Motor & General Traders, **AIR 1975 SC 1709;** Ramesh Kumar vs. Kesho Ram, **AIR 1992 SC 700;** Sheshambal (dead) through LRs vs. Chelur Corporation Chelur Building, **(2010) 3 SCC 470 – referred to.**

List of Acts

Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, 2022.

Keywords

Selection process; Review Medical Board (RMB); External Haemorrhoid; *Ignorantia juris;* Computer Board Examination (CBE); Physical Efficiency Test (PET); Physical Standard Test (PST); Medical Examination; Document verification.

Case Arising From

Rejection of candidature of the petitioner vide Annexure-9 dated 03.08.2023 passed by the Review Medical Examination (RME) Board.

Appearances for Parties

For Petitioner : Mr. Soumya Dev Ray
For Opp. Parties : Mr. P.K. Parhi, DSG for UOI, Mr. D. Gochhayat, CGC

Judgment/Order

Judgment

V. NARASINGH, J.

1. Assailing rejection of his candidature vide Annexure-9 for appointment as Constable (General Duty) in Central Armed Police Forces (CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy on being adjudged as medically "unfit", the Writ Petition has been preferred U/A.226 and 227 of the Constitution seeking the following relief;

> *"It is therefore prayed that, appropriate writ/writs be issued calling upon the Opp. Parties to show cause as to why on the basis of a wrong diagnosis report the impugned*

unfit report under Annexure-9 was issued by the Opposite Part Authority to the present Petitioner.

And if the Opp. Party fail to show cause and/or show insufficient cause the writ application may be allowed.

And Opposite Party authority may directed to consider the Medical Reports under Annexure-10, in the process of declaring the petitioner as a fit candidate.

And in alternative petitioner may be re-examined with proper diagnosis.

And such direction/directions other and/or relief/reliefs, order/orders may be issued directing the Opp. Party No. 2 and 3 to consider the application of the petitioner.

xxx xxx xxx"

2. On perusal of the pleadings of the parties and submissions, the *lis* can be divided into the following two issues;

(i) Whether the action of the Opp. Parties in declaring the Petitioner medically unfit since he was suffering from Haemorrhoid (Haemorrhoids) on the basis of Annexure-9 can stand scrutiny, keeping in view the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, 2022, governing the field.

(ii) When the rejection order contains a stipulation to approach Review Medical Examination (RME) Board and the Petitioner was found fit in terms of such subsequent review report (Annexure-16), whether the Authorities can refuse to appoint the Petitioner on the self-same ground of being medically unfit basing upon earlier decision of RME Board in Annexure-9.

3. For better appreciation, the undisputed facts having nexus with the adjudication of the aforesaid issues are stated as under:

3A. Ministry Of Home Affairs and Staff Selection Commission invited application for recruitment of Constable (General Duty) in Central Armed Police Forces (CAPFs), SSF, Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau Examination, 2022 published by Ministry of Home Affairs and Staff Selection Commission as per Notification at Annexure-1.

Said selection process consisted of Computer Based Examination (CBE), Physical Efficiency Test (PET), physical Standard Test (PST), medical examination and document verification.

3B. The Petitioner applied in terms of such advertisement and on scrutiny, he was assigned Roll No.4610019162.

He was called for Computer Based Examination (CBE) on 13.02.2023 and was declared qualified in such CBE and was issued E-admit card to appear before Physical Standard Test (PST), Physical Efficiency Test (PET) Board at CISF, Rourkela, Bishra Camp, Sundergarh on 01.05.2023 wherein, was found qualified in such Physical Standard Test and Physical Efficiency Test and thereafter, he was called for Document Verification and Detailed Medical Examination scheduled to be held on 02.08.2023 at Group Centre, CRPF, Bhubaneswar.

3C. On the scheduled date i.e. 02.08.2023, the Petitioner appeared for Detailed Medical Examination wherein, he was declared medically unfit by the doctor and accordingly he was issued unfit certificate on 02.08.2023 vide Annexure-7 to the Writ Petition.

In the very Annexure, it was mentioned that the Petitioner can apply for a Review Medical Examination by Review Medical Board (RMB).

3D. Being aggrieved with such opinion, the Petitioner preferred appeal, before the Review Medical Board and on the very next day vide Annexure-8 the Petitioner was allowed to appear before Review Medical Examination (RME) Board, Bhubaneswar and the Petitioner was referred to Capital Hospital, Bhubaneswar requesting for opinion from Surgery Specialist to rule out Haemorrhoids and after clinical examination the board opined that "external Haemorrhoid present @ 7 O'clock". Accordingly, the Board on 03.08.2023 vide Annexure-9 declared the Petitioner to be unfit with such observation, which is impugned in the present Writ Petition.

3E. It is contended by the Petitioner that in the meantime he got himself examined at Capital Hospital, Bhubaneswar wherein on examination, it was detected that external Haemorrhoid is present which need not be operated. It is submitted by the Petitioner that the Petitioner got himself examined in this regard in two other government hospitals i.e. Sadar Hospital, Chaibasa and MGM Medical College & Hospital, Jamshedpur and the reports of the said Hospitals are at Annexure-10 and 11 of the Writ Petition respectively which reveal that he is not suffering from any Haemorrhoid but it is a skin tag.

3F. It is further stated by the Petitioner that, assuming that the Petitioner has Haemorrhoid, but as per the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, dated 31.05.2021(which governs the recruitment in question as brought on record by way of additional affidavit filed by the Petitioner), mere presence of Haemorrhoids is not a disqualification. But, a Haemorrhoids, internal or external, with "bleeding" is a disqualification.

It is submitted that in the face of such guidelines, the opinion rendered by the Review Medical Board cannot be accepted and since both the medical board have not opined that there is any "bleeding" and in the absence of such finding, the Opposite Parties could not have declared the Petitioner as "unfit" on the said score.

3G. The learned Counsel for the Petitioner Mr.S.D. Roy relied upon the following decisions:

(i) Prashan Kumar Vrs. Union Of India & Others; W.P.(C) No.9761of 2023 & CM APPL. No. 37461 of 2023.

(ii) Aman Kumar Jha Vrs. Union Of India & Ors; W.P.(C) No.10995/2023 & CM APPL. 42619 / 2023.

(iii) Davala China Raja Vrs Union of India & Ors; W.P. (C) No. 38982 Of 2022.

(iv) Suchitra Sethi Vrs Union Of India & Others; W.P. (C) No.16120 of 2016

ANALYSIS OF THE JUDGMENT CITED BY THE PETITIONER

3G(i). In Prasan Kumar (supra), while adjudicating a case of similar nature where the Petitioner therein was declared medically unfit on the ground of hypertension and haemorrhoids, the High Court of Delhi, while quoting clause 3(f)(iii) of the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, 2021, as in the case at hand which states that "Haemorrhoid (internal or external), with evidence of bleeding is a disqualification," set aside the findings of the Medical Board and directed a re-examination of the candidate.

(Emphasized)

3G(ii). In ***Aman Kumar Jha (supra)***, the Hon'ble High Court of Delhi, while observing that in the medical report, though the experts had opined that the Petitioner suffers from Haemorrhoid, Grade-I, noted that there was no opinion as to whether there was any evidence of bleeding, which has been stipulated as a disqualifying condition in terms of clause 3(f)(iii) of the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, 2021. The High Court directed a fresh medical examination of the Petitioner therein in accordance with the said guidelines.

It is apt to note that the self-same Guidelines are being relied upon by both sides in the instant case.

3G(iii). In ***Davala China Raja (supra)***, the Hon'ble High Court of Telangana dealt with a similar matter where the Petitioner was declared unfit inter alia on the ground of his suffering from hypertension and haemorrhoids, without any finding about bleeding from the haemorrhoids. The Hon'ble Court directed the respondents therein to reconstitute the Review Medical Board and conduct a review medical examination of the Petitioner strictly in accordance with the Guidelines issued in O.M. dated 31.05.2021.

It may be noted here that the Union of India went in Writ Appeal against the said judgment dated 10.10.2023, which was dismissed by order dated 21.03.2024 in Writ Appeal No. 220/2024, confirming the order passed by the learned Single Bench.

3G(iv). The law laid down in ***Suchitra Sethi (supra)*** is factually distinguishable and has no application to the case at hand.

4. Per contra, learned Senior counsel Mr. Parhi, DSGI along with Mr. Gochhayat learned Senior Panel Counsel for Union of India relying on the counter affidavit submit that the Writ Petition is not maintainable. It is further submitted that the Petitioner was examined for "Haemorrhoids" by the doctors (03 Doctors of CRPF) and found that patient is having External Haemorrhoids present @ 7 o'clock" (ANNEXURE-R/5).

This was further confirmed/certified by OPD report dated 03/08/2023 (Annexure-9) by Capital Hospital, Bhubaneswar, which is a Govt. hospital for clinical examination. Hence, the Petitioner was rightly declared medically unfit due to "External Haemorrhoids present @ 7 o'clock" (ANNEXURE R/6).

4A. It is stated by Mr. Parhi, learned DSGI and Mr. Gochhayat learned Senior Panel Counsel for Union of India that Central Armed Police Forces (CAPF) medical officers are aware of the duties of a jawan in different areas and in different situation. The civil doctors may not be the best judges to opine on the subject matter or what a medical condition might mean in the most trying and toughest of circumstances the Forces encounter every day in real life in unfriendly terrain and at high altitude protecting our borders.

While vehemently submitting that since the decision of fitness for appointment in CAPF is to be done by Board of Detailed Medical Officers from Central Armed Police Forces (CAPF), and not by Non-departmental doctors, he sought for dismissal of Writ Petition and also submitted that in the given circumstances it is not open to Judicial Review.

4B. It is further submitted by the learned DSGI and Senior Panel counsel that Writ Petition has no merit for consideration as per the DIG (Rectt) Directorate General CRPF New Delhi para No. 9.14 of letter No. A.VI-I/ 2022-Rectt (SSB)-CT/GD-2022 dated 12/06/2023, since there is no provision for appeal, if the candidate is declared UNFIT in Review Medical Examination (RME) and same has also been recorded in Annexure-J/1, Form – 4 CAPF Constable (GD) Exam-2022 (ANNEXURE-R/7).

5. It is pertinent to note that since it was contended by the Opposite Parties that there is no provision to conduct medical examination after review medical examination, the Petitioner filed IA No.15535 of 2023 praying therein to facilitate re constitution of Review Medical Board for examination of the medical papers of the Petitioner, in the interest of justice.

5A. This Court by order dated 11.09.2023 granted liberty to the Petitioner to produce the medical documents annexed as Annexures -10 & 11 to the Writ Petition before the Review Examination Board No.2 (Opposite Party No.5) for its consideration, observing that the pendency of this Writ Petition shall not be a bar for the Review Medical Examination Board to consider the medical documents and render its opinion.

For convenience of ready reference Annexures- 10 and 11 are extracted hereunder;

Annexure- 10

Sadar Hospital Chaibasa
Near Gandhi Maidan Chaibasa,, NA, Chaibasa, WEST SINGHBHUM, JHARKHAND, 833201 ,WEST SINGHBHUM,JHARKHAND,Pin: 833201

Registration No : 20230014263
Visit No : 1 / Token No : 1
Room No : Main Building,OPD Block,Ground,OPD 2 Surgery OPD

Dr. Pradeepta Kumar Manjhi

Name : Mr. Ankit Kumar
Department : General Surgery
Date of Registration : 16/08/2023 11.25 AM
Patient Type : General
Remark :

Registration Amount : Rs. 5
Mobile No : 8294790093
Sex : M
Address :HEMGIR ,SUNDARGARH ,WEST SINGHBHUM(JHARKHAND)
Age : 24Y
MLC Patient : NO

Proctoscopy . examination
Perianal skin healthy.
No. haemorrhoids.

16/8/23
DR. PRADEEPTA KR. MAJHI
S.M.O. (SURGERY)
C.H.C. MANOHARPUR
WEST SINGHBHUM

सदर अस्पताल सहायता केंद्र सह ममता वाहन कॉल सेंटर (24*7) 898607626/06582-255482

Date Time: 16/08/2023 11.25 AM

179 50
50%

Annexure- 11

MGM Medical College & Hospital, Jamshedpur
Sakchi, Jamshedpur, East Singhbhum, Jharkhand - 831001

Registration No : 20230056804
Visit No : 2/ Last Visit Date : 16/08/2023 12.00 AM / Token No : 36
Room No : OPD BUILDING,SURGERY OPD,Ground,17

Annexure-11
Dr. Krishna Kumar Singh
MS
SURGERY CLINIC

OUT PATIENT RECORD (Follow Up)

Name : Mr. Ankit Kumar
Guardian Name : KAMLESH KUMAR SINGH(Father)
Department : General Surgery
Dept. Reg. No : 20230004886
Unit : DR D HANSDA UNIT 01
Date of Registration : 18/08/2023 11.13 AM
Patient Type : General

Registration Amount : Rs. 0
Mobile No : 8294790093
Sex : M
Address :HEMGIR,SUNDARGARH(ODISHA)
Age : 24Y 2D
MLC Patient : NO

18/8/23.

Came for Hernia -

O/E.
Normal hydrocele
No hernia.
Skin tag 12 to 5 o'clock.
No hemorrhoids.

Adv.
(1) No surgical intervention required
(2) Patient is fit.

18/8/23.

6. Pursuant to orders passed by this Court, the Opp. Parties constituted a review Medical board on 23.10.2023 vide Annexure-16 (Additional Affidavit filed by the Petitioner) for re-examination of the medical papers under Annexure-10 and 11 of the writ application and RME Board No.2 concluded that there was no Haemorrhoid on examination particularly after taking into account Annexure-10 and 11 extracted above.

7. It was alleged by learned counsel for the Petitioner that the Opp. Parties are deliberately suppressing the above report of RME Board No.2. In response thereto, an Additional Affidavit dt. 29.11.2024 has been filed by the Opposite Party No.3-Staff Selection Commission, New Delhi. In Paragraph No.2 thereof, the following opinion of review medical examination Board No.2 (Annexure-16) has been referred to (Running Page 192 of the brief= Internal Page 5 of the Additional Affidavit);

> *"(1) Possibility of resolution Haemorrhoid either due medical treatment or surgery.*
>
> *(2) Possibility of spontaneous resolution of haemorrhoid"*

8. For convenience of ready reference, relevant clause 3(f)(iii) of the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, dated 31.05.2021 is quoted hereunder:-

> *"3 (f)(iii) Ano-rectal*
>
> *1. Evidence of anal fistula is disqualifying.*
>
> *2. Evidence of anal or rectal polyp, prolapse, stricture, or disqualifying. fecal incontinence is*
>
> *3. Haemorrhoid (internal -or external), with evidence of bleeding, disqualifying."*

The applicability of the said guideline dated 31.05.2021 to the recruitment vis-à-vis the case at hand is not disputed.

9. Mr. P.K. Parhi, learned Deputy Solicitor General of India makes a hair-splitting submission referring to the punctuation "comma" that haemorrhoid of any nature disentitles an incumbent to be recruited as constable. But on the face of it, such submission does not stand to reason. Otherwise, there was no necessity for the Guideline to qualify haemorrhoid that "either internal or external with bleeding" it could have been stated "either internal or external with or without bleeding" to be the ground of disqualification as has been done. Further the submission of the learned Deputy Solicitor General of India, referring to the unique mode of medical fitness to advance his submission is on the face of it, is untenable and hence, does not merit consideration.

10. Admittedly, in terms of Clause-3(f)(iii) of the Guideline dated 31.05.2021 which governs the field, only the haemorrhoids which are "bleeding" are to be treated as a norm to disqualify a candidate. In the case at hand, admittedly there is no finding about any bleeding of the haemorrhoids and hence disqualifying the

Petitioner on the said ground is not justified and outcome of perverse appreciation and a colorable exercise of power.

11. Further, from the medical reports issued by the Sadar Hospital, Chaibasa and MGM Medical & Hospital College, Jamshedpur, at Annexure-10 and 11 respectively and subsequent report issued by the RME at Annexure-16 it is evident that there is "no Haemorrhoid on examination", said RME report (which is by the RME Board constituted by the opposite parties) at annexure-16, reads as under;

"xxx xxx xxx

Including of	:	Board of officers RME Board No.02, CRPF, Bhubaneswar (regarding recruitment of CT/OD 2022 exam)
Assembled at	:	Office of the DIG(Medical)/Medical Superintendent, composite Hospital, CRPF, Bhubaneswar.
With effect from By the order of	:	On 23/10/2023 DIG(law) Directorate signal No. J.II.998/2023-LWP-9 dated 3/10/2023- MED-9 dated 6/10/2023 & 12/10/2023
For the purpose of	:	RME Board No.02, CRPF, Bhubaneswar to re-assemble and examine supporting medical documents of Sadar hospital Chaibasa, West Singhbhum & MGM Medical College and Hospital Jamahedpur, East Singhbhum , Jharkhand along with Interim Court Order dated 19/09/2023 as produce by the petitioner (Shri. Ankit Kumar S/o Kamlesh Kumar Singh)
CONSTITUTION OF BOARD		
Presiding Officer	:	Dr. Jagat Anand Surin, CMO(SG)/ Comdt. (IRLA. No. 7017), 190 BN.
Member-I	:	Dr. Shashidhar V.Mullur, CMO(OG)/2-IC (IRLA No. 9865), 205 CoBRA BN.
Member-II	:	Dr. Gitanjali Mohapatra, Spl. MO/Dy. Comdt, (IRLA No. 119108) CH CRPF, Bhubaneswar.

RME Board No. 02, CRPF, Bhubaneswar (regarding recruitment of CT/GD 2022 exam) having been re-assembled in pursuance to DIG (Law) Directorate signal No. J.II.998/2023- LWP-9 dated 3/10/2023, Medical Directorate signal No. J.II.1/2023 MED-9 dated 6/10/2023 & 12/10/2023 in office of the DID (medical) / Medical Superintendent, Composite Hospital, CRPF, Bhubaneswar, to examine supporting medical documents of Sadar Hospital Chaibasa, West Singhbhum & MGM Medical College and Hospital Jamshedpur, East Singhbhum, Jharkhand along with Interim Court Order Dated 19/09/2023 as produce by the petitioner (Ankit Kumar S/o Kamlesh Kumar Singh).

2. all Accordingly, the board has examined the medical documents and other documents as per instructions and the following remarks are submitted for further necessary action.

- *Shri, Ankit Kumar S/o Kamlesh Kumar Singh (Roll No. 4610019162), Aged 24 years was examined by RME Board– 2 on 03/08/2023. On examination, the candidate was found to have External Haemorrhoids.*

- *In view of the above said findings, a review was sought from the Surgery Department of Capital Hospital, Bhubaneswar on 03/08/2023.*

• Candidate further confirmed to have external haemorrhoids with skin tag at 7'O clock position as per Capital Hospital, Bhubaneswar OPD No. 211012305726243 dated 3/08/2023. The candidate was examined by Dr. Subhashis Patra, Assistant Professor, General Surgery, Capital Hospital, Bhubhaneswar.

• The candidate was declared unfit (In view of external haemorrhoids) by RME board-2 on 03/08/2023 as per revised uniform guidelines for the recruitment medical examination for recruitment of GO's and NGO's the CAPFs & AR dated 20/05/2015.

• On examination of medical documents submitted by the candidate (Annexure -10 & 11),

○ a) Sadar Hospital Chaibasa, West Singhbhum, OPD Registration No.20230014263, examined by Dr. Pradeepta Kumar Manjhi, SMO (surgeon) on 16/08/2023.

• Examination findings on proctoscopy – "perianal skin healthy – no haemorrhoids

○ b) MGM Medical college and hospital Jamshedpur, East Singhbhum, Jharkhand – 831001. OPD Registration No. 20230056804 dated 16/08/2023, Examined by Dr. D. Hansda Unit 01,

• Examination findings was "No haemorrhoids, No hernia, with skin tag 12''O'& 6"O' clock. No Hydrocele.

*• Opinion of RME Board after examination of submitted medical documents – Both the documents (a) & (b) (Annexure 10 & 11) conclude "**No Haemorrhoids on examination**". (Emphasized)*

• The change in examination findings of RME Board 2, Surgeon opinion of Capital Hospital, Bhubaneswar, compared with present submitted medical documents by candidates might be due to

1. Possibility of resolution of haemorrhoids either due to medical treatment treatment or surgery.

2. Possibility of spontaneous resolution of haemorrhoids.

xxx xxx xxx"

11A. It is trite that a candidate cannot be disqualified on flimsy ground in absence of any stipulation in the concerned recruitment Rules empowering to do so. It cannot be at the *ipse dixit* of the authorities. In the case at hand the grounds declaring the Petitioner 'unfit' for appointment being patently *dehors* the Guidelines for Recruitment Medical Examination in Central Armed Police Forces and Assam Rifles, dated 31.05.2021, are patently untenable.

12. On consideration of the aforesaid rival contentions on the basis of materials on record, this Court is of the considered view that it is the consistent stand of the Petitioner that the authorities have reached an erroneous conclusion declaring him as unfit particularly ignoring the revised uniform guidelines for review in medical examination in Central Arm Police Forces and Assam Rifle for GOs and NGOs dtd. 31.05.2021 wherein it is emphasized that mere presence of Haemorrhoid does not amount to disqualification but such Haemorrhoid, either internal or external with bleeding is a disqualification. *(Emphasized)*

13. In the absence of any opinion of doctor, pleadings of the authorities to the extent that the Petitioner is suffering from Haemorrhoid with "bleeding", the finding of the Medical Board and Review Medical Board-2 are to be considered.

This Court is conscious of the contours of appreciation in the face, finding recorded by an expert body. The case at hand is not one where this Court is substituting its opinion for that of the Medical Board, as such does not arrogate to itself such an unenviable task.

13A. On a bare perusal of the opinion of the medical examination boards, it is explicitly clear that the Petitioner does not suffer from Haemorrhoid with bleeding.

As such, treating him as unfit by the impugned report at Annexure-9 in the light of the finding of the Review Medical Examination Board at Annexure-16 is out of non-application of mind and therefore, liable to be set aside and it is so directed.

14. It is apposite to note that though in the 2024- declaration of final result of recruitment of constable (GD) in Central Armed Police Forces (CAPFs), SSF, and Rifleman (GD) in Assam Rifles Examination, 2024 placed on record by learned counsel for the Petitioner, Mr. Roy, 17 vacancies have been kept reserved due to various Court orders. Yet, the interim order of this Court dated 08.05.2024 passed in I.A. No. 13287 of 2023 has not been stated therein, whereas the orders passed by the other Hon'ble High Courts have been mentioned. The same is reflected in paragraph-16 of the said notification. The Paragraphs-11-13 also refers to the pending litigation and roll numbers of the candidates have also been reflected in Paragraphs 11 and 12. For convenience of reference Paragraphs-11 to 13 as well as Paragraph 16 of 2024-declaration of final result is culled out hereunder;

> "11. Vacancies have been kept reserved in respect of following 17 candidates due to the various court orders:-
>
> | | | | | | |
> |---|---|---|---|---|---|
> | 10040
23773 | 10040
15614 | 22012
78571 | 24040
01391 | 24052
42088 | 24060
29028 |
> | 24060
58805 | 42050
12545 | 42060
34636 | 42050
23646 | 42060
18161 | 51050
49629 |
> | 51050
63752 | 51050
52083 | 57010
04224 | 82040
00125 | 82040
00419 | ---- |
>
> 12. The recommendations of 08 candidates bearing Roll No. 2201109995, 4206033791, 2201154248, 4205054818, 1404029690, 5111002237, 1404002687 and 5601007688 shall be subject to the outcome of the Court cases.
>
> 13. The final results of 845 candidates have been kept withheld due to court orders/suspected malpractices.
>
> 14. xxx xxx xxx
>
> 15. xxx xxx xxx

16. Any appointment will be subject to the result of WP(MD) No. 24587 of 2024 titled A. Abbas Ali V/s UOI & Others and W.P. (MD) 24629 of 2024 titled K. Vasanth V/s UOI & Others before the Hon'ble High Court of Madras."

It is apt to note that the said notification is dated 13.12.2024 and admittedly, the order of this Court was passed on 08.05.2024 in I.A. No. 13287 of 2023 directing as under;

"xxx xxx xxx

5. As an interim measure, it is directed that one post of Rifle Man (GD) in Assam Rifles pursuant to Annexure-1, shall not be filled up till the next date."

14A. This Court does not appreciate such conduct of the Opposite Parties. Taking into account the submission of Mr. Parhi, learned DSGI, appearing for the Opposite Parties along with Mr. Gochhayat, learned CGC for Union of India that the non-mentioning of the order passed by this Court relating to the Petitioner is an inadvertent lapse, this Court refrains from passing any order regarding such omission, which in the considered view of this Court is contumacious viewed in the context of reference to the orders passed by other Hon'ble High Courts other than this Court.

15. It is the settled principle of law, because the prayer in the Writ Petition has not been couched properly, as in the present case Courts more so Courts of equity ought not to deprive the litigant from getting the relief, *ignorantia juris* of the counsel ought not to deprive his client the relief in a deserving case. The proposition that the Court can mould relief is well settled and needs no further emphasis.

In this context the reference can be made to the leading judgment of the Apex Court in **Pasupuleti Venkateswarlu vs. The Motor & General Traders, AIR 1975 SC 1709** and **Ramesh Kumar vs. Kesho Ram, AIR 1992 SC 700.**

In **Sheshambal (dead) through LRs vs. Chelur Corporation Chelur Building, (2010) 3 SCC 470** dealing with such issue of moulding of relief, the Supreme Court held thus;

"xxx xxx xxx

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) **that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and**

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

xxx xxx xxx" *(Emphasized)*

On a perspicuous analysis of the materials on the record and submissions of the learned counsels for parties, this Court is of the considered view that the Petitioner is diagnosed as suffering from Haemorrhoid without any report justifying

either internal or external bleeding entailing his disqualification which is also evident from the medical certificates under Annexure-10 and 11 and the report of review Medical Board No.2 at Annexure-16 declaring absence of any Haemorrhoid qua the Petitioner. As such, the report at Annexure-9 declaring the Petitioner as 'unfit' is quashed.

16. Since there is no other legal impediment for consideration of the candidature of the Petitioner for recruitment as constable, the next question that confronts this Court is what consequential relief the Petitioner is entitled to.

16A. At the cost of repetition, it is worth reiterating that the only ground on which the Petitioner was not being appointed having been adjudged to be untenable as above, this Court instead of directing for consideration of the claim of the Petitioner, which is an accepted norm in service jurisprudence, in the factual matrix of the case at hand is of the firm view that directing the authorities to appoint the Petitioner would subserve the ends of justice as otherwise again directing for consideration of his case would not be just and equitable as the same would amount to relegating him to morass of uncertainty.

17. It is apt to note that 2092 posts are still lying vacant as per information submitted before this Court. By virtue of the interim order dated 08.05.2024 in I.A. No. 13287 of 2023, the Opposite Parties were directed to keep one post of constable (General Duty) in Central Armed Police Forces(CAPFS) and SSF Rifle man (GD) in Assam Rifles, 2022 and Sepoy in Narcotics Control Bureau Examination, 2022 not to be filled up till the next date.

Hence, the Opposite Parties are hereby directed to appoint the Petitioner as Constable (General Duty) in Central Armed Police Forces (CAPFs) and SSF, Rifleman (GD) in Assam Rifles and Sepoy in Narcotics Control Bureau Examination, 2022 within a period of three month from the date of receipt/submission of the copy of the judgment.

18. The Writ Petition is accordingly disposed of. No order as to costs.

In view of the disposal of the Writ Petition, pending I.As, if any, stand disposed of.

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

Result of the case:
Writ Petition disposed of.

—— o ——

2025 (II) ILR-CUT-1244

BISHNUPADA SETHI
V.
CENTRAL BUREAU OF INVESTIGATION

[ABLAPL NO. 7333 OF 2025]

28 JULY 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the case of the Petitioner merits consideration for grant of anticipatory bail.

Headnotes

PRE-ARREST BAIL – Prevention of Corruption Act, 1988 (as amended in 2018) – Section 7 r/w Sections 8, 9 & 10 r/w Section 61(2) of the Bharatiya Nyaya Sanhita, 2023 – Allegation against the petitioner, who is a Senior Indian Administrative Service Officer, is that he had played a pivotal role in the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. demanding and obtaining a sum of ₹ 10 lakhs from one Santosh Moharana, Director, M/s. Penta A Studio Pvt. Ltd. as an illegal gratification for clearing the project bills – A trap was laid on 07.12.2024 and the alleged bribe amount of ₹ 10 lakhs was recovered from the vehicle of one Debadutta Mohapatra – The petitioner had acquaintance with D. Mohapatra and he made a phone call from the phone of named accused Chanchal Kumar Mukherjee and prevailed upon said D. Mohapatra to receive bribe amount of ₹ 10 lakhs – On the basis of CFSL report the voice in the call made to D. Mohapatra matched with the voice sample of the petitioner recorded voluntarily – Whether the case of the Petitioner merits consideration for grant of anticipatory bail.

Held: No – There is no dispute at the Bar that the Petitioner had volunteered to give the voice sample which allegedly matched with the voice in the call received by Debadutta Mohapatra, from whose vehicle the alleged money given as bribe was recovered – This Court cannot lose sight of the fact that the Petitioner in this case is a highly ranked officer of Indian Administrative Service and was well aware of his Constitutional Rights – Even bereft of such material the damage of both the iPhones of the Petitioner and omissions of his wife, who is also a working lady, to state about the two lockers which were unearthed during ongoing probe and access to the said lockers, just few days before CBI could come to know of it and the lockers having found empty by CBI cannot be brushed aside, as being urged – The

exact amount of Rs.10 lakhs found when the named accused was taken into custody in tune with the information which was recorded earlier on the basis of which the investigation started also lends credence to the case of the prosecuting agencies – It is also alleged that Petitioner's daughter received a MacBok and a luxury watch worth Rs.1,46,700/- on 6.8.2024 from Debadutta Mohapatra from whom the bribe amount was recovered, as noted – Such allegation is refuted, inter alia, on the ground that there is no seizure to the said effect. (Paras 24-25)

Considering that the Petitioner is a Senior Officer in the rank of Indian Administrative Service, this Court finds force in the submission of the learned counsel for the CBI that his interrogation being "ensconced" by an order of anticipatory bail would be a fruitless exercise in the light of the materials unearthed. (Para 28)

Accordingly, the ABLPAL stands rejected. (Para 30)

Petitioner preferred an appeal in the Hon'ble Supreme Court of India in SLP (Crl) No. 11426 of 2025 and the Special Leave Petition was dismissed.

Citations Reference

State of West Bengal vrs. Swapan Kumar Guha, **AIR 1982 SC 949;** Dukhishyam Benupani vrs. Arun Kumar Bajoria, **(1998) 1 SCC 52;** Islamic Academy of Education and another vrs. State of Karnataka and others, **(2003) 6 SCC 697 : (Paragraphs 139 - 145);** M.P. Sharma and others vrs. Satish Chandra, **(1954) 1 SCC 385 (Para 11);** Selvi and others vrs. State of Karnataka, (2010) 7 SCC 263; Tofan Singh vrs. State of T.N., **(2021) 4 SCC 1;** Devinder Kumar Bansal vs. The State of Punjab, **(2025) 4 SCC 493;** P. Chidambaram vs. Directorate of Enforcement, **(2019) 9 SCC 24;** Ritesh Sinha vs. State of Uttar Pradesh and another, **(2019) 8 SCC 1;** R.M. Malkani vs. State of Maharashtra, **(1973) 1 SCC 471;** Bishnupada Sethi & others vrs. Central Bureau of Investigation (CBI), New Delhi and others, **WP(C) No.5905 of 2025 disposed of on 20.06.2025;** Satender Kumar Antil vrs. Central Bureau of Investigation and another, **2023 SCC Online SC 452;** Satender Kumar Antil vrs. Central Bureau of Investigation and another, **2022 (10) SCC 51;** State of Bombay vrs. Kathi Kalu Oghad, **AIR 1961 SC 1808;** Mohammed Dastagir vrs. The State of Madras, **AIR 1960 SC 756;** Veera Ibrahim vrs. The State of Maharashtra, **AIR 1976 SC 1167;** Directorate of Enforcement vrs. Ashok Kumar Jain, **(1998) 2 SCC 105;** Neera Yadav vrs. Central Bureau of Investigation, **(2017) 8 SCC 757;** State represented by the C.B.I. vrs. Anil Sharma, **(1997) 7 SCC 187 – referred to.**

List of Acts

Prevention of Corruption Act, 1988 (as amended in 2018); Bharatiya Nyaya Sanhita, 2023; Bharatiya Suraksha Sanhita, 2023; Constitution of India, 1950.

Keywords

Pre-arrest bail; Self-incrimination; Testimonial compulsion; Voice sample; Illegal gratification.

Case Arising From

R.C. Case No. 17(A) of 2024 pending in the court of learned Special Judge CBI-I, Bhubaneswar arising out of RC 21720240017 of CBI, AC-II, New Delhi.

Appearances for Parties

For Petitioner : Mr. D. Panda
For Opp. Party : Mr. Sarthak Nayak, Special Public Prosecutor, CBI

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard Mr. D. Panda, learned counsel for the Petitioner and Mr. S. Nayak, learned Special Public Prosecutor for the CBI.

2. The Petitioner is seeking pre-arrest bail in connection with R.C. Case No.17(A) of 2024 pending in the Court of learned Special Judge CBI-I, Bhubaneswar arising out of RC21720240017 of CBI, AC-II, New Delhi for commission of offence punishable under Section 7 read with Sections 8/9/10 of the Prevention of Corruption Act, 1988 (as amended in 2018) and Section 61(2) of the BNS.

3. The allegation against the present Petitioner is that the Petitioner had played pivotal role in the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. demanding and obtaining a sum of Rs.10 lakhs from one Santosh Moharana, Director, M/s. Penta A Studio Pvt. Ltd. as an illegal gratification for clearing the project bills.

4. It is the case of the CBI that on the basis of source information, a trap was laid on 07.12.2024 and the alleged bribe amount of Rs.10 lakhs was recovered from the vehicle of one Debadutta Mohapatra in the presence of the independent witnesses. The allegation against the present Petitioner, who is a Senior Indian Administrative Service Officer, is that he had acquaintance with the named accused Chanchal Kumar Mukherjee, Group General Manager, Bridge & Roof Co. Ltd. which is a Central Public Sector Undertaking during his incumbency as Secretary,

SC & ST Development Department since Bridge & Roof Co. Ltd. was undertaking a projects worth Rs.37 crores of SC & ST Development Department.

It is the further case of the CBI that expensive gifts (a MacBook and a luxury watch) were received by the daughter of the Petitioner from the said Debadutta Mohapatra from whom the money, alleged to have been given as a bribe, was recovered. And, it is the case of the CBI that the Petitioner making a phone call from the phone of named accused Chanchal Kumar Mukherjee prevailed upon the said Debadutta Mohapatra to receive bribe amount of Rs.10 lakhs. It is alleged on the basis of CFSL report that the voice in the call made to Debadutta Mohapatra matched with the voice sample of the Petitioner recorded voluntarily.

5. Learned counsel for the Petitioner, Mr. Panda submitted that the Petitioner is being roped in only because of his acquaintance with the named accused Chanchal Kumar Mukherjee. Oblivious of the fact that the same was in his official capacity as the Secretary of SC & ST Development Department and it is his further submission that the Petitioner appeared before the CBI as and when summoned, ungrudgingly co-operated even giving voice sample. Thus, considering the nature of allegations, custodial interrogation of the Petitioner is not warranted. He also submits that there is no credible material to justify the allegation that Petitioner's daughter received gifts from the said Debadutta Mohapatra.

6. Per contra, learned retainer counsel for the CBI, Mr. Sarthak Nayak, submitted that there is prima facie material to indicate that the Petitioner has actively participated in the alleged crime. He also refutes the submission that the Petitioner has cooperated with the ongoing investigation referring to the objection filed.

As such, he seeks rejection of the pre-arrest bail. Rejoinder has been filed by the Petitioner in response.

7. It is apt to note that the Petitioner along with his wife and daughter filed WP(C) No.5905 of 2025 under Articles 226 and 227 of the Constitution of India in this Court seeking following reliefs;

> "……. the Petitioners seek a direction from this Court to quash the ongoing investigation initiated by the CBI pursuant to FIR No.RC2172024A0017, and further pray for return of seized materials and <u>protection from coercive action alleging procedural illegality,</u> harassment and violation of fundamental rights.."
>
> (Emphasized)

8. Learned counsel for the CBI draws the attention of this Court to Paragraph-8 of the judgment of this Court dated 20.06.2025 in the said WP(C) No.5905 of 2025 wherein referring to the judgment of the Apex Court in the case of ***State of West Bengal vrs. Swapan Kumar Guha***[1], this Court held that "interference would be premature and inappropriate".

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1 AIR 1982 SC 949

In Paragraph-9 of the said judgment (WP(C) No.5905 of 2025), referring to the judgment of the Apex Court in the case of ***Dukhishyam Benupani vrs. Arun Kumar Bajoria***[2], Coordinate Bench of this Court in concluding Paragraph-25 held that "The Petitioners are reprimanded for this ill-advised litigation".

Referring to the same, it is submitted by the learned counsel for the CBI, Mr. Nayak that filing of the present anticipatory bail application is itself an abuse of process of law since all the contentions which are raised in this ABLAPL were threadbare urged and duly rebutted, in the Writ Petition also at the instance of the Petitioner. And, taking note of the rival submissions, this Court came to a finding that such writ petition does not merit consideration.

9. Such submission is opposed by the learned counsel for the Petitioner, Mr. Panda.

This Court finds force in such submission of learned counsel for the Petitioner, Mr. Panda. It is also submitted that in the meanwhile, the Petitioner has assailed the said judgment by filing Writ Appeal which, is yet to be numbered.

