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(w.e.f 21.07.2025)

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CIVIL PROCEDURE CODE, 1908 – Section 151 – Petitioner being plaintiff No.1A moved an application seeking leave of the learned Court to adduce further evidence in rebuttal to examine plaintiff No. 2 as a witness from the side of contesting defendants – The learned Court below held the same to be not necessary and was followed by the impugned Order – Whether an application for leading rebuttal evidence in a suit on the verge of disposal is permissible by exercising inherent jurisdiction.

Held: Yes – The petitioner even though sought for a leave to lead rebuttal evidence and it was with some amount of delay not immediately after death of original plaintiff No.1 but apparently, after examination of plaintiff No.2 as D.W.2, in such a peculiar situation, the Court is of the view that he should have been allowed to bring on record such rebuttal evidence with the exercise of jurisdiction under Section 151 CPC by learned court below – It is reiterated that any such conduct of a party during the hearing of the suit even when pending at the stage of argument may be a ground to allow the other side an opportunity for leading rebuttal evidence and necessarily for the said purpose, inherent power under Section 151 CPC is required to be exercised.

Jagat Jivan Pani V. Sarita Pani & Ors.

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CIVIL TRIAL – Suit for injunction simpliciter – Suit was dismissed by the Trial Court on the ground that plaintiff has failed to establish his possession over the suit properties – 1st Appellate Court dismissed the appeal by concurring in the findings of the Trial Court regarding possession – Whether interference by the 2nd Appellate Court is warranted in view of the concurrent findings of the Courts below.

Held: No – When, it is the concurrent findings on facts by the Trial Court and First Appellate Court that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex Court and Hon'ble Courts, it is held that, the plaintiff is not entitled to get the decree i.e. permanent injunction in respect of the suit properties against the defendants – For which, the question of interfering with the Judgment of dismissal of the suit for injunction of the plaintiff through this 2nd Appeal filed on behalf of the plaintiff does not arise – Therefore, the refusal to the prayer for injunction sought for by the plaintiff made by the Trial Court and 1st Appellate Court is to be confirmed without disturbing/interfering with the findings made by the learned 1st Appellate Court relating to the title of the suit properties and the validity of the sale deeds in respect of the same leaving that part to be decided in the pending writ petition vide OJC No.1786 of 1995 against the decision of the Consolidation Commissioner.

Sushilarani Behera & Ors. V. Haguru Mahalik & Ors.

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COURT FEES ACT, 1870 – Section 16 r/w Section 89 of the Code of Civil Procedure, 1908 – Suit was allowed to be withdrawn as the plaintiff and defendant agreed for settlement outside the Court – Whether court fees already paid can be refunded in a suit which was settled outside the Court.

Held: Yes – This Court is of the considered opinion that the plaintiff is entitled for refund of the Court fee in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908 and in view of the law laid down by the Supreme Court in High Court of Madras [High Court Of Judicature at Madras represented by its Registrar General vs M. C. Subramaniam, (2021) 3 SCC 560].

Geoserve Energy Transport DMCC V. MV Teleri M (IMO: 9648867)

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CONSTITUTION OF INDIA, 1950 – Article 14 r/w MATERNITY BENEFIT ACT, 1961 and Memorandum dated 31.03.2012 issued by the Finance Department of the Government – Grant of maternity benefit to contractual employee – Whether benefit of maternity leave can be denied on the basis of nature of employment.

Held: No – The contention that the memorandum applies only to the civil servants cannot be countenanced, inasmuch as, women employees for the purpose of availing such benefit do constitute one homogenous class and their artificial bifurcation founded on status of appointment falls foul of Article 14 of the Constitution.

Naturally, the employment in private sector looms large – Denying maternity benefit on the basis of nature of employment is abhorrent to the notions of humanity and womanhood – Our Smrutikaaraas chanted “*yatr naaryaastu pujiyante ramante tatr devatah*”, literally meaning that Gods rejoice where women are honoured – Such ideal things should animate the purposive interpretation of State Policy concerning the welfare of women.

State of Odisha & Anr. V. Smt. Anindita Mishra

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CONSTITUTION OF INDIA, 1950 – Article 226 – Principle of Natural Justice – The Collector-cum-District Magistrate basing upon the complaint of Manoj Sahu & others and on the basis of joint enquiry report vide order dated 13.05.2025 debarred the petitioner from paddy procurement operation KMS 2024-25 (Rabi Season) but such enquiry report has never been supplied to the petitioner – Whether the impugned order debarring the petitioner from paddy procurement operation KMS 2024-25 (Rabi season) without adhering to the principles of natural justice is sustainable under law.

Held: No – The central point is that debarment should not be used casually or as a standard response for ordinary contract breaches – The implication is that debarment is a serious penalty and should be reserved for more egregious circumstances.

With the above note, it is, therefore, concluded that the Order dated 13.05.2025 being clearly violative of principles of natural justice and bereft of reasons, warrants indulgence of this Court.

Since this Court finds in view of discussions made in the foregoing paragraphs that there has been serious violation of fundamental principles of natural justice by the Collector, Sambalpur in taking decision vide order dated 13.05.2025 (Annexure-10), suffice it to say that such order cannot be sustained in the eye of law and matter deserves to be remanded to the said authority for fresh decision by ascribing reasons.

Maa Biraja Self Help Group, Kudapada, Sambalpur V. State of Odisha, Commissioner-cum-Secretary, Mission Shakti Deptt., Bhubaneswar & Ors.

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CONSTITUTION OF INDIA, 1950 – Article 226 r/w Section 14 of Rights of Persons with Disabilities Act, 2016 – The husband of the petitioner is in a comatose/ vegetative state, entirely unresponsive and incapable of communication, decision-making or execution of documents – Petitioner seeks to be appointed as the legal guardian/ representative/ attorney of her husband – Can the prayer of the petitioner be allowed?

Held: Yes – The silence of the statute cannot become a justification for denial of relief when the life, dignity and welfare of an incapacitated person are at stake – In such exceptional situations, the Court must rise above procedural formalities and act in furtherance of justice by invoking its constitutional jurisdiction in a manner that safeguards the rights of the most vulnerable.

Therefore, recognizing the wife as the guardian of her husband in a comatose or vegetative condition is not only consistent with statutory principles and constitutional values, but also resonates deeply with cultural ethos and time-honoured traditions that venerate the marital bond as one of unity, duty, and mutual guardianship.

Epari Sushma V. Ministry of Health & Family Welfare & Ors.

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CONSTITUTION OF INDIA, 1950 – Article 226 r/w sections 122, 130 of Odisha Goods & Services Tax Act, 2017 – The petitioner assails the show cause notice and imposition of redemption fine in lieu of confiscation of a goods which are not physically available – Whether the case of the petitioner merits consideration.

Held: No – In the identical circumstances, the coordinate Bench in case of *Shri D. Murali Mohan Patanaik (Shri D. Murali Mohan Patanaik v. Secretary to Government of Odisha, Finance Department and others)* (W.P.(C) No.34787 of 2022) found that once the payment is made without protest it is not open to challenge the entire procedure adopted for confiscation liable to be struck down – Though the petitioner in the instant case pleaded that the said payment of redemption fine and penalty was under protest, but we do not find from the documents that any such protest was recorded; rather, there has been categorical stand taken before the authority admitting the shortage of the stocks and conceding the payment of penalty and the fine in lieu of confiscation.

M/s. Viraj Steel & Energy Pvt. Ltd. (Through its Authorized Representative Binod Bihari Pati) V. Joint Commissioner of State Tax (Appeal), Sambalpur & Ors.

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CONSTITUTION OF INDIA, 1950 – Articles 226, 227 – Award of the Industrial Tribunal – The Workman (Opposite Party No.1) was removed from service being guilty of gross misconduct for facilitating the withdrawal of the amount from the account of a dead person – The workman preferred an appeal but it was dismissed – The dismissal was assailed before the Assistant Labour

Commissioner (Central), Bhubaneswar – The learned Tribunal directed the Petitioner-Management to reinstate the Workman forthwith with 50% back wages – Whether the award passed by the learned Tribunal should be interfered with because a different view may be possible by re-appreciating the materials on record.

Held: No – It cannot be held that the impugned award is perverse, more particularly when learned Tribunal on assessment of materials on record arrived at the impugned findings – Only because a different view may be possible by re-appreciating the materials on record, this Court should not interfere with the impugned award in exercise of power conferred under Articles 226 and 227 of the Constitution – Accordingly, we find no reason to interfere with the impugned award.

Accordingly, it is directed that the Management shall pay a sum of Rs.5.00 lakh (rupees five lakh only) to the Workman/Opposite Party No.1 as lump sum compensation in lieu of reinstatement in service along with 50% of back wages within a period of two months hence.

State Bank of India (Region-1, Regional Office, Jeypore) V. Rama Krishna Behera & Anr.

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CONSTITUTION OF INDIA, 1950 – Articles 226 & 227 – Claim for grant of freedom fighter's pension (non- jailed) – Rejection of claim is under challenge – Petitioner contended that application enclosing necessary documents like voter identity card and personal knowledge certificates from two freedom fighters availing pension, submitted before the cut-off date – The authority rejected the application on the ground that he does not meet the age criteria and the voter identity card is a manipulated one – It is not disputed that he is not a freedom fighter – It is also proved that the voter identity card is not a manipulated one rather the voter identity card proved that the petitioner fulfills the age criteria – Whether the petitioner is entitled to get the freedom fighter's pension (non-jailed).

Held: Yes – Thus, on a conspectus of the analysis of facts and the discussions made thereon, this Court is of the considered view that the authorities have adopted a hyper-technical approach in the matter to reject the claim of the petitioner – It must be kept in mind that, while it can never be the intention to allow any fake claims to subsist, at the same time care should be taken to see that genuine claims are not rejected on mere technicalities – In the instant case, it has not been stated by the authorities that the petitioner has come up with a fake claim.

In the result, the writ application is allowed – The impugned order of rejection of the petitioner's claim for freedom fighters' pension is hereby set aside.

Sudarshan Behera V. State of Odisha & Anr.

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CONSTITUTION OF INDIA, 1950 – Art. 226 & 227 – Judicial Review – Disciplinary Proceeding – Imposition of major punishment i.e. removal from service – Interference of Writ Court – When maintainable – Discussed.

CONSTITUTION OF INDIA, 1950 – Article 311(2) – Petitioner having requisite eligibility, participated in the recruitment process and was appointed as a jail warder – As per the requirement, the petitioner had obtained a character certificate from the DSP (DIB) Ganjam dated 17.05.2023 – The petitioner was issued with the appointment letter on 29.05.2023 – An office order dated 02.02.2024 was issued by Opp. Party No. 4 discharging the petitioner under Rule 59(2) and Rule 94 (2) of Odisha Model Jail Manual – Prior to issuance of discharge order dated 02.02.2024 the petitioner was never served with any show-cause notice and no opportunity was given to him to explain his position – Whether such discharge order is sustainable in terms of Article 311 (2) of the Constitution of India.

Held: No – This Court has no hesitation in coming to a conclusion that the Opposite Parties should have followed the mandatory procedure of holding an inquiry and providing an opportunity of being heard to the Petitioner in terms of Article 311(2) – On a careful analysis of the factual matrix involved in the present writ petition, this Court has no hesitation in coming to a conclusion that the mandatory provision of Article 311(2) has not been complied with by the Opposite Parties.

On a careful analysis of the facts, further keeping in view the settled legal position, this Court is of the considered view that the impugned order of discharge dated 02.02.2024 is unsustainable in law on several counts; firstly, the order of discharge is not in conformity with Article 311(2) of the Constitution of India, therefore, the same is void ab-initio.

P. Rajesh Reddy V. State of Odisha & Ors.

CRIMINAL PROCEDURE CODE, 1973 – Section 313 – Accused Statement – The chemical examination report (Ext. 16) indicates that full pant and full shirt of appellant (M.O. V and M.O. VI) were containing human blood of Group-B and the wearing apparels of the deceased was also containing human blood of Group-B – But in the statement recorded under Section 313 of Cr.P.C. no question has been put to him with respect to the chemical examination report – Whether the chemical examination report can be utilized against the accused/appellant when no question has been put to him in the statement recorded U/s. 313 of Cr.P.C. with respect to the chemical examination report.

Held: No – Since this incriminating circumstance i.e. chemical examination report (Ext.16) finding on the full pant and full shirt which were marked as M.O. V and M.O. VI has not been put to the appellant in his statement recorded under section 313 of Cr.P.C., the learned trial Court should not have utilised such finding in Ext.16 against the appellant.

Huika Hari V. State of Orissa

CRIMINAL PROCEDURE CODE, 1973 – Section 482 – Petitioner is a practicing advocate – He prays to quash the order of cognizance passed against him for the offences U/s. 120-B 468/ 471/ 34 of IPC on the allegation of

rendering legal opinions certifying the genuineness of the forged documents – Whether a legal professional can be held criminally liable for the opinions rendered in discharge of his professional duty.

Held: No – An erroneous or imperfect professional opinion, rendered in good faith and within the scope of engagement, cannot by itself give rise to criminal liability – The law draws a clear distinction between professional misjudgment and criminal intent – In absence of cogent evidence of collusion or fraudulent scheme, no penal consequences can follow merely because the opinion later turns out to be incorrect – The role attributed to the Petitioner is confined to the rendering of legal opinions in his professional capacity as an advocate – There is neither any specific overt act alleged against him nor any cogent material suggesting that he acted in concert with the principal accused persons to commit the offence – The materials on record fall far short of establishing the essential ingredients of Sections 120-B, 468, or 471 of the Indian Penal Code.

Basanta Kumar Behera V. State of Odisha

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CRIMINAL TRIAL – Absence of Motive – The appellant was found guilty by the learned Trial Court for commission of offences under Sections 498-A, 304-B and 302 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act – In the present case the family members of the deceased and neighbors of the appellant have not supported the prosecution case and turned hostile – Prosecution has not been able to prove any motive on the part of the appellant to commit the offences – Whether absence of motive can set at naught the other evidence pointing towards the guilt of the accused.

Held: No – Law is well settled that motive increases the probability of commission of an offence, but motive alone cannot prove an offence and similarly in absence of proof of motive, it cannot be a ground to set at naught the other evidence pointing towards the guilt of the accused.

Susanta @ Susil Kumar Sahu V. State of Odisha

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CRIMINAL TRIAL – Last seen together – The appellant was convicted for commission of offence punishable U/s. 302 of the Indian Penal Code, 1860 – The appellant was last seen in the company of the deceased at about 10.30 p.m. leaving the quarter and thereafter the dead body of the deceased was found on the next day morning on the Airstrip road side – The circumstances available in record do not form a complete chain to come to the irresistible conclusion that it was the appellant who is the author of the crime – Whether only on the basis of “last seen together” the appellant should be convicted without any other corroborative evidence.

Held: No – In absence of any other clinching evidence on record, merely because the prosecution has proved that the deceased died a homicidal death and a wooden handmade cricket bat was recovered at the instance of the appellant coupled with the last seen together evidence, it cannot be said that the prosecution has proved that the chain of circumstances is so complete to come to an inescapable conclusion that within all human probabilities, the crime was committed by the appellant and none else and that the facts so proved unerringly point towards the guilt of the appellant.

CRIMINAL TRIAL – Right to speedy trial – Offences under Sections 13(2) r/w 13(1) (d) (e) of the P.C. Act – Delay in investigation and submission of charge-sheet – Present case is not a complicated one rather it is an isolated recovery, still it took eleven years to conclude the investigation – Whether delay in investigation and submission of charge-sheet violates the right of speedy trial guaranteed under Art.21 of the Constitution of India.

Held: Yes – The delay in the present case is about 11 years – In a catena of judgments, the Hon'ble Supreme Court has already settled the law that the right to speedy trial in a criminal prosecution is an inalienable right guaranteed under Article 21 of the Constitution of India – This right is applicable not only to the actual proceeding before the Court but also includes within its sweep the preceding police investigation – In this case, though the case was not a complicated one rather relating to an isolated recovery, still it took 11 years for the vigilance department to conclude the investigation.

The present case makes it abundantly clear that the delay that has caused in the present case is fatal – Therefore, even if the petitioner is subjected to trial in a case of present nature at an inordinate belated stage, it may not be possible for the prosecution to secure conviction – The right of the accused-petitioner to defend his case is also marred to an irreparable extent – Hence, further procrastination of the proceeding in the given facts and circumstances of the case would neither be beneficial to the prosecution nor the defence, therefore, the trial is destined to be a futile exercise.

Sarat Chandra Dash V. State of Odisha (Vigilance)

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DOCTRINE OF PARENS PATRIAE – Scope for exercise.

Held: In order to invoke the *parens patriae* jurisdiction, exceptional circumstances have to exist – The scope of this jurisdiction has to be exercised with great caution and with enormous seriousness – The Supreme Court further recognises that Constitutional Courts, including High Courts, can also act under their *parens patriae* jurisdiction to "meet the ends of justice" – Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction – If the Court is satisfied that the person concerned is in a vegetative state, then surely "parens patriae" jurisdiction can be exercised.

Epari Sushma V. Ministry of Health & Family Welfare & Ors.

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EVIDENCE ACT, 1872 – Section 32 – Dying declaration – Relevant witnesses have turned hostile and prosecution case rests solely on the dying declaration – The doctor who was present at the time of recoding of the dying declaration was not examined by prosecution – Whether the dying declaration can be relied upon.

Held: Yes – We find from a perusal of the dying declaration that Dr. Asit Kumar Sethi has given a certificate vide Ext.4 that the deceased was conscious,

oriented and fit to give the dying declaration and his certificate and signature have been proved by P.W.8, the Executive Magistrate.

The dying declaration inspires confidence and there is no material that it was the result of either tutoring, prompting or vindictive or product of imagination – We are not only satisfied that the deceased was in a fit state of mind to make the statement, but also that the dying declaration was true, voluntary and not influenced by any extraneous consideration and therefore, on the sole basis of dying declaration, conviction of the appellant can be sustained.

Susanta @ Susil Kumar Sahu V. State of Odisha

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HINDU MARRIAGE ACT, 1955 – Section 16 – Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (the Second Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act, 1955.

Held: Yes – Section 16 of the HMA confers legitimacy on children born from void and voidable marriages, ensuring that they are entitled to inherit their parents' property – Under the HSA, legitimate children including those legitimised under Section 16 of the HMA, fall under the category of Class-I heirs, giving them an undisputed right to inherit the self-acquired property of their parents.

This Court holds that the children born from the Appellant and Late Kailash Chandra Mohanty are obviously entitled to inherit his self-acquired property – Additionally, where the deceased parent was a Mitakshara coparcener, such children shall also inherit their share in the ancestral property, limited to the portion that would have been allotted to their parent upon a notional partition before their death – The Family Court's order shall be modified to reflect this clarification.

Sandhya Rani Sahoo @ Mohanty V. Smt. Anusaya Mohanty

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HINDU MARRIAGE ACT, 1955 – Section 24 – *Pendente lite* maintenance – Husband/father was directed to pay *pendente lite* maintenance of ₹45,000/- per month to wife and ₹5000/- to the minor child and litigation expenses of ₹1,00,000/- to the wife – The husband-petitioner [W.P.(C) No. 23220 OF 2017] prayed to set aside the impugned order whereas the wife-petitioner [W.P.(C) No. 1797 OF 2017] seeks for enhancement of maintenance granted to her – The per month income of the husband would not be less than ₹2,00,000/-, but may be more than that up to ₹3,00,000/- The child “son” born out of the estranged couple was born in 2012 and he must be around 13 years now – Whether the impugned order dated 17.01.2017 granting *pendente lite* maintenance needs any modification.

Held: Yes – It is very it very clear that the *pendente lite* maintenance as granted to wife is little bit on higher side and interest of justice would be best served, if the *pendente lite* maintenance, as granted to the wife is reduced to Rs.25,000/- per month, whereas the same is enhanced to Rs.15,000/- for the son, but this Court does not consider it proper to interfere with litigation expenses of Rs.1,00,000/- as awarded by the learned trial Court to the wife by taking into consideration the length/period of litigation – Accordingly, the modified amount of *pendente lite* maintenance is payable w.e.f. the date of application and arrear

of such amount be cleared up in monthly installments, but the number and amount of the installment shall be decided/fixed by the learned trial Court – Hence, the wife and son are entitled to Rs.25,000/- and Rs.15,000/- per month as *pendent lite* maintenance – Further, the wife is authorized to receive the *pendente lite* maintenance for herself and for her son till disposal of the MAT case.

Manjusha Singhania @ Agarawalla V. Nimish Singhania

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HINDU MARRIAGE ACT, 1955 – Section 25 – Permanent Alimony – Principles in fixing the permanent alimony – While the husband-petitioner (MATA No. 198 of 2022) challenged the quantum of permanent alimony, the wife-petitioner (MATA No. 38 of 2022) challenged the impugned judgment passed by the learned Judge, Family Court, Bhubaneswar – The husband being a doctor getting net pension of ₹87,002 (Rupees Eighty-Seven Thousand and Two only) and he has liabilities of taking care of his parents – The wife on other hand is engaged as a guest teacher with effect from July 2023 and receiving monthly remuneration of ₹10,000/- (Ten Thousand only) – Whether the quantum of permanent alimony of ₹17,00,000/- needs enhancement.

Held: Yes – Keeping in view, therefore, the age of the parties, the children being in marriageable age and the quantum of remuneration of the wife from her engagement as a guest teacher and over all surrounding circumstances, we feel it appropriate to fix the permanent alimony to Rs.30,00,000/- (Rupees Thirty Lakhs only) – In our humble opinion, this amount shall fairly protect the interest of the wife and children without imposing any punitive or unreasonable financial burden on the husband, thus aiming to safeguard the interest of both the parties.

Pradeep Kumar Rath V. Susmita Mishra

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INDIAN PENAL CODE, 1860 – Sections 304-B, 498-A r/w Section 4 of D.P. Act – Prosecution case is that there was demand of dowry and the deceased was being harassed and treated with cruelty as the demand was not fulfilled – None of the relatives of the deceased and co-villagers have supported the prosecution case as regards the demand of dowry and ill-treatment to the deceased – Even the deceased herself has not stated about such demand and torture in her dying declaration – Whether the offences U/s. 304-B, 498-A and U/s. 4 of D.P. Act are sustainable.

Held: No – It is pertinent to note that even the deceased herself has not stated about such demand and torture in her dying declaration – Thus, we find sufficient force in the contention of the learned counsel for the appellant that there is absence of evidence regarding motive to commit the crime and harassment and ill treatment on account of demand for dowry soon before the death of the deceased – Thus, we have no choice but to acquit the appellant from the charges under Sections 498-A, 304-B of the I.P.C as well as Section 4 of the D.P. Act.

Susanta @ Susil Kumar Sahu V. State of Odisha

2025 (II) ILR-Cut.....

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INDUSTRIAL DISPUTES ACT, 1947 – Section 33-C(2) – The workman/ opp. party filed an application U/s. 33-C(2) to pay the un-utilized leave salary before the learned Labour Court – The Petitioner-Management in its show cause stated that due to non-receipt of No Due Certificate (NDC) from the Division Offices where the applicant was working during his entire service period as well as non-receipt of final NDC from the Divisional Manager, Bhubaneswar (Plantation) Division wherefrom he retired, his terminal benefits except gratuity could not be settled – The Management further stated that in view of the observation in the Special Audit Report to the effect that the dues recoverable from the Opp. Party/workman was much more than his retiral dues for which his Un-utilized Leave Salary (ULS) of ₹2,62,980/- was withheld – The learned Labour Court allowed the application and directed the Management to pay a sum of ₹2,62,980/- towards un-utilized leave salary to the workman – The Management assails the order of the Labour Court in the present writ application – Whether any fault can be attributed to the workman for non-submission of the NDC by different Divisions of the Petitioner-Management.

Held: No – Law is well-settled that no action can be taken against an employee on the basis of observation in the Audit Report without affording an opportunity to the concerned employee to explain the same following due procedure of law – In the instant case, no such procedure appears to have been followed.

On cumulative assessment of the discussions made above, this Court is of the considered opinion that learned Labour Court has made no error in holding that the Workman-Opposite Party is entitled to Rs.2,62,980/- towards ULS – Hence, we are not inclined to interfere with the impugned under Annexure-3.

Managing Director, Odisha Forest Development Corporation LTD., (OFDC), Bhubaneswar V. Brahmananda Biswal

2025 (II) ILR-Cut.....

720

INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993 (as amended in 1998) r/w Sections 32 and 18 (4) of the MICRO, SMALL & MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 – Opp. Party No. 3 claiming to be a supplier filed an application before the Industries Facilitation Council, Thane (for brevity ‘IFC’) U/s. 4 of the 1993 Act against the petitioner/ company – The petitioner raised objection with regard to maintainability/ continuance of the proceeding before the IFC on the ground of lack of territorial jurisdiction – Whether the IFC, Thane has territorial jurisdiction to entertain and continue the proceeding when issuance of tender, work order, execution of contract and submission of bills etc. arose within the geographical territory of the State of Odisha.

Held: Yes – The Council at Thane had the territorial jurisdiction to entertain the dispute as the Supplier, namely, Opposite Party No.3 is located within its jurisdiction – This provision has been made in conformity with the scope and object of the MSMED Act, which provides for facilitating the promotion and development and enhancing the competitiveness of Small and Medium Enterprises – Further, Section 32 of the MSMED Act, 2006 while repealing the IDP Act, 1993, under Sub-section (1) of the said provision, made

provision under Sub-section (2) – Thus, the proceeding initiated under the IDP Act, 1993 is deemed to have been initiated under corresponding provisions of MSMED Act.

Odisha Mining Corporation Ltd., Bhubaneswar V. Union of India, Ministry of Micro, Small & Medium Enterprises, New Delhi & Ors.

2025 (II) ILR-Cut.....

725

INTERPRETATION OF STATUTES – Whether the opinion of G.A. and Law Department can be treated as Executive instructions for preparation of final gradation list.

Held: No – Any such opinion of a Government Department cannot be conferred the status of a statutory rule or Executive instruction.

Sanatana Sahoo V. State of Odisha & Ors.

2025 (II) ILR-Cut.....

839

JURISDICTION OF FAMILY COURT – Family Courts Act, 1984 – Sections 7 & 7(1)(b) r/w Sections 14(2), 58 of the Limitation Act, 1963 r/w Section 16 of the Hindu Marriage Act, 1955 r/w Section 34 of the Specific Relief Act, 1963 – Both the appellant and respondent claim to be the wife of the deceased Kailash Chandra Mohanty – Both are having their children through late Kailash Chandra Mohanty – Both claim right of inheritance to the properties of late Kailash Chandra Mohanty – Family Court, Bhubaneswar concluded the matter by declaring the respondent as the legally wedded wife of late Kailash Chandra Mohanty and appellant’s alleged marriage to the deceased as invalid – The appellant challenges the jurisdiction of the Family Court to give declaration of marital status instead of the Civil Court – She further raises the point of bar of limitation and right of inheritance – Whether the prayer for declaration of marital status is maintainable before the Family Court under Section 7 of the Family Courts Act, 1984 or Civil Court has jurisdiction under Section 34 of the Specific Relief Act, 1963.

Held: A suit seeking a declaration of marital status whether it affirms or denies the existence of a valid marriage squarely falls within the ambit of the Family Court’s jurisdiction – Once the Family Court jurisdiction is established over a matter, any attempt to bypass it would undermine the very purpose of establishing Family Courts, which is to provide a specialised forum for resolving family disputes efficiently – In the present case, the core of the matter is a declaration of marital status, which aligns squarely with Section 7(1)(b) of the Family Courts Act – The Family Court had the proper jurisdiction under Section 7(1)(b) of the Act to entertain the Respondent’s prayer for a declaration of her marital status – The provision clearly vests the Family Court with the authority to decide matters relating to the validity of a marriage and the matrimonial status of any person.

Therefore, this Court finds no merit in the Appellant’s contention regarding lack of jurisdiction – The Family Court validly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, and the Appellant’s objection regarding maintainability is, accordingly, untenable and stands rejected.

Sandhya Rani Sahoo @ Mohanty V. Smt. Anusaya Mohanty

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LIMITATION ACT, 1963 – Sections 14(2) and 58 – Suit was filed for declaration of marital status after three years of the death of Late Kailash Chandra Mohanty – Whether the suit is barred by limitation.

Held: No – Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues – In the present case, the Appellant asserts that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death, and therefore, the suit filed on 24.07.2017 is barred by time – However, this Court finds that such a rigid application of Article 58 overlooks certain critical legal principles – Firstly, Section 14(2) of the Limitation Act provides relief in cases where a party has pursued a matter in good faith before a Court that ultimately lacked jurisdiction.

In the present case, the Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship – However, the Civil Court returned the plaint on 13.01.2016, holding that it lacked jurisdiction to entertain the matter – The Respondent subsequently filed CMP No. 278 of 2016, challenging the order of the Civil Court, which was dismissed on 10.05.2017 – Only thereafter did the Respondent file the present suit before the Family Court on 24.07.2017 – Therefore, the period spent in prosecuting the earlier suit and the subsequent challenge before the Civil Court ought to be excluded under Section 14(2) of the Limitation Act – This principle has been consistently upheld by the Hon'ble Supreme Court, which recognises that parties should not be penalised for diligently pursuing their claims before a forum that ultimately lacks jurisdiction – Secondly, a conjoint reading of Section 7 of the Family Courts Act and Section 29(3) of the Limitation Act lends support to the view that proceedings before the Family Court are not subject to a strict limitation period – Section 7(1)(b) of the Family Courts Act expressly empowers the Family Court to decide suits or proceedings for “a declaration as to the validity of a marriage or as to the matrimonial status of any person” – Importantly, the Family Courts Act does not prescribe any limitation period for such proceedings – Section 29(3) of the Limitation Act clarifies that where a special law provides for a different limitation period or excludes the application of the Limitation Act, the special law will prevail – In the absence of a specific limitation period under the Family Courts Act, the general principles of delay and laches apply, rather than the rigid timelines under the Limitation Act.

A party seeking to establish or refute marital status cannot be barred from seeking such a declaration merely because a certain period has elapsed, particularly when the dispute has long-standing consequences for inheritance, legitimacy, and personal law rights – The concept of “continuing cause of action” applies in cases involving marital status – Therefore, even assuming that no statutory exclusion under Section 14(2) applies, the continuing nature of the dispute sustains the Respondent's right to seek a declaration.

In light of these considerations, this Court finds that the Respondent's suit before the Family Court is not barred by limitation – The time spent in prosecuting the matter before the Civil Court and the subsequent challenge before the High Court must be excluded under Section 14(2) of the Limitation Act – Moreover, given the absence of any specific limitation period under the Family Courts Act and the continuing nature of the dispute, the Respondent's

claim remains legally tenable – Accordingly, the Appellant’s objection regarding limitation lacks merit and stands rejected.

Sandhya Rani Sahoo @ Mohanty V. Smt. Anusaya Mohanty
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770

MATRIMONIAL PROCEEDINGS – Petition for transfer of the matrimonial proceedings – Petitioner (wife) and Opposite Party (husband) are residents of Jagatsinghpur district – The petitioner contended that as she is residing in Cuttack for coaching, the pending case before the Judge, Family Court, Jagatsinghpur be transferred to the Judge, Family Court, Cuttack – The details of her present address not furnished –Whether the prayer of the petitioner seeking transfer of the matrimonial proceeding can be allowed.

Held: No – As it seems from the conduct of the Petitioner-wife, taking advantage of the leniency shown by the High Court so also Supreme Court that convenience of wife must be looked at while dealing with transfer petitions, she has filed these applications for transfer of proceedings initiated by herself so also her husband at Jagatsinghpur, to the Court at Cuttack – It is a glaring example of misuse of leniency shown by the Courts while dealing with application for transfer of matrimonial proceedings at the instance of the wife.

Accordingly, taking into consideration the arguments advanced by the learned Counsel for the parties so also the grounds urged in both the transfer petitions, this Court is not inclined to allow the prayers for transfer.

Itishree Pradhan V. Subrat Ranjan Kapa
2025 (II) ILR-Cut.....

966

MOTOR ACCIDENT – Claim of compensation – Gratuitous passenger – Whether the deceased persons carrying tower materials to work site in a goods carriage vehicle are to be construed as gratuitous passengers.

Held: No – It is not in dispute that the offending vehicle was a goods carriage truck and on the date of accident, the deceased persons along with the injured persons in total six, who were working as a contract labourer under M/s. M.M Enterprises, were travelling in the offending truck carrying tower materials to the work site and therefore, there is no dispute that on the date of accident, the truck was loaded with working materials which was supposed to be used by the deceased and injured for installing the tower at the work site and therefore, they cannot be turned to have been travelling in this offending truck as a gratuitous passengers, rather they would be considered as worker/ labourer going to the work site with the working materials – Further, the insurance policy reveals payment of premium of Rs.100/- by the owner towards LL to persons employed in connection with operation (IMT.39) and therefore, the appellant-insurer is contractually liable to indemnify the owner of the offending vehicle to satisfy the awards as passed by the learned Tribunal.

HDFC-ERGO General Insurance Company Ltd., Cuttack V. Gahar Alli Purkait & Ors.

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977

MOTOR VEHICLES ACT, 1988 – Section 147 – Limit of liability – In this present appeal the award of the Tribunal is challenged – Appellant-company

contended that the deceased while travelling in his employer's vehicle succumbed to the injury and the insurance being a private car comprehensive policy and as the additional premium has not been paid under IMT-16 and IMT-29, Appellant is not liable to pay compensation – Owner of the vehicle contended that deceased was travelling as an occupant and the accident took place due to rash and negligent driving of the driver of the offending vehicle and the overt act of driver is proved – So, the appellant-company is liable to pay compensation – Whether the appellant/company is liable to pay compensation in view of the provision contained U/s. 147 of the M.V. Act, 1988.

Held: Yes – Since the policy in question is a private car comprehensive policy and the deceased was an occupant in the said vehicle, placing reliance on the decision in the case of *Shanti Bopannah* as well as *Balkrishnan* as cited, it is the view of this Court that Appellant-Company is liable to pay the compensation so awarded vide the impugned judgment.

Asst. Manager (Legal) HDFC ERGO General Insurance Co. Ltd. V. Mitu Swain & Ors.

2025 (II) ILR-Cut.....

923

MOTOR VEHICLES ACT, 1988 – Section 166 – Claim of compensation – Whether major married sister and brother can claim compensation being the dependent/ legal representative of deceased/ victim.

Held: Yes – On coming to the issue of maintainability of claim by the major married brother and sister as advanced by the appellant-insurer to challenge the award made in MAC Case No.834 of 2017, it needs to be stated here that the objective of granting compensation under the MV Act is to ensure that just and fair compensation is paid to the aggrieved party, but Section 166 of the MV Act makes it ample clear that an application for compensation arising out of an accident of the nature specified in Sub-Section 1 of Section 165 may be made by all or any of the “legal representative” of the deceased, where death has resulted from the accident – The MV Act does not define the term “legal representative”, but generally “legal representative” means a person who in law represents the estate of a deceased person, and includes any person(s) in whom legal right to receive compensatory benefit vests/vest. A “legal representative” may also include any person who intermeddles with the estate of the deceased and such person does not necessarily have to be a legal heir, who is the person entitled to inherit the surviving estate of the deceased – No doubt a legal heir may also be a “legal representative”, but may not be vice versa – Sub-Section 11 of Section 2 of the Code of Civil Procedure, 1908 describes “legal representative” as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued – An unmarried person dying intestate shall be succeeded by his and her legal heirs and in absence of parents, such unmarried person is ordinarily succeeded by his brother and sisters, even if they are married – It is, however, not uncommon in Indian society that in absence of parents, unmarried brother would be linked with other family members; such as brothers and sisters for guidance & dependence and if such unmarried brother is working and earning, some time his brother and sister may be dependent on his income – Besides, it is

not uncommon that the unmarried brother would contribute his income to his dependent brother and sister on various occasions – In this regard, this Court is also quite alive with the principle laid down by Apex Court in Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and others; (1987) 3 SCC 234, wherein it is held that a “legal representative” is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parents or child.

HDFC-ERGO General Insurance Company Ltd., Cuttack V. Gahar Alli Purkait & Ors.

2025 (II) ILR-Cut.....

977

MOTOR VEHICLES ACT, 1988 – Section 181 – Absence of valid driving license – Award of the Tribunal is under challenge – Appellant/ company contended that the deceased being the driver of the offending vehicle had no valid driving license, so the appellant/ company is not liable to pay compensation – Whereas the Respondents contended that the appellant is liable to pay compensation having the right to recover the same from the owner – In such circumstances, whether the appellant/company is liable to pay compensation.

Held: No - It is the view of this Court that since the driver of the offending vehicle also happens to be the owner of the said vehicle, the stand taken by the learned counsel appearing for the claimants-respondents that unless and until it is proved that the owner of the offending vehicle was having conscious knowledge that the driver of the offending vehicle was not having valid D.L. and accordingly no fault can be found with the impugned award, is not acceptable – Since the driver of the offending vehicle is also the owner of the vehicle, conscious knowledge of the owner that he was not having valid D.L., is well proved – No right of recovery is also permissible as the owner is the driver of the offending vehicle.

This court is of the view that the appellant is not liable to pay the compensation so awarded.

Divisional Manager, National Insurance Co., Ltd. V. Subash Chandra Swain & Ors.

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913

NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 143-A – Interim compensation – Order granting compensation U/s.143-A is under challenge – Contention of the petitioner is that the order under section 143-A is directory in nature and not mandatory – Whether the order passed U/s. 143-A is mandatory in nature.

Held: No - It has been held by the Supreme Court that the word “may” used in the provision is directory and not mandatory and it cannot be interpreted as “shall” – The Supreme Court has held that if such an order for payment of compensation is passed before the accused is found to be guilty, it would be contrary to the well-settled concept of fairness and justice and it is likely to have drastic consequences as the accused may have to sell his immovable and movable property to comply with the order and on the event of his acquittal and return of the amount, may not get back his property.

The legal principle that an accused is presumed to be innocent until proven guilty, is well known – If direction for payment of interim compensation under Section 143-A of the Negotiable Instruments Act is held to be mandatory, apart from being contrary to the above legal principle, it may encourage unscrupulous persons to initiate frivolous litigation in order to obtain an order of interim compensation for their unjust enrichment – By the time the accused, who may not be liable, is repaid the money after his acquittal, he may have been ruined – So an order for payment for interim compensation should not be passed for the mere asking and should be passed only under exceptional circumstances – The impugned order dated 25.03.2021 passed in 1 C.C. No.257 of 2020 by the learned SDJM (S) is set aside.

Sukanti Senapati V. Babita Senapati

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NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 145 r/w Sections 200, 202 of the Code of Criminal Procedure, 1973 – Prayer for quashing of cognizance taken U/s. 138 of the N.I. Act on the grounds that the instruments is not valid one as the bank has been merged with another bank, initial statements of complainant has not been recorded & the cognizance could not have been taken without conducting an enquiry U/s.202 of Cr.P.C. – Whether an enquiry under Section 202 of Cr.P.C. is necessary before taking cognizance of an offence under Section 138 of the N.I. Act.

Held: Yes – It is however apparent that the learned SDJM has taken cognizance of the offence under Section 138 of the N.I. Act, without conducting an enquiry under Section 202 Cr.P.C. As decided by the Supreme Court, enquiry is necessary but this can be done by affording opportunity to the complainant to record the initial statement and statements of witnesses under Section 202 Cr.P.C., by accepting affidavits of the complainant and his witnesses.

Satyabadi Sahu & Anr. V. Santosh Kumar Muni

2025 (II) ILR-Cut.....

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ODISHA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rules 23 & 27 – Withholding of appeal – Petitioner was appointed as Junior Typist vide order dated 19.05.2019 and she reported her duty on 01.06.2019 – She earned the promotion on 12.07.2022 as Senior Typist – However, vide order dated 27.04.2024 made by the learned District Judge she has been reverted to the original position of Junior Typist – She had made a representation against the same – The petitioner preferred a departmental appeal as provided under Rule 23 of the 1962 Rule to the Appeal Committee of this Court on the administrative side – The appeal was presented to the District Judge so that he would on a normative way forward the same to the Appeal Committee – To the dismay, forwarding did not take place on the ground of time-barred – Whether such withholding of a departmental appeal without assigning any reason is sustainable.

Held: No – In a model employment, a worthy cause of an aggrieved employee cannot be laid to rest on a technical ground of the kind – In other words, the power availing under Rule 27 is not absolute and it is conditional – Unless these conditions are satisfied, the exercise of discretion to withhold the

appeal cannot be sustained – In departmental appeal, we add, aspect of delay takes backseat.

Dibyarani Mohapatra V. District & Sessions Judge, Nayagarh & Anr.

2025 (II) ILR-Cut.....

761

ODISHA GOODS AND SERVICES TAX ACT, 2017 – Section 130 r/w Sections 122 and 107(4) r/w Article 226 of the Constitution of India – The Petitioner having availed of the right conferred U/s. 130 of the Odisha Goods and Services Tax Act had filed the appeal before the appellate authority U/s. 107 of the Act – The appeal was filed after a lapse of almost two years since the date of the conclusion of the proceeding – The appellate authority rejected the appeal as it was filed beyond the statutory period of limitation – Whether the order of rejection passed by the appellate authority is tenable in law.

Held: Yes – We find no ambiguity in the order of the appellate authority as the law is somewhat settled that the moment the outer cap is fixed in the statute beyond which the authority cannot travel, the rejection in this regard cannot be faulted with – The discretion vested upon the authority to condone the delay if brindled with an outer cap being fixed in the statute, the authority cannot exercise the power beyond such limit.

M/s. Viraj Steel & Energy Pvt. Ltd. (Through its Authorized Representative Binod Bihari Pati) V. Joint Commissioner of State Tax (Appeal), Sambalpur & Ors.

2025 (II) ILR-Cut.....

654

ODISHA GROUP-C AND GROUP-D (CONTRACTUAL APPOINTMENT) RULES, 2013 – Regularization – Petitioners are working on contractual basis at the Odisha Bhawan, Mumbai operated by the Home Department, Government of Odisha – Petitioners were appointed in the year 2010 on contractual basis on consolidated pay – Petitioners contended that despite continuing in service for more than a decade and having completed six years of service on 01.07.2016, their services have not yet been regularized as per 2013 Rule – State Opposite Party contended that the petitioners cannot seek regularization unless they are appointed in accordance with provision under Rule 5(2) of 2013 Rule – Whether the petitioners' service should be regularized.

Held: Yes – This Court, while adjudicating the issue at hand, exercises ample caution so as to refrain from placing unnecessary reliance on the initial label of 'contractual appointment' affixed to the Petitioners. It is the duty of this court to look beyond superficial labels and consider the ground realities of the nature of employment of the Petitioners, as borne out from the record, i.e. the continuous, unblemished and long-term service rendered by the Petitioners and the absence of any illegalities in their initial appointment, more so, keeping in view the commitment of the constitutional courts to the cause of humanity and to ensure that the poor, hapless and lowly paid workers do not suffer in the hand of the employer and are not exploited by such employer – Therefore, refusal of regularization of service of the Petitioners merely on the ground that their initial/original term of engagement does not specifically state so, would be contrary to the principles of fairness and equity.

Pramod Kumar Padhi & Ors. V. State of Orissa & Anr.

2025 (II) ILR-Cut.....

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ORISSA POLICE MANUAL RULES, 1940 – Rules 824, 834(a), 835, 837, 844, 845 – In the present Writ Petition the punishment of black marks as well as the direction to treat the period of suspension as such has been challenged – Allegation of gross misconduct due to unnatural intercourse with subordinate at work place – Both criminal proceeding as well as departmental proceeding were initiated on self-same allegation – Compromise/ settlement made between the parties – Criminal proceeding quashed – Contention of the petitioner is that ‘the punishment treating the suspension period as such’ has not been prescribed under Rule 824 – So suspension is not warranted and as the criminal proceeding has been quashed on compromise on the self-same allegation it is not open for the Authorities to impose any black mark – Contention of the Opposite Party is that the acquittal is not clean and the act of the petitioner comes under the category of moral turpitude – Whether the act of the petitioner comes under the category of moral turpitude.

Held: No- The expression moral turpitude in the present context implies to the offence as it was in the statute book under Section 377 of IPC – In view of the pronouncement of the Apex Court in the case of Navtej Singh Johar and taking into account the compromise inter se between the parties since the same is voluntary and there is nothing on record to indicate that such consent was impelled on account of by any external factors or was outcome of any duress or coercion, as rules no longer qualifies as an offence in view of the judgment of the Apex court in the Case of Navtej Singh Johar, this Court is not persuaded to accede to the submission of the learned counsel for the State that the act on the date the order was passed can be treated as an offence.

Taking into account the charge in the departmental proceeding and the quashing of the criminal case in which the alleged offence, inter alia, was under Section 377 of IPC, in the light of the judgment passed by the Apex Court in the case of Navtej Singh Johar, this Court has no hesitation to hold that the charge in the departmental proceeding as well as in the criminal case are one and the same primarily on account of an alleged offence under Section 377 of IPC – This Court is not oblivious of the contours of exercise of jurisdiction in interfering with an order passed in a departmental proceeding – But on conspectus of pleadings, this Court is of the considered view that allowing the punishment of “any black mark” as per Rule 834 of Police Rules, in the case at hand, would amount to abuse of process of law.

Mahendra Kumar Behera V. State of Orissa & Ors.

2025 (II) ILR-Cut.....

903

ODISHA PREVENTION OF LAND ENCROACHMENT ACT, 1972 (in short OPLE Act) r/w Article 300-A of the Constitution of India, 1950 – Demolition of structure without following the direction issued by the Hon’ble Supreme Court – The land is recorded as Rakhita Anabadi – The community center building existed over the said plot – Proceeding under the OPLE Act was initiated – Petitioner challenged the proceeding before the Hon’ble High Court – The Hon’ble High Court directed the petitioner to file an application for settlement U/s. 8-A of the OPLE Act – The authority rejected the said application – The rejection was followed by an appeal before the Sub-Collector – The petitioner also filed a Writ Petition before the Hon’ble Court – On

29.11.2024 the High Court directed that no eviction shall take place during the pendency of the appeal – Despite such order, a new eviction notice was issued, prompting the petitioners to approach the High Court again – On 13.12.2024, the High Court reiterated its stance, restraining eviction during the pendency of the appeal – On the same day (13.12.2024) the Sub-Collector concluded the hearing and allegedly reserved orders in the appeal around 4 P.M. – At approximately 5.15 P.M. a demolition notice was affixed and on 14.12.2024 at 10 A.M. the structure was demolished – Whether demolition of the structure without affording any opportunity is sustainable.

Held: No – Forcible dispossession of a person from their property, without adherence to due process of law, constitutes not only a violation of their constitutional right under Article 300-A but also an affront to basic human rights.

What is at stake here is not the legality of one demolition, but the integrity of a constitutional culture – When executive action arrogates to itself the role of judge, jury, and executioner, the harm that follows is not merely institutional, it is civic – In a democratic society governed by the rule of law, process is not an inconvenience to be bypassed when found burdensome – It is the very architecture that lends legitimacy to State action – The moment that process becomes expendable, so does the public's faith in the neutrality of governance – This Court is duty-bound to restore that balance, for what is lost here is not only a building, but also the belief that law is a shield against arbitrariness.

The Tahasildar has shown undue haste in demolishing the structure, without adhering to the guidelines issued by the Supreme Court of India – In determining the quantum of compensation, this Court has taken into account the nature and purpose of the demolished structure, the conduct of the authorities, and the attendant constitutional violations.

Having regard to the cost of reconstruction, the loss suffered, and the gravity of administrative misconduct, compensation is assessed at ₹10,00,000 – Of this, ₹2,00,000 shall be recovered from the Tahasildar concerned, to be deducted in reasonable installments from his salary, given his direct involvement in the unlawful act – The balance amount of ₹8,00,000 shall be paid by the State to the Petitioner within a period of eight weeks from the date of presentation of this order.

Kumarpur Sasan Juba Gosti Kendra & Ors. V. State of Odisha & Ors.
2025 (II) ILR-Cut.....

796

ODISHA SECRETARIAT DATA ENTRY OPERATORS (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2008 –

Rule 13 – Inter se Seniority – Petitioner was engaged as computer operator on 1st September 1995 on consolidated basis – Petitioner's service was regularized w.e.f. 30th June 2011 & he was appointed as Jr. DEO in the scale of pay as admissible under the Rules against the vacant post of Jr. DEO – The Opp. Party No. 1 published the provisional gradation list of Jr. DEOs working in different departments of Odisha State Secretariat as on 1st February 2020 where petitioner's name finds place at Sl. No. 1 and the petitioner was placed at Sl. No. 17 in the final gradation list basing upon the opinion of the G.A. and Law Department – Whether any person who joined in the post of Jr. DEO after

regularization of petitioner's service in the said post could supersede the petitioner and be placed above in the gradation list.

Held: No – The Court is of the further view that once the petitioner's service was regularized w.e.f. 30th June, 2011 and appointed as a Junior DEO in the scale of pay admissible as per the Rules against an available post claimed to be sanctioned and also revealed from Annexure-1, his seniority in juxtaposition to others shall be governed by Rule 13 of the Rules – To postpone the seniority until 2020 claiming that the date of encadrement is to govern the seniority with reference to Annexure-B/1 and any such opinion of the Law Department, Government of Odisha would be an erroneous decision for the fact that the petitioner's entry into the cadre shall have to be treated w.e.f. 30th June, 2011, he having been appointed as a Junior Data Entry Operator against a vacant or sanctioned post in the scale of pay as admissible under Rules.

Sanatana Sahoo V. State of Odisha & Ors.

2025 (II) ILR-Cut.....

839

ORISSA SPECIAL COURTS ACT, 2006 – Section 19 – Refund of confiscated property – Offence U/s.13(1)(e) r/w 13(2) of P.C. Act – Order of Authorised Officer rejecting refund of confiscated property is under challenge – In the instant case the accused person is dead – His legal heirs being the Appellants have filed this case – Appellants contended that as the case against the accused has been abated, the confiscated property needs to be refunded to them – The State/ respondent contended that as the legality of the confiscation order is pending adjudication, no order for release of property could be passed as the Authorised Officer lacks jurisdiction – Whether the Authorised Officer lacks jurisdiction to refund the confiscated property under section 19 of the Orissa Special Courts Act, 2006,.

Held: No - Upon consideration of the contentions advanced and perusal of the materials on record, this Court finds that the confiscation under the Orissa Special Courts Act, 2006 is intrinsically connected with the outcome of the trial proceeding under Section 13(1)(e) of the Prevention of Corruption Act – The procedure envisaged under Sections 13 to 19 of the Act contemplates that confiscation is contingent upon the eventual conviction of the accused in the principal crime for which he faces trial – In the present case, with the death of the accused, the trial has been abated – There is, therefore, no prospect of a determination of guilt or prosecuting securing conviction of the accused – It follows that there exists no lawful basis to sustain an order of confiscation which was passed solely on the anticipation of such conclusion of the trial – Thus, in the considered opinion of this Court, the continuance of confiscation proceedings and retention of the property despite the abatement of the trial offends the principle of fairness and violates the constitutional right of the legal heirs to property in the absence of adjudicated criminal liability of the deceased.

The rejection of the application under Section 19 of the Act, 2006 by the Authorized Officer on the sole ground that the appeal is pending is also flawed in law – Section 19 of the Act, 2006 is not confined merely to the cases of acquittal or annulment of conviction of the accused by appellate courts but encompasses broader circumstances where the basis of confiscation ceases to exist, including death and legal abatement – The Authorized Officer in such cases is not rendered powerless; rather, he is vested with the authority to redress

the wrongful deprivation of property when the presumption of guilt no longer holds legal currency

Suchismita Behera @ Prusty & Ors. V. State of Orissa (Vigilance) & Ors.
2025 (II) ILR-Cut.....

994

PAYMENT OF GRATUITY ACT, 1972 – Sections 7(3-A), 7(7) – Delay in payment of gratuity – Order directing payment of interest to the Opposite Party No.2 by the petitioner/corporation is under challenge – Petitioner contended that due to pendency of departmental proceeding against the Opp.Party No.02 exact recovery amount was not known to employer, resultantly gratuity was withheld – Delay not attributable to the petitioner rather attributable to Opp. Party No.02 – Plea of availability of alternative remedy U/s.7(7) raised by the Opp. Parties – Maintainability of Writ Petition is in question.

Held: This Court is of the view that the writ petition is not maintainable in view alternative remedy available under Section 7(7) of the Act, 1972.

Managing Director, Tribal Development Co-Operative Corporation of Odisha Ltd. & Anr. V. Controlling Authority under Payment of Gratuity Act and Asst. Labour Commissioner, Rayagada & Anr.

2025 (II) ILR-Cut.....

957

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995 & RULES, 1996 – Appointment/Selection – The petitioner applied for the post of Junior Assistant in the Scheduled Caste (SC) Persons with Disability (PwD) category – The District Medical Board has determined that the level of impairment is 40% whereas the Appellate Medical Board has opined the level of vision impairment is 30% – Whether the prayer seeking re-verification of petitioner's disability is permissible.

Held: Yes – The petitioner's disability found by the Medical Board of AIIMS to be 60% in the left eye and complete loss of sight in the right eye, the consequence would be that the petitioner after being duly selected was entitled to get appointment in the S.C. (PwD) category – It has to be held that the petitioner has been wrongly deprived of getting appointment, may be in fortuitous circumstances.

Janakalyan Majhi V. Secretary to Govt. of Odisha (Deptt. of Social Security & Empowerment of Persons with Disabilities), Bhubaneswar & Anr.

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824

PREVENTION OF CORRUPTION ACT, 1988 – Section 13(2) r/w 13(1) (d) (e) – Absence of check period – Isolated recovery of a sum of ₹1,14,800/- from the possession of the petitioner – There is no evidence brought on record by the I.O. regarding demand for gratification thereby extending illegal favour to any one – Inconsistent answer with regard to source of accumulation of such amount is the only adverse fact against the petitioner/accused – However, the period of the source of income was not specified – Whether in absence of a check period and on the basis of the isolated recovery, a case of disproportionate asset under Section 13(1) (d) (e) of the P.C. Act can be thrashed upon the petitioner.

Held: No – It is trite that clearly defined check period is indispensable

in DA cases – It serves as a foundation for comparing the accused’s assets and expenditures against the known sources of income – Absence of an improper and undefined check period would lead to the collapse of the prosecution’s case.

Moreover, in absence of a defined and specific check period being provided by the prosecution, the petitioner is prejudicially positioned to discharge the burden of presumption under section 20 of the P.C. Act.

Sarat Chandra Dash V. State of Odisha (Vigilance)

2025 (II) ILR-Cut.....

1002

REVENUE LAWS – Mutation – Vide Mutation Case No. 5009 of 2021, the Tahasildar, Banki (Opposite Party No. 4) as per final order dated 22.12.2021 ordered for mutation of the case land in the name of the petitioner, which he himself reversed *suo motu* in Mutation Case No. 1020 of 2022 on 25.11.2022 – The same was concurred by the Collector, Cuttack in Misc. Case No. 63 of 2022 vide order dated 30.11.2022 for removal of the name of the petitioner from the R.O.R. and to record it in the name of the Government/State and further directing the Sub-Registrar, Banki not to entertain any transaction in respect of the case land – Petitioner was not given any opportunity of being heard – Whether the impugned orders are sustainable under law.

Held: No – When, the impugned orders dated 25.11.2022 (Annexure-6) and 30.11.2022 (Annexure-7) respectively have been passed in *suo motu* Mutation Case No.1020 of 2022 and Misc. Case No.63 of 2022 by the Tahasildar, Banki (Opposite Party No.4) and Collector, Cuttack (Opposite Party No.2) without complying the principles of natural justice, then, in view of the principles of law enunciated by the Hon’ble Courts and Apex Court, the impugned orders vide Annexures-6 and 7 cannot be sustainable under law – For which, the same are liable to be quashed (set aside) and the matter/case i.e. Mutation Case No.1020 of 2022 is required to be heard and disposed of afresh as per law after complying the principles of natural justice.

Santanu Samantaray V. State of Odisha, Represented through Commissioner-cum-Secretary (Revenue & Disaster Management), Bhubaneswar & Ors.

2025 (II) ILR-Cut.....

1014

SELECTION OF ANGANWADI WORKER – For selection of Anganwadi Worker, a candidate should be able to write and read Odia language – The selection committee during interaction with the candidates on the date of verification was convinced that Opposite Party No. 6 could speak and understand Odia and able to sign in Odia – Whether the selection committee can be given wide discretion to determine the evaluation criteria for selection of Anganwadi Worker.

Held: No – In our considered opinion, the selection committee cannot be given such wide discretion to determine in the process of evaluation, to such an extent of subjectivity that without any records/certificates of education/and or ability, the committee itself can decide the evaluation criteria as prescribed at sl. No.4 of the advertisement dated 19.07.2021 that a candidate should be able to read and write Odia – The records of selection that were provided along with the letter dated 30.01.2023 contain the certificates and testimonials furnished by respondent no.6 – None of those certificates indicate that she can read and write Odia as per her education.

The discretion exercise by the selection committee to arrive at a conclusion that the respondent no.6 can read and write Odia without any supporting certificate or document thereto is excessive and arbitrary, therefore, cannot be approved.

Kumari Khara V. State of Odisha & Ors.

2025 (II) ILR-Cut.....

748

SERVICE JURISPRUDENCE – Appointment – Anganwadi worker – Guidelines dated 02.05.2007 and 09.04.2010 were issued for selection of Anganwadi Workers – The learned ADM on receipt of complaint disposed of the appeal by quashing the impugned advertisement being violative of the Guidelines – The learned Single Judge interpreted the Guidelines that Scheduled Tribe candidate belonging to nearby village or a resident of the Gram Panchayat may be appointed – Whether the ADM is competent/empowered to decide a complaint regarding the selection of Anganwadi Worker.

Held: Yes – With the delineated legal perspective and keeping abreast of modifications made to the Revised Guidelines, dated 02.05.2007, the ADM is the competent authority to decide the complaints filed in relation to a selection of an Anganwadi Worker in the said area – The ADM having exercised jurisdiction in tune with the said Guidelines, no fault in factual finding made with respect to incongruous advertisement published by the CDPO could be imputed – The administrative authority derives powers and jurisdiction under the statutory documents and having not transcended the boundaries thereof, this Court finds infirmity in the decision of the learned Single Judge.

Sujata Digal V. State of Odisha (Women & Child Development Deptt.) & Ors.

2025 (II) ILR-Cut.....

643

SERVICE JURISPRUDENCE – Appointment – Suppression of facts at the time of appointment – In the present case it is undisputed factual position that at the time of submitting his application as per the advertisement, petitioner had obtained a character certificate from none other than the Deputy Superintendent of Police (DIB) Ganjam on 17.05.2023 – On a close scrutiny of the certificate, it reveals that the DSP (DIB) Ganjam has categorically stated that nothing adverse was found against the petitioner in the records of the Chamakhandi Police Station under whose jurisdiction the petitioner was residing permanently – Whether the charge/ allegation that petitioner had suppressed the material facts before the opposite parties at the time of filling up his form is sustainable.

Held: No – On a careful analysis of the factual position and keeping in view the certificate issued by the DSP (DIB), Ganjam, under Annexure-3, is of the view that when the DSP (DIB), Ganjam could not detect any criminal case in which the Petitioner is involved, obviously the Petitioner cannot be blamed that he was not aware of the fact that two criminal cases were pending in Chamakhandi P.S. wherein he has been shown as an accused – It is also relevant to mention here that nothing was brought on record in course of hearing to establish the fact that the Petitioner was either arrested/detained in police custody or he was ever summoned to the police station in connection with the investigation of the above noted two criminal cases –Therefore, on the basis of the facts pleaded as well as the materials brought on record, this Court has no

hesitation to hold that the Opposite Parties have failed to establish the fact that the pendency of the above noted two criminal cases were within the knowledge of the Petitioner.

P. Rajesh Reddy V. State of Odisha & Ors.

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883

SERVICE JURISPRUDENCE – Promotion – Reversion – Recovery of remuneration after reversion – Petitioner was appointed as Junior Typist vide Order dated 19.05.2019 – She reported her duty on 01.06.2019 – Petitioner earned the promotion on 12.07.2022 as Senior Typist – By Order dated 27.04.2024 made by the learned District Judge she was reverted to the original post of Junior Typist – Whether recovery of remuneration paid to an employee for working in a post on fulltime basis is sustainable.

Held: No – It is difficult to justify recovery of remuneration paid to an employee for working in a post on fulltime basis only on the ground that he was not entitled to hold the post and therefore is reverted – It is not a case of fraud or duplicity attributed to the petitioner – In such a circumstance, recovering the differential of salary may fall foul of Constitutional prohibition of begar enacted in Article 23 – Even this aspect is a matter for the consideration of appellate authority.

Dibyarani Mohapatra V. District & Sessions Judge, Nayagarh & Anr.

2025 (II) ILR-Cut.....

761

SERVICE JURISPRUDENCE – Disengagement of Sikshya Sahayak – Terms & Conditions of engagement – Leave & Maternity Leave – As per the terms & conditions a Sikshya Sahayak engaged on contractual basis is entitled to 12 days casual leaves in a calendar year – Petitioner challenges her disengagement as maternity leave period was considered as unauthorised absence – Whether a Sikshya Sahayak can avail of maternity leave beyond the 12 days casual leaves.

Held: Yes – This Court need not emphasize the well-known legal principle that law cannot operate in a vacuum – If a strict adherence of the terms and conditions regarding grant of leave to a Sikshya Sahayak would be insisted, it would lead to a situation, where a lady Sikshya Sahayak required to undergo maternity leave would lose her employment – This obviously cannot be the intent of the so called terms and conditions of engagement of Sikshya Sahayak, as it would amount to denial of the fundamental right of a person guaranteed by the Constitution of India under Article 21.

Kalpana Khosla V. State of Odisha & Ors.

2025 (II) ILR-Cut.....

859

SERVICE JURISPRUDENCE – Petitioner was a bank employee – On the allegation of irregularities of fraudulent withdrawal of Rs.25.92 lakhs from his two overdraft accounts, departmental proceeding as well as criminal proceeding were initiated – Petitioner was exonerated from criminal proceeding but in departmental proceeding the order of dismissal passed – Challenging the order of dismissal the Writ Petition filed and the order was confirmed – Challenging the confirmation order passed by the Hon'ble Single bench, Writ Appeal was filed – The Hon'ble Writ Appeal Court observed that the Disciplinary Authority shall reconsider the matter and infliction of punishment will be in commensurate

with the misconduct allegedly made against the petitioner and the mitigating circumstances to be taken into consideration – The Disciplinary Authority pursuant to the order of the Appellate Court, passed the order of “Removal” – Challenging the order of “Removal” present Writ Petition has been filed – It was contended by the petitioner that admittedly there is no pecuniary loss to the bank and the punishment should be commensurate with the misconduct allegedly committed and the mitigating circumstances ought to be taken into account – The plea of disproportionate punishment also raised – On the other hand the Opposite Party Authority raised the maintainability of the judicial review in case of disciplinary proceeding – Whether the punishment of removal imposed on the petitioner is commensurate with the delinquency.

Held: No – This Court is of the view that punishment of removal as imposed by Annexure-8 and upheld by the Appellate Authority vide Annexure-9 is disproportionate to the delinquency.

Baladev Panda V. The Chief Gen. Manager, SBI, L.H.O, Bhubaneswar & Ors.
2025 (II) ILR-Cut.....

894

WORDS & PHRASES – ‘Consider’ – Meaning of – Discussed.

Baladev Panda V. The Chief General Manager, SBI, L.H.O, Bhubaneswar & Ors.

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894

WORDS & PHRASES – MAY, SHALL AND DISCRETION – Discussed in reference to case law.

Dibyarani Mohapatra V. District & Sessions Judge, Nayagarh & Anr.
2025 (II) ILR-Cut.....

761

WORDS & PHRASES – Suppression – Meaning and necessary ingredients to hold a person guilty of suppression of fact – Explained.

The word “suppression” in common parlance means a material information which was within the knowledge of the person who is making any disclosure/ declaration and such person has deliberately omitted to disclose or declare such fact before the authority – Thus, to hold the Petitioner guilty of suppression of material fact, this Court is required to analyze and come to a conclusion that the piece of information which is alleged to have been suppressed was in fact within the knowledge of the Petitioner and that the Petitioner has willfully and deliberately withheld such information from the authorities, to his benefit – Therefore, to hold a person guilty of suppression of fact, three ingredients are to be demonstrated; (i) the person guilty was mandatorily required to disclose such fact, (ii) such fact was within the knowledge of the person and, (iii) the person deliberately withholds such information, which was within his knowledge, to his/ her benefit.

P. Rajesh Reddy V. State of Odisha & Ors.
2025 (II) ILR-Cut.....

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2025 (II) ILR-CUT-643

**SUJATA DIGAL
V.
STATE OF ODISHA (WOMEN & CHILD
DEVELOPMENT DEPTT.) & ORS.**

[WA NO. 2843 OF 2024]

12 MAY 2025

[HARISH TANDON, C.J. & M.S. RAMAN, J.]

Issue for Consideration

Whether the Additional District Magistrate (ADM) is competent/ empowered to decide a complaint regarding the selection of Anganwadi Worker.

Headnotes

SERVICE JURISPRUDENCE – Appointment – Anganwadi worker – Guidelines dated 02.05.2007 and 09.04.2010 were issued for selection of Anganwadi Workers – The learned ADM on receipt of complaint disposed of the appeal by quashing the impugned advertisement being violative of the Guidelines – The learned Single Judge interpreted the Guidelines that Scheduled Tribe candidate belonging to nearby village or a resident of the Gram Panchayat may be appointed – Whether the ADM is competent/empowered to decide a complaint regarding the selection of Anganwadi Worker.

Held: Yes – With the delineated legal perspective and keeping abreast of modifications made to the Revised Guidelines, dated 02.05.2007, the ADM is the competent authority to decide the complaints filed in relation to a selection of an Anganwadi Worker in the said area – The ADM having exercised jurisdiction in tune with the said Guidelines, no fault in factual finding made with respect to incongruous advertisement published by the CDPO could be imputed – The administrative authority derives powers and jurisdiction under the statutory documents and having not transcended the boundaries thereof, this Court finds infirmity in the decision of the learned Single Judge.

(Para 6)

Citations Reference

T. Cajee Vrs. U. Jormanik Siem, **AIR 1961 SC 276 = (1961) 1 SCR 750**; Surinder Singh Vrs. Central Government, **(1986) 4 SCC 667**; Jantia Hill Truck Owners Association Vrs. Shailang Area Coal Dealer and Truck Owner Association, **(2009) 8 SCC 492**; UCO Bank Vrs. CIT, **(1999) 237 ITR 889 (SC)**; Steel Authority of India Vrs. Collector of Customs, Bombay, **(2000) 115 ELT 42**; Paper Products Ltd. Vrs. Commissioner of Central Excise, **(2001)**

247 ITR 128 (SC); Collector of Central Excise Vrs. Dhiren Chemical Industries, **(2002) 126 STC 122 (SC) = (2002) 254 ITR 554 (SC);** Union of India Vrs. Azadi Bachao Andolan, **(2003) 263 ITR 706 (SC) = (2003) 1 RC 742 (SC);** Balaji Computers Vrs. State of Karnataka, (2006) 147 STC 269 (Kar); Union of India Vrs. Arviva Industries (I) Ltd. Vrs. **(2007) 209 ELT 5 (SC);** State of Kerala Vrs. Kurian Abraham Pvt. Ltd., **(2008) 13 VST 1 (SC);** A.B. Krishna Vrs. State of Karnataka, **(1998) 3 SCC 495;** PEPSU Road Transport Corporation Vrs. Mangal Singh, **(2011) 6 SCR 564 = 2011 INSC 387 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Jurisdiction of Additional District Magistrate (ADM) for selection of Anganwadi Workers; Anganwadi complaint; Executive instructions; Guidelines of the Government.

Case Arising From

Judgment and order dated 13th September, 2024 passed by the single Bench in W.P.(C) No.25094 of 2023 and W.P.(C) No.8807 of 2022.

Appearances for Parties

For Appellant : Mr. Chandrakanta Nayak

For Respondents: Mr. Bimbisar Dash, AGA (1 to 6)

Judgment/Order

Judgment

BY THE BENCH,

The instant appeal is directed against the judgment and order dated 13th September, 2024 passed by the single Bench in W.P.(C) No.25094 of 2023 and W.P.(C) No.8807 of 2022 in allowing the writ petitions filed by respondent No.7 whereunder the order dated 17th June, 2022 passed by the Additional District Magistrate (ADM), Kandhamal, Phulbani in Anganwadi Appeal filed by the appellant was quashed and a direction was passed upon the authority to issue the order of engagement in favour of respondent No.7 within a month from the date.

2. Shorn of unnecessary details, pursuant to the advertisement published by the Child Development Project Officer, Khajuripada (for short, “CDPO”) on 30th June, 2021 inviting the application from the intending Scheduled Tribes (“ST”) candidates for engagement as Anganwadi Workers in five different Anganwadi Centers which includes Pandrabadi (inadvertently mentioned as “Pandrapada” in the impugned judgment) Anganwadi Center, respondent No.7 offered her candidature

as ST candidate belonging to a nearby village. The CDPO did not find any ST candidate living within the aforementioned Anganwadi Centre service area and selected respondent No.7 by including her name in the select list published on 10th August, 2021. Despite the selection of respondent No.7 and including her name in the select list, the appointment letter was not issued in her favour although the appointment letters were issued in respect of other Anganwadi Centers. The said respondent No.7 approached the District Social Welfare Officer (DSWO) as well as the Collector by making a representation on 20th September, 2021. But, the same was kept in suspended animation as no action was taken thereupon. Respondent No.7 thereafter approached this Court by filing a writ petition being W.P.(C) No.31889 of 2021 which was disposed of directing the Collector, Kandhamal to consider the representation in accordance with law within a stipulated time. In compliance of the said direction passed by this Court in the aforementioned writ petition, the Collector invited the CDPO to submit the parawise comments on the grievance so raised by respondent No.7. The CDPO communicated that though respondent No.7 was selected, but do not belong to the service area of the Anganwadi Center, for which her name is included in the select list and several complaints were received from the villagers in this regard and precisely for such reasons, the appointment letter could not be issued.

2.1. The Collector proceeded to rely upon the Guidelines issued by the Government on 2nd May, 2007 as amended from time to time and arrived at the conclusion that in terms of the amended Guidelines in respect of Tribal Sub Plan Area, only ST candidate would be eligible to apply and in the event no such ST candidate is found, then it shall be open to a Scheduled Caste (SC) candidate. It was further opined that in the event no women is found eligible from the service area of the concerned Anganwadi Center, then the women from the other part of the same village as well as the Gram Panchayat would be considered. In view of such anomalies having detected, the Women and Child Development Department of the Government of Odisha was approached by the DSWO, but till date there is no response given in this regard. However, the Collector proceeded to dispose of the said representation withholding the appointment of respondent No.7 to be within the said Guidelines and no ambiguity can be attached thereto. Respondent No.7 challenged the said order of the Collector by filing the writ petition. Amidst the pendency of the said writ petition, on the basis of the complaint made by the appellant before the ADM, the complaint case which was registered as M.C. No.1 of 2021 (A.W. Appeal), a final order was passed on 17th June, 2022 quashing the advertisement dated 30th June, 2021 with categorical finding that in the event the ST candidates are not found within the service area of the Anganwadi Center, the CDPO must invite the application from the SC candidates in terms of the said Guidelines dated 2nd May, 2007 as amended from time to time. Respondent No.7 challenged the said order of the ADM, Kandhamal in W.P.(C) No.25094 of 2023 impleading the appellant as party therein. The appellant was invited to file counter

affidavit which in fact was filed taking a specific plea that in terms of the said Guidelines, in the event the eligible ST candidates residing within the area of the Anganwadi Center is not found, the engagement should have been done with the SC candidate and the appellant having belonged to SC residing within the area of the Anganwadi Center is eligible for engagement and, therefore, there is no illegality and/or infirmity in the order of the ADM in quashing the advertisement dated 30th June, 2021.

2.2. On the conspectus of the aforesaid facts, the single Bench proceeded to dispose of three writ petitions concerning different Anganwadi Centers, but we are concerned with the Pandrabadi Anganwadi Center and, therefore, need not venture to consider the other writ petitions, which is not subject matter in the instant writ appeal.

2.3. The single Bench held that the writ petitioner, respondent No.7 herein belong to ST and applied for in terms of the advertisement dated 30th June, 2021 and, therefore, the appellant who never applied in terms of the said advertisement cannot claim any right nor can challenge the advertisement after the engagement of some of the candidates in three Anganwadi Centers. The single Bench further proceeded to hold that the ADM, Kandhamal was not a competent authority to quash and set aside the advertisement in terms of the Guidelines and, therefore, such order is per se without jurisdiction and, therefore, cannot be permitted to occupy the space in the administrative field.

3. The counsel for the appellant is very much vocal in his submission that Guidelines dated 2nd May, 2007 as amended from time to time clearly stipulates that in all Tribal Sub Plan areas, only ST candidate will be selected as an Anganwadi Worker and in the event no suitable ST candidate is available in the said Anganwadi Center area then it may be made open to an SC candidate also and, therefore, the authorities cannot travel beyond to engage the ST candidate who is not residing within the Anganwadi Center area, but should have taken recourse to the engagement with the SC candidate who is resident of the said Anganwadi Center area. It is further submitted that there is no infirmity and/or illegality in the order of the ADM, Kandhamal in quashing and setting aside the said advertisement being violative of the said Guidelines and, therefore, the single Judge wrongly interpreted the said Guidelines that the ST candidate belonging to a nearby village or a resident of the Gram Panchayat may be appointed. It is further submitted that the decision of the ADM does not invite any interference being a competent authority under the said Guidelines dated 2nd May, 2007.

4. On the other hand, learned counsel for respondent No.7 vociferously submits that there is no infirmity and/ or illegality in the decision of the single Bench in holding that the ADM, Kandhamal is not competent to decide the complaint regarding the selection of the Anganwadi Worker for tribal and rural projects and the order of the single Bench does not warrant any interference.

4.1. On the backdrop of the aforesaid submissions advanced before us, we feel it prudent to recapitulate the various provisions of the Guidelines dated 2nd May, 2007. The said Guidelines was issued by the Government for selection and engagement of Anganwadi Workers in different areas where the Anganwadi Centers have been set up with an avowed object of spreading awareness amongst the people of the area with regard to the benefits of the schemes floated by the Government. The said Guidelines stipulates that the selection of the volunteers to work as Anganwadi Worker is necessary for each village/Anganwadi Center area by engaging the women residing in the said village/Anganwadi Center area. The said Guidelines further indicates the age group of the female candidate with requisite educational qualifications and their suitability and eligibility shall be determined on the basis of the percentage of marks obtained in the matriculation examination together with the preferential additional percentage be given to a category of the persons including the ST/SC candidates in rural and urban areas. Initially, the ST/SC candidates are required to be selected as Anganwadi Worker having the requisite educational qualification as provided in Paragraph 3 of the said Guidelines in respect of a scheduled area with a rider that in the event no suitable ST/SC candidate is available in the area of the Anganwadi Center, then the suitable ST/SC candidates will be selected from the same Gram Panchayat. Subsequently, the Government partially modified the said revised Guidelines *vide* circular No. IV-ICDS-1-84/89-82/ WCD, dated 4th January, 2010 by appending two sub-paragraphs to Paragraph 3 in the following:

“Para-3(a) of the Revised Guidelines referred to above.

In PTG areas the female candidate who has the highest qualification from among the applicants for each Anganwadi centre area may be selected as Anganwadi Worker. In case there are more than one candidate with same qualification the person who is senior in age may be selected.

Para-3(b) of the Revised Guidelines

In all Tribal Sub Plan (TSP) Areas only ST candidates will be selected as Anganwadi Workers. In case no suitable ST candidate is available in the AWC area then it may be made open to SC candidates also.”

4.2. The cumulative effect of Paragraph-3 with sub-Paragraphs subsequently inserted by partial modification of the said Guidelines manifestly indicates that in all Tribal Sub Plan areas, the Anganwadi Worker belonging to ST category will be selected and in the event, no suitable ST candidate is available in the Anganwadi Center area, it may be made open to the SC candidate also. A conjoint reading of the same leads no ambiguity that though the engagement of the Anganwadi Worker in Tribal Sub Plan Areas is restricted to the ST candidate residing within the Anganwadi Center Area, in the event no suitable ST candidate is available therein, it may be open to an SC candidate being a resident of the said Anganwadi Center Area. It thus does not permit the ST candidate belonging to other Anganwadi Center Area to be engaged depriving the SC candidate of the said Anganwadi Center Area.

Any other interpretations would lead to frustrate the very core object of incorporating such modification brought through a circular dated 4th January, 2010. There is no incongruity in the manifest intention of the Government in putting the requisite criteria in selection of the Anganwadi Worker in the Tribal Sub Plan area until the further modification is brought by virtue of a circular dated 9th April, 2010.

4.3. Though the circular dated 9th April, 2010 is restricted to Paragraph 1 of the said Guidelines,¹ dated 02.05.2007, the same is being interpreted to have an overriding effect on Paragraph 3 (b) of the said Guidelines. Although it is indicated that in case no woman is found eligible having a resident in the service area, then the women from the other parts of the same village may be considered or in the eventuality, no woman is found in the other part of the same village, the women from the other village of the same Gram Panchayat may be considered, but the moment specific provision relating to the engagement of the Anganwadi Worker in Tribal Sub Plan area is retained and not modified, it has to be construed in a pragmatic manner to make both the provisions workable.

4.4. It is no longer *res integra* that the Guidelines, which has statutory flavor, should be interpreted in harmonious manner so that it does not destroy the very fabric thereof. The canon of interpretative tools does not warrant any interpretation which would render the different provisions of the statute or the statutory document to an unworkable situation, but should complement each other. Once a specific provision is restricted to a specific eventuality, the omnibus provisions must pave way to operate in such eventuality. The modification brought in Paragraph 1 is of general nature and would apply in a situation where the applicability of the specific provisions could not be made or despite efforts having made could not find the suitable candidates. The proper interpretation of the said modifications as envisaged is explicit to the extent that in case of engagement of an Anganwadi Worker in an Tribal Sub Plan area, the ST candidate should be engaged belonging to the said Anganwadi area and in the event, it is not so found the SC candidate of the same

¹ Paragraph 1 of Guidelines, dated 02.05.2007 stands as under:

"Applications for selection of Volunteers to work as Anganwadi Workers will be invited for each village/Anganwadi Center area from women residing in the said village/Anganwadi Center Area."

By virtue of Circular in Letter No.IV_ICDS-7079/WCD, dated 09.04.2010, the following modification is made in the Revised Guidelines, dated 02.05.2007 for selection of Anganwadi Workers:

"In case no woman is found eligible from those residing in the service area then women from other parts of the same village will be considered. If no women is found eligible from the village then women from other villages of the same Gram Panchayat will be considered."

Anganwadi area may be engaged and, in the event, both the eventualities are not available, the said modified Paragraph 1 gets activated.

5. On perusal of records of the writ petition, it is found that the respondent No.7 has questioned the order dated 17.06.2022 passed by the Additional District Magistrate, Randhamal, Phulbani in M.C. No. 1/2021 (A.W. Appeal) by holding that the advertisement No.359 dated 30.06.2021 published by C.D.P.O., Khajuripada, whereby the said advertisement was quashed by holding that applications from SC candidates should also have been invited.

5.1. The ADM after receipt of petition of the appellant-Sujata Digal, a case was registered on 07.10.2021 and after hearing the appellant/her representative, a decision was taken *vide* order dated 17.06.2022 by returning finding that there are 77 families in Pandrabadi village out of which only 3 families belong to ST category and the rest belong to SC category. The appellant-Sujata Digal belongs to SC community and having certificate of IGNOU in the Child Food Nutrition with B.A. qualification but was deprived of to compete for the post of Anganwadi Worker due to the flawed Advertisement published inviting applications from persons belonging to ST community only. Upon referring to relevant paragraphs of the Guidelines, as amended, the advertisement, dated 30.06,2021 did not find favour with in absence of inviting applications from persons belonging to SC community. Since said advertisement is not in consonance with the Revised Guidelines of 2007, as amended from time to time, allowed the appeal of the instant appellant. As is manifest from the order of the ADM is that he had heard and disposed of MC No.1 of 2021 (Anganwadi Appeal) on receipt of complaint.

5.2. It is not in dispute and apparent from document at Annexure-13 that 121 places are identified to come within the fold of the Tribal-Sub Plan (TSP) areas in the State of Odisha, and out of them in the district of Kandhamal, three Blocks namely Phulbani, Phiringia and Khajuripada, are stated to be under Tribal Sub Plan Areas. Therefore, it is contended by the appellant that both ST & SC candidates should have been invited to participated in the selection process of Anganwadi Worker.

5.3. Reading of Judgment of learned Single Judge it transpires that he has proceeded as if ADM has exceeded his jurisdiction to decide the complaint inasmuch as he is not vested with the power to seize the complaint regarding selection of Anganwadi Worker with respect to Tribal Sub Plan. The relevant portion of the judgment is quoted hereunder:

*“10. *** In this regard, it would be apt to refer to the revised guidelines dated 02.05.2007 issued by the Government in W&CD Department wherein, under the heading “Procedure”, the provision of appeal has been mentioned. The relevant clause is extracted here in below:*

'(i) Sub-Collector will be the appellate authority for hearing complaints regarding selection of Anganwadi Workers for tribal and rural projects and Addl. District Magistrate will be the appellate authority for complaints regarding selection of Anganwadi Workers for urban projects. Collector shall be the appellate authority in case Sub-Collector/ADM have approved the selection as per para 'g' and 'h' above.'

11. On a plain reading of the aforequoted provision, it is clear that only complaints regarding selection of candidates as Anganwadi Workers can be considered by the ADM as the appellate authority. No further power is conferred on the ADM. What the ADM has done in the present case is to far exceed his brief by invalidating the selection process itself."

5.4. What could not be placed before the learned Single Judge as it appears from cursory reading of the judgment impugned is the amendment to the Guidelines dated 02.05.2007 carried out in Circular vide Letter No.IV-ICDS-I-11/09 (Pt.)/4842/WCD, dated 02.03.2010, which reads as follows:

*"Women and Child Development Department
No. IV-ICDS-1-11/09 (PT) / 4842 / WCD,
Dated 02.03.2010*

From

Smt Sujata Karthikeyan, IAS
Director, Social Welfare

To

All Collectors.

Sub : Sub-Collector as the Chairman of the Selection Committee for the selection of Anganwadi Workers both for Rural / Tribal and Urban Projects— Modification.

Madam/Sir,

I am directed to bring to your kind notice that after careful consideration, Government have been pleased to **appoint Sub-Collector as the Chairman** of the Selection Committee for the selection of Anganwadi Workers **both for rural/tribal and urban projects** in place of Chairperson/Vice-Chairperson of the Panchayat Samiti / Municipality in case of rural tribal projects and urban projects respectively.

Further, in view of the above modifications.

(i) Para (g) of the revised guidelines for selection of Anganwadi Workers dated May 2, 2007 stands deleted.

(ii) Para (h) partially modified as stated above.

(iii) ADM will be the appellate authority for hearing complaints regarding selection of Anganwadi Workers for tribal and rural projects and urban projects.

Rest of the procedure and criteria for selection of Anganwadi Workers remains the same.

This comes into force with immediate effect.

Sd/-
Director, Social Welfare"

5.5. From the above modification to the Guidelines of 2007, it is crystal clear that the ADM is empowered to hear the complaints regarding selection of Anganwadi Workers *inter alia* for tribal projects. There is no dispute that the present case relating to publication of advertisement No.359, dated 30.06.2021 is with respect to

appointment of vacant posts of Anganwadi Workers pertaining the Tribal Sub-Plan Area. Therefore, this Court is not one with the view expressed by the learned Single Judge.

5.6. Having held so, in terms of paragraph 3(b) of the amended Guidelines, 2007 in the present case ST candidate could have been selected and in absence of suitable ST candidate available in the Anganwadi Center Area, an SC candidate was to be selected. Since the Advertisement is confined to invitation of application for the post of Anganwadi Workers belonging to ST community, the same is found to be incongruous with the amended clause in the year 2010.

5.7. Article 162 of the Constitution of India in unequivocal terms provides that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. Such executive powers having regard to the rule of executive business are framed in terms of Article 166. Clause (3) of Article 166 empowers the Government to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Minister of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. When the memorandum is issued in the name of Governor, and there is no dispute that it was authenticated in terms of clause (2) of Article 166 of the Constitution, the power so exercised by the State would be under the provisions of the Act. The said order is to remain in force till rules are framed in the prescribed manner. The State for giving effect to the provisions of the statute may upon itself take the burden of providing for certain things in exercise of its power under Article 298 or Article 162 of the Constitution of India. Where executive power impinges upon the rights of citizens, it will have to be supported by an appropriate law. Where a statute confers powers on an authority to do certain acts or exercise power conferred by the statute, it does not depend on the existence of rules, unless the statute expressly and unconditionally conferred the same. In other words, framing of the rules is not a condition precedent to the exercise of power expressly and unconditionally conferred by the statute. The expression 'subject to rules' only means in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. [Reference can be had to *T. Cajee Vrs. U. Jormanik Siem*, AIR 1961 SC 276 = (1961) 1 SCR 750; *Surinder Singh Vrs. Central Government*, (1986) 4 SCC 667; *Jantia Hill Truck Owners Association Vrs. Shailang Area Coal Dealer and Truck Owner Association*, (2009) 8 SCC 492. The circulars issued in exercise of statutory powers are binding on the department, but it would be binding so long as the circulars are in operation and it holds the field. See, *UCO Bank Vrs. CIT*, (1999) 237 ITR 889 (SC); *Steel Authority of India Vrs. Collector of Customs, Bombay*, (2000) 115 ELT 42; *Paper Products Ltd. Vrs. Commissioner of Central Excise*,

(2001) 247 ITR 128 (SC); *Collector of Central Excise Vrs. Dhiren Chemical Industries*, (2002) 126 STC 122 (SC) = (2002) 254 ITR 554 (SC); *Union of India Vrs. Azadi Bachao Andolan*, (2003) 263 ITR 706 (SC) = (2003) 1 RC 742 (SC); *Balaji Computers Vrs. State of Karnataka*, (2006) 147 STC 269 (Kar); *Union of India Vrs. Arviva Industries (I) Ltd. Vrs.* (2007) 209 ELT 5 (SC); *State of Kerala Vrs. Kurian Abraham Pvt. Ltd.*, (2008) 13 VST 1 (SC).

5.8. This Court may benefit having regard to the following dicta laid down in *A.B. Krishna Vrs. State of Karnataka*, reported in (1998) 3 SCC 495, paragraph 8:

“*** As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of “doctrine of occupied field”. **If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.**”

5.9. Taking cue from the above principles it may give rise to decide whether the advertisement is fundamentally defective going to the root of the matter as the appellant had no occasion to participate in response to the Advertisement dated 30.06.2021. Since said Advertisement invited applications from candidates belonging to ST community, it is only when no ST candidate was found available in the service area of the Pandrabadi Anganwadi Center, the person like the appellant who belongs to SC community sought to question the validity of the advertisement in terms of amended paragraph 3 of Guidelines, 2007 by virtue of Circular dated 04.01.2010. In the considered opinion of this Court, the CDPO while publishing aforesaid advertisement could not act contrary to the Guidelines as amended from time to time and thereby the invitation of application could not be restricted to candidates belonging to ST community only.

5.10. This Court derives conceptual understanding regarding the effectiveness of above Guidelines of the Government from the following observation contained in *PEPSU Road Transport Corporation Vrs. Mangal Singh*, (2011) 6 SCR 564 = 2011 INSC 387:

“16. It is well settled law that the Regulations made under the statute laying down the terms and conditions of service of employees, including the grant of retirement benefits, has the force of law. **The Regulations validly made under statutory powers are binding and effective as the enactment of the competent legislature.** The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the Regulations as a legal compulsion. **Any action or order in breach of the terms and conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.**”

5.11. It is evident from the above discussion that the ADM is conferred with the powers to take a decision on the complaint filed in relation to a selection of Anganwadi Worker for tribal and rural projects. In the instant case, the appellant is

aggrieved by the engagement of respondent No.7, who does not belong to Anganwadi Center Area relating to Tribal Sub Plan.

6. With the delineated legal perspective and keeping abreast of modifications made to the Revised Guidelines, dated 02.05.2007, the ADM is the competent authority to decide the complaints filed in relation to a selection of an Anganwadi Worker in the said area. The ADM having exercised jurisdiction in tune with the said Guidelines, no fault in factual finding made with respect to incongruous advertisement published by the CDPO could be imputed. The administrative authority derives powers and jurisdiction under the statutory documents and having not transcended the boundaries thereof, this Court finds infirmity in the decision of the learned Single Judge.

6.1. We, thus, find error in the portion of the impugned judgment and order wherein it is held that the ADM is incompetent to quash and set aside the advertisement in relation to the Anganwadi Center within the Tribal Sub Plan area.

6.2. Having come to such conclusion that the ADM was competent to hear complaints with respect to Tribal Sub Plan in relation to selection of Anganwadi Workers, we, therefore, cannot overlook the fact that there has been an apparent violation of the mandates given in the said Guidelines and, therefore, the technicalities if pitted against the substantial justice, the latter must prevail. The moment we find that the engagement of respondent No.7 is in violation of Paragraph-3(b) of the said Guidelines, we could not persuade ourselves to accede to the ultimate direction passed by the learned single Bench in directing the authorities to issue the letter of engagement to respondent No.7. Such portion of the impugned judgment and order needs interference and, therefore, is quashed and set aside.

6.3. Since the entire selection is vitiated, the authorities are directed to make a fresh publication/advertisement for engagement of the Anganwadi Worker in Pandrabadi Anganwadi Center strictly in terms of the Paragraph 3(b) of the said Guidelines and in the event, suitable candidates are not found, the engagement shall be made taking into consideration the modified Paragraph 1 of the said Guidelines. The entire exercise has to be completed within three months from the communication of this judgment and order.

7. The writ appeal is accordingly disposed of. No order as to costs. All the pending interlocutory applications, if any, stand disposed of accordingly.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Appeal disposed of.

2025 (II) ILR-CUT-654

**M/s. VIRAJ STEEL & ENERGY PVT. LTD.
(THROUGH ITS AUTHORIZED REPRESENTATIVE
BINOD BIHARI PATI)
V.
JOINT COMMISSIONER OF STATE TAX (APPEAL),
SAMBALPUR & ORS.**

[W.P.(C) NO. 9367 OF 2025]

15 MAY 2025

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

Issues for Consideration

1. Whether the order of rejection passed by the appellate authority is tenable in law.
2. Whether the case of the petitioner merits consideration.

Headnotes

(A) ODISHA GOODS AND SERVICES TAX ACT, 2017 – Section 130 r/w Sections 122 and 107(4) r/w Article 226 of the Constitution of India – The Petitioner having availed of the right conferred U/s. 130 of the Odisha Goods and Services Tax Act had filed the appeal before the appellate authority U/s. 107 of the Act – The appeal was filed after a lapse of almost two years since the date of the conclusion of the proceeding – The appellate authority rejected the appeal as it was filed beyond the statutory period of limitation – Whether the order of rejection passed by the appellate authority is tenable in law.

Held: Yes – We find no ambiguity in the order of the appellate authority as the law is somewhat settled that the moment the outer cap is fixed in the statute beyond which the authority cannot travel, the rejection in this regard cannot be faulted with – The discretion vested upon the authority to condone the delay if brindled with an outer cap being fixed in the statute, the authority cannot exercise the power beyond such limit. (Para 16)

(B) CONSTITUTION OF INDIA, 1950 – Article 226 r/w sections 122, 130 of Odisha Goods & Services Tax Act, 2017 – The petitioner assails the show cause notice and imposition of redemption fine in lieu of confiscation of a goods which are not physically available – Whether the case of the petitioner merits consideration.

Held: No – In the identical circumstances, the coordinate Bench in case of Shri D. Murali Mohan Patanaik (**Shri D. Murali Mohan Patanaik v. Secretary to Government of Odisha, Finance Department and others** (W.P.(C) No.34787 of 2022) found that once the payment is made without protest it is not open to challenge the entire procedure adopted for confiscation liable to be struck down – Though the petitioner in the instant case pleaded that the said payment of redemption fine and penalty was under protest, but we do not find from the documents that any such protest was recorded; rather, there has been categorical stand taken before the authority admitting the shortage of the stocks and conceding the payment of penalty and the fine in lieu of confiscation. (Para 18)

Citations Reference

Chinku Exports v. Commissioner of Customs, Calcutta, **1999 (112) ELT 400 (Tribunal)**; Commissioner of Customs (Import), Mumbai v. Finesse Creation INC., **2009 (248) ELT 122 (Bom.)**; Commissioner of Customs, Bangalore v. G.M. Exports, **2012 (279) ELT 493 (Kar.)**; Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., **2008 (229) ELT 185 (P&H)**; Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of Central Excise and Customs, Nasik, **2009 (235) ELT 623 (Tri.-LB)**; Kunhayammed v. State of Kerala, **2001 (129) ELT 11 (SC)**; Synergy Fertichem Pvt. Ltd. v. State of Gujarat, **2019 SCC OnLine (Gujarat) 6127**; District Magistrate, Haridwar v. Harish Malhotra, **(2015) 11 SCC 513**; Bonanzo Engg. & Chemical P. Ltd. v. Commissioner of Central Excise, **2012 (277) ELT 145 (SC)**; Kalabharati Advertising v. Hemant Vimalnath Narichania, **(2010) 9 SCC 437**; Kiran Singh v. Chaman Paswan, **(1954) 1 SCC 710**; Chiranjilal Shrilal Goenka v. Jasjit Singh, (1993) 2 SCC 507; Union of India v. Vicco Laboratories, **2007 (218) ELT 647 (SC)**; Magadh Sugar and Energy Limited v. State of Bihar, **(2022) 16 SCC 428**; M/s. Visteon Automotive Systems India Limited v. CESTAT, Chennai, **2017 SCC OnLine (Madras) 37615**; Weston Components Ltd. v. Commissioner of Customs, New Delhi, **2000 (115) ELT 278 (SC)**; Shri D. Murali Mohan Patanaik v. Secretary to Government of Odisha, Finance Department and others, **(W.P.(C) No.34787 of 2022 decided on 31st January, 2023) – referred to.**

List of Acts

Odisha Goods and Services Tax Act, 2017; Constitution of India, 1950.

Keywords

Limitation; Condonation of delay; Show cause notice; Imposition of fine and penalty; Redemption; Confiscation; Search and seizure; Security Bond.

Case Arising From

Order passed by the appellate authority under Section 107 of the GST Act, 2017 on 28th February, 2025.

Appearances for Parties

For Petitioner : Mr. Kartik Kurmy

For Opp. Parties : Mr. Sunil Mishra, Standing Counsel,
Mr. S. Dash, A.S.C.

Judgment/Order**Judgment**

HARISH TANDON, C.J.

1. Having suffered an order passed by the appellate authority under Section 107 of the GST Act, 2017 on 28th February, 2025 rejecting the same on the ground of limitation, the instant writ petition is filed not only assailing the said order, but also the show cause notice dated 27th March, 2023 issued by opposite party No.2 on the basis whereof the order was passed on 29th March, 2023 in FORM GST-DRC-07 imposing the penalty of Rs.27,65,016/- (CGST Rs.13,82,508/- + OGST Rs.13,82,508/-) and redemption fine of Rs.79,87,824/- (CGST Rs.39,93,912/- + OGST Rs.39,93,912/-) in exercise of power under Section 130 read with Section 122 of the OGST Act, 2017, after having paid the penalty as well as the redemption fine as demanded.

2. A prelude to the initiation of proceeding can be reasonably traced from a search and seizure operation conducted on 22nd March, 2003 at the factory/registered office premises of the petitioner located at village Gurupali, PO-Lapanga, District-Sambalpur, Odisha by a team consisting of the enforcement officials of the Enforcement Range, Samabalpur, the mining officials of the Deputy Director of Mines, Sambalpur and local police personnel. During the said search and seizure operation, the enforcement officials detected a shortage of 341.360 MT of Billet fetching a value of Rs.1,53,61,200/- and seized various documents/notebooks/registers/files/loose slips under Form GST-INS-02 which was duly countersigned by the authorized persons of the petitioner. The descriptions of the seized documents were vividly reflected in the Annexures appended to FORM-GST-INS-02 which has not been disputed by the petitioner in the writ petition.

2.1. In furtherance of the said search and seizure operation, the show cause notice dated 27th March, 2023 was issued in FORM GST-DRC-01 along with its annexures for the period March, 2023 to show cause why the purported shortage detected in relation to supply of MS Billet should not be confiscated under Section 130 of the OGST Act and the penalty of the amount as indicated hereinabove be not imposed. It is further indicated therein that in lieu of the confiscation, the redemption fine as disclosed hereinabove be also not imposed. After the receipt of the show cause

notice dated 27th March, 2023, the petitioner caused a letter intimating to the revenue authority that as an authorized person and upon consulting the management of the Company, the stock discrepancies are admitted and the Company has agreed to pay the calculated amount of a penalty and fine in lieu of the confiscation under Section 130 read with Section 122 of the OGST Act for the shortage of the stock of goods noticed at the business premises of the petitioner at the time of search and seizure operation. Since the petitioner agreed to pay the penalty and the redemption fine in lieu of the confiscation, the authority issued the demand order on 29th March, 2023 vividly reflecting the conduct of the petitioner in evading the tax in clandestine manner.

2.2. It is pertinent to record that pursuant to the said demand order dated 29th March, 2023, the petitioner made deposit of the entire demanded amount which includes the redemption fine in lieu of the confiscation and after such deposit having made, the documents seized at the time of search and seizure operation were released to the petitioner.

2.3. After having availed the right conferred under Section 130 of the OGST Act, the appeal was filed before the appellate authority under Section 107 of the said Act on 7th February, 2025 i.e. almost two years after the date of the said conclusion of the proceeding raising several points including the authority of the enforcement officials in imposing the redemption fine and penalty when the goods were not available for confiscation. Obviously, the appellate authority rejected the said appeal on 28th February, 2025 having filed beyond the statutory period of limitation, more particularly, that the authority lacks jurisdiction to condone the delay beyond the outer limit set forth in sub-Section (4) of Section 107 of the said Act.

2.4. Upon dismissal of the appeal on the ground of inordinate delay and lack of power in condoning the delay beyond the outer cap fixed under sub-Section (4) of Section 107 of the said Act, the writ petition is filed not only challenging the order of the appellate authority, but the show cause notice which culminated into a demand order on the premise that the moment the goods are not available, there may not arise any occasion either for seizure or for confiscation in terms of Section 130 (2) of the Act and, therefore, the show cause notice and the demand order are palpably illegal having issued in gross violation of the statutory provision and, therefore, partakes a character of a nullity. It is further stated that once the foundation is found invalid, illegal and infirm being violative of the statutory provision, all subsequent decisions/order shall automatically fall.

3. On the backdrop of the aforesaid facts pleaded in the writ petition, the respective counsels were invited to address the Court and after the closure of the oral submissions, the written notes of argument are filed by the respective parties which are taken on record.

4. Learned counsel appearing for the petitioner submits that the demand order dated 29th March, 2023 imposing the penalty under Section 130 (1) read with Section 122 (xviii) of the OGST Act, 2017 and the redemption fine under sub-Sections (2), (3), (4), (5), (6), (7) of Section 130 of the said Act for shortage of 341.360 MT of MS Billet in the stock, on the basis of a show cause notice dated 27th March, 2023, are in clear contravention to the Clauses contained in (i), (ii) and (iv) of Section 130 (1) of the Act and, therefore, liable to be quashed and set aside. It is further submitted that on the alleged shortage of goods, a separate proceeding has been initiated under Section 74 of the CGST Act/OGST Act, 2017 upon issuing a show cause notice dated 30th May, 2024 and, therefore, the interest of the revenue is fully protected despite the fact that the petitioner is pursuing its remedy available under the said Act which is not a subject matter of the instant writ petition. It is arduously submitted that Section 130 of the Act contains two parts wherein the first part is relatable to goods liable to confiscation, on the other hand, the second part contains the provision relating to the condition precedent for confiscation and imposition of redemption fine on physical availability of the goods sought to be confiscated. It is thus submitted that if the goods are not available for confiscation, the authority cannot impose redemption fine under the second part of Section 130 of the Act. In support of the contention that the assessee cannot be compelled to pay the redemption fine in lieu of a confiscation when the goods are not physically available for confiscation, the reliance is placed upon the judgment rendered in **Chinku Exports v. Commissioner of Customs, Calcutta, 1999 (112) ELT 400 (Tribunal)** which was affirmed by the apex Court and such judgment is reported in **2005 (184) ELT A36 (SC); Commissioner of Customs (Import), Mumbai v. Finesse Creation INC., 2009 (248) ELT 122 (Bom.)** which was further affirmed by the Supreme Court and such order is reported in **2010 (255) ELT A120 (SC); Commissioner of Customs, Bangalore v. G.M. Exports, 2012 (279) ELT 493 (Kar.); Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) ELT 185 (P&H)** and **Shiv Kripa Ispat Pvt. Ltd. v. Commissioner of Central Excise and Customs, Nasik, 2009 (235) ELT 623 (Tri.-LB)**.

4.1. It is strenuously argued that once the civil appeal is dismissed by the Supreme Court against the order passed in **Chinku Exports** (supra), it would invite the concept of merger and the decision of the apex Court would operate in the field, which can be supported by a judgment of the Supreme Court rendered in **Kunhayammed v. State of Kerala, 2001 (129) ELT 11 (SC)**. The counsel further submits that the redemption fine can be imposed even if the goods are not available, but on the special facts that after the confiscation of the goods, the same was released upon execution of a bond. In other words, it is contended that if the goods so confiscated was released on bond/undertaking given by the assessee, subsequent confiscation cannot be impinged as the goods are not physically available which would find support from the judgment of Gujarat High Court in case of **Synergy Fertichem Pvt. Ltd. v. State of Gujarat, 2019 SCC OnLine (Gujarat) 6127**.

4.2. Learned counsel for the petitioner is very much vocal in his submission that no tax shall be levied or collected by the State save by the authority of law under Article 265 of the Constitution of India and, therefore, even if the assessee has consented or there appears to be a mistake committed by the parties, the constitutional provision cannot be whittled down and placed reliance upon the judgment of the Supreme Court in case of ***District Magistrate, Haridwar v. Harish Malhotra*, (2015) 11 SCC 513** and ***Bonanzo Engg. & Chemical P. Ltd. v. Commissioner of Central Excise*, 2012 (277) ELT 145 (SC)**. Learned counsel submits that the matter can be seen from another angle. According to him, the moment the foundation of issuance of a show cause notice contemplating to confiscate the goods which is not physically available is illegal and/or infirm, all subsequent proceedings founded thereupon shall also be regarded as illegal and/or invalid as once the illegality strikes at the root of the jurisdiction, all structures standing thereupon would fall. To buttress the aforesaid submission, the reliance is placed upon the judgment of the apex Court in ***Kalabharati Advertising v. Hemant Vimalnath Narichania*, (2010) 9 SCC 437**; ***Kiran Singh v. Chaman Paswan* (1954) 1 SCC 710**; and ***Chiranjilal Shrilal Goenka v. Jasjit Singh*, (1993) 2 SCC 507**. On the maintainability of the writ petition, the reliance is placed upon a judgment of the Supreme Court in ***Union of India v. Vicco Laboratories*, 2007 (218) ELT 647 (SC)** and ***Magadh Sugar and Energy Limited v. State of Bihar*, (2022) 16 SCC 428** that if the show cause notice is issued without jurisdiction, there is no fetter on the part of the aggrieved person to approach the writ Court. Lastly, it is submitted that even if the penalty and the redemption fine are deposited under protest, in the event of the show cause notice being an outcome of illegality and violative of the provisions of the statute, there is no fetter put on the part of the writ Court to interfere with the same and quash and set aside the subsequent orders founded thereupon.

5. Mr. Sunil Mishra, Standing Counsel appearing for the opposite parties refuted the contention of the petitioner in contending that there is no infirmity and/or illegality in issuance of the show cause notice dated 27rd March, 2023 by the authority for confiscation of the goods/documents/books or the things under Section 130 of the said Act. Mr. Mishra would further submit that Section 67 of the OGST Act, 2017 confers powers upon the proper officers as indicated therein to arrive at the reason to believe that any goods liable to confiscation or any documents or books or things which in his opinion shall be useful for or relevant to any proceeding under the said Act to search and seize the same. He further submits that there is no challenge thrown in the writ petition on the authority of the competent persons to search and seize the materials mentioned in Section 67 of the said Act bestowing power upon the authority to confiscate the same for the other proceedings to be initiated under the provision of Section 130 and/ or Section 122 of the OGST Act, 2017. He thus submits that at the time of search and seizure, the authorized revenue authority confiscated the unaccounted shortage of stocks, the books and the documents from the premises and issued a notice under Form-GST-INS-02 along

with the annexures containing the description of the materials. He vehemently submits that immediately upon the service of the show cause notice dated 27th March, 2023, the petitioner admitted the stock discrepancies and conveyed a clear intention of payment of penalty and fine in lieu of confiscation and on the basis of such admission, the authorities issued the demand order dated 29th March, 2023 and the payment was made by the petitioner not only of the penalty but the redemption fine in lieu of confiscation. Mr. Mishra would submit that after the compliance of the demand order, the confiscated materials which include books and the documents seized at the time of the search and seizure operation were released in lieu of confiscation.

5.1. Mr. Mishra is very much vocal that having sat for a considerable period of time, the petitioner filed an appeal against the demand order before the appellate authority under Section 107 of the OGST Act, 2017 after a gap of almost two years along with an application for condonation of delay which was rightly rejected by the appellate authority as it sans power to condone the delay beyond the stipulated period provided in the said provision. According to Mr. Mishra, a person should not be permitted to approbate and reprobate at the same time by challenging the show cause notice in the writ petition after having accepted and implemented the demand order dated 29th March, 2023. Mr. Mishra, vociferously submits that a litigant should not be permitted to achieve a thing which cannot be achieved directly taking recourse to an indirect manner. He thus submits that the appellate authority has rightly rejected the appeal being barred by limitation and that the said authority is denuded of power to condone the delay beyond the outer limit set forth in Section 107 (4) of the Act.

5.2. Mr. Mishra further submits that Section 130 of the Act has to be read by giving meaning to the words or expressions used therein which not only includes the goods received in contravention to any provision of Act or the Rules with an intent to evade payment of tax, but also the supplies in the same line. It is thus submitted that where the goods are supplied without issuing the invoices resulting into a shortage of the goods with an intent to evade tax, it is not mandatory that the goods must be found in physical condition and, therefore, the interpretation sought to be made by the petitioner would tantamount to frustration of the spirit of the said provision. He further submits that the provision contained under Section 130 of the Act has to be read in conjunction with Section 122 and Section 67 (2) of the said Act and the interpretation so sought to be made by the petitioner if accepted would render the provision contained under Section 130 of the Act a dead letter. In support of the contention that the confiscation can be made even when the goods are not physically available, Mr. Mishra relies upon a judgment of the Gujarat High Court rendered in case of **Synergy Fertichem Pvt. Ltd.** (supra) and Madras High Court judgment in **M/s. Visteon Automotive Systems India Limited v. CESTAT, Chennai, 2017 SCC OnLine (Madras) 37615**. Mr. Mishra thus submits that in view of the

facts involved in the instant case, the petitioner cannot take a rebound and challenge the show cause notice and, therefore, the writ petition deserves dismissal.

6. Both the counsels appearing for the respective parties advanced lengthy arguments on the powers of the competent authorities to confiscate the goods which are not physically available and imposition of the redemption fine in lieu of such confiscation under Section 130 of the Act. Recently, the trend has developed in assailing the show cause notice and the demand order in the writ jurisdiction after exhausting the statutory remedy of appeal provided in the Act belatedly, when the appellate authority declined to condone the delay beyond the outer limit set forth under Section 107 (4) of the Act on the pretext that once the foundation of initiating the proceeding is found invalid and illegal, all subsequent decisions taken thereupon are liable to fall and, therefore, the writ Court is not denuded a power to decide such fundamental issue in exercise of power of judicial review. The arguments are advanced that once the order passed by the authority is *per se* illegal and attracts the principles of nullity, such action or a decision is amenable to be challenged before the Court or even in collateral proceeding. The authorities on the above proposition have been sighted to achieve a desired result taking a shelter under Article 226 of the Constitution of India as a collateral proceeding. The three Judge Bench of the Supreme Court rendered in **Kiran Singh** (supra) as cited for the proposition that the decree passed by the Court having inherent lack of jurisdiction is always perceived as nullity and its invalidity can be set up, anywhere or everywhere, it is sought to be enforced and even in a collateral proceeding. The relevant excerpt from the said judgment is reproduced as under:

“6. The answer to these contentions must depend on what the position in law is when a court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of Section 11 of the Suits Valuation Act is on that position. 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 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 the 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 parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non iudice, and that its judgment and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position.”

6.1. Although the judgment rendered by the three Judge Bench in **Kiran Singh** (supra) was an authority before a radical amendment had been brought in the Code of Civil Procedure in the year 1977, yet the ratio of the said judgment was considered to have its application and recognized in a subsequent judgment of the Supreme Court in **Chiranjilal Shrilal Goenka** (supra) in the following:

“18. It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party.”

6.2 In **Kalabharati Advertising** (supra), the legal maxim *sublato fundamento, cadit opus* meaning thereby in case a foundation is removed, the superstructure falls, was applied in a situation where the decree passed by a Court lacking inherent jurisdiction over the subject matter would always be regarded as a nullity and *non est* in the eye of law in the following:

“21. In Badrinath v. State of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13] this Court observed that once the basis of a proceeding is gone, all consequential acts, action, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to the administrative orders.”

7. There is no quarrel to the settled proposition of law as enunciated in the above report that the Court lacking inherent jurisdiction in relation to a subject matter if passes a decree which is *per se* nullity and, therefore, amenable to be assailed even at the stage of execution of the said decree or order and can further be challenged in any collateral proceedings. It is no longer *res integra* that the Court can only assume jurisdiction conferred by law and even by consent of parties such jurisdiction cannot be assumed. The jurisdiction exercised by the Court flows from the authority of law which can neither be exercised nor be assumed on the consent of the parties. It also admits no ambiguity in law that the Court exercising jurisdiction not vested in it in passing an order is regarded as a nullity and *non est* in the eye of law. It may have its equal application upon the statutory authority exercising powers provided in the statute and in the event such power is not so conferred, yet the same is exercised which may be assailed and/or challenged before the higher forum provided in the statute and also otherwise. Such broad and fundamental principles discerned from the aforesaid reports are to be applied on a factual matrix and not in abstract manner. The Court cannot shut its sight on the conduct of the parties in relation to the proceedings, more particularly, after exhausting all the remedies available in the statute. Had it been a case that the authority lacks inherent jurisdiction or powers which does not require a deep scrutiny into it, it is open to the writ Court to interfere, but the position would be different in the event the power can be traced from the statutory provisions and the challenge is founded upon irregular exercise of such power in a collateral proceeding. A distinction must be drawn between an inherent lack of powers or jurisdiction and the exercise of powers so conferred in an erroneous manner. In the latter situation, it can be corrected by approaching the appellate forum under the statute and should not be permitted to be opened under the

extraordinary jurisdiction conferred upon the High Courts under Article 226 of the Constitution. Even though the proceedings may be maintainable under Article 226 of the Constitution of India, yet we see no absolute fetter on the part of the High Court exercising writ jurisdiction in refusing to entertain the writ petition. The support can be gainfully lend to a judgment of the apex Court in **Vicco Laboratories** (supra) where the show cause notice was challenged invoking the jurisdiction under Article 226 of the Constitution of India and a plea was taken that the Court should not interfere with such show cause notice as the authorities have not applied its conscious mind as yet, the apex Court clarified that normally the Court should relegate the parties to participate in the proceeding, but in the event, the show cause notice is issued either without jurisdiction or in abuse of process of law, there is no absolute bar that the writ Court would refuse to entertain the plea at such a stage in the following:

“30. Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued. Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities is the normal rule. However, the said rule is not without exceptions. Where a show cause notice is issued either without jurisdiction or in an abuse of process of law, certainly in that case, the writ court would not hesitate to interfere even at the stage of issuance of show cause notice. The interference at the show cause notice stage should be rare and not in a routine manner. Mere assertion by the writ petitioner that notice was without jurisdiction and/or abuse of process of law would not suffice. It should be prima facie established to be so. Where factual adjudication would be necessary, interference is ruled out.”

7.1. Even in **Magadh Sugar and Energy Limited** (supra), the three Judge Bench of the Supreme Court reiterated and reinstated the situation under which the High Court can exercise its jurisdiction under Article 226 of the Constitution of India in the following:

“20. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternative remedy is available, the existence of an alternative remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallised by this Court in Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] and Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [Harbanslal Sahnia v. Indian Oil Corpn. Ltd., (2003) 2 SCC 107] Recently, in Radha Krishan Industries v. State of H.P. [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771] a two-Judge Bench of this Court of which one of us was a part of (D.Y. Chandrachud, J.) has summarised the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternative remedy. This Court has observed : (Radha Krishan Industries case [Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771] , SCC p. 795, para 27)

“27. The principles of law which emerge are that:

27.1. 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.

27.2. 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 alternative remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternative 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; or (d) the vires of a legislation is challenged.

27.4. An alternative 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 alternative remedy is provided by law.

27.5. 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.

27.6. 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.”

21. *The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Commr. of State Tax v. Commercial Steel Ltd. [Commr. of State Tax v. Commercial Steel Ltd., (2022) 16 SCC 447] In State of H.P. v. Gujarat Ambuja Cement Ltd. [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] this Court has held that a writ petition is maintainable before the High Court if the Taxing Authorities have acted beyond the scope of their jurisdiction. This Court observed : (Gujarat Ambuja Cement case [State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499] , SCC pp. 517-18, para 23)*

“23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the Taxing Authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.”

