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<p>CIVIL PROCEDURE CODE, 1908 – Section 24 – Transfer of the case – The petitioners are the plaintiffs in the Civil Suit – Present petition has been filed to transfer the Civil Suit from the Court of learned 2nd Additional Civil Judge (Sr. Div.), Puri to the Court at Bhubaneswar on the ground of old age ailments, and a travel distance of 40 kms for deposition as PW’s in the Civil Suit – Suit is pertaining to partition of immovable properties situated within the territorial Jurisdiction of the Court at Puri – At the time of presenting the suit in the year 2023, both the petitioners were residing in Bhubaneswar and continue to reside there – Whether the ground of old age ailments and a travel distance of 40 Kms is sufficient to transfer the Civil Suit from the Court at Puri to the Court at Bhubaneswar.</p> <p>Held: No – This Court is of the view that such grounds are not convincing to consider the prayer made in this transfer petition – That apart, the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, are not supposed to attend the said proceeding on each and every date, as they are represented through a lawyer – Only their presence would be required in the said proceeding, if they intend to depose as PWs in Civil Suit No.414 of 2023 – If there is any inconvenience for them to remain physically present before the said Court for adducing evidence because of their health issues, they can be examined through Video Conferencing mode following due procedure prescribed under the Orissa High Court Video Conferencing for Courts Rules, 2020, or on commission, as provided under Order 26, Rule 4 C.P.C, if it is prayed so by moving an appropriate application to the said effect at the stage of trial.</p> <p><i>Swarnaprava Dash & Anr. V. Pranab Kumar Satapathy & Ors.</i> 2025 (III) ILR-Cut.....</p>	1409

CIVIL PROCEDURE CODE, 1908 – Order XXI Rule 1 – Execution of decree – Award of interest – Jurisdiction of Executing Court – The Trial Court awarded compensation with interest at 8% per annum – In appeal, the compensation was enhanced and the appellate court directed payment of interest at 8% per annum from the date of filing of the suit, with a further direction that interest at 12% per annum would apply only if the amount was not deposited within two months from the date of the appellate judgment – The decree of the Appellate court was affirmed in the second appeal – During execution, the Executing Court treated the delayed deposit as a default and directed payment of interest at 12% per annum from the date of filing of the suit, instead of applying it only after the expiry of the two-month period – Whether the Executing Court was justified in directing payment of interest @12% per annum on the compensation amount from the date of filing of the suit.

Held: No – A thorough reading of the aforesaid order of the first appellate court speaks that, 12% interest will be applicable on the compensation amount in the event the Defendant failed to deposit the amount within a period of two months from the date of the order – Since the second appeals were dismissed on 14.12.2021 without interfering the order of the first appellate court, counting two months thereof, the period is completed on 14.02.2022 – Admittedly, the Defendant-Railways did not deposit the compensation amount as on 14.02.2022, but paid on 29.06.2022 – Thus, it implies from the direction of the first appellate court that the Defendant is liable to pay interest @8% on the compensation amount till 14.02.2022 and thereafter the interest rate will be applicable @12% per annum from 14.02.2022 onwards.

Since it is admitted that a sum of Rs.12,14,946/- was already deposited on 29.06.2022, therefore the interest to be calculated @12% per annum for the period from 14.02.2022 to 29.06.2022.

It is settled that in terms of the provisions contained under Order 21 Rule 1 of the C.P.C., interest will cease to run from the date, the amount is paid.

Union of India & Ors. V. Parbati Das & Anr.

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CIVIL PROCEDURE CODE, 1908 – Order 23 Rule 3-A – Compromise decree – Bar to separate suit – Effect on interim orders – Petitioners instituted a suit seeking partition, injunction and a declaration that the compromise decree dated 08.10.2007 passed in C.S. No. 946 of 2007-(I) was invalid in respect of Schedule-B property – The Trial Court and the Appellate Court refused injunction over Schedule-B property – In CMP

No. 437 of 2025, this Court directed parties to maintain status quo over Schedule-B and Schedule-C properties – Opposite Party No.1 filed the present I.A. seeking modification of the said order, contending that challenge to a compromise decree by a separate suit is barred under Order 23 Rule 3-A CPC – Whether the order of status quo passed by this court in respect of the Schedule B property is sustainable.

Held: No – The conclusion of the Apex Court in the decision (supra) is based on the underlying principle to put an end to the various disputes pending before the Courts once and for all creating a bar to institute another suit to challenge the decree managed by a compromise – In the facts and circumstances of the case at hand, the petitioners have instituted the suit for a declaration and also claiming partition in respect of all the properties with permanent injunction and though, any such interim order of injunction via-a-vis Schedule-B property has been denied by the learned Courts below and rightly so, the Court is of the humble view that the order of status quo cannot be sustained, when it is certainly to prejudice the defendants who, as on date, are possessed of a valid decree (unless declared unlawful and avoided) obtained in C.S. No.946 of 2007-(I)– According to the Court, the suit may be maintainable to the extent concerning other reliefs except the declaration and the petitioners are definitely to be affected, if future alienations do take place but cannot avoid it, unless the compromise decree is set aside – Of course, the fate of the suit for partition is dependent on the result in CMA No. 218/98 of 2025 but till such time, the plea of the petitioners is accepted and the decree on compromise is nullified and invalidated it would not be proper and justified to direct status quo in respect of Schedule-B property, which, as on date, is validly possessed by the defendants, who acquired interest therein by purchases made – To be honest, the said aspect escaped the attention of this Court, while disposing of the CMP at the stage of admission – The bar under Order 23 Rule 3-A CPC is certainly a ground to demand modification of the Court's order dated 12th May, 2025 in the CMP since the suit for a declaration though coupled with other reliefs is filed but not sufficient enough to interfere with the rights of the defendants, who acquired the interest post-alienation by defendant No.1, against whom, partition is pleaded involving all the properties – For the discussions hereinabove, the Court is constrained to hold that the decision in the CMP needs a revisit thereby modifying the order of status quo excluding therefrom the Schedule-B property.

Rokiya Bibi & Anr. V. Sk. Nasim & Ors.

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CIVIL PROCEDURE CODE, 1908 – Order XXXIX, Rule 1 &2 r/w Section 151 – Application for Injunction – Dismissed – Second Application – Maintainability – Whether a Second Application for injunction can be entertained after dismissal of the first application?

Held: Yes – In the case of **Arjun Singh v. Mohindra Kumar**, the Supreme Court held that rejection of an interim application does not bar a subsequent application based on new facts.

Rabindra Panigrahi V. Gouranga Panigrahi & Ors.