10. It is trite that the observations/findings of the Court have to be understood in the factual background of each case and the stage at which the same have been asserted. **(Ref : Islamic Academy of Education and another vrs. State of Karnataka and others)**[3]**.**

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2 (1998) 1 SCC 52

3 (2003) 6 SCC 697 : (Paragraphs 139 - 145)

139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. (See Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj)

140. In Padma Sundara Rao v. State of T.N., it is stated: (SCC p. 540, paragraphs 90) "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board (Sub nom British Railways Board v. Herrington). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases." (See also Haryana Financial Corpn. v. Jagadamba Oil Mills)

141. In General Electric Co. v. Renusagar Power Co., it was held: (SCC p.157, paragraph 20)
"As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes. We do not have any doubt that when the words 'adjudication

11. In Paragraph-26 of the judgment dated 20.06.2025 in WP(C) No.5905 of 2025, Coordinate Bench of this Court had clarified that the observations therein are only for the purpose of deciding the maintainability of the said writ petition filed at the behest of the Petitioner, his spouse and daughter and reference of the Coordinate Bench to "trial" in the said paragraph has to be understood contextually.

11-A. Hence, this Court is persuaded to hold that the present ABLAPL is maintainable and accordingly shall proceed to consider the materials on record independently bereft of dismissal of WP(C) No.5905 of 2025.

12. Learned counsel for the Petitioner, Mr. Panda, submits that there is a patent incongruity in the narration of the FIR and the alleged phone call which is stated to

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of the merits of the controversy in the suit' were used by this Court in State of U.P. v. Janki Saran Kailash Chandra, the words were not used to take in every adjudication which brought to an end the proceeding before the court in whatever manner but were meant to cover only such adjudication as touched upon the real dispute between the parties which gave rise to the action. Objections to adjudication of the disputes between the parties, on whatever ground, are in truth not aids to the progress of the suit but hurdles to such progress. Adjudication of such objections cannot be termed as adjudication of the merits of the controversy in the suit. As we said earlier, a broad view has to be taken of the principles involved and narrow and technical interpretation which tends to defeat the object of the legislation must be avoided."

142. In Rajeshwar Prasad Mishra v. State of WB, it was held:
"No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact."(See also Amar Nath Om Prakash v. State of Punjab and Hameed Joharan v. Abdul Salam.)

143. It will not, therefore, be correct to contend, as has been contended by Mr. Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In Keshav Chandra Joshi v. Union of India, this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in Direct Recruits Class II Engg. Officers' Assn. v. State of Maharashtra, held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom. (See Union of India v. Chajju Ram)."

be the basis to implicate the Petitioner. It is his further submission that he being a responsible public servant cooperated with the ongoing investigation and volunteered for recording of his voice sample. And, the Petitioner all along appeared as and when summoned. Though searches were conducted but no incriminating material has been found.

It is further stated that the accidental damage of two mobile phones being blown out of proportion by the CBI and non-mentioning of the two lockers by his wife during ongoing investigation, probing the role of the Petitioner, is not deliberate but because of the overwhelming circumstances. And, even if the prosecution allegations of the CBI are accepted at its face value, no case under Section 7 of the Prevention of Corruption Act, 1988 is made out against the Petitioner and as such the Petitioner should not be subjected to custodial interrogation.

13. Learned counsel for the Petitioner Mr. Panda, relies on the judgments of the Apex Court in the case of **M.P. Sharma and others vrs. Satish Chandra**[4] **(para11) ,Selvi and others vrs. State of Karnataka**[5]**, Tofan Singh vrs. State of T.N.**[6]**,** inter alia, to canvass that the action of the CBI in recording the voice samples of the Petitioner militates against the doctrine of testimonial compulsion as envisaged under **Article 20(3) of the Constitution of India**[7]**.**

14. Learned counsel for the CBI relies on the judgments of the Apex Court in the case of **Devinder Kumar Bansal vs. The State of Punjab**[8]**, P. Chidambaram vs. Directorate of Enforcement**[9]**, Ritesh Sinha vs. State of Uttar Pradesh and another**[10]**, R.M. Malkani vs. State of Maharashtra**[11] and this Court in the case of **Bishnupada Sethi & others vrs. Central Bureau of Investigation (CBI), New Delhi and others**[12]**,** adverted to herein above.

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4 (1954) 1 SCC 385
5 (2010) 7 SCC 263
6 (2021) 4 SCC 1
7 Article 20(3) of the Constitution of India

20. Protection in respect of conviction for offences
(1) xxx
(2) xxx
(3) No person accused of any offence shall be compelled to be a witness against himself.

8 (2025) 4 SCC 493
9 (2019) 9 SCC 24
10 (2019) 8 SCC 1
11 (1973) 1 SCC 471
12 [WP(C) No.5905 of 2025 disposed of on 20.06.2025]

15. The Apex Court in its order dated 21.03.2023 in the case of **Satender Kumar Antil vrs. Central Bureau of Investigation and another[13],** have clarified that the decision of **Satender Kumar Antil vrs. Central Bureau of Investigation and another[14],** shall apply in equal measure to the cases in which pre-arrest bail is being sought and held that "Anticipatory bail after all is one of the species of a bail".

16. Hence, the submissions of the learned counsel for the parties with reference to the materials on record have to be examined on the anvil of the above dictum of the Apex Court.

17. It is submitted with vehemence by the learned counsel for the Petitioner that merely because of his earlier acquaintance with one of the accused Chanchal Kumar Mukherjee, the Petitioner being made a scapegoat and being hounded and threatened with arrest though he has fully cooperated with the investigation. As already noted, it is submitted that the damage of iPhones and non-disclosure of the lockers are of no significance viewed in the background that there is no prima facie material on record to implicate the Petitioner in the alleged crime.

18. During the course of submission, learned counsel for the CBI has filed a memo to fortify his submission that the present Petitioner was operating WhatsApp in mobile number 9xxxxxxxx6 (Redacted) which is registered in the name of the co-accused Debadutta Mohapatra. The memo is culled out hereunder:

> "…..in support of the arguments made during the hearing on behalf of CBI and in compliance to the Hon'ble Court's order, it is humbly submitted that during investigation, it was revealed that the present Petitioner was operating WhatsApp via mobile number 9xxxxxxxx6 (Redacted), which is registered in the name of the co-accused Debadutta Mohapatra"

The recitals in the said memorandum have been refuted by the Petitioner "as baseless".

19. It is his further submission that there is material to indicate that the named accused Chanchal Kumar Mukherjee had met the present Petitioner just before the trap was laid and it his submission that the voice samples which are voluntarily provided matched with the call that came to one Debadutta Mohapatra from whose vehicle Rs.10 lakhs was recovered and according to the learned counsel for the CBI the same is one of the incriminating materials against the Petitioner.

20. Learned counsel for the Petitioner referring to **Section 349 of BNSS[15]** submits that very recording of the voice sample is an infraction of the said statutory

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13 2023 SCC Online SC 452

14 2022 (10) SCC 51

15 **349 BNSS. Power of Magistrate to order person to give specimen signatures or handwriting, etc.**

provisions which is in the nature of constitutional protection against self-incrimination. And, if the same is likely to be used against the Petitioner, he should have been put to notice. To fortify his submission he heavily relied on the larger Bench decision of the Apex Court in the case of ***M.P. Sharma (supra)***[4].

The issue which was considered in the said decision has been stated in Paragraph-3 of the said judgment which is extracted hereunder;

> "3. The only substantial question, therefore, that has been raised is the one relating to Article 20(3) which runs as follows:
>
> **"20. (3)** No person accused of any offence shall be compelled to be a witness against himself."

21. On a bare perusal of Paragraph-11 of the said judgment, it can be seen that the said observation was in respect of the persons against whom FIR was lodged and were included in the category of the accused therein and therefore they are persons "accused of an offence".

22. It is argued that when protection for testimonial compulsion is available to a person-accused of an offence and cited as an accused that apply in a greater measure in respect of a person, who is not yet cited as an accused.

23. It is apt to note that the decision in the case of ***M.P. Sharma (supra)***[4] came up for consideration before 11 Judges Bench in the case of **State of Bombay vrs. Kathi Kalu Oghad**[16]**.** In Paragraph-16 of the said judgment, the Apex Court recorded the conclusions. In Sub-Para-7 thereof, it has been held that "to bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that <u>he should become an accused, any time after the statement has been made"</u>. (Emphasised).

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample: Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

16 AIR 1961 SC 1808

23-A. In this context reference can also be made to the judgment of the Apex Court in the case of **Mohammed Dastagir vrs. The State of Madras[17],** wherein argument as advanced in the case at hand were put-forth referring to the judgment of the Apex Court in the case of ***M.P. Sharma (supra)[4].*** In the case of **Mohammed Dastagir (supra)[17]**, it was held that "though the offence had in fact been already committed by the appellant, he had not been accused of it at the stage when the currency notes were produced by him. It was also held that it could not be said that he was compelled to produce the said currency notes, because he might easily have refused to produce them, and also there was no occasion for him to invoke the constitutional protection against self-incrimination".

23-B. The correctness of finding of ***Mohammed Dastagir (supra)[17]*** was also questioned in the case of ***Kathi Kalu Oghad (supra)[16]*** and it was held that the judgment in ***Mohammed Dastagir (supra)[17]*** "in our opinion lays down the law correctly".

23-C. It is further clarified in the case of **Veera Ibrahim vrs. The State of Maharashtra[18]** that –

> "……In order to claim the benefit of the guarantee against testimonial compulsion embodied in this clause, it must be shown, firstly, that the person who made the statement was "accused of any offence"; secondly, that he made this statement under compulsion. The phrase "accused of any offence" has been the subject of several decisions of this Court so that by now it is well settled that only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution, would fall within its ambit." (Para-6) (Emphasized)

As such, the submission that voice samples are hit by Clause-3 of Article 20 of the Constitution which deals with testimonial compulsion in the given facts of the present case and alleged infraction of Section 349 of BNSS has to be shunned, inter alia, since admittedly the voice sample was given voluntarily.

24. There is no dispute at the Bar that the Petitioner had volunteered to give the voice sample which allegedly matched with the voice in the call received by Debadutta Mohapatra, from whose vehicle the alleged money given as bribe was recovered. This Court cannot lose sight of the fact that the Petitioner in this case is a highly ranked officer of Indian Administrative Service and was well aware of his Constitutional Rights. Even bereft of such material the damage of both the iPhones of the Petitioner and omissions of his wife, who is also a working lady, to state about the two lockers which were unearthed during ongoing probe and access to the said lockers, just few days before CBI could come to know of it and the lockers having found empty by CBI cannot be brushed aside, as being urged.

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17 17 AIR 1960 SC 756

18 AIR 1976 SC 1167

25. The exact amount of Rs.10 lakhs found when the named accused was taken into custody in tune with the information which was recorded earlier on the basis of which the investigation started also lends credence to the case of the prosecuting agencies. It is also alleged that Petitioner's daughter received a MacBok and a luxury watch worth Rs.1,46,700/- on 6.8.2024 from Debadutta Mohapatra from whom the bribe amount was recovered, as noted. Such allegation is refuted, inter alia, on the ground that there is no seizure to the said effect.

26. While dealing with the power of Section 482 B.N.S.S. (Section 438 Cr.P.C.) relating to an economic offence, the Apex Court has held in the case of ***P. Chidambaram (supra)***[9] that the anticipatory bail is not to be granted as a matter of right and it has to be granted when the Court finds that exceptional circumstances exist to resort to that extraordinary remedy.

26-A. It was further held in the self-same judgment referring to the case ***Directorate of Enforcement vrs. Ashok Kumar Jain***[19] that "in economic offence the accused is not entitled to anticipatory bail"

But as already noted the same has to be construed in the light of the latest decision of the Apex Court in the case of ***Satender Kumar Antil (supra)***[13]**.**

26-B. In ***Devinder Kumar Bansal (supra)***[8]**,** the Apex Court reiterated its deep concern with growing corruption as stated in **Neera Yadav vrs. Central Bureau of Investigation**[20] and held thus;

> "61. Tackling corruption is going to be a priority task for the Government. The Government has been making constant efforts to deal with the problem of corruption. However, the constant legislative reforms and strict judicial actions have still not been able to completely uproot the deeply rooted evil of corruption. This is the area where the Government needs to be seen taking unrelenting, stern and uncompromising steps. Leaders should think of introducing good and effective leadership at the helm of affairs; only then benefits of liberalization and various programmes, welfare schemes and programmes would reach the masses. Lack of awareness and supine attitude of the public has all along been found to be to the advantage of the corrupt. Due to the uncontrolled spread of consumerism and fall in moral values, corruption has taken deep roots in the society. What is needed is a reawakening and recommitment to the basic values of tradition rooted in ancient and external wisdom. Unless people rise against bribery and corruption, society can never be rid of this disease. The people can collectively put off this evil by resisting corruption by any person, howsoever high he or she may be."

In such background, this Court has to decide whether the Petitioner is to be insulated by a pre-arrest bail.

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19 (1998) 2 SCC 105
20 (2017) 8 SCC 757

27. In **State represented by the C.B.I. *vrs. Anil Sharma*[21],** the Apex Court held thus;

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."

28. Considering that the Petitioner is a Senior Officer in the rank of Indian Administrative Service, this Court finds force in the submission of the learned counsel for the CBI that his interrogation being "ensconced" by an order of anticipatory bail would be a fruitless exercise in the light of the materials unearthed.

29. It is often said that power of corruption is like a shadow, it follows those who wield power. The Petitioner undoubtedly has the power being a senior official of the Indian Administrative Service. On a conspectus of materials on record, whether corruption is his shadow merits probe unhindered and unimpeded by the exceptional remedy of pre-arrest bail.

30. Accordingly, the ABLPAL stands rejected.

Interim order dated 03.07.2025 stands vacated.

31. It is needless to state that the observations made hereinabove are only for the purpose of consideration of the Petitioner's prayer for pre-arrest bail and the same ought not to be considered as this Court expressing any opinion regarding complicity of the Petitioner which has to be probed independently.

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

Result of the case:
ABLAPL rejected.

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21 (1997) 7 SCC 187

2025 (II) ILR-CUT-1256

SUSHANT KUMAR & ORS.
V.
CENTRAL UNIVERSITY OF ODISHA, KORAPUT & ORS.

[W.P.(C) NO. 4610 OF 2023]

WITH

[W.P.(C) NOS. 11725, 11593 & 13022 OF 2019, 24456, 24544, 23982, 23980, 24474 & 24458 OF 2024]

02 MAY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the petitioners continuing in regular sanctioned post are eligible for regularization/ absorption.

Headnotes

CENTRAL UNIVERSITY ACT, 2009 – Section 18 (6) r/w Para 10 (f) UGC Regulation, 2018 – Regularization of Contractual Lecturers/ Assistant Professors – Pursuant to the advertisements/notices issued by the authorities of Central University of Odisha, petitioners were engaged as Guest Faculty/Junior Consultant/ Lecturer on Contract basis vide different orders starting from 15.07.2015 to 05.06.2018 – It is admitted that, the appointment was made against the regular sanctioned posts and the petitioners have the required qualification to teach at under Graduate and Post Graduate level – Whether the petitioners continuing in regular sanctioned post are eligible for regularization/ absorption.

Held: Yes – All the petitioners were engaged on temporary basis as Lecturer on Contract pursuant to the selection process initiated by the University vide Annexure-E series to the counter affidavit – Taking into account the fact that the petitioners were all engaged as Lecturer on contract against sanctioned regular post in terms of the selection process initiated under Annexure-E series and petitioners since possess the required qualification to hold the post of Asst. Professor on regular basis, placing reliance on the decisions so cited (supra), this Court is of the view that petitioners are eligible and entitled to get the benefit of absorption in their respective posts in which they are engaged vide orders issued under Annexure-1 series. (Para 7.4)

Citations Reference

Karnataka State Private College Stop-Gap Lecturers Association, **(1992) 2 SCC 29;** Vinod Kumar and Others Vs. Union of India, **2024 INSC 332;** Somesh Thapliyal and Another Vrs. Vice Chancellor, H.N.B. Garhwal University and Another, **(2021) 10 SCC 116 (Civil Appeal No.8157 of 2024);** Shripal and Another Vrs. Nagar Nigam Ghajiabad **decided on 31.01.2025 (SLP (Civil) No.16944 of 2022;** Maitreyee Chakraborty Vs. The Tripura University and Others, **decided on 22.08.2024;** Subrat Narayan Das and Others Vrs. State of Odisha and Others, **2022(II) OLR P-658 – referred to.**

List of Acts

Central University Act, 2009; University Grants Commission Regulation, 2018.

Keywords

Regularization; Absorption; Regular sanctioned post; Contractual appointment; Lecturer; Assistant Professor; UGC

Case Arising From

Seeking indulgence of the Court with a prayer to regularize the services of the petitioners.

Appearances for Parties

For Petitioners : Mr. C.K. Agrawal

For Opp. Parties : Mr. B. Routray, Sr. Adv., Mr. S. Behera (O.P. Nos. 1 & 2)
Mr. T.K. Satapathy, (O.P. No. 3)

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. Since the issue in the present batch of Writ Petitions revolves around continuance and/or regularization of the services of the petitioners, all the matters were heard analogously and disposed of by the present common order. However, taking into account the fact that all the relevant pleadings are available in W.P.(C) No.4610 of 2023, the same was taken as the lead case for adjudication of the dispute involved.

2. It is the case of the petitioners in the present batch of Writ Petitions that pursuant to the advertisement issued at different point of time by the authorities of

Central University of Odisha (In short "University"), petitioners were all engaged as Guest Faculty/Junior Consultant/Lecturer (on contract) vide different orders issued by the University under Annexure-1 series.

2.1. It is contended that petitioners were so engaged basing on the notice/advertisement issued by the University vide Annexure-E Series to the counter affidavit so filed by the Opp. Party-University. It is contended that on being so engaged as against the post of Guest Faculty/Lecturer on contract vide order issued under Annexure-1 series pursuant to the notice/advertisement issued under Annexure-E series to the counter affidavit on consolidated remuneration basis vide subsequent orders issued under Annexure-2 series, engagement of the petitioners were extended by treating them as contractual appointees.

2.2. It is also contended that taking into account such continuance as Lecturer on contract, petitioners were allowed and taken as members in different committees constituted by the University vide different office orders/notifications issued by the University under Annexure-3 series. Not only that vide order issued on 30.10.2017 under Annexure-4, consolidated remuneration of such Lecturers on contract was revised to Rs.30,000/- per month w.e.f. 01.11.2017 and all Lecturers engaged on contract were designated as "Lecturer on Contract". Vide the said order, it was also indicated that after implementation of the 7th CPC Pay Scale in Central University of Odisha, remuneration of such lecturers on contract will be enhanced to Rs.35,000/- per month.

2.3. It is contended that while so continuing with due extension of the engagement vide different orders issued by the University, when vide office order dated 01.07.2019 under Annexure-8, petitioners were relieved from their services w.e.f. 30.06.2019 and the University issued a fresh advertisement on 01.07.2019 under Annexure-9 for empanelment of Guest Faculty in different discipline so occupied by the petitioners, challenging such relieve order issued on 01.07.2019 under Annexure-8 and the walk-in-interview fixed in terms of the advertisement issued on 01.07.2019 under Annexure-9, petitioners approached this Court by filing W.P.(C) No.11725 of 2019, W.P.(C) No.11593 of 2019 and W.P.(C) No.13022 of 2019.

2.4. This Court vide order dated 22.07.2019 and 06.08.2019 under Annexure-10 series, directed for maintenance of status-quo with regard to the posts held by the petitioners. This Court vide another order issued under Annexure-10 series also held that selection process pursuant to the advertisement dated 01.07.2019 under Annexure-9 may continue but no final decision shall be taken without leave of the Court.

2.5. It is also contended that subsequent to order dated 01.07.2019 under Annexure-8, when vide notification dated 17.07.2019, a direction was issued to the petitioners not to occupy any space or position in the academic departments, this Court vide order dated 22.07.2019 in W.P.(C) No.11593 of 2019, passed a further

order by directing the University to allow the petitioners to continue in the Department as before as they were continuing prior to 30.06.2019.

2.6. It is also contended that while so continuing in terms of the interim order passed under Annexure-10 series, petitioners herein claiming equal pay for equal work, approached this Court by filing W.P.(C) No.4052 of 2022. This Court vide order dated 28.11.2022 under Annexure-11, disposed of the Writ Petition with the following direction, so contained in Para-8 of the said order:-

> *"8. In such view of the matter, since the petitioners are continuing in the very same post and are discharging their responsibilities, they are entitled for 'equal pay for equal work' at par with their counterparts, as has been indicated above, and as such, the relief sought by the petitioners is admissible. Accordingly, this writ petition stands disposed of directing the opposite parties to pay the 'equal pay for equal work' to the petitioners at par with similarly situated persons, as mentioned above in terms of the 6th Pay Commission and the dues admissible to the petitioners shall be paid, as expeditiously as possible, preferably within a period of three months from the date of production of certified copy of this order."*

2.7. It is contended that while the matter stood thus and petitioners basing on the order of engagement issued under Annexure-1 series and subsequent orders issued under Annexure-2 series and further orders issued under Annexures-3 & 4, were continuing in their respective posts, the impugned advertisement was issued on 23.01.2023 under Annexure-12, inviting applications to fill up the post of Asst. Professor on regular basis in different departments of the University, which includes the departments where the present petitioners are continuing.

2.8. Challenging such advertisement issued on 23.01.2023 under Annexure-12, W.P.(C) No.4610 of 2023 was filed and with a further prayer to direct the University to absorb petitioners against the post in which they are continuing, without insisting them to undergo rigors of the selection process.

2.9. It is contended that this Court while issuing notice of the matter vide order dated 16.02.2023 passed an interim order to the following effect:-

> *"In the interim, it is observed that without prejudice to the claim as made in the Writ Petition, the petitioners may make their applications pursuant to the notification issued by the University on 23.01.2023 under Annexure-12. The University is free to proceed with the selection process pursuant to Annexure-12 but no final decision shall be taken without leave of this Court till the next date."*

2.10. It is contended that pursuant to the interim order passed by this Court on 16.02.2023, all the petitioners made their applications pursuant to the notification issued by the University on 23.01.2023 under Annexure-12 and participated in the selection process. However, when only one of the petitioner i.e. Petitioner No.6 in W.P.(C) No.4610 of 2023, was found eligible and his name was recommended for his appointment in the department of Mathematics, this Court considering the application filed by the University in I.A. No.15713 of 2023, modified the interim order dated 16.02.2023 to the following effect :-

"While modifying the order, this Court permits Opp. Party-University to fill up the post of Assistant Professor in different discipline from amongst the recommended candidates including Petitioner No.6 in W.P.(C) No.4610 of 2023, who was so recommended save and except filling up required number of posts so held by the other petitioners".

2.11. It is contended that in terms of the interim order passed by this Court in W.P.(C) No.11725 of 2019, W.P.(C) No.11593 of 2019 and W.P.(C) No.13022 of 2019 and the interim order passed in the present case on 16.02.2023 so modified vide order dated 23.11.2023, all the petitioners are continuing as Lecturer on Contract as on date.

2.12. Learned counsel for the petitioners however contended that since the petitioners were all engaged by facing due selection process pursuant to the advertisement/notification issued by the University at different point of time vide Annexure-E series to the counter affidavit and all the petitioners were so engaged against sanctioned regular post and petitioners also possess the required qualification to teach in Under Graduate and Post Graduate level, they are eligible and entitled to be absorbed as against the post in which they were initially engaged vide orders issued under Annexure-1 series, save and except Petitioner No.6, who in the meantime has already been appointed as against the regular post of Assistant Professor in the department of Mathematics, pursuant to Annexure-12.

2.13. It is contended that in the counter affidavit so filed by the Opp. Party-University, O.P. Nos.1 & 2 have clearly admitted that petitioners were appointed as Lecturer on Contract against sanctioned regular post. It is also admitted in the counter affidavit that petitioners possess required qualification to teach in Under Graduate and Post Graduate Level and accordingly they were selected as Lecturer on Contract vide their initial orders of appointment. Stand taken in Para-25 of the counter affidavit reads as follows:-

"25. That, in response to para-16 the Opp.Parties humbly submitted that in this application, as follows:-

a) Direct Recruitment for regular posts are not filled by Walk-in-interviews.

b) Petitioners were appointed as Lecturer on-Contract against sanctioned regular posts, so that, their salaries may be paid out of allocation under the Salary Budget head.

c) The petitioners possess required qualification to teach at under graduate and post graduate level hence, were selected as Lecturer-on-Contract in their initial appointment.

d) The petitioners have opportunity for regular appointment by competing with other eligible candidates by advertisement no.03/2023. They have not been debarred from applying or competing."

2.14. It is contended that since the petitioners have got the required qualification and they are all appointed as Lecturer on Contract against sanctioned regular post by

facing due selection process pursuant to the advertisement issued by the University under Annexure-E series, in view of the decisions of the Hon'ble Apex Court in the case of ***Karnataka State Private College Stop-Gap Lecturers Association, (1992) 2 SCC 29, Vinod Kumar and Others Vs. Union of India, 2024 INSC 332, Somesh Thapliyal and Another Vrs. Vice Chancellor, H.N.B. Garhwal University and Another, (2021) 10 SCC 116 (Civil Appeal No.8157 of 2024) Shripal and Another Vrs. Nagar Nigam Ghajiabad decided on 31.01.2025 (SLP (Civil) No.16944 of 2022 (Maitreyee Chakraborty Vs. The Tripura University and Others, decided on 22.08.2024.*** Hon'ble Apex Court in Para-1 and 7 of the judgment passed in the case of ***Karnataka State Private College Stop-Gap Lecturers Association*** has held as follows::-

> *"1.Teachers appointed temporarily for three months or less, by privately managed degree colleges receiving cent per cent grant-in-aid, controlled administratively and financially by the Educational Department of the State of Karnataka, seek regularisation of their services by invoking principle of equitable estoppel arising from implied assurance due to their continuance, as such, for years with a break of a day or two every three months. Another basis for direction to regularise is founded on denial of similar treatment by the State as has been extended to contract teachers and local teachers appointed in government or vocational colleges. Payment of fixed salary instead of regular emoluments for eight months in a year and that too for number of years is yet another grievance.*
>
> *xxx xxxx xxxx xxxx*
>
> *7. So far these petitioners and teachers similarly situated are concerned, it could not be disputed that many of those teachers who appeared for selection in pursuance of the High Court order secured sufficiently high marks but they could not be regularised because the vacancies are said to be reserved. But what has been lost sight of is that petitioners are seeking regularisation on posts on which they have been working and not fresh appointments, therefore, they could not be denied benefit of the High Court's order specially when no such difficulty was pointed out and it was on agreement by the respondents that the order was passed. No material has been brought on record to show that any action was taken prior to decision by the High Court against any institution for not following the reservation policy. To deny therefore the benefit of selection held on agreement by the respondents is being unjust to such selectees. Further the State of Karnataka appears to have been regularising services of adhoc teachers. Till now it has regularised services of contract lecturers, local candidates, University lecturers, Engineering colleges, lecturers etc. It may not furnish, any basis for petitioners to claim that the State may be directed to issue similar order regularsing services of teachers of privately managed colleges. All the same such policy decisions of government in favour of one or the other set of employees of sister department are bound to raise hopes and expectations in employees of other departments. That is why it is incumbent on governments to be more circumspect in taking such decisions. The petitioners may not be able to build up any challenge on discrimination as employees of government colleges and private colleges may not belong to the same class yet their claim cannot be negatived on the respondents' stand in the counter affidavit that the regularisation of temporary teachers who have not faced selection shall impair*

educational standard without explaining the effect of regularisation of temporary teachers of University and even technical colleges. Such being the unfortunate state of affairs this Court is left with no option but to issue following directions to respondents for not honoring its commitments before the High court and acting contrary to the spirit of the order, and also due to failure of government in remaining vigilant against private management of the college by issuing timely directions and taking effective steps for enforcing the rules:

(1) Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.

(2) If regular selections have been made the government shall create additional posts to accommodate such selected candidates.

(3) The teachers who have undergone the process of selection under the directions of the High Court and have been appointed because of the reservation policy of the Government be regularly appointed by creating additional posts.

(4) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post.

(5) Such teachers shall be continued in service even during vacations."

2.15. Hon'ble Apex Court in Para-5 to 8 of the judgment passed in the case of ***Vinod Kumar*** as cited (supra) has held as follows:-

"5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or

interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognize the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."

2.16. Hon'ble Apex Court in Para-34,36, 37, 43, 45 to 52 of the judgment passed in the case of ***Somesh Thapliyal v. HNB Garhwal University, (2021) 10 SCC 116*** has held as follows:-

"34. *The appointments were made of the teaching faculty (Assistant Professor-Lecturer and Associate Professor-Reader) in accordance with the procedure prescribed under Chapter VI of the 1973 Act, pursuant to an Advertisement No. 34 dated 4-2-2004 and later by Advertisement No. 39 dated 19-5-2006 for holding regular selection of various faculties including the faculty of pharmaceutical sciences.*

36. *After the recommendations were finally approved by the Executive Council, appointments were made by the Vice-Chancellor of the University and at this stage, for the first time, arbitrary conditions were incorporated in the letter of appointment making appointment to be contractual for a period of three years in the first instance which came to be extended at the later stage.*

37. *From the narration of facts as being referred to supra, it clearly manifests that the appellants were appointed after going through the process of selection as contemplated under Part VI of the 1973 Act which indeed was an appointment on substantive basis and since the appellants were not in an equal bargaining position and were in the need of employment when the offer of appointment was made, were left with no option but to accept such arbitrary conditions incorporated in the letter of appointment in treating it*

to be contractual for a limited period still recorded their protest while joining but no heed was paid. When they were allowed to continue by extending their services, they remained under the bona fide belief that as their appointment is being substantive in character, they will be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29-8-2011 came to be notified by the respondent Central University, no option was left with them but to approach the High Court by filing of a writ petition.

Xxxx xxxx xxxx xxxx

43. *The bargaining power is vested with the employer itself and the employee is left with no option but to accept the conditions dictated by the authority. If that being the reason, it is open for the employee to challenge the conditions if it is not being in conformity with the statutory requirement under the law and he is not estopped from questioning at a stage where he finds himself aggrieved.*

Xxxx xxxx xxxx xxxx

45. *The term "substantive appointment" is not so defined in the legal dictionary but has been referred in the service jurisprudence by the recruiting authority while framing Rules under Article 309 of the Constitution and what is being termed "substantive appointment" can be gathered from the U.P. Sales Tax Officers (Grade II) Service Rules, 1983. The relevant extract is as under:*

"substantive appointment" means an appointment, not being an ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and, if there are no rules in accordance with the procedure prescribed for the time being by executive instructions, issued by the Government."

46. *The definition of "substantive appointment" can further be noticed under Rajasthan Administrative Service Rules, 1954 as under:*

"4. (n) "substantive appointment" means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period."

47. *Almost similar nature of rule is available in the services where the recruiting authority has defined what is held as "substantive appointment" under the Recruitment Rules framed under Article 309 of the Constitution and this clearly defines that an appointment made in accordance with the scheme of Rules are held to be substantive appointment.*

48. *Adverting to the facts of the case, undisputedly, the appellants were appointed pursuant to an advertisement dated 4-2-2004 and 19-5-2006 held for regular selection and after going through the process of selection as being provided under Chapter VI of the 1973 Act and on the recommendations been made by the statutory Selection Committee, constituted under Sections 31(1) and (4) of the Act and approved by the Executive Council, which is a statutory authority, appointments were made in the year 2004 and 2007 respectively.*

49. *In our considered view, once the appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in*

character and could be made permanent as and when the post is permanently sanctioned by the competent authority.

50. *In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes.*

51. *Thus, it can safely be held that the appellants became entitled to claim their appointment to be in substantive capacity against the permanent sanctioned post and become a member of the teaching faculty of the Central University under the Act 2009.*

52. *Consequently, the appeals succeed and are accordingly allowed. The judgment of the Division Bench of the High Court dated 19th August, 2013 is hereby quashed and set aside. The appellants shall be treated to be substantively appointed teachers (Associate Professor/Assistant Professor) and members of service of the Central University, namely, HNB Garhwal University for all practical purposes, entitled for a pay scale and notional consequential benefits admissible to a regularly appointed teacher in the service of the Central University under the Act 2009. No costs."*

2.17. Hon'ble Apex Court in Para-15, 16 and 18, of the judgment passed in Civil Appeal No.8157 of 2024 in the case of ***Shripal and Another*** as cited (supra) has held as follows:-

15. *It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records—despite directions to do so—allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfill ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite "temporary" employment practices as done by a recent judgement of this court in Jaggo v. Union of India3 in the following paragraphs:*

"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

……

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

• Misuse of "Temporary" Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

• Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

• Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

• Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

• Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."

***16.** The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.*

Xxxx xxxxxx xxxxxx

***18.** The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:*

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until

actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."

2.18. Hon'ble Apex Court in Para-26 to 30, 32 to 34 and 36 of the judgment passed in the case of ***Maitreyee Chakraborty*** as cited (supra) has held as follows:-

"26. *The Appellant went through the normal process of selection. The employment notice set out that appointment made to the posts against LIEN vacancies are likely to be regularized subject to vacation of lien and satisfactory performance. The lien admittedly got vacated. The performance has been satisfactory as nothing adverse had been pointed out and the Appellant is discharging the duties for more than seven years. While approving the panel of names also it was clearly mentioned that in case the candidate at Serial No.1 – Sri. Brij Mohan Pandey did not accept the offer, the Appellant was to be accommodated against the regular vacancy. This clearly demonstrates that all the applicants competed for the regular post also and no one from the open market could have been prejudiced. Most importantly, the offer of appointment also stated that in case the lien was vacated, the Appellant's service was to be continued further with the approval of the Executive Council of the University.*

27. *In this background, particularly when the Appellant was put through the fire test of a regular selection, was the University justified in denying her confirmation when all the contingencies were cleared with the vacation of the lien and the performance being satisfactory? We think not. The University cannot be heard to say:- 'may be the lien is vacated, and your performance is satisfactory, but we do not want to confirm your service'. The Respondent-University, being a statutory body, any such conduct would tantamount to an arbitrary and unreasonable exercise of power, apart from being unfair. The discretion vested in the Executive Council should be exercised in a fair and nonarbitrary manner. It cannot be based on the whim and caprice of the decision-making authority. If asked to justify, the Executive Council must have good reasons to defend the exercise of power. In this case, alas, there are none. The resolution of the Executive Council denying confirmation and preferring re-advertisement is delightfully vague and offers no justification. The justification desperately attempted in the counter affidavit to defend the decision has, as demonstrated above, come a cropper.*

28. *In Somesh Thapliyal (supra) it was held as under:-*

"49. In our considered view, once the Appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the

post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.

50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present Appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes."

29. *Mehar Fatima Hussain (supra), while following Somesh Thapliyal (supra), held on the facts of that case that where appointment was after undergoing a regular selection process and the incumbents possess the relevant qualification, they should have been continued on the posts merged with the regular establishment of the University instead of adopting a fresh selection procedure. Further in that case the University's action of not continuing the incumbents and starting a fresh selection process was held to be unjust, arbitrary and violative of Article 14 of the Constitution of India. Directions to continue the employment were given. On the facts of the present case too we are inclined to adopt a similar course.*

30. *Considering the facts obtaining in the present case, we are inclined to hold that, in the absence of any material indicating unsatisfactory performance, in the ordinary course of things, fair and just exercise of power would require that the Appellant be confirmed against the vacancy since there was no more a lien being exercised by Dr. Praveen Kumar Mishra. The reasoning given by the learned Single Judge and of the Division Bench, as demonstrated above, are fallacious. The Appellant has, after undergoing the regular selection process, been working since 17.01.2017, for the last seven years and approximately six months. Even in the impugned order, pending the proposed re-advertisement, she was continued in service.*

Xxxx xxxx xxxx xxxx

32. *In Ram Pravesh Singh and Others vs. State of Bihar and Others, (2006) 8 SCC 381, this Court observed that the repository of the legitimate expectation is entitled to an explanation as to the cause for denial of the expected benefit flowing from the representation held out. Ram Pravesh Singh (supra) was recently followed by the Constitution Bench in Sivanandan C.T. and Others vs. High Court of Kerala and Others, (2024) 3 SCC 799. Chief Justice D.Y. Chandrachud, speaking for the Constitution Bench, after felicitously tracing the entire history of the development of the doctrine of legitimate expectation, held in para 18 as under:-*

"18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure."

33. *In the said judgment of the Constitution Bench, it was further held following Food Corporation of India vs. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 that*

public authorities have a duty to use their powers for the purpose of public good and that the said duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non- arbitrary manner. One of the exceptions recognized in the above judgment is that the doctrine of legitimate expectation will cede to larger public interest.

34. *In the present case, the only explanation given in the counter affidavit of the State was that the University had discretion and that the denial of regularization and the decision to re-advertise was in the larger interest of the candidates who had not applied as the post was under lien. This explanation found favour with the High Court. However, we have in our discussion above, demonstrated that one of the post of the Assistant Professor (Law) was clearly a regular post in the Unreserved Category. We have found that no prejudice to public interest could have been caused as eligible candidates desiring the appointment would have anyway applied to compete for the regular slot. In view of this, in the facts of the present case, we find that the legitimate expectation was not outweighed by any overriding public interest.*

xxxx xxxxx xxxxx

36. *In view of the aforesaid, we set aside the judgment of the learned Single Judge dated 04.12.2019 and of the Division Bench dated 20.06.2022. We also set aside the Resolution in Agenda No.18/32/2018 of the 32nd Meeting of the Executive Council held on 13.12.2018 insofar as it records that the Appellant is not confirmed in service and that the post should be re-advertised. We also set aside the letter of the Registrar dated 06.02.2019 directing that her services will not be continued beyond 28.02.2019. We further issue a writ of mandamus directing the Respondent-University to place the Appellant's case for confirmation before the Executive Council and that the Executive Council and the Respondent-University shall pass appropriate resolution/order(s), in accordance with the findings given in the present judgment. The said exercise is to be carried out within four weeks' time. The Appellant should also be given all consequential benefits."*

2.19. Reliance was also placed to a decision of this Court reported in ***2022(II) OLR P-658 (Subrat Narayan Das and Others Vrs. State of Odisha and Others).*** This Court in Para-22 to 27 of the judgment has held as follows:-

"22. In view of such position, if the Petitioners have been allowed to continue for a quite long period on contractual basis, due to financial crunch, they cannot be thrown out stating that they were not recruited as per the provisions of BPUT Act and the Rules framed thereunder. Therefore, the Petitioners' case should be taken into consideration for regularization of their services.