7.2. What emerges from the above report that ordinarily the High Court should refuse to entertain the writ petition under Article 226 of the Constitution of India if

the efficacious alternative remedy is provided in the statute. Ordinarily, the High Court should relegate the parties to exhaust the statutory remedy so provided unless the challenges thrown in the writ petition to the action of the authorities is in gross violation of the fundamental rights guaranteed under Part-III of the Constitution; violation of principles of natural justice; vires of the Act or the subordinate legislation and the order or the proceeding is wholly without jurisdiction. It is highlighted that the High Court may decline to entertain the writ petition if it involves a disputed question of facts subject to the objective satisfaction of the High Court that it invites the exercise of the jurisdiction. Even though the power of the writ Court is not brindled in absolute sense, yet the High Court may refuse to entertain the writ petition in the event the point raised therein is amenable to be assailed before the statutory forum provided the case of such nature as envisaged in the above report is made out. The plea of jurisdiction striking at the root of the powers exercised by the statutory authority can be determined by the writ Court provided there appears to be a complete lack of such power and once the Court find a little departure, it should ordinarily relegate the parties to the forum available in the statute.

8. In the present case, there is no dispute on the conferment of power upon the proper officer to make inspection, search and seizure upon the formation of a reason to believe that a taxable person has suppressed any transaction relating to the supply of goods and services or both or the stock of goods in hand or any goods liable to confiscation or any documents, books or things which in his opinion shall be useful and relevant to any proceeding under the Act, sub-Section (2) of Section 67 is quoted as under:

“67. Power of inspection, search and seizure

xxx

xxx

xxx

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of State tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.”

9. It is thus evident and eminent from the aforesaid provision that the power is conferred upon the proper officer to make search and seizure on a perceive reason to believe the eventualities provided in Section 67 liable to confiscation. It therefore

cannot be said that the power to confiscate is eminently and/or evidently absent in the said proper officer and, therefore, exercise of such power cannot be fundamentally flawed on the ground of complete lack of inherent jurisdiction and powers. Even Section 122 of the Act exposes the taxable person liable for a penalty in the event it supplies any goods or services or both without issue of any invoices or issues an incorrect or false invoice with regard to any supply apart from the other incidents provided therein. Section 130 of the Act contains an exhaustive provision relating to the confiscation of goods or a conveyance and a levy of penalty which imbibes within itself the eventuality of supplying or receiving any goods in contravention to any provisions of the Act or the Rules made thereunder with intent to evade payment of tax. Sub-Section (2) of Section 130 of the Act postulates an option to pay a redemption fine in lieu of the confiscation. The conjoint reading of the provision as aforesaid are the expositions of the powers and the jurisdiction conferred upon the proper authorities not only to the inspection, search and seizure, but also the confiscation the goods and the payment of redemption fine in lieu of such confiscation. It is thus not a case of a complete lack of jurisdiction or powers, but hovers around the exercise of such powers or jurisdiction in relation to goods liable to confiscation and the meaning to be assigned to the word 'goods'. The word 'goods' is defined in Section 2 (52) of the said Act to mean every kind of movable property other than money and securities and includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

10. The canon of statutory interpretation in relation to a meaning to be assigned to a word given in the said statute which contain the expressions, "means and includes" should be given a broader meaning. The word 'include' in a definition provision is always regarded as expansive definition and, therefore, a word of wide connotation. It imbibes within itself, the things which apart from the other meaning, but included within the meaning of the said word and, therefore, to be considered in a wider perspective. The expression "every kind of movable property" has to be understood on the meaning assigned to the goods in the said definition section and, therefore, any restrictive meaning ascribed to the said word would oppose the legislative intent. Although the goods in its grammatical meaning is understood in the larger perspective, but the moment the definition is given in the statute, wherever such word is appearing in the said statute, it should be ascribed the meaning as given thereunder and no external aid should be resorted to. The tangible movable property of every description or kind is included within the definition of goods and, therefore, the expression supplies or receives any goods in contravention to the provision of the Act has to be understood in such literal sense and support from an external aid should be avoided. In catena of judgments relied upon by the respective parties on the powers of the authorities to confiscate the goods and payment of redemption fine in lieu thereof delivered in a case of a Customs Act are relied upon by the respective parties on the doctrine of *pari materia*. The decision rendered by the Supreme Court

in **Weston Components Ltd. v. Commissioner of Customs, New Delhi, 2000 (115) ELT 278 (SC)** is relied upon by the several High Courts and the Supreme Court on the proposition when the goods are not physically available for confiscation whether the redemption fine in lieu of such confiscation is permissible in law. The apex Court in the said decision held as under:

“It is contended by the learned counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.”

11. The Bombay High Court in **Finesse Creation INC** (supra) held that there is no fetter on the part of the authority to confiscate the goods not physically available, but such situation would arise when the goods which were physically available were released on execution of a bond or undertaking and not otherwise in the following:

“5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.”

12. In **Chinku Exports** (supra), the Tribunal in unequivocal term held when the goods are not available physically for confiscation then in absence of any bond or security for release thereof, the power of confiscation should not be exercised and consequently, redemption fine in lieu of confiscation cannot be imposed.

13. The Punjab and Haryana High Court in **Raja Impex (P) Ltd.** (supra), upon taking note of the judgment of the apex Court in **Weston Components Ltd.** (supra) and the judgment of the Tribunal in **Chinku Exports** (supra) held thus:

“12. It may also be noticed here that in the case of M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), the goods were released to the assessee on an application made by it and on the execution of a bond by the assessee and in those circumstances, the Hon'ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine. A reading of the judgment/order of the Hon'ble Apex Court in M/s. Weston Components Ltd. v. Commissioner of Customs, New Delhi (supra), would show that the Apex Court has taken the view that redemption fine can be imposed even in the absence of the goods as the goods were released to the appellant on an application made by it and on the appellant

executing a bond. Since the goods were released on a bond the position is as if the goods were available. The ratio of the above decision cannot be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for under-valuation or other irregularity, even then redemption fine could be imposed. We are, therefore, not inclined to accept the contention raised by the appellant on this issue and set aside the redemption fine.

13. The reliance of learned counsel for the revenue upon the provisions of Section 125 of the Act is also misconceived. Section 125 of the Act is applicable only in those cases which have been cleared by the concerned authorities subject to furnishing undertaking/bond etc. However, in the present case, admittedly, the goods were cleared by the respondent-authorities without execution of any bond/undertaking by the assessee. Thus, in view of the fact and circumstances of the case, we find no error in the impugned orders. No substantial question of law arises for our determination in the present appeal and the same is hereby dismissed."

14. We need not multiply the other judgments so cited on such proposition as the distinction is noticeable that in relation to a confiscation of the goods under the Customs Act, in the event, the goods are released on bond or on undertaking and subsequently the same is held liable to confiscate, there is no fetter on the part of the authorities in confiscating such goods even in absence of its physical presence and imposition of redemption fine in lieu thereof. Even in case of **Synergy Fertichem Pvt. Ltd.** (supra), the Division Bench of the Gujarat High Court dealing with the case concerning the powers of the authority under Section 130 of the Act held that pre-requisite condition enshrined in Section 130 of the Act is that the goods are liable to be confiscated and the fine in lieu thereof, if paid, may not invite such confiscation and held as under:

"174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems vs. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A No.2857 of 2011, decided on 11th August, 2017, wherein the following has been observed in para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption

fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No.(iii). "

15. We may not lose sight of a Division Bench judgment of this Court in **Shri D. Murali Mohan Patanaik v. Secretary to Government of Odisha, Finance Department and others** (W.P.(C) No.34787 of 2022 decided on 31st January, 2023) wherein in an identical situation and on somewhat parity of facts, the Court declined to exercise the power under Article 226 of the Constitution of India in order to apply and appreciate the decision of the coordinate Bench, it is our ardent duty to find the facts parity. Undeniably, on the basis of a search and seizure, several documents/materials were seized detecting the shortage of the sizable quantity of MS Billet which was not accounted for nor any valid tax invoices were issued and, therefore, intended to evade the payment of tax. The materials/documents were sized under Form-GST INS-02. Immediately, the show cause notice was issued on 27th March, 2023 as to why the proceeding should not be initiated and confiscation of the goods be not made. The petitioner communicated the authority that the Company has admitted the stock discrepancies and agreed to pay the calculated amount of penalty and fine in lieu of confiscation under Section 130 of the Act. Solely on the basis of such confession on the shortage of stocks and concession on payment of penalty and fine in lieu of confiscation, the demand order was issued which was challenged under Section 106 of the Act before the appellate authority beyond the outer limit set forth under the said provision. The appellate authority refused to condone the delay of nearly two years as the power of condonation of the period in filing the appeal have put a outer limit beyond which the appellate authority cannot exercise powers.

16. We find no ambiguity in the order of the appellate authority as the law is somewhat settled that the moment the outer cap is fixed in the statute beyond which the authority cannot travel, the rejection in this regard cannot be faulted with. The discretion vested upon the authority to condone the delay if brindled with an outer cap being fixed in the statute, the authority cannot exercise the power beyond such limit.

17. The petitioner was conscious that the order of the appellate authority in rejecting the application on the ground of limitation cannot be assailed on the legal parameters took a circuitous route under Article 226 of the Constitution of India assailing the show cause notice and imposition of the redemption fine in lieu of confiscation of a goods which is not physically available.

18. In the identical circumstances, the coordinate Bench in case of **Shri D. Murali Mohan Patanaik** (supra) as referred above found that once the payment is made without protest it is not open to challenge the entire procedure adopted for confiscation liable to be struck down. Though the petitioner in the instant case

pleaded that the said payment of redemption fine and penalty was under protest, but we do not find from the documents that any such protest was recorded; rather, there has been categorical stand taken before the authority admitting the shortage of the stocks and conceding the payment of penalty and the fine in lieu of confiscation. The coordinate Bench in such perspective where the payment is made without any protest refused to exercise the jurisdiction under Article 226 of the Constitution of India in the following:

“7. Initially, Mr. Pattanaik, learned counsel for the Petitioner repeatedly urged that he was aggrieved by the above letter. When it was pointed out to him that there was nothing in the letter about which he can be aggrieved, his contention was that the Petitioner had actually made payments under protest and was, on account of the above letter, unable to file any appeal against the demands already raised and which had been paid by the Petitioner.

8. If the Petitioner wanted to contest the demand raised, he ought to have adopted the procedure already outlined under Rule 142 (1A) of the OGST Rules. For reasons best known to him, he did not opt for that procedure. Also, till date, he has actually not registered any protest with the Department which ought to have been made contemporaneous with the making of the payment. Three months after making such payment, he has sent a vague letter contending that the liability is “not acceptable” which is neither here nor there since the Petitioner had already made the full payment of the tax demanded.

9. The Petitioner has by his own conduct disabled himself from availing the remedy available to him in law, if indeed the payment was made under protest. Since, there is no material to support the contention of the Petitioner that he made payment of the demanded tax under protest, the Court is not persuaded to accept such submission at this stage.”

19. The comity of the judicial discipline demands the adherence of the decision of the coordinate Bench and the only option left to the subsequent coordinate Bench in the event of any dissent to refer the matter to the Chief Justice to constitute a Larger Bench. The subsequent coordinate Bench must record a cogent reason for dissent and in the event, noticeable materials are not eminent and evident, uniformity in a decision is the virtue.

20. In view of the discussions made hereinabove, we do not find that the instant case warrants invocation of extraordinary powers conferred under Article 226 of the Constitution of India.

21. The writ petition thus fails. 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 fails.

2025 (II) ILR-CUT-671

**STATE BANK OF INDIA
(REGION-1, REGIONAL OFFICE, JEYPORE)
V.
RAMA KRISHNA BEHERA & ANR.**

[W.P.(C) NO. 22135 OF 2017]

19 JUNE 2025

[HARISH TANDON, C.J. & K.R. MOHAPATRA, J.]

Issue for Consideration

Whether the award passed by the learned Central Government Industrial Tribunal-cum-Labour Court should be interfered with because a different view may be possible by re-appreciating the materials on record.

Headnotes

CONSTITUTION OF INDIA, 1950 – Articles 226, 227 – Award of the Industrial Tribunal – The Workman (Opposite Party No.1) was removed from service being guilty of gross misconduct for facilitating the withdrawal of the amount from the account of a dead person – The workman preferred an appeal but it was dismissed – The dismissal was assailed before the Assistant Labour Commissioner (Central), Bhubaneswar – The learned Tribunal directed the Petitioner-Management to reinstate the Workman forthwith with 50% back wages – Whether the award passed by the learned Tribunal should be interfered with because a different view may be possible by re-appreciating the materials on record.

Held: No – It cannot be held that the impugned award is perverse, more particularly when learned Tribunal on assessment of materials on record arrived at the impugned findings – Only because a different view may be possible by re-appreciating the materials on record, this Court should not interfere with the impugned award in exercise of power conferred under Articles 226 and 227 of the Constitution – Accordingly, we find no reason to interfere with the impugned award. (Para 17)

Accordingly, it is directed that the Management shall pay a sum of Rs.5.00 lakh (rupees five lakh only) to the Workman/Opposite Party No.1 as lump sum compensation in lieu of reinstatement in service along with 50% of back wages within a period of two months hence. (Para 19)

List of Acts

Constitution of India, 1950; Industrial Disputes Act, 1947.

Keywords

Award of the Industrial Tribunal; Re-appreciation of evidence; Principle of natural justice; Opportunity of hearing; Fairness in inquiry; Violation of natural justice; Reinstatement; Workman.

Case Arising From

Award dated 14th February, 2017 passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar in Industrial Dispute Case No. 30 of 2004.

Appearances for Parties

For Petitioners : Mr. Pradipta Kumar Mohanty, Sr. Adv. and
Mr. K.T. Mudali

For Opp. Parties : Mr. Durga Prasanna Das (O.P. No.1)

Judgment/Order

Judgment

K.R. MOHAPATRA, J.

1. This matter is taken up through hybrid mode.
2. Management of State Bank of India calls in question the legality and propriety of award dated 14th February, 2017 (Annexure-1) passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (for brevity, ‘learned Tribunal’) in Industrial Dispute Case No.30 of 2004 directing the Petitioner-Management to reinstate the Workman/Opposite Party No.1 in service with 50% back wages.
- 2.1. For convenience in discussion, the parties are described as per their respective status before learned Tribunal.
3. Shorn of unnecessary details, the facts relevant for adjudication of this case are that the industrial dispute set in motion pursuant to a reference made by the appropriate Government. For ease of discussion, the reference to be answered by learned Tribunal read as under:-

“1. Whether the action of the Management of State Bank of India, Umerkote in terminating the service of Shri R.K. Behera, Messenger by way of infliction of punishment, is legal and justified? If yes, whether the same is proportionate to cause of offence committed by the workman?

2. If not, to what relief the workman concerned is entitled?”

- 3.1 The Workman (Opposite Party No.1) was appointed as Messenger in State Bank of India, Umerkote Branch with effect from 26th March, 1992 and was discharging his duties. One Smt. Radha Gouduni had a freedom fighter’s account with the Petitioner-Bank at Umerkote Branch. The said branch used to draw the pension of said Smt. Radha Gouduni from the State Government and depositing the

same in her SB account, which she used to draw from time to time. The account became dormant for non-drawal of any amount/nonoperation of the account for a considerable period. When the matter stood thus, on 3rd October, 2000, an amount of Rs.20,000/- was withdrawn from the said account on presentation of a withdrawal slip bearing a Left Thumb Impression (LTI). At the relevant time, one Sri R.N. Biswas was working as Junior Manager, Sri Koteswar Pattnaik was working as Account Opening Counter Clerk and Sri Mrutunjaya Pattnaik was working as Paying Cashier in the said branch. On the next day of such withdrawal, it was detected that the account holder, namely, Smt. Radha Gouduni had died long back and Rs.20,000/- was drawn by her grandson. When the incident came to the knowledge of the higher authority, a departmental proceeding was initiated against him on the allegation that the said withdrawal slip of Smt. Radha Gouduni was passed for payment on the approach and request of the Workman and that the Workman presented the withdrawal slip of deceased Radha Gouduni before Sri Koteswar Pattnaik, who was manning the SB account counter on the date of withdrawal and requested to issue a token stating that the depositor was unable to come to the counter because of heavy rush in the Branch and managed drawal of money from the account of a deceased person. However, the Workman recovered the amount from the drawee and deposited the same in the account by the time the departmental proceeding was initiated. One Sri S. Rajarshee, SMGS4 of Damanjodi branch was appointed as Enquiry Officer to conduct the departmental enquiry against the Workman and three other officials of Umerkote Branch named above. Enquiry report was submitted holding the Workman guilty of gross misconduct for facilitating the drawal of the amount from the account of a dead person. Hence, he was imposed with major punishment of removal from Bank's service in terms of Para-6 (b) of bipartite settlement dated 10th April, 2022. Needless to mention here that before imposing major penalty, the Workman was served with notice against the enquiry report as well as imposition of major penalty.

3.2 Being aggrieved, the Workman preferred an appeal before the appellate authority, which was dismissed and the order was communicated vide letter No. DGM/BER/DP&F/154 dated 4th July, 2003 (Annexure-5). Assailing the order of removal from service, the Workman moved the Assistant Labour Commissioner (Central), Bhubaneswar on different grounds. Conciliation being failed on 10th December, 2003, the failure report was submitted to the appropriate Government and thereafter the matter was referred to learned Tribunal to answer the aforesaid reference.

3.3 The Workman in his claim statement stated that withdrawal of cash from a SB account was not his part of duty as per the duty chart of a Messenger. There might be some irregularity and negligence on the part of the Officer who passed the withdrawal slip for payment and issued token. Denying his involvement in any manner in the alleged withdrawal of the amount from the account of deceased Radha Gouduni, the Workman pleaded that the account in question became dormant with

effect from September, 1999, as it was not being operated for long time. Before passing the withdrawal slip, Sri Koteswar Pattnaik, the SB Account Clerk was duty-bound to seek attendance of the account-holder, Smt. Radha Gouduni for verification of her LTI and forwarding slip for payment. Simultaneously, said Mrutunjaya Pattnaik, the Paying Cashier was expected to be vigilant and to ask for personal attendance of Radha Gouduni before making payment. Sri Biswas was also negligent of his duty in passing the withdrawal slip for payment without verifying the attendance and LTI of Radha Gouduni. The Workman had no role in such withdrawal and disbursement of the amount. When the matter was detected, he helped the Accounts Clerk and the Paying Cashier to recover the amount from the grandson of the deceased account holder and deposited the same in the account of deceased Radha Gouduni. Such an incident occurred due to negligence of the officials involved in passing the withdrawal slip, issuing token and releasing cash. Being a mere Messenger, the Workman should not be made liable and held responsible for the misconduct of senior officers of the Bank. A preliminary enquiry was conducted by the Assistant General Manager, SBI, Jeypore for the incident and one year thereafter, the departmental proceeding was drawn up against the Workman and three others. Charge sheet was issued without a copy of such preliminary report, statement of imputations, list of witnesses and documents relied on by the Department. The Enquiry Officer was appointed before submission of show cause reply by the Workman. Due to non-supply of the relevant documents, as stated above, the Workman could not submit his explanation. Though the departmental enquiry was conducted at Damanjodi Branch no advance Travelling Allowance (TA) was provided to attend the departmental enquiry. Though several documents were exhibited in the departmental enquiry and official witnesses were examined, copy of the same was not provided to the Workman. The statement of witnesses was not recorded on oath in presence of the Workman. He was also not provided with opportunity to cross-examine the official witnesses. The presenting Officer became the witness and relying upon his version conclusion to hold the Workman guilty was arrived at. The Workman was also not provided any opportunity to produce his witnesses. No material was placed before the Enquiry Officer to suggest that the Workman was aware of the death of Radha Gouduni and he had any connivance for withdrawal of such amount from the account of a deceased woman.

3.4 Further, other three officials were imposed with minor punishment, whereas the Workman was inflicted with major punishment of removal from service only to protect the erring and negligent officials. The departmental enquiry was vitiated for not following the principles of natural justice. Hence, he claims his reinstatement with full back wages along with all service benefits.

4. The First Party Management (SBI, Umerkote branch) filed its written statement stating that an amount of Rs. 20,000/- was withdrawn from the SB account of a deceased account holder. Taking advantage of his proximity, the Workman misled the bank officials to pass the withdrawal slip and thereby abated withdrawal

of a huge amount from the account of deceased-Radha Gouduni. Departmental proceeding was initiated against the Workman as well as three other negligent employees. Charge sheet against each of them was submitted detailing the charges and imputations. Due enquiry was conducted in conformity with principles of natural justice. Ample opportunity was given to the Workman to defend himself in the departmental proceeding. He was furnished with the charge-sheet and all necessary documents for the purpose of defending himself in the departmental enquiry, as he was primarily responsible for such illegal withdrawal. The Enquiry Officer analyzing the documents available and the statement of witnesses held the Workman guilty of the charges levelled against him. He was issued with show cause notice along with copy of the enquiry report to submit his explanation. Following due procedure, he was dismissed from service. There being no defect in the departmental enquiry followed by imposition of major punishment of dismissal from service learned Tribunal should not interfere with the order of punishment.

5. On the basis of rival pleadings of the parties, learned Tribunal framed the following issues.

1. Whether the action of the Management of State Bank of India, Umerkote in terminating the service of Shri R.K. Behera, Messenger by way of infliction of punishment, is legal and justified? If yes, whether the same is proportionate to cause of offence committed by the workman?
2. If not, to what relief the workman concerned is entitled?

6. The question with regard to fairness of the enquiry was not raised by any of the parties to the industrial dispute. Thus, without framing any preliminary issue with regard to fairness of enquiry learned Tribunal proceeded to adjudicate the issues framed and answer the reference taking up of both issues as aforesaid simultaneously.

7. To substantiate his case, the Workman examined himself as WW-1 and relied upon certain documents, viz., copy of the job card No.4 of the Management, copy of the duty chat of Messenger as per the Staff Training Centre, copy of the suspension order dated 27th October, 2000, copy of the charge sheet dated 24th September, 2001, copy of letter dated 10th November, 2001, copy of letter dated 10th December, 2001, copy of the affidavit of Sri Jugal Gouda, copy of letter of Sri S.K. Bahinipati, copy of the enquiry report, copy of letter dated 26th December, 2002, copy of letter dated 31st March, 2003, copy of the appeal memorandum and copy of order dated 4th July, 2003 of the appellate authority, which are marked as Ext.1 to Ext.13.

7.1 Likewise, the Petitioner-Management examined Sri Niranjan Swain, the Chief Manager and filed documents such as, copy of the charge sheet dated 24th September, 2001, Copy of office order No.404 dated 10th November, 2001, copy of office order dated 10th December, 2001, copy of order dated 21st March, 2003, copy of order dated 4th July, 2003, copy of charge sheet dated 24th September, 2001 in respect of the Workman, copy of the charge sheet dated 24th September, 2001 of Sri

R.N.Biswas, Sri Koteswar Pattnaik and Sri Mrutunjaya Pattnaik, copy of warning letter dated 26th October, 2002 in respect of Sri Koteswar Pattnaik, copy of punishment order in respect of said Sri R.N. Biswas, copy of punishment order of administrative warning issued in respect of Mrutunjaya Pattnaik. The Management further relied upon the original withdrawal slip dated 3rd October, 2000, original deposit slip dated 9/10th October, 2000, original letter of Workman dated 9th October, 2000. The documents relied upon by the Management were marked as Ext. 'A' to Ext. 'P'.

8. Learned Tribunal on the basis of the material available on record and contentions raised, answered the reference by directing the Petitioner-Management to reinstate the Workman forthwith with 50% back wages vide award under Annexure-1. Assailing the same, this writ petition has been filed by the Management.

9. Before adverting to the rival contentions of the parties, it is apposite to mention that the Workman has in the meantime attained the age of superannuation. Thus, direction issued by learned Tribunal for reinstatement of the Workman cannot be given effect to even if the writ petition fails. Keeping in mind the same, this Court proceeds to discuss the rival contentions of the parties.

10. Mr. Mohanty, learned Senior Advocate appearing for the Management vehemently argued that while adjudicating the industrial dispute, learned Tribunal lost sight of the charges framed against the Workman, materials available against him as well as evidence available on record. Although ample materials available on record reveal that principles of natural justice was followed at every stage of the departmental enquiry, but learned Tribunal most mechanically held that the Workman was prejudiced for noncompliance of principles of natural justice. Enquiry conducted by the Enquiry Officer cannot be a full-proof one and there bound to be certain lacunae in it, but learned Tribunal ought to have examined irregularity, if any, in the departmental proceeding, has caused any prejudice to the Workman or not. If any of the lacunae is irregular one and did not prejudice the Workman in any manner, it should not be a ground to hold the entire proceeding to be vitiated.

11. Further, the pleading of the Management in its written statement was not at all discussed by learned Tribunal while adjudicating the industrial dispute. Learned Tribunal unnecessarily emphasized the pleadings of the Workman without referring to the reply to it by the Management. It is the submission of Mr. Mohanty, learned Senior Advocate that the statements of witnesses examined on behalf of the Management were recorded in presence of the Workman and his representative and in token thereof, they signed the day-to-day proceedings. The witnesses of the Management were also elaborately and effectively cross-examined by the representative of the Workman during departmental proceeding. Moreover, when fairness of the departmental enquiry was not in question before learned Tribunal, the procedure adopted during departmental enquiry should not be a ground to answer the reference in favour of the Workman. It is his submission that keeping in mind

the delinquency of the erring officials including the Workman, they have been suitably punished.

12. Maintenance of discipline in Banking Sector being of paramount consideration no illegality has been committed by dismissing the Workman from service. Admittedly, the Workman had a role in withdrawal of the amount from a dormant account of a deceased account-holder. Although at first instance, the Workman admitted to have assisted withdrawal of the amount in good faith to help the legal heir of the deceased account-holder, but subsequently disowned the same and totally denied his involvement in the entire incident. That itself shows the *mala fide* of the Workman. This aspect was completely brushed aside by learned Tribunal while adjudicating the industrial dispute. In any case, learned Tribunal should not have directed reinstatement of the Workman. If at all, it is found that there are some lapses in the departmental proceeding including the allegation of non-compliance of principles of natural justice, learned Tribunal ought to have directed the Management to conduct the enquiry de novo from that stage following the principles of natural justice. Taking the place of the disciplinary authority and directing reinstatement of the Workman was not only illegal but the same was also not sustainable in the eye of law. He, therefore, prays for setting aside the impugned award and to remit the matter to learned Tribunal for fresh adjudication of the industrial dispute.

13. Mr. Das, learned counsel for the Workman with reference to counter affidavit filed by the Workman submitted that the departmental enquiry was perfunctory as it proceeded without providing reasonable opportunity to the Workman to defend his case. He also reiterated the contentions raised by the Workman in his statement of claim.

13.1 It is further submitted that the Management adduced evidence of one Niranjana Swain, who was not present at the time of the incident. As such, he had no direct knowledge of the incident or the alleged involvement of the Workman in it. Although he adduced evidence on the basis of the official record neither the record of departmental proceeding was exhibited before learned Tribunal nor was any endeavour made to call for the same. The Workman being a Messenger had no role to play either for withdrawal or deposit of money in any account much less the account of the deceased accountholder, Smt. Radha Gouduni. The Workman had exhibited his job card which clearly opts out his involvement in the entire incident. Ext. 'P', which was relied upon by the Management to bring home the charges levelled against the Workman was obtained from the Workman by exercising undue influence and pressure by the then Chief Manager of the Bank in order to save the other delinquent officials. In his cross-examination, the Workman had specifically stated about the same. It was alleged that the grandson of the deceased account-holder, namely, Jugal Gouda, by filing affidavit (Ext.7) clearly stated that he had illegally withdrawn the amount from the dormant account of his deceased grandmother. After the illegal withdrawal was pointed out by the bank employee, the Workman along with his co-employees rushed to his house and requested him to return the amount and he (Jugal Gouda) returned the same. Although he was present at the time of enquiry, but the Enquiry Officer did not allow said Jugal Gouda to adduce evidence in the enquiry. He also pointed out several other lacunae in the departmental enquiry and submitted that in view of the above, learned Tribunal has

committed no error in directing reinstatement of Opposite Party No.1. He, therefore, prayed for dismissal of the writ petition.

14. Heard learned counsel for the parties; also perused the materials placed before the Court at the time of hearing. It appears from record that the Workman had specifically taken a plea that the departmental enquiry was not conducted in a fair and transparent manner in conformity with the principles of natural justice. Although evasive denial was made by the Management, but no specific pleading with regard to the fairness of the departmental enquiry was available in the written statement filed by the Management. No evidence was also adduced in that regard. The Presenting Officer appears to have no direct knowledge about the incident. The evidence of the Presenting Officer was purely based on official records. It, however, appears that no prayer was made by any of the parties to try the issue of fairness of the departmental enquiry, as primary issue. Be that as it may, when the Workman had specifically raised an issue with regard to the fairness of the departmental enquiry, learned Tribunal ought to have tried the fairness of the inquiry as a preliminary issue. But, learned Tribunal proceeded to adjudicate the industrial dispute on merit basing upon the materials available on record. Evidence on behalf of the Management was led to address that the departmental enquiry was conducted in accordance with the procedure laid down in the Certified Standing Order of the Management as well as complying with the principles of natural justice. But the testimony of MW-1 does not disclose in detail about the procedure adopted in conducting the departmental enquiry. It appears that the Management had heavily relied on the report of the preliminary enquiry, the copy of which was not supplied to the Workman. It further appears that the Workman had taken a specific plea that he being a Messenger, had no role in withdrawal of cash of a third party as per the duty chart of Messenger exhibited by the Workman. The Management appears to have not adduced any evidence as to how the withdrawal slip allegedly tendered by the Workman could be entertained and an amount of Rs.20,000/- was allowed to be withdrawn in absence of the account-holder. Surprisingly, it appears from the written statement filed by the Management that the Officers involved in allowing withdrawal of Rs.20,000/- from the account of Radha Gouduni in her absence were inflicted with minor penalties. But in absence of any clinching material showing involvement of Workman in withdrawal of the cash, he was inflicted with the punishment of dismissal from service. It raises doubt about the fairness of the enquiry held against Workman.

15. On scrutiny of records, it appears that the Workman was asked to submit his explanation against the report of the Enquiry Officer in the departmental enquiry. But there is no material on record to show as to whether the Workman was given any opportunity to show cause against the proposed punishment to be imposed on him more particularly when he was inflicted with major penalty of dismissal from service. It, however, appears from the record that the Workman had helped to recover the amount, which was withdrawn from the account of a dead person. The same cannot be a ground to hold that the Workman had connived with the grandson of the deceased account-holder in withdrawing the amount.

16. On a cumulative assessment of the materials available on record, we are of the considered opinion that the materials on record were not sufficient to hold the Workman guilty of any misconduct alleged against him. Discussing the oral as well as the documentary evidence on record, learned Tribunal came to a conclusion that the departmental enquiry was not conducted with all fairness and in conformity with the principles of natural justice.

17. On a careful assessment of the submission of Mr. Mohanty, learned Senior Advocate appearing for the Management, it cannot be held that the impugned award is perverse, more particularly when learned Tribunal on assessment of materials on record arrived at the impugned findings. Only because a different view may be possible by re-appreciating the materials on record, this Court should not interfere with the impugned award in exercise of power conferred under Articles 226 and 227 of the Constitution. Accordingly, we find no reason to interfere with the impugned award under Annexure-1.

18. We have already held that the Workman has already attained the age of superannuation in the meantime and he has already received the amount under Section 17-B of the Industrial Disputes Act, 1947 till the date of his superannuation. Mr. Mohanty, learned Senior Advocate, in course of argument submitted and also placed on record a statement showing disbursement of an amount to the Workman beyond the date of his superannuation. Mr. Das, learned counsel appearing for the Workman does not seriously disputes the same. In that view of the matter, direction of learned Tribunal for reinstatement of the Workman does not arise at this stage. However, keeping in mind the that the Workman was drawing a salary of Rs.5,792/- at the time of his dismissal from service and that the Workman had attained the age of superannuation in the year 2022, this Court is of the considered opinion that an amount of Rs.5.00 lakh towards lump sum compensation in lieu of his reinstatement and 50% of the back wages, as directed by learned Tribunal, will meet the ends of justice.

19. Accordingly, it is directed that the Management shall pay a sum of Rs.5.00 lakh (rupees five lakh only) to the Workman/Opposite Party No.1 as lump sum compensation in lieu of reinstatement in service along with 50% of back wages within a period of two months hence.

20. The writ petition is disposed of accordingly. In the facts and circumstances there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition disposed of.

**HUIKA HARI
V.
STATE OF ORISSA**

[JCRLA NO. 91 OF 2007]

20 JUNE 2025

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

Issues for Consideration

1. Whether only on the basis of “last seen together” the appellant should be convicted without any other corroborative evidence.
2. Whether the chemical examination report can be utilized against the accused/ appellant when no question has been put to him in the statement recorded U/s. 313 of Cr.P.C with respect to the chemical examination report.

Headnotes

(A) CRIMINAL TRIAL – Last seen together – The appellant was convicted for commission of offence punishable U/s. 302 of the Indian Penal Code, 1860 – The appellant was last seen in the company of the deceased at about 10.30 p.m. leaving the quarter and thereafter the dead body of the deceased was found on the next day morning on the Airstrip road side – The circumstances available in record do not form a complete chain to come to the irresistible conclusion that it was the appellant who is the author of the crime – Whether only on the basis of “last seen together” the appellant should be convicted without any other corroborative evidence.

Held: No – In absence of any other clinching evidence on record, merely because the prosecution has proved that the deceased died a homicidal death and a wooden handmade cricket bat was recovered at the instance of the appellant coupled with the last seen together evidence, it cannot be said that the prosecution has proved that the chain of circumstances is so complete to come to an inescapable conclusion that within all human probabilities, the crime was committed by the appellant and none else and that the facts so proved unerringly point towards the guilt of the appellant.

(Para 15)

(B) CODE OF CRIMINAL PROCEDURE, 1973 – Section 313 – Accused Statement – The chemical examination report (Ext. 16) indicates that full pant and full shirt of appellant (M.O. V and M.O. VI) were containing human blood of Group-B and the wearing apparels of the deceased

was also containing human blood of Group-B – But in the statement recorded under Section 313 of Cr.P.C. no question has been put to him with respect to the chemical examination report – Whether the chemical examination report can be utilized against the accused/ appellant when no question has been put to him in the statement recorded U/s. 313 of Cr.P.C. with respect to the chemical examination report.

Held: No – Since this incriminating circumstance i.e. chemical examination report (Ext.16) finding on the full pant and full shirt which were marked as M.O. V and M.O. VI has not been put to the appellant in his statement recorded under section 313 of Cr.P.C., the learned trial Court should not have utilised such finding in Ext.16 against the appellant. (Para 13)

Citations Reference

Padman Bibhar -Vrs.- State of Odisha, **2025 SCC OnLine SC 1190**; Dharnidhar and Ors. -Vrs.- State of U.P., **(2010) 7 Supreme Court Cases 759**; Kuldip Singh -Vrs.- State of Delhi, **(2003) 12 Supreme Court Cases 528**; Kanhaiya Lal -vs.- State of Rajasthan, **(2014) 4 Supreme Court Cases 715 – referred to.**

List of Acts

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

Keywords

Last seen together; Circumstantial evidence; Motive; Chain of circumstance; Accused statement; Chemical Examination Report; Blood stain; Inquest report.

Case Arising From

Judgment and order dated 31.08.2007 passed by the 2nd Additional Sessions Judge, Berhampur (Ganjam) in Sessions Case No.45 of 2006 (S.C. 362/04 GDC).

Appearances for Parties

For Appellant : Mr. Janmejaya Katikia, Ms. Jijnasa Panda and
Ms. Himshi Katikia

For Respondent : Mr. Partha Sarathi Nayak, AGA

Judgment/Order

Judgment

BY THE BENCH:

The appellant Huika Hari faced trial in the Court of learned 2nd Additional Sessions Judge, Berhampur (Ganjam) in Sessions Case No.45 of 2006 (S.C. 362/04 GDC) for commission of offence punishable under section 302 of the Indian Penal Code (hereinafter 'I.P.C.') on the accusation that in the intervening night of 22/23.01.2004, he committed murder of Huika Nagaraju (hereinafter 'the deceased') at the near end of the Airstrip roadside of Berhampur University.

The learned trial Court vide impugned judgment and order dated 31.08.2007 found the appellant guilty of the offence charged and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- (ten thousand only), however, no default sentence has been awarded for nonpayment of the fine amount.

Prosecution Case:

2. The prosecution case, as per the first information report (hereinafter 'F.I.R.') (Ext.6) lodged by M. Gopal Rao (P.W.6), Campus Supervisor of Berhampur University on 23.01.2004 before the Officer-in-Charge of Gopalpur police station, in short, is that he came to know from some persons at Monark Market that the dead body of the deceased was lying at the Airstrip and somebody had committed murder of the deceased. P.W.6 came to the spot where the dead body was lying and found injuries on the person of the deceased. Accordingly, he lodged the written report against unknown persons, basing on which Gopalpur P.S. Case No.07 dated 23.01.2004 was registered under section 302 of I.P.C. by P.W.11, Kailash Chandra Acharya, the Officer-in-Charge of Gopalpur P.S.

After registration of the case, P.W.11 took up investigation of the case, examined the informant, came to the spot, conducted inquest over the dead body of the deceased in presence of the witnesses, prepared the inquest report (Ext.3) and sent the dead body to the F.M.& T. Department of M.K.C.G. Medical College & Hospital, Berhampur for post mortem examination through the constables. P.W.11 also seized the blood stained earth, sample earth and two hawai sleepers of the deceased from the spot in presence of the witnesses under seizure list Ext.7. He examined the family members of the deceased, other witnesses, seized the wearing apparels of the deceased on production by the escort constable at Gopalpur police station under seizure list (Ext.1). The wearing apparels of the appellant were seized as were hanging on the wire on the back side of the rented house in presence of witnesses as per seizure list (Ext.5). The appellant was arrested and his statement was recorded under Section 27 of the Evidence Act and he led the police party and other witnesses to a busy area which was at a distance of about 80 feet from the spot where the dead body was lying and produced a wooden cricket bat from inside the bush which was seized as per seizure list Ext.8. The appellant was forwarded to Court on 25.01.2004. P.W.11 prepared the spot map vide Ext.12 and on 06.02.2004, he handed over the charge of investigation to P.W.12, Kishore Chandra Dash, who examined the witnesses, revisited the sport, received the P.M. report of the deceased, sent the viscera of the deceased to S.F.S.L., Bhubaneswar for chemical examination,

seized some photographs of the scene of occurrence, produced the weapon of offence before the doctor, who conducted post mortem examination and made a query regarding possibility of injuries sustained by the deceased with such weapon and received the query report vide Ext.11 and on completion of investigation, he submitted charge sheet against the appellant under section 302 of the I.P.C.

Framing of Charges:

3. After submission of the charge sheet, the case was committed to the Court of Session after complying due formalities. The learned trial Court framed charge against the appellant on 10.02.2005. The appellant refuted the charge and claimed to be tried and accordingly, the sessions trial procedure was resorted to establish his guilt.

Prosecution Witnesses, Exhibits and Material Objects:

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

P.W.1 Golak Behera, a police personnel attached to Gopalpur Police Station, who was in charge of the Centry on 23.1.04 is a witness to the seizure to the wearing apparels of the deceased produced by the escorting constable after post mortem examination under seizure list Ext.1.

P.W.2 D. Kaibalya Dora was the police constable attached to Gopalpur Police Station, who escorted the deceased's body to F.M.&T, M.K.C.G Medical College &Hospital for postmortem examination on 23.01.04 and later produced the deceased's blood-stained wearing apparels before the I.O. for seizure.

P.W.3 Hrushikesh Panda, Section Officer of Bhanja Vihar University is a witness to the inquest over the dead body of the deceased at the crime scene on 23.01.04 and noticed multiple injuries on the deceased including wounds on left forehead and shoulder.

P.W.4 Gandharbasen Pradhan was the police constable in-charge of Centry at Gopalpur police station, who is a witness to the seizure of deceased's blood-stained clothings produced by constable under seizure list Ext.1.

P.W.5 Surendranath Das, University staff member received information about the murder of the deceased on 24.01.04 morning and witnessed police seizing a sky colored shirt and navy blue pant that afternoon when police personnel requested his signature on the seizure documentation, with the seized items later identified as M.O.V and M.O.VI.

P.W.6 M. Gopal Rao, the informant who first saw the dead body in the case, knew both the appellant and the deceased. He deposed that on 23.1.04 around 9 a.m., while he was returning to his quarters, he heard that someone had committed murder of the deceased at the end of Aerodrome field, Rangeilunda. He immediately

rushed to the spot and found the deceased's body lying on the Aerodrome field with blood oozing from the nostrils and ears, injured lower lip with bleeding, and white foam on the mouth. He came to Gopalpur P.S. and lodged the F.I.R.

P.W.7 Promod Ch. Choudhury, police constable attached to Gopalpur P.S. accompanied the O.I.C. and other staff to Rangeilunda Aerodrome field on 24.01.04 at about 4:30 p.m. along with the appellant and some university staff. He stated about seizure of wooden handmade cricket bat by the I.O. at the instance of the appellant vide seizure list Ext.8.

P.W.8 H. Hymavati, the widow of deceased identified the appellant as her deceased husband's younger brother. She testified about the events of 22.01.2004 night when the incident occurred at their official university quarters. Around 10 p.m., her deceased husband and the appellant went to the garage house to bring a wooden cot, which they transported back in a mini truck after half an hour. After unloading the cot, both went back to park the vehicle in the University garage and at that time, the appellant carried a wooden cricket bat of the son of the deceased, claiming that it was for the protection against street dogs during their walk back. When they didn't return quickly, she waited and then went to bed. Around midnight, she heard the opening of front door and when she called out, only the appellant responded, telling her that the deceased had not come with him and would come later as he was taking liquor. She became worried when her husband didn't return even after considerable delay and asked the appellant to search for him. The appellant went out for half an hour and returned and told P.W.8 that he could not find her husband anywhere. The next morning around 7 a.m., her children informed her that their father was found dead at the Aerodrome field, after which she rushed to the spot and found her husband's body with serious bleeding injuries on his head and ear.

P.W.9 H. Srinibash, the son of deceased identified the appellant as his uncle. He corroborated his mother's testimony about the events of 22.01.2004 night when his deceased father and the appellant went together to the university garage around 10 p.m. to bring a cot. After bringing the cot in a mini truck, both went back to park the vehicle, with the appellant taking his cricket bat, telling that it was for the protection from street dogs during their return walk. The next morning, his mother informed him that someone had killed his father. When they went to the Aerodrome field, they found police and people gathered around his father's dead body, which had bleeding injuries all over. He noticed the appellant was sitting about 10 feet away from the place where his father's dead body was lying, but when asked about the cause of death of the deceased, the appellant didn't reply. He mentioned that prior to this incident, whenever his deceased father was returning home after taking liquor, the deceased and the appellant used to quarrel. He identified the recovered cricket bat (M.O.XI) as his own handmade cricket bat.

P.W.10 Dr. J.K. Dash conducted the post mortem examination over the dead body of the deceased and proved the P.M. Report (Ext.10) and also opined to the

query made by the I.O. in affirmative regarding possibility of injuries sustained by the deceased with the cricket bat and the query report is proved as Ext.11.

P.W.11 Kailash Ch. Acharya, Officer-in-Charge of Gopalpur Police Station is the Investigating Officer of the case and later on he handed over the investigation of the case to his successor Kishore Chandra Dash (P.W.12) upon his transfer on 06.02.2004 and P.W.12 carried on the investigation and on completion of investigation, he submitted charge sheet.

The prosecution exhibited seventeen documents. Ext.1 is the seizure list, Ext.2 is the dead body challan, Ext.3 is the inquest report, Ext.4 is the command certificate, Ext.5 is the seizure list, Ext.6 is the F.I.R., Ext.7 and Ext.8 are the seizure lists, Ext.9 is the confessional statement of appellant, Ext.10 is the post mortem report, Ext.11 is the examination report of weapon of offence, Ext.12 is the spot map, Ext.13 is the acknowledgement, Ext.14 is the forwarding report of the S.D.J.M., Ext.15 is the acknowledgment receipt, Ext.16 and Ext.17 are the chemical examination reports.

The prosecution has also proved twenty three material objects. M.O.I is red coloured sweater, M.O.II is black coloured full pant, M.O.III is half baniyan, M.O.IV is sky coloured chadi, M.O.V is navy blue coloured full pant, M.O.VI is sky coloured shirt, M.O.VII is pair of chappal, M.O.VIII is broken glass pieces, M.O.IX is blood stained earth, M.O.X is sample earth, M.O.XI is handmade cricket bat, M.O.XII to XVII are positive photographs and M.O.XVIII to XXIII are the negatives.

Defence Plea:

5. The defence plea of the appellant is one of denial.

Findings of the Trial Court:

6. The learned trial Court after assessing the oral as well as the documentary evidence on record, came to hold that in view of the evidence of P.Ws.3, 6, 8 and 9 so also the evidence of the doctor (P.W.10) and P.M. report (Ext.10), the prosecution has proved that the death of the deceased was homicidal in nature. The learned trial Court taking into account the motive behind the commission of crime as deposed to by P.W.9, the evidence of last seen as deposed to by P.W.8 and P.W.9, the seizure of wearing apparels of the appellant as deposed to by P.Ws.5, 6 and the I.O. (P.W.11) and leading to discovery of weapon of offence, i.e., cricket bat as deposed to by P.Ws.6, 7 and 11, found the appellant guilty of the offence charged.

Contentions of the Parties:

7. Mr. Janmejaya Katikia, learned counsel being ably assisted by Ms. Jijnasa Panda and Himshi Katikia, learned counsel appearing for the appellant emphatically contended that there is no direct evidence in the case and the case is based on circumstantial evidence and the motive behind the commission of crime as deposed

to by P.W.9, the son of the deceased is shaky in nature. He further argued that the appellant and the deceased were closely related to each other and the deceased was the step brother of the appellant and the materials available on record indicate that prior to the occurrence, they had gone together to bring one wooden cot and they also brought it, which shows that there was good relationship between them. He argued that the last seen evidence adduced by P.Ws.8 and 9 should not be accepted and though the minor son of the deceased being examined as P.W.9, who is a child witness stated that when he came to the spot, he found the appellant was sitting at a distance of ten feet from the dead body of his father but the evidence of P.W.8, the widow of the deceased who accompanied P.W.9 is completely silent in that respect. He further argued that though one pant and shirt seized by the I.O. (P.W.11) were stated to be that of the appellant, but there is no clinching evidence that the said pant and shirt belonged to the appellant. Learned counsel further argued that even though the chemical examination report indicates that human blood of Group-B was found in the full pant and shirt of the appellant, which is stated to be the blood group of the deceased, but in the 313 Cr.P.C. statement of the appellant, no question has been put with respect to the C.E. report (Ext.16) and therefore, this evidence should not have been utilized against the appellant. He further argued that the wooden bat which was seized by the police stated to be at the instance of the appellant was sent for chemical examination and C.E. report, indicated that the origin and the group of the blood could not be determined. The learned counsel argued that the circumstances available on record do not form a complete chain to come to the irresistible conclusion that it was the appellant who is the author of the crime and therefore, it is a fit case where benefit of doubt should be extended to the appellant. To substantiate his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Padman Bibhar -Vrs.- State of Odisha reported in 2025 SCC OnLine SC 1190.***

Mr. Partha Sarathi Nayak, learned Additional Government Advocate, on the other hand, supported the impugned judgment and argued that the two witnesses P.W.8 and P.W.9 are the natural witnesses, who have stated that the appellant left the house in the company of the deceased at around midnight and on the next day morning, the dead body of the deceased was found from the Aerodrome field and specific questions have been put on this last seen circumstances to the appellant in the 313 Cr.P.C. statement, but no explanation has been offered by the appellant. The learned counsel further argued that the seizure of weapon i.e. the cricket bat at the instance of the appellant from inside the bush as per the leading to discovery statement of the appellant recorded under section 27 of the Evidence Act is another clinching evidence, which is very relevant inasmuch as the doctor (P.W.10) who conducted post-mortem examination also examined the bat on being produced by the I.O. and gave a positive opinion that the injuries detected on the body of the deceased were possible by such bat. The learned counsel further argued that the appellant's dresses i.e. one full pant and shirt were seized from the back side of the house where it was hanging and the it was sent for chemical examination and the

C.E. Report (Ext.16) clearly indicates that it contained human blood of Group-B which was also the blood group of the deceased which would be evident from the report and since the homicidal death of the deceased is not in dispute, the circumstances which have been established by the prosecution can be said to be sufficient to form a complete chain and therefore, the learned trial Court is quite justified in accepting these circumstances and finding the appellant guilty under section 302 of the I.P.C.

Whether the deceased met with a homicidal death?:

8. Adverting to the contentions raised by the learned counsel for the respective parties, let us first assess the evidence on record to see whether the prosecution has successfully established that the deceased met with homicidal death or not.

Apart from the evidence of the witnesses who found the dead body of the deceased lying in Aerodrome field with injuries, the inquest report marked as Ext.3, the evidence of the doctor (P.W.10) so also the post mortem examination report (Ext.10) are very much relevant for this purpose.

P.W.10 conducted the post mortem examination over the dead body of the deceased on 23.01.2004 in the department of F.M.&T, MKCG, Medical College and Hospital, Berhampur and he noticed the following external injuries:

- (i) Abraded contusion 3.5cm x 3cm over left frontal area of head, 5 cm above the left eyebrow;
- (ii) Abraded contusion of 1cm x 0.5cm over a swelling of 3cm x 3cm just above the outer end of left eyebrow;
- (iii) Abrasion 8cm x 5.5cm on the leftside face in front of the left ear;
- (iv) Right side lower lip is found contused, 3cm x 1.5cm with laceration of the mucosal surface;
- (v) Abraded contusion 3 cm x 2.5 cm on the tip of left shoulder and blood was coming out from mouth, nostril and right ear.

On dissection, the following internal injuries were noticed:-

- (i) The under surface of the scalp was found contused with extravasation of blood at left frontal area of head corresponding external injury nos. (i) & (ii);
- (ii) 0.5cm thick sub scalp hematoma was found spreading over right side of head involving frontal, temporal and parietal area with contusion of right temporal muscle;
- (iii) A depressed and comminuted fracture of skull bone in an area of 6cm x 6cm on right posterior parietal area of head, from the upper and anterior portion of which a fissure fracture of 12.5cm long extending forwards towards right frontal bone to the medial part of superciliary arch. Another fissure fracture extending downwards from the anteroinferior portion of the depressed area to the base of skull in front of right ear;
- (iv) Acute diffused subdural hemorrhage was noticed spreading over both the hemisphere of the brain being more mark on left side;

- (v) The fracture line extends to the base of skull on the floor of right middle and posterior cranial fossa;
- (vi) Surface contusion detected on the anterior and inferior aspect of left temporal lobe of brain;

The doctor has stated that during post-mortem examination, he noticed that 200 grams of rice curry food in the stomach which was emitting alcohol like smell and he preserved the viscera and handed over the same to the police for chemical examination at S.F.S.L. He also preserved the scalp hairs and sample blood of the deceased and handed over the same to the accompanying police for further examination at R.F.S.L. He has also proved the post mortem report vide Ext.10. Though some questions have been put in the cross-examination by the learned defence counsel, but the evidence of the doctor has remained unchallenged.

The learned counsel for the appellant has not challenged the finding on homicidal death of the deceased.

After going through the evidence of the doctor and the post mortem report apart from the inquest report and the evidence of witnesses, we are of the humble view that the finding of the learned trial Court that the prosecution has successfully established that the deceased met with a homicidal death is quite justified.

Appreciation of a case based on circumstantial evidence:

9. Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute that there is no direct evidence in the case in hand as to who committed the murder of the deceased, when and how and the prosecution case hinges on circumstantial evidence. It is well established rule of criminal justice that fouler the crime, the higher should be the degree of proof. A moral opinion, howsoever strong or genuine cannot be a substitute for legal proof. The Court should not be carried away by the heinous nature of the crime or gruesome manner in which it was found to have been committed. When a case is based on circumstantial evidence, a very careful, cautious and meticulous scrutinization of the evidence is necessary and it is the duty of the Court to see that the circumstances from which the conclusion of guilt is to be drawn should be fully proved and those circumstances must be conclusive in nature and all the links in the chain of events must be established clearly beyond reasonable doubt and established circumstances should be consistent only with the hypothesis of guilt of the accused and totally inconsistent with his innocence. Whether the chain of events is complete or not would depend on the facts of each case emanating from the evidence. The Court should not allow suspicion to take the place of legal proof and has to be watchful to avoid the danger of being swayed away by emotional consideration. The long distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent, credible and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone,

irrespective of the fact that it is very strong or probable, cannot take the place of legal proof. The quality and credibility of the evidence should be brought on record so that the miscarriage of justice is avoided. The Court should not forget that the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the accused till the charges are proved beyond all reasonable doubt.

The prosecution has relied upon the following circumstances to prove the guilt of the appellant:-

- (i) Last seen together;
- (ii) Motive;
- (iii) Seizure of Pant (M.O.V) and Shirt (M.O.VI) of Appellant;
- (iv) C.E. Report (Ext.16) finding;
- (v) Seizure of wooden handmade cricket bat;

Last Seen Together:

10. The circumstance of last seen of the appellant in the company of the deceased is deposed to by two witnesses i.e. P.W.8, the widow of the deceased and P.W.9, the minor son of the deceased.

P.W.8 has stated that on the night of occurrence, i.e., on 22.01.2004 at about 10.00 p.m., the deceased along with the appellant went to the garage house to bring a wooden cot and the garage house is situated inside the university campus. She further stated that after about half an hour, both of them brought a wooden cot in a mini truck to the quarters and unloaded the said cot and again went away to keep the mini truck in the garage and while leaving the house, the appellant took the wooden handmade cricket bat which belonged to P.W.9 telling that since during night, the street dogs were creating problems, he was taking the bat. She further stated that though she waited for some time but neither the appellant nor the deceased returned back and then she went to bed and at about midnight, she heard opening of the front door of the quarters which was bolted from outside when the appellant and deceased left the quarters. P.W.8 did not find the deceased but only the appellant had returned back. When she asked the appellant regarding the whereabouts of her deceased husband, the appellant replied that the deceased would come at a later point of time as he was taking liquor. P.W.8 further stated that the appellant went to his bed and she also went to her bed and since the deceased did not return in that night, she requested the appellant to go and search for the deceased. The appellant went outside and after half an hour, he returned and informed her that he could not find the deceased anywhere. She further stated that on the next day morning, she came to know about the dead body of her deceased husband was lying in the aerodrome field at Rangeilunda and she rushed to the field and found the dead body was lying there with bleeding injuries.

The reply given by the appellant to the query made by P.W.8 that the deceased would come at a later point of time as he was taking liquor, gets corroboration from the evidence of the doctor (P.W.10) who stated that during P.M. examination, he found rice curry food in the stomach of the deceased which was emitting alcohol like smell. Though the viscera were preserved and it was handed over to the police for chemical examination at S.F.S.L., but the I.O. has not taken any steps for sending the same. Of course, the defence except confronting some parts of her previous statement to P.W.8 recorded by the investigating officer (P.W.11) in the cross-examination which were not proved through P.W.11 and giving some suggestions, has not brought out anything substantial to disbelieve her evidence relating to the last seen.

The evidence of P.W.9, the child witness, who is the son of the deceased and P.W.8 is required to be discussed here. Some formal questions were put to P.W.9 by the learned trial Court to test his intellectual capacity and understanding and on the basis of the answers given by the witness, the learned trial Court came to hold that P.W.9 had knowledge about worldly affairs. Treating this witness to be a competent witness, his evidence was recorded. After perusing the questions put by the learned trial Court and the answers given by P.W.9, we are of the view that the learned trial Court has taken sufficient precautions before recording the evidence of the child witness and the learned trial Court has rightly held the child witness to be a competent one.

P.W.9 has almost made an identical statement like his mother (P.W.8) regarding the appellant and the deceased leaving the quarters together after keeping the cot in the quarters to keep the vehicle in the garage and also the appellant carrying cricket bat with him. Like P.W.8, the learned defence counsel has failed to bring anything in the cross-examination of P.W.9 to disbelieve him.

Therefore, the evidence of these two witnesses i.e. P.W.8 and P.W.9 proves that in the occurrence night at about 10.30 p.m., the appellant and the deceased went together after keeping the wooden cot in the quarters and the appellant was carrying the cricket bat of P.W.9 and the appellant only returned to the quarters but the deceased did not return and that his dead body of the deceased was found on the next day with injuries in the aerodrome field.

Motive:

11. So far as the motive part is concerned, P.W.9, the child witness has stated that prior to the occurrence, whenever his deceased father was returning home after taking liquor, the appellant used to quarrel with him. He further stated about the presence of the appellant at a distance of about 10 feet away from the dead body of his father lying in the aerodrome field. The evidence of P.W.8 is completely silent on either aspect. P.W.8 has not stated that at any point of time, the appellant was quarrelling with the deceased over the issue of taking liquor by the deceased. She has also not stated that the appellant was present near the dead body in the

aerodrome field on the next day morning when both she as well as her son visited the spot. The motive part that has been put forth by the prosecution through the evidence of P.W.9 cannot be said to be that clinching and it is very difficult to accept that merely because the appellant was quarrelling with his elder brother (deceased) for taking liquor and coming to the house in a drunkard condition, the same would be the motive behind the commission of the crime, rather being the younger brother, he might be dissuading the deceased to take liquor. The appellant also went with the deceased to bring the cot to the quarters which shows the relationship between the two was cordial. Therefore, we are of the view that the prosecution has failed to prove any cogent motive on the part of the appellant to commit the murder of the deceased.

In a case based on circumstantial evidence, motive assumes pertinent significance as existence of motive is always an enlightening factor in a process of presumptive reasoning in such a case. Absence of motive puts the Court on its guard to scrutinize the circumstances more carefully to ensure that suspicion and conjecture do not take the place of legal proof.

Seizure of Pant (M.O.V) and Shirt (M.O.VI) of Appellant:

12. The evidence of P.Ws.5, 6 and 11, no doubt proves about the seizure of a pant and a shirt under seizure list Ext.5, but it is not proved by way of cogent evidence that it belonged to the appellant. Needless to say that the appellant has denied in the accused statement that the pant (M.O.V) and shirt (M.O.VI) belonged to him.

The evidence of P.W.5 indicates that on 24.01.2004, when he had come to his quarters to take lunch, one police personnel called him to come out and showed one sky coloured full shirt and one navy blue coloured full pant and requested him to sign on a paper and accordingly, he had put his signature on the seizure list Ext.5. This witness has been declared hostile by the prosecution. P.W.5 has not whispered anything that the full pant and the shirt which were seized belonged to the appellant.

Similarly, the evidence of P.W.6 indicates that on 24.01.2004 at about 2.30 p.m., while he was in his University Office at Bhanja Vihar, the Officer-in-Charge of Gopalpur P.S. as well as Bhanja Vihar outpost contacted him and he accompanied the police personnel to the house of the deceased and the appellant was also there and they found one barbed wire fencing on the backside of the house of the deceased and noticed one navy blue coloured full pant and one sky coloured full shirt were on the barbed fence and the police seized the same as per seizure list Ext.5 and he also proved the full pant and full shirt marked as M.O.V and M.O.VI. Most peculiarly, the evidence of P.W.6 is also silent that the pant and shirt which were seized belonged to the appellant.

P.W.11, the I.O. has stated about the seizure of the pant and shirt vide seizure list Ext.5 and though he has stated that it belonged to the appellant, but since the I.O.

has got no personal knowledge in that respect, it is very difficult to accept such evidence.

The evidence that the wearing apparels M.O.V and M.O.VI were of the appellant, could have been best proved through P.W.8 and P.W.9 by the prosecution and it could also have been proved that while the appellant left the quarters with the deceased on the date of occurrence, he was wearing M.O.V and M.O.VI, but the same has not been done. Therefore, we are of the view that Mr. Katikia, learned counsel for the appellant is quite justified in making the submission that the prosecution has not proved by cogent evidence that the pant and shirt which were seized by the I.O. (P.W.11) under seizure list Ext.5 belonged to the appellant. The learned trial Court most peculiarly has held that since the appellant and the deceased were residing in one house and there is no evidence that M.O.V and M.O.VI were the wearing pant and shirt of the deceased or of his son, it was inferred that the said pant and shirt belonged to the appellant. We are not able to accept such reasoning assigned by the learned trial Court. P.W.8 has not stated that M.O.V and M.O.VI did not belong to the appellant and P.W.9 has also not stated that M.O.V and M.O.VI did not belong to him. M.O.V and M.O.VI were the dresses of a male person and three male persons i.e. the appellant, deceased and P.W.9 who was around 14 years were staying in the quarters of the deceased, in the backside of which those were seized. Therefore, it was the duty of the prosecution to adduce positive evidence that M.O.V and M.O.VI belonged to the appellant who were acquainted with it or at least to adduce the evidence that it did not belong to the other two male persons who were residing together with the appellant in the same quarters.

C.E. Report (Ext.16) finding:

13. The chemical examination report (Ext.16) indicates that the full pant and full shirt which were marked as M.O.V and M.O.VI were containing human blood of Group-B and the wearing apparels of the deceased was also containing human blood of Group-B.

The learned trial Court should have been put a pertinent question to the appellant in his statement recorded under section 313 of Cr.P.C. regarding the finding in Ext.16 giving the scope to the appellant to explain the same. Law is well settled that when the attention of the accused is not drawn specifically to the incriminating circumstance during his examination under section 313 of Cr.P.C., such circumstance cannot be used against him. Examination of an accused is not a mere formality. It has practical utility for the criminal Courts in affording opportunity to the accused to explain the incriminating circumstances and to explain his stand in defence. Sub-section (4) of section 313 of the Code indicates that answers given by the accused, during his examination under section 313, may be considered by the Court. The words "may be taken into consideration" in such enquiry or trial as appearing in subsection (4) indicates that the legislature laid down the guideline for the Court to give due weight to such answers. In the case of

Dharnidhar and Ors. -Vrs.- State of U.P. reported in (2010) 7 Supreme Court Cases 759, it is held that the legislative intent behind section 313 of Cr.P.C. appears to have twin objects, firstly, to provide an opportunity to the accused to explain the circumstances appearing against him and secondly, for the Court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement. The proper methodology to be adopted by the Court while recording the statement of the accused under section 313 of the Cr.P.C. is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the Court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail of that opportunity and if he fails to do so then it is for the Court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under section 313 of the Cr.P.C. In the case of **Kuldip Singh -Vrs.- State of Delhi reported in (2003) 12 Supreme Court Cases 528**, it is held if a material piece of evidence is not put to the accused when he is examined under section 313 of Cr.P.C., the prosecution is disentitled from placing reliance on such evidence.

Since this incriminating circumstance i.e. chemical examination report (Ext.16) finding on the full pant and full shirt which were marked as M.O.V and M.O.VI has not been put to the appellant in his statement recorded under section 313 of Cr. P.C., the learned trial Court should not have utilised such finding in Ext.16 against the appellant.

Seizure of wooden handmade cricket bat:

14. Now, coming to the seizure of wooden handmade bat at the instance of the appellant on the basis of his statement recorded under Section 27 of the Evidence Act, though the bat was sent for chemical examination and the C.E. report indicates that there was blood stain found on the bat but the origin and the group of blood could not be ascertained. Even if the doctor has stated that the cricket bat which was produced before him could cause the injuries sustained by the deceased but since the findings in the chemical examination report so far as bat is concerned is completely is silent on the origin and group of blood noticed on it, such circumstance cannot be said to be that clinching in nature.

Conclusion:

15. In view of the foregoing discussions, even if it is proved that the appellant was last seen in the company of the deceased at about 10.30 p.m. leaving the quarters and thereafter the dead body of the deceased was found on the next day morning in the Airstrip roadside, but we cannot lost sight of the ratio laid down in the case of **Padman Bibhar (supra)** in which reliance has been placed in the case of **Kanhaiya Lal -vs.- State of Rajasthan reported in (2014) 4 Supreme Court Cases 715** wherein it has been held that evidence on ‘last seen together’ is a weak

piece of evidence and conviction only on the basis of ‘last seen together’ without there being any other corroborative evidence against the accused, is not sufficient to convict the accused for an offence under section 302 of I.P.C.

Thus, in absence of any other clinching evidence on record, merely because the prosecution has proved that the deceased died a homicidal death and a wooden handmade cricket bat was recovered at the instance of the appellant coupled with the last seen together evidence, it cannot be said that the prosecution has proved that the chain of circumstances is so complete to come to an inescapable conclusion that within all human probabilities, the crime was committed by the appellant and none else and that the facts so proved unerringly point towards the guilt of the appellant. Law is well settled that suspicion, howsoever grave it may be, cannot take the place of proof or form the basis of conviction and heinous the crime, higher must be proof. Therefore, we are of the view that the learned trial Court was not justified in convicting the appellant under section 302 of the I.P.C. and thus it is a fit case where benefit of doubt should be extended in favour of the appellant.

Accordingly, the JCRLA is allowed. The conviction of the appellant under Section 302 I.P.C. is hereby set aside and he is acquitted of such charge.

The appellant, who is on bail by order of this Court, is hereby discharged from liability of the bail bonds and the surety bonds shall also stand cancelled.

Before parting with the case, we would like to put on record our appreciation to Mr. Janmejaya Katikia, learned counsel along with Ms. Jijnasa Panda and Himshi Katikia, learned counsel appearing for the appellant by rendering their valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Partha Sarathi Nayak, learned Additional Government Advocate for the State of Odisha.

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:

JCRLA allowed

2025 (II) ILR-CUT-695

**SUSANTA @ SUSIL KUMAR SAHU
V.
STATE OF ODISHA**

[JCRLA NO. 08 OF 2014]

27 MAY 2025

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

Issues for Consideration

1. Whether absence of motive can set at naught the other evidence pointing towards the guilt of the accused.
2. Whether the dying declaration can be relied upon.
3. Whether the offences under Sections 304-B and 498-A of the Indian Penal Code, 1860 and under Section 4 of the Dowry Prohibition Act, 1961 are sustainable.

Headnotes

(A) CRIMINAL TRIAL – Absence of Motive – The appellant was found guilty by the learned Trial Court for commission of offences under Sections 498-A, 304-B and 302 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act – In the present case the family members of the deceased and neighbors of the appellant have not supported the prosecution case and turned hostile – Prosecution has not been able to prove any motive on the part of the appellant to commit the offences – Whether absence of motive can set at naught the other evidence pointing towards the guilt of the accused.

Held: No – Law is well settled that motive increases the probability of commission of an offence, but motive alone cannot prove an offence and similarly in absence of proof of motive, it cannot be a ground to set at naught the other evidence pointing towards the guilt of the accused. (Para 14)

(B) INDIAN EVIDENCE ACT, 1872 – Section 32 – Dying declaration – Relevant witnesses have turned hostile and prosecution case rests solely on the dying declaration – The doctor who was present at the time of recoding of the dying declaration was not examined by prosecution – Whether the dying declaration can be relied upon.

Held: Yes – We find from a perusal of the dying declaration that Dr. Asit Kumar Sethi has given a certificate vide Ext.4 that the deceased was conscious, oriented and fit to give the dying declaration and his certificate and signature have been proved by P.W.8, the Executive Magistrate.

(Para 17)

The dying declaration inspires confidence and there is no material that it was the result of either tutoring, prompting or vindictive or product of imagination – We are not only satisfied that the deceased was in a fit state of mind to make the statement, but also that the dying declaration was true, voluntary and not influenced by any extraneous consideration and therefore, on the sole basis of dying declaration, conviction of the appellant can be sustained. (Para 21)

(C) INDIAN PENAL CODE, 1860 – Sections 304-B, 498-A r/w Section 4 of D.P. Act – Prosecution case is that there was demand of dowry and the deceased was being harassed and treated with cruelty as the demand was not fulfilled – None of the relatives of the deceased and co-villagers have supported the prosecution case with regards to the demand of dowry and ill-treatment to the deceased – Even the deceased herself has not stated about such demand and torture in her dying declaration – Whether the offences U/s. 304-B, 498-A and U/s. 4 of D.P. Act are sustainable.

Held: No – It is pertinent to note that even the deceased herself has not stated about such demand and torture in her dying declaration– Thus, we find sufficient force in the contention of the learned counsel for the appellant that there is absence of evidence regarding motive to commit the crime and harassment and ill treatment on account of demand for dowry soon before the death of the deceased– Thus, we have no choice but to acquit the appellant from the charges under Sections 498-A, 304-B of the I.P.C as well as Section 4 of the D.P. Act. (Para 24)

Citations Reference

A. Jayachandra -Vrs.- Aneel Kaur, (2005) 2 Supreme Court Cases 22; Renuka Prasad -Vrs.- State represented by Assistant Superintendent of Police, 2025 SCC Online SC 1074 : 2025 INSC 657; Laxman -Vrs.- State of Maharashtra, A.I.R. 2002 S.C. 2973; Paparambha Rosamma and Others -Vrs.- State of Andhra Pradesh, (1999) 7 S.C.C. 695; Uka Ram -Vrs.- State of Rajasthan, (2001) 5 SCC 254; Purshottam Chopra and another -Vrs.- State (Govt. of NCT Delhi), (2020) 11 SCC 489; Vijay Pal -Vrs.- State Govt. of NCT, (2015) 4 SCC 749; State of Karnataka -Vrs.- Suvarnammam, (2015) 1 SCC 323; Gajoo -Vrs.- State of Uttarakhand, (2012) 9 SCC 532; Amar Singh -Vrs.- Balwinder Singh and others, (2003) 2 SCC 518; Dhanaj Singh @ Shera and others -Vrs.- State of Punjab, (2004) 3 SCC 654; Khushal Rao -Vrs.- State of Bombay, A.I.R. 1958 S.C. 22; Rajendra -Vrs.- State of Maharashtra, 2024 SCC online SC 941 : 2024 LiveLaw (SC) 506; Muthu Kutty -Vrs.- State, A.I.R. 2005 S.C. 1473; Betal Singh -Vrs.- State of M.P., (1996) 4 SCC 203; Sukanti Moharana -Vrs.- State of Orissa, (2009) 9

SCC 163; Nallapati Sivaiah -Vrs.- Sub Divisional Officer, Guntur, A.P., **A.I.R. 2008 S.C. 19**; Koli Chunilal Savji -Vrs.- State of Gujarat, **(1999) 9 SCC 562**; Trimukh Maroti Kirkan -Vrs.- State of Maharashtra, **(2006) 10 SCC 681**; M. Saravan -Vrs.- State of Karnataka, **(2012) 7 SCC 636**; Bhajju –Vrs.- State of M.P., **(2012) 4 SCC 327**; Govindaraju @ Govinda -Vrs.- State, **(2012) 4 SCC 722**; Madhusudan Singh -Vs.- State of Bihar, **A.I.R. 1995 S.C. 1437**; Utpal Das -Vs.- State of West Bengal, **(2010) 46 Orissa Criminal Reports (SC) 600**; Chaitu Naik -Vs.- State of Orissa, **(2015) 60 Orissa Criminal Reports 906 – referred to.**

List of Acts

Indian Penal Code, 1860; Indian Evidence Act, 1872; Dowry Prohibition Act, 1961

Keywords

Dying declaration; Non-examination of Doctor; Torture; Demand of dowry; Fitness certificate; Absence of motive; Recording of dying declaration; ill treatment; Cruelty; Hostile; Fit statement of mind.

Case Arising From

Judgment and order dated 06.01.2014 of the District and Sessions Judge, Jajpur in C.T. (Sessions) No.75 of 2012.

Appearances for Parties

For Appellant : Ms. Rita Singh (Amicus Curiae)

For Respondent : Mr. Aurobinda Mohanty, Addl. Standing Counsel

Judgment/Order

Judgment

MISS SAVITRI RATHO, J.

The Hon'ble Supreme Court in order to emphasize the sanctity of Hindu Marriage and essence of Grihastha life, in the case of **A. Jayachandra -Vs.- Aneel Kaur reported in (2005) 2 Supreme Court Cases 22**, has observed as follows:-

“2. Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy, it is sanskar - a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual.”

The saying “marriages are made in heaven” suggests that compatible partners are destined to be together, implying fate or divine intervention in finding a suitable

couple. When it is a love marriage, the bond is expected to be stronger as a successful marriage requires falling in love many times, always with same person. Both partners recognize and value each other's individuality, opinions and feelings. They listen without judgment and show consideration for each other's needs and wishes. The emotional and intellectual connection between the two souls, shared values and mutual respect goes beyond superficial physical attraction.

2. Unfortunately such things did not happen in the present case. The appellant and the deceased got married one and half years before the occurrence, as they were in love. The deceased Jayanti Sahoo sustained extensive burn injuries on the night of 14.11.2011 while staying in the house of her husband (appellant) and was admitted in the hospital. She was in an advanced stage of pregnancy at that time and gave birth to a stillborn child on 16.11.2011 and while undergoing treatment in S.C.B. Medical College Hospital, Cuttack, she expired on 09.12.2011 due to complications arising out of the burn injuries which she had sustained in the night of 14.11.2011.

It is no one's case that the deceased sustained burn injuries on account of an accident. While it is the prosecution case that the appellant came home in a drunken condition, poured kerosene on the deceased and set her on fire, the defence plea is that she set herself on fire from the dibri (lamp) as the appellant came home in a drunken condition and created a ruckus. To make matters worse, her family members did not support the prosecution case during trial and resiled from their earlier statements where they had stated about demand for dowry and harassment and ill-treatment and threats to kill by the appellant due to non-fulfillment of the demand of dowry, reducing the prosecution to a mockery. Relying on the dying declaration of the deceased recorded on 16.11.2011, the appellant was found guilty by the learned trial Court for commission of offences under sections 498-A, 304-B, 302 of the Indian Penal Code (in short 'I.P.C.') and Section 4 of the Dowry Prohibition Act (in short 'D.P. Act').

3. The Supreme Court has best described this situation in a recent decision the case of **Renuka Prasad -Vrs.- State represented by Assistant Superintendent of Police : 2025 SCC Online SC 1074 : 2025 INSC 657** observing as follows:-

"1. Prevaricating witnesses, turning hostile in Court and overzealous investigations, done in total ignorance of basic tenets of criminal law, often reduces prosecution to a mockery. Witnesses mount the box to disown prior statements, deny recoveries made, feign ignorance of aggravating circumstances spoken of during investigation and eye witnesses turn blind. Here is a classic case of 71 of the total 87 witnesses including eye-witnesses, turning hostile, leaving the prosecution to stand on the testimony of the police and official witnesses. Even a young boy, the crucial eyewitness, who saw his father being hacked to death, failed to identify the assailants."

4. In this appeal, the appellant Susanta @ Susil Kumar challenged his conviction and sentence for commission of offences punishable under Sections 498-A, 304-B, 302 of the I.P.C. and Section 4 of the D.P. Act by the learned Sessions Judge, Jajpur in C.T. (Sessions) No.75 of 2012. The learned trial Court has sentenced him to

undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- (Rupees five thousand), in default, to undergo R.I. for one month more for the offence under Section 302 I.P.C., to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for one month for the offence under Section 304-B I.P.C. read with Section 498-A of I.P.C. and to undergo R.I. for six months and to pay a fine of Rs.5,000/- (Rupees five thousand), in default, to undergo R.I. for one month each for the offence under and Section 4 of the D.P. Act. It was further directed that the substantive sentences shall run concurrently.

Prosecution Case:

5. The case of the prosecution, in short, is that the deceased Jayanti Sahu was the niece of P.W.5 Brajakishore Sahu (informant) of village Narua. Prior to one year and six months of the incident, the deceased had married the appellant as they were in love. For about eight months, she lived happily in the house of her in-laws, but thereafter she was subjected to cruelty by her husband and in-laws, who demanded dowry of Rs.50,000/-, which neither she nor her parents could fulfill due to poverty. The informant visited the house of the appellant and tried to convince him and his parents not to ill-treat the deceased. While the matter stood thus, prior to 15 days of the incident, the deceased informed the informant over telephone that her husband (appellant) was assaulting her demanding cash of Rs.50,000/- and threatening her that in the event of non-fulfillment of such demand, she would be killed. The informant rushed to the house of the appellant and assured the in-laws to give the demanded amount at an earliest after arranging the same. While the matter stood thus, on 14.11.2011 at about 9.30 p.m., the informant received news that the appellant and his parents had tied the hands of the deceased, poured kerosene on her body and set her on fire, as a result of which she received serious burn injuries. Hearing her shouts, the co-villagers reached there and sent her to Jajpur Hospital. As her condition got worsened, she was shifted to S.C.B. Medical College and Hospital, Cuttack for treatment. On 15.11.2011, on the report of P.W.5, uncle of the deceased, Bari Ramchandrapur P.S. Case No.73 of 2011 was registered against the appellant, his parents Bipin Sahu and Sumitra Sahu and his brothers Benu Sahu and Sudhir Sahu under Sections 498-A, 307 of the I.P.C. and Section 4 of the D.P. Act. In the hospital, she gave birth to a stillborn child. On 16.11.2011, her dying declaration was recorded by the Executive Magistrate (P.W.8) on requisition given by P.W.13, the Officer in-charge, Bari Ramchandrapur police station, who is also the Investigating Officer of the case, in the presence of woman constable (P.W.9) and staff nurse (P.W.11). The deceased stated in her dying declaration that the appellant had poured kerosene on her and set her on fire. She died in the hospital on 09.12.2011 during treatment. Her post mortem examination was conducted by P.W.4 Dr. Purnima Singh. After completion of investigation, charge sheet was submitted only against the appellant for the offences under Sections 498-A, 304-B, 302 of the I.P.C and Section 4 of the D.P. Act.

Charge:

6. Charge was framed against the appellant for commission of offences under Sections 498-A, 304-B and 302 of I.P.C. and Section 4 of the D.P. Act. The appellant refuted the charges, pleaded not guilty and claimed to be tried and accordingly, the Sessions Trial procedure was resorted to establish his guilt.

Defence plea:

7. The defence plea was one of denial and it was pleaded that the deceased had committed suicide by setting herself on fire. During his examination under Section 313 Cr.P.C, reply of the appellant to all the questions put by the learned trial Judge was a denial and at the end, he stated that as he had been shouting in a drunken state, the deceased set herself on fire from the dibiri (lamp). He tried to save her but was not able to put off the fire.

Prosecution Witnesses & Exhibits:

8. In order to prove its case, the prosecution examined thirteen witnesses and relied on Exhibits No.1 to 6.

P.W.2 Balaram Sahu, neighbour of the appellant stated that three to four months back around midnight, he heard hullah from the house of the appellant and went there to find burn injuries on the body of the deceased and she was carried to the hospital. He did not see the appellant at the spot. At this stage, he was declared hostile by the prosecution as he resiled from his earlier statement.

P.W.3 Fakira Charan Mohanty was the havildar of Bari Ramachandrapur Police Station who was a witness to seizure of the requisition given in the hospital for recording of the dying declaration of the deceased vide seizure list Ext.1 and in his cross-examination, he has stated that dying declaration of the deceased was recorded by the Magistrate.

P.W.4 Dr. Purnima Singh was the doctor attached to the F.M.T. Department of S.C.B. Medical College and she conducted the post mortem examination over the dead body of the deceased along with Dr. Agni Wesh on 09.12.2011. She has proved the post mortem examination report vide Ext.2 and stated about the external injuries on the deceased and condition of the internal organs on dissection. She also stated that the burn injuries were ante mortem in nature and caused due to application of dry heat or fire. The total area was 80% to 90% and fatal in ordinary course to cause death. Death was on account of complications of the burn injuries and age of death was 12-18 hours of the post mortem examination. In the cross examination, she has stated that a person having 80-90% burn injuries would be incapable to talk.

P.W.5 Brajakishore Sahu is the informant in the case and uncle of the deceased. He has stated that due to blasting of kerosene stove during cooking, the body of the deceased caught fire and she died. He has proved Ext.3, the F.I.R. As he

did not support the prosecution case, he was declared hostile and was cross-examined by the prosecution.

P.W.6 Prahallad Sahu, a co-villager of the appellant, did not support the prosecution case and was declared hostile.

P.W.7 Manoj Kumar Sahu is the brother of the deceased and he did not support the prosecution case.

P.W.8 Pradyumna Kumar Jena was working as Asst. Commissioner of Police, Zone-6, Cuttack on 16.11.2011. He has stated that the I.O. of this case submitted a requisition before the D.C.P., Cuttack for deployment of an Executive Magistrate to record the dying declaration of the deceased and he was directed by the D.C.P., Cuttack to record the dying declaration. After receipt of the requisition, he went to S.C.B. Medical College and Hospital, Gynecology Department where the deceased was an indoor patient. Initially the deceased was being treated in Burn Ward, Bed No.14 but subsequently after termination of her pregnancy, she was shifted to Gyneac Ward. He further stated that there was about 50% burn bandage injury all over the body of the deceased. Dr. Asit Kumar Sethy opined that the patient was in a fit mental condition to give her statement and he gave a written certificate which he wrote in his presence. He has stated that he recorded the statement of the deceased in "Odia" as far as practicable as per her version in the presence of witnesses, namely, Sunita Das and one lady nurse. He has stated that the deceased stated in Odia that she was the wife of Susanta Sahu (appellant) of village Thakurpatna Bari. On Monday night at about 11.30 p.m., her husband (appellant) came home drunk and poured kerosene on her and set her on fire. She got burnt and started shouting. Her parents in-law came and put off the fire and she was taken to Jajpur Hospital and from there to 'Bada Medical'. She was nine months pregnant. He proved the certificate of Dr. Sethy as Ext.4 and signature of Dr. Sethy as Ext.4/1, the dying declaration Ext.4/2 and his own signature Ext.4/3. He has also stated that he read over the contents of the dying declaration to the deceased and she admitted the same to be correct, but she could not put her signature on the paper as her thumb and fingers were bandaged due to burn injuries and he gave an endorsement to that effect as Ext.4/4 and his signature Ext.4/5. Sunita Dash, constable gave her signature as Ext.4/6 and staff nurse gave her signature as Ext.4/7 in his presence. He has also stated the dying declaration Odia Stanza was written by him in the bed head ticket. He denied the suggestions during cross-examination that the deceased was not able to talk on that day due to 80% to 90% burn injuries. He has also denied the suggestions that the patient was not in a fit mental condition to give her statement and that he had prepared the statement at the instance of the police.

P.W.9 Sunita Das was working as a constable on 16.11.2011 in Bari Ramchandrpur Police Station. She had accompanied Sri Bamadev Nanda, the I.O. from the police station to S.C.B. Medical College Hospital to assist him. The I.O. gave a requisition to D.C.P., Cuttack for deputation of an Executive Magistrate to record the dying declaration of the deceased. The A.C.P. Sri P.K. Jena was deputed

to record the dying declaration of the deceased. He recorded the dying declaration in her presence. She heard the deceased saying that that on the date of incident, her husband came being drunk and poured kerosene oil on her. The deceased was speaking slowly but she could understand her talk. She gave her signature on the dying declaration marked as Ext.4/6. She has denied the suggestions given by the defence counsel that no dying declaration of the deceased was recorded by Pradip Jena and that she was deposing falsehood.

P.W.10 Jayanta Parida has stated that he wrote the F.I.R. as per the instruction of P.W.5 Braka Kishore Sahu and after writing the same, he read it over and explained the contents to P.W.5 whereafter the later gave his signature. He has proved his own signature on the F.I.R. as Ext.3/2. He has stated that he knew nothing about the case and he did not know the appellant and wrote the F.I.R. as per instruction of the police.

P.W.11 Rossalini Mohanty was working as a staff nurse in the labour room at S.C.B. Medical College and Hospital, Cuttack. She has stated that the deceased was admitted on being referred from burn ward to labour room. The deceased gave a statement that her husband being drunk came in the night, poured kerosene on her and set fire on her body for which she received burn injuries. She further stated that in her presence, the statement of the deceased was recorded and she gave her signature marked as Ext.4/7. She denied the suggestions given by the defence that she had told the police that the patient gave such statement to her in the labour room and that nothing was recorded in her presence and that the patient was not in a fit condition to give any statement.

P.W.12 Maheswar Mallik was a driver who stated that once he was coming with his vehicle and on the way, he was requested to carry a burn lady patient to Jajpur Main Hospital and accordingly, he brought that patient with burn injury and left her at Jajpur Main Hospital.

P.W.13 Bamadev Nanda was the O.I.C. of Bari Ramachandrapur P.S. and he is also Investigating Officer of the case. He stated that on 15.11.2011, he registered the F.I.R. on receipt of the written report from P.W.5 Braja Kishore Sahu. During investigation, he examined the informant and other witnesses, visited the spot and prepared spot map. He proved the formal F.I.R., his signature and the spot map. On 16.11.2011, he came to Cuttack hospital where the deceased was undergoing treatment. He sought for permission of the Superintendent, S.C.B. Medical College & Hospital to record the dying declaration who was undergoing treatment in surgical burn ICU. In response to his requisition, the D.C.P., Cuttack deputed Sri Pradeep Kumar Jena, O.P.S, A.C.P., Zone VI, to be the Executive Magistrate and Superintendent, S.C.B. Medical College & Hospital deputed Dr. Asit Kumar Sethy to remain present during the recording of dying declaration. The Executive Magistrate recorded the dying declaration, in presence of Rojalin Mohanty, staff nurse and Sunita Das, lady constable and he examined the Doctor and the Executive Magistrate. He arrested the appellant on 09.12.2011 and on that day, he got

telephonic information from Medical Outpost, S.C.B Medical College & Hospital, Cuttack that the deceased who was undergoing treatment had died and in this connection, Mangalabag P.S. U.D. Case No.1506/11 was registered. After the death of the deceased, the case turned to one under section 304-B of the I.P.C. The I.O. denied the suggestion that he did not record the statement of the deceased as she was unable to give such statement. He further stated that he was present in the hospital on the verandah, when the dying declaration was being recorded. He has also denied the suggestion that as the deceased had sustained 90-92% burn injuries, she was not in a fit condition to give any declaration.

The prosecution exhibited six documents which have already been stated while discussing the evidence of the witnesses. Ext.1 is the seizure list, Ext.2 is the post mortem examination report of the deceased, Ext.3 is the written F.I.R., Ext.4 is the certificate of Dr. Asit Kumar Sethy, Ext.4/2 is the Odia dying declaration of the deceased, Ext.4/4 is the endorsement on Ext.4, Ext.5 is the spot map and Ext.6 is the prayer for addition of the offence under section 304-B of I.P.C.

Findings of Trial Court:

9. On an analysis of the facts, circumstances and evidence on record, the learned trial Court came to the conclusion that the oral evidence of P.Ws.9 and 11 about the cause of death of the deceased is not only relevant but also admissible in evidence under section 60 of the Evidence Act and the same has not been shaken in the cross-examination. Analysing the evidence of the doctor, the Executive Magistrate, the I.O. and also the independent witnesses, it was held that the deceased was in a fit and conscious state of mind to declare her cause of death. From the facts, circumstances and the evidence of P.Ws.6, 8, 9 and 11 and from other circumstances, the learned trial Court came to the conclusion that having knowledge that the deceased was pregnant for nine months, the appellant put kerosene on her living body and set her on fire causing severe burn injuries to which she succumbed in the hospital. The intention of the appellant was not only to murder his wife but also to murder a living unborn baby in the womb of the deceased. Accordingly, it was held that the prosecution has successfully proved its case against the appellant for the offences punishable U/s.498-A/304-B/302 of I.P.C. and Section 4 of the D.P. Act beyond all reasonable doubt. The appellant was found guilty of commission of such offences and sentenced to imprisonment and fine in the manner as already mentioned above.

Submissions of Counsel:

10. Ms. Rita Singh, learned Amicus Curiae appearing for the appellant argued that there is no evidence regarding demand of dowry, torture on the deceased in connection with demand of dowry and that it is a case of accidental fire. She has challenged the conviction of the appellant on the following grounds:

- i) The doctor who gave the certificate of fitness on the dying declaration has not been examined;
- ii) The Forensic Scientific Team has not visited the spot which is a grave lacuna in the prosecution case and as such benefit of doubt should be given to the appellant;
- iii) The incident occurred on 14.11.2011, but F.I.R. was lodged on 15.11.2011;
- iv) The deceased died on 09.12.2011 i.e. after 24 days during treatment, but her statement was not recorded by police;
- v) Nothing incriminating has been seized from the spot;
- vi) The dying declaration is liable to be rejected on the following grounds:-
 - a) No family members have been examined to prove the dying declaration;
 - b) The evidence of the staff nurse (P.W.11) and lady constable (P.W.9) who were alleged to be present when her dying declaration was recorded, cannot be accepted;
 - c) As the deceased was 80-90 percent burnt, as per medical jurisprudence, she could not have been in a condition to speak;
 - d) Neither the signature nor LTI of the deceased has been taken on the dying declaration.

In support of her submissions, she has relied on the following decisions:

- i) Laxman -Vrs.- State of Maharashtra : A.I.R. 2002 S.C. 2973;**
- ii) Paparambha Rosamma and Others -Vrs.- State of Andhra Pradesh : (1999) 7 S.C.C. 695;**
- iii) Uka Ram -Vrs.- State of Rajasthan : (2001) 5 SCC 254.**

11. Mr. Aurobinda Mohanty, learned Additional Standing Counsel on the other hand, supported the impugned judgment and argued that the death of the deceased has been proved to be homicidal on the basis of cogent evidence adduced by the prosecution. The dying declaration has been recorded by an Executive Magistrate (P.W.8) and bears the certificate of a doctor that the deceased was in a fit and conscious state and able to make such statement, being blemish free, can form the sole basis of conviction as both P.W.8 and the doctor had got no animosity against the appellant to falsely implicate him. The appellant being the husband should have given a plausible explanation for the burn injuries sustained by his wife (deceased) in his own house in view of section 106 of the Evidence Act. The defence plea of the appellant that the deceased set herself on fire and he tried to save her is not acceptable as he had not sustained any burn injury nor has he taken the deceased to the hospital for treatment even though she had sustained extensive burn injuries. Had he tried to save the deceased, she would not have sustained such extensive burn injuries. In support of the acceptability of dying declaration, he has urged as follows:-

- i) the dying declaration has been recorded by P.W.8, the Executive Magistrate, who does not have any personal animosity with the appellant so as to falsely implicate him;

- ii) The dying declaration is supported by the evidence of two witnesses who are government servants and have no reason to falsely implicate the appellant;
- iii) Certificate has been given by the doctor that the petitioner was fit, conscious and oriented to make dying declaration which has been rightly accepted;
- iv) LTI and signature of the deceased could not be taken on the dying declaration as her hands were bandaged.

He has relied on the following decisions in support of his submissions:-

- i) **Purshottam Chopra and another -Vrs.- State (Govt. of NCT Delhi) : (2020) 11 SCC 489;**
- ii) **Vijay Pal -Vrs.- State Govt. of NCT : (2015) 4 SCC 749;**
- iii) **State of Karanataka -Vrs.- Suvarnamma : (2015) 1 SCC 323;**
- iv) **Gajoo -Vrs.- State of Uttarakhand : (2012) 9 SCC 532;**
- v) **Amar Singh -Vrs.- Balwinder Singh and others : (2003) 2 SCC 518;**
- vi) **Dhanaj Singh @ Shera and others -Vrs.- State of Punjab : (2004) 3 SCC 654.**

Judicial Pronouncements on Dying Declaration:

12. Section 32 of the Indian Evidence Act, 1872 deals with ‘dying declaration’. A dying declaration made by person on the verge of his death has a special sanctity as at that special moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. It is an exception to the general rule that hearsay evidence is no evidence and the evidence which cannot be tested by cross-examination of a witness is not admissible in a Court of law.

Way back in the year 1958, the Supreme Court in the case of **Khushal Rao - Vrs.- State of Bombay reported in A.I.R. 1958 S.C. 22**, examined the principles governing acceptance of dying declaration. After examining the relevant provisions of the Evidence Act and different judicial pronouncements, laid down the following principles:

- “(i) it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;*
- (ii) each case must be determined on its own facts, keeping in view the circumstances in which the dying declaration was made;*
- (iii) it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;*
- (iv) a dying declaration stands on the same footing as another piece of evidence. It has to be judged in the light of surrounding circumstances and with reference to the principles governing weighing of evidence;*
- (v) a dying declaration which has been recorded by a competent Magistrate in the proper manner stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character;*

(vi) in order to test the reliability of a dying declaration, the court has to keep in view various circumstances including the condition of the person concerned to make such a statement; that it has been made at the earliest opportunity and was not the result of tutoring by interested parties.”

In a recent decision, in the case of **Rajendra -Vrs.- State of Maharashtra reported in 2024 SCC online SC 941 : 2024 LiveLaw (SC) 506**, the Hon’ble Supreme Court has referred to the decision in **Kushal Rao** (supra) and reiterated the settled position of law that a dying declaration can form the basis of a conviction . It has held as follows:

“25. The law relating to dying declaration is now well settled. Once a dying declaration is found to be authentic inspiring confidence of the court, then the same can be relied upon and can be the sole basis for conviction without any corroboration. However, before accepting such a dying declaration, court must be satisfied that it was rendered voluntarily, it is consistent and credible and that it is devoid of any tutoring. Once such a conclusion is reached, a great deal of sanctity is attached to a dying declaration and as said earlier, it can form the sole basis for conviction.

In the case of **Uka Ram** (supra), the deceased was a mental patient who had earlier attempted suicide, the Hon’ble Supreme Court defined what a dying declaration is and laid down the safeguards to be followed in case of dying declaration and the principle behind accepting a dying declaration without cross-examination of the maker, holding as follows:

“6. Statements, written or verbal of relevant facts made by a person who is dead, or who cannot be found or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts under the circumstances enumerated under sub-sections (1) to (8) of Section 32 of the Act. When the statement is made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question is admissible in evidence being relevant whether the person was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question. Such statements in law are compendiously called dying declarations. The admissibility of the dying declaration rests upon the principle that a sense of impending death produces in a man’s mind the same feeling as that of a conscientious and virtuous man under oath – Nemo moriturus praesumitur mentire. Such statements are admitted, upon consideration that their declarations made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth. The principle on which the dying declarations are admitted in evidence, is based upon the legal maxim Nemo moriturus praesumitur mentire i.e., a man will not meet his maker with a lie in his mouth. It has always to be kept in mind that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that dying declaration should be of such nature as to inspire full

confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or product of imagination. Before relying upon a dying declaration, the court should be satisfied that the deceased was in a fit state of mind to make the statement. Once the court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence.”

In the case of **Purshottam Chopra** (supra), the Hon’ble Supreme Court held as follows:-

“21. For what has been noticed hereinabove, some of the principles relating to recording of dying declaration and its admissibility and reliability could be usefully summed up as under:

21.1. A dying declaration could be the sole basis of conviction even without corroboration, if it inspires confidence of the court.

21.2. The court should be satisfied that the declarant was in a fit state of mind at the time of making the statement; and that it was a voluntary statement, which was not the result of tutoring, prompting or imagination.

21.3. Where a dying declaration is suspicious or is suffering from any infirmity such as want of fit state of mind of the declarant or of like nature, it should not be acted upon without corroborative evidence.

21.4. When the eyewitnesses affirm that the deceased was not in a fit and conscious state to make the statement, the medical opinion cannot prevail.

21.5. The law does not provide as to who could record dying declaration nor there is any prescribed format or procedure for the same but the person recording dying declaration must be satisfied that the maker is in a fit state of mind and is capable of making the statement.

21.6. Although presence of a Magistrate is not absolutely necessary for recording of a dying declaration but to ensure authenticity and credibility, it is expected that a Magistrate be requested to record such dying declaration and/or attestation be obtained from other persons present at the time of recording the dying declaration.

21.7. As regards a burns case, the percentage and degree of burns would not, by itself, be decisive of the credibility of dying declaration; and the decisive factor would be the quality of evidence about the fit and conscious state of the declarant to make the statement.

21.8. If after careful scrutiny, the court finds the statement placed as dying declaration to be voluntary and also finds it coherent and consistent, there is no legal impediment in recording conviction on its basis even without corroboration.

xxx xxx xxx

*25.1....As laid down in **Vijay Pal’s** case and reiterated in **Bhagwan’s** case (supra), the extent of burn injuries – going beyond 92% and even to 100% - would not, by itself, lead to a conclusion that victim of such burn injuries may not be in a position to make the statement. Irrespective of the extent and gravity of burn injuries, when the*

doctor had certified him to be in fit state of mind to make the statement; and the person recording the statement was also satisfied about his fitness for making such statement; and when there does not appear any inherent or apparent defect, in our view, the dying declaration cannot be discarded. Contra to what has been argued on behalf of the appellants, we are of the view that the juristic theory regarding acceptability of statement made by a person who is at the point of death has its fundamentals in the recognition that at the terminal point of life, every motive to falsehood is removed or silenced.

25.2. To a fire victim like that of present case, the gravity of injuries is an obvious indicator towards the diminishing hope of life in the victim; and on the accepted principles, acceleration of diminishing of hope of life could only obliterate the likelihood of falsehood or improper motive. Of course, it may not lead to the principle that gravity of injury would itself lead to trustworthiness of the dying declaration. As noticed, there could still be some inherent defect for which a statement, even if recorded as dying declaration, cannot be relied upon without corroboration. Suffice would be to observe to present purpose that merely for 100% burn injuries, it cannot be said that the victim was incapable to make a statement which could be acted upon as dying declaration."

In the case of **Muthu Kutty -Vrs.- State reported in A.I.R. 2005 S.C. 1473**, the Hon'ble Supreme Court has held:

"where the Court is satisfied that the dying declaration was true and voluntary, it can rely on it to sustain the conviction without any further corroboration since the rule requiring corroboration is merely a rule of prudence".

In the case of **Betal Singh -Vrs.- State of M.P. reported in (1996) 4 SCC 203**, the Hon'ble Supreme Court has held:

"15. Legal position remains unaltered that dying declaration should be scrutinized very carefully and if the Court is satisfied after such scrutiny that the dying declaration was true and was free from any effort to prompt the deceased to make such a statement and is coherent and consistent, there is no legal impediment in founding the conviction on it. (**Kusa -Vrs.- State of Orissa : A.I.R. 1980 S.C. 559**). The position does not change even if such a dying declaration is put forward in a bride burning case whether or not it has been recorded by the police officer during investigation. (**State of Punjab -Vrs.- Amarjit Singh : A.I.R. 1992 S.C. 1817**, **Charipalli Shankararao -Vrs.- Public Prosecutor, High Court of A.F., 1995 Suppl. (4) SCC 24**).

In the case of **Sukanti Moharana -Vrs.- State of Orissa reported in (2009) 9 SCC 163**, the Hon'ble Supreme Court after referring to a number of its earlier decisions on acceptability of dying declaration and how to deal with a dying declaration, has held as follows:

"32. The doctor who recorded the dying declaration was examined as a witness and he had in his deposition categorically stated that the deceased while making the aforesaid statement was conscious and in a fit mental condition to make such a statement. The aforesaid position makes it therefore clear that the aforesaid dying declaration could be

relied upon as the same was truthfully recorded and the said statement gave a vivid account of the manner in which the incident had taken place.

33. There was another objection raised by the counsel appearing for the appellant regarding the admissibility of the aforesaid recorded dying declaration contending inter alia that the signature or the thumb impression of the deceased was not taken on the said dying declaration. The said objection according to us also is without any basis. The deceased had suffered about 90 to 95 per cent burn injuries covering 90 to 95 per cent body surface. The post mortem report also indicates that there was bandage in her thumb as it was burnt. In such a situation, it was not possible to take her signature or LTI on the dying declaration. There is also no reason why a dying declaration which is otherwise found to be true, voluntary and correct should be rejected only because the person who recorded the dying declaration did not or could not take the signature or the Left Thumb Impression of the deceased on the dying declaration. Once it is found that the dying declaration is true and made voluntarily and as also trustworthy, there is no reason why the same should not be believed and relied upon. In this case, the said dying declaration is corroborated by the oral dying declaration made by the deceased before P.W.1 and P.W.3 which is also corroborated by the medical evidence and the facts contained in the FIR."

In the case of **Nallapati Sivaiah -Vrs.- Sub Divisional Officer, Guntur, A.P. reported in A.I.R. 2008 S.C. 19**, it is held as follows:

"18. It is equally well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration in as much as there could be any number of circumstances which may affect the truth. This Court in more than one decision cautioned that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion."

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

"3....A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of

caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

In the case of **Paparambaka Rosamma** (supra), the parents of the deceased as well as other close relatives had turned hostile. Her mother in-law was also her grandmother. None of the neighbours came forward to support the prosecution and so there was no evidence that the deceased was subjected to ill-treatment or there was any dowry demand. The only grievance made in the dying declaration was that she wanted to live separately but her husband (acquitted earlier) was not prepared and had beaten her in the afternoon on the previous day. The dying declaration was not accepted in the absence of certificate of the doctor that the injured was in a fit state of mind to give the declaration. The relevant portion of the judgment is extracted below:

"In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K. Vishnupriya Devi (P.W.10) did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that patient is conscious while recording the statement. In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind."

In the Case of **Koli Chunilal Savji -Vrs.- State of Gujarat reported in (1999) 9 SCC 562**, the Hon'ble Supreme has held as follows:

"8. In view of the aforesaid decisions of this Court, we are unable to accept the submission of Mr. Keshwani that the two dying declarations cannot be relied upon as the doctor has not been examined and the doctor has not made any endorsement on the dying declaration. With regard to the condition of the deceased, the Magistrate who recorded the dying declaration has been examined as a witness. She has categorically stated in her evidence that as soon as she reached the hospital in the Surgical Ward of Dr. Shukla, she told the doctor on duty that she is required to take the statement of Dhanuben and she showed the doctor the Police yadi. The doctor then introduced her to Dhanuben and when she asked the doctor about the condition of Dhanuben, the said doctor categorically stated that Dhanuben was in a conscious condition. It further appears from her evidence that though there has been no endorsement on the dying declaration recorded by the Magistrate with regard to the condition of the patient but there has been an endorsement on Police yadi, indicating that Dhanuben was fully conscious. In view of the aforesaid evidence of the Magistrate and in view of the endorsement of doctor on the Police yadi and no reason having been ascribed as to why the Magistrate would try to help the prosecution, we see no justification in the comments of Mr. Keshwani that the dying declaration should not be relied upon in the absence of the endorsement of the doctor thereon...."

In the case of **Vijay Pal** (supra), the Supreme Court has held as follows:

"20. Thus, the law is quite clear that if the dying declaration is absolutely credible and nothing is brought on record that the deceased was in such a condition, he or she could not have made a dying declaration to a witness, there is no justification to discard the same."

Standard of Proof:

In the case of **Trimukh Maroti Kirkan -Vrs.- State of Maharashtra reported in (2006) 10 SCC 681**, which was a case where the wife of the appellant was found dead in his house but direct evidence regarding her death was not available, the Hon'ble Supreme Court while confirming his conviction under Section 302 I.P.C. has held as follows:

"12. In the case in hand, there is no eye-witness of the occurrence and the case of the prosecution rests on circumstantial evidence. The normal principle in a case based on circumstantial evidence is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with his innocence.

13. The demand for dowry or money from the parents of the bride has shown a phenomenal increase in last few years. Cases are frequently coming before the Courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. No member of the family, even if he is a witness of the crime, would come forward to depose against another family member. The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in Court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculcate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished.

*14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the Courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See **Stirland Vs. Director of Public Prosecution : 1944 AC 315** quoted with approval by Arijit Pasayat, J. in **State of Punjab Vs. Karnail Singh : (2003) 11 SCC 271**). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case."*

Hostile Witness:

In the case of **M. Saravan -Vrs.- State of Karnataka reported in (2012) 7 SCC 636**, it has been held by the Supreme Court that merely because a witness has turned hostile, it would not be fatal to the prosecution case, if the prosecution has been able to prove its case by other cogent and reliable evidence. The relevant portion is extracted below:

“10...The mere fact that one of the witnesses produced by the prosecution had been declared hostile and did not support the case of the prosecution would not be fatal to the case of the prosecution, particularly when the prosecution has been able to prove its case by other cogent and reliable evidence...”

In the case of **Bhajju –Vrs.- State of M.P. reported in (2012) 4 SCC 327 and Govindaraju @ Govinda -Vrs.- State reported in (2012) 4 SCC 722**, it has been held by the Hon’ble Supreme Court that the Court can take into consideration the part of the statements of witnesses which supports the case of the prosecution.

Defective Investigation:

In the case of **Suvarnamma** (supra), the Hon’ble Supreme Court held as follows:-

“11. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.”

In the decision in **Dhanaj Singh @ Shera** (supra), the Hon’ble Supreme Court has held as follows:-

“In the case of a defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

In the case of **Gajoo** (supra), the serological report had not been produced for which Supreme Court directed that action should be taken against the Investigating Officer, while holding as follows:

“A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court.”

Cause of death:

13. To ascertain as to whether the prosecution has been successful in proving that the death of the deceased was homicidal in nature, the evidence of P.W.4 Dr. Purnima Singh who conducted post mortem examination of the deceased on 09.12.2011 is very relevant.

The deceased died on 09.12.2011 while undergoing treatment in the S.C.B.M.C.H. for burn injuries, which was more than three weeks after the occurrence. The injuries noticed by P.W.4 on the deceased and her opinions are extracted herein below:

External Injuries:

Infected dermo epidermal burn injuries involving complete neck, the lower half of the face, the anterior aspect of the chest, both the thighs, back of both the legs, the whole left upper

limb, the rt, mid of forearm up to the hand, whole of the abdomen and whole of the back side.

The pubic hair was intact, the left side axillary hair had burnt and rt. side was singed, scalp hair was-also singed. The eyebrows and eyelash singed, The bum hounds were looking unhealthy with slough formation emating putrid odour.

There were signs of periferial healing at the margins of the wound, No mechanical injury or ay bodily deformity was detected at the time of P.M, examination.

On dissection:

The internal structure of neck were intact. On opening the chest cavity there were plural effusion of about 200 ml. clear, colourless fluid of both sides. Both the lungs were intact and edematous. The pericardial sack was contained about 100 C.C. of colourless fluid. Heart was intact, containing fluid blood in both the chambers. The uterus was enlarged up to 6 week size. It was empty and consistent with of size of post delivery of one and half months back as alleged size of post delivery of one and half months back as alleged.

Opinion:

The burn injuries detailed above are antemortem in nature and might have been caused due to application of dry heat in form of fire or flame.

The total burn surface area is about 80 to 90% of the total body surface area and is fatal to cause death of a person in ordinary course of nature.

The death is due to the complications of burn injuries sustained.

The age is was within about 12 to 18 hours from the time of P.M. examination."

She has attributed the cause of death to complications of the burn injuries and has also stated that the burn injuries were ante mortem in nature and caused due to application of dry heat or fire. She has also stated that the total burn area was 80% to 90% and fatal in ordinary course to cause death. So it is clear that the death of the deceased was due to the burn injuries but the doctor who has conducted post mortem has not and could not have stated if the burn injuries were homicidal or suicidal or even accidental.

As the witnesses who had stated during investigation that the appellant had poured kerosene on the deceased and set her on fire, did not support the prosecution case while deposing in Court, so we have to look at other evidence which has been adduced by the prosecution to prove its case.

Motive:

14. In the present case, as the family members of the deceased and neighbours of the appellant have not supported the prosecution case and turned hostile, the prosecution has not been able prove any motive on the part of the appellant to commit the offence. Law is well settled that motive increases the probability of commission of an offence, but motive alone cannot prove an offence and similarly, in absence of proof of motive, it cannot be a ground to set at naught the other evidence pointing towards the guilt of the accused.

Evidence relating to dying declaration:

15. The law regarding dying declaration is governed by Section 32 of the Indian Evidence Act. Importance is attached to a dying declaration as it is the presumption and belief that a person who is going to die and meet his/her maker will not utter falsehood, just before his death.

As the relevant witnesses have turned hostile and the prosecution case rests solely on the dying declaration of the deceased, we therefore have to be very careful while examining the dying declaration as to whether it is genuine, true and free from all doubts and inspires confidence and whether it was recorded when the injured was conscious and in a fit state of mind. For this, we have to carefully examine the dying declaration itself, the evidence of P.W.8, the Executive Magistrate who recorded the dying declaration, the evidence of P.W.9, the woman constable and P.W.11, the staff nurse, the two witnesses, who have signed on the dying declaration sheet. The evidence of P.W.13, the I.O. is also necessary to be examined for the purpose of corroboration. The evidence of these witnesses has already been referred to in extenso earlier and is not being repeated, but the relevant portions are required to be referred to while discussing the acceptability or otherwise of the dying declaration.

16. The dying declaration contains the certificate of Dr. Asit Ku Sethy in English vide Ext.4, the declaration of the deceased in Odia vide Ext.4/2 and the certificate of P.W.8 in English vide Ext.4/4. The contents of the declaration (Ext.4) are extracted below:

“Certified that Patient Jayanti Sahoo, w/o Susanta Sahoo of Thakurpatna, P.S.-BariRamchandrapur, Dist.- Jajpur initially admitted to surgery treated in Burn ICU Bed No.14 and transferred to Dept. of Obstetrics and Gynecology for delivery on 16.11.2011.

She is conscious, oriented and fit to give dying declaration. Time 6.45 p.m. 16.11.2011. Pt delivered a dead male child at 4.30 p.m. - 16.11.2011.

Indoor Regd. No.
430/15.11.11

Sd/-
(Dr. Asit Ku Sethi)
16.11.2011
Asst. Prof. Surgery.”

Pt having 50% burn

The dying declaration which is in Odia is extracted below:

“ମୋର ନାମ ଜୟନ୍ତୀ ସାହୁ, ସ୍ବାମୀ-ସୁଶାନ୍ତ ସାହୁ, ଗ୍ରାମ-ଠାକୁରପାଟଣା, ବରି । ଗତ ସୋମବାର ଦିନ ରାତି ପ୍ରାୟ ସାଢ଼େ ଏଗାରଟା ହେବ (ରାତି ୧୧.୩୦) ମୋ ସ୍ବାମୀ ମଦ ପିଇ ଆସି ମୁଁ ଶାଶୁଘରେ ଥିବାବେଳେ ମୋତେ କିରୋସିନ୍ ଢାଳି ନିଆଁ ଲଗାଇଦେଲା । ମୁଁ ପୋଡ଼ିହୋଇଗଲି , ପାଟିକଳି ଓ ଶାଶୁ ଶୁଶୁର ଦୌଡ଼ିଆସି ନିଆଁଲିଭାଇ ଦେଲେ ଓ ଯାଜପୁର ଡାକ୍ତରଖାନା ନେଇଗଲେ ଓ ସେଠୁ କଟକ ବଡ଼ ମେଡ଼ିକାଲ ଆସିଲି । ମୁଁ ନଅ ମାସ ର ଗର୍ଭବତୀ ଥିଲି ।”

The certificate given below by P.W.8, the Executive Magistrate with signatures of the two witnesses is reproduced below: -

“Recorded by me as per her version. On 16.11.2011 at 7 p.m. at Labour Room Gyneac (O & G), SCBMCH Cuttack in presence of witness. I am to note here that the abovenamed

victim sustained burn injury throughout her body and her palms have been bandaged for which she could not put her thumb impression.

Sd/-
Sunita Dash
16.11.11
Sd/-
R. Mohanty
16.11.11

Sd/-
(16.11.2011)
(P.K. Jena) O.P.S.
ACP Zone-VI Cuttack (Em)
Camp (O & G), SCBMCH,
Cuttack.”

17. P.W.13, the I.O. has stated that the Superintendent, SCBMCH, Cuttack deputed Dr. Asit Kumar Sethi to remain present at the time of recording of dying declaration. We find from a perusal of the dying declaration that Dr. Asit Kumar Sethi has given a certificate vide Ext.4 that the deceased was conscious, oriented and fit to give the dying declaration and his certificate and signature have been proved by P.W.8, the Executive Magistrate.

18. Though the said Dr. Sethi is a chargesheet witness, but the prosecution has not examined him. However, there is no challenge to the evidence of P.W.8 that Dr. Sethi was not present at the time of recording the dying declaration and that he had not given any such certificate vide Ext.4. P.W.8 has specifically denied the defence suggestion that the deceased was not in a fit mental condition. The contentions raised by the learned counsel for the appellant that for non-examination of Dr. Sethi, it cannot be said that the prosecution has proved that the deceased was in a fit state of mind, cannot be accepted.

After recording the dying declaration in Odia, P.W.8, has given a certificate at the end that as the palms of the deceased were bandaged due to burn injuries, her LTI could not be taken. The declaration has also been proved by P.W.9 Sunita Das, the police constable and P.W.11 Rojalin Mohanty, Staff Nurse of SCBMCH, Cuttack who were present at the time of recording and put their signatures on the dying declaration sheet. P.W.13, the I.O. has stated during his cross-examination as follows:

“... I was absent when the dying declaration was taken down. When the dying declaration was recorded, I was present in the hospital but on the verandah.”

19. As held by the Hon’ble Supreme Court in the case of **Purushottam** (supra), no hard and fast rule can be laid down that a person with 100% burn injuries cannot be in a fit state of mind to make a dying declaration and it depends on the facts and circumstances of the case and that normally a person who is going to die will not state falsehood unless the contrary is proved.

20. In the present case, in view of the certificate of Dr. Asit Kumar Sethi, we have no reason to reject the dying declaration on the ground that the deceased was not in a fit state of mind to give such declaration.