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CIVIL PROCEDURE CODE, 1908 – Order XXXIX, Rule 1 &2 r/w Section 151 – Application for Injunction – Dismissed – The trial court dismissed the application for injunction on the ground of absence of necessary ingredients for the injunction but pass the order to maintain status quo – Question raised that, once the trial court dismissed the application for injunction on the ground of absence of necessary ingredients, the order to maintain status quo is maintainable under the law?

Held: Yes – There is no quarrel with the proposition that in the absence of the necessary ingredients, such as, prima facie case, balance of convenience and irreparable loss, injunction cannot be granted but fact remains that the application for injunction (I.A. No. 51 of 2023) was filed not only under the provisions of order XXXIX Rule 1 and 2 but also Section 151 of C.P.C. It is trite law that Section 151 C.P.C., which saves the inherent powers of the Civil Court, confers wide power on it to pass such orders as may be necessary in a particular fact-situation for preservation of the subject matter of the suit – It cannot therefore, be said that only because the Court did not find the existence of the ingredients necessary to pass an order of injunction, it became powerless to pass any order for protection of the subject matter of the suit – In fact, reading of the impugned order would reveal that the Trial Court, despite holding that the petitioners are not entitled to the relief of injunction, held that if the defendants continue with their construction work exceeding their share it may cause great hardship to the plaintiffs, if equity is claimed – Therefore, in the interest of justice and for the purpose of preservation of the suit property, the order of status quo was passed – Learned District Judge, finding the order of the Trial Court to be reasonable, concurred with it.

Rabindra Panigrahi V. Gouranga Panigrahi & Ors.

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COMMERCIAL COURTS ACT, 2015 – Section 13 – Appeal – Constitution of India – Article 227 – Maintainability of Writ Petition – Supervisory jurisdiction – Bar of appeal – The petitioner challenged an order passed by the Commercial Court by invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India – A preliminary objection was raised that the petition was not maintainable since Section 13 of the Commercial Courts Act, 2015 provides for an appellate remedy against orders of Commercial Courts – The petitioner contended that in view of the restricted nature of the appellate remedy under Section 13, no appeal lies against the impugned order and therefore recourse to Article 227 was maintainable – Question raised, whether in such scenario a writ petition is maintainable?

Held: Yes – Thus, considering the submissions of both parties with regard to interpretation of the proviso clause appearing in Section 13, in the opinion of this Court, the same applies to both sub-section (1) and sub-section (1-A) to restrict the scope of appeal within the ambit of Order 43 of the Civil Procedure Code, 1908 – Thus, it is held that the present C.M.P. is maintainable in the present form – The preliminary objection is answered thus.

Lumenkai Power Pvt. Ltd. (Formerly AES India Pvt. Ltd.), East Delhi V. M/s. Kalinga Insulation, Paradip

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COMMERCIAL COURTS ACT, 2015 – Section 13 – Right of appeal – Interpretation of a proviso – Scope – The opposite party contended that the proviso to Section 13 of the Commercial Courts Act, 2015 applies only to sub-section (1-A) and not to sub-section (1), relying upon the punctuation used in the statute – The petitioner contended that the proviso qualifies both sub-sections (1) and (1-A) and restricts appeals only to orders enumerated under Order XLIII of the Code of Civil Procedure, 1908 and Section 37 of the Arbitration and Conciliation Act, 1996 – Whether the proviso to Section 13 of the Commercial Courts Act, 2015 restricts the right of appeal under both sub-sections (1) and (1-A) to the categories of orders specified therein.

Held: Yes – Having considered the purpose and intention of introduction of sub-section (1-A) after its amendment in 2018 and the changes in words from decision to judgment or order, since no major difference is seen except providing two different forums for preferring appeal by the aggrieved party, it can be reasonably concluded that the proviso applies to both sub-section (1) and sub-section (1-A) – A bare look to the Gazette Notification also seems that the provision is meant to apply to both sub-

section (1) and sub-section (1-A) – Except the difference in the marking of the punctuations, i.e. full-stop (.) and colon (:), there is nothing to support the contention that the proviso is applicable to sub-section (1-A) alone excluding sub-section (1) – In other words, if it is accepted then it means that the provision for appeal would be applicable with such restrictions, as per the provisions in Order 43 of the CPC, in respect of the orders passed by the court at the level of District Judge, but the restrictions will not be applicable to such other courts below the level of District Judge – This reasoning is seen somehow illogical, because the purpose of the proviso would then not be in conformity with the object of the Act (The Commercial Courts Act, 2015) – The object of the Act is for providing speedy disposal of high value commercial disputes – Therefore, the conclusion would be that the proviso is meant to apply to sub-section (1) and sub-section (1-A) both and its application cannot be limited to such provisions appearing in sub-section (1-A) only.

Lumenkai Power Pvt. Ltd. (Formerly AES India Pvt. Ltd.), East Delhi V. M/s. Kalinga Insulation, Paradip

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CONSTITUTION OF INDIA, 1950 – Articles 21, 300-A – Right to livelihood & Right to Property – In the present Writ Petition the action of Bank authority, whereby the unilateral debit of ₹5,00,000 from the pension account of petitioner is under challenge – Petitioner is a guarantor and his wife is the loanee/borrower, petitioner & his wife is the joint account holder – The Bank unilaterally debited the said amount from the pension account of the petitioner without giving any demand notice – Whether the bank can, on its own deduct money from pension account to recover dues arising from borrower’s default?

Held: No – The fact that the amount was taken from a joint account, held by the petitioner and his wife, does not legalize the recovery – If a debt is owed by one person, the bank cannot simply seize money from a joint account held with another person who is not a co-debtor – In this case, while the petitioner (guarantor) and his wife (borrower) are both liable for the loan, the joint account was effectively being treated as a convenient source without distinguishing whose funds were being taken – The petitioner is a retiree whose contribution to that account was his pension, which is protected.

Simply because the account was joint does not strip the funds of their pensionary nature in his hands – The Chander Udey Singh (Supra) ruling is instructive: pension funds do not lose their statutory protection merely by being in a joint account, and contractual consent in a guarantee

cannot waive the exemption given to pension under law – Thus, the Bank’s resort to the joint account in this manner was legally improper.

Bharat Chandra Mallick V. Branch Manager, State Bank of India
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CONSTITUTION OF INDIA, 1950 – Articles 226 & 227 – Writ petition – In the present writ petition the order passed by the Opposite Party No. 3 cancelling the allotment of the house and directing to handover the possession is under challenge – Petitioner is a lady and the allotment was made in the favor of her husband in the year 1993 under Kalinga Nagar Project – The Opposite Party Authority cancelled the allotment on the ground of false affidavit, to the effect he did not possess any site, when he was possessing one – The petitioner pleaded that, the said affidavit was made decades ago and mere issuance of allotment does not amount to granting possession and also further contended that such allotment of site was not under the area of the Municipality/BDA rather it was coming under the Gram Panchayat – The petitioner also contended that there is enormous delay that remain unexplained as to why for the decades, the Opposite Party Authorities slept over the matter when the original allottee was very much alive to answer the allegation of fraud – In the circumstances above, whether the impugned Order of the Opposite party authority cancelling the allotment is sustainable under the law?