23. On the basis of the materials available on record, this Court is of the firm view that the Petitioners were engaged against sanctioned posts by following due process of selection, pursuant to the advertisements issued. And, because of satisfactory performance, even though they were appointed for a period of one year, their services have been extended time to time and in the meantime, they have gained experience of more than 16 years. The contention raised that because of the interim order passed by this Court, they have been allowed to continue, does not stand to reason, in view of the fact that once the Petitioners are continuing against sanctioned posts, if the advertisements were issued for filling up those posts, the Court, having considered the gravity of the issue, passed interim orders protecting the interest of the Petitioners and, ultimately, the Authorities themselves have withdrawn those advertisements realizing the fact that the Petitioners are continuing against those posts. Therefore, the contention that by virtue of the interim orders they have been continuing, cannot have any

justification, rather, the Opposite Party No.4 has tried to exploit the Petitioners. In the circumstances, a right has already accrued in favour of the Petitioners for seeking regularization of their services. The Petitioners' right to seek for regularization of services, cannot be set at naught by relying on a clause that they cannot ask for regularization. In the considered view of this Court scion clause is a Henry VIII clause, smacks of arbitrariness and hence such arbitrary clause cannot be sustained in the eye of law.

24. Mr. S. Palit, learned Senior Advocate laid emphasis on the judgment of the apex Court in Union of India v. N. Murugesan, (2022) 2 SCC 25 and contended that the provisions of Contract Act, 1872 and principle of approbate and reprobate are applicable to the present case. This Court is of the considered view that the principle, which has been referred to, is applicable to the facts and circumstances of that case only, as because in that case an advertisement was made to fill up the post of Director General either by direct recruitment or on deputation in tune with Central Power Research Institute (Pay, Recruitment and Promotion) Rules, 1989. The respondent had applied for the said post being eligible to be appointed on direct recruitment. The approval for appointment of respondent was given for an initial tenure of five years or until further orders, with a further direction that the respondent would be eligible for reappointment for a further term up to the date of his superannuation. On finding his tenure coming to an end, the respondent submitted a representation after about four years and nine months from the date of his joining, taking a stand that since his appointment was made by way of direct recruitment, he should be treated as a regular employee and therefore, to be continued till the date of his superannuation.

25. The factual matrix of the judgment, as referred to above, being distinguishable from that of the Present Petitioners, on the basis of the ratio decided by the apex Court, as mentioned in the foregoing paragraphs, the Petitioners' service should have been regularized. But the Tribunal, without considering the case of the Petitioners in proper perspective, has come to an erroneous conclusion and dismissed the Original Applications filed by the Petitioners.

26. In view of the facts and law, as discussed above, this Court is of the considered view that the order dated 03.10.2016 passed by the Tribunal cannot be sustained in the eye of law and is liable to be quashed and hereby quashed.

27. Consequentially, this Court is of the considered view that the Opposite Parties should absorb the Petitioners on regular basis against sanctioned vacant posts taking into account the length of service rendered by them in their respective posts, in which they are continuing, without insisting upon them to undergo the rigors of the selection procedure, since they were engaged by following due process of selection in a transparent manner conducted by the Authority through the selection committee on contractual basis and are continuing for more than 16 years. The Petitioners being not backdoor entrants to the service and admittedly their performance having been found to be satisfactory for more than a decade and half, Opposite Party No.4 should extend all consequential benefits, as due and admissible in accordance with law, as expeditiously as possible, preferably within a period of four months. Ordered accordingly."

2.20. It is contended that in view of the continuance of the petitioners for more than 7 years in each of the cases and their continuance as against sanctioned regular post, in view of the decisions as cited (supra), petitioners are eligible and entitled to get the benefit of absorption in their posts in the respective departments. It is accordingly contended that appropriate direction be issued to the University to

absorb the petitioners against regular post in different departments in which petitioners are so continuing in terms of the order of engagement issued under Annexure-1 series.

3. Mr. B. Routray, learned Senior Counsel appearing for the University-O.P. Nos.1 and 2 along with Mr. Sarbeswar Behera, learned counsel on the other hand made his submission basing on the stand taken in the counter affidavit so filed by the University. It is contended that the impugned advertisement dated 23.01.2023 was issued by the University under Annexure-12 to fill up the post of Assistant Professor on regular basis in various departments of the University. The recruitment is to be conducted in accordance with UGC Regulations, 2018, AICTE Regulations, 2019, NCTE Regulations, 2014 as applicable.

3.1. It is contended that pursuant to the interim order passed by this Court on 16.02.2023, all the petitioners participated in the selection process in terms of Annexure-12. Save and except Petitioner No.6, all failed to qualify and accordingly in terms of further orders passed by this Court on 23.11.2023, all the recommended candidates in different departments including Petitioner No.6, have been appointed on regular basis. But in view of the interim order passed by this Court initially in the Writ Petitions filed in the year 2019 and the interim order passed by this Court in the present Writ Petition, all the petitioners are continuing as Lecturer on Contract. It is contended that since all the petitioners except Petitioner No.6 have failed to qualify the selection in terms of Annexure-12 they don't have any right to continue any further.

3.2. It is contended that as provided under the UGC Regulation, 2018 so issued by the UGC vide Notification dated 18.07.2018 under Annexure-D to the counter affidavit, petitioners were appointed on contract basis in terms of the provisions contained under Para-13 of the said regulation. Para-13 of the Regulation reads as follows:-

> ***"13. Appointments on Contract Basis***
>
> *The teachers should be appointed on contract basis only when it is absolutely necessary and when the student-teacher ratio does not satisfy the laiddown norms. In any case, the number of such appointments should not exceed 10% of the total number of faculty positions in a College/University. The qualifications and selection procedure for appointing them should be the same as those applicable to a regularly-appointed teacher. The fixed emoluments paid to such contract teachers should not be less than the monthly gross salary of a regularly appointed Assistant Professor. Such appointments should not be made initially for more than one academic session, and the performance of any such entrant teacher should be reviewed for academic performance before reappointing him/her on contract basis for another session. Such appointments on contract basis may also be resorted to when absolutely necessary to fill vacancies arising due to maternity leave, child-care leave etc."*

3.3. It is also contended that Para-4 of the Regulation prescribes the qualification for direct recruitment to the post of Assistant Professor. Similarly, Para-10 of the Regulations provides the counting of previous regular service for direct recruitment and promotion under Career Advancement Scheme of a Teacher as Asst. Professor, Associate Professor, Professor or any other nomenclature. Para-10(f) of the said Regulation provides that previous adhoc or temporary or contractual service (by whatever nomenclature it may be called) shall be counted for direct recruitment and for the promotion, provided that essential qualification of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.

3.4. It is contended that since in terms of Regulation 13 of 2018 Regulation, petitioners were all appointed on contract basis, petitioners have got no right to claim absorption as against such posts in which they were appointed on contract basis. Similarly, Regulation 6 of the Regulation provided the criteria for regular selection of Asst. Professor/Associate Professor/ Professor/ Sr. Professor in Universities and Colleges.

3.5. It is also contended that as provided under Regulation 6.2 of the Regulations, the constitution of the selection committee and selection procedure as well as the assessment criteria and methodology of the above cadres, either through direct recruitment or through Career Advancement Scheme, shall be in accordance with these regulations. It is contended that though it is not disputed that all the petitioners were engaged as Lecturer on Contract as against regular sanctioned post and petitioners also do possesses the required qualification to hold the post in question, but since petitioners save and except Petitioner No.6, failed to qualify the selection in terms of Annexure-12 notification, petitioners are not eligible and entitled to get the benefit of absorption as prayed for.

3.6. It is contended that since petitioners have failed to qualify the selection process in terms of Annexure12, their further continuance is not in the interest of the University and they are continuing because of the interim order passed by this Court in the Writ Petitions filed in the year 2019 and the interim order passed in the present Writ Petition.

3.7. Learned Senior Counsel appearing for the University also contended that in terms of the provisions contained under Section 18 of the Central University Act, 2009 (In short "the Act"), there shall be a Selection Committee for making recommendations to the executive council for appointment to the post of Professor/Associate Professor/Asst. Professor, Registrar etc. maintained by the University. Section 18(2) of the said Act provides the constitution of Selection Committee for appointment to different posts which includes the post of Asst. Professor. Section 18(6) of the said Act further provides for appointment to temporary post in the manner indicated below. Section 18(6) of the Act reads as follows:-

"(6) Appointments to temporary posts shall be made in the manner indicated below:-

(i) If the temporary vacancy is for duration longer than one academic session, it shall be filled on the advice of the Selection Committee in accordance with the procedure indicated in the foregoing clauses:

Provided that if the Vice-Chancellor is satisfied that in the interest of work it is necessary to fill the vacancy, the appointment may be made on a purely temporary basis on the advice of a local Selection Committee referred to in sub-clause (ii) for a period not exceeding six months.

(ii) If the temporary vacancy is for a period less than a year, an appointment to such vacancy shall be made on the recommendation of a local Selection Committee consisting of the Dean of the School concerned, the Head of the Department and a nominee of the Vice-Chancellor.

Provided that if the same person holds the office of the Dean and the Head of the Department, the Selection Committee may contain two nominees of the Vice-Chancellor.

Provided further that in the case of sudden casual vacancies of teaching posts caused by death or any other reason, the Dean may, in consultation with the Head of the Department concerned, make a temporary appointment for a month and report to the Vice-Chancellor and the Registrar about such appointment.

(iii) No teacher appointed temporarily shall, if he is not recommended by a regular Selection Committee for appointment under the Statutes, be continued in service on such temporary employment, unless he is subsequently selected by a local Selection Committee or a regular Selection committee, for a temporary or permanent appointment as the case may be."

3.8. Placing reliance on the provisions contained under Section 18(6)(iii) of the Act, learned Senior Counsel contended that since the petitioners were appointed on temporary basis and are not recommended by the Regular Selection Committee for appointment under the statutes, they are not eligible to continue in service on such temporary employment. It is contended that since in terms of Annexure-12 notification, petitioners were not recommended by the selection committee for their appointment as against the post of Assistant Professor in the concerned department on regular basis, they are not eligible to continue in service on such temporary employment. It is accordingly contended that petitioners are neither eligible for their absorption in the concerned department as prayed for, but also they are not eligible to continue any further on such temporary employment.

3.9. Making all these submissions learned Senior Counsel appearing for the University contended that petitioners are not eligible and entitled to get the benefit as prayed for and the Writ Petition is liable for dismissal with vacation of the interim order.

4. To the submissions made by learned Senior Counsel appearing for the University, learned counsel for the petitioners made further submission basing on the stand taken in the rejoinder affidavit. It is contended that as admitted in the counter affidavit, the University was established in the year 2009 with the

sanctioned strength of 22 Professors, 43 Associate Professors and 88 Asst. Professors. Pursuant to the selection process initiated by the University at different point of time, the university could recruit 2 Associate Professor and 15 Asst. Professor till the date of filing of the present Writ Petition. Stand taken in Para-13 of the counter affidavit reads as follows:-

> *"13. That, in response to para-3 the Opp. Parties humbly submitted that in this application, the university was established in the year 2009 with a sanctioned strength of Professor 22, Associate Professor 43, Assistant Professors 88. The university could recruit 2 Associate Professors and 15 Assistant Professors till the date of the WP and selection process for appointment of Professors, Associate Professors and Assistant Professors is going on which has been challenged in this WP."*

4.1. It is also contended that subsequent to engagement of the petitioners vide different orders issued under Annexure-1 series, the University though made various attempt to fill up the posts on regular basis vide advertisements issued vide Advertisement Nos.01/2010, 02/2012, 02/2016, 01/2019, 02/2019, 03/2019 and 01/2020, but the University basing on said selection process could only appoint 15 Assistant Professors and 2 Associate Professors.

4.2. It is also contended that advertisements issued by the University as indicated hereinabove were withdrawn by the University subsequently, save and except the present advertisement issued vide Advertisement No.03/2023 under Annexure-12. Stand taken by the University in Para-15, 20, 21 and 22 reads as follows:-

> *"15. That, in response to para-5 the Opp. Parties humbly submitted that in this application the university made several attempts to appoint regular faculty for teaching and advertised the positions ever since its establishment in 2009. Advt. No.01/2010, 02/2012, 02/2016, 01/2019, 02/2019, 03/2019, 01/2020 and latest in 2023 vide advertisement no.01/2023, 02/2023, 03/2023.*
>
> *But, due to various reasons, could appoint only 15 Assistant Professors and, 2 Associate Professors. The university was not having a regular Vice-Chancellor in September 2022 the university progressed well and advertised all the teaching positions, i.e., Professors, Associate Professors and Assistant Professors in January 2023 which has been challenged by the petitioners thus creating a road block again in the recruitment process of regular faculty.*
>
> *Xxxx xxxx xxxx*
>
> *20. That, in response to para-10 and 11 the Opp. Parties humbly submitted that in this application the Office Order No.CUO/Admn./AL/41/VI dated 01.07.2019 has been withdrawn by the university following the Hon'ble High Court in WP 11593/2019 order dated 09/07/2019, 22.07.2019 and 06.08.2019.*
>
> *21. That, in response to para-12 the Opp. Parties humbly submitted that in this application the university advertisement No.03/2019 dated 01.08.2019 was withdrawn due to technical reasons.*

> *22. That, in response to para-13 the Opp. Parties humbly submitted that in this application the university advertisement No.01/2020 dated 22.06.2020 was withdrawn on 03.11.2021 due to recasting the reservation rosters."*

4.3. It is contended that since as against 88 posts of Assistant Professor as admitted by the University only 15 posts of Assistant Professor have been filled up on regular basis, taking into account the long continuance of the petitioners on contractual basis and their continuance for more than 7 (seven) years, in view of the decisions relied on by the learned counsel for the petitioners as cited (supra), petitioners are eligible and entitled to get the benefit of absorption in the departments in question in which they are continuing on contract basis.

4.4. It is also contended that since by the time petitioners were all engaged as Lecturer on contract, UGC Regulation, 2018 was not in picture, the same having been notified on 18.07.2018, petitioners are not covered as per the said regulations issued by the UGC under Annexure-D to the counter affidavit.

4.5. Similarly, placing reliance on the provisions contained U/s.18(6)(iii) of the Act, it is contended that since petitioners have not been recommended by the Selection Committee pursuant to Annexure-12, petitioners are eligible and entitled to continue on temporary basis till they are absorbed on regular basis.

4.6. It is also contended that as prescribed under the 2018 Regulations, the qualification and procedure for engagement of Teachers on Contract basis is same as applicable to regularly appointed teachers. It is also contended that even though petitioners were continuing on contract basis, but in terms of the provisions contained under Regulation-10(f) of the Regulation, 2018, their previous continuance was not counted during the process of selection in terms of Annexure-12 advertisement.

4.7. It is also contended that had the previous experience of the petitioners would have been taken into consideration, petitioners should have been recommended to get the benefit of regular appointment in terms of Annexure-12. It is accordingly contended that the petitioners are eligible and entitled to get the benefit of absorption in the department in which they are continuing at present.

5. To the submissions made by learned counsel for the petitioners, learned Sr. Counsel appearing for the University contended that this Court in W.P.(C) No.11593 of 2019, W.P.(C) No.13022 of 2019 and W.P.(C) No.11725 of 2019, when passed a further order on 05.12.2019 by permitting the University to continue with the selection process in terms of the advertisement issued on 01.07.2019 under Annexure-9, the same was challenged by the University by filing W.A. Nos.614, 619 and 620 of 2019.

5.1. It is contended that this Court while taking up all those 3 (three) Writ Appeals on 20.12.2019, learned counsel for the petitioners in the present batch of Writ Petitions, made a submission that the intention of the University is to avoid the

Regular selection process and the University is trying to engage Guest Faculty temporarily and continue with that system.

5.2. It is accordingly contended that in view of the submission made by learned counsel for the petitioners in the aforesaid Writ Appeals, petitioners are not permitted to challenge the steps taken by the University to fill up the post of Asst. Professor on regular basis with issuance of the notification under Annexure-12. It is accordingly contended that in view of such stand taken by the petitioners before this Court in the Writ Appeal, they are not permitted to challenge the selection process initiated by the University to fill up the post of Asst. Professor on regular basis vide Annexure-12 and petitioners are not eligible and entitled to get the benefit as prayed for.

6. I have heard Mr. C.K. Agrawal, learned counsel for the petitioners, Mr. B. Routray, learned Sr. Counsel along with Mr. Sarbeswar Behera, learned counsel appearing for O.P. Nos.1 and 2 and Mr. T.K. Satapathy, learned counsel appearing for O.P. No.3. With due exchange of the pleadings and on the consent of learned counsels appearing for the parties, the matter was heard at the stage of admission and disposed of by the present order.

7. Having heard learned counsel for the parties, considering the submissions made and after going through the materials available in the record, this Court finds that pursuant to the notifications issued by the University at different point of time vide Annexure-E series to the counter affidavit so filed by the University, petitioners were all engaged as Guest Faculty/Junior Consultant/Lecturer on Contract vide different orders issued under Annexure-1 series starting from 15.07.2015 to 05.06.2018.

7.1. Engagement of the petitioners were subsequently extended from time to time vide different orders issued under Annexure-2 series starting from 03.08.2015. While so extending engagement of the petitioners on contractual basis, engagement of the petitioners was taken as against the post of Lecturer (on contract). It is also found that consolidated salary of petitioners was enhanced at different point of time and petitioners were allowed to continue in different committees formed by the University so found under Annexure-3 series.

7.2. It is also found that while the petitioners were so continuing as Lecturer on contract on contractual basis, when the University vide office order dated 01.07.2019 relieved the petitioners from their engagement w.e.f. 30.06.2019 vide office order dated 01.07.2019 under Annexure-8 and a fresh notification was issued calling for walk in interview for empanelment of Guest Faculty vide notification dated 01.07.2019 under Annexure-9, the same was challenged by the present petitioners by filing W.P.(C) Nos.11593, 13022 & 11725 of 2019. Pursuant to the interim order passed by this Court on 09.07.2019 and 22.07.2019 as well as 06.08.2019 under Annexure-10 series, petitioners were allowed to continue in their respective departments. However, as found from the counter affidavit so filed by the

University, all the advertisement issued by the University at different point of time were withdrawn by the University, save and except the impugned advertisement dated 23.01.2023 issued under Annexure-12.

7.3. It is also found from the record and as admitted by the University, all the petitioners were appointed as Lecturer on Contract against sanctioned regular posts and it is also not disputed that the petitioners possess the required qualification to teach at Under Graduate and Post Graduate level. As further found from the UGC Regulation, 2018 so notified on 18.07.2018 under Annexure-D, the essential qualification for engagement/appointment of Asst. Professor on temporary basis and regular basis as provided under Regulation 10(f) is same.

7.4. All the petitioners were engaged on temporary basis as Lecturer on Contract pursuant to the selection process initiated by the University vide Annexure-E series to the counter affidavit. Taking into account the fact that the petitioners were all engaged as Lecturer on contract against sanctioned regular post in terms of the selection process initiated under Annexure-E series and petitioners since possess the required qualification to hold the post of Asst. Professor on regular basis, placing reliance on the decisions so cited (supra), this Court is of the view that petitioners are eligible and entitled to get the benefit of absorption in their respective posts in which they are engaged vide orders issued under Annexure-1 series.

7.5. Therefore, this Court while disposing the Writ Petition, directs the University to take steps for absorption of the petitioners in their respective posts. This Court directs the University to issue appropriate order in that regard within a period of 2 (two) months from the date of receipt of this order. Till such order of absorption is issued, petitioners save and except petitioner No.6 be allowed to continue as Lecturer on Contract in their respective departments.

8. With the aforesaid observation and direction, the Writ Petition stands disposed of.

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

Result of the case:
Writ Petition disposed of.

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2025 (II) ILR-CUT-1278

NABA KISHORE MALLICK & ORS.
V.
STATE OF ODISHA

[CRLA NO. 376 OF 2007]

16 JULY 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the order of conviction requires interference though there is contradictions and inconsistencies in the evidence of the witness.

Headnotes

CRIMINAL TRIAL – The appellants have been convicted and sentenced U/s. 147/149/323/325 of IPC – While assailing the judgment learned counsel appearing for the appellants contended that the eye witness to the occurrence are the related witness and the evidence of such witnesses are not to be relied on – It is also contended that even though in the FIR, it is alleged that the injured was taken to the hospital by one Bharat Bhoi, but he was not examined as an witness – It is stated by appellant that the FIR was drafted by some other person not by the informant – It is contended that there is discrepancies in the medical and ocular evidence and there is no seizure of the alleged weapons used in the assault – Whether the order of conviction requires interference though there is contradictions and inconsistencies in the evidence of the witness.

Held: No – This Court is also unable to accept the contention of the learned counsel for the appellants that the conviction and sentence is not sustainable because of the discrepancies in the statement of P.Ws., as the same does not create any doubt about the truthfulness of the witnesses – Placing reliance in the decision in the case of ***Smt. Shamim and Narayan Chetanram Chaudhury*** as cited supra, it is the view of this Court that any such minor discrepancy is not contradiction in the statement of witnesses and the same is not fatal for the case. (Para 4.3)

In view of the aforesaid analysis, this Court finds no illegality or irregularity with the impugned order of conviction and sentence passed by the learned trial court vide the impugned judgment dt.26.07.2007 – Accordingly, this Court is not inclined to interfere with the same and dismiss the appeal. (Para 4.4)

Citations Reference

Radhakrishnan Nair and Others Vs. State of Kerala and batch, **1995 Supp(1) SCC 217;** Arjun Marik Vs. State of Bihar, **1994 Supp. (2) SCC 372;** Krishnegowda and Others v. State of Karnataka, **2017 (13) SCC 98;** Smt. Shamim Vs. State (GNCT of Delhi), **Criminal Appeal No.56 of 2018 dtd. 19.09.2018;** Narayan Chetanram Choudhury Vs. State of Maharashtra, **(2000) 8 SCC 457– referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Contradictions in evidence; Discrepancies in evidence; Related witness; Minor discrepancy; Medical evidence; Ocular evidence; Order of Conviction; Interference of the Court.

Case Arising From

Judgment dated 26.07.2007 passed by the Addl. Session Judge, Jagatsinghpur in ST Case No. 119/2006.

Appearances for Parties

For Appellants : Mr. Ayushi Mehta on behalf of Mr. D. Panda
For Respondents : Mr. S. K. Jee, AGA

Judgment/Order

Judgment

BIRAJA PRASANNA SATAPATHY, J.

1. The present appeal has been filed by the appellants challenging judgment dt.26.07.2007 so passed by the learned Addl. Sessions Judge, Jagatsinghpur in S.T. Case No.119 of 2006. Vide the said judgment, the appellants have been convicted and sentenced to undergo R.I for one (1) year for the offence under Section 147 of I.P.C, R.I for six (6) months for the offence under Section 323/149 of I.P.C and five (5) years for the offence under Sections 325/149 of I.P.C. The appellants were also sentenced to pay a fine of Rs.1,000/-, in default R.I for six (6) months more for the offence under Sections 325/149 of I.P.C. All the offences are to run concurrently.

2. While assailing the judgment, learned counsel appearing for the appellants contended that basing on the F.I.R lodged in Naugaon P.S. Case No.51 of 2004 corresponding to G.R. Case No.554 of 2004 in the file of learned S.D.J.M., Jagatsinghpur, the prosecution case was set into motion for the offences under Sections 147/148/323/324/325/307/149 of the I.P.C. The appellants however stood charged for the offences under Sections 147/148/323/324/325/307/149 of I.P.C and faced the trial in the Court of learned Addl. Sessions Judge, Jagatsinghpur in S.T. Case No.119 of 2006.

2.1. It is contended that the prosecution in order to prove its case examined 8 nos. of P.Ws and the defence examined 3 witnesses on its behalf. While P.Ws.1 and 2 were the witnesses to the occurrence, P.W.3 was the injured himself. P.W.4 is the informant, being the father of the injured. P.W.5 is the B.D.O, Naugaon block posted at the relevant time. P.Ws. 6 & 7 are the doctors who examined the injured and P.W.8 is the I.O.

2.2. It is contended that the prosecution case set to motion basing on the FIR lodged by the informant-P.W.4 on 04.8.2004 before Naugaon Police Station to the effect that on the morning while his son Susanta(P.W.3) was returning from Jogipada, accused persons being armed with Bhujali, Tenta, Thenga and Crowbar, surrounded him and in order to take his life, brutally assaulted him causing injuries on his legs and hands. It is contended that while being so assaulted, P.Ws.1 & 2 rescued the injured and all of them took the injured to the hospital.

2.3. While assailing the order of conviction and sentence vide the impugned judgment, learned counsel appearing for the appellants vehemently contended that though the occurrence took place on 04.08.2004, but the F.I.R was lodged on 06.08.2004 and such delay in lodging the F.I.R was never explained. It is also contended that P.Ws.1 & 2 though are eye-witnesses to the occurrence, but since they are related to the injured, they were required to be treated as related witnesses and their testimony has to be properly appreciated. It is also contended that in order to prove the allegation, no independent witnesses were examined by the prosecution and thereby it creates serious doubt with regard to the alleged occurrence and the alleged assault made by the accused appellants.

2.4. A further submission was also made that even though basing on the statements of the P.Ws, the order of conviction and sentence was passed by the learned trial Court, but such statements of the P.Ws are not reliable because of the discrepancies which are apparent. It is also contended that even though in the F.I.R, it is alleged that the injured was taken to the hospital by one Bharat Bhoi, but he was not examined as an witness. It is also contended that the F.I.R dt.04.08.2004 is not the F.I.R duly written by the informant and the said F.I.R was drafted by some other person.

2.5. With regard to the discrepancies in the statement of the P.Ws, learned counsel appearing for the appellants relied on the statement of P.W.1 in his cross-examination in para-5. P.W.1 in his cross-examination in para-5 stated as follows:

> ***5.*** *There were several injuries on the all over the body of Susant and since I was trying to rescue him, I not counted the number of injuries. All the accused persons surrounded and assaulted him. So, I cannot say the number of blows by the accused and to which portion of the body. The crowbar was of 2 and half fit length. So also the iron rod. The surface of crow bar was plain.*

2.6. Similarly, reliance was also placed to the statement of P.W.2 in para 2 of his cross-examination. The statement of P.W.2 in para-2 of his cross-examination reads as follows:

> ***2.*** *Informant Sankar,myself and Susanta belong to one family . I cannot say If charchil losted in last election for the post of Ward Member. My self and charchil had gone to search for labours and we were returning. Village Kani pada 100 cubits from the spot so also Benapada within 100 to 200 cubits. The houses of Dharmananda, Bholanath Das and Manu Bhoi were at a distance of 100 cubits from the culvert. We have got good relationship with accused .Siba and other accused a apprehending assault on us we did not date to go to Susant the presence of accused persons. We did not also raise our voice we were observing the scene silently. I cannot say if Bholi Das. Narayan Barik have their cycle shop and sallon at the spot.*
>
> *It is not the fact that my self Susanta and p.w.1 belong to communist party at time I accompany Babuli Das, BJD leader. I cannot say the name of the Motorcyclist who kept our request out of several vehicles bringing Susanta to Naugaon hospital. It is not a fact that In stated to police thatwe saw Susanta near the Oranda culvert chhak. and I brought susanta in Motor cycle and p.w.1 followed us by a cycle and during that time father of Susanta arrived near the spot and the Doctor Nuagaon advised us to take to Cuttack and I accompanied Susanta Cuttack where he treated for 25days. It is not a fact that I had stated to Police that accused Naba assaulted to the left leg of Susanta by a crowbar and Susanta was unconscious when we brought him to the hospital and accused Debraj assaulted with Krushna on the body of Susanta by means of rod.*

2.7. It is accordingly contended that because of the discrepancies in the medical and ocular evidence and there being no seizure of the alleged weapons used in the assault, the order of conviction and sentence could not have been passed for the offence under Sections 147/323/325/149 of the Indian Penal Code.

2.8. A further submission was also made that since allegation of offence under Section 307 of the I.P.C was not proved and the appellants were acquitted for the said offence, no order of conviction could have been passed under Sections 325 of the Indian Penal Code.

2.9. With regard to delay in lodging the F.I.R, reliance was placed to a decision of the Hon'ble Apex Court rendered in the case of ***Radhakrishnan Nair and Others Vs. State of Kerala and batch, 1995 Supp(1) SCC 217.*** It is also contended that since the F.I.R allegedly lodged on 04.08.2004 was sent to the concerned Court on 06.08.2024, it violates the provisions of Section 157 of the Cr.P.C. In terms of the provisions contained under Section 157 of the Cr.P.C, F.I.R was required to be sent to the Magistrate forthwith. Since in the instant case, the same was sent after two (2) days of the lodging of the F.I.R, the prosecution story is not believable and it should have been discarded out rightly. In support of his submission, reliance was placed to a decision of the Hon'ble Apex Court rendered in the case of ***Arjun Marik Vs. State of Bihar, 1994 Supp. (2) SCC 372.*** Hon'ble Apex Court in para-24 of the said decision held as follows:

> ***24.*** *The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story*

and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

2.10. It is also contended that since only related witnesses of the injured were examined in support of the prosecution allegation and the same having not been corroborated through the evidence of independent witnesses, the same is not trustworthy and relying on the same, no order of conviction and sentence could have been passed.

2.11. In support of the aforesaid submission, reliance was placed to a decision of the Hon'ble Apex Court rendered in the case of ***Krishnegowda and Others v. State of Karnataka, 2017 (13) SCC 98.*** Hon'ble Apex Court in para 32 & 33 of the said decision held as follows:

32. *It is to be noted that all the eyewitnesses were relatives and the prosecution failed to adduce reliable evidence of independent witnesses for the incident which took place on a public road in the broad daylight. Although there is no absolute rule that the evidence of related witnesses has to be corroborated by the evidence of independent witnesses, it would be trite in law to have independent witnesses when the evidence of related eyewitnesses is found to be incredible and not trustworthy. The minor variations and contradictions in the evidence of the eyewitnesses will not tilt the benefit of doubt in favour of the accused but when the contradictions in the evidence of the prosecution witnesses proves to be fatal to the prosecution case then those contradictions go to the root of the matter and in such cases the accused gets the benefit of doubt.*

33. *It is the duty of the Court to consider the trustworthiness of evidence on record. As said by Bentham, "witnesses are the eyes and ears of justice". In the facts on hand, we feel that the evidence of these witnesses is filled with discrepancies, contradictions and improbable versions which draws us to the irresistible conclusion that the evidence of these witnesses cannot be a basis to convict the accused.*

2.12. Similarly because of the contradictions and inconsistencies in the evidence of P.Ws, the evidence of such witnesses are not to be relied on. In support of the

same, reliance was also placed to the self-same decision of the Apex Court rendered in the case of ***Krishnegowda and Others v. State of Karnataka, 2017 (13) SCC 98.*** Hon'ble Apex Court in para-27 of the said decision held as follows:

> ***27.*** *Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the court, but if these contradictions create such serious doubt in the mind of the court about the truthfulness of the witnesses and it appears to the court that there is clear improvement, then it is not safe to rely on such evidence.*

2.13. Making all these submissions and relying on the decisions as cited (supra), learned counsel appearing for the appellants contended that the impugned order of conviction and sentence passed vide the impugned judgment is not at all sustainable in the eye of law and requires interference of this Court.

3. Mr. S.K. Jee, learned Addl. Govt. Advocate on the other hand while supporting the impugned judgment, contended that the F.I.R allegation having been duly proved by the prosecution witnesses, nothing more was required to be proved in support of the allegations. It is contended that P.Ws.1 & 2 though alleged to be related witnesses, but they being eye-witnesses to the occurrence, there was nothing to disbelieve their evidence. It is also contended that in their crossexamination, nothing has been elicited by the defence that the appellants are not involved in the alleged crime. Statement of P.W.1 in Paragraph-1 of his examination-inchief and Paragraph-3 & 4 of his cross-examination reads as follows:

> ***1.*** *I know the informant Sankar and injured and the accused persons present. Occurrence took place on 4.08.2004 at about 9 a.m. at the end of Oranda village road saw the accused persons were chasing being armed with the crowbar, rod , farsa to Susanta who was going with a cycle then at a lonely place all the accused persons surrounded and bounced upon him I saw this incident with Mahendra, at a distance of 10 to 15 cubits and being threatened by them we could not dare to go there. Then Susanta fell down accused Siba Mallick dealt a farsa blow claiming to his head during which susanta raised his left hand as a result of which has left palm was cut by that farsa blow. Then other accused persons dealt susanta by means of crowbarand rod causing injuries on his neck and hands, back. Susanta became senseless and the accused persons held that he died for which they left the spot and fled away from the spot. During that time Susanta on the Nala by the roadside to whom we rescued and took him to Naugaon Medical. Thereafter father of Susanta arrived. We brought Susanta by a Motorcycole and Mahendra accompanied him and I followed them by my cycle. We requested the Motor cyclist who was passing by the road. The father of Susanta lodged the report. Susanta was medically examined and he was referred to SCB Medical College in serious condition while he was there for 25 days.*
>
> <u>*Cross-examination by defence*</u>
>
> ***3.*** *I was examined by the police on that day at about 12 noon. It is a fact that I stated to police that accused Siba dealt the bhujali blow aiming to the head of Susanta who raised his hand and according to me there is no difference between Bhujali and Farsa. The Farsa was to be one and half cubits in length. The wooden handle was within one cubits.*

4. *It is not a fac that I had not stated to police that we are at a distance of 10 cubits from the spot and the accused persons threatened us and by the assault Susanta sustained bleeding injury o his legs, hand and back and after the incident father of Susanta arrived. and Mahendra was brought by the motorcycle by Mahendra and I followed them by cycle and Susanta was referred to Cuttack Medical where he was treated for 25 days.*

3.1. Similarly, P.W.2 in his examination in chief and in para-3 of his cross-examination deposed as follows:

I know the informant, injured and the accused present. On 4.8.2004, at about 9 a.m. while I was returning with Charchil, P.W.1 I Susanta was going on ahead us Orand found Murali near the culvert of Ordana and the accused persons were chasing Susanta who was going by cycle the accused persons caught hold of his cycle by which Susant fell down. At that time accused Siba stated to Murder him and dealt a farsa blow, Susantaraised his left hand and the farsa on his palm, causing cut injury the accused. Naba Mallick dealt crowbar blow on the waist of Susanta cauysing injury on his left leg. Then accused Tiki Bishnu also assaulted Susanta by means of crow-bar to his shoulder, causing fracture injury. Babuli and Krushna, (Debraj, assaulted susanta by means of iron rod causing injuries on his legs and back and other parts of the body. Then threw the Susant by the road side was water and left the spot taking him to be dead. Then I along with Charchil rushed there brought Susanta from the water who lost his sense. Then on the request we brought Susanta by Motorcyclist to Naugaon Hospital. I accompanied Susanta by a motorcycle and charchil followed us by cycle. Then father of susanta arrived near the spot. Then the Doctor at Naugaon advise to take Susanta to Cuttack. I took medical with Charchil and his father at the later come. Susanta treated there about 25 days at Cuttack medical.

<u>Cross-Examination</u>

3. *Siba dealt a farsa blow having a force and from the considerable distance and he was in his front. The farsa was of six inches long iron portion and the was one cubit length having two leafs there was one blow. The incident took place for 10 minutes and Siba was near Susanta out of fear I was trembling. The crowbar was one and half cubit length so also the iron rod. All the injuries were bleeding injures and I noticed 10/15 injuries and father of Susanta also accompanied us to the hospital and till our departure to Cuttack father of Susanta was with us and we left Naugaon hospital in between 11 to 12 noon and from the spot till our departure to Cyuttack the father of Susanta with us at Naugaon. On the next day, I returned from Cuttack. I was examined by police at Naugaon medical on the day of occurrence within 11 a.m. It is not a fact that I had not stated to I.O that by the crow-bar blow of Bishnu Susanta sustained bleeding injury on his shoulder. I do not remember the time of admission, at Cuttack. But arrived at outdoor at 2 P.M. The surface of the crow bar is plain having one inch dia. So also the road having æ inch. The doctor of Naugaon referred to Cuttack. It is not a fact that getting information myself and Charchil arrived at the spot and before us Bharat Bhoi, Bholi Das and Naran Bark at the pot. I is not a fact that I amdeposing falsehood since I belong to the group of Susanta and there was no such occurrence.*

3.2. Learned Addl. Govt Advocate further contended that P.Ws.6 & 7 who happens to be the doctors and examined the injured P.W.3, found various injuries both grievous and simple. Statement of P.W.6 & 7 reads as follows:

Statement of P.W.6

On 6.8.2004 I was M.O.1/C. Naugaon PHC. On that day on police requisition, I examined Susanta Kr..Mallik s/o.Sunakr Mallick of Benapada, P.O-Alanahat, P.S. Naugaon and found the following injuries:

1. One communicated fracture on left leg 5cm above ankle join The injury was grevious in nature, and caused by hard and weapon such as Iron rod, lathi, with force.

2. One collish fracture right hand, above wrist joint grievous in nature and caused by above object (weapons).

3. One lacerated wound 10cm extending from the root of the left thumb and portion of the palm pescure surface. simple in nature and caused by the above weapons.