21. After perusal of the dying declaration and the evidence of P.Ws. 8, 9, 11 and 13, we find no reason to doubt the certificate of Dr. Asit Kumar Sethi vide Ext.4, the

certificate of P.W.8 vide Ext.4/4 or the declaration vide Ext.4/2 itself. The dying declaration inspires confidence and there is no material that it was the result of either tutoring, prompting or vindictive or product of imagination. We are not only satisfied that the deceased was in a fit state of mind to make the statement, but also that the dying declaration was true, voluntary and not influenced by any extraneous consideration and therefore, on the sole basis of dying declaration, conviction of the appellant can be sustained.

Defence Plea:

22. During his examination under Section 313 Cr.P.C., the appellant has taken a plea that as he came home drunk, the deceased set herself on fire by using the dibri (lamp) and he had tried to put off the fire but was not able to do so.

This plea has been taken only to be rejected. P.W.2 Balaram Sahu, neighbour of the appellant has stated that hearing hullah at midnight, he had come to the house of the appellant and saw burn injuries on the deceased but did not see the appellant. He has also stated that the deceased was carried to the hospital. He has not been cross-examined by the defence on this aspect.

P.W.5, the informant has stated that while cooking food, the kerosene stove blasted, as a result of which, the body of the deceased caught fire. As he did not support the prosecution case, he was declared hostile. He has however proved the F.I.R. and his signature on the F.I.R. Neither it is the defence plea of the appellant nor it is there in the dying declaration that any kerosene stove blasted causing injuries to the deceased. Therefore, the evidence of P.W.5 on this aspect is to be outrightly rejected.

The plea of the appellant does not inspire confidence for the following:-

- i) The deceased was 8 to 9 months pregnant and she would have not put her unborn child in danger;
- ii) The deceased sustained extensive burns which would not have happened if the appellant had tried to save her;
- iii) The appellant has not stated to have sustained any burn injuries while rescuing the deceased nor has he stated to have taken the deceased to hospital;
- iv) In the dying declaration, the deceased has stated that hearing her shout, her parents in-law came and put off the fire and took her to Jajpur Hospital.

Whether the contentions of the learned Amicus Curiae for acquittal of the appellant are acceptable?

23. The contentions of the learned Amicus Curiae for acquitting the appellant are not acceptable for the following reasons:

- i) A conviction can be based only on a dying declaration if it inspires confidence;
- ii) Even if the relations of the deceased have turned hostile, it will not be fatal to the prosecution case since other evidence pointing to the guilt of the appellant more particularly dying declaration are available;

iii) Non-examination of the doctor who gave the certificate on the dying declaration regarding fitness of mind of the deceased is not fatal to the prosecution case as his certificate and signature have been duly proved by the Executive Magistrate (P.W.8);

iv) The failure of the forensic team to visit the spot may be a lacuna in the investigation but the same will not be fatal to the prosecution case as it is the settled principle of law that any defect in investigation cannot be a ground to reject the prosecution case in toto;

v) There is no delay in lodging F.I.R. as the incident occurred on 14.11.2022 night and the deceased was first taken to Jajpur Hospital and then to SCBMCH, Cuttack on 15.11.2011 and the F.I.R. has been lodged also on 15.11.2011 which was after such admission in the Hospital at Cuttack and it cannot be lost sight of the fact that the primary concern of the family members was to save the life of the deceased.

In the case of **Amar Singh** (supra), it is held that there is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It necessarily depends upon facts and circumstances of each case whether there has been any such delay in lodging the FIR which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration.

vi) The reason for absence of LTI of the deceased in the dying declaration sheet has been explained by P.W.8 stating that her palms were bandaged. This explanation also holds good for absence of her signature on the declaration sheet;

vii) Failure of the I.O. to record the statement of the deceased under Section 161 Cr.P.C is not fatal to the prosecution, as the dying declaration has been recorded promptly.

Conviction of appellant under Section 304-B and Section 498-A I.P.C. and Section 4 of the D.P. Act:

24. It was the prosecution case that there was demand of dowry and the deceased was being harassed and treated with cruelty as the demand was not fulfilled. Soon before her death, the appellant had threatened to kill her if the demand of the appellant and his family members for dowry was not fulfilled.

None of the relatives of the deceased and the covillagers have supported the prosecution case as regards demand of dowry and ill-treatment and torture of the deceased.

Law is well settled as held in case of **Madhusudan Singh -Vs.- State of Bihar reported in A.I.R. 1995 S.C. 1437**, that the F.I.R. does not constitute substantive evidence, however it can be used as a previous statement for the purpose of corroboration/contradiction to the maker thereof. The allegation has to be proved at the trial. Conviction cannot be based only on the allegation in the F.I.R. In the case of **Utpal Das -Vs.- State of West Bengal reported in (2010) 46 Orissa Criminal Reports (SC) 600**, it is held that the first information report does not constitute

substantive evidence. It can, however, only be used as a previous statement for the purposes of either corroborating its maker or for contradicting him and in such a case, the previous statement cannot be used unless the attention of witness has first been drawn to those parts by which it is proposed to contradict the witness. In the case of ***Chaitu Naik -Vs.- State of Orissa reported in (2015) 60 Orissa Criminal Reports 906***, it is held that a statement recorded under Section 161 of Cr.P.C. is not a substantive piece of evidence. In view of the proviso to sub-section (1) of Section 162 of Cr.P.C., the statement can be used only for the limited purpose of contradicting the maker thereof in the manner laid down in the said proviso. Such a statement cannot be treated as evidence in the criminal trial but may be used for the limited purpose of impeaching the credibility of a witness.

It is pertinent to note that even the deceased herself has not stated about such demand and torture in her dying declaration. Thus, we find sufficient force in the contention of the learned counsel for the appellant that there is absence of evidence regarding motive to commit the crime and harassment and ill treatment on account of demand for dowry soon before the death of the deceased. Thus, we have no choice but to acquit the appellant from the charges under Sections 498-A, 304-B of the I.P.C as well as Section 4 of the D.P. Act.

Conviction of the appellant under section 302 of I.P.C.:

25. Even though the charge under Section 498-A of I.P.C. and Section 4 of the D.P. Act could not be proved, the motive to kill the deceased has also not been proved, but as discussed above, availability of motive is not mandatory for convicting an accused of an offence under Section 302 of I.P.C.

In the case in hand, as per the dying declaration, the appellant came home drunk and poured kerosene on the body of the deceased and set her on fire. Hence absence of motive in these circumstances will not be a ground to disbelieve the dying declaration, as it is otherwise reliable.

Death of the deceased was due to burn injuries. There are no eye witnesses who have seen the appellant setting the deceased on fire her on fire. But in her dying declaration, she has implicated the appellant to have poured kerosene on her and set her on fire. The dying declaration has been recorded by P.W.8, an Executive Magistrate who was deputed by the D.C.P. to record the same and he has recorded the declaration in the presence of two witnesses who are government servants i.e. P.W.9, a woman constable and P.W.11, a staff nurse. None of these three witnesses have any animosity with the appellant so as to falsely implicate him, nor has any suggestion to that effect been put to them. That apart, the dying declaration has been recorded by P.W.8 himself in his own handwriting and contains the certificate of a doctor that the deceased was in a fit condition to give the same. It has also been mentioned below the dying declaration by P.W.8 that the LTI of the deceased could not be taken on the declaration sheet as her palms were bandaged. Merely because the relatives of the deceased are not witnesses to the dying declaration or the doctor

who gave the certificate has not been examined, the dying declaration cannot be disbelieved as the certificate and signature of the doctor has been proved by P.W 8 and this has not been challenged in cross-examination by the defence.

The dying declaration proves that the appellant by pouring kerosene on the deceased and setting her on fire, has intentionally committed her murder and therefore, the prosecution has successfully established the charge under section 302 of I.P.C. against the appellant.

Conclusion:

26. In view of the foregoing discussions, we are of the humble view that the conviction of the appellant for commission of the offences under Section 498-A and Section 304-B of the I.P.C and Section 4 of the Dowry Prohibition Act is liable to be set aside and accordingly, we set aside the same and acquit the appellant of the charges under Sections 498-A/304-B of the I.P.C. and Section 4 of the Dowry Prohibition Act.

27. The conviction of the appellant for commission of the offence under Section 302 I.P.C and sentence passed thereunder by the learned trial Court stands confirmed.

28. In the result, the JCRLA is partly allowed. Trial Court records with a copy of this judgment be sent to the concerned Court forthwith for information and necessary action.

29. Before parting with the judgment, we put on record our appreciation to the efforts of Ms. Rita Singh, learned Amicus curiae and Mr. Aurobindo Mohanty, learned Additional Standing Counsel who have prepared the case thoroughly and argued sincerely and rendered their valuable assistance in arriving at the above decision. The learned Amicus Curiae shall be entitled to the professional fees, which is fixed at Rs.10,000/- (rupees ten thousand).

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

JCRLA partly allowed.

2025 (II) ILR-CUT-720

**MANAGING DIRECTOR, ODISHA FOREST DEVELOPMENT
CORPORATION LTD., (OFDC), BHUBANESWAR
V.**

BRAHMANANDA BISWAL

[W.P.(C) NO. 3985 OF 2023]

10 APRIL 2025

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

Issue for Consideration

Whether any fault can be attributed to the workman for non-submission of the NDC (No Due Certificate) by the different Division of the petitioner/management.

Headnotes

INDUSTRIAL DISPUTES ACT, 1947 – Section 33-C(2) – The workman/ opp. party filed an application U/s. 33-C(2) to pay the un-utilized leave salary before the learned Labour Court – The Petitioner-Management in its show cause stated that due to non-receipt of No Due Certificate (NDC) from the Division Offices where the applicant was working during his entire service period as well as non-receipt of final NDC from the Divisional Manager, Bhubaneswar (Plantation) Division wherefrom he retired, his terminal benefits except gratuity could not be settled – The Management further stated that in view of the observation in the Special Audit Report to the effect that the dues recoverable from the Opp. Party/workman was much more than his retiral dues for which his Un-utilized Leave Salary (ULS) of ₹2,62,980/- was withheld – The learned Labour Court allowed the application and directed the Management to pay a sum of ₹2,62,980/- towards un-utilized leave salary to the workman – The Management assails the order of the Labour Court in the present writ application – Whether any fault can be attributed to the workman for non-submission of the NDC by different Divisions of the Petitioner-Management.

Held: No – Law is well-settled that no action can be taken against an employee on the basis of observation in the Audit Report without affording an opportunity to the concerned employee to explain the same following due procedure of law – In the instant case, no such procedure appears to have been followed. (Para 6)

On cumulative assessment of the discussions made above, this Court is of the considered opinion that learned Labour Court has made no error in holding that the Workman-Opposite Party is entitled to Rs.2,62,980/-

towards ULS – Hence, we are not inclined to interfere with the impugned under Annexure-3. (Para 8)

Citations Reference

Bhagirathi Jena Vs. Board of Directors, OSFC and others; **1999 SCC (L&S) 804 – referred to.**

List of Acts

Industrial Disputes Act, 1947.

Keywords

Industrial dispute; Withholding of un-utilized leave salary (ULS); No due certificate (NDC); Non-receipt of NDC; Retiral dues; Gratuity; Show cause; Audit Report.

Case Arising From

Order dated 7th December 2022 passed by learned Labour Court, Bhubaneswar in Industrial Dispute Misc. Case No. 27 of 2020.

Appearances for Parties

For Petitioner : Mr. Somnath Mishra
For Opp. Parties : Mr. Susanta Dash

Judgment/Order

Judgment

BY THE BENCH, J.

1. This matter is taken up through hybrid mode.
2. Petitioner-Management in this writ petition seeks to assail the Order dated 7th December, 2022 (Annexure-3) passed by learned Labour Court, Bhubaneswar in Industrial Dispute Misc. Case No.27 of 2020, thereby allowing an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for brevity ‘the Act’) filed by the Workman-Opposite Party and directing the Petitioner-Management to pay a sum of Rs.2,62,980/- towards Un-utilized Leave Salary (ULS) to the Workman. It is also directed that in the event the Petitioner-Management fails to pay the aforesaid entitlement to the Workman within two months of the said order it would carry interest at the rate of 6% per annum.
3. Mr. Mishra, learned counsel for the Odisha Forest Development Corporation (OFDC)-Management submits that the Opposite Party-Workman was working as Deputy Sub-divisional Manager under the Management and retired from service on 28th February, 2013 on attaining the age of superannuation. Opposite Party-Workman claiming that he was not paid his DA at the rate of 13/16%, arrear RACP so also the ULS, filed an application (ID Misc. Case No.27 of 2020) under Section

33-C (2) of the Act before learned Labour Court after seven years from the date of his superannuation. During pendency of ID Misc. Case No.27 of 2020, Petitioner-Management paid his DA and arrear RACP. Thus, learned Labour Court directed for payment of ULS to the Opposite Party-Workman.

3.1 Mr. Mishra, learned Counsel further submits that on the date of superannuation, the retiral benefits, including ULS, should be paid to the employee subject to submission of No Due Certificate (NDC). Although gratuity amount was paid to the Workman, but in view of the observation in the Special Audit Report to the effect that the dues recoverable from the Opposite Party- Workman was much more than his retiral dues, his ULS of Rs.2,62,980/- was withheld. Learned Labour Court, relying upon the case law in **Bhagirathi Jena Vs. Board of Directors, OSFC and others**; 1999 SCC (L&S) 804, directed the PetitionerManagement to pay the aforesaid ULS. The ratio in the case of **Bhagirathi Jena (supra)** is not applicable to the instant case, as in the said case, in absence of any provision in the Regulations, Disciplinary Proceeding was initiated against said Mr. Jena, the ex-employee of OSFC, after the date of his superannuation. But in the instant case, no such disciplinary proceeding was initiated against the Opposite Party-Workman. The retiral benefit of ULS could have been released in favour of the Opposite Party on production of NDC, which the Workman failed to comply. Thus, there is no illegality in withholding the ULS of the Workman. This material aspect was not taken into consideration by learned Labour Court while adjudicating the matter. Hence, the impugned order is not sustainable and is liable to be set aside. The matter should be remitted back to learned Labour Court for fresh adjudication of the matter keeping in mind the aforesaid position of law.

4. Mr. Dash, learned counsel for the Opposite Party Workman, refuting such submission, contended that at para-7 of the Show Cause filed by the Management-Petitioner, it has been categorically stated that due to non-receipt of the certificate from the Division Office where the Opposite Party (Applicant therein) was working during his entire service period as well as non-receipt of the final NDC form Divisional Manager, Bhubaneswar (Plantation) Division, wherefrom the Opposite Party got superannuated, his terminal benefits, except gratuity, could not be settled. He also referred to the observation of learned Labour Court to the effect that “the OPW No.1 has stated at para-18 that he cannot say if any communication was made to the applicant regarding the non-submission of NDC against the applicant till date, for which the outstanding dues of the applicant are not settled.” It is his submission that at no point of time any communication was made to the Opposite party-Workman by the Management for submission of NDC. In view of the categorical admission of the Management Petitioner in its Show Cause to the effect that NDC was required to be submitted by the Division Offices and the Divisional Manager, Bhubaneswar (Plantation) Division, the Opposite Party-Workman should not be made to suffer. He, therefore, submits that learned Labour Court has rightly held that the Opposite Party-Workman is entitled to ULS.

5. Heard learned counsel for the parties; perused the case record. It is apparent from the submissions of learned Counsel for the parties that although the application under Section 33-C(2) of the Act was filed claiming unpaid DA at the rate of 13/16% arrear RACP and ULS, during pendency of the said application, DA and arrear RACP, as claimed, was paid. Thus, learned Labour Court has categorically held that the Opposite Party Workman is not entitled to any amount towards DA and arrear RACP, as claimed by him, as the same was already paid after filing of the aforesaid application.

6. So far as un-paid ULS is concerned, Mr. Mishra, learned Counsel for the Petitioner-Management emphatically submitted that due to non-submission of NDC, ULS could not be settled and released in favour of the Opposite Party. It is more so because of the observation made in the Special Audit Report. But the contention of the Management at para-7 of its Show Cause is contrary to the same. For ready reference, the averments made at para-7 of the Show Cause filed by the Management, is reproduced here under:-

“7. That, due to non-receipt of no dues certificate from the Division Offices where the applicant was working during his entire service period as well as non-receipt of final NDC from the Divisional Manager, Bhubaneswar (Plantation) Division where from he retired, his terminal benefits except Gratuity could not be settled. It may be noted here that as per OFDC Letter No.32080 dtd. 18.11.2002 the Corporations established outstanding amount will be recovered by way of adjustment from the ULS and arrear salary if any.”

(Emphasis Supplied)

From the above, it is clear that ULS of the Opposite Party could not be settled due to non-submission of the NDC by the Division Offices where the Applicant/Opposite Party was working during his entire service period as well as non-receipt of NDC from the Divisional Manager, Bhubaneswar (Plantation) Division. There is also no material on record to appreciate that any communication was made to the Opposite Party for submission of NDC. Be that as it may, the Opposite Party-Workman was not at all required to submit the NDC as would be clear from the averments made by the Management at para-7 of its Show Cause (quoted supra). Thus, no fault can be attributed to the Workman for non-submission of the NDC by the different Divisions of the Petitioner-Management. It also appears from the letter under Annexure-6 filed along with Affidavit of the Petitioner/Management dated 23.02.2024 that the Workman has been paid a sum of Rs.32,310/- towards ULS during pendency of the present writ petition. Thus, it can be said in no ambiguous terms that the Opposite Party-Workman was not required to submit the NDC and further he is entitled to ULS. Law is well-settled that no action can be taken against an employee on the basis of observation in the Audit Report without affording an opportunity to the concerned employee to explain the same following due procedure of law. In the instant case, no such procedure appears to have been followed.

7. Further, the Opposite Party-Workman was superannuated from service in 2013, but the ULS of Rs.32,310/- was paid during November, 2023, which is much after his retirement. In absence of any adjudication there could not have been any deduction from the ULS of the Opposite Party- Workman.

8. On cumulative assessment of the discussions made above, this Court is of the considered opinion that learned Labour Court has made no error in holding that the Workman-Opposite Party is entitled to Rs.2,62,980/- towards ULS. Hence, we are not inclined to Annexure-3.

8. At this stage, Mr. Mishra, learned counsel for the Petitioner-Management submits that learned Labour Court, while adjudicating the application under Section 33-C (2) of the Act, has categorically observed that *“However, if the alleged recoverable amount will be finally decided by the OFDC through its Triangular Committee in view of the special audit report, the OP is at liberty to recover the said amount from the applicant, if any, by **due process of law**. But, the OP should not deprive the present old aged applicant from his legal rights as it would be against the principle of natural justice.”* As such, the Management was justified to deduct the recoverable amount from the Applicant and paid him Rs.32,310/- under Annexure-6 towards ULS.

9. The action of the Management in deducting a substantial amount and paying a meager amount of Rs.32,310/- to the Opposite Party towards ULS after ten years of his retirement, during pendency of the present writ petition, without following due procedure of law is without jurisdiction and unjustified, as no proceeding whatsoever, was initiated against the Workman before his superannuation on the basis of the alleged observation made in the Special Audit Report.

10. In view of the discussions made above, the Opposite Party-Workman is entitled to Rs.2,62,980/-, as computed by the learned Labour Court, which should have been paid to him on the date of his superannuation or at least within two months from the date of passing of the order under Annexure-3, which is impugned herein. Hence, there is no substance in the argument of Mr. Mishra, learned counsel for the Petitioner-Management.

11. Accordingly, the writ petition, being devoid of any merit, stands dismissed. However, 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.

2025 (II) ILR-CUT-725

**M/s. ODISHA MINING CORPORATION LTD., BHUBANESWAR
V.
UNION OF INDIA, MINISTRY OF MICRO, SMALL & MEDIUM
ENTERPRISES, NEW DELHI & ORS.**

[W.P.(C) NO. 22236 OF 2014]

18 JUNE 2025

[K.R. MOHAPATRA, J.]

Issue for Consideration

Whether the IFC Thane or council had the territorial Jurisdiction to entertain and continue the proceeding when issuance of tender, work order, execution of contract and submission of bills etc. arose within the geographical territory of the state of Odisha.

Headnotes

INTEREST ON DELAYED PAYMENTS TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993 (as amended in 1998) r/w Sections 32 and 18 (4) of the MICRO, SMALL & MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 – Opp. Party No. 3 claiming to be a supplier filed an application before the Industries Facilitation Council, Thane (for brevity ‘IFC’) U/s. 4 of the 1993 Act against the petitioner/ company – The petitioner raised objection with regard to maintainability/ continuance of the proceeding before the IFC on the ground of lack of territorial jurisdiction – Whether the IFC, Thane has territorial jurisdiction to entertain and continue the proceeding when issuance of tender, work order, execution of contract and submission of bills etc. arose within the geographical territory of the State of Odisha.

Held: Yes – The Council at Thane had the territorial jurisdiction to entertain the dispute as the Supplier, namely, Opposite Party No.3 is located within its jurisdiction – This provision has been made in conformity with the scope and object of the MSMED Act, which provides for facilitating the promotion and development and enhancing the competitiveness of Small and Medium Enterprises – Further, Section 32 of the MSMED Act, 2006 while repealing the IDP Act, 1993, under Sub-section (1) of the said provision, made provision under Sub-section (2) – Thus, the proceeding initiated under the IDP Act, 1993 is deemed to have been initiated under corresponding provisions of MSMED Act. (Para 12)

Citations Reference

Harshad Chiman Lal Modi Vs. DLF Universal Limited; **(2005) 7 SCC 791**; Sneh Lata Goel Vs. Pushpalata; **(2019) 3 SCC 594**; JSW Steel Limited Vs. M/s Micro, Small Enterprises Facilitation Council, Cuttack; **(2023) 3 ILR Cuttack 643**; Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and others, **(2021) 19 SCC 206**; Shanti Debi Vs. Union of India, **(2020) 10 SCC 766**; Nawal Kishore Sharma Vs. Union of India and others, **AIR 2014 SC 3607**; M/s. Kusum Ingots and Alloys Ltd. vs Union of India and another, **AIR 2004 SC 2321**; Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, **AIR 1999 SC 22**; Kanwar Singh Saini Vs. High Court of Delhi, **(2012) 4 SCC 307**; Marsons Electrical Industries Vs. Chairman, Madhya Pradesh Electricity Board and another, **2023 SCC OnLine All 2675**; M/s Silpi Industries etc. Vs. Kerala State Road Transport Corporation and another, **(2021) 18 SCC 790**; Shreyas Marketing vs Micro and Small Enterprises Facilitation Council (MSEFC), Bangalore and another, **(2023) SCC OnLine (Ker) 4206, Allahabad High Court**; Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit-2) and other, **(2023) 6 SCC 401**; Rabinder Kumar Dhariwal Vs. Union of India, **(2023) 2 SCC 209 – referred to.**

List of Acts

Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (as amended in 1998); Micro, Small and Medium Enterprises Development Act, 2006; Arbitration and Conciliation Act, 1996

Keywords

Territorial jurisdiction, Limitation; Issuance of tender; Work Order; Execution of work; Arbitration Proceeding.

Case Arising From

Letter dated 30.01.2014 issued by Micro, Small, and Medium Enterprises in IFC Case No. 01 of 2006 and Letter dated 23rd July 2014 and *ex parte* order dated 15th Nov. 2014 passed by IFC /Council, Thane.

Appearances for Parties

For Petitioners : Ms. Pami Rath, Sr. Adv. and Ipsit Acharya
For Opp. Parties : Mr. Durga Prasad Nanda, Sr. Adv. and
Suvalaxmi Devi (O.P. No. 3)

Judgment/Order

Judgment

K.R. MOHAPATRA, J.

1. This matter is taken up through hybrid mode.

M/s. ODISHA MINING CORPORATION LTD. V. UOI & ORS. [K.R. MOHAPATRA, J.]

2. Petitioner-M/s Odisha Mining Corporation Limited (for brevity 'OMC') has filed this Writ Petition seeking for a direction to quash and set aside the proceeding in IFC Case No.1 of 2006 initiated by the Industries Facilitation Council, Thane (for brevity 'IFC') and consequential letter dated 30th January, 2014 (Annexure-7) issued by Micro, Small and Medium Enterprises Facilitation Council, Konkon Region, Thane (for brevity 'Council') communicating the order of the even date terminating the conciliation proceeding and initiating arbitration proceeding under Section 18 (3) of the Micro, Small and Medium Enterprises Development Act, 2006 (for brevity, 'MSMED Act, 2006') and letter dated 23rd July, 2014 (Annexure-9) communicating that the IFC, Thane had jurisdiction to entertain the proceeding in question. Petitioner, by way of amendment to the Writ Petition also assailed the ex parte award dated 15th November, 2014 (Annexure-10) passed by the IFC/ Council, Thane.

3. Ms. Rath, learned Senior Advocate appearing for OMC submitted that technical and commercial bids for design, manufacture, supply, storage, erection, testing, commissioning and performance guarantee test on turn-key basis of one 75 TPH crushing and screening plant at Jajanga, Odisha was invited by the Petitioner-OMC. The Opposite Party No.3- M/s Indiana Engineering Works (Bombay) Private Limited was the successful bidder. Petitioner issue LoI to Opposite Party No.3 on 22nd December, 1992, whereas the work order was issued by OMC on 29th September, 1993. Accordingly, contract was executed between OMC and Opposite Party No.3 on 13th May, 1994 (Annexure-2). The Opposite Party No.3 failed to achieve the rated capacity in performance test, i.e., 75 TPH (Ton Per Hour) and left the work incomplete. In spite of repeated communications, the Opposite Party No.3 did not comply with the terms and conditions of the contract. On the other hand, Opposite Party No.3 claiming to be a Supplier, filed an application on 27th March, 2006 before the IFC, Thane under Section 4 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 (for brevity 'IDP Act, 1993'). The said application was registered as IFC Case No.1 of 2006 (Annexure-1). It was alleged in the said application that the OMC failed to clear the bills of the Opposite Party No.3 from 6th May, 1998 to 17th April, 1999 though the plant in question was handed over to OMC on 11th April, 1999 and it was provisionally accepted on the said date. Thus, IFC Case No.1 of 2006 was registered before IFC.

4. The plant in question was proposed to be constructed at Jajanga, Odisha, but the petition under the IDP Act, 1993 (as amended in 1998) was filed at Thane in the State of Maharashtra. The entire cause of action, if any, i.e., issuance of tender, work order, execution of contract and submission of bills etc., arose within the geographical territory of the State of Odisha. The contract between OMC and Opposite Party No.3 under Annexure-2 clearly stipulated that the contract shall be subject to the exclusive jurisdiction of the Court at Bhubaneswar in Odisha. Thus, the IFC had no jurisdiction to entertain such an application under the IDP Act, 1993. Before issuance of notice to the Petitioner, the IFC should have examined as to

whether it had jurisdiction to entertain an application under the IDP Act, 1993 or not. When the matter stood thus, MSMED Act, 2006 came into force with effect from 2nd October, 2006, but the IFC assuming jurisdiction under the MSMED Act, 2006 acted in terms of Section 18 of the MSMED Act, 2006 and proceeded with the matter. The provision under Section 18 of the MSMED Act, 2006 does not have any retrospective application to validate a proceeding under the IDP Act, 1993. When initiation of the proceeding under the IDP Act, 1993 by the IFC, Thane was without jurisdiction and a nullity, no action under the MSMED Act, 2006 could have been taken by the said IFC validating an invalid proceeding. Thus, IFC, Thane lacked territorial jurisdiction to entertain IFC Case No.1 of 2006.

4.1 In support of her submission, Ms. Rath, learned Senior Advocate relied upon the case of **Harshad Chiman Lal Modi Vs. DLF Universal Limited**; (2005) 7 SCC 791 and **Sneh Lata Goel Vs. Pushpalata**; (2019) 3 SCC 594.

5. Section 32 of the MSMED Act, 2006 deals with repeal and saving of IDP Act, 1993 (as amended in 1998). Sub-section (1) of Section 32 of MSMED Act, 2006 makes it clear that by enactment of the said Act, IDP Act, 1993 was repealed. It is, however, clarified in Sub-section (2) that notwithstanding the said repeal clause, anything done or any action taken under the IDP Act, 1993 so repealed, be deemed to have been done or taken under the corresponding provision of MSMED Act, 2006. Purportedly assuming jurisdiction under the said provision, the IFC proceeded with IFC Case No.1 of 2006. But when the initiation of the proceeding was itself defective and without jurisdiction, the IFC could not have assumed jurisdiction and undertaken exercise under the MSMED Act, 2006. Section 18 (4) of the MSMED Act, 2006 confer territorial jurisdiction of IFC, Thane to entertain application for which the cause of action arose beyond its territorial jurisdiction. But there was no such corresponding provision under the IDP Act, 1993 (as amended in 1998). Thus, the said provision makes it clear that it has a prospective effect. As such, neither Section 32 nor Section 18 (4) of the MSMED Act, 2006 confers any jurisdiction on IFC, Thane to entertain the application in question.

5.1 Further, upon receipt of the application filed by Opposite Party No.3, IFC Case No.1 of 2006 was registered and notice was issued to the Petitioner-OMC. On 13th December, 2006, Petitioner on being served with the notice moved the IFC, Thane-Opposite Party No.2 and prayed for two months' time to file reply. But no order was passed by the IFC, Thane on the said application filed by the Petitioner-OMC. As during the relevant period, IFC, Thane was not functioning; Petitioner could not also enquire about the status of its application and further proceeding in the matter. However, the Petitioner was served with 2nd notice on 23rd May, 2013 by the Council, which was in continuation of the notice issued by IFC, Thane for filing reply. Pursuant to the 2nd notice dated 23rd May, 2013, Petitioner filed an application raising preliminary issue of jurisdiction of IFC, Thane/ Council to accept and decide IFC Case No.1 of 2006. However, vide letter dated 27th January, 2014 (Annexure-6), the Council intimated the Petitioner and Opposite Party No.3 the

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minutes/order passed pursuant to the hearing held on 18th January, 2014 in IFC Case No.1 of 2006, wherein, it was stated as under:-

“Council come to the conclusion that Respondent is not interested in conciliation. Therefore, the Council decided to terminate the conciliation process and to start the arbitration process. It is also decided to inform the Respondent that if remains absent for next hearing, the case will be decided on merit. Next hearing will be held on 1st February, 2014.”

Again vide letter dated 30th January, 2014, the Council communicated to the Petitioner and Opposite Party No.3 the minutes/order passed pursuant to hearing held on 18th January, 2014, wherein, it was stated as under:-

“As per the decision taken in the MSEFC Hearing Dtd. 18.01.2014, Arbitration Order pertaining to your Petition is enclosed herewith for your information.”

5.2 Ms. Rath, learned Senior Advocate further submitted that upon receipt of the notice dated 23rd May, 2013 from the Council, the Petitioner had filed an application dated 13th August, 2013 requesting the Council to decide the issue of jurisdiction as preliminary issue. But without taking a decision on the same, the Council communicated its decision to terminate the conciliation proceeding holding that the Petitioner was not interested to settle the matter amicably. Further, the Council took a decision to take up the arbitration proceeding under Section 18 (3) of the MSMED Act, 2006 by itself. Letter dated 31st January, 2024 (Annexure-7) contained the order passed pursuant to the hearing held on 18th January, 2014. On the said date, a composite order was passed, firstly, finally terminating the conciliation proceeding and secondly, initiating arbitration proceeding under Section 18(3) of the MSMED Act, 2006 by the Council itself. Thus, the same resulted in procedural irregularity as well as impropriety.

5.3 In the letter dated 23rd July, 2014 (Annexure-9), reference to hearing on 1st February, 2014 was made. In the said letter, it was stated that in view of provision under Section 32 of the MSMED Act, 2006, the Council had jurisdiction to entertain the case as the Unit (Opposite Party No.3) was registered as SSI with Directorate of Industries, Government of Maharashtra. However, the said letter under Annexure-9 did not indicate as to whether any hearing on preliminary issue of jurisdiction was undertaken on that day or not. The present Writ Petition was filed assailing the letter dated 23rd July, 2014 (Annexure-9). During pendency of the Writ Petition, the ex-parte award was passed on 23rd February, 2015 (Annexure-10) in IFC Case No.1 of 2006 by the Council. Hence, the Petitioner amended the Writ Petition also to challenge the said order/award.

5.4 It is further submitted that order dated 7th February, 2014 (Annexure-8) stipulates that the Council gave direction to the parties to resolve the issue amicably. The same implies that by that date, the proceeding was at the stage of conciliation and no arbitration proceeding had been initiated. Even after filing of the present Writ Petition on 14th November, 2014, the Petitioner intimated the Council about filing

the Writ Petition via e-mail dated 14th November, 2014 (same date) (Annexure-12). However, the impugned award was passed on 23rd February, 2015 under Annexure-10.

5.5 It is stated that the impugned award dated 23rd February, 2015 was passed on the basis of purported hearing on 15th November, 2014. The impugned award was passed without resorting to the procedure of arbitration. When the Council took up arbitration, it was incumbent on its part to allow the Petitioner to file its written statement of defence under Section 23 of the Arbitration and conciliation Act, 1996 (for brevity 'Arbitration Act'). No notice whatsoever was issued to the Petitioner intimating either initiation of the proceeding under the Arbitration Act, 1996 or providing opportunity to file statement of defence. It was stated in the impugned award under Annexure-10 that the Petitioner was represented by Sri Saswat Mishra and Sri N.C. Sahu in the hearing on 15th November, 2014, which was not at all correct, as by that time Sri Mishra was no longer associated with the Petitioner-OMC. An affidavit was also filed through Mr. N. C. Sahu stating that neither he nor Sri Mishra appeared before the Council at Thane in the proceeding dated 15th November, 2014. Procedure laid down in the Arbitration Act, 1996 was given a total go by the Council. Hence, the impugned award is a nullity. Ms. Rath, learned Senior Advocate in support of her submission also relied upon the case law ***JSW Steel Limited Vs. M/s Micro, Small Enterprises Facilitation Council, Cuttack***; (2023) 3 ILR Cuttack 643 and ***Jharkhand Urja Vikas Nigam Limited Vs. State of Rajasthan and others***; (2021) 19 SCC 206. Date of communication of the award was 4th March, 2015, i.e., after four months from the purported date of award dated 15th November, 2014.

6. Ms. Rath, learned Senior Advocate arguing on the maintainability of the Writ Petition, submitted that this Court has the jurisdiction to entertain the present Writ Petition, as the initial cause of action for filing the Writ Petition arose in the State of Odisha. She relied upon the case of ***Shanti Debi Vs. Union of India***; (2020) 10 SCC 766, ***Nawal Kishore Sharma Vs. Union of India and others***; AIR 2014 SC 3607 and ***M/s. Kusum Ingots and Alloys Ltd. vs Union of India and another***; AIR 2004 SC 2321. Alternate remedy though available to the Petitioner is not a bar to entertain the Writ Petition as the ex-parte award passed by the Council was exfacie illegal and without jurisdiction is settled in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others***; AIR 1999 SC 22. Section 19 of the MSMED Act, 2006 does not oust the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India since it relates to judicial review. She, therefore, prays for setting aside the letters under Annexures-7, 9 and 10 and also prayed for a direction to hold the very initiation of the proceeding before the IFC, Thane under the provisions of the IDP Act, 1993 to be without jurisdiction and prayed for declaring the entire proceeding to be a nullity. She also prayed for declaring the consequential award under Annexure-10 to be a nullity.

7. Mr. Nanda, learned Senior Advocate appearing for Opposite Party No.3 submitted that on being adjudged successful in the bid, a contract was executed between the Petitioner and Opposite Party No.3 on 13th May, 2013 for the designing, supply installation and commissioning of one 75 TPH crushing and screening plant in BPJ Mines under Barbil Zone, Keonjhar, Odisha. Due to certain breaches (as alleged) in the claim application dated 27th March, 2006 (Annexure-1) in IFC Case No.1 of 2006, the Opposite Party No.3 was prevented from completing the work within the stipulated period as envisaged in the contract. Certain dues of Opposite Party No.3 remained unpaid. Hence, Opposite party No.3 filed IFC Case No.1 of 2006 before IFC, Thane under the provisions of the IDP Act, 1993 (as amended in 1998) claiming an amount of Rs.5,37,01,293/-. Upon enactment of the MSMED Act, 2006, the IFC was replaced by MSME Council, Thane (MSEFC-Opposite Party No.2). In view of Section 32 of the MSMED Act, 2006, the Council took up the proceeding; proceeded with the case and passed the award under Annexure-10 directing the Petitioner to pay Opposite Party No.3 a sum of Rs.45,60,886/- along with interest. Just a day before passing of the award under Annexure-10, the Petitioner filed the present Writ Petition.

7.1 After the award under Annexure-10 was passed, the Petitioner sought for amendment of the Writ Petition to challenge the award, which was allowed by this Court. Vide order dated 12th May, 2015 and in Misc. Case No.5231 of 2015, directed interim stay operation of award under Annexure-10, which is continuing till date. Although an application for vacation of the interim order has been filed by Opposite Party No.3, but the same is still pending. Due to non-payment of the amount so awarded by the Council in the impugned award, the Opposite Party No.3, which is a Small Scale Industrial Unit, is suffering financially. Upon receipt of the application filed by Opposite Party No.3 under Annexure-1, IFC, Thane issued notice to the Petitioner on 9th November, 2006 to file their reply. The Petitioner in its letter dated 13th December, 2006 (Annexure-R/24 to the additional affidavit) sought for extension of two months for filing their reply to IFC Case No.1 of 2006. On 24th July, 2007 (Annexure-R/25 to the additional affidavit), the Petitioner wrote to the Principal Secretary, IFC, Thane that they had engaged Sri Ashok Kumar Pati to defend their case before the IFC. When the matter stood thus, due to enactment of MSMED Act, 2006, the Council, vide its letter dated 4th March, 2013 (Annexure-R/28 to the additional affidavit) directed the Petitioner to file its reply within fifteen days from the receipt of the said letter with a copy to the Opposite Party No.3 failing which, the Council would take an ex-parte decision. Again, on 23rd May, 2013 (Annexure-4 to the writ petition and Annexure-R/29 to the additional affidavit), the Council referring to its earlier letters informed the Petitioner that no reply by the Petitioner was filed by then and it was also indicated therein that in the event no submission/say is received within seven days from the date of communication, the Council would decide the case ex-parte and the same would amount to waiver of opportunity of hearing at Petitioner's own risk. In reply to the said letter under

Annexure-R/29, the Petitioner intimated Opposite Party No.2 vide its letter dated 29th May, 2013 (Annexure-R/30 to the additional affidavit) that pursuant to notice dated 9th November, 2006 by the Council when its Advocate went to the office of Opposite Party No.2/Council to verify the case record and to obtain necessary documents in January, 2007, the Council was found defunct in view of the enactment of MSMED Act, 2006. It was also alleged, inter alia, that no communication was made by the Council thereafter. Further, the Petitioner alleged that the Council had no jurisdiction to entertain the dispute on account of Clause-9.20 of the contract and the case was barred by limitation. However, the Petitioner requested for another set of claim petition and sought for two months' time for submission of reply. Accordingly, the Council-Opposite Party No.2 sent a set of documents in respect of the claim petition to the Petitioner on 13th June, 2013 (Annexure-R/31 of the additional affidavit) directing them to file their reply within fifteen days of receipt of the documents. In reply, the Petitioner informed the Council in its letter dated 3rd July, 2013 (Annexure-R/32 to the additional affidavit) that they had received documents on 17th June, 2013 only and would require one month time with effect from 1st July, 2013 to file their reply. However, the Council/Opposite Party No.2 issued notice for final hearing of the parties on 18th July, 2013 (Annexure-R/33 to the additional affidavit) informing them that despite having served with notice to the Petitioner to file reply nothing had been received. Thus, as last opportunity the Petitioner was directed to make the payment as claimed or to file its reply within fifteen days from the date of receipt of the said notice failing which, the Council would be compelled to hear the matter without waiting for reply of the Petitioner. On 8th August, 2013, the Petitioner filed its preliminary reply (Annexure-5). On receipt of the aforesaid reply, the Council sent a copy of the same to the Opposite Party No.3 to respond to the same within fifteen days. In due course on 29th August, 2013 (Annexure-R/34 to the additional affidavit), the Council directed both the parties to attend the hearing scheduled on 6th September, 2013. The matter was then adjourned on 6th September, 2013. Thus, hearing of the case was scheduled to 11th October, 2013 and the parties were directed by the Council to attend hearing on the scheduled date vide Annexure-R/37 to the additional affidavit. On the said date, the Opposite Party No.3 filed its rejoinder to the Petitioner's reply. Accordingly, the date of hearing was fixed to 15th November, 2013 (Annexure-R/39 to the additional affidavit). Notice was also sent enclosing minutes of the hearing held on 11th October, 2013, which disclosed that the Petitioner did not attend hearing. On receipt of the said letter/notice, the Petitioner requested for adjournment of four weeks to file the reply to the affidavit filed by Opposite Party No.3. Further, the Petitioner vide its letter dated 21st December, 2013 and 26th December, 2013 raised the objection of jurisdiction. It also admitted to have withheld a sum of Rs.25,13,775/- from the Opposite Party No.3 on account of their failure to achieve the rated capacity. The Petitioner also raised objection that the money claim made by Opposite Party No.3 related to financial year 1999-2000 and the application under the IDP Act, 1993 was filed in the year 2006, i.e., after six years despite

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having other fora for redressal of its grievances. It was further stated that MSMED Act, 2006 has come into force on 2nd October, 2006, which is prospective in nature. Thus, it could not be made applicable to the claim of Opposite Party No.3 retrospectively more particularly after a lapse of six years. Thereafter, the hearing before the Council was scheduled to 18th January, 2014, which was communicated to the parties vide notice of the Council dated 7th January, 2014. In the said notice, minutes of the hearing held on 21st December, 2013, was also enclosed which revealed that the Petitioner did not attend the hearing. Subsequently, the date of hearing was scheduled to 1st February, 2014 and it was communicated by the Council to the parties vide notice dated 24th January, 2014. In the said notice, minutes of the hearing held on 18th January, 2014 was enclosed which disclosed that the Petitioner did not attend the hearing. Thus, the Council opined that the Petitioner is not interested for conciliation. As such, it decided to terminate the conciliation and commence the arbitration process. Thus, its Mr. Nanda, learned Senior Advocate argued that the Petitioner having afforded ample opportunity to participate in the conciliation, chose not to avail the same. As such, no irregularity or illegality was committed by the Council in terminating the conciliation proceeding and commencing the arbitration process. Even thereafter, the Council provided opportunities to the parties to settle the matter amicably without involving the Council, which is clear from the subsequent minutes of the Council dated 1st February, 2014. However, vide its letter dated 5th May, 2014 (Annexure-R/45 to the additional affidavit), the Petitioner being not satisfied again wrote to the Council/Opposite Party No.2 that it lacked jurisdiction to decide the dispute and requested to decide the issue of jurisdiction preliminarily. Hearing of matter was then posted to 21st June, 2014 by the Council. Vide the said notice under Annexure-R/46 to the additional affidavit, the Petitioner informed the Council/Opposite party No.2 to decide the issue of jurisdiction first without which attendance of the Petitioner should not be insisted upon. In response to the said letter, the Council intimated the Petitioner vide Annexure-7 that it had jurisdiction to entertain the claim of Opposite Party No.3 in view of Section 32 of the MSMED Act, 2006 read with notification dated 7th January, 2008 issued by the Industry, Energy and Labour Department, Government of Maharashtra. Thereafter, the Council proceeded with the arbitration issuing notice to the parties to attend the hearing for arbitration to be held on 30th August, 2014 (Annexure-R/48 to the additional affidavit). In response to the same, the Petitioner vide its letter dated 27th August, 2014 (Annexure-R/49 to the additional affidavit), requested the Council to adjourn the hearing for four weeks on account of change in the office order of Chairman/Managing Director. Hence, the matter was then fixed to 15th November, 2014 under intimation to the parties. When the matter stood thus, the Petitioner filed the instant Writ Petition on 14th November, 2014. On the same date, it intimated to the Council about filing of the Writ Petition. The matter was, however, taken up on 15th November, 2014 and on conclusion of hearing in absence of the Petitioner award under Annexure-10 was passed directing the Petitioner to pay Rs.45,60,886/- along with interest till the date of payment to

Opposite Party No.3 within a period of one month from the date of receipt of the award. Thus, the Petitioner moved this Court for amendment of the Writ Petition to challenge the award, which was allowed. Mr. Nanda, learned Senior Advocate, therefore, submitted that since award under Annexure-10 has already been passed in the IFC Case, the Writ Petition in the present form is not maintainable. Legality of the decision with regard to issue of jurisdiction as well as merit of the award (Annexure-10) can only be challenged under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act, 2006. The Petitioner was afforded with ample opportunity by the Council as would be apparent from the documents along with additional affidavit filed by Opposite Party No.3. The grievance, if any, with regard to termination of the conciliation proceeding can only be challenged in a properly constituted petition under Section 34 of the Arbitration Act, 1996 and not in the present Writ Petition.

7.2 It is further submitted that the Council at Thane had jurisdiction to entertain the claim of the Opposite Party No.3, as the Opposite Party No.3 was registered with the Directorate of Industries, Maharashtra, which come under the jurisdiction of the Council at Thane. Mr. Nanda, learned Senior Advocate also relied upon the case of **Kanwar Singh Saini Vs. High Court of Delhi**; (2012) 4 SCC 307, wherein, at para-23, Hon'ble Supreme Court held as under:-

“When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner”. Thus, for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.”

The Opposite Party No.3 being an SSI Unit under the jurisdiction of Council at Thane had jurisdiction to entertain the dispute relating to IDP Act, 1993. Again, after commencement of MSMED Act, 2006, the act done or orders passed under the IDP Act, 1993 was saved and taken to have been passed under the provisions of MSMED Act, 2006. The Council has also intimated the Petitioner under Annexure-7 that it had jurisdiction to entertain the dispute/claim made by the Opposite Party No.3. Mr. Nanda, learned Senior Advocate also placed reliance on the case of **Marsons Electrical Industries Vs. Chairman, Madhya Pradesh Electricity Board and another**; 2023 SCC OnLine All 2675. Mr. Nanda, learned Senior Advocate further submitted that in view of the ratio in the case of **M/s Silpi Industries etc. Vs. Kerala State Road Transport Corporation and another**; (2021) 18 SCC 790, the MSMED Act, 2006 being a special statute will have overriding effect on the Arbitration Act, 1996 and in the instant case, Opposite Party No.3 under the IDP Act, 1993 had approached the competent authority and filed its claim under the said Act. “Any agreement to the contrary has to be ignored in view of the statutory obligations.” The same view was taken by the Allahabad High Court taking into consideration the case law in the case of **Marsons Electrical Industries (supra)**,

Kerla High Court in Shreyas Marketing vs Micro and Small Enterprises Facilitation Council (MSEFC), Bangalore and another; (2023) SCC OnLine (Ker) 4206 has discussed the jurisdiction of the Council established under Section 20 of the MSMED Act, 2006 and its overriding effect in view of Sections 18 and 24 of the MSMED Act, 2006. It is held therein that the jurisdiction of a Council is determined by the location of the Supplier's business. Section 18 (4) of the MSMED Act, 2006 categorically states that only the Facilitation Council in the area where the Supplier's business is located has jurisdiction to entertain the claim.

7.3 In Gujarat State Civil Supplies Corporation Limited Vs. Mahakali Foods Private Limited (Unit-2) and other; (2023) 6 SCC 401, Hon'ble Supreme Court dealt with several issues regarding applicability of the MSMED Act, 2006. In para-44 and 45 of the said case, Hon'ble Supreme Court held as under:-

“44. The submissions made on behalf of the counsel for the Buyers that a conscious omission of the word “agreement” in sub-section (1) of Section 18, which otherwise finds mention in Section 16 of the MSMED Act, 2006 implies that the arbitration agreement independently entered into between the parties as contemplated under Section 7 of the Arbitration Act, 1996 was not intended to be superseded by the provisions contained under Section 18 of the MSMED Act, 2006 also cannot be accepted. A private agreement between the parties cannot obliterate the statutory provisions. Once the statutory mechanism under sub- section (1) of Section 18 is triggered by any party, it would override any other agreement independently entered into between the parties, in view of the non obstante clauses contained in subsection (1) and sub-section (4) of Section 18 (2005) 1 SCC 754. The provisions of Sections 15 to 23 have also overriding effect as contemplated in Section 24 of the MSMED Act, 2006 when anything inconsistent is contained in any other law for the time being in force. It cannot be gainsaid that while interpreting a statute, if two interpretations are possible, the one which enhances the object of the Act should be preferred than the one which would frustrate the object of the Act. If submission made by the learned counsel for the buyers that the party to a dispute covered under the MSMED Act, 2006 cannot avail the remedy available under Section 18(1) of the MSMED Act, 2006 when an independent arbitration agreement between the parties exists is accepted, the very purpose of enacting the MSMED Act, 2006 would get frustrated.

45. There cannot be any disagreement to the proposition of law laid down in various decisions of this Court, relied upon by the learned counsel for the buyers that the Court has to read the agreement as it is and cannot rewrite or create a new one, and that the parties to an arbitration agreement have an autonomy to decide not only on the procedural law to be followed but also on the substantive law, however, it is equally settled legal position that no agreement entered into between the parties could be given primacy over the statutory provisions. When the Special Act i.e., MSMED Act, 2006 has been created for ensuring timely and smooth payment to the suppliers who are the micro and small enterprises, and to provide a legal framework for resolving the dispute with regard to the recovery of dues between the parties under the Act, also providing an overriding effect to the said

law over any other law for the time being in force, any interpretation in derogation thereof would frustrate the very object of the Act.”

Hon’ble Supreme Court in the aforesaid case law also clarified the powers of the Facilitation Council so that it acts as an Arbitrator vis-à-vis the Arbitration Act, 1996. The relevant para⁴⁸ is reproduced hereunder for ready reference.

“48. When the Facilitation Council or the institution or the centre acts as an Arbitrator, it shall have all powers to decide the disputes referred to it as if such arbitration was in pursuance of the arbitration agreement referred to in sub-section (1) of Section 7 of the Arbitration Act, 1996 and then all the trappings of the Arbitration Act, 1996 would apply to such arbitration. It is needless to say that such Facilitation Council/institution/centre acting as an arbitral tribunal would also be competent to rule on its own jurisdiction like any other arbitral tribunal appointed under the Arbitration Act, 1996 would have, as contemplated in Section 16 thereof.”

In view of the above, Mr. Nanda, learned Senior Advocate argued that the Council under the IDP Act, 1993 initially and Facilitation Council under the MSMED Act, 2006 after its enactment had the jurisdiction to entertain the claim/dispute of the Opposite party No.3.

7.4. It was further argued by Mr. Nanda, learned Senior Advocate that the claim of Opposite Party No.3 was not time barred as alleged by the Petitioner. Elaborating his submission Mr. Nanda, learned Senior Advocate stated that the Petitioner refused to make payment of certain invoices raised by Opposite Party No.3 from 13th February, 1997 till 29th February, 2000. Several requests and reminders of the Opposite Party No.3 to the Petitioner went in vain. All the time, the Petitioner although proposed to settle the dispute amicably, but in essence, it only killed time and no fruitful step was taken at the instance of the Petitioner in that regard. Till 6th October, 2004 (Annexure-R/6 to the Additional Affidavit), the Petitioner proposed settlement with Opposite Party No.3. On 18th November, 2004 (Annexure-R/17 to the Additional Affidavit), the Petitioner forwarded the copy of the minutes of the meeting on 14th October, 2004, which indicated that the Petitioner would float fresh tender to bring in the third party to repair the crusher and price quoted in the tender would be deducted from the outstanding dues of Opposite Party No.3. Thereafter, the Opposite Party No.3 in its letters dated 7th February, 2005 and 11th February, 2005 (Annexure-R/61 to the rejoinder affidavit) disputed the contents of the minutes of the meeting dated 3rd October, 2003 and 14th October, 2004 and requested for another meeting to resolve the dispute. Further, the letters of Opposite Party No.3 dated 16th February, 2005, 21st February, 2005, 14th March, 2006, 2nd May, 2005, 22nd June, 2005, 30th July, 2005, 31st August, 2005 and 9th September, 2005 to the Petitioner (Annexure-R/62 series to the additional affidavit) were not responded to by the Petitioner. Thus, the Opposite Party No.3 was constrained to move the IFC under the IDP Act, 1993. Further, in the letter dated 26th October, 2013, it was mentioned for the first time that although the claim relates to financial year 1999-

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2000 approached MSEFC after six years despite having other fora for redressal of its grievances. Thus, Mr. Nanda, learned Senior Advocate prayed for dismissal of the Writ Petition.

8. Learned Senior Advocates appearing for the parties were heard on several occasions. Lengthy arguments were also made. In fact, after closure of the argument, the judgment was reserved on 2nd January, 2025. But at the time of preparation of the judgment, some clarification both on facts and law was required in view of the peculiar fact and circumstances of the case as well as points raised by learned Senior Advocates at the time of argument of the case. Hence, the matter was listed on 4th April, 2025 under the heading 'To be Mentioned'

9. This Court heard learned Senior Advocates for the parties on the said date on relevant points and the judgment was reserved on the said date. The Petitioner has raised an objection with regard to maintainability, continuance and culmination of the proceeding before the IFC as well as before the Council broadly on three grounds.

i) the IFC as well as the Council had no territorial jurisdiction to entertain and continue with the proceeding;

ii) the Council under MSMED Act, 2006 did not assume jurisdiction to entertain the claim of the Opposite Party No.3;

iii) the claim of the Opposite Party No.3 was barred by time; and

iv) the impugned award is not sustainable both of law and facts.

10. As narrated above by learned Senior Advocates appearing for the respective parties and the materials available on record, there remains no dispute with regard to the factual aspect of the case. It remains undisputed that the Opposite Party No.3 was awarded with a contract for designing, manufacture, supply, search, erection, testing, commissioning and performance guarantee test on turnkey basis 75 TPH Crushing and Spinning Plant at Jajanga, Odisha. There arose some dispute between the parties for which payment of Opposite Party No.3 was withheld by Petitioner-OMC. The Opposite Party No.3 filed a claim petition before the Industrial Facilitation Council, Thane (IFC) under the provisions of the IDP Act, 1993, as amended in 1998. The claim petition by Opposite Party No.3 was filed on 27th March, 2006 (Annexure-1). The said claim petition was registered as IFC Case No.1 of 2006. On 21st September, 2006, IFC sought for clarification from Opposite Party No.3 as to whether its claim was only for interest or for principal amount along with interest (R-21 to the additional affidavit). The Opposite Party No.3 clarified the same on 28th September, 2006 stating that the claim was for principal outstanding, interest as well as for damages. Thus, the IFC issued notice to the Petitioner on 9th November, 2006 (Annexure-3 to the Writ Petition). On receipt of the said notice, the Petitioner, vide its letter dated 13th December, 2006 (R-24 to the additional affidavit) sought for extension of two months' time for filing reply in IFC Case No.1 of 2006. When the matter stood thus, MSMED Act, 2006 came into force with effect from 2nd

October, 2006, vide notification No.S.O.1154(E) dated 18th July, 2006 [see Gazette of India, Extraordinary Part II sec.3(ii)] and the Council was constituted under the provisions of MSMED Act, 2006. After the Council was constituted, fresh notices were issued to the Petitioner and Opposite Party No.3. It is worthwhile to state here that although the Petitioner had sought for extension of two months' time to file its reply, but no reply was filed for a considerable period. As such, vide letter dated 4th March, 2013 (Annexure-R-28 to the additional affidavit), the Council informed the Petitioner that despite its letter dated 13th December, 2006, no response was received from the side of the Petitioner. Thus, the Council directed the Petitioner to file its reply within fifteen days from the date of receipt of the said letter failing which, it was indicated that the Council would proceed ex parte in the matter. Reminder to file objection was also issued to the Petitioner by the Council on 23rd May, 2013 (Annexure-4 to the Writ Petition). On receipt of the said letter, the Petitioner, vide its letter addressed to the Council, inter alia, alleged that pursuant to letter dated 9th November, 2006, learned Advocate appearing for the Petitioner had visited office of the IFC/Council to verify the case record and obtain necessary documents during January, 2007, but the same was found defunct following repeal of the IDP Act, 1993. No communication by the Council was made to the Petitioner thereafter. The Petitioner further alleged that the Council had no jurisdiction to entertain the dispute in view of the Clause 9.20 of the contract and the dispute was also barred by limitation. Thus, for the first time, the Petitioner, vide its letter dated 29th May, 2013, raised an objection with regard to the territorial jurisdiction of the Council and that the dispute was barred by limitation.

10.1 However, adhering to the request of the Petitioner to provide another set of claim petition, the Council sent a set of documents to the Petitioner in respect of the claim petition dated 13th June, 2013. The Petitioner was also directed therein to file its reply within fifteen days from the date of receipt of the documents. On receipt of the said documents, the Petitioner again requested for one month time with effect from 1st July, 2013 to file its reply (Annexure R-32 to the additional affidavit). However, vide letter dated 18th July, 2013 (Annexure R-33 to the additional affidavit), the Council issued notice of final hearing to the Petitioner intimating that despite several notices it had not filed its response to the claim petition. Thus, the Petitioner was directed by the Opposite Party No.2 either to make payment of the claim amount or to file its reply within fifteen days of the date of the notice failing which, the Council would be compelled to proceed with the matter without waiting for the reply of the Petitioner. On receipt of the same, the Petitioner filed its preliminary reply on 8th August, 2013 (Annexure-5 to the Writ Petition). Thereafter, the matter was posted to different dates either on the request of the Petitioner or Opposite Party No.3. Although hearing of the dispute was scheduled on 11th October, 2013, the Petitioner did not attend the hearing before the Council. However, the Council informed the Petitioner that since Opposite Party No.3-Unit is located in Mumbai and was registered with the Industry Commissioner, Mumbai, the Council had jurisdiction to entertain the dispute. Upon receipt of the said

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letter/notice dated 29th October, 2013, the Petitioner again raised the issue of jurisdiction of the Council as well as limitation to file the claim petition. However, the Council, vide its notice dated 4th/7th January, 2014 (Annexure-R-41 to the additional affidavit), directed both parties to attend the hearing scheduled on 18th January, 2014. The minutes of proceeding dated 18th January, 2014 is annexed to the notice dated 24th/ 27th January, 2014 (Annexure R-44 to the additional affidavit), which is relevant in the instant case to be referred to.

“GOVERNMENT OF MAHARASHTRA

Micro & Small Enterprises Facilitation Council

Konkan Division

Petition No.01/2006

Petitioner— *M/s Indiana Engineering Works*

(Bombay) Pvt. Ltd. Mumbai

Respondent—*M/s Orissa Mining Corporation Ltd.,*

Bhubaneswar

Delayed Amount Principal

Rs.4,35,31,677/-

Interest Rs.1,01,69,616/-

Total Rs.5,37,01,293/-

The sitting of Micro & Small Enterprises Facilitation Council, Konkan Division Thane was held on 18th January, 2014 at 11 a.m. in the office of the Joint Director of Industries, Konkan Region Thane under the chairmanship of Mr. Dilip Shinde, Chairman, MSEFC & Addl. Divisional Commissioner Revenue, Konkan Division in the presence of following members.

- 1. Mr. Anilkumar Chandorikar, Member Secretary, MSEFC*
- 2. Mr. Umesh Tayade, Member & Chairman, AAMA*
- 3. Mr. Mukesh Gupta, Member & Chairman, APMA*
- 4. Mr. R. K. Singh, Member & AGM, SIDBI.*

During hearing, discussion was held and following decision was taken by Council.

Petitioner was present for the hearing. Respondent never attended the hearing. Petitioner submitted reply to the letter dtd. 21.12.2013 & 26.12.2013 filed by respondent. Council came to the conclusion that respondent is not interested in Conciliation. Therefore, Council decided to terminate the conciliation process, and to start the arbitration process. It is also decided to inform the Respondent that if he remains absent for next hearing, the case will be decided on merit. Next hearing will be held on 1st February, 2014.

Sd/- (illegible)

*Member Secretary Micro & Small Enterprises Facilitation Council
& Jt. Director of Industries, Konkan Division*

Sd/- (illegible)

Chairman

*Micro & Small Facilitation Council &
Enterprises Addl. Commissioner (Revenue),
Konkan Division ”*

Thus, it appears from the minutes of the proceeding dated 18th January, 2014 that due to non-cooperation of the Petitioner, the Council decided to terminate the conciliation process and to proceed with arbitration. The Petitioner never challenged the said order dated 18th January, 2014 passed by the Council terminating the conciliation proceeding and deciding to start arbitration under Section 18 (3) of the MSMED Act. Ms. Rath, learned Senior Advocate appearing for the Petitioner, however, raised certain objections with regard to culmination of the conciliation proceeding on 18th January, 2014. It was her submission that the Council by order dated 1st February, 2014, called upon both parties to resolve the dispute amicably and to inform the Council. Thus, the conciliation proceeding was not terminated on 18th January, 2014 and was still alive. The said feeble contention raised by Ms. Rath, learned Senior Advocate is not sustainable inasmuch as, vide order dated 1st February, 2014, the Council had only requested the parties to resolve the dispute amicably and inform the Council. Thus, it is apparent that the Council had never taken up the conciliation proceeding beyond 18th January, 2014.

11. Jurisdiction of IFC/Council to initiate, adjudicate and entertain the dispute :-

Ms. Rath, learned Senior Advocate argued with vehemence that neither the IFC had any territorial jurisdiction to initiate the proceeding by entertaining the claim application and to proceed with the same nor the Council had any jurisdiction to adjudicate upon the dispute. It was her submission that the cause of action, i.e., issuance of work order and execution of the contract dated 13th May, 1994 in respect of the work in question arose within the territorial jurisdiction of the State of Odisha. The contract dated 13th May, 1994 also specifically provided that any dispute arising out of the contract shall be subject to the exclusive jurisdiction of the Court at Bhubaneswar, Odisha. There was no provision under the IDP Act, 1993 conferring jurisdiction on the IFC to initiate and entertain the proceeding on the complaint of the Opposite Party No.3. MSMED Act, 2006 came into force on 2nd October, 2006 and is prospective in nature. Thus, the provisions under the Act, has no retrospective application more particularly to validate a proceeding, which is null and void *ab initio*.

11.1 It is in fact Clause 9.20 of the contract dated 13th May, 1994 (Annexure-2) deals with ‘disputes and jurisdiction’. It reads as under:-

“The Court/Courts at Bhubaneswar shall have the exclusive jurisdiction for deciding the conflicts or the disputes, if at all it occurs.”

It is also not in dispute that Opposite Party No.3 had never approached Court/Courts at Bhubaneswar for resolution of any dispute arising out of the contract. Mr. Nanda, learned Senior Advocate, however, submitted that the Opposite Party No.3, which is a Small-Scale Unit, has been registered in the State of Maharashtra under the IDP Act, 1993. The claim of the Petitioner under the IDP Act, 1993 was registered before IFC Thane (IFC Case No.1 of 2006). It was further

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argued that although the Petitioner appeared before IFC Thane, but for the first time, it raised the issue of jurisdiction before the Council (not before IFC) after MSMED Act, 2006 came into force. Mr. Nanda, learned Senior Advocate also referred to Section 32 of the MSMED Act and submitted that proceeding initiated under the IDP Act, 1993 including any act done or action taken under the said Act shall be deemed to have been done or taken under the corresponding provision of the MSMED Act. Thus, Opposite Party No.3 is deemed to have been registered under the MSMED Act. Further, in view of the provisions under Section 32 of the MSMED Act, all proceedings initiated under the said Act shall be deemed to have been initiated under the MSMED Act. The MSMED Act being a special statute overrides the Clause more particularly Clause 9.20 of the contract under Annexure-2. The provisions under MSMED Act confers jurisdiction on the Council to entertain and proceed with the dispute. The Opposite Party No.3 being the Supplier, which is situated and ordinarily carries on its business within the State of Maharashtra. Thus, the Council at Thane had territorial jurisdiction to entertain and adjudicate the proceeding.

12. In view of rival contentions of the parties, this Court thinks it profitable to refer to Section 18 (4) of the MSMED Act, 2006, which reads as under:-

“18. Reference to Micro and small Enterprises Facilitation Council.

xx xx xx

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

xx xx xx”

(emphasis supplied)

Thus, the Council at Thane had the territorial jurisdiction to entertain the dispute as the Supplier, namely, Opposite Party No.3 is located within its jurisdiction. This provision has been made in conformity with the scope and object of the MSMED Act, which provides for facilitating the promotion and development and enhancing the competitiveness of Small and Medium Enterprises. Further, Section 32 of the MSMED Act, 2006 while repealing the IDP Act, 1993, under Sub-section (1) of the said provision, made provision under Sub-section (2), which reads as under:-

“Section 32 Repeal Act 32 of the Act, 1993

(1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act.”

Thus, the proceeding initiated under the IDP Act, 1993 is deemed to have been initiated under corresponding provisions of MSMED Act. In case of **Kanwar Singh Saini (supra)**, it is observed that *“When a statute gives a right and provides a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act. When an Act creates a right or obligation and enforces the performance thereof in a specified manner, ‘that performance cannot be enforced in any other manner’. Thus, for enforcement of a right/obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of rights under the said Act.”* In the case of **M/s Silpi Industries etc. (supra)**, it is clarified that MSMED Act being a special statute would have overriding effect on the Arbitration and Conciliation Act, 1996 and if the claims come under the ambit of MSMED Act, 2006, the Supplier can approach the competent authority and file its claim under the said Act. The Hon’ble Supreme Court in the said case law further clarified that any agreement to the contrary would have to be ignored in view of the statutory obligation. The same view was taken up by the Allahabad High Court in **Marsons Electrical Industries(supra)**, wherein, at para-40 quoting **M/s Silpi Industries etc. (supra)**, it is held as follows:-

“40. Hon'ble Supreme Court in the matter of Silpi Industries (supra) has clearly held that MSMED Act, 2006 being a special Act will have overriding effect on the Arbitration and Conciliation Act, 1996 and if the seller comes under the ambit of MSMED Act, 2006, he can approach the competent authority and file his claim under the said Act. Any agreement to the contrary has to be ignored in view of the statutory obligations. The Court further held that if any registration is obtained the same will be prospective and applies for supply of goods and service subsequent to its registration but cannot operate retrospectively.”

In view of the above, Clause 9.20 of the contract under Annexure-2 becomes redundant, in view of the provision under the MSMED Act, which overrides Clause 9.20 of the Contract.

13. Learned counsel for the parties made elaborate arguments on the jurisdiction of the Council to adjudicate the dispute, but this Court does not feel it necessary to further delve into the issue of jurisdiction in view of the clear statutory provision as stated above as well as the settled position of law. Ms. Rath, learned Senior Advocate appearing for the Petitioner, however, submitted that although preliminary objection with regard to the jurisdiction of the Council was raised, but its objection was rejected and communicated to it vide letter dated 23rd July, 2014 (Annexure-9). On perusal of Annexure9, it reveals that the petition raising issue of jurisdiction was taken into consideration by the Council and it was decided that in view of Section 21 (3) and Section 32 of the MSMED Act, the Council had jurisdiction to entertain the case, as the Opposite Party No.3-Unit was registered as SSI with Directorate of Industries, Government of Maharashtra. It is submitted that the IFC under the IDP Act, 1993 had no jurisdiction to entertain the claim of Opposite Party No.3, as the entire cause of action arose within the territorial jurisdiction in the State of Odisha. It was also argued that MSMED Act, 2006 is prospective in nature and its provisions

cannot be retroactive in nature to validate the claim of Opposite Party No.3 to be entertained by IFC Thane. The argument advanced by Ms. Rath, learned Senior Advocate is not acceptable, inasmuch as although the Opposite Party No.3 filed its claim petition before IFC Thane, but it was taken up for consideration by the Council when MSMED Act, 2006 came into force. By the time the issue of jurisdiction was raised, the Council was in seisin of the matter. As discussed, the Council had ample jurisdiction to entertain the claim as Opposite Party No.3 situates within its local jurisdiction. Thus, the argument with regard to prospective application of the provision of MSMED Act in the instant case loses its significance. Be that as it may, the decision with regard to jurisdiction of the Council could have been raised in a properly constituted petition under Section 34 of the Arbitration Act, 1996 read with Section 19 of the MSMED Act, 2006, which the Petitioner has not yet availed. In view of the above, the objection with regard to jurisdiction raised by the Petitioner being devoid of any merit stands overruled.

14. Whether the IFC has any jurisdiction to entertain the claim of Opposite Party No.3;

Ms. Rath, learned Senior Advocate vehemently argued that a preliminary issue of jurisdiction of the IFC, Thane and the limitation as to whether it has the jurisdiction to decide the instant dispute was raised by the Petitioner. It was argued that that the preliminary issue, as aforesaid, was raised pursuant to the 2nd notice dated 23rd May, 2013 issued by the Council. It is further argued that upon receipt of the claim by the IFC, it should have made an endeavour to see as to whether it had jurisdiction to entertain such a claim. Instead, IFC registered the claim petition and mechanically issued notice to the Petitioner on the claim petition filed by Opposite Party No.3. This Court has vividly discussed the issue of jurisdiction of the Council to entertain the claim of Opposite Party No.3 in preceding paragraphs. Thus, the same needs no reiteration. Contention of Ms. Rath, learned Senior Advocate to the effect that upon receipt of the claim of Opposite Party No.3, the IFC should have made endeavour to see that whether it had the jurisdiction to entertain the same or not, this Court observes that there is no provision under the IDP Act, 1993 or MSMED Act, 2006 obliging the IFC or the Council, as the case may be, to decide the issue or jurisdiction at the threshold unless it is raised by the adversary, namely, the Petitioner. When an application raising such preliminary issue was filed, the Council observed that it had jurisdiction to entertain the proceeding. The veracity of such decision can only be adjudicated under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act, 2006.

15. Section 32 of the MSMED Act, 2006 repealed IDP Act, 1993. Sub-section (2) of Section 32 of the MSMED Act stipulates “notwithstanding such repeal, anything done or any action taken under the IDP Act was repealed under Sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act”. It was thus argued by Ms. Rath, learned Senior Advocate that there is no corresponding provision under the repealed Act, i.e., IDP Act, 1993

(as amended in 1998) to entertain such a claim by the IFC to entertain the proceeding/claim raised by Opposite Party No.3 by the Council. It was further argued that the provision under Section 18(4) being prospective in nature would only be applicable to the claim petition filed after MSMED Act came into force. Ms. Rath, learned Senior Advocate vehemently argued that the claim petition was filed by Opposite Party No.3 before MSMED Act, 2006 came into force. Thus, the same could not have been deemed to be filed under the MSMED Act.

16. Mr. Nanda, learned Senior Advocate appearing for Opposite Party No.3 refuting the same submitted that there cannot be any controversy to the position of law that Opposite Party No.3 was entitled to file a claim under the provisions of IDP Act. Issue with regard to place of filing such claim can only be adjudicated when it is raised. Such a preliminary issue was raised only after MSMED Act came into force. As such, no illegality has been committed by the Council in answering the preliminary issue against the Petitioner observing that the Council had territorial jurisdiction to entertain the claim.

16.1 Upon hearing learned counsel for the parties and on perusal of record, it is apparent that the claim petition was filed by Opposite Party No.3 under Section 4 read with Section 7-A of the IDP Act, 1993 (as amended in 1998). Save and except the objection with regard to territorial jurisdiction of the IFC/Council, it can be safely said that Opposite Party No.3 was legally entitled to raise a claim under the IDP Act, 1993. Section 18(1) of the MSMED Act, 2006 is the corresponding provision entitling the Supplier to make a reference to the Council for adjudication of the claim. Thus, the Council had apparently committed no error in holding that it had jurisdiction to entertain such claim. As such, the argument of Ms. Rath, learned Senior Advocate that there was no corresponding provision under the MSMED Act to entertain such claim is not sustainable. Ms. Rath, learned Senior Advocate referred to the case law in the case of **Rabinder Kumar Dhariwal Vs. Union of India**; (2023) 2 SCC 209, which does not deal with a case of the present nature. The observations made therein are in the context of facts and circumstances of the said case, which has no application to the instant case. It is, however, observed in the said case law that the test to identify two statutes are 'corresponding' is whether firstly, subject matter of two statutes is essentially same and secondly, main object and purpose are substantially similar. It is further observed therein that the said test, however, cannot be applied to identify corresponding provision, since a much more specific analysis will have to be undertaken. A provision does not correspond to another merely because it deals with the same subject matter. Rather, the test would be whether both provisions are essentially similar or not. In the instant case, core issue to be considered is whether a claim before the IFC was entertainable or not. From the observations made in **Rabindra Kumar Dhariwal (supra)**, it is apparent that the same requires adjudication, if raised. There was no occasion for the IFC to adjudicate upon the same in the facts and circumstances of the case. The issue with regard to the territorial jurisdiction would come at a later stage when it is raised.

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When the issue with regard to the territorial jurisdiction was raised after enactment of MSMED Act, 2006, this Court feels that the Council has committed no error in holding that it had territorial jurisdiction to entertain the same more particularly in view of Section 18 (4) of the MSMED Act, 2006. Thus, the contention raised by Ms. Rath, learned Senior Advocate for the Petitioner, is not sustainable.

17. Whether the claim of the Opposite Party No.3 was barred by time;

It appears from the record that the Petitioner refused to make payment of certain invoices raised by Opposite Party No.3 from 13th February, 1997 till 29th February, 2000 in spite of several requests and reminders of the Opposite Party No.3 to the Petitioner. The Petitioner appears to have proposed to settle the dispute amicably. Till 6th October, 2004 (Annexure R/6 to the additional affidavit), the Petitioner proposed settlement with Opposite Party No.3. On 18th November, 2004 (Annexure-R/17 to the additional affidavit), the Petitioner forwarded the copy of the minutes of the meeting on 14th October, 2004, which indicated that the Petitioner would float fresh tender to bring in the third party to repair the crusher and price quoted in the tender would be deducted from the outstanding dues of Opposite party No.3. Thereafter, the Opposite Party No.3 in its letters dated 7th February, 2005 and 11th February, 2005 (Annexure-R/61 to the rejoinder affidavit), disputed the contents of the minutes of the meeting dated 3rd October, 2003 and 14th October, 2004 and requested for another meeting to resolve the dispute. Further, the letters of Opposite Party No.3 dated 16th February, 2005, 21st February, 2005, 14th March, 2006, 2nd May, 2005, 22nd June, 2005, 30th July, 2005, 31st August, 2005 and 9th September, 2005 to the Petitioner (Annexure-R/62 series to the additional affidavit) were not responded by the Petitioner. Apparently aforesaid series of communications constrained the Opposite Party No.3 to move the IFC under the IDP Act, 1993. Further, in the letter dated 26th October, 2013, it is stated for the first time that although the claim relates to financial year 19992000, the Opposite Party No.3 approached IFC after six years despite having other fora for redressal of its grievances. No specific objection with regard to limitation appears to have been raised by the Petitioner either before the Council or in the Writ Petition. However, from the series of events, as discussed above, it cannot be said that the claim of the Opposite Party No.3 was barred by limitation. Had such an issue been raised, the Council would have an occasion to adjudicate the same. But, the Petitioner preferred not to participate in the proceeding before the Council and allowed it to be adjudicated ex parte. In view of the above, this Court feels that the objection with regard to limitation raised by the Petitioner is not sustainable.

18. Legality of the Award passed by the Council :-

Ms. Rath, learned Senior Advocate vehemently urged that there are several procedural irregularities and improprieties in passing the impugned award under Annexure-10. Relying upon *Jharkhand Urja Vikas Nigam Limited (supra)*, it was argued that the award is a nullity as the Council had neither taken up the conciliation

proceeding nor arbitration before passing the ex-parte award under Annexure-10. It was argued by Ms. Rath, learned Senior Advocate that minutes of the hearing held on 18th January, 2014 in IFC Case No.1 of 2006 clearly indicated that “.....*Council come to the conclusion that Respondent is not interested in conciliation. Therefore, the Council decided to terminate the conciliation process and to start the arbitration process. It is also decided to inform the Respondent that if remains absent for next hearing, the case will be decided on merit....*” Again, vide letter dated 30th January, 2014, the Council communicated the Petitioner and Opposite Party No.3 referring to the hearing held on 18th January, 2014 stating that “*arbitration order pertaining to your petition enclosed herewith for your information.*” In spite of the same, the Council vide its letter dated 7th February, 2014 (Annexure-8) referred to order dated 1st February, 2014, wherein, it is indicated that “*Council heard the both. Council advised both to solve the issue amicably and inform the Council accordingly.*” Thus, it is apparent that in spite of the order dated 18th January, 2014 to terminate the conciliation, the Council again proceeded to direct both parties to amicably resolve the issue and intimate the Council. Thus, the process of conciliation was still on beyond 18th January, 2014. Ms. Rath, learned Senior Advocate thus submitted that no order thereafter was passed terminating the conciliation proceeding. As such, the award, which is stated to be an outcome of the arbitration proceeding is null and void. As such, the writ petition is maintainable in view of the ratio in ***Jharkhand Urja Vikas Nigam Limited (supra)***. Mr. Nanda, learned Senior Advocate for Opposite Party No.3 objecting to the same submitted that after termination of the conciliation proceeding, vide order dated 18th January, 2014 by the Council, it had only advised the parties to settle the matter amicably and inform the Council without involving itself in the conciliation. The said order can never be construed as a continuation of the conciliation proceeding, as alleged by the Petitioner. In order to settle the matter amicably, even after termination of the conciliation proceeding, the Council provided another opportunity to the parties to settle the matter amicably without involving itself. Thus, there was no illegality on the part of the Council to proceed with the arbitration and pass *ex-parte* award under Annexure-10.

19. Giving an anxious thought to the rival contentions of the parties, this Court on perusal of records finds that vide order dated 18th January, 2014, the Council holding that the Petitioner is not interested in conciliation, terminated the conciliation proceeding and directed the parties to participate in the hearing of the case thereby initiating arbitration proceeding. As such, the ratio of ***Jharkhand Urja Vikas Nigam Limited (supra)*** has no application to the instant case. Minutes of hearing held on 1st February, 2014, which was communicated to the parties on 7th February, 2014 by the Council, does not indicate that the Council had taken up the conciliation proceeding beyond 18th January, 2014. It only provided another opportunity to the parties, namely, the Petitioner and the Opposite Party No.3 to settle the dispute amicably and inform the Council accordingly. Thus, it is clear from the said order that the Council never involved itself in taking up the conciliation

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proceeding beyond 18th January, 2014. As such, the contention of Ms. Rath, learned Senior Advocate in that regard, is not sustainable.

20. An argument was advanced by Ms. Rath, learned Senior Advocate that no opportunity was given to the Petitioner to file written statement to the claim of Opposite Party No.3 in the arbitration proceeding. It was her submission that arbitration was to be undertaken in accordance with the provisions of the Arbitration Act, 1996. The mandatory provision having not been followed by the Council while taking up the arbitration proceeding, the same vitiates the entire arbitration proceeding, so also the award. Such an argument advanced by Ms. Rath, learned Senior Advocate is not acceptable, inasmuch as the legality and propriety of the procedure followed and merit of the award can only be adjudicated in a properly constituted proceeding under Section 34 of the Arbitration Act, 1996 read with Section 19 of the MSMED Act, 2006. Admittedly, the Petitioner has not resorted to the statutory provision, as yet. Without referring to the case laws in the field it can be safely said that such an argument cannot be entertained in a proceeding under Articles 226 and 227 of the Constitution of India. This Court is not vested with the power under Articles 226 and 227 of the Constitution to adjudicate upon the legality and validity of the award passed by the Council. The argument of Ms. Rath, learned Senior Advocate on this legal aspect is also not sustainable.

21. Cumulative assessment of the facts and circumstances of the case, argument advanced as well as case laws referred to, this Court is of the considered opinion that the writ petition merits no consideration. Learned counsels for the parties have referred to several case laws and have also made arguments on minute details of the proceeding before the IFC as well as the Council. In view of the discussions made above, this Court does not feel it necessary to discuss the same in detail.

22. Accordingly, the writ petition being devoid of any merit stands dismissed, but in the facts and circumstances, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition dismissed.

2025 (II) ILR-CUT-748

**KUMARI KHARA
V.
STATE OF ODISHA & ORS.**

[W.A. NOS. 766 & 767 OF 2023]

18 JUNE 2025

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

Issue for Consideration

Whether the selection committee can be given wide discretion to determine the evaluation criteria for selection of Anganwadi Worker.

Headnotes

SELECTION OF ANGANWADI WORKER – For selection of Anganwadi Worker, a candidate should be able to write and read Odia language – The selection committee during interaction with the candidates on the date of verification was convinced that Opposite Party No. 6 could speak and understand Odia and able to sign in Odia – Whether the selection committee can be given wide discretion to determine the evaluation criteria for selection of Anganwadi Worker.

Held: No – In our considered opinion, the selection committee cannot be given such wide discretion to determine in the process of evaluation, to such an extent of subjectivity that without any records/certificates of education/and or ability, the committee itself can decide the evaluation criteria as prescribed at sl. No.4 of the advertisement dated 19.07.2021 that a candidate should be able to read and write Odia – The records of selection that were provided along with the letter dated 30.01.2023 contain the certificates and testimonials furnished by respondent no.6 – None of those certificates indicate that she can read and write Odia as per her education.

(Para 10)

The discretion exercise by the selection committee to arrive at a conclusion that the respondent no.6 can read and write Odia without any supporting certificate or document thereto is excessive and arbitrary, therefore, cannot be approved.

(Para 19)

Citations Reference

Tomaso Bruno v. State of U.P., **(2015) 7 SCC 178**; Mahila Bajrangti (dead) through L.Rs and others v. Badribai and another, **2013 AIR SCW 129: (2003) 2 SCC 464**; Harpal Singh and another v. State of Himachal Pradesh, **AIR 1981 SC 361: (1981) 1 SCC 560 – referred to.**

List of Acts

Indian Evidence Act, 1872

Keywords

Admissibility of document; Burden of proof; Admissibility of the entries in the school admission register; Selection Committee; Discretion; Knowledge in Odia; School Admission Register.

Case Arising From

Order dated 24.02.2023 passed by the learned Single Judge in W.P.(C) Nos.16096 and 13154 of 2022.

Appearances for Parties

For Appellant : Ms. Sujata Jena & Ms. Sonali Panda

For Respondents : Mr. Debaraj Mohanty, AGA (O.P. Nos. 1 to 4)
Mr. Swapna Kumar Ojha (O.P. No. 6)

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

Both the writ appeals are taken up together as they bring into question the legality of the common judgment and order dated 24.02.2023 passed by the learned single Judge dismissing the writ petition W.P.(C) No.16096 of 2022 filed by the appellant in Writ Appeal No.767 of 2023 who was the petitioner in the writ petition. The W.P.(C) No.16096 of 2022 was filed challenging order of the A.D.M., Jajpur dated 13.04.2022 directing fresh selection to be done for 'Jari North' Anganwadi Centre. Writ Appeal No.766 of 2023 is also filed by the appellant also challenging the common judgment and order dated 24.02.2023 allowing the writ petition W.P.(C) No.13154 of 2022 filed by the present respondent no.6. By the said judgment and order, the learned single Judge has set aside the order dated 13.04.2022 passed by the Additional District Magistrate, Jajpur (hereafter the A.D.M.) in Anganwadi Worker Misc. Appeal [A.W.W. Misc. (Appeal) case No.03/2021: Smt. Kumari Khara vrs. Smt. Sunita Mallik], upholding selection of respondent no.6 as Anganwadi Worker.

2. The appeal before the A.D.M. was filed as provided in the guidelines governing selection of Anganwadi Worker challenging selection of Anganwadi Worker for 'Jari North' Anganwadi Centre in village-Jari, Gram Panchayat-Jari in the district of Jajpur. The A.D.M. set aside the selection and directed for fresh advertisement and selection. The selection that was challenged was pursuant to the advertisement dated 19.07.2021 (Annexure-1 to the writ appeal), the English translation of which has also been filed on 03.07.2023. Pursuant to the said selection as per the advertisement, the respondent no.6 was selected as the Anganwadi

Worker (AWW) by the committee. In the appeal before the A.D.M. the appellant challenged the selection and engagement order issued by the Child Development Project Officer, Binjharpur issued in favour of respondent no.6 as Anganwadi Worker.

2.1. The grounds of challenge in the appeal before the A.D.M. were, inter alia, as follows:

“(i) The respondent No.1 is not an inhabitant/residing of the center area of Jari North AWC i.e. Rama Chandra Mallik house to Jadaba Jena house.

(ii) The respondent No.1 is not known the Oriya language as well as not able to read and write.”

It was also alleged that selection committee had not properly verified the documents furnished by the respondent no.6.

2.2. Before the A.D.M., present respondent no.6 being arrayed as respondent no.1 filed her written submission in response to the appeal enclosing documents she relied upon. The respondent no.3 before the A.D.M. [Child Development Project Officer (CDPO), Binjharpur, respondent no.5 in the present appeal] also filed a written submission enclosing documents taking a stand that the selection of the respondent no.6 was on the basis of merit list prepared after consideration of all the candidates. The selected candidate had ‘knowledge in Odia’ and the respondent no.6 can speak, write and read in Odia. A similar stand was taken by the respondent no.6 before the A.D.M. that she can speak, writ and read Odia language. The A.D.M. took note of the written submission of the respondent no.6, wherein it was stated that she had passed 5th Class in Odia medium in Ahamadpur Primary School, Rajkanika, Kendrapara for which she filed School Leaving Certificate (S.L.C)/Transfer Certificate (T.C.) of Class-V of Ahamadpur Primary School, Rajkanika, Kendrapara.

2.3. Objections were raised by the appellant before the A.D.M. regarding genuineness of the said S.L.C./T.C. of the respondent no.6 of Class-V of Ahamadpur Primary School. The A.D.M. directed the appropriate authority i.e. the District Education Officer (hereafter the D.E.O.), Kendrapara under whose jurisdiction the said school was functioning. The D.E.O., Kendrapara submitted detailed report to the A.D.M. in the proceeding along with the relevant documents that was taken on record. In the report, finding was given by the D.E.O., Kendrapara after proper enquiry that the S.L.C./T.C. produced by respondent no.6 is faked/forged.

2.4. Before the A.D.M. the clarification dated 22.05.2010 issued by the Director, Social Welfare, Government of Odisha regarding High School Certificate examination conducted by other States without Odia-Language as a subject, in connection with Anganwadi Worker selection was produced. The A.D.M. referred to the said clarification and relied on the aspect that *‘as the Anganwadi Worker has to deal with very small children, pregnant and lactating mothers, conduct pre-school education, it is mandatory that she knows Oriya. Hence knowledge of Oriya for*

Anganwadi Worker selection is mandatory'. The A.D.M. concluded that during selection of the Anganwadi Worker for Jari North Anganwadi Centre, the selection committee have not properly verified the documents produced by the respondent no.6 and had not followed the guidelines of the Women & Child Development Department regarding selection of the Anganwadi Worker. Thus, the A.D.M. set aside the selection, directed the cancellation of engagement of respondent no.6 and further directed the authority to take appropriate step for fresh selection of Anganwadi Worker of Jari North Anganwadi Centre as per provision and guidelines of the Women & Child Development Department, Government of Odisha.

3. In view of the setting aside of the entire selection process, the present appellant (in both the writ appeals) who claimed before the A.D.M. that she being the candidate who should have been selected in place of the respondent no.6 whose selection was set aside by the A.D.M. (in the appeal referred above), filed writ petition W.P.(C) No.16096 of 2022. By filing W.P.(C) No.13154 of 2022 the present respondent no.6 being the petitioner therein challenged setting aside of her selection as Anganwadi Worker.

4. Ms. Sujata Jena, learned counsel for the appellant and Mr. S.K. Ojha, learned counsel for the respondent no.6 were heard at length.

5. Ms. Jena, learned counsel for the appellant submits that once the selection of the respondent no.6 was set aside without there being any finding by the A.D.M. that selection of the appellant is flawed in any manner, she should have been given appointment as Anganwadi Worker instead of setting aside the entire process of selection. Mr. Ojha, learned counsel for the respondent no.6 supports the order passed by the learned single Judge.

6. It is agreed at the Bar that in the selection process as has been found by the learned single Judge, the appellant Kumari Khara secured 66.83% of marks placed at serial no.2 and the respondent no.6 securing 72% of marks placed at serial no.1. The learned single Judge has held that the Court did not find any fault with the decision of the selection committee appointing respondent no.6 as Anganwadi Worker. The learned single Judge has relied upon the written submission of the C.D.P.O., Binjharpur before the A.D.M. that the candidate should have knowledge in Odia and the respondent no.6 can speak, write and read Odia. However, at paragraph-7 of the judgment the learned single Judge has relied on the communication dated 30.01.2023 from the C.D.P.O. addressed to the Advocate General, wherein she has stated thus (reproduced from the judgment):

"Smt. Sunita Mallik secured highest mark as per the evaluation. The committee during interaction with the candidates on the date of verification was convicted that Smt. Sunita mallik could speak and understand Odia. She was also able to sign in Odia. Apart from this, the residential certificate of Smt. Mallik shows that she is residing in area since three years. In view of the above, the Committee was convinced that Smt. Mallik secured the highest mark." (Emphasis Supplied)

7. The contention of the respondent no.6 as opposite party no.5 before the learned single Judge that the respondent no.6 had not produced the school leaving certificate that was found to be forged/fake by the D.E.O., Kendrapara and accordingly rejected by the A.D.M. in the appeal has been rejected by the learned single Judge holding the contention to be “a palpably unbelievable plea”. The said finding has not been challenged by the respondent no.6.

8. The learned single Judge has however proceeded to hold that the conditions of the engagement as per guidelines issued by the Government in W & CD Department do not mandate that the candidate must possess any qualification in Odia. All that is required is their ability to read and speak Odia. The selection committee categorically observed that Smt. Sunita Mallik is capable of speaking, writing and reading Odia. It was further held by the learned single Judge that even ignoring the certificate supposedly produced by the respondent no.6 before the A.D.M., still she would be found eligible to be appointed. At paragraph-7 of the judgment, the learned single Judge has referred to the advertisement to be providing the candidate *‘must be able to write and read odia language’*.

9. The merit list of the selection of the Anganwadi Workers by the selection committee containing the educational certificate of respondent no.6, i.e., certificate issued by the Central Board of Secondary Education in the name of the respondent no.6 having passed Delhi Senior School Certificate Examination, 2013, indicates she studying the following subjects:

“1. Sanskrit Core 2. Hindi Elective 3. Political Science 4. Sociology 5. Physical Education 6. Home Science 7. Work Experience 8. Phy & Health Educa 9. General Studies”

The selection committee has not given the details before the A.D.M. how it evaluated respondent no.6 to be able to read and write Odia. The learned single Judge did not delve into such aspect of the selection but has observed that the selection committee has observed the respondent no.6 is capable of speaking, writing and reading Odia. The A.D.M. had relied upon the guidelines/clarification dated 22.05.2010 issued by the Director, Social Welfare regarding High School Certificate Examination conducted by the other states without Odia subject. Concededly, the respondent no.6 produced certificate to have passed Delhi Senior School Certificate Examination with the subjects as indicated above and did not have Odia-Language as a subject. Conspicuously, the CDPO in her instruction by letter dated 30.01.2023 provided to the learned Advocate General which forms part of the record in the writ petition, i.e., W.P.(C) No.16096 of 2022, has stated *“The Committee during interaction with the candidates on the date of verification was convinced that Smt. Sunita Mallik could speak and understand Odia. She was also able to sign in Odia.”*

10. In our considered opinion, the selection committee cannot be given such wide discretion to determine in the process of evaluation, to such an extent of

subjectivity that without any records/certificates of education/and or ability, the committee itself can decide the evaluation criteria as prescribed at sl. No.4 of the advertisement dated 19.07.2021 that a candidate should be able to read and write Odia. The records of selection that were provided along with the letter dated 30.01.2023 contain the certificates and testimonials furnished by respondent no.6. None of those certificates indicate that she can read and write Odia as per her education.

11. Learned counsel for the respondent no.6 fairly submitted that the respondent has not challenged the finding of the learned Single Judge rejecting her contention that she did not produce the S.L.C. that was found to be forged/fake. He only reiterated her plea though rejected by the learned Single Judge that she has no idea who obtained and produced the certificate and that in all probability her lawyer has produced the certificate.

12. The certified copy of orders of the proceeding before the A.D.M. in the AWW Misc. Appeal No.03 of 2021 is available in the writ petition marked as Annexure-4 series. By order dated 10.11.2021 the A.D.M. has recorded “...*The learned Advocate for the respondent No.1 also filed School Leaving/Transfer Certificate of the respondent no.1 of Class VI of Ahamadpur Primary School, Rajkanika, Kendrapara. Perused the submissions of both the parties along with School Leaving/Transfer Certificate of the respondent no.1. Ask the D.E.O., Kendrapara to instruct the Headmaster Ahamadpur Primary School, Rajkanika, Kendrapara whether the certificate is genuine or not and report compliance to this court on or before the date fixed. Copy of School Leaving/Transfer Certificate is enclosed herewith for your reference. ...*”

In view of Section 106 of the Indian Evidence Act, 1872 (since repealed) when any fact especially is within knowledge of any person, the burden of proving that fact is upon him. The principle underlying the section is that the burden to establish those facts, which are within his personal knowledge is cast on the person concerned, and if he fails to establish or explain those facts, an adverse inference may be drawn against him : ***Tomaso Bruno v. State of U.P. : (2015) 7 SCC 178.***

13. In any event the contention subsequently raised by the respondent no.6 that she did not produce the S.L.C. was never taken before A.D.M. The records of the proceeding before A.D.M. indicate that it was filed on behalf of respondent no.6 and was taken on record. It was forwarded to the concerned higher authority, District Education Officer to furnish a report. The report was furnished and was acted upon by the A.D.M. The learned Single Judge rejected the contention of the respondent no.6 that she did not produce it in the proceeding before A.D.M. Both the findings of the A.D.M. as well as the learned Single Judge remain unchallenged. Therefore, the contention of respondent no.6 that she did not produce the certificate has also to be rejected by us. Implication of Section 106 of the Indian Evidence Act is also against such stand of the respondent no.6.

14. The clarification issued by the Director, Social Welfare dated 25.05.2010 requires that the candidate mandatorily must know Odia. The advertisement required the candidate must be able to read and write Odia.

15. Learned Single Judge has held that on the basis of a letter purportedly written by the Headmaster of the concerned school, it cannot be conclusively held that the certificate in question is fake/forged. It is held by the learned single Judge that without conducting a proper enquiry into the school records the finding of A.D.M. has to be held to be incorrect.

16. It is found from the records that the A.D.M. in the proceeding before him by order dated 10.11.2021 had asked the District Education Officer to conduct enquiry. The District Education Officer being the head of the office of the Education Department in the District had directed the Headmaster, Ahamadpur Primary School to verify. Thereafter, the verification report was furnished by the D.E.O.

17. To rely on the report of the School Headmaster regarding register maintained by the School containing issuance of S.L.C./T.C. it would be apt to refer to the judgment rendered by the Supreme Court in the case of ***Mahila Bajrangji (dead) through L.Rs and others v. Badribai and another***; 2013 AIR SCW 129: (2003) 2SCC 464. In ***Mahila Bajrangji***, it is held by the Supreme Court that “... Entries in School Admission Register and School Leaving Certificate describing deceased as father of defendant made long before dispute arose can be relied on....”

18. Regarding admissibility of the entries in the school admission register though the officer who made the entry is not produced and examined as witness we rely on the principles laid down in ***Harpal Singh and another v. State of Himachal Pradesh*** : AIR 1981 SC 361: (1981) 1 SCC 560 is applied. In ***Harpal Singh*** (para-3 of SCC print) rejecting the contention that in the absence of examination of the officer concerned who recorded the entry, the register is inadmissible in evidence the Supreme Court held “...We cannot agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties, that it is therefore clearly admissible under Section 35 of the Evidence Act and that it is not necessary for the prosecution to examine its author. ...”

19. The discretion exercise by the selection committee to arrive at a conclusion that the respondent no.6 can read and write Odia without any supporting certificate or document thereto is excessive and arbitrary, therefore, cannot be approved. The reliance of the respondent no.6 on the S.L.C./T.C. has also to be rejected/cannot be countenanced as the document is found to be forged. Further, the respondent no.6 has to be held responsible for production of such certificate found to be forged/fake.

20. Accordingly, the writ appeals are allowed. The common judgment and order dated 24.02.2023 passed by the learned Single Judge in W.P.(C) No.13154 of 2022 and W.P.(C) No.16096 of 2022; rejecting the W.P.(C) No.16096 of 2022 and allowing the W.P.(C) No.13154 of 2022 is set aside. The writ petition W.P.(C) No.16096 of 2022 is allowed and W.P.(C) No.13154 of 2022 is dismissed. The order

of the A.D.M. dated 13.04.2022 in AWW Misc. Appeal No.03 of 2021 setting aside the entire selection process is modified.

21. As a consequence the petitioner in aforesaid W.P.(C) No.16096 of 2022, the present appellant having secured the second position in the selection of AWW is held to be the successful candidate as the selection of the respondent no.6 as the first candidate has been set aside by the A.D.M.. The appellant, the candidate selected at Sl.no.2, being otherwise eligible, is declared to be successful candidate for the post of Anganwadi worker for Jari North Anganwadi Centre. The appellant shall be given appointment as AWW of Jari North AWC, village Jari in the district of Jajpur forthwith. Her appointment shall be deemed to be with effect from 27.08.2021 i.e. the date of issuance of appointment order by CDPO, Binjharpur.

22. Both the appeals are allowed and disposed of in terms of the above order. In the facts and circumstances of the case, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

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Result of the case:

Writ Appeals allowed.

2025 (II) ILR-CUT-755

STATE OF ODISHA & ANR.

V.

Smt. ANINDITA MISHRA

[W.A. NO. 1074 OF 2023]

24 JUNE 2025

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

Issue for Consideration

Whether benefit of maternity leave can be denied on the basis of nature of employment.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 14 r/w MATERNITY BENEFIT ACT, 1961 and Memorandum dated 31.03.2012 issued by the Finance Department of the Government – Grant of maternity benefit to contractual employee – Whether benefit of maternity leave can be denied on the basis of nature of employment.

Held: No – The contention that the memorandum applies only to the civil servants cannot be countenanced, inasmuch as, women employees for the

purpose of availing such benefit do constitute one homogenous class and their artificial bifurcation founded on status of appointment falls foul of Article 14 of the Constitution. (Para 3.5)

Naturally, the employment in private sector looms large – Denying maternity benefit on the basis of nature of employment is abhorrent to the notions of humanity and womanhood – Our Smrutikaaraas chanted “*yatr naaryaastu pujiyante ramante tatr devatah*”, literally meaning that Gods rejoice where women are honoured – Such ideal things should animate the purposive interpretation of State Policy concerning the welfare of women. (Para 3.6)

Citations Reference

Bhupendra Nath Hazarika v. State of Assam, **AIR 2013 SC 234**; Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, **AIR 1978 SC 851**; Dr. Kabita Yadav v. Secretary, Ministry of Health & Family Welfare Department, **(2024) 1 SCC 421**; Kesavananda Bharati v. State of Kerala, **AIR 1973 SC 1461**; Jolly George Varghese v. The Bank of Cochin, **AIR 1980 SC 470**; DAVIS v. MILLS, **194 US 451 (1904)** – referred to.

List of Acts

Constitution of India, 1950; Maternity Benefit Act, 1961; Memorandum dated 31.03.2012 Finance Department; International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Keywords

Right to maternity benefit; Maternity leave; Contractual employee; Policy decision; Classification of employee; Zero separation; Discrimination against women; Homogeneous class; Artificial bifurcation; Humanity & womanhood.

Case Arising From

Order dated 30.08.2022 passed by the learned Single Judge in WPC (OAC) No. 1680 of 2017.

Appearances for Parties

For Appellants : Shri Subha Bikash Panda, A.G.A.
For Respondent : None

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Challenge in this intra-Court appeal is to a learned Single Judge’s order dated 30.08.2022, whereby respondent-employee’s WPC(OAC) No. 1680 of 2017 having been favoured a direction has been issued to extend the benefit of maternity

leave to her under the extant State Policy, as promulgated through Rules/Regulations/Orders.

2. Learned Addl. Government Advocate appearing for the appellant-State vehemently argues that the right to maternity benefit does not avail under State Policy, unless the claim falls strictly within the four-corners of such Policy. He submits that if the impugned decision was not a speaking order, the right course for the writ court was to set the same at naught and remand the matter for consideration afresh. He also submits that since the respondent-employee is governed by the terms of contract, she is not entitled to maternity benefit. According to him, all these aspects having not been properly adjudged by the learned Single Judge, the impugned order needs to be invalidated.

3. Having heard learned Addl. Government Advocate appearing for the appellant-State & its functionary and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of the learned Single Judge. A short description of the concept of maternity benefit needs to be stated: This concept is discussed in Article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 11(2)(b) of the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Under the provisions of CEDAW, maternity leave with pay or comparable social benefits are to be assured by the party/States inter alia through their Policies & Programs. The Convention highlights the social significance of ‘maternity’ and the role of both parents in the family structure and in the upbringing of children. It is said that *God could not be everywhere and therefore he created mothers*. The idea of maternity leave is structured on “zero separation” between lactating mother and breast feeding baby. The Child Psychiatrists and Obstetricians are of the considered opinion that physical companionship of mother and the baby is mutually advantageous and it promotes bonding between the two, which is essential for their wellbeing. A lactating mother has a fundamental right to breastfeed her baby during its formative years. Similarly, baby has a fundamental right to be breastfed and brought about in a reasonably good condition. These two important rights form an amalgam from which the State obligation to provide maternity benefits, such as paid leave to the employees within the permissible resources would arise. The Government Memorandum, relevant part of which we have reproduced *infra* is one of the State measures to secure this amalgam and therefore it being a socio-welfare instrument has to be construed liberally to advance its objectives/purposes. This approach is lacking in the order that was challenged before the learned Single Judge, which he has rightly voided.

3.1. Ours is a constitutionally ordained Welfare State. The Government, be it Provincial or Federal, has to conduct itself as a model employer vide **Bhupendra Nath Hazarika v. State of Assam**¹. It is not in dispute that the respondent is not a

¹ AIR 2013 SC 234

regular employee of the appellants herein. However, she has been rendering service in the class of ‘young professionals’ after being chosen in a normative selection process. Her name having been sponsored by the G.A. Department, she came to be posted to the Health & Family Welfare Department with effect from 20.05.2014. This is on contract basis, which was initially for a period of one year and subsequently has been renewed time & again.

3.2. Respondent having delivered a female child, applied to the 2nd appellant herein on 17.08.2016 for the grant of maternity leave for the period between 17.08.2016 and 12.02.2017. She has produced medical certificate in support of the same. This could not have been rejected by the 2nd appellant vide endorsement dated 07.06.2017, that too without assigning any reason. It hardly needs to be stated that giving reasons for the decisions is imperative in *good governance*. Apex Court in ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi***² has observed that a non-speaking order cannot be justified on the supply of reasons from outside. It should stand or fall on its intrinsic merits. An employee cannot be told that the reasons are stacked in the Godown of the Government and he/she can search for the same all in wilderness. Therefore, learned Single Judge is right in quashing the said endorsement.

3.3. The second contention that the learned Single Judge after quashing the subject endorsement ought to have remanded the matter to the 2nd respondent for consideration afresh, does not impress us. No rule or ruling is cited before us in support of said contention. We are mindful of cases which may warrant remand for fresh consideration regard being had to complexity of issues involved and the need for their resolution at the hands of some expert body. That is not the case here. The only question that arose before the learned Single Judge was, whether maternity benefit can be granted to a contract employee under the extant Policy of the State. That issue essentially partakes the character of a question of law and that can be answered by turning the pages of legal literature. It is not the case of the appellants herein that there is no policy governing the grant of maternity benefit. Added, there is a Parliamentary enactment, i.e., the Maternity Benefit Act, 1961. It hardly needs to be stated that ordinarily the power of the writ court is co-extensive with the powers of authority whose proceedings are put in judicial review. Of course, there are exceptions to this rule and argued case of the appellants does not attract any of them.

3.4. The apex court in ***Dr. Kabita Yadav v. Secretary, Ministry of Health & Family Welfare Department***,³ has observed that even a contractual employee is entitled to maternity benefit. This case arose under the 1961 Act is true. However, whether a Policy is enacted or just promulgated in the exercise of Executive Powers, is irrelevant in matters of the kind for classification of persons as regular employees

² AIR 1978 SC 851

³ (2024) 1 SCC 421

& contract employees, so far as the claim for maternity benefit is concerned. Several High Courts in the country have taken this view. List is as under:

- (i) Rajasthan High Court in *Geeta Sharma v. UOI*, 2001 SCC OnLine Raj 488.
- (ii) Himachal Pradesh High Court in *State of H.P. v. Sudesh Kumari*, 2014 SCC OnLine HP 4844.
- (iii) Calcutta High Court in *Neeta Kumari v. UOI*, 2024 SCC OnLine Cal 1881.
- (iv) Madras High Court in Writ Appeal No.1692 of 2022, between Tamilnadu State Transport Corporation v. B. Rajeswari decided on 12.01.2023.
- (v) Karnataka High Court in W.P. No.10677/2020 (S-Res) between Smt. B.S. Rajeswari and State of Karnataka, decided on 04.02.2021.
- (vi) Delhi High Court in *Dr. Babasaheb Ambedkar Hospital v. Dr. Krati Mehrotra*, 2022 LiveLaw Delhi 201.

3.5. In the light of the decision in ***Kabita Yadav*** supra, the 2nd appellant should have humanely considered claim of the respondent for the grant of maternity benefit as would avail under the memorandum dated 31.03.2012 issued by the Finance Department of the Government. A relevant part of the said memorandum reads as under:

“After careful consideration Government have been pleased to decide that in respect of all female employees engaged in Government establishment on contract basis with consolidated remuneration the existing ceiling of 90days of absence from duty on maternity ground is enhanced to 180 days subject to condition that the tenure of maternity leave will be within the contractual period in maximum.”

The contention that the memorandum applies only to the civil servants cannot be countenanced, inasmuch as, women employees for the purpose of availing such benefit do constitute one homogenous class and their artificial bifurcation founded on status of appointment falls foul of Article 14 of the Constitution, as already discussed above.

3.6. In the good olden days in our social set up the place of women traditionally was her home. Now, we are living in different times. Because of various reasons, including poverty & illiteracy, women come out of their home and gain entry to the employment, public, private, contractual or otherwise, as a source of livelihood. State cannot provide public employment to everyone. It could have been ideal, if it could provide. Naturally, the employment in private sector looms large. Denying maternity benefit on the basis of nature of employment is abhorrent to the notions of humanity and womanhood. Our Smrutikaaraas chanted “*yatr naaryaastu pujiyante ramante tatr devatah*”, literally meaning that Gods rejoice where women are honoured. Such ideal things should animate the purposive interpretation of State Policy concerning the welfare of women.

3.7. It was next contended by learned Additional Government Advocate that the conditions of service between the Government and the contract employees like the

respondent herein are regulated by the terms of contract and therefore unless Government Policy is made a part of such contract, the maternity benefit cannot be claimed. Every employment, be it private or public, begins with contract and attains the status in due course. A Welfare State cannot be heard to say that a Policy of the kind has to be kept away regardless of its socio-welfare object to serve all classes of persons employed in the State, whatever be the nature of such engagement. When benefits of the Policy of this nature are extended, it is not that Court is rewriting the contract of employment. We are aware that we cannot. This does not mean that Court cannot read the State Policy into the terms of engagement, in the absence of a contra indication in the contract itself. Obviously, there is no such contra intent in the contract.

3.8. Lastly, there is one finer aspect which merits deliberation: India is a signatory to several International Conventions and one of them is CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). The State Policy conferring the benefit of maternity facilities is one that broadly promulgates inter alia the objectives of this Convention. It hardly needs to be stated jurists like J.G. Starke an acclaimed author of Public International Law is of the opinion that Conventions of the kind are the customary source of Rules of International Law, which the party-States are expected to honour even in their domestic affairs, there being nothing contrary in the Domestic Law. This view gains support from the decisions in *Kesavananda Bharati v. State of Kerala*,⁴ and *Jolly George Varghese v. The Bank of Cochin*,⁵. The subject Government memorandum has absolutely nothing that runs counter to the paragraphs of CEDAW. A justiciable right thus is created in the contract employees to knock at the doors of the writ court. Justice **Oliver Wendell Holmes in DAVIS v. MILLS**,⁶ has observed as under:

“Constitutions are intended to preserve practical and substantial rights, not to maintain theories...”

Learned Single Judge has rightly granted relief to the poor employee and that viewed from any angle the same cannot be faltered.

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly rejected in limine. The impugned order of the learned Single Judge to be implemented and report of compliance shall be filed with the Registrar Judicial of this Court within eight weeks.

Registry to send a copy of this judgment to the respondent by speed post.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Appeal rejected.

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⁴ AIR 1973 SC 1461

⁵ AIR 1980 SC 470

⁶ 194 US 451 (1904)

2025 (II) ILR-CUT-761

**DIBYARANI MOHAPATRA
V.
DISTRICT & SESSIONS JUDGE, NAYAGARH & ANR.**

[W.P.(C) NO. 11284 OF 2025]

25 JUNE 2025

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

Issues for Consideration

1. Whether withholding of a departmental appeal without assigning any reason is sustainable.
2. Whether recovery of remuneration paid to an employee for working in a post on fulltime basis is sustainable.

Headnotes

(A) ODISHA CIVIL SERVICES (CLASSIFICATION, CONTROL & APPEAL) RULES, 1962 – Rules 23 & 27 – Withholding of appeal – Petitioner was appointed as Junior Typist vide order dated 19.05.2019 and she reported her duty on 01.06.2019 – She earned the promotion on 12.07.2022 as Senior Typist – However, vide order dated 27.04.2024 made by the learned District Judge she has been reverted to the original position of Junior Typist – She had made a representation against the same – The petitioner preferred a departmental appeal as provided under Rule 23 of the 1962 Rule to the Appeal Committee of this Court on the administrative side – The appeal was presented to the District Judge so that he would on a normative way forward the same to the Appeal Committee – To the dismay, forwarding did not take place on the ground of time-barred – Whether such withholding of a departmental appeal without assigning any reason is sustainable.

Held: No – In a model employment, a worthy cause of an aggrieved employee cannot be laid to rest on a technical ground of the kind – In other words, the power availing under Rule 27 is not absolute and it is conditional – Unless these conditions are satisfied, the exercise of discretion to withhold the appeal cannot be sustained – In departmental appeal, we add, aspect of delay takes backseat. (Para 6)

(B) SERVICE JURISPRUDENCE – Promotion – Reversion – Recovery of remuneration after reversion – Petitioner was appointed as Junior Typist vide Order dated 19.05.2019 – She reported her duty on 01.06.2019 – Petitioner earned the promotion on 12.07.2022 as Senior Typist – By Order dated 27.04.2024 made by the learned District Judge she was reverted to the original post of Junior Typist – Whether

recovery of remuneration paid to an employee for working in a post on fulltime basis is sustainable.

Held: No – It is difficult to justify recovery of remuneration paid to an employee for working in a post on fulltime basis only on the ground that he was not entitled to hold the post and therefore is reverted – It is not a case of fraud or duplicity attributed to the petitioner – In such a circumstance, recovering the differential of salary may fall foul of Constitutional prohibition of *begar* enacted in Article 23 – Even this aspect is a matter for the consideration of appellate authority. (Para 7)

(C) WORDS & PHRASES – MAY, SHALL AND DISCRETION – Discussed in reference to case law. (Para 5.1)

Citations Reference

Susannah Sharp v. Wakefield, [1891] A.C. 173 – referred to.

List of Acts

Odisha Civil Services (Classification, Control & Appeal) Rules, 1962;
Constitution of India, 1950

Keywords

Recovery of remuneration; Promotion; Reversion; Withholding of appeal without any reason; Doctrine of *beggar*.

Case Arising From

Order dated 27.04.2024 passed by the learned District Judge, Nayagarh.

Appearances for Parties

For Petitioner : Mr. Sameer Kumar Das

For Opp.Parties : Mr. Satyabrata Mohanty, A.G.A.

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD, J.

Petitioner was appointed as Junior Typist vide order dated 19.05.2019 and she reported her duty on 01.06.2019. She earned the promotion on 12.07.2022 as Senior Typist. However, vide order dated 27.04.2024 made by the learned District Judge she has been reverted to the original position of Junior Typist. She had made a representation against the same. Thereafter she had preferred a departmental appeal as provided under Rule 23 of the OCS (CC&A) Rules, 1962 to the Appeal Committee of this Court on the administrative side.

2. The above appeal was presented to the District Judge so that he would on a normative way forward the same to the Appeal Committee. To the dismay of

petitioner, that forwarding did not take place allegedly on the ground that appeal was time-barred. We are told at the Bar that the District Judge ordinarily has power to withhold appeal of the kind in terms of Rule 27 of 1962 Rules..

3. Learned counsel for the petitioner submits that withholding of appeal of the kind is a serious matter; strong reasons have to be assigned for the same; even if appeal is time barred, the appellate authority may entertain it after condoning delay; from any standards the action of District Judge is not fair & just. He also adds that after the reversion of petitioner two of her juniors have been promoted as Senior Typists disregarding the candidature of his client. According to him, this is nothing but adding insult to the injury. Lastly, he finds fault with the recovery of differential of the salary as a result of reversion contending that the same offends doctrine of *begar*.

4. Learned Additional Government Advocate on request taking notice for the opposite parties resists the petition making submission in justification of the reasons on which the impugned order is structured. He argues that though the right of appeal is a statutory & substantive right, if the same is not exercised within the period of limitation prescribed by law, it dies and therefore the impugned action of the District Judge in withholding the appeal cannot be much faltered. He also contends that to the petitioner was only on temporary basis and ordinarily it does not create any lien to the post, in the realm of service jurisprudence; therefore, if a temporary status is taken away and emoluments paid are withdrawn, much grievance cannot be made out. So contending he seeks dismissal of the petition.