Held: No – There is enormous delay that remains unexplained as to why for decades the OPs slept over the matter, when the original allottee, i.e., the husband of the petitioner was very much alive to answer allegation of fraud, had it been made then – That exercise they did not undertake. Now, all of a sudden having woken up from the deep slumber, they have taken a prejudicial decision – Law does not come to the protection of sleepy & tardy, said Jeremy Bentham, an English Jurist of yester centuries – Any public power of the kind has to be exercised within a reasonable time at least as a concession to the shortness of human life – Why nothing was done when petitioner’s husband was alive, is not explained.

Susama Mishra V. State of Odisha & Ors.

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CRAFTSMEN TRAINING SCHEME RECRUITMENT EXAMINATION RULES, 2022 – Industrial Training – Recruitment of Assistant Training Officers (ATO) – Validity of Eligibility Criteria – Petitioners, long-serving Part-Time Guest Instructors (PTGIs) in various Government ITIs, challenged the OSSC advertisement dated 02-11-2022 and the SD&TE Department’s selection guidelines prescribing CITS

qualification and revised Career Assessment criteria under the CTSRE Rules, 2022 — They relied on earlier guidelines (23-06-2016 and 30-11-2021) which gave weightage to experience and contended that the new rules unfairly disqualify them — Whether the State’s advertisement dated 02.11.2022 prescribing new eligibility norms for ATO recruitment is valid in law.

Held: Yes — The legislature/executive is well within its competence to enact the Rules 2022 — The power is relatable to the proviso to Article 309 of the Constitution of India — The CTSRE Rules, 2022 expressly supersedes earlier rules, regulations, orders, instructions with regard to the subject matter except as respect things done or omitted to be done before such supersession.

The wisdom of the legislature/executive requiring ‘CITS’ training cannot be faulted with inasmuch as it is within their domain to prescribe a particular qualification.

The qualification prescribed, CITS has been made uniformly applicable and there is no intelligible differentia between the petitioners and other candidates for not applying the said notification/eligibility condition to the petitioners in the writ petition — The availability of candidates having CITS qualification is evident from the fact that as many as 171 candidates have been recruited as per the advertisement dated 02.11.2022 issued by the opposite party no.2 (Odisha Staff Selection Commission) and have got appointment/posted by the opposite party no.3-DTET, office letter dated 20.01.2024 — We may reiterate the government is vested with the authority to prescribe qualification for recruitment of any post under the Government establishment..

Shakti Prasad Mishra & Ors. V. State of Odisha & Ors.

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CRIMINAL PROCEDURE CODE, 1973 – Section 91 (corresponding to Section 94 of BNSS) – Summoning of documents – Stage of discharge – Scope of accused’s right – The accused-petitioners sought summoning of the Notary Register to prove an alleged affidavit executed by the informant-victim, by invoking Section 91 of Cr.P.C at the stage of discharge prior to framing of charge – The trial court rejected the application – Whether, at the stage of discharge prior to framing of charge, the accused can invoke Section 91 Cr.P.C.

Held: No – Be that as it may, as has already been comprehensively discussed, before framing of the charge, at the stage of discharge, the learned trial court can only examine the documents and materials on the

record, i.e. only the materials filed along with the Chargesheet – At the stage of framing of charge, it is not the guilt of the accused that is under adjudication, rather, the trial court considers whether there are sufficient grounds to proceed to the stage of trial – Upon an evaluation of the impugned order of the learned trial court, in light of the aforesaid analysis, this Court is of the view that the learned ADJ-cum-special Judge, Bhanjanagar, Ganjam has not committed any illegality in passing the order dated 26.06.2025 under Annexure-7 – As such, the impugned order dated 26.06.2025 does not warrant any interference by this Court in exercise of its inherent powers under section 528 of the BNSS (i.e. erstwhile section 482 Cr.P.C) is necessary.

Suresh Chandra Sahu @ Suresh Sahu & Anr. V. State of Odisha & Anr.
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CRIMINAL PROCEDURE CODE, 1973 – Section 239 r/w Section 13(2) and 13 (1)(d) of Prevention of Corruption Act, 1988 and Section 409/468/47/120-B of the Indian Penal Code – Allegation of misuse of official position and fraudulent drawn of an amount of ₹1,00,000/- from the GPF account of one Krushna Chandra Barik by preparing forged record and misappropriation of the said amount – Petitioner contended that there is no expert opinion conclusively establishing the signature appearing on the documents in question were appended by the petitioner – Whether while considering an application U/s. 239 of Cr.P.C., the Court is required to examine the evidence meticulously.

Held: No – The question of the Petitioners' innocence and their alleged involvement in the aforesaid acts can only be determined upon full-fledged trial based on evidence.

At this stage, therefore, it cannot be held prima facie that the Petitioners are not involved in the offence or that the impugned order suffers from any legal infirmity – While considering an application under Section 239 Cr.P.C., the Court is required to examine whether a prima facie case exists against the accused and not to undertake a meticulous evaluation of the evidence on record.

Baikuntha Nath moharana V. State of Odisha (Vigilance) & Ors.
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CRIMINAL PROCEDURE CODE, 1973 – Section 323 – Commitment of case – Joint trial – Scope – The accused/petitioner sought commitment of a Magistrate-triable case and its joint trial with a pending Sessions Trial, contending that both cases arose out of the same transaction and constituted case and counter-case – The learned Magistrate rejected the

application holding that the FIRs disclosed distinct allegations, involved different offences, and that the Sessions Trial had already progressed substantially – Petitioner contended that both the FIRs are interconnected and the same should have been tried together – Whether the rejection of the application under Section 323 Cr.P.C. by the learned Magistrate is justified in law.

Held: Yes – With regard to the submission made by the learned counsel for the Petitioner that both the F.I.Rs. are interconnected and the same should have been tried together by the Court of Sessions, this Court found that although the offence alleged relates to a single family and some of the parties are common, however, nature of allegations are quite different in both the F.I.Rs – So far as the Dhamnagar P.S. No.101 of 2020 is concerned, the same has been registered on the allegation of dowry related death of the daughter of the Informant in the hands of some in-law family members. In Dhamnagar P.S. Case No.12 of 2023, the allegation is basically by the in-law family members against the family of the daughter-in-law alleging harassment – Therefore, it cannot be construed that the nature of the allegations or the transaction out of which both the F.I.Rs. arise are one and the same – Thus, the trial court has rightly held that Dhamnagar P.S. Case No.12 of 2023 cannot be considered to be a cross case of Dhamnagar P.S. Case No.101 of 2020 – Moreover, this Court was informed that more than 20 witnesses from the prosecution side have already been examined in the S.T. Case No.58 of 2020, which arises out of Dhamnagar P.S. Case No.101 of 2020.