4. Two lacerated injury 2cm X1 cm length each on left leg s and caused by above weapons.

5. One lacerated injury 2cmlength x 1 cm breadth on right leg simple and caused by above weapons. simple and caused by above weapons.

6. One abrasion, 3cm x 2 cm. found on right arm, simple in nature and caused by slighinding against rough surface.

All the injuries are from sl. No.1 to 6 occurred within 1 to 2 hours. Time of examination 10.45 a.m. and I examined the injured on 04.08.2006 vide OPD Regd. No.5595/4.8.2004. But received the police requisition on 6.8.2004.

Thereafter I submitted injury report Ext.2 Ext.2/1 is my signature.

Cross-Examination by defence:-

***2.** I had not enquired the injured about the cause of injuries. I had made stitch about 4 lacerated injuries. ON that day I informed the matter regarding the injuries over telephone to P.S. Many persons were present with injured but Sourav Mallik identified the injured. I do not remember if the family members of injured were present or not. At about 11 a.m. I informed the matter to P.S after treating the injured. A crowbar can be called as plain surface of iron rod and hard and plain weapon. The aforesaid injures can be possible by road accident. I have written in Ext.2 that I received the requisition on 5.8.2004. I have not mentioned in Ext.2 that I received the requisition on 5.8.2004. I have not mentioned the date and time of examination.*

Statement of P.W.7

On 08.04.2004, I was in my present post. On that date at 7.30 P.M. I examined Susanta Mallik in casuality department of SCBMCH, Cuttack. Vide COPD. No.12017 dt.04.08.2004 and I have received police requisition from Supdt SCBMCH, Cuttack on 06.11.2004 vide examinaitoin. I found stich would of 8cm length along the 1st wave space on Pamar aspect of left hand. It was simple in nature, might have been caused by blunt weapon.

2. Stitch would 4 cm. length against anter medias aspect or right leg. 8 cm. away from knee joint. Simple in nature, might have been caused by blunt weapon.

3.Stitched would 2 innons, one 10 cm. long another 1 cm. long along aterror aspect of left leg 10 cm. away from ankle joint. It was grievous iin nature might have been casued by blunt weapon.

4. In medocilical Xray- bearing film no.6998 dt.5.8.2004 shows x-ray of left leg ap and laternal view showing fracture lower third soft of fibia and fibula on left side.

5. X-ray, right wrist joint ape and lateral view showing facture lower end of radious on right side.

as per the MAC report reported by Radiology, injury no.3 was grievous in nature and duration of injury is more than 6 hours AT THE TIME OF EXAMINATION. Thereafter, I submitted injury report Ext.3 and Ext.3/1 is my signature.

Cross-Examination:-

The patient was referred from Naugaon PHC and the stitching ws done there. I have not mentioned the colour of the injuries which can show the time of duration of assault and I found three stitched would. One Dillip Kumar Mohanty brother in law of injured had accompanied him and identified. Usually the above injuries may not caused the death of a person some dislocation. The X-ray films are not available on record.

3.3. It is also contended that the I.O of the case also proved the prosecution allegation and the allegation that the F.I.R was not drafted by the informant and the said F.I.R is not the original F.I.R, could not be proved by the defence. Statement of P.W.8 in his cross-examination in para-8 reads as follows:

On the day of occurrence I had been to Nuagaon PHC once and mate the injured and recorded his statement. It is not a fact that before the examination. Nuagaon CHC, within 9.30 a.m. the injured along with Mahendra Mallick had been to the P.S and seeing their condition I directed them to be examined by the Doctor first. It is not a fact that at 10.30 a.m. I reached at Medical at Naugaon and Mahendra Mallik narrated the entire incident to me there and during that time, I also examine the injured Susanta. I have not ascertained from Sanakar Mallik regarding the author of the FIR. I had not seen the informant at the Hospital when I reached there. After treatment from Cuttack, I had not recorded the statement of the injured at his village. No other police officer had been to the Medical before receipt of the FIR by me. It is not a fact that I have not examined Sourav Mallick and others. Prior to receive of requisition on the injured was examined by the Doctor at Naugaon. It is not a fact that the FIR Ext.1 was not the first F.I.R and before it I was informed by many other persons including Mahendra and Susanta regarding the occurrence and without sufficient material I submitted charge sheet and my investigation was proper.

3.4. Learned Addl. Govt. Advocate accordingly contended that since allegation of assault on P.W.3 was well proved not only by the injured as P.W.3, but also by P.Ws.1 & 2, who happens to be eye-witnesses to the occurrence, no illegality or irregularity can be found with the impugned order of conviction and sentence. A further submission was also made that defence has failed to show any other ground for which the injured sustained all those injuries on the fateful day. P.W.3 in his cross-examination also clearly implicated the appellants who caused the injuries on him. Statement of P.W.3 in para-2 of his cross-examination reads as follows:

2. *I have been to the saloon of Narayan Barik where from I was returning. The saloon was within 500 to 700 meters from the spot and it was at 9 a.m. ON the occurrence took place. My house was at a distance of 200 cubits from the house of accusedpersons towards the shop without any intervening houses. The paddy filed was towards the south of the house. I was alone while returning from saloon. During he course of assault P.W.1 and 2 arrived near me. I was on the ground and was assaulted by four accused persons during which P.W.1 and 2 arrived at the spot. I was in my sense. Accused Siba Mallik was at a distance of one and half cubits and initiated the first blow with much force by the sharp side of the farsa. The wooden portion was within 1 to an half cubits and the iron portion was six to eight inches of his farsa having two inches wide on the*

iron portion. Naba and Bishnuy gave 15 to 20 blows on me by the crowbar with much force. On my legs shoulder, back. The iron rods were of two cubits in length with 3/4th inch circumspect having plain surface. The crowbar was of 2 cubits in length having one inch in round with plain surface. I raised my voices some persons were passing who are not known to me and they did not stop there except P.W.s1 and 2. Village Oranda and Kanipada was within one kms. Distance. I was with senses when I reached at Nat Naugaon P.S. in the motor cycle with Mahendra.

3.5. Learned Addl. Govt. Advocate also contended that because of the injury sustained by P.W.3, he was not only treated in the local hospital but also on being referred, remained as an indoor patient in the S.C.B Medical College and Hospital for around 29 days.

3.6. With regard to the submission of the learned counsel for the appellants that because of the discrepancies in the statement of P.Ws, such evidence of the P.Ws.1 to 4 are not to be relied on, it is contended that if the evidence of the P.Ws read as a whole inspires confidence, the same can be relied upon. In support of such submission, reliance was placed to a decision of the Apex Court rendered in the case of ***Smt. Shamim Vs. State (GNCT of Delhi), Criminal Appeal No.56 of 2018*** decided on ***19.09.2018.*** Apex Court in para 12 of the said judgment held as follows:

12. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole inspires confidence. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error without going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Minor omissions in the police statements are never considered to be fatal. The statements given by the witnesses before the police are meant to be brief statements and could not take place of evidence in the court. Small/Trivial omissions would not justify a finding by court that the witnesses concerned are liars. The prosecution evidence may suffer from inconsistencies here and discrepancies there, but that is a shortcoming from which no criminal case is free. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. In the former case, the defence may be justified in seeking advantage of incongruities obtaining in the evidence. In the latter, however, no such benefit may be available to it.

3.7. Reliance was also placed to a decision rendered in the case of ***Narayan Chetanram Choudhury Vs. State of Maharashtra, (2000) 8 SCC 457.*** Hon'ble Apex Court Para 42 of the said judgment held as follows:

42. *Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful*

witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness. In this regard this Court in State of H.P. v. Lekh Raj [(2000) 1 SCC 247 : 2000 SCC (Cri) 147 : (1999) 9 ST 155] (in which one of us was a party), dealing with discrepancies, contradictions and omissions held: (SCC pp. 258-59, paras 7-8)

"Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in theaccounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person.

Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State of M.P. [(1999) 8 SCC 649 : JT (1999) 7 SC 247] this court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:

'There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence…. The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or uniform rule of human reaction and to discard a

piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.' "

3.8. It is accordingly contended that on the face of the evidence laid by P.Ws, prosecution has proved the allegations against the appellants beyond all reasonable doubt. Minor discrepancies in evidence will not make the prosecution case doubtful. It is accordingly contended that the appeal is liable for dismissal.

4. Having heard learned counsel appearing for the parties and after going through the materials available on record, this Court finds that the prosecution was set into motion basing on the F.I.R lodged by the informant-P.W.4 on 04.08.2004. Basing on the allegation in the F.I.R and after submission of the final form, the appellants stood charged for the offence under Sections 147/148/ 325/323 /307/149 of the Indian Penal Code.

4.1. Taking into account the materials available on record, learned trial Court held the prosecution to have failed to prove the offence under Section 307 of the Indian Penal Code along with Section 148 of the I.P.C. This Court finds no illegality or irregularity with such view of the trial Court.

4.2. Placing reliance on the evidence of the P.Ws, this Court is of the view that the prosecution has proved the allegation against the appellants beyond all reasonable doubt. The allegation that the F.I.R was lodged with delay and the F.I.R is not the original F.I.R drafted by the informant, is also not acceptable to this Court, in view of the statement of I.O in his cross-examination.

4.3. This Court is also unable to accept the contention of the learned counsel for the appellants that the conviction and sentence is not sustainable because of the discrepancies in the statement of P.Ws., as the same does not create any doubt about the truthfulness of the witnesses. Placing reliance in the decision in the case of ***Smt. Shamim and Narayan Chetanram Chaudhury*** as cited supra, it is the view of this Court that any such minor discrepancy is not contradiction in the statement of witnesses and the same is not fatal for the case.

4.4. In view of the aforesaid analysis, this Court finds no illegality or irregularity with the impugned order of conviction and sentence passed by the learned trial court vide the impugned judgment dt.26.07.2007. Accordingly, this Court is not inclined to interfere with the same and dismiss the appeal. Bail bonds furnished by the appellants stand cancelled and appellants are directed to surrender to serve the remaining part of the sentence.

4.5. The appeal accordingly stands 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-1290

PABITRA KUMAR MALLICK & ORS.
V.
CENTRAL ELECTRICITY SUPPLY UTILITY OF ODISHA & ORS.

[W.P.(C) NO.13753 OF 2020]

AND

JITEN KUMAR BEHERA V. CENTRAL ELECTRICITY SUPPLY UTILITY OF ODISHA & ORS.
[W.P.(C) NO.13752 OF 2020]

25 JULY 2025

[MURAHARI SRI RAMAN, J.]

Issues for Consideration

Whether the order dated 04.01.2020, by which the petitioners are denied regularization of service is tenable in law.

Headnotes

SERVICE JURISPRUDENCE – Denial of regularization of service – Petitioners, Non-ITI, have been engaged to work as Helper through outsourcing agency are denied regularization in service notwithstanding the bipartite settlement dated 08.06.2010, by virtue of which other similarly Non-ITI workers engaged through outsourcing agency were regularized – Whether the order dated 04.01.2020, by which the petitioners are denied regularization of service is tenable in law.

Held: No – In view of above discussions with conspectus of legal approach of various Courts, this Court has no option but to observe that the decision of the Board in the 45th Meeting and the 49th Meeting held on 02.09.2015 and 24.09.2016 as reflected in the Letter dated 04.01.2020 (Annexure-8) is not in consonance with law and cannot be countenanced – Having thus observed, the decisions of the Board in its 45th Meeting dated 02.09.2015 and reaffirmed in its 49th Meeting dated 24.09.2016 are set aside – It is, therefore, directed that the competent authorities may take up the claim of the petitioners and consider their case for regularisation in service or absorb them in service. (Para 11)

Citations Reference

State of Karnataka Vrs. Umadevi, **(2006) 4 SCC 1;** Secretary, State of Karnataka Vrs. Umadevi (3), **(2006) 4 SCC 1;** Prasana Kumar Mishra Vrs. State of Odisha, **W.P.(C) No.11148 of 2005, 2016 (I) ILR-CUT 373;** Narendra Kumar Tiwari Vrs. State of Jharkhand, **(2018) 8 SCC 238;** Sunil

Barik Vrs. State of Odisha, **2021 (II) OLR 469;** Suvendu Mohanty Vrs. State of Odisha, **2015 SCC OnLine Ori 267;** Amarendra Kumar Mohapatra Vrs. State of Odisha, **(2014) 4 SCC 583 = AIR 2014 SC 1716;** Subrata Narayan Das Vrs. State of Odisha, **W.P.(C) No.18659 of 2016, vide Judgment dated 12.07.2022;** Union of India Vrs. Central Administrative Tribunal, **(2019) 4 SCC 290;**Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, **2023 LiveLaw (SC) 91 = (2023) 3 SCC 639;** Ranjeet Kumar Das Vrs. State of Odisha, **2018 (I) ILR-CUT 695;** Patitapaban Dutta Dash Vrs. State of Odisha, **W.P.(C) No. 19951 of 2020, vide Judgment dated 09.09.2021;** State of Odisha & Anr. -V- Patitapaban Dutta Dash & Ors., W.A. NO. 777 OF 2021 & BATCH (Division Bench) vide Judgment dated 12.04.2023, **(2023) (I) ILR-CUT 906;** Niranjan Nayak Vrs. State of Odisha & Others, **2023 (I) OLR 407;** Jaggo Vrs. Union of India, **2024 SCC OnLine SC 3826;** Shripal Vrs. Nagar Nigam, **2025 SCC OnLine SC 221;** Prafull Kumar Behera Vrs. State of Odisha, **2025 SCC OnLine Ori 2416;** Deepak Kumar Mohanty Vrs. TP Central Odisha Distribution Limited, **W.P.(C) No.2688 of 2016, vide Judgment dated 06.04.2021;** Mohinder Singh Gill Vrs. Chief Election Commissioner, **AIR 1978 SC 851;** Ravi Verma and others Vrs. Union of India and others, **2018 SCC OnLine SC 3860;** Raman Kumar and others Vrs. Union of India and others, **2023 SCC OnLine SC 1018;** Gujarat Agricultural University Vrs. Rathod Labhu Bechar, **(2001) 3 SCC 574;**Sri Ganesh Chandra Patra Vrs. State of Odisha, **2025 (II) ILR-CUT 262 Division Bench – referred to.**

List of Acts

Industrial Disputes Act, 1947

Keywords

Regularization of service; Bi-partite settlement; Non-ITI; Outsourcing agency; Regular; Temporary; Temporary employees; Contractual; Arbitrary termination.

Case Arising From

Order dated 04.01.2020 of the Senior General Manager(H.R.)- Opposite Party No. 2.

Appearances for Parties

For Petitioners : Mr. Budhadev Routray, Sr. Adv. & M/s. S.D. Routrary, B.R. Pattanayak, Shakti Sekhar, Jagdish Biswal, A.K. Das M.M. Panda (for both Petitions).

For Opp.Parties : M/s. Bijaya Kumar Dash, Rajbhusan Dash, Smruti Ranjan Dash, Ramesh Chandra Sethy & Kishor Nayak (O.Ps Nos.1, 2, 4 & 5 for both Petitions);

(O.P.No.3) : **None** for both Petitions)

Judgment/Order

Judgment

MURAHARI SRI RAMAN, J.

THE WRIT PETITIONS :

Assailing the order dated 04.01.2020 of the Senior General Manager (HR)-opposite party No.2, by which the petitioners are denied regularisation in service notwithstanding the bipartite settlement dated 08.06.2010, by virtue of which other similarly placed Non-ITI workers engaged through outsourcing agency were regularized, but the petitioners are left out, these writ petitions, being W.P.(C) Nos.13753 of 2020 and 13752 of 2020, are filed craving to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the following prayer(s)[1]:

> *"It is therefore, most humbly prayed that this Hon'ble Court be graciously pleased to:*
>
> *i) Admit the writ application.*
>
> *ii) Call for the record.*
>
> *iii) Issue Rule Nisi calling upon the opposite parties more particular opp. Party no.2 to show cause as to why the letter dated 04.01.2020 issued by the opposite party No.2 under Annexure-8 shall not be quashed;*
>
> *iv) If the opposite parties more particularly opp. Party no.2 do not show cause or show insufficient cause issue a writ in the nature of certiorari or any other appropriate writ/writs, order/orders, direction/ directions by quashing the letter dated 04.01.2020 issued by the opposite party No.2 under Annexure-8;*
>
> *v) Issue a writ in the nature of mandamus or any other appropriate writ/writs, order/orders, direction/ directions directing the opp. Party No.2 to appoint the petitioners ("petitioner" in WP(C) No.13752 of 2020) to the post of Helper Trainee and subsequently regularize the services of the petitioners ("service of the petitioner" in WP(C) No.13752 of 2020) as agreed upon by the union of the petitioners and opposite party No.1 management in the bi-partite settlement dated 08.06.2010 under Annexure-3;*
>
> *vi) Issue a writ in the nature of mandamus of any other appropriate writ/writs, order/orders, direction/ directions directing the opp. Party no.2 to grant all consequential service benefits to the petitioners ("petitioner" in WP(C) No.13752 of 2020) as has already been extended to their counterparts from the date of their appointment to the post of Trainee Helper as per the bi-lateral settlement dated 08.06.2010 under Annexure-3;*
>
> *vii) And/or pass any other order/orders, direction/ directions as this Hon'ble Court deems fit and proper for the ends of justice.*
>
> *And for this act of kindness, the petitioner as in duty bound shall ever pray."*

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[1] *Identical prayers are made in both the writ petitions being W.P.(C) Nos.13753 of 2020 and 13752 of 2020.*

Factual matrix:

2. The facts emanated from the pleadings reveal that the petitioners, Non-ITI, engaged to work as Helper through outsourcing agency, namely, Maa Tarini Security Services in the year 2005 under the Central Electricity Supply Utility of Odisha-opposite party No.1, being not regularized in service, through their Union placed grievance for resolution on 03.12.2009 between the Management and the representatives of the Union. The charter of demands *inter alia* at Serial No.6 contained regularization of all categories of contract workers, such as, ITI, Non ITI (Helper), Data Entry Operator, Office Assistant, Attendant and others workers. The opposite party No.1 settled the said dispute *vide* Bi-partite Settlement dated 08.06.2010, wherein at paragraph-3 it is decided as under:

> *"3.Outsourced Non-ITI working in O & M: Those Non-ITIs working in Operation and Maintenance activities and have already completed one year engagement in CESU through outside agency would be considered as Helper (Trainee) and would be placed on 3½ years training period. The stipend payable during the training period is given in Annexure-B. On successful completion of training period, they will be placed in Regular Pay Scale of Scale of Rs.4440-10200 with grade pay of Rs.1750/- and their basic pay will be fixed at Rs.4440/-. Before they are taken as Trainee, they are subjected to qualifying the Viva-voce & practical desk-top test."*

2.1. The opposite party No.2-Senior General Manager (HR) on 09.08.2010 issued a letter to all the General Managers, Deputy General Manager, Additional General Manager and Managers in-Charge of Circles/Divisions stating that the Management of CESU had decided to bring all the outsourced helpers (Non-ITIs excluding security guards) engaged in Operation and Maintenance activities and Peons/Attendants (Non-ITIs excluding security guards) to the trainee fold of CESU subject to qualifying interview and practical desktop test and also *vide* Letter dated 15.02.2011 provided the date and venue of desk-top test and interview for the post of Helper (trainee).

2.2. In the meantime, the Odisha State Electricity Board Shramik Maha Sangha and one Security Guard, who was working in the Bhubaneswar City Distribution Division No.1 of CESU filed writ petition being WP(C) No.4188 of 2011 before this Court, wherein *vide* order dated 23.02.2011 notices were issued with interim protection staying the selection process of post of Helper (Trainee). Therefore, the desk-top and interview test of the Non-ITI workers could not proceed in view of interim order passed by this Court. However, *vide* order dated 11.08.2011 said writ petition came to be dismissed and, consequently, the interim order stood vacated.

2.3. After dismissal of the aforesaid writ petition, certain Helpers (Trainees) after successful completion of three and half years of training under CESU, were regularized in service *vide* Office Order dated 30.10.2014, while the petitioners are side tracked.

2.4. The Board of CESU in its 42nd Meeting held on 10.06.2014 again decided to bring the existing left out outsourced personnel engaged prior to 31.05.2010 in

Operation and Management and other activities to the fold of CESU as Helper Trainee and they will be regularized regularly after completing three and half years of training. Seamlessly working as such, waiting for further eight years with the hope of consideration of their regularization, the petitioners made representation on 17.11.2019 before the Ministry of Energy Department, which was forwarded to the opposite party No.2 on 17.12.2019 for consideration and the opposite party No.2 *vide* order dated 04.01.2020 instead of regularizing the petitioners as per the bi-partite settlement dated 08.06.2010 stemming on which other Non-ITI workers engaged through outsourced agencies, like the present petitioners, were regularized, but taking shelter of *State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1,* the opposite party No.2 instead of regularizing the present petitioners in service, decided to give weightage to the petitioners whenever fresh recruitment for relevant post would be made.

2.5. The text of Letter dated 04.01.2020 of CESU (Annexure-8), impugned in the writ petitions, is quoted hereunder:

"*Central Electricity Supply Utility of Odisha*
Head office: 2nd Floor, IDCO Towers, Janapath, Bhuabneswar-751022
Telephone-2541 727, Fax-2543 125.
Ref. No. CESU/HR/18-11/2012(Vol-II)/259, Date-4th January, 2020

To

The Additional Secretary to Government
Department of Energy,
Government of Odisha.

Sub: Regularisation of 121 Non-ITI personnel working in O&M Activities to the post of Helper Trainee.

Ref: Your office letter No.ENG-RR-DISTCOM-0025-2017/10144/En, dtd. 26.11.2019.

Sir,

In inviting reference to the subject cited above and the letter under reference it is to intimate you that the Management Board of CESU in it 45th meeting held on 02.09.2015 decided that the case of regularisation of the 121 Non-ITI personnel working in O&M Activities to the post of Helper (Trainee) cannot be considered in view of the judgment passed by the Hon'ble Apex Court in Secretary, State of Karnataka and others Vrs. Umadevi (3) and others Vide Case No. Appeal(Civil) 3595-3612 of 1999 and reported in (2006) 4 SCC 1.

Further, the Board Members in the 49th Board meeting held on 24.09.2016, again deliberated on the matter of regularisation of the 121 outsourced personnel and re-confirmed that their case for regularisation cannot be considered in light of above stated judgments of the Apex Court. However, it was also decided that they may be given some weightage whenever fresh recruitment for relevant posts will be done by CESU. These decisions of the Management board of CESU have been communicated to their Union i.e. Odisha Rajya Bidyut Shramika Karmachari Engineers Ekta Manch & OSEB Employee Federation vide letter no.17555 dtd 01.08.2016 and 24558 dtd.24.10.2016 respectively.

This is for your kind information please.

Yours faithfully.
Sd/-
Sr. General Manager (HR)"

2.6. To ventilate grievance, the present petitioners have approached this Court by way of filing writ petitions, registered as W.P.(C) Nos.13753 of 2020 and 13752 of 2020.

Hearing:

3. On consent of the counsel for respective parties, analogous hearing of the writ petitions was taken up as the pleadings in both the matters are complete and issue involved in both the cases is identical.

3.1. Accordingly, heard Sri Budhadev Routrary, learned Senior Advocate assisted by Sri Jagdish Biswal, learned Advocate appearing for the petitioners in both the writ petitions and Sri Bijay Kumar Dash, learned Advocate for the opposite party Nos.1, 2, 4 & 5.

3.2. On conclusion of hearing, the matters are kept reserved for preparation and pronouncement of the judgment/ order.

Rival contentions and submissions:

4. Sri Budhadev Routrary, learned Senior Advocate along with Sri Jagdish Biswal, learned counsel appearing for the petitioners drawing attention of this Court to paragraph-9 of the counter affidavit filed by opposite party No.5 submitted that the stand taken by the opposite party that the petitioners do not have the requisite qualification and not involved in the Operation and Maintenance activities, is not borne on record.

4.1. It is submitted that the opposite parties could not deny regularization in service of the petitioners who have been engaged to perform the work of Helper since 2005 and the CESU authorities should have adhered to the terms of bi-partite settlement of the year 2010. Even otherwise, since the petitioners have requisite qualification and have been continuing to discharge the work entrusted to them without any blemish, turning down their claim is unwholesome, illogical and irrational.

4.2. Drawing attention of this Court to Minutes of discussion held on 03.12.2009 between the Management of CESU and the Odisha State Electricity Board Employees Federation submitted that all pros and cons were examined by the Management with respect to "all categories of contract workers" including the "ITI and Non-ITI (Helper)" who have already been "engaged in the job of perennial nature" for regularization. Settlement has been arrived at between the Management of CESU and the Odisha State Electricity Board Employees Federation on 08.06.2010 with respect to outsourced Non-ITIs, working in Operation and Maintenance activities; and those who had already completed one year engagement

in CESU through outside agency. Since the petitioners have the requisite qualification, their case cannot be ignored.

4.3. A Letter dated 09.08.2010 was issued by the opposite party No.2 requiring all General Managers and Other Managers of Circles and Divisions to forward filled in application from eligible candidates. A writ petition being W.P.(C) No.4188 of 2011 was filed at the behest of one security guard and the OSEB Shramika Mahasangha in which the selection process of post of Helper (Trainee) was stayed. However, said case was dismissed by order dated 11.08.2011. Thereafter, the opposite parties regularized services of similarly situated Non-ITI Helpers of different Divisions.

4.4. Having utilized the services of the petitioners for such a long period and making them await for consideration of their regularization in service with assurance that the benefit of bi-partite settlement would be extended to them as has already been worked out for certain other similarly situated personnel, by taking shelter of *Secretary, State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1*, at this distance of time would not only violate right to be considered for employment but also impinge avowed object of protection conferred under the Constitution of India through Article 14.

5. Sri Bijay Kumar Dash, learned Advocate for the opposite parties would defend the rejection of claim of the petitioners *vide* Letter No.04.01.2020 issued by the Senior General Manager (HR) of Central Electricity Supply Utility of Odisha, wherein the reason ascribed is this:

> *"****
>
> *Further, the Board Members in the 49th Board Meeting held on 24.09.2016, again deliberated on the matter of regularisation of the 121 outsourced personnel and re-confirmed that their case for regularization cannot be considered in light of above stated judgment of the Apex Court. However, it was also decided that they may be given some weightage whenever fresh recruitment for relevant posts will be done by CESU. These decisions of the Management Board of CESU have been communicated to their Union, i.e., Odisha Rajya Bidyut Shramika Karmachari Engineers Ekta Manch and OSEB Employees Federation vide Letter No.17555, dated 01.08.2016 and 24558, dated 24.10.2016 respectively. ***"*

5.1. Learned counsel for the opposite parties laid emphasis on the stance taken in paragraph-9 of the counter affidavit, which is extracted hereunder:

> *"9. That with regard to the averments made in para-9 of this application, it is humbly submitted that it is not a fact that because of the interim stay, the cases of 121 of Non-ITI persons were not considered. The communication dated 09.08.2010 was purely intended to invite applications from outsourced helpers engaged in Operation & Maintenance activities for the post of Helper (Trainee) vide Letter No.37660, dated 09.08.2010 (Annexure-4 to the writ petition). Only shortlisted candidates were called for Desk-top test and interview. Since the petitioners had no relevant experience in Operation & Maintenance activities, their cases were not considered for the post of Helper (Trainee).*

> *The Hon'ble High Court vide order 04.08.2011 in WP(C) No.4188 of 2011 has mentioned that the settlement applies to those Non-ITI's who are actually working in Operation & Maintenance activities and the Security Guards have never participated in Maintenance & Operation activities. And, hence cannot take the advantage of settlement and claim for regularization.*
>
> *In the similar circumstances since the petitioners, do not have experience in Operation and Maintenance activities their cases were not considered for regularization."*

5.2. With such assertion, Sri Bijay Kumar Dash, learned Advocate for the opposite parties urged to dismiss the writ petition, being sans merit.

CONSIDERATION OF RIVAL CONTENTIONS:

6. It is fact that the petitioners are Non-ITI Workers/ Helpers engaged through outsourcing agency during 2005-07. Since then they have been rendering service to the opposite parties (erstwhile Organisation as also present Organisation). Scrutiny of documents enclosed to the writ petition as Annexure-1 series relating to experience certificates issued by authorities demonstrates that these Non-ITI workers have been utilised in the performance of maintenance of 11 KV Line, LT Line and also as electricians in Operation and Maintenance work. Such documents, which apparently show that they have gained experience in the Operation and Maintenance Work, have been relied on by the petitioners and the same are not denied or disputed by the opposite parties in the counter affidavit. Nonetheless, the opposite parties have emphatically disputed the fact that only Non-ITI Workers who had experience in Operation and Maintenance activities were considered for Helper (Trainee) in the selection process.

6.1. Be that as it may, it has been averred in the rejoinder of the petitioners that it is the Bi-partite Settlement which is binding *inter se* parties in view of Section 18(3) of the Industrial Disputes Act, 1947.

POSITION AS TO REGULARISATION IN SERVICE:

7. It is pertinent to notice following observation made in *Dr. Prasana Kumar Mishra Vrs. State of Odisha, W.P.(C) No.11148 of 2005, reported at 2016 (I) ILR-CUT 373*:

> *"7.In Binan Kumar Mohanty Vrs. Water and Land Management Institute (WALMI), 2015 (I) OLR 347 referring to Kapila Hingorani Vrs. State of Bihar, (2003) 6 SCC 1 the apex Court held that the Government companies/public sector undertakings being 'States' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution of India. Therefore, if the petitioner has rendered service for around 20 years, keeping in view the ratio decided in Kopila Hingorani (supra), this Court issues direction to the opposite parties to mitigate the hardship of the employees. Financial stringency is no ground for not issuing requisite directions when there is violation of fundamental rights of the petitioner. Allowing a person to continue for a quite long period of 20 years of service and exploiting him on the pretext of financial crunch in violation of Article 21 of the Constitution of India is sheer arbitrariness of the authority which is highly condemnable.*

8. In Narendra Kumar Ratha and Others Vrs. State of Odisha and Others, 2015 (I) OLR 197, this Court has taken into consideration the object of Article 16 of the Constitution of India to create a constitutional right to equality of opportunity and employment in public offices. The word 'employment or appointment' cover not merely the initial appointment, but also other attributes like salary, increments, revision of pay, promotion, gratuity, leave pension and age of superannuation etc. Appointment to any post under the State can only be made in accordance with the provisions and procedure envisaged under the law and guidelines governing the field.

9. In Prabodh Verma and Others Vrs. State of U.P. and Others, (1984) 4 SCC 251, the apex Court held that Article 16 is an instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government.

10. Similar view has also been taken by the apex Court in Km. Neelima Mishra Vrs. Harinder Kaur Paintal and Others, (1990) 2 SCC 746 = AIR 1990 SC 1402 and E.P. Royappa Vrs. State of Tamil Nadu and Another, (1974) 4 SCC 3. Clause (1) of Article 16 guarantees equality of opportunity for all citizens in the matters of employment or appointment to any office under the State. The very concept of equality implies recourse to valid classification for preference in favour of the disadvantaged classes of citizens to improve their conditions so as to enable them to raise themselves to positions of equality with the more fortunate classes of citizens. This view has also been taken note of by the apex Court in the case of Indra Sawhney Vrs. Union of India, 1992 Supp. (3) SCC 217 = AIR 1993 SC 477."

7.1. The case of *Prasana Kumar Mishra (supra)* was carried in appeal before the Division Bench, giving arise to *W.A. No.4 of 2016*, which was dismissed *vide Order dated 11.12.2019*. Said matter, being carried further to the Hon'ble Supreme Court of India, *vide* Order dated 07.08.2020, the S.L.P.(C) No.4945 of 2020, filed at the behest of Biju Patnaik University of Technology, stood dismissed.

7.2. So far as regularization of services, in a catena of decisions the Hon'ble Supreme Court of India dealing illuminatingly with the concept of regularization, in the case of *Narendra Kumar Tiwari Vrs. State of Jharkhand, (2018) 8 SCC 238*, said as follows:

"The purpose and intent of the decision in Umadevi (3) was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in Umadevi (3), (2006) 4 SCC 1 is a clear indication that it believes that it was all right to continue with irregular appointments and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. ***This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head.*** *This is precisely what Umadevi and Kesari sought to avoid."*

7.3. In *Sunil Barik Vrs. State of Odisha, 2021 (II) OLR 469*, it has been discussed as follows:

"12. As it appears from the record itself, the case of the petitioner is squarely covered by the exception carved out in paragraph 53 of the judgment rendered in Umadevi (3)

mentioned supra. Meaning thereby, against an existing sanctioned vacancy in the post of Barber, the petitioner having been engaged by following due procedure of selection in the post of Home Guard and continued for a quite long period, which is not disputed by the opposite parties-State as per the pleadings available in the counter affidavit and, as such, the petitioner is still continuing, the same cannot be treated as an 'illegal engagement', rather it may be nomenclature as an 'irregular engagement'.

13. In State of Jammu and Kashmir Vrs. District Bar Association, Bandipora, MANU/SC/1566/2016 = (2017) 3 SCC 410, wherein a distinction has been made with regard to 'irregular' and 'illegal' engagement, referring to the exception carved out in Umadevi (3) mentioned supra, in paragraph 12 of the said judgment it has been stated as follows:

'12. The third aspect of Umadevi (3) which bears notice is the distinction between an 'irregular' and 'illegal' appointment. ***While answering the question of whether an appointment is irregular or illegal, the Court would have to enquire as to whether the appointment process adopted was tainted by the vice of non-adherence to an essential prerequisite or is liable to be faulted on account of the lack of a fair process of recruitment.*** *There may be varied circumstances in which an ad hoc or temporary appointment may be made.* ***The power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed.*** *The exercise of power however stands vitiated if it is found that the exercise undertaken*

(a) was not in exigencies of administration; or

(b)where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or

(c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides."

7.4. In *Suvendu Mohanty Vrs. State of Odisha, 2015 SCC OnLine Ori 267,* it has been observed as follows:

"9. With regard to the regularization of the services of the petitioners, a mention has been made in Annexure-4 that the petitioners being irregular recruits, their regularization is not permissible under the State Government Rules. But this condition made in the restructuring order in Annexure-4 so far as it relates to the petitioners cannot be applicable in view of the fact that the petitioners have been appointed against regular vacancies available in the regular scale of pay admissible to the post. But in view of their continued service for more than 10 years, their cases are covered by the ratio of the judgment of the apex Court in Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 = AIR 2006 SC 1806, wherein the apex Court has held that the appointments made against temporary or ad-hoc basis are not to be regularized. ***In paragraph 53 of the said judgment, it is provided that irregular appointment of duly qualified persons against sanctioned posts, who have worked for 10 years or more can be considered on merits and steps to be taken as one time measure to regularize them.*** *In Paragraph 53 of the said judgment, the apex Court has held as follows:*

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10. The object behind the exception carved out in this case was to permit regularization of such appointments, which are irregular but not illegal, and to ensure security of employment of those persons who served the State Government and their instrumentalities for more than ten years. Similar question came up for consideration

before the apex Court in Civil Appeal No. 2835 of 2015 (arising out of SLP (Civil) No. 20169 of 2013 disposed of on 13.3.2015 [Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265]. In paragraphs 12 and 13, the apex Court has held as follows:

'12. Elaborating upon the principles laid down in Umadevi's case (supra) and explaining the difference between irregular and illegal appointments in State of Karnataka Vrs. M.L. Kesari, (2010) 9 SCC 247, this Court held as under:

'7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi (3), if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. ***But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.'***

13. Applying the ratio of Umadevi's case, this Court in Nihal Singh Vrs. State of Punjab, (2013) 14 SCC 65 directed the absorption of the Special Police Officers in the services of the State of Punjab holding as under:

'35. ***Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor with reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.***

*36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits on a par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is— the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks.'***"*

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

7.6. In the case of *Union of India Vrs. Central Administrative Tribunal, (2019) 4 SCC 290* the following is the observation:

> *"25. The Court noted in the above judgment that if a strict and literal interpretation was given to the decision in Umadevi, no employee from the State of Jharkhand appointed on an irregular basis could ever be regularized as the State was formed on 15 November 2000 and the cut-off date had been fixed as 10 April 2006. The intent of the Court was to grant similarly-placed employees who had put the requisite years of service as mandated by Umadevi, the benefit of regularization. The Court thus held that the Jharkhand Sarkar ke Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamitikaran Niyamawali, 2015 ('the Regularisation Rules') must be interpreted in a pragmatic manner and employees of the State who had completed 10 years of service on the date of promulgation of the rules, ought to be regularized. In doing so, the Court ensured that employees in the State of Jharkhand who had completed the same years of service as employees from other States, are granted parity in terms of regularization. The spirit of non-discrimination and equity runs through the decisions in Umadevi [(2006) 4 SCC 1], ML Kesari [(2010) 9 SCC 247] and Narendra Kumar Tiwari [(2018) 8 SCC 238].*
>
> *26. In this background, the issue which now arises before this Court is in regard to the effective direction which would govern the present case. The High Court has directed the Union of India to absorb the casual workmen, if it is not possible at the Institute in question, then in any other establishment. The latter part of the direction, as we have already noted, cannot be sustained. Equally, in our opinion, the authorities cannot be heard to throw their hands in despair by submitting that there are no vacancies and that it had already regularized such of the persons in the seniority list, who reported for work. The Tribunal has entered a finding of fact that this defence is clearly not borne out of the record. Accordingly, we are of the view that having decided to implement the decision of the Tribunal, which was affirmed by the High Court, the Union of India must follow a rational principle and abide strictly by the seniority list in proceeding to regularize the workmen concerned.* ***Accordingly, we direct that the case for regularization shall be considered strictly in accordance with the seniority list in pursuance of the directions which were issued by the Tribunal and confirmed by the High Court and such of the persons, who are available for regularization on the basis of vacancies existing at present, shall be considered in accordance with law.*** *The Tribunal has denied back-wages but has ordered a notional fixation of pay and allowances. While affirming that direction, we also direct that persons who have crossed the age of superannuation will be entitled to the computation and payment of their retiral dues on that basis. This exercise shall be carried out within a period of three months from the receipt of a copy of the judgment. If it becomes necessary to grant age relaxation to the concerned workmen, the Appellants shall do so."*

7.7. In *Vibhuti Shankar Pandey Vrs. State of Madhya Pradesh, 2023 LiveLaw (SC) 91 = (2023) 3 SCC 639*, it has been stated as follows:

> *"*** The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in Secretary, State of Karnataka and Others Vrs. Umadevi and Others, (2006) 4 SCC 1, as* ***initial***

appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. ****"*

7.8. It may be apt to refer to *Ranjeet Kumar Das Vrs. State of Odisha, 2018 (I) ILR-CUT 695*, wherein relevant portion of the Judgment runs as follows:

"7. Before delving into the niceties of the order passed by the tribunal, this Court deems it proper to examine the claims of the petitioner on the basis of the factual matrix available on record itself. On the basis of the pleadings available before this Court, no doubt the petitioner had approached the tribunal seeking regularization of his services. ***Regularization in service law connotes official formalisation of an appointment, which was made on temporary or ad hoc or stop gap or casual basis or the like, in deviation from the normal rules of applicable norms of appointment. Such formalisation makes the appointment regular.*** *The ordinary meaning of regularisation is "to make regular" according to The Shorter Oxford English Dictionary, 3rd Edition, and according to Black's Law Dictionary, 6th Edition, the word "regular" means:*

'Conformable to law. Steady or uniform in course, practice, or occurrence; not subject to unexplained or irrational variation. Usual, customary, normal or general. Gerald Vrs. American Cas. Co of Reading, Pa., D.C.N.C., 249 F, Supp. 355, 357. Made according to rule, duly authorised, formed after uniform type; built or arranged according to established plan, law, or principle. Antonym of "casual" or "occasional," Palle Vrs. Industrial Commission, 79 Utah 47, 7 P. 2d. 248, 290.'