5. Having heard the learned counsel for the parties and having perused the petition papers, we are broadly in agreement with the submission of learned counsel for the petitioner that withholding of a departmental appeal by a mediary like the District Judge herein, is not a happy thing to happen. There is power to withhold appeal in terms of Rule 27 of 1962 Rules cannot be much disputed is true. However, existence of power is one thing and its mindless exercise is another. A bare perusal of the impugned order does not reflect due application of mind for ascertaining jurisdictional facts on the basis of which appeal of the kind could have been withheld to the prejudice of the petitioner-employee. It also does not reflect due seriousness expected of a Judicial Officer in making such prejudicial orders. Withholding appeal permanently amounts to dismissing the appeal itself. Therefore, a very important right of an employee of judicial institution has been unjustifiably breached.

5.1. Learned counsel appearing for the petitioner is right in drawing our attention to the terminology of the subject Rule which employs the word ‘may’ as distinguished from ‘shall’. Ordinarily ‘may’ implies discretion, say the sages of law like Justice G.P. Singh in India, Maxwell in U.K. and Crawford in U.S.. This discretion is not a Mughal discretion. Lord Halsbury L.C. speaking for the House observed in *Susannah Sharp v. Wakefield*, [1891] A.C. 173 observed that *discretion means according to the rules of reason & justice and not in a whimsical way nor*

according to the private opinion; it should be according to law, and not humour. That kind of reason & justice are lacking in the impugned order.

6. Learned counsel for the petitioner is also right in drawing our attention to Clause 3 of Rule 27 of 1962 Rules, which makes the power to withhold appeal dependent upon certain conditions: one of them is that the appeal is filed time-barred and no reasonable cause is shown for the delay brooked. If that be so, he could have asked the petitioner to file a better affidavit explaining the delay. After all, in a model employment, a worthy cause of an aggrieved employee cannot be laid to rest on a technical ground of the kind. In other words, the power availing under Rule 27 is not absolute and it is conditional. Unless these conditions are satisfied, the exercise of discretion to withhold the appeal cannot be sustained. In departmental appeal, we add, aspect of delay takes backseat.

7. A perusal of the records does not much disclose as to how the reversion of petitioner could have been directed, when two of her juniors have been promoted disregarding her candidature. Arguably, these are the cases of promotion on the basis of merit-cum-seniority as distinguished from seniority-cum-merit. Be that as it may, we do not undertake a deeper examination of this aspect of the matter, since it pertains to domain of appellate committee. That being said, it is difficult to justify recovery of remuneration paid to an employee for working in a post on fulltime basis only on the ground that he was not entitled to hold the post and therefore is reverted. It is not a case of fraud or duplicity attributed to the petitioner. In such a circumstance, recovering the differential of salary may fall foul of Constitutional prohibition of *begar* enacted in Article 23. Even this aspect is a matter for the consideration of appellate authority.

In the above circumstances, this petition is allowed in part. A writ of certiorari issues quashing the impugned order of the learned District Judge. Matter is remitted to the portals of District Judge, who shall refer the appeal in question to the jurisdictional committee at the earliest keeping open all contentions for consideration.

No costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition allowed in part.

2025 (II) ILR-CUT-765

**PRADEEP KUMAR RATH
V.
SUSMITA MISHRA**

[MATA NO. 198 OF 2022]

WITH

SUSMITA MISHRA V. Dr. PRADEEP KUMAR RATH
[MATA NO. 38 OF 2022]

12 MAY 2025

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

Issue for Consideration

Whether the quantum of permanent alimony of ₹17,00,000/- needs enhancement.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 25 – Permanent Alimony – Principles in fixing the permanent alimony – While the husband-petitioner (MATA No. 198 of 2022) challenged the quantum of permanent alimony, the wife-petitioner (MATA No. 38 of 2022) challenged the impugned judgment passed by the learned Judge, Family Court, Bhubaneswar – The husband being a doctor getting net pension of ₹87,002 (Rupees Eighty-Seven Thousand and Two only) and he has liabilities of taking care of his parents – The wife on other hand is engaged as a guest teacher with effect from July 2023 and receiving monthly remuneration of ₹10,000/- (Ten Thousand only) – Whether the quantum of permanent alimony of ₹17,00,000/- needs enhancement.

Held: Yes – Keeping in view, therefore, the age of the parties, the children being in marriageable age and the quantum of remuneration of the wife from her engagement as a guest teacher and over all surrounding circumstances, we feel it appropriate to fix the permanent alimony to Rs.30,00,000/- (Rupees Thirty Lakhs only) – In our humble opinion, this amount shall fairly protect the interest of the wife and children without imposing any punitive or unreasonable financial burden on the husband, thus aiming to safeguard the interest of both the parties. (Para 11)

Citations Reference

Parvin Kumar Jain Vs. Anju Jain, [2024] 12 S.C.R. 543; Vinny Paramvir Parmar v. Paramvir Parmar, [2011] 9 SCR 371 : (2011) 13 SCC 112; Vishwanath Agrawal v. Sarla Vishwanath Agrawal, [2012] 7 SCR 607: (2012) 7 SCC 288; Rajnesh Vs. Neha & Anr., (2021) 2 SCC 324 – referred to.

List of Acts

Hindu Marriage Act, 1955.

Keywords

Permanent alimony; Enhancement of alimony; Determination of permanent alimony; Quantum of maintenance.

Case Arising From

Judgment and order dated 31.01.2022 passed by the learned Judge, Family Court, Bhubaneswar in Civil Proceeding No.414 of 2015.

Appearances for Parties

For Appellant : Mr. A.P. Bose (MATA 198 of 2022)
Mr. M. Kanungo, Sr. Adv. (MATA 38 of 2022)

For Opp. Parties : Mr. M. Kanungo, Sr. Adv. (MATA 198 of 2022)
Mr. A.P. Bose (MATA 38 of 2022)

Judgment/Order**Judgment*****BY THE BENCH:***

1. Both the Appeals arise out the Judgment and order dated 31.01.2022 passed by the learned Judge, Family Court, Bhubaneswar in Civil Proceeding No.414 of 2015 and the same having been heard analogously are disposed of by this common Judgment.
2. The Appellant-wife in MATA No.38 of 2022, inter alia challenged the impugned judgment dated 31.01.2022 praying to set aside the same while the Appellant-husband in MATA No.198 of 2022 challenged the aforesaid impugned judgment only in respect to the quantum of permanent alimony.
3. The Respondent-husband in MATA No.38 of 2022 being the Appellant in MATA No.198 of 2022, moved the Court of learned Judge, Family Court, Bhubaneswar in Civil Proceeding No.414 of 2015, inter alia, praying for a decree of divorce. The Respondent-wife accordingly contested the case. The learned Judge, Family Court, Bhubaneswar having heard both the parties and assessing the evidence led before it, allowed the application of the husband by declaring the marriage of the parties dissolved, by a decree of divorce and further directed the husband to pay a lump sum amount of Rs.17,00,000/- (Rupees Seventeen Lakhs only) to the wife towards permanent alimony.
4. In course of hearing before this Court, the Respondent wife agreed not to disturb the decree of divorce passed by the learned Judge, Family Court, Bhubaneswar in the impugned judgment and accordingly both the parties limited their challenge to the quantum of alimony only.

5. The factual matrix giving rise to the dispute between the husband and wife, found necessary for the disposal of the issue regarding permanent alimony, is that out of the wedlock between the parties, they have begotten a son and a daughter. Both the son and daughter are residing with the wife and are major. It is further case of the parties that the husband was a doctor engaged in Government hospital and took voluntary retirement. The wife on the other hand is engaged as a guest teacher with effect from July 2023 and receiving monthly remuneration of Rs.10,000/- (Rupees Ten Thousand only) being engaged in Times Scholars' Gurukul, Gothapatana, Bhubaneswar. The husband at the time of seeking voluntary retirement was receiving gross pension of Rs.97,002/- (Rupees Ninety-Seven Thousand and Two only) per month and net amount of Rs.87,002/- (Rupees Eighty-Seven Thousand and Two only). While the husband prays for reduction of the quantum of alimony fixed by the learned Judge, Family Court, Bhubaneswar, the wife prays for enhancement of the same to the extent of Rs.1,00,000,00/- (Rupees One Crore Only).

6. On the direction of this Court, both the parties filed affidavits in respect to their income, assets and liabilities respectively. The husband, though disclosed his net pension amount to be Rs.87,002/- (Rupees Eighty-Seven Thousand and Two only), claims to have liabilities of taking care of his parents, who are aged about 91 years and 84 years. He also submits that he spends Rs.12,000/- (Rupees Twelve Thousand only) towards the medications for his parents besides his domestic expenses to the tune of Rs.50,000/- (Rupees Fifty Thousand only) and Rs. 18,000/- (Rupees Eighteen Thousand only) towards the care-taker and house-help and accordingly insists for reduction of the permanent alimony. The wife on the other hand claims that the husband besides his pension, is having substantial income from his private practice, visiting various hospitals including Vivekananda's Heath Care & Medical Hospital, KIMS, Aditya Care Hospital, Shree Hospital and various other private clinics in Bhubaneswar.

7. The submission of the learned counsel for the husband to the effect that the wife is professionally engaged and has income of her own, is not entitled to the enhancement of the alimony has been vehemently opposed by the learned counsel for the wife.

8. Before adverting to address the issue in fixing the permanent alimony, it is profitable to refer to the various principles laid down in this respect by the Hon'ble Supreme Court in the matter of **Parvin Kumar Jain Vs. Anju Jain** reported in [2024] 12 S.C.R. 543, held as follows:

“30. Before going into the details of the financial position of the parties, it is imperative that we highlight the position of law with regard to determination of permanent alimony. This Court, in a catena of judgments, has laid down the factors that needs to be considered in order to arrive at a just, fair and reasonable amount of permanent alimony.

31. There cannot be strict guidelines or a fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in **Vinny Paramvir Parmar v. Paramvir Parmar**¹, and **Vishwanath Agrawal v. Sarla Vishwanath Agrawal**².

32. This Court in the case of **Rajnish v. Neha (Supra)**, provided a comprehensive criterion and a list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, with specific emphasis on permanent alimony. The same has been reiterated by this Court in **Kiran Jyot Maini v. Anish Pramod Patel (Supra)**. The primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependent spouse and does not provide for penalizing the other spouse in the process. The Court in these two judgments laid down the following factors to be looked into:

- i. Status of the parties, social and financial.
- ii. Reasonable needs of the wife and the dependent children.
- iii. Parties' individual qualifications and employment status.
- iv. Independent income or assets owned by the applicant.
- v. Standard of life enjoyed by the wife in the matrimonial home.
- vi. Any employment sacrifices made for the family responsibilities.
- vii. Reasonable litigation costs for a non-working wife.
- viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities. These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.

33. This Court in **Kiran Jyot Maini (Supra)**, while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed that the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance

¹ [2011] 9 SCR 371 : (2011) 13 SCC 112

² [2012] 7 SCR 607 : (2012) 7 SCC 288

amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort postseparation.”

9. Moreover, the Hon’ble Apex Court in the matter of ***Rajnesh Vs. Neha and another*** reported in (2021) 2 SCC 324 has also laid down the principles to ensure equitable determination of financial supports for the wife and dependent child. It is reiterated that the alimony should be determined having regard to the income of the parties, other properties (if any), the conduct of the parties, and other circumstances as the Court may deem just and proper.

10. The case in hand, does not, however, underscores any ambiguity in respect to the various aspects of the income, assets and liabilities of the parties. Needless to mention, that even though the children are major and the Appellant-husband kept paying the maintenance for all of them regularly during the trial as and when directed by the Courts, he cannot shirk in discharging his social responsibility as a father vis-à-vis the children. Further, the earning of the wife itself does not disqualify her to claim permanent alimony, more so, when her income from the temporary service is very negligible. Admittedly, the husband, has taken voluntary retirement and as submitted, is taking care of his parents who are too old and must be passing through the old age ailment requiring the husband to spend after their medication and well-being.

11. Keeping in view, therefore, the age of the parties, the children being in marriageable age and the quantum of remuneration of the wife from her engagement as a guest teacher and over all surrounding circumstances, we feel it appropriate to fix the permanent alimony to Rs.30,00,000/- (Rupees Thirty Lakhs only). In our humble opinion, this amount shall fairly protect the interest of the wife and children without imposing any punitive or unreasonable financial burden on the husband, thus aiming to safeguard the interest of both the parties. The husband is, therefore, directed to pay the said amount as permanent alimony to the wife-Appellant within a period of three months, failing which the wife shall be at liberty to proceed for execution to realise the same in accordance with law. Meanwhile, we expect the husband, who has all along been obedient in complying with the direction of the Courts, shall not put the wife to distress and comply the direction as above.

12. In view of the discussions as above, while the impugned Judgment of the learned Judge, Family Court Bhubaneswar, in dissolving the marriage by a decree of divorce is confirmed, the quantum of permanent alimony is modified by enhancing the same from Rs.17,00,000/- (Rupees Seventeen Lakhs only) to Rs.30,00,000/- (Rupees Thirty Lakhs only).

13. Both the Appeals stand disposed of accordingly.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Both Appeals disposed of.

Smt. SANDHYA RANI SAHOO @ MOHANTY
V.

Smt. ANUSAYA MOHANTY

[MATA NO. 04 OF 2024]

02 APRIL 2025

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

Issues for Consideration

1. Whether the prayer for declaration of marital status is maintainable before the Family Court under Section 7 of the Family Courts Act, 1984 or Civil Court has jurisdiction under Section 34 of the Specific Relief Act, 1963.
2. Suit was filed for declaration of marital status after three years of the death of Late Kailash Chandra Mohanty – Whether the suit is barred by limitation.
3. Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (the Second Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act, 1955.

Headnotes

(A) JURISDICTION OF FAMILY COURT – Family Courts Act, 1984 – Sections 7 & 7(1)(b) r/w Sections 14(2), 58 of the Limitation Act, 1963 r/w Section 16 of the Hindu Marriage Act, 1955 r/w Section 34 of the Specific Relief Act, 1963 – Both the appellant and respondent claim to be the wife of the deceased Kailash Chandra Mohanty – Both are having their children through late Kailash Chandra Mohanty – Both claim right of inheritance to the properties of late Kailash Chandra Mohanty – Family Court, Bhubaneswar concluded the matter by declaring the respondent as the legally wedded wife of late Kailash Chandra Mohanty and appellant's alleged marriage to the deceased as invalid – The appellant challenges the jurisdiction of the Family Court to give declaration of marital status instead of the Civil Court – She further raises the point of bar of limitation and right of inheritance – Whether the prayer for declaration of marital status is maintainable before the Family Court under Section 7 of the Family Courts Act, 1984 or Civil Court has jurisdiction under Section 34 of the Specific Relief Act, 1963.

Held: A suit seeking a declaration of marital status whether it affirms or denies the existence of a valid marriage squarely falls within the ambit of the Family Court's jurisdiction – Once the Family Court jurisdiction is established

S.R. SAHOO @ MOHANTY V. ANUSAYA MOHANTY [CHITTARANJAN DASH, J.]

over a matter, any attempt to bypass it would undermine the very purpose of establishing Family Courts, which is to provide a specialised forum for resolving family disputes efficiently – In the present case, the core of the matter is a declaration of marital status, which aligns squarely with Section 7(1)(b) of the Family Courts Act – The Family Court had the proper jurisdiction under Section 7(1)(b) of the Act to entertain the Respondent's prayer for a declaration of her marital status – The provision clearly vests the Family Court with the authority to decide matters relating to the validity of a marriage and the matrimonial status of any person. (Para 10)

Therefore, this Court finds no merit in the Appellant's contention regarding lack of jurisdiction – The Family Court validly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, and the Appellant's objection regarding maintainability is, accordingly, untenable and stands rejected. (Para 12)

(B) LIMITATION ACT, 1963 – Sections 14(2) and 58 – Suit was filed for declaration of marital status after three years of the death of Late Kailash Chandra Mohanty – Whether the suit is barred by limitation.

Held: No – Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues – In the present case, the Appellant asserts that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death, and therefore, the suit filed on 24.07.2017 is barred by time – However, this Court finds that such a rigid application of Article 58 overlooks certain critical legal principles – Firstly, Section 14(2) of the Limitation Act provides relief in cases where a party has pursued a matter in good faith before a Court that ultimately lacked jurisdiction. (Paras 14-15)

In the present case, the Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship – However, the Civil Court returned the plaint on 13.01.2016, holding that it lacked jurisdiction to entertain the matter – The Respondent subsequently filed CMP No. 278 of 2016, challenging the order of the Civil Court, which was dismissed on 10.05.2017 – Only thereafter did the Respondent file the present suit before the Family Court on 24.07.2017 – Therefore, the period spent in prosecuting the earlier suit and the subsequent challenge before the Civil Court ought to be excluded under Section 14(2) of the Limitation Act – This principle has been consistently upheld by the Hon'ble Supreme Court, which recognises that parties should not be penalised for diligently pursuing their claims before a forum that ultimately lacks jurisdiction – Secondly, a conjoint reading of Section 7 of the Family Courts Act and Section 29(3) of the Limitation Act

lends support to the view that proceedings before the Family Court are not subject to a strict limitation period – Section 7(1)(b) of the Family Courts Act expressly empowers the Family Court to decide suits or proceedings for “a declaration as to the validity of a marriage or as to the matrimonial status of any person” – Importantly, the Family Courts Act does not prescribe any limitation period for such proceedings – Section 29(3) of the Limitation Act clarifies that where a special law provides for a different limitation period or excludes the application of the Limitation Act, the special law will prevail – In the absence of a specific limitation period under the Family Courts Act, the general principles of delay and laches apply, rather than the rigid timelines under the Limitation Act. (Para 15)

A party seeking to establish or refute marital status cannot be barred from seeking such a declaration merely because a certain period has elapsed, particularly when the dispute has long-standing consequences for inheritance, legitimacy, and personal law rights – The concept of “continuing cause of action” applies in cases involving marital status - Therefore, even assuming that no statutory exclusion under Section 14(2) applies, the continuing nature of the dispute sustains the Respondent’s right to seek a declaration. (Para 16)

In light of these considerations, this Court finds that the Respondent’s suit before the Family Court is not barred by limitation – The time spent in prosecuting the matter before the Civil Court and the subsequent challenge before the High Court must be excluded under Section 14(2) of the Limitation Act – Moreover, given the absence of any specific limitation period under the Family Courts Act and the continuing nature of the dispute, the Respondent’s claim remains legally tenable – Accordingly, the Appellant’s objection regarding limitation lacks merit and stands rejected. (Para 17)

(C) HINDU MARRIAGE ACT, 1955 – Section 16 – Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (the Second Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act, 1955.

Held: Yes – Section 16 of the HMA confers legitimacy on children born from void and voidable marriages, ensuring that they are entitled to inherit their parents’ property – Under the HSA, legitimate children including those legitimised under Section 16 of the HMA, fall under the category of Class-I heirs, giving them an undisputed right to inherit the self-acquired property of their parents. (Para 19)

This Court holds that the children born from the Appellant and Late Kailash Chandra Mohanty are obviously entitled to inherit his self-acquired property – Additionally, where the deceased parent was a Mitakshara

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coparcener, such children shall also inherit their share in the ancestral property, limited to the portion that would have been allotted to their parent upon a notional partition before their death – The Family Court's order shall be modified to reflect this clarification. (Para 22)

Citations Reference

Samar Kumar Roy vs. Jharna Bera, **(2008) 1 SCC 1**; Harmohan Senapati vs. Smt. Kamala Kumari Senapati and Anr., **AIR 1979 ORISSA 51**; Renubala Moharana and anr vs. Mina Mohanty and ors., **AIR 2004 SC 3500**; Hanamanthappa and Anr vs. Chandrashekharappa and Ors., **(1997) 9 SCC 688**; Sri Amar Chand Inani vs. The Union of India, **(1973) 1 SCC 115**; State of Punjab vs. K.R. Erry and Sobhag Rai Mehta And State of Punjab vs. Shri Khaushal Singh, P.A.S., **(1973) 1 SCC 120**; Oil and Natural Gas Corp. Ltd. Vs. Modern Construction and Company, **(2014) 1 SCC 648**; Balram Yadav vs. Fulmaniya Yadav, **AIR 2016 SC 2161**; Hasina Bano vs. Mohd. Ehsan, **2024 SCC OnLine AI 5194**; Jitendra Kumar Choudhary vs. Banku Sahoo, **FAO No. 27 of 2013**; Revanasiddappa & Anr. versus Mallikarjun & Ors., **2023 LiveLaw (SC) 737**– referred to.

List of Acts

Code of Civil Procedure, 1908; Family Courts Act, 1984; Limitation Act, 1963; Hindu Marriage Act, 1955; Specific Relief Act, 1963.

Keywords

Barred by limitation; Notional partition; Ancestral property; Inheritance rights; Coparcenary property; Rightful share; Void or voidable marriages; Ancestral and self-acquired property; Right to inheritance; Concurred legitimacy; Coparcener; Declaration of marital status; Legally married wife; *Lex specialis derogat legi generali*.

Case Arising From

Judgment dated 12.12.2023 passed by the learned Judge, Family Court, Bhubaneswar in C.P. No. 576 of 2017.

Appearances for Parties

For Appellant : Mr. B. Baug, Sr. Adv.

For Respondent : Mr. Bibekananda Bhuyan, Sr. Adv. & Mr. S.S. Bhuyan

Judgment/Order

Judgment

CHITTARANAJN DASH, J.

1. By means of this appeal, the Appellant has challenged the judgment dated 12.12.2023 passed by the Learned Judge, Family Court, Bhubaneswar, in C.P. No. 576/2017, declaring the Respondent as the legally wedded wife of Late Kailash

Chandra Mohanty and his legal heir, thereby entitling her to inherit his ancestral and self-acquired property.

2. The background facts of the case are that the Respondent, Anusaya Mohanty, initiated C.P. No. 576 of 2017 before the Family Court, Bhubaneswar, seeking a declaration that she is the legally wedded wife of Late Kailash Chandra Mohanty and his rightful legal heir. The Respondent claimed that their marriage took place on 05.06.1966 as per Hindu rites and customs, and they lived together, raising two sons. She further alleged that the Appellant, Sandhya Rani Sahoo @ Mohanty, was merely a nurse who worked with the deceased and had no legitimate marital relationship with him. The Family Court decreed the suit on 29.10.2021, declaring the Respondent as the legally wedded wife and legal heir of Late Kailash Chandra Mohanty, entitling her to inherit his ancestral and self-acquired property. Aggrieved by the judgment, the Appellant filed MATA No. 96 of 2021 before this Court, challenging the decision on the grounds that she was not given a fair opportunity to present her case. The Appellant contended that her lawyer had passed away during the proceedings, and due to the disruptions caused by the COVID-19 pandemic, she was unaware of the developments, leading to the case being decided in her absence. This Court, in its order dated 13.07.2023, observed that there was reasonable cause for the Appellant's non-appearance and held that the Family Court's judgment was passed without affording the Appellant proper opportunity to contest the matter.

Consequently, this Court set aside the judgment dated 29.10.2021 and remitted the matter back to the Family Court, Bhubaneswar, for fresh adjudication. Additionally, this Court issued an interim arrangement concerning the disputed property. Considering the advanced age of both parties with the Respondent approaching 80 years and the Appellant around 70 years, this Court directed that, until the final outcome of the case, the usufructs arising from the property would be shared in a 60:40 ratio, with 60% in favour of the Respondent, Anusaya Mohanty, and 40% in favour of the Appellant, Sandhya Rani Sahoo @ Mohanty. Following the remission, the Family Court reheard the matter and passed a fresh judgment on 12.12.2023, once again declaring the Respondent as the legally wedded wife of Late Kailash Chandra Mohanty and his legal heir, thereby reaffirming her right to inherit his ancestral and self-acquired property. As a result of the Family Court's decision, the Appellant has preferred the present Matrimonial Appeal, challenging the judgment dated 12.12.2023.

3. Mr. B. Baug, learned Senior Counsel appearing on behalf of the Appellant, contends that the Family Court lacked jurisdiction to entertain the suit, arguing that the Respondent's prayer for a declaration of marital status should have been brought before the Civil Court under Section 34 of the Specific Relief Act, rather than under Section 7 of the Family Courts Act, 1984. He further asserts that the suit is barred by limitation, as it was filed more than three years after the death of Late Kailash Chandra Mohanty, making it time-barred under Article 58 of the Limitation Act, 1963. Additionally, Mr.

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Baug challenges the Family Court's finding that the Respondent is the sole legal heir of the deceased, contending that the children born from the Appellant's relationship with Late Kailash Chandra Mohanty are legitimate under Section 16 of the Hindu Marriage Act, 1955, and are entitled to inherit their father's self-acquired property as Class-I heirs under the Hindu Succession Act, 1956. Mr. Baug asserts that the Family Court erred by failing to explicitly recognize this right in its final order. Consequently, he prays for the setting aside of the impugned judgment and proper consideration of her claims and those of her children as legal heirs of Late Kailash Chandra Mohanty. Mr. Baug has placed his reliance on the following decisions – **Samar Kumar Roy vs. Jharna Bera** reported in (2008) 1 SCC 1; **Harmohan Senapati vs. Smt. Kamala Kumari Senapati and Anr.** Reported in AIR 1979 ORISSA 51; **Renubala Moharana and anr vs. Mina Mohanty and ors** reported in AIR 2004 SC 3500; **Hanamanthappa and Anr vs. Chandrashekharappa and Ors** reported in (1997) 9 SCC 688; **Sri Amar Chand Inani vs. The Union of India** reported in (1973) 1 SCC 115; **State of Punjab vs. K.R. Erry and Sobhag Rai Mehta And State of Punjab vs. Shri Khaushal Singh, P.A.S.** reported in (1973) 1 SCC 120; **Oil and Natural Gas Corp. Ltd. Vs. Modern Construction and Company** reported in (2014) 1 SCC 648.

4. Mr. S. S. Bhuyan, the learned counsel appearing on behalf of the Respondent, contends that the Family Court rightly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, 1984, as the suit sought a declaration of her marital status, which falls squarely within the Family Court's purview. He further argues that the suit is not barred by limitation, as the period spent pursuing the matter before the Civil Court, which returned the plaint for lack of jurisdiction, should be excluded under Section 14(2) of the Limitation Act, 1963. Additionally, Mr. Bhuyan asserts that the Family Court correctly declared the Respondent as the legally wedded wife and legal heir of Late Kailash Chandra Mohanty, based on ample oral and documentary evidence. While acknowledging that the Appellant's children are legitimate under Section 16 of the Hindu Marriage Act, Mr. Bhuyan argues that this does not affect the Respondent's status as the lawful wife or her right to inherit the ancestral property. He prays for the dismissal of the present appeal, asserting that the Family Court's findings are just and proper. Mr. Bhuyan has placed his reliance on the following decisions – **Balram Yadav vs. Fulmaniya Yadav** reported in AIR 2016 SC 2161; **Hasina Bano vs. Mohd. Ehsan** reported in 2024 SCC OnLine AI 5194; **Jitendra Kumar Choudhary vs. Banku Sahoo** reported in FAO No. 27 of 2013.

5. The Family Court, in its findings, held that the Respondent is the legally wedded wife of Late Kailash Chandra Mohanty and his rightful legal heir. The Court found that the Respondent established her marriage with the deceased through credible oral and documentary evidence, including voter identity cards, service records, and letters exchanged between them. It ruled that the suit was not barred by limitation, applying Section 14 of the Indian Limitation Act, 1963, to exclude the time spent pursuing the matter in the wrong forum. On the issue of jurisdiction, the Court concluded that the matter fell within the purview of Section 7(1)(b) of the Family Courts Act, 1984, as it concerned the declaration of marital status.

Furthermore, the Court determined that the Appellant's alleged marriage to the deceased was invalid under the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") as the Respondent's marriage was still subsisting at the time. However, it acknowledged that the Appellant's children would be considered legitimate and would have inheritance rights. Consequently, the Court declared the Respondent as the legally wedded wife and lawful heir, entitled to inherit both the ancestral and self-acquired properties of Late Kailash Chandra Mohanty.

6. In course of final hearing, this Court, as per the order dated 17.03.2025, found it appropriate to outline the Appeal in the following three issues: -

- (i) Whether the Respondent's prayer for declaration of her marital status is maintainable before the learned Judge, Family Court under Section 7 of the Family Courts Act, or whether she was required to approach the Civil Court under Section 34 of the Specific Relief Act?
- (ii) Whether the suit filed by the Respondent before the learned Judge, Family Court is barred by limitation, having been filed more than three years after the death of Late Kailash Chandra Mohanty?
- (iii) Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (Second Wife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act?

Both the parties have submitted their replies addressing these issues in the meantime, and it is now incumbent upon this Court to scrutinise the matter independently and render its findings accordingly.

Issue (i) - Whether the Respondent's prayer for declaration of her marital status is maintainable before the learned Judge, Family Court under Section 7 of the Family Courts Act, or whether she was required to approach the Civil Court under Section 34 of the Specific Relief Act?

7. The Appellant contends that the relief sought by the Respondent, a declaration of her status as the legally wedded wife of Late Kailash Chandra Mohanty does not fall within the jurisdiction of the Family Court. According to the Appellant, the proper recourse for such a declaration lies under Section 34 of the Specific Relief Act, 1963, which governs suits for declaratory relief. The Appellant argues that the Family Court, being a creature of statute, derives its jurisdiction strictly from the Family Courts Act, 1984, and any matter outside its express mandate must be brought before a Civil Court of competent jurisdiction. The Appellant relies on the principle that jurisdiction cannot be inferred but must be expressly conferred, and since the Respondent's suit primarily seeks a declaration of marital status, it should have been adjudicated by a Civil Court.

Conversely, the Respondent asserts that the Family Court had the necessary jurisdiction under Section 7(1)(b) of the Family Courts Act, 1984. Section 7(1)(b) empowers Family Courts to decide suits or proceedings for "a declaration as to the validity of a marriage or as to the matrimonial status of any person." The Respondent contends that her prayer to be declared the legally wedded wife of Late

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Kailash Chandra Mohanty squarely falls within this provision. Moreover, the Respondent points out that the Appellant never raised the issue of jurisdiction in the initial stages before the Family Court or even during the earlier MATA No. 96 of 2021, and is therefore estopped from raising it at this stage. The Respondent further submits that the matter was initially filed before the Civil Court but was returned under Order VII Rule 10 of the CPC for want of jurisdiction, reinforcing the argument that the Family Court is the appropriate forum.

8. This Court, after carefully considering the rival submissions and examining the statutory provisions, finds that Section 7(1)(b) of the Family Courts Act, 1984, is broad enough to encompass the relief sought by the Respondent. The provisions reads as follows:

“7. Jurisdiction.—(1) Subject to the other provisions of this Act, a Family Court shall—

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.— The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

Additionally, Section 8 of the Family Courts Act reinforces the exclusivity of the Family Court’s jurisdiction by expressly barring the jurisdiction of Civil Courts in matters covered under Section 7. The provision reads as:

8. Exclusion of jurisdiction and pending proceedings.—Where a Family Court has been established for any area,—

(a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—

(i) which is pending immediately before the establishment of such Family Court before any district Court or subordinate Court referred to in that subsection or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

Finally, **Section 20 of the Family Courts Act** provides that the Act has an overriding effect over any other law that may be inconsistent with it:

20. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

9. The Hon'ble Supreme Court, in **Balram Yadav vs. Fulmaniya Yadav** reported in **AIR 2016 SC 2161**, has categorically held the following –

“Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court,

since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status.

Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.”

10. The language of the above-mentioned provisions leaves no room for ambiguity. A suit seeking a declaration of marital status whether it affirms or denies the existence of a valid marriage squarely falls within the ambit of the Family Court's jurisdiction. Once the Family Court jurisdiction is established over a matter, any attempt to bypass it would undermine the very purpose of establishing Family Courts, which is to provide a specialised forum for resolving family disputes efficiently. In the present case, the core of the matter is a declaration of marital status, which aligns squarely with Section 7(1)(b) of the Family Courts Act. The Family Court had the proper jurisdiction under Section 7(1)(b) of the Act to entertain the Respondent's prayer for a declaration of her marital status. The provision clearly vests the Family Court with the authority to decide matters relating to the validity of a marriage and the matrimonial status of any person.

11. The Appellant's argument that the Respondent ought to have approached the Civil Court under Section 34 of the Specific Relief Act is misplaced, as the Family Courts Act is a special law enacted to deal with disputes of a matrimonial nature, including the determination of marital status. The principle of *lex specialis derogat*

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legi generali i.e. meaning special law prevails over general law applies in this context, giving precedence to the Family Courts Act over the general provisions of the Specific Relief Act. Furthermore, the Family Court's jurisdiction is not merely concurrent but exclusive for matters enumerated under Section 7, thereby precluding the jurisdiction of Civil Courts in such cases.

Moreover, the fact that the Respondent initially approached the Civil Court and the plaint was returned under Order VII Rule 10 CPC further reinforces the conclusion that the Family Court was the correct forum. The Appellant's failure to challenge the jurisdiction in the earlier proceedings further weakens her case, as jurisdictional objections must be raised at the earliest stage of litigation.

12. Therefore, this Court finds no merit in the Appellant's contention regarding lack of jurisdiction. The Family Court validly exercised its jurisdiction under Section 7(1)(b) of the Family Courts Act, and the Appellant's objection regarding maintainability is, accordingly, untenable and stands rejected.

Issue (ii) - Whether the suit filed by the Respondent before the learned Judge, Family Court is barred by limitation, having been filed more than three years after the death of Late Kailash Chandra Mohanty?

13. The Appellant contends that the Respondent's suit is barred under the Limitation Act, 1963. According to the Appellant, Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues. The Appellant argues that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death. Therefore, the Respondent's suit, filed on 24.07.2017, is time-barred, as it was filed more than five years after the cause of action arose. The Appellant further submits that the Respondent failed to seek condonation of delay under Section 5 of the Limitation Act and did not provide any explanation for the delay, making the suit liable for dismissal on this ground alone.

Conversely, the Respondent asserts that the suit is not barred by limitation, relying on the principle that time spent prosecuting a case in the wrong forum should be excluded from the calculation of the limitation period. The Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship. However, the Civil Court returned the plaint on 13.01.2016, citing lack of jurisdiction. The Respondent subsequently challenged this order by filing CMP No. 278 of 2016, which was dismissed on 10.05.2017. Thereafter, the Respondent filed the present suit before the Family Court on 24.07.2017. The Respondent contends that the period from the institution of C.S. No. 1998 of 2013 until the dismissal of CMP No. 278 of 2016 should be excluded under Section 14(2) of the Limitation Act, which allows for the exclusion of time spent in bona fide pursuit of a claim before a Court that lacked jurisdiction. The Respondent further submits that, as per settled law, there is no

prescribed period of limitation for seeking a declaration of marital status before the Family Court.

14. Upon careful consideration of the rival submissions, it is imperative to analyse the interplay between the Limitation Act, 1963, and the Family Courts Act, 1984, in the context of suits seeking a declaration of marital status.

Article 58 of the Limitation Act prescribes a three-year limitation period for suits seeking a declaration, starting from the date when the right to sue first accrues. In the present case, the Appellant asserts that the cause of action arose on 12.07.2012, the date of Late Kailash Chandra Mohanty's death, and therefore, the suit filed on 24.07.2017 is barred by time. However, this Court finds that such a rigid application of Article 58 overlooks certain critical legal principles.

15. Firstly, Section 14(2) of the Limitation Act provides relief in cases where a party has pursued a matter in good faith before a Court that ultimately lacked jurisdiction. It reads as:

“In computing the period of limitation for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant, shall be excluded where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

In the present case, the Respondent initially filed C.S. No. 1998 of 2013 before the Civil Judge (Senior Division), Bhubaneswar, seeking a declaration of her marital status and legal heirship. However, the Civil Court returned the plaint on 13.01.2016, holding that it lacked jurisdiction to entertain the matter. The Respondent subsequently filed CMP No. 278 of 2016, challenging the order of the Civil Court, which was dismissed on 10.05.2017. Only thereafter did the Respondent file the present suit before the Family Court on 24.07.2017. Therefore, the period spent in prosecuting the earlier suit and the subsequent challenge before the Civil Court ought to be excluded under Section 14(2) of the Limitation Act. This principle has been consistently upheld by the Hon'ble Supreme Court, which recognises that parties should not be penalised for diligently pursuing their claims before a forum that ultimately lacks jurisdiction.

Secondly, a conjoint reading of Section 7 of the Family Courts Act and Section 29(3) of the Limitation Act lends support to the view that proceedings before the Family Court are not subject to a strict limitation period. Section 7(1)(b) of the Family Courts Act expressly empowers the Family Court to decide suits or proceedings for “a declaration as to the validity of a marriage or as to the matrimonial status of any person.” Importantly, the Family Courts Act does not prescribe any limitation period for such proceedings. Section 29(3) of the Limitation Act clarifies that where a special law provides for a different limitation period or excludes the application of the Limitation Act, the special law will prevail. In the absence of a specific limitation period under the Family Courts Act, the general

principles of delay and laches apply, rather than the rigid timelines under the Limitation Act.

16. A party seeking to establish or refute marital status cannot be barred from seeking such a declaration merely because a certain period has elapsed, particularly when the dispute has long-standing consequences for inheritance, legitimacy, and personal law rights. The concept of “continuing cause of action” applies in cases involving marital status. The Respondent’s right to assert her status as the legally wedded wife of Late Kailash Chandra Mohanty is not a right that extinguishes over time, as it forms the foundation of her claims over his property and other legal entitlements. As long as the Respondent’s status remained contested by the Appellant, the cause of action continued. Therefore, even assuming that no statutory exclusion under Section 14(2) applies, the continuing nature of the dispute sustains the Respondent’s right to seek a declaration.

17. In light of these considerations, this Court finds that the Respondent’s suit before the Family Court is not barred by limitation. The time spent in prosecuting the matter before the Civil Court and the subsequent challenge before the High Court must be excluded under Section 14(2) of the Limitation Act. Moreover, given the absence of any specific limitation period under the Family Courts Act and the continuing nature of the dispute, the Respondent’s claim remains legally tenable. Accordingly, the Appellant’s objection regarding limitation lacks merit and stands rejected.

Issue (iii) - Whether the direction of the learned Judge, Family Court, depriving the issues born from the Appellant (the SecondWife) from the properties of Late Kailash Chandra Mohanty, is violative of Section 16 of the Hindu Marriage Act, 1955?

18. In view of this issue, the Appellant’s concern is that in the final order section of the Family Court’s judgment, it is only declared that the Respondent is the legal heir of late Kailash Chandra Mohanty and entitled to inherit his ancestral and self-acquired property. However, despite discussion in the judgment, the Family Court has not clarified in the final order that the children born from the Appellant have a right over both ancestral and self-acquired property of the deceased.

19. In this regard, it is pertinent to examine the right of inheritance of such children under the Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956 (hereinafter referred to as “HSA”). Section 16 of the HMA confers legitimacy on children born from void and voidable marriages, ensuring that they are entitled to inherit their parents’ property. Under the HSA, legitimate children including those legitimised under Section 16 of the HMA, fall under the category of Class-I heirs, giving them an undisputed right to inherit the self-acquired property of their parents.

20. To better understand, we may refer to the case in the matter of ***Revanasiddappa & Anr. versus Mallikarjun & Ors.***, reported in **2023 LiveLaw (SC) 737**, wherein the Hon’ble Supreme Court has dealt with the issue as to whether the children born from void or voidable marriages, though conferred legitimacy

under Section 16(1) and (2) of the HMA, could claim rights in ancestral property or as coparceners under the HSA. Held as under: -

“54. We now formulate our conclusions in the following terms:

(i) In terms of sub-section (1) of Section 16, a child of a marriage which is null and void under Section 11 is statutorily conferred with legitimacy irrespective of whether (i) such a child is born before or after the commencement of Amending Act 1976; (ii) a decree of nullity is granted in respect of that marriage under the Act and the marriage is held to be void otherwise than on a petition under the enactment;

(ii) In terms of sub-section (2) of Section 16 where a voidable marriage has been annulled by a decree of nullity under Section 12, a child ‘begotten or conceived’ before the decree has been made, is deemed to be their legitimate child notwithstanding the decree, if the child would have been legitimate to the parties to the marriage if a decree of dissolution had been passed instead of a decree of nullity;

(iii) While conferring legitimacy in terms of subsection (1) on a child born from a void marriage and under sub-section (2) to a child born from a voidable marriage which has been annulled, the legislature has stipulated in subsection (3) of Section 16 that such a child will have rights to or in the property of the parents and not in the property of any other person;

(iv) While construing the provisions of Section 3(1)(j) of the HSA 1956 including the proviso, the legitimacy which is conferred by Section 16 of the HMA 1955 on a child born from a void or, as the case may be, voidable marriage has to be read into the provisions of the HSA 1956. In other words, a child who is legitimate under sub-section (1) or subsection (2) of Section 16 of the HMA would, for the purposes of Section 3(1)(j) of the HSA 1956, fall within the ambit of the explanation ‘related by legitimate kinship’ and cannot be regarded as an ‘illegitimate child’ for the purposes of the proviso;

(v) Section 6 of the HSA 1956 continues to recognize the institution of a joint Hindu family governed by the Mitakshara law and the concepts of a coparcener, the acquisition of an interest as a coparcener by birth and rights in coparcenary property. By the substitution of Section 6, equal rights have been granted to daughters, in the same manner as sons as indicated by sub-section (1) of Section 6;

(vi) Section 6 of the HSA 1956 provides for the devolution of interest in coparcenary property. Prior to the substitution of Section 6 with effect from 9 September 2005 by the Amending Act of 2005, Section 6 stipulated the devolution of interest in a Mitakshara coparcenary property of a male Hindu by survivorship on the surviving members of the coparcenary. The exception to devolution by survivorship was where the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative in Class I claiming through a female relative, in which event the interest of the deceased in a Mitakshara coparcenary property would devolve by testamentary or intestate succession and not by survivorship. In terms of subsection (3) of Section 6 as amended, on a Hindu dying after the commencement of the Amending Act of 2005 his interest in the property of a Joint Hindu family governed by the Mitakshara law will devolve by testamentary or intestate succession, as the case may be, under the enactment and not by survivorship. As a consequence of the substitution of Section 6, the rule of devolution by testamentary or intestate succession of the interest of a deceased Hindu in the property of a Joint Hindu family governed by Mitakshara law has been made the norm;

(vii) Section 8 of the HSA 1956 provides general rules of succession for the devolution of the property of a male Hindu dying intestate. Section 10 provides for the distribution

of the property among heirs of Class I of the Schedule. Section 15 stipulates the general rules of succession in the case of female Hindus dying intestate. Section 16 provides for the order of succession and the distribution among heirs of a female Hindu;

(viii) While providing for the devolution of the interest of a Hindu in the property of a Joint Hindu family governed by Mitakshara law, dying after the commencement of the Amending Act of 2005 by testamentary or intestate succession, Section 6 (3) lays down a legal fiction namely that ‘the coparcenary property shall be deemed to have been divided as if a partition had taken place’. According to the Explanation, the interest of a Hindu Mitakshara coparcener is deemed to be the share in the property that would have been allotted to him if a partition of the property has taken place immediately before his death irrespective of whether or not he is entitled to claim partition;

(ix) For the purpose of ascertaining the interest of a deceased Hindu Mitakshara coparcener, the law mandates the assumption of a state of affairs immediately prior to the death of the coparcener namely, a partition of the coparcenary property between the deceased and other members of the coparcenary. Once the share of the deceased in property that would have been allotted to him if a partition had taken place immediately before his death is ascertained, his heirs including the children who have been conferred with legitimacy under Section 16 of the HMA 1955, will be entitled to their share in the property which would have been allotted to the deceased upon the notional partition, if it had taken place; and

(x) The provisions of the HSA 1956 have to be harmonized with the mandate in Section 16(3) of the HMA 1955 which indicates that a child who is conferred with legitimacy under sub-sections (1) and (2) will not be entitled to rights in or to the property of any person other than the parents. The property of the parent, where the parent had an interest in the property of a Joint Hindu family governed under the Mitakshara law has to be ascertained in terms of the Explanation to sub-section (3), as interpreted above.”

21. The Hon’ble Supreme Court held that Section 16(3) of the HMA restricts the property rights of such children to only the property that comes in the share of the parents out of the joint family property besides self-acquired property. To be more specific, the judgment further clarifies that where the parent was a Hindu Mitakshara coparcener, the explanation to Section 6(3) of the HSA comes into play, that reads as –

6. Devolution of interest in coparcenary property.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a predeceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.--For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

This means that before the devolution of the parent's property, a notional partition must be presumed to have occurred immediately before the parent's death, thereby determining the parent's share in the coparcenary property. Once the share of the deceased parent is ascertained through this notional partition, the legal heirs including children born from void or voidable marriages are entitled to their rightful share in such property.

22. Accordingly, we find merit in the Appellant's concern and deem it necessary to modify the Family Court's order by incorporating a specific clarification. This Court holds that the children born from the Appellant and Late Kailash Chandra Mohanty are obviously entitled to inherit his self-acquired property. Additionally, where the deceased parent was a Mitakshara coparcener, such children shall also inherit their share in the ancestral property, limited to the portion that would have been allotted to their parent upon a notional partition before their death. The Family Court's order shall be modified to reflect this clarification.

23. In view of the above discussions, this Court finds no merit in the Appellant's other contentions. As a necessary corollary, the jurisdiction exercised by the learned Judge, Family Court under Section 7(1)(b) of the Family Courts Act, is just and proper. Further, in view of our discussion as above, on the issue of limitation, the suit is also not barred by limitation. Furthermore, the Family Court has correctly declared the Respondent as the legally wedded wife of Late Kailash Chandra Mohanty and his legal heir, entitled to inherit his ancestral and self-acquired property. As already discussed, the judgment dated 12.12.2023 by the Judge, Family Court, Bhubaneswar, is modified to the extent that the Appellant's children have the right to inherit the self-acquired property of Late Kailash Chandra Mohanty, as well as their rightful share in his ancestral property, subject to the portion that would have been allotted to him upon a notional partition before his death, as per section 6(3) of the HSA.

24. Accordingly, the Appeal is dismissed on merit, and the impugned judgment is upheld with the aforementioned modification.

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

Result of the case:
Appeal dismissed.

2025 (II) ILR-CUT-785

**EPARI SUSHMA
V.
MINISTRY OF HEALTH & FAMILY WELFARE & ORS.**

[W.P.(C) NO. 24656 OF 2024]

09 MAY 2025

[Dr. S.K. PANIGRAHI, J.]**Issues for Consideration**

1. Can the prayer of the petitioner as the legal guardian/representative/ attorney of her husband be allowed?
2. Doctrine of *Parens patriae* – Scope for exercise.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Article 226 r/w Section 14 of Rights of Persons with Disabilities Act, 2016 – The husband of the petitioner is in a comatose/ vegetative state, entirely unresponsive and incapable of communication, decision-making or execution of documents – Petitioner seeks to be appointed as the legal guardian/ representative/ attorney of her husband – Can the prayer of the petitioner be allowed?

Held: Yes – The silence of the statute cannot become a justification for denial of relief when the life, dignity and welfare of an incapacitated person are at stake – In such exceptional situations, the Court must rise above procedural formalities and act in furtherance of justice by invoking its constitutional jurisdiction in a manner that safeguards the rights of the most vulnerable. (Para 19)

Therefore, recognizing the wife as the guardian of her husband in a comatose or vegetative condition is not only consistent with statutory principles and constitutional values, but also resonates deeply with cultural ethos and time-honoured traditions that venerate the marital bond as one of unity, duty, and mutual guardianship. (Para 26)

(B) DOCTRINE OF PARENS PATRIAE – Scope for exercise.

Held: In order to invoke the *parens patriae* jurisdiction, exceptional circumstances have to exist – The scope of this jurisdiction has to be exercised with great caution and with enormous seriousness – The Supreme Court further recognises that Constitutional Courts, including High Courts, can also act under their *parens patriae* jurisdiction to "meet the ends of justice" – Mental incompetency is listed as an exceptional circumstance

which would justify the exercise of this jurisdiction – If the Court is satisfied that the person concerned is in a vegetative state, then surely “*parens patriae*” jurisdiction can be exercised. (Para 21)

Citations Reference

Rajni Hariom Sharma v. Union of India, **2020 SCC OnLine Bom 880**; Aruna Ramchandra Shanbaug v. Union of India & Ors., **2011 INSC 187**; Shafin Jahan v. Ashokan K.M. & Ors., **AIR 2018 SC 1933**; Shobha Gopalakrishnan v. State of Kerala and Ors, **AIRONLINE 2019 KER 992**; Vandana Tyagi v. Government of National Capital Territory of Delhi, **AIRONLINE 2020 DEL 5 – referred to.**

List of Acts

Constitution of India, 1950; Rights of Persons with Disabilities Act, 2016

Keywords

Parens patriae jurisdiction; Comatose state; Vegetative State; Legal guardian; Persons with disabilities; Long-term impairments; Ardhangini; Extra ordinary jurisdiction. Appointment of guardian; Life; Dignity; Exceptional circumstances; *Ex debito justitiae*; Personal liberty; Bodily autonomy.

Case Arising From

Comatose or vegetative state of the husband of the petitioner.

Appearances for Parties

For Petitioner : Mr. Soumya Sekhar Parida

For Opp. Parties : Mr. Sulochana Patra, C.G.C

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. The Petitioner, by way of the present Writ Petition, seeks a direction from this Court to appoint her as the legal guardian/representative of her husband, who is presently in a comatose or vegetative state.

I. FACTUAL MATRIX OF THE CASE:

2. The brief fact of the case is that:

(i). The Petitioner’s husband, Mr. Suresh Kumar Epari is currently in a comatose / vegetative state with no medical indication or reasonable prospect of revival. As a result of his sudden and severe medical condition, he is entirely

physically incapacitated, incapable of communication, decision-making, or execution of documents.

(ii). The Petitioner has been compelled to incur substantial and ongoing medical expenses while simultaneously managing household responsibilities and the educational needs of their dependent son, Mr. Sukrut Epari, who is presently pursuing a B.B.A. LL.B. degree.

(iii). Mr. Suresh Kumar Epari is a businessman actively engaged in multiple enterprises. He is the sole proprietor of M/s. Kalinga Royale, a construction business, the managing partner of M/s. Epari Govindam & Sons, and the owner of a commercial property located at #78, Janpath, Kharvelnagar, Bhubaneswar, Odisha, which generates rental income. In all his business concerns, his shareholding is either full or joint (50%). Several immovable properties stand in his name, though their transfer and registration are pending. His business obligations require regular execution of sale deeds, payments to contractors, suppliers, employees, and the remittance of applicable taxes, particularly in relation to an ongoing apartment construction project. The Orissa Real Estate Regulatory Authority (ORERA) has mandated that the said construction be completed by 31.05.2025, with legal consequences in case of noncompliance.

(iv). On 26.01.2024, Mr. Epari was admitted to Ashwini Hospital, C.D.A., Cuttack, after being diagnosed with pneumothorax (fluid accumulation in the lungs). During treatment, his condition worsened due to a rise in creatinine and urea levels, necessitating dialysis and intensive care owing to multiple organ failure. On medical advice, he was airlifted to Medanta Hospital, Gurugram, Haryana on 01.02.2024, where he suffered a cardiac arrest. Though successfully revived by a team led by Dr. Anand Jaiswal, Senior Consultant in Pulmonology, he remained unconscious and has since been in a vegetative state, requiring ventilator support and constant monitoring across various ICUs.

(v). Despite extensive treatment at Medanta Hospital, including surgeries and continued care, Mr. Epari did not show neurological improvement. On 22.04.2024, he was discharged in a bedridden state with a tracheostomy in place and being fed via nasogastric tube. He was subsequently airlifted to Apollo Hospital, Arilova, Visakhapatnam, for further management under a team led by Dr. Atchyutha from the Pulmonology and Neurology departments. Upon discharge on 15.05.2024, home-based intensive medical care was recommended, involving installation of necessary equipment and medical personnel from Medanta Hospital's Home Care Department.

(vi). From 15.05.2024 to 31.07.2024, the Petitioner and her husband resided at a rented apartment (Flat No. A1, Sagarika Apartments, Pandurangapuram, Visakhapatnam), where he remained under round the-clock care provided by Dr. Anitha (General Physician), Dr. Vamshidhar (Nephrologist), and Dr. Shiva (Physiotherapist). On 31.07.2024, Mr. Epari was transported back to his residence in Cuttack, Odisha, accompanied by medical staff, and continues to be under the medical supervision of doctors from Apollo Hospital, Visakhapatnam and Medanta

Hospital, Gurugram. Despite all treatment efforts, Mr. Epari has remained in a vegetative state since 02.02.2024.

(vii). In view of his persistent incapacitation, the Petitioner is now compelled to take over his financial, legal, and business responsibilities, which include, inter alia, paying statutory dues, meeting operational expenses, executing legal documents, and ensuring compliance with obligations under ORERA and other regulatory bodies. These functions are critical for the sustenance of the family and the continuity of his business operations. The Petitioner's inability to act on his behalf, without legal authorization, poses a serious risk of financial loss and legal noncompliance.

(viii). Accordingly, the Petitioner seeks to be appointed as the legal guardian/representative/attorney of her husband, Mr. Suresh Kumar Epari, to act on his behalf in all matters including legal, commercial, statutory, and financial transactions. The Petitioner further prays that this Court may be pleased to issue appropriate directions to the concerned authorities and institutions to recognize the Petitioner's legal authority to represent her husband in view of his medical incapacitation. The Petitioner submits that the present application arises from an unforeseen medical catastrophe, leaving the family without any other viable means of sustenance.

II. SUBMISSIONS OF THE RIVAL PARTIES:

3. The Counsel for the Petitioner submitted that the medical expenses incurred in looking after Suresh Kumar Epari, the husband of the petitioner, are quite substantial, and he continues to remain in a vegetative condition. As a result of his current state, he is unable to use his intellect, communicate, or execute documents. Accordingly, the petitioner is required to act as his guardian in order to safeguard his business interests, operate his bank accounts, make payments to discharge business liabilities, meet business requisitions, pay taxes, suppliers, employees, and attend to other financial responsibilities on his behalf, while also looking after the needs of the family. The petitioner must further attend to her husband's duties in running his business, specifically to comply with statutory conditions imposed by ORERA, which require completion of construction by 31.05.2025 and execution of sale deeds in favour of the buyers, along with post-legal and statutory compliances.

4. The sudden and unforeseen ailment of her husband, Mr. Suresh Kumar Epari, has rendered him to a vegetative state, a condition neither expected nor anticipated. The petitioner now faces an uncertain future, devoid of any source of income to meet the ongoing medical expenses of her husband, household needs, and the educational expenses of their son.

5. It is also submitted that the petitioner's son, having attained majority, has consented to the appointment of the petitioner as the guardian of Mr. Suresh Kumar Epari. Despite being in a vegetative state, Mr. Epari retains his fundamental right to live with dignity. The petitioner, being his wife, bears legal, moral, familial, and

societal obligations to care for him and the family. Without a stable income, the petitioner is unable to meet these essential expenses.

6. There being no specific statutory provision for the appointment of a guardian to care for individuals in a bedridden or vegetative condition, the petitioner has approached this Court under Article 226 of the Constitution of India, seeking recognition of her husband's right to live with dignity. In pursuit of this objective, she seeks to be appointed as his Guardian/Representative.

7. *Per contra*, the Opposite Parties have not filed any counter affidavit in the present proceeding. It is evident that the respondents have not controverted or challenged the foundational facts as pleaded by the petitioner. Their objection is confined solely to the maintainability of the relief(s) sought before this forum. In the absence of any rebuttal to the petitioner's factual assertions, the Court shall proceed on the presumption that the said facts are true and correct.

III. COURT'S REASONING AND ANALYSIS:

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

9. In the eyes of law, as in the deeper moral and cultural consciousness of society, a husband and wife are equal partners in the institution of marriage. This partnership is not merely contractual but spiritual, emotional, and existential. The wife is not only a companion but also, as ancient Indian philosophy describes, the Ardhangini, the other half of the husband. The very word "Ardhangini" derives from the Sanskrit roots *ardha* (half) and *ang* (body), signifying that the wife is not a separate entity but one half of a composite whole. This concept finds powerful embodiment in the divine form of Ardhanarishvara, where Lord Shiva and Goddess Parvati unite as a single form representing the indivisible synthesis of the masculine and feminine energies: Shiva and Shakti.

10. Similarly, in biblical tradition, the Book of Genesis describes the creation of woman from the rib of man, signifying not subordination but intrinsic unity and equality: "This is now bone of my bones and flesh of my flesh". The conception of marriage is that of a sacred covenant where "the two shall become one flesh". In both these traditions, the wife is envisioned not merely as a dependent but as an indispensable and divinely sanctioned counterpart to the husband.

11. In this regard, the Bombay High Court in the case of **Rajni Hariom Sharma v. Union of India**¹, had a similar view, and held as follows:

"22. According to Hindu vedic philosophy, marriage is a sanskar or a sacrament. What is essentially contemplated is a union of two souls. The eternal being is composed of two halves i.e., the man and the woman. Both the halves are equal and one-half is incomplete without the other. As long as the wife survives, one half of the

¹ 2020 SCC OnLine Bom 880.

husband survives. Ancient Hindu tradition says that a man's life can never be complete without a wife i.e., his Ardhangini or his better half. They are considered to be equal partners. Wife is not only considered to be Ardhangini but is also referred to as 'Sahadharmini'. Literal meaning of the concept of Ardhangini is that a Hindu woman is associated with her husband in the journey of life for fulfillment and for attainment of all goals. She is also referred to as Sahayogini co-operating with her husband in all his activities as well as a Sahakarmini which means having an equal share in the actions of her husband. Together they are referred as Dampati. In Manusmriti, Manu had declared the wife as not just Patni but Dharmapatni meaning thereby that under dharma she is under obligation to discharge and perform all duties of her husband."

12. The abovementioned precedent makes it clear that when a husband falls into a comatose or vegetative state, losing the ability to exercise reason, make decisions, or act on his own behalf, there can be no person more naturally, morally, or legally suited than the wife to act as his guardian. She has shared in his life, his burdens, his responsibilities, and his dreams. She is likely to understand his values, intentions, and wishes more than any other individual. Her appointment as guardian is not only an act of legal necessity but also one of moral imperative and social logic.

13. However, the guardianship of the husband cannot be granted to the wife solely on the basis of cultural or religious considerations. It is incumbent upon the Court to examine the matter within the framework of law and determine the question of guardianship in accordance with legal principles and statutory mandates.

14. From a lay perspective, there exists little distinction between a comatose condition and a vegetative state, as both reflect a state of profound unconsciousness and absence of cognitive function. While medical science may differentiate the two based on clinical criteria, both conditions render the individual incapable of communication, decision making, or meaningful interaction with the environment. In functional terms, they result in a complete loss of personal agency, necessitating the appointment of a substitute decision-maker. The petitioner, therefore, seeks to be appointed as the guardian and representative of her husband, who remains in a vegetative state and is medically incapacitated, analogous to a person in a coma.

15. Now, the factual position remains undisputed, as the opposite party has not attempted to controvert the same. The medical condition of the petitioner's husband, characterized by unresponsiveness and cognitive incapacity, has been clearly and authoritatively detailed in the medical certificate dated 19.07.2024, issued by Dr. Atchyuth R. Gongada (MD, FRCA), Senior Consultant and Head of the Department of Intensive Care and Anaesthesiology, Apollo Hospitals, Visakhapatnam. The relevant excerpt from the said certificate is reproduced herein below for ready reference:

"This is to confirm that Mr. Suresh Kumar Epari M/53 yrs was admitted to Apollo Hospitals on 22/04/24 and he was treated on ICU and wards till 15/06/24. He was discharged home with nursing help at home. He was re-admitted to hospital on

16/06/24 till 20/06/24. He is now at home with 24 Hr nurses' help for his life activities.

*I saw this patient on 18/07/24 at in Apollo Hospital. He was brought by his wife, with the help of a male nurse and a male domestic help, on a wheel chair. **He is not able to communicate in writing or verbally. He is taking a long time to understand verbal input.** He has shown significant improvement in his mental status since his discharge from the hospital.”*
(Emphasis supplied)

16. Now, in the absence of specific and comprehensive legislation governing the appointment of guardians or representatives for individuals in a comatose or vegetative state, the judiciary has frequently been confronted with complex situations concerning the management and administration of properties owned by such incapacitated persons. The legal vacuum in this area has resulted in a lack of uniformity and predictability, thereby compelling courts to adjudicate these sensitive matters on a case-by-case basis. In doing so, the courts have had to rely on constitutional principles, equitable considerations, and the broader intent of personal and proprietary rights to arrive at just and pragmatic solutions in the interest of the incapacitated individual.

17. In *Aruna Ramchandra Shanbaug v. Union of India & Ors.*², the Supreme Court addressed the legal vacuum surrounding the rights and care of individuals in a comatose state. Section 2(s) of the Rights of Persons with Disabilities Act, 2016 defines “persons with disabilities” as those who have long-term impairments which, in interaction with various barriers, may hinder their full and effective participation in society. However, this statutory definition presumes a degree of responsiveness or interaction, albeit limited. In contrast, individuals in a comatose or vegetative state are entirely unresponsive and incapable of interaction or decision-making. Consequently, such persons fall outside the ambit of the said statutory framework, including the appointment of a guardian under Section 14 of the Act.

18. Given this legislative gap, and recognizing the urgent need for financial and medical decisions to be made in the best interest of the incapacitated individual, the Court has no alternative but to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India.

19. The silence of the statute cannot become a justification for denial of relief when the life, dignity and welfare of an incapacitated person are at stake. In such exceptional situations, the Court must rise above procedural formalities and act in furtherance of justice by invoking its constitutional jurisdiction in a manner that safeguards the rights of the most vulnerable. This duty finds expression in the doctrine of *parens patriae* which allows Constitutional Courts to step in as the ultimate protector of those who cannot speak or act for themselves.

² 2011 INSC 187.

20. The Supreme Court in **Shafin Jahan v. Ashokan K.M. & Ors.**³, the Court has considered the scope of 'parens patriae' jurisdiction and has observed as under:

"39. Constitutional Courts in this country exercise parens patriae jurisdiction in matters of child custody treating the welfare of the child as the paramount concern. There are situations when the Court can invoke the parens patriae principle and the same is required to be invoked only in exceptional situations. We may like to give some examples. For example, where a person is mentally ill and is produced before the court in a writ of habeas corpus, the court may invoke the aforesaid doctrine. On certain other occasions, when a girl who is not a major has eloped with a person and she is produced at the behest of habeas corpus filed by her parents and she expresses fear of life in the custody of her parents, the court may exercise the jurisdiction to send her to an appropriate home meant to give shelter to women where her interest can be best taken care of till she becomes a major.

While the scope of the parens patriae jurisdiction is unlimited, the jurisdiction must nonetheless be exercised in accordance with its underlying principle. The discretion given under this jurisdiction is to be exercised for the benefit of the person in need of protection and not for the benefit of others. It must at all times be exercised with great caution, a caution that must increase with the seriousness of the matter. This is particularly so in cases where a court might be tempted to act because failure to act would risk imposing an obviously heavy burden on another person."

21. The Court further held that in order to invoke the parens patriae jurisdiction, exceptional circumstances have to exist. The scope of this jurisdiction has to be exercised with great caution and with enormous seriousness. The Supreme Court further recognises that Constitutional Courts, including High Courts, can also act under their parens patriae jurisdiction to "meet the ends of justice". Mental incompetency is listed as an exceptional circumstance which would justify the exercise of this jurisdiction. If the Court is satisfied that the person concerned is in a vegetative state, then surely "parens patriae" jurisdiction can be exercised.

22. Identical situations have arisen earlier also into various parts of the country. Different High Courts while dealing with such identical situations has passed the following orders.

23. In **Shobha Gopalakrishnan v. State of Kerala and Ors**⁴, the Kerala High Court considered the case of a patient in a comatose state, whose family was facing grave difficulties in arranging the necessary finances for his continued medical treatment and life support. The patient, being the sole breadwinner of the family, owned immovable properties; however, his family members were legally incapacitated from dealing with the said assets due to the absence of statutory authority or guardianship, thereby encountering insurmountable legal hurdles. The Court further observed the legal lacuna in India, highlighting the absence of any

³ AIR 2018 SC 1933.

⁴ AIR ONLINE 2019 KER 992.

statutory provision or legislative framework enabling the appointment of a guardian for persons in a comatose or vegetative condition. The Kerala High Court invoked its *parens patriae* jurisdiction and framed detailed guidelines to address such exigencies in future cases:

“Coming to the incidental aspects; since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in 'comatose state', it is necessary to stipulate some 'Guidelines', based on the inputs gathered by this Court from different corners, as suggested by the learned counsel for the petitioners, the learned Government Pleader and also by the learned Amicus Curiae, till the field is taken over by proper legislation in this regard. This Court finds it appropriate to fix the following norms/guidelines as a temporary measure:

i) petitioner/s seeking for appointment of Guardian to a person lying in comatose state shall disclose the particulars of the property, both movable and immovable, owned and possessed by the patient lying in comatose state.

ii) The condition of the person lying in comatose state shall be got ascertained by causing him to be examined by a duly constituted Medical Board, of whom one shall definitely be a qualified Neurologist.

iii) A simultaneous visit of the person lying in comatose state, at his residence, shall be caused to be made through the Revenue authorities, not below the rank of a Tahsildar and a report shall be procured as to all the relevant facts and figures, including the particulars of the close relatives, their financial conditions and such other aspects.

iv) The person seeking appointment as Guardian of a person lying in comatose state shall be a close relative (spouse or children) and all the persons to be classified as legal heirs in the due course shall be in the party array. In the absence of the suitable close relative, a public official such as 'Social Welfare officer' can be sought to be appointed as a Guardian to the person lying in 'comatose state'.

v) The person applying for appointment as Guardian shall be one who is legally competent to be appointed as a Guardian

vi) The appointment of a Guardian as above shall only be in respect of the specific properties and bank accounts/such other properties of the person lying in comatose state; to be indicated in the order appointing the Guardian and the Guardian so appointed shall act always in the best interest of the person lying in 'comatose state'.

vii) The person appointed as Guardian shall file periodical reports in every six months before the Registrar General of this Court, which shall contain the particulars of all transactions taken by the Guardian in respect of the person and property of the patient in comatose state; besides showing the utilization of the funds received and spent by him/her.

viii) The Registrar General shall cause to maintain a separate Register with regard to appointment of Guardian to persons lying in 'comatose state' and adequate provision to keep the Reports filed by the Guardian appointed by this Court.

ix) It is open for this Court to appoint a person as Guardian to the person lying in comatose state, either temporarily or for a specified period or permanently, as found to be appropriate.

x) If there is any misuse of power or misappropriation of funds or non-extension of requisite care and protection or support with regard to the treatment and other requirements of the person lying in comatose state, it is open to bring up the matter for further consideration of this Court to re-open and revoke the power, to take appropriate action against the person concerned, who was appointed as the Guardian and also to appoint another person/public authority/Social Welfare Officer (whose official status is equal to the post of District Probation Officer) as the Guardian.

xi) It shall be for the Guardian appointed by the Court to meet the obligations/duties similar to those as described under Section 15 of the National Trust Act and to maintain and submit the accounts similar to those contained in Section 16.

xii) The Guardian so appointed shall bring the appointment to the notice of the Social Welfare Officer having jurisdiction in the place of residence, along with a copy of the verdict appointing him as Guardian, enabling the Social Welfare Officer of the area to visit the person lying in 'comatose state' at random and to submit a report, if so necessitated, calling for further action/ interference of this Court .

xiii) The transactions in respect of the property of the person lying in 'comatose state', by the Guardian, shall be strictly in accordance with the relevant provisions of law. If the Guardian appointed is found to be abusing the power or neglects or acts contrary to the best interest of the person lying in 'comatose state', any relative or next friend may apply to this Court for removal of such Guardian.

xiv) The Guardian appointed shall seek and obtain specific permission from this Court, if he/she intends to transfer the person lying in comatose state from the jurisdiction of this Court to another State or Country, whether it be for availing better treatment or otherwise.”

24. In **Vandana Tyagi v. Government of National Capital Territory of Delhi**⁵, Delhi High Court in this case relied and reiterated the guidelines laid down by Kerala High Court in the case of **Shobha Gopalakrishnan** (supra), on how to deal with cases regarding the appointment of a legal guardian for comatose persons. These guidelines were issued by the Division Bench of Kerala High Court and followed by the Delhi High Court since no specific provision is available in any Statutes to deal with the procedure for such appointment of Guardian to a victim lying in ‘comatose state’. The Court also held that only the spouse or children can be appointed as a legal guardian of a person in coma and they will have to disclose the details of all tangible and intangible assets of the patient.

25. Then again, in **Rajni Hariom Sharma** (supra), the Bombay High Court affirmed the ratio decidendi laid down in the aforementioned two cases and invoked the principle of *ex debito justitiae*. The Court, while considering the submissions

⁵ AIRONLINE 2020 DEL 5.

advanced by the appellants, noted that the husband is in a comatose state and thereby rendered incapable of exercising his mental faculties, engaging in communication, or executing requisite documents. In view of these circumstances, it was contended that the appointment of a guardian is imperative to protect the business and proprietary interests of the patient and to ensure the welfare of the dependent family members. The relevant paragraphs of the judgment are extracted hereinbelow:

“38. From the above, it is clearly deducible that when the High Court exercises jurisdiction under Article 226 of the Constitution of India, it does so to further the cause of justice. To provide justice or discharge ex debito justitiae is the raison d’etre of the courts. The Latin expression ex debito justitiae literally means a debt of justice; on account of justice; a claim, the refusal of which would involve an injustice, and therefore, one which justice owes it to the claimant to recognize and allow. The doctrine of ex debito justitiae is well established and requires no further elaboration. In addition to Article 226 of the Constitution, such power of the High Court is traceable to section 151 of the Civil Procedure Code, 1908 and section 482 of the Code of Criminal Procedure, 1973.

.....

41. Thus, having regard to the discussions made above, we are of the view that reliefs sought for by the petitioner are reasonable and may be granted considering the peculiar facts and circumstances of the case. However, to ensure that order of this Court is followed in letter and spirit and there is no breach thereof, it is also essential that there should be some kind of monitoring of the functioning of the petitioner as guardian albeit for a limited duration to ensure that guardianship is being used for the benefit of the person who is in a vegetative state. Such monitoring may be carried out through the forum of Maharashtra State Legal Services Authority constituted under the Legal Services Authorities Act, 1987”

26. Therefore, recognizing the wife as the guardian of her husband in a comatose or vegetative condition is not only consistent with statutory principles and constitutional values, but also resonates deeply with cultural ethos and time-honoured traditions that venerate the marital bond as one of unity, duty, and mutual guardianship.

27. It is also worth emphasizing that in an era of evolving jurisprudence on personal liberty, bodily autonomy, and dignity, the law must not operate in a vacuum when faced with emerging social realities. With rapid medical advancements enabling prolonged survival even in vegetative states, the judiciary must proactively fill legislative voids by creating pragmatic frameworks that safeguard incapacitated individuals without undermining their human dignity. Where an individual is rendered silent by medical misfortune, the voice of the law must resonate through the person most intimately aware of his needs and values: his spouse. Any interpretation that obstructs her from assuming this role would not only be antithetical to compassion but would also amount to judicial abdication in the face of a moral and constitutional imperative.

IV. CONCLUSION:

28. In light of the foregoing analysis, this Court is of the considered view that the Petitioner is entitled to be appointed as the legal guardian and representative of her husband, who is in a persistent vegetative state and incapable of managing his affairs.

29. Smt. Epari Sushma is hereby appointed as the legal guardian and representative of Mr. Suresh Kumar Epari, with full authority to manage all his personal, financial, legal, medical, and business matters, including compliance with statutory obligations.

30. All relevant authorities, banks, and regulatory bodies are directed to recognize the Petitioner's authority for all purposes. The Petitioner shall maintain accurate records of all transactions and actions taken on behalf of Mr. Epari and shall submit a detailed report to any regulatory authority as and when they demand for compliance.

31. The present Writ Petition is, accordingly, disposed of.

32. 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 Petition disposed of.

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2025 (II) ILR-CUT-796

KUMARPUR SASAN JUBA GOSTI KENDRA & ORS.

V.

STATE OF ODISHA & ORS.

[W.P.(C) NO. 1373 OF 2025]

WITH

[CONTC NO. 801 OF 2025]

20 JUNE 2025

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

Issue for Consideration

Whether demolition of the structure without affording any opportunity is sustainable.

Headnotes

ODISHA PREVENTION OF LAND ENCROACHMENT ACT, 1972 (in short OPLE Act) r/w Article 300-A of the Constitution of India, 1950 – Demolition of structure without following the direction issued by the Hon’ble Supreme Court – The land is recorded as Rakhita Anabadi – The community center building existed over the said plot – Proceeding under the OPLE Act was initiated – Petitioner challenged the proceeding before the Hon’ble High Court – The Hon’ble High Court directed the petitioner to file an application for settlement U/s. 8-A of the OPLE Act – The authority rejected the said application – The rejection was followed by an appeal before the Sub-Collector – The petitioner also filed a Writ Petition before the Hon’ble Court – On 29.11.2024 the High Court directed that no eviction shall take place during the pendency of the appeal – Despite such order, a new eviction notice was issued, prompting the petitioners to approach the High Court again – On 13.12.2024, the High Court reiterated its stance, restraining eviction during the pendency of the appeal – On the same day (13.12.2024) the Sub-Collector concluded the hearing and allegedly reserved orders in the appeal around 4 P.M. – At approximately 5.15 P.M. a demolition notice was affixed and on 14.12.2024 at 10 A.M. the structure was demolished – Whether demolition of the structure without affording any opportunity is sustainable.

Held: No – Forcible dispossession of a person from their property, without adherence to due process of law, constitutes not only a violation of their constitutional right under Article 300-A but also an affront to basic human rights. (Para 15)

What is at stake here is not the legality of one demolition, but the integrity of a constitutional culture – When executive action arrogates to itself the role of judge, jury, and executioner, the harm that follows is not merely institutional, it is civic – In a democratic society governed by the rule of law, process is not an inconvenience to be bypassed when found burdensome – It is the very architecture that lends legitimacy to State action – The moment that process becomes expendable, so does the public’s faith in the neutrality of governance – This Court is duty-bound to restore that balance, for what is lost here is not only a building, but also the belief that law is a shield against arbitrariness. (Para 17)

The Tahasildar has shown undue haste in demolishing the structure, without adhering to the guidelines issued by the Supreme Court of India – In determining the quantum of compensation, this Court has taken into account the nature and purpose of the demolished structure, the conduct of the authorities, and the attendant constitutional violations. (Para 26)

Having regard to the cost of reconstruction, the loss suffered, and the gravity of administrative misconduct, compensation is assessed at ₹10,00,000 – Of this, ₹2,00,000 shall be recovered from the Tahasildar concerned, to be deducted in reasonable installments from his salary, given his direct involvement in the unlawful act – The balance amount of ₹8,00,000 shall be paid by the State to the Petitioner within a period of eight weeks from the date of presentation of this order. (Para 27)

Citations Reference

In Re: Directions in the matter of demolition of structures **(W.P.(C) No. 295 of 2022, decided on 13.11.2024;** N. Padmamma v. S. Ramakrishna Reddy, **(2008) 15 SCC 517;** Jilubhai Nanbhai Khachar v. State of Gujarat, **1995 Supp (1) SCC 596;** Delhi Airtech Services Pvt. Ltd. v. State of U.P, **(2011) 9 SCC 354 – referred to.**

List of Acts

Odisha Prevention of Land Encroachment Act, 1972; Constitution of India, 1950.

Keywords

Land Encroachment; Demolition of structure; Opportunity of hearing; Rule of law; Separation of power; Doctrine of public trust; Bulldozer justice; Compensation.

Case Arising From

Demolition of the structure known as ‘Gosthigruha’ or Community centre by the Revenue Authority.

Appearances for Parties

For Petitioner(s) : Mr. Ninad Laud & Mr. L.K. Moharana.
For Opp.Party(s) : Smt. J. Sahoo, ASC

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

1. Since both the cases are interlinked, both the cases are being heard and disposed of together. However, this Court feels it appropriate to treat W.P.(C) No.1373 of 2025 as the leading case for proper adjudication of both the matters.

2. In this Writ Petition, the Petitioners seek a direction to declare the demolition of the community structure as illegal, order its reconstruction at State expense, award compensation for loss and hardship suffered, and initiate proceedings against officials responsible for violating binding judicial orders and constitutional safeguards.

I. FACTUAL MATRIX OF THE CASE:**3. The brief facts of the case are as follows:**

(i) The dispute pertains to a structure known as ‘Gosthigruha’ or Community Centre, constructed on a portion of land measuring Ac. 0.05 dec out of a total of Ac. 1.87 dec, classified as Gochar (grazing) land under Khata No. 616, Plot No. 1261, located at Mouza: Balipur, Tahasil: Athagarh, District: Cuttack.

(ii) This land is recorded in the name of *Rakhita Anabadi* and falls under the *Odisha Prevention of Land Encroachment Act, 1972 (OPLE Act)*. According to the petitioners, the structure existed in some form since 1985, repaired post-cyclone in 1999, and was reconstructed in 2016-18 using public funds sanctioned under the “Ama Gaon Ama Vikas Yojana” and the MLA-LAD fund.

(iii) The community centre was used by villagers for public utility purposes, including awareness drives, yoga camps, health check-ups, and government outreach programmes. The land, though classified as Gochar, was neither objected to by authorities at the time of construction nor encroached forcibly. Villagers expressed willingness to exchange homestead land in lieu of the Gochar portion used.

(iv) In July 2024, encroachment proceedings were initiated under the OPLE Act via Notices dated 26.07.2024 in Encroachment Cases No. 111 and 113 of 2024-25. Petitioners challenged the proceedings by filing W.P.(C) Nos. 19449/2024 and 19450/2024, which were disposed of by the Hon’ble High Court on 16.08.2024, directing the Petitioners to file an application for settlement under Section 8A of the OPLE Act.

(v) The said application was filed on 03.09.2024 and was rejected on 30.09.2024 citing lack of documentary proof of continuous possession, inauthenticity of resolutions, non-compoundability of the land category, and absence of registration.

(vi) The rejection was followed by an appeal before the Sub-Collector in Encroachment Appeal Nos. 26 & 27 of 2024, and simultaneously W.P.(C) Nos. 29185 and 29258 of 2024 were filed. On 29.11.2024, the High Court directed that no eviction shall take place during the pendency of the appeal.

(vii) Despite the order, a new eviction notice dated 05.12.2024 was issued, prompting the Petitioners to approach the High Court again in W.P.(C) Nos. 31269 and 31279 of 2024. On 13.12.2024, the High Court reiterated its stance, restraining eviction during the pendency of the appeals.

(viii) On the same day (13.12.2024), the Sub-Collector concluded the hearing and allegedly reserved orders in the appeal around 4 PM. However, at approximately 5.15 PM, a demolition notice was affixed, indicating that the structure would be demolished the next morning (14.12.2024).

(ix) On 14.12.2024 at 10:00 AM, the structure was demolished, allegedly without affording the Petitioners adequate time to challenge the order or vacate the premises.

(x) The Petitioners allege that the actions of the revenue authorities violated the binding directions issued by the Hon'ble Supreme Court in ***In Re: Directions in the matter of demolition of structures, WP(C) No. 295/2022***⁶, specifically:

- a. No 15-day show cause notice was issued.
- b. No reasoned demolition order was provided explaining why lesser alternatives were not explored.
- c. Petitioners were not afforded the mandatory appellate opportunity.
- d. The demolition was not video graphed, nor was a demolition report prepared.
- e. There was no opportunity for personal hearing, and statutory procedures such as intimation to the Collector, uploading to a public portal, and Panchanama inspection reports were allegedly skipped.

(xi) In view of the foregoing, the Petitioners pray that this Court declare the demolition of the community structure as illegal and void ab initio; direct the restitution and reconstruction of the demolished structure at the personal cost of the concerned officers responsible for the unlawful action; award compensation to the tune of Rs. 1 crore for the mental agony, reputational damage, and litigation expenses incurred by the Petitioners; and initiate contempt proceedings against the officials involved for wilful disobedience of the binding directions issued by the Supreme Court in W.P.(C) No. 295/2022.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

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

(i) The demolition of the structure was allegedly in flagrant violation of the Supreme Court's directions in WP(C) No. 295/2022, which explicitly mandates procedural safeguards like show cause notice, hearing, recording of reasons, waiting period, and transparency. The demolition with just 17 hours' notice of intimation, without a prior show cause notice, is claimed to be unlawful.

(ii) Petitioners emphasize that the High Court had, on multiple occasions (29.11.2024 and 13.12.2024), directed that no coercive action shall be taken during pendency of appeal. The demolition carried out just hours after reserving the appeal orders is submitted to be a wilful breach of these judicial directions.

(iii) Petitioners assert that by immediately acting upon the rejection of the appeal (assuming it was even pronounced), they were denied the statutory right to prefer revision under Section 12(2) of the OPLE Act and the 15-day appellate period prescribed by the Hon'ble Supreme Court.

(iv) The Petitioners submit that the haste, secrecy, and sequence of events surrounding the demolition indicate premeditation, arbitrariness, and possible mala fides on the part of revenue authorities, including acting in concert to pre-empt legal remedies.

⁶ W.P.(C) No. 295/2022.

(v) The entire process is alleged to be in violation of constitutional guarantees, including the rule of law and principles of natural justice, particularly the right to be heard and to seek redressal against state action.

(vi) Petitioners argue that State actors, including Tahasildar and Sub-Collector, are under a constitutional obligation to act fairly, transparently, and within the bounds of law. The action, if found unlawful, not only vitiates procedural propriety but also attracts personal liability under paras 93-94 of the Supreme Court's judgment.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

5. The Opposite Parties contend that the structure in question was an unauthorized encroachment on Gochar land, recorded as Rakhita Anabadi, and despite being given opportunities under the OPLE Act, the Petitioners failed to establish any legal right or valid possession; thus, the demolition was a lawful enforcement action carried out in accordance with statutory powers.

IV. COURT'S REASONING AND ANALYSIS:

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

7. The core grievance of the Petitioners arises from the demolition of a long-standing community structure, a *Gosthigruha*, standing on Gochar land, alleged to have been executed without adherence to procedural safeguards mandated by law, and in open defiance of this Court's own interim orders dated 29.11.2024 and 13.12.2024.

8. The facts are largely undisputed. The Petitioners had been in occupation of the land in question for over three decades. The structure had received government-sanctioned funds for reconstruction and was used for community and welfare purposes. The record reflects that encroachment proceedings were initiated in July 2024, followed by an application under Section 8A of the OPLE Act which was rejected. An appeal was preferred and was pending as of 13.12.2024, the day the demolition notice was affixed. The demolition was carried out within 17 hours on the morning of 14.12.2024.

9. This sequence of events raises not just concerns of administrative lapse, but of deeper institutional failure. An act as final and irreversible as demolition was carried out despite two standing judicial directions, and without even the most basic procedural safeguards mandated by the Supreme Court in ***In Re: Directions in the matter of demolition of structures (W.P.(C) No. 295 of 2022, decided on 13.11.2024*** (Supra).

10. The Supreme Court in that case, invoking Article 142, issued mandatory directions, inter alia, that no demolition shall take place without:

- a. a 15-day show cause notice,
- b. a reasoned order explaining why demolition is the only option,
- c. a fair opportunity for appellate and judicial scrutiny,

- d. video documentation of the act of demolition,
- e. and uploading of all notices and orders on a digital portal for transparency.

None of these conditions were fulfilled in the present case.

11. What makes the episode all the more concerning is not merely the breach of procedural safeguards, but the deeper disregard to constitutional process and institutional boundaries. The demolition did not occur in a moment of administrative necessity. It was not the outcome of a duly completed adjudicatory process. It was carried out while the matter was still under active judicial consideration, with the appellate authority having reserved its decision. No final order had been pronounced.

12. This is not a procedural misstep. It reflects a troubling pattern, where the machinery of the State appears to act not in aid of the law, but in anticipation of avoiding its outcome. The space between a matter being heard and a decision being delivered is not an empty procedural formality. It is a phase in which the law is still at work. The authority of the appellate forum does not vanish simply because it is silent for a moment. That silence is deliberate. It reflects the court's duty to think, not the executive's opportunity to act.

13. When the State proceeds to demolish a structure in that window, knowing that the order has not yet been passed, knowing that judicial scrutiny is underway, it raises a serious concern. This is not how institutions committed to constitutional governance are expected to behave. There must be clarity on this point. Acting while an order is reserved is not simply premature. It is, in substance, an attempt to outpace the law itself. That cannot be condoned.

14. What is even more troubling is that the consequences of such executive haste are not merely institutional or procedural, they are deeply human. Law is not merely a tool to regulate action; it is also a shield against arbitrary force. When the State fails to pause where law requires stillness, it is not only the structure that is lost, but the trust of those whose rights depend on the process being fair and complete. This case, therefore, cannot be assessed solely through the lens of administrative law. It must also be understood as an instance where a constitutionally protected interest in property was extinguished not through judicial determination, but through executive fiat.

15. Forcible dispossession of a person from their property, without adherence to due process of law, constitutes not only a violation of their constitutional right under Article 300-A but also an affront to basic human rights. In this regard, the Supreme Court in the case of *N. Padmamma v. S. Ramakrishna Reddy*⁷ held as follows:

⁷ (2008) 15 SCC 517.

“21. If the right to property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of the provisions of Article 300-A of the Constitution of India, must be strictly construed.”

16. This observation reinforces a fundamental principle: the protection under Article 300-A is not merely procedural but substantive in nature. It draws a constitutional boundary around the exercise of state power over property. The point finds further elaboration in the reasoning adopted by the Supreme Court in ***JilubhaiNanbhaiKhachar v. State of Gujarat***⁸, where the requirement of a statutory foundation for any such deprivation was categorically affirmed:

“48....In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”

17. What is at stake here is not the legality of one demolition, but the integrity of a constitutional culture. When executive action arrogates to itself the role of judge, jury, and executioner, the harm that follows is not merely institutional, it is civic. In a democratic society governed by the rule of law, process is not an inconvenience to be bypassed when found burdensome. It is the very architecture that lends legitimacy to State action. The moment that process becomes expendable, so does the public’s faith in the neutrality of governance. This Court is duty-bound to restore that balance, for what is lost here is not only a building, but also the belief that law is a shield against arbitrariness.

18. The demolition of the *Gosthigruha* may be defended by the State as an act of regulatory enforcement, but the Court finds no such legitimacy in its execution. The speed and secrecy with which it was undertaken, in open defiance of judicial restraint, gives the impression not of public administration but of covert operation. Structures built with public funds, maintained for public welfare, and functioning without any recorded opposition for decades, were reduced to rubble in a span of minutes, without affording even the courtesy of lawful procedure. It is not the structure alone that has been demolished. It is the dignity of law-abiding citizens who sought protection not through confrontation but through courts. The executive is not merely expected to enforce orders; it is expected to wait when courts ask it to pause. That pause was willfully ignored.

19. This Court takes serious note of the conduct of the Tahasildar, whose actions in this case reflect a steady and conscious departure from the standards expected of a responsible public officer. When judicial directions were first issued, there was an opportunity to act with restraint and deference to the process of law. As

⁸ 1995 Supp (1) SCC 596.

the matter progressed and remained pending before the appellate authority, the expectation of caution became even more pressing. Yet, when the hearing concluded and the order was reserved, the Tahasildar proceeded not with circumspection, but with haste. The decision to carry out a demolition at that juncture cannot be explained as a procedural misstep. It was a deliberate act taken while judicial consideration was still underway.

20. The office of the Tahasildar is not a mere administrative post. It is a position that carries the weight of constitutional responsibility, particularly when it comes to enforcing the law at the ground level. To act in a manner that anticipates and potentially frustrates the outcome of pending legal proceedings is a serious breach of duty. This Court cannot overlook the fact that the demolition was carried out not in compliance with the law, but in disregard of it, and such conduct undermines both the authority of the judiciary and the legitimacy of public administration.

21. The binding procedural safeguards lay down by the Supreme Court in ***In Re: Directions in the matter of demolition of structures (Supra)***, are not aspirational guidelines, they are enforceable mandates. The Supreme Court, invoking its power under Article 142, did not request compliance. It imposed it. These directives must be treated not as peripheral suggestions but as minimum constitutional thresholds. The failure to issue a 15-day show cause notice, the absence of a reasoned order, the denial of appellate remedy, and the lack of video documentation are not merely checklist oversights. They are compound violations that nullify the very idea of lawful governance. A Tahasildar who chooses to discard these procedural obligations in favour of expediency does not act on behalf of the State, he acts against it.

22. The Court notes with concern that such behaviour, if left unaddressed, could set a dangerous precedent, where field-level officers entrusted with significant statutory powers begin to treat judicial timelines as administrative gaps to be tactically exploited. The conduct reflects a troubling pattern where legal process is treated as optional. Acting during the pendency of proceedings signals disregard for institutional boundaries. It reduces adjudication to an afterthought and weakens the authority of courts in matters where their oversight is critical. This Court must categorically disabuse any such notion. Officers acting in defiance of binding judicial norms are not performing their duty; they are undermining the very scaffolding of lawful Statehood.

23. In reinforcing this accountability, the Supreme Court in ***Delhi Airtech Services Pvt. Ltd. v. State of U.P.***⁹, unequivocally affirmed that when executive action defies the twin pillars of rule of law and separation of powers, the doctrine of public trust is not merely implicated, it is triggered as a shield for the public interest. It held as follows:

⁹ (2011) 9 SCC 354.

“213. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the government department, if not with a greater rigour. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In State of Bihar v. Subhash Singh [(1997) 4 SCC 430] , this Court, in exercise of the powers of judicial review, stated that the doctrine of “full faith and credit” applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In Centre for Public Interest Litigation v. Union of India [(2005) 8 SCC 202 : (2006) 1 SCC (Cri) 23] , this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of “full faith and credit” applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision-making process in government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule.

217. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In State of A.P. v. Food Corporation of India [(2004) 13 SCC 53 : 2006 SCC (L&S) 873] , this Court observed that it is a known fact that in transactions of government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision-making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being “public officer” or “public servant”, is accountable

for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance.”

24. What this judgment makes clear is that public power carries with it a continuing duty of care. The law is not self-executing. It depends on officers who are expected to act with fairness, honesty and within the limits of their legal authority. The doctrine of public trust is not a decorative ideal. It is a binding obligation that requires those in office to treat their role as a public responsibility. When decisions are taken in haste, or authority is used without proper justification, the consequences are not merely administrative. They touch the core of democratic governance. The rule of law is sustained not only by enforcement but by trust. That trust is built slowly and can be lost quickly. When it breaks, the harm is not always visible, but it runs deep. It affects not just the immediate parties but the public's confidence in institutions. This Court has a duty to uphold both the legal framework and the public belief that the law is a shield, not a weapon.

25. The facts of this case echo a growing and troubling pattern commonly referred to as “bulldozer justice”, where executive power, backed by machinery rather than reason, supplants legal process. The use of demolition as a tool of enforcement, absent procedural compliance and judicial finality, transforms what should be a lawful act into a coercive one. It is not the bulldozer per se that offends constitutional sensibilities, but the ease with which it is deployed before the law has spoken its final word. In a system governed by law, force must follow reason, not precede it. Where the reverse occurs, the legitimacy of State action begins to erode, and with it, the credibility of institutions tasked with upholding the rule of law.

V. CONCLUSION:

26. The Tahasildar has shown undue haste in demolishing the structure, without adhering to the guidelines issued by the Supreme Court of India. In determining the quantum of compensation, this Court has taken into account the nature and purpose of the demolished structure, the conduct of the authorities, and the attendant constitutional violations. The community centre in question, though modest in size, served as a vital public utility space, constructed through sanctioned public funds and used for welfare-oriented functions such as health camps, government outreach, and awareness programmes. The demolition was not preceded by the mandatory procedural safeguards, and was carried out despite subsisting judicial orders restraining such action. The petitioners were compelled to engage in multiple rounds of litigation, incurring legal expenses and enduring mental distress. This Court is of the view that the breach of judicial directions and procedural obligations, coupled with the manner and timing of the demolition, warrants public law compensation.

27. Having regard to the cost of reconstruction, the loss suffered, and the gravity of administrative misconduct, compensation is assessed at ₹10,00,000. Of this, ₹2,00,000 shall be recovered from the Tahasildar concerned, to be deducted in

reasonable installments from his salary, given his direct involvement in the unlawful act. The balance amount of ₹8,00,000 shall be paid by the State to the Petitioner within a period of eight weeks from the date of presentation of this order.

28. Appropriate Departmental proceedings shall be initiated against the Tahasildar, and a copy of this judgment shall be placed before the Chief Secretary and Revenue Secretary for necessary compliance. It is further directed that the Chief Secretary shall immediately issue a detailed guidelines to all the Revenue officials and Municipal authorities of the State taking into account the guidelines issued by the Supreme Court in, In re: Directions in the matter of demolition of structures, W.P.(C) No.295 of 2022.

29. The Writ Petition is, therefore, allowed.

30. Consequently, the CONTC is disposed of being dropped.

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

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

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Result of the case:

Writ Petition allowed &

CONTC disposed of.

2025 (II) ILR-CUT-807

SUKANTI SENAPATI

V.

BABITA SENAPATI

[CRLMC NO. 1171 OF 2021]

24 JUNE 2025

[MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether an order passed under Section 143-A of the Negotiable Instruments Act, 1881 is mandatory in nature.

Headnotes

NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 143-A – Interim compensation – Order granting compensation U/s.143-A is under challenge – Contention of the petitioner is that the order under section 143-A is directory in nature and not mandatory – Whether the order passed U/s. 143-A is mandatory in nature.

Held: No - It has been held by the Supreme Court that the word “may” used in the provision is directory and not mandatory and it cannot be interpreted

as “shall” – The Supreme Court has held that if such an order for payment of compensation is passed before the accused is found to be guilty, it would be contrary to the well-settled concept of fairness and justice and it is likely to have drastic consequences as the accused may have to sell his immovable and movable property to comply with the order and on the event of his acquittal and return of the amount, may not get back his property. (Para 13)

The legal principle that an accused is presumed to be innocent until proven guilty, is well known – If direction for payment of interim compensation under Section 143-A of the Negotiable Instruments Act is held to be mandatory, apart from being contrary to the above legal principle, it may encourage unscrupulous persons to initiate frivolous litigation in order to obtain an order of interim compensation for their unjust enrichment – By the time the accused, who may not be liable, is repaid the money after his acquittal, he may have been ruined – So an order for payment for interim compensation should not be passed for the mere asking and should be passed only under exceptional circumstances – The impugned order dated 25.03.2021 passed in 1 C.C. No.257 of 2020 by the learned SDJM (S) is set aside. (Paras 14-15)

Citations Reference

Rakesh Ranjan Shrivastava vrs. State of Jharkhand and Another, **(2024) 4 SCC 419**; G.J. Raja vrs. Tejraj Surana, **(2019) 19 SCC 469** – referred to.

List of Acts

Negotiable Instruments Act, 1881.

Keywords

Negotiable instrument; Punishment; Interim compensation; Mandatory; Directory; May; Shall; Exceptional circumstances; Concept of fairness and justice.

Case Arising From

Order dated 25.03.2021 passed by the learned Sub Divisional Judicial Magistrate (Sadar), Cuttack in 1 C.C. No. 257 of 2020.

Appearances for Parties

For Petitioner : Mr. Pradeep Kumar Sahoo
For Opp. Party : Mr. B. S. Tripathy

Judgment/Order

Judgment

MISS SAVITRI RATHO, J.

This CRLMC has been filed challenging the order dated 25.03.2021 passed by the learned Sub Divisional Judicial Magistrate (Sadar), Cuttack (in short “SDJM/

Magistrate”), in I.C.C. No. 257 of 2020 directing the accused-petitioner (hereinafter “*the petitioner*”) to pay the interim compensation amounting to Rs.1,54,500/- (10% of the cheque amount of Rs.15,45,000/-) on or before 21.05.2021 in exercise of power under Section 143-A of Negotiable Instruments Act (in short “*the N.I. Act*”) to the complainant – opposite party (hereinafter “*the opp.party*”).

CASE OF THE COMPLAINANT

2. The complainant’s case in brief is that the petitioner being the owner of a patch of land in village Bharatipur under Puri Tahasil, which she had purchased from the original title holders. Due to want of money, she sold a portion of the said land, i.e., Ac.0.04 dec. 420 sq.kadi to the opp.party by executing a registered sale deed dt.29.11.2016 for a total consideration amount of Rs.4,84,000/- and handed over possession of the land to her. After transfer of the aforesaid property, the State Govt. filed Second Appeal No.19/2017 before this Court against the confirming judgment in respect of that land. While the said second appeal was pending, the opp.party approached the petitioner, who is a pardanashin lady and took three blank signed cheques from her in the year 2017 with the impression to refund the same after her title is confirmed by this Hon’ble Court in the aforesaid second appeal. Thereafter, vide order dt.05.12.2018, the said second appeal filed by the State was dismissed and the right, title, interest and possession of the vendors of the petitioner as well as the opp.party was confirmed and the order passed in the second appeal became final. But the opp.party did not return the blank signed cheques to the petitioner. While matter stood thus, in the year 2020, the local administration started a project for construction of village road and a bridge and proposed to construct it on the land of the petitioner including the land purchased by the opp.party. In such factual background, the opp.party through her husband pressurized the petitioner and in August, 2020, she obtained the signature of the petitioner on blank stamp paper purchased by her and with a mala fide intention converted the signed paper to an agreement between the parties. The opp.party also by misutilizing the previously obtained old signed blank bank cheques in the year, 2017 and with the help of the subsequent stamp paper, put a total amount of Rs.15,45,000/- in three cheques and deposited the said cheques in the bank in order to make out a case u/s.138 of the N.I. Act against the petitioner. The old cheques of different dates were deposited by the opp.party in the bank at Cuttack on one date and all the cheques returned without clearance as the said bank account of the petitioner became dormant for want of transactions for a long time. After issuing notice to the petitioner through her counsel, the opp.party filed a case before the learned S.D.J.M. (Sadar), Cuttack i.e. I.C.C. No.257 of 2020 under Section 138 of the N.I. Act claiming Rs.15,45,000/-.

PETITION UNDER SECTION – 143 A OF THE N.I. ACT

3. The petitioner had entered appearance in the case through her counsel filed a petition u/s.205 Cr.P.C. for dispensing with her personal appearance. The opp.party filed her objection to the petition filed u/s.205 Cr.P.C. and in the form of a petition

purported to be under section 143-A of N.I. Act. The petitioner filed her preliminary objection as well as additional objection and contested the prayer made by the opp.party for grant of interim compensation u/s.143 A of the NI Act taking into consideration the facts and circumstance of this case and also produced the copy of the registered sale deed in favour of the opp.party and also cited the law laid down in the matter, but the learned S.D.J.M. reserved the petition for orders.

ORDER OF THE LEARNED SDJM COURT

4. The learned SDJM vide order dt.25.03.2021 allowed the petition filed u/s.143-A of the Act and directed the petitioner to pay an amount of Rs.1,54,500/- to the opp.party as interim compensation which is 10% of the cheque amount

SUBMISSIONS

5. I have heard Mr. Pradeep Kumar Sahoo, learned counsel for the petitioner and Mr. B.S. Tripathy, learned counsel appearing on behalf of the opposite party-complainant.

6. Relying on the decision of the Supreme Court in the case of **Rakesh Ranjan Shrivastava vrs. State of Jharkhand and Another: (2024) 4 SCC 419**, Mr. Pradeep Kumar Sahoo, learned counsel for the petitioner submitted that the impugned order is liable for interference as:-

i) the learned trial court has directed for payment of compensation interpreting the word 'may' in Section 143-A of the NI Act to be as 'shall' which as per the decision of the Supreme Court is directory and not mandatory; and

ii) the application under Section 143-A of the N.I. Act has been decided without considering the merits of the case.

7. Mr. B.S. Tripathy, learned counsel appearing on behalf of the opposite party-complainant relied on the decision of the Hon'ble Supreme Court in the case of **G.J. Raja vrs. Tejraj Surana: (2019) 19 SCC 469**, and submitted that as per the provisions of Section 143-A in the N.I. Act, the accused could be made to pay or deposit interim compensation even before his conviction and that even before pronouncement of his guilt, the interim compensation can be recovered with the aid of State machinery as arrears of land revenue.

8. Both counsel have submitted that as the case is pending since 2020, whatever the decision of this Court on payment of interim compensation, a direction may be issued to the learned SDJM (Sadar), Cuttack for disposing of I.C.C. No. 257 of 2020 within a stipulated time.

STATUTORY PROVISIONS

9. The provisions necessary for deciding this application are Section- 138 and 143-A of the N.I. Act, which are extracted below:-

“Section 138- Dishonour of cheque for insufficiency, etc., of funds in the account:- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

“Section 143-A-Power to direct interim compensation:-

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant-

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”

JUDICIAL PRONOUNCEMENTS

10. In the case of **Rakesh Ranjan Shrivastava** (supra), the Supreme Court has held as follows:

“15. For recovery of the interim compensation, the immovable or movable property of the accused can be sold by the Collector. Thus, non-payment of interim compensation fixed under Section 143-A has drastic consequences. To recover the same, the accused may be deprived of his immovable and movable property. If acquitted, he may get back the money along with the interest as provided in subsection (4) of Section 143-A from the complainant. But, if his movable or immovable property has been sold for recovery of interim compensation, even if he is acquitted, he will not get back his property.”

“18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143-A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word "may" is interpreted as "shall", it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20% of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143-A provides for penalising an accused even before his guilt is established.

19. Considering the drastic consequences of exercising the power under Section 143-A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143-A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143-A is discretionary.”

In the case of **G.J. Raja** (supra), the Hon'ble Supreme Court has held as follows:

“19. It must be stated that prior to the insertion of Section 143A in the Act there was no provision on the statute book whereunder even before the pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in Employees' State Insurance Corporation case.”

ANALYSIS

11. After recording the provisions of Section – 143-A of the NI Act and the submissions of the learned counsel, the learned SDJM has allowed the application holding as follows: -

“It has not been provided in the Act that the Court is to see whether there exists any legally enforceable debt or liability for the accused towards the complainant at the time

of dealing with the petition u/s. 143(A) rather the existence of legal liability is to be seen after taking evidence from both the sides. In the present case trial has not yet commenced and the disposal of the case may take some time. In order to provide interim relief to the complainant I think it proper to grant interim compensation to her. Moreover, it has been provided that the accused shall be repaid the entire interim compensation along with bank interest on the eve of acquittal and therefore, I am of the opinion that the accused shall not be prejudiced if he is directed to pay the interim compensation amount”.

12. From this it is apparent that the learned SDJM has not considered the merit of the case as the same was not required by the NI Act. On the ground that disposal of the case may take a long time and as the amount shall be repaid to the accused in the event (typed as “eve” in the impugned order) of acquittal, no prejudice would be caused to her, allowed the application.

13. It has been held by the Supreme Court that the word “may” used in the provision is directory and not mandatory and it cannot be interpreted as “shall”. The Supreme Court has held that if such an order for payment of compensation is passed before the accused is found to be guilty, it would be contrary to the well-settled concept of fairness and justice and it is likely to have drastic consequences as the accused may have to sell his immovable and movable property to comply with the order and on the event of his acquittal and return of the amount, may not get back his property.

14. The legal principle that an accused is presumed to be innocent until proven guilty, is well known. If direction for payment of interim compensation under Section 143-A of the NI Act is held to be mandatory, apart from being contrary to the above legal principle, it may encourage unscrupulous persons to initiate frivolous litigation in order to obtain an order of interim compensation for their unjust enrichment. By the time the accused, who may not be liable, is repaid the money after his acquittal, he may have been ruined. So an order for payment for interim compensation should not be passed for the mere asking and should be passed only under exceptional circumstances.

CONCLUSION

15. In view of the aforesaid discussion, the impugned order dated 25.03.2021 passed in 1.CC. No.257 of 2020 by the learned SDJM (S) Cuttack is set aside.

16. As the complaint case is of the year 2020, I do not consider it necessary to direct the learned SDJM to reconsider the matter, but consider that it would in the interest of justice to request the learned trial court to dispose of the case expeditiously.

17. The learned Court in seisin over the matter, is requested to make an endeavour to dispose of the complaint case expeditiously, preferably by the end of November 2025, if there is no legal impediment.

18. The CRLMC is accordingly allowed. The I.A. No.921 of 2021 is disposed of.

Headnotes prepared by :

Sri Jnanendra Ku. Swain, Judicial Indexer

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

Result of the case :

CRLMC allowed.

2025 (II) ILR-CUT-814

**SATYABADI SAHU & ANR.
V.
SANTOSH KUMAR MUNI**

[CRLMC NO. 2479 OF 2024]

24 JUNE 2025

[MISS SAVITRI RATHO, J.]

Issue for Consideration

Whether an enquiry under Section 202 of Cr.P.C. is necessary before taking cognizance of an offence under Section 138 of the Negotiable Instruments Act, 1881 (in short N.I. Act).

Headnotes

NEGOTIABLE INSTRUMENTS ACT, 1881 – Sections 138, 145 r/w Sections 200, 202 of the Code of Criminal Procedure, 1973 – Prayer for quashing of cognizance taken U/s. 138 of the N.I. Act on the grounds that the instrument is not valid one as the bank has been merged with another bank, initial statements of complainant has not been recorded & the cognizance could not have been taken without conducting an enquiry U/s. 202 of Cr.P.C. – Whether an enquiry under Section 202 of Cr.P.C. is necessary before taking cognizance of an offence under Section 138 of the N.I. Act.

Held: Yes – It is however apparent that the learned SDJM has taken cognizance of the offence under Section 138 of the N.I. Act, without conducting an enquiry under Section 202 Cr.P.C. As decided by the Supreme Court, enquiry is necessary but this can be done by affording opportunity to the complainant to record the initial statement and statements of witnesses under Section 202 Cr.P.C., by accepting affidavits of the complainant and his witnesses. (Para 21)

Citations Reference

Smt. Archana Singh Gautam vs. State of U.P. & Another, **Case No. 9536 of 2024 decided on 05.06.2024**; Laxmikanta Sahu vs. Santosh Kumar Muni, (CRLMC No. 2058 of 2024 decided on 20.02.2025); Satyabadi Sahu & Another vs. Chitta Ranjan Panda, (CRLMC No. 2138 of 2024 decided on 23.12.2024); K.S. Joseph vs Philips Carbon Black Ltd & another, (2016) 64 OCR (SC) 361; Suo-Motu Writ Petition (Crl) No. 2 of 2020; CRLMC No. 3347 of 2018 decided on 09.07.2021; Vijay Dhanuka & Ors. v. Najima Mamta & Ors., (2014) 14 SCC 638; Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr: (2017) 3 SCC 528; Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors. (2019) 16 SCC 610 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Negotiable Instruments Act, 1881.

Keywords

Offence under the Negotiable Instruments Act, Cognizance of offence; Valid instruments; Enquiry; Jurisdiction of the Court; Issue of summons/ process; Legal liability.

Case Arising From

Order dated 01.07.2023 passed by the learned Sub Divisional Judicial Magistrate, Berhampur in 1 C.C. No. 219 of 2023.

Appearances for Parties

For Petitioners : Mr. Manoranjan Acharya
For Opp. Party : Mr. Jugala Kishore Panda

Judgment/Order

Judgment

MISS SAVITRI RATHO, J.

This application under Section 482 of the Code of Criminal Procedure has been filed *challenging the order dated 01.07.2023 passed by the learned Sub Divisional Judicial Magistrate (in short “SDJM”), Berhampur in 1.C.C. No. 219 of 2023, taking cognizance of the offence under Section 138 of the Negotiable Instruments Act (in short “NI Act”) and the criminal proceeding i.e. pending against the petitioners. The relevant portion of the prayer is extracted below :-*

“It is therefore prayed that in view of the submissions made above, the CRLMC be admitted, records be called for and after hearing the parties the same be allowed and the order of cognizance dt. 01.07.2023 passed in I.C.C. case No. 219 of 2023 and the entire criminal proceeding i.e. I.C.C. case No. 219 of 2023 pending in the court of the learned SDJM Berhampur may kindly be quashed in the interest of justice”

CASE OF THE COMPLAINANT

2. The complainant-opposite party (hereinafter “*the complainant*”) is the owner of Bhagyalaxmi Bhandar Milk Point. The accused – petitioners (hereinafter “*the petitioners*”) and the complainant are known to each other. The petitioners are running a rice mill at Golapali under Aska Police Station. The petitioners used to supply rice to the father of the complainant. His father died in the year 2020 and the complainant took over the business of his father and paid Rs.22,00,000/- in advance to the petitioners in February, 2022, for providing him five loads of rice in two months intervals. When the petitioners did not supply the rice to him, he demanded return of the advanced amount. After repeated visits and requests, on 17.03.2023 the petitioners gave him a cheque bearing no. 009671 of Corporation Bank, Aska Branch for Rs.22,00,000/-

On 21.03.2023 the complainant deposited the cheque in his account at SBI Main Branch, Berhampur but it was returned to him on the same day as the said cheque was an old one. After consulting to the petitioners, regarding the dishonour of cheque the complainant on 03.04.2023 again deposited the aforementioned cheque in his account at Axis Bank, Berhampur for encashment. The cheque was not cleared but the same was dishonoured and returned to him on the same day. On 20.04.2023 the complainant sent a statutory demand notice through his advocate by registered post to the petitioners which was received on 28.04.2023. the petitioners gave a false denial on 06.05.2023. As they did not make payment till 13.05.2023, the complainant filed 1.C.C. No. 219 of 2023 in the Court of the learned S.D.J.M., Berhampur for realisation of the cheque amount.

REPLY OF THE PETITIONERS TO THE STATUTORY NOTICE.

3. The petitioners replied to the notice on 06.05.2023 stating that cheque in question was lost in the year 2020 for which the petitioners had intimated to the bank on 15.07.2020 to stop payment. From the legal notice the petitioners learned that the complainant had stolen the cheque and tried to encash it to put the petitioners to financial loss. Corporation Bank had merged with Union Bank of India in the year 2020 and the cheque was not in circulation, so how could the cheque be placed by the complainant. The petitioners proposed to initiate a criminal case against the complainant for utilizing a stolen cheque unless he refrained from making baseless allegations.

IMPUGNED ORDER

4. On 01.07.2023 the learned S.D.J.M., Berhampur found existence of prima facie materials to proceed against the petitioners and took cognizance of the offence under Sec. 138 N.I. Act. and issued summons to the petitioners, after conducting enquiry on verification of documents namely - xerox copy of cheque along with original one for verification, copy of advocate notice, original postal receipt, cheque return memo and court fee worth of Rs.1000/- only.

SUBMISSIONS

5. Mr. M.R. Acharya, learned counsel for the petitioners submitted that the order of cognizance is liable to be set aside on the following grounds, namely:-

(i) The cheques were not dishonored on account of lack of sufficient funds in the account of the petitioners or because the amount mentioned in the cheque exceeded the arrangement made with the bank. The cheques were returned as Corporation bank had merged with Union Bank and the cheques were no longer valid instruments.

(ii) The cheques had been lost for which instruction had been sent to the bank on 15.07.2020 to stop payment. But the cheques have been subsequently misutilised by the complainant.

(ii) Corporation Bank had merged with Union Bank on 01.04.2020, so the old cheques of Corporation bank could not have been issued to the complainant.

6. The following grounds though not raised during hearing of the case, have been mentioned in the CRLMC:-

iii) No initial statement of the complainant has been recorded either orally or through affidavit.

iv) The ground that cognizance could not have been taken without conducting enquiry under Section 202 Cr.P.C. as the petitioners reside out side the jurisdiction of the Court

v) The case could not have been filed in the Court of the learned S.D.J.M., Berhampur as the issuing bank is located in Aska.

vi) Cognisance of the offence has been taken mechanically by only looking at the documents.

7. The following documents have been annexed to the CRLMC :-

i) One page of the Notification GSR 154 (E) dated 04.03.2020 of the Central Government containing “*The Amalgamation of Andhra Bank and Corporation Bank into Union Bank of India Scheme*” as Annexure 1.

ii) Copy of the order of cognizance, the complaint petition, the cheque return memo of Axis bank, legal notice dated 20.04.2023, reply dated 06.05.2023 of the petitioners, letter dated 15.07.2020 addressed to the Branch Manager Corporation Bank, Aska, and letter dt. 22.03.2023 to the Branch Manager Union Bank, Aska as Annexure 2 Series.

8. In support of his submission that the order of cognizance should be set aside as no offence under Section 138 of the N.I. Act is made out against the petitioner in view of the non existence of Corporation Bank when the cheque was presented, Mr. Acharya, learned counsel for the petitioners relied on the decision of the Allahabad High Court in the case of **Smt. Archana Singh Gautam vs. State of U.P. & Another** in Case No. 9536 of 2024 decided on 05.06.2024.

9. Mr. Jugala Kishore Panda, learned counsel for the opposite party relied on the decisions of this Court in the case of **Laxmikanta Sahu vs. Santosh Kumar Muni** (CRLMC No. 2058 of 2024 decided on 20.02.2025) and in the case of **Satyabadi Sahu & Another vs. Chitta Ranjan Panda** (CRLMC No. 2138 of 2024 decided on 23.12.2024). He also submits that in CRLMC No. 2138 of 2024, the present petitioners were the accused and had approached this Court under Section 482 of Cr.P.C. raising the same objections to the order of cognizance and this Court while setting aside the order of cognisance, remitted back the case to the learned trial Court for recording his pre-summoning/initial statement under Section 202 of Cr.P.C. before issuing summons.