In the aforesaid factual background, this Court is constrained to hold that the learned Magistrate has rightly rejected the application of the Petitioner under Section 323 of Cr.P.C. as the provision contained in Section 323 of Cr.P.C. is not applicable to the facts of the present case.

Debdeep Panda @ Debjeet Panda V. State of Odisha & Anr.
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CRIMINAL PROCEDURE CODE, 1973 – Section 438 – Pre-arrest bail – Offence U/Ss. 418, 420/34 of IPC – Contractual dispute between the parties – Matter is pending before the National Company Law Tribunal – Petitioners are co-operating in the investigation – Guideline of the Honorable Supreme Court with regard to grant of Pre-arrest bail considered – Whether the Petitioners/Accused are entitled to be released on Pre-arrest bail?

Held: Yes – It is apt to note that on the date of registration of the FIR the Informant was evidently aware of the institution of the proceeding before

the National Company Law Tribunal, Principal Bench, New Delhi as he has cited Mr. Ashwini Mehra, Petitioner in ABLAPL No.5818 of 2025 in his capacity as “Resolution Professional”.

Evidently the claim in the FIR prima facie arises out of and in connection with the contract between the Informant and the Corporate Debtor Punj Lloyd Ltd. whose officials are Petitioners in ABLAPL Nos.4807, 5819, 5822 and 5839 of 2025.

It is indeed baffling that the statutory provisions contained in the Insolvency and Bankruptcy Code, 2016 were not taken into account by the investigating agency.

On a conspectus of the materials on record, considering the nature of allegations, this Court is persuaded to hold that in the light of the judgment of the Apex Court in the case of **Gurbaksh Singh Sibbia & Others Vrs. State of Punjab** and **Satender Kumar Antil (supra)** the Petitioners are entitled to the exceptional remedy of pre-arrest bail.

Accordingly, it is directed that in the event of arrest of the Petitioners in connection with the aforesaid case, they shall be released on bail by the Arresting Officer on such terms and conditions deemed just and proper.

Ashwini Mehra & Ors. V. State of Odisha.

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1371

CRIMINAL TRIAL – Offence U/s. 20(b)(i) of the NDPS Act r/w. Section 47(a) of Bihar & Orissa Excise Act – The order of conviction is under challenge – Accused challenged the order of conviction on the ground of non-compliance of the mandatory provisions contained U/s. 42 & 50 of the NDPS Act, Non Production of brass seal before the Court & Non examination of the Gazetted Officer before whom search was made – The prosecution contended that in the fact scenario of the present case, sections 42 & 50 are not required to be complied with – As per the evidence of P.W.1 it is clear that, there was no written offer made to the accused intimating him regarding his right U/s. 50 of the NDPS Act for getting searched in the presence of a Magistrate or a Gazetted Officer – Further the evidence of P.W.8 (I.O) reveals that, the Gazetted Officer in the presence of whom the search & seizure was made is conspicuously withheld by the prosecution to be examined – The liquor alleged to have seized from the possession of the accused has not been measured – The brass seal used for sealing the samples was not produced before the Court – In the facts & circumstances whether the impugned order of conviction is sustainable under the Law?

Held: No – Applying the ratio laid down by the Hon’ble Supreme Court in the aforementioned two judgments to the facts of the present case, it could be safely concluded that the I.O. has not complied the requirements of Sections 42 and 50 of the NDPS Act, because the evidence at large illuminating on record to the effect that the accused was apprehended while he was holding the bag – The search and seizure were simultaneously carried out on the person of the accused along with the bag – Therefore, the I.O. was obliged under the Act to comply the statutory safeguards contemplated under Sections 42 and 50 of the Act.

By taking me to the evidence of the witnesses, Ms. Mishra, learned counsel for the appellant has also pointed out that the liquor alleged to have been seized from the possession of the accused has not been measured – This part of the submission made by Ms. Mishra could not be controverted by the State Counsel – That apart, by taking to the evidence of P.Ws.7 and 8, the counsel for the appellant has stated that the brass seal used for sealing the samples were not produced before the court, which is mandatory requirement under law. P.W.8 in paragraph-7 of his evidence deposed as under:-

“7. After sealing the three pkts of Ganja my personal brass seal was given in zima of witness Locahan Sahu (P.W. 7). Ext. 3/1 is the zimanama executed by him – These are the two sample pkts. sent back to the court after examination by the Chemical examiner – These are the two paper slips which contained the signature of accused and witnesses marked M.O. VI and VII – After making seizure of the Ganja and liquor I handed over the three packets of Ganja and two bottles of liquor in the zima of I.I.C., Ngr. P.S. to keep it in P.S. Malkhana till its production before the S.D.J.M., Ngr.”

However, when P.W.7 was examined as a witness, he did not support the prosecution and stated that the signature in the zimanama was simply obtained from him and he had no knowledge about the same – Therefore, regarding the production of the brass seal before the court, the evidence is shaky – The other points raised by the learned counsel for the appellant need not be delved upon, in view of my findings that the I.O. (P.W.8) of the present case has not complied with the requirements under Sections 42 and 50 of the NDPS Act.

Bijoy Kumar Sahu V. State of Orissa

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1433

CRIMINAL TRIAL – Offences under Sections 395 & 457 of the IPC – The Accused Persons are the Co-villagers of the informant – The alleged

offences of dacoity was committed in the night when the informant along with other family members were sleeping in their home – There was previous enmity amongst the informant & the accused persons – In the present appeal the order of conviction is under challenge – Accused persons are challenging the order of conviction on the grounds of delay in lodging of F.I.R, Previous enmity, Interested witnesses & Non-recovery of looted materials etc. – On the other hand prosecution argued that mere delay in lodging of F.I.R. does not vitiate an otherwise credible prosecution case – The delay in lodging of the F.I.R is satisfactorily explained and prior hostility is the motive for the occurrence – The prosecution witnesses are clear & mutually corroborative – Whether in the facts & circumstances the impugned order of conviction warrants any interference?

Held: No – The prosecution case receives further corroboration from the seizure of various articles recovered from the houses of multiple accused persons during investigation – The Test Identification Parade conducted by P.W.8, the Judicial Magistrate was carried out in accordance with established procedure, and P.W.7 correctly identified the articles belonging to the household – The contention that the articles were common household items or that identification by a single witness is inadequate is untenable in law – It is well settled that familiarity of a householder with his own property is a sufficient basis for identification.