8. The above being the meaning of "regular", as per the common parlance given in dictionary, in B.N. Nagarajan, Vrs. State of Karnataka, AIR 1979 SC 1676 = (1979) 4 SCC 507, the apex Court held that the effect of such regularization would depend on the object or purpose for which the regularization is made or the stage at which it is made. Once regularized, the procedural infirmities which attended the appointment are cured. Regularization, however, does not necessarily connote permanence.

9. ***The word 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.*** *Relying on the Judgments of the apex Court in B.N. Nagarajan Vrs. State of Karnataka, AIR 1979 SC 1676 = (1979) 4 SCC 507, the Constitution Bench of the apex Court in State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1 has also taken the same view, which has also been followed by the apex Court in Hindustan Petroleum Corpn. Ltd. Vrs. Ashok Ranghba Ambre, (2008) 2 SCC 717 and also in Hindustan Aeronautics Ltd. Vrs. Dan Bahadur Singh, (2007) 6 SCC 207.*

10. Temporary or ad hoc or stop gap or casual basis or the like appointments are made for various reasons. An emergent situation might make it necessary to make such appointments. Since the adoption of the normal method of regular recruitment might involve considerable delay regulating in failure to tackle the emergency. ***Sometimes such appointments were to be made because although extra hands are required to meet the workload, there are no sanctioned posts against which any regular recruitment could be made. In fact in the case of ad hoc or casual appointees, the appointments, are in the majority of cases, not against sanctioned posts and the appointments are made because of the necessity of workload and the constraints of sanctioning such post (mainly on financial consideration) on permanent basis.*** *Needless to say that filling up vacancies against sanctioned posts by regularisation is*

against the constitutional provisions of equality of opportunity in the matter of public employment violating Articles 14 and 16 of the Constitution by not making the offer of employment to the world at large and allowing all eligible candidates equality of opportunity to be considered on merits. If that be so, considering the emergent necessity of filling up of vacancies and allowing the petitioner to continue for a quite long period, even if with one day break in service, cannot be stated to be a reasonable one, rather, this is an unfair and unreasonable action of the authority concerned.

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12. In view of above constitutional philosophy, whether Courts can remain as mute spectator, is a matter to be considered to achieve the constitutional goal in proper perspective. But all these questions had come up for consideration and decided by the Constitution Bench of the apex Court in Umadevi (3) mentioned supra. The factual matrix of the case in Umadevi (3) arose for consideration from a judgment of Karnataka High Court. In some of the cases, the Karnataka High Court rejected the claims of persons, who had been temporarily engaged as daily wagers but were continued for more than 10 years in the Commercial Taxes Department of the State of Karnataka for regularization as permanent employees and their entitlement to all the benefits of regular employees. Another set of civil appeals arose from the order passed by the same High Court on a writ petition challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers and seeking a further direction for the regularization of all such daily wage earners engaged by the State or local bodies. These claims were rejected by the Division Bench of the Karnataka High Court on appeal from the judgment of the learned Single Judge. The reason for the mater being considered by the Constitution Bench arose because of two earlier orders of reference made by a Bench of two-Judge and subsequently by a Bench of three-Judge- Secretary, State of Karnataka Vrs. Umadevi (1) (2004) 7 SCC 132, and Secretary, State of Karnataka Vrs. Umadevi (2) (2006) 4 SCC 44, respectively, as they noticed the conflicting opinions expressed by the earlier 3 Bench judgments in relation to regularization."

7.9. In *Patitapaban Dutta Dash Vrs. State of Odisha, W.P.(C) No. 19951 of 2020, vide Judgment dated 09.09.2021*, a Single Bench of this Court has made the following observation:

"8. It is worthwhile to mention here that the Court comes into picture only to ensure observance of fundamental rights, and to ensure the rule of law and to see that the executive acts fairly and gives a fair ideal to its employees consistent with requirements of Articles 14 and 16 of the Constitution, and that the authority should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. For this very reason, it is held that a person should not be kept in contractual, temporary or ad hoc status for a long period. Where a contractual, temporary or ad hoc appointment is continued for long, the Court presumes that there is need of a regular post and accordingly directs for regularization. ***While issuing direction for regularization, the Court must first ascertain the relevant fact, and must be cognizant of the several situations and eventualities that may arise on account of such direction. If for any reason, a contractual, ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization, provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.*** *Even though a casual*

labourer is continued for a fairly long spell, say two or three years, a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with empathy for the person."

7.10. Aforesaid Judgment rendered by the Single Judge of this Court in *Patitapaban Dutta Dash (supra)* got the seal of approval of this Court being carried in appeal bearing *W.A. No. 777 of 2021* before the Division Bench, which came to be disposed of *vide* Judgment dated 12.04.2023 [see, *(2023) (I) ILR-CUT 906*]. While directing the State of Odisha to implement the direction of the Single Judge "in letter and spirit", this Court in the ultimate held as follows:

"44. Going by the above legal position, in the present cases, at the highest, the respondents could be considered to be 'irregularly' appointed and therefore would, even on the touchstone of Umadevi (supra), be eligible for regularization. The law in M.L. Kesari (supra), has been reiterated in Amarkant Rai Vrs. State of Bihar, (2015) 8 SCC 265, Sheo Narain Nagar Vrs. State of U.P., (2018) 13 SCC 432 = AIR 2018 SC 233 and Rajnish Kumar Mishra Vrs. State of U.P., (2019) 17 SCC 648."

7.11. Noticing the Judgment of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and Others Vrs. Umadevi (3), (2006) 4 SCC 1*, in *Niranjan Nayak Vrs. State of Odisha & Others, 2023 (I) OLR 407* the observation of this Court runs as follows:

"12. Similarly, in the case of Amarendra Kumar Mahapatra and Others Vrs. State of Odisha and Others, (2014) 4 SCC 583 = AIR 2014 SC 1716, the Supreme Court was of the opinion that ***the appellants were entitled to regularization in service having regard to the fact that they have rendered long years of service on ad hoc basis****.*

13. In the case at hand, it can be ascertained that the petitioner was appointed against a substantive vacant post and he had been discharging his duties in the said post since 1993. The appointment was made on an ad hoc basis and was extended from time to time. Since the petitioner was appointed against substantive vacancy and the post was sanctioned by higher authorities, the petitioner should have been extended the benefit of regulatisation like other similarly situated persons."

7.12. This Court wishes to take notice of recent view of Hon'ble Supreme Court of India expressed in the case of *Jaggo Vrs. Union of India, 2024 SCC OnLine SC 3826*, wherein it has been observed as follows:

"20. ***It is well established that the decision in Umadevi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities.*** *The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar Vrs. Union of India, (2024) 1 SCR 1230, it was*

held that held that ***procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee.*** *The relevant paras of this judgment have been reproduced below:*

'6. The application of the judgment in Umadevi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. ***The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service.*** *Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Umadevi (supra).*

*7. The judgment in the case Umadevi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. ***"*

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. ***In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.***

22. ***The pervasive misuse of temporary employment contracts****, as exemplified in this case,* ***reflects a broader systemic issue that adversely affects workers' rights and job security.*** *In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.*

23. The International Labour Organization (ILO), of which India is a founding member, has consistently advocated for employment stability and the fair treatment of workers. The ILO's Multinational Enterprises Declaration [International Labour Organization—Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy] encourages companies to provide stable employment and to observe obligations concerning employment stability and social security. ***It emphasizes that enterprises should assume a leading role in promoting employment security, particularly in contexts where job discontinuation could exacerbate long-term unemployment****.*

24. The landmark judgment of the United State in the case of Vizcaino Vrs. Microsoft Corporation, 97 F.3d 1187 (9th Cir. 1996) serves as a pertinent example from the

private sector, illustrating the consequences of misclassifying employees to circumvent providing benefits. In this case, Microsoft classified certain workers as independent contractors, thereby denying them employee benefits. The U.S. Court of Appeals for the Ninth Circuit determined that these workers were, in fact, common-law employees and were entitled to the same benefits as regular employees. The Court noted that large Corporations have increasingly adopted the practice of hiring temporary employees or independent contractors as a means of avoiding payment of employee benefits, thereby increasing their profits. This judgment underscores the principle that the nature of the work performed, rather than the label assigned to the worker, should determine employment status and the corresponding rights and benefits. ***It highlights the judiciary's role in rectifying such misclassifications and ensuring that workers receive fair treatment.***

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

Misuse of "Temporary" Labels:
Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as "temporary" or "contractual," even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

Arbitrary Termination:
Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

Lack of Career Progression:
Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

Using Outsourcing as a Shield:
Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

Denial of Basic Rights and Benefits:
Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

26. ***While the judgment in Umadevi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees.*** *This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular*

appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Umadevi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for Government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. ***By ensuring fair employment practices, Government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody.*** *This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."*

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

"16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. ***Regrettably, this only perpetuated precariousness: the Appellant Workmen were left in a marginally improved yet still uncertain status.*** *While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record.*

17. In light of these considerations, the Employer's discontinuation of the Appellant Workmen stands in violation of the most basic labour law principles. Once it is established that their services were terminated without adhering to Sections 6E and 6N of the U.P. Industrial Disputes Act, 1947, and that they were engaged in essential, perennial duties, these workers cannot be relegated to perpetual uncertainty. While concerns of municipal budget and compliance with recruitment rules merit consideration, such concerns do not absolve the Employer of statutory obligations or negate equitable entitlements. ***Indeed, bureaucratic limitations cannot trump the legitimate rights of workmen who have served continuously in de facto regular roles for an extended period****.*

18. The impugned order of the High Court, to the extent they confine the Appellant Workmen to future daily-wage engagement without continuity or meaningful back wages, is hereby set aside with the following directions:

I. The discontinuation of the Appellant Workmen's services, effected without compliance with Section 6E and Section 6N of the U.P. Industrial Disputes Act, 1947, is declared illegal. All orders or communications terminating their services are quashed. In consequence, the Appellant Workmen shall be treated as continuing in service from

the date of their termination, for all purposes, including seniority and continuity in service.

II. The Respondent Employer shall reinstate the Appellant Workmen in their respective posts (or posts akin to the duties they previously performed) within four weeks from the date of this judgment. Their entire period of absence (from the date of termination until actual reinstatement) shall be counted for continuity of service and all consequential benefits, such as seniority and eligibility for promotions, if any.

III. Considering the length of service, the Appellant Workmen shall be entitled to 50% of the back wages from the date of their discontinuation until their actual reinstatement. The Respondent Employer shall clear the aforesaid dues within three months from the date of their reinstatement.

IV. The Respondent Employer is directed to initiate a fair and transparent process for regularizing the Appellant Workmen within six months from the date of reinstatement, duly considering the fact that they have performed perennial municipal duties akin to permanent posts. In assessing regularization, the Employer shall not impose educational or procedural criteria retroactively if such requirements were never applied to the Appellant Workmen or to similarly situated regular employees in the past. To the extent that sanctioned vacancies for such duties exist or are required, the Respondent Employer shall expedite all necessary administrative processes to ensure these longtime employees are not indefinitely retained on daily wages contrary to statutory and equitable norms."

7.14. In *Prafull Kumar Behera Vrs. State of Odisha, 2025 SCC OnLine Ori 2416* relying on the General Administration Department Resolution dated 17.09.2013, it has been observed as follows:

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

'8. ***When we consider the prevailing scenario, it is painful to note that the decision in Umadevi (Supra) has not been properly understood and rather wrongly applied by various State Governments.*** *We have called for the data in the instant case to ensure as to how many employees were working on contract basis or ad-hoc basis or daily-wage basis in different State departments. We can take judicial notice that widely aforesaid practice is being continued.* ***Though this Court has emphasised that incumbents should be appointed on regular basis as per rules but new devise of making appointment on contract basis has been adopted, employment is offered on daily wage basis etc. in exploitative forms.*** *This situation was not envisaged by Umadevi (supra). The prime intendment of the decision was that the employment process should be by fair means and not by back door entry and in the available pay scale. That spirit of the Umadevi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Umadevi (supra) has not been implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34(1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in D.S. Nakara Vrs. Union of India, (1983) 1 SCC 305 = AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be*

continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. ***There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily.*** *The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Umadevi (supra). Thus, the time has come to stop the situation where Umadevi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.* ***The employment cannot be on exploitative terms, whereas Umadevi (supra) laid down that there should not be back door entry and every post should be filled by regular employment, but a new device has been adopted for making appointment on payment of paltry system on contract/ adhoc basis or otherwise.*** *This kind of action is not permissible, when we consider the pith and substance of true spirit in Umadevi (supra).*

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

10. The High Court dismissed the writ application relying on the decision in Uma devi (supra). ***But the appellants were employed basically in the year 1993; they had rendered service for three years, when they were offered the service on contract basis; it was not the case of back door entry; and there were no Rules in place for offering such kind of appointment.*** *Thus, the appointment could not be said to be illegal and in contravention of Rules, as there were no such Rules available at the relevant point of time, when their temporary status was conferred with effect from 02.10.2002.* ***The appellants were required to be appointed on regular basis as a one-time measure, as laid down in paragraph 53 of Umadevi (supra). Since the appellants had completed 10 years of service and temporary status had been given by the respondents with retrospective effect in the 02.10.2002, we direct that the services of the appellants be regularized from the said date i.e. 02.10.2002, consequential benefits and the arrears of pay also to be paid to the appellants within a period of three months from today.'***

8.7. It is manifest from record that by now the petitioner Appellant, being appointed by duly authorized Appointing Authority, has completed more than 10 years of service, which is requisite length of service for consideration of regularization in service as per Umadevi (3), (2006) 4 SCC 1 [although the Government of Odisha has accepted six years of satisfactory service for regularization in terms of Resolution dated 17.09.2013 read with Resolution dated 16.01.2014] and the authorities of the Regional Transport Officer employed the petitioner-Appellant and extended his terms in service voluntarily and continuously for more than ten years."

Analysis:

8. Conspectus of legal perspective leads this Court to opine that the rejection of claim of the petitioners as communicated in Letter dated 04.01.2020 (Annexure-8) taking shelter of *Umadevi (3) (supra)* is unjustified in view of *Jaggo (supra)* and *Shripal (supra)*.

8.1. This Court proceeds to consider the plight of the petitioners *vis-à-vis* similarly situated persons whose cases being taken up, are regularised in service. With reference to *Deepak Kumar Mohanty Vrs. TP Central Odisha Distribution Limited, W.P.(C) No.2688 of 2016, vide Judgment dated 06.04.2021* it has been submitted by the learned Senior Counsel for the petitioners that since by virtue of Bi-partite Settlement certain personnel having been considered for regularisation in service, the same benefit should have been extended to the case of the petitioners. This Court appreciates vociferous argument advanced on behalf of the petitioners that as the services of the petitioners, Non-ITI Workers, having been utilised for the purpose of Operation and Maintenance, and they have been working till date uninterruptedly since 2005-07, the authorities should have maintained parity in treatment without any reservation on technical considerations. The opposite parties could not assert additional factor/ground by way of counter affidavit to supplement the order of rejection. In the Letter dated 04.01.2020 (Annexure-8) it has been admitted by the CESU that the 121 Non-ITI personnel are "working in Operation and Maintenance Activities", yet their case for regularisation was not considered using the shield of *Umadevi (3) (supra).* However, in view of subsequent decision of the Hon'ble Supreme Court as discussed in the foregoing paragraphs would make it clear that the petitioners are entitled to be considered for regularisation.

8.2. The claim of the petitioners for regularisation with such additional ground cannot be considered in this writ proceeding in view of settle position of law laid down in *Mohinder Singh Gill Vrs. Chief Election Commissioner, AIR 1978 SC 851.* The Hon'ble Supreme Court in paragraph 8 of said reported decision observed as follows:

> *"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, 1951 SCC 1088 = AIR 1952 SC 16:*
>
> *'Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.' ***"*

8.3. Reliance is placed by the learned Senior Counsel on the following paragraphs of Judgment rendered in *Deepak Kumar Mohanty (supra)*:

> *"7. For the aforesaid direction and keeping in view the development through the Tripartite Settlement as well as the development through Annexure-1 allowing the petitioners to participate in a Written Test finding them qualified in such Written Test further they have been called upon to attend the viva-voce test and such viva-voce test has not only been conducted but result thereof has also been kept in sealed cover.* ***This Court is unable to appreciate the application of Umadevi (supra) to the case of the petitioners and rejecting their case thereby.*** *It is for the aforesaid development up till allowing the petitioners to attend the viva-voce test and after holding the viva-voce test in terms of the settlement at Clause-6 of the Tripartite 8 Settlement involved herein, it is open to the Competent Authority to declare the result of the petitioners in the viva voce test and dependant on their merit in the viva-voce test vis-a-vis the interview altogether. Action as appropriate for regularization should have been taken only in terms of Tripartite Settlement. It is in this view of the matter and for wrong application of Umadevi (supra) to the case of the petitioners, this Court finds the impugned order at Annexure-4 is a mechanical and illegal disposal one and it is in this view of the matter this Court sets aside the order at Annexure-4 and while allowing the Writ Petition directs the Competent Authority, the contesting opposite parties or substituted owner in the meantime if any to open the sealed cover involving the petitioners, in the viva-voce test dependant on the outcome in the viva-voce test take decision in the matter of interview involving the petitioners on the aspect of their regularization in the post of Clerk-B (trainee) by undertaking the complete exercise within a period of one and half months from the date of communication of the order by either party."*

8.4. With the aforesaid backdrop, while it is reflected in the Letter dated 04.01.2020 that, the petitioners, Non-ITI personnel are working in Operation and Maintenance Activities, they should not have been discriminated while certain other similarly situated counterparts have been considered for regularisation.

8.5. In this connection *Ravi Verma and others Vrs. Union of India and others, 2018 SCC OnLine SC 3860* may fruitfully be referred to, wherein the following are the observations of Hon'ble Supreme Court:

> *"4. The appellants were appointed as casual employees in the Income Tax Department in the year 1993-1994 since then they were working continuously. On 30th January 2004 with respect to other similarly situated employees, temporary status was granted. The respondent No. 4 on 30th December 2004 recommended the case of the appellants for temporary status/regularization. Again it was recommended for regularization on 14.06.2005. In the meantime, the decision in the State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1 was pronounced by this Court, the same provided that the employees who had rendered services continuously for ten years without the cover of the court's order be regularized as the one-time measure.*
>
> *8. Again on 07.11.2007/19.11.2007 information was forwarded along with a recommendation for the regularization of services of the appellant and again on 01.01.2008 and 31.01.2008 also, recommendations were made. However services were not regularized, through Chief Commissioner, Income Tax, U.P. West, Ghaziabad regularized similarly placed 88 casual employees on 30.01.2009. The Chief Commissioner, Income Tax Orissa, Bhubaneshwar also regularized similarly situated*

eight employees on 12.03.2009; orders of regularization have been placed on record respectively as Annexures P1 and P2. However, similar treatment was not accorded to the appellants.

9. On 01.06.2009 appellants 1, 2 and 3 were sanctioned minimum of regular pay scale of Group D employees with Dearness Allowance in accordance with DoPT Circular dated 31.05.2004 and in terms of the orders of CCIT dated 07.11.2007 and 06.12.2007 on conferral temporary of status on the employees. On 22.09.2009, Chief Commissioner, Income Tax, Kolkata also regularized 111 similarly situated casual employees and 17 employees on 15.10.1990 and Chief Commissioner, Income Tax, Lucknow regularized 59 similarly situated casual employees on 22.01.2010. There was further regularization of 35 employees of the office of Chief Commissioner, Income Tax, Patna on 20.08.2010. ***However, the claim of the appellants was rejected by respondent No. 3 though they had served continuously for more than ten years and fulfill the requisite criteria for the purpose of regularization in terms of the circulars of DoPT and the decision rendered by this Court in Umadevi (supra). The appellants have also given the vacancy position****.*

12. Having heard learned counsel for the parties at length, we are of the considered opinion that appointments were only irregular one, this Court observed in para 53 Umadevi (supra) thus:

'53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, (1967) 1 SCR 128 = AIR 1967 SC 1071, R.N. Nanjundappa, (1972) 1 SCC 409 = (1972) 2 SCR 799 and B.N. Nagarajan, (1979) 4 SCC 507 = (1979) 3 SCR 937 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.'

13. In view of the aforesaid decision, ***the circulars and regularization of the similarly situated employees at other places and various recommendation that were made the services of the appellants ought to have been regularized in the year 2006; discriminatory treatment has been meted out to them. As per the decision of Umadevi (supra), they were entitled to regularization of services; they did not serve under the cover of court's order.*** *Illegality has been committed by not directing regularization of services."*

8.6. Reference is also made to paragraphs 4 and 8 of *Raman Kumar and others Vrs. Union of India and others, 2023 SCC OnLine SC 1018*, wherein the following are the observations:

> *"4. The matter arises out of regularization of the employees. The Chief Commissioner of Income Tax in his report dated 14.02.2013 found that, in the exercise conducted in pursuance of the judgment of this Court in the case of Secretary, State of Karnataka Vrs. Umadevi, (2006) 4 SCC 1, though 65 employees were found to be entitled for regularization, only 35 employees were regularized. This was done since only 35 vacancies were available.*
>
> *8. Indisputably, the appellants herein have completed service of more than ten years. Even this Court in the case of Ravi Verma Vrs. Union of India (Civil Appeal No(s).2795-2796 of 2018) decided on 13.03.2018 found that the act of regularizing the services of some employees and not regularizing the services of the others is discriminatory and violative of Article 14 of the Constitution of India."*

8.7. Such being the position, it is unequivocal that the petitioners cannot be discriminated on the plea that the decision in *Umadevi (3) (supra)* poses a barrier for consideration of regularisation in service.

CONCLUSION & DECISION:

9. In the wake of discussions made above and views expressed through decisions of the Hon'ble Supreme Court of India as also this Court and other High Courts, taking into consideration the material available on record it is necessary that the opposite parties of the Central Electricity Supply Utility of Odisha are required to take fresh decision with respect to regularization in service of the petitioners.

9.1. Impugned in the present case is the decision of 45th and 49th Board Meeting held on 02.09.2015 and 24.09.2016 respectively as reflected in Letter Ref.No. CESU/HR/18-11/2012 (Vol-II)/259, dated 04.01.2020 issued by Senior General Manager (HR) of Central Electricity Supply Utility of Odisha addressed to the Additional Secretary to the Government of Odisha in Department of Energy. Glance at said letter it reveals that the regularization of 121 Non-ITI personnel working in Operation and Management Activities being engaged through outsourcing agency in the light of judgment of the Hon'ble Supreme Court of India in the case of *Secretary, State of Karnataka Vrs. Umadevi (3), (2006) 4 SCC 1* could not be considered. Bereft such reason, no other impediment has been cited by the Board. Further minute reading of said letter reveals that weightage would be given to those employees/workers in the future recruitment process.

9.2. As is apparent from said communication, no question is raised with respect to the experience of those workers in the Operation and Maintenance Activities. There is nothing in the said letter to show that they have not been engaged since 2005-07 as Non-ITI Helpers in erstwhile Central Electricity Supply Utility of Odisha. There is nothing on record placed by the opposite parties to suggest that they are not continuing with the work entrusted to them as on date. Rather the Board of Central Electricity Supply Utility of Odisha conscious to consider their

experience and long standing contribution to the Organisation in the Operation and Maintenance Activities or otherwise by giving weightage in future recruitment that would be carried out by the opposite parties.

9.3. The view expressed by the Hon'ble Supreme Court of India post-*Umadevi (3) (supra)* in subsequent judgments as referred to in foregoing paragraphs including *Jaggo* and *Shripal* is relevant in the present context. This Court has also on earlier occasions and recently followed the same and directed the authorities concerned to consider the case of personnel engaged in the Organisations/ Institutions by resorting to outsourcing process *vis-à-vis* roles performed by temporary employees/NMR/DLR/Contractual/ad hoc or any other name whatsoever. The Courts have deprecated replacement of one set of exploited workers with another. With strong words, the Hon'ble Supreme Court observed that *"This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment".*

10. Regard being had to the decisions on the subject and the factual matrix as obtained from the pleadings of respective parties, diligently considering the arguments, contentions and submissions advanced by counsel for respective parties, this Court is of the strong opinion that the decision taken by the Board of Central Electricity Supply Utility of Odisha as communicated in Letter dated 04.01.2020 cannot withstand judicial scrutiny.

10.1. It may be worthy of notice at this juncture the following expression of the Hon'ble Supreme Court of India as found in *Gujarat Agricultural University Vrs. Rathod Labhu Bechar, (2001) 3 SCC 574*:

> *"17. From the aforesaid, it emerges that the learned Single Judge had concurred with the finding of the Tribunal that* ***the contesting workmen have been working in the appellant University regularly for a long number of years. The existence of permanent nature of work was inferred on this account and also due to the vastness of the appellant's establishment. The regularisation is claimed only in respect of Class IV employees. The main objection which was raised earlier and is raised before us, is that a person could only be regularised on any vacant post and if there be one he should be qualified for the same as per qualifications, if any, prescribed. In fact, the Tribunal has held that on the date of the award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from the daily-wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from a daily-wage worker or an ad hoc appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with a sword of Damocles hanging over their heads or to continue with favoured ones in the cases of ad hoc employees withstalling competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, whey they***

> ***continue to work for year after year, the only option to the employer is to regularise them.*** *Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption."*

10.2. Vide Sri Ganesh Chandra Patra Vrs. State of Odisha, 2025 (II) ILR-CUT 262 Division Bench of this Court has expressed the following through the observations of Hon'ble Madras High Court:

> *"It is apt to refer to the anxious consideration shown by the Madras High Court in N. Karunanidhi Vrs. Union of India, W.P. No. 12887 of 2016, vide Judgment dated 22.04.2022 rendered with respect to exploitation of service. The following benevolent observation has been made by said Court in favour of the employees, whose services have been utilized by the Government for a substantial length of time:*
>
> *'18. If the Courts cannot give direction for their regularisation of service, in the constrained legal scenario what other remedies that are available to these unfortunate employees, who have been engaged in service for public purpose, without having any definite future to hold on?* ***These petitioners cannot be kept on the tenterhooks of their employment for years together, by brushing aside and discarding their concerned yearning for a definite future, with unresponsive indifference.***
>
> *19. A welfare State grounded on constitutional values, cannot come up with apathetic and callous stand that despite continued employment of these petitioners for years together, no semblance of right is available to them.* ***Such stand by the State is opposed to constitutional values as enshrined in Article 21 of the Constitution of India.*** *The Courts of course have held that equal opportunity must be provided in public employment and entry through back door should be discountenanced.* ***When Article 21, being violated by the State, action towards its servants, the consideration of the Government must primarily be focused on alleviating legitimate grievances of its employees.*** *Even assuming that the recruitment of these writ petitioners had not been fully in consonance with the procedure for appointment in Government services, the fact remained that these persons have been consciously appointed by the Government for implementing public projects and the work has been extracted from them continuously for several years. It is therefore, not open to the Government after a period of time to turn around and contend that these writ petitioners have no right at all to seek any kind of guarantee for their future. 20. In the opinion of this Court, continued employment for several years,* ***even on a projects meant to serve the State as a whole, certain rights would definitely accrue to them, at least to the extent of making a claim for formulation of a scheme/towards their absorption.*** *This Court*

is quite conscious of the fact that the Government has been benevolent and had come up with several schemes in the past and directed regularisation of services of thousands of employees over a period of time. Such benevolence ought to permeate to the lowest levels to take within its sweep the desperate cry of the petitioners as well. As in the sublime words of the father of nation, Mahatma Gandhi, ***'A nation's greatness is measured by how it treats its weakest members'****. Merely because these writ petitioners have been employed in the projects, the policy makers may not shut their mind and close their eyes to their precarious plight having to serve public purpose but left in the lurch and unprotected, at the end of the day.' ***"*

11. In view of above discussions with conspectus of legal approach of various Courts, this Court has no option but to observe that the decision of the Board in the 45th Meeting and the 49th Meeting held on 02.09.2015 and 24.09.2016 as reflected in the Letter dated 04.01.2020 (Annexure-8) is not in consonance with law and cannot be countenanced. Having thus observed, the decisions of the Board in its 45th Meeting dated 02.09.2015 and reaffirmed in its 49th Meeting dated 24.09.2016 are set aside. It is, therefore, directed that the competent authorities may take up the claim of the petitioners and consider their case for regularisation in service or absorb them in service.

11.1. Needless to state that while taking fresh decision, the opposite parties shall not be biased by any of the constraints that prevailed in taking earlier decisions in the Meeting of the Board.

11.2. It is hoped and trusted that the opposite parties shall take pragmatic decision in the light of the above position of law. It may be observed that keeping in view that the petitioners have been waiting for their turn to be regularised in service or absorption in positions in service for long since, being engaged during 2005-07, the opposite parties-competent authorities shall complete the entire exercise within a period of three months from date.

12. In the result, the writ petitions [W.P.(C) No. 13753 of 2020 and W.P.(C) No.13752 of 2020] stand disposed of along with all pending Interlocutory Applications, if any, but in the circumstances, there shall be no order as to costs.

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

Result of the case:
Writ Petitions disposed of.

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2025 (II) ILR-CUT-1317

GANDARAM BHOI
V.
REGULATED MARKET COMMITTEE, DUNGURIPALI & ORS.

[W.P.(C) NO. 20651 OF 2017]

07 JULY 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether the petitioner is entitled to all service benefits including increment in absence of any specific observation made in the order of punishment.

Headnotes

SERVICE JURISPRUDENCE – Disciplinary Proceeding – Termination/ removal – Reinstatement – The petitioner was reinstated in service with effect from 01.09.2010, imposing the punishment to the effect that he will not be entrusted with duties related to financial matter & liable to pay a penalty of ₹5,000/- which is to be realized in five installments – It was also ordered that the period of removal to be treated as suspension – Nowhere in the said order, it has been indicated that the period of removal i.e. from 01.04.1997 till 01.09.2010 shall not be treated as continuous service for the purpose of increment and other financial benefits – Whether the petitioner is entitled to all service benefits including increment in absence of any specific observation made in the order of punishment.

Held: Yes – In absence of any specific observation made in the order dated 27.08.2010, vide which the Petitioner was reinstated in service with effect from 01.09.2010, this Court is of the view that the Petitioner's period of suspension/termination/removal should have been taken into consideration for the purposes of increment and financial benefits at par with other co-employees – This Court is of further view that the Petitioner is entitled to all the benefits, including increments, which were being extended in favour of his counterparts from time to time. (Para 9)

Citations Reference

Central Bank of India and others Vs. Dragendra Singh Jadon, **AIR 2022 SC 3779 – referred to.**

List of Acts

Constitution of India, 1950.

Keywords

Disciplinary Proceeding; Removal; Termination; Reinstatement; Suspension; Service benefits; Increment; Financial benefit; Punishment; Show cause notice.

Case Arising From

Prayer for a direction to pay the balance arrear salary of the petitioner with effect from 01.09.2010 till date.

Appearances for Parties

For Petitioners : Mr. B. Baug, Sr. Adv.

For Opp. Party : Mr. T.R. Mehera (O.P. No. 1 & 2)
None for (O.P. No. 3)

Judgment/Order

Judgment

S. K. MISHRA, J.

This writ petition has been preferred by the Petitioner with the following prayers.

"PRAYER

Under the aforesaid facts and circumstances, it is, therefore, prayed that this Hon'ble Court may be graciously pleased to admit this writ petition and issue a 'Rule-Nisi' calling upon the Opposite Parties to show cause as to why the Opposite parties shall not be directed to pay the balance arrear salary of the petitioner with effect from 01.09.2010 till date and thereafter per month regularly by taking into consideration the appointment of the petitioner in regular service with effect from 01.07.1994 and to clear up the balance arrear amount within a fixed period and if the Opposite Parties fail to show cause or show insufficient cause make the said rule absolute"

2. The factual matrix, which led to filing of the present writ petition, is that the Petitioner was engaged as daily wager by the Chairman, Regulated Market Committee, Dunguripali along with five others. Vide order dated 01.07.1994, the services of the Petitioner and others were regularized as Yardman in the scale of pay of Rs.800-15-1010-EB120-1150/-. After regularization of his service, a departmental proceeding was initiated against him. He was dismissed from service with effect from 01.04.1997. Being aggrieved by the said order of dismissal, the Petitioner preferred O.J.C. No.9627 of 1997. This Court, vide order date 01.05.2006, had been pleased to quash the said order of dismissal as the same was passed by the Opposite Party-Employer without any enquiry and providing an opportunity of hearing to the Petitioner. However, because of the observation made in the said order dated 01.05.2006, passed in O.J.C. No. 9627 of 1997, a fresh article of charge was issued against the Petitioner and an Enquiry Officer was appointed to enquire in to the matter, who submitted his report finding the Petitioner guilty. However, without giving any second show cause notice, punishment was imposed on the Petitioner vide letter dated 27.08.2010 (Annexure-2), which is extracted below:

REGULATED MARKET COMMITTEE, DUNGURIPALI
At/PO-Dunguripali, Dist: Subarnapur-767023 (Orissa)

Ref NO.345 Date: 27.08.2010

O R D E R

After careful consideration of the matter in the Committee Meeting of RMC, Dunguripali held on 17/08/2010 & basing on the previous order of the Ex-Chairman, Sri Gandaram Bhoi, Ex-Yardman of RMC, Dunguripali is hereby reinstated in his service with effect from 01.09.2010 with imposing of following punishment.

1) He will not be entrusted with duties related to financial matter.

2) He is imposed penalty of Rs.5,000/- which to be realized in 05(five) installments.

3) ***The period of removal is treated as suspension as such.***

By order of Chairman
Sd/-
Secretary
R.M.C.,Dunguripali"
(Emphasis supplied)

3. Even though, vide order dated 27.08.2010, it was ordered that period of removal of the Petitioner is to be treated as suspension as such, in view of nonpayment of subsistence allowance, the Petitioner was constrained to approach this Court again in W.P.(C) No.9531 of 2012, which was disposed of vide order dated 12.09.2013 directing the Opposite Parties-Employers to pay subsistence allowance to the Petitioner within a period of three months from the date of receipt of certified copy of the said order. After his reinstatement with effect from 01.09.2010, his past period of service, i.e., from 01.04.1997 till the date of his reinstatement, was not counted for the purpose of continuous service and he was not paid his revised salary at par with other co-employees, who were regularized with him with effect from 01.07.1994. The Petitioner was only paid Rs.21,261/- per month whereas, other Yardmans were paid Rs.27,000/- per month. Thereafter, the Petitioner submitted a representation on 15.05.2017 indicating therein that he is entitled to get all the service and financial benefits like other Yardmans, who were regularized along with him with effect from 01.07.1994. However, because of the inaction of the employer, he was being constrained to prefer the present writ petition.

4. Opposing to such prayer, a Counter Affidavit has been filed by the Opposite Party No.2. The sum and substance of the said Counter is that the Petitioner was not purely exonerated from the charges for the said period of dismissal. The said period was not treated as duty but was treated as suspension as such. Hence, the Petitioner is not entitled to get the same salary at par with his co-employees.

5. Mr. Baug, learned Senior Counsel for the Petitioner, reiterating the grounds urged in the writ petition, submitted that there is no mention in the order of punishment dated 27.08.2010 that the period for which the Petitioner was out of employment shall not be counted for any purpose, including for the purpose of future increments. Rather, he was paid subsistence allowance for the said period, being so directed by this Court in W.P.(C) No.9531 of 2012. Further, as per the settled position of law, the Petitioner is entitled to all the consequential benefits after his reinstatement in service so also future benefits at par with his co-employees,

what he would have been paid, had he not been dismissed from service. To substantiate his submission, learned Senior Counsel for the Petitioner relied on the judgment of the Supreme Court reported in AIR 2022 SC 3779 ***(Central Bank of India and others Vs. Dragendra Singh Jadon).***

6. Learned Senior Counsel for the Petitioner further submitted that, during pendency of the present writ petition, the Petitioner was superannuated from service with effect from 31.01.2024. Hence, direction be given to the Opposite Party-Employer to pay him all the financial benefits, including increments, which were extended in favour of the counterparts of the Petitioner from time to time with effect from his date of reinstatement, i.e. 01.09.2010, till 31.01.2024.