STATUTORY PROVISIONS

10. Section 200 and Section 202 of the Cr.P.C. and Section 138 and Section 145 of the NI Act, which are relevant for deciding the case are extracted below:-

“Section 200. Examination of complainant.— A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses— (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

“Section-202. Postponement of issue of process.—

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

“Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

“Section 145. Evidence on affidavit.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

JUDICIAL PRONOUNCEMENTS

11. In the case of **Smt. Archana Singh Gautam** (supra), the Allahabad High Court has held as follows:-

“6. After hearing the rival submission of the counsel for the parties and perused the record, it is clear that the Allahabad Bank had merged into the Indian Bank on 01.04.2020. Thereafter, a wide circular was made by the Indian Bank in newspapers mentioning the fact that all the cheques issued by Allahabad Bank can be exchanged with the cheques of Indian Bank by 30.09.2021, and the cheque from Allahabad Bank will be honoured by 30.09.2021. Therefore, the cheque issued by the Allahabad Bank was valid till 30.09.2021, and all the cheques of Allahabad Bank which were presented before the Indian Bank till 30.09.2021, were honoured by the Indian Bank, and after 30.09.2021, cheques issued from the account maintained by the erstwhile Allahabad Bank were declared invalid for honouring. Section 138 N.I. Act prescribes the condition for initiation of proceeding on bouncing the cheque in the proviso (a) of Section 138 N.I. Act. As per the proviso (a) of Section 138 N.I. Act, cheque must be presented to the Bank during its validity. Section 138 N.I. Act is being quoted as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.--Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the Bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that Bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the Bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."

7. From the perusal of Section 138 N.I. Act, it is clear that if any invalid cheque is presented before the Bank and the same was dishonoured, then there is no liability under Section 138 N.I. Act would be attracted, and the cheque of Allahabad Bank is invalid after 30.09.2021 after merging the Allahabad Bank into the Indian Bank on 01.04.2020. Therefore, dishonouring such cheques after 30.09.2021 will not attract liability u/s 138 N.I. Act.

8. It is also relevant to mention here that as per Section 118 (b) of N.I. Act a cheque shall be deemed to be drawn on the date which is mentioned in the cheque even if same may post dated.

9. In the present case, a cheque dated 02.06.2023 of erstwhile Allahabad Bank was presented to the Indian Bank on 21.08.2023, and the same was returned on 25.08.2023 with the endorsement "wrongly delivered not drawn on us". Therefore, the cheque in question was invalid on the date of presentation before the Indian Bank."

In the case of **Laxmikanta Sahu** (supra), this Court had held:-

"6. Section 143 (2) of N.I. Act mandate that the cases of present nature needs to be disposed of as expeditiously as possible within a period of six months. Keeping in view the mandate of law, I am of the considered view that the technical objection raised by the opposite party needs to be cured at any stage, for that the proceeding shall not delayed. Hence, I allow the petition and set aside the order dated 29.06.2023 passed by the learned S.D.J.M., Berhampur in 1CC Case No.217 of 2023 and remit back the matter to the learned trial court for affording opportunity to the complainant to record the pre-summoning/initial statement under Section 202 Cr.P.C. and the trial court shall proceed in accordance with law thereafter."

In the case of **Satyabadi Sahu** (supra), this Court in similar circumstances, after referring to the decisions of the Supreme Court in the case of **K.S. Joseph vs Philips Carbon Black Ltd & another : (2016) 64 OCR (SC) 361** and **Suo-Motu Writ petition (Crl) No. 2 of 2020** and this Court in CRLMC No.3347 of 2018 decided on 09.07.2021, has set aside the impugned order and remitted the matter to the learned trial Court for affording opportunity to the complainant to record presummoning / initial statement under Section 202 Cr.P.C. before issuing summons below held as follows:-

"8.... It appears from the impugned order that the trial Court has not resorted to the procedure contemplated under Section 202 Cr.P.C. and by dispensing with the recording of the presummoning evidence proceeded to take cognizance of the offence under Section 138 of the N.I. Act on the basis of the documents form part of the

complaint. Therefore, the impugned order is not sustainable. Accordingly the impugned order dated 10.08.2023 passed by the learned S.D.J.M., Berhampur in 1.C.C. Case No.329 of 2023 is set aside and the matter is remitted back to the learned trial Court for affording opportunity to the complainant to record the pre-summoning/initial statement under Section 202 Cr.P.C. before issuance of summons to the petitioners. Thereafter, the learned trial Court shall proceed with the complaint in accordance with law.

9. Needless to note that, the trial for commission of offence under Section 138 of the N.I. Act mandated to be completed within the stipulated time framed as prescribed under the statute. Therefore, it is expected that the trial Court would do well to see that the case is disposed of as expeditiously as possible.”

In ***Suo Motu Writ Petition (Crl) No.2 of 2020*** (supra), the Supreme Court has held as follows: -

“INQUIRY UNDER SECTION 202 OF THE CODE IN RELATION TO SECTION 145 OF THE ACT.

*10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: **Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors.:** 2014) 14 SCC 638, **Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr:** (2017) 3 SCC 528, and **Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.** (2019) 16 SCC 610). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.*

*11. The learned Amici Curiae referred to a judgment of this Court in **K.S. Joseph v. Philips Carbon Black Ltd & Anr.** (2016) 11 SCC 105 where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in **Vijay Dhanuka** (supra), **Abhijit Pawar** (supra) and **Birla Corporation** (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.*

12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be

given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

ANALYSIS AND CONCLUSION

12. In view of the submissions made by the learned counsel for parties, the statutory provisions laid above and judicial pronouncements cited above, the following points emerge for consideration:-

- i) Whether the dishonour of the cheque in the present case attracts liability under Section 138 of the N.I. Act?
- ii) Whether enquiry under Section 202 of the Cr.P.C could have been dispensed with before issuing process? and
- iii) Whether summons could have been issued without conducting enquiry under Section 202 of the Cr.P.C.?

13. Section – 138 of the N.I. Act makes it clear that it is not every return of a cheque, which is an offence. To make out an offence under Section 138 of the N.I. Act, the cheque must have been returned 'unpaid' either because the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

14. The Reject Memo annexed to the CRLMC appears to be incomplete. A perusal reveals that the reason for rejection of the cheque is : *“CHI REJECT Drawee bank for Item is in not -clearing mode or has been”...*

15. In the reply to the statutory notice sent by the complainant, the petitioners have made serious allegations that the complainant has stolen the cheque and misutilised it. But their signatures in the cheque have not been denied and no FIR or complaint has been made against the complainant of stealing the cheque or misutilising it.

16. While it is the case of the petitioner that he had informed the Bank in the year 2020 that the cheques had been stolen and to stop payment and in his reply to the statutory notice, he had informed the complainant about theft of the cheques and that cheques were no longer valid as Corporation bank was no longer in existence as it had merged with Union bank, but this has to be proved by adducing evidence.

17. That Corporation Bank had merged with Union Bank is not disputed. But whether the petitioners have issued the cheque in the year 2023 as claimed by the complainant or the cheque has been misutilised by the complainant in the absence of any legal liability has to be proved by adducing evidence.

18. As the complainant has claimed that there existed a legal liability for which the cheque had been issued and the signature on the cheque has not been denied by the petitioners, I am not inclined to quash the proceedings.

19. But perusal of the impugned order reveals that no enquiry under Section – 202 Cr.P.C. has been conducted before taking cognizance of the offence under Section 138 of the N.I. Act and issuing summons to the petitioners. In view of the decision of the Supreme Court in the case of in ***Suo Motu Writ petition (Crl) 2 of 2020*** (supra), and as the petitioners reside outside the jurisdiction of the learned SDJM Berhampur, the matter is required to be remitted to the Court of the learned SDJM Berhampur for conducting such enquiry. Such enquiry can be conducted by accepting affidavits of the complainant and witnesses if any.

CONCLUSION

20. In view of the above discussion, I am satisfied that the contentions raised by the learned counsel for the petitioner for quashing the proceedings cannot be adjudicated in exercise of power under Section 482 of the Cr.P.C., by conducting a mini trial at this stage.

21. It is however apparent that the learned SDJM has taken cognizance of the offence under Section – 138 of the N.I. Act, without conducting an enquiry under Section – 202 Cr.P.C. As decided by the Supreme Court, enquiry is necessary but this can be done by affording opportunity to the complainant to record the initial statement and statements of witnesses under Section 202 Cr.P.C., by accepting affidavits of the complainant and his witnesses.

22. As the trial for commission of offence under Section 138 of the N.I. Act is mandated to be completed within the time prescribed under the statute, it is expected that the trial Court shall complete the enquiry expeditiously.

23. It is clarified that the petitioners shall be at liberty to raise their contentions regarding merit of the complaint case before the learned Trial Court during trial and if they do so, the learned Trial Court shall decide the same based on evidence adduced, in accordance with law, without being influenced by any of the observations made in this order.

24. The CRLMC and IAs are accordingly disposed of.

Headnotes prepared by:

Shri Jnanendra Ku. Swain (Judicial Indexer)

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

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Result of the case :

CRLMC disposed of

2025 (II) ILR-CUT-824

JANAKALYAN MAJHI

V.

**SECRETARY TO GOVT. OF ODISHA
(DEPTT. OF SOCIAL SECURITY & EMPOWERMENT
OF PERSONS WITH DISABILITIES),
BHUBANESWAR & ANR.**

[W.P.(C) NO. 10147 OF 2018]

08 MAY 2025

[MRUGANKA SEKHAR SAHOO, J.]

Issues for Consideration

1. Whether the prayer of seeking re-verification of petitioner's disability is permissible.
2. Whether re-verification of disability of a person is permissible when the level of impairment differs from District Medical Board and Appellate Medical Board.

Headnotes

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995 & RULES, 1996 – Appointment/Selection – The petitioner applied for the post of Junior Assistant in the Scheduled Caste (SC) Persons with Disability (PwD) category – The District Medical Board has determined that the level of impairment is 40% whereas the Appellate Medical Board has opined the level of vision impairment is 30% – Whether the prayer of seeking re-verification of petitioner's disability is permissible.

Held: Yes – The petitioner’s disability found by the Medical Board of AIIMS to be 60% in the left eye and complete loss of sight in the right eye, the consequence would be that the petitioner after being duly selected was entitled to get appointment in the S.C. (PwD) category – It has to be held that the petitioner has been wrongly deprived of getting appointment, may be in fortuitous circumstances. (Para 8)

List of Acts

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.

Keywords

Level of impairment; Disability; Test of disability; Medical Board; Appointment/ Selection; Determination of disability; Re-verification of Disability percentage.

Case Arising From

Difference of opinion in the level of impairment of the petitioner by the District Medical Board, Jagatsinghpur and Appellate Medical Board.

Appearances for Parties

For Petitioner : Mr. S.K. Tripathy

For Opp. Parties : Mr. D. Mohanty, AGA (for O.P. No.1)

Mr. P.K. Nayak (for O.P. No.2)

Mr. A. Mohanty (for AIIMS, Bhubaneswar)

Judgment/Order

Judgment

M. S. SAHOO, J.

1. The writ petition has been filed by the petitioner who is an applicant for the selection to the post of Junior Assistant in category of Scheduled Caste (SC), Persons with Disability (PwD), seeking a direction for re-verification of his disability percentage as determined by the appellate medical board in terms of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.

2. Considering the prayer of the petitioner and the submissions of the opposite party no.2, by order dated 18th June, 2024, Co-ordinate Bench of this Court had directed the disability to be decided by the expert Ophthalmologist/Medical Board to be constituted by the Director, All India Institute of Medical Sciences (AIIMS), Bhubaneswar for checkup and determination of the percentage of visual impairment. Thereafter, by order dated 02.08.2024, Mr. A. Mohanty, learned counsel for AIIMS sought for time to obtain instruction and file affidavit. Affidavit on behalf of the

AIIMS, Bhubaneswar has been filed, which forms part of the case record. Copy has been served on Mr. Tripathy, learned counsel for the petitioner and Mr. Nayak, learned counsel for the opposite party no.2.

Learned AGA also refers to the said report of AIIMS as available in the brief marked at Flag-“K”.

3. Brief facts of the case are that pursuant to the advertisement made by the opposite party-authority, the petitioner applied. His candidature was accepted by the authority on 16th October, 2017 (Annexure-1). The authority issued a letter directing the petitioner to attend skill test on 19.10.2017. As the petitioner succeeded in the qualifying skill test, letter dated 12th January, 2018 was issued by the opposite party no.2. For genuineness of disability of candidate, he was directed to be examined by Appellate Medical Board at the SCB Medical College and Hospital (SCBMCH), Cuttack. He was examined in the SCBMCH on 18.01.2018 in the Eye Department.

4. There happens to be difference between the opinion of the District Medical Board and the Appellate Medical Board at the SCBMCH, Eye Department regarding the percentage of disability that is loss of vision suffered by petitioner. The District Medical Board at Jagatsinghpur has determined the disability, i.e., the level of impairment to be 40% whereas the Appellate Medical Board has opined the level of the vision impairment to be 30%. Being 40% visually impaired, the petitioner as per the statute and advertisement made by the opposite party no.2 is eligible for selection in the category of PwD by applying the criteria of persons of disability in the category of SC.

5. In view of the prayer in the writ petition for referring to a Medical Board for test of the disability suffered by the petitioner, the affidavit filed on behalf of the AIIMS, Bhubaneswar has to be considered and dealt with in some detail. Paragraphs-2,3,4, 5 and 6 of the affidavit of the Senior Administrative Officer, AIIMS, Bhubaneswar is reproduced herein:-

“2) That, in the above case this Hon’ble Court vide order dated 18.06.2024, directed for constitution of a Board by the Director, AIIMS, Bhubaneswar for checking the percentage of visual impairment and the Medical Board shall submit a report before this Hon’ble Court one week thereafter.

3) That, however on being received the details communication address the existing Medical Board have treated the Petitioner on dated 30.07.2024 and the report has been submitted by Dr. Sucheta Parija to the Medical Superintendent, AIIMS, Bhubaneswar on 02.08.2024. The copy of the report dated 02.08.2024 along with other medical documents are filed herewith as Annexure-A.

4) That, in this connection the Director, SSEPD Department, Govt. of Odisha, communicated letter on 20.07.2024 addressing to Director, AIIMS, Bhubaneswar wherein request was made to send the report of the Medical Board to Senior Asst. Secretary, Paradip Port Trust, (Administrative Section) under intimation to this department. The copy of the letter dated 20.07.2024 is filed herewith as Annexure-B.

5) That, it is to submit here that upon receipt of the letter dated 20.07.2024 the Authority of AIIMS on 06.08.2024 send the report of the Medical Board to Senior Secretary, Paradip Port Trust (Administrative Section) vide speed post letter No.2822 dated 06.08.2024 and the same has been delivered to the Authority of Paradip Port Trust. The copy of the letter dated 06.08.2024 along with proof of sending of said medical report is filed herewith as Annexure-C.

6) That, in this case last occasion, this Hon'ble Court passed an order to file affidavit by the Authority of AIIMS, accordingly the present affidavit is filed for necessary compliance of order of this Hon'ble Court wherein it is evident that the Medical Board has treated the petitioner and report thereof has already been sent to the Paradip Post Trust on 06.08.2024."

6. The affidavit filed by the AIIMS authority encloses the report dated 2nd August, 2024 of the Professor and Head of the Department, Department of Ophthalmology, AIIMS, Bhubaneswar (Annexure-A) which read as follows:-

"Sub: RE-EXAMINATION OF SRI JANAKALYAN MAJHI DISABILITY, AS PER DIRECTION IN CASE NO.WP(C) No.10147/2018 OF HON'BLE ORISSA HIGH COURT.

Respected Sir,

As per your email to re-examine the disability of Sri Janakalyan Majhi (By the direction in case No.W.P.(C) No.10147 of 2018 of Hon'ble High Court) was done on 30.07.2024. On examination, the Visual Acuity was no perception of light in the right eye and best Corrected Visual Acuity (With Standard Correction) 6/24 for distance and N10 for near in left eye. There is scope of improvement of vision with management in left eye. The visual disability category is 60% and temporary for 1 year."

The report encloses the out-patient card dated 30th July, 2024 of the petitioner indicating that he had visited outpatient department of Department of Ophthalmology for comprehensive eye examination, trauma with wooden stick five years back.

7. Report dated 02.08.2024 clearly indicates complete loss of vision in left eye due to opacity and visual disability category to be of 60% and temporary for one year. The loss of vision being 60% in the left eye and complete loss of vision in the right eye, the best corrected visual activity being 6/24 for distance and N10 for the near in the left eye; making the disability 60% and temporary for one year.

8. The said report corroborates the findings of the District Medical Board, Jagatsinghpur rather the disability as found by the Professor of AIIMS on 30th July, 2024 was more than 40% in the left eye, in the right eye there being no perception of light.

8. The prayer for the petitioner to re-verification of his disability has been satisfied by the direction of this Court by order dated 18.06.2024. The writ petition has to be allowed.

The petitioner's disability found by the Medical Board of AIIMS to be 60% in the left eye and complete loss of sight in the right eye, the consequence would be that the petitioner after being duly selected was entitled to get appointment in the S.C.(PwD) category. It has to be held that the petitioner has been wrongly deprived of getting appointment, may be in fortuitous circumstances.

9. Learned counsel appearing for the opposite party no.2 submitted on 24.04.2024 that since the writ petition did not raise an issue regarding getting appointment, he has not obtained instruction whether there is any vacancy or not.

By order dated 24.04.2024, the following was directed:

“9. Learned counsel for the opposite party no.2 is directed to obtain instruction regarding the number of posts advertised in the SC (PwD) category as per the advertisement in question, number of persons engaged, position of merit of the petitioner in the selection process, the subsequent vacancies arising due to retirement or vacancy for any other reason in the said post. The instruction shall also be obtained regarding availability of any vacancy in any category.”

10. The learned counsel Mr. Nayak appearing for the opposite party no.2 has obtained instruction by electronic mail (e-mail) dated 06.05.2025 from the opposite party no.2. The copy of the printout of e-mail is taken on record. The e-mail indicates the following:

“In nutshell,

- 1. The total vacancy available in the cadre of Jr. Assistant=05 (ST vacancies)*
- 2. The candidature of the petitioner to be considered against these vacancies as per the orders passed in W.P. (c) No.5850 of 2019=02 (UR category)*
- 3. The remaining clear vacancies in the cadre of Jr. Assistant=03 (ST vacancies)”*

11. In view of the clear vacancy available, the petitioner belonging to the (PwD) category shall be given appointment. It is directed that the petitioner shall be given appointment against any of the vacancy available as would be decided by the authority.

The writ petition is allowed and disposed of with the aforesaid direction.

Before parting with the case, this Court records its appreciation of the learned counsel appearing for the parties in rendering effective assistance to arrive at a conclusion in a petition pending for last seven years granting relief to the petitioner who has disability, yet has been running from pillar to post to get appointment after becoming successful in selection process.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition allowed.

2025 (II) ILR-CUT-829

**GEOSERVE ENERGY TRANSPORT DMCC
V.
MV TELERI M (IMO: 9648867)**

[I.A. NO. 19 OF 2025]
[ARISING OUT OF ADMLS NO. 3 OF 2025]

14 MAY 2025

[M.S. SAHOO, J.]

Issue for Consideration

Whether court fees already paid can be refunded in a suit which was settled outside the Court.

Headnotes

COURT FEES ACT, 1870 – Section 16 r/w Section 89 of the Code of Civil Procedure, 1908 – Suit was allowed to be withdrawn as the plaintiff and defendant agreed for settlement outside the Court – Whether court fees already paid can be refunded in a suit which was settled outside the Court.

Held: Yes – This Court is of the considered opinion that the plaintiff is entitled for refund of the Court fee in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908 and in view of the law laid down by the Supreme Court in **High Court of Madras [High Court Of Judicature at Madras represented by its Registrar General vs M. C. Subramaniam, (2021) 3 SCC 560]**. (Para 5)

Citations Reference

High Court of Judicature at Madras represented by its Registrar General vs M. C. Subramaniam; **(2021) 3 SCC 560 – referred to.**

List of Acts

Court Fees Act, 1870; Code of Civil Procedure, 1908.

Keywords

Refund of Court fees; Settlement outside Court; Mode of settlement.

Case Arising From

Order dated 09.05.2025.

Appearances for Parties

For Plaintiff : Mr. Pratik Dash
For Defendant : --

Judgment/Order**Order**

M.S. SAHOO, J.

1. By order dated 09.05.2025 after the plaintiff and defendant agreed for out of Court settlement and the suit was allowed to be withdrawn. Regarding I.A. No.19 of 2025 filed by the plaintiff the following was directed:

5. *The I.A. has been filed for refund of the court fee.*

The Registry shall place the matter before the Registrar (Judicial) to put up a note regarding prayer made by the plaintiff."

2. Registrar (Judicial) in response has put a note which indicates the following:

"On going through the I.A. No.19 of 2025 filed by the plaintiff, it reveals that the same was filed for refund of the Court Fees on the ground that the matter was amicably settled between the parties. As the matter has already been settled between both the sides, if the Hon'ble Court feel it proper to refund the Court Fees as per Section 16 of the Court Fees Act, 1870 in light of the Judgement of the Hon'ble Apex Court decided in the case of High Court of Judicature at Madras represented by its Registrar General Vrs. MC Subhramanyam and others 2021 (3) SCC 560, then the plaintiff has to file a refund application before the undersigned along with the order of the Hon'ble Court after which steps will be taken for refund of the Court Fees."

3. Learned counsel for the plaintiff Mr. Das refers to Section 16 of the Court Fees Act, 1870. The said section is reproduced herein:

"16. Refund of fee -Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorising him to receive back from the Collector, the full amount of the fee paid in respect of such plaint."

4. In the decision rendered by the Supreme Court in the **High Court Of Judicature at Madras represented by its Registrar General vs M. C. Subramaniam; (2021) 3 SCC 560** the Supreme Court considered interpretation of Section 89 of the Civil Procedure Code, 1908 as referred to in Section 16 of the Court Fees Act. The Court accepted the interpretation given by the High Court of Madras that the Section 89 of the Civil Procedure Code should be interpreted liberally. Section 89 provides for settlement of disputes outside the Court. Section 89 is reproduced below:

"89. Settlement of disputes outside the Court.-(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:--

(a) arbitration;

(b) conciliation;

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.”

The issue before the High Court of Madras was that whether any of the modes of the settlement outside Court, other than those specified in Section 89 can also come to aid of the plaintiff to seek refund of the Court fee deposited as provided in Section 16 of the Court Fees Act, 1870. The Apex Court held that the benefit of refund of Court Fee can be extended in any kind of settlement of dispute outside the Court.

5. Considering the submissions of the learned counsel for the plaintiff, this Court is of the considered opinion that the plaintiff is entitled for refund of the Court fee in terms of Section 16 of the Court Fees Act, 1870 read with Section 89 of the Code of Civil Procedure, 1908 and in view of the law laid down by the Supreme Court in **High Court of Madras** (*supra*).

6. Accordingly, the I.A. is allowed and disposed of.

7. The plaintiff shall move the Registry for refund of the Court Fee in the manner as provided in the Orissa High Court Rules/The Code of Civil Procedure and The Court Fees Act. The Registry shall act upon such application of the plaintiff and refund of the Court fee. Ordered accordingly.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

I.A. allowed.

2025 (II) ILR-CUT-832

**JAGAT JIVAN PANI
V.
SARITA PANI & ORS.**

[CMP NO. 1085 OF 2024]

10 JUNE 2025

[R.K. PATTANAIK, J.]

Issue for Consideration

Whether an application for leading rebuttal evidence in a suit on the verge of disposal is permissible by exercising inherent jurisdiction.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Section 151 – Petitioner being plaintiff No.1A moved an application seeking leave of the learned Court to adduce further evidence in rebuttal to examine plaintiff No. 2 as a witness from the side of contesting defendants – The learned Court below held the same to be not necessary and was followed by the impugned Order – Whether an application for leading rebuttal evidence in a suit on the verge of disposal is permissible by exercising inherent jurisdiction.

Held: Yes – The petitioner even though sought for a leave to lead rebuttal evidence and it was with some amount of delay not immediately after death of original plaintiff No.1 but apparently, after examination of plaintiff No.2 as D.W.2, in such a peculiar situation, the Court is of the view that he should have been allowed to bring on record such rebuttal evidence with the exercise of jurisdiction under Section 151 CPC by learned court below – It is reiterated that any such conduct of a party during the hearing of the suit even when pending at the stage of argument may be a ground to allow the other side an opportunity for leading rebuttal evidence and necessarily for the said purpose, inherent power under Section 151 CPC is required to be exercised. (Para 12)

Citations Reference

K.K. Velusamy Vrs. N. Palanisamy (2011) 11 SCC 275; Prem Sagar Gupta (Deceased) through LRs Vrs. Smt. Kamlesh Kumari and another, AIR 2004 DELHI 136; Sultan Saleh Bin Omer Vrs. Vijayachand Sirimal, AIR 1966 AP 295; Smt. Prativa Kar Vrs. Sri Ananda Chandra Das, 2010 (Supp.-I) OLR 950; Rajakishore Biswal Vrs. Mohan Charan Biswal and another, 2015 (II) OLR 1104 – referred to.

List of Acts

Code of Civil Procedure, 1908.

Keywords

Rebuttal evidence; Scope of inherent jurisdiction; Further evidence;

Case Arising From

Order passed by learned Senior Civil Judge, Bhubaneswar in CS No. 111 of 2019.

Appearances for Parties

For Petitioner : Mr. S.K. Dash, Sr. Adv.

For Opp. Parties : Mr. B.C. Panda

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant petition is filed by the petitioner assailing the impugned order as at Annexure-5 passed in connection with the suit in CS No.111 of 2019 by learned Senior Civil Judge, Bhubaneswar, whereby, an application as per Annexure-3 seeking rebuttal evidence by him in the facts and circumstances of the case was declined on the grounds inter alia that such a decision is not in accordance with law, hence, to be interfered with and set aside in the interest of justice.

2. The petitioner, as plaintiff No.1A, moved an application as at Annexure-3 seeking leave of learned court below to adduce further evidence in rebuttal later to the examination of plaintiff No.2 as a witness from the side of the contesting defendant, which was opposed with an objection as per Annexure-4. The learned court below, however, held that same to be not necessary and was followed by the impugned order i.e. Annexure-5. According to learned court below, original plaintiff No.1, who was the father of the petitioner deposed in the suit, while he was alive and in the meantime, evidence from the side of the plaintiffs was closed and under such circumstances, when it is posted for argument, there is no reason to allow any such rebuttal evidence as the same is also not necessary to determine the real question in controversy between the parties. According to the petitioner, the impugned decision as per Annexure-5 does not stand to any good reason at all, inasmuch as, the scope of examination of a witness at any stage of the suit is never curtailed all the more when the same is in the nature of rebuttal evidence even though it is on the verge of disposal and therefore, learned court below erred in law in rejecting such a request while disposing of Annexure-3, hence, the impugned order at Annexure-5 suffers from legal infirmity.

3. Heard Mr. Dash, learned counsel for the petitioner and Mr. Panda, learned counsel for the opposite parties.

4. In the suit, opposite party No.1 as sole defendant filed the WS, a copy of which is at Annexure-2. In fact, the suit is instituted by original plaintiff No.1 since deceased and opposite party No.2 against opposite party No.1 and proforma opposite party No.3 for a declaration that the gift deed dated 3rd February, 2017 executed in

favour of opposite party No.1 to be illegal with such other reliefs as deemed fit and proper with cost being awarded. The crux of the dispute is over the alleged gift deed executed in favour of opposite party No.1 in 2017 with a plea by the plaintiffs that the same was managed under threat and coercion. The gift deed has been executed by the plaintiffs in favour of opposite party No.1 and the same is challenged with the allegation that it was never intended but was managed by playing fraud upon them. The petitioner is the son of the plaintiffs, whereas, opposite party No.1 and proforma opposite party No.3 are their daughters. In other words, the alleged gift deed was executed by the parents in favour of one of the daughters, namely, opposite party No.1, who is the sole defendant in the suit. Though, the plaintiffs instituted the suit, opposite party No.2, namely, mother of opposite party No.1 and the petitioner switched her side and examined as a witness from the side of the defendant daughter. After such examination of opposite party No.2 as D.W.2 supporting the claim of opposite party No.1, the petitioner as the substituted plaintiff No.1A moved the application as per Annexure-3 to lead rebuttal evidence challenging the execution of the gift deed. However, as earlier stated, such an attempt of the petitioner was unsuccessful as the application i.e. Annexure-3 moved by him was disposed of followed by the impugned order dated 12th September, 2024 at Annexure-5. According to learned court below, the evidence is already closed from both the sides and original plaintiff No.1 since adduced evidence, the petitioner is not required to lead further evidence as the same is not necessary to determine the real issue involved between the parties.

5. Mr. Dash, learned counsel for the petitioner submits that the only possible plea to oppose the request of the petitioner is that plaintiff No.2 was cross-examined by them and hence, there is no need to adduce rebuttal evidence but what has been elicited in cross-examination is in relation to her conduct or action while deposing in favour of the defendant, which is otherwise required to be substantiated by such further evidence. It is further contended that one more plea about the right of the petitioner to adduce further evidence would be in conflict with his predecessor-in-interest, namely, original plaintiff No.1 but the same is wholly misconceived. Considering the nature of evidence received from opposite party No.2, originally, plaintiff No.2 and since she deposed in favour of opposite party No.1, Mr. Dash, learned counsel submits that in the peculiar facts of the case, rebuttal evidence is necessary. It is claimed that opposite party No.2 was cross-examined by original plaintiff No.1 and was discharged and therefore, according to Mr. Dash, learned counsel, learned court below should have allowed such rebuttal evidence. It is also claimed that opposite party No.2 was examined as a witness for opposite party No.1 and peculiarly enough, she was cross-examined by her own engaged counsel and in the aforesaid backdrop, it is further submitted that the petitioner, hence, sought for the leave to adduce rebuttal evidence limited to the facts and circumstances which compelled plaintiff No.2 to depose in favour of her adversary. The contention is that rebuttal evidence holds significant importance for several reasons and first and foremost is to serve the fundamental principle of fairness by enabling each party to

respond to the evidence and arguments presented against each other and to ensure that all relevant information is brought to light and considered by a Court when reaching at a just decision and secondly, it plays a crucial role in testing the strength and validity of the opposing party's case and allowing the parties to introduce evidence that rebuts or undermines the credibility of the opponent's claims helps in uncovering inconsistencies, factual errors or misleading assertions and the process not only strengthens the evidentiary base of the presenting party but also aids the Court and distinguishing conflicting interpretations of events or legal standards, inasmuch as, such evidence contributes to the efficiency of the legal proceedings by promoting clarity and completeness in presentation of arguments and allows parties to address any unexpected developments or new information that may arise during the course of the trial ensuring that all aspects of the case are thoroughly examined and deliberated upon. By highlighting the salient features vis-à-vis rebuttal evidence, Mr. Dash, learned counsel cited the following decisions, such as, **K.K. Velusamy Vrs. N. Palanisamy (2011) 11 SCC 275; Prem Sagar Gupta (Deceased) through LRs Vrs. Smt. Kamlesh Kumari and another AIR 2004 DELHI 136 and Sultan Saleh Bin Omer Vrs. Vijayachand Sirimal, AIR 1966 AP 295** to contend that rebuttal evidence may be led at any stage of the suit even if it is posted for argument and in a peculiar situation, the same is absolutely necessary for the fact that plaintiff No.2 deposed in support of the sole defendant contrary to the stand while challenging the legality of the gift deed along with original plaintiff No.1. It is lastly contended that in view of the ratio laid down by the Apex Court in **K.K. Velusamy** (supra) and since the arguments have not been presented and evidence in regard to the conduct of opposite party No.2 is essential, learned court below could have exercised inherent jurisdiction under Section 151 CPC to permit the petitioner in production of such further evidence which is very much relevant and necessary but instead, it has led to the passing of the impugned order at Annexure-5.

6. On the other hand, as earlier stated, opposite party No.1 vehemently challenged any further evidence to adduce in the suit at the behest of the petitioner and justified the impugned decision as per Annexure-5 concurring the view of learned court below that the same is not at all required to determine the real question in controversy. Mr. Panda, learned counsel for the opposite parties would submit that no further evidence is needed for the fact that original plaintiff No.1 led evidence against the execution of the gift deed and the same is sufficient enough and that apart, when plaintiff No.2 was cross-examined, when she deposed in favour of opposite party No.1 during the life time of original plaintiff No.1. In support of the contention advanced, Mr. Panda, learned counsel for the opposite parties refers to the following decisions, such as, **Smt. Prativa Kar Vrs. Sri Ananda Chandra Das 2010 (Supp.-I) OLR 950 and Rajakishore Biswal Vrs. Mohan Charan Biswal and another 2015 (II) OLR 1104.**

7. Interestingly enough, plaintiff No.2 in the suit has been examined as a witness for the sole defendant. Such examination is perhaps after transposition of the said plaintiff as another defendant alongside opposite party No.1. If the claim of the

petitioner is not incorrect, opposite party No.2 was cross-examined by original plaintiff No.1 and was discharged. It means when original plaintiff No.1 was alive, plaintiff No.2 switched over her side and supported the defendant daughter and even deposed in her favour examined as D.W.2. Till such time, even though the petitioner was substituted as plaintiff No.1A, he had not examined himself but after plaintiff No.2 crossed over the line and deposed as D.W.2, the petitioner moved the application for rebuttal evidence to examine him as a witness besides original plaintiff No.1. The challenge in the suit is over the alleged gift deed executed in favour of the defendant and as plaintiff No.2 favoured the defendant daughter and examined herself as a witness, the petitioner is said to have moved the application as per Annexure-3 for rebuttal evidence. Mr. Dash, learned counsel for the petitioner submits that the petitioner is not to adduce evidence inconsistent and in conflict with the testimony of original plaintiff No.1, rather, to challenge the hostile evidence of plaintiff No.2 examined as D.W.2 from the side of opposite party No.1, which in the special facts and circumstances of the case, should have been allowed by learned court below.

8. No doubt the suit is at the stage of disposal as the parties are to present their respective arguments and in fact, there is no bar in demanding any such further evidence even after closure of evidence any time before the disposal of the suit but the request for the same is found to be relevant and required in the interest of justice. A Court has the authority to allow any such production of evidence subject to such terms as it may consider just and expedient. In **Prem Sagar Gupta** (supra), it has been held by the Delhi High Court that any such request for further evidence after closure of trial is not readily to be denied. In fact, it has been held therein that examination of any document after closure of evidence, though, it be before or during the hearing of the arguments does not amount to reopening of the trial, inasmuch as, rejection of a right of a party to produce evidence in rebuttal even on account of delayed application on the premise that the evidence is closed is negation of the right itself. In the decision (supra), it is also held that denial of such a right is not only infraction of legal right but also amounts to defeating the interest of justice. The above decision was with reference to Order 18 Rule 3 CPC concerning evidence where several issues are involved and when a party has the option either to produce evidence on all such issues or reserve it by way of answer to the evidence to be led by the other parties.

9. In **K.K. Velusamy** (supra), a similar question arose for consideration, whether, further evidence should be allowed after closure of evidence before the argument presented and during such interregnum and observed in the following words:

“12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence

and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

10. Reference has been made to Order 15 Rule 3 CPC in juxtaposition to Order 18 Rules 1 and 2 CPC and it is contended by Mr. Dash, learned counsel for the petitioner that since the hearing in the suit is not concluded, in such cases, either party is not precluded from leading further evidence and in that connection, the decision in **Sultan Saleh Bin Omer** (supra) is pressed into service, relevant extract of which, is reproduced herein below:

“17. A combined reading of all these provisions makes it abundantly clear that the Code has not provided for hearing of arguments as a distinct stage in the trial of the suit. On the other, hand, according to Order 15, Rule 3, the hearing of the suit includes both productions of evidence as well as argument. It is in the option of the parties to argue their case after the evidence in the suit is closed, and it is for them to decide whether they will exercise their privilege or not. In other words, once the trial of the suit is taken up and the examination of the witnesses has commenced, the hearing of the suit is said to begin; and that hearing comes to an end only with the delivery of the judgment, or when the suit is posted for judgment where it is reserved. In cases, therefore, where the suit has not been posted for judgment, but is posted for hearing arguments of one side or the other, it should be remembered that the hearing of the suit is not concluded, though the recording of evidence might have been finalized by both the parties. In such cases, either party is not precluded from making a request for examination of additional witnesses, or making documents, merely on the ground that the trial is closed and the matter is posted for arguments, whether the request should be granted or not, is however a matter to be decided on its merits, bearing in mind the fact that it is belated.”

11. In the case at hand, at the cost of repetition, it is to be stated that the petitioner was not examined as a witness in the suit, whereas, original plaintiff No.1 cross-examined plaintiff No.2 after she deposed in favour of the defendant. Since, the suit was by the plaintiffs opposing the execution of the alleged gift deed in favour of the defendant, the petitioner even after being substituted after the death of original plaintiff No.1 continued with the suit and requested learned court below to adduce rebuttal evidence only after plaintiff No.2 was examined as a defendant’s witness and therefore, the question is, whether, it should have been allowed by learned court below.

12. In **Smt. Prativa Kar** (supra), a decision cited by Mr. Panda, learned counsel for the opposite parties, it has been held that the suit was adjourned for argument and at that stage, the plaintiff moved an application to adduce evidence and this Court concluded that the name of the witness was not earlier furnished nor was the right to adduce further evidence was reserved after the evidence of the defendant was closed on any specific issue framed and therefore, in absence of any procedure

prescribed to claim privilege to summon a witness is not available. In the case of the petitioner, there was no such occasion for him at any earlier stage of the suit to examine himself as a witness and such a request was received only after the examination of plaintiff No.2 as D.W.2. In fact, from the objection filed by the defendant at Annexure-4 to the application of the petitioner, it is made to understand that plaintiff No.2 sought for withdrawal of the suit and instead was transposed and examined as D.W.2 with the claim that the intention is malafide since the application as per Annexure-3 was moved long after the demise of original plaintiff No.1 in 2021 but filed just after plaintiff No.2 adduced her evidence in the suit in support of the defendant. If such is the case, even though, the death of original plaintiff No.1 was in 2021, the petitioner moved the application for rebuttal evidence after plaintiff No.2 was examined supporting the defendant. Notwithstanding the fact that the evidence was concluded and the suit was ready for argument, the Court of the humble view that the petitioner ought to have been allowed a chance to lead rebuttal evidence to carry forward the mantle of original plaintiff No.1 questioning the alleged gift deed particularly on the anvil of the conduct of opposite party No.2. Such a situation was confronted with in **Smt. Prativa Kar** (supra). As far as the other decision in **Rajakishore Biswal** (supra) is concerned, during the continuation of the evidence from side of the plaintiff, an application for further evidence was moved in terms of Order 18 Rule 3 CPC and since, it was declined, this Court held and concluded that learned court below committed patent error of law in denying the same specially when the evidence from the side of defendant was yet to commence. The above decisions are clearly distinguishable on facts. The petitioner even though sought for a leave to lead rebuttal evidence and it was with some amount of delay not immediately after death of original plaintiff No.1 but apparently, after examination of plaintiff No.2 as D.W.2, in such a peculiar situation, the Court is of the view that he should have been allowed to bring on record such rebuttal evidence with the exercise of jurisdiction under Section 151 CPC by learned court below. It is reiterated that any such conduct of a party during the hearing of the suit even when pending at the stage of argument may be a ground to allow the other side an opportunity for leading rebuttal evidence and necessarily for the said purpose, inherent power under Section 151 CPC is required to be exercised which is what has been held by the Apex Court in **K.K. Velusamy** (supra). In **Prem Sagar Gupta** (supra), it is held that delay in making an application for further evidence even after closure of trial should be entertained when the other party can be burdened with cost since rejection of a right to adduce evidence in rebuttal on account of any such delay is to take away an invaluable right defeating the interest of justice and therefore, the conclusion of the Court is that even though there has been closure of evidence, the petitioner should have been allowed to lead rebuttal evidence especially after plaintiff No.2 was examined as D.W.2. In such a fact situation, the Court is of the humble view that to deal with the same, inherent jurisdiction under Section 151 CPC is required to be invoked but learned court below miserably failed to exercise the power, it is vested with. As a necessary corollary, the inevitable conclusion would be that the impugned decision as per Annexure-5 cannot be justified.

13. Hence, it is ordered.

14. In the result, the petition stands allowed. Consequently, the impugned order as at Annexure-5 passed in connection with CS No.111 of 2019 by learned Senior Civil Judge, Bhubaneswar is hereby set aside with a direction to allow the petitioner in adducing rebuttal evidence in the suit, however, subject to cost of Rs.2000/- payable to opposite party No.1 only.

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-839

SANATANA SAHOO

V.

STATE OF ODISHA & ORS.

[W.P.(C) NO. 29172 OF 2020]

10 JUNE 2025

[R.K. PATTANAIK, J.]

Issues for Consideration

1. Whether any person who joined in the post of Jr. DEO after regularization of petitioner's service in the said post could supersede the petitioner and be placed above in the gradation list.
2. Whether the opinion of G.A. and Law Department can be treated as Executive instructions.

Headnotes

(A) ODISHA SECRETARIAT DATA ENTRY OPERATORS (METHOD OF RECRUITMENT AND CONDITIONS OF SERVICE) RULES, 2008 – Rule 13 – Inter se Seniority – Petitioner was engaged as computer operator on 1st September 1995 on consolidated basis – Petitioner's service was regularized w.e.f. 30th June 2011 & he was appointed as Jr. DEO in the scale of pay as admissible under the Rules against the vacant post of Jr. DEO – The Opp. Party No. 1 published the provisional gradation list of Jr. DEOs working in different departments of Odisha State Secretariat as on 1st February 2020 where petitioner's name finds place at Sl. No. 1 and the petitioner was placed at Sl. No. 17 in the final gradation list basing upon the opinion of the G.A. and Law Department – Whether any person who joined in the post of Jr. DEO

after regularization of petitioner's service in the said post could supersede the petitioner and be placed above in the gradation list.

Held: No – The Court is of the further view that once the petitioner's service was regularized w.e.f. 30th June, 2011 and appointed as a Junior DEO in the scale of pay admissible as per the Rules against an available post claimed to be sanctioned and also revealed from Annexure-1, his seniority in juxtaposition to others shall be governed by Rule 13 of the Rules – To postpone the seniority until 2020 claiming that the date of encadrement is to govern the seniority with reference to Annexure-B/1 and any such opinion of the Law Department, Government of Odisha would be an erroneous decision for the fact that the petitioner's entry into the cadre shall have to be treated w.e.f. 30th June, 2011, he having been appointed as a Junior Data Entry Operator against a vacant or sanctioned post in the scale of pay as admissible under Rules. (Para 18)

(B) INTERPRETATION OF STATUTES – Whether the opinion of G.A. and Law Department can be treated as Executive instructions for preparation of final gradation list.

Held: No – Any such opinion of a Government Department cannot be conferred the status of a statutory rule or Executive instruction. (Para 20)

Citations Reference

Shiba Shankar Mohapatra and others Vrs. State of Orissa and others, **AIR 2010 SC 706**; Pimpri Chinchwad New Township Development Authority Vrs. Vishnudev Cooperative Housing Society and others, **(2018) 8 SCC 215**; K. Meghachandra Singh & others Vrs. Ningam Siro & others, **(2020) 5 SCC 689**; Secretary, State of Karnataka & others Vrs. Uma Devi (3) and others, **(2006) 4 SCC 1**; State of Karnataka & others Vrs. M.L. Kesari & others, **(2010) 9 SCC 247 – referred to.**

List of Acts

Odisha Secretariat Data Entry Operators (Method of Recruitment and Conditions of Service) Rules, 2008.

Keywords

Inter se seniority; Provisional gradation list; Final gradation list; Opinion of a Government Department; Executive instruction; Cadre post; Ex-cadre post; Sanctioned post; Regularisation.

Case Arising From

Find gradation list dated 24th September, 2020.

Appearances for Parties

For Petitioner : Mr. B.S. Tripathy-1, Sr. Adv.

For Opp. Parties : Mr. U.R. Jena, AGA

Judgment/Order**Judgment**

R.K. PATTANAİK, J.

1. Instant writ petition is filed by the petitioner challenging the final gradation list dated 24th September, 2020 as at Annexure-3 and for a direction to opposite party Nos.1 and 2 to redraw the same on the basis of inter se seniority among the Junior Data Entry Operators (Jr. DEOs) on the grounds stated.

2. In fact, the petitioner questions the impugned decision with respect to the final gradation list of Jr. DEOs posted in different Departments of the Secretariat as on 1st September, 2020. According to the petitioner, a provisional gradation list was prepared and he was placed at Serial No.1 therein with the date of joining in the rank of Jr. DEO on 30th June, 2011, yet in the final gradation list, opposite party Nos.3 to 18, who joined as Jr. DEOs much after were placed above him. The plea of the petitioner is that he could not have been superseded and placed below the said opposite parties and therefore, seniority as per the provisional gradation list (Annexure-2) is required to be restored.

3. The petitioner for having a qualification of Post Graduate Diploma Computer Application was engaged as a Computer Operator in PH, SubDivision, Baripada under the Executive Engineer, RWSS, Balasore on 1st September, 1995 and thereafter, the Chief Engineer, PH (Urban) by Office order dated 6th November, 2002 to the Financial Advisor-cum-Joint Secretary to Government, Housing and Urban Development Department intimated that the petitioner has been directed to work as such on a consolidated salary of Rs.7000/-. It is the case of the petitioner that he requested the authorities of PH, Division and Housing and Urban Development Department for his regularization in service, whereafter, on the basis of instructions received from the Chief Engineer, PH (Urban), the Executive Engineer, PH, Baripada furnished a list of employees mentioning his name therein for such regularization. It is further pleaded that proposals were mooted to create posts of Data Entry Operators and to regularize the petitioner as such post was not available earlier. In the meanwhile, according to the petitioner, opposite party No.2 requested the Finance Department in 2004 to consider the case of the petitioner and the latter concurred creating of two posts of Jr. DEOs in Housing and Urban Development Department, however, such posts were filled up through service providers and as a result, he had to approach the Odisha Administrative Tribunal, Bhubaneswar in OA No.3421 of 2013 with a direction to Government to regularize or absorb him in the post of Jr. DEO or Computer Operator with all service and financial benefits as has been extended to others, who are similarly situated and the

same was disposed of by an order dated 14th May, 2015 rejecting the plea for regularization, as against which, W.P.(C) No.14365 of 2015 was filed and it was disposed of by a judgment dated 1st November, 2017 with the order of the Tribunal set aside and the matter being remitted back to the authorities concerned to regularize his service. It is also pleaded that the petitioner filed CONTC No.556 of 2018 as the direction in W.P.(C) No.14365 of 2015 was not carried out, whereafter, he was appointed as Jr. DEO in the scale of pay as admissible under the Rules against the vacant post of Jr. DEO with effect from 30th June, 2011. A copy of the order of appointment is at Annexure-1.

3.1. After the services of the petitioner was regularized in the cadre of Jr. DEO, opposite party No.1 published the provisional gradation list i.e. Annexure-2 of Jr. DEOs working in different departments of Odisha State Secretariat as on 1st February, 2020 and it was later finalized and on 24th September, 2020, the final gradation list was released, wherein, contrary to the provisional list, the petitioner was placed at Serial No.17 below other Jr. DEOs joined in 2013 and after ignoring the fact that his date of joining in the rank of Jr. DEO was on and from 30th June, 2011. A copy of the final gradation list is at Annexure-3. The contention of the petitioner is that inter se seniority among the Jr. DEOs is governed by Rule 13 of the Odisha Secretariat Data Entry Operators (Method of Recruitment and Conditions of Service) Rules, 2008 (hereinafter referred to as 'the Rules'). The further contention is that the petitioner joined in service having been directly recruited and joined on 6th November, 2002 and thereafter, in the rank of Jr. DEO with effect from 30th June, 2011 and in that year of 2011, there was no induction into the cadre by way of promotion, whereas, opposite party Nos.3 to 18 have been brought into the cadre between 2013 and 2018, which is much after his entry into the cadre and in that view of the matter, he could not have been placed below them in the final gradation list and same even does not stand to any reason and hence, in view of the impugned decision of the Government upon publication of the final gradation list dated 24th September, 2020, he has been unfairly discriminated and thus, cannot be sustained in law.

4. Heard Mr. Tripathy, learned Senior Advocate for the petitioner and Mr. Jena, learned AGA for the State.

5. Mr. Tripathy, learned Senior Advocate for the petitioner would submit that such a decision of the Government is not in consonance with the Rules and that apart, it has not been preceded by any Government order, circular or guidelines, inasmuch as, the seniority among Jr. DEOs cannot and could not have been on the basis of an opinion of the GA Department. It is contended that the petitioner was appointed as Jr. DEO with effect from 30th June, 2011 and was regularized vide order dated 17th September, 2018 of Housing and Urban Development Department and much before opposite party Nos.3 to 18 joined in the cadre, hence, ought not to have been placed below them. The contention is that all the Jr. DEOs were brought into the cadre by the decision of the Government and it is not that the petitioner was

inducted into the cadre as an ex-cadre Jr. DEO and placed alongside the other Jr. DEOs being already in the cadre by then and therefore, any such decision of the Government with a final gradation list as per Annexure-3 cannot be countenanced. The further contention is that the regularization of the petitioner in service on 30th June, 2011 shall have to be held as the date of entry into the cadre in view of Annexure-1 and as he joined earlier to opposite party Nos.3 to 18, opposite party Nos.1 and 2 could not have placed him below in the final gradation list i.e. Annexure-3 and that too when, the decision is based on the opinion of the GA Department, Government of Odisha and not on account of any Government order, circular or guidelines in terms of Articles 162 and 164 of the Constitution of India and therefore, Annexure-B/1 to the counter affidavit of the Government has no application to consider determination of seniority of Jr. DEOs in the Secretariat. In support of such contention as to absence of any executive instructions, order or circular of the Government and hence, the opinion of the GA Department, Government of Odisha could not have been the basis to determine the inter se seniority of Jr. DEOs, Mr. Tripathy, learned Senior Advocate relies on the following decisions, such as, **Shiba Shankar Mohapatra and others Vrs. State of Orissa and others AIR 2010 SC 706** and **Pimpri Chinchwad New Township Development Authority Vrs. Vishnudev Cooperative Housing Society and others (2018) 8 SCC 215** with the submission is that the final gradation list placing the petitioner at Serial No.17 must have to be held as contrary to the settled principles of law, hence, to be modified in the lines of the provisional gradation list at Annexure-2.

6. On the other hand, Mr. Jena, learned AGA for the State referring to the counter affidavit submits that the petitioner was brought into the cadre of Junior DEOs vide Home Department Resolution No.27986 dated 24th August, 2020. The submission is that the Home Department is the Cadre Controlling Authority (CCA) and therefore, his seniority in service has been counted from the date of entry into the cadre and refers to the said resolution at Annexure-A/1. The further submission is that the petitioner has been rightly placed in the final gradation list of Jr. DEOs in the cadre and the fixation seniority has been prepared after obtaining view of the GA Department and also Law Department, Government of Odisha and on account of the general principle that encadre should find their position below the persons, who are already in the cadre and in support of such a plea, Mr. Jena, learned AGA refers to relevant extract of the opinion of the GA Department at Annexure-B/1. The contention is that as per the 1st schedule under Rule 4 of the Rules of Business, Odisha, the matter was referred to the Law Department which offered the view that petitioner is eligible to be brought into the cadre along with others having been regularized in service from the date of their regularization in a chronological manner to determine inter se seniority in the cadre and since 09 (nine) Date Entry Operators were working in different Departments of the Government against the posts created by the respective departments and all were regularized thereafter, the petitioner and such other Data Entry Operators have been brought into the fold of the cadre of the

Secretariat for which Home Department, Government of Odisha is the CCA. It is also contended that all the Data Entry Operators have been re-designated as Jr. DEOs after such encadrement and are to be governed by the Rules as amended from time to time. A copy of the notification dated 30th December, 2008 of the Home Department, Government of Odisha with regard to the Rules is at Annexure-C/1. It is claimed that the petitioner was initially engaged as a Computer Operator temporarily in Housing and Urban Development Department on a daily wage basis and as he was a hand receipt employee under PH, Division, Baripada, his case was not considered against two newly created posts of Jr. Data Entry Operator in Secretariat Establishment of Housing and Urban Development Department, however, in view of the dismissal of SLP(C) No.011911 of 2018 for being withdrawal and in compliance of the judgment in W.P.(C) No.14365 of 2015, the services rendered by him was regularized with effect from 30th June, 2011. It is reiterated by Mr. Jena, learned AGA that the provisional gradation list was prepared and after receiving the objections from other Jr. DEOs and in view of the opinion received from GA Department, Government of Odisha in the light of the general principles to be followed in encadring outsiders, the petitioner was rightly placed in the final gradation list i.e. Annexure3 below opposite party Nos.3 to 18 and hence, there is no any illegality committed, as a result.

7. A rejoinder affidavit is filed by the petitioner followed by a reply affidavit of opposite party Nos.1 and 2 to such rejoinder and same are gone through. Referring to the rejoinder affidavit dated 18th June, 2021, Mr. Tripathy, learned Senior Advocate for the petitioner submits that by Office order dated 17th September, 2018 as at Annexure-1, the petitioner's service was regularized with effect from 30th June, 2011 as a Jr. DEO in the scale of pay of Rs.5,200/- to 20,200/- with a Grade pay of Rs.1900/- (pre-revised) carrying usual DA and other allowances admissible under the Rules and such appointment was made against a vacant post of Jr. DEO sanctioned by Housing and Urban Development Department, Government of Odisha vide No.15677/H &UD dated 30th June, 2011, the stand of the Govt. that it was a case of encadrement by a resolution dated 24th August, 2020 is not correct. The further reply is that the guidelines issued by the GA Department, Government of Odisha as referred to is only a guiding principle and the intent was to avoid merger of cadres of Junior Grade Typist with Jr. Data Entry Operator since it has been clearly stated therein that in the event of such merger, it would lead to unavoidable litigations and hence, the advice was for a separate common cadre of DEOs to be created by the Home Department being the CCA which was followed by a decision of the Government to create a common cadre under Rule 3 of the Rules, according to which, while preparing the gradation list, inter se seniority as per Rule 13 thereof is to be followed and since in the case at hand, the petitioner being an earlier appointee in the rank of Jr. DEO, he was required to be placed above others joined later and brought into the cadre and therefore, any such opinion or view or clarification received from GA Department to apply to the case of the Jr. DEOs in a common cadre is completely misunderstood and wholly misplaced.

8. In response to the above, referring to the affidavit dated 7th October, 2021 of opposite party Nos.1 and 2 in reply to the rejoinder, it is contended by Mr. Jena, learned AGA that the petitioner was initially engaged as a hand receipt employee with effect from 1st September, 1995 and was directed to work as a Computer Operator on a temporary basis, hence, neither joined as a Jr. DEO on a regular recruitment process nor inducted from Group-D posts through a departmental examination, hence, therefore, he has been considered as an outsider or ex-cadre but was regularized with effect from 30th June, 2011 in view of the judgment in W.P.(C) No.14365 of 2015 upon dismissal of the SLP. The further contention is that the Home Department being the CCA of DEOs cadre of the Secretariat, no such post of Jr. DEO was allotted to the Housing and Urban Development Department to absorb the petitioner as Jr. DEO and in so far as other Jr. DEOs are concerned, they have been inducted or brought into the cadre by promotion and with regard to the petitioner with other DEOs, who have joined as Jr. DEOs without following the due process of recruitment and subsequently regularized have been encadred with the Jr. DEOs cadre and therefore, the stand taken by the GA Department by resolution as per Annexure-A/1 is appropriate and without any flaw and furthermore, the petitioner has been rightly placed in the final gradation list of the cadre without any such wrong interpretation of the guidelines of the GA Department as it is very common that in a gradation list, the ex-cadres are placed below the cadre employees. The contention is that the date from which the services of the petitioner were regularized cannot be taken as the date of entry into the cadre and as per the views of the Law Department, he along with other eligible persons standing on the same footing were brought into the cadre and the dates of their regularization have been mentioned in a chronological manner to determine their seniority in the cadre. It is once again claimed that the petitioner and eight other computer personnel working in Government Departments with different designations and scale of pay were regularized by the concerned Department and have been brought into the cadre in view of the Home Department's decision dated 24th August, 2020 and since then, he is governed by the cadre rules and that he had not been adjudged against any posts created by the Home Department by order No.40220 dated 2nd December, 2015 as at Annexure-A/1 to the reply affidavit to the rejoinder. With the above pleading on record and stand of the Government, Mr. Jena, learned AGA would finally submit that the writ petition is devoid of any merit, hence, liable to be dismissed.

9. Admittedly, the petitioner was engaged as a Computer Operator in P.H. Sub-division, Baripada under Executive Engineer, RWSS, Balasore in the year 1995 whereafter his service was placed at the disposal of P.H. Division, Baripada and thereafter, he was directed to work in Housing & Urban Development Department. In fact, the petitioner joined in service on a consolidated remuneration w.e.f. 6th November, 2002. The aforesaid facts as revealed from the record are not in dispute. It is also not in denial that while serving in such capacity as a Computer Operator ever since 2002, the P.H. Division as well as Housing & Urban Development Department considered regularization of service of the petitioner with the proposals

submitted to create posts of Data Entry Operators as it was required after computerization of official work and ultimately, such regularization was achieved, of course, by the direction of this Court in W.P.(C) No. 14365 of 2015 and upon dismissal of SLP by the Apex Court. At the cost of repetition, it is to be stated that the petitioner joined on a daily wage basis in 1995 and was allowed to work in the P.H. Division and thereafter, as a Computer Operator in Housing & Urban Development Department on and from 6th November, 2002 and finally, was regularized as a Junior Data Entry Operator w.e.f. 30th June, 2011.

10. The dispute is related to the placement of the petitioner in the final gradation list of Junior DEOs as per Annexure-3. Initially, the petitioner was at Serial No.1 of the provisional gradation list prepared as on 1st February, 2020 but it was followed by Annexure-3 by placing him below at Serial No.17. The claim of the petitioner is that since he was regularized on 30th June, 2011 and others, who are juniors to him and joined in 2013 and thereafter, could not have been placed above him in the final gradation list as per Annexure-3. The further claim is that the petitioner joined as a Junior Data Entry Operator in the year 2011 having been regularized in the scale of pay admissible under the Rules in Housing & Urban Development Department against a vacant post of Junior DEO sanctioned by the Government, hence, senior to others, who joined in the year 2013 and later. But the stand of the opposite party Nos. 1 & 2 is that he was not in the cadre and being an ex-cadre employee and encadred pursuant to the decision of the Government in G.A. Department w.e.f. 24th August, 2020, he was appropriately placed in the final gradation list on the general principle that the employees encadred should find their position below others, who are already in the cadre. In fact, a distinction is sought to be made with the counter claim that the petitioner is an ex-cadre and hence, had to be placed below the Junior DEOs, who, even though, joined in 2013 and afterwards.

11. Mr. Tripathy, learned Senior Advocate for the petitioner submits that the other Junior DEOs since joined much after the petitioner, whose service was regularized w.e.f. 2011 could not have been placed above him and such seniority cannot be considered on and from 24th August, 2020 in view of the resolution of the Home Department with a plea that he was brought into the cadre as a Junior DEO upon such decision of the CCA. The contention is that the other employees were not even born in the cadre by the time the service of the petitioner as a Junior Data Entry Operator was regularized w.e.f. 30th June, 2011. It submitted by Mr. Tripathy, learned Senior Advocate that the petitioner was brought into the cadre upon such regularization and joined as a Junior Data Entry Operator with a scale of pay admissible as per the Rules against a sanctioned post created in favour of Housing & Urban Development Department vide order No. 15677/HUD dated 30th June, 2011.

12. Mr. Jena, learned AGA, however, contradicts the above claim referring to the counter affidavit of opposite party Nos. 1 & 2 and also Annexure-A/1 of the reply affidavit to the rejoinder with the submission that such regularization was not against any sanctioned post. It is made to understand that the sanctioned posts

created were filled up without regularizing the services of the petitioner. But, from Annexure-1, it is made to reveal that the petitioner's service was regularized w.e.f. 30th June, 2011 as a Junior DEO against a post sanctioned in favour of Housing & Urban Development Department as already mentioned earlier in the scale of pay admissible under the Rules.

13. Mr. Tripathy, learned Senior Advocate for the petitioner refers to Rule 3 of the Rules and submits that such entry into service as a Junior DEO on and from 30th June, 2011 shall have to be held as joining in the cadre service. In other words, the contention is that the petitioner cannot be claimed to be an excadre upon such regularization of service, inasmuch as, the date of regularization in the post of Junior DEO by him is the date of entry into the cadre. To further buttress the argument over placement of the petitioner in the final gradation list, Mr. Tripathy, learned Senior Advocate referred to the decision of the Apex Court in **K. Meghachandra Singh & others Vrs. Ningam Siro & others (2020) 5 SCC 689** to contend that the other Junior DEOs since not even born in the cadre by the time the petitioner's service was regularized, they cannot be placed above him in the final gradation list.

14. A cadre post is a permanent position within a structured service while an ex-cadre post is a temporary one created for a specific purpose usually outside the regular cadre and is typically filled on deputation or temporary basis. A permanent post is a core position within a service listed in the cadre strength having a defined hierarchy and pay structure with promotional avenues, whereas, an ex-cadre post is meant for a specific and temporary purpose and not a part of the regular structured cadre and may not have the same promotional pathways, which means, usually no formal promotion is available within any such ex-cadre post. To further elaborate, an ex-cadre post refers to a temporary position often at the same rank as a cadre post but created for specific purposes outside of the regular recognized service cadre, hence, it is distinct from a permanent cadre post and such a post is often filled by officers, who already hold positions within a cadre usually through deputation or on a temporary basis. Having described the clear distinction between the cadre and ex-cadre posts, the question would arise whether the petitioner can be considered as an outsider or an ex-cadre as it has been claimed by the Government while justifying the final gradation list at Annexure-3?

15. Briefly to recapitulate, the petitioner was a Computer Operator engaged in the Housing & Urban Development Department on a temporary basis with a consolidated remuneration of Rs.7,000/- per month. Initially, the petitioner joined as a hand receipt in the year 1995 on a daily wage basis and thereafter, as a Computer Operator on and from 6th November, 2002. The service of the petitioner was regularized in view of the judgment in W.P. (C) No. 14365 of 2015 dated 1st November, 2017 as the SLP filed by the Government was withdrawn and hence, stood dismissed. The regularization of the petitioner's service was accomplished in 2018 pursuant to the Office order of the Housing & Urban Development Department, Government of Orissa as per Annexure1. Though, the recruitment of

the petitioner was not as per the Rules, the service rendered by him was regularized keeping in view the decision of the Apex Court in **Secretary, State of Karnataka & others Vrs. Uma Devi (3) and others (2006) 4 SCC 1** further clarified in **State of Karnataka & others Vrs. M.L. Kesari & others (2010) 9 SCC 247**.

16. It is not that the petitioner upon such regularization held an ex-cadre post. As already discussed before, ex-cadre posts are normally filled up through deputation or on temporary basis. It is a fact that the petitioner was engaged with a temporary appointment as a Computer Operator in 2002. Even such a temporary appointment, after regularization, is not automatically converted into an ex-cadre post. Such is not the case of the petitioner either, who rather joined against a temporary post created for a specific purpose and was finally absorbed as the Junior Data Entry Operator against a sanctioned post as evident from Annexure-1. It is not understood how someone's service regularized in 2011 can be said to be encadred in 2020. As far as the Rules in place is concerned, Rule 2(b) thereof defines 'Cadre' constituted under Rule 3, according to which, the service shall consist of the following cadres, such as, Junior DEOs and Senior DEOs. As per Chapter-II of the Rules, recruitment to the cadre of Junior DEOs is made by a competitive examination. In fact, Rule 4 deals with the direct recruitment to the cadre of Junior DEOs. Rule 13 of the Rules stipulates that inter se seniority of the candidates appointed as Junior DEOs shall be as per the select list but the one's appointed under Rule 4(4) shall enbloc be senior to the direct recruitees in a particular year. As it is made to reveal from the record, the other DEOs have been appointed through promotion and have been placed above the petitioner in the final gradation list including one joined under RAS so made to appear from Annexure-3. It is not that the other Junior DEOs joined in service in the year in which the petitioner was regularized. Such regularization of the services of the petitioner has taken place in 2011 much prior to others, who joined and appointed as Junior DEOs either under RAS or through induction by promotion from Group-D. If the Rules is read properly, recruitment in a particular year vis-à-vis inter se seniority among the Junior DEOs shall be governed by Rule 13 thereof. In the instant case, as earlier discussed, the other Junior DEOs, who have been placed above the petitioner joined in 2013 and afterwards and not in the same year i.e. 2011. Had there been such a situation with the appointment of all Junior DEOs in a particular year, the petitioner would have been placed below since in view of Rule 13, the appointees as per Rule 4(4) of the Rules shall have to be enbloc senior to others inducted through a direct recruitment under Rule 4(1) thereof.

17. It is claimed in the counter affidavit of opposite party Nos. 1 & 2 that the service of the petitioner was not placed in Housing & Urban Development Department by any Government order rather he was directed to join as a Computer Operator temporarily on a daily wage basis. It is also averred that the case of the petitioner does not lie within the purview of the resolutions of the G.A. & P.G. Department and he was not appointed against any such post created in the Secretariat Establishment of Housing & Urban Development Department, however, in view of the dismissal of SLP and for complying the judgment in W.P. (C) No. 14365 of 2015, his services was regularized w.e.f. 30th June, 2011. But, upon a reading of Annexure-1 and since such a plea having not been clearly demonstrated, it has to be held that the petitioner's service was

regularized from the appointed date as a Junior DEO in the scale of pay admissible under the Rules against a sanctioned or vacant post of Junior DEO. In such view of the matter, according to the Court, it would not be proper to claim that the petitioner to be an ex-cadre or outsider, he having been duly appointed as a Junior DEO against a regular sanctioned post.

18. Mr. Tripathy, learned Senior Advocate for the petitioner submits that the guidelines issued by the G.A. & P.G. Department is only a guiding principle and it was intended to avoid merging of cadres of Junior Grade Typists and Junior DEOs, as on a reading of the same, it is clearly made to understand that in the event of any such merger, the same is likely to lead to various anomalies and litigations and hence, advised to have a separate common cadre for Data Entry Operators by the Home Department and thus, it was imperative that to form a common cadre, Rule 3 of the Rules is to govern and while preparing the gradation list, the inter se seniority among the Junior DEOs shall be as per Rule 13 and in the case at hand, the petitioner being an earlier appointee in the cadre, he is required to be placed above all subsequent entrants to the cadre and therefore, any such reliance placed on the G.A. Department clarification as per Annexure-B/1 is wholly misplaced and misunderstood. In the given context, as some Data Entry Operators may find place above Junior Grade Typists already promoted to the rank of Senior Grade Typists thereby giving rise to question of reversion and some appears much below the Junior Grade Typists already appointed from the select list of 1987, any such inclusion of the Data Entry Operators in the cadre of Junior Grade Typists, it was the opinion of the G.A. Department that the same would give rise to unavoidable litigations and therefore, suggested the Administrative Departments to have a common cadre of Data Entry Operators with the Home Department as the CCA outlining the general principle to be followed in encadring outsiders placing them below the cadre employees. As far as the case of the petitioner is concerned, the Court finds that he joined in service in 2002 and was regularized in service as a Junior DEO w.e.f. 30th June, 2011 and such appointment is held to be against a sanctioned or vacant post. A regular appointment is always made against a substantive post. The regularization of service of the petitioner could not have been allowed without a sanctioned or vacant post being available. The Court finds from Annexure1 that the petitioner's service was regularized against a sanctioned post though it has been denied by opposite party Nos. 1 & 2 but without being duly demonstrated or explained away. The date of joining in the rank of Junior DEO as per the final gradation list vis-à-vis the petitioner is stated to be 30th June, 2011. If such is the case and the petitioner was appointed as a Junior DEO from the appointed date apparently against a sanctioned or vacant post, to claim that it was not an entry into the regular cadre is unacceptable. One who is regularized in 2011 cannot be placed below others, who joined later with a plea that the encadrement has taken place in 2020. If such an exercise is undertaken despite the fact that the petitioner's service was regularized in 2011, it would place him below other Junior DEOs, who joined long thereafter. The Court is of the further view that once the petitioner's service was regularized w.e.f. 30th June, 2011 and appointed as a Junior DEO in the scale of pay admissible as per the Rules against an available post claimed to be sanctioned and also revealed from Annexure-1, his seniority in juxtaposition to others shall be governed by Rule 13 of the Rules. To postpone the

seniority until 2020 claiming that the date of encadrement is to govern the seniority with reference to Annexure-B/1 and any such opinion of the Law Department, Government of Odisha would be an erroneous decision for the fact that the petitioner's entry into the cadre shall have to be treated w.e.f. 30th June, 2011, he having been appointed as a Junior Data Entry Operator against a vacant or sanctioned post in the scale of pay as admissible under Rules.

19. The other Junior DEOs joined on and after 2013 and all such appointments including the petitioner have not taken place in a particular year, otherwise, in such an eventuality, Rule 13 of the Rules would have been applicable. It is of course not a case that the petitioner was appointed as a direct recruit, as is so claimed but him having joined in the cadre as a Junior DEO w.e.f. 30th June, 2011 and that too, against a sanctioned post could not have been placed below others in the final gradation list. Furthermore, the other Junior DEOs inducted into the cadre by way of promotion in 2013 and thereafter and not in the year of appointment of the petitioner. Though, the petitioner cannot be treated as a direct recruit but since appointed in 2011 as a Junior DEO and by then others had not even been born in the cadre and the recruitment with the appointments having not taken place in a particular year, he shall have to be placed above the latter in the final gradation list and the same cannot be denied with a plea that such induction in to the cadre is in 2020. In other words, the petitioner having joined as Junior DEO with the regularization of services w.e.f. 30th June, 2011 is definitely to be unfairly treated, if held not to have been encadred as per the Rules and therefore, the claim of opposite party Nos. 1 & 2 about such encadrement of 2020 to govern the seniority among the Junior DEOs with references to Annexures A/1 and B/1 cannot be justified.

20. That apart, the opinion of the Government Departments in absence of any statutory rules or Executive instructions is not worth acceptance as held time and again and reiterated by the Apex Court in **Shiba Shankar Mohapatra and Pimpri Chinchwad New Township Development Authority** (supra). In the present case, no any Executive instruction has ever been issued but the inter se seniority is being determined on the strength of the opinion of the GA and Law Departments. Any such opinion of a Government Department cannot be conferred the status of a statutory rule or Executive instruction as further held in the decisions referred to herein above. So, therefore, the inevitable conclusion is that the impugned decision vis-à-vis the seniority of Jr. DEOs shall have to be set at naught being contrary to the settled position of law.

21. Hence, it is ordered.

22. In the result, the writ petition stands allowed. As a necessary corollary, the impugned final gradation list as per Annexure-3 is hereby set aside with a direction to opposite party Nos. 1 and 2 to align it in the lines of the provisional gradation list as at Annexure-2 assigning the seniority of the petitioner as Jr. DEO placing him above opposite party Nos. 3 to 18.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition allowed.

2025 (II) ILR-CUT-851

**SUDARSHAN BEHERA
V.
STATE OF ODISHA & ANR.**

[W.P.(C) NO. 13361 OF 2017]

16 MAY 2025

[SASHIKANTA MISHRA, J.]**Issue for Consideration**

Whether the petitioner is entitled to get the freedom fighter's pension (non-jailed).

Headnotes

CONSTITUTION OF INDIA, 1950 – Articles 226 & 227 – Claim for grant of freedom fighter's pension (non-jailed) – Rejection of claim is under challenge – Petitioner contended that application enclosing necessary documents like voter identity card and personal knowledge certificates from two freedom fighters availing pension, submitted before the cut-off date – The authority rejected the application on the ground that he does not meet the age criteria and the voter identity card is a manipulated one – It is not disputed that he is not a freedom fighter – It is also proved that the voter identity card is not a manipulated one rather the voter identity card proved that the petitioner fulfills the age criteria – Whether the petitioner is entitled to get the freedom fighter's pension (non-jailed).

Held: Yes – Thus, on a conspectus of the analysis of facts and the discussions made thereon, this Court is of the considered view that the authorities have adopted a hyper-technical approach in the matter to reject the claim of the petitioner – It must be kept in mind that, while it can never be the intention to allow any fake claims to subsist, at the same time care should be taken to see that genuine claims are not rejected on mere technicalities – In the instant case, it has not been stated by the authorities that the petitioner has come up with a fake claim.

(Para 14)

In the result, the writ application is allowed – The impugned order of rejection of the petitioner's claim for freedom fighters' pension is hereby set aside.

(Para 15)

Citations Reference

Gurdial Singh v. Union of India, (2001) 8 SCC 8 – referred to.

List of Acts

Constitution of India, 1950; Swatantrata Sainik Samman Pension Scheme, 1980; Right to Information Act, 2005.

Keywords

Freedom fighters' pension (non-jailed); Claim for grant of pension; Rejection of claim; Voter Identity card; Personal Knowledge Certificate; Jail certificate.

Case Arising From

Letter dated 10.03.2008 of the Finance Department.

Appearances for Parties

For Petitioner : Mr. Sudarsan Behera

For Opp. Parties : Mr. S.N. Patnaik, AGA

Judgment/Order**Judgment**

SASHIKANTA MISHRA, J.

The petitioner is aggrieved by the rejection of his claim for grant of freedom fighters' pension (non-jailed) by the Government.

2. The facts of the case, briefly stated, are that the petitioner claims to be a freedom fighter, who participated in the Satyagraha, Non-Cooperation Movement and Quit India Movement against the Britishers from the year 1940, when he was only 16 years old. He was arrested by the Britishers and imprisoned, but could not obtain copy of the jail certificate.

2.1. He applied for freedom fighters' pension under the Central Government Scheme in the year 1987, but, his claim was not considered and letter dated 11.12.1998 issued by the Under Secretary to the Government in Finance Department was received by him requesting him to submit the required documents.

2.2. In the meantime, the Government of Odisha issued circular no. 47348 dated 09.10.2002 providing for grant of non-jailed freedom fighters' pension fixing the cut-off date as 31.12.2004.

2.3. The petitioner submitted application by registered post on 27.12.2004 enclosing copy of his voter identity card and personal knowledge certificates from two freedom fighters availing pension. No action was taken, for which the petitioner approached the Hon'ble Chief Minister in his Grievance Cell, who directed the Department concerned to consider his application.

2.4. By letter dated 10.03.2008 of the Finance Department, the petitioner was informed that he is not entitled to the pension, as his application had not been received by the cut-off date. The petitioner, in a representation dated 13.10.2008, clarified that he had submitted the application within time.

2.5. Since no action was taken, he approached this Court in WP(C) No. 1283 of 2009, which was disposed of on 19.03.2009 directing the authorities to consider his representation.

2.6. On 01.11.2011, the petitioner was asked to furnish original documents, which the petitioner submitted. He also submitted an application under the Right to Information Act, 2005 on 12.06.2013 to know the status of his claim and was informed that his case had not been finalized for want of receipt of information from the District Treasury Officer, Nayagarh and the Deputy Collector, Record Room, Puri. It was further informed that the personal knowledge certificates of the two freedom fighters submitted by the petitioner were to be verified.

2.7. The petitioner further claims that one Satrugana Mansingh, who stands on the same footing, has been receiving such pension. The petitioner again approached this Court in WP(C) No. 5329 of 2016, which was disposed of on 19.08.2016 directing him to submit fresh representation to the Principal Secretary to Government in Finance Department, whereupon the signatures of the two freedom fighters should be sent by the authorities for verification by the concerned bank. Since no action was taken, the petitioner filed a contempt application being CONTC No. 1514 of 2016.

2.8. While the matter stood thus, the impugned order under Annexure-8 was passed by the Finance Department on 27.08.1990 rejecting the application of the petitioner on the ground that he does not fulfill the requisite age criteria as per the resolution dated 09.10.2002 and the certified copy of the voter list of 1988 furnished by the petitioner was found to be not genuine.

2.9. The petitioner claims that his age, as on 01.01.1994, was 70 years, as per the voter identity card issued by the Election Commission of India. Further, as per the certified copy of the voter list issued by the Deputy Collector, Puri, his age, as on 01.01.1988, was 64 years.

2.10. He being in his 90s and deprived of his legitimate claim of pension, the petitioner has filed this writ application with the following prayer:-

“In the circumstances it I humbly prayed that this Hon’ble Court may kindly be pleased to issue notice as to why this case shall not be allowed and the Opp.parties shall not be directed to sanction State Freedom Fighters” Pension (Non-jailed) in favour of the petitioner by considering Annexures-9 and 10 and quashing Annexure-8 and pass any other order(s) as deemed fit and proper;”

3. The stand of the opposite party-authorities, in a nutshell, is that as per the report of the Sub-Collector, Khurda, the petitioner was found to be underage and the Addl. District Magistrate (ADM), Puri reported that the certified copy of the voter list of 1988 furnished by the petitioner was found to be manipulated and not genuine. As such, his claim for grant of pension was rightly rejected. It is also stated that the petitioner had submitted xerox copy of the voter identity card showing his age as 70 years as on 01.01.1994, but xerox copies are unacceptable. As per the

resolution dated 09.10.2002, age of the applicant for sanction of freedom fighters' pension (non-jailed) should be 78 years as on 01.01.2002 and such age should be determined on the basis of the voter list/ electoral roll only. Further, it was decided that the proof of age will be accepted as on the voter identity card only after receipt of authenticated proof of age by the concerned Sub-Collector. In the instant case, the ADM, Puri, in his letter dated 21.09.2016, reported that the age of the petitioner seems illegible, as there is manipulation in the voter list available in the District Election Section, Collectorate, Puri, and that the certified copy of the voter list of 1988 is not genuine. It is also stated that departmental proceeding is being initiated for manipulation of voter list. The Sub-Collector, Khurda, vide letter dated 28.10.2016, reported that the age of the petitioner is 56 years, as per voter list of 2002. It is, however, admitted that the personal knowledge certificates submitted by the petitioner of two freedom fighters were found to be genuine on verification.

4. Heard Shri Sudarsan Behera, learned counsel for the petitioner and Shri S.N. Patnaik, learned Addl. Government Advocate for the State-opposite parties.

5. Shri Behera would argue that the plight of the petitioner is evident from the fact that even though he was jailed by the British Government for participating in the Quit India Movement at a very young age, he had not obtained any jail certificate from the authorities at the relevant time. As such, despite being a genuine freedom fighter, he has been deprived of pension under the Central Government Scheme, then in vogue. It is only because of the circular issued by the Government of Odisha on 09.10.2002 that he became eligible for grant of freedom fighters' pension, at least in the non-jailed category. Shri Behera further argues that the authorities ultimately accepted that he had submitted his application within the cut-off date, but rejected his claim only on the ground that he did not fulfill the age criteria of being born before 1924. The petitioner was born on 02.01.1924. His participation in the freedom struggle is certified by two freedom fighters, both of whom are receiving pension. His contention regarding age is proved by the voter identity card issued by the Election Commission of India. As regards the voter list, the petitioner is not in a position to say as to how the same contained any manipulation, if at all. Moreover, on what basis the Sub-collector determined his age as 56 years, has also not been highlighted. Shri Behera concludes his argument by submitting that the self-respect and dignity of a freedom fighter has been questioned by rejecting his claim for pension under the Scheme on frivolous grounds.

6. Shri Patnaik, learned State Counsel would argue that definite guidelines having been laid down by the Government in the circular dated 09.10.2002, the same are required to be adhered to strictly. The said guidelines provide that the applicant must have born before 1924. So, even if brushing aside the other facts, the petitioner, being born on 02.01.1924, as claimed by him, would still not be eligible for grant of pension as per the circular. Further, justifying the rejection of the claim of the petitioner, Shri Patnaik would argue that the petitioner could not prove that he

SUDARSHAN BEHERA V. STATE OF ODISHA & ANR. [SASHIKANTA MISHRA, J.]

was eligible as per the age criteria by furnishing the required documents. On the contrary, the Sub-collector reported that as per the voter list of 2002, the petitioner was aged 56 years. Moreover, the certified copy of the voter list relied on by the petitioner was found to be not genuine.

7. The sequence of events, as narrated, is not disputed. The petitioner originally claims to have been imprisoned for his participation in the freedom struggle. No proof has been furnished in this regard. For such inability, the petitioner staked his claim for freedom fighters' pension under the non-jailed category, after coming into force of the circular dated 09.10.2002. This Court finds nothing wrong in such approach. Nevertheless, pension under the aforementioned circular can obviously be granted as per the parameters and conditions laid down therein. It is provided that for being eligible to pension, the applicant must have been born before 1924. Coming to the impugned order, it is seen that the two freedom fighters' certificates submitted by the petitioner were found to be genuine upon verification from the concerned banks. It was also accepted that the petitioner had submitted application prior to the cut-off date, i.e., 27.08.1990. His claim was, however, rejected on the ground that the xerox copy of the certified copy of the voter list of 1988 submitted by the petitioner, which mentions his age as 64 years, is not a genuine document. In this context, the letter dated 21.09.2016 of the ADM, Puri has been referred to. The letter dated 12.10.2012 of the ADM, Puri, a copy of which is enclosed with the said letter dated 21.09.2016, is re-produced herein below for immediate reference:-

DISTRICT OFFICE, PURI

(Record Room)

No. 139/RR. Dt.12/10/12/

To

*The Deputy Secretary,
Govt. Finance Department.
Bhubaneswar.*

Sub:- Verification of Age in Voter list.

Ref:- Your office letter No.15664/F., Dt.5.4.12 and No.21290/F., Dt.29.5.12, No.22715/F., Dt.12.6.12 and No.23813/F., Dt.25.6.12.

Sir,

With reference to the letters on the subject cited above I am to say that as the age of the applicants seems "illegible" as there is manipulation in the voter lists available in the District Election Section, Collectorate, Puri. Hence Certified Copies referred for verification as enclosed in your letter are not genuine. Departmental Proceedings is being initiated for manipulation of Votorlist

So, you may prefer to verify the same from the documents/Votorlists available in the Home Election Deptt., Govt. of Odisha for taking further action at your end.

Yours faithfully,

Sd/-

Addl. District Magistrate, Puri"

8. A bare reading of the above letter would make it clear that the same is not in the least conclusive as regards the so-called manipulation. To amplify, what exactly was the manipulation done has not been stated. However, the letter mentions that departmental proceeding is being initiated for such manipulation, but is entirely silent as to against whom such proceeding was initiated, if at all. During hearing, documents were produced by the learned State Counsel indicating that departmental proceeding was conducted against a Junior Clerk in the District Election Section, who, being found guilty of manipulation, was imposed with the punishment of withholding of 10% gratuity permanently. This does not improve the case of the opposite parties, inasmuch as, the departmental proceeding appears to have been initiated and concluded during pendency of this writ application. That apart, there is nothing on record to suggest that the manipulation done by the delinquent employee was at the instance of the petitioner. Even accepting the above, it is not understood as to how the petitioner can be blamed for manipulation of the certified copy of the voter list. Moreover, it has not been stated as to what age was mentioned in the original voter list, if not 64, as claimed by the petitioner. In the absence of these vital factual aspects, the observation of the ADM cannot be accepted.

9. Coming to the letter dated 28.10.2016 of the Sub-Collector, the age of the petitioner, as on 01.01.2002, was 56 years. On what basis the same was submitted is not known. Significantly, the said letter mentions the voter identity card number as OR/09/060/27442. Reference to the copy of the voter identity card (copy enclosed as Annexure-9) bearing the same number reveals that the age of the petitioner, as on 01.01.1984, is 70 years. So, on what basis the Sub-Collector mentioned the age of the petitioner as 56 years, as on 01.01.2002, is not known. The only objection to the copy of the voter identity card raised is that it is a xerox copy. This can hardly be treated as an acceptable ground as petitioner, can always be asked to produce the original voter identity card, if available.

10. In course of hearing, the petitioner filed the original certified copy of the voter list of the year 2011, wherein his age is mentioned as 87 years. This entirely contradicts the letter of the Sub-Collector mentioning his age as 56 years, as on 01.01.2002.

11. From the above documents, what emerges is that there is proof of participation of the petitioner in the freedom struggle as evident from the personal knowledge certificates of two freedom fighters, which were found to be genuine. The petitioner submitted his application, as per the circular dated 09.10.2002, before the cut-off date. The claim of the authorities that the petitioner was under-aged is belied by their own contradictory records relating to his age as on different dates. On the other hand, the petitioner relies upon his voter identity card issued by the Election Commission of India (and also referred to by the Sub-Collector), which shows his age as 70 years, as on 01.01.1994. The feeble agreement made by the State Counsel, that the petitioner being born on 02.01.1924 is not eligible to get the freedom fighters' pension, cannot be accepted, as the same was raised for the first

time before this Court and it is not found mentioned in the impugned order. Even otherwise, accepting his date of birth as 02.01.1924, the same makes him ineligible, if at all, by only two days. The object of the circular is to honour the freedom fighters for their contribution in the freedom struggle of the country. The Supreme Court, in the case of **Gurdial Singh v. Union of India**¹, observed as follows:-

“6. The scheme was introduced with the object of providing grant of pension to living freedom fighters and their families and to the families of martyrs. It has to be kept in mind that millions of masses of this country had participated in the freedom struggle without any expectation of grant of any scheme at the relevant time. It has also to be kept in mind that in the partition of the country most of citizens who suffered imprisonment were handicapped to get the relevant record from the jails where they had suffered imprisonment. The problem of getting the record from the foreign country is very cumbersome and expensive. Keeping in mind the object of the scheme, the concerned authorities are required that in appreciating the scheme for the benefit of freedom fighters a rationale and not a technical approach is required to be adopted. It has also to be kept in mind that the claimants of the scheme are supposed to be such persons who had given the best part of their life for the country. This Court in Mukand Lal Bhandari's case (supra) 1993 Supp (3) SCC 2 observed:

“The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The scheme should retain its high objective with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependents. The preference in employment, allotment of accommodation and in admission to schools and colleges of their kith and kin etc., are also the other benefits which have been made available to them for quite sometime now.”

12. As regards the standard of proof required for these cases, the Supreme Court further observed in **Gurdial Singh** (supra) as follows:-

“7. The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be

¹ (2001) 8 SCC 8

covered by scheme have suffered for the country about half a century back and had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch-stone of the test of beyond reasonable doubt. Once on the basis of the evidence it is probalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the same is rebutted by cogent, reasonable and reliable evidence."

13. This Court, while dealing with the case of grant of pension to a freedom fighter, WPC No.23220 of 2013, observed as follows:-

"17. As already stated, the very object of the Scheme is to honour those who had made sacrifices for the country by participating in the freedom movement. In fact, the very ideals that inspired the freedom movement have been acknowledged by the Constitution as something to be remembered and cherished by the citizens as a Fundamental Duty. Article 51A(b) of the Constitution enjoins upon the citizens to „cherish and follow the noble ideals which inspired our national struggle for freedom“. This is implicit in the 1980 Scheme as crystallized in the guidelines of the Govt. of India referred to herein before. Thus, the action of the authorities must be to further the object of the Scheme and not to frustrate it."

True, the said observations were made in the context of Swatantrata Sainik Samman Pension Scheme, 1980, but then the underlying principles can be made applicable to the facts of the present case.

14. Thus, on a conspectus of the analysis of facts and the discussions made thereon, this Court is of the considered view that the authorities have adopted a hyper-technical approach in the matter to reject the claim of the petitioner. It must be kept in mind that, while it can never be the intention to allow any fake claims to subsist, at the same time care should be taken to see that genuine claims are not rejected on mere technicalities. In the instant case, it has not been stated by the authorities that the petitioner has come up with a fake claim.

15. In the result, the writ application is allowed. The impugned order of rejection of the petitioner's claim for freedom fighters' pension is hereby set aside. The opposite parties are directed to sanction and disburse the admissible amount towards freedom fighters' pension (non-jailed) in favour of the petitioner, including its arrears, as early as possible, preferably, within a period of two months from the date of production of certified copy of this judgment by the petitioner.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case

Writ Petition allowed.

2025 (II) ILR-CUT-859

**KALPANA KHOSLA
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 4556 OF 2024]

16 MAY 2025

[SASHIKANTA MISHRA, J.]

Issue for Consideration

Whether a Sikshya Sahayak can avail of maternity leave beyond the 12 days casual leaves.

Headnotes

SERVICE JURISPRUDENCE – Disengagement of Sikshya Sahayak – Terms & Conditions of engagement – Leave & Maternity Leave – As per the terms & conditions a Sikshya Sahayak engaged on contractual basis is entitled to 12 days casual leaves in a calendar year – Petitioner challenges her disengagement as maternity leave period was considered as unauthorised absence – Whether a Sikshya Sahayak can avail of maternity leave beyond the 12 days casual leaves.

Held: Yes – This Court need not emphasize the well-known legal principle that law cannot operate in a vacuum – If a strict adherence of the terms and conditions regarding grant of leave to a Sikshya Sahayak would be insisted, it would lead to a situation, where a lady Sikshya Sahayak required to undergo maternity leave would lose her employment – This obviously cannot be the intent of the so called terms and conditions of engagement of Sikshya Sahayak, as it would amount to denial of the fundamental right of a person guaranteed by the Constitution of India under Article 21. (Para 10)

List of Acts

Constitution of India, 1950.

Keywords

Disengagement of a Sikshya Sahayak; Order of disengagement; Terms & Conditions of engagement; Leave; Maternity leave; Calendar year; Unauthorized absence; Denial of fundamental right.

Case Arising From

Order dated 24.02.2023 passed by the Collector, Koraput and the order dated 11.03.2020 passed by the District Project Coordinator, Samagra Shiksha, Koraput.

Appearances for Parties

For Petitioner : M/s. S.K. Mishra, B.R.Tripathy & B.P. Pradhan
For Opp. Parties : Mr. S.N. Patnaik, A.G.A.

Judgment/Order**Judgment****SASHIKANTA MISHRA, J.**

The petitioner challenges the order dated 24.02.2023, as at Annexure-9, passed by the Collector, Koraput in rejecting her representation, and the order dated 11.03.2020, as at Annexure-10, passed by the District Project Coordinator, Samagra Shiksha, Koraput in disengaging her from the post of Sikshya Sahayak with effect from 01.08.2015.

2. The facts of the case, briefly stated, are that the petitioner was engaged as Sikshya Sahayak in Kanimusa Primary School, Laxmipur in the district of Koraput, vide order dated 22.12.2011, after undergoing a process of selection. As she was untrained, she sought permission from the competent authority to undertake B.Ed. course as a regular student from KSUB, CTE, Bhanjanagar. The District Project Co-ordinator, Koraput, vide order dated 09.12.2014, granted her such permission. After completion of the training course, the petitioner joined in her duty on 07.09.2015 and the same was accepted by the authority. However, because of her illness, she availed medical leave from 08.09.2015 to 31.03.2016. Again, she joined on 01.04.2016, but availed maternity leave from 02.04.2016 to 28.09.2016, during which she delivered a male child on 23.06.2016. Because of certain complications, she had to extend her medical leave till 17.04.2018. She claims to have submitted leave applications along with joining reports supported by medical certificates to the authorities, which were forwarded by the Block Education Officer to the District Project Coordinator for acceptance. Since no action was taken regarding acceptance of the joining of the petitioner, she approached the Collector by submitting a representation, which was forwarded vide letter dated 17.10.2019, to the District Education Officer, who, in turn, transmitted the same to the District Project Coordinator. When no action was taken by the authorities, the petitioner approached this Court in WP(C) No. 34459 of 2022. This Court, by order dated 02.01.2023, directed the Collector to consider the case of the petitioner as per her representation. By order dated 24.02.2023, the Collector rejected the claim of the petitioner on the ground that she had joined the B.Ed. training, without prior permission of the competent authority, on 29.11.2014 at KCUB, Bhanjanagar. Moreover, she had already been disengaged vide order dated 11.03.2020. According to the petitioner, said order of disengagement was never communicated to her. On such facts, the petitioner has filed this writ application seeking the following relief:-

“Under the above circumstances it is therefore humbly prayed that this Hon’ble Court may graciously be pleased to quash the order dtd. 24.02.2023 under annexure-9 and order dtd. 11.03.2020 under annexure10 and direct the opposite parties to reengage the

petitioner in her former post and grant her all consequential service and financial benefits;

And pass any other order/orders, direction/ directions as this Hon'ble Court may deem just and proper;"

3. The stand of the State-opposite parties, as per the counter filed in the case, is that the petitioner was permitted to take admission in B.Ed. course at KSUB, Keonjhar, vide letter dated 09.12.2014 of the District Project Office, RTE-SSA, Koraput. Instead, she joined at KSUB, Bhanjanagar by tampering with the permission letter. She was permitted till 31.03.2015, but she remained unauthorized absent from 01.08.2015 to 06.09.2015 without prior permission of the competent authority, thereby violating the terms and conditions of the agreement executed by her at the time of engagement. She submitted a bunch of joining report, leave applications to the Block Education Officer. However, as per Government Resolution No. 587/SME dated 10.01.2011, a Sikshya Sahayak engaged on annual contractual basis is eligible for Casual Leave (CL) of 12 days during a calendar year. The petitioner failed to execute the annual contractual agreement for the academic year 2016-17 onwards after completing her term of engagement on 31.03.2016. Her representation dated 27.10.2020 was considered along with the terms and conditions of her engagement and she was disengaged from her post of Junior Teacher (Contractual) by order dated 11.03.2020. The District Project Coordinator was instructed to serve the order dated 11.03.2020 on the petitioner. It is also stated that the petitioner has tried to cover up her unauthorized absence by producing medical certificates, but in absence of any provision of availing leave beyond a particular period, such period cannot be regularized in any manner.

4. The petitioner filed a rejoinder seeking to refute the stand taken by the State in its counter by reiterating the averments made in the writ application. It is stated that after being granted permission to appear in the B.Ed. course from KSUB, CTE, Keonjhar, when she went for admission, she did not find any such institution in Keonjhar. She, therefore, approached the District Project Coordinator, who corrected the place as Bhanjanagar instead of Keonjhar. She, thereafter, took admission in the B.Ed. course, being allowed by the College authorities, on production of the permission letter, after verification from the District Project Coordinator. It is also stated that she never remained unauthorized absent, but because of circumstances beyond her control, which is supported by medical certificates, she sought for leave on different occasions, which were also forwarded for acceptance.

5. Heard Shri S.K. Mishra, learned counsel for the petitioner and Shri S.N. Patnaik, learned Addl. Government Advocate for the State-opposite parties.

6. Shri Mishra would argue that the ground taken by the Collector to reject the petitioner's representation that she had joined the B.Ed. training course without prior permission of the competent authority is factually incorrect, as she had been duly permitted to do so. As regards the stand taken that she was permitted to undergo the course at Keonjhar, Shri Mishra would argue that on inquiry by the petitioner it was

found that no such institution named KSUB exists at Keonjhar, but such institution exists at Bhanjanagar. It cannot therefore be held that the petitioner committed any illegality in undergoing the course at Bhanjanagar instead of Keonjhar. Moreover, she had obtained necessary permission in this regard also, as the District Project Coordinator had corrected the place of the institution in the permission letter, considering which the institution accepted her as a regular student. Shri Mishra, further argues that as regards the order of disengagement dated 11.03.2020, the same was never served upon the petitioner at any point of time, but was attached with the order of rejection of her representation. The order of disengagement, therefore, has no force. It is also argued that the petitioner had to remain absent under compelling circumstances and she did so by submitting leave applications supported by medical documents on every occasion. So, it cannot be treated as unauthorized absence of the petitioner.

7. Shri S.N. Patnaik, learned State Counsel would argue that there is no proof that the letter granting permission was ever corrected. Since the petitioner was specifically permitted to undergo B.Ed. training from the institution at Keonjhar, she could not have unilaterally taken a decision to do so at another institution. Shri Patnaik further argues that the petitioner remained unauthorized absent continuously and though she submitted some leave applications, the same could not have been considered having regard to the terms and conditions of her engagement, which provides for only 12 days CL in a calendar year. Her representation was, therefore, rightly rejected and she was disengaged from service.

8. The first question that falls for consideration is, whether the petitioner had undergone B.Ed. training without permission of the competent authority. In this regard, attention of this Court is drawn to the copy of the letter dated 09.12.2014 of the District Project Coordinator, Koraput, whereby she was permitted to appear in the B.Ed. course institutionally in KSUB, Keonjhar. The petitioner claims that there is no such institution at Keonjhar, but the institution having the same name situated at Bhanjanagar. The State has not disproved such contention, inasmuch as, it has not been stated that there is in fact an institution by the same name at Keonjhar. Though the petitioner claims that having come to know of the above, she got the letter of permission corrected from Keonjhar to Bhanjanagar, yet nothing has been placed on record to substantiate such stand. Nevertheless, it has not been disputed that the petitioner did undergo the course at KSUB-CTE, Bhanjanagar. It is reasonable to suppose that the College authorities must have accepted her as a student basing on the permission granted by her competent authority. Even otherwise, Clause-13 of her engagement order requires the selected untrained candidate to acquire training qualification within a period of five years at her own cost. The factual position that emerges thus is, the petitioner duly completed her B.Ed. course and the same was with permission of the competent authority. The only discrepancy is with regard to the place of the institution. According to the considered view of this Court, the same is immaterial when it is not the case of the authorities that the course undertaken by

the petitioner is not otherwise acceptable. Thus, she having acquired B.Ed. qualification and that too being permitted by the competent authority, it cannot be said that she had done so without prior permission. The finding of the Collector while rejecting her representation is, therefore, not tenable. Taking this argument forward, it can be easily held that there being no such institution at Keonjhar, it was the competent authority himself, who has to be blamed for mentioning Keonjhar, instead of Bhanjanagar, in the permission letter in the first place. Needless to say, the petitioner cannot be taken to task for the mistake committed by the competent authority.

9. As regards the effect of non-service of the order of disengagement on the petitioner, it is seen that in the counter affidavit it has been stated under paragraph-11 that the District Project Coordinator was instructed to serve the order dated 11.03.2020 on the petitioner for her reference. Nothing has been stated as to if such order was actually served upon her or not. Surprisingly, in the same affidavit it is stated under paragraph-15 that the order was issued by the competent authority and was forwarded to the Block Education Officer for service on the petitioner. Again, nothing has been stated as to if the order was actually served upon the petitioner. Be that as it may, fact remains that the petitioner's disengagement as Sikshya Sahayak was on annual contract basis, which is required to be renewed every year. Admittedly, the contract was not renewed after 31.03.2016. Such being the case, the question of disengagement appears to be redundant.

10. Coming to the other ground cited by the Collector for rejecting the representation of the petitioner, i.e., her alleged unauthorized absence, as already stated, the petitioner, after completing her B.Ed. course, joined but availed medical and maternity leave for a fairly long period. Her leave applications, along with the joining reports, were forwarded by the Block Education Officer to the District Project Coordinator vide letter dated 28.05.2018. It has nowhere been stated by the authorities that her leave applications were forged or manufactured. A stand has been taken that a Sikshya Sahayak can avail leave up to 12 days in a calendar year. While it is true that the terms and conditions prescribe such limit, but then the same would hardly be applicable to a lady availing maternity leave, which obviously would exceed the limit of 12 days. Furthermore, the petitioner has enclosed certain medical certificates to justify her leave or absence. These aspects ought to have been considered by the Collector from a proper perspective instead of rejecting the same at the threshold. This Court need not emphasize the well-known legal principle that law cannot operate in a vacuum. If a strict adherence of the terms and conditions regarding grant of leave to a Sikshya Sahayak would be insisted, it would lead to a situation, where a lady Sikshya Sahayak required to undergo maternity leave would lose her employment. This obviously cannot be the intent of the so called terms and conditions of engagement of Sikshya Sahayak, as it would amount to denial of the fundamental right of a person guaranteed by the Constitution of India under Article 21.

11. From the conspectus of the analysis made above, this Court is of the considered view that the impugned order as at Annexure-9 passed by the Collector cannot be sustained in the eye of law. Consequently, the so called order of disengagement as at Annexure-10 issued without any proof of the same being served on the petitioner also cannot be sustained.

12. In the result, the writ application is allowed. The impugned orders are hereby quashed. The opposite party/authorities are directed to re-engage the petitioner as Sikshya Sahayak. It is made clear that the petitioner shall not be entitled to any financial benefit for the period during which she did not render any service to the establishment, but the same shall count notionally towards continuity of service for grant of other service benefits.

Headnotes prepared by:

Shri Jnanendra Ku. Swain , Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case :

Writ application allowed.

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2025 (II) ILR-CUT-864

**PRAMOD KUMAR PADHI & ORS.
V.
STATE OF ORISSA & ANR.**

[W.P.(C) NO. 16511 OF 2021]

WITH

[CONTC NO. 7398 OF 2022]

16 MAY 2025

[A.K. MOHAPATRA, J.]

Issue for Consideration

Whether petitioners' service should be regularized.

Headnotes

ODISHA GROUP-C AND GROUP-D (CONTRACTUAL APPOINTMENT) RULES, 2013 – Regularization – Petitioners are working on contractual basis at the Odisha Bhawan, Mumbai operated by the Home Department, Government of Odisha – Petitioners were appointed in the year 2010 on contractual basis on consolidated pay – Petitioners contended that despite continuing in service for more than a decade and having completed six years of service on 01.07.2016, their services have not yet been regularized as per 2013 Rule – State Opposite Party contended that the petitioners cannot seek regularization unless they are appointed in

accordance with provision under Rule 5(2) of 2013 Rule – Whether the petitioners’ service should be regularized.

Held: Yes – This Court, while adjudicating the issue at hand, exercises ample caution so as to refrain from placing unnecessary reliance on the initial label of ‘contractual appointment’ affixed to the Petitioners. It is the duty of this court to look beyond superficial labels and consider the ground realities of the nature of employment of the Petitioners, as borne out from the record, i.e. the continuous, unblemished and long-term service rendered by the Petitioners and the absence of any illegalities in their initial appointment, more so, keeping in view the commitment of the constitutional courts to the cause of humanity and to ensure that the poor, hapless and lowly paid workers do not suffer in the hand of the employer and are not exploited by such employer – Therefore, refusal of regularization of service of the Petitioners merely on the ground that their initial/original term of engagement does not specifically state so, would be contrary to the principles of fairness and equity. (Para 41)

Citations Reference

State of Haryana and others Vs. Piara Singh and others, **AIR 1992 Supreme Court 2130**; Jaydev Shrichand Danani Vs. State of Gujarat, **AIR 1992 Supreme Court 2152**; Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors., **AIR 2006 Supreme Court 1806**, State of Karnataka and Others Vs. M.L. Kesari and Others, **(2010) 9 Supreme Court Cases 247**; Nihal Singh and others Vs. State of Punjab and others, **(2013) 14 Supreme Court Cases 65**, Amarkant Rai Vs. State of Bihar and others, **(2015) 8 Supreme Court Cases 265**, Narendra Kumar Tiwari and others Vrs. State of Jharkhand and others, **(2018) 8 SCC 238**; Shripal and Anr. Vs. Nagar Nigam Gaziabad, **2025 SCC OnLine SC 221**; Jaggo Vs. Union of India and Ors., **2024 SCC OnLine SC 3826**, Bijan Kumar Mohanty & others Vs. Water & Land Management Institute (WALMI) & others, **2015 (I) OLR-347**; Diilip Kumar Baral Vs. Biju Pattnaik University and Technology (BPUT), represented through the Registrar, Rourkela and another, **2013 (II) OLR-210**; Basil Lakra Vs. State of Orissa, **2013 (II) OLR-214**; Managing Committee, Majhipada M.E. School Vs. State of Orissa and others, **1992 (I) OLR 447**; Dr.Prasana Kumar Mishra Vs. State of Orissa and others, **2016 (Supp.-I) OLR-507**; Rintu @ Narottam Naik Vs. State of Orissa, **2016 (Supp.-I) OLR-517**; State of Jammu and Kashmir v. District Bar Association, Bandipora, **(2017) 3 SCC 410**; Narendra Kumar Tiwari v. State of Jharkhand, **(2018) 8 SCC 238**; Jaggo v. Union of India, **2024 SCC OnLine SC 3826**; Vinod Kumar v. Union of India, **(2024) 1 SCR 1230 – referred to.**

List of Acts

Odisha Group-C and Group-D (Contractual Appointment) Rules, 2013.

Keywords

Contractual appointment; Temporary engagement; Sanctioned post; Regularization of service; *Ad hoc*; Irregular; Illegal; Consolidated pay; Consequential service and financial benefits.

Case Arising From

Non-regularization of the contractual appointment of the petitioners.

Appearances for Parties

For Petitioner : Mr. Sameer Kumar Das

For Opp. Parties : Mr. S.K. Parhi, A.S.C.

Judgment/Order**Judgment**

A.K. MOHAPATRA, J.

1. The present writ petition has been filed by the Petitioners with a prayer to regularize the contractual appointment of the Petitioners according to the Odisha Group-C and Group-D (Contractual Appointment) Rules, 2013, w.e.f. 01.07.2016 along with a further prayer to grant the Petitioners all the consequential service and financial benefits as is due and admissible to them, within a stipulated time.

FACTUAL MATRIX OF THE PRESENT CASE:

2. The essential facts of the matter that led to the filing of the present writ petition are as follows; the present Petitioners are all employees engaged in contractual appointment at the Odisha Bhawan, Mumbai, operated by the Home Department, Government of Odisha. Initially, the Government of Odisha, vide letter No.4416 dated 02.02.2010 (reproduced under Annexure-1 series to the present writ petition) requested the Principal, Institute of Hotel Management and Catering Technology, VSS Nagar, Bhubaneswar to sponsor suitable persons to be appointed in different posts at the then newly proposed Odisha Bhawan, Mumbai. Following such communication, the names of several candidates were received by the Additional Secretary to Government in the Home Department, who, thereafter issued a letter dated 05.04.2010 (Annexure-2 series) directing the Petitioners, amongst other persons, to be present before the Selection Board. Out of the 35 (thirty five) candidates sponsored by the Institute, 17 (seventeen) candidates appeared before the Selection Committee and, amongst those 17 candidates, 7 (seven) candidates were selected by the Selection Committee in the interview conducted on 20.04.2010 vide Memo No.26267 dated 16.06.2010 (under Annexure-3 to the present writ petition), including the present Petitioner No.1– who was appointed against the post of Receptionist-in charge, the Petitioner No.2 – who was appointed as House Keeping-in-charge and the Petitioner No.3 – who was selected as the waiter. The Petitioners were all appointed on contractual basis on consolidated pay. The joining reports of the Petitioners are also available on record under Annexure-4 series.

3. Initially, the Petitioners were appointed on contractual basis for six months and their appointment has been regularly extended from time to time, as is evident from the documents under Annexure-5 series, by the Home Department and the last order of such extension was passed in favour of the Petitioners on 07.04.2021, wherein their contractual appointment was extended by a period of six months w.e.f. 01.02.2021. At present, it is the grievance of the present Petitioners that despite continuing uninterruptedly in service for more than a decade and having completed six years of service on 01.07.2016, the services of the Petitioners have not yet been regularised as

per the provisions of the Odisha Group-C and Group-D (Contractual Appointment) Rules, 2013 (herein referred to as the “2013 Rules”). Being aggrieved by such conduct of the State-Opposite Parties in not regularising their services, the Petitioners have approached this Court.

4. It is pertinent to mention here that initially, vide order dated 05.07.2021 passed in the present writ petition, a direction was given to the State-Opposite parties to look into the matter and take a decision with respect to the grievance of the Petitioners by keeping in view Annexures-1 & 2, the Odisha Group-C and Group-D (Contractual Appointment) Rules, 2013 and the recommendation made by the Officer on Special Duty vide Annexure-8. Against the aforesaid order, the Opposite Party Nos.1 & 2 filed an appeal bearing W.A. No.919 of 2021 on the ground that they have not been given an opportunity of being heard before passing the aforesaid order dated 05.07.2021. The said writ appeal was disposed of vide order dated 12.09.2022 allowing the Opposite Party Nos.1 & 2 to file ‘parawise reply’ to the present writ petition.

5. Heard Mr. Sameer Kumar Das, the learned counsel for the Petitioners and Mr.S.K.Parhi, learned A.S.C appearing for the State-Opposite Parties. The contentions advanced by the Petitioners and the State-Opposite Parties, are as follows;

CONTENTIONS OF THE PETITIONERS

6. The Learned Counsel for the Petitioners, at the outset, has contended that while the Petitioners were continuing in their contractual posts, the State Government promulgated the Odisha Group-C & Group-D Posts (Contractual Appointment) Rules, 2013 with a view to regularize the service of contractual employees that have been duly appointed by the State Government on the completion of satisfactory service of six years. Learned Counsel for the Petitioners submitted that the Petitioners were duly appointed by the Home Department, Government of Odisha after following the due selection procedure conducted by the Selection Committee, and, after their selection, they have been performing their duties diligently. In fact, considering the satisfactory performances of the Petitioners, the Opposite Party No.2-Head of Establishment of Odisha Bhawan, Mumbai, has recommended the case of the present Petitioners for regularisation w.e.f 01.08.2016, vide his letter dated 17.06.2016 (under Annexure-8 to the present writ petition). To lead further credence to his stance, the Learned Counsel for the Petitioners contended that earlier the Petitioners had filed a grievance petition addressed to the Hon’ble Chief Minister of the State and in pursuance thereof the Home Department has given his e-compliance, dated 08.08.2017, wherein it has been stated that the Finance Department has created three permanent posts and as against which the present petitioners were recommended to be absorbed (Annexure-7 to the writ petition). Therefore, the Learned Counsel for the Petitioners contended that it is clear that not only were there sanctioned posts for the Petitioners, but also they have been recommended for being absorbed into the said posts by the Opposite Party No.2.

7. Next, referring to the the Odisha Group-C & Group-D Posts (Contractual Appointment) Rules, 2013 (i.e. the “2013 Rules”), the Learned Counsel for the Petitioners contended that the aforesaid rules, which were in force at the time of the filing of the present writ petition, posit that persons that have been in contractual service

for more than 6 (six) years, after having being appointed by following a proper selection process, shall be eligible for having their services regularised. In the instant case, the Learned Counsel for the Petitioners submitted that not only did the Petitioners complete their initial term of appointment, but also, as per the advertisement dated 02.02.2010 (under Annexure-1) wherein it has been mentioned that the contract of the Petitioners is liable to be extended, the Petitioners have been allowed extension of their contracts owing to their satisfactory performance. As such, the Learned Counsel for the Petitioners contended that the Petitioners completed 6 (six) years of service on 01.07.2016 and have been continuing uninterruptedly in the same post for more than a decade, around 12 years *in toto*, at this point.

8. Moreover, it was also contended that the posts against which the Petitioners are continuing are clearly substantive posts, and, as such, the Petitioners deserve to have their services regularised in terms of the aforesaid 2013 Rules. Additionally, the Petitioners had earlier approached the concerned authorities through proper channel by filing representations (under Annexure-6 to the present writ petition) for regularisation of their services. Learned counsel for the petitioner submitted that such representations of the Petitioners have been duly forwarded to the competent authorities, however, no action has been taken therein till date. To support his contentions, the Learned Counsel for the Petitioners has once again referred to the copies of the acknowledgement receipt, of their grievance petition, by the Home Department, Odisha, Bhubaneswar and the recommendation letter of the Officers on Special Duty of Odisha Bhawan, Mumbai dated 17.06.2016, under Annexures-7 and 8 respectively.

9. The Learned Counsel for the Petitioners, at this point, directly controverted the stance taken by the State-Opposite Parties in their counter that since the manpower required for Odisha Bhawan, Mumbai is to be managed by outsourcing basis, the regularisation of the service of the Petitioners is not required. Furthermore, in reply to the contention of the State-Opposite Parties that the Petitioners cannot be regularised as per Rule 5(2) of the 2013 Rules since they were not selected by a regular process of recruitment, the learned counsel for the petitioners has drawn the attention of this court to the Government letter No.4416 dated 02.02.2010 wherein a request was made to the Institute to recommend names of suitable candidates and the letter dated 05.04.2010 intimating the Petitioners to appear before the Selection Board (under Annexures 1 and 2 respectively) and contended that the petitioners were duly selected by following a recruitment process that was conducted by the Home Department.

10. Similarly, with respect to the contention by the State-Opposite Parties that there were no sanctioned posts against which the Petitioners can claim their regularisation, the Learned Counsel for the Petitioners referred to the e-grievance receipt under Annexure-7 and contended that it is clear from the aforesaid document that the Finance Department has created 3 permanent posts against which the Petitioners are to be absorbed. Further, referring to the letter dated 12.02.2018 (under Annexure-9 to the present writ petition) by the Special Secretary to the Government addressed to the Principal Accountant General (A&E), the Learned Counsel for the Petitioners has submitted that 4 (four) posts have been created at the Odisha Bhawan, Navi Mumbai in lieu of abolition of 7 (seven) posts of Room Boy.

11. The Learned Counsel for the Petitioners further contended that as per the aforesaid document, the said posts have been created with the concurrence of the Finance Department vide file No.FIN-GSI-CADRE-0004-2016. Therefore, despite the availability of such posts, the State-Opposite Parties have not regularised the services of the Petitioners on the ground that they have been disengaged from service. He further submitted that no disengagement order against the Petitioners has been filed by the State-Opposite Parties. In fact, referring to the order dated 09.11.2022 passed by this court in the present writ petition, the Learned Counsel for the Petitioners contended that in the said order, as an interim measure, it was directed that the Petitioners are not to be disengaged. Therefore, it is undisputed that the Petitioners are continuing in service and, as such, their services ought to be regularised.