As regards the delay in lodging and forwarding the FIR, this Court finds that the explanation provided by P.W.7 is both natural and convincing – Fear of encountering the accused on the direct route and the decision to take a longer pathway in the dead of night constitute sufficient justification – Moreover, no question was put to the Investigating Officer on this aspect; no adverse inference can therefore be drawn – The settled legal position, as reaffirmed in *Pattipati Venkaiah* (supra), is that mere delay, when satisfactorily explained, cannot by itself erode the credibility of the prosecution.

The core plea of false implication on account of prior enmity is equally unconvincing – While the existence of enmity is admitted, it furnishes a possible motive for the accused to commit the offence rather than for the victims to falsely implicate several co-villagers in a grave charge of dacoity – The evidence of the prosecution witnesses has been scrutinized carefully with due caution and found to be cogent, credible, and corroborated on all material particulars.

On an overall conspectus, this Court finds no material infirmity, perversity, or illegality in the approach or findings of the learned trial Court – The prosecution has proved the charges under Sections 395 and

457 IPC beyond reasonable doubt, and the defence has not been able to create even a shadow of uncertainty sufficient to dislodge the conviction.

Bhaba @ Bhabagrahi Panda & Ors. V. State of Odisha

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1441

EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7-A,(I)(Q) – Determination of moneys dues from employers and Appeals to Tribunal – In the present Writ petition the order passed by learned Appellate Tribunal refusing the admission of appeal on the ground of limitation is under challenge – The petitioner/State Govt. has challenged the order of the learned Tribunal by applying Sections 5 & 14 of the Limitation Act – Question raised that, Whether the provisions of the Limitation Act can be applied while condoning the delay under the Special statute namely EPF & MP Act, 1952?

Held: No – So far as condonation of delay is concerned, this Court respectfully refers to the recent dictum of the Apex Court in the case of **Shivamma v. Karnataka Housing Board** and contentions as raised have to be examined in the context of the judgment of the Apex Court also in the case of **Commissioner of Sales Tax, U.P., Lucknow vs. M/s. Parson Tools and Plants, Kanpur** laying down that where power of condoning delay is specified under any special statute, the general provisions of Section 5 and 14 of the Limitation Act would have no application in cases where appellate and revisional authority is not a Court.

Admittedly, in the case at hand even excluding the period of pendency before this Court as per Section 14 of the Limitation Act, the period of delay comes to 289 days. Undisputedly, the appeal was not filed within the time line “15 days” fixed by this Court.

Be that as it may, the another distinguishing feature which is of seminal importance and cannot be lost sight of is that, it can be reasonably concluded that this Court being conscious of the limitation prescribed notwithstanding the schematic arrangement of effective statutory remedy having been bypassed in preferring writ petition under article 226 and 227 of the Constitution of India and there being no exceptional cause to entertain the same in exercise of its plenary jurisdiction still, taking a liberal view granted 15 days time to the Petitioner-State establishment to prefer the statutory appeal. But admittedly, the same was not filed within the time as stipulated, as noted by the impugned order 17.09.2015 and quoted hereunder for convenience of reference;

“xxx xxx xxx

Appeal actually filed on behalf of appellant on 01.09.2015. It becomes clear that appellant not adhered order dated 10.07.2015 passed by Hon’ble High Court, so again and again, appellant can not be allowed to take benefits of its own wrong/fault, so accordingly present appeal is hereby dismissed being time-barred.
xxx xxx xxx”

There being no prayer for extension of time stipulated by this Court, the Tribunal could not have entertained such appeal – And, considering the matter on merits in the factual matrix of the case at hand would have been contumacious.

As such, this Court does not find any infirmity in the order passed by the tribunal warranting interference by this Court.

The Writ Petition is accordingly dismissed – Costs made easy.

The order of 17.09.2015 passed in Section 7A proceeding along with interest component in terms of the provisions of 7Q of the Act, 1952 shall be complied by the Petitioner within four months from the date of receipt/production of copy of this judgment.

Director, Directorate of Printing, Stationery & Publication, Odisha, Cuttack V. Presiding Officer, E.P.F. Appellate Tribunal, New Delhi & Ors.

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1377

INDIAN PENAL CODE, 1860 – Sections 302/34 – Murder – Common intention – Conviction based on eyewitness testimony – Delay in examination of witnesses – The appellants were tried for the murder of the deceased, with infliction of multiple incised injuries – The prosecution case rested primarily on the testimonies of P.W.4 and P.W.8, being the natural companions of the deceased and the eyewitnesses at the time of occurrence – Though their statements were recorded after a delay of four to five days, the prosecution explained the delay on the ground of threats extended by the appellants – The medical evidence established that the deceased suffered multiple incised wounds on vital parts of the body – The Trial Court relied upon the ocular testimony, corroborated by medical evidence, and convicted the appellants under Section 302 read with Section 34 IPC – Whether the conviction of the appellants under Section 302 read with Section 34 of IPC can be sustained on the testimony of P.W.4 and P.W.8, despite their belated examination?

Held: Yes – The law is well settled that delay in the examination of witnesses, particularly those who claim to be present at the scene of

occurrence does not, by itself, render the prosecution case untenable, especially when their presence is not in dispute – However, such delay can certainly affect the creditworthiness and overall reliability of the testimony, depending on whether the prosecution offers a satisfactory and plausible explanation – Unexplained or inordinate delay may cast a serious shadow on the veracity of the evidence and may allow the defence to argue the possibility of embellishment, improvement, or manipulation, requiring the Court to approach the testimony with circumspection and, therefore, what the Court must evaluate is whether the delay has caused prejudice to the accused in effectively defending themselves; for instance, due to non-availability of material witnesses, loss of evidence, or fading recollection – Where such prejudice is shown, delay assumes significance – Conversely, where the prosecution offers a rational and acceptable explanation, the Court is required to scrutinise the evidence with care, ensuring that no undue prejudice is occasioned to either side while still upholding the cause of justice.

Despite strenuous and prolonged cross-examination, neither P.W.4 nor P.W.8 faltered on the fundamental aspects of the prosecution case – Their depositions remained coherent on the identity of the assailants, the nature of the weapons carried, the manner in which the deceased was repeatedly assaulted, and the role of Appellant-Madha both in restraining the deceased and in actively inciting the attack – Minor deviations or omissions in their earlier police statements particularly as regards the attribution of specific blows do not go to the root of their credibility, especially when the medical evidence conclusively demonstrates multiple incised wounds caused by sharp-cutting weapons, thereby fully supporting their core version.