7. Learned Counsel for the Opposite Party-Bank, reiterating the stand taken in the Counter, submitted that because of the proved misconduct, the punishment was imposed on the Petitioner vide order dated 27.08.2010, which was never challenged by the Petitioner. Hence, the Opposite Party was justified in not paying the salary and other benefits to the Petitioner at par with the Co-Yardmans by counting the period from 01.04.1997 till 01.09.2010 as continuous service.

8. As is revealed from the punishment order dated 27.08.2010, admittedly, pursuant to the decision of the Committee of R.M.C., Dunguripali held on 17.08.2010 so also the previous order of the Ex-Chairman of R.M.C., Dunguripali, the Petitioner was reinstated in service with effect from 01.09.2010 imposing the punishment to the effect that he will not be entrusted with duties related to financial matter, he is liable to pay a penalty of Rs.5,000/-, which to be realized in five installments and it was ordered to treat the period of removal as suspension as such. Nowhere in the said order, it has been indicated that the period of removal i.e. from 01.04.1997 till 01.09.2010 shall not be treated as continuous service so also for the purpose of increment and other financial benefits. Rather, being directed by this Court, the Opposite Party-Employer paid the Petitioner subsistence allowance for the said period, as, vide order dated 27.08.2010, it was ordered that period of removal is to be treated as suspension as such. At this juncture, it would be apt to reproduce below the operative portion of the said order dated 12.09.2013 passed in W.P.(C) No.9531 of 2012.

> *"In view of the above,* ***it is not disputed that the Petitioner continued under suspension from 01.04.1997 till he was reinstated, i.e. 27.08.2010. Hence, he is entitled to payment of subsistence allowance for the said period as per the rules.*** *Accordingly, opposite parties are directed to take immediate steps to ensure payment of the subsistence allowance to the petitioner for the aforesaid period as per rules, as expeditiously as possible, preferably within a period of three moths from the date of receipt of certified copy of the order."* ***(Emphasis supplied)***

9. Further, law is well settled that, if a competent Court passes an order directing a dismissed or terminated employee to be reinstated, what would be the consequence. This Court is of the view that, if there is no mention in the order of punishment as to what would be the fate of past service, for which an employee was

forced to remain out of employment on his reinstatement, the period of dismissal has to be counted for the purpose of continuous service and future service benefits. Hence, in absence of any specific observation made in the order dated 27.08.2010, vide which the Petitioner was reinstated in service with effect from 01.09.2010, this Court is of the view that the Petitioner's period of suspension / termination / removal should have been taken into consideration for the purposes of increment and financial benefits at par with other co-employees. This Court is of further view that the Petitioner is entitled to all the benefits, including increments, which were being extended in favour of his counterparts from time to time. At this juncture, it would be apt to extract below the relevant paragraphs from the judgment in ***Central Bank of India*** (supra).

> ***"20.*** *We find no infirmity with the concurrent findings of the Single Bench and the Division Bench of the High Court.* ***There is a difference between reappointment and reinstatement. Reinstatement means to return a person or thing to its previous position or status. An order of reinstatement puts a person back to the same position.***
>
> ***21.*** *The Tribunal had granted the Respondent, the relief of reinstatement. Considering that the Respondent had not actually rendered service to the Appellant-Bank and that he had been earning in the intervening period, the Tribunal denied him back wages. The Tribunal and the High Court (both the Single Bench and the Division Bench) have in effect and substance found the termination of service of the Respondent to be wrongful.*
>
> ***22. The Appellant-bank cannot take advantage of its own wrong of wrongfully dismissing the Respondent from service, to deny him the benefit of seniority, promotion and other benefits to which he would have been entitled, if he had attended to his duties."*** ***(Emphasis supplied)***

10. In view of the observation made above, this Court is inclined to allow the prayer made in the writ Petition. The Opposite Party Nos.1 & 2-Employers are directed to calculate the admissible unpaid differential salary and other benefits, which were being paid to the counterparts of the Petitioner, for the period from 27.08.2010 till 31.01.2024 and disburse the same in favour of the Petitioner at the earliest, preferably within a period of six weeks from the date of production of the certified copy of this order.

11. It is made clear that, if the salary and other benefits, are not paid to the Petitioner within the stipulated period, as directed above, the Opposite Party Employer shall be liable to pay 7% interest thereon from the delayed period.

12. Accordingly, the writ petition stands allowed and 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 allowed & disposed of.

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2025 (II) ILR-CUT-1322

PRIYADARSHAN DASH
V.
SAGARIKA SATAPATHY

[TRP(C) NO. 336 OF 2024]

23 JULY 2025

[SANJAY KUMAR MISHRA, J.]

Issues for Consideration

Whether the proceeding pending before the different Court between the parties raising common question of fact and law should be tried together.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Section 24 – Transfer of matrimonial proceeding – Petitioner/husband has filed C.P. No. 339 of 2023 for restitution of conjugal life, before the Judge Family Court, Puri – The Opp. Party/wife has filed C.P. No. 196 of 2023 for divorce, before the Judge, Family Court, Jagatsinghpur – The wife presently serving as an Assistant Teacher at Maa Uttarayani Vidyapitha, Satasankha under the district of Puri, which is hardly around 25 K.Ms away from the Court of the Judge, Family Court, Puri – Whether the proceeding pending before the different Court between the parties raising common question of fact and law should be tried together.

Held: Yes – The prayer made in the C.Ps, being contrary to each other, this Court is of the view that both the said proceedings should be tried together to avoid multiplicity in trial and conflicting decisions. (Para 10)

This Court is inclined to allow the prayer made in the transfer petition. (Para 12)

Necessary directions were given to the Judge Family Court, Jagatsinghpur, to transmit the case record and Judge Family Court, Puri to complete the proceeding by giving an opportunity of hearing to both the parties. (Paras 13-16)

Citations Reference

N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, **2022 SCC Online SC 1199 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Protection of Women from Domestic Violence Act, 2005; Orissa High Court Video Conferencing for Courts Rules, 2020.

Keywords

Transfer of matrimonial proceeding; Restitution of conjugal life; Multiplicity of proceeding/trial; Conflicting decision; Transfer petition; Divorce.

Case Arising From

Transfer of C.P. No. 196 of 2023 pending before Judge Family Court, Jagatsinghpur to the Court of Judge Family Court, Puri.

Appearances for Parties

For Petitioners : Mr. Biswaranjan Dalai.

For Opp. Party : Mr. Malaya Ku. Mishra

Judgment/Order

Judgment

S.K. MISHRA, J.

1. This Transfer Petition has been filed by the Petitioner-husband for transfer of proceeding in C.P. No.196 of 2023, now pending before the Judge, Family Court, Jagatsinghpur, to the Court of Judge, Family Court, Puri on the grounds detailed in the Transfer Petition.

2. A written objection has been filed by the Opposite Party-wife opposing to the prayer for transfer on the ground that that she has filed C.P. No.196 of 2023 for divorce before the Judge, Family Court, Jagatsinghpur. Though in Paragraph No.4 of the Counter it has been stated that she has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in the Court of J.M.F.C., Kujang so also lodged an FIR before the Kujang Police Station in the district of Jagatsinghpur alleging torture against the Petitioner-husband, wherein she has allegedly adduced evidence as P.W.1, no case numbers have been furnished in the Counter.

3. Heard Mr. Dalai, learned Counsel for the Petitioner-husband so also Mr. Mishra, learned Counsel for the Opposite Party-wife.

4. Relying on the pay slip of the Opposite Party-wife issued by the DEO, Puri as at Annexure-3, so also averments made in paragraph Nos.3 and 5 of the Transfer Petition, Mr. Dalai, learned Counsel for the Petitioner-husband submits, the Opposite Party-wife is a government servant and at present working as an Assistant Teacher at Maa Uttarayani Vidyapitha, Satasankha under the district of Puri, which comes under the territorial jurisdiction of Judge, Family Court, Puri. Mr. Dalai further submits, C.P. No.339 of 2023, which has been preferred by the Petitioner-husband before the Judge, Family Court, Puri for restitution of conjugal life, the Opposite Party-wife has appeared in the said case, already filed her written statement and trial is about to commence in the said case. Further, no attempt has

been made by the Opposite Party-wife for transfer of C.P. No.339 of 2023 from the Court of Judge, Family Court, Puri to the Court of Judge, Family Court, Jagatsinghpur. Mr. Dalai further submits, if C.P. No.196 of 2023 is transferred to the Court of Judge, Family Court, Puri, it will be convenient for the Opposite Party-wife to attend the said proceeding in the Court of Judge, Family Court, Puri, as she is at present serving as an Assistant Teacher at Maa Uttarayani Vidyapitha, Satasankha under the district of Puri, which is hardly around 25 K.Ms. away from the Court of Judge, Family Court, Puri.

5. Relying on the judgment of the Supreme Court reported in 2022 SCC Online SC 1199 ***(N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha),*** Mr. Dalai, learned Counsel for the Petitioner-husband further submits, since the Petitioner-husband has preferred C.P. No.339 of 2023 for restitution of conjugal life before the Judge, Family Court, Puri, whereas, the Opposite Party/wife has preferred C.P. No.196 of 2023 for divorce before the Court of Judge, Family Court, Jagatsinghpur, if both the proceedings are tried differently by different Courts, it may lead to conflicting judgments and multiplicity in trial.

6. Per contra, Mr. Mishra, learned Counsel for the Opposite Party-wife submits, marriage was solemnized at Jagatsinghpur. After marriage both the parties resided at Bhubaneswar. Hence, the Court of Judge, Family Court, Puri has no territorial jurisdiction to entertain C.P. No.339 of 2023. Mr. Mishra further submits, though the Petitioner-husband is a resident of Bhubaneswar, intentionally, to harass the Opposite Party, C.P. No.339 of 2023 has been filed at Puri.

7. A query being made, as to whether the Opposite Party/wife, who is the Opposite Party in C.P. No.339 of 2023, has taken such a stand in her written statement filed before the Judge, Family Court, Puri regarding lack of territorial jurisdiction, Mr. Mishra, learned Counsel for the Opposite Party-wife is unable to apprise this Court as to whether such a stand has been taken by her in C.P. No.339 of 2023. However, he admits that the Opposite Party-wife is at present serving as an Assistant Teacher at Maa Uttarayani Vidyapitha, Satasankha in the district of Puri and regarding her appearance in C.P. No.339 of 2023 and contesting the said case before the Court of Judge, Family Court, Puri, by filing a written statement in the said case so also the fact that she has not filed any application before this Court for transfer of C.P. No.339 of 2023 from the Court of Judge, Family Court, Puri to the Court of Judge, Family Court, Jagatsinghpur for trial of both C.P. No.339 of 2023 and C.P. No.196 of 2023 together.

8. Further, a query being made, learned Counsel for the Opposite Party-wife is unable to apprise this Court the case numbers, which are allegedly pending before the Court at Jagatsinghpur and the present status of said cases.

9. Law is well settled that, when two or more proceedings are pending in different Courts between the same parties, which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they

should be tried together by the same judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.

10. The Petitioner-husband has filed this transfer petition for transfer of proceeding in C.P. No.196 of 2023 initiated by the Opposite Party-wife for divorce at Jagatsinghpur to Puri on various grounds, including the ground of pendency of C.P. No.339 of 2023, which has been filed by him for restitution of conjugal life. The prayers made in the C.Ps., being contrary to each other, this Court is of the view that both the said proceedings should be tried together to avoid multiplicity in trial and conflicting decisions.

11. At this juncture, it would be apt to deal with the Judgment of the Supreme Court reported in 2022 SCC Online SC 1199 ***(N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha),*** wherein it is held as follows:-

> *"10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions."*

12. Hence, after going through the pleadings so also taking note of the contentions of the learned Counsel for the parties, the settled position of law and the observations of this Court, as detailed above, this Court is inclined to allow the prayer made in the transfer petition.

13. Accordingly, the Judge, Family Court, Jagatsinghpur is directed to transmit the case record in C.P No.196 of 2023 to the Court of Judge, Family Court, Puri at the earliest, preferably within a period of one week from the date of production of certified copy of this judgment.

14. Since pleadings in C.P. No.339 of 2023 so also in C.P. No.196 of 2023 are complete, on receiving the case record in C.P. No.196 of 2023 from the Court of Judge, Family Court, Jagatsinghpur, the Judge, Family Court, Puri shall re-register C.P. No.196 of 2023, if so required, and shall do well to try both the proceedings together and proceed further in accordance with law giving due opportunity to both the parties.

15. For convenience of the parties ,the Judge, Family Court, Puri is requested to explore the facilities of Video Conferencing available in the said Court and permit the parties to appear before him through virtual mode following due procedure, as prescribed under the Orissa High Court Video Conferencing for Courts Rules, 2020, if so prayed . However, on the dates of effective hearing i.e. for examination and cross-examination of witnesses and other purposes, for which their presence may be required by the Court and if it is so ordered, the parties shall remain physically present before the Court of Judge, Family Court, Puri.

16. Since pleadings are complete in both the cases, to avoid delay and notice, the parties are directed to make a query themselves or through their counsel regarding the date and purpose of posting of C.P. No.196 of 2023, and attend the Court of the Judge, Family Court at Puri. Both the parties are further directed not to ask for unnecessary adjournments and cooperate with the Judge, Family Court, Puri, who shall do well to conclude both the proceedings, i.e., C.P. No.339 of 2023 so also C.P. No.196 of 2023, at the earliest, preferably within a period of six months from the date of receipt of the record from the Court of Judge, Family Court, Jagatsinghpur.

17. With the said observation and direction, the transfer petition stands disposed of.

18. Interim order dated 05.11.2024 passed in I.A. No.348 of 2024 stands vacated.

19. Office is directed to communicate a copy of this order to the Court of Judge, Family Court, Jagatsinghpur so also the Judge, Family Court, Puri for compliance.

20. Urgent certified copy of the judgment be granted on proper application as per rules.

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

Result of the case:
Transfer Petition disposed of.

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2025 (II) ILR-CUT-1326

ANANYA ROUTRAY
V.
Dr. NIHAR RANJAN RAY

[W.P.(C) NO. 31902 OF 2024]

15 MAY 2025

[G. SATAPATHY, J.]

Issues for Consideration

Whether the order of maintenance is sufficient for the sustenance of petitioner/wife and daughter.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 24 – *Pendente lite* maintenance – The petitioner and the Opposite Party are wife and husband in relation – Both have litigated against each other, the petitioner has filed

C.P. No. 468 of 2021, U/Ss. 18,20 of the Hindu Adoption and Maintenance Act, 1956 for grant of maintenance to her and her daughter, husband has filed C.P. No. 340 of 2022 for divorce – Petitioner/wife claims *pendente lite* maintenance and litigation expenses in an application under Section 24 of the Hindu Marriage Act, 1955, where as she is getting ₹20,000/- per month as interim maintenance and daughter is getting ₹3000/- and ₹7,000/- per month towards maintenance and study expenses respectively – Whether such maintenance is sufficient for the sustenance of the petitioner and daughter.

Held: Yes – It is relevant that the petitioner has not only litigating with the OP in the present proceeding, but also she has filed independent proceedings in CP No.468 of 2021 and proceeding under DV Act and has also approached this Court in different proceedings and, therefore, the interim maintenance as granted in CP No.468 of 2021 can be considered to be sufficient for the sustenance of the petitioner and her daughter. (Para 6)

Looking at the claim as advanced by the petitioner and taking into consideration the facts involved in this case, this Court considers that a sum of Rs.25,000/- to the petitioner for litigation expense would meet the ends of justice. Accordingly, the petitioner is required to pay only Rs.25,000/- towards lump sum litigation expenses, but this Court, however, confirms the order passed by the learned trial Court in rejecting the claim for grant of *pendente lite* maintenance in view of the fact that the petitioner and her daughter are being ordered to be paid for a sum of Rs.30,000/- in toto towards interim maintenance in CP No.468 of 2021. (Para 7)

Citations Reference

Rajnesh vs. Neha and another, **(2021) 2 SCC 324;** Manish Jain Vs. Akanksha Jain, **(2017) 15 SCC 801;** Partha Sakha Maity vs. Bijali Maity, **(2024) SCC Online, Calcutta 4389 – referred to.**

List of Acts

Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956; Protection of Women from Domestic Violence Act, 2005.

Keywords

Pendente lite maintenance; Litigation expenses; Chronic matrimonial dispute; Quantum of maintenance;

Case Arising From

Order dated 28.11.2024 passed by the learned Judge, Family Court, Cuttack Cuttack in CMA No. 1 of 2023.

Appearances for Parties

For Petitioner : Mr. A.K. Mohanty
For Opp. Party : Mr. S. Dash

Judgment/Order

Judgment

G. SATAPATHY, J.

1. By means of this writ petition, the petitioner-wife has invoked the extraordinary jurisdiction of this Court under Articles 226 & 227 of Constitution of India praying to quash the order dated 28.11.2024 passed by learned Judge, Family Court, Cuttack in CMA No.1 of 2023 rejecting the claim of the petitioner-wife for pendente lite maintenance and litigation expenses in an application under Section 24 of the Hindu Marriage Act, 1955 (in short, "the Act").

2. The undisputed facts in the present litigation are that the petitioner and OP are admittedly wife and husband and their marriage was solemnized on 24.06.2010 and the opposite party was working as Surveillance Medical Officer in World Health Organization (WHO) at the relevant time of marriage and both of them had stayed together as husband and wife for some period and a girl child was born out of their wedlock, but later on, when dissension arose between them, they started living separately leading to filing of many litigations against each other and one of such litigation is in the present case for divorce under Section 13 of Hindu Marriage Act in which the petitioner-wife unsuccessfully approached the learned trial Court for *pendente lite* maintenance and litigation expenses which ultimately travelled to this Court.

3. In assailing the impugned order, Mr. Amiya Kumar Mohanty, learned counsel for the petitioner has submitted that the learned trial Court has erred in law by rejecting the application of the petitioner-wife for grant of *pendente lite* maintenance and litigation expenses by erroneously observing that since the petitioner and her daughter are getting ad interim maintenance in IA No.52 of 2021 arising out of CP No.468 of 2021 which is pending for adjudication, but fact remains that the proceeding in CP No.468 of 2021 being brought under Section 18/20 of Hindu Adoption and Maintenance Act (in short, "the HAMA") for grant of maintenance to the petitioner and her daughter, the same cannot be equated and considered for the interim application filed under Section 24 of the Act in a proceeding for divorce in CP No.340 of 2022 which is instituted by the OP-husband against the petitioner-wife. Mr. A.K. Mohanty, has also submitted that the learned trial Court has further erred in not striking of the defence/pleadings of the OP-husband for non-compliance of filing of disclosure affidavit of assets & liabilities within the time in terms of the law laid down by Apex Court in ***Rajnesh vs. Neha and another; (2021) 2 SCC 324,*** which prescribes for disclosure of such affidavit by the respondent within a maximum period of four weeks, but the learned trial Court ignoring the mandate of law has allowed the opposite party-husband in this case to

file his disclosure affidavit subsequently and refused to grant pendente lite maintenance to the petitioner. In relying upon the decision ***Rajnesh (supra),*** Mr. Mohanty has also submitted that the petitioner-wife has definitely right to claim maintenance under Section 24 of the Act and in case, the Court is of the view that the petitioner is also awarded with maintenance in any previously instituted proceeding, it is under legal obligation to pass appropriate order to grant maintenance by adjusting or setting of the amount as directed to be paid to the petitioner-wife in an earlier proceeding and therefore, the impugned order being unsustainable is liable to be set aside and the OP-husband may kindly be directed to pay the petitioner-wife and their daughter a sum of Rs.1,20,000/- per month as *pendente lite* maintenance and a sum of Rs.20,000/- per month as litigation expenses to the petitioner-wife.

In reply, Mr. Suryakant Dash, learned counsel for OP while controverting the claim of the petitioner has vehemently argued and submitted that not only the petitioner and her daughter are getting monthly maintenance of Rs.30,000/- from the OP, but also has sought for relief under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, "the PWDV Act") which include monetary relief of maintenance and, therefore, the petitioner-wife is not entitled to any *pendente lite* maintenance in the present proceeding. He accordingly has prayed to dismiss the writ Petition.

4. After having considered the rival submissions upon perusal of record, it appears that the parties in this case are in chronic matrimonial dispute and both of them have instituted different proceedings against each other and in some of the cases, the litigation has travelled to this Court. Besides the present case, which arises out of a divorce proceeding, the petitioner-wife has admittedly filed two other proceedings, out of which one in CP No.468 of 2021 is a proceeding under Sections 18 and 20 of the HAMA for grant of maintenance in which the petitioner has filed an application for grant of interim maintenance in IA No.52 of 2021, which was admittedly disposed of by the learned trial Court granting interim maintenance to the petitioner and her daughter for a sum of Rs.35,000/- (Rs.25,000/- to petitioner and Rs.10,000/- to the daughter), which was of course assailed by the OP in W.P.(C) No.3864 of 2022 and this Court by an order passed on 08.02.2023 confirmed the interim maintenance of the daughter @ Rs.3000/- per month and Rs.7,000/- per month as study expenses (total Rs.10,000/-) while remitting the matter back to the learned trial Court for fresh adjudication to decide the quantum of interim maintenance to the petitioner-wife and further directed to pay Rs.15,000/- per month to the petitioner-wife till disposal of IA No.52 of 2021 as interim arrangement. It is in fact not disputed that the petitioner has also approached this Court in W.P.(C) No.41413 of 2021 for enhancement of interim maintenance as granted to her and her daughter in I.A. No.52 2021 by the learned trial Court, but the said writ petition was disposed of by this Court on 08.02.2023 by reiterating the fact that the matter has already remitted for fresh disposal in W.P.(C) No. 3864 of 2022 with regard to

decide the quantum of maintenance to the petitioner. However, the petitioner has admitted in the writ petition that IA No.52 of 2021 arising out of CP No.468 of 2021 has already been disposed of by the learned trial Court quantifying the quantum of interim maintenance to the petitioner @ Rs.20,000/- per month and thereby, the total interim maintenance as quantified to the petitioner and her daughter is Rs.30,000/-.

5. The plea of petitioner is for grant of pendente lite maintenance and litigation expenses in the present proceeding in CMA No.01 of 2023 is over and above the amount granted in IA No.52 of 2021 arising out of CP No.468 of 2021 and in support of such claim, the petitioner has also relied upon the decision in ***Rajnesh (supra),*** wherein the Apex Court at paragraph Nos.60 & 61 has observed as under:-

> ***"60.*** *It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A.* ***It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding.*** *If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment.* ***While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.***
>
> ***61.*** *To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding,* ***and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding."***

A careful reference to the observation of the Apex Court as stated above, it appears that the Apex Court is also quite conscious of the fact that husband cannot be directed to pay maintenance under each of the proceedings independent of the relief granted in a previous proceeding which is apparent from observation that it would be, however, inequitable to direct the husband to pay maintenance under each of the proceedings. At this stage, this Court considers it appropriate to refer to the provision of Section 24 of the Act which is couched in very plain language that where in a proceeding under this Act, it appears to the Court that either the wife or the husband, as the case may be, **has no independent income sufficient for her or his support** and the **necessary expenses of the proceeding,** it may, on the application of the wife or the husband order the respondent to pay the petitioner the **expenses of the proceeding** and monthly during the proceeding such as, **having regard to the petitioner's own income and the income of the respondent,** it may seems to the Court to be **reasonable** xxx xxx xxx xxx.

It, therefore, very clear that the word "*pendente lite*" used in this section itself refers to the pendency of the proceeding and the grant of financial support for sustenance of the party who has no independent income sufficient for her support, but the grant of pendente lite maintenance has to be considered in the light of aforesaid to keywords as used in the section. In this regard, this Court is also alived with the principle as laid down in ***Manish Jain Vs. Akanksha Jain; (2017) 15 SCC 801,*** wherein at paragraph-15 and 16 the Apex Court has held as under:-

> *"15. Section 24 of the HM Act empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, has* ***no independent income sufficient for her or his support and the necessary expenses of the proceeding,*** *it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent.* ***Heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings".*** *The Section, however,* ***does not use the word "maintenance"; but the word "support" can be interpreted to mean*** *as Section 24 is intended to provide for maintenance pendente lite.*
>
> *16. An order for maintenance pendente lite or for costs of the proceedings is* ***conditional*** *on the circumstance that the* ***wife or husband*** *who makes a claim for the same* ***has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding.*** *It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and* ***the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support.*** *Maintenance is always dependent upon factual situation; the Court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the Court."*

6. This Court, however, noted the submission made for the petitioner for non-disposal of the proceeding Under Section 24 of the Act within 60 days as stated in the proviso to Section 24 of the Act, but the word used therein "as far as possible" makes it clear that endeavors should be made to dispose of the application of the parties Under Section 24 of the Act as expeditiously as possible, but the opposite party cannot be penalized merely because the said proceeding has been disposed of after 60 days, however, discretion is with the Court if the parties neglects without sufficient cause or plays dilatory tactics from disposing such proceeding can proceed in the manner by striking out defence or imposing costs to the party guilty of negligence or any other mode permissible under law. Be that as it may, in this case, it is not disputed that the petitioner is getting Rs.20,000/- per month as interim maintenance in CP No.468 of 2021 and her daughter is getting Rs.3,000/- per month as maintenance & Rs.7,000/- per month as study expenses, which are sufficient in the present context of the litigation between the parties. It is no doubt true that in case the Court feels that the amount as ordered in the earlier proceeding is not

sufficient, it can grant some more in another proceeding by adjusting or taking into consideration the maintenance as granted in the previous proceeding, but the grant of pendente lite maintenance in Section 24 of the Act is based on the principle of grant of such maintenance for the sustenance of the party and for litigation expenses. Further, it is relevant that the petitioner has not only litigating with the OP in the present proceeding, but also she has filed independent proceedings in CP No.468 of 2021 and proceeding under DV Act and has also approached this Court in different proceedings and, therefore, the interim maintenance as granted in CP No.468 of 2021 can be considered to be sufficient for the sustenance of the petitioner and her daughter. However, this Court considers that since the petitioner was not aware of the present proceeding in CP No.340 of 2022 which is a proceeding instituted by OP, the petitioner deserves some litigation expenses in terms of the provision of Section 24 of the Act. It is no doubt true that the petitioner has claimed litigation expenses on monthly basis, but the litigation has already travelled around three years in the meanwhile and since the petitioner has approached this Court in many proceedings, some litigation expenses should be granted to her on lump sum.

7. The petitioner has of course relied upon the decision in ***Partha Sakha Maity vs. Bijali Maity; (2024) SCC Online, Calcutta 4389*** to direct the opposite party to pay monthly litigation expenses, but Section 24 of the Act makes it very clear that the grant of litigation expenses either of the spouse is within the discretion of the Court. This Court firmly believes that the grant of *pendente lite* maintenance and litigation expenses would depend on the facts and circumstances of individual case and it is not obligatory on the part of the Court to grant monthly litigation expenses. It is of course observed by the Calcutta High Court that it would be reasonable to grant litigation expenses on monthly basis, but the same is not binding on this Court, rather it has got some persuasive value. Looking at the claim as advanced by the petitioner and taking into consideration the facts involved in this case, this Court considers that a sum of Rs.25,000/- to the petitioner for litigation expense would meet the ends of justice. Accordingly, the petitioner is required to pay only Rs.25,000/- towards lump sum litigation expenses, but this Court, however, confirms the order passed by the learned trial Court in rejecting the claim for grant of *pendente lite* maintenance in view of the fact that the petitioner and her daughter are being ordered to be paid for a sum of Rs.30,000/- in toto towards interim maintenance in CP No.468 of 2021.

8. In the result, the writ petition stands allowed to the extent of paying of litigation expenses of Rs.25,000/- which shall be payable within one week of re-opening of the Court after vacation. Consequently, the impugned order rejecting the claim for *pendente lite* maintenance to the petitioner stands confirmed.

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

Result of the case:
Writ petition partly allowed.

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2025 (II) ILR-CUT-1333

BISWAJIT BERA
V.
REPUBLIC OF INDIA

[BLAPL NO. 3031 OF 2024]

01 JULY 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether the petitioner is entitled to bail when there is delay in trial.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 439 r/w Article 21 of Constitution of India, 1950 – Right to life, Personal liberty & speedy trial – Bail – The petitioner is in the Judicial Custody since 27.04.2019 for the offences U/Ss.120-B/420/409 r/w Sections 4/5/6 of Prize Chits & Money Circulation schemes (Banning) Act, 1978 – More than six years have elapsed but charge has not been framed – Delay in trial & long detention in custody – Whether the petitioner is entitled to bail when there is delay in trial.

Held: Yes – The detention of the Petitioner in the present case beyond six years without charge being framed infringes his right to speedy trial as guaranteed under Article 21 of the constitution of India and he thereby, is entitled to bail on that score.

This Court, therefore, considers that the Petitioner is entitled to bail pending trial on stringent conditions since two of the co-accused persons as referred to the above standing on similar footing have already been granted bail. (Para 14)

Citations Reference

Hussainara Khatoon Vrs. Home Secy., State of Bihar**, (1980) 1SCC 81;** Mohd. Muslim @ Hussain Vrs. State (NCT of Delhi), **2023 INSC 311;** Union of India Vrs. K.A. Najeeb, **(2021) 3 SCC 713;** Satender Kumar Antil Vrs. CBI, **(2022) 10 SCC 51;** State of Kerala Vrs. Raneef, **(2011) 1 SCC 784;** Christian James Michel Vrs. Central Bureau of Investigation, **Special Leave to Appeal(Crl.) Nos. 17016 of 2024 dtd. 18.02.2025 – referred to.**

List of Acts

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

Keywords

Delay in trial; Right to speedy trial; Bail; Economic offence; Prima facie case; Personal liberty; long detention in custody

Case Arising From

T.R case No.07 of 2023 pending in the Court of CBI-1, Bhubaneswar.

Appearances for Parties

For Petitioner : Mr. J. Pal & Ms. A. Pal.
For Opp. Party : Mr. S. Nayak (CBI)

Judgment/Order

Judgment

G. SATAPATHY, J.

1. This is a bail application U/S.439 of CrPC by the petitioner for grant of bail in connection with SPE No. 24 of 2014 arising out of TR Case No.07 of 2023 for commission of offences punishable U/Ss. 120-B/420/409 r/w Sections 4/5/6 of Prize Chits & Money Circulation schemes (Banning) Act 1978 (In short the "PCMC Act") pending in the Court of learned CBI-I, Bhubaneswar.

2. The allegation against the Petitioner in brief is that the Petitioner-Biswajit Bera being one of the Directors and other board of Directors along with officials of M/s. Silicon Project India Ltd, a company without having RBI registration as NBFC and not being listed with National Stock Exchange, were illegally collecting public deposits throughout the state of Odisha by accepting fixed deposits, MIS, recurring deposits after alluring the depositors promising them a return with high rate of interest and thereby, cheating the general public. Accordingly, the SI of Baliapal PS in Balasore District lodged an FIR against the Company and some others vide Baliapal PS Case No. 88 of 2013 for commission of offences punishable U/Ss. 420/120-B/34 of IPC r/w Sections 4/5/6 of PCMC Act. However, subsequently the CBI came into picture and took over the investigation, in the course of which the personal & active involvement of the present Petitioner as one of the directors and signatories of the balance sheet of the Company together his complicity in the commission of offences was unearthed. Accordingly, the Petitioner was arrested for cheating the innocent gullible depositors by misappropriating their money through unauthorized schemes and charge sheet was submitted against the Petitioner and others for commission of offences punishable U/Ss. 120-B/420/409 of IPC r/w Sections 4/5/6 of PCMC Act. It is also alleged against the Petitioner that he was actively associated with the affairs of the company in the matter of formulation of key policy decisions and promotion of business by deceiving the investors through agents by making false assurance of paying higher returns against the deposits and he was also stated to be the Director of other six companies of the Silicon Groups.

3. Heard, Mr. Jaydeep Pal, learned counsel for the Petitioner and Mr. Sarthak Nayak, learned counsel for the CBI in the matter and perused the record.

4. The main thrust of argument of Mr. Pal to grant bail to the Petitioner is violation of his right to speedy trial for his long detention in custody without trial, whereas CBI opposes the bail application of the Petitioner mainly on the ground of prima facie case, involvement of the Petitioner in economic offences of huge magnitude and his involvement in other cases in different States. The Petitioner also seeks for bail on the ground of parity for release of co-accused Jugal Kishor Gupta and Tushar Jana @ Tushar Kanti Jana on bail.

5. After having considered the rival submissions upon perusal of the record, since one of the claims of the petitioner for grant of bail is for violation of his right to speedy trial, this Court considers it to address such issues at the threshold before taking up the other pleas of the petitioner together with the allegation leveled against the Petitioner. On the subject of the right to speedy trial, it is considered relevant by this Court to reiterate the principles lay down by the Constitutional Courts in the matter to understand the problem of the under-trial prisoners and their remedy. In the sequence, the decision which is considered as locus classicus is ***Hussainara Khatoon Vrs. Home Secy., State of Bihar;(1980) 1SCC 81***, wherein the Apex Court while laying down the principles governing the subject, has held that the right to speedy trial of offenders facing criminal charges is "implicit in the broad sweep and content of Article 21." It is, however, held by the Apex Court in this decision that:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

6. Moving to the next decision in ***Mohd. Muslim @ Hussain Vrs. State (NCT of Delhi); 2023 INSC 311***, wherein the Apex Court has held as under:-

> *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of these 122,852 were convicts; the rest 4,27,165 were under trials.*

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State21 as "a radical transformation" whereby the prisoner:

"Loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"22 (also see Donald Clemmer's 'The Prison Community' published in 1940). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

7. In ***Union of India Vrs. K.A. Najeeb; (2021) 3 SCC 713***, the Apex court while considering the long incarceration and the effect of Section 43(D)(5) of the UAP Act has observed at paragraph 17 as under:-

"17. It is thus clear to us that the presence of statutory restrictions like ***Section 43D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution****. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down* ***where there is no likelihood of trial being completed within a reasonable time*** *and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial."*

8. In a very recent decision, in ***Satender Kumar Antil Vrs. CBI; (2022) 10 SCC 51***, the concern of the Apex Court with regard to prolong incarceration and inordinate delay was very much palpable from the following observation made therein which reads as under:-

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

9. In ***State of Kerala Vrs. Raneef; (2011) 1 SCC 784***, the Apex Court at paragraph 15 has held as under:-

> *"15. In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody. Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case. Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.*
>
> *In the present case the respondent has already spent 66 days in custody (as stated in paragraph 2 of his counter affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles Dicken's novel `A Tale of Two Cities', who forgot his profession and even his name in the Bastille."*

10. A careful and conscious reading of the precedents as set out by the Apex Court in the decision referred to above, it goes without saying that the right to speedy trial is the fundamental right of an accused as guaranteed under Article 21 of the Constitution of India. It cannot be denied that if an accused is to get a final verdict after incarceration of six to seven years in jail as a under trial prisoner, then definitely it could be said that his right to speedy trial under Article 21 of the Constitution of India has been infringed because the accused who remained in custody for some years and later on get acquitted at the trial is never being financially compensated for his sufferings in the jail nor can he be restored to his earlier position when he was taken into custody nor his sufferings as undergone by him in custody can be returned. It should not be forgotten, the very well settled principle of law that bail is not to be withheld as a punishment, since its object is to secure the attendance of the accused at the trial, but the proper test that is to be applied as to the question of granting or refusing bail to an accused is his probability in appearing at the trial. Moreover, it is the constitutional duty of the State or the complainant prosecuting the accused to provide speedy and fair trial to him with reasonable promptitude irrespective of whether the accused has demanded for speedy trial or not. What significant is that a person accused of an offence is not a convict till his guilt is proved at the trial in a criminal case, which is the inherent right of the accused.

11. It is obvious that deprivation of liberty must be considered as a punishment and Courts must remember the principle that the punishment can be imposed after conviction. Right to speedy trial is not to be denied merely because of the gravity of the offence, but the primary purpose of bail in a criminal trial is to relieve the accused of imprisonment by taking surety and in the process also to relieve the burden of the State for keeping him in confinement. When the under-trial prisoner is detained in custody for an indefinite period, Article 21 of the Constitution of India is considered to be violated. Every person detained or arrested is entitled to speedy trial, but if the State fails to ensure speedy trial for the accused, it should not oppose

the plea of bail of the accused on the ground that the crime committed by him is serious, since Article 21 of the Constitution of India applies irrespective of the nature of crime. The classic right that every accused has in a criminal case is his presumption of innocence until proven guilty, but such right can only effectuated by granting bail to him imposing certain conditions for his appearance at trial. However, an accused cannot be released on bail in each and every case, where there is not only prima facie materials to support the allegation against such accused for committing serious and heinous crime, but also the materials are of such nature by which it can be presumed against the accused for commission of crime till no evidence comes at the trial or where there exists prima facie or reasonable ground to believe that the accused has committed the offence. At the same time, even if there is a prima facie case against the accused, but still he can be released on bail, if he makes out a case for grant of bail. It is no more res Integra that the concept of bail and detention of accused in custody has to be understood in the light of provisions contained in Chapter-V of BNSS/Cr.PC under the heading "arrest of person" along with the statutory provisions of bail as provided in Sections 478 to 483 of BNSS/436 to 439 of Cr.PC with primary focus on Article 21 of the Constitution of India keeping in mind the principle of bail to be the rule, but jail to be an exception and the fundamental principle that postulates the guarantee of right to liberty is that no person shall be deprived of his liberty except according to the procedure established by law.

12. What is the effect of the violation of the speedy trial can be easily understood by reading out the following paragraph as recorded by the Apex Court in ***Christian James Michel Vrs. Central Bureau of Investigation; Special Leave to Appeal(Crl.) Nos. 17016 of 2024 disposed of on 18.02.2025***.