12. Further, the learned counsel for the Petitioners asserted that the Petitioners having continued uninterruptedly in their posts have garnered a legitimate expectation to have their services regularised. To support his contention, the Learned Counsel for the Petitioners has placed reliance on the following judgements of the Hon'ble Supreme Court and of this court to underline the law with regard to regularisation of the service of contractual employees;

a. State of Haryana and others Vs. Piara Singh and others, reported in *AIR 1992 Supreme Court 2130*,

b. Jaydev Shrichand Danani Vs. State of Gujarat, reported in *AIR 1992 Supreme Court 2152*,

c. Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors., reported in *AIR 2006 Supreme Court 1806*,

d. State of Karnataka and Others Vs. M.L. Kesari and Others, reported in *(2010) 9 Supreme Court Cases 247*,

e. Nihal Singh and others Vs. State of Punjab and others, reported in *(2013) 14 Supreme Court Cases 65*,

f. Amarkant Rai Vs. State of Bihar and others, reported in *(2015)8 Supreme Court Cases 265*,

g. Narendra Kumar Tiwari and others Vrs. State of Jharkhand and others, reported in *(2018) 8 SCC 238*,

h. Shripal and Anr. Vs. Nagar Nigam Gaziabad, reported in *2025 SCC OnLine SC 221*,

i. Jaggo Vs. Union of India and Ors., reported in *2024 SCC OnLine SC 3826*,

Learned Counsel for the Petitioners has also placed reliance on the following judgements of this Court;

a. Bijan Kumar Mohanty & others Vs. Water & Land Management Institute (WALMI) & others, reported in *2015 (I) OLR-347*,

b. Diilip Kumar Baral Vs. Biju Pattnaik University and Technology (BPUT), represented through the Registrar, Rourkela and another, reported in *2013 (II) OLR-210*,

c. Basil Lakra Vs. State of Orissa, reported in *2013 (II) OLR-214*

d. Managing Committee, Majhipada M.E. School Vs. State of Orissa and others, reported in 1992(I)OLR447,

e. Dr.Prasana Kumar Mishra Vs. State of Orissa and others, reported in 2016(Supp.-I) OLR-507,

f. Rintu @ Narottam Naik Vs. State of Orissa, reported in 2016 (Supp.-I) OLR-517

13. Relying on the aforesaid judgments, the Learned Counsel for the Petitioners contended that the Petitioners have put in more than a decade of service as of yet and non-regularisation of their service, after such long tenure, amounts to exploitation. In the aforesaid context, learned counsel for the Petitioner referred to the latest judgment of the Supreme Court in *Jaggo (supra)* & *Shripal (supra)*. Moreover, it was contended that once the concerned authorities appointed the Petitioners by following their own selection process, they cannot question the same just to deny regularisation of service of the Petitioners.

14. Furthermore, the Learned Counsel for the Petitioners accosted the caprices of the State-Opposite Parties in not regularising their services by submitting that in the case of many similarly situated persons the State Government has notionally regularised the service of contractual appointees, from the date of their joining in contractual appointment in different posts pursuant to the 2013 Rules. However, the present petitioners, despite their legitimate claim for regularisation, have been left to suffer. Additionally, the Opposite Party No.2, being the very officer who has recommended the regularisation of services of the Petitioners to the Opposite Party No.1, cannot then question his own actions in the counter affidavit and, as such, is estopped from raising any objection to his own proposal.

15. In fact, the Learned Counsel for the Petitioners has referred to the letter dated 03.03.2021 of the G.A.&P.G. Department (under Annexure-H/1) and argued that since the Opposite Party No.2, being the responsible officer of the State Government, had earlier recommended the names of the Petitioners for regularisation of their service, such action of the Opposite Party No.2 cannot be simply thrown away by the aforesaid GA&PG Department letter.

16. Moreover, the Learned Counsel for the Petitioners has also submitted that the posts at Odisha Bhawan, Mumbai, with respect to the present Petitioners, cannot be said to be temporary since the said establishment, from the date of its opening, has now become a permanent establishment of the State Government and recently the Hon'ble Chief minister of the State has laid a foundation stone for the extension of the establishment. Therefore, it can very well be inferred that there is a long-term need of the services rendered by the Petitioners. As such, even if the posts were not created by an order, but a due procedure was followed while appointing the Petitioners and they have been continuing for over a decade, ergo, the Learned Counsel for the Petitioners contended that the Petitioners are liable to have their services regularised from the initial date of their joining, i.e. 01.07.2010.

17. In view of the aforesaid contentions, the Learned Counsel for the Petitioners contended that the present Petitioners have been discharging their duties uninterruptedly,

with an unblemished record, in the aforesaid substantive posts for over a decade and as such, their services ought to have been regularised. However, for the latches on the part of the State-Opposite parties, the Petitioners have had to suffer. Hence, the Learned Counsel for the Petitioners contended that the State-Opposite Parties be directed to regularize the contractual employment of the Petitioners under the 2013 Rules, w.e.f 01.07.2016 and to further direct the State-Opposite Parties to extend all the consequential service and financial benefits in favour of the Petitioners.

CONTENTIONS OF THE STATE-OPPOSITE PARTIES

18. Learned Counsel for the State-Opposite Parties at the outset have naturally opposed the stand taken by the Petitioners and contended that the Petitioners are presently not continuing in service and they have been disengaged from 27.06.2022. It was stated that the Petitioners were actually engaged temporarily at Odisha Bhawan, Mumbai for six months, vide Home Department Office Order No.26265 dated 16.06.2010. He further contended that first the willingness of the Petitioners was received (under Annexure-E/1) and then they were engaged in various types of jobs different from their initial engagement and their engagement was later extended through extension orders (under Annexure-F/1 series to the Counter Affidavit)

19. Thereafter, the Learned Counsel for the State-Opposite Parties referred to the 2013 Rules and contended that persons appointed on contractual basis prior to the commencement of the 2013 Rules and below 45 years of age, shall be allowed to participate in the recruitment process under Rule-5 of the aforesaid Rules for any Group C or Group D posts, provided they satisfy all other eligibility criteria for such post as laid down in the relevant recruitment rules. Only then can such persons be allowed relaxation of upper age limit for entry into Government service.

20. Next, relying on the 2013 Rules again, specifically Rules-3, 4 and 8, the Learned Counsel for the State-Opposite Parties submitted that the 2013 Rules do not allow for regularisation of contractual service of the Petitioners. Thereafter, specifically referring to Rules-4 and 8, the Learned Counsel for the State-Opposite Parties contended that on a bare perusal of the aforesaid rules it is clear that the present Petitioners fall under the categories enshrined under Rules-4 and 8. Therefore, as per the aforesaid rules, the Petitioners are eligible to get the benefit under Rule-8 i.e. relaxation of upper age-limit for entry into government service and one percent of extra marks on the total marks of the examination for each completed year of continuous service. However, the Learned Counsel for the State-Opposite Parties contended that the petitioners cannot seek regularisation unless they are appointed in accordance with the provisions under Rule-5(2). Since, this is not the scenario in the present case, the claim of the Petitioners for regularisation of their service is not permissible in law.

21. Addressing the contentions of the learned counsel for the Petitioners with regard to the creation of substantive posts, the Learned Counsel for the State-Opposite Parties contended that no posts were actually created during the inaugural period of Odisha Bhawan, Mumbai. Instead, the Petitioners were engaged on temporary basis. He further contended that the terms of the initial engagement of the Petitioners clearly indicates that the Petitioners were engaged subject to submission of an undertaking to the effect that

they shall not claim for any regular scale of pay and their engagement does not confer any right on the petitioners to lay any claim for regular appointment in the future. Furthermore, the aforesaid engagement of the Petitioners was also liable to be terminated automatically after expiry of the period of engagement.

22. To lend further weight to his submissions, the Learned Counsel for the State- Opposite Parties referred to the GA&PG Department Letter No.7210(e) dated 03.03.2021 (under Annexure H/1 to the present writ petition) and contended that as per Note-1(a) of the said letter, the appointments which have been made against non-sanctioned posts are illegal appointments and, as such, the service of the Petitioners cannot be regularised. The learned counsel for the State-Opposite Parties, reiterated that no posts were actually created at the time of appointment of the Petitioners and the Petitioners were engaged temporarily at the relevant time. As such, it was contended that the Petitioners are not eligible to get the benefit of regularisation of their services.

23. Next, addressing the contention of the Petitioners with regard to the creation of permanent posts by the Finance Department, as per the e-grievance petition vide No.OR114/E/2017/00018 (under Annexure-7), the Learned Counsel for the State- Opposite Parties contended that no permanent posts were actually created in 2017 for absorption of the Petitioners. In this context, the learned counsel for the State-Opposite Parties also submitted that no concurrence has been given by the Finance Department for the creation of posts in the year 2016. In fact, later on, vide Home Department letter No.6097 dated 12.02.2018, four posts were created in lieu of abolition of seven posts of “Room Boys” and the said posts are required to be filled up through the relevant recruitment rules and by following the due process.

24. In view of the aforesaid contentions, the Learned Counsel for the State-Opposite Parties submitted that the Petitioners’ claim for regularization lacks substance and not supported by law, and as such, the present writ petition is devoid of merit and is liable to be dismissed.

ANALYSIS OF THE COURT

25. Heard learned counsel for the petitioner and learned counsel for the State. Perused the writ application as well as documents annexed thereto.

26. After a careful analysis of the factual background of the present case and after weighing the rival submissions of the counsel for both parties, this court is of the view that the primary issue involved in the present writ petition is with respect to the status of the service of the Petitioners. The Petitioners, referring to their long and continuous service of more than a decade, claim regularization under the 2013 Rules and on the basis of a catena of judgments of this Court and the Hon’ble Supreme Court. The State- Opposite Parties have naturally denied their claims on the ground that the Petitioners, being contractually employed, are bound by their contract of appointment which does not vest any right of regularization on them, and the 2013 Rules relied on by the Petitioners does not accord the benefit of regularization of the service to the Petitioners. Therefore, to adjudicate the matter at hand, this Court is first required to examine the applicability of the 2013 Rules to the case of the Petitioners.

27. On perusal of the 2013 Rules, it appears that the same came into effect in the year 2013, i.e. much after the initial appointment of the Petitioners in the year 01.07.2010. The aforesaid rules stipulate that from the date of their commencement there shall be no *ad hoc* appointment in Group-C and Group-D posts under the State Government. Further, as per Rule-3, it appears that the said rules are applicable to Group-C and Group-D posts that have been filled via direct recruitment and to contractual appointments made under Rule-4 (from the date of appointment), provided the appointment has been made under Rule-5. The said Rules also explicitly exclude (under subrule-3 to Rule-3) from their purview Group-C and Group-D posts pertaining to functions like that of “Watch & Ward, Sweeping and Cleaning, Gardening etc.” and the manpower required to perform such functions shall be managed on outsourcing basis. Next, Rule-4 of the aforesaid rules divide personnel appointed contractually prior to the commencement of the 2013 rules into two categories. The Petitioners, as it appears, fall under category-II of Rule-4. At this point, it is pertinent to mention that vide G.A.&P.G. notification dated 16th October 2022, the State Government has promulgated the ‘Odisha Group “B”, “C” and Group “D” posts (Repeal and Special Provisions) Rules, 2022’ to repeal the ‘Odisha Group-B posts (Contractual Appointment) Rules, 2013’ and the ‘Odisha Group “C” and Group “D” posts (contractual Appointment) Rules, 2013’.

For better appreciation, the relevant rules of the 2013 Rules are extracted hereinbelow;

“3. Applicability: (1) *These rules shall apply to the Group “C” and Group “D” posts, which are filled up by way of direct recruitment;*

Provided that the State Government may by notification exclude any post from the purview of these rules

(2) *They shall also apply to the categories of contractual appointments made under rule 4 from the date of contractual appointment, if any, made under rule 5.*

(3) *These rules shall not apply to the Group ‘C’ and Group ‘D’ posts for services and functions like Watch & Ward, Sweeping and Cleaning, Gardening etc. Manpower required for such services/ functions shall be managed by outsourcing basis.*

(4) *These rules shall also not apply to contractual appointments made under-*

(a) *Temporary Plan Schemes (including those under Centrally Sponsored Plan Scheme, Externally Aided Projects);*

(b) *Temporary Establishments; and*

(c) *Tenure Based Posts:*

Provided that persons appointed on contractual basis under these schemes prior to the commencement of these rules, who are below 45 years shall be allowed to participate in the recruitment process under rule 5 for any Group C or Group D posts, if they satisfy all other eligibility criteria for the such post as laid down in the relevant recruitment rules and shall be allowed relaxation of upper age limit for entry into Government service.

NOTE: *Persons appointed under sub-rule (2) and proviso to sub-rule (4) shall get the benefit of these rules only after they were recruited and appointed to any post under rule 5.*

4. Categorisation of existing Contractual Employees:

For the purpose of these rules all contractual appointments made prior to the commencement of these rules shall be classified into two categories; namely:-

(a) *Category I: Contractual appointments/ engagements made against contractual posts created with the concurrence of Finance Department without following the recruitment procedure including the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 and the rules made thereunder and rules regulating recruitment for the regular posts.*

(b) *Category II: Contractual Engagements made through manpower service provider agencies with concurrence of Finance Department.*

5. Recruitment Procedure: (1) Recruitment to the posts shall be made on the basis of the provisions of the **relevant recruitment rules or executive instructions, as the case may be in force.**

(2) Notwithstanding anything contained in the relevant **recruitment rules or executive instructions, as the case may be in force** all appointments made pursuant to subrule(1) shall, from the date of commencement of these rules, be on contract basis

...

...

8. Special Provision for different Categories of existing Contractual Employees:

(a) *The contractual employees belonging to Category-I and the persons provided by the manpower service provider agencies under Category-II. who shall be less than 45 years of age and shall have completed at least one year of continuous service, in case they apply for Recruitment under sub-rule(1) of rule 5 for any Group C and Group D posts, shall be allowed relaxation of upper age limit for entry into Government service: provided they satisfy all other eligibility criteria for the post as laid down in the relevant recruitment rules.*

b) *They shall be allowed one per cent extra marks on the total marks of the examination for each completed year of continuous service subject to a maximum of fifteen per cent, which shall be added to the marks secured by them for deciding the merit position.*

...

...

10. Conditions of Service on Regular appointment;

(1) Regular Appointments: *On the date of satisfactory completion of six years of contractual service under subrule (1) of rule 9, they shall be deemed to have been regularly appointed. A formal order of regular appointment shall be issued by the appointing authority.*

(2) Pay and other benefits: *On regular appointment they shall be entitled to draw the time scale of pay plus Grade Pay with DA and other allowances as admissible in the corresponding Pay Band.*

(3) Other conditions of service: (a) *The other conditions of service shall be such as has been provided in the relevant recruitment rules.*

(b) *The conditions of service in regard to matters not covered by sub-rule (2) and clause (a) of this subrule shall be the same as are or as may from time to time be prescribed by the State Government."*

28. From the aforesaid analysis, particularly keeping in view Rules-3, 4, 5, 8 and 9, it is clear that the benefit of regularization of service under the aforesaid 2013 Rules, in

favour of persons appointed prior to the commencement of the 2013 Rules, can only be granted if they have been appointed under Rule-5. Since the appointment of the present Petitioners was not done under the said Rule-5(2), the benefit of regularization of service as claimed for by the petitioners under the 2013 Rules cannot be granted to them.

29. Next, since the issue at hand is with regard to the regularization of the service of the Petitioners, this court is required to undertake an analysis of the nature of service of the Petitioners. Firstly, with regard to the duration of service of the Petitioners, it is an admitted fact on record that the Petitioners have joined in service on 01.07.2010 and the last order of extension, for a period of 6 (six) months, was passed in favour of the petitioners on 01.02.2021. This means, at the very least, the Petitioners were in service till 01.08.2021. Besides, the State-Opposite Parties, in their written submissions as well as their Reply, dated 28.02.2025, to Additional Affidavit by the Petitioners, have admitted that the Petitioners were in service till 27.06.2022, where after they have been disengaged. However, no order of disengagement issued in favour of the Petitioners can be found on record. Therefore, it can be safely ascertained that admittedly the Petitioners have imparted a service of at least 11 years and 11 months. Nevertheless, it is well established that the Petitioners have indeed served continuously for more than a decade, against the posts they were initially appointed to, without any intervention of courts or tribunals.

30. Furthermore, with regard to the initial appointment of the Petitioners, it cannot be said that the same is vitiated by illegalities since there was a clear requisition from the Home Department of the State Government to the Institute to sponsor suitable personnel for appointment. Following such recommendation/ sponsor, several candidates including the Petitioner appeared before a Selection Committee who then finalized the list of seven candidates including the Petitioner who were given appointment at Odisha Bhawan, Mumbai. Neither the selection procedure nor the constitution of Selection Committee has been challenged by the State-Opposite Parties. The qualification possessed by the Petitioners has also not been questioned by the State-Opposite Parties. As such, it would be apposite to conclude that the Petitioners were initially duly appointed against their contractual posts and that their initial appointment does not, in any way, seem illegal.

31. To supplement the aforesaid reasoning, reference may be had to the decision of the Hon'ble Supreme Court in **State of Jammu and Kashmir v. District Bar Association, Bandipora**, reported in (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's judgement** (reported in (2006) 4 SCC 1). 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.”

32. Now, with regard to the nature of employment, i.e. the nature of work performed by the Petitioners, it is borne from the record that the Petitioners were appointed as Receptionist-in-charge, House Keeping-in-charge and Waiter respectively. It is clear that the duties of the aforesaid nature ascribed to the present Petitioners form an essential aspect of the day-to-day operational functionality of the Odisha Bhawan premises. Moreover, the work assigned to the petitioners, which is essential in nature, was being performed by them daily on a continuous basis without any break whatsoever over a prolonged period of more than a decade. Additionally, their engagement, post their initial appointment, was not sporadic, instead, it was recurrent/regular and akin to the duties ascribed to regularly sanctioned posts. Therefore, it is clear that the work performed by the Petitioners is perennial in nature, which is underlined by the fact that the premises of Odisha Bhawan, Mumbai has recently received an extension.

33. Moreover, there have been no complaints or grievances against the Petitioners, during the period of their service, pertaining to their performance. On the contrary, their services have been extended regularly (as evidenced by the documents under Annexure-F/1 series) over the years and they have received recommendation (under Annexure-8) by the Officer on Special Duty for regularization of their services. Also, in reply to the e-grievance petition of the Petitioners (under Annexure-7 to the writ petition), it has been stated that the Finance Department has created 3 permanent posts against which the Petitioners “will be recommended to be absorbed”. Furthermore, as to the presence of sanctioned vacancies against which the Petitioners’ claim can be accommodated, it is revealed from the record, specifically, the Home Department letter No.6097 dated 12.02.2018 (under Annexure-9), that admittedly 4 sanctioned posts have been specifically created by abolishing seven ‘Room Boy’ posts.

34. In adjudication of the matter at hand, it is pertinent to mention here that the law with regard to regularization of service of contractual employees is no more *res integra* and it has now been well settled in view of a catena of decisions by the Hon’ble Supreme Court. In Secretary, State of Karnataka v. Uma Devi, reported in (2006) 4 SCC 1, the Hon’ble Apex Court has made the following observations;

“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 abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and

their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

35. Thereafter in **State of Karnataka v. M.L. Kesari**, reported in (2010) 9 SCC 247, the concept of a ‘one-time measure’, as was directed in **Uma Devi’s case** (supra), was further explained in paragraphs 9, 10 and 11 as;

“9. The term “one-time measure” has to be understood in its proper perspective. This would normally mean that after the decision in *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularise their services.

10. At the end of six months from the date of decision in *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , cases of several dailywage/ad hoc/casual employees were still pending before courts. Consequently, several departments and instrumentalities did not commence the one-time regularisation process. On the other hand, some government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of para 53 of the decision in *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , will not lose their right to be considered for regularisation, merely because the onetime exercise was completed without considering their cases, or because the six-month period mentioned in para 53 of *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] has expired. The one-time exercise should consider all daily-wage/ad hoc/casual employees who had put in 10 years of continuous service as on 10-4-2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , but did not consider the cases of some employees who were entitled to the benefit of para 53 of *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one-time exercise will be concluded only when all the employees who are entitled to be considered in terms of para 53 of *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , are so considered.

11. The object behind the said direction in para 53 of *Umadevi* (3) [State of Karnataka v. *Umadevi* (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is twofold. First is to ensure that those who have put in more than ten years of continuous service without the

protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual basis for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10-4-2006 [the date of decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753]] without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] as a one-time measure."

36. Similarly, in **Narendra Kumar Tiwari v. State of Jharkhand**, reported in (2018) 8 SCC 238, the position of law regarding regularization in light of the judgement in **Uma Devi's case** (supra) was further clarified as follows;

"5. The decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.

...

7. The purpose and intent of the decision in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] 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 (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] and Kesari [State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826] sought to avoid

8. If a strict and literal interpretation, forgetting the spirit of the decision of the Constitution Bench in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1

: 2006 SCC (L&S) 753] , is to be taken into consideration then no irregularly appointed employee of the State of Jharkhand could ever be regularised since that State came into existence only on 15-11-2000 and the cut-off date was fixed as 10-4-2006. In other words, in this manner the pernicious practice of indefinitely continuing irregularly appointed employees would be perpetuated contrary to the intent of the Constitution Bench

...

10. Under the circumstances, we are of the view that the Regularisation Rules must be given a pragmatic interpretation and the appellants, if they have completed 10 years of service on the date of promulgation of the Regularisation Rules, ought to be given the benefit of the service rendered by them. If they have completed 10 years of service they should be regularised unless there is some valid objection to their regularisation like misconduct, etc.”

37. Finally, in **Jaggo v. Union of India**, reported in **2024 SCC OnLine SC 3826**, the Hon’ble Supreme Court has taken into consideration the long period of continuous service of the Petitioners, which was analogous to the duties performed by regular employees, while validating their claims for regularization of their services. In doing so, the Hon’ble Supreme Court has also paid heed to the fact that despite the label of contractual/ part-time workers the petitioners performed essential jobs satisfactorily and received regular contract extensions. The relevant paragraphs are quoted hereinbelow;

“10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants’ long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labeling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

...

12. Despite being labelled as “part-time workers,” the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants’ tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants’ termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.”

38. In fact, the Hon’ble Supreme Court, in **Jaggo’s case** (supra), has also reiterated and clarified the spirit of **Uma Devi’s** (supra) judgement as such;

“20. It is well established that the decision in **Uma Devi** (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and

necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly “irregular,” and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization.”

39. Recently, in **Vinod Kumar v. Union of India** reported in (2024) 1 SCR 1230, the Hon’ble Apex Court had held that mere procedural formalities cannot stand in the way of regularizing the service of an employee whose appointment was termed “temporary” but who has rendered services akin to that of a regular employee, over a substantial period of time, in the capacity of a regular employee. It has been observed in the relevant paragraphs (i.e. para 6 & 7) that;

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between “irregular” and “illegal” appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”

40. Therefore, as clearly gathered from the aforesaid decisions, it must be borne in mind that the decision in **Uma Devi’s case** (supra), later clarified in the decisions in **Narendra Nath Tiwari’s case** (supra) and **Jaggo’s case** (supra), was not intended to penalize employees that have rendered service for a long period of time thereby fulfilling certain ongoing and necessary functions of the State or its instrumentalities. Instead, the said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, the commendable objective underlying the judgment in **Uma Devi’s case** (supra) is being distorted and undermined when institutions invoke its dicta to summarily dismiss the claims of employees, even in instances where the appointments in question are not illegal but merely suffer from non-compliance with procedural requirements. It is regrettable that even though ‘temporary engagement’ is meant to address short term needs of institutions, temporary/contractual employment are increasingly becoming a mechanism to evade long-term obligations of the employer. Therefore, in cases where appointments were not illegal, but may have been irregular, and where employees have performed their duties continuously for an extended period “against the backdrop of sanctioned functions” (see paragraph 20 of the judgement in **Jaggo**), it becomes essential to ensure a just and compassionate approach

is adopted by the employer so far as the issue of regularization of services of such employees are concerned. When such employees have rendered long, consistent, and untainted service in roles/ jobs that are fundamentally required to be performed on a regular basis, the nature of their employment can, over the time, evolve from being ad-hoc or part-time or temporary into one strongly warranting equitable regularization.

41. As such, it is imperative that this Court, while adjudicating the issue at hand, exercises ample caution so as to refrain from placing unnecessary reliance on the initial label of ‘contractual appointment’ affixed to the Petitioners. It is the duty of this court to look beyond superficial labels and consider the ground realities of the nature of employment of the Petitioners, as borne out from the record, i.e. the continuous, unblemished and long-term service rendered by the Petitioners and the absence of any illegalities in their initial appointment, more so, keeping in view the commitment of the constitutional courts to the cause of humanity and to ensure that the poor, hapless and lowly paid workers do not suffer in the hand of the employer and are not exploited by such employer. Therefore, refusal of regularization of service of the Petitioners merely on the ground that their initial / original term of engagement does not specifically state so, would be contrary to the principles of fairness and equity.

CONCLUSION

42. In view of the aforesaid analysis, taking into consideration the long period of continuous and unblemished service of more than a decade rendered by the Petitioners and further taking into consideration the nature of work performed by the Petitioners at the establishment as well as the recommendations made in favour of the Petitioners for regularization of their services, and keeping in view the judgements discussed hereinabove, this Court deems while allowing the present writ petition directs the State- Opposite Parties to regularize the service of the Petitioners against available vacant posts from the date such posts were created by the Govt. of Odisha with all consequential service and financial benefits as would be due and admissible within a period of eight weeks from the date of communication of a certified copy of this judgement. Accordingly, the Petitioners are directed to be reinstated in service forthwith in the event they are disengaged from service and disburse all pending remuneration and consequential service & financial benefits as is due and admissible to the Petitioners, as expeditiously as possible.

43. Accordingly, the Writ Petition stands disposed of. However, there shall be no order as to costs.

44. In view of the aforesaid judgement, the contempt application bearing CONTC No.7398 of 2022 is disposed of with liberty to the Petitioners to revive the contempt application in the event the cause of action still subsists.

45. In view of the aforesaid judgement, the interim application bearing I.A. No.16011 of 2022 stands disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Both Writ Petition & CONTC disposed

2025 (II) ILR-CUT-883

**P. RAJESH REDDY
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 23409 OF 2024]

26 MAY 2025

[ADITYA KUMAR MOHAPATRA, J.]

Issues for Consideration

1. Whether the order of discharge dated 02.02.2024 is sustainable in terms of Article 311 (2) of the Constitution of India.
2. Whether the charge/ allegation that petitioner had suppressed material facts before the opposite parties at the time of filling up his form is sustainable.

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Article 311(2) – Petitioner having requisite eligibility, participated in the recruitment process and was appointed as a jail warder – As per the requirement, the petitioner had obtained a character certificate from the DSP (DIB) Ganjam dated 17.05.2023 – The petitioner was issued with the appointment letter on 29.05.2023 – An office order dated 02.02.2024 was issued by Opp. Party No. 4 discharging the petitioner under Rule 59(2) and Rule 94 (2) of Odisha Model Jail Manual – Prior to issuance of discharge order dated 02.02.2024 the petitioner was never served with any show-cause notice and no opportunity was given to him to explain his position – Whether such discharge order is sustainable in terms of Article 311 (2) of the Constitution of India.

Held: No – This Court has no hesitation in coming to a conclusion that the Opposite Parties should have followed the mandatory procedure of holding an inquiry and providing an opportunity of being heard to the Petitioner in terms of Article 311(2) – On a careful analysis of the factual matrix involved in the present writ petition, this Court has no hesitation in coming to a conclusion that the mandatory provision of Article 311(2) has not been complied with by the Opposite Parties. (Para 17)

On a careful analysis of the facts, further keeping in view the settled legal position, this Court is of the considered view that the impugned order of discharge dated 02.02.2024 is unsustainable in law on several counts; firstly, the order of discharge is not in conformity with Article 311(2) of the Constitution of India, therefore, the same is void ab-initio. (Para 24)

(B) SERVICE JURISPRUDENCE – Appointment – Suppression of facts at the time of appointment – In the present case it is undisputed factual position that at the time of submitting his application as per the advertisement, petitioner had obtained a character certificate from none other than the Deputy Superintendent of Police (DIB) Ganjam on 17.05.2023 – On a close scrutiny of the certificate, it reveals that the DSP (DIB) Ganjam has categorically stated that nothing adverse was found against the petitioner in the records of the Chamakhandi Police Station under whose jurisdiction the petitioner was residing permanently – Whether the charge/ allegation that petitioner had suppressed the material facts before the opposite parties at the time of filling up his form is sustainable.

Held: No – On a careful analysis of the factual position and keeping in view the certificate issued by the DSP (DIB), Ganjam, under Annexure-3, is of the view that when the DSP (DIB), Ganjam could not detect any criminal case in which the Petitioner is involved, obviously the Petitioner cannot be blamed that he was not aware of the fact that two criminal cases were pending in Chamakhandi P.S. wherein he has been shown as an accused – It is also relevant to mention here that nothing was brought on record in course of hearing to establish the fact that the Petitioner was either arrested/detained in police custody or he was ever summoned to the police station in connection with the investigation of the above noted two criminal cases – Therefore, on the basis of the facts pleaded as well as the materials brought on record, this Court has no hesitation to hold that the Opposite Parties have failed to establish the fact that the pendency of the above noted two criminal cases were within the knowledge of the Petitioner. (Para 19)

(C) WORDS & PHRASES – Suppression – Meaning and necessary ingredients to hold a person guilty of suppression of fact – Explained.

The word “suppression” in common parlance means a material information which was within the knowledge of the person who is making any disclosure/ declaration and such person has deliberately omitted to disclose or declare such fact before the authority – Thus, to hold the Petitioner guilty of suppression of material fact, this Court is required to analyze and come to a conclusion that the piece of information which is alleged to have been suppressed was in fact within the knowledge of the Petitioner and that the Petitioner has willfully and deliberately withheld such information from the authorities, to his benefit – Therefore, to hold a person guilty of suppression of fact, three ingredients are to be demonstrated; (i) the person guilty was mandatorily required to disclose such fact, (ii) such fact was within the knowledge of the person and, (iii) the person deliberately withholds such information, which was within his knowledge, to his/ her benefit. (Para 20)

Citations Reference

Avtar Singh v. Union of India & Others, (2016) 8 SCC 471; Ravindra Kumar v. State of Uttar Pradesh & Others, (2024) 5 SCC 264 – **referred to.**

List of Acts

Odisha Model Jail Manual, 2020; Constitution of India, 1950; Indian Penal Code, 1860.

Keywords

Appointment; Discharge; Suppression of facts; Principle of natural justice; Opportunity of hearing; Show cause notice; Character Certificate.

Case Arising From

Order of discharge dated 02.02.2024 issued by Opposite Party No.4 and order of rejection of representation vide letter dated 18.07.2024.

Appearances for Parties

For Petitioner : Mr. Satyanarayan Moahapatra

For Opp. Parties : Mr. U.C. Jena, A.S.C.

Judgment/Order**Judgment****A.K. MOHAPATRA, J.**

1. The present writ application has been filed by the above named petitioner with a prayer to quash order of discharge of the petitioner dated 02.02.2024 under Annexure-9 to the writ application by the Opposite Party No.4 as well as the order of rejection of his representation vide letter dated 18.07.2024 under Annexure-12 to the writ application. Further, a prayer has also been made for a direction to the Opposite Party Nos. 4 and 5 to reinstate the petitioner in his former post of Warder, fixation of salary of the petitioner and to pay arrear differential salary of the petitioner as is due and admissible.

2. The factual background of the present writ application in short is that on 13.12.2022 the Opposite Party No.2 floated an advertisement for filling up 403 numbers of vacant posts of Jail Warder. The petitioner, being interested in getting appointment to such post, obtained a character certificate from the Deputy Superintendent of Police, Ganjam dated 17.05.2023, under Annexure-3. Accordingly, the petitioner submitted his application. Hence, the petitioner along with other eligible applicants was made to appear in the selection process as provided in the police manual. Finally, vide letter dated 29.05.2023 of the Superintendent of Sub-Jail, Daspalla, the petitioner was appointed against the post of Jail Warder in Daspalla, Sub-Jail pursuant to the appointment letter under Annexure-5 to the writ application.

3. While this was the position, and the petitioner was discharging his duties as an warder in the Daspalla Sub-Jail, the petitioner received a letter dated 02.02.2024 of the Senior Superintendent of Circle Jail, Berhampur. Later, vide letter dated 02.02.2024 under annexure-9 to the writ application, the petitioner has been discharged from service on the allegation that he had suppressed material information in his attestation form which was submitted at the time of making an application for appointment to the post of Jail Warder. The substance of the allegation made in the office order dated 02.02.2024 is that the petitioner had categorically suppressed information about two criminal cases i.e. Chamakhandi P.S. 48 of 2022 and Chamakhandi P.S. Case No.130 of 2013. When the aforesaid facts came to the notice of Opposite Party No.4, he has passed the impugned office order dated 02.02.2024, under annexure9 to the present writ application. In exercise of the power conferred under Rule 59(2) and Rule 94(2) of Odisha Model Jail Manual such impugned order was passed and accordingly, the petitioner was discharged from his service as Jail Warder.

4. Being aggrieved by the aforesaid office order dated 02.02.2024, the petitioner immediately approached the Opposite Party No.2 by filing a representation dated 11.03.2024 under Annexure-10 to the writ application. In his representation under Annexure-10, the petitioner has explained his position and his innocence and, in the said representation, the petitioner has categorically stated that he was not involved in either of the cases as has been referred to by the Opposite Party No.4 in its office order dated 02.02.2024 under Annexure-9 and that the petitioner is merely a victim of the circumstances. Moreover, the impugned order under Annexure-9 has been passed under the wrong impression that the petitioner was involved in the above noted two cases. He has also categorically stated in his representation that he has no personal knowledge about the aforesaid two cases, therefore, the question of suppression of any materials facts does not arise in the first place. Finally, the petitioner has prayed before the Opposite Party No.2 to revoke the discharge order which has been passed under a wrong impression and is based on erroneous facts. Since no decision was taken on his representation under Anenxure-10, the petitioner again submitted a reminder on 24.06.2024, under Annexure-11.

5. Finally, vide letter dated 18.07.2024, under Annexure-12, the Opposite Party No.4 has intimated that the Petitioner's representations dated 11.03.2024 and 24.06.2024, under Annexures-10 and 11 respectively, were duly considered and eventually the same has been rejected by the D.G. of Prisons and Correctional Service, Odisha-Opposite Party No.2. Being aggrieved by the order passed on 02.02.2024 under Annexure-9 by the Opposite Party No.4 as well as the order under Annexure-12, communicating the decision of the opposite Party No.2 to the petitioner, the petitioner has approached this Court by filing the present writ application with the prayer as has been indicated hereinabove.

6. Learned counsel appearing for the petitioner at the outset contended that the petitioner is an innocent person and he is being victimized due to a misconception of the actual facts by the Opposite Party No.4. He further contended that pursuant to the advertisement the petitioner obtained the requisite character certificate from the D.S.P. (D.I.G.), Ganjam. In course of his argument, learned counsel for the petitioner also

referred to the character certificate issued by the D.S.P.(D.I.G.) which reveals that the character and antecedents of the petitioner was duly verified for the period starting from 1998 to 12.05.2023 from the records maintained as Chamakhandi Police station, under which jurisdiction the petitioner was residing at the relevant point of time. As per the report of IIC, Chamakhandi P.S., nothing adverse was found against the petitioner and, as such, the Petitioner was issued with the character certificate by the D.S.P.(DIG) Ganjam under Annexure-3 to the writ application. On the basis of aforesaid character certificate, the petitioner submitted his application and on being duly selected he was appointed vide order No.3993 dated 23.05.2023 of the Senior Superintendent Circle Jail, Berhampur, under Annexure-4 to the writ application, along with other selected candidates. Accordingly, the petitioner joined at Sub-Jail, Daspalla.

7. He further contended that while the petitioner was discharging his duties at Sub-Jail Daspalla, he received the letter/ office order dated 02.02.2024, under Annexure-9 to the writ application. He further contended that prior to passing office order dated 02.02.2024, the Opposite Party No.4 never issued any show-cause notice to the petitioner. In fact, no opportunity of hearing whatsoever was provided to the petitioner before discharging him from his service. At this stage, learned counsel for the petitioner further argued that the order dated 02.02.2024 has been passed in violation of principles of natural justice and without providing any opportunity whatsoever to the petitioner to explain his case or counter the allegations made against him with regard to the police cases allegedly pending in the Chamakhandi P.S. involving the present petitioner. In such view of the matter, learned counsel for the petitioner submitted that the impugned order is liable to be set aside on the ground that the same has been passed in violation of principle of natural justice.

8. Mr. Mishra, learned counsel appearing for the petitioner further argued that as per the allegation in office order dated 02.02.2024, the petitioner has been alleged to be involved in two criminal cases of Chamakhandi P.S. i.e. P.S. Case No.130 of 2022 registered for commission of offence under Sections 143, 147, 452, 188, 292, 506, 149 of I.P.C. Similarly, P.S. Case No.84 dated 15.02.2023 has been registered for alleged commission of offence punishable under Sections 147, 148, 186, 188, 307,323, 353, 307, 447, 506, 120B, 149 of I.P.C. Later on, a corrigendum was issued correcting the second P.S. case number as 48 instead of 84. He further contended that it has also been alleged that the petitioner made a false declaration in the attestation form and he has deliberately concealed information with regard to the above noted two P.S. Cases.

9. While further elaborating his argument on the above noted pending two P.S. cases of Chamakhandi Police Station, Mr. Mishra, learned counsel for the petitioner contended that so far Chamakhandi P.S. case No.130 of 2022 is concerned, the same corresponds to G.R. Case No.613 of 2022 which was pending in the file of S.D.J.M., Chhatrapur and in view of the order dated 07.10.2024, the complainant has already withdrawn the case. Accordingly, a final form has been submitted and the same was accepted by the learned Magistrate. The Final report was submitted on 21.08.2022, after which the said case was closed. Similarly, with regard to P.S. Case No.130 of 2023, laying emphasis on final form dated 21.08.2022, learned counsel for the petitioner submitted that the Investigating Officer has given the following Opinion:-

“Hence, I submit F.F. in Chamakhandi P.S. effect No.143 dated 21.08.2022 and return the case of the final report in sufficient evidence under Sections 143, 147, 148, 94, 506, 149 I.P.C. against them after received the Hon’ble Court may kindly be accepted the F.F.”.

Additionally, learned counsel for the petitioner further contended that the petitioner was never implicated in the said case and he was never detained or arrested in connection with the said case. He further specifically argued that the petitioner had no knowledge with regard to the aforesaid Chamakhandi P.S. case which was registered on the alleged occurrence of protest by the villagers with regard acquisition of the land for establishment of private company.

10. Similarly, with regard to Chamakhandi P.S. case No.48 of 2023 which corresponds to G.R. Case No.216 of 2023, pending in the file of learned S.D.J.M, Chhatrapur, learned counsel for the petitioner further emphatically argued that since it was found in course of the investigation that the petitioner was not involved on the day of occurrence i.e. 15.02.2023, the I.O. has deleted the name of the petitioner from the charge sheet itself. He further contended that in connection with the said case the petitioner was also never detained or taken into custody for questioning by the police and that the entire occurrence was not within the knowledge of the petitioner. He further laid emphasis on the observation of the I.O. in the charge sheet which is quoted herein below-

“On 15.02.2023 F.I.R. name accused Rajesh Reddy(27) son of P.Jayaja Reddy had gone to Visakhapatna, Simanchal temple and returned to village. On the way village committee member called Rajesh Reddy to remain present and participate and strike against before the Tata Company otherwise his family will be debarred from village. As per calling he returned to village and knew that police arrested some men and women from the strike place, so he did not go to the spot and seeing the occurrence from 10 meters away from the spot i.e. Tata boundary construction wall. Accused Rajesh Reddy was not involved in the date of occurrence i.e. 15.02.2023, hence his name eliminated from the charge against him”.

In view of the aforesaid factual position, learned counsel for the petitioner argued that the innocence of the petitioner itself is borne out from the police record itself. He further submitted that neither the petitioner was detained taken into custody arrested, convicted, fined in any manner either by the police or the learned Court in any criminal case till the date he has submitted an application. Therefore, it was argued that the declaration given in the attestation form does not amount to suppression of material facts. On the contrary, the Opposite Party No.4 on a misconception of fact and on erroneous application of the rules passed an order in gross violation of the principle of natural justice thereby arbitrarily discharging the petitioner from the service.

11. Learned counsel for the State on the other hand referred to the counter affidavit filed by the Opposite Party Nos.2 to 5. He further contended that there is no dispute that pursuant to the advertisement the Petitioner submitted an application for appointment to the post of Jail Warder and accordingly, on being selected, he was

issued with an appointment letter under annexure-4 to the writ application. However, subsequently when the Senior Superintendent of Circle Jail, Berhampur came to learn that the petitioner is involved in two criminal cases of Chamakhandi P.S., as has been indicated in the letter under Annexure-9, in compliance to the rules of Orissa Model Jail Manual, the service of the petitioner has been discharged. In such view of the matter, learned counsel for the State contended that the Opposite Party No.4 has not committed any illegality in passing the order under Annexure-9 to the writ application as well as in rejecting the representation of the Petitioner vide Annexure-12 to the writ application.

12. Further, referring to the counter affidavit, learned counsel for the State contended that in the attestation form which was submitted by the petitioner under Annexure-6 to the writ application, the petitioner has suppressed essential factual information. Further, drawing attention of this Court to the attestation form under Annexure-6, the learned counsel for the State contended that at Serial No.2 of the form it has been categorically mentioned that if detained, arrested, prosecuted, bound down, fined, convicted, debarred, acquitted etc. subsequent to the completion and submission of this form, the details of such facts are to be immediately reported to the authorities to whom the attestation form has been sent earlier, failing which, it will be deemed to be suppression of factual information. In course of his argument, learned counsel for the State also referred to the questionnaire at Serial No.12 wherein the petitioner, as a candidate, is required to give an answer to the questionnaire with regard to arrest, prosecution, detention, bound down, fine, conviction etc. In reply to the said questionnaire, at Para-12 of the attestation form, the petitioner has given a negative reply to all the queries. Therefore, learned counsel for the State alleged that the attestation form, as has been submitted by the petitioner, contains incorrect information which can very well be construed as suppression of material facts in the context of the present case.

13. It was further argued by learned counsel for the State that the petitioner is clearly guilty of suppression of material facts, inasmuch as the petitioner was involved in Chamakhandi P.S. cases as has been discussed hereinabove. Furthermore, irrespective of the result of such P.S. Cases, the petitioner should have disclosed the information. He further submitted that it does not matter whether the petitioner was discharged subsequently since non-disclosure of such information in the attestation form itself amounts to suppression of material facts. Therefore, Opposite Party No.4 was justified in discharging the petitioner from the service of the Jail Warder in terms of the Odisha Model Jail Manual. On such grounds, learned counsel for the State contended that the writ petition filed by the petitioner is devoid of merit and, accordingly, the same should be dismissed.

14. Heard Mr. S.N. Mohapatra, learned counsel appearing for the petitioner as well as Mr. Jena, learned counsel for the State. Perused the pleadings of the respective parties as well as the materials on record.

15. On a careful analysis of the pleadings of the respective parties as well as the submissions made by the learned counsels appearing for both sides, this Court observes that the factual position in the present matter is that the advertisement was floated on 13.12.2022 to fill up 403 vacant posts of Jail Warder. The Petitioner, having the requisite eligibility, participated in the recruitment process and on being duly selected he was appointed as a Jail Warder. It is also not disputed that as per the requirement, the Petitioner obtained a character certificate from the DSP (DIB), Ganjam dated 17.05.2023 under Annexure-3 to the writ petition. Pursuant to the final selection of the Petitioner, he was issued with the appointment letter dated 29.05.2023 and, as such, he was posted as a Jail Warder under the Superintendent of Sub-Jail, Daspalla. The real problem arose when the Petitioner was issued with Office Order dated 02.02.2024 by the Opposite Party No.4 thereunder discharging the Petitioner from the service of Jail Warder under Rule 59(2) and Rule 94(2) of Odisha Model Jail Manual.

16. There exists no conflicts with regard to the factual position that prior to issuance of discharge order dated 02.02.2024, the Petitioner was never issued with a show-cause notice nor was he given any opportunity to explain his position. It is not a case that the Petitioner has been convicted in any criminal case, so that the authorities would be justified in their conduct of discharging the Petitioner from service by taking resolve to the proviso to Article 311(2). It is crystal clear from the admitted factual position that neither the Petitioner has been convicted in any criminal case nor the impugned order of discharge dated 02.02.2024 discloses any reason as to why it was not reasonably practicable to hold an inquiry against the Petitioner. Thus, the impugned letter of discharge issued by the Opposite Party No.4 is not saved under the proviso to Article 311(2) of the Constitution of India.

17. In the aforesaid context, this Court would like to further observe that Article 311 of the Constitution of India provides a reasonable degree of protection to government employees against any order of dismissal, removal or reduction in rank. Under Article 311(2), although the government employees can very well be dismissed or removed or reduced in rank, however, the same can be resorted to by the employer-state only after conducting an inquiry in which the delinquent has to be informed of the charges against him and by giving a reasonable opportunity of being heard in respect of those charges. Although the proviso appended to Article 311(2) provides an exception to the mandatory inquiry, however, the contingencies mentioned in the proviso does not arise in the case of the Petitioner. Thus, this Court has no hesitation in coming to a conclusion that the Opposite Parties should have followed the mandatory procedure of holding an inquiry and providing an opportunity of being heard to the Petitioner in terms of Article 311(2). On a careful analysis of the factual matrix involved in the present writ petition, this Court has no hesitation in coming to a conclusion that the mandatory provision of Article 311(2) has not been complied with by the Opposite Parties.

18. The next question that falls for consideration before this Court is as to whether the Petitioner suppressed any material facts before the Opposite Parties at the time of filling up of his form for the post of Jail Warder? And, whether such non-disclosure of information is intentional and in the given circumstance the same would be construed as fatal to the case of the Petitioner? The answers to the above noted two questions lies in

the facts pleaded in the writ petition as well as the documents annexed thereto. The undisputed factual position is that at the time of submitting his application pursuant to the advertisement dated 13.12.2022, the Petitioner obtained a character certificate from none other than the Deputy Superintendent of Police (DIB), Ganjam on 17.05.2023 under Annexure-3 to the writ petition. On a close scrutiny of the certificate under Annexure-3, it is revealed that the DSP (DIB), Ganjam has categorically stated that nothing adverse was found against the Petitioner in the records of the Chamakhandi Police Station under whose jurisdiction the Petitioner was residing permanently. The document under Annexure-3 to the writ petition has not been disputed by the State-Opposite Parties in their counter affidavit. Therefore, this Court has no hesitation in accepting the facts stated in the character certificate under Annexure-3 to be the admitted position.

19. In reply to the first question formulated in the preceding paragraph, this Court, on a careful analysis of the factual position and keeping in view the certificate issued by the DSP (DIB), Ganjam, under Annexure-3, is of the view that when the DSP (DIB), Ganjam could not detect any criminal case in which the Petitioner is involved, obviously the Petitioner cannot be blamed that he was not aware of the fact that two criminal cases were pending in Chamakhandi P.S. wherein he has been shown as an accused. It is also relevant to mention here that nothing was brought on record in course of hearing to establish the fact that the Petitioner was either arrested/detained in police custody or he was ever summoned to the police station in connection with the investigation of the above noted two criminal cases. Therefore, on the basis of the facts pleaded as well as the materials brought on record, this Court has no hesitation to hold that the Opposite Parties have failed to establish the fact that the pendency of the above noted two criminal cases were within the knowledge of the Petitioner.

20. To establish suppression by the Petitioner before any authority, the burden of proof is on the Opposite Parties who are alleging such suppression. The word “suppression” in common parlance means a material information which was within the knowledge of the person who is making any disclosure/ declaration and such person has deliberately omitted to disclose or declare such fact before the authority. Thus, to hold the Petitioner guilty of suppression of material fact, this Court is required to analyze and come to a conclusion that the piece of information which is alleged to have been suppressed was in fact within the knowledge of the Petitioner and that the Petitioner has willfully and deliberately withheld such information from the authorities, to his benefit. Therefore, to hold a person guilty of suppression of fact, three ingredients are to be demonstrated; (i) the person guilty was mandatorily required to disclose such fact, (ii) such fact was within the knowledge of the person and, (iii) the person deliberately withholds such information, which was within his knowledge, to his/ her benefit. In the instant case, on a careful analysis of the factual background, this Court found that even the certificate issued by the DSP (DIB), Ganjam does not disclose that any criminal case was pending against the Petitioner

at Chamakhandi P.S. Moreover, the State-Opposite Parties have failed to bring on record any material which would indicate that the fact of pendency of the criminal cases were within the knowledge of the Petitioner. On fulfillment of the aforesaid two criteria by the State-Opposite Parties, this Court would have drawn an inference against the Petitioner holding him guilty of suppression of material fact. However, in the preceding paragraph, this Court has already held that the fact of pendency of the above noted two criminal cases were detected for the first time much after the joining of the Petitioner in service. Moreover, the same was not within the knowledge of the DSP (DIB), Ganjam who has issued a character certificate in favour of the Petitioner. Thus, this Court has no hesitation in coming to a conclusion that the State-Opposite Parties have failed to establish the fact that the information was within the knowledge of the Petitioner and he has deliberately suppressed such information while filling up of the form.

21. The subsequent development in the above noted two criminal cases of the Chamakhandi P.S. also proves the innocence of the Petitioner. Moreover, the final form has also been submitted in Chamakhandi P.S. Case No.130 of 2022 which corresponds to G.R. Case No.613 of 2022. Similarly, in the other Chamakhandi P.S. Case No.48 of 2023 corresponding to G.R. Case No.216 of 2023, a charge-sheet has been filed wherein the I.O. has not included the name of the present Petitioner stating in the charge-sheet that accused-Petitioner was not involved in the occurrence. Accordingly, his name has been deleted from the charge-sheet.

22. Additionally, while analyzing the legal position involved in the present writ petition, this Court deems it profitable to refer to the judgment of the Hon'ble Supreme Court in **Avtar Singh v. Union of India & Others** reported in (2016) 8 SCC 471. In the above noted case, a Three-Judge Bench of the Hon'ble Supreme Court has already settled the law and the same have been summarized in Paragraph-38 of the judgment. The relevant portions which would be applicable to the facts of the Petitioner's case are quoted herein below;

“38.8: if criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.11: before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

The principal enunciated in **Avtar Singh's** case (supra) clearly lays down the law that although suppressed material information does not give a person an unfettered right for appointment, at the same time the right of such person not to be dealt with arbitrarily is protected. It means the exercise of power has to be in a reasonable manner with objectivity and having due regard to the facts

23. In more recent judgment of the Hon'ble Supreme Court, i.e. in the case of **Ravindra Kumar v. State of Uttar Pradesh & Others** reported in (2024) 5 SCC 264,

while speaking on behalf of the Two-Judge Bench of the Hon'ble Supreme Court in Para-32 of the judgment have observed as follows;

“32. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/ termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.”

Moreover, the factum of the case in the above noted judgment of the Hon'ble Supreme Court have been summarized in Para-33. Para 33.9 is relevant for the purpose of the present case and is quoted herein below for better appreciation;

“33.9 The Superintendent of Police, in his letter to the Commandant, endorsement the report and reiterated that the character of the candidate was excellent.” Thus, on a careful analysis of the facts of the present case, this Court is of the view that the case of the Petitioner is somewhat similar to the one involved in the case of **Ravindra Kumar** (supra).

24. On a careful analysis of the facts, further keeping in view the settled legal position, this Court is of the considered view that the impugned order of discharge dated 02.02.2024 is unsustainable in law on several counts; firstly, the order of discharge is not in conformity with Article 311(2) of the Constitution of India, therefore, the same is void ab-initio. Secondly, the Petitioner has not suppressed any material information which was within his knowledge at the time of filling up of his form. Thirdly, the subsequent development in both the criminal cases reveals that the Petitioner is in no way involved in the said criminal cases. Accordingly, this Court has no hesitation to quash the impugned discharge order dated 02.02.2024 under Annexure-9 as well as the consequential order rejecting the representation of the Petitioner dated 18.07.2024 under Annexure-12. Therefore, the same are hereby quashed and the writ petition is allowed. While allowing the present writ petition, this Court is inclined to issue a writ of mandamus directing the Opposite Party Nos.4 & 5 to reinstate the Petitioner in service with all consequential service and financial benefits. Further, it is directed that the period of discharge be treated as “On Duty” and the financial benefits accruing in favour of the Petitioner for the said period be also calculated and disbursed in favour of the Petitioner. Let the entire exercise be carried out within a period of two months.

25. Accordingly, the writ petition stands allowed. However, 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 allowed.

2025 (II) ILR-CUT-894

BALADEV PANDA
V.
THE CHIEF GENERAL MANAGER, SBI,
L.H.O, BHUBANESWAR & ORS.

[W.P.(C) NO. 832 OF 2021]

23 APRIL 2025

[V. NARASINGH, J.]**Issues for Consideration**

1. Whether the punishment of removal imposed on the petitioner is commensurate with the delinquency.
2. Maintainability of Judicial Review against the decision of the disciplinary authority.

Headnotes

(A) SERVICE JURISPRUDENCE – Petitioner was a bank employee – On the allegation of irregularities of fraudulent withdrawal of Rs.25.92 lakhs from his two overdraft accounts, departmental proceeding as well as criminal proceeding were initiated – Petitioner was exonerated from criminal proceeding but in departmental proceeding the order of dismissal passed – Challenging the order of dismissal the Writ Petition filed and the order was confirmed – Challenging the confirmation order passed by the Hon’ble Single bench, Writ Appeal was filed – The Hon’ble Writ Appeal Court observed that the Disciplinary Authority shall reconsider the matter and infliction of punishment will be in commensurate with the misconduct allegedly made against the petitioner and the mitigating circumstances to be taken into consideration – The Disciplinary Authority pursuant to the order of the Appellate Court, passed the order of “Removal” – Challenging the order of “Removal” present Writ Petition has been filed – It was contended by the petitioner that admittedly there is no pecuniary loss to the bank and the punishment should be commensurate with the misconduct allegedly committed and the mitigating circumstances ought to be taken into account – The plea of disproportionate punishment also raised – On the other hand the Opposite Party Authority raised the maintainability of the judicial review in case of disciplinary proceeding – Whether the punishment of removal imposed on the petitioner is commensurate with the delinquency.

Held: No – This Court is of the view that punishment of removal as imposed by Annexure-8 and upheld by the Appellate Authority vide Annexure-9 is disproportionate to the delinquency. (Para 22)

(B) CONSTITUTION OF INDIA, 1950 – Art. 226 & 227 – Judicial Review – Disciplinary Proceeding – Imposition of major punishment i.e. removal from service – Interference of Writ Court – When maintainable – Discussed. (Paras 17 & 20)

(C) WORDS & PHRASES – ‘Consider’ – Meaning of – Discussed.

(Para 15)

Citations Reference

Asstt. General Manager, SBI Vrs. Thomas Jose And Another, **(2000) 10 SCC 280**; Nilamani Jal Vrs. Collector, Bolangir and two others, **2016 (ii) OLR 190**; Ranjit Thakur Vrs. Union of India and others, **AIR 1987 Supreme Court 2386**; Naik Sardar Singh Vrs. Union of India and others, **AIR 1992 Supreme Court 417**; Haryana Financial Corporation Vrs. Jagdamba Oil Mills, **(2002) 3 SCC 496**; Islamic Academy of Education and another Vrs. State of Karnataka and others, **(2003) 6 SCC 697**; Chairman, LIC of India & Ors. Vs. A. Masilamani, **(2013) 6 SCC 530– referred to.**

List of Acts

State Bank of India Officers Services Rules, 1992; Constitution of India, 1950.

Keywords

Disciplinary Proceeding; Major punishment; Dismissal; Removal; Commensurate to the misconduct; Mitigating circumstances; Consideration; Judicial Review; Proportionate punishment; Disproportionate punishment; Shockingly disproportionate; Doctrine of proportionality.

Case Arising From

Orders passed by the Appointing Authority as well as the Appellate Authority imposing the punishment of removal from service.

Appearances for Parties

For Petitioners : Mr. S.S. Das, Sr. Adv.

For Opp. Parties : Mr. D.K. Mishra

Judgment/Order

Judgment

V. NARASINGH, J.

Heard Mr. S.S Das, learned senior counsel instructed by Mr. Modi, learned counsel for the Petitioner and Mr. D.K Mishra, learned counsel for the Opposite Parties.

1. The Petitioner who was working as Junior Management Grade, Scale-I (JMGS-I), State Bank of India, Buxi bazar Branch, Cuttack assails the orders passed by the Appointing Authority as well as the Appellate Authority at Annexures-8 & 9

respectively imposing the punishment of Removal from service which is one of the major penalties in terms of the Rule 67(g) of State Bank of India Officers Service Rules (SBIOSR), 1992.

It is apt to note here that, earlier assailing the order of “dismissal”, which was affirmed by Hon’ble Single Judge of this Court in W.P(C) No.18797 of 2019, the Petitioner preferred Writ Appeal No.372 of 2017 and in terms of the order dated 07.01.2019 in the said Writ Appeal, the impugned orders at Annexures-8 and 9 altering the punishment of “Dismissal” to removal” has been passed which is challenged in the present Writ Petition.

2. Brief facts germane for just adjudication are indicated hereunder;

The Petitioner was working as Officer Junior Management Grade Scale-1 and during his incumbency as Assistant manager (advances) at Buxi bazar branch was departmentally proceeded for the allegation of irregularities at fraudulent withdrawal to the tune of Rs.25.92 lacks from his two overdraft accounts. On the basis of such allegation a Departmental Enquiry as well as a criminal case was instituted.

3. In the Departmental Enquiry the Petitioner participated and the Disciplinary Authority recommended for imposition of penalty of reduction to a lower stage in the time scale of pay by five stages for a period of five years, not earning increments during the period of rigor but not postponing future increments on expiry of the period of rigor and not adversely affecting his pension in terms of Rule 67(f) of State Bank of India Officer Service Rules, 1992 (SBIOSR), the period of suspension of the Petitioner, who on the date of the order was suspension, directed to be treated as such i.e. not on duty.

At this stage it is apt to note that reference to Rule 67(f) of State Bank of India Officer Service Rules is a patent error in as much the punishment recommended comes within the hold of Rule 67(e) of SBIOSR. For convenience of reference and to avoid any confusion both rules 67(e) and 67(f) of SBIOSR are extracted hereunder:

“xxx xxx xxx

67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason:-

Minor Penalties

- (a) censure;
- (b) withholding of increments of pay with or without cumulative effect;
- (c) withholding of promotion;
- (d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

Major Penalties

- (e) reduction to a lower grade or post, or to a lower stage in a time scale;
- (f) compulsory retirement;
- (g) removal from service;
- (h) dismissal.

xxx xxx xxx”

4. The recommendation of the Disciplinary Authority came for consideration of the appointing Authority and the Appointing Authority taking into account the seriousness of the charges and also the background that the Petitioner is working in a financial institution dealing with public money, felt that the infliction of penalty of dismissal would be appropriate and accordingly disagreed with the recommendation of the Disciplinary Authority.

5. Assailing such order, the Petitioner moved this Court in W.P.(C) No.18797 of 2009 and by order dated 30.08.2017, the Hon’ble single Judge dismissed the writ petition and while doing so the submission that the Petitioner in the meanwhile being acquitted in the criminal case was also taken note of.

6. Thereafter, Intra Court Writ Appeal No.372 of 2017 was filed by the Petitioner assailing the order of the Hon’ble single Judge passed in W.P(C) No. 18797 of 2019. In the Intra Court appeal, the Opposite Party-Bank appeared and after going through the materials on record, on a perspicuous analysis of the same, the Hon’ble Division Bench of this Court allowed the appeal in part. For convenience of reference the operative portion of the order dated 07.01.2019 in W.A No.372 of 2017 is culled out hereunder:

“xxx xxx xxx

Hence, we are inclined to allow the appeal in part. We set aside the judgment passed by the learned single Judge in W.P(C) No.18797 of 2009 and remand the matter back to the Disciplinary Authority to reconsider the matter after affording reasonable opportunity to the appellant

The appellant shall produce the certified copy of this order before the Disciplinary Authority on 24.01.2019 and on such an event the Disciplinary Authority i.e., the opposite party no.3 shall reconsider the matter and inflict punishment which will be in commensurate with the misconduct allegedly made against the appellant and the mitigating circumstances. With the aforesaid observation, the writ appeal is disposed of.

(Emphasized)

xxx xxx xxx”

7. It is apt to note at the cost of repetition that the Division Bench while directing the Opposite Parties to reconsider the matter went on to observe that punishment should be commensurate with the alleged misconduct “and the mitigating circumstances”.

8. Pursuant to such direction of this court in the Writ Appeal, the Appointing Authority passed the following order at Annexure-8.

“xxx xxx xxx

in the above backdrop, the ends of justice would be adequately met if the earlier punishment of “Dismissal” is commuted to “Removal” which is to be imposed on Sri Panda in terms of Rule 67 (i) of State Bank of India Officer’s Service Rules 1992, which I hereby do in terms of Rule No. 68(3) (iii) ibid which will be effective from the date of

acknowledgement of original "Dismissal" order i.e. 22/05/2008. Further, the period of suspension of Shri Panda is to be treated as such i.e. "not on duty"

xxx xxx xxx"

9. While considering Petitioner's appeal, the Appellate Authority vide Annexure-9 after taking into account all the circumstances and the misconduct did not interfere with the order passed and rejected the prayer of the Petitioner for reconsideration and thereby the order of the Appointing Authority at Annexure-8 altering the punishment for "Dismissal" to "removal" was affirmed which, is the subject matter of challenge before this Court in this Writ Petition, as already noted.

10. Learned senior counsel Mr. Das, appearing for the Petitioner, at the outset, submits with vehemence that the alleged impropriety is in fact is no offence in as much as the allegation against the Petitioner is of overdrawal. And, admittedly there is no pecuniary loss to the bank and the Authorities did not consider the overwhelming circumstances which compelled the Petitioner to resort to the same.

10A. Hence, it is submitted that the initial punishment as imposed would sub serve the ends of justice. And, to fortify his submission learned senior counsel has relied on the following judgments on the question of proportionality and regarding the power of this Court to exercise jurisdiction in a matter of punishment imposed in a departmental proceeding.

10B. Relying on the judgment of the Apex Court in the case of **Asstt. General Manager, SBI Vrs. Thomas Jose And Another**, reported in (2000) 10 SCC 280, and the order of the learned single Judge of this Court in the case of **Nilamani Jal vrs. Collector, Bolangir and two others**, reported in 2016 (ii) OLR 190 it is the submission of the learned senior counsel for the Petitioner that the word "consider" in the light of the directions of the Division Bench in Writ Appeal has to be given its full play and not a mechanical appreciation as has been done in the case at hand.

10C. The judgment of the Apex Court in the case of **Ranjit Thakur Vrs. Union of India and others**, reported in AIR 1987 Supreme Court 2386, more particularly paragraph-9 thereof wherein while considering the order passed in Court-Martial, contours of judicial review, has been succinctly stated and is respectfully quoted hereunder:

"xxx xxx xxx

9. *Re: contention (d): Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court- Martial, if the decision of the Court even as to sentence is an outrageous defiance of B logic, then the sentence would not be immune from correction. Irrationality and perversity are*

recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, [1984] 3 Weekly Law Reports 1174 (HL) Lord Diplock said:

"... Judicial Review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community E In Bhagat Ram v. State of Himachal Pradesh, A.I.R. 1983 SC 454 this Court held:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasise is that all powers have legal limits.

In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

xxx xxx xxx "

10D. Further to buttress his argument on the question of proportionality, which was imposed in terms of the Army Act, reliance was placed on the judgment of the Apex Court in the case of **Naik Sardar Singh Vrs. Union of India and others**, reported in **AIR 1992 Supreme Court 417**.

11. Per contra, the learned counsel for the Bank, Mr. Mishra, submits that admittedly the Petitioner was dealing with public money and was holding responsible post and so far as the delinquency as committed by the Petitioner is concerned, evidently the Division Bench did not notice any irregularity committed in the Departmental Proceeding, culminating in the imposition of punishment of "Dismissal". As such, taking into account the order passed by the Division Bench, the order of dismissal was converted to removal, which is one of the punishment as envisaged in the rules and, therefore, there is no irregularity and/or illegality warranting interference of this Court, in exercise of plenary jurisdiction.

11A. He further submits that this Court cannot sit in appeal over the punishment passed in the Enquiry which has stood the test of the judgment passed by the Division Bench. It is his further submission that interference as sought is beyond the purview of time tested norms of judicial review and more so since by no stretch of imagination can it be said that the same is "disproportionate" much less "shockingly disproportionate". Hence, the writ petition is liable to be dismissed.

11B. So far as the Judgment cited at the Bar regarding the proportionality of punishment, it is submitted by the learned counsel Mr. Mishra, referring to the judgment of the Apex Court in the case of **Haryana Financial Corporation Vrs. Jagdamba Oil Mills** reported in **(2002) 3 SCC 496** as well as the leading judgment of the Apex Court in the case of **Islamic Academy of Education and another Vrs. State of Karnataka**

12. There is no dispute at the bar that so far as the delinquency of the Petitioner is concerned that had attained finality in terms of the order passed by the Division Bench. Now, the only question that is to be answered by this Court is regarding the proportionality of punishment, referring to the delinquency as alleged.

The said judgment of the acquittal has attained finality, as agreed at the Bar.

15. At this stage it is worthwhile to refer the order of this Court in ***Nilamani Jal (supra)*** wherein the Hon'ble Single Judge referring to the dictum of the Apex Court in ***Chairman, LIC of India & Ors. Vs. A. Masilamani*** reported in ***(2013) 6 SCC 530*** has dealt with the import of the word "consider" and referring to the dictionary meaning held as under;

“xxx xxx xxx”

19. The word "consider", is of great significance, Its dictionary meaning of the same is, "to think over", "to regard as", or "deem to be". Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term "consider postulates consideration of all relevant aspects of a matter. Thus. formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material on record. The order of the authority, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order.

xxx xxx xxx”

“XXX XXX XXX

Misappropriation by an employee of a bank is misappropriation of public moneys and must be treated very differently. Misconduct such as this cannot be treated as lightly as it has been done.

xxx xxx xxx”

But at the same time felt that reinstatement without any increment for a period of 10 years, with all cumulative circumstances, would serve the ends of justice.

17. In the case of **Ranjit Thakur(supra)**, which has already been quoted extensively hereinabove, the power of judicial review has been dealt with as noted. In the said judgment the Apex Court reiterated as under;

“xxx xxx xxx

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be A vindictive or unduly harsh.

xxx xxx xxx”

(Emphasized)

18. Taking a cue from the language as used by the Apex Court, it is the submission of the learned senior counsel that when the decision was not taken in terms of the order passed in the Writ Appeal, he moved this Court by filing a contempt Petition and on receipt of notice in the contempt petition, the impugned order altering the punishment from dismissal to removal has been passed mechanically and out of vindictiveness.

19. Such submission is opposed with vehemence by the learned counsel Mr. Mishra for the Bank reiterating his stand and referring to the very order on which reliance has been placed by the learned Senior counsel for the Petitioner that the petitioner being an employee of bank and the working norms that is normally expected from him is of the highest order and since his guilt has been established in a proceeding and the procedure as followed having stood the scrutiny of this Court twice, there is no scope for interference.

20. The other judgment referred to in **Sardar Singh(Supra)** also deals with the question of ‘proportionality’ as part of judicial review and the Apex Court has observed

“xxx xxx xxx

The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

xxx xxx xxx”

21. Referring to the said judgments, learned senior counsel Mr. Das, submits that the Division Bench of this Court while exercising its appellate jurisdiction had

specifically directed that the punishment should commensurate with the delinquency and mitigating circumstances ought to be taken into account, but by imposing a punishment of removal which is a major punishment the Authorities have followed, the directive of this Court in writ appeal in its violation.

22. On a conspectus of materials on record, this Court is of the view that the punishment of removal as imposed by Annexure-8 and upheld by the Appellate Authority vide Annexure-9 is disproportionate to the delinquency, taking into account the blemishless career of the Petitioner for almost two decades and half, the overwhelming circumstances which compelled him to make the withdrawal on account of his son's illness which is graciously not disputed, also in the light of the undisputed fact that the Bank did not suffer any pecuniary loss and the acquittal of the Petitioner in the criminal case.

23. On due consideration of the defence relating to all the allegations which were five in number, the Enquiry Officer had recommended for punishment of reduction to lower scale by five stages for a period of five years with no increment during the period of rigors but not postponing increments on expiry of period of rigor and not adversely affecting his pension.

24. In the backdrop of the allegations as has been made, taking into account the enquiry report, on evaluation of Petitioner's defence and the judgments cited at the Bar relating to the proportionality of punishment, this Court is persuaded to hold that reduction to a lower stage in time scale for a period of seven (7) years, with not earning increment till the date of his retirement without adversely affecting Petitioner's pension would sub serve the ends of justice. The period of suspension of the Petitioner, Officer JMGS-I (U/S) will be treated as such i.e. not on duty.

And, it is accordingly so directed.

25. The Opposite Parties are called upon to pay the emoluments of the Petitioner after taking into account the amounts which have already been disbursed.

The exercise in this regard shall be completed by the Opposite Parties within a period of four months from the date of receipt/production of the Judgment.

26. Accordingly, the writ Petition stands disposed of. No costs.

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.

2025 (II) ILR-CUT-903

MAHENDRA KUMAR BEHERA**V.****STATE OF ORISSA & ORS.**

[W.P.(C) NO. 16834 OF 2023]

17 JUNE 2025

[V. NARASINGH, J.]**Issue for Consideration**

Whether the act of the petitioner comes under the category of moral turpitude.

Headnotes

ORISSA POLICE MANUAL RULES, 1940 – Rules 824, 834(a), 835, 837, 844, 845 – In the present Writ Petition the punishment of black marks as well as the direction to treat the period of suspension as such has been challenged – Allegation of gross misconduct due to unnatural intercourse with subordinate at work place – Both criminal proceeding as well as departmental proceeding were initiated on self-same allegation – Compromise/ settlement made between the parties – Criminal proceeding quashed – Contention of the petitioner is that ‘the punishment treating the suspension period as such’ has not been prescribed under Rule 824 – So suspension is not warranted and as the criminal proceeding has been quashed on compromise on the self-same allegation it is not open for the Authorities to impose any black mark – Contention of the Opposite Party is that the acquittal is not clean and the act of the petitioner comes under the category of moral turpitude – Whether the act of the petitioner comes under the category of moral turpitude.

Held: No- The expression moral turpitude in the present context implies to the offence as it was in the statute book under Section 377 of IPC – In view of the pronouncement of the Apex Court in the case of **Navtej Singh Johar** and taking into account the compromise inter se between the parties since the same is voluntary and there is nothing on record to indicate that such consent was impelled on account of by any external factors or was outcome of any duress or coercion, as rules no longer qualifies as an offence in view of the judgment of the Apex court in the Case of **Navtej Singh Johar**, this Court is not persuaded to accede to the submission of the learned counsel for the State that the act on the date the order was passed can be treated as an offence. (Para 21)

Taking into account the charge in the departmental proceeding and the quashing of the criminal case in which the alleged offence, inter alia, was

under Section 377 of IPC, in the light of the judgment passed by the Apex Court in the case of **Navtej Singh Johar**, this Court has no hesitation to hold that the charge in the departmental proceeding as well as in the criminal case are one and the same primarily on account of an alleged offence under Section 377 of IPC – This Court is not oblivious of the contours of exercise of jurisdiction in interfering with an order passed in a departmental proceeding – But on conspectus of pleadings, this Court is of the considered view that allowing the punishment of “any black mark” as per Rule 834 of Police Rules, in the case at hand, would amount to abuse of process of law.

(Para 24)

Citations Reference

Sailendra Nath Mohanty vrs. Union of India & Others, **2014 SCC OnLine Ori 650**; Ram Lal vrs. State of Rajasthan and others, **(2024) 1 SCC 175**; Tapan Kumar Pradhan @ Tapan Pradhan vrs. State of Odisha and another, **(W.P.(C) No.15879 of 2019 disposed of on 30.01.2024)**; Bani Bhusan Dash vrs. State of Odisha, **2021 (II) OLR 1022**; Haryana Financial Corporation and another V. Jagdamba Oil Mills and another, **(2002) 3 SCC 496**; Navtej Singh Johar and others vrs. Union of India through Secretary, Ministry of Law and Justice, **(2018) 10 SCC 1**; Vijay Singh vs. State of U.P. and others, **(2012) 5 SCC 242 – referred to.**

List of Acts

Orissa Police Manual Rules, 1940; Indian Penal Code, 1860; Constitution of India, 1950.

Keywords

Departmental Proceeding; Punishment; Black marks; Suspension; Self-same allegation; Criminal Proceeding; Compromise; Settlement between the parties; Clean acquittal; Moral turpitude; Opportunity of hearing; Gross misconduct.

Case Arising From

Order of punishment passed by the Authority as well as rejection of appeal, revisional order reducing the punishment of three black marks to two and rejection of memorial.

Appearances for Parties

For Petitioner : Mr. M.K. Khuntia, Mr. B.K. Biswal
For Opp. Parties : Mr. S.P. Das, ASC

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard Mr. Khuntia, learned counsel for the Petitioner and Mr. Das, learned Additional Standing Counsel for the State.

2. The Petitioner, who is working as an ASI, has assailed the order at Annexure-3 by which he was found guilty of the charge and consequential imposition of the punishment of black marks for his gross misconduct of alleged unnatural intercourse with the sub-ordinate at work place and the further direction to treat the period of suspension from 04.08.2016 to 02.12.2016 (120 days) as such, as well as, the rejection order of the appellate authority at Annexure-5 and revisional order at Annexure-7 reducing the punishment of three black marks to two. And, the rejection of memorial under Annexure-9 challenging the infliction of punishment of "two black marks".

The prayer in the present Writ Petition reads as under;

"It is therefore humbly prayed that this Hon'ble Court may graciously be pleased to quash the order of punishment "Three Black Mark" under Annexure-3 & the rejection of appeal under Annexure-5 and the order of revision under Annexure-7 and also the rejection of memorial under Annexure9 as illegal & arbitrary;

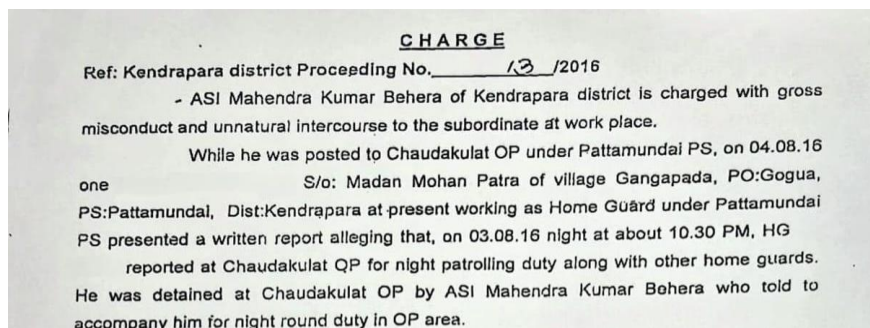
And further be pleased to give all the consequential service benefits to the petitioner;

xxx xxx xxx"

3. The brief undisputed facts which are germane for just adjudication read as under;

One home guard (the name is not being mentioned keeping in view the privacy of the person concerned) lodged an FIR against the Petitioner which was registered as G.R. Case No.314 of 2016 on the file of learned J.M.F.C. Pattamundai, arising out of Pattamundai P.S. Case No.313 of 2016 U/s. 341/ 342/323/377/506 of IPC.

4. As a sequel to the institution of such case, a memorandum of charge was served on the Petitioner in Kendrapara District Proceeding No.13 of 2016 which is at Annexure-1. The memorandum of such charge is culled out hereunder for convenience of reference;



In the dead hour of night ASI M.K.Behera called HG to his rest room and told to sleep with him. When HG denied, he forced him to sleep with him in a single bed cot by side a side. After sometime, ASI M.K.Behera squeezed the buttocks of HG roamed his hands over his body and stimulated. He sodomised by putting his penis on the anus of HG Due to such unnatural intercourse he discharged his semen which sticks to his Bermuda Pant of HG In this connection, on the written report of HG Pattamundai PS Case No.313 dt.04.08.16 U/s 341/342/323/377/506 IPC was registered against ASI Mahendra Kumar Behera and Sri Barini Das, IIC Pattamundai PS was investigated into the case. During course of investigation, accused ASI Mahendra Kumar Behera was arrested on 04.06.16 and forwarded to the court of JMFC Pattamundai on the same day.

The matter was enquired by Sri K.N:Sahoo,OPS the then SDPO, Pattamundai (now SDPO, Kendrapara). During enquiry of this case prima-facie evidence has been well proved against ASI Mahendra Kumar Behera and forwarded to the court of JMFC, Pattamundai on 04.08.16. Such type of act clearly indicates his gross misconduct and unnatural intercourse to the subordinate at work place.

He is directed to show cause within 30 days of receipt of the charge as to why suitable disciplinary action should not be initiated against him in the event of charge being proved against him.

Any representation he may wish to offer in this regard will be duly considered by the authority competent to pass final orders in this regard.


Superintendent of Police,
Kendrapara.

5. And in the memo of evidence, it was noted that the said home guard, who was the informant, was to be examined as P.W.2.

6. When matter stood thus, as the matter was settled between the parties, the Petitioner moved this Court by filing CRLMC No.1408 of 2017 and by order dated 08.08.2018 at Annexure-2, this Court quashed the G.R. Case referred to hereinabove and the same reads as under;

“Heard learned Counsel for the parties.

In offence under Section 377 of I.P.C. both the parties are major and have come to composition in the meantime.

Learned counsels for the parties submit that the filing of case against the petitioner is actually a mistake of fact and for that both the parties have come to composition by intervention of their superiors. As the parties have come to composition, allowing the proceeding to continue shall only be an abuse of the process of the Court. In the ends of justice, therefore, the proceeding in G.R. Case No.314 of 216 pending in the court of J.M.F.C., Pattamundai is quashed.

The CRLMC is accordingly disposed of.

Urgent certified copy of this order be granted as per Rules.”

6A. Evidently, there is an inadvertent typographical error in the order of this Court in as much as in the 2nd paragraph of the order, the word “compromise” has been inadvertently wrongly reflected as “composition”. The same error has also crept in the next sentence.

7. In deference to the order passed by this Court, which attained finality, the learned J.M.F.C. passed the consequential order of dropping the proceeding against

the Petitioner and thereafter, the Petitioner filed W.P.(C) No.18896 of 2019 to consider his representation for dropping the departmental proceeding in view of the fact that G.R. case has been quashed by this Court and by order dated 30.10.2019 at Annexure-10, this Court disposed of the Writ Petition referred to hereinabove directing the Opposite Party No.1 therein (State of Orissa, represented through DG and IG of Police) to consider the request of the Petitioner and pass appropriate orders.

8. It is the grievance of the Petitioner that notwithstanding such order passed by this Court, impugned orders referred to hereinabove, the punishment of two black marks reducing it from initially imposed three along with the punishment to treat the suspension period as such were imposed.

9. Before advertng to the contentions raised by Mr. Khuntia, learned counsel for the Petitioner, it is apposite to refer to the relevant provisions of the Chapter-XXV of the Orissa Police Rules dealing with punishments and departmental punishments. Rule824 describes Prescription of Departmental Punishments. Rule-824(f) deals with Black mark or marks. The said rule is extracted hereunder;

“xxx xxx xxx

824. Description of departmental punishments:-

The following punishments may be inflicted departmentally on a police officer below the rank of Deputy Superintendent-

(a) Dismissal,

(b) Removal.

[b-1]- Compulsory retirement; and]

(c) Reduction in rank

(d) Reduction in time-scale.

(e)Withholding of or the next increment for a specific offence, with without corresponding postponement of increments, subsequent

(f) Black mark or marks,

(g) Removal from any office of distinction or specific emolument,

(h) Censure,

(i) Warning,

(j) Confinements to quarters for a period not exceeding 15 days,

(k) punishment drill, and

(l) Extra guard or other duty;

Provided that the punishments mentioned in Clauses (i) to (m) shall not be imposed on any officer of or above the rank of Sub-Inspector nor the punishment mentioned in (l) on any Assistant sub-inspector, Constable of Ordinary Reserve and Havildar of Armed Reserve.

Punishments mentioned in Clauses (a) to (h) are classed as major and the rest are minor. All major punishments and censure shall be entered in the service book other minor punishments may be so entered if the officer awarding the punishment so directs.

xxx xxx xxx”

The punishments (a) to (h) are classified as major and the rest as minor. It is further provided that all major punishments and censure shall be entered in the

service books other minor punishments may be so entered if the officer awarding the punishment so directs.

9A. It is also apposite to take note of Rule-834 as well as Rules 835, 837 relating to Black Marks to appreciate the gamut of challenge. It would also be necessary to extract the Rules 844 and 845 under the sub-heading Criminal Prosecutions of Chapter-XXV of the Police Rules, the same is extracted hereunder;

“xxx xxx xxx

834.(a) Imposition of black marks:- Black marks may be awarded alone or in addition to other punishments enumerated in Rule 824 except dismissal or removal, to all officers of and below the rank of Inspector.

No more than one black mark shall be awarded or any one offence except when moral turpitude can reasonably be inferred.

(b) Three black marks shall ordinarily entail reduction or forfeiture or withholding of an increment, the period of which shall be specified in the order and, after the period is over the officer will be restored to his former position. Such reduction or forfeiture or withholding of increment shall not carry any black mark value.

(c) It shall be left to the discretion of the officer awarding the third black mark to waive the penalty noted in Clause (b). In exercising this option, he shall consider—

(i) the officers for which the previous black marks were awarded;

(ii) the length of time that has elapsed since they were awarded;

(iii) any good service the defaulter may have to his credit.

835. (i) Effect of black marks:- A reduction or forfeiture or withholding of increment for specific offence shall carry the following black mark value

Black Marks

A reduction etc.,	up to six months	1
Ditto	twelve months	2
Ditto	for longer than twelve months	3

xxx xxx xxx

837. (1) General rules as to black marks – (1) Black marks shall remain permanently on record and be taken into consideration in deciding the nature and extent of subsequent punishments:

Provided that the due allowances shall be made for good service marks and any other recognition of good work on record in the delinquent's favour.

(2) The order awarding black marks shall specify the number of black marks outstanding against the delinquent, and when the imposition of two more black marks may result in reduction in rank or compulsory retirement or removal or dismissal, or one more black mark may result in his reduction in rank or loss of increment under these rules, the order shall contain a warning to that effect.

xxx xxx xxx

844. Superintendent to examine, records of cases against police officers:- The Superintendent shall go through the record of every case brought against a police officer in the Court, and shall take departmental cognizance of every criminal case in which a police officer is convicted or acquitted or discharged (except when the case is false) and record an order in writing (Appendix 39 and Rule 843).

845. Effect of imprisonment:- Every police officer, imprisoned for an offence implying moral turpitude, such as theft and perjury, or for a serious breach of discipline, such as allowing a prisoner to escape or sleeping on sentry duty, shall be proceeded against with a view to dismissal and shall ordinarily be dismissed. He shall receive pay up to the date of ceasing to perform his duties.

xxx

xxx

xxx”

10. The first submission of Mr. Khuntia, learned counsel for the Petitioner is that the second limb of the punishment treating the suspension period as such having not been envisaged in the punishment prescribed under Rule 824 extracted hereinabove could not have been imposed and it is his further submission that so far as imposition of two black marks are concerned, in the factual matrix of the case at hand since the charge in the departmental proceeding as well as in the criminal case were one and the same since the criminal case has been quashed on compromise by this Court, it was not open for the Authorities in the factual backdrop of the case at hand to even impose any black mark and to fortify his submission, learned counsel for the Petitioner relies on the following judgments;

i. Sailendra Nath Mohanty vrs. Union of India & Others, 2014 SCC OnLine Ori 650

ii. Ram lal vrs. State of Rajasthan and others, (2024) 1 SCC 175

iii. Tapan Kumar Pradhan @ Tapan Pradhan vrs. State of Odisha and another (W.P.(C) No.15879 of 2019 disposed of on 30.01.2024)

iv. Bani Bhusan Dash vrs. State of Odisha, 2021 (II) OLR 1022

11. Learned counsel for the State, Mr. Das, learned ASC reiterating the fundamental distinction of appreciation of evidence in departmental proceeding and in a criminal case submits that since the evaluation of evidence in a departmental proceeding is based on preponderance of probability and that since the Petitioner belongs to a disciplined force, the order of punishment as affirmed by the Revisional Authority ought not to be interfered with. He also justifies the rejection of memorial. It is his further submission that since in the case at hand there has not been a clean acquittal rather it has been quashed on compromise the Authorities rightly passed the impugned punishment and it is his submission that the allegations that the Authorities did not take note of the order of this Court is ex-facie incorrect in as much as while passing the order the Disciplinary Authority has referred to the same.

12. He also supports the second limb of punishment and urges with vehemence that considering that the Petitioner belongs to a disciplined force, the act complained will squarely come under the category of moral turpitude and he submits that taking a lenient view the punishment in question has been imposed, whereas in his considered opinion the Petitioner was liable for graver punishment.

13. On these competing submissions, this Court is called upon to answer as to whether the act complained of comes under the category of moral turpitude and if so, whether the punishment imposed can stand the scrutiny of this Court and more particularly in the light of scope of this Court to exercise such jurisdiction. As

rightly pointed out by the learned counsel for the State Mr. Dash, the distinction between appreciation of evidence in a criminal case and in a disciplinary proceeding cannot be lost sight of and there is no cavil about such proposition of law. But as it is so often said that the decision in each case is dependent on the peculiar factual background of such case.

14. In this context, this Court respectfully refers to the authoritative pronouncement of the Apex Court in the case of **Haryana Financial Corporation and another V. Jagdamba Oil Mills and another, (2002) 3 SCC 496** wherein the Apex Court cautioned that judgments are not be read as “Euclid’s Theorem”

15. On perusal of the charges as framed against the Petitioner in the departmental proceeding and the sections under which the FIR has been instituted, it is seen that they are one and the same and one of the charges is under Section 377 of the IPC. Section 377 of IPC of the penal code which was governing the field then that at the relevant time reads as under;

“377. Unnatural offences.—

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

The very heading of the section is “unnatural offences”.

16. This Court would be failing in its duty if it does not take note of the intervening circumstances which changed the face of the particular offence in view of the constitution bench judgment of the Apex Court in the case of **Navtej Singh Johar and others vrs. Union of India through Secretary, Ministry of Law and Justice, (2018) 10 SCC 1** and it is apt to note that the case was decided on 06.09.2018.

17. In the said case, the Apex Court was considering the constitutionality of Section 377 IPC so far as criminalizing consensual sexual act between adults of any sexual orientation.

The conclusions in the case of **Navtej Singh Johar (Supra)** reads as under;

“645. CONCLUSION

645.1. In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Article 14, 15, 19 and 21 of the Constitution. It is, however, clarified that such consent must be free consent, which is completely voluntary in nature and devoid of any duress or coercion.

645.2. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.

645.3. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.

645.4. The judgment in *Suresh Kumar Koushal v. Naz Foundation*² is hereby overruled for the reasons stated in paras 642 and 643.”

18. The Apex Court has categorically said that in so far as Section 377 which criminalises consensual sexual acts of adult persons above the age of 18 years in private is violative of Articles 14, 15 19 and 21 of the Constitution. But sounded a word of caution that such consent must be free, voluntary and devoid of duress or coercion. The apex Court has also clarified that provisions of Section 377 will continue to govern nonconsensual sexual acts against the adults.

19. This Court felt it imperative to refer to the aforementioned judgments of the constitution bench in view of the fact that one of the charges as framed is under Section 377 of IPC.

20. It is the submission of the learned counsel for the Petitioner that Rule 834(A) clearly stipulates that no more than one black mark shall be awarded for any offence except when moral turpitude can reasonably be inferred. The word moral turpitude has not been defined and in the considered view of this Court sans the judgment of the Constitution Bench the act as committed by the Petitioner qualifies as moral turpitude. Rule 845 dealing with criminal prosecutions gives clue regarding moral turpitude in as much as it can be impliedly held that as per the Police Rules moral turpitude can be such as theft and forgery or for a serious breach of discipline as such allowing a prisoner to escape or sleeping on sentry duty.

21. This Court is conscious of the fact that Rule 845 deals with the Effect of imprisonment but to get an insight into the intent of the executive defining “moral turpitude” the aforementioned reference has been made. Even otherwise the moral turpitude has known in common parlance means thus;

The expression moral turpitude in the present context implies to the offence as it was in the statute book under Section 377 of IPC. In view of the pronouncement of the Apex Court in the case of **Navtej Singh Johar (Supra)** and taking into account the compromise inter se between the parties since the same is voluntary and there is nothing on record to indicate that such consent was impelled on account of by any external factors or was outcome of any duress or coercion, as rules no longer qualifies as an offence in view of the judgment of the Apex court in the Case of **Navtej Singh Johar (Supra)**, this Court is not persuaded to accede to the submission of the learned counsel for the State that the act on the date the order was passed can be treated as an offence.

This aspect has been completely lost sight of by the departmental authorities while dealing with the claim of the Petitioner in the light of the judgment of this Court.

22. In this context, it is also worthwhile to refer to Rule 844 of the Criminal Prosecutions under the Odisha Police Rules which casts a duty upon the Superintendent to go through the records of every case brought against the police officers in Court and shall take departmental cognizance of every criminal case in which a police officer is convicted or acquitted or discharged. According to the learned counsel for the Petitioner in imposing the punishment the authorities have signally failed to take note of the same.

23. Per contra learned counsel for the State submits that since it deals with the contingencies of conviction, acquittal or discharge, the case at hand in which the proceeding has been quashed on account of compromise won't come within the category as stated in Rule 845 and as such, there is no infirmity in the order.

24. Taking into account the charge in the departmental proceeding and the quashing of the criminal case in which the alleged offence, inter alia, was under Section 377 of IPC, in the light of the judgment passed by the Apex Court in the case of **Navtej Singh Johar (Supra)**, this Court has no hesitation to hold that the charge in the departmental proceeding as well as in the criminal case are one and the same primarily on account of an alleged offence under Section 377 of IPC. This Court is not oblivious of the contours of exercise of jurisdiction in interfering with an order passed in a departmental proceeding. But on conspectus of pleadings, this Court is of the considered view that allowing the punishment of "any black mark" as per Rule 834 of Police Rules, in the case at hand, would amount to abuse of process of law.

Accordingly the punishment for imposition of the black marks is quashed.

25. So far as the second limb of punishment is concerned, it is submitted by the learned counsel for the Petitioner, relying upon the judgment of the Hon'ble Supreme Court in case of **Vijay Singh vs. State of U.P. and others** reported in **(2012) 5 SCC 242**, that the punishment not envisaged under the Rules cannot be imposed. Admittedly, treating the "suspension period as such" which entails financial depravity cannot otherwise be imposed without giving an opportunity of hearing to a delinquent.

26. It is trite that no order, which results in civil consequence, can be passed without giving the delinquent an opportunity of hearing. Admittedly, in the case at hand the same has not been done, which renders the second limb of the punishment, additionally vulnerable.

27. Hence, on a perspicuous analysis of materials on record and in the light of the judgments of the Apex Court in the case of **Navtej Singh Johar (Supra)** as well as **Vijay Singh (Supra)**, the order of punishment at Annexure-3 and the appellate as well as revisional orders at Annexure-5 and 7 respectively as well as the rejection of memorial, at Annexure-9 are hereby quashed.

MAHENDRA KUMAR BEHERA V. STATE OF ORISSA & ORS. [V. NARASINGH, J.]

28. The petitioner shall be entitled to consequential service and financial benefits. Accordingly, the Writ Petition stands disposed of. No costs.

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-913

DIVISIONAL MANAGER, NATIONAL INSURANCE CO., LTD.

V.

SUBASH CHANDRA SWAIN & ORS.

[MACA NO. 669 OF 2020]

18 JUNE 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the Appellant /Insurance Company is liable to pay compensation.

Headnotes

MOTOR VEHICLES ACT, 1988 – Section 181 – Absence of valid driving license – Award of the Tribunal is under challenge – Appellant/ company contended that the deceased being the driver of the offending vehicle had no valid driving license, so the appellant/ company is not liable to pay compensation – Whereas the Respondents contended that the appellant is liable to pay compensation having the right to recover the same from the owner – In such circumstances, whether the appellant/company is liable to pay compensation.

Held: No - It is the view of this Court that since the driver of the offending vehicle also happens to be the owner of the said vehicle, the stand taken by the learned counsel appearing for the claimants-respondents that unless and until it is proved that the owner of the offending vehicle was having conscious knowledge that the driver of the offending vehicle was not having valid D.L. and accordingly no fault can be found with the impugned award, is not acceptable – Since the driver of the offending vehicle is also the owner of the vehicle, conscious knowledge of the owner that he was not having valid D.L., is well proved – No right of recovery is also permissible as the owner is the driver of the offending vehicle.

This court is of the view that the appellant is not liable to pay the compensation so awarded. (Para 8.4 & 8.5)

Citations Reference

National Insurance Co., Ltd., vs. Swaran Singh & Others, (2004) 1 ACC 194; National Insurance Co., Ltd. Vs. Ashalata Bhowmik & Others, (2018) 3 ACC-894; Singh Ram vs. Nirmala & Others, (2018) 3 SCC 800– referred to.

List of Acts

Motor Vehicles Act, 1988; Indian Penal Code, 1860.

Keywords

Motor accident; Claim of compensation; Valid Driving License; Right of recovery; Conscious knowledge.

Case Arising From

Judgment dated 13.03.2020 passed by the learned 1st M.A.C.T., Puri in M.A.C. No. 486 of 2012.

Appearances for Parties

For Appellant : M/s. Mr. P. K. Mahali & N. Kar
For Respondents : M/s. P.C. Pattanaik & D. Patnaik

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. This matter is taken up through Hybrid Mode.
2. Heard Mr. P.K. Mahali, learned counsel for the Appellant and Mr. P.C. Pattnaik, learned counsel for the Respondent Nos.1 & 2.
3. This appeal has been filed by the Appellant-Company challenging the judgment dtd.13.03.2020 passed by learned 1st M.A.C.T., Puri in M.A.C. No.486 of 2012. Vide the said judgment, claim application filed by the Claimants-Respondents in MAC No.486 of 2012 was allowed by the learned 1st M.A.C.T., Puri.
4. While assailing the award so passed by the learned Tribunal vide the impugned judgment dtd.13.03.2020, learned counsel appearing for the appellant vehemently contended that since the deceased was the owner-cum-driver of the offending vehicle, bearing Regd. No. OR-13G2530 and the driver-cum-owner was not having valid D.L at the time of the accident on 01.02.2012, no liability could have been fastened on the appellant-company.
- 4.1. It is also contended that the driver was not having valid D.L. is well proved as after completion of the investigation, the I.O. filed the charge sheet for the

offence under Section-181 of the M.V. Act along with offences under Sections 279/304(A) of the I.P.C.

4.2. It is also contended that though such a stand was taken by the appellant-company that appellant is not liable to pay the compensation as the owner-cum-driver was not having valid D.L and the same was also discussed by the Tribunal in the impugned judgment, but without due appreciation of the appellant's stand and the decisions governing the field, the appellant was held liable to pay the compensation to the claimant-respondents. The finding of the Tribunal that the owner-cum-driver was not having the valid D.L. so discussed in the impugned judgment reads as follows:-

“The certified copy of charge-sheet (Ext.2) reveals that after completion of investigation finding prima facie evidence the police submitted charge-sheet against the rider-cum-owner (O.P.No.1) U/s.279/304(A) of I.P.C. read with Section 181 of the M.V. Act.. However, as no D.L. belongs to the rider of the offending vehicle has been seized nor the owner- O.P.No.1 appeared and proved the D.L. by contesting the case, so the presumption is that the rider of the offending motor cycle was riding the same without having valid and effective D.L. So O.P.No.1. being the owner has thereby violated the policy condition by riding the motor cycle himself knowing that he had no valid and effective driving license at the time of accident. Thus the contention made on behalf of the O.P.No.2 company is found to be acceptable in this case”.

4.3. It is contended that on the face of such finding of the Tribunal, the appellant was held liable to pay the compensation amount so awarded inter alia on the ground that the act is a beneficial legislation and the offending vehicle since was having valid insurance policy, the appellant is liable to pay the compensation.

4.4. In support of the submission that the appellant is not liable to pay the compensation as the driver was not having valid D.L, reliance was placed to a decision of the Hon'ble Apex Court in the case of **National Insurance Co., Ltd., vs. Swaran Singh & Others**, reported in (2004) 1 ACC 194.

4.5. Placing reliance on the aforesaid decision in the case of **Swaran Singh**, learned counsel appearing for the appellant contended that Hon'ble Apex Court while dealing with a similar issue and after taking note of the various decisions governing the field, rendered the following findings, so reflected in Para-106 of the judgment:-

“Summary of findings

106. The summary of our findings to the various issues as raised in these petitions is as follows:

i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third-party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) An insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988, inter alia, in terms of Section 149(2)(a)(ii) of the said Act.

(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply “the rule of main purpose” and the concept of “fundamental breach” to allow defences available to the insurer under Section 149(2) of the Act.

vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The Claims Tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the Tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between the insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.

(x) Where on adjudication of the claim under the Act the Tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured

or the compensation and other amounts which it has been compelled to pay to the third party under the award of the Tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the Tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the Tribunal.

(xi) The provisions contained in sub-section (4) with the proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance on behalf of the insured can be taken recourse to by the Tribunal and be extended to claims and defences of the insurer against the insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims *inter se* might delay the adjudication of the claims of the victims”.

4.6. Reliance was also placed to a decision of the Hon’ble Apex Court in the case of **National Insurance Co., Ltd. Vs. Ashalata Bhowmik & Others**, reported in **(2018) 3 ACC-894**. Hon’ble Apex Court in Para-7, 8 & 9 of the said judgment held as follows:-

“7. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. It is an admitted position that the deceased was the owner-cum-driver of the vehicle in question. The accident had occurred due to the rash and negligent driving of the vehicle by the deceased. No other vehicle was involved in the accident. The deceased himself was responsible for the accident. The deceased being the owner of the offending vehicle was not a third party within the meaning of the Act. The deceased was the victim of his own action of rash and negligent driving. A claimant, in our view, cannot maintain a claim on the basis of his own fault or negligence and argue that even when he himself may have caused the accident on account of his own rash and negligent driving, he can nevertheless make the insurance company to pay for the same. Therefore, the respondents being the legal representatives of the deceased could not have maintained the claim petition filed under Section 166 of the Motor Vehicles Act.

8. This Court in *Oriental Insurance Co. Ltd. v. Jhuma Saha* [*Oriental Insurance Co. Ltd. v. Jhuma Saha*, (2007) 9 SCC 263 : (2007) 3 SCC (Cri) 443], was considering a similar case where the owner himself was driving the vehicle which due to his negligence dashed with a tree on the roadside as a result of which he died. The Court held that the claim petition filed by his legal representatives was not maintainable. It was held thus : (SCC p. 265, paras 10-11)

“10. The deceased was the owner of the vehicle. For the reasons stated in the claim petition or otherwise, he himself was to be blamed for the accident. The accident did not involve motor vehicle other than the one which he was driving. The question which arises for consideration is that the deceased himself being negligent, the claim petition under Section 166 of the Motor Vehicles Act, 1988 would be maintainable.

11. Liability of the insurer Company is to the extent of indemnification of the insured against the respondent or an injured person, a third person or in respect of damages of property. Thus, if the insured cannot be fastened with any liability under the provisions

of the Motor Vehicles Act, the question of the insurer being liable to indemnify the insured, therefore, does not arise."

9. Therefore, the High Court was not justified in directing the appellant insurer to pay the compensation determined by the Tribunal. Since the indemnification extended to personal accident of the deceased is limited to Rs 2,00,000 under the contract of insurance, the respondents are entitled for the said amount towards compensation. Hence, the appellant is directed to deposit the said sum of Rs 2,00,000 with interest @ 9 per cent p.a. from the date of the claim petition till the date of deposit with the Tribunal within a period of four weeks from today".

4.7. It is also contended that similar issue was also before this Court in MACA No.977 of 2017. This Court vide order dtd.28.10.2022 held that in absence of valid D.L. of the driver of the offending vehicle, the insurer cannot be held liable to indemnify the owner. View expressed in Para-9 of the order dtd.28.10.2022 reads as follows:-

*"9. First coming to the challenge advanced by the insurer, it is seen that the offending motorcycle was driven by one Mr. Dillip Kumar Rath, who is Opposite Party No.1 before the Tribunal. He did not come to contest the case and there is no dispute about his ownership of the offending motorcycle. As per the claimants, said Dillip Kumar Rath was driving the offending motorcycle at the time of accident. Ext.B is the certified copy of the driving license of said Dillip Kumar Rath and as per Ext.B, though he was authorized to drive the light motor vehicle and light passenger motor vehicle, but he was not authorized to drive two wheeler (motorcycle). As such, it is established that the driver-cum-owner of the offending motorcycle was not having a valid driving license on the date of accident. Since the owner is the driver, the negligence and lack of reasonable care on his part to drive the motorcycle without a valid driving license is clearly established and therefore, in terms of the principle decided in the case of **National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297**, the insurer is not liable to indemnify the owner. As such the insurer is exempted from its liability to indemnify the compensation amount on behalf of the owner".*

4.8. Reliance was also placed to a decision of this Court in MACA No.108 of 2021. This Court in Para-4 & 7 of order dtd.25.04.2023 held as follows:-

"4. Mr. Mahali submits on behalf of the insurer that the accused driver of the offending vehicle, i.e. motor cycle bearing registration number OD-08-D-3541 is the owner himself who did not have licence to drive the motor cycle on the date of accident. The copy of the driving licence produced under Ext.A on behalf of the insurer discloses that the licence was issued on 4th November, 2016, whereas the accident is dated 17th May, 2016. The owner – Respondent No.4 is unable to produce any material to controvert the fact that he was driving the vehicle without license. As per the principles expounded in the case of National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 as well as in the case of Nirmala Kothari vs. United India Insurance Company Limited, (2020) 4 SCC 49, the position has been clarified that when the owner has consciously permitted the vehicle to be driven by a person without having authorization to drive, the insurer is absolved of his liability. This court MACA No.445 of 2020 disposed of on 7th February 2023 and in MACA No.977 of 2017, disposed of on 28th October, 2022 have also observed that when the owner is the driver himself and did not have licence to drive the vehicle, the insurer is exempted from its liability.

7. *In view of the discussions made above, the appeal is allowed and the insurer – Appellant is exempted from the liability.*

The owner – Respondent No.4 is directed to deposit the modified compensation amount of Rs.12,57,400/- along with interest @ 6% per annum from the date of filing of the claim application till realization, within a period of two months from today, failing which it is open for the claimants to realize it from him. The amount shall be disbursed in favour of the claimants on such terms and proportion to be decided by learned tribunal. ”

5. Making all the submissions, learned counsel appearing for the appellant contended that since the driver of the offending vehicle, who also happens to be the owner, was not having valid D.L., appellant is not liable to pay the compensation and the impugned award passed in that regard needs interference of this Court.

6. Mr. P.C. Pattnaik, learned counsel appearing for the Claimants-Respondent Nos.1 and 2 on the other hand while supporting the impugned judgment contended that since the offending vehicle was having valid Insurance Policy, even though the driver of the offending vehicle was not having valid D.L., but the appellant is liable to pay the compensation so allowed by the Tribunal and the appellant be allowed right of recovery as against the owner of the offending vehicle.

6.1. Reliance was placed to a decision of the Hon’ble Apex Court in the case of **Singh Ram vs. Nirmala & Others**, reported in (2018) 3 SCC 800. Hon’ble Apex Court in Para2, 5, 6, 7 & 8 has held as follows:-

“2. The accident took place on 22-3-2010. The deceased Sunil Kumar was riding a motorcycle bearing Registration No. HR 04 B 4673. The Tribunal found that the accident was caused as a result of the rash and negligent act of the appellant. This finding of fact has not been disturbed by the High Court. The deceased was employed as a sweeper in Haryana Roadways and was engaged on a salary of Rs 11,928 per month. The Tribunal allowed future prospects of 50%, the deceased being just short of 36 years of age. After deducting an amount representing one-fourth of the earnings for personal expenses, the Tribunal applied a multiplier of 15. The total compensation was computed at Rs 24,15,420 to which the Tribunal added an amount of Rs 20,000 under conventional heads. However, the Tribunal held that the financial assistance which the heirs of the deceased would receive over a period of 12 years from the employee (amounting to Rs 16,16,112) would have to be deducted from the compensation. After making the deduction, the Tribunal awarded an amount of Rs 8,19,500 together with interest at 7.5% p.a. from the date of the claim petition. The High Court has enhanced the compensation to Rs 16,04,912.

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5. Before we advert to the decision in *Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]* a brief reference to the facts as they emerge from the decision of the Tribunal is necessary. Initially before the Tribunal the appellant produced a driving licence issued by the Motor Vehicles Department, Agra (Ext. R-1). The driving licence was found to be fake. The statement of the Senior Assistant in the office of the RTO, Agra was that Ext. R-1 had not been issued by the office. The Tribunal noted that the witness had proved the report (Ext. R-2) issued by the department and concluded that the licence was fake. Faced with this situation, the

appellant attempted to prove that he held a valid driving licence issued by the licensing authority at Jagadhri to drive a motorcycle. The Tribunal rejected the application filed by the appellant for producing additional evidence. The Tribunal noted that even otherwise, the licence which was issued by the licensing authority, Jagadhri for a tractor and car was valid only until 29-8-2009. The accident took place on 22-3-2010. The licence was renewed on 28-11-2011 more than two years after it had expired. On these facts, the Tribunal observed that on the date of the accident, the appellant was not holding a valid and effective driving licence nor was there any evidence to indicate that the licence was sought to be renewed as required in law, within 30 days of its expiry. The Tribunal also observed that the appellant did not hold a valid licence to drive a motorcycle. On these grounds, the insurer was absolved. The High Court has confirmed the direction of the Tribunal to pay and recover.

6. In *Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]*, this Court held that the holder of a driving licence has a period of thirty days on its expiry, to renew it : (SCC p. 325, paras 45-46)

“45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Act and the Rules framed thereunder, despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefor. Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed, as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter, he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.” The following conclusion has been recorded in summation in the judgment : (SCC pp. 341-42, para 110) “(iii) The breach of policy condition e.g. disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time.

iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish “breach” on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The court cannot lay down any criteria as to how the said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act. (vii) The question, as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case."

7. In the present case it is necessary to note, as observed by the Tribunal, that the owner did not depose in evidence and stayed away from the witness box. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired. The appellant as owner had evidently failed to take reasonable care [Proposition (vii) of Swaran Singh [National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297 : 2004 SCC (Cri) 733]] since he could not have been unmindful of facts which were within his knowledge.

8. In the circumstances, the direction by the Tribunal, confirmed by the High Court, to pay and recover cannot be faulted. The appeal is, accordingly, dismissed. There shall be no order as to costs".

6.2. Placing reliance on the aforesaid decisions, learned counsel appearing for the Claimants-Respondent Nos.1 and 2 contended that, appellant has been rightly saddled with the liability by the Tribunal as it was not proved that the owner with having conscious knowledge that the driver having no valid D.L., allowed the driver to drive the vehicle. It is accordingly contended that the impugned award requires no interference of this Court. At best while upholding the award, right of recovery be allowed against Page 15 of 19 the owner in view of the decisions in the case of **Singh Ram**, so passed following the decision in the case of **Swaran Singh** as cited (*supra*).

7. To the submissions made by the learned counsel for the claimants / Respondents, learned counsel for the appellant contended that the decision in the case of Singh Ram is not applicable as in the case in hand the owner is the driver of the offending vehicle. It is also contended that since the owner is the driver, there is no meaning in allowing right of recovery against the owner.

8. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that claiming grant of compensation for the death of the deceased Ranjan Swain in a road accident, which took place on 01.02.2012, the Claimants-Respondents filed MACA No.486 of 2012 in the file of learned 1st MACT, Puri claiming compensation of Rs.6,00,000/-. As found from the impugned judgment, the offending vehicle was being driven by the driver, who also happens to be the owner of the offending motor cycle.

8.1. It is not disputed that the driver of the offending vehicle was not having valid D.L. at the time of accident and accordingly charge sheet was filed by the I.O for the offence under Section-181 of the M.V Act read with Section 279/304(A) of the I.P.C.

8.2. It is found that the Tribunal while passing the impugned judgment, also came to a finding that the driver of the offending vehicle was not having valid D.L. and charge sheet has been filed under Section-181 of the M.V. Act.

8.3. But it is found that on the face of such finding of the Tribunal, the Tribunal held the appellant liable to pay the compensation amount inter alia on the ground that the provision is a beneficial one and the offending vehicle was having valid insurance policy.

8.4. Placing reliance on the decisions in the case of **Swaran Singh** as well as **Singh Ram** so cited by the learned counsels appearing for the respective parties, it is the view of this Court that since the driver of the offending vehicle also happens to be the owner of the said vehicle, the stand taken by the learned counsel appearing for the claimants-respondents that unless and until it is proved that the owner of the offending vehicle was having conscious knowledge that the driver of the offending vehicle was not having valid D.L. and accordingly no fault can be found with the impugned award, is not acceptable. Since the driver of the offending vehicle is also the owner of the vehicle, conscious knowledge of the owner that he was not having valid D.L., is well proved. No right of recovery is also permissible as the owner is the driver of the offending vehicle.

8.5. In view of the aforesaid analysis, this Court placing reliance on the decision in the case of **Swaran Singh** as cited (supra) and more particularly the finding in sub-para (vii) of Para-106 of the judgment, is of the view that the appellant is not liable to pay the compensation so awarded.

8.6. Therefore, this Court is inclined to quash the impugned judgment dtd. 13.03.2020 so passed by learned 1st M.A.C.T., Puri in M.A.C. No.486 of 2012. While quashing the same, this Court allows the appeal.

8.7. Statutory amount so deposited be refunded along with accrued interest, if any, on proper identification.

9. The appeal accordingly stands disposed of.

Headnotes prepared by:

Shri Jnanendra Ku.Swain, Judicial Indexer

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

Result of the case:

Appeal allowed.

2025 (II) ILR-CUT-923

ASST. MANAGER (LEGAL) HDFC
ERGO GENERAL INSURANCE CO. LTD.

V.

MITU SWAIN & ORS.

[MACA NO. 975 OF 2023]

19 JUNE 2025

[BIRAJA PRASANNA SATAPATHY, J.]

Issue for Consideration

Whether the appellant/ company is liable to pay compensation in view of the provision contained under Section 147 of the M.V. Act, 1988.

Headnotes

MOTOR VEHICLES ACT, 1988 – Section 147 – Limit of liability – In this present appeal the award of the Tribunal is challenged – Appellant-company contended that the deceased while travelling in his employer's vehicle succumbed to the injury and the insurance being a private car comprehensive policy and as the additional premium has not been paid under IMT-16 and IMT-29, Appellant is not liable to pay compensation – Owner of the vehicle contended that deceased was travelling as an occupant and the accident took place due to rash and negligent driving of the driver of the offending vehicle and the overt act of driver is proved – So, the appellant-company is liable to pay compensation – Whether the appellant/company is liable to pay compensation in view of the provision contained U/s. 147 of the M.V. Act, 1988.

Held: Yes – Since the policy in question is a private car comprehensive policy and the deceased was an occupant in the said vehicle, placing reliance on the decision in the case of *Shanti Bopannah* as well as *Balkrishnan* as cited, it is the view of this Court that Appellant-Company is liable to pay the compensation so awarded vide the impugned judgment.

(Para 6.1)

Citations Reference

Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors., (2007) 5 SCC 428; United India Insurance Co. Ltd. Vs. R. Krishnan, (CMA No. 2307 of 2018 & batch) disposed of on 23.03.2020; National Insurance Co. Ltd. Vs. Balkrishnan & Anr., (2013) 1 TAC (1); New India Assurance Co. Ltd. Vs. Shanti Bopannah & Ors., (2018) 1 TAC 12 (SC) – referred to.

List of Acts

Motor Vehicles Act, 1988.

Keywords

Motor accident claim; Limit of liability; Private Car Comprehensive Policy; Occupant; Rash and negligent act; IMT-16; IMT-29; Unnamed passengers.

Case Arising From

Judgment dated 03.05.2023 passed by the 2nd Additional District Judge-cum-3rd MACT, Bhubaneswar in MAC Case No. 25 of 2018.

Appearances for Parties

For Appellant : Mr. G.P. Dutta (for Company)

For Respondents : Mr. B.B. Singh (Respondent Nos. 3 to 6)
Mr. P.K. Mishra (Respondent No. 7)

Judgment/Order**Judgment*****B.P. SATAPATHY, J.***

The present appeal has been filed by the Appellant-Company challenging the impugned judgment dtd.03.05.2023 so passed by the learned 2nd Additional District Judge-cum-3rd MACT, Bhubaneswar in MAC Case No. 25 of 2018. Vide the said Judgment the Tribunal while allowing the claim application so filed by the Claimants-Respondent Nos. 1 to 6, held the Appellant liable to pay compensation amount of Rs.32,54,000/- along with interest payable @ 6% per annum from the date of filing of the application till its realization. The Tribunal also levied default interest @ 8% per annum.

2. While assailing the impugned judgment learned counsel appearing for the Appellant contended that since the deceased while travelling in his employer's vehicle, succumbed to the injury because of the accident, which took place on 18.01.2018, the Appellant is not liable to pay the compensation in view of the provisions contained under Sec. 147 of the M.V. Act, 1988.

3. It is contended that the offending vehicle bearing Registration No. OD-33-K-6310 being insured by the Appellant under the Private Car Comprehensive Policy and no premium having been paid by the Owner-Respondent No. 7 under IMT-16, IMT-29, the Appellant could not have been held liable to pay the compensation as has been done by the Tribunal in the present case.