The explanation tendered by these witnesses for the delay in their examination that they had been threatened with dire consequences by the assailants and had therefore left the village, appears both plausible and natural in the circumstances.

Madha @ Sachidananda Khuntia V. State of Odisha

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1205

INDIAN PENAL CODE, 1860 – Sections 302/34 & 201/34 – Murder – Causing disappearance of evidence – Extra-judicial confession – Voluntariness and reliability – Inconsistency with medical evidence – The appellants were convicted for murder and for causing disappearance of evidence on the basis of an extra-judicial confession that they killed the deceased by throttling – The confessional statement was stated to have been made after initial denial by the appellants – Further, the manner of death disclosed in the alleged confession was inconsistent with the

medical evidence, which established death by decapitation with a sharp-cutting weapon – Whether the conviction can be sustained on the basis of the alleged extra-judicial confession.

Held: No – The extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind – The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime – The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility – The extrajudicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it – [Ref.: Sk. Yusuf -Vrs.- State of W.B. : (2011) 11 Supreme Court Cases 754 and Pancho v. State of Haryana : (2011) 10 Supreme Court Cases 165].

In the case in hand, we find no earthly reason for the appellants to repose confidence on P.W.2 and others to make the so-called disclosure – At this juncture, we found that the statements of the witnesses including P.W.2 are that all the appellants made extrajudicial confession and thereafter, P.W.1 went to the police station to lodge the first information report, but in the first information report, it is stated that it was only the appellant no.1 Rupa Jerai, who made the extrajudicial confession and whatever has been brought out by confronting the previous statements of the witnesses to them and proved through the I.O., it also indicates that it was the appellant no.1, who had made the extrajudicial confession – Therefore, the learned trial Court has erred in observing that the appellants voluntarily came to the house of P.W.2 and made the extrajudicial confession – Though it seems that the contention was raised by the learned defence counsel before the learned trial Court that in the circumstances in which the confession was made by the appellant no.1, it cannot be said to be voluntary in nature, but the learned trial Court has not given any importance to the same and erroneously held that the extrajudicial confession is true, free and voluntary one.

In the factual scenario, we are of the view that since it was only the confession of the appellant no.1 and not by the other appellants and it further appears that such confession was made when P.W.2 stated to the appellants that if the matter would be reported, then it would be complicated and further assured to the appellants that he could subside the matter in the village about the assault on the deceased, if the deceased would be available, it is difficult to hold that it was a voluntary one and as such no reliance can be placed on the extrajudicial confession and it is not admissible in the eyes of law.

Another important feature is that the extrajudicial confession as stated in the first information report is that the deceased was throttled to

death and thereafter thrown in the river water – When the post mortem examination over the dead body was conducted, the penetrating wounds were noticed on the person of the deceased and the doctor has stated very categorically that the cause of death was due to decapitation of the head and probably by sharp cutting weapons – Therefore, we are of the view as rightly pointed out by the learned counsel for the appellants that the manner in which the death is stated to have been caused in the extrajudicial confession runs contrary to the death as has been found by the doctor (P.W.14) which is another ground for not placing reliance on the evidence of extrajudicial confession.

Rupa Jerai & Ors. V. State of Odisha

2025 (III) ILR-Cut.....

1189

INDIAN PENAL CODE, 1860 – Sections 302/34 & 201/34 – Recovery of weapon – Evidentiary value – Absence of forensic linkage – In a case resting on circumstantial evidence, the prosecution relied upon the recovery of a katuri (weapon of offence) at the instance of one appellant – Chemical examination of the recovered weapon revealed absence of bloodstains and no forensic linkage – Whether the recovery of the alleged weapon of offence (katuri) at the instance of one appellant, can bring home the charges levelled against the appellants.

Held: No – The evidence relating to the recovery of the weapon of offence i.e. katuri (M.O.I) at the instance of appellant no.1 cannot be given much importance, since in view of the chemical examination report, no blood was detected in the katuri – Merely because the doctor (P.W.14) has stated that the injuries sustained by the deceased could be possible by such katuri, we are of the humble view that this circumstance alone is not sufficient to hold the appellants guilty.

Rupa Jerai & Ors. V. State of Odisha

2025 (III) ILR-Cut.....

1189

INDUSTRIAL DISPUTES ACT, 1947 – Sections 10 & 12 – Industrial reference – 21-point Charter of Demands – Maintainability and scope – The workmen, through their recognised Labour Union, raised a 21-point Charter of Demands before the Management seeking upward revision of wages, dearness allowance, allowances and other service benefits – Upon failure of conciliation, the appropriate Government made a three-point industrial reference to the Industrial Tribunal for adjudication – The Management assailed the maintainability of the reference, contending that a prior settlement was subsisting, several demands were non judiciable – Whether the industrial reference arising out of the 21-point Charter of Demands raised by the workmen is maintainable in law.

Held: Yes – Before delving into the matter in details, the wage settlement between the Management and Opposite Party No.3-Union made on 28th November, 2002 (Annexure-5) should be kept in mind – Such settlement was valid till 31st December, 2004 – During subsistence of such settlement, the Union submitted 21-point charter of demand at Ext.6 – Pursuant to the said charter of demand tripartite discussion was attempted, but it failed on 22nd September, 2005 (Ext.M) – Since the charter of demand submitted by the workers’ Union assumed the characteristics of an industrial dispute, the Conciliation Officer attempted for a conciliation and on failure of the tripartite discussion submitted a failure report on 16th March, 2006 – Conciliation failure report has been annexed to the Writ Petition as Annexure-1 – On perusal of the conciliation report under Annexure-1, it reveals that there was no possibility of promoting settlement and to resolve the issues – Hence, the conciliation proceeding was declared as failed and closed – The failure report was submitted to the appropriate Government which culminated in referring the matter for adjudication under Annexure-2.

The Management of the Vice President (Operations), M/s. IMFA Ltd., Theruballi V. The Government of Odisha (Deptt. of Labour & ESI) & Ors.

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1234

JURISDICTION OF INDUSTRIAL TRIBUNAL – Scope of reference – Pursuant to a three-point industrial reference, the Tribunal answered Issues (i) and (ii) in favour of the workmen and Issue (iii) against them – The petitioner contended that the Tribunal failed to consider material evidence and did not adjudicate the issues in accordance with the terms of the reference – Whether the Industrial Tribunal can travel beyond the terms of the industrial reference or record findings without proper consideration of the material evidence relating to the issues referred?