> *"Considering the facts and circumstances of the case and in particular that the Petitioner, who was extradited in December, 2018, has been in custody since then, i.e. more than six years by now, and according to the learned senior counsel, appearing for the respondent-CBI, despite filing three charge-sheets and two supplementary charge-sheets, the investigation is still on going, as is also apparent from the counter affidavit, and the fact that the trial has not yet commenced, we are inclined to grant bail to the petitioner on such terms and conditions as may be determined by the Trial Court in connection with FIR/ RC No. RC-217 2013-A-0003 dated 12.03.2013."*

13. In coming to the contention of the CBI with regard to existence of prima facie case against the Petitioner, it appears that co-accused Jugal Kishor Gupta has been granted bail by the Apex Court in Criminal Appeal No. 2458 of 2023 (arising out of SLP (Crl) Nos.8520/2023) disposed of on 18.08.2023, wherein it has been observed as under:-

> *"The supplementary charge sheet is stated to have been filed now and investigation is still in progress. On our query, learned counsel for the respondent states that the maximum sentence is 10 years.*
>
> *In view of the aforesaid facts and circumstances, we grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.*"

Similarly, another co-accused Tushar Jana @ Tushar Kanti Jana has been granted bail by the Apex Court in Criminal Appeal No. 1711-1712 of 2022 (arising out of SLP (Crl) Nos.6792-6793/2021) disposed of on 30.09.2022, wherein it has been observed as under:-

> *"The investigation process is still on and the appellant has been in custody for six years.*
>
> *We grant bail to the appellant on terms and conditions to the satisfaction of the trial Court.*
>
> *The appeals stand disposed of."*

14. On coming back to the facts of this case, it is not disputed that the charge has not yet been framed, but the Petitioner is in judicial custody since 27.04.2019 and in the meanwhile, more than six years have elapsed. It is of course argued by the learned counsel for the CBI that this Court had stayed the trial on the petition of the co-accused Shibanarayan Das who is represented by the present learned counsel for the Petitioner and, therefore, the CBI is not guilty of delay in trial, but it is never disputed by the parties that the stay order had already been vacated since more than a year and therefore, how come the present Petitioner would make to suffer for the petition brought by co-accused to hold up the trial and what prevented the CBI not to prosecute the petition in which stay was granted. The obvious result in delay in trial is the suffering of the present Petitioner who is not at all at fault for the cause of delay in trial. It is not understood as to why charge has not yet been framed after the vacation of stay of trial in this case since last more than one year. This Court is of course conscious of the fact that the accused had been charged for economic offences, but what was the exact & precise magnitude of monetary transaction has not been brought to the notice of the Court through any prima facie materials, although the learned counsel for the CBI has submitted by referring to the affidavit sworn in by the DSP, CBI that the Petitioner has been charge sheeted in a case of economic offence involving illegal collection of approximately Rs. 265Crores, but there are number of accused persons in this case and the affidavit also suggests that an amount of Rs. 80,000/- was transferred to the account of the present Petitioner from the account of Company and it is alleged that the Petitioner had collected cash from different branches of the said company during relevant period, but the exact cash that has been collected by the Petitioner has not been revealed in the affidavit. One more argument was advanced by the learned counsel for the CBI that the Petitioner is having five criminal cases in different States, but what are the exact and precise allegations against the Petitioner in those cases have not been revealed by the CBI. It is also stated by the learned counsel for the Petitioner by referring to the affidavit of the brother of the Petitioner that the Petitioner is not on bail in five cases allegedly registered against him in the State of West Bengal and if that be so, the law will take its own course in those matters, but by any standard, the detention of the Petitioner in the present case beyond six years without charge being framed infringes his right to speedy trial as guaranteed under Article 21 of the Constitution of India and he thereby, is entitled to bail on that score. Further, neither the

petitioner nor the CBI has produced the copy of charge sheet before this Court in this case, but how many witnesses are supposed to be examined in this case has not been brought to the knowledge of the Court by the learned counsel for the CBI, however, at any date, the trial would definitely take a considerable time, looking at the magnitude of the allegation and the witnesses supposed to be examined. This Court, therefore, considers that the Petitioner is entitled to bail pending trial on stringent conditions since two of the co-accused persons as referred to the above standing on similar footing have already been granted bail.

15. Hence, the bail application of the Petitioner stands allowed and he is allowed to go on bail on furnishing bail bonds of Rs.5,00,000/- (Rupees Five Lakhs) only with two solvent sureties for the like amount to the satisfaction of the learned Court in sessin of the case on such terms and conditions as deem fit and proper by it with following conditions:-

> *(i) the petitioner shall not commit any offence while on bail,*
>
> *(ii) the petitioner in the course of trial shall attend the trial Court on each date of posting without fail unless his attendance is dispensed with.* ***In case the Petitioner fails without sufficient cause to appear in the Court in accordance with the terms of the bail, the learned trial Court may proceed against the Petitioner for offence U/S.269 of BNS,2023 in accordance with law,***
>
> *(iii) The petitioner shall not leave the territorial jurisdiction of the trial Court without prior permission till disposal of the case by intimating his present address of stay to the concerned Court,*
>
> *(iv) The Petitioner shall inform the Court as well as the Investigating Agency as to his place of residence during the trial by providing his mobile number(s), residential address, e-mail, if any, and other documents in support of proof of his residence. The Petitioner shall not change his address of residence without intimating to the Court and Investigating Agency,*
>
> *(v) In case the Petitioner misuses the liberty of bail and in order to secure his presence, proclamation U/S.84 of BNSS, 2023 is issued and the Petitioner fails to appear before the Court on the date fixed in such proclamation, then, the learned trial Court is at liberty to initiate proceeding against him for offence U/S.209 of BNS, 2023 in accordance with law.*
>
> *(vi) The petitioner shall surrender his passport, if any (if not already surrendered), and in case, he is not a holder of the same, he shall swear an affidavit to that effect. If he has already surrendered his pass-port before the learned Special Judge, CBI, that fact should also be supported by an affidavit.*
>
> *(vii) This Court reserves liberty to the CBI to make an appropriate application for modification/recalling the order passed by this Court, if for any reason, the petitioner violates any of the conditions imposed by this Court.*

It is clarified that the Court in seisin of the case will be at liberty to cancel the bail of the petitioner without further reference to this Court, if any of the above conditions are violated or a case for cancellation of bail is otherwise made out. In the wake of aforesaid, the subsequent involvement of the petitioner in future for a

grave/similar offence on prima facie accusations may be treated as a ground for cancellation of bail in this case.

16. Accordingly, the BLAPL stands disposed of.

17. Issue urgent certified copy of the order as per the Rules.

I.A. NO. 851 OF 2025

Date of Order : 13.08.2025

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).

2. This is an application by the petitioner to rectify his father's name as "Pravat Bera" instead of incorrect name "Pravat Behera" and also the case No. "SPE No. 24 of 2014" instead of incorrect case No. "SPE No.24 of 2011" in the cause title as well as paragraph-1 of the judgment dated 01.07.2025.

3. Heard, Ms. A. Pal, learned counsel for the petitioner and Mr. S. Nayak, learned counsel for the CBI in the matter and perused the record.

4. Accordingly, the petitioner is permitted to rectify the name of the father of the petitioner as "Pravat Bera" in place of incorrect one "Pravat Behera" and also the case No. "SPE No. 24 of 2014" in place of incorrect one "SPE No.24 of 2011" in the cause title. Further, the paragraph-1 of the judgment be corrected by reflecting "SPE No. 24 of 2014" in place of "SPE No.24 of 2011".

5. Ms. A. Pal, learned counsel for the petitioner, however, files an amended cause title of the bail application which is taken on record. Office is also requested to rectify the judgment by incorporating necessary correction in paragraph No.1 of the judgment as stated above.

6. Accordingly, the I.A. stands disposed of.

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

Result of the case:
Bail application allowed and I.A. disposed of.

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2025 (II) ILR-CUT-1342

BISWAJEET MANDAL
V.
STATE OF ODISHA & ANR.

[CRLMC NO. 2641 OF 2022]

09 JULY 2025

[CHITTARANJAN DASH, J.]

Issue for Consideration

Whether criminal liability under Section 306 of IPC is attributable against the petitioner.

Headnotes

INDIAN PENAL CODE, 1860 – Section 306 – Abetment of suicide – Deceased committed suicide by hanging on 02.09.2021 – Investigation report alleged that the deceased was in regular telephonic contact with the petitioner, and she was often seen in a state of distress – It was alleged that deceased committed suicide due to the said reason – Whether criminal liability U/s. 306 IPC is attributable against the petitioner.

Held: No – In the present case, the death of a young woman by suicide is, without doubt, a deeply unfortunate and heart-rending incident – However, when assessed in light of the settled legal position, the materials on record do not disclose any act or omission on the part of the Petitioner that could be construed as instigation or active abetment. (Para 8)

Courts must exercise great caution before attributing criminal culpability in cases of suicide, especially when such attribution may arise solely from strained personal equations – The law demands not only sensitivity towards the victim but also fairness and subjectivity in determining the liability of the accused – In that light, allowing the continuation of the criminal proceeding against the Petitioner, despite the absence of the foundational ingredients of abetment, would be unjust – Compassion cannot replace legal scrutiny, and fairness must guide the dispensation of justice. (Para 9)

Citations Reference

Mahendra Awase Vs. The State of Madhya Pradesh, **2025 INSC 76 – referred to.**

List of Acts

Indian Penal Code, 1860.

Keywords

Abetment; Abetment to suicide; Foundational ingredients of abetment; Instigation to commit suicide. Mens rea.

Case Arising From

G.R. Case No. 771 of 2021 pursuant to Malkangiri P.S. Case No. 382 of 2021 pending before the learned SDJM, Malkangiri.

Appearances for Parties

For Petitioner : Mr. S.K. Mishra.

For Opp. Parties : Smt. Siva Mohanty, Addl. P.P.

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. By means of application, the Petitioner seeks indulgence of this Court praying to quash the proceedings in GR Case No.771 of 2021 pursuant to the Malkangiri PS Case No.382 of 2021 pending before the learned SDJM, Malkangiri.

2. The background facts of the case are that one Ratan Kumar Biswas lodged a written report before the IIC, Malkangiri, alleging that his daughter, Anuradha Biswas, aged 22 years, committed suicide by hanging herself inside her room using a dupatta (*Odhani*) tied around her neck on 02.09.2021 at around 8:00 AM. Based on the said report, Malkangiri P.S. Case No. 382 of 2021 was registered, and investigation commenced. The report further alleged that the deceased was in regular telephonic contact with one Biswajeet Mandal (the Petitioner), and she was often seen in a state of distress. It was alleged that the deceased committed suicide due to the said reason. The report also stated that the mobile phone number 8457955239 belonged to the Petitioner.

3. Learned counsel for the Petitioner submitted that the deceased, Anuradha, had met the Petitioner accidentally at Jeypore Bus Stand around three years prior to the incident while both were travelling to Malkangiri in the same bus. What began as a casual acquaintance gradually developed into a relationship involving exchange of messages, chats, and interactions over social media, although there had been no physical meeting for about 9 to 10 months preceding the unfortunate incident of suicide on 02.09.2021. It is the contention of the Petitioner that the deceased was earnestly seeking refuge in the form of a marital relationship, which she had proposed to the Petitioner on multiple occasions. However, the Petitioner, being overwhelmed by familial obligations including the post-operative care of his mother, and constrained by a meagre income from a newly acquired job, found it practically impossible to commit to marital life. Despite his efforts to make the deceased understand his situation, she remained doubtful of his intentions, attributing the delay in marriage to lack of commitment, and often reacted adversely. At the time of the incident, the Petitioner was working at Kalinganagar, which is situated approximately 800 kms.

away from Malkangiri. The alleged conduct of the Petitioner during the proximate period leading to the incident was neither hurtful nor threatening, nor did it involve any element of blame, harassment, or instigation that could attract the ingredients of abetment under Section 306 of the IPC. Therefore, the Petitioner has prayed for quashing of the proceedings as the materials reflected in the FIR as well as in the course of investigation do not disclose any offence against him.

4. Learned counsel for the State, on the other hand, submitted that there are materials on record which raise a strong presumption against the Petitioner warranting a trial, and the contentions raised by the Petitioner are matters of defence, which cannot be adjudicated at the threshold stage so as to give a complete goodbye to the very initiation of the proceeding and such as insisted for dismissal of the prayer.

5. Before delving into the case at hand, it is apposite to refer to the relevant provisions of the Indian Penal Code that govern the offence alleged against the Petitioner.

> 107. Abetment of a thing.–A person abets the doing of a thing, who-
>
> First. – Instigates any person to do that thing; or
>
> Secondly.–Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;
> or
>
> Thirdly.–Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> Explanation 1. – A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing
>
> 306. Abetment of suicide.–If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

6. It is further held by the Hon'ble Apex Court in the matter of ***Mahendra Awase Vs. The State of Madhya Pradesh, 2025 INSC 76*** –

> **"14.** In Madan Mohan Singh vs. State of Gujarat and Another, (2010) 8 SEC 628, this Court held that in order to bring out an offence under Section 306 IPC specific abetment as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned as a result of that abetment is required. It was further held that the intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for attracting Section 306.

15. In ***Amalendu Pal alias Jhantu vs. State of West Bengal, (2010) 1 SCC 707***, this Court held as under:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. lt is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

[Emphasis supplied]

16. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

17. M. Mohan vs. State, (2011) 3 SCC 626 followed ***Ramesh Kumar vs. State of Chhattisgarh, (2001) 9 SCC 618,*** wherein it was held as under:-

41. This Court in SCC para 20 of Ramesh Kumar has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC p. 629)

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's wife therein) may necessarily be drawn." Thereafter, this Court in ***Mohan (supra)*** held:-

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

[Emphasis supplied]

> **18.** As has been held hereinabove, to satisfy the requirement of instigation the accused by his act or omission or by a continued course of conduct should have created such circumstances that the deceased was left with no other option except to commit suicide. It was also held that a word uttered in a fit of anger and emotion without intending the consequences to actually follow cannot be said to be instigation."

7. The very mandate of the provision under Section 306 of the IPC postulates a case where if any person instigates other person to commit suicide and as a result of such instigation the other person commit suicide, the person causing instigation is liable to be punished for the offence under Section 306 of the IPC for abetting the commission of suicide. Therefore, in order to bring a case within the substantive provision for the offence under Section 306 of the IPC, there must a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of the suicide must have played an active role by act of instigation or by doing a certain, act to facilitate the commission of suicide. Section 306 of the Indian Penal Code contemplates a situation where a person abets the commission of suicide by another. As reiterated by the Hon'ble Supreme Court in a catena of decisions, the essential ingredients of the offence under Section 306 IPC include a clear mens rea and a proximate, active act of instigation or facilitation by the accused. It is not sufficient that the deceased was merely in a state of emotional vulnerability or that there existed a strained relationship between the parties. There must be cogent material to show that the accused, by his conduct or acts directly or indirectly created circumstances so compelling that the deceased was left with no other option but to end their life.

8. In the present case, the death of a young woman by suicide is, without doubt, a deeply unfortunate and heart-rending incident. However, when assessed in light of the settled legal position, the materials on record do not disclose any act or omission on the part of the Petitioner that could be construed as instigation or active abetment. The Petitioner was stated to be residing and working at Kalinganagar, approximately 800 kilometers away from Malkangiri, at the relevant time. There is no indication of any threatening or coercive communication proximate to the time of the incident. The deceased was residing with her family and was not in a state of isolation or compulsion that would suggest she had no alternative but to end her life. While the emotional distress that may have arisen from personal misunderstandings is acknowledged, such circumstances, in the absence of any active role or culpable mental state attributable to the Petitioner, cannot attract criminal liability under Section 306 IPC.

9. Courts must exercise great caution before attributing criminal culpability in cases of suicide, especially when such attribution may arise solely from strained personal equations. The law demands not only sensitivity towards the victim but also fairness and subjectivity in determining the liability of the accused. In that light, allowing the continuation of the criminal proceeding against the Petitioner, despite the absence of the foundational ingredients of abetment, would be unjust. Compassion cannot replace legal scrutiny, and fairness must guide the dispensation of justice.

10. In view of the aforesaid analysis and having regard to the settled legal position, this Court is of the considered opinion that the continuance of the criminal proceeding against Petitioner in connection with Malkangiri P.S. Case No. 382 of 2021, corresponding to G.R. Case No. 771 of 2021, pending before the learned S.D.J.M., Malkangiri, would amount to an abuse of the process of law and would result in prejudice to the Petitioner.

11. Accordingly, the proceeding so far as it relates to the present Petitioner stands quashed.

12. The CRLMC is accordingly allowed.

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

Result of the case:
CRLMC allowed.

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2025 (II) ILR-CUT-1347

ASHIM KUMAR GHOSH
V.
HAFIZ KHAN

[CRLMC NO. 1668 OF 2023]

23 JULY 2025

[CHITTARANJAN DASH, J.]

Issue for Consideration

Whether the essential ingredients of the offence U/s. 138 of the N.I Act are made out against the petitioner in absence of any material on record to indicate that he was in charge or responsible for the conduct of the business of the cold storage at the relevant time or had authorized the transaction in question.

Headnotes

(A) NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 141 – Complaint under the Act – The complainant has miserably failed to establish that petitioner was the proprietor of the cold storage in question and has issued the cheque as its drawer – Whether the essential ingredients of the offence U/s. 138 of the N.I Act are made out against the petitioner in absence of any material on record to indicate that he was in charge or responsible for the conduct of the business of the cold storage at the relevant time or had authorized the transaction in question.

Held: No – Mere mention of his name as proprietor, without supporting documentary evidence or allegations establishing direct or vicarious liability, cannot fasten criminal responsibility upon him – In such circumstances, the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act are, prima facie, not made out against the Petitioner, and continuation of the proceedings against him would amount to abuse of the process of law. (Para 8)

(B) NEGOTIABLE INSTRUMENTS ACT, 1881 – Section 138 – Necessary conditions required to be fulfilled to file a valid complaint – Explained. (Para 7)

List of Acts

Negotiable Instrument Act, 1881.

Keywords

Negotiable instrument; Offence; Liability; Valid complaint; Essential ingredient; Prima facie; Vicarious liability; Liability ; Any liability; Criminal liability.

Case Arising From

Order of cognizance in 1CC Case No. 74 of 2020 passed by the SDJM, Jajpur

Appearances for Parties

For Petitioner : Mr. D.R. Swain
For Opp. Party : Mr. S.K. Barala

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. Heard learned counsel for the Parties.

2. By means of this application, the Petitioner seeks to challenge the order of cognizance dated 17.02.2020, passed in 1CC Case No.74 of 2020 by the learned S.D.J.M., Jajpur.

3. The background facts of the case are that the Complainant, Hafiz Khan filed a complaint petition before the learned S.D.J.M., Jajpur registered as 1CC Case No.74 of 2020, under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act), praying to take cognizance and issue process against the Petitioner as accused to stand the trial and to punish him adequately directing the Petitioner-accused to pay double the cheque amount to the Complainant, as liable under the N.I. Act, besides the punishment as the court would deem fit and proper.

4. As alleged in the complaint, the Opposite Party-Complainant is having his fruit business at Jajpur Town. In order to keep his fruits fresh, he availed the services of the

cold storage of the Petitioner-accused, run in the name and style of "Chakadola Shitala Bhandar". According to the complaint, one Ashim Kumar Ghosh (present Petitioner) and Jyotsnarani Nanda are the proprietors of the said cold storage and the accused No.3 namely, Amiya Ranjan Mohanty is the manager. The Complainant kept 53 boxes of apple weighing 1590 K.Gs. on 26.09.2019 and again 105 boxes of appeal weighing 3150 K.Gs. on 15.10.2019. The accused No.3 namely, Amiya Ranjan Mohanty issued two different receipts in favour of the Complainant against deposit of apple boxes. When the Complainant went to the aforesaid cold storage to bring the apple boxed on 03.12.2019, he found missing 158 boxes of apple. The accused No.3, in order to save his skin, could not give a proper explanation with regard to the missing of 158 boxes of apple and finally admitted to have sold it out. Accordingly, after a long chase, the accused No.3 issued a cheque in lieu of the cost of 158 boxes of apple amounting to Rs.3,16,000/- (Rupees Three Lakhs Six-teen Thousand only) drawn on Axis Bank, Dumuduma bearing cheque No.807446 dated 23.12.2019 in favour of the Complainant to be collected from his account i.e. the Account No. 914010003375393 belong to accused No.3 and requested the Complainant to deposit the same for collection after 20.01.2020. Accordingly, the Complainant presented the said cheque on 20.01.2020 with his banker i.e. United Bank of India, Jajpur Branch for collection but the cheque got dishonoured with remark "Account Closed". The Payee Bank intimated the fact of dishonour of cheque to the Complainant. The Complainant, thereafter, issued legal notice to the accused No.3 demanding the dishonoured cheque amount vide lawyer's notice dated 27.01.2020. As the accused No.3 failed to pay the dishonoured cheque amount within the statutory period, the Complainant lodged the complaint.

5. The Petitioner, namely Ashim Kumar Ghosh, assails the impugned order taking cognizance of the complaint alleging him to be the proprietor of the aforesaid cold storage, namely "Chakadola Shitala Bhandar," on the ground that he has no connection whatsoever with the said cold storage, nor has any document, correspondence, or transaction ever been made between the Complainant and him, either as its proprietor or otherwise. He further assails the impugned order on the ground that, while the Complainant names both him and one Jyotsnarani Nanda as proprietors of the aforesaid cold storage, no document of any nature showing two persons as proprietors has been filed along with the complaint. He further challenges the impugned order of cognizance on the ground that the cheque in question was neither issued by him nor has he engaged any Amiya Ranjan Mohanty as manager to manage the said cold storage. The cheque annexed to the complaint purports to have been issued under the signature of Amiya Ranjan Mohanty against his Account No. 1665250000444, and accordingly, in the absence of any supporting document whatsoever, the implication of the Petitioner as an accused in 1CC Case No. 74 of 2020 is not only unwarranted but also illegal. Hence, he seeks the intervention of this Court to quash the impugned order insofar as it relates to him as an accused.

6. The learned counsel for the Opposite Party, appearing on behalf of the Complainant, did not come out with any document and/or material to substantiate the involvement of the Petitioner either as a proprietor or otherwise to implicate him vicariously under Section 141 of the N.I. Act to make him liable for any reason either as

proprietor or the person to have issued the cheque and/or showing any responsibility in the affairs and management of the cold storage.

7. In order to file a valid complaint under Section 138 of the N.I. Act, the following conditions are required to be fulfilled.

1. The cheque must have been drawn for discharge of existing debt or liability.

2. Cheque must be presented within three months or within validity period whichever is earlier.

3. Cheque must be returned unpaid due to insufficiency of fund or it exceeds the amount arrange or for any reason that could be brought within the ambit of the act towards dishonour of cheque

4. Fact of dishonour be informed to the drawer by notice within a period of thirty days.

5. Drawer of cheque must fail to make payment within fifteen days of receipt of the notice.

a. For the commission of an offence under Section 138 of N.I. Act, such cheque i.e. dishonoured, must represent a legally enforceable debt not only on the day when it was drawn but also on the date of its maturity/presentation.

b. "any liability" occurred in the section is only to mean that any kind of liability of the drawer and not any other's liability, unless the payee, the drawer and the original debtor entered to any agreement to that effect.

8. In the present case, the Complainant has miserably failed to substantiate that the Petitioner was the proprietor of the cold storage in question or that he had issued the cheque as its drawer, or that he was otherwise liable under any agreement to discharge the debt for which the alleged cheque was issued. The cheque itself was admittedly issued by a third party from an account not belonging to the Petitioner, and there is no material on record to indicate that the Petitioner was in charge of or responsible for the conduct of the business of the cold storage at the relevant time or that he had authorised the transaction in question. Mere mention of his name as proprietor, without supporting documentary evidence or allegations establishing direct or vicarious liability, cannot fasten criminal responsibility upon him. In such circumstances, the essential ingredients of the offence under Section 138 of the Negotiable Instruments Act are, prima facie, not made out against the Petitioner, and continuation of the proceedings against him would amount to abuse of the process of law.

9. Accordingly, this CRLMC is allowed. The impugned order of cognizance dated 17.02.2020 passed in 1CC Case No. 74 of 2020 by the learned S.D.J.M., Jajpur is hereby quashed as against the present Petitioner only. The proceedings in the said complaint case shall, however, continue as against the other accused persons in accordance with law.

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

Result of the case:
CRLMC allowed.

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2025 (II) ILR-CUT-1351

ASHOK KUMAR DAS
V.
STATE OF ODISHA (VIGILANCE)

[CRLREV NO. 647 OF 2024]

05 MAY 2025

[S.S. MISHRA, J.]

Issue for Consideration

Whether the order rejecting the discharge petition without taking into consideration of the plea of absence of sanction is sustainable under the law.

Headnotes

PREVENTION OF CORRUPTION ACT, 1988 – Section 19 r/w Section 197 of Code of Criminal Procedure, 1973 – Sanction – Offence U/s. 13(2) r/w section 13 (1) (d) of the P.C Act & section 120-B of the Penal Code – Rejection of discharge petition is under challenge – Order challenged mainly on the grounds of, absence of sanction, delay in taking cognizance etc. – The petitioner was a public servant at the time of alleged incident and neither sanction was obtained during his service tenure, nor the approval of the Govt. was taken even after retirement – F.I.R was registered on dated 10.07.2003, closure report filed on 08.08.2006(after three years of alleged incident) & the petitioner retired from service on dated 30.12.2009 – The trial court took cognizance of the case on 02.09.2017 with the observation that if prima facie case is there, the probative value of the material placed on record cannot be gone into – Petitioner contended that, prosecution deliberately waited for his retirement to avoid the rigors of the sanction & after 14 years of the incident, cognizance was taken – Whether the order rejecting the discharge petition even without taking into consideration of the plea of absence of sanction is sustainable under the law.

Held: No – It is no more res integra that the sanction under Section 197 of the Cr. P.C. is mandatory for taking the cognizance of the penal offence against a public servant even after retirement from the service – The learned Court below has taken the cognizance by not following the required procedural safeguard – The Court below has also not taken into consideration that the closure report filed in the connected case has also been accepted, and the case is put to a quietus – It has also escaped from the notice of the Court that this is a case whereby no inference could be drawn regarding the loss to the exchequer, as there exists sufficient cause

for recovery of the alleged excess payment, which has been allegedly claimed to be the loss to the exchequer. (Para-33)

Citations Reference

Mahendra Lal Das vs. State of Bihar & Ors., **(2002) 1 SCC 149**; State of Punjab vs Labh Singh, **(2015) 60 OCR (SC) 398;** Maharashtra and another vs. Som Nath Thappa & another, **1996 4 SCC 659;** State of Punjab vs. Labh Singh, **(2014) 16 SCC 807;** A.R. Antulay vs. R.S. Nayak, **(1992) 1 SCC 225 – referred to.**

List of Acts

Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Indian Penal code, 1860.

Keywords

Discharge Petition; Cognizance; Sanction; Delay in taking Cognizance; Procedural lapses; Prima Facie; Procedural safeguard; Closure report; Sufficient cause; Personal gain; Corrupt motive; Quid pro quo

Case Arising From

Order dated 04.09.2024 passed by the Learned Special Judge (Vigilance), Baripada in VGR Case No. 29 of 2003, arising out of Balasore Vigilance P.S. Case No. 29 of 2003.

Appearances for Parties

For Petitioner : Mr. D.P. Dhal

For Opposite Party : Mr. Sangram Das, S.C (Vigilance)

Judgment/Order

Judgment

S.S. MISHRA, J.

The present Criminal Revision Petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, assailing the order dated 04.09.2024 passed by the learned Special Judge (Vigilance), Baripada in VGR Case No. 29 of 2003, arising out of Balasore Vigilance P.S. Case No. 29 of 2003. By the impugned order, the learned Special Judge rejected the petitioner's prayer for discharging him from offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (as it stood prior to amendment) read with Section 120-B of the Indian Penal Code, 1860.

2. Heard Mr. D.P. Dhal, learned Senior Advocate, appearing for the petitioner and Mr. Sangram Das, learned Standing Counsel (Vigilance) appearing for the opposite party State.

3. The present revision petition arises out of VGR Case No. 29 of 2003, which emanates from the allegations of irregularities in the tendering and execution of a

government contract related to the construction of the "Jambhira Earth Dam from RD 4200 Mtr. to 4500 Mtr. (Reach-IV) with stepped Spillway" under the Subarnarekha Irrigation Project, Baripada. The Vigilance Department, Odisha, initiated an inquiry into the matter, following complaints regarding procedural lapses, financial irregularities, and unauthorized modifications in contract terms. The inquiry revealed that certain tenders had been approved at inflated rates, deviations were made from the original agreement terms without obtaining necessary sanctions, and payments were released in excess of the permissible limits, allegedly causing undue financial loss to the government exchequer.

4. The petitioner, a former government official who was involved in the administrative process of the project, was not named in the initial First Information Report (FIR) filed by the Vigilance Department. However, upon completion of the investigation, a charge sheet was filed implicating him under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (as it stood prior to amendment), along with Section 120-B of the Indian Penal Code, 1860.

5. Following the investigation, the prosecution initially submitted a Final Report (FRT) on 08.08.2006, recommending departmental action instead of criminal prosecution against the petitioner. However, no further action was taken against the petitioner for over a decade by the court of learned C.J.M., Baripada. In obedience to the Hon'ble Court's letter no. 5181, dtd. 26.06.2013, the case record is transferred to the Court of Addl. District and Sessions Judge-cum-Special Judge (Vigilance), Baripada for disposal of the case in accordance with law. The learned Special Judge (Vigilance), Baripada, took cognizance of the offences on 02.09.2017 on the final closure report of the I.O. The petitioner had already retired from government service in 2009, and at no stage during his tenure of service sanction was sought from the competent authority for his prosecution.

6. The petitioner filed an application before the learned Special Judge (Vigilance), Baripada, seeking discharge on multiple grounds, including the absence of sanction under Section 19 of the Prevention of Corruption Act, the inordinate delay in taking cognizance, and the lack of any evidence demonstrating criminal intent. However, the learned Special Judge, by order dated 04.09.2024, rejected the discharge application, holding that a prima facie case has been made out against the petitioner. Aggrieved by the said order, the petitioner has approached this Court invoking revisional jurisdiction of this Court.

7. Mr. Dhal, learned Senior Advocate appearing for the petitioner, has vehemently argued that the impugned order suffers from legal and procedural infirmities and has resulted in grave injustice to the petitioner. It is submitted that the petitioner was merely an administrative officer carrying out official duties in accordance with the directives of his superior officers, and there is no independent material to suggest that he had acted with dishonest intent. The entire case is based on alleged procedural lapses in the execution of a government contract, which, even if assumed to be true, do not constitute an offence under the Prevention of

Corruption Act in the absence of any evidence of personal gain, quid pro quo, or corrupt motive.

8. Additionally, it is contended that the learned Special Judge (Vigilance) erred in rejecting the discharge petition without applying judicial mind to the ingredients of the alleged offence. The offence under Section 13(1)(d) of the Prevention of Corruption Act requires proof that the accused obtained pecuniary advantage for himself or another through corrupt means. However, the charge sheet fails to establish any such benefit derived by the petitioner. The entire case rests on administrative irregularities, which may warrant disciplinary action but do not meet the threshold of criminal misconduct under the Prevention of Corruption Act.

9. It is further contended that the prosecution has been launched without obtaining prior sanction from the competent authority, as required under Section 19 of the Prevention of Corruption Act, 1988. The petitioner was a public servant at the time of the alleged incident, and no sanction was obtained during his tenure of service. Even after his retirement, the prosecution proceeded without any formal approval from the government. The petitioner argued that in the absence of sanction, the entire prosecution is vitiated and cannot be sustained, relying upon the decisions of the Hon'ble Supreme Court in ***Mahendra Lal Das vs. State of Bihar & Ors.. (2002) 1 SCC 149,*** *and* ***State of Punjab vs Labh Singh, (2015) 60 OCR (SC) 398***.

10. The petitioner also challenges the inordinate delay in the initiation of prosecution. It is submitted that the FIR was registered in 2003, the investigation was concluded in 2007 with the submission of an FRT, yet cognizance was taken only in 2017, nearly 14 years after the alleged offence. Such an extraordinary delay, without any plausible explanation, has caused serious prejudice to the petitioner and violates his fundamental right to a fair and speedy trial.

11. Despite the grant of additional time, the opposite party has not filed its written note of submission. The Court proceeds to decide the matter based on the oral arguments advanced by the parties and the materials available on record.

12. I have carefully gone through the materials placed before this Court and the judgments cited by the learned counsels for the parties at the Bar.

13. It is relevant to note the following dates of events to appreciate the facts in the subject. The present case emanating from the F.I.R. in Balasore Vigilance P.S. Case No.29 of 2003 registered on 10.07.2003 registered the alleged commission of the offences punishable under Sections 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 120-B of the IPC.

14. The investigating agency took three years to complete the investigation and on 08.08.2006, filed the closure report, *inter alia*, stating that the alleged excess amount sanctioned and approved to the contractors either could be adjusted in the final bill as per contract condition or could be recovered from them. The Investigating

Officer has suggested to proceed departmentally, as no criminal case is made out against the petitioner.

15. The offence alleged to have committed prior to the year 2003. The investigation took about three years. Three years after filing the charge sheet, on 30.12.2009, the petitioner retired from the service on attaining the age of superannuation.

16. The certified copy of the proceedings of the learned Court below has been placed on record as Annexure-5. Reading of the proceeding reveals that on 06.07.2007, the Court of the C.J.M. accepted the closure report filed by the prosecution and issued the notice to the complainant/informant to file the protest petition, if any. Thereafter, the matter got listed for about 54 times ranging from 2007 to 2017, i.e. for ten years. The protest petition was never filed.

17. Suddenly, at the 55th hearing, i.e. on 02.09.2017, the learned Special Judge, Vigilance, by a detailed order, has taken the cognizance of the offences against the petitioner and the other co-accused persons on the basis of the material placed by the investigating agency by way of the Final Form.

18. On 06.08.2024, the petitioner moved an application seeking discharge from the offences. The learned Court below, vide order dated 04.09.2024, rejected the application of the petitioner seeking discharge. The petitioner is aggrieved by the said order. Hence, he has filed the present petition.

19. The learned trial Court, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Maharashtra and another vs. Som Nath Thappa & another,*** reported in ***1996 4 SCC 659***, came to the conclusion that at the time of framing of charges, only test is to see the existence of the *prima facie*. If there is ground of presuming that the accused has committed the offence, the probative value of the material placed on record cannot be gone into.

20. It reveals from the investigation report that during the course of the enquiry it transpired that the estimate of the work, namely "Construction of Jambhira Earth Dam" from RD 4200 mtrs. to 4500 mtrs. (Reach-V)" was framed by the Executive Engineer, Subarnarekha Irrigation Division No. III, Deuli (Er. B.M. Das) on 5.7.1995 which was sanctioned by the Chief Engineer, SIP (Er. P.K. Mishra) on 20.11.1995 amounting to Rs.3,05,49,800/- vide drawing No.32 "C" for 15 nos. of items. The tender schedule was approved by Chief Engineer, SIP (Er. P.K. Mishra) on 09.09.1995 amounting to Rs.2,98,85,723/- for 11 nos. of items. Accordingly, the tender for work was called by the Ex. Engineer, SI Division No. III, Deuli vide Tender Call Notice No.4/95-96 dtd.15.06.1995. The 1st corrigendum was published in 'The Samaj' on 1.9.1995. Accordingly, only 5 sets of tenders were received by 10.10.1995 out of sale of 38 nos. of tender papers and the same were opened on 13.10.1995.

The Government in Department of Water Resources letter No.29654 dtd.28.11.1995 approved L-1 bidder M/s.O.C.C. Ltd. limiting to value to Rs.3,85,52,582.67 only which is 29% excess over the amount of estimated cost. The General Manager, M/s. OCC Ltd., furnished their negotiation at 29% excess to CE, SIP in their letter No. 16382 dtd.1.12.1995. The CE instructed the EE in his letter No.18213 dtd. 11.12.1995 for drawing agreement in favour of M/s. O.C.C. Ltd. In response to EE's letter No.89 dtd.3.1.1996 M/s.O.C.C. Ltd., deposited the balance amount of EMD Rs. 4,71,050/-. The EE has drawn agreement in favour of M/s. O.C.C. Ltd. on 19.02.1996 vide Agt.No.16/95-96 dd.19.02.1996 with date of commencement and completion as 19.02.1996 and 18.02.1998 respectively.

21. It is relevant that two cases were registered on the self-same allegations, being VGR No.29 of 2003 and VGR No.35 of 2003. The present case germinates from VGR No.29 of 2003 regarding the execution of the construction of "Jambhira Earth Dam" from **RD 4200 mtrs. to 4500 mtrs.** The second case in VGR No.35 of 2003 is regarding the same project of construction of "Jambhira Earth Dam" from **RD 4500 mtrs. to 4950 mtrs.** In both cases, the closure report has been filed by the investigating agency after the investigation.

22. In the instant case, the matter remained pending for ten years before the Court below, whereas in VGR No.35 of 2003, the learned Special Judge (Vigilance), Balasore, vide its order dated 01.07.2010, accepted the closure report and put the case to the quietus. The petitioner, being one of the co-accused in both cases, could not have been treated separately as the allegations are verbatim same. Two standards cannot be adopted by the prosecution.

23. Besides, the point, the important issue here is the inordinate delay on the part of the prosecution to kick start the trial particularly after the investigating agency had filed the closure report stating that no case as such is made out against the petitioner and the other co-accused persons.