3.1. It is contended that as per the terms and conditions of the policy so issued in favour of the Owner-Respondent No. 7, since no extra premium was paid to cover personal accident to unnamed passengers other than Insured and the paid driver or

cleaner under IMT-16 and no premium having been paid towards legal liability to employees of the Insured other than driver and/or conductor and/or trainer, who may be travelling or driving in the Employer's car, the Tribunal could not have saddled the liability while allowing the claim application of the Claimants-Respondents. IMT-16 & 29 reads as follows:-

“IMT.16. PERSONAL ACCIDENT TO UNNAMED PASSENGERS OTHER THAN INSURED AND THE PAID DRIVER OR CLEANER (For Vehicles rated as Private Cars and Motorised Two Wheelers <not for hire or reward> with or without side car)

In consideration of the payment of an additional premium, it is hereby understood and agreed that the Company undertakes to pay compensation on the scale provided below for bodily injuries hereinafter defined sustained by any passenger other than the Insured and/or the paid driver, attendant or cleaner and/or a person in the employ of the Insured coming within the scope of the Workmen's Compensation Act, 1923 and subsequent amendments of the said Act and engaged in and upon the service of the Insured at the time such injury is sustained whilst mounting Into, dismounting from or travelling in the insured motor car and caused by violent accidental external and visible means which independently of any other cause shall within three calendar months of the occurrence of such injury result in :-

<i>Details of injury</i>	<i>Scale of compensation</i>
<i>i) Death</i>	<i>100%</i>
<i>ii) Loss of two limbs or sight of two eyes or one limb and sight of one eye.</i>	<i>100%</i>
<i>iii) Loss of one limb or sight of one eye</i>	<i>50%</i>
<i>iv) Permanent total disablement from injuries</i>	<i>100%</i>

Provided always that:

*1) compensation shall be payable under only one of the items (i) to (iv) above in respect of any such person arising out of any one occurrence and total liability of the Company shall not in the aggregate exceed the sum of Rs. * during any one period of insurance in respect of any such person.*

2) no compensation shall be payable in respect of death or injury directly or indirectly wholly or in part arising or resulting from or traceable to (a) intentional self injury, suicide or attempted suicide physical defect or infirmity or (b) an accident happening whilst such person is under the influence of intoxicating liquor or drugs.

3) such compensation shall be payable only with the approval of the Insured named in the Policy and directly to the injured person or his/her legal representative(s) whose receipt shall be a full discharge in respect of the injury of such person.

*4) not more than...** persons/passengers are in the vehicle insured at the time of occurrence of such injury. Subject otherwise to the terms exceptions conditions and limitations of this Policy.*

**The Capital Sum Insured (CSI) per person is to be inserted.*

***The registered sitting capacity of the vehicle insured to be inserted.*

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IMT.29. LIABILITY TO EMPLOYEES OF THE INSURED OTHER THAN PAID DRIVER AND/OR CONDUCTOR AND/OR CLEANER WHO MAY BE TRAVELLING OR DRIVING IN THE EMPLOYER'S CAR (Private Car's only/Motorised two wheelers [not for hire or reward])

In consideration of the payment of an additional premium @ Rs. 50/- per employee insured notwithstanding anything to the contrary contained in the Policy it is hereby understood and agreed that the Company will 'Indemnify the Insured against the Insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named Insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured.

Provided that in the event of an accident whilst the vehicle insured is carrying more than employees of the Insured (including the driver) the Insured shall repay to the Company a rateable proportion of the total amount payable by the Company by the reason of this endorsement in respect of accident in connection with such vehicle insured.

Subject otherwise to the terms, conditions limitations and exceptions of this policy.

*NB. *To insert the number of employees for which the premium has been paid."*

3.2. It is also contended that though it is not disputed that the policy in question was a comprehensive private car insurance policy, but since no additional premium was paid by the Insured as provided under IMT-16 & 29, the Appellant is not liable to pay the compensation as directed by the Tribunal.

3.3. In support of his aforesaid submission reliance was placed to a decision of the Hon'ble Apex Court reported in (2007) 5 SCC 428 (**Oriental Insurance Co. Ltd. Vs. Meena Variyal & Ors.**). Hon'ble Apex Court in Para 12 to 14 & 18 of the said judgment has held as follows:-

"12. Chapter XI of the Act bears a heading, "Insurance of Motor Vehicles against third-party risks". The definition of "third party" is an inclusive one since Section 145(g) only indicates that "third party" includes the Government. It is Section 146 that makes it obligatory for an insurance to be taken out before a motor vehicle could be used on the road. The heading of that section itself is "Necessity for insurance against third-party risk". No doubt, the marginal heading may not be conclusive. It is Section 147 that sets out the requirement of policies and limits of liability. It is provided therein that in order to comply with the requirements of Chapter XI of the Act, a policy of insurance must be a policy which is issued by an authorised insurer; or which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by the owner in respect of the death of or bodily injury or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place. With effect from 14-11-1994, injury to the owner of goods or his authorised representative carried in the vehicle was also added. The policy had to cover death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. Then, as per the proviso, the policy shall not be required to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in

the course of his employment, other than a liability arising under the Workmen's Compensation Act, 1923 in respect of the death of, or bodily injury to, an employee engaged in driving the vehicle, or who is a conductor, if it is a public service vehicle or an employee being carried in a goods vehicle or to cover any contractual liability. Sub-section (2) only sets down the limits of the policy.

13. *As we understand Section 147(1) of the Act, an insurance policy thereunder need not cover the liability in respect of death or injury arising out of and in the course of the employment of an employee of the person insured by the policy, unless it be a liability arising under the Workmen's Compensation Act, 1923 in respect of a driver, also the conductor, in the case of a public service vehicle, and the one carried in the vehicle as owner of the goods or his representative, if it is a goods vehicle. It is provided that the policy also shall not be required to cover any contractual liability. Uninfluenced by authority, we find no difficulty in understanding this provision as one providing that the policy must insure an owner against any liability to a third party caused by or arising out of the use of the vehicle in a public place, and against death or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of vehicle in a public place. The proviso clarifies that the policy shall not be required to cover an employee of the insured in respect of bodily injury or death arising out of and in the course of his employment. Then, an exception is provided to the last foregoing to the effect that the policy must cover a liability arising under the Workmen's Compensation Act, 1923 in respect of the death or bodily injury to an employee who is engaged in driving the vehicle or who serves as a conductor in a public service vehicle or an employee who travels in the vehicle of the employer carrying goods if it is a goods carriage. Section 149(1), which casts an obligation on an insurer to satisfy an award, also speaks only of award in respect of such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy). This provision cannot therefore be used to enlarge the liability if it does not exist in terms of Section 147 of the Act.*

14. *The object of the insistence on insurance under Chapter XI of the Act thus seems to be to compulsorily cover the liability relating to their person or properties of third parties and in respect of employees of the insured employer, the liability that may arise under the Workmen's Compensation Act, 1923 in respect of the driver, the conductor and the one carried in a goods vehicle carrying goods. On this plain understanding of Section 147, we find it difficult to hold that the Insurance Company, in the case on hand, was liable to indemnify the owner, the employer Company, the insured, in respect of the death of one of its employees, who according to the claim, was not the driver. Be it noted that the liability is not one arising under the Workmen's Compensation Act, 1923 and it is doubtful, on the case put forward by the claimant, whether the deceased could be understood as a workman coming within the Workmen's Compensation Act, 1923. Therefore, on a plain reading of Section 147 of the Act, it appears to be clear that the Insurance Company is not liable to indemnify the insured in the case on hand.*

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18. *In New India Assurance Co. Ltd. v. Asha Rani [(2003) 2 SCC 223 : 2003 SCC (Cri) 493] this Court had occasion to consider the scope of the expression "any person" occurring in Section 147 of the Act. This Court held : (SCC p. 235, para 26)*

"... that the meaning of the words 'any person' must also be attributed having regard to the context in which they have been used i.e. 'a third party'. Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not

enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."

In other words, this Court clearly held that the apparently wide words "any person" are qualified by the setting in which they occur and that "any person" is to be understood as a third party."

3.4. Reliance was also placed to a Division Bench decision of the Madras High Court in the case of **United India Insurance Co. Ltd. Vs. R. Krishnan** (CMA No. 2307 of 2018 & batch) disposed of on 23.03.2020. Madras High Court in Para 19.2, 19.3, 20.1, 20.2, 20.3, 20.4, 20.5, 20.6.1, 20.6.2, 20.7, 20.8, 20.9, 20.10 & 20.11 has held as follows:-

"19.2 IMT-16 is relating to the premium paid to cover the present accident to unnamed passengers other than the insured and the paid driver and the cleaner. Now, the issue to be decided herein is that, who are the persons to be covered under the category of unnamed passengers, in terms of IMT16.

19.3 As per the IMT-16, all the passengers would be covered other than the following:-

i) insured and/or

ii) the paid driver attendant or cleaner; and/or

iii) a person in the employ of the insured coming within the scope of the Workmens Compensation Act, 1923 and subsequent amendments of the said Act and

iv) engaged in and upon the service of the insured at the time such injury is sustained whilst mounting into

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20.1 As far as fifth issue is concerned, now we have to decide whether the owner of the vehicle is liable to pay additional premium to cover its employees in terms of IMT-29? To answer this issue it is relevant to extract the IMT-29 as follows:

"IMT-29 Legal Liability to Employees of the Insured other than paid driver and/or conductor and /or cleaner who may be travelling or driving in the employer's car (Private cars only/Motorized two wheelers (not for hire or reward) "In consideration of the payment of an additional <http://www.judis.nic.in> and 586 of 2019 premium @ Rs.25/- per employee insured notwithstanding anything to the contrary contained in the policy it is hereby understood and agreed that the insurer will indemnify the insured against the insured's liability at Common Law and Statutory Liability under the Fatal Accidents Act, 1855 for compensation (including legal costs of any claimant) for death of or bodily injury to any employee (other than paid drivers) of the within named insured being carried in or upon or entering in or getting on to or alighting from or driving the vehicle insured. Provided that in the event of an accident whilst the vehicle insured is carrying more than ... employees of the insured (including the driver) the insured shall repay to the insurer a rateable proportion of the total amount payable by the insurer by the reason of this endorsement in respect of accident in connection with such vehicle insured. Subject otherwise to the terms, condition limitations and exception of this policy."*

20.2. The IMT-29 is relating to the payment of additional premium to cover the liability to employees of the insured other than the paid drivers/conductors/cleaners.

20.3 The terms and conditions of Section II-Liability to third parties, as stated above, clearly excludes payment of compensation to the employees of the insured under the category of third party liability. Section II ultimately provides that third party liabilities would be covered as provided under Section 147 of the M.V. Act. Section 147 of the M.V. Act, clearly spells out that premium paid by the insured would cover only the statutory liabilities as stated thereunder, excluding the liabilities to the employees of the insured. Therefore, under Section 147 of M.V. Act, it is mandatory for the insured to enter into a private contract with the insurer by way of payment of additional premium to cover its employees.

20.4 The premium paid under basic third party liability does not cover the employees of the insured. As we stated earlier, additional premium paid under IMT-16 to cover unnamed passengers also excludes employees of the insured from any coverage. Therefore, in order to cover the employees of the insured, the insured is required to pay additional premium in terms of IMT-29.

20.5 This Court vide orders dated 05.09.2019 and 23.09.2019 directed the IRDA to answer the following queries:

“(i) Whether the Insurance Company is liable to <http://www.judis.nic.in> and 586 of 2019 pay compensation to the occupant in a private car without paying additional premium under IMT-29?

(ii) What is the scope of IMT-29 after the issuance of circular dated 3 December 2009, by IRDA.”?

20.6.1 As far as first query is concerned, the IRDA submits that the Insurance Company will not be liable to pay compensation in an accident for the occupants in the private car, who are employees of the insured/owner travelling without obtaining coverage under IMT-29.

20.6.2 As far as second query is concerned, the IRDA answered that the circular, dated 03.12.2009 was not intended to modify the policy terms or include coverage for employee/occupant but only to deal with dispute being raised by the insurer for all occupants (other than employees/occupants) contrary to the express wording of the policy.

20.7 Thus, from the memo filed by IRDA dated 30.09.2019, it is clear that insurer will not have liability for occupants in a private car, who are employees of the insured/owner (except the paid driver) without obtaining coverage under IMT-29.

20.8 Therefore, if an employer intends to cover its employees, it is mandatory for the employer to pay additional premium in terms of IMT-29. In the event of non payment of any additional premium, in terms of IMT-29, insurance coverage will not be extended to its employees. In the present case, admittedly, no additional premium was paid under IMT-29 to cover the employees of the insured. Therefore, without payment of additional premium certainly, the employees are not entitled to make any claim under the pretext that the policy issued by the insurer was a comprehensive/package policy.

20.9 At the time of argument, the learned Senior Counsel, Mr.M.S.Krishnan made a submission that issue relating to applicability of IMT-29 has been raised for the first time before this Court. Had they raised this issue at the time of trial, they would have had a chance to examine whether the claimant was travelling as employee in the course of employment. We do <http://www.judis.nic.in> and 586 of 2019 not find any force in the said submission of learned Senior Counsel as there is no requirement to raise the said issue now since the claimant had filed claim statement stating that the accident

occurred, when he was travelling in a Bollero Jeep after visiting his work site at Joda towards Bhubaneswar. Corroborating the same, P.W.1 and P.W.2 also deposed evidence. The said averment was not disproved by the Thriveni. Further, at the time of chief examination, R.W.1 has clearly deposed about the difference between IMT-28 and IMT-29. Therefore, even at the time of examination of witnesses, the issue relating to the applicability of IMT-29 was raised. It is only the insured, who failed to cross-examine R.W.1. in this aspect. Therefore, the contention of the learned Senior Counsel that for the first time, the applicability of IMT-29 has been raised before this Court does not have any merit. Therefore, we are of the considered view that, in the present case, no additional premium was paid under IMT-29 to cover the employees of the insured.

20.10 At this juncture, it would be appropriate to deal with various case laws cited by Mr.M.S.Krishnan, learned Senior Counsel appearing for the owner of the vehicle. The learned Senior counsel referred mainly the latest decision of the Hon'ble Supreme Court in the case of New India Assurance <http://www.judis.nic.in> and 586 of 2019 Company Vs. Shanti Bopanna and other (supra). By referring the above case, the learned Senior Counsel contended that the Hon'ble Supreme Court has categorically held that the employees will be covered under the comprehensive policy. In the present case, since the Policy issued is under the comprehensive/package policy, he contended that the said case is squarely applicable for the present case. However, on the perusal of the above judgment, it is clear that the additional premium payable in terms of IMT-29 to cover the legal liabilities to the employees of the insured other than paid driver had not been brought into the knowledge of the Hon'ble Supreme Court. Since the counsels failed to bring into the knowledge of the Hon'ble Supreme Court, the Hon'ble Supreme Court had no occasion to deal with about the applicability of IMT-29. The finding of the Hon'ble Apex Court in Shanti Bopanna case (supra) was made without testing the requirement of payment of additional premium by the employer to cover its employees under IMT29. Therefore, we are of the view that the principles laid down by the Hon'ble Apex Court in the Shanti Bopanna case will not be applicable to the case on hand.

20.11 In all other cases, as referred by both the parties, there was no finding on the aspect of applicability of IMT-29. Therefore, all the above cases <http://www.judis.nic.in> and 586 of 2019 referred by the learned Senior counsel appearing for the owner of the vehicle will not be applicable for the present case. In fine, we hold that in the present case, owner of the vehicle is liable to pay additional premium under IMT-29, to cover its employees. Obviously, no additional premium was paid in terms of IMT-29. Hence, we are of the view that the insurance company is not liable to pay compensation as awarded by the Tribunal. Accordingly, Issue No.5 is answered."

3.5. It is also contended that challenge made to the Judgment passed by the Madras High Court before the Hon'ble Apex Court in Special Leave to Appeal (Civil) No. 7529 of 2020 was also dismissed vide order dtd.03.08.2022. It is accordingly contended that in view of non-payment of any premium under IMT-16 & 29 and the policy being a Private Car Comprehensive Policy, the Appellant is not liable to pay any compensation as has been allowed vide the impugned judgment and the same is not sustainable in the eye of law.

4. Mr. P.K. Mishra, learned counsel appearing for the Owner Respondent No. 7 on the other hand contended that since the policy in question is a private car comprehensive policy and there is no violation of any policy condition, challenge

made by the Appellant to the impugned judgment is not sustainable in the eye of law.

4.1. It is contended that since the policy is a private car comprehensive policy and the deceased was travelling in the vehicle as an occupant and while proceeding as such, he met with the accident and died accordingly, the Appellant is liable to pay the compensation as awarded.

4.2. It is also contended that there is no dispute that the accident took place due to the rash and negligent driving of the driver of the offending vehicle and such overt act of the driver of the offending vehicle has been clearly proved by P.W. 1 & 2.

4.3. Since the driver of the offending vehicle was having valid D.L. and the vehicle was duly insured under the Private Care Comprehensive Package Policy, such a policy covers the risk of the occupants. The Claimants being the legal heirs of the deceased occupant, being a 3rd Party, are entitled to get the compensation. In support of the same, reliance was place to a decision of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Balkrishnan & Anr. (2013) 1 TAC (1)**. Hon'ble Apex Court in Para 20 & 21 of the said Judgment has held as follows:-

“20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated [2011 ACJ 1415 (Del)] thus: (Yashpal Luthra case [2011 ACJ 1415 (Del)] , ACJ p. 1424, para 27)

“27. In view of the aforesaid, it is clear that the comprehensive/package policy of a two-wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for the Motor Accidents Claims Tribunal to go into the question whether the insurance company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case.”

21. In view of the aforesaid factual position, there is no scintilla of doubt that a “comprehensive/package policy” would cover the liability of the insurer for payment of compensation for the occupant in a car. There is no cavil that an “Act policy” stands on a different footing from a “comprehensive/package policy”. As the circulars have made the position very clear and IRDA, which is presently the statutory authority, has commanded the insurance companies stating that a “comprehensive/package policy” covers the liability, there cannot be any dispute in that regard. We may hasten to clarify that the earlier pronouncements were rendered in respect of the “Act policy” which admittedly cannot cover a third-party risk of an occupant in a car. But, if the policy is a “comprehensive/package policy”, the liability would be covered. These aspects were not noticed in Bhagyalakshmi [(2009) 7 SCC 148 : (2009) 3 SCC (Civ) 87 : (2009) 3 SCC (Cri) 321] and, therefore, the matter was referred to a larger Bench. We are disposed to think that there is no necessity to refer the present matter to a larger Bench as IRDA, which is presently the statutory authority, has clarified the position by issuing circulars which have been reproduced in the judgment by the Delhi High Court and we have also reproduced the same.”

4.4. It is accordingly contended that since the deceased was an occupant in the vehicle, which is not disputed, in view of the decision in the case of **Balkrishnan** as cited (supra), no illegality or irregularity can be found with the impugned judgment.

5. Mr. B.B. Singh, learned counsel appearing for the Claimants-Respondent Nos. 1 & 3 to 6 also made similar submission as made by the learned counsel appearing for the Owner-Respondent. In addition to the submission made by the learned counsel appearing for the Respondent-Owner, learned counsel appearing for the Claimants-Respondents contended that the decision rendered by the Madras High Court by the Appellant is not applicable to the facts of the present case as in the said case the offending vehicle was registered in the name of the Company and the policy was also issued in favour of the Company. Accordingly, provisions of IMT-16 & IMT-29 were made applicable to the facts of the said case.

5.1. Since the present case, the deceased was travelling in the offending vehicle as an occupant and since the accident occurred due to rash and negligent driving of the driver, which is well proved by P.W. 1 & 2, eye witnesses to the occurrence, in view of the decision rendered in the case of **Balkrishnan** as cited (supra), the Appellant is liable to pay the compensation.

5.2. Reliance however was also placed to another decision of the Hon'ble Apex Court reported in (2018) 1 TAC 12 (SC) (**New India Assurance Co. Ltd. Vs. Shanti Bopannah & Ors.**). Hon'ble Apex Court in Para 7 & 8 of the said judgment has held as follows:-

"7. The clause of the policy reproduced above clearly covers the insured against all sums which the insurer may become liable to pay in respect of:

"(i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward)...."

8. We thus find that the claim of the widow and the adopted son is fully covered by the clause in the insurance contract, i.e., the policy and there is no scope for acceding to the submission made on behalf of the appellant-company that the claim is excepted by virtue of the provisions of Section 147 (1) of 1 of the Act in this case. We, therefore, reject the contention made on behalf of the applicant that the deceased was not a third party because he was an employee sitting in the car. It is obvious from the circumstances that the deceased was indeed a third party being neither the insurer nor the insured."

5.3. Learned counsel appearing for the Claimants-Respondents accordingly contended that no interference is called for with the impugned judgment.

6. Having heard learned counsel appearing for the Parties, considering the submissions made and after going through the materials available on record, this Court finds that the deceased died due to a road accident caused on 18.01.2018. It is not disputed that the offending vehicle bearing Registration No. OD-33-K-6310 was insured with the Appellant-Company with issuance of a policy in the name and style 'Private Car Comprehensive Policy'. It is not the case of the Appellant that the deceased died due to his own negligence in any manner.

6.1. Since the policy in question is a private car comprehensive policy and the deceased was an occupant in the said vehicle, placing reliance on the decision in the case of **Shanti Bopannah** as well as **Balkrishnan** as cited (supra), it is the view of this Court that Appellant-Company is liable to pay the compensation so awarded vide the impugned judgment. Decisions relied on by the learned counsel appearing for the Appellant as per the considered view of this Court, is not applicable to the facts of the present case.

6.2. However, considering the submission made by the learned counsel for the Appellant as well as the Claimants-Respondents, this Court while not interfering with the impugned award, held the Claimants-Respondents entitled to get the awarded compensation amount. However, this Court is inclined to waive out the penal interest levied @ 8%. While holding so, this Court directs the Appellant-Company to deposit the awarded compensation amount of Rs.32,54,000/- along with interest payable @ 6% per annum from the date of filing of the application till its realization within a period of eight (8) weeks from the date of receipt of this order. On such deposit of the amount, the Tribunal shall disburse the same in favour of the Claimants-Respondents in full in terms of the Judgment passed on 03.05.2023.

6.3. However, it is observed that if the amount as directed will not be deposited by the Appellant-Company within the aforesaid time period of eight (8) weeks, the compensation amount of Rs.32,54,000/- shall carry interest @ 7% per annum for the period starting from the expiry of the period of eight (8) weeks till its payment.

6.4. It is observed that the account payee cheque not yet invested, be returned back to the Appellant-Company, after satisfaction of the award.

7. The appeal is disposed of accordingly.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

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

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Result of the case:

Appeal disposed of.

2025 (II) ILR-CUT-934

**MAA BIRAJA SELF HELP GROUP,
KUDAPADA, SAMBALPUR
V.
STATE OF ODISHA,
COMMISSIONER-CUM-SECRETARY, MISSION SHAKTI DEPTT.,
BHUBANESWAR & ORS.**

[W.P.(C) NO. 15237 OF 2025]

13 JUNE 2025

[MURAHARI SRI RAMAN, J.]

Issue for Consideration

Whether the impugned order debarring the petitioner from paddy procurement operation KMS 2024-25 (Rabi season) without adhering to the principles of natural justice is sustainable under law.

Headnotes

CONSTITUTION OF INDIA, 1950 – Article 226 – Principle of Natural Justice – The Collector-cum-District Magistrate basing upon the complaint of Manoj Sahu & others and on the basis of joint enquiry report vide order dated 13.05.2025 debarred the petitioner from paddy procurement operation KMS 2024-25 (Rabi Season) but such enquiry report has never been supplied to the petitioner – Whether the impugned order debarring the petitioner from paddy procurement operation KMS 2024-25 (Rabi season) without adhering to the principles of natural justice is sustainable under law.

Held: No – The central point is that debarment should not be used casually or as a standard response for ordinary contract breaches – The implication is that debarment is a serious penalty and should be reserved for more egregious circumstances. (Para 8.12)

With the above note, it is, therefore, concluded that the Order dated 13.05.2025 being clearly violative of principles of natural justice and bereft of reasons, warrants indulgence of this Court. (Para 8.13)

Since this Court finds in view of discussions made in the foregoing paragraphs that there has been serious violation of fundamental principles of natural justice by the Collector, Sambalpur in taking decision *vide* order dated 13.05.2025 (Annexure-10), suffice it to say that such order cannot be sustained in the eye of law and matter deserves to be remanded to the said authority for fresh decision by ascribing reasons. (Para 9.1)

Citations Reference

Maa Asuragadian Women Self-Help Group, Subarnapur & batch **W.P.(C) No.29405 of 2024, Order dated 10.03.2025**; Taylor Vrs. Taylor, **(1875) 1 Ch.D. 426**; The Secretary, A.P. Social Welfare Residential Educational Institutions Vrs. Sri Pindiga Sridhar, **(2007) 4 SCR 145**; Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi and others, **AIR 1978 SC 851**; Swadeshi Cotton Mills Vrs. Union of India, **(1981) 1 SCC 664**; Canara Bank Vrs. Debasis Das, **(2003) 4 SCC 557 = (2003) 2 SCR 968**; Sponge Udyot Pvt. Ltd. Vrs. The Asst. Commissioner of Sales Tax, Rourkela-II Circle, Rourkela, **2010 SCC OnLine Ori 68**; Steel Authority of India Limited Vrs. Sales Tax Officer, **(2008) 10 SCR 655 = 2008 INSC 799**; Blue Dreamz Advertising Pvt. Ltd. & Anr. Vrs. Kolkata Municipal Corporation, **(2024) 8 SCR 189 = 2024 INSC 589**; Mahipal Singh Tomar Vrs State of Uttar Pradesh and others, **(2013) 16 SCC 771**; Ridge Vrs. Baldwin, **(1963) 2 All ER 66 (HL)**; Chief Constable of North Wales Plice Vrs. Evans, **(1982) All ER 141 (HL)**; State of Orissa Vrs Binapani Dei, **AIR 1967 SC 1269**; U.P. Warehousing Corporation Vrs. Vijay Narayan Vajpayee, **(1980) 3 SCC 459**; Union of India Vrs. Arulmozhi Iniarasu, **(2011) 9 SCR 1**; B.P. Enterprises Vrs. State of Odisha, **2008 SCC OnLine Ori 532**; Doki China Gurubalu and Sons and Co. Vrs. State of Orissa and others, **1991 SCC OnLine Ori 93 = AIR 1992 Ori 189 = 73 (1992) CLT 468 – referred to.**

List of Acts

Constitution of India, 1950; Odisha Agricultural Produce Markets Rules, 1958.

Keywords

Debarment; Failure to give reason; Reason; Useless formality theory; Principle of natural justice; Substantial justice; Quasi-judicial authority.

Case Arising From

Order No. 2074/CS, dated 13.05.2025 passed by Collector-cum-District Magistrate, Sambalpur.

Appearances for Parties

For Petitioner : Mr. Subir Palit, Sr. Adv. & Mr. Amitabh Mishra
and Abhisek Kejriwal

For Opp. Parties : Mr. Bibekananda Nayak, A.G.A.

Judgment/Order

Judgment

M.S. RAMAN, J.

Illegal, arbitrary, and whimsical action of Collector-cum-District Magistrate, Sambalpur, *vide* order No.2074/CS, dated 13.05.2025, debarring the

petitioner from paddy procurement operation KMS 2024-25 (Rabi Season) with immediate effect, is under challenge in the instant writ petition invoking provisions of Articles 226 and 227 of the Constitution of India, wherein the following prayer(s) has been made:

“It is therefore humbly prayed that this Hon’ble Court may graciously be pleased to declare that the order vide No.2074 dated 13.05.2025 issued by the O.P. No.3 as at Annexure-10 be quashed;

And may further be pleased to direct that the existing Self Help Group members not be removed from their functional roles and responsibilities, and be allowed to continue their participation without disruption;

And may further be pleased to pass any other order(s) as deemed fit and proper;

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

Facts:

2. Shorn off unnecessary detailed narration of facts, as is relevant for the present purpose are taken note of hereunder.

2.1. It is submitted by the petitioner¹ that it has been issued with licence vide License No.125 dated 13.03.2023 under Section 4(6) of the Odisha Agricultural Produce Markets Act, 1956² read with Rule 60 of the Odisha Agricultural Produce Markets Rules, 1958 by the Sub-Collector, Sambalpur-cum-Chairman Regulated Market Committee, Sambalpur to operate as trader/commission agent/surveyor broker/weighman/measure in the Regulated Market Yard, Sambalpur.

2.2. Sub-Divisional Selection Committee recommended eight Women Self Help Groups including the petitioner on its Meeting held on 21.10.2020 for involvement in KMS (Kharif Marketing Season) 2020. Since then the petitioner has been involved in the paddy procurement for the Regulated Marketing Committee, Sambalpur.

2.3. A tripartite agreement among the petitioner, the District Social Welfare Officer, Sambalpur (DSWO) and the District Manager, Odisha State Civil Supplies Corporation Limited, Sambalpur, was executed on 19.11.2024 with the object as specified in Clause (2) and Clause (3) thereof, which are reproduced hereinbelow:

“Clause-2: Objective of the Contract:

¹ The petitioner is a Women Self Help Group registered in the Mission Shakti vide its Registration No. 2401-001-602721 for empowerment of women and ensure decentralized, community-based leadership to operate as Trader/Commission Agent/Surveyor Broker/Weighman/measure in the Regulated Market Committee Market yard.

² An act to provide, for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Odisha.

As per Food and Procurement Policy for KMS 2024-25, the Corporation has to undertake for procurement of paddy from farmers at the PPC to be operated by selected WSHGs as commission agent. The DSWO shall act as Nodal Officer for procurement of FAQ/URS paddy through WSHGs in the concerned districts.

Clause-3: Duration of Contract:

The contract shall come into force with effect from the date of execution of this agreement and shall remain in force till 30.09.2025 or till conciliation of paddy purchased and delivered to millers and settlement of accounts with the Corporation, whichever is later.

This agreement may be extended for further period as may be mutually agreed by the parties on the same terms and conditions or as per the direction of the Government.”

2.4. The President of Maa Biraja Women’s Self Help Group (petitioner) has deposited amount towards license fees for the year 2024-25 in respect of agricultural produce being transported from 01.11.2024 to 31.10.2025 and received a receipt from the authorized person of the Market Committee.

2.5. The petitioner was allowed to procure paddy for KMS 2024-25 (Rabi Season) in respect of Dhankauda Block in Sambalpur Division pursuant to decision taken in the “Proceeding of the District Level Procurement Committee” Meeting held on 29.04.2025.

2.6. In order to maintain smooth and hassle-free paddy procurement operation during KMS 2024-25 (Rabi Season), Mandi Nodal Officers (MNO) and Mandi Supervising Officers (MSO) are appointed *vide* Order No.1804/CS, dated 28.04.2025.

2.7. *Vide* Letter No.2061/CS, dated 10.05.2025, Collector, Sambalpur has issued letter addressed to the CDM & PHO, Sambalpur for making provision of the First Aid Kit and the ORS Pouch at each Market Yard/Paddy Purchase Centre of Samabalpur district during KMS 2024-25 (Rabi Season). The procurement period relating to KMS 2024-25 scheduled to span from 01.10.2024 to 30.09.2025.

2.8. On the basis of a complaint received against the petitioner by some villagers (Manoj Sahu and others), an enquiry report was directed to be submitted by the Collector-*cum*-District Magistrate, Sambalpur; in pursuance of which joint enquiry report prepared by the DRCS, Sambalpur and the CSO, Sambalpur was stated to have been submitted.

2.9. As it appears from order dated 13.05.2025 action has been taken by the Collector & District Magistrate, Sambalpur based on complaint of Manoj Sahu and others and joint enquiry report debarring the petitioner from paddy procurement operation for ensuing KMS 2024-25 (Rabi Season).

2.10. Hence, this writ petition.

Hearing:

3. Since the procurement of paddy is on-going and involves time-bound factor, the matter was directed to be listed during vacation of this Court on 04.06.2025. Pursuant to order of even date, counter affidavit being sworn to by Sri Subodh Hota, Chief Civil Supplies Officer, Sambalpur (opposite party No.6) has been filed on 10.06.2025, serving copy thereof on Sri Amitabh Mishra, Advocate.

3.1. As short point whether principles of natural justice have been complied with before taking decision to debar the petitioner from paddy procurement falls for consideration of this Court, on consent, the counsel for respective parties advanced arguments on 10.06.2025. After arguments are advanced by both sides, on the request of Senior Counsel for the petitioner, the matter stood posted today for further hearing. Accordingly final hearing is conducted today.

3.2. Heard Sri Subir Palit, learned Senior Advocate being assisted by Sri Amitabh Mishra and Sri Abhisek Kejriwal, learned Advocates for the petitioner and Sri Bibekananda Nayak, learned Additional Government Advocate.

Arguments:

4. Sri Subir Palit, learned Senior Counsel appearing for the petitioner advanced following submissions:

(i) The order dated 13.05.2025 is without authority and jurisdiction of the Collector-cum-District Magistrate, Sambalpur in view of explicit provisions contained in the Odisha Agricultural Produce Markets Act, 1956;

(ii) The order impugned dated 13.05.2025, *vide* Annexure-10, is cryptic, bereft of reason and illegal; and

(iii) Non-supply of enquiry report purported to have been submitted pursuant to joint inspection vitiates the decision taken *vide* order dated 13.05.2025.

(iv) Debarment without duly confronting the material collected behind the back of the petitioner leads to adverse civil consequences, as a result of which the order impugned is untenable in the eye of law.

(v) Basic tenets of natural justice being not adhered to, the petitioner is entitled for restoration of position as if the order dated 13.05.2025 (Annexure-10) has never been given effect to.

5. Sri Bibekananda Nayak, learned Additional Government Advocate would submit that action has been taken on the basis of complaint received from Manoj Sahu and others by the Collector-cum-District Magistrate, Sambalpur. Joint enquiry was conducted and a report was submitted by the DRCS and the CSO, Sambalpur as against the petitioner.

5.1. It is manifest from the joint enquiry report that:

(i) as against 169 numbers of forms discovered on physical verification, 196 numbers of farmers (25 new farmers and 171 existing farmers) were registered for Rabi 2024-25 as per the online portal;

(ii) the petitioner maintained a receipt register without page certification and maintained the same unsystematically;

(iii) though the petitioner was allocated to procure paddy from farmers relating to *Kalamati Gram Panchayat* area, registration of some farmers of *Satupali Mouza*, *A. Katapali Mouza*, *Sansinhgari Mouza*, *Basantpur Mouza* have been made; and

(iv) on inspection, it could be ascertained that basic infrastructure amenities like godown, toilet, drinking water, weigh bridge, space for paddy cleaning and paddy vehicle parking area *etc.* were not made available.

(v) In addition thereto, there was violation of Operational Guideline for KMS 2024-25 communicated *vide* Letter No.12908 dated 28.10.2024 particularly the petitioner having not preserved system generated hard copy of all registers/documents in bound book shape as required under point No.9.2 of the said Guideline.

5.2. Sri Bibekananda Nayak, learned Additional Government Advocate vehemently contended on merits that such serious mismanagement being noticed during inspection led to debarment of the petitioner from paddy procurement operation. Therefore, he submitted that the order dated 13.05.2025 cannot be faulted with.

6. Sri Subir Palit, learned Senior Counsel appearing for the petitioner, after perusal of counter affidavit, refuting the contentions of the Additional Government Advocate urged that the petitioner has come up before this Court on limited grievance on the points of jurisdiction of the authority and the non-compliance of principles of natural justice. He submitted that had the copy of joint enquiry report been supplied to the petitioner, it would have explained each point of allegation.

6.1. It is affirmed that the petitioner was unaware of contents of the joint enquiry report which were never confronted to it. Such enquiry report having been submitted to the Collector behind his back, and the Collector having acted upon such report and utilised the same to the detriment of the petitioner to debar it from the paddy procurement operation, the impugned order dated 13.05.2025 cannot be sustained in the eye of law.

6.2. Expanding his argument further Sri Subir Palit, learned Senior Advocate referred to *Order dated 10.03.2025* passed in *W.P.(C) No.29405 of 2024 (Maa Asuragadian Women Self-Help Group, Subarnapur)* & *batch* to buttress that the opposite parties should have acted fairly and pragmatically. Before taking recourse to debarment of the petitioner from procurement of paddy, adverse material should have been put to its notice and called for explanation.

6.3. It is, therefore, submitted by learned Senior Counsel that from the contents of the enquiry report, which came to its knowledge on receiving the counter affidavit, the allegations could come to be noticed by the petitioner. It is submitted that the terms and conditions as stipulated in the tripartite agreement being not contravened at any stage by the petitioner during the subsistence of such agreement, the order dated 13.05.2025 could not have been passed by the Collector-cum-District Magistrate, Sambalpur by taking a unilateral decision on the basis of the

joint enquiry report; and that too in transgression of his power conferred under Rule 61 of the Odisha Agricultural Produce Markets Rules, 1958³. The enquiry being conducted on vague and frivolous allegations levelled against the petitioner by one Sri Manoj Sahu and others, the same could not trigger enquiry to form the basis for debarment of the petitioner from procurement of paddy in the midst of KMS-2024-25. He further submitted that no reason emanates from order dated 13.05.2025. Thus, any subsequent reason assigned by way of counter affidavit would not sanctify the impugned order dated 13.05.2025.

6.4. Sri Subir Palit, learned Senior Advocate laid emphasis on the following oft-quoted principle laid down in *Taylor Vrs. Taylor, (1875) 1 Ch.D. 426*, as approved and followed till date, that if the rule requires something to be done in a particular manner, it should be done either in the same manner or not at all. The Collector-cum-District Magistrate, Sambalpur by his action rendered the licence granted by competent authority under the Odisha Agricultural Produce Markets Act and rules framed thereunder inoperative. Such a course is without jurisdiction and authority conferred under the statute. Therefore, he arduously submitted that the action taken by the Collector-cum-District Magistrate cannot be countenanced in law as lack of jurisdiction goes to the root of the matter.

7. To counter such arguments, learned Additional Government Advocate in reply submitted that the reason being stated in the joint enquiry report needed no further examination by the Collector. Having accepted the enquiry report which was submitted upon conducting verification in connection with the allegation of Sri Manoj Sahu and others, the petitioner was debarred from paddy procurement operation for KMS 2024-25.

3 Rule 61 of the Odisha Agricultural Produce Markets Rules, 1958, stands thus:

"61. Powers of the Market Committee to suspend or cancel the licence granted to traders and general commission agents. —

(1) The Market Committee may, by a resolution passed by a majority consisting not less than two-thirds of its members cancel or suspend for a fixed period, the licence granted to one trader or general commission agent if he contravenes any of the conditions of his agreement or licence or of the rules or bye-laws or who, in the opinion of the Market Committee, is not solvent:

Provided that no order cancelling the licences or suspending the same for a period of more than six months shall be passed without previous approval of the Director.

(2) Any appeal against the decision of the Committee given under Sub-rule (1) shall lie to such Officer as may be authorised by the Director in this behalf and the decision of such officer in such appeal shall be final:

Provided that such appeal is made within thirty days of the decision of the Market Committee and the appellant abides by the decisions of the Market Committee from the date of such decision till the date of the orders passed in appeal."

7.1. He submitted that there was no requirement of observing formality by affording rigmarole of natural justice and hearing when the joint enquiry report is tell-tale with respect to non-compliance of stipulation contained in relevant guideline and covenant of agreement.

7.2. Sri Bibekananda Nayak, learned Additional Government Advocate would place reliance on *The Secretary, A.P. Social Welfare Residential Educational Institutions Vrs. Sri Pindiga Sridhar*, (2007) 4 SCR 145 to buttress his argument that in the circumstances of the present case there was no necessity to afford opportunity of hearing by furnishing copy of enquiry report.

Analysis and discussions:

8. The facts are undisputed, save and except the contents reflected in the joint enquiry report, as set out by the petitioner after receipt of copy of counter affidavit. It is fairly conceded by the counsel for the opposite parties that copy of joint enquiry report submitted by the DRCS and the CSO, Sambalpur was never brought to the notice of the petitioner in order to afford an opportunity to have its say. The reason for debarment from procurement of paddy as put forth in the counter affidavit could not improve the case of the opposite parties inasmuch as the Office Order dated 13.05.2025 (Annexure-10) does not transpire such reason.

8.1. It is well-settled principle of law as laid down by the Supreme Court in *Mohinder Singh Gill and another Vrs. The Chief Election Commissioner, New Delhi and others*, AIR 1978 SC 851. It has been held 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.’

In Commissioner of Police, Bombay Vrs. Gordhandas Bhanji, AIR 1952 SC 16, the Apex Court held as follows:

‘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 acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.’

Similar view has also been taken in *Bhikhubhai Vithalbhai Patel and others Vrs. State of Gujarat and another*, (2008) 4 SCC 144 as well as in *M/s. Shree Ganesh Construction Vrs. State of Orissa*, 2016 (II) OLR 237 = 2016 (II) ILR-CUT 237.

In the case of State of Punjab Vrs. Banddeep Singh, (2016) 1 SCC 724 the Apex Court held that ***the validity of administrative orders/decisions/ executive instructions/orders/circulars must be judged by reasons stated in decision or order itself***. Subsequent explanations or reasons cannot be accepted to sustain decision or order.”

8.2. Under the aforesaid premise, the reason being not depicted in the impugned Order dated 13.05.2025, it cannot be held to be tenable.

8.3. It may be pertinent to refer to *Swadeshi Cotton Mills Vrs. Union of India, (1981) 1 SCC 664*, wherein it has been lucidly explained the meaning and the concept of ‘natural justice’. It is stated:

“26. Well then, what is “natural justice”? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self-evident and unarguable truth”. [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice”. Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are:

(i) audi alteram partem and

(ii) nemo judex in re sua.

For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach a decision without a full hearing. In Maneka Gandhi case, (1978) 1 SCC 405 = (1978) 2 SCR 272, Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in A.K. Kraipak, (1975) 1 SCC 421 = (1975) 3 SCR 619). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India Vrs. Col. J.N. Sinha, (1969) 2 All ER 1207)

32. The maxim audi alteram partem has many facets. Two of them are:

(a) notice of the case to be met; and

(b) opportunity to explain.

This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice"—as Lord Atkin felicitously put it— "are often not on speaking terms [General Medical Council Vrs. Spackman, 1943 AC 627, 638".

44. In short, the general principle — as distinguished from an absolute rule of uniform application — seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

8.4. In the case of *Canara Bank Vrs. Debasis Das*, (2003) 4 SCC 557 = (2003) 2 SCR 968 the principles of natural justice has illuminatingly been discussed in the following manner: (SCC)

"12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not improve the situation, "useless formality theory" can be pressed into service.

13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a

formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "*Magna Carta*". The classic exposition of Sir Edward Coke of natural justice requires to "*vocate, interrogate and adjudicate*". In the celebrated case of *Cooper Vrs. Wandsworth Board of Works*, (1863) 143 ER 414 = 14 CBNS 180 = (1861-73) All ER Rep Ext 1554 the principle was thus stated : (ER p. 420)

*'[E]ven God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?' ***'*

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term "*principles of natural justice*" is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. Vrs. Local Govt. Board*, (1914) 1 KB 160 = 83 LKJB 86 (KB at p. 199) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. Vrs. Spackman*, 1943 AC 627 = (1943) 2 All ER 337 = 112 LKJB 529 (HL) Lord Wright observed that it was not desirable to attempt "*to force it into any Procrustean bed*" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "*a full and fair opportunity*" to every party of being heard.

18. Lord Wright referred to the leading cases on the subject. The most important of them is *Board of Education Vrs. Rice*, 1911 AC 179 = 80 LKJB 796 = (1911-13) All ER Rep 36 (HL) where Lord Loreburn, L.C. observed as follows : (All ER p. 38 C-F)

'Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon

*matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and listen fairly to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial. *** The Board is in the nature of the arbitral tribunal, and a court of law has no jurisdiction to hear appeals from their determination, either upon law or upon fact. But if the court is satisfied either that the Board have not acted judicially in the way which I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari.'*

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that *"the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view"*. To the same effect are the observations of Earl of Selbourne, L.O. in *Spackman Vrs. Plumstead District Board of Works*, (1885) 10 AC 229 = 54 LJMC 81 = 53 LT 151 where the learned and noble Lord Chancellor observed as follows:

'No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice.'

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase *"justice should not only be done, but should be seen to be done"*.

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression *"civil consequences"* encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

20. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew Vrs. Drew and Leburu*, (1855) 2 Macq 1 = 25 LTOS 282 (HL) (Macq at p. 8), Lord Cranworth defined it as *"universal justice"*. In *James Dunber Smith Vrs. Her Majesty the Queen*, (1877-78) 3 AC 614 (PC) (AC at p. 623) Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase *"the requirements of substantial justice"*, while in *Arthur John Spackman Vrs. Plumstead*

District Board of Works, (1885) 10 AC 229 = 54 LJMC 81 = 53 LT 151 (AC at p. 240), the *Earl of Selbourne*, S.C. preferred the phrase “the substantial requirement of justice”. In *Vionet Vrs. Barrett*, (1885) 55 LJRD 39 (LJRD at p. 41), Lord Esher, M.R. defined natural justice as “the natural sense of what is right and wrong”. While, however, deciding *Hookings Vrs. Smethwick Local Board of Health*, (1890) 24 QBD 712 Lord Esher, M.R. instead of using the definition given earlier by him in *Vionet* case, (1885) 55 LJRD 39 chose to define natural justice as “fundamental justice”. In *Ridge Vrs. Baldwin*, (1963) 1 QB 539 = (1962) 1 All ER 834 = (1962) 2 WLR 716 (CA) (QB at p. 578), *Harman, L.J.*, in the Court of Appeal countered natural justice with “fair play in action”, a phrase favoured by *Bhagwati, J.* in *Maneka Gandhi Vrs. Union of India*, (1978) 1 SCC 248 = (1978) 2 SCR 621. In *H.K. (An Infant), Re* (1967) 2 QB 617 = (1967) 1 All ER 226 = (1967) 2 WLR 962 (QB at p. 630), Lord Parker, C.J. preferred to describe natural justice as “a duty to act fairly”. In *Fairmount Investments Ltd. Vrs. Secy. of State for Environment*, (1976) 1 WLR 1255 = (1976) 2 All ER 865 (HL) Lord Russell of Killowen somewhat picturesquely described natural justice as “a fair crack of the whip” while *Geoffrey Lane, L.J.* in *R. Vrs. Secy. of State for Home Affairs, ex p Hosenball*, (1977) 1 WLR 766 = (1977) 3 All ER 452 (CA) preferred the homely phrase “common fairness”.

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is “*nemo iudex in causa sua*” or “*nemo debet esse iudex in propria causa sua*” as stated in *Earl of Derby’s case*, (1605) 12 Co Rep 114 = 77 ER 1390 that is, “no man shall be a judge in his own cause”. Coke used the form “*aliquis non debet esse iudex in propria causa, quia non potest esse iudex et pars*” (Co. Litt. 1418), that is, “no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party”. The form “*nemo potest esse simul actor et iudex*”, that is, “no one can be at once suitor and judge” is also at times used. The second rule is “*audi alteram partem*”, that is, “hear the other side”. At times and particularly in continental countries, the form “*audietur et altera pars*” is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the *audi alteram partem* rule, namely “*qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit*” that is, “**he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right**” [see *Boswel’s case*, (1605) 6 Co Rep 48b = 77 ER 326 (Co Rep at p. 52-a) or in other words, as it is now expressed, “justice should not only be done but should manifestly be seen to be done”. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (*sic. open*). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

22. What is known as “useless formality theory” has received consideration of this Court in *M.C. Mehta Vrs. Union of India*, (1999) 6 SCC 237. It was observed as under : (SCC pp. 245-47, paras 22-23)

‘22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not

admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed see *Malloch Vrs. Aberdeen Corpn.*, (1971) 2 All ER 1278 = (1971) 1 WLR 1578 (HL) (per Lord Reid and Lord Wilberforce), *Glynn Vrs. Keele University*, (1971) 2 All ER 89 = (1971) 1 WLR 487, *Cinnamond Vrs. British Airports Authority*, (1980) 2 All ER 368 = (1980) 1 WLR 582 (CA) and other cases where such a view has been held. The latest addition to this view is *R. Vrs. Ealing Magistrates' Court, ex p Fannaran*, (1996) 8 Admn LR 351 (Admn LR at p. 358) [see de Smith, Suppl. p. 89 (1998)] where *Straughton, L.J.* held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd Vrs. McMahon*, (1987) 1 All ER 1118 = 1987 AC 625 = (1987) 2 WLR 821 (CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy Vrs. Grant*, 1959 NZLR 1014 however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood — not certainty — of prejudice'. On the other hand, *Garner's Administrative Law* (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge Vrs. Baldwin*, 1964 AC 40 = (1963) 2 All ER 66 = (1963) 2 WLR 935 (HL), *Megarry, J. in John Vrs. Rees*, (1969) 2 All ER 274 = 1970 Ch 345 = (1969) 2 WLR 1294 stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. *Ackner, J.* has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R. Vrs. Chief Constable of the Thames Valley Police Forces, ex p Cotton*, 1990 IRLR 344 by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary?' 1991 PL, p. 64.) A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch*, (1971) 2 All ER 1278 = (1971) 1 WLR 1578 (HL) and *Glynn*, (1971) 2 All ER 89 = (1971) 1 WLR 487 were wrongly decided. *Foulkes* (*Administrative Law*, 8th Edn., 1996, p. 323), *Craig* (*Administrative Law*, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. de Smith (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala Vrs. S.K. Sharma*, (1996) 3 SCC 364, *Rajendra Singh Vrs. State of M.P.*, (1996) 5 SCC 460 that even in relation to statutory provisions requiring notice, a distinction is

to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J. '

23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao Vrs. Govt. of A.P.*, AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See *Charan Lal Sahu Vrs. Union of India*, (1990) 1 SCC 613 = AIR 1990 SC 1480.)

24. Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different. The position was illuminatingly stated by this Court in *Managing Director, ECIL Vrs. B. Karunakar*, (1993) 4 SCC 727 which reads as follows:

'31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the court/tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/ management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period

from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.'

***"

8.5. This Court feels persuaded to reproduce the observation of a Division Bench of this Court made in the case of *Sponge Udyot Pvt. Ltd. Vrs. The Asst. Commissioner of Sales Tax, Rourkela-II Circle, Rourkela, 2010 SCC OnLine Ori 68*:

"5. Admittedly before issuance of the order of suspension, the petitioner had not been served with any notice to show cause. Admittedly there is no provision in the Act or the Rules for service of a notice to show cause before an order of suspension is passed. Under these circumstances, the Court is called upon to decide as to whether a notice in the present case is required to be served on the petitioner to show cause before the order of suspension was passed or not. In the case of M/s. Ramkumar Jaigopal Vrs. Assistant Commissioner of Sales Tax, Sambalpur, 2007 (1) OLR 534 the challenge was in relation to cancellation of registration certificate. The petitioner therein was a registered dealer under the Sales Tax authorities for more than 58 years and without giving an opportunity of hearing, the registration certificate was cancelled. The Court not only dealt with Section 31 of the Act dealing with cancellation of certificate of registration but also Section 30 of the Act which dealing with suspension of registration certificate. In paragraph-8 of the judgment relying on an earlier decision of the Hon'ble Supreme Court in the case of Smt. Maneka Gandhi Vrs. Union of India and another, reported in AIR 1978 SC 597, the Court made the following observation:

It must be kept in mind that the power of suspension/cancellation of registration certificate of a dealer, clearly imposes civil consequence and in this respect law is well settled in the case of Smt. Maneka Gandhi Vrs. Union of India and another reported in AIR 1978 SC 597 wherein, the Apex Court has held that the rule of natural justice is embodied in every Statute and even where there is no specific provision for the same and when an administrative action involves civil consequence, the doctrine of natural justice must be held to be applicable.'

6. As is evident from reading of the judgment though the case related to cancellation of registration certificate, the Court not only considered the question of cancellation of registration certificate but also suspension thereof and came to hold that the power of suspension/cancellation of registration certificate of a dealer clearly imposes civil consequence and therefore, even where there is no specific provision to follow the principles of natural justice, when an administrative action involves civil consequence, the doctrine of natural justice must be held to be applicable.

*In the case of Sidhartha Engineering Pvt. Ltd. Vrs. Assistant Commissioner of Sales Tax and another, (1999) 115 Sales Tax Cases 478 in paragraph-8 of the judgment, the Court held that **natural justice is an inseparable ingredient of fairness and reasonableness. Observance of the principles is the pragmatic requirement of fair play in action. The rules of natural justice operate as implied mandatory procedural requirement and non-observance whereof invalidates the action.***

Reference may also be made to some other decisions in this connection. In the case of *Sahara India (Firm) Vrs. Commissioner of Income-Tax and another*, reported in (2008) 300 ITR 403 (SC) referring to large number of earlier decisions including the case of *Maneka Gandhi (Mrs.) Vrs. Union of India (supra)*, the Hon'ble Supreme Court came to a conclusion that even an administrative order or decision in matters involving civil consequences has to be made consistently with the rules of natural justice. The concept of natural justice is invariably read into administrative actions involving civil consequences, unless the statute conferring the power excludes its application by express language. A similar view was expressed by this Court in the case of *M/s. Iron Exchange India Ltd. Vrs. State of Orissa and others*, reported in 1995 (I) OLR 402. The Court held in the aforesaid decision that **principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. Such power is inherent in every Tribunal, judicial or quasi-judicial character and the purpose is to avoid miscarriage of justice.** In the case of *Basanta Kumar Sahoo Vrs. The State of Orissa and others*, reported in 1990 (II) OLR 408 while dealing with the case under the Urban Land (Ceiling and Regulation) Act, 1976, the Court held that **where valuable right is sought to be taken away, an opportunity of hearing though not specifically provided in the Act, is desirable to be given.** In the case of *Kanak Cement Pvt. Ltd. Vrs. Sales Tax Officer, Assessment Unit, Rajgangpur*, reported in (1997) 105 Sales Tax Cases 112, the Court observed that **it is a fundamental requirement of the principles of natural justice that if any person is likely to be affected by the use of any material collected by the Revenue, those are to be brought to his notice, and disclosed to him. The requirement of natural justice is to disclose by way of confrontation the materials collected and proposed to be used against a dealer.**

Admitted in the Act and the Rules, though there is no provision for affording an opportunity of hearing before an order of suspension is passed, the said principle of natural justice has also not been expressly excluded.

7. On reading of above judgments, it is clear that even in respect of suspension of registration certificate, civil consequence follows and therefore, observance of principle of natural justice is a necessity. We are, therefore, of the view that even though the statute is silent about issuance of a notice to show cause prior to passing of an order of suspension under Section 30 of the Act, when such order of suspension results in civil consequences, the principles of natural justice should be followed. We are, therefore, of the view that the order of suspension of registration certificate is liable to be quashed even though it is open for the petitioner under the Act to seek for restoration of the same."

8.6. The Essential feature of the principles of natural justice as established by exposition of law by way of different pronouncements is that the administrative officer and the quasi judicial authority are required to assign reason and adhere to principles of natural justice, one of the facets of which is *audi alteram partem*.

8.7. At this stage, it is also felt expedient to refer to the following observation of the Hon'ble Supreme Court, in the matter of *Steel Authority of India Limited Vrs. Sales Tax Officer*, (2008) 10 SCR 655 = 2008 INSC 799:

"12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellants, this is not the way a statutory appeal

is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt by the first appellate authority.

13. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. [See *Raj Kishore Jha Vrs. State of Bihar*, (2003) 11 SCC 519].

14. Even in respect of administrative orders Lord Denning, M.R. in *Breen Vrs. Amalgamated Engg. Union*, (1971) 1 All ER 1148, observed:

‘The giving of reasons is one of the fundamentals of good administration.’

In *Alexander Machinery (Dudley) Ltd. Vrs. Crabtree* 1974 ICR 120 (NIRC) it was observed:

“Failure to give reasons amounts to denial of justice.” “Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.” Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the “*inscrutable face of the sphinx*”, it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. ***The “inscrutable face of the sphinx” is ordinarily incongruous with a judicial or quasi judicial performance.***”

8.8. This Court, without entering into any factual aspects with respect to merits of the matter on a limited point of non-confrontation of adverse material contained in the joint enquiry report utilised against the petitioner to its detriment, is inclined to hold that such untested material could not form the basis to debar the petitioner from procurement of paddy operation. The purported action of the Collector having bearing on civil consequences, the order impugned is liable to be set aside.

8.9. It may be apposite to have reference to *Blue Dreamz Advertising Pvt. Ltd. & Anr. Vrs. Kolkata Municipal Corporation*, (2024) 8 SCR 189 = 2024 INSC 589, wherein questions fell for consideration were as follows:

“The following questions arise for consideration:

a. *Whether in the facts and circumstances of the case, the order of the Corporation dated 02.03.2016, **debaring the appellant** for a period of five years is valid and justified in the eye of the law?*

b. *If so, what reliefs is the appellant entitled to?”*

The Hon’ble Supreme Court came to hold that,

*“22. Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In *Erusian Equipment & Chemicals Ltd. Vrs. State of West Bengal & Anr.*, (1975) 1 SCC 70, this Court observed that*

‘20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact

that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. ***'

23. In *B.S.N. Joshi & Sons Ltd. Vrs. Nair Coal Services Ltd. & Ors.* (2006) Supp.8 SCR 11 = (2006) 11 SCC 548, this Court held that

'41. * When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter.'**

24. This Court in *Kulja Industries Ltd. Vrs. Chief General Manager Western Telecom Project BSNL & Ors.*, (2013) 14 SCR 430 = (2014) 14 SCC 731 after setting out the legal position governing blacklisting/ debarment in USA and UK held that:

'25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back.'

25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person's conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/ debarment as a penalty ought not to be resorted to. **Debarring a person albeit for a**

certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.

36. The Division Bench has observed that blacklisting is a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. It also observed that between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. ***The observations are too sweeping in their ambit and wholly overlook the fact that the respondent-Corporation is a statutory body vested with the duty to discharge public functions. It is not a private party. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality.***

8.10. In administrative law the principle of *audi alteram partem* has been held to be a fundamental principle of the rules of natural justice. This requires the maker of a decision to give prior notice of the proposed decision to the person affected and an opportunity to make a representation. The exercise of a power which affects the rights of an individual must be exercised in a manner which is fair and just and not arbitrarily or capriciously. An administrative order involving civil consequences must necessarily be made in conformity with rules of natural justice. Any decision which has been made without compliance of the aforementioned fundamental principle of natural justice, i.e., the rule of *audi alteram partem*, cannot be sustained. For the aforesaid proposition of law reference may be made to the decisions in *Mahipal Singh Tomar Vrs State of Uttar Pradesh and others*, (2013) 16 SCC 771, *Ridge Vrs. Baldwin*, (1963) 2 All ER 66 (HL), *Chief Constable of North Wales Plice Vrs. Evans*, (1982) All ER 141 (HL), *State of Orissa Vrs Binapani Dei*, AIR 1967 SC 1269, *U.P. Warehousing Corporation Vrs. Vijay Narayan Vajpayee*, (1980) 3 SCC 459.

8.11. Casual and perfunctory approach to debar person without adhering to the principles of natural justice is liable to be deprecated. As no fraud element is involved in the case at hand, the case law in *The Secretary, A.P. Social Welfare Residential Educational Institutions Vrs. Sri Pindiga Sridhar*, (2007) 4 SCR 145 cited by Sri Bibekananda Nayak, learned Additional Government Advocate is misplaced being rendered under different context. This Court, therefore, wishes to take note of following observation of the Hon'ble Supreme Court of India in the case of *Union of India Vrs. Arulmozhi Iniarasu*, (2011) 9 SCR 1:

“Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before

it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."

8.12. The central point is that debarment should not be used casually or as a standard response for ordinary contract breaches. The implication is that debarment is a serious penalty and should be reserved for more egregious circumstances.

8.13. With the above note, it is, therefore, concluded that the Order dated 13.05.2025 being clearly violative of principles of natural justice and bereft of reasons, warrants indulgence of this Court.

9. Another point of significance has been canvassed by Sri Subir Palit, learned Senior Advocate to contend that the Collector of Sambalpur could not arrogate himself to the position of Market Committee as envisaged under Rule 61 of the Odisha Agricultural Produce Markets Rules, 1958 in order to indirectly nullify the effect of the licence given by the competent authority in exercise of power conferred under Rule 60 of the Odisha Agricultural Markets Rules, 1958.

9.1. As hearing of the matter has been taken up on the concession of the counsel for both sides with respect to principles of natural justice, this Court desists from addressing such issue of jurisdiction on merit of the matter. Since this Court finds in view of discussions made in the foregoing paragraphs that there has been serious violation of fundamental principles of natural justice by the Collector, Sambalpur in taking decision *vide* order dated 13.05.2025 (Annexure-10), suffice it to say that such order cannot be sustained in the eye of law and matter deserves to be remanded to the said authority for fresh decision by ascribing reasons.

9.2. It is to be noted that before proceeding with a matter, *quasi* judicial authority is required to verify his own jurisdiction. A Division Bench of this Court observed in *B.P. Enterprises Vrs. State of Odisha*, 2008 SCC OnLine Ori 532 that, "*Before parting with the case, we would like to point out that every day we are facing the assessment orders, in respect of the TIN dealers, passed by the assessing authority, circle, though such assessment orders are in violation of the statutory provisions as can be passed only by assessing authority, range. Even if the dealer does not take any objection in this regard, it becomes the duty of the assessing authority himself to keep the jurisdictional issue in mind.*"

9.3. In the same tenor, this Court by remanding the matter for fresh consideration requests the Collector, Sambalpur to examine his jurisdiction and authority to proceed with the matter as agitated by the learned Senior Counsel herein this case.

9.4. In *Doki China Gurubalu and Sons and Co. Vrs. State of Orissa and others*, 1991 SCC OnLine Ori 93 = AIR 1992 Ori 189 = 73 (1992) CLT 468, in the context of maintainability of writ petition with reference to right flowing from a contract, it has been held that

*“9. In our view, the present case comes even within the ratio of Radhakrishna Agarwal Vrs. State of Bihar, AIR 1977 SC 1496 case. The Supreme Court did not categorically hold that an application under Article 226 for enforcement of fundamental rights under Article 14 was not maintainable in any circumstances, where the right flowed from a contract. Had it so held, it would not have gone into the question that the petitioner in that case had not laid the foundation by appropriate pleadings to make out a case of violation of fundamental rights under Article 14. Hence, in our view, it cannot be said as an absolute rule of law, that in no circumstances, a writ application for issue of mandamus can lie if the right involved flows from a contract. That would be circumscribing the extraordinary jurisdiction of this Court which was intended by the Founding Fathers to function as the sentinel always in the alert. Where without any authority of law, by an executive fiat, rights are trampled arbitrarily, this Court cannot and should not shut its door to the aggrieved party. **Where valuable civil rights are taken away without any authority of law or by violation of principles of natural justice, this Court cannot fold its hands and look on as an helpless onlooker asking the party to approach the civil Court.** Where there are disputed questions of fact, evidence is to be led by the parties and it would be necessary to scan and assess the same, it is a different matter. The ultimate remedy of suit should be followed. **Whether extraordinary jurisdiction should be exercised in a matter is in the discretion of this Court.** Where a person has been deprived of his valuable civil rights by executive fiat without any justification in law, it would be futile to contend that this Court should refuse to exercise jurisdiction under Article 226.*

*10. We have considered the decision of the Government and we are of the view that the allegations which were accepted by the Government ex parte without giving the petitioner an opportunity of hearing did not only cast a stigma on it but affected its civil rights of which it cannot be deprived without following the principles of natural justice. **We are not deciding whether in fact the petitioner violated the terms and conditions but we quash the order on the ground, namely, for violation of the principles of natural justice.***

11. We may also notice in this connection a decision of this Court in Hrudananda Patra Vrs. Revenue Divisional Commissioner, AIR 1979 Orissa 13, where various decisions of the Supreme Court were taken note of and it was held that a monopoly could not be created by an administrative order. It could be created only by law made in the interest of the general public or in favour of the State or a Corporation owned and controlled by the State. A co-operative society is neither a State nor owned or controlled by the State. Hence, no monopoly can be created in respect of the cooperative society. The stand taken in the counter-affidavit was unsustainable on this ground also.”

9.5. There is nothing in the impugned order dated 13.05.2025 (Annexure-10) or in the joint enquiry report dated 06.05.2025 enclosed to counter affidavit to show that opportunity of hearing was afforded to the petitioner before passing the aforesaid order of debarment. Nothing is suggestive that during the course of the enquiry the petitioner was invited to proffer any explanation. Learned Additional

Government Advocate appearing for the opposite party Nos.1 and 6 does not dispute the fact (rather fairly conceded) that no opportunity of hearing was afforded to the petitioner before passing the aforesaid impugned order or during the enquiry proceedings for it would be an empty formality. Such an argument at the behest of State Counsel is liable to be repelled in view of precedents on the principles of natural justice as discussed above.

Conclusion:

10. In the wake of aforesaid discussion and position of law as enunciated by different Courts, this Court has no hesitation to set aside the order dated 13.05.2025 passed by the Collector-*cum*-District Magistrate, Sambalpur (Annexure-10).

11. The writ petition is disposed of by remitting the matter to the Collector-*cum*-District Magistrate, Sambalpur with a direction to issue a show cause notice to the petitioner within two weeks stating therein specific points along with any adverse material, if any, that would be utilised against the it for the purpose of taking fresh decision and the petitioner shall have two weeks thereafter to submit his reply/objections including the point of jurisdiction/authority of the Collector-*cum*-District Magistrate to proceed with debarment of the petitioner, which has been granted licence under the Odisha Agricultural Produce Markets Act, 1956. The Collector-*cum*-District Magistrate, Sambalpur, shall, thereafter, pass a reasoned and speaking order preferably within next four weeks in accordance with law, after affording reasonable opportunity of being heard to the petitioner. Needless it is to say that such order or decision taken by the authority concerned shall be communicated to the petitioner.

12. With the aforesaid observation(s) and direction(s), the writ petition and the pending interlocutory application(s), if any, stand disposed of, but in the circumstances, there shall be no order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

Writ Petition disposed of.

2025 (II) ILR-CUT-957

MANAGING DIRECTOR, TRIBAL DEVELOPMENT
CO-OPERATIVE CORPORATION OF
ODISHA LTD. & ANR.

V.

CONTROLLING AUTHORITY
UNDER PAYMENT OF GRATUITY ACT AND ASST. LABOUR
COMMISSIONER, RAYAGADA & ANR.

[W.P.(C) NO. 4006 OF 2017]

03 JULY 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether the writ petition is maintainable in view of availability of alternative remedy under Section 7(7) of the Payment of Gratuity Act, 1972.

Headnotes

PAYMENT OF GRATUITY ACT, 1972 – Sections 7(3-A), 7(7) – Delay in payment of gratuity – Order directing payment of interest to the Opposite Party No.2 by the petitioner/corporation is under challenge – Petitioner contended that due to pendency of departmental proceeding against the Opp.Party No.02 exact recovery amount was not known to employer, resultantly gratuity was withheld – Delay not attributable to the petitioner rather attributable to Opp. Party No.02 – Plea of availability of alternative remedy U/s.7(7) raised by the Opp. Parties – Maintainability of Writ Petition is in question.

Held: This Court is of the view that the writ petition is not maintainable in view alternative remedy available under Section 7(7) of the Act, 1972.

(Para 14)

Citations Reference

Managing Director, Orissa State Cashew Development Corporation Ltd., Bhubaneswar and another Vrs. Controlling Authority under Payment of Gratuity Act-Cum-Assistant Labour Commissioner, Khordha and another, **W.P.(C) No.18589 of 2018**; Cuttack Central Co-operative Bank Ltd. Vrs. The Joint Labour Commissioner, Odisha & others, **2024 (III) ILR-CUT-875 – referred to.**

List of Acts

Payment of Gratuity Act, 1972.

Keywords

Delay in payment of gratuity; Payment of interest; Pendency of departmental proceeding; Withholding of gratuity; Availability of alternative remedy; Maintainability of Writ Petition.

Case Arising From

Order dated 31st October, 2016 passed by the Controlling Authority under Payment of Gratuity Act & Assistant Labour Commissioner, Rayagada in P.G. Case No.02 of 2016.

Appearances for parties

For Petitioner : Mr. B. Mohanty

For Opp. Parties : Mr. B. Nayak (O.P. No. 1) AGA, Mr. N. Biswal (O.P. No. 2)

Judgment/Order**Judgment*****S.K. MISHRA, J.***

This writ petition has been preferred by the Petitioner-Corporation challenging the order dated 31st October, 2016 passed by the Controlling Authority under Payment of Gratuity Act & Assistant Labour Commissioner, Rayagada, shortly hereinafter, ‘Controlling Authority’ in P.G. Case No.02 of 2016, vide which it has been ordered for payment of Rs.53,587/- towards interest to the Applicant (Opposite Party No.2) within thirty days of the receipt of the said order towards delayed payment of gratuity.

2. The order dated 31st October, 2016 in P.G. Case No.02 of 2016 has been challenged basically on the ground that number of departmental proceedings and dispute cases were pending against the Opposite Party No.2 at the time of his compulsory retirement from service. As the exact amount recoverable from him was not known to the employer, the gratuity amount was withheld. On finalization of liability account, the Opposite Party No.2 made an application on 14.12.2009 for payment of admissible gratuity amount. Pursuant to submission of such application, the gratuity amount was paid to him after adjustment of the recoverable dues from other retiral dues. Therefore, in view of the proviso to Section 7(3-A) of the Payment of Gratuity Act, 1972, shortly hereinafter, ‘the Act, 1972’, the payment of gratuity got delayed due to the fault of the Opposite Party No.2. The delay cannot be attributed to the Petitioner-Corporation directing it to make huge payment towards interest granting premium to a dishonest employee. The Opposite Party No.1 has passed the impugned order mechanically without application of mind directing payment of interest in an illegal and arbitrary manner.

3. A Counter Affidavit has been filed on behalf of Opposite Party No.1 justifying the impugned order passed in P.G. Case No.02 of 2016. That apart, it has also been stated in the Counter that, in view of the alternative remedy available

under Section 7(7) of the Act, 1972, the Writ Petition is not maintainable. The right to appeal under Section 7(7) of the Act, 1972 becomes a vested right only when precondition of deposit is complied with. Hence, the writ petition is not maintainable.

4. It has further been stated in the Counter that, in view of the provision enshrined under Section 7(3-A) of the Act, 1972, it was obligatory on the part of the Petitioner-Corporation to pay interest @ 10% per annum from the date of retirement of Opposite Party No.2 till the date of actual payment. The plea taken by the Petitioner-Corporation has no legal sanctity and is liable to be rejected. Further, so far as the ground of delay, it has been stated that the present Opposite Party No.2 filed an application for condonation of delay along with application filed under Section 7(4)(c) of the Act, 1972 and the Controlling Authority, after condoning the delay, passed the impugned order, which is appealable.

5. The Opposite Party No.2 has also appeared and filed a Counter Affidavit opposing to the prayer made in the writ petition on various grounds, including the ground that, since no permission was obtained in writing from the Controlling Authority for withholding the gratuity in terms of the proviso under Section 7(3-A) of the Act, 1972, the Controlling Authority has rightly passed the impugned order directing the Petitioner-Corporation to make payment of interest in terms of Section 7(3-A) of the Act, 1972 and there is no infirmity in the impugned order passed by the Controlling Authority.

6. It has further been stated in the Counter Affidavit by the Opposite Party No.2 that the Petitioner-Corporation has not mentioned as to since when the dispute cases were pending against the Opposite Party No.2 and when those cases were finalized. It has further been stated in the Counter that no intimation was given to the Opposite Party No.2 or the Controlling Authority regarding withholding of payment of gratuity on any ground and no permission was also taken from the Controlling Authority in the said regard. Hence, the Petitioner-Corporation was liable to pay the interest, which has been rightly ordered by the Controlling Authority vide the impugned order.

7. Mr. Mohanty, learned Counsel for the Petitioner, reiterating the grounds detailed in the writ petition, submitted that since the delay in payment of gratuity was due to the fault of the Opposite Party No.2, against whom the departmental proceeding so also surcharge proceedings were pending, the Controlling Authority (Opposite Party No.1) was not justified to direct the Petitioner-Corporation to make payment of interest vide the impugned order.

8. So far as maintainability of the writ petition, Mr. Mohanty, learned Counsel for the Petitioner submits, since the order has been passed in terms of Section 7(3-A) of the Act, 1972 with regard to interest, the same is not appealable under Section 7(7) of the Act, 1972. Hence, being remediless, the Petitioner preferred the writ petition.

9. Per contra, Mr. Nayak, learned AGA submitted that, it is well evident from the impugned order that the Opposite Party No.2 filed an application under Section 7(4)(a) of the Act, 1972 for non-payment of interest. He further submitted, since the principal amount of gratuity was paid to the Opposite Party No.2 and no permission was obtained from the Controlling Authority for withholding or delaying the payment of gratuity, the Controlling Authority was justified to grant interest in terms of the provision enshrined under Section 7(3-A) of the Act, 1972.

10. Learned Counsel for the State further submitted that, since the order was passed by the Controlling Authority in terms of Section 7(4)(c) of the Act, 1972, the same is appealable under Section 7(7) of the Act and to avoid deposit of the amount in terms of second proviso under sub-section-7 of Section 7 of the Act, 1972, intentionally, the Management has preferred the present writ petition. Hence, the writ petition is not maintainable in view of the alternative remedy of appeal available under Section 7(7) of the Act, 1972.

11. Learned Counsel for the Opposite Party No.2-Workman, reiterating the submission made by the learned Counsel for the State, submitted that there is no infirmity in the impugned order passed by the Opposite Party No.1, vide which the Petitioner-Corporation was directed to make payment of interest @ 10% per annum for the delayed payment of gratuity. To substantiate his submission, learned Counsel for Opposite Party No.2 filed website copy of the order dated 16.08.2022 passed by this Court in W.P.(C) No.18589 of 2018 (***Managing Director, Orissa State Cashew Development Corporation Ltd., Bhubaneswar and another Vrs. Controlling Authority under Payment of Gratuity Act-Cum-Assistant Labour Commissioner, Khordha and another***) after handing over a copy of the same to the learned Counsel for the Petitioner so also relied on the judgment of this Court reported in 2024 (III) ILR-CUT-875 (***Cuttack Central Co-operative Bank Ltd. Vrs. The Joint Labour Commissioner, Odisha & others***).

12. In ***Managing Director, Orissa State Cashew Development Corporation Ltd.*** (supra), so far as payment of interest, this Court held as follows:

“6. Admittedly, neither the Petitioners-Corporation sought for permission of the Controlling Authority to delay the payment of Gratuity of the Opposite Party No.2 nor preferred an Appeal in terms of Sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972. Hence, this Court is not inclined to interfere with the Order impugned dated 13.06.2018 passed in P.G. Case No.02 of 2018 by the Controlling Authority-Cum-Assistant Labour Commissioner, Khordha.”

13. Similarly, in ***Cuttack Central Co-operative Bank Ltd.*** (supra), this court held as follows:

*“25. This Court in a recent judgment in ***The Sr. Branch Manager, the National Small Industries Corporation Ltd.*** (supra), taking note of various provisions under the Act, 1972 so also Rules, 1972 and various judgments of the Supreme Court held as follows:*

“42. On examination of the various legal provisions under the Act, 1972 and Rules made thereunder so also the Judgments cited by the learned Counsel for the parties, as detailed above, this Court is of the following views:

a) As prescribed under section 4(1) of the Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease. However, completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

b) In terms of section 7(1) of the Act, 1972 read with rule 7(1) & (6) of the Rules, 1972, a person, who is eligible for payment of gratuity under the said Act, 1972 or any person authorized, in writing, to act on his behalf, shall send a written application to the Employer in Form 'I' ordinarily within thirty days from the date the gratuity became payable, either by personal service or by registered post acknowledgement due.

c) As provided under rule 7 (1) of the Rules, 1972, where the date of superannuation or retirement of an employee is known, the employee may apply to the Employer before thirty days of the date of superannuation or retirement for payment of gratuity.

d) Rule 7(5) of the Rules, 1972 provides that an application for payment of gratuity filed after the expiry of the periods specified in rule 7(1) of the Rules, 1972 shall also be entertained by the Employer, if the applicant adduces sufficient cause for the delay in preferring his claim.

e) As provided under rule 7(5) of the Rules, 1972, no claim for the gratuity under the Act, 1972 shall be invalid merely because the claimant has failed to present his application within the specified period.

f) In terms of Rule-8(1) under Rules, 1972, within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the Employer shall, if the claim is found admissible on verification, issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof.

g) As provided under rule 8(1) (ii) of the Rules, 1972, if the claim for gratuity is not found admissible, the Employer is to issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons as to why the claim for gratuity is not considered admissible. In either case, where the gratuity claimed is admissible or inadmissible, a copy of the notice in Form 'L' or 'M' given to the applicant shall be endorsed to the Controlling Authority.

h) An Employer cannot simply issue notice in Form-M to the employee rejecting claim for payment of gratuity. If the Employer so desires to forfeit the gratuity, a Show Cause Notice has to be given, because the gratuity amount to which the Employee is otherwise entitled is to be forfeited, which is a drastic consequence for the Employee concerned.

i) As provided under rule 10(1)(iii) of the Rules, 1972, if pursuant to the application filed in terms of rule 7 of Rules, 1972 a notice is given under rule 8(1) either specifying an amount of gratuity which is considered by the application less than what is payable or rejecting his/her eligibility for payment of gratuity or the Employer fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may, within ninety days of the occurrence of

the cause for the application, apply in Form 'N' to the Controlling Authority for issuing a direction under section 7(4) of the Act, 1972 with as many extra copies as are the opposite parties.

j) In view of the provisions enshrined under section 7(2) of the Act, 1972, as soon as gratuity becomes payable, the Employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also the Controlling Authority, specifying the amount of gratuity so determined.

k) As prescribed under section 7(3) of the Act, 1972, the Employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

l) In terms of section 7(3-A) of the Act, 1972, if the amount of gratuity payable under sub-section (3) is not paid by the Employer within the period specified in sub-section (3), the Employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify (As per the notification dated 10.10.1987 issued by the Central Government, in exercise of powers conferred under sub-section (3-A) of section 7 of the P.G. Act, 1972, 10% interest is payable).

m) In view of the proviso under section 7(3-A) of the Act, 1972, no such interest is payable if the delay in the payment is due to the fault of the employee and the Employer has obtained permission in writing from the Controlling Authority for the delayed payment on the said ground.

n) As prescribed under section 7(4)(a) of the Act, 1972, if there is any dispute as to the amount of gratuity payable to an employee under the said Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the Employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

o) Where there is a dispute with regard to any matter or matters specified in clause (a), the Employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute, in terms of section 7(4)(b) of the Act, 1972.

p) As provided under section 7(4)(c) of the Act, 1972, the Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the Employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the Employer.

q) As provided in sub-section (6) of section 4 of the Act, 1972, the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the Employer, shall be forfeited to the extent of the damage or loss so caused.

r) As per the settled position of law, as detailed above, before forfeiting the gratuity of an employee in terms of clause (1) of sub-section 6 of section 4 of the Act, 1972, any damage or loss to, or destruction of, property belonging to the Employer has to be quantified by the Employer.

s) Similarly, as prescribed in clause (b) of sub-section 6 of section 4 of the Act, 1972, the gratuity payable to an employee may be wholly or partially forfeited, if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in course of his employment.

t) As held by the apex Court in **Union Bank of India** (supra), under sub-section (6)(b)(ii) of section 4 of the Act, forfeiture of gratuity is permissible if the termination of an employee is for any misconduct which constitutes an offence involving moral turpitude, and the employee concerned is convicted accordingly by a Court of competent jurisdiction. It is not for the Employer to decide whether the offence has been committed amounting to involving moral turpitude.

u) As held in *Rabindranath Choubey* (supra), if departmental proceeding has been initiated against an employee before his retirement, if the service rules of the Employer provide so, the departmental proceeding can continue even after retirement of an employee and if the employee is found guilty, minor or major punishment, including the punishment of dismissal can be imposed by the Employer, even the employee has retired.

v) As was further held by the apex Court in *Rabindranath Choubey* (supra), the enquiry proceeding has to be concluded first on merit and after passing appropriate order in accordance with law, thereafter necessary consequences as per section 4 of the Act, 1972, more particularly sub-section (6) of section-4 of the Act, 1972 and the Rules of the Employer shall to follow. The recovery, as provided under section-4(6) of the Act, 1972, is in addition to a punishment that can be imposed on an employee after his superannuation.”
(Emphasis Supplied)

28. So far as imposing 10% interest by the Controlling Authority, the Supreme Court in **H. Gangahanume Gowda** (supra), held as follows.

“7. It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long- term deposits; provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. **However, under the proviso to Section 7(3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground.** Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the

employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the person entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala v. M. Padmanabhan Nair*¹. Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of *Charan Singh v. Birla Textiles* this aspect was noticed in the following words: (SCC pp. 214-15, para 4)

"4. There was no provision in the Act for payment of interest when the same was quantified by the controlling authority and before the Collector was approached for its realization. In fact, it is on the acceptance of the position that there was a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application".

9. It is clear from what is extracted above from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7(3-A) of the Act. It was not the case of the respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge could not be said to be arbitrary. **In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary.** (Emphasis supplied)

29. Similarly, this Court in *Abhay Kumar Samantray* (supra), referring to the notification made by the Central Government dated 01.10.1987 in terms of sub-section (3-A) of section 7 of the Act, 1972, held as follows:

"22. Hence, this Court is of the view that the Controlling Authority under P.G. Act-Cum-Divisional Labour Commissioner, Cuttack, was justified to take into consideration

the total period of service of the Opposite Party from the date of his initial engagement (14.11.1991) till the date of his superannuation (31.03.2018), so also award 10% simple interest on the awarded amount for the delayed period, so also ordering to pay further simple interest @ 10% per annum till the payment is made, if the Petitioner-Corporation fails to deposit the said ordered amount within 30 days from the date of pronouncement of the judgment". (Emphasis supplied)

31. In *Calcutta Dock Labour Board* (supra) the Supreme Court, referring to Section 13 & 14 of the Act, 1972, held that section 13 of the Act, 1972 gives total immunity to gratuity from attachment. Paragraph Nos.5 & 6 of the said judgment, being relevant, are extracted below:

"5. Reference may now be made to Sections 13 and 14 of the Act which are very relevant.

13. Protection of gratuity – No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

14. Act to override other enactments, etc.- The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

6. We may point out that by Central Act No.25 of 1984 Section 13 has been amended with effect from July 1, 1984, and the amended section reads thus:

No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue, or criminal court.

In the absence of any notification within the meaning of Section 5 of the Act the amendment is not relevant for consideration. Section 14 has overriding effect and Section 13 gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, inter alia, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity under Section 13 thereof". (Emphasis supplied)"

14. In view of the submissions made by the learned Counsel for the parties, as detailed above, so also the settled position of law, this Court is of the view that the writ petition is not maintainable in view of the alternative remedy available under Section 7(7) of the Act, 1972. That apart, this Court is also of further view that there is no infirmity in the impugned order passed by the Controlling Authority (Opposite Party No.1) in P.G. Case No.02 of 2016, vide which the Petitioner-Corporation was directed to make payment of Rs.53,587/- towards interest to the Opposite Party No.2 for the period from 30.10.2003 to 29.06.2010 because of delay in making payment of gratuity.

15. Accordingly, the writ petition stands dismissed.

16. In view of the dismissal of the writ petition, the Petitioner-Management is directed to make payment to the Opposite Party No.2 in terms of the impugned

order dated 31st October, 2016, passed in P.G. Case No.02 of 2016 at the earliest, preferably within a period of four weeks from the date of production of certified copy of this order, failing which, the Petitioner-Management shall be liable to pay Rs.10,000/- (Rupees ten thousand) to the Opposite Party No.2 towards costs, in addition to the awarded amount.

17. Urgent certified copy of this order be granted on proper application as per rules.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

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Result of the case :

Writ Petition dismissed.

2025 (II) ILR-CUT-966

**ITISHREE PRADHAN
V.
SUBRAT RANJAN KAPA**

[TRP(C) NO. 29 & 30 OF 2024]

04 JULY 2025

[SANJAY KUMAR MISHRA, J.]

Issue for Consideration

Whether the prayer of the petitioner seeking transfer of the matrimonial proceeding can be allowed.

Headnotes

MATRIMONIAL PROCEEDINGS – Petition for transfer of the matrimonial proceedings – Petitioner (wife) and Opposite Party (husband) are residents of Jagatsinghpur district – The petitioner contended that as she is residing in Cuttack for coaching, the pending case before the Judge, Family Court, Jagatsinghpur be transferred to the Judge, Family Court, Cuttack – The details of her present address not furnished –Whether the prayer of the petitioner seeking transfer of the matrimonial proceeding can be allowed.

Held: No – As it seems from the conduct of the Petitioner-wife, taking advantage of the leniency shown by the High Court so also Supreme Court that convenience of wife must be looked at while dealing with transfer

petitions, she has filed these applications for transfer of proceedings initiated by herself so also her husband at Jagatsinghpur, to the Court at Cuttack – It is a glaring example of misuse of leniency shown by the Courts while dealing with application for transfer of matrimonial proceedings at the instance of the wife. (Para 10)

Accordingly, taking into consideration the arguments advanced by the learned Counsel for the parties so also the grounds urged in both the transfer petitions, this Court is not inclined to allow the prayers for transfer. (Para 13)

Citations Reference

Anindita Das Vs. Srijit Das, **(2006) 9 Supreme Court Cases – referred to.**

Lists of Act

Hindu Marriage Act, 1955; Family Courts Act, 1984; Orissa High Court Video Conferencing for Courts Rules, 2020.

Keywords

Matrimonial proceeding; Divorce; Restitution of conjugal rights; Transfer of proceedings; Convenience of wife; Misuse of leniency; Multiplicity of proceedings.

Case Arising From

C.P. No.84 of 2021 & C.P. No. 245 of 2021 pending before the Judge, Family Court, Jagatsinghpur.

Appearances for Parties

For Petitioner : Mr. N. Behuria
For Opp. Parties : Mr. R.K. Prusty

Judgment/Order

Judgment

S.K. MISHRA, J.

1. TRP(C) No.29 of 2024 has been filed by the Petitioner-Wife, for transfer of C.P. No.84 of 2021, filed by the Opposite Party-Husband for divorce, from the Court of Judge, Family Court, Jagatsinghpur, to the Court of Judge, Family Court, Cuttack.
2. Similarly, in TRPC No.30 of 2024, which is also on board to-day, the Petitioner-Wife has prayed for transfer of C.P. No.245 of 2021, filed by her under section-9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, from the Court of Judge, Family Court, Jagatsinghpur, to Court of Judge, Family Court, Cuttack.

3. Parties in the transfer petitions and the grounds on which prayers for transfer of both the proceedings being same, both the transfer petitions are taken up for hearing and disposal together vides this common judgment.

4. Heard learned Counsel for the parties.

5. Learned Counsel for the Petitioner-Wife, drawing attention of this Court to the averments made in Paras 7 and 8 of both the transfer Petitions, which are identical, submits, though the Petitioner-wife, after her desertion, was residing with her parents At-Kiada, P.O.-Ambiki in the district of Jagatsinghpur, she has preferred both the transfer petitions on the ground that she has enrolled herself in a Coaching Institution at Cuttack and studying thereon by staying in a rented house in Cuttack. The duration of the said course is from 29.11.2023 to 05.12.2025. She is unable to travel such a long distance from Cuttack to Jagatsinghpur to pursue the proceedings in C.P. No.84 of 2021 and C.P. No.245 of 2021, both pending before the Judge, Family Court, Jagatsinghpur.

6. Though no written objection has been filed opposing to such prayers for transfer, per contra, learned Counsel for the Opposite Party-Husband opposes to such prayer for transfer of proceedings orally. Drawing attention of this Court to the cause title in both the transfer petitions so also pleadings made therein, learned Counsel for the Opposite Party-Husband submits, though a stand has been taken in both the transfer petitions that at present the Petitioner-wife is staying in a rented house in Cuttack, neither in the cause title nor in the body of the transfer petitions it has been indicated as to where she is residing at present in Cuttack. That apart, the sole ground, on which both the transfer petitions have been filed, cannot be a good ground seeking transfer of the said proceedings from the Court of Judge, Family Court, Jagatsinghpur to the Court of Judge, Family Court, Cuttack.

7. He further submits, the Opposite Party-Husband filed C.P. No.84 of 2021 under section 13 (1) of the Hindu Marriage Act, 1955 read with section 7 of the Family Court's Act, 1984 for divorce. On being noticed in the said case, though the Petitioner-Wife appeared in the said case, as a counter blast, subsequently she filed C.P. No.245 of 2021 under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. So far as C.P. No.84 of 2021, she has already filed her written statement since September, 2021. Similarly, the Opposite Party-Husband has also filed his written statement in C.P. No.245 of 2021 and both the said cases are ready for hearing.

8. Learned Counsel for the Opposite Party-Husband submits, even if such plea of the Petitioner-Wife is accepted and admitted to be true, the tenure of coaching is going to expire on 05.12.2025. Hence, prayer for transfer of proceeding in both the transfer petitions deserves rejection. Rather, a direction should be given to the Judge, Family Court, Jagatsinghpur to expedite the hearing in both the proceedings i.e. C.P. No.84 of 2021 and C.P. No.245 of 2021, for disposal of the said cases at the earliest

in a time bound manner and both the said cases should be tried together to avoid conflicting decisions and multiplicity of proceedings.

9. Law is well settled that, while hearing the transfer applications for transfer of matrimonial cases, the convenience of wife has to be looked at. However, so far as the present transfer petitions are concerned, the Petitioner-Wife has prayed for transfer of C.P. No.84 of 2021 filed by her husband so also C.P. No.245 of 2021 filed by her after more than three years, for transfer of the said proceedings to Cuttack on the ground that she has taken admission in a coaching institute at Cuttack since 29.11.2023 and is at present residing at Cuttack in a rented house. Admittedly, neither in the cause title nor in body of the transfer petition the present address of the Petitioner-Wife has been disclosed by her. That apart, the affidavit shown by her in both the transfer petitions also does not indicate her present address.

10. As it seems from the conduct of the Petitioner-wife, taking advantage of the leniency shown by the High Court so also Supreme Court that convenience of wife must be looked at while dealing with transfer petitions, she has filed these applications for transfer of proceedings initiated by herself so also her husband at Jagatsinghpur, to the Court at Cuttack. It is a glaring example of misuse of leniency shown by the Courts while dealing with application for transfer of matrimonial proceedings at the instance of the wife.

11. In **Anindita Das Vs. Srijit Das**, reported in (2006) 9 Supreme Court Cases, the Supreme Court observed as follow:-

“Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency shown by this Court. On an average at least 10 to 15 transfer petitions are on board of each court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

12. In view of the discussions made above, this Court is of the view that each transfer petition, even if it is filed by the Wife/Women for transfer of matrimonial proceedings, is required to be considered on its own merit.

13. Accordingly, taking into consideration the arguments advanced by the learned Counsel for the parties so also the grounds urged in both the transfer petitions, this Court is not inclined to allow the prayers for transfer. However, as both the said cases are ready for hearing, to avoid conflicting judgments so also multiplicity of proceedings, the Judge, Family Court, Jagatsinghpur is directed to take up C.P. No.84 of 2021 and C.P. No.245 of 2021 together and proceed further in accordance with law.

14. The Judge, Family Court at Jagatsinghpur is requested to explore the facilities of Video Conferencing available in the said Court and allow the parties to appear through virtual mode following due procedure as prescribed under the Orissa High Court Video Conferencing for Courts Rules, 2020. However, on the dates of effective hearing i.e for examination and cross-examination of witnesses, so also for

other purposes, if so required and ordered by the concerned Court, the parties shall remain physically present before the Court at Jagatsinghpur.

15. Since both the CPs are ready for trial, the parties are directed not to ask for unnecessary adjournments and cooperate with the Judge, Family Court, Jagatsinghpur, who shall do well to conclude both the said proceedings at the earliest, preferably within a period of six months from the date of production of certified copy of this order.

16. Interim orders passed in both the transfer petitions stand vacated.

17. Urgent certified copy of this order be granted on proper application as per rules.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

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

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Result of the case:

Petition disposed of.

2025 (II) ILR-CUT-970

**MANJUSHA SINGHANIA @ AGARAWALLA
V.
NIMISH SINGHANIA**

[W.P.(C) NO. 1797 OF 2017]

AND

NIMISH SINGHANIA V. MANJUSHA SINGHANIA
[W.P.(C) NO. 23220 OF 2017]

15 MAY 2025

[G. SATAPATHY, J.]

Issue for Consideration

Whether the impugned order dated 17.01.2017 passed by the learned Senior Civil Judge, Talcher in I.A. No.63 of 2016 arising out of MAT Case No. 19 of 2016 granting *pendente lite* maintenance needs any modification.

Headnotes

HINDU MARRIAGE ACT, 1955 – Section 24 – *Pendente lite* maintenance – Husband/father was directed to pay *pendente lite* maintenance of ₹45,000/- per month to wife and ₹5000/- to the minor child and litigation expenses of ₹1,00,000/- to the wife – The husband-petitioner [W.P.(C) No. 23220 OF 2017] prayed to set aside the impugned order whereas

the wife-petitioner [W.P.(C) No. 1797 OF 2017] seeks for enhancement of maintenance granted to her – The per month income of the husband would not be less than ₹2,00,000/-, but may be more than that up to ₹3,00,000/- The child “son” born out of the estranged couple was born in 2012 and he must be around 13 years now – Whether the impugned order dated 17.01.2017 granting *pendente lite* maintenance needs any modification.

Held: Yes – It is very it very clear that the *pendente lite* maintenance as granted to wife is little bit on higher side and interest of justice would be best served, if the *pendente lite* maintenance, as granted to the wife is reduced to Rs.25,000/- per month, whereas the same is enhanced to Rs.15,000/- for the son, but this Court does not consider it proper to interfere with litigation expenses of Rs.1,00,000/- as awarded by the learned trial Court to the wife by taking into consideration the length/period of litigation – Accordingly, the modified amount of *pendente lite* maintenance is payable w.e.f. the date of application and arrear of such amount be cleared up in monthly installments, but the number and amount of the installment shall be decided/fixed by the learned trial Court – Hence, the wife and son are entitled to Rs.25,000/- and Rs.15,000/- per month as *pendent lite* maintenance – Further, the wife is authorized to receive the *pendente lite* maintenance for herself and for her son till disposal of the MAT case. (Para 10)

Citations Reference

Rajnish Vrs. Neha and another, (2021) 2 SCC 324; Manish Jain Vs. Akanksha Jain, (2017) 15 SCC 801 – referred to.

List of Acts

Hindu Marriage Act, 1955; Hindu Marriage and Divorce Rules, 1956; General Rules and Circular Orders (Civil), Vol.-II Chapter-III.

Keywords

Maintenance; *Pendente lite* maintenance; Maintenance *pendent lite*; Permanent alimony; Educational expenses; Average monthly income; Litigation expenses.

Case Arising From

Order dated 17.01.2017 passed by the learned Senior Civil Judge, Talcher in I.A. No. 63 of 2016 arising out of MAT Case No. 19 of 2016.

Appearances for Parties

For Petitioner : Mr. B. Bhuyan, Sr. Adv. & Ms. S. Sahoo
[W.P.(C) No. 1797 of 2017]
Mr. L.K. Moharana [W.P.(C) No. 23220 of 2017]
For Opp. Parties : Mr. L.K. Moharana [W.P.(C) No. 1797 of 2017]
Mr. B. Bhuyan, Sr. Adv. & Ms. S. Sahoo
[W.P.(C) No. 23220 of 2017]

Judgment/Order**Judgment****G. SATAPATHY, J.**

1. The commonality of challenge in these two writ Petitions, one by wife and the other by husband is to the impugned order dated 17.01.2017 passed by the learned Senior Civil Judge, Talcher in I.A. No.63 of 2016 arising out of MAT Case No. 19 of 2016 directing the husband/father to pay *pendente lite* maintenance of Rs.45,000/- per month to wife and Rs.5000/- to the minor child w.e.f. 11.07.2016 in addition to direction for payment of litigation expenses of Rs.1,00,000/- to the wife in an application U/S.24 of Hindu Marriage Act, 1955 (in short, the “HMA”).

2. By the aforesaid impugned order, the learned trial Court has directed the husband to pay arrear maintenance amount and litigation expenses to the wife within one month of passing of order by authorizing the wife to receive maintenance for her minor child in addition to her own maintenance. For clarity, it needs to be emphasized that the petitioner in W.P.(C) No.23220 of 2017 who is the husband has prayed to set aside the impugned order, whereas the petitioner in W.P.(C) No.1797 of 2017 who is the wife seeks for enhancement of the maintenance granted to her vide the impugned order. Accordingly, both the writ Petitions are heard together and disposed of by this common judgment with the consent of learned counsel for the parties.

3. In the course of hearing, Mr. Lalit Kumar Moharana, learned counsel appearing for the husband while not disputing the status of the parties and grant of *pendente lite* maintenance to the child @ Rs.5000/- per month has submitted that the petitioner-husband is ready to pay Rs.6000/- to the child, since the husband's income is very meager which is Rs.25,000/- per month from all sources and he has also incurred expenses towards rent for his accommodation, travel, EMI for the loan taken by him, food, clothing and medicine, but the learned trial Court ignoring such facts has erroneously directed the husband to pay Rs.45,000/- per month to the wife. It is further submitted by Mr. Moharana that the wife has not approached the Court with clean hands or in terms of Chapter-III of General Rules and Circular Orders(Civil) Vol.II (in short, GRCO) containing Rules under Hindu Marriage Act referred as “The Hindu Marriage and Divorce Rules,1956 (in short, the “Rules”) in which Rule-13 prescribes that every application for maintenance *pendente lite*, permanent alimony and maintenance or for custody, maintenance and educational expenses of minor children, shall state the average monthly income of the petitioner and the respondent the sources of these income, particulars of other movable and immovable property owned by them, the number of dependents on the petitioner and the respondent, and the names and age of such dependents, but the application of wife for *pendente lite* maintenance does not disclose the above factors and thereby, the claim of the wife ought to have been rejected on that score. On coming to the quantification of the *pendente lite* maintenance to the wife, Mr. Moharana learned

counsel for the husband has submitted that the husband is working as a “Sales Executive” with Tirupati Enterprises, Jharsuguda since May-2023 and his current net annual income is Rs.3,00,000/-, but due to typographical error, the income of the husband has been shown by him in the objection to the application for pendente lite maintenance in I.A. No.63 of 2016 to be net income of Rs.3,00,000/- per month, however, the husband cannot pay such a huge amount of Rs.45,000/- per month to the wife as *pendente lite* maintenance. Mr. Moharana, however, has alternatively submitted that since the petitioner is the husband, he cannot avoid his liability and at best, he can pay a sum of Rs.15,000/- per month to the wife. In summing up his argument, Mr. Moharana has submitted that since the impugned order has been passed in ignorance of Rule-13 of the Rules which is mandatory in nature, the impugned order may kindly be set aside.

3.1 On the contrary, Mr. Bibekananda Bhuyan, learned Sr. counsel who is being assisted by Ms. S. Sahoo, learned counsel for the wife has submitted that the husband is not only an affluent man, but also is earning Rs.5,00,000/- per annum from all sources which is very much clear from the admission of the husband in his objection for earning around Rs.3,00,000/- per month and purchase of building in his name as well as spending lakhs of rupees towards his extravagant living and visiting places in India and abroad in pleasure trips and therefore, the impugned order directing the husband to pay Rs.45,000/- to the wife is quite meager and deserves to be enhanced since the husband can pay at least Rs.1,00,000/- per month to the wife. Accordingly, Mr. Bhuyan has prayed to enhance the *pendente lite* maintenance of the wife.

4. After having considered the rival submissions upon perusal of record, it appears that this Court by way of an order passed on 07.12.2027 in Misc. Case No.19893 of 2017 arising out of W.P.(C) No.23220 of 2017 has directed for staying operation of the impugned order as an interim measure subject to condition the husband going on paying a sum of Rs.20,000/- per month to the wife w.e.f. December 2017 onwards and litigation expenses of Rs.75,000/- and it is stated by learned counsel for the husband that the husband has cleared up all the arrear dues in terms of the such interim order of this Court. The husband-father also does not dispute about paying *pendente lite* maintenance to the child @ Rs.6,000/- per month and thereby, the impugned order with regard to payment of *pendente lite* maintenance the child only needs to be examined on the scope for enhancement, whereas it needs to be examined with regard to quantum of *pendente lite* maintenance to the wife in addition to its sustainability.

5. In this case, there is absolutely no dispute about the relationship between the parties, but grant of pendente lite maintenance in a proceeding of this nature is to be guided by the provision of Sec.24 of HMA which provides for grant of *pendente lite* maintenance, litigation expenses either of the spouses and the objective behind Sec.24 of HMA is intended to provide support to the spouse having no independent income sufficient for his/her support and necessary expenses of the proceeding, but

the support for his/her requirement also implicitly includes the basic needs of the spouse like food, clothing and shelter. While quantifying *pendente lite* maintenance in a proceeding of this nature, the financial capacity of the spouse is the critical factor and the Court has to examine the spouse's actual income, reasonable expenses for his/her own maintenance and any dependents which he/she is legally obliged to support. In addition, the liabilities and financial commitments are also to be considered to ensure a balance and fair maintenance award. In this case, while challenging the impugned order with regard to *pendente lite* maintenance to wife, the husband has resorted to Rule-13 of the Rules which in fact has not been discussed in the impugned order, but fact remains that the parties are in litigating terms prior to 2016 and the narration of the facts also discloses allegation by the husband that the wife took away their son on 27.09.2012 by abandoning him and in this situation, this Court feels that soon there is a quietus to the dispute between the parties, it is better for the parties. Further, the present proceeding is for *pendente lite* maintenance arising out of a proceeding in MAT Case No.19 of 2016 for divorce between the parties. At this length of time, this Court does not wish to pass any order to relegate the parties to square one by directing the learned trial Court to decide the application for *pendente lite* maintenance and litigation expense afresh for not following the provision Rule 13 of the Rules on the face of objective of the provision of Sec.24 of the HMA.

6. On consideration of facts, it is found that the couple has a son who was born on 10.08.2012 and the husband has not brought any material on record to indicate that the wife was earning for her and her child sustenance. Indisputably, the husband has purchased a house in the year 2009 which is, however, claimed by him to have purchased by taking loan, but no document is produced to evidence to suggest so. On the other hand, the learned trial Court has taken in the impugned order that the husband has purchased the aforesaid house out of his own savings and the other admitted fact is that the couple had gone to Gangtok, Darjeeling and many other places in abroad like New Zealand and Singapore in pleasure trips which is indicative of the income of the husband. Moreover, the husband in his objection has also stated his income to be Rs.3,00,000/- per month which is of course claimed by learned counsel for the husband to be a typographical error, but if it is a typographical error, why the husband has not taken any steps for rectifying the same. Besides, the father of the husband is also having business entity in the name and style M/s. Micro Minerals. Even if the husband has purchased the house by taking loan and repaying it with an EMI of Rs.8333/- per month, but the house which has been purchased is stated to have been given on rent @ Rs.9000/- per month. Further, the husband is a titan member of lions club, Jharsuguda. The learned trial Court in the impugned order has also observed that the documents filed by the wife further reveals that the husband had obtained a loan of Rs.10,00,000/- from the HDFC bank in the year 2015 and he is repaying such loan by paying EMI of Rs.21,370/- which he has paid till the month of September, 2015. According to the husband, he has no dues or arrear to be paid to the wife in terms of the interim order passed by this

Court by which the husband has been asked to pay Rs.20,000/- per month and he has admitted to have paid it till March, 2025 w.e.f. December, 2017 for 87 months.

7. On a cumulative assessment of facts in the background of husband successfully paying a sum of Rs.20,000/- per month to the wife in terms of the order passed by this Court as an interim arrangement, this Court is unable to buy the assertion of the husband that his monthly income is Rs.25,000/- from all sources and the earning of the husband is much more than Rs.25,000/- per month. In view of the above facts and standard of living of the husband as demonstrated in the preceding paragraph on the context of present days cost of living, it can be safely and convincingly said that the income of the husband would not be less than Rs.2,00,000/-, but may be more than that up to Rs.3,00,000/- per month which he admitted in his objection, no matter claims the same to be a typographical error subsequently.

8. In order to have an equitable determination of financial support required to the wife and dependent child, it can be said that maintenance should be determined after considering the status and life style of the parties, and their reasonable needs, educational qualification of the wife, so also her earning capacity as well as the financial standing and obligation of the husband and the rising cost of living on the face of inflation to ensure a standard of living that is proportionate to the husband's financial capacity and commensurate to the standard of his living and the standard of living of the wife and children prior to their separation. True it is that there cannot be any straight jacket formula for fixing the amount, but the quantum of maintenance must be subjective to each case and dependent on various circumstance and factors, such as income of the parties; their conduct during subsistence of the marriage; their individual social and financial status; their personal expenses; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of marriage and such other similar factors. At the same time, it is not only equitable, but also obligatory for father/mother to provide maintenance to his/her children, which is apparent from the following observation made in **Rajnish Vrs. Neha and another; (2021) 2 SCC 324**, wherein the Apex Court at paragraphs-91 & 92 has held as under:-

"91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties."

9. Sec. 24 of the HMA empowers the Court to grant *pendente lite* and litigation expenses, but the words used therein in the context makes the grant of *pendente lite*

maintenance conditional, which cannot be granted unless the applicant has no independent income sufficient for his/her support and, therefore, the grant of *pendente lite* and litigation expenses is dependent on those two words “no independent income” and “support”. In the context, the decision relied on by the husband in ***Manish Jain Vs. Akanksha Jain; (2017) 15 SCC 801*** is very clear wherein the Apex Court in Paragraph-15 has held thus:-

*“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.**”*

10. What is more important is that, the child “son” of the estranged couple was born on in the year 2012 and he must be around 13 years right now and, therefore, this Court has to see his requirement for maintenance and sustenance as well as his educational expenses in the standard of living of his father. In the above premises and discussion of facts & law as narrated above together with capacity and status of the parties makes it very clear that the *pendente lite* maintenance as granted to wife is little bit on higher side and interest of justice would be best served, if the *pendente lite* maintenance, as granted to the wife is reduced to Rs.25,000/- per month, whereas the same is enhanced to Rs.15,000/- for the son, but this Court does not consider it proper to interfere with litigation expenses of Rs.1,00,000/- as awarded by the learned trial Court to the wife by taking into consideration the length/period of litigation. Accordingly, the modified amount of *pendente lite* maintenance is payable w.e.f. the date of application and arrear of such amount be cleared up in monthly installments, but the number and amount of the installment shall be decided/fixed by the learned trial Court. Hence, the wife and son are entitled to Rs.25,000/- and Rs.15,000/- per month as pendent ite maintenance. Further, the wife is authorized to receive the *pendente lite* maintenance for herself and for her son till disposal of the MAT case.

11. In the result, the W.P.(C) No.1797 of 2017 stands dismissed, but W.P.(C) No.23220 of 2017 stands allowed to the extent indicated above. Parties are directed to bear their cost.

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

Result of the case:
W.P.(C) No. 1797 of 2017 dismissed.
W.P.(C) No. 23220 of 2017 allowed.

2025 (II) ILR-CUT-977

**HDFC-ERGO GENERAL INSURANCE
COMPANY LTD., CUTTACK
V.
GAHAR ALLI PURKAIT & ORS.**

[MACA NO. 125 OF 2023]

WITH

HDFC-ERGO GENERAL INSURANCE CO. LTD., CUTTACK
(IN ALL APPEALS)

V.

CHAMION BIBI & ORS. (MACA 123 OF 2023)
HANCHINA BIBI & ORS. (MACA 124 OF 2023)
AMADULLA PUROKAIT & ANR. (MACA 126 OF 2023)
MANIRUDDIN PUROKAIT & ANR. (MACA 127 OF 2023)

AND

HANIF MOLLA & ANR. (MACA 128 OF 2023)

16 MAY 2025

[G. SATAPATHY, J.]

Issues for Consideration

1. Whether major married sister and brother can claim compensation being the dependent/legal representative of deceased/victim.
2. Whether the deceased persons carrying tower materials to work site in a goods carriage vehicle are to be construed as gratuitous passengers.

Headnotes

(A) MOTOR VEHICLES ACT, 1988 – Section 166 – Claim of compensation – Whether major married sister and brother can claim compensation being the dependent/ legal representative of deceased/ victim.

Held: Yes – On coming to the issue of maintainability of claim by the major married brother and sister as advanced by the appellant-insurer to challenge the award made in MAC Case No.834 of 2017, it needs to be stated here that the objective of granting compensation under the MV Act is to ensure that just and fair compensation is paid to the aggrieved party, but Section 166 of the MV Act makes it ample clear that an application for compensation arising out of an accident of the nature specified in Sub-Section 1 of Section 165 may be made by all or any of the “legal representative” of the deceased, where death has resulted from the accident – The MV Act does not define the term “legal representative”, but generally “legal representative” means a person who in law represents the estate of a deceased person, and includes any person(s) in whom legal right to receive compensatory benefit

vests/vest. A “legal representative” may also include any person who intermeddles with the estate of the deceased and such person does not necessarily have to be a legal heir, who is the person entitled to inherit the surviving estate of the deceased – No doubt a legal heir may also be a “legal representative”, but may not be vice versa – Sub-Section 11 of Section 2 of the Code of Civil Procedure, 1908 describes “legal representative” as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued – An unmarried person dying intestate shall be succeeded by his and her legal heirs and in absence of parents, such unmarried person is ordinarily succeeded by his brother and sisters, even if they are married – It is, however, not uncommon in Indian society that in absence of parents, unmarried brother would be linked with other family members; such as brothers and sisters for guidance & dependence and if such unmarried brother is working and earning, some time his brother and sister may be dependent on his income – Besides, it is not uncommon that the unmarried brother would contribute his income to his dependent brother and sister on various occasions – In this regard, this Court is also quite alive with the principle laid down by Apex Court in **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and others**; (1987) 3 SCC 234, wherein it is held that a “legal representative” is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parents or child. (Para 8)

(B) MOTOR ACCIDENT – Claim of compensation – Gratuitous passenger – Whether the deceased persons carrying tower materials to work site in a goods carriage vehicle are to be construed as gratuitous passengers.

Held: No – It is not in dispute that the offending vehicle was a goods carriage truck and on the date of accident, the deceased persons along with the injured persons in total six, who were working as a contract labourer under M/s. M.M Enterprises, were travelling in the offending truck carrying tower materials to the work site and therefore, there is no dispute that on the date of accident, the truck was loaded with working materials which was supposed to be used by the deceased and injured for installing the tower at the work site and therefore, they cannot be turned to have been travelling in this offending truck as a gratuitous passengers, rather they would be considered as worker/labourer going to the work site with the working materials – Further, the insurance policy reveals payment of premium of Rs.100/- by the owner towards LL to persons employed in connection with operation (IMT.39) and therefore, the appellant-insurer is contractually liable

to indemnify the owner of the offending vehicle to satisfy the awards as passed by the learned Tribunal. (Para 14)

Citations Reference

New India Assurance Co. Ltd. Vrs. Anand Pal, **2024 (1) T.A.C. 3 SC**; Gian Singh and others Vrs. Ram Krishnan Kohli and others, **(2002) 3 T.A.C 671 (J&K)**; Maharashtra State Road Transport Vrs. Darab Khan and others, **(2005) 3 T.A.C. 537 (Bombay)**; Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and others, **(1987) 3 SCC 234**; N. Jayasree and others Vs. Cholamandalam MS General Insurance Company Limited, **(2022) 14 SCC 712 – referred to.**

List of Acts

Motor Vehicles Act, 1988.

Keywords

Motor accident; Claim of compensation; Dependent; Legal representative; Major married brother and sister; Goods carriage vehicle; Gratuitous passengers; IMT-39; Loss of consortium estate and funeral expenses; Unskilled labour; Rash and negligent driving.

Case Arising From

Judgment dated 15.11.2022 passed in M.A.C. Case Nos. 833 to 838 of 2017 by learned 3rd Motor Accident Claim Tribunal.

Appearances for Parties

For Appellant : Mr. G.P. Dutta
For Opp. Parties : Mr. S.N. Kar

Judgment/Order

Judgment

G. SATAPATHY, J.

1. Challenge in these appeals is as to the common judgment dated 15.11.2022 passed in six claims vide M.A.C. Case Nos. 833 to 838 of 2017, by which the learned 3rd Motor Accident Claim Tribunal (Hereinafter referred to as “the learned tribunal”) has awarded different compensation amounts to the different claimants preferring applications U/S. 166 of Motor Vehicles Act, 1988(In short “the MV Act”) for compensation due to motor vehicular accident in which three persons died and three persons sustained injuries.

2. Facts in precise are on 03.10.2017 at about 2:30 AM in the mid night, one truck bearing Registration No. OD-05-W-8955(offending vehicle) belonging to Respondent No.5(R5) M/S. MM Enterprises, proceeding towards Solopakhari under Balugaon PS carrying the deceased Habibulla Purkait, Khatip Purkait @ Raja Purkait, Arabilla Purkait and injured Amadulla Purkait, Maniruddin Purkait and

Hanif Molla met with an accident and capsized by felling on the side of National Highway resulting in death and injuries to above persons. Accordingly, the family members of the deceased persons claiming themselves to be dependents on the deceased persons and the injured themselves filed applications U/S. 167 of the MV Act claiming certain compensation by impleading the owner and insurer of the offending vehicle. According to the claimants, the deceased and injured persons were working under M/S. Sri Sai Construction engaged to install Jio Mobile Phone Tower and these persons were proceeding to work site at Solopakhari for installation of Mobile Tower.