Held: No – Mr. Ray, learned counsel for the Workmen verily relied upon the case law in the case of *Syed Yakub* (supra) – There cannot be any quarrel to the principles decided in the said case – In the instant case, learned Tribunal failed to take into consideration the material evidence in the record while discussing different points of the reference – Hence, learned Tribunal has failed to exercise its jurisdiction vested in it – Thus, this Court has ample power under Article 227 of the Constitution of India to interfere with such findings, which are based on no material – The principles decided in *The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar* (supra) has no application to the instant case, as the learned Tribunal had failed to discuss the evidence on record to record its finding – It is not the case of any of the parties that the impugned award

was not elaborative – The Management took a stand that the material evidence available on record was neither discussed nor taken into consideration by learned Tribunal – In *The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar* (supra), the discussions made by learned Tribunal was not elaborative but it had discussed such relevant material evidence on record to arrive at a conclusion, which is not available in the instant case.

We would have not hesitated to discuss the evidence on record and arrive at a conclusion, but that may prejudice the case of either of the parties, more particularly when there is a scope for the parties to place on record certain additional evidence in support of their respective cases, as in view of the passage of time, some developments may have taken place in the meantime.

The Management of the Vice President (Operations), M/s. IMFA Ltd., Theruballi V. The Government of Odisha (Deptt. of Labour & ESI) & Ors.

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1234

MOTOR VEHICLES ACT, 1988 – Section 166 – Application for Compensation – Non-joinder of owner of the offending vehicle – The claimant, while riding a bicycle, suffered injuries in a motor accident caused by rash and negligent riding of a motorcycle – The Motor Accident Claims Tribunal recorded findings in favour of the claimant on negligence and quantified compensation payable – However, the Tribunal dismissed the claim petition as not maintainable solely on the ground that the owner of the offending vehicle had not been impleaded – Whether such dismissal of claim by the Tribunal is sustainable.

Held: No – It is no doubt true that the Respondent has set up the plea of non-joinder of necessary parties, but the Appellant-petitioner being not vigilant, has not impleaded the owner of the motor cycle as a party to the claim proceeding, however, since the Act is beneficial social provision of law and its objective is to save the persons suffering on account of Motor Vehicular accident, the learned Tribunal should have directed the Appellant-petitioner to implead the owner of the offending motor cycle as a party and on failure to comply such direction, the learned tribunal could have dismissed the claim, however, the learned Tribunal has never directed the Appellant-Petitioner to implead the owner as a party – Further since the Act is a social legislation, the learned Tribunal was not prevented from impleading suo motu the owner of the offending motor-cycle as a party inasmuch as the innocent party/petitioner should not suffer from the laches and negligence of his counsel, but dismissing the

claim of the Appellant-petitioner merely on technical ground would not sub-serve the purpose of the legislation which is actually meant to advance social justice and to provide succor to the person suffering from accident – It is also not in dispute that the learned Tribunal has answered issue Nos. (ii) and (iii) in favor of the claimant by holding that the accident occurred due to rash and negligent driving of the rider of the motor cycle and the claimant is entitled to compensation, but even after holding so and deciding issue nos.(ii) & (iii) in favor of the claimant, the learned Tribunal has lost sight of true provision of law and dismissed the claim by holding it to be not maintainable, but without allowing the Appellant-Petitioner to implead the owner of the offending motor-cycle as party.

Tulsiram Sahu V. Ashutosh Panda

2025 (III) ILR-Cut.....

1424

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Punishments U/ss. 20(b)(ii)(C) & 25 of the Act – Bail – Commercial quantity – Rigour of Section 37 – The petitioner seeks bail for offences under Ss. 20(b)(ii)(C) and 25 of the NDPS Act – It is pleaded that the co-accused, who is allegedly placed on a graver footing, has already been granted bail by a co-ordinate Bench of the High Court – The petitioner contends that he has been in custody for a considerable period, and on the principle of parity, he should also be enlarged on bail – The State strongly opposes the bail application on the ground that the quantity of contraband ganja seized is 370 Kgs and 800 grams, which is far above the commercial quantity prescribed under the NDPS Act – Whether the petitioner is entitled to be released on bail under Section 37 of the NDPS Act on the ground of parity and prolong custodial detention.

Held: No – It is, therefore, very clear from the precedent as laid down by the Apex Court in Satpal Singh (supra) that an order granting bail must demonstrate the conditions of Section 37 of NDPS Act, but if the order granting bail to co-accused does not discuss/demonstrate about the satisfaction of the conditions of Section 37 of NDPS Act, it would not have any binding precedent for grant of bail to co-accused – Further, it is not in dispute that no person accused of offence under NDPS Act involving commercial quantity shall be released on bail; where Public Prosecutor opposes such bail application, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and he is unlikely to commit offence while on bail – In the present scenario and taking into consideration the materials placed on record, the Petitioner is hardly found to have satisfied the conditions of Sec. 37 of NDPS Act.

Nakul @ Sushanta Gharami V. State of Orissa

2025 (III) ILR-Cut.....

1421

NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG), 2025 – Result dispute – Alleged application number mismatch – OMR answer sheet – The Petitioner, a NEET (UG) 2025 aspirant claimed that due to a technical error there was a discrepancy in her application number, as a result of which she was awarded zero mark despite her claim of having secured 579 marks – The Respondents contended that NIC-verified records shows a different application number and revealed that the Petitioner had not marked any response in the OMR sheet – Original records were produced before the Court in sealed cover – Whether a Writ Court can direct declaration of a candidate as successful in NEET (UG) when original NIC-verified records show zero mark and the documents relied upon by the candidate are disputed?

Held: No – In view of our above detailed discussions after taking into consideration the averments made by the petitioner in the writ petition as well as her other pleadings, the statements made and contentions raised in the counter affidavit and upon perusal of the original records, we have no hesitation and we hold that the reliefs sought for in the writ petition are based on incorrect assumptions and statements, as well as baseless and reckless allegation made against the opposite parties, particularly Opposite Parties Nos.1, 2 and 3 – The Petitioner has neither taken care nor responsibility of approaching the Court with assertions, contentions and allegations which at least she herself could have supported to make out a case in her favour.

We further find and observe that the petitioner not answering any of the questions in her OMR sheet, but subsequently claiming that she had answered as per the ‘OMR’ annexed to the writ petition which she claimed to be her own without any supporting material cannot be a mere coincidence.

Pritipragnya Mallik V. Union of India & Ors.

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1151

ORISSA BOARD OF SECONDARY EDUCATION REGULATIONS – Rule 39 r/w Section 8 of the Registration of Births & Deaths Act, 1969 – Register of Births and Deaths – Rectification/Correction in date of Birth – In the present Writ Petition the rejection order for rectification of date of Birth in the school record is under challenge – Birth Certificate of the Petitioner has been issued by the appropriate Authority – Petitioner prays for rectification of his date of birth in the school record as per the Birth

Certificate – Limitation of 3 years as provided under the Rule 39 of the Regulation – Authority denied the rectification on the ground of delay in application for correction/rectification – Whether the action of the Authority while denying the rectification of Date of Birth is correct under the law?