24. Mr. D.P. Dhal, learned Senior Advocate appearing on behalf of the petitioner, has rightly placed reliance on ***Mahendra Lal*** *(supra)* wherein the Hon'ble Supreme Court has held as under:

> *"6. In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant accused of possessing disproportionate wealth of about Rs 50,600. The authorities of the respondent State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility.*
>
> *7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the appropriate authorities concerned are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused*

or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived of the love, affection and the society of his children who were residing in a foreign country as on account of the pendency of the investigation he could not afford to leave the country."

25. The delay on the part of the prosecution has also multiplied for the reason that the prosecution waited for six years to complete the investigation. The cognizance has been taken by the learned Court below oblivious of the fact that the prosecution has deliberately waited for the retirement of the petitioner to prosecute him so as to avoid the rigors of obtaining the sanction for prosecution. It would be apt to rely on the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Labh Singh,*** reported in ***(2014) 16 SCC 807*** in that context the Hon'ble Supreme Court has held in paragraphs 10, 11 & 12 which read as under:

*"**10.** However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 CrPC is available to the public servant concerned even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13-9-2000 and secondly on 24-9-2003, the Court could not have taken cognizance insofar as the offences punishable under the Penal Code are concerned. As laid down by this Court in State of H.P. v. Nishant Sareen [State of H.P. v. Nishant Sareen, (2010) 14 SCC 527 : (2011) 3 SCC (Cri) 836] , the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material.*

***11.** In the circumstances, in our view the order under appeal passed by the High Court is correct insofar as charges under IPC are concerned but must be set aside as regards charge under the PC Act is concerned.*

***12.** Before we part, we must record that we do not approve the stand taken by the appellant in the petition. The prosecution cannot keep waiting till a public servant retires and then choose to file charge-sheet against him after his retirement, thereby setting at naught the protection available to him under Section 19 of the PC Act. The appeal, thus, stands allowed partly. No order as to costs."*

26. The Hon'ble Supreme Court has castigated the prosecution for having adopted the method, which directly affects the constitutional right of the accused. In that case, the prosecution has waited till the retirement of the delinquent for filing the charge sheet.

27. The Hon'ble Supreme Court has also held that after the retirement, although the sanction under Section 19 of the P.C. Act is not required vis-à-vis the offence under Sections 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988

r/w Section 120-B of the IPC, but for the other penal offences, sanction under Section 197 of the Cr. P.C. is a must even for a retired accused.

28. In the present case, the learned trial Court has taken cognizance of the offence under Section 120-B of the IPC without there being a sanction under Section 197 of the Cr. P.C.

29. Apparently, this is a case wherein the accused persons have committed dereliction in their duty by excess sanction of the amount. As per the contract condition amount excess paid through the running bill could be adjusted in the payment of the final bill. Therefore, there was an option for the Department to adjust the excess payment while granting the final bill, even otherwise if excess amount is paid, the same is also recoverable. Therefore, the investigating agency has rightly concluded that there is no criminal offence made out against the petitioner.

30. That apart, the inordinate delay of 14 years for taking the cognizance of the offence without there being an iota of explanation vitiates the entire proceeding.

31. The Hon'ble Supreme Court, in the case of ***A.R. Antulay vs. R.S. Nayak,*** reported in ***(1992) 1 SCC 225***, while interpreting the scope of Article 21 of the Constitution of India, has held that every citizen has right to speedy trial of the case pending against him. The speedy trial was considered also in the public interest as it serves the social interest as well. It is in the case of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. While determining the alleged delay the Court has to decide each case or its fact having regard to all the attending circumstances including the nature of the offence, number of accused and witnesses. The work load of the Court concerned prevailing the local conditions etc.

32. The record reveals in the instant case that the investigating agency took three years to complete the investigation and filed the closure report. But the cognizance taking Court has taken 11 years to take the cognizance. 54 adjournments have been given to the prosecution/informant to file the protest petition. Eventually, no protest petition was filed. After 11 years, the Court below has taken the cognizance for the offence punishable under Section 13(2) r/w 13(1)(d) of the P.C. Act and Section 420/120-B of the IPC on the police report.

33. It is no more *res integra* that the sanction under Section 197 of the Cr. P.C. is mandatory for taking the cognizance of the penal offence against a public servant even after retirement from the service. The learned Court below has taken the cognizance by not following the required procedural safeguard. The Court below has also not taken into consideration that the closure report filed in the connected case has also been accepted, and the case is put to a quietus. It has also escaped from the notice of the Court that this is a case whereby no inference could be drawn regarding the loss to the exchequer, as there exists sufficient cause for recovery of the alleged excess payment, which has been allegedly claimed to be the loss to the exchequer.

34. In view of the foregoing discussions, I am inclined to allow the present petition and set aside the impugned order dated 04.09.2024 passed by the learned Special Judge (Vigilance), Baripada in VGR Case No.29 of 2003 arising out of Balasore Vigilance P.S. Case No.29 of 2003.

35. The CRLREV is accordingly allowed.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case:
CRLREV allowed.

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2025 (II) ILR-CUT-1359

Md. INTEKHAB ALAM & ANR.
V.
ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE, GOVERNMENT OF INDIA, BHUBANESWAR

[CRLMC NO. 4405 OF 2024]

18 JULY 2025

[S.S. MISHRA, J.]

Issues for Consideration

1. Whether proceedings under PML Act can be continued against the petitioners when the schedule offences forming the basis of the proceedings have been quashed.

2. Whether proceeding under the PML Act can be initiated against the firm, company etc. separately without the individual members or partners of the company or firm.

Headnotes

(A) PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 2, 3, 24 & 70 – Offences under the Act – Present case has been filed U/s. 528 of the BNSS, 2023 to quash the proceeding under the PML Act – Schedule offences already been quashed – Prayer for quashing of the '*proceeds of crime'* – Whether proceedings under PML Act can be continued against the petitioners when the schedule offences forming the basis of the proceedings have been quashed.

Held: No – In view of the law laid down in judgement passed by the Hon'ble Apex Court in the case of *"Vijay Madan lal Chaudhary & Ors. Vs. Union of India & Ors."* (supra) and *"Indrani Patnaik vs. Enforcement Directorate"* (supra) and on the basis of ratio of other judgments as discussed above, the only conclusion that could be arrived at is that the proceedings against

Petitioner No.1 under PMLA, 2002 cannot be maintained and are liable to be quashed – Because, no schedule offence exists against him, hence he can't be related to the alleged proceeds of crime – However, in respect of Petitioner No.2, the situation is somewhat different – It appears from the observation made by the coordinate bench of this Court dated 23.09.2022, the predicative offence vis-à-vis the Petitioner No.1 was quashed solely on technical grounds – At the same time, the complicity of Petitioner No.2, i.e., the firm in the commission of the crime has been highlighted – An inescapable inference that could be drawn from the judgment is that by using the Partnership firm (Petitioner No.2) as a shield, the crime appears to have been committed – Therefore, the complaint U/s.45 of PMLA against the firm survives particularly under the aid of Section 70 of PMLA. (Para 26)

(B) PREVENTION OF MONEY LAUNDERING ACT, 2002 – Sections 2, 3, 24 & 70 – Proceeding under the Act – Whether proceeding under the Act can be initiated against the firm, company etc. separately without the individual members or partners of the company or firm.

Held: Yes –*'Persons'* as defined U/s.2(1)(s)(4) includes a firm – Thus, for the purpose of the offence of money laundering defined U/s.3 of PMLA, 2002, a firm in its individual capacity and in separation to its partners can be made an accused – The intent of the legislature is very much clear that the purpose of PMLA, 2002 is to prevent the creation and circulation of *'proceeds of crime'* and remove the *'proceeds of crime'* which have entered into the mainstream economy – Therefore, legislature in its wisdom has brought under the purview of the offence of money laundering, the juristic personalities like companies and firms severally and individually – The basic rationale behind such enactment is to prevent the use of firms and companies to launder the black money generated as *'proceeds of crime'* by the associates of the company/firm in their personal capacity, however, using the shield of the company/firm. (Para 21)

Citations Reference

Indrani Patnaik vs Enforcement Directorate, **W.P. (C) No.368 of 2021**; Directorate of Enforcement v. Akhilesh Singh, **(2024 SCC Online DEL 3051)**; Vijay Madanlal Choudhary & Ors. v. Union of India, **(2022 SCC OnLine SC 929)**; P. Rajendran v. Assistant Director, **ED (Crl.O.P.No.19880 of 2022)**; Assistant Directorate of Enforcement v. State & Ors., **(Crl.O.P.No.28289 of 2023, Madras HC)**; Mohan Lal Rathi v. Union of India & Ors., **(MANU/UP/2866/2023, Allahabad HC)**; Shiv Kumar Jatia vs. State of Nct of Delhi **(AIR 2019 SUPREME COURT 4463) – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Indian Penal Code, 1860;

Prevention of Corruption Act, 1988; Indian Forest Conservation Act, 1980; Mines & Minerals (Development & Regulation) Act, 1957

Keywords

Offence of money laundering; Schedule Offence; Proceeds of Crime; Persons; Company; Firm; Partners; Personal capacity; Offence under PML Act; Juristic Person; Predicate offence; Recovery of Money; Seize of Money

Case Arising From

Order of cognizance dated 03.12.2020 passed by the learned CBI-I cum-Special Judge (PMLA), Bhubaneswar.

Appearances for Parties

For Petitioners: Mr. P.N. Mishra, Sr. Adv.
For Opp. Party: Mr. Gopal Agrawal, Sr. Adv. (Enforcement Directorate)

Judgment/Order

Judgment

S.S. MISHRA, J.

The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking quashing of the order of cognizance dated 03.12.2020 passed by the learned CBI-I cum-Special Judge (PMLA), Bhubaneswar, now in the Court of the learned Sessions Judge, Khurda at Bhubaneswar, as well as the consequential proceedings pending in Criminal Misc. Case (PMLA) No.16 of 2020.

2. The case arises out of allegations of illegal mining operations by M/s. Serajuddin & Co. (Petitioner No.2), a partnership firm comprising seven partners, including Md. Mofazzalur Rehman (since deceased) and Md. Intekhab Alam (Petitioner No.1). The Vigilance Department had registered FIR Nos.54 and 55 of 2009 at Vigilance P.S., Balasore, Odisha, leading to Charge Sheet Nos.3 and 4 dated 30.03.2012 against the petitioners under the following provisions:

- Sections 201, 379, 420, 120-B of the Indian Penal Code, 1860 (IPC)
- Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957
- Section 2 of the Indian Forest Conservation Act, 1980
- Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988

3. Based on the said Charge Sheets being the predicating/ scheduled offence, a complaint under Sections 3 and 45 of the PMLA, 2002 was filed before the learned Special Judge (PMLA), Bhubaneswar in Crl. Misc. (PMLA) Case No.16 of 2020, *inter alia*, on the allegation that the petitioners had received proceeds of crime to the tune of ₹ 625,13,87,640.00/- (Six Hundred Twenty Five Crores Thirteen Lakh

Eighty-Seven Thousand Six Forty only) and the same is still retained by the Petitioner No.2 and, has been laundered by the Petitioner firm, which is an offence under Section 3 and punishable under Section 4 of the PMLA.

4. That it is also a matter of record that this Court vide order dated 23.09.2022 passed in CRLMC No.2845 of 2021 and CRLMC No.2272 of 2024, quashed the order of taking cognizance passed by the trial court and the entire proceedings emanating thereof against Md. Mofazzalur Rahman (deceased) and Md. Intekhab Alam (Petitioner No.1). Pursuant to the order dated 23.09.2022 passed by this Court, the learned Special Judge (Vigilance) Keonjhar vide order dated 01.11.2022 closed the case against the aforesaid accused in so far as the scheduled offence is concerned.

5. The petitioners, relying upon the order dated 23.09.2022 passed by this Court in CRLMC No.2845 of 2021 and CRLMC No.2272 of 2024 and subsequent orders closing the case against the petitioners by the court below, are now seeking quashing of the proceedings under the PMLA, 2002, pending before the learned Special Judge, PMLA.

6. The primary grounds taken by the petitioners in support of their prayer for quashing is that with the scheduled offences having been quashed, there remains no basis for treating the alleged amount as *'proceeds of crime'* under Section 2(1)(u) of the PMLA, 2002 and once there is no *'proceeds of crime'*, the proceeding under PMLA does not survive.

7. Mr. Mishra, the learned Senior Counsel for the petitioners, has strongly contended that the foundation of an offence under Section 3 of PMLA, 2002, is the existence of *'proceeds of crime'*, which must originate from a scheduled offence. Since the scheduled offences have been quashed by this Court, there exists no legal basis to treat any amount in the hands of the Petitioners as proceeds of crime.

8. It has been further argued on behalf of the Petitioner No.2 that under partnership law, a firm is merely a collective name for its partners and partnership firm is not a juristic person. Since only two partners were being prosecuted for the scheduled offence, namely, Md. Mofazzalur Rehman (deceased) and Md. Intekhab Alam (Petitioner No.1) and against the proceedings under the scheduled offence have already been quashed, the firm itself cannot be prosecuted independently.

9. The petitioners also relied on the judgment of the Hon'ble Supreme Court in the case of "***Indrani Patnaik vs Enforcement Directorate" W.P. (C) No.368 of 2021***, whereby the Hon'ble Apex Court has quashed the proceedings under PMLA against another accused company on similar grounds after the scheduled offence was quashed. The relevant paragraph of the judgment passed in the aforesaid case is extracted for ready reference:

> *"Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the*

Prevention of Money-laundering Act, 2022 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No.59 of 2009 (T.R. Case No.80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No.831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged. Learned Additional Solicitor General appearing for the respondents though has not disputed the order dated 27.11.2020 passed by the High Court, discharging the from the scheduled offence but has submitted that he has not received further instructions as to whether the prosecuting agency has challenged the said order or not. The record as it stands today, the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence. That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further. However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA. Subject to the observations and liberty foregoing, this petition is allowed while quashing the proceeding in Complaint Case No.05 of 2020 dated 10.01.2020 pending in the Court of Sessions Court, Khurdha at Bhubaneswar cum Special Court under the Prevention of Money-laundering Act, 2002."

10. It has been strenuously argued on behalf of the petitioner that under the scheme of PMLA, the offence of money laundering is linked to the commission of a scheduled offence as defined under Section 2(1)(y) of the Act. If there is no predicate offence, then there can be no proceeds of crime, and consequently, no offence of money laundering can arise. It is further submitted that the Delhi High Court in ***Directorate of Enforcement v. Akhilesh Singh (2024 SCC Online DEL 3051)*** has taken the view that once the predicate offence is quashed, proceedings under PMLA cannot continue, as it is contingent upon the scheduled offence.

11. The petitioners have placed heavy reliance on the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. v. Union of India (2022 SCC OnLine SC 929)***, where the Court categorically held that:

"If the person is finally discharged/ acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

Since the High Court has quashed the proceedings against the petitioners, there is no offence of money laundering under Section 3 of PMLA, 2002 would survive.

12. *Per contra*, Mr. Agrawal, the learned Senior Counsel for the Opposite Party-Enforcement Directorate argues that Charge Sheet Nos. 3 and 4 dated 30.03.2012

filed in the court of the learned Special Judge (Vigilance), Balasore u/s. 120B/420/379 of IPC r/w Section 13(1)(d) of the P.C. Act, 1988, Section 21(1) of MMDR Act, 1957 and Section 24 of the PMLA, 2002, raises a statutory presumption that any money recovered from the petitioners constitutes *'proceeds of crime'* unless they prove otherwise at trial. Thus, the petitioners must discharge their burden at the trial stage, and the proceedings should not be quashed at the threshold by scuttling the proceeding abruptly.

13. Reliance has been placed by the Opposite Party on the judgment of the Madras High Court in ***P. Rajendran v. Assistant Director, ED (Crl.O.P.No.19880 of 2022)***, where the court held that PMLA proceedings do not depend on the survival of the predicate offence. The court further observed that in a prosecution under PMLA, there are two sets of accused – one in the predicate offence and the other in the prosecution initiated by the Enforcement Directorate. Therefore, PMLA is a standalone offence, distinct from the predicate offence. Further relying on ***Assistant Directorate of Enforcement v. State & Ors. (Crl.O.P.No.28289 of 2023, Madras HC)***, which reaffirmed that even if the predicate offence is closed, ED can place the facts before the High Court under Section 482 Cr.P.C. to prevent miscarriage of justice.

14. The Opposite Party further contended that mere quashing of the scheduled offence qua one accused does not automatically establish that the seized amount is legitimate income, and an independent inquiry under PMLA is still permissible. The Opposite Party relied on ***Mohan Lal Rathi v. Union of India & Ors. (MANU/UP/2866/2023, Allahabad HC)***, where the court emphasized that money laundering is an independent offence, and even if the predicate offence is closed, the proceedings under PMLA can continue if the ED establishes that the accused was engaged in money laundering.

15. It is also submitted that the charge of theft under Section 379 IPC still exists against M/s. Serajuddin & Co., which itself forms a basis for the PMLA proceedings.

16. The learned Senior Counsel has also placed reliance on ***Vijay Madanlal Choudhary v. Union of India (2022 SCC OnLine SC 929)***, where the Supreme Court held that the existence of a predicate offence is only relevant at the stage of initiation of PMLA proceedings, but once PMLA Court takes cognizance and proceeds with the matter, there would be no bearing of the non-existence of the scheduled offence.

17. Mr. Agrawal, the learned Senior Counsel further submitted that in view of Section 70 of the PMLA, which permits prosecution of a company and those in charge of its affairs, and in line with the principles laid down in ***Vijay Madanlal Choudhary*** (supra) and ***P. Rajendran*** (supra), proceedings under PMLA shall continue against the firm, M/s. Serajuddin & Co. and more particularly because the proceeds of crime has been routed through the accounts of the firm.

18. He further brought to the notice of the Court that during the pendency of the proceeding before the learned Special Court, PMLA, Bhubaneswar, Md. Mofazzalur Rahman expired and his name has been deleted by the Special Court (PMLA), so only against Md. Intekhab Alam, present petitioner no.1, the proceeding under schedule offence has been quashed. But on 08.09.2023 supplementary complaint was filed against newly added accused persons, namely, Mr. Seraj Yusha, Mr. Meraj Yusha and M/s. Yazdani International Pvt. Ltd. represented through Mr. Seraj Yusha and Mr. Meraj Yusha. The learned Special Court took cognizance against the newly added accused persons and issued summons. Therefore, the cognizance order passed by the learned Special Court (PMLA) against other accused persons cannot be quashed on the ground that the proceeding under the scheduled offence has been quashed as against one of the accused.

19. The primary issue before this Court is whether proceedings under the PMLA, 2002, can continue against the petitioners when the scheduled offences forming the basis of the proceedings have been quashed and whether a firm which has not been made an accused in the predicate offence or against which no proceedings under the scheduled offence are pending can be made to face the proceedings under PMLA, 2002.

20. Before deliberating upon the legal issue that has arisen for the consideration of this Court, it would be relevant to extract some of the provisions of PMLA, 2002.

> ***Section 2(1)(s)***
>
> *““person” includes—*
>
> *(i)* ***an individual****,*
> *(ii) a Hindu undivided family,*
> *(iii) a company,*
> *(iv)* ***a firm****,*
> *(v)* ***an association of persons or a body of individuals, whether incorporated or not,***
> *(vi) every artificial juridical person not falling within any of the preceding sub-clauses, and*
> *(vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;”*
>
> ***Section 2(1)(u)***
>
> *““proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad]:*
>
> *[Explanation.—For the removal of doubts, it is hereby clarified that* ***“proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]”***

Section 3

Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering. [Explanation.—For the removal of doubts, it is hereby clarified that,—
(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property; or
(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

Section 24

*Burden of Proof.—In any proceeding relating to proceeds of crime under this Act,**—(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering;** and(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]*

Explanation to Section 44

[Explanation.—For the removal of doubts, it is clarified that,—

*(i) the jurisdiction of the Special Court while dealing with the offence under this Act, **during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;***

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]

Section 70

Offences by companies.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation [1].—For the purposes of this section,—

(i) ***"company" means any body corporate and includes a firm or other association of individuals; and***
(ii) "director", in relation to a firm, means a partner in the firm.

[Explanation 2.—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]

21. Bare reading of the aforementioned sections would make it amply clear that:-

- *'persons'* as defined U/s.2(1)(s)(4) includes a firm. Thus, for the purpose of the offence of money laundering defined U/s.3 of PMLA, 2002, a firm in its individual capacity and in separation to its partners can be made an accused. The intent of the legislature is very much clear that the purpose of PMLA, 2002 is to prevent the creation and circulation of *'proceeds of crime'* and remove the *'proceeds of crime'* which have entered into the mainstream economy. Therefore, legislature in its wisdom has brought under the purview of the offence of money laundering, the juristic personalities like companies and firms severally and individually. The basic rationale behind such enactment is to prevent the use of firms and companies to launder the black money generated as *'proceeds of crime'* by the associates of the company/firm in their personal capacity, however, using the shield of the company/firm.

- *'Proceeds of crime'* is not only derived or obtained from scheduled offence but also includes any property which may directly or indirectly be derived or obtained as a result of any criminal activity related to the scheduled offences. Thus, the legislature has consciously brought such gains under the purview of the definition of *'proceeds of crime'*, which are not only directly or indirectly derived from the commission of scheduled offences but also relatable to scheduled offences. Therefore, any income/gains/property would fall under the category of *'proceeds of crime'* if the same is in some manner or the other relatable to the scheduled offences. Thus, the prosecution in order to bring the income/gains/property under the category of *'proceeds of crime'*, has to prove relatebility of such property with the scheduled offences. In the facts of the present case proceedings under the scheduled offences are still pending in the court of competent jurisdiction, although both the petitioners are not parties to such proceedings anymore. But the fact remains that proceedings under the scheduled offence are still pending against other co-accused persons.
- Section 24 of PMLA, 2002 creates a presumption against the accused to say that unless the contrary is proved, it would be presumed that the alleged *'proceeds of crime'* are rooted in money laundering. Thereby, not only is a presumption created against the accused but a positive obligation is cast upon the accused to prove the contrary, that is to say that *'proceeds of crime'* are not involved in money laundering.
- Explanation to Section 44 clearly bifurcates proceedings under the scheduled offence and proceedings under PMLA, 2002 making both the proceedings independent as both the offences are independent.

22. In the present case, the closure of the predicate offence qua Petitioner No.1, removes the very foundation on which the proceeds of crime are alleged to have been generated by the Petitioner No.1. The Enforcement Directorate has not independently demonstrated that the petitioners personally engaged in activities that would constitute an offence under Section 3 of PMLA.

23. The Madras High Court, in ***P. Rajendran v. Assistant Director, ED (Crl.O.P.No.19880 of 2022)***, recognized that while PMLA is a standalone offence, it cannot be sustained in cases where the accused individuals are not actively engaged in money laundering but are merely implicated due to their association with the predicate offence.

24. Furthermore, in ***Mohan Lal Rathi v. Union of India (MANU/UP/2866/2023, Allahabad HC)***, the court held that a person accused under PMLA cannot be prosecuted indefinitely when the predicate offence is no longer in existence, unless there is specific evidence of money laundering against them.

25. It's equally relevant to note that the Prevention of Money Laundering Act, 2002, defines the offence of money laundering under Section 3, which criminalizes activities involving the proceeds of crime, when derived from a predicate offence. However, the Supreme Court in ***Vijay Madanlal Choudhary v. Union of India***

(2022 SCC OnLine SC 929) held that while PMLA proceedings do not automatically cease if the predicate offence is dropped, each case must be examined based on its individual facts. The Supreme Court has observed in multiple cases that criminal liability cannot be attributed to individuals merely by virtue of their position in a company/firm unless there is direct involvement or mens rea (criminal intent). In the absence of such evidence, individuals cannot be made to face prolonged litigation.

26. Thus, in view of the law laid down in judgement passed by the Hon'ble Apex Court in the case of ***"Vijay Madan lal Chaudhary & Ors. Vs. Union of India & Ors."*** (supra) and ***"Indrani Patnaik vs. Enforcement Directorate"*** (supra) and on the basis of ratio of other judgments as discussed above, the only conclusion that could be arrived at is that the proceedings against Petitioner No.1 under PMLA, 2002 cannot be maintained and are liable to be quashed. Because, no schedule offence exists against him, hence he can't be related to the alleged proceeds of crime. However, in respect of Petitioner No.2, the situation is somewhat different. It appears from the observation made by the coordinate bench of this Court dated 23.09.2022, the predicative offence vis à-vis the Petitioner No.1 was quashed solely on technical grounds. At the same time, the complicity of Petitioner No.2, i.e., the firm in the commission of the crime has been highlighted. An inescapable inference that could be drawn from the judgment is that by using the Partnership firm (Petitioner No.2) as a shield, the crime appears to have been committed. Therefore, the complaint U/s.45 of PMLA against the firm survives particularly under the aid of Section 70 of PMLA.

27. In financial and corporate fraud cases, courts have distinguished between corporate liability and individual liability. In ***Shiv Kumar Jatia vs. State Of Nct Of Delhi (AIR 2019 SUPREME COURT 4463)***, the Supreme Court held that-

> *"27. The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious Crl.A. @ SLP (Crl.)No.8008/18 etc. etc. liability unless the Statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."*

28. The PMLA recognizes corporate liability under Section 70, and the law permits a company or a firm to be prosecuted separately from its officers. In the presentcase, the firm has been prosecuted separately and the predicating offence vis-a-vis the firm still going on. Independent evidence has been provided by the Enforcement Directorate to establish the complicity of the firm through money laundering transactions carried through the firm.

29. Moreover, quashing of PMLA proceedings at this stage would create an anomalous situation because, in the event, it is proved in the course of trial that the proceeds of crime has been generated through the schedule offence for which the trial is pending qua other co-accused person, for the reasons that illegal mining activities have been conducted in the name of the Petitioner No.2, which is the precise reasons for quashing of the proceedings against the Petitioner No.1 by this Court vide order dated 23.09.2022 passed in CRLMC No.2272 of 2021. In that view of the matter, this Court is unable to accept the submission of the learned Senior Counsel, Mr. Mishra in so far as Petitioner No.2, i.e., the firm is concerned.

30. In the present case, complaint has been filed against the Petitioner No.1, i.e., Md. Intekhab Alam and Petitioner No.2, i.e., M/s. Serajuddin & Co. U/s.44 and 45 of PMLA, 2002 for commissioning of offence of money laundering, U/s.3 punishable U/s.4 of PMLA, 2002. The proceedings against accused No.1 in his individual capacity have already been quashed by this Court pursuant to which the learned Special Judge (Vigilance), Keonjhar, has closed the proceedings against two accused persons vide its order dated 01.11.2022. Although, this Court vide order dated 23.09.2022, has quashed the criminal proceedings against Petitioner No.1 in the predicate offence, however, on perusal of the said order, findings recorded by this Court would suggest that petitioner No.1 was able to persuade this Court that the allegations and the material brought on record by the prosecution in the Charge Sheet was primarily against M/s. Serajuddin & Co (Petitioner No.2) and there was no specific allegation against the Petitioner No.1 in his personal and individual capacity, therefore, he in his personal capacity cannot be made to face the criminal trial in the predicate offence. Perusal of paragraph 13 of the said judgement passed by this Court would indicate that this Court has rather indicted M/s. Serajuddin & Co. (Petitioner No.2) with allegations of illegal mining activities. The relevant paragraphs of the order dated 23.09.2022 passed by this Court in CRLMC No.2272 of 2021 are extracted herein below:

> *"13. In the case at hand, the documents relied on by the petitioner do not appear to have been disputed by the Vigilance Department. It further appears from the charge sheet and other papers on record* <u>*that the entire allegation is directed against the Lessee-company, i.e., M/s. Serajuddin & Co..*</u> *There is hardly any allegation in specific against the petitioners regarding their involvement in any of the alleged offences, independent of the will, intent or interest of the Lessee-company. The allegation against the Lessee-company appears to be essentially regarding alleged violation, illegalities etc. in relation to Mining activities, attracting the provisions of the MMDR Act. Needless to mention that no prosecution for any offence under the*

said Act can be initiated except on a complaint by the Authorized Officer in view of Section 22 of the said Act. A complaint is also required for launching a prosecution under the Forest (Conservation) Act, 1980. Thus, statutory have not been followed in the present case."

"18. In view of the well settled principal of law, as apparent form the decisions quoted above, the prosecution launched against the petitioners is found to be legally not sustainable although the petitioners are admittedly Partners of the Lessee company. Further, for the discussion made hereinbefore, the offence of criminal conspiracy and other offences as alleged, are found to be not made out against the petitioners, especially when there is no specific allegation in that regard against them either as an individual or a partner of the Lessee-company. Hence, this court finds merit in the contention of the petitioners that continuance of the criminal proceedings against them will amount to abuse of the process of the Court. The CRLMC, therefore, deserved to be allowed."

31. Therefore, the proceedings against M/s. Serajuddin & Co. (Petitioner No.2) for the offence of money laundering stand on a different footing altogether. This Court finds merit in the argument of the learned Senior Counsel for the Opposite Party that the proceedings under the predicate offence are not quashed in its entirety and same are still pending against other accused person before the Vigilance Court and the issue with regard to whether the money recovered and seized is *proceeds of crime* will finally be determined in the course of trial. Moreover, in view of a statutory presumption that any money/property recovered from the petitioners constitutes *'proceeds of crime'* unless same is disproved at trial, the petitioner No.2 must discharge its burden at the trial alone, for which the proceedings ought not be quashed at the stage of cognizance.

32. Consequently, the proceedings against the petitioners, Md. Intekhab Alam and another are hereby quashed.

33. However, the proceedings against the company/firm shall continue, and the Enforcement Directorate is free to proceed in accordance with law regarding any further investigation or prosecution of the company/firm under PMLA by strictly complying the procedural safeguard provided under the Prevention of Money Laundering Act, 2002, and any other applicable laws.

34. The CRLMC is partly allowed.

Headnotes prepared by:
Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case
CRLMC partly allowed.

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2025 (II) ILR-CUT-1372

TARINI GOUDA
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 33275 OF 2024]

13 MAY 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Whether the prayer of the petitioner can be accepted?

Headnotes

ADMINISTRATION OF JUSTICE – Reconstruction of records – Prayer for reconstruction of the records – The State/Opp.party authority denied reconstruction of the record on the grounds that record has been wasted, as in the meantime 48 years have been elapsed – Whether the prayer of the petitioner can be accepted?

Held: Yes – Law has already been settled in a case between **Arjun Padhi Vs. State** reported in **AIR 1952 (Orissa) 237** that, *"when the record of a pending case is lost or destroyed, the Court or Authority has inherent power to reconstruct its records on the basis of its authenticated copies and the reconstructed records shall have the same efficacy/force as that of the original record."* (Para 4)

So, in view of the principles of law enunciated in the ratio of the above decision, the Tahasildar, Ganjam (Opp. Party No.4) is required to be directed to reconstruct the records of OLR Case No.8 of 1977 on the basis of the authenticated copies thereof supplied either by the petitioner or through other source and to act on the basis of previous orders passed in that OLR Case No.8 of 1977. (Para 5)

Citations Reference

Arjun Padhi Vs. State, **AIR 1952 (Orissa) 237 – referred to.**

List of Acts

Orissa Land Reforms Act, 1960.

Keywords

Pendency of case; Lost or destruction of record; Reconstruction of record; Inherent power of the Court or Authority.

Case Arising From

Petitioner has prayed to direct the Tahasildar Ganjam (Opp. Party No. 4) for reconstruction of the file.

Appearances for Parties

For Petitioners : Mr. Sukanta Kumar Dalai
For Opp. Parties : Mr. S.R. Pattnaik, A.G.A (for the State)

Judgment/Order

Judgment

A.C. BEHERA, J.

1. Heard from the learned counsels of both the sides.

2. In this writ petition, the petitioner has prayed for directing Tahasildar, Ganjam (Opp. Party No.4) for reconstruction of the file of OLR Case No.8 of 1977 on the basis of the authenticated copies thereof supplied by the petitioner and to issue the Rayati Patta of the case land in favour of the petitioner as per the final order passed in that OLR Case No.8 of 1977.

3. Learned AGA for the State submitted on the basis of the letter dated 24.03.2025 issued by record keeper, Khalikote Tahasil to the Tahasildar, Khalikote that, *"the records of OLR Case No.8 of 1977 under Section 36-A of the OLR Act has been wasted due to completion of 48 years and the question of tracing out of the same in future does not arise."*

4. Law has already been settled in a case between **Arjun Padhi Vs. State** reported in **AIR 1952 (Orissa) 237** that,

> *"when the record of a pending case is lost or destroyed, the Court or Authority has inherent power to reconstruct its records on the basis of its authenticated copies and the reconstructed records shall have the same efficacy/force as that of the original record."*

5. So, in view of the principles of law enunciated in the ratio of the above decision, the Tahasildar, Ganjam (Opp. Party No.4) is required to be directed to reconstruct the records of OLR Case No.8 of 1977 on the basis of the authenticated copies thereof supplied either by the petitioner or through other source and to act on the basis of previous orders passed in that OLR Case No.8 of 1977.

Therefore, there is merit in the writ petition filed by the petitioner. The same is to be allowed.

6. Hence, the writ petition filed by the petitioner is allowed con contest.

7. The Tahasildar, Ganjam (Opp. Party No.4) is directed to take steps for reconstruction of the records of OLR Case No.8 of 1977 on production of the certified copy of this Order by the petitioner before him along with the authenticated copies of the records/order-sheets of OLR Case No.8 of 1977 and to comply the previous orders of OLR Case No.8 of 1977 as per law and to complete all the processes of the said OLR Case No.8 of 1977 within a period of 2 months from the date of production of the certified copy of this Order before him (Opp. Party No.4).

8. Accordingly, the writ petition is disposed of finally.

Headnotes prepared by:
Shri 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-1374

SAURI JENA
V.
SUB-REGISTRAR, BARANGA & ANR.

[W.P.(C) NO. 13387 OF 2025]

13 MAY 2025

[ANANDA CHANDRA BEHERA, J.]

Issues for Consideration

Whether Sub-Registrar has power to refuse orally to receive the sale deed for registration.

Headnotes

THE REGISTRATION ACT, 1908 – Section 71 – Refusal to registration – Oral refusals – Whether Sub-Registrar has power to refuse orally to receive the sale deed for registration.

Held: No – It is very fundamental in law that, Sub-Registrar cannot orally refuse to receive the sale deed for registration. He is bound to receive the same as per law, but, he can refuse to register the same if, the same is not legally permissible for registration. The Sub-Registrar has no jurisdiction or authority under law to refuse to accept any sale deed which is presented before him for registration. (Para 3)

Citations Reference

M/s. Northeastern Infrastructure Private Limited & Another Vs. State of Andhra Pradesh & Others, **2025 (2) Civil Court Cases 220 (Andhra Pradesh) – referred to.**

List of Acts

The Registration Act, 1908; Constitution of India, 1950.

Keywords

Sale deed; Registration; Refusal; Oral Refusal; Jurisdiction/power of Sub-Registrar.

Case Arising From

Challenging the order passed by the Opp. Party No. 1 on dated 03.05.2025.

Appearances for Parties

For Petitioners : Mr. Sudhir Ku. Mallick
For Opp. Parties : Mr. S. Nayak, A.S.C (for the State)

Judgment/Order

Judgment

A.C. BEHERA, J.

This writ petition under Article 226 & 227 of the Constitution of India, 1950 has been filed by the petitioner praying for directing the Opp. Party No.1 (Sub-Registrar, Baranga) to accept the sale deed of the petitioner and to register the same, because, the slot was booked on dated 03.05.2025 by the petitioner for registration of the sale deed before the Opp. Party No.1, but, when the petitioner presented his sale deed on dated 03.05.2025 for registration, the Opp. Party No.1 refused to accept the same expressing orally that, *there is a status quo order in respect of the properties covered under the said sale deed, for which, he will not accept the same for registration.*

For which, without getting any way, the petitioner approached this Court by filing this writ petition praying for directing the Opp. Party No.1 to accept the sale deed, which was not accepted by the Opp. Party No.1 on dated 03.05.2025 and to register the same.

2. Heard from the learned counsel for the petitioner and the learned ASC for the State.

3. It is very fundamental in law that, Sub-Registrar cannot orally refuse to receive the sale deed for registration. He is bound to receive the same as per law, but, he can refuse to register the same if, the same is not legally permissible for registration.

The Sub-Registrar has no jurisdiction or authority under law to refuse to accept any sale deed which is presented before him for registration.

On this aspect, the propositions of law has already been clarified in the ratio of the decision between ***M/s. Northeastern Infrastructure Private Limited & Another Vs. State of Andhra Pradesh & Others*** reported in ***2025 (2) Civil Court Cases 220 (Andhra Pradesh)*** that,

> *"Sub-Registrar cannot orally refuse to receive a document, which is presented for registration by the vendor. He is either to register the document, but if it is not legally fit for registration, then, to pass an order for refusal of its registration indicating the reasons for the same."*

4. Here in this matter at hand, when the sale deed was presented by the petitioner on dated 03.05.2025 before the Opp. Party No.1 for registration, then, it was the duty of the Sub-Registrar, Baranga (Opp. Party No.1) to receive the same and to register the same and if the same was not fit under law to be registered, then, he (Opp. Party No.1) should have returned the same to the petitioner indicating the reasons for its refusal to register, but the Opp. Party No.1 has not done so. For which, there is no justification under law to allow the writ petition filed by the petitioner in order to direct the Opp. Party No.1 to accept the sale deed of the petitioner for registration.

Therefore, there is merit in the writ petition filed by the petitioner. The same is to be allowed.

5. Hence, the writ petition filed by the petitioner is allowed contest.

6. The Sub-Registrar, Baranga (Opp. Party No.1) is directed to accept/receive the sale deed of the petitioner, if, he (petitioner) presents the same before the Opp. Party No.1 along with the certified copy of this Judgment and to act upon the same immediately as per the provisions of Indian Registration Act, 1908 and Rules thereof.

7. Accordingly, the writ petition filed by the petitioner is disposed of finally.

Headnotes prepared by:
Shri 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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