In response to the claims six in number as filed, the owner of the offending vehicle-cum-R5 M/S. MM Enterprise did not choose to contest the claims and it was accordingly, set ex-parte in all the claims, but the insurer of the offending vehicle-cum-present Appellant HDFC-ERGO General Insurance Company Ltd., Cuttack contested all the six claims by filing separate written statements inter-alia challenging maintainability of the claims and its liability to pay compensation to the claimants in these six claims on various grounds, but the main plea of the insurer is that since the deceased and injured persons were travelling in the offending vehicle by sitting in its Dala as a gratuitous passengers, the insurer is not liable to pay any compensation to the claimants. According to the insurer, the prescribed capacity of the offending truck in terms of registration certificate was two persons including the driver, but the owner of the offending vehicle having allowed the offending vehicle to carry the deceased and injured persons beyond the permissible limit, the insurer is not contractually liable to indemnify the owner. In addition of denying its liability, the insurer had also disputed the profession and income of the deceased and injured persons.

3. Since all the claims arise out of one accident, the learned tribunal took all the matters simultaneously, however, on the inter se pleadings of the parties, the learned tribunal struck five issues and allowed the parties to lead evidence. Accordingly, five witnesses were examined in favour of the claimants as against one witness by the insurer-appellant. In addition to oral evidence, the claimants exhibited twenty two documents under Ext.1 to Ext.22 as against the documentary evidence of copy of insurance policy, certified copy of RC Book, Road permit and final form in the accident case under Exts A to D by the insurer.

4. After appreciating the evidence upon hearing the parties, the learned Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and thereby, the claims by the claimants are maintainable and the appellant-insurer being contractually liable is required to satisfy the awards passed in these claims, but the learned tribunal by the impugned judgment while allowing the claim of the claimants against the insurer dismissed the claim against the owner of the offending vehicle. Being aggrieved, the insurer has filed all these six appeals.

5. In the course of hearing of these appeals, Mr. G.P. Dutta, learned counsel for the appellant-insurer has emphatically submitted that the claim by the Respondents-claimants in MACA No. 124 of 2023, arising out of claim in MAC Case No. 834 of 2017 being the sister and brother of the deceased is not maintainable because they are not dependent on their deceased brother, but ignoring such fact, the learned tribunal has awarded compensation to the brother and sister of the deceased who are not only married, but also having independent income and are residing separately. In order to buttress his submission, Mr. Dutta has relied upon the decision in ***New India Assurance Co. Ltd. Vrs. Anand Pal; 2024 (1) T.A.C. 3 SC***. In addition to specially challenging the award in MACA No. 124 of 2023, Mr. Dutta also assailed the impugned judgment in rest of the claims on various grounds inter alia that the deceased and injured persons being gratuitous passenger, their dependents or themselves (injured) are not entitled to any compensation and the claim of the claimants having been dismissed against the owner by the impugned judgment, the insurer of such offending vehicle is statutorily not liable to indemnify the owner of the offending vehicle because the insurer is only liable to indemnify the liability of the insured, but when no liability has been fastened on the insured in a motor accident case, the insurer is absolved of indemnifying the insured by paying compensation. It is, however, submitted by Mr. Dutta that MV Act never recognizes imposition of any penal interest, but in this case, the learned tribunal has awarded penal interest @ 12% which being unsustainable is liable to be set aside. Accordingly, Mr. Dutta has prayed to allow these appeals.

5.1. On the contrary, Mr. S.N. Kar, learned counsel for the claimants-Respondents in all these appeals has submitted by relying upon the decision in ***Gian Singh and others Vrs. Ram Krishnan Kohli and others; (2002) 3 T.A.C 671 (J &K)*** that sisters and brothers of the deceased being his legal representatives can maintain a claim petition U/S. 166 of the Act and thereby, the learned tribunal has not committed any illegality in granting compensation to the brothers and sisters in MAC No. 834 of 2017 (MACA No. 124 of 2023). On this point, Mr. Kar also relies on another decision in ***Maharashtra State Road Transport Vrs. Darab Khan and others; (2005) 3 T.A.C. 537 (Bombay)***. In addition, Mr. Kar, however, has submitted that since the tribunal has rightly assessed the compensation, there is no need of any interference in these appeals and the learned tribunal has rightly imposed the penal interest only to secure payment of compensation to the claimants, otherwise the insurer may delay to pay the compensation to the claimants. It is also submitted by Mr. Kar that since IMT No.39 covers the liability of maximum 7 persons including the driver and cleaner while being engaged in the service of insured, the learned tribunal has not committed any illegality in fastening the liability to pay compensation to the insurer and, therefore, the awards to the claimants need no interference. Mr. Kar, has accordingly, prayed to dismiss all these appeals. However, none appears for the Respondent-owner of the vehicle despite being duly noticed.

6. After having considered the rival submissions upon perusal of record, since the learned tribunal has awarded compensation to the claimants in different claims, but arising out of one accident, this Court considers it appropriate to examine the liability of the appellant-insurer to satisfy the award passed in all the claims simultaneously, while examining the quantum of compensation individually in each claim. Additionally, this Court also wants to examine specifically the maintainability of the claim and entitlement of the claimants in MAC No. 834 of 2017, who are major married brother and sister, since the maintainability of claim by them has been specifically challenged in MACA No. 124 of 2023 for being the major brother and sister. Before dwelling upon these issues, it needs to be emphasized that the evidence, both oral and documentary, on record clearly establishes the accident to have occurred due to rash and negligent driving of the driver of the offending vehicle i.e. the Truck bearing Regd. No.OD-05-W-8955 in which the deceased and injured persons were travelling at the relevant time and therefore, the finding of the learned trial Court with regard to accident occurring due to rash and negligent driving of the driver of offending vehicle needs no interference, rather it is confirmed and bears the approval of this Court. Further, the evidence on record clearly reveals about the death of Habibulla Purkait, Khatip Purkait @ Raja Purkait and Arabilla Purkait and the injuries to Amadulla Purokait, Maniruddin Purkait and Hanif Molla in the aforesaid vehicular accident which was caused due to rash and negligent driving of the driver of the offending vehicle, since neither any evidence nor material is brought to the notice of this Court to dispute such facts by the appellant. On the above premises, especially when it is established by the evidence on record that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and some persons died and some persons sustained injuries in such accident, the legal representative of the deceased persons and the injured persons personally are entitled to receive compensation in view of the provisions under Section 166 of the M.V. Act, which provides for making application for compensation by the person who has sustained injury(ies) or by all or any of the legal representative of the deceased who suffered death in such accident.

7. Undoubtedly, the appellant herein seriously disputes about the maintainability of the claim by the married major brother and sister of the deceased in MAC Case No.834 of 2017 which needs to be addressed by this Court, but before advertng to such question, this Court makes it very clear that the claim by the other appellants for compensation is quite maintainable which the appellant could not validly dispute. Once the claim for compensation under MV Act is found maintainable, such claim should be allowed against the owner and driver of the offending vehicle, but the liability of the insurer will arise only when the liability of the insured is contractually protected by the insurer, who is contractually liable to indemnify the insured, who may be the owner of the offending vehicle under a contract of insurance. In this case the appellant is the insurer of the offending vehicle and thereby, it is contractually liable to indemnify the owner of the offending vehicle subject to terms and conditions of the contract of insurance, which has not

been proven to have been violated by the insured inasmuch as neither any evidence nor any material is produced by the appellant-insurance company to establish violation of terms and conditions of the policy by the insured-owner of the offending vehicle. The tribunal albeit has found all the claims by the claimants for compensation to be maintainable, but it has erroneously dismissed the claims for compensation against the respondent-owner of the offending vehicle without making any analysis of evidence or assigning any reason, however, at the same time, the learned Tribunal has saddled the liability of paying compensation to the appellant/insurance company and, therefore, such finding of dismissal of claim against respondent No.5-owner is unsustainable and, accordingly, the claims against the R5 are allowed ex parte. Further, the Tribunal has committed error in imposing penal interest @ 12% per annum after granting simple interest @ 6% per annum on each award, if the award is not satisfied within two months from the date 23.10.2007, but Section 171 of the M.V Act only recognize payment of Simple Interest on the award at such rate and from such date not earlier than the date of making claim application. Accordingly, the direction for payment of penal interest @ 12% per annum over and above grant of 6% interest on each award being unsustainable needs to be ignored.

8. On coming to the issue of maintainability of claim by the major married brother and sister as advanced by the appellant-insurer to challenge the award made in MAC Case No.834 of 2017, it needs to be stated here that the objective of granting compensation under the MV Act is to ensure that just and fair compensation is paid to the aggrieved party, but Section 166 of the MV Act makes it ample clear that an application for compensation arising out of an accident of the nature specified in Sub-Section 1 of Section 165 may be made by all or any of the “legal representative” of the deceased, where death has resulted from the accident. The MV Act does not define the term “legal representative”, but generally “legal representative” means a person who in law represents the estate of a deceased person, and includes any person(s) in whom legal right to receive compensatory benefit vests/vest. A “legal representative” may also include any person who intermeddles with the estate of the deceased and such person does not necessarily have to be a legal heir, who is the person entitled to inherit the surviving estate of the deceased. No doubt a legal heir may also be a “legal representative”, but may not be vice versa. Sub-Section 11 of Section 2 of the Code of Civil Procedure, 1908 describes “legal representative” as a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. An unmarried person dying intestate shall be succeeded by his and her legal heirs and in absence of parents, such unmarried person is ordinarily succeeded by his brother and sisters, even if they are married. It is, however, not uncommon in Indian society that in absence of parents, unmarried brother would be linked with other family members; such as brothers and sisters for guidance & dependence and if such unmarried brother is working and earning, sometime his brother and sister may be dependent on his income. Besides, it is not uncommon that the unmarried brother would contribute his income to

his dependent brother and sister on various occasions. In this regard, this Court is also quite alive with the principle laid down by Apex Court in **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and others; (1987) 3 SCC 234**, wherein it is held that a “legal representative” is one, who suffers on account of death of a person due to a motor vehicle accident and need not necessarily be a wife, husband, parents or child.

9. In **N. Jayasree and others Vs. Cholamandalam MS General Insurance Company Limited; (2022) 14 SCC 712**, the Apex Court in Paragraph-16 has observed as under:-

“16. In our view, the term “legal representative” should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. As noticed above, MV Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider interpretation to serve the real purpose underlying the enactment and fulfill its legislative intent. We are also of the view that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicle accident should have a remedy for realization of compensation.”

It is no doubt true that the appellant/insurer has relied upon the decision in **New India Assurance Company Ltd. Vs. Anand Pal and Ors; 2024 (1) T.A.C. 3 (S.C.)** to contend that the brother and sister would not be considered as dependent so as to entitle them to compensation, but the Apex Court in this decision has held that in absence of the evidence to the contrary, brother and sister would not be considered as dependents because they will either be independent and earning, or married, or be dependent on the father, but in this case the deceased was not survived by his father and he was living with his brother and sister and therefore, factually this principle may not be applicable to the present case since the brother and sister of the deceased are found to be dependent on the income of deceased. In view of the above facts and circumstance and taking into account the law laid down by Apex Court in **N. Jayasree (supra)**, the claimants in MAC Case No.834 of 2017 can well be considered to be dependents on the deceased so as to maintain a claim for compensation in terms of Section 166 of the MV Act. Accordingly, the plea as advanced by the appellant is answered in negative.

10. On coming back to the issue of quantum of compensation, this Court now adverts to the each case individually. In sequence, MAC Case No.833 of 2017 comes first, but on analysis of evidence, the deceased was found to be 35 years of age at the relevant time of his death and the Tribunal has taken his income by relying upon the minimum wages circular of Labour Commissioner of Odisha vide letter No.4909 of dated 30.04.2018, which prescribes the daily wages of an unskilled labourer then at Rs.214/- per day and accordingly, the learned Tribunal calculated the monthly income of the deceased at Rs.6420/- (Rs.214/- x 30) and adding 40% towards future prospects to the income of deceased, the learned Tribunal assessed the net monthly income of the deceased at Rs.8988/- per month (Rs.6420/- + 40% of Rs.6420/-) and thereafter,

deducting $1/4^{\text{th}}$ towards personal & living expenses since the deceased was having six dependents, the contribution of the deceased to his family was assessed at Rs.80,892/- per year. Accordingly, the quantum of compensation in MAC Case No.833 of 2017 has been quantified at Rs.12,94,272/- (Rs. 80,892 x 16) + Rs.70,000/- towards loss of estate, consortium and funeral expenses. Accordingly, the final compensation to the claimants in the above claim has been rightly quantified by the learned Tribunal at Rs.13,64,272/- (Rs.12,94,272/- + Rs.70,000/-), which could not be validly disputed by the appellant-insurer.

11. In MAC No.834 of 2017, the deceased died as a bachelor and was having two dependents, who are his brother and sister. The deceased was found to be 19 years at the time of his death and accordingly, the compensation to the claimant has been rightly quantified at Rs.10,40,740/- [50% of Rs.8988/- x 12(months) x 18(multiplier) + Rs.70,000/- (towards conventional heads of loss of consortium estate and funeral expenses)]. While quantifying compensation to the claimants in this claim, the learned Tribunal has followed the same principle by taking the minimum wage circular of the State for an unskilled labourer @ Rs.240/- per day. In coming to the quantum of compensation in MAC No.835 of 2017, the deceased was having four dependents and his age was found to be 32 years at the relevant time of his death. Accordingly, the compensation to the claimants has been rightly quantified at Rs.13,64,272/- [(Rs.8988/- x $1/4^{\text{th}}$) x 12(months) 16(multiplier) + Rs.70,000/(towards conventional heads)].

12. In coming to the quantum of compensation in MAC No.836 of 2017, the claimant therein is the injured who sustained injuries in the accident, but the learned Tribunal after referring to the injuries as per the injury report under Ext.15 granted compensation of Rs.30,000/-, which is just and proper and the appellant-insurer has not seriously disputed such compensation. Similarly in MAC No.837 of 2017, the claimant therein is the injured and the learned Tribunal after referring to the injuries of the injured as proved under Ext.16 has rightly quantified the compensation to the claimant at Rs.50,000/-, which is just and proper and cannot be disputed by the appellant-insurer. More or less the same in the case of the claimant in MAC No.838 of 2017, wherein the learned Tribunal after referring to the injuries of the injured as proved under Ext.17 granted a sum of Rs.30,000/- as compensation to the claimant, which is just and proper and could not be disputed by the appellant-insurer.

13. Now coming to the liability of the insurer, the learned Tribunal has found the appellant to be the insurer of the offending vehicle which was having valid insurance at the relevant time of accident, but the validity of insurance policy of the offending vehicle belonging to the insured was never disputed by the appellant, however, the plea of the appellant in these appeals is that the appellant is not contractually liable to pay the compensation to the claimants. However, the learned Tribunal has fastened the liability of paying compensation to the appellant by referring to IMT.39 which provides legal liability to person employed in connection with operation and/or maintaining and/or loading and/or unloading motor vehicle (FOR GOODS VEHICLES) and the learned Tribunal has referred IMT.39 in the impugned judgment by extracting as under:-

*“In consideration of the payment of an additional premium of *.....it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the insurer shall indemnify the insured against his legal liability under the **Workmen’s Compensation act, 1923 and subsequent amendments of that Act prior to the date of this Endorsement, the Fatal Accidents Act, 1855 or at Common Law** in respect of personal injury to any paid driver (or cleaner or conductor or person employed in loading/or unloading but in any case not exceeding seven in number including driver and cleaner) whilst engaged in the service of the insured in such occupation in connection with the.....and not exceeding seven in number and will in addition be responsible for all costs and expenses incurred with its written consent.”*

14. Nothing was brought to the knowledge of this Court to dispute above observation of the learned Tribunal with regard to IMT.39. Further, it is not in dispute that the offending vehicle was a goods carriage truck and on the date of accident, the deceased persons along with the injured persons in total six, who were working as a contract labourer under M/s. M.M Enterprises, were travelling in the offending truck carrying tower materials to the work site and therefore, there is no dispute that on the date of accident, the truck was loaded with working materials which was supposed to be used by the deceased and injured for installing the tower at the work site and therefore, they cannot be turned to have been travelling in this offending truck as a gratuitous passengers, rather they would be considered as worker/labourer going to the work site with the working materials. Further, the insurance policy reveals payment of premium of Rs.100/- by the owner towards LL to persons employed in connection with operation (IMT.39) and therefore, the appellant-insurer is contractually liable to indemnify the owner of the offending vehicle to satisfy the awards as passed by the learned Tribunal.

15. In view of aforesaid discussions of facts and law, this Court has no hesitation to concur with the findings of the learned Tribunal with minor modification like allowing the claim *ex parte* against the respondent(R5)-owner and ignoring the penal interest as imposed by the learned Tribunal, but this Court does not find any justification to interfere with the quantum of compensation, liability to pay compensation to the claimants and the entitlement of the claimants so also the apportionment compensation made to the claimants in the respective claims.

16. In the result, all the six appeals stands dismissed with modification of the impugned judgment for allowing the claim against the owner-respondent *ex parte* and setting aside the penal interest. Parties are directed to bear their own cost. All the six appeals are disposed of.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case :
Appeals dismissed.

2025 (II) ILR-CUT-987

**BASANTA KUMAR BEHERA
V.
STATE OF ODISHA**

[CRLMC NO. 2764 OF 2016]

19 JUNE 2025

[CHITTARANJAN DASH, J.]

Issue for Consideration

Whether a legal professional can be held criminally liable for the opinions rendered in discharge of his professional duty.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 482 – Petitioner is a practicing advocate – He prays to quash the order of cognizance passed against him for the offences U/s. 120-B 468/ 471/ 34 of IPC on the allegation of rendering legal opinions certifying the genuineness of the forged documents – Whether a legal professional can be held criminally liable for the opinions rendered in discharge of his professional duty.

Held: No – An erroneous or imperfect professional opinion, rendered in good faith and within the scope of engagement, cannot by itself give rise to criminal liability – The law draws a clear distinction between professional misjudgment and criminal intent – In absence of cogent evidence of collusion or fraudulent scheme, no penal consequences can follow merely because the opinion later turns out to be incorrect – The role attributed to the Petitioner is confined to the rendering of legal opinions in his professional capacity as an advocate – There is neither any specific overt act alleged against him nor any cogent material suggesting that he acted in concert with the principal accused persons to commit the offence – The materials on record fall far short of establishing the essential ingredients of Sections 120-B, 468, or 471 of the Indian Penal Code. (Para 10)

Citations Reference

CBI Hyderabad vs. K. Narayan Rao, (2013) 1 OLR (SC) 74; Tankadhara Mishra v. Republic of India, (2022) 87 OCR 397; M. Srikanth vs. State of Telangana, (2019) 10 SCC 373; State of Gujarat vs. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539; Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao, 2012 (9) SCC 512; Nrusingha Nath Mishra vs. Republic of India, 2010 (I) OLR 934; Nimai Charan Mohanty vs. Republic of India, (2015) 1 OLR 292; Kulamani Parida vs. State of Odisha, 2023 (I) ILR - CUT-611 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860.

Keywords

Professional opinion; Criminal liability; Criminal conspiracy; Forgery; Good faith; Professional misjudgment.

Case Arising From

Order dated 16.05.2016 passed by learned SDJM, Keonjhar.

Appearances for Parties

For Petitioner : Mr. Debi Prasad Dhal, Sr. Adv.

For Opp. Party : Mr. S.J. Mohanty, Addl. Standing Counsel

Judgment/Order**Judgment*****CHITTARANJAN DASH, J.***

1. By means of this application, the Petitioner, Basanta Kumar Behera, a practicing advocate, has approached this Court under Section 482 CrPC seeking to quash the order dated 16.05.2016 passed by the learned SDJM, Keonjhar, taking cognizance against him for offences under Sections 120-B/468/471/34 IPC in connection with G.R. Case No. 1338 of 2014, arising out of Keonjhar Town P.S. Case No. 273 of 2014.

2. The background facts of the case are that, in a written complaint dated 04.08.2014 submitted by Pratap Chandra Nayak, the then Senior Branch Manager of Syndicate Bank, Keonjhar Branch (hereinafter referred to as the 'Bank'), alleged that during the period of 2011–2012, the Bank had sanctioned 11 tractor loans to various individuals and a cash credit loan of ₹10 lakhs to one Duryodhan Das, the proprietor of M/s Rahul Enterprises. These loans were sanctioned based on mortgage of immovable properties, purportedly supported by title deeds, RORs, rent receipts, and other revenue documents. Subsequent internal audit conducted during May–June, 2013, revealed that these documents were forged. A second legal opinion obtained from Advocate Ajay Kumar Nath confirmed the forgery. It was discovered that the documents bore fake seals and signatures of public authorities, and were created with the intent to defraud the Bank. Undeniably, one Duryodhan Das, had introduced the borrowers to the Bank and received the loan disbursements. He later absconded, closing his business. The Petitioner herein, had rendered legal opinions certifying the genuineness of these forged documents. As a result, he was arrayed as an accused along with Duryodhan Das, the borrowers, and the then Branch Manager, Ramesh Chandra Giri. The Investigating Officer, after examining several witnesses including Bank staff and obtaining relevant documents, filed Charge Sheet No. 01 dated 31.03.2016, implicating the Petitioner under Sections 120-B, 468, 471, and 34

IPC. It is alleged that the Petitioner, in connivance with the Branch Manager and others, knowingly validated forged documents, leading to a loss of around ₹69,29,000 to the Bank.

3. Mr. D. P. Dhal, learned Sr. Counsel appearing on behalf of the Petitioner, submits that the role of the Petitioner was limited to providing a legal opinion based solely on documents supplied by the Bank officials, and he had no reason or obligation to verify their authenticity from the original sources such as the Sub-Registrar or Tehsil offices. Mr. Dhal further asserts that the Petitioner had no knowledge of the forgery and had not entered into any conspiracy with the co-accused. He acted in good faith and without any mens rea. Mr. Dhal further contends that the charge of conspiracy against him is unfounded and unsupported by any direct evidence and placed his reliance on the decision of the Hon'ble Supreme Court in **CBI Hyderabad vs. K. Narayan Rao** reported in (2013) 1 OLR (SC) 74, where it was held that mere submission of a wrong legal opinion, in the absence of any material showing connivance with other accused, cannot attract criminal liability; a similar position has also been reaffirmed by this Court in **Tankadhara Mishra v. Republic of India** reported in (2022) 87 OCR 397. Mr. Dhal asserts that legal professionals cannot be criminally prosecuted merely because a document later turns out to be forged, unless there is specific material indicating intentional participation in the fraudulent act. He reiterates that the Petitioner's professional duty was confined to the documents handed over to him, and there is no material on record to show that he had knowledge of their forged nature or that he was part of any fraudulent arrangement. Mr. Dhal finally concludes by praying for the criminal proceedings against the Petitioner be quashed in the interest of justice.

4. Mr. S. J. Mohanty, learned Additional Standing Counsel for the State, while opposing the Petitioner's prayer for quashing of the cognizance order, contends that there are sufficient materials on record to proceed against the Petitioner for offences under Sections 120-B, 468, 471, and 34 of the IPC. He submits that during the period of 2011–12, the Keonjhar Branch of Syndicate Bank sanctioned tractor and cash credit loans to various individuals based on forged revenue documents such as RORs and rent receipts which were certified as genuine by the present Petitioner in his capacity as legal advisor. The matter only came to light during an internal audit during May–June 2013 and when a second legal opinion was sought from Advocate Ajaya Kumar Nath revealed the use of forged documents. He further submits that during the investigation, the I.O. recorded statements under Section 161 CrPC of key witnesses, including Bank officials and advocates, who consistently stated that the Petitioner was selected as legal advisor by the then Branch Manager without authorisation from the Regional Office, and had vetted forged documents submitted by the accused borrowers. Mr. Mohanty asserts that the witnesses have categorically alleged that the Petitioner, along with the Branch Manager, the borrowers, and one Duryodhan Das, conspired to cheat the Bank and caused wrongful loss of ₹69,29,000/-. Mr. Mohanty argued that at the stage of cognizance, the Magistrate is

not required to conduct a detailed analysis of the merits or the sufficiency of evidence. It is enough if the material on record discloses a prima facie case. He further his argument by stating that it is not expected to weigh the evidence but only to see whether there exists sufficient ground to proceed, and placed his reliance on various Supreme Court decisions in the matters of ***M. Srikanth vs. State of Telangana (2019)*** reported in **10 SCC 373** and ***State of Gujarat vs. Afroz Mohammed Hasanfatta*** reported in **(2019) 20 SCC 539**. Mr. Mohanty asserts that a Magistrate can take cognizance based on the police report and accompanying documents without giving detailed reasons. He also contends that Section 482 CrPC is not to be invoked as a matter of routine to stifle legitimate prosecution and in view of the consistent witness testimonies, the nature of the allegations, and the materials collected during investigation, the Petitioner's role is not merely professional but forms part of a wider conspiracy. Mr. Mohanty concludes his argument by stating that the learned SDJM, Keonjhar rightly took cognizance and the present CRMLC is devoid of merit and liable to be dismissed.

5. Before delving into the core legal question of whether a legal professional can be held criminally liable for the opinions rendered in discharge of professional duty, it is necessary to acknowledge the peculiar nature of the allegations in the present case. The Petitioner, an advocate by profession, is sought to be implicated not on the basis of any overt fraudulent act, but for having certified, in his professional capacity, the genuineness of certain documents which were later discovered to be forged. In such a backdrop, it becomes imperative to examine whether the material on record justifies the criminal proceeding against the Petitioner. This issue has engaged the attention of both the Hon'ble Supreme Court and various High Courts in several decisions, which provide a guiding framework for determining the scope and limits of liability in such circumstances.

6. The Hon'ble Apex Court in its decision in the matter of ***Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao*** reported in **2012 (9) SCC 512**, has held that –

“23) A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings, viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

24) In *Jacob Mathew vs. State of Punjab & Anr.* (2005) 6 SCC 1 this court laid down the standard to be applied for judging. To determine whether the person charged has been negligent or not, he has to be judged like an ordinary competent person exercising ordinary skill in that profession. It is not necessary for every professional to possess the highest level of expertise in that branch which he practices.

25) In *Pandurang Dattatraya Khandekar vs. Bar Council of Maharashtra & Ors.* (1984) 2 SCC 556, this Court held that "...there is a world of difference between the giving of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct.

26) Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

27) However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 of IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

7. This Court too in the matter of *Nrusingha Nath Mishra vs. Republic of India* reported in **2010 (I) OLR 934**, has held that –

"3. To examine the question as to whether a case under sections 420/120-B IPC has been made out or not, it would be apt to examine as to whether by accepting the prosecution case in its entirety, the ingredients of sections 420/120-B IPC exist or not. Section 420 IPC relates to an offence of cheating and dishonestly inducing the person deceived to deliver any property to any person, or to make, alter or destroy the whole or part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

4, In the instant case, there is absolutely no allegation made by the prosecution with regard to the Petitioner or the co-accused cheating the New India Assurance Company Ltd. and dishonestly inducing the said company to deliver any property. As a matter of fact, the prosecution has admitted that on lodging of the claim by the Petitioner, the claim was settled and the prosecution never alleges that before settling the claim, due procedure was not followed. With regard to the offence under section 120-B IPC, there is absolutely no material or allegation made by the prosecution, prima facie, satisfying the ingredients of the said offence which relates

to punishment of criminal conspiracy as defined in section 120-A IPC. No materials whatsoever have been brought out during the investigation to show any agreement or conspiracy between the two co-accused persons to commit any offence. At this juncture, it would be profitable to note that the other co-accused is an advocate, who was engaged by the New India Assurance Company Ltd. to investigate the case and while performing such professional work, he sent a report that he could not trace out any records regarding hospitalization of the Petitioner at S.C.B. Medical College, Hospital. There is no material whatsoever to show prima facie that the co-accused in order to cause an illegal gain to either himself or the Petitioner or to cause illegal loss to the company gave such a report. A report or opinion rendered by an advocate, to his client, if found to be incorrect, cannot constitute an offence when nothing is shown that such report or opinion is purposefully given to commit any offence. The prosecution has also not come out with any material disclosing meeting of mind between the two accused persons to bring home the charge under section 120-B IPC. Rather, the allegation in the F.I.R. was made that the co-accused conspired with one Beni Madhan Dwivedi, who was functioning as a Divisional Manager and the said Beni Madhab Dwivedi is not an accused in the charge sheet filed.

5. The impugned order passed by the learned C.J.M. taking cognizance of the offence under sections 420/120-B IPC ex-facie shows non-application of judicial mind by the learned C.J.M. It is a settled position of law that when a charge sheet is filed after investigation against the accused persons alleging commission of offence, the court taking cognizance is to apply his judicial mind to find out as to whether there is any material showing that such offence has been committed.

6. The Court, while exercising jurisdiction under section 482 Cr.P.C. to quash a criminal proceeding, no doubt, should exercise such power sparingly and with circumspection. If, however, it is found that on accepting the materials produced by the prosecution, which were collected during investigation along with the F.I.R. in its entirety, do not disclose commission of any offence, the court is to quash the criminal proceeding in order to prevent abuse of the process of the court and to secure the ends of justice. (See *State of West Bengal and others v. Swapan Kumar Guha and others*, AIR 1982 SC 949, *State of Haryana and others v. Ch. Bhajan Lal and others*, AIR 1992 SC 604, *Sanu Das and another v. State of Orissa and another*, 1999 (I) OLR 442, *G. Sagar Suri and another v. State of U.P. and others*, (2000) 18 OCR (SC) 355, *Ajaya Mitra v. State of M.P. and others*, (2003) 25 OCR (SC) 226, *Uma Shankar Mishra v. State of Orissa*, (2003) 25 OCR 611 and *Hira Lal Hari Lal Bhagwati v. CBI. New Delhi*, (2003) 25 OCR (SC) 770.)”

8. Similar view has been taken by this Court in the decision in the matters of ***Nimai Charan Mohanty vs. Republic of India*** reported in (2015) 1 OLR 292 as well as ***Kulamani Parida vs. State of Odisha*** reported in 2023 (I) ILR – CUT – 611, wherein it is held as follows –

“16. In such view of the matter, the allegation appearing in the F.I.R. and the complaint of the Bank vis-à-vis the Petitioner does not make out a case constituting the offences under Sections 420/467/468/471/120-B IPC as neither the Petitioner is part of the business transaction allegedly to have conducted by the co-accused persons having interest therein nor that the document in question allegedly to have

been forged and fabricated is attributed to the present Petitioner in absence of a material showing his personal interest in any gain/loss of the parties conducting business except that he retains his professional interest. This Court while dealing with the matter is alive of the fact that the offences alleged are the category of offence involving the moral aptitude and detrimental to the society in general but have strong conviction that the act of the Petitioner in discharging his professional duty is above all the allegations alleged save and except discharging part of his professional duty. Consequently, this Court finds no material to proceed against the Petitioner attributing the criminal liability so as to continue the proceeding. The learned court below having not specifically recorded any reasoning vis-à-vis the present Petitioner erroneously travelled in taking cognizance against the Petitioner and is as such liable for being interfered with exercising the jurisdiction under Section 482 Cr.P.C.”

9. In the instant case, there is a conspicuous absence of any prima facie material to suggest that the Petitioner entered into a conspiracy with the co-accused persons to commit forgery or use forged documents within the meaning of Sections 120-B, 468, or 471 of the IPC. As an advocate, the Petitioner was engaged solely to render legal opinions on documents submitted to him by the Bank. There is no allegation that he played any role in preparing or fabricating those documents, nor is there any evidence suggesting that he had knowledge of their forged nature. The settled legal position, as laid down by the Hon’ble Supreme Court in **CBI vs. K. Narayana Rao** (Supra), is that criminal liability cannot be fastened on a legal professional for merely rendering an incorrect opinion, unless there is material showing that the advocate actively participated in a fraud. This principle has been consistently affirmed by this Court as well, notably in the abovementioned decisions, where it is held that an advocate’s incorrect report, in the absence of any evidence of intention to cheat or conspire, does not constitute an offence under Sections 420 or 120-B IPC. In the present matter, the charge of conspiracy under Section 120-B IPC is not substantiated by any direct or circumstantial evidence showing a meeting of minds or any form of collusion. Likewise, to attract Section 468 IPC, which requires forgery for the purpose of cheating, and Section 471 IPC, which deals with use of forged documents as genuine, there must be material demonstrating that the accused either forged the document or knowingly used it despite knowing it to be forged. The Petitioner’s role, by contrast, is limited to certifying the documents for their legal sufficiency not their factual authenticity and he has consistently maintained that his opinion was based on materials provided by the Bank without any instruction or expectation to conduct independent field verification. In the absence of any allegation of personal gain, active abetment, or conscious facilitation of fraud, continuing criminal proceedings against the Petitioner would amount to an abuse of process. The application of Sections 120-B, 468, and 471 IPC to the facts of this case is therefore legally unsustainable.

10. In view of the foregoing discussion, and upon a careful perusal of the record as well as the applicable legal principles laid down by the Hon’ble Supreme Court and this Court, this Court is of the considered view that the prosecution has failed to

bring on record any material that would indicate the Petitioner's involvement in the alleged criminal conspiracy or forgery. An erroneous or imperfect professional opinion, rendered in good faith and within the scope of engagement, cannot by itself give rise to criminal liability. The law draws a clear distinction between professional misjudgment and criminal intent. In absence of cogent evidence of collusion or fraudulent scheme, no penal consequences can follow merely because the opinion later turns out to be incorrect. The role attributed to the Petitioner is confined to the rendering of legal opinions in his professional capacity as an advocate. There is neither any specific overt act alleged against him nor any cogent material suggesting that he acted in concert with the principal accused persons to commit the offence. The materials on record fall far short of establishing the essential ingredients of Sections 120-B, 468, or 471 of the Indian Penal Code.

11. Accordingly, the CRLMC is allowed.

12. The impugned order dated 16.05.2016 passed by the learned SDJM, Keonjhar in G.R. Case No. 1338 of 2014, arising out of Keonjhar Town P.S. Case No. 273 of 2014, taking cognizance against the Petitioner under Sections 120-B/468/471/34 IPC, as well as all consequential criminal proceedings so far as the present Petitioner is concerned, stand quashed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

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Result of the case :

CRLMC allowed.

2025 (II) ILR-CUT-994

SUCHISMITA BEHERA @ PRUSTY & ORS.

V.

STATE OF ORISSA (VIGILANCE) & ORS.

[CRLA NO. 1007 OF 2024]

05 MAY 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether the Authorised Officer lacks jurisdiction to refund the confiscated property U/s. 19 of the Orissa Special Courts Act, 2006.

Headnotes

ORISSA SPECIAL COURTS ACT, 2006 – Section 19 – Refund of confiscated property – Offence U/s.13(1)(e) r/w 13(2) of P.C. Act – Order of Authorised Officer rejecting refund of confiscated property is

under challenge – In the instant case the accused person is dead – His legal heirs being the Appellants have filed this case – Appellants contended that as the case against the accused has been abated, the confiscated property needs to be refunded to them – The State/respondent contended that as the legality of the confiscation order is pending adjudication, no order for release of property could be passed as the Authorised Officer lacks jurisdiction – Whether the Authorised Officer lacks jurisdiction to refund the confiscated property under section 19 of the Orissa Special Courts Act, 2006.

Held: No - Upon consideration of the contentions advanced and perusal of the materials on record, this Court finds that the confiscation under the Orissa Special Courts Act, 2006 is intrinsically connected with the outcome of the trial proceeding under Section 13(1)(e) of the Prevention of Corruption Act – The procedure envisaged under Sections 13 to 19 of the Act contemplates that confiscation is contingent upon the eventual conviction of the accused in the principal crime for which he faces trial – In the present case, with the death of the accused, the trial has been abated – There is, therefore, no prospect of a determination of guilt or prosecuting securing conviction of the accused – It follows that there exists no lawful basis to sustain an order of confiscation which was passed solely on the anticipation of such conclusion of the trial – Thus, in the considered opinion of this Court, the continuance of confiscation proceedings and retention of the property despite the abatement of the trial offends the principle of fairness and violates the constitutional right of the legal heirs to property in the absence of adjudicated criminal liability of the deceased. (Para 18)

The rejection of the application under Section 19 of the Act, 2006 by the Authorized Officer on the sole ground that the appeal is pending is also flawed in law – Section 19 of the Act, 2006 is not confined merely to the cases of acquittal or annulment of conviction of the accused by appellate courts but encompasses broader circumstances where the basis of confiscation ceases to exist, including death and legal abatement – The Authorized Officer in such cases is not rendered powerless; rather, he is vested with the authority to redress the wrongful deprivation of property when the presumption of guilt no longer holds legal currency. (Para 19)

Citations Reference

Renubala & others vs. State of Odisha (Vigilance), **CRLMP No.634 of 2014 – referred to.**

List of Acts

Orissa Special Courts Acts, 2006; Prevention of Corruption Act, 1988.

Keywords

Refund of confiscated property; Abatement of case; Acquittal; Annulment of conviction; Source of income; Disproportionate assets; Lawful income; Deemed acquitted; Jurisdiction of Authorized Officer.

Case Arising From

Order dated 10.09.2024 passed by the learned Authorized Officer, Special Court, Bhubaneswar in Confiscation Case No. 2 of 2011.

Appearances for Parties

For Appellants : Mr. B.K. Sharma

For Respondents : Mr. Srimanta Das, Sr. S.C., Vigilance

Judgment/Order**Judgment**

S.S. MISHRA, J.

The present appeal has been filed under Section 17 of the Orissa Special Courts Act, 2006, challenging the order dated 10.09.2024, passed by the learned Authorized Officer, Special Court, Bhubaneswar, in Confiscation Case No. 2 of 2011, whereby the petition filed by the appellants under Section 19 of the Orissa Special Courts Act, 2006, seeking release of the confiscated properties of late Suryanarayan Behera, has been rejected.

2. The present appeal arises from the confiscation proceedings initiated against late Suryanarayan Behera, who alleged to have accumulated assets disproportionate to his known sources of income. The Vigilance Department registered a case against him under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988, on the allegation of amassing wealth to the known source of income during the period from 21.07.1990 to 07.06.1995. Pursuant to the investigation, trial was initiated in T.R. Case No. 04/06 of 2008/2002 before the learned Special Judge, Special Court, Bhubaneswar against the said accused Suryanarayan Behera.

3. On 16.04.2012, the learned Authorized Officer, Special Court, Bhubaneswar, passed an order holding that late Suryanarayan Behera had amassed assets disproportionate to his lawful income. Consequently, the Officer directed that the movable and immovable properties of the accused be confiscated to the Government of Odisha, free from all encumbrances. Aggrieved by this order, late Suryanarayan Behera filed CRLA No. 298 of 2012 before this Hon'ble Court, challenging the legality of the confiscation order.

4. During the pendency of the appeal, this Court, vide order dated 18.05.2012 in Misc. Case No. 772 of 2012, directed that the confiscated assets shall not be auctioned or disposed of, subject to the appellant furnishing a bank guarantee of Rs.10 lakhs in favor of the Authorized Officer. In compliance with this direction,

late Suryanarayan Behera furnished the bank guarantee on 30.05.2012, which is being subsequently renewed from time to time.

5. While the appeal was still pending, late Suryanarayan Behera passed away on 04.06.2021. Following his demise, the learned Special Judge, Special Court, Bhubaneswar, vide order dated 15.09.2021, declared that the trial proceedings in T.R. Case No. 04/06 of 2008/2002 abated. Thereafter, on 06.07.2024, the legal heirs of late Suryanarayan Behera, being the present appellants, filed a petition under Section 19 of the Orissa Special Courts Act, 2006 (for short “the Act, 2006”), before the learned Authorized Officer, Special Court, Bhubaneswar, seeking release of the confiscated property and money.

6. On 10.09.2024, the learned Authorized Officer rejected the petition, stating that the legality of the confiscation order dated 16.04.2012 is pending adjudication before this Court in CRLA No. 298 of 2012, and as such, no order for release of property could be passed. Aggrieved by this rejection, the present appeal under Section 17 of the Act, 2006, has been preferred before this Court.

7. Heard Mr. B.K. Sharma, learned counsel for the appellants and Mr. Srimanta Das, learned Senior Standing Counsel for the Vigilance Department.

8. The learned counsel for the appellants, who are the legal heirs of late Suryanarayan Behera, contended that the confiscation of property and money must be contingent upon the final outcome of the criminal trial. In the present case, late Suryanarayan Behera passed away on 04.06.2021, and the trial proceedings in T.R. Case No. 04/06 of 2008/2002 has been abated by the learned Special Judge, Special Court, Bhubaneswar, on 15.09.2021. Since the criminal proceedings cannot be concluded with a conviction, the appellants argued that the confiscated property and money should be withdrawn and the same shall be returned to them.

9. It was further submitted that if the Authorized Officer has the jurisdiction to release confiscated property upon acquittal, there is no valid reason why the same officer would lack jurisdiction to release the property upon the accused’s death. The appellants contended that the death of an accused before conviction prevents the prosecution from proving guilt, and therefore, continuing to hold the confiscated property in such circumstances would be unjust and contrary to law.

10. Additionally, it was submitted that the learned Authorized Officer failed to exercise his jurisdiction under Section 19 of the Act, 2006, which empowers the Officer to pass an order for release of confiscated property even if no order under Sections 15 or 18 of the Act has been passed. The appellants argued that confiscation is carried out in anticipation of a conviction, and when conviction is no longer possible due to the accused’s death, the very foundation of the confiscation order ceases to exist.

11. Mr. Sharma, learned counsel for the appellants further pointed out that this Court, vide order dated 18.05.2012, had directed that the confiscated property shall

not be auctioned or disposed of till the disposal of the appeal, subject to the appellant furnishing a bank guarantee of Rs.10 lakhs. In compliance with this order, late Suryanarayan Behera furnished the bank guarantee on 30.05.2012, which has been duly renewed from time to time. The appellants argued that they have fulfilled all legal obligations and, therefore, are entitled to the release of the confiscated property.

12. In conclusion, the appellants prayed for the setting aside of the order dated 10.09.2024 passed by the learned Authorized Officer and sought refund of all confiscated properties and money.

13. Mr. Das, learned counsel for the State Vigilance Department, appearing for the respondents, vehemently opposed the appeal, contending that the appellants were not entitled to the release of the confiscated property. It was submitted that the petition under Section 19 of the Act, 2006, filed by the appellants is misconceived, as the provision allows for release of confiscated property only in cases where the order of confiscation is annulled or modified in appeal, or in the event of an acquittal in the trial. Since the order of confiscation dated 16.04.2012 remains unaltered, and the appeal against it (CRLA No. 298 of 2012) is still pending before this Court, the Authorized Officer has rightly refused to release the property.

14. The respondents further argued that the learned Authorized Officer had become functus officio after passing the final order of confiscation, meaning thereby he had no further jurisdiction to modify or annul the same. Any order modifying or setting aside the confiscation by the authorized officer would amount to a review, which is not permissible under the law.

15. It was also submitted that the legal heirs of late Suryanarayan Behera are beneficiaries of the ill-gotten properties, and therefore, they cannot claim a right to have the confiscated property released in their favour. The confiscation of assets was based on the finding that late Suryanarayan Behera had amassed disproportionate assets known to his source of legitimate income, and merely because the trial abated due to his demise does not automatically entitle the appellants to reclaim the confiscated property.

16. The respondents contended that the appellants had already filed CRLA No.298 of 2012, challenging the final order of confiscation, and by filing a separate petition under Section 19 of the Act, they were misusing the judicial process to gain an advantage to which they are not entitled at this stage. The respondents maintained that the outcome of CRLA No.298 of 2012 will determine the fate of the confiscated property, and therefore, the present appeal is premature and ought to be dismissed.

17. In conclusion, the respondents prayed for the dismissal of the present appeal, asserting that the confiscated property should not be released unless the order of confiscation is overturned by this Hon'ble Court in CRLA No.298 of 2012.

18. Upon consideration of the contentions advanced and perusal of the materials on record, this Court finds that the confiscation under the Orissa Special Courts Act, 2006 is intrinsically connected with the outcome of the trial proceeding under Section 13(1)(e) of the Prevention of Corruption Act. The procedure envisaged under Sections 13 to 19 of the Act contemplates that confiscation is contingent upon the eventual conviction of the accused in the principal crime for which he faces trial. In the present case, with the death of the accused, the trial has been bated. There is, therefore, no prospect of a determination of guilt or prosecuting securing conviction of the accused. It follows that there exists no lawful basis to sustain an order of confiscation which was passed solely on the anticipation of such conclusion of the trial. Thus, in the considered opinion of this Court, the continuance of confiscation proceedings and retention of the property despite the abatement of the trial offends the principle of fairness and violates the constitutional right of the legal heirs to property in the absence of adjudicated criminal liability of the deceased.

19. The rejection of the application under Section 19 of the Act, 2006 by the Authorized Officer on the sole ground that the appeal is pending is also flawed in law. Section 19 of the Act, 2006 is not confined merely to the cases of acquittal or annulment of conviction of the accused by appellate courts but encompasses broader circumstances where the basis of confiscation ceases to exist, including death and legal abatement. The Authorized Officer in such cases is not rendered powerless; rather, he is vested with the authority to redress the wrongful deprivation of property when the presumption of guilt no longer holds legal currency.

20. While dealing with the scope of Section 19 of the Act, 2006, this Court in the case of **Renubala & others vs. State of Odisha (Vigilance)**, reported in **CRLMP NO.634 of 2014** held as under:

"7. Chapter-III of the Act, 2006 deals with confiscation of property. Section of the Act, 2006 mandates that upon receipt of an application under the said provision Authorized Officer shall serve a notice on the person in respect of whom the application has been made calling upon him to show cause as to why all or any money or property, or both should not be declared to have been acquired by means of the offence alleged to have been committed by him, confiscated to the State Government in compliance of provision under Section 14 of the Act, 2006 After giving a reasonable opportunity of hearing to the person upon whom notice under Section 14 has been served, he may pass an order confiscating all or any part of the money as well as the property so involved to be confiscated to the State free from all encumbrances. Where any money or property. or both have been confiscated to the State, the Authorized Officer, under the provisions of Section 16 of the Act 2006, shall make an order directing the person affected as well as any other person, who is in possession of such property or money, to deliver possession thereof to concerned Authorized Officer or to any officer duly authorized by him in that behalf within the time specified in the order. Section 19 deals with refund of confiscated money or property, reads as follows:-

"19. Refund of confiscated money or property.- Where an order of confiscation made under Section 15 is modified or annulled by the High Court in appeal or where the

person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the rate of five percent per annum thereon calculated from the date of confiscation."

8. On a close reading of Section 19 of the Act, 2006, it is abundantly clear that order of confiscation passed under Section 15 of the Act, if either modified or annulled by the High Court under Section 17 of the Act, or where a person facing trial is acquitted by the Special Court from the charges leveled against him, the money or property, or both so confiscated, shall be refunded to him and where it would not be possible on the part of the Authorized Officer to and/or the money or property, or both to the person affected, he can direct that such person should be paid the of the property including money, so confiscated, with interest per annum. **From a compendious reading of the aforesaid provisions, viz., Sections 13, 14, 15, 18 and 19 of the Act 2006, it is crystal clear that the Authorized Officer is only competent authority to refund and/or return the money or property so confiscated.**

9. In the instance case, although a proceeding for confiscation in Confiscation Case No. 1 of 2009 was initiated on the file of **the Authorized Officer under Section 13 of the Act, 2006, no order of confiscation as required under Section 15 of the Act could be passed before the death of the person affected, namely, late Khetrabasi Das. On the death of the person affected, Confiscation Case No. 1 of 2009 was dropped. Thus, an obvious question that arises as to whether the Authorized Officer would be competent to pass an order to refund/release the money or property so seized in a proceeding under the provisions of the P.C. Act.** In the instance case, initiation of confiscation proceeding under the provisions of the Act, 2006 can not be questioned because the Court can entertain a petition under Section 13 of the Act irrespective of the fact that cognizance of offence under the Act has not been taken. On and from the date, the Authorized Officer takes cognizance of the petition and issues notice to the person affected under Section 14 of the Act, 2006, the trial Judge lacks jurisdiction to deal with the said property involved in the confiscation proceeding. Thus, it is only the Authorized Officer, who can deal with the property in the manner prescribed under the provisions of the Act, 2006. No doubt, the Authorized Officer has jurisdiction to refund/return the money or the property, or both involved in a confiscation proceeding under two contingencies, such as -

(i) when the order of confiscation made under Section 15 is modified or annulled by the Court in appeal under Section 17 of the Act, 2006; and

(ii) whether the person affected is acquitted by the Special Judge?

Thus, Section 19 of the Act, 2006 mandates that when the affected person is acquitted of the offence alleged against him, the Authorized Officer is under obligation to refund the money and return the properties so confiscated. On and from the date when a proceeding for confiscation is initiated pursuant to an application under Section 13 of the Act, 2006, the Authorized Officer takes control of the properties so involved and will act in accordance with the provisions of the Act, 2006. It necessarily implies that the Special Judge before whom the trial is lacks jurisdiction to deal with the property so seized. When the Authorized Officer has the jurisdiction to release the money and property confiscated after acquittal of the person affected, there is no reason as to why he would lack jurisdiction or competence to deal with

the property after the death of the person affected, whether or not order under Sections 15, 16 or 18 of the Act, 2006 has been passed. Release or refund of the property or money does not have any bearing as to whether or not the possession of the money or property involved has been confiscated or the possession of the same has been taken over by the Authorized Officer. It has the same power to pass an order under Section 19 even if no order has been passed under Section 15 or 18 of the Act, 2006.

21. It is also relevant to observe that the continuation of confiscation proceedings or requiring further reinvestigation would serve no practical purpose and would in fact defeat the constitutional guarantee of a speedy trial. The death of the accused precludes the possibility of a trial and even the probability of reopening the matter posthumously is ruled out.

22. Upon the death of the principal accused before the conclusion of the trial, the trial abated, therefore, the trial virtually comes to an end, and no conviction or acquittal is recorded. Legally, the accused died as an innocent person, as the presumption of innocence unless proven guilty reinforced. In strict legal parlance although abatement of trial akin to acquittal, but doctrinally, the situation could be termed as “deemed acquittal” or in other words “not convicted”. Since in this case Suryanarayan Behera has died while facing trial he is “not convicted” or “deemed acquitted”. The confiscation of property under the Orissa Special Courts Act being contingent upon the conviction of the accused, the only corollary is that the property under confiscation is liable to be released. Section 19 is the provision under the Act that empowers the Authorized Officer to pass appropriate orders. Hence, there was no escape under law for the Authorized Officer to pass such orders in accordance with law on the application of the legal representatives of the accused once the trial stands abated after the death of the accused.

23. In light of the above discussion, this Court is of the opinion that the impugned order rejecting the application of the appellants under Section 19 of the Act is an act in accordance with law. The Authorized Officer, Special Court has the power to decide the application under Section 19 of the Act in the given situation. Hence, the impugned order dated 10.09.2024 passed by the Authorized Officer, Special Court, Bhubaneswar in Confiscation Case No.2 of 2011 is hereby set aside and the matter is remanded back to the Authorized Officer to decide the application under Section 19 of the Act afresh in accordance with law.

24. The CRLA is accordingly disposed of.

Headnotes prepared by :

Shri Jnanendra Ku. Swain, Judicial Indexer
(Verified by : Shri Pravakar Ganthia, Editor-in-Chief)

Result of the case :
CRLA disposed of.

2025 (II) ILR-CUT-1002

**SARAT CHANDRA DASH
V.
STATE OF ODISHA (VIGILANCE)**

[CRLREV NO. 483 OF 2024]

15 MAY 2025

[SIBO SANKAR MISHRA, J.]**Issues for Consideration**

1. Whether in absence of a check period and on the basis of the isolated recovery, a case of disproportionate asset under section 13(1)(d)(e) of the Prevention of Corruption Act can be thrashed upon the petitioner.
2. Whether delay in investigation and submission of the charge-sheet violates the right of speedy trial guaranteed under Art. 21 of the Constitution of India.

Headnotes

(A) PREVENTION OF CORRUPTION ACT, 1988 – Section 13(2) r/w 13(1) (d) (e) – Absence of check period – Isolated recovery of a sum of ₹1,14,800/- from the possession of the petitioner – There is no evidence brought on record by the I.O. regarding demand for gratification thereby extending illegal favours to any one – Inconsistent answer with regard to source of accumulation of such amount is the only adverse fact against the petitioner/accused – However, the period of the source of income was not specified – Whether in absence of a check period and on the basis of the isolated recovery, a case of disproportionate asset under Section 13(1) (d) (e) of the P.C. Act can be thrashed upon the petitioner.

Held: No – It is trite that clearly defined check period is indispensable in DA cases – It serves as a foundation for comparing the accused's assets and expenditures against the known sources of income – Absence of an improper and undefined check period would lead to the collapse of the prosecution's case. (Para 24)

Moreover, in absence of a defined and specific check period being provided by the prosecution, the petitioner is prejudicially positioned to discharge the burden of presumption under section 20 of the P.C. Act.

(Para 25)

(B) CRIMINAL TRIAL – Right to speedy trial – Offences under Sections 13(2) r/w 13(1) (d) (e) of the P.C. Act – Delay in investigation

and submission of charge-sheet – Present case is not a complicated one rather it is an isolated recovery, still it took eleven years to conclude the investigation – Whether delay in investigation and submission of charge-sheet violates the right of speedy trial guaranteed under Art. 21 of the Constitution of India.

Held: Yes – The delay in the present case is about 11 years – In a catena of judgments, the Hon'ble Supreme Court has already settled the law that the right to speedy trial in a criminal prosecution is an inalienable right guaranteed under Article 21 of the Constitution of India – This right is applicable not only to the actual proceeding before the Court but also includes within its sweep the preceding police investigation – In this case, though the case was not a complicated one rather relating to an isolated recovery, still it took 11 years for the vigilance department to conclude the investigation. (Para 21)

The present case makes it abundantly clear that the delay that has caused in the present case is fatal – Therefore, even if the petitioner is subjected to trial in a case of present nature at an inordinate belated stage, it may not be possible for the prosecution to secure conviction – The right of the accused-petitioner to defend his case is also marred to an irreparable extent – Hence, further procrastination of the proceeding in the given facts and circumstances of the case would neither be beneficial to the prosecution nor the defence, therefore, the trial is destined to be a futile exercise.

(Para 23)

Citations Reference

Mahendra Lal Das vrs. State of Bihar and Ors., **2002 (1) SCC 149**; Hasmukhlal D. Vora and another vrs. The State of Tamil Nadu, **Criminal Appeal No. 2310 of 2022, Supreme Court**; Vakil Prasad Singh vrs. State of Bihar, **(2009) 3 SCC 355**; Gian Singh vs. State of Punjab and another, **2012 (10) SCC 303**; B.S. Joshi & others vs. State of Haryana & another, **(2003) 4 SCC 675**; Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors., **(1988) 1 SCC 692**; State of Maharashtra v. Pollonji Darabshaw Daruwalla, **AIR 1988 SC 88**; State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede, **(2010) 2 SCC (Cri.) 385**; Akshaya Kumar Nayak v. State of Odisha (Vigilance), **CRLA No.148 of 2020, disposed of on 30.07.2024**; Damodar Das v. State of Odisha, **CRLA No.682 of 2023, disposed of on 07.05.2024 – referred to.**

List of Acts

Prevention of Corruption Act, 1988; Code of Criminal Procedure, 1973; Constitution of India, 1950.

Keywords

Discharge; Speedy trial; Absence of check period; Known sources of income; Delay in investigation and submission of chargesheet; Isolated recovery; Disproportionate assets.

Case Arising From

Order dated 02.08.2024 passed by the learned A.D.J.-cum-Special Judge (Vigilance), Dhenkanal in T.R. Case No. 09 of 2023 arising out of Vigilance G.R. Case No. 61 of 2012.

Appearances for Parties

For Petitioner : M/s. Adyasidhi Mishra, S. Rath, D.K. Mohanty, P. Soni & S. Bahadur

For Opp. Parties : Mr. Sangram Das, SC (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, challenging the order dated 02.08.2024 passed by the learned A.D.J.cum-Special Judge (Vigilance), Dhenkanal in T.R. Case No.09 of 2023 arising out of Vigilance G.R. Case No.61 of 2012, whereby the learned trial Court rejected the discharge petition filed by the petitioner seeking discharge from the offences under Sections 13(2) read with 13(1)(d)(e) of the Prevention of Corruption Act, 1988 (for short “the P.C. Act”).

2. The brief facts leading to the present Revision Petition are that the petitioner, a retired government auditor now aged 67 years, was serving as Auditor in the Local Fund Audit (LFA), Dhenkanal. On 07.07.2012, based on an intelligence input, officials of the Vigilance Department allegedly intercepted the petitioner outside his office premises and seized a sum of Rs.1,14,800/- from his possession. It was alleged that the said sum was illicitly collected from various officers of Kaniha Block to regularize audit objections.

3. An F.I.R. was registered under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act on the same day, i.e., 07.07.2012. However, despite the passage of more than 11 years, the investigating agency failed to conclude the investigation with due diligence and only submitted the charge-sheet belatedly on 21.09.2023. The sanction for prosecution was obtained much later on 25.08.2023.

4. The investigation revealed that the petitioner, Sarat Chandra Dash, then Auditor of the Local Fund Audit Office, Dhenkanal, was assigned to audit the accounts of Kaniha Block, Angul, during which he allegedly collected illegal gratification from various officers to overlook audit irregularities. Acting on credible

intelligence, a Vigilance team intercepted him near the District Audit Office, Dhenkanal, on 07.07.2012. Upon search, Rs.1,14,800/- in cash along with various personal and official documents were recovered from his possession. The petitioner failed to provide a satisfactory explanation to the source of the seized amount, and his statements were inconsistent and uncorroborated by any financial record.

5. Further investigation involved examination of his wife, brother, and other relatives, all of whom denied having given him any such amount. Verification of bank statements also showed no recent withdrawals justifying possession of the seized cash. The amount was found disproportionate to his known and legal sources of income. After a thorough investigation by multiple Vigilance Officers ranging for more than a decade and upon obtaining sanction from the competent authority, charge-sheet was filed on 21.09.2023 under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act, 1988, in Cuttack Vigilance P.S. Case No.61 of 2012.

6. Upon submission of the charge-sheet, the learned Special Judge (Vigilance), Dhenkanal, vide order dated 03.10.2023 in V.G.R. Case No.61 of 2012 took cognizance of the offences based on sanction order, statement of witnesses recorded under Section 161 Cr.P.C. and other connected documents form part of the challan filed by the I.O. arriving at a prima facie satisfaction.

7. The petitioner then challenged the said cognizance order by filing CRLMC No.5465 of 2023. This Court vide order dated 12.04.2024 while disposing of the same granted liberty to the petitioner to file a discharge petition before the learned trial Court.

8. The petitioner, accordingly, filed a detailed discharge petition enumerating various legal and factual infirmities in the prosecution's case. However, by the impugned order dated 02.08.2024, the learned trial Court rejected the said petition stating that prima facie materials are found from the collected documents for consideration of framing of the charge against the accused under Section 13(2) r/w 13 (1)(d)(e) of the P.C. Act, 1988, so there is no merit in this petition seeking discharge of the accused.

9. Heard Ms. Adyasidhi Mishra, learned counsel for the petitioner and Mr. Sangram Das, learned Standing Counsel for the Vigilance Department.

10. Ms. Mishra, learned counsel for the petitioner submitted that the impugned order dated 02.08.2024 rejecting the petitioner's discharge application is unsustainable in law and deserves to be set aside, as it suffers from non-application of judicial mind, mis-appreciation of facts, and failure to consider the absence of foundational ingredients necessary to frame charges under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act.

11. Ms. Mishra, learned counsel contended that there is no direct or circumstantial evidence indicating that the seized cash amounting to Rs.1,14,800/- was received by the petitioner by way of illegal gratification. The prosecution has

failed to identify any complainant, victim, or witness who allegedly paid or saw the money being accepted as a bribe, despite the nature of the allegation requiring such evidence.

12. Learned counsel further pointed out that the two government officials who accompanied the petitioner during the audit, namely, Sri Akshaya Kumar Muduli and Sri Fagu Behera, were not examined by the investigating agency, nor cited as witnesses in the charge-sheet. Their omission from the list of witnesses is fatal, as they were material witnesses to establishing whether any illegal activity occurred during the course of the audit.

13. It was also submitted by the learned counsel for the petitioner that the petitioner has provided a reasonable and plausible explanation for the possession of the seized amount, which was advanced to him by his brother for the purpose of construction of a joint family house at Chandikhole. The bank statement showing a cash withdrawal of Rs.2,75,000/- from the brother's account prior to the incident has been placed on record which was ignored by the learned trial Court.

14. It was argued that the prosecution had failed to delineate the "check period" or to conduct any asset-liability analysis to demonstrate that the petitioner possessed assets disproportionate to his known sources of income. In the absence of such exercise, no offence under Section 13(1)(d)(e) of the P.C. Act is made out.

15. Ms. Mishra, learned counsel, further submitted that the inordinate and unexplained delay of over 11 years in filing the charge-sheet and obtaining prosecution sanction violates the petitioner's unalienable right to a speedy trial guaranteed under Article 21 of the Constitution. The delay has severely prejudiced the petitioner's ability to mount a defence and has led to immense mental, physical and financial hardship. Undergoing the ordeal of delayed procedure of investigation has caused infliction of punishment to the petitioner.

16. Lastly, it was submitted that the learned trial Court failed to examine whether a prima facie case existed to sustain the prosecution on the basis of cogent materials. In a case involving serious penal consequences under the P.C. Act, mechanical framing of charges without basic evidentiary support amounts to abuse of process and deserves judicial interference under Section 397/401 of Cr.P.C.

17. Mr. Das, learned Standing Counsel for the Vigilance Department opposed the Revision Petition and submitted that the learned trial Court has rightly rejected the discharge application after considering the materials on record which, according to the prosecution, make out a prima facie case against the petitioner under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act.

18. It was contended that the seizure of Rs.1,14,800/- from the petitioner's possession outside the office of the BDO, Kaniha Block, immediately after the audit, raises serious suspicion and supports the case of abuse of official position for obtaining undue advantage.

19. Mr. Das, learned Standing Counsel also contended that the delay in filing of the charge-sheet or obtaining sanction does not by itself vitiate the trial unless prejudice is demonstrably caused. In the present case, the sanction has been duly obtained and there is no illegality in the cognizance order or framing of charges that warrants interference by this Court.

20. The present case is emanating from a complaint allegedly received from reliable sources on 07.07.2012, which was reduced down in writing. The prosecution alleged that the petitioner was apprehended and on his personal search, Rs.1,14,800/- was recovered. Since he has given prevaricated statements to justify the possession of the said amount, it was presumed that the money he has collected by illegal manner while misusing his official position. The apprehension, search and seizure were made on 07.07.2012. It took more than a decade for the Investigating Agency to procure sanction order from the authority to prosecute the petitioner. On 25.08.2023, the Special Secretary to Government G.A. & P.G. Department, Bhubaneswar had accorded the sanction. A month thereafter, i.e., on 21.09.2023, the charge-sheet has been filed against the petitioner. Subsequently, vide order dated 03.10.2023, the learned Special Judge (Vigilance), Dhenkanal has taken cognizance of the offences punishable under Sections 13(2) read with Section 13(1)(d)(e) of the P.C. Act against the petitioner. The petitioner approached this Court by filing CRLMC No.5465 of 2023 seeking quashing of the entire charge-sheet. This Court vide order dated 12.04.2024 rejected the prayer made by the petitioner by dismissing the application, however, granted liberty to the petitioner to move before the learned trial Court seeking discharge. On the strength of the said order dated 12.04.2024, the petitioner approached the learned trial Court by filing an application under Section 227 of Cr.P.C. seeking discharge. The learned A.D.J.-cum-Special Judge (Vigilance), Dhenkanal vide order dated 02.08.2024 in T.R. Case No.09 of 2023 rejected the same, inter alia, observing as under:-

“The background of the case is that, while the accused was working as Auditor, Local Fund Audit, Dhenkanal, had been to Kaniha Block Angul, in the month of May, 2012 for audit of accounts of Kaniha Block along with another Auditor Akshaya Kumar Muduli and peon Fagu Behera of District Local Fund Audit, Dhenkanal. During that audit, accused Sarat Chandra Dash, being a public servant had collected huge amount from the different officers of the Block illegally to regularize the defects pointed out during the audit and the said information came to the knowledge of the S.P. Vigilance, CD, Cuttack. On the direction of the S.P. Vigilance, CD, Cuttack, the accused was intercepted at Dhenkanal Town near Local Fund Audit Office, Dhenkanal on 07.07.2012 in presence of independent witnesses and vigilance staff and during search, an amount of Rs. 1,14,800/- was recovered from the carry bag of the accused, to which he could not satisfactorily account for such possession and the same has been acquired by him illegally abusing his official position and has accumulated the above cash illegally which is considered disproportionate to his known and legal sources of income and Sri H.K. Behera, D.S.P, Vigilance seized the above cash in presence of the witnesses. After obtaining sanction for prosecution against accused Sarat Chandra Dash, and as there is prima-facie evidence is made out against him, the 1.0 submitted charge sheet U/s.13(2) r/w 13(1)(d)(e) of the P.C Act, 1988 vide C.5 No.28, dtd.21.09.2023.

On perusal of the case record, It is found that, on the alleged date and time of search of his person and belongings, on search a sum of Rs.1,14,800/- (rupees one lakhs fourteen thousand eight hundred) of different denomination was recovered from his hand bag and an being asked by the vigilance team regarding the possession of such huge amount, the accused gave prevaricating statements by saying that, he has received Rs.20,000/- from his son Biswa Prakash Dash about 20 days back and on 28.06.2012 he had taken the amount of Rs.1,00,000/- (one lakh) from his wife who had obtained the same from his brothers (brothers of the accused) for payment to the Cement Dealer and on verification, the I.O found those pleas false and as the accused could not give any satisfactory account of possession of Rs.1,14,800/- has implicated him in this case.

However, there is nothing on record to show that, he has received Rs.20,000/- from his son Biswa Prakash Dash about 20 days back and on 28.06.2012 he had taken the amount of Rs.1,00,000/- (one lakh) from his wife who had obtained the same from his brothers (brothers of the accused). The accused could have filed the related bank statements along with his petition, but he has not done so. Although, he has submitted that, his brother had withdrawn rupees one lakh on 28.06.2012 but no prima-facie material is brought on record. On the other hand, the recovery of such a huge amount from the exclusive and conscious possession of the accused is itself sufficient to proceed against the accused.

It is the settled proposition of law that at the stage of framing of charge, the Court will not make a detailed analysis of the evidence proposed to be led by the prosecution but it is sufficient if the same makes out a prima-facie case. No meticulous analysis of the evidence is to be addressed at this stage. Thus, when prima-facie materials are found from the collected documents for consideration of charge against the accused U/s.13(2) r/w 13(1)(d)(e) of the P.C. Act.1988, there is no merit in such petition seeking discharge of the accused.

As such, I find the petition filed on behalf of the accused U/s 227 of Cr.P.C. being devoid of any merit and hence stands rejected. Put up on 02.09.2024 for consideration of charge against the accused."

The petitioner is aggrieved by the said order and approached this Court by filing the present Criminal Revision Petition.

21. While attacking the impugned order dated 02.08.2024, the petitioner has raised many points which have already been enumerated in the preceding paragraphs. I am not inclined to deal with the merits of the case at this stage as the petitioner is trying to defend his case on the basis of the documents which are not form part of the charge-sheet. At this stage, the revisional jurisdiction of this Court under Section 397/401 of Cr.P.C., is forbidden to examine the probative value of the documents placed before this Court and also to examine the veracity of the defence projected by the petitioner so as to explain the legitimate source of income, i.e., Rs.1,14,800/-. However, taking into consideration the facts unfolded in the present case rather, I am inclined to examine the issue as to whether in absence of a check period and on the basis of the isolated recovery, a case of disproportionate asset under Section 13(1)(d)(e) of the P.C. Act can be thrashed upon the petitioner or not? And I am inclined to examine the effect of the delay in investigation and submission of the charge-sheet belatedly. The delay in the present case is about 11 years. In a

catena of judgments, the Hon'ble Supreme Court has already settled the law that the right to speedy trial in a criminal prosecution is an inalienable right guaranteed under Article 21 of the Constitution of India. This right is applicable not only to the actual proceeding before the Court but also includes within its sweep the preceding police investigation. In this case, though the case was not a complicated one rather relating to an isolated recovery, still it took 11 years for the vigilance department to conclude the investigation. Therefore, in that context, it would be apt to rely upon the judgment of the Hon'ble Supreme Court in the case of **Mahendra Lal Das vs. State of Bihar and Ors.**, reported in **2002 (1) SCC 149**. Relevant part of the said judgment reads as under:-

"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 concerned appropriate authorities 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 the love, affection and the society of his children who were residing in foreign country as on account of the pendency of the investigation he could not afford to leave the country."

Echoing the same principle, the Hon'ble Supreme Court in the matter of **Hasmukhlal D. Vora and another vs. The State of Tamil Nadu**, reported in **Criminal Appeal No. 2310 of 2022** has held as under:-

*"23 There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in **Bijoy Singh & Anr. Vs State Of Bihar, (2002) 9 SCC 147** inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below:*

"Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."

24. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

25. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.”

22. Even in the case of **Vakil Prasad Singh vs. State of Bihar**, reported in (2009) 3 SCC 355, the Hon’ble Supreme Court has held as under:-

“18. Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] and in *Hussainara Khatoon (1) v. State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be “reasonable, fair and just”; and therefrom flows, without doubt, the right to speedy trial. It was also observed that: [*Hussainara Khatoon (1) case* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] , SCC p. 89, para 5]

“5. ... 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.”

The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in *Hussainara Khatoon (1) case* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.

20. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (*A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , SCC pp. 270-73, para 86)

(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;

(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on—what is called, the systemic delays;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as

presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) ultimately, the court has to balance and weigh several relevant factors—„balancing test” or „balancing process”—and determine in each case whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

(ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.”

23. Conjoint reading of all the judgments vis-à-vis the facts of the present case makes it abundantly clear that the delay that has caused in the present case is fatal. Therefore, even if the petitioner is subjected to trial in a case of present nature at an inordinate belated stage, it may not be possible for the prosecution to secure conviction. The right of the accused-petitioner to defend his case is also marred to an irreparable extent. Hence, further procrastination of the proceeding in the given facts and circumstances of the case would neither be beneficial to the prosecution nor the defence, therefore, the trial is destined to be a futile exercise. In this context, I am reminded of the judgment of the Hon’ble Supreme Court in the cases of **Gian Singh vs. State of Punjab and another**, reported in 2012 (10) SCC 303 and **B.S. Joshi & others vs. State of Haryana & another**, reported in (2003) 4 SCC 675. The Hon’ble Supreme Court has already held that while exercising the jurisdiction under Section 482 of Cr.P.C. or revisional jurisdiction, the Court can scuttle the trial if it arrived at a conclusion that there is a bleak chance for the prosecution to obtain a conviction. In this context, the judgment in **B.S Joshi** (Supra) by Hon’ble Supreme Court, while referring to the judgment of **Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.**, reported in [(1988) 1 SCC 692] assume importance. For convenience of ready reference, the following paragraph of the said judgment in **B.S. Joshi** (supra) reads as under:-

“In Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors. [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features

*which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an **ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue**, the court may, while taking into consideration the special facts of a case, also quash the proceedings."*

24. It is trite that clearly defined check period is indispensable in DA cases. It serves as a foundation for comparing the accused's assets and expenditures against the known source of income. Absence of an improper and undefined check period would lead to the collapse of the prosecution's case. The necessity of a clearly defined check period in disproportionate assets (DA) cases is firmly rooted in judicial precedent, as it forms the bedrock for accurately assessing the accused's assets, expenditures, and income. In ***State of Maharashtra v. Pollonji Darabshaw Daruwalla (AIR 1988 SC 88)***, the Hon'ble Supreme Court underscored that an improperly demarcated check period risks rendering the prosecution's calculations speculative, as omissions in accounting for pre-existing assets or income sources such as agricultural holdings or inherited property can invalidate the entire case. The Hon'ble Supreme Court held thus:

"The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of by the public servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the facts and circumstances of a case, a ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling-over from the anterior period, if their existence is probalised, would, of course, have to be given credit-to on the income side and would go to reduce the extent and the quantum of the disproportion.

On this aspect, the High Court observed:

"... 20. But at the same time, it has also to be remembered that the prosecution, without showing any reason has selected to begin the calculation of the assets from 1958. I do not see any substantial reason in the selection of the year 1958. It is on record that from 1954, the accused had become the Appraiser. It is also on record that from year 1958 the accused had separated from his brother mother after the child was born to his wife. When I a the Public Prosecutor for the reason for selecting the period of 1958 to 1968, he said that it was done because the prosecution could lead evidence so as to show that the investment during these 10 years would be disproportionate of assets compared to the moneys received. Looking to the logic of the prosecution, if amounts invested upto 1958 excluded by themselves, I see considerable force in Vashi's arguments that the first year of 1958 should also be considered along with the previous years. There is no charm in selecting the year. I think that the prosecution would have been in a better position instead of selecting the period of 1958 to 1968, it had taken the entire period service from 1946 to 1968 and given credit of the amount that he has earned against all the assets that he had collected. It is therefore difficult to understand why the prosecution has chosen the period from 1958 to 1968 ".... 20. We have carefully considered this evidence of the Police Inspector but still we are not convinced about the selected of the period. We feel that the prosecution by selecting the check period of 10 years, when the

accused had put in service from 1946 to 1968, i.e. for 22 years has done something whereby the chances of prejudicing the case of the accused are there.”

This principle was also reaffirmed in ***State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede***, reported in (2010) 2 SCC (Cri.) 385, where the prosecution’s failure to conclusively establish the timeline of alleged bribes and income sources led to acquittal, highlighting the cascading effects of an ambiguous check period on evidentiary reliability. Similarly, recent judgments like ***Akshaya Kumar Nayak v. State of Odisha (Vigilance)***, in CRLA No.148 of 2020, disposed of on 30.07.2024 and ***Damodar Das v. State of Odisha***, in CRLA No.682 of 2023, disposed of on 07.05.2024, have emphasized that deviations from a rigorously defined check period such as excluding income from undisputed landholdings or misaligning expenditure timelines fatalize the prosecution’s ability to prove “known sources of income” under the Prevention of Corruption Act. Courts consistently stress that even minor discrepancies in the check period, such as overlapping dates or unverified asset valuations, create reasonable doubt, necessitating acquittal.

25. The present case involves an isolated recovery of a sum of Rs.1,14,800/- from the possession of the petitioner. There is no evidence brought on record by the IO in the charge sheet regarding demand for gratification or extending illegal favours to anyone by the petitioner. It's only alleged that on demanding an explanation from the petitioner regarding the source of acquisition of the amount he gave inconsistent answer, however, the period of the source of income was not specified. In absence of provision specific period during which the known source of income causing the acquisition of the amount is prejudicial to the petitioner. As a result, at the belated stage, i.e. after 11 years, subjecting the petitioner to trial to explain the source of an isolated recovery on a particular date is virtually impossible. Since the presumption under Section 20 of the P.C. Act operates against the petitioner, he has to discharge the burden of proving the source. Hence, delay in prosecution is fatal to the defence of the petitioner. Moreover, in absence of a defined and specific check period being provided by the prosecution, the petitioner is prejudicially positioned to discharge the burden of presumption under section 20 of the P.C. Act.

26. Taking into account the foregoing discussions in toto, I am of the considered view that the impugned order dated 02.08.2024 passed by the learned A.D.J.-Cum-Special Judge (Vigilance), Dhenkanal in T.R. Case No.09 of 2023 arising out of Vigilance G.R. Case No.61 of 2012 is not sustainable. Hence, the same is set aside. The petitioner is discharged of all charges.

27. Accordingly, the CRLREV is allowed and disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

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

Result of the case:

CRLREV allowed.

2025 (II) ILR-CUT-1014

**SANTANU SAMANTARAY
V.
STATE OF ODISHA,
REPRESENTED THROUGH
COMMISSIONER-CUM-SECRETARY (REVENUE & DISASTER
MANAGEMENT), BHUBANESWAR & ORS.**

[W.P.(C) NO. 7806 OF 2023]

30 JUNE 2025

[ANANDA CHANDRA BEHERA, J.]

Issue for Consideration

Principles of natural justice not complied – Whether the impugned orders dated 25.11.2022 and 30.11.2022 passed by the Tahasildar, Banki (Opposite Party No. 4) and Collector, Cuttack (Opposite Party No. 2) in Mutation Case No. 1020 of 2022 and Misc. Case No. 63 of 2022 respectively are sustainable under law.

Headnotes

REVENUE LAWS – Mutation – Vide Mutation Case No. 5009 of 2021, the Tahasildar, Banki (Opposite Party No. 4) as per final order dated 22.12.2021 ordered for mutation of the case land in the name of the petitioner, which he himself reversed *suo motu* in Mutation Case No. 1020 of 2022 on 25.11.2022 – The same was concurred by the Collector, Cuttack in Misc. Case No. 63 of 2022 vide order dated 30.11.2022 for removal of the name of the petitioner from the R.O.R. and to record it in the name of the Government/State and further directing the Sub-Registrar, Banki not to entertain any transaction in respect of the case land – Petitioner was not given any opportunity of being heard – Whether the impugned orders are sustainable under law.

Held: No – When, the impugned orders dated 25.11.2022 (Annexure-6) and 30.11.2022 (Annexure-7) respectively have been passed in suo motu Mutation Case No.1020 of 2022 and Misc. Case No.63 of 2022 by the Tahasildar, Banki (Opposite Party No.4) and Collector, Cuttack (Opposite Party No.2) without complying the principles of natural justice, then, in view of the principles of law enunciated by the Hon'ble Courts and Apex Court, the impugned orders vide Annexures-6 and 7 cannot be sustainable under law – For which, the same are liable to be quashed (set aside) and the matter/case i.e. Mutation Case No.1020 of 2022 is required to be heard and disposed of afresh as per law after complying the principles of natural justice.

(Para 9)

Citation References

Justice P.D. Dinakaran vrs. Hon'ble Judges Inquiry Committee and others, **2011 (II) OLR (S.C.)-445 (Para Nos.22 and 25)**; Niranjan Tripathy vrs. Regional Manager, The New India Assurance Company Ltd. and another, **2015 (II) OLR-898**; Satyajit Sahoo vrs. State of Orissa and others, **2016 (I) OLR-325 (Para-12)**; Johra and others vrs. State of Haryana and others, **2019 (1) CCC (S.C.)-12 and 2019 (1) CLR (S.C.)-380**; Subash Chandra Sahu vrs. Union of India and others, **2019 (I) OLR-728 (Para-14)**; Uma Nath Pandey and others vrs. State of U.P. and another, **AIR 2009 S.C.- 2375 (Para-19)**; High Court Bar Association, Allahabad vrs. State of U.P. and others, **2025 (1) Civil Law Judgment (S.C.)-40 (Para-16)**; Shivaji vrs. Parwatibai and others, **2025 (2) Civil Law Judgment (S.C.)-528**; Suresh Lataruji Ramteke vrs. Sau.Sumanbai Pandurang Petkar and others, **2023 SCC online S.C.-1210**; Census Commissioner and others vrs. R. Krishnamurthy, **2015 (1) Civil Law Times (S.C.)-30**; Gobinda Prasad Pattanaik and another vrs. Collector, Cuttack and others, **112 (2011) CLT-276**; Biswanath Sethi vrs. State of Odisha and others, **2021 (1) OLR-555 – referred to.**

Keywords

Mutation; Suo motu mutation; Non-compliance of the principles of natural justice.

Case Arising From

Order dated 25.11.2022 passed by the Tahasildar, Banki (Opposite Party No. 4) in Mutation Case No. 1020 of 2022 and order dated 30.11.2022 passed by the Collector, Cuttack (Opposite Party No. 2) in Misc. Case No. 63 of 2022.

Appearances for Parties

For Petitioners : Mr. S.P. Mishra, Sr. Adv. & Mr. A. Nayak
For Opp. Parties : Mr. S. Nayak, A.S.C. (for O.P. Nos. 1 to 4)
Mr. N. Panda (for O.P. No. 5)

Judgment/Order

Judgment

A.C. BEHERA, J.

This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner against the Opposite Parties praying for quashing(setting aside) the order dated 25.11.2022 (Annexure-6) passed in Mutation Case No.1020 of 2022 by the Tahasildar, Banki(Opposite Party No.4) and also to

quash the order dated 30.11.2022 passed in Misc. Case No.63 of 2022(Annexure-7) by the Collector, Cuttack(Opposite Party No.2).

2. The case land vide Khata No.59, Plot No.384 in Mouza-Natery under Banki Tahasil in the district of Cuttack was ordered for mutation to the name of the petitioner by the Tahasildar, Banki(Opposite Party No.4) as per final order dated 22.12.2021(Annexure-3) passed in Mutation Case No.5009 of 2021 on the basis of the Sale Deed No.10412101774 dated 15.11.2021 in his favour. After such order for mutation passed on dated 22.12.2021(Annexure-3) in Mutation Case No.5009 of 2021 by the Tasildar, Banki(Opposite Party No.4), new RoR of the case land vide Khata No.263/339(Annexure-4) was prepared by the Opposite Party No.4(Tahasildar, Banki) in the name of the petitioner on the basis of the said final order passed in Mutation Case No.5009 of 2021 on dated 22.12.2021(Annexure-3).

3. That, subsequent thereto, the said Opposite Party No.4 (Tahasildar, Banki) initiated a Mutation Case No.1020 of 2022 suo motu for recalling the earlier mutation order (Annexure-3) passed by him(Opposite Party No.4) in respect of the case land in Mutation Case No.5009 of 2021 in favour of the petitioner and also passed final order in that suo motu Mutation Case No.1020 of 2022 on dated 25.11.2022(Annexure-6) for deletion of the name of the petitioner from the RoR No.263/339,(which was prepared after final order of mutation passed by the Opposite Party No.4 in Mutation Case No.5009 of 2021) and to prepare the RoR of the case land in the name of the State and indirectly recalled the final order passed in Mutation Case No.5009 of 2021 by him(Opposite Party No.4) without giving any notice to the petitioner for hearing of that suo motu Mutation Case No.1020 of 2022 and also without giving any opportunity of being heard to the petitioner in that suo motu Mutation Case No.1020 of 2022.

On the basis of such order dated 25.11.2022(Annexure-6) passed by the Tahasildar Banki(Opposite Party No.4) in suo motu Mutation Case No.1020 of 2022, the Collector, Cuttack(Opposite Party No.2) passed an order on dated 30.11.2022(Annexure-7) in Misc. Case No.63 of 2022 for removal of the name of the petitioner from the RoR of the case land and to record the same under Government Khata No.279 in the name of the Government/State and directed Sub-Register, Banki not to entertain any transaction in respect of the case land.

4. When, the petitioner came to know about the above impugned order dated 25.11.2022(Annexure-6) passed in suo motu Mutation Case No.1020 of 2022 by the Tahasildar, Banki(Opposite Party No.4) and the impugned order dated 30.11.2022(Annexure-7) passed in Misc. Case No.63 of 2022(Annexure-7) by the Collector, Cuttack(Opposite Party No.2), he(petitioner) challenged the same by filing this writ petition against the Opposite Parties praying for quashing Annexures-6 and 7 passed by the Tahasildar, Banki(Opposite Party No.4) and Collector, Cuttack (Opposite Party No.2) on the grounds that, after passing the order for mutation of the case land in Mutation Case No.5009 of 2021 on dated 22.12.2021(Annexure-3) by the Opposite Party No.4 in favour of the petitioner, the

said Opposite Party No.4 (Tahasildar, Banki) had no authority or jurisdiction under law to initiate Mutation Case No.1020 of 2022 suo motu for recalling the earlier mutation order passed by him (Opposite Party No.4) on dated 22.12.2021(Annexure-3) in Mutation Case No.5009 of 2021 and he(Opposite Party No.4) should not have recalled the final order passed on dated 22.12.2021(Annexure-3) in Mutation Case No.5009 of 2021 without giving any opportunity of being heard to the petitioner and without complying the principles of natural justice. Likewise, the Collector, Cuttack(Opposite Party No.2) also should not have passed the impugned order dated 30.11.2022 (Annexure7) in Misc. Case No.63 of 2022 without giving any opportunity of being heard to the petitioner and as such, the impugned the orders vide Annexures-6 and 7 passed by the Opposite Party Nos.4 and 2 are without jurisdiction, for which, the said Annexures-6 and 7 are liable to be quashed.

5. I have already heard from the learned counsel for the petitioner and learned counsels for the Opposite Parties including the learned Additional Standing Counsel for the State.

6. It is the undisputed case of the parties that,

“Final order dated 22.12.2021(Annexure-3) was passed by the Opposite Party No.4(Tahasildar, Banki) in Mutation Case No.5009 of 2021 for recording the case land in the name of the petitioner.

On the basis of such final order dated 22.12.2021 (Annexure-3) passed by the Opposite Party No.4 in Mutation Case No.5009 of 2021, RoR vide Khata No.263/339 in respect of the case land was prepared in the name of the petitioner.

Mutation Case No.1020 of 2022 was initiated by the same Opposite Party No.4 suo motu much after preparation of the new RoR vide Khata No.263/339 of the case land in the name of the petitioner on the basis of the order for mutation passed in Mutation Case No.5009 of 2021 for recalling the said final order passed on dated 22.12.2021 in Mutation Case No.5009 of 2021.

As per order dated 25.11.2022 passed in suo motu Mutation Case No.1020 of 2022, the Opposite Party No.4(Tahasildar, Banki) directed for removal/deletion of name of the petitioner from the newly prepared RoR of the case land(which was prepared on the basis of his order as per Annexure-3) and to prepare the RoR of the case land in the name of the State cancelling/recalling the final order dated 22.12.2021 passed in Mutation Case No.5009 of 2021 indirectly.

The impugned order dated 30.11.2022(Annexure-7) was passed by the Collector, Cuttack(Opposite Party No.2) in Misc. Case No.63 of 2022 in respect of the case land for preparation of the RoR of the same in the name of the State/Government on the basis of the order dated 25.11.2022(Annexure-6) passed in suo motu Mutation Case No.1020 of 2022 by the Tahasildar, Banki(Opposite Party No.4).”

7. It appears from the impugned order dated 25.11.2022 (Annexure6) passed by the Tahasildar, Banki(Opposite Party No.4) in suo motu Mutation Case No.1020 of 2022 that, the said order dated 25.11.2022 (Annexure-6) has been passed by him(Opposite Party No.4) for removal/deletion of the name of the petitioner from

the RoR of the case land and to prepare the RoR for the same in the name of the State/Government recalling the final order dated 22.12.2021(Annexure3) passed by him(Opposite Party No.4) in Mutation Case No.5009 of 2021 indirectly without issuing any notice to the petitioner and without giving any opportunity of being heard to the petitioner. As such, the impugned order vide Annexure-6 has been passed by the Opposite Party No.4 against the petitioner affecting his right already created in his favour as per order on dated 22.12.2021(Annexure-3) passed in Mutation Case No.5009 of 2021 without complying the principles of natural justice.

Likewise, it also appears from the impugned order dated 30.11.2022(Annexure-7) passed in Misc. Case No.63 of 2022 by the Collector, Cuttack (Opposite Party No.2) that, the said Annexure-7 has been passed by the Opposite Party No.2 on the basis of the impugned order vide Annexure-6 of the Tahasildar, Banki (Opposite Party No.4) without issuing any notice to the petitioner and without giving any opportunity of being heard to the petitioner. As such, both the orders vide Annexures-6 and 7 have been passed by the Opposite Party Nos.2 and 4 respectively against the petitioner behind his back without complying the principles of natural justice.

8. The law concerning the object of compliance of the principles of natural justice and the fate / result of the judgments/orders passed without complying the principles of natural justice has already been clarified by the Hon'ble Courts and the Apex Court in the ratio of the following decisions :-

(i) In a case between ***Justice P.D. Dinakaran vs. Hon'ble Judges Inquiry Committee and others*** : reported in **2011(II) OLR(S.C.)-445 (Para Nos.22 and 25)**—Natural justice is a branch of public law- Rules of natural justice are basic valuesPrinciples of natural justice control all actions of public authorities- Natural justice is a part of law which relates to administration of justice- Object of rules of natural justice is to ensure fundamental liberties and rights of subjects- Doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. The judge should be impartial and neutral and must be free from bias.

(ii) In a case between ***Niranjan Tripathy vs. Regional Manager, The New India Assurance Company Ltd. and another*** : reported in **2015(II) OLR-898**—Even if there is no provision for compliance of principles of natural justice, it implies that, before taking any action, principles of natural justice has to be complied with by affording an opportunity of hearing to the parties, otherwise, the action is open to challenge and is violative of Article-14 of the Constitution of India.

(iii) In a case between ***Satyajit Sahoo vs. State of Orissa and others*** : reported in **2016(I)OLR-325 (Para-12)**—If a decision has been taken which affects a party, it would amount to clear violation of principles of natural justice and the order passed in violation of salutary provision of natural justice would be a nullity.

(iv) In a case between ***Johra and others vs. State of Haryana and others*** : reported in **2019(1) CCC(S.C.)-12 and 2019(1) CLR(S.C.)-380**—No order can be passed by any Court in any judicial proceedings against any party to such proceedings without hearing and giving such party an opportunity of hearing.

(v) In a case between ***Subash Chandra Sahu vs. Union of India and others*** : reported in **2019(1) OLR-728(Para-14)**— The principles of natural justice are those- rules, which have been laid down by the Courts as being the minimum protection of the rights of the individuals against the arbitrary procedure that may be adopted by the judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

(vi) In a case between ***Uma Nath Pandey and others vs. State of U.P. and another*** : reported in **AIR 2009 S.C.- 2375(Para-19)**—The purpose of the following principles of natural justice is the prevention of miscarriage of justice.

(vii) In a case between ***High Court Bar Association, Allahabad vs. State of U.P. and others*** : reported in **2025(1) Civil Law Judgment(S.C.)-40(Para-16)**—Any order passed without complying the principles of natural justice is to be treated as illegal.

(viii) In a case between ***Shivaji vs. Parwatibai and others*** : reported in **2025(2) Civil Law Judgment(S.C.)-528**—When a case is disposed of against any party without giving him/her an opportunity of hearing, such disposal deserves to be deprecated in view of **2023 SCC online S.C.-1210 Suresh Lataruji Ramteke vs. Sau.Sumanbai Pandurang Petkar and others**, for which, matter is required to be remitted back for its decision afresh.

(ix) In a case between ***Census Commissioner and others vs. R. Krishnamurthy*** : reported in **2015(1) Civil Law Times (S.C.)-30**—Person likely to suffer from order of Court and not impleaded as a party has right a to ignore said order as it has been passed in violation of the principles of natural justice.(Paras-19 and 20).

(x) In a case between ***Gobinda Prasad Pattanaik and another vs. Collector, Cuttack and others*** : reported in **112(2011) CLT-276**—When Revenue Misc. Case was heard by the Collector without giving any opportunity of hearing to the petitioners, therefore, the said order passed by the Collector is set aside and directed the Collector to issue notice to the petitioners, hear the parties and pass orders afresh as would be deemed fit and proper in accordance with law.

(xi) In a case between ***Biswanath Sethi vs. State of Odisha and others*** : reported in **2021(1) OLR-555**—Even when an administrative order is passed affecting the rights of a citizen without hearing such citizen, the said order shall be treated as an order without compliance of the principles of natural justice, which is the gross violation of law.

9. When, the impugned orders dated 25.11.2022(Annexure-6) and 30.11.2022(Annexure-7) respectively have been passed in suo motu Mutation Case No.1020 of 2022 and Misc. Case No.63 of 2022 by the Tahasildar, Banki(Opposite Party No.4) and Collector, Cuttack(Opposite Party No.2) without complying the principles of natural justice, then, in view of the principles of law enunciated by the Hon'ble Courts and Apex Court in the ratio of the aforesaid decisions, the impugned orders vide Annexures-6 and 7 cannot be sustainable under law. For which, the same are liable to be quashed(set aside) and the matter/case i.e. Mutation Case No.1020 of

2022 is required to be heard and disposed of afresh as per law after complying the principles of natural justice.

10. For which, there is merit in the writ petition filed by the petitioner. The same must succeed.

11. In result, the writ petition filed by the petitioner is allowed on contest.

12. The impugned order dated 25.11.2022 passed by the Tahasildar, Banki (Opposite Party No.4) in Mutation Case No.1020 of 2022 vide Annexure-6 and the impugned order dated 30.11.2022 passed in Misc. Case No.63 of 2022 vide Annexure-7 by the Collector, Cuttack (Opposite Party No.2) are quashed (set aside).

13. The matter vide Mutation Case No.1020 of 2022 is remitted back (remanded back) to the Tahasildar, Banki (Opposite Party No.4) to decide the same afresh as per law after issuing notice to the petitioner and others, if any and after giving opportunity of being heard to the petitioner and others, if any, complying the principles of natural justice as expeditiously as possible and the petitioner along with other parties, if any, are at liberty to agitate their all grievances/grounds permissible under law on their behalf in respect of their claims before the Tahasildar, Banki in Mutation Case No.1020 of 2022 and the Opposite Party No.4 is to take its best endeavour to dispose of that Mutation Case No.1020 of 2022 finally as expeditiously as possible answering/meeting all the points/questions raised by the parties including the petitioner before him (Opposite Party No.4).

14. Accordingly, this writ petition is disposed of finally.

15. Registry is to communicate this judgment immediately to the Tahasildar, Banki (Opposite Party No.4) for the proceeding with the Mutation Case No.1020 of 2022 as per law in compliance with the directions made above in this judgment.

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

Result of the case:
Writ Petition allowed.

2025 (II) ILR-CUT-1021

Smt. SUSHILARANI BEHERA & ORS.
V.
HAGURU MAHALIK & ORS.

[S.A. NO. 197 OF 1998]

04 JULY 2025

[ANANDA CHANDRA BEHERA, J.]**Issue for Consideration**

Whether interference by the 2nd Appellate Court is warranted in view of the concurrent findings of the Courts below.

Headnotes

CIVIL TRIAL – Suit for injunction simpliciter – Suit was dismissed by the Trial Court on the ground that plaintiff has failed to establish his possession over the suit properties – 1st Appellate Court dismissed the appeal by concurring in the findings of the Trial Court regarding possession – Whether interference by the 2nd Appellate Court is warranted in view of the concurrent findings of the Courts below.

Held: No – When, it is the concurrent findings on facts by the Trial Court and First Appellate Court that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex Court and Hon'ble Courts, it is held that, the plaintiff is not entitled to get the decree i.e. permanent injunction in respect of the suit properties against the defendants – For which, the question of interfering with the Judgment of dismissal of the suit for injunction of the plaintiff through this 2nd Appeal filed on behalf of the plaintiff does not arise – Therefore, the refusal to the prayer for injunction sought for by the plaintiff made by the Trial Court and 1st Appellate Court is to be confirmed without disturbing/interfering with the findings made by the learned 1st Appellate Court relating to the title of the suit properties and the validity of the sale deeds in respect of the same leaving that part to be decided in the pending writ petition vide OJC No.1786 of 1995 against the decision of the Consolidation Commissioner. (Para 19)

Citations Reference

Raghunath Sahu & Another Vs. Sarat Nayak & Others, **1987 (I) OLR 144**; Prafulla Kumar Swain Vs. Kalandi Kandi & Others, **2016 (I) CLR 565**; Laxmidhar Sahu & Others Vs. State of Orissa & Others, **2019 (I) CLR 950**; Bholanath Bal & Others Vs. Nandi Bal & Others, **125 (2018) CLT 970**; Brajakishore Panda & Others Vs. Damodar Rout & Another, **63 (1987) C.L.T. 347**; Kashibai & Another Vs. Parwatibai & Others, **1995 SCC (6) 213**;

Ramathal And Ors. vs K.Rajamani (Dead) Through Lrs And Anr., **2024 (1) Civ.L.Judgment (SC) 243**; Mst. Kharbuja Kuer Vs. Jangbahadur Rai And Others, **AIR 1963 SC 1203 (at Para No.5)**; Khitish Chandra Bose Vs. Commissioner of Ranchi, **(1981) 2 SCC 103 at Para No.11**; V. Ramachandra Ayyar And Another Vs. Ramalingam Chettiar And Another, **AIR 1963 SC 302 (Para No.12) – referred to.**

List of Acts

Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972.

Keywords

Suit for injunction simpliciter; Consolidation operation; Bar on Civil Court's jurisdiction to sit on the judgment and decisions of the consolidation authorities; Right, title and interest; Possession; Recovery of possession.

Case Arising From

Judgment and decree dated 15.04.1998 and 25.04.1998 respectively passed by the 1st Appellate Court in T.A. No.78 of 1991-I.

Appearances for Parties

For Appellants : Mr. D.P. Mohanty

For Respondents : Mr. J.R. Dash

Judgment/Order

Judgment

A.C. BEHERA, J.

This 2nd Appeal has been preferred against the confirming Judgment.

2. The predecessor of the appellants in this 2nd Appeal i.e. Kali Charan Behera was the sole plaintiff before the Trial Court in the suit vide O.S.No.189/87-I and appellant before the 1st Appellate Court in the 1st Appeal vide T.A. No.78 of 1991-I.

When during the pendency of the 1st Appeal, the plaintiff/appellant i.e. Kali Charan Behera expired, then, his legal heirs (appellants in this 2nd Appeal) were substituted in his place as appellants.

The predecessors of the respondents in this 2nd Appeal i.e. Gana Mahalik & Fakira Mahalik were the defendants before the Trial Court in the suit vide O.S.No.189/87-I and respondents before the 1st Appellate Court in the 1st Appeal vide T.A. No.78 of 1991-I.

When during the pendency of the 1st Appeal, both the defendants/respondents expired, then, their legal heirs (respondents in this 2nd Appeal) were substituted as respondents.

3. The suit of the plaintiff (Kali Charan Behera) vide O.S.No.189/87-I before the Trial Court against the defendants was a suit for injunction simpliciter.

4. The case of the plaintiff before the Trial Court against the defendants as per the averments made in his plaint was that, the suit properties along with other properties were the joint and ancestral properties of the predecessors of the defendants along with their other co-sharers. All the co-sharers of the suit properties including the predecessors of the defendants distributed their all joint properties including the suit properties between them through amicable partition and as per such amicable partition, the suit properties fell into the shares of the vendors of the plaintiff. The vendors of the plaintiff being the owners of the suit properties sold the same to the vendors of the plaintiff executing and registering sale deeds and delivered possession thereof. Accordingly, the suit properties came to the hands of the vendors of the plaintiff. While the vendors of the plaintiff were the owners of the suit properties described in Schedule “Ka” of the plaint, they sold the same to the plaintiff by executing and registering 3 sale deeds vide R.S.D. No.604 dated 22.03.1974 (Ext.1), R.S.D. No.9461 dated 30.06.1971 (Ext.2) & R.S.D. No.5005 dated 21.04.1970 (Ext.3) respectively and delivered possession thereof. Accordingly, after purchasing the suit properties, the plaintiff had/has been possessing the suit properties being the exclusive owner thereof. When during consolidation operation, the defendants created disturbances in the plaintiff's possession over the suit properties, then, the plaintiff approached the Trial Court by filing the suit vide O.S.No.189/87-I against the defendants praying for injuncting them (defendants) permanently from creating any sort of disturbance in his peaceful possession over the suit properties without praying for declaration of title, as, the consolidation operation was going on, stating that, the suit for injunction simpliciter is maintainable as per law even during consolidation operation.

5. Having been noticed in the suit vide O.S.No.189/87-I from the Trial Court, the defendants contested the same by filing their written statement jointly taking their stands *inter alia* therein that, *the suit of the plaintiff is not maintainable.*

The specific/definite/case/plea of the defendants was that, the suit properties are their joint ancestral family properties and the suit properties along with their other joint properties have never been partitioned between them at any point of time. The plaintiff has never possessed the suit properties at any point of time. For which, the suit for injunction filed by the plaintiff against them (defendants) is not maintainable under law, as the plaintiff is not in possession over the suit properties. That apart, the suit of the plaintiff for injunction simpliciter without declaration of title and without recovery of possession is also not maintainable under law. The suit properties being their house and homestead properties, the same is within one enclosure along with their house and the Kisam of the suit properties is Khalabari. The so-called sale deeds dated 22.03.1974, 30.06.1971 & 21.04.1970 said to have been executed in respect of the suit properties in favour of the plaintiff are the fraudulent deeds. As such, the sale deeds relied upon by the plaintiff claiming his

title and possession over the suit properties are non-est in the eye of law. For which, the suit of the plaintiff is liable to be dismissed against them (defendants) with costs.

6. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether 11 numbers of issues were framed by the Trial Court in the suit vide O.S.No.189/87-I and the said issues are:

ISSUES

- 1. Has the plaintiff any cause of action to file the suit?***
- 2. Is the suit maintainable in law?***
- 3. Is the suit barred under law of limitation?***
- 4. Is the suit bad for non-joinder of parties?***
- 5. Are the sale deeds purported to have been executed by the defendant No.1 and ancestor of defendant No.2 in respect of the suit land legal, valid, genuine and acted upon?***
- 6. Has the suit land any separate and definite existence on the spot?***
- 7. Has the plaintiff got any actual physical possession over the suit land at the time of institution of this suit?***
- 8. Is the plaintiff entitled to the simple permanent injunction in the suit?***
- 9. Are the deeds of transfer of the suit land hit under Section 23 of the OLR Act?***
- 10. Have the defends alternatively acquired title of the suit land by way of adverse possession?***
- 11. What relief, if any the plaintiff is entitled to?***

7. In order to substantiate the aforesaid relief i.e. permanent injunction against the defendants, the plaintiff examined 4 numbers of witnesses from his side including him (plaintiff) as P.W.1 and exhibited series of documents on his behalf vide Exts.1 to 8.

On the contrary, in order to nullify/defeat the suit of the plaintiff, the defendants examined 2 numbers of witnesses from their side including the defendant No.1 (Gana Mahalik) as D.W.1 and relied upon the documents vide Ext.A to D on their behalf.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the Trial Court answered issue Nos.1,4,5,7 & 8 against the plaintiff and in favour of the defendants and other issues were not pressed by the parties.

Basing upon the findings and observations made by the Trial Court in the issue Nos.1,4,5,7 & 8 against the plaintiff and in favour of the defendants, the Trial Court dismissed the suit of the plaintiff on contest against the defendants as per its Judgment and Decree dated 26.08.1991 and 09.09.1991 respectively assigning the reasons that, the plaintiff has failed to establish his possession over the suit

properties and the so-called sale deeds relied upon by the plaintiff said to have been executed in his favour as well as in favour of his vendors in respect of the suit properties are not valid, legal and genuine and as such, the plaintiff has also failed to establish his title over the suit properties.

9. On being dissatisfied with the aforesaid Judgment and Decree of the dismissal of the suit of the plaintiff passed by the trial court, he (plaintiff) challenged the same by preferring the 1st Appeal vide T.A. No.78/1991-I being the appellant against the defendants arraying them (defendants) as respondents.

When during the pendency of the 1st Appeal, the appellant (plaintiff) expired, then, his LRs were substituted in his place as appellants.

Likewise, when during the pendency of the 1st Appeal, both the respondents/defendants expired; then, their LRs were substituted in their place as respondents.

After hearing from both the sides, the First Appellate Court dismissed that 1st Appeal vide T.A. No.78-1991-I of the plaintiff on contest against the defendants/respondents as per its Judgment and Decree dated 15.04.1998 and 25.04.1998 respectively concurring/accepting the findings of the Trial Court regarding the possession of the defendants over the suit properties. But, whereas, in the said Judgment and Decree of the learned 1st Appellate Court in T.A. No.78 of 1991-I, the learned 1st Appellate Court reversed to the findings and observations of the learned Trial Court concerning the title of the suit properties assigning the reasons in Para Nos.12,13 & 14 of its Judgment that, the consolidation operation has not yet been completed and title of the suit properties has not been determined finally as yet by the consolidation authorities. Therefore, the dispute concerning the title of the suit properties between the parties has not been decided by the competent authorities i.e. Consolidation Authorities as yet and as such, the matter concerning title of the parties in respect of the suit properties is subjudice before the higher forum of the consolidation authorities. For which, without deciding the title of the suit properties in question, only the matter concerning injunction is taken up into consideration and after considering the disputes between the parties relating to injunction, it is held after accepting the findings regarding possession made by the Trial Court that, the defendants are in possession over the suit properties, for which, confirmed the Judgment and Decree of the dismissal of the suit for injunction of the plaintiff/appellant against the defendants/respondents passed by the Trial Court and dismissed to that 1st Appeal of the plaintiff.

10. On being aggrieved with the aforesaid Judgment and Decree of the dismissal of the First Appeal of the plaintiff passed by the learned 1st Appellate Court in T.A. No.78-1991-I, the substituted successors of the plaintiff challenged the same preferring this 2nd Appeal being the appellants against the successors of the defendants arraying them as respondents.

11. This 2nd Appeal was admitted on formulation of the following substantial questions of law i.e.

I. Whether in view of the order of the Assistant Consolidation Officer (Ext.6) and Consolidation R.o.R (Ext.10) recording the name of the plaintiff in respect of the suit land which amounts to acceptance of title of the plaintiff, are the forums below justified in holding that, the title of the plaintiff is in controversies?

II. When there is stay by the High Court in OJC No.1786 of 1995 as per Ext.9 to the order of the Consolidation Commissioner, the Courts below were justified in dismissing the suit for permanent injunction of the plaintiff?

12. I have already heard from the learned counsel for the appellants and the learned counsel for the respondents.

13. When the above two formulated substantial questions of law are interlinked having ample nexus with each other as per the findings and observations made by the Trial Court and First Appellate Court on the basis of the pleadings and evidence of the parties, then, both the above formulated substantial questions of law are taken up together analogously for their discussions hereunder:

14. *“It is the settled propositions of law that, during consolidation operation, it is not the work of the Civil Court to decide the right, title and interest of any land, which comes under consolidation operation. Because, the consolidation authorities being lawfully vested with the powers of Civil Court, shall decide right, title and interest of the properties coming under their jurisdiction.*

The law is very much clear that, during consolidation operation, a suit for permanent injunction simpliciter is maintainable, because, that relief is beyond the scope of the consolidation authorities.

Likewise, it is also the law that, the Civil Court has no jurisdiction to sit on the Judgments and decisions of the consolidation authorities. The decisions of the consolidation authorities are available to be varied/set aside only by the higher forums provided under the Consolidation Act.

The decision of the consolidation authorities on the question of right, title and interest, which are the matters within their jurisdiction would operate as res judicata in the suit for the same properties and that being so, the Civil Court would have no jurisdiction to hear and decide the right, title and interest of the parties for the same land again after the decision of the Civil Court.”

On this aspect the propositions of law has already been clarified by the Hon’ble Courts in the ratio of the following decisions:

I. In a case between **Raghunath Sahu & Another Vs. Sarat Nayak & Others** reported in **1987 (I) OLR 144** that, suit for injunction simpliciter shall not abate following provision of Section 4(4) of the OCH & PFL Act, 1972.

II. In a case between **Prafulla Kumar Swain Vs. Kalandi Kandi & Others** reported in **2016 (I) CLR 565** that, suit for permanent injunction simplicitor without

involvement of adjudication of right, title and interest of the parties cannot abate during the consolidation operation.

III. In a case between ***Laxmidhar Sahu & Others Vs. State of Orissa & Others*** reported in **2019 (I) CLR 950**, a decision of the consolidation authorities on the question of right, title and interest which are matters within their jurisdiction would operate as res-judicata and that being so, the Civil Court will have no jurisdiction to hear and decide the suit. **(Para Nos.13 & 14)**

IV. In a case between ***Bholanath Bal & Others Vs. Nandi Bal & Others*** reported in **125 (2018) CLT 970**, when the consolidation operation is still going on, it is not the work of the Civil Court to order upon the right, title and interest of the suit land.

V. In a case between ***Brajakishore Panda & Others Vs. Damodar Rout & Another*** reported in **63 (1987) C.L.T. 347**, Civil Court has no jurisdiction to sit in Judgment over the decisions of the consolidation authorities. Such decision of the consolidation authorities are available to be varied by the higher forums provided under Consolidation Act. **(Para No.4)**

15. Here in this matter at hand, when it is the findings and observations of the learned 1st Appellate Court in Para Nos.12 to 14 of its Judgment passed in T.A. No.78-1991-I reversing the findings concerning the declaration of title and validity of the sale deeds of the learned Trial Court that, *“the decisions of the consolidation authorities concerning the title of the parties in respect of the suit properties and the validity of the sale deeds in respect of the same in favour of the plaintiff and his vendors have not been reached in its finalities due to the pendency of the writ petition vide OJC No.1786 of 1995 before the High Court against the decision of the consolidation Commissioner and there is stay of the operation of the order passed by the Consolidation Commissioner, for which, there is no necessity under law to enter into the discussions concerning the title of the suit land in question as the same as beyond the jurisdiction of the Civil Court, for which, the learned 1st Appellate Court only confirmed to the part findings of the Trial Court concerning possession in favour of the defendants, and when the defendants have neither filed any separate appeal nor any cross objection challenging the reversing of the findings of the trial court concerning title of the suit properties and validity of the sale deeds, then, the said findings of the 1st Appellate Court concerning title of the suit properties and validity of the sale deeds have already been reached in its finality leaving the said matter to be decided in OJC No.1786 of 1995 by the High Court. Therefore, in this 2nd Appeal, only the controversies between the parties regarding injunction is to be decided answering the above formulated substantial questions of law.”*

A relief i.e. injunction is purely an equitable relief. Relief of injunction cannot be granted, in a case, where plaintiff fails to establish his/her possession over the suit properties. Therefore, possession of the suit land is main consideration while considering the relief i.e. permanent injunction.

It is the concurrent findings on facts of the trial court and 1st Appellate Court after appreciation of the pleadings and evidence of the parties that, the plaintiff has

failed to establish his possession over the suit properties. For which, the plaintiff is not entitled for the relief i.e. injunction against the defendants.

16. The scope, power and jurisdiction concerning interference of the High Court in an 2nd Appeal with the concurrent findings on facts of the Trial Court and 1st Appellate Court has already been clarified by the Apex Court in the ratio of the following decisions:

I. In a case between **Kashibai & Another Vs. Parwatibai & Others** reported in **1995 SCC (6) 213**, High Court has no jurisdiction to entertain a 2nd Appeal on the ground of erroneous finding of fact, based on appreciation of the relevant evidence however gross the error may seem to be.

II. In a case between **Ramathal And Ors. vs K.Rajamani (Dead) Through Lrs And Anr.** Reported in **2024(1)Civ.L.Judgment (SC) 243 (at Para No.31)** High Court has no jurisdiction to disturb pure and concurrent findings of facts, that too, on wrong appreciation of evidence.

III. In a case between **Mst. Kharbuja Kuer Vs. Jangbahadur Rai And Others** reported in **AIR 1963 SC 1203 (at Para No.5) & Khitish Chandra Bose Vs. Commissioner of Ranchi** reported in **(1981) 2 SCC 103 at Para No.11** that, High Court had no jurisdiction to entertain a 2nd Appeal on the ground of erroneous finding of fact.

IV. In a case between **V. Ramachandra Ayyar And Another Vs. Ramalingam Chettiar And Another** reported in **AIR 1963 SC 302 (Para No.12)** that, High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court however gross or inexcusable the error may seem to be.

17. Here in this suit/appeal at hand, when it is the concurrent findings on fact of the Trial Court and the First Appellate Court after appreciation of the pleadings and evidence of the parties that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex Court in the ratio of the aforesaid decisions, the question of disturbing such findings on possession against the plaintiff does not arise.

18. Law concerning the relief i.e. injunction basing on the findings of possession like this appeal at hand has already been clarified in the ratio of the following decisions:

I. In a case between **Shabbu & Another Vs. Moinuddin** reported in **2021 (4) Civil Court Cases Page 38**, in a suit for permanent injunction, when there is no positive material available on record that, the plaintiff has been in possession, the relief of permanent injunction cannot be granted to the plaintiff. **(Para No.25)**

II. In a case between **Balasubramanian & Another Vs. M. Arockiasamy (dead) through LRs.** reported in **2021 (3) CCC 504 (SC)**, relief of perpetual injunction cannot be granted in cases where plaintiff has failed to establish possession of suit property.

III. In a case between ***Bruce Vs. Silva Raj & Others*** reported in **1987 (Supp.) SCC 161**, person concerned having no possession, no injunction can be granted, as, the relief i.e. injunction can be granted on the basis of possession only.

19. When, it is the concurrent findings on facts by the Trial Court and First Appellate Court that, the plaintiff has failed to establish his possession over the suit properties, then, at this juncture, by applying the propositions of law enunciated by the Apex Court and Hon'ble Courts in the ratio of the above decisions to this 2nd appeal at hand, it is held that, the plaintiff is not entitled to get the decree i.e. permanent injunction in respect of the suit properties against the defendants. For which, the question of interfering with the Judgment of dismissal of the suit for injunction of the plaintiff through this 2nd Appeal filed on behalf of the plaintiff does not arise. Therefore, the refusal to the prayer for injunction sought for by the plaintiff made by the Trial Court and 1st Appellate Court is to be confirmed without disturbing/interfering with the findings made by the learned 1st Appellate Court relating to the title of the suit properties and the validity of the sale deeds in respect of the same leaving that part to be decided in the pending writ petition vide OJC No.1786 of 1995 against the decision of the Consolidation Commissioner.

20. As such, there is no merit in this 2nd Appeal filed the appellants/plaintiffs. The same must fail.

21. In result, this 2nd Appeal filed by the appellants (successors of the plaintiff) is dismissed on contest against the respondents (successors of the defendants), but without cost.

22. The Judgment and Decree along with its findings thereof passed by the learned First Appellate Court in T.A. No.78/1991-I are confirmed.

Headnotes prepared by:

Shri Pravakar Ganthia, Editor-in-Chief
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Result of the case:

Second Appeal dismissed.