Held: No – There is force in the submission of learned counsel appearing for the Petitioner that, may be by inadvertence, in the school records the date of registration of birth has been reflected as the date of birth of her client – It is not uncommon to see such mistakes occurring at the hands of parents who secure school admission, their wards being obviously juveniles and therefore, such juveniles would not have had any say in the matter – At times, in the rural society, the admission of children to the schools is done by persons other than parents also, i.e., relatives or friends who may not have that degree of seriousness which the parents would have – Presumably, it is for this reason, the law provides for rectification of date of birth in the school records subject to certain conditions & limitations – Regulation 39 of the extant Regulations reads as under:

“The date of birth once entered in the Board’s records cannot be changed unless it is of the nature of clerical error or printing mistake – Application for the correction of the date of birth should be made within three years of passing the examination – No change in date of birth recorded shall be made unless the application for correction is received through the head of the institution concerned within three years of passing the examination.”

The above Regulation prescribes a limitation period of three years for applying for rectification and the reckoning point is the examination – The word “examination” is defined under section 2(b) of the Orissa Secondary Education Act, 1953 to mean the one conducted by the Board of Secondary Education – The contention of Mr. Rao that going by the text of this Regulation, petitioner’s application was belated, is true – However, what one has to see is the intent & policy content of the Rule Maker and not just *litera legis* – In other words, rule of the kind should be construed with purposive approach and not literal approach, vide Justice Aharon Barak the ‘Purposive Interpretation in Law’ (2005) – Added, if there is a delay, there is no prohibition in the Regulations for the authorities to condone it keeping in view justice of the case – It is more so, when there is no allegation of fraud or fabrication.

The reasoning in the impugned order, that the subject date of birth is reflected in other contemporaneous school records, does not stand to logic – It is so because, once the date of birth is recorded at the entry point of admission to educational institution, the same would be reflected in the

records of other institutions, wherein a person has studies in due course – If the entry in the base document is shown to be incorrect, the exercise for correction has to be undertaken, for keeping the record straight – It hardly needs to be stated, the date of birth assumes importance in many matters, such as professional courses, employment (appointment, seniority & retirement), travel documents (passport, visa, etc.), election (voting, staking candidature, etc.) – It has been a settled position of law that ordinarily wherever the issue of age of a person crops up, the entry of date of birth made in the HSC/SSLC certificates should be acted upon.

Pruthiraj Manik V. State of Odisha & Ors.

2025 (III) ILR-Cut.....

1256

ODISHA EDUCATION ACT, 1969 – Section 24-B – Jurisdiction of Education Tribunal – Maintainability of writ petition – Appellant, appointed as Demonstrator in the year 1987 and was permitted to hold 7th Lecturer post from the year 2000 in KBDVAV College, Nirakarpur – Governing Body resolved to approve his promotion in the year 2003 and approached the Director, Higher education for approval, who rejected it – Appellant approached the High Court, then the Education Tribunal, which in 2022 directed for reconsideration of his claim – Director finally rejected the claim on 27-03-2025 pursuant to Tribunal’s direction – Instead of challenging it before the Tribunal, appellant filed a writ petition, which was dismissed by the learned Single Bench due to availability of statutory remedy – Question raised, Whether a writ petition challenging the order of Director, Higher Education can be maintained without first approaching the Odisha Education Tribunal.

Held: No – It is axiomatic to record that the appellant has been taking steps assailing the action of the authorities either by filing writ petition before this Court and at times before the Tribunal, which appears to be convenient to him – It is a matter of concern that such proceedings are being dealt with, obviously in absence of any plea relating to the jurisdiction – A litigant cannot choose the forum at his convenience as the jurisdictional issue strikes at the root and, therefore, it is the foremost duty of a Court while dealing any litigation to satisfy itself whether it has a jurisdiction to deal with the disputes/issues raised therein – Any uncertainty in relation to jurisdictional issue would not only invite an anomaly situation, but also conflicting decisions bringing uncertainty in its due implementation – Once the Legislature has provided a forum for redressal and/or determination of the disputes, it would be preposterous to suggest that such forum is a forum of convenience and does not limit or abridge the right of the litigant to approach another forum – Even if the power of High Court under Article 226 of the Constitution of India cannot

be ousted being a basic structure of the Constitution, yet the Writ Court may decline to entertain the writ petition if a forum is provided in the statute, which is competent to deal with such issues within its folds – The order dated 27th March, 2025 was passed in due implementation of the direction issued by the Tribunal and, therefore, we do not find any infirmity in the impugned order, which relegate the appellant to move the forum provided under Section 24-B of the said Act.

We have discussed in *extenso* the scope and jurisdiction of the Tribunal constituted under Section 24-A of the said Act and the dispute comes within the four-corners of the said jurisdiction and, therefore, the challenge to the order dated 27th March, 2025 can be made by approaching the said Tribunal.

Haraprasanna Tripathy V. Principal Secy., Department of Higher Education, Bhubaneswar & Ors.

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1128

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 24 (2) (c) – No confidence motion against Sarpanch or Naib Sarpanch – Notice along with the copy of the requisition and the proposed resolution – Whether it is mandatory to give notice along with copy of the requisition and the proposed resolution to all the members holding offices in the Grama Panchayat?

Held: Yes – The bone of contention between the parties is as to the meaning of clause (c) of Sub-Section (2), which *inter alia* states that the Sub-Divisional Officer, on requisition, ‘**shall give notice**’ to all the Members of Panchayat, ‘along with a copy of the requisition **and of the proposed resolution**’ – Notice is not valid if it is not accompanied by the ‘proposed resolution’, is the submission of Appellant’s counsel, whereas notice is not vitiated merely because copy of ‘proposed resolution’ did not accompany it, is the retort of counsel representing the private Respondents – Both they rely upon certain decisions which we would advert to, a little later – We agree with the proposition of Appellant’s counsel because clauses (a) (b) (c) & (d) of Sub-Section (2) of Section 24 textually employ the word ‘shall’, there being no scope for reading it as ‘may’, regard being had to the serious implications such as, if the Motion succeeds, Sarpanch would be ousted from office once for all and he would not retain membership too.

Added to the above, the contention that notice sent with requisition *sans* copy of draft Resolution would suffice the requirement of Section 24(2)(c), if countenanced would render the statutory expression ‘and of the proposed resolution’ otiose – The sages of law have long been

saying that every part and every word of a statute should be given its due meaning – In **Poppattal Shah v. The State of Madras**, it has been reiterated in the following words:

“It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself...”

Appellant is a popularly elected Sarpanch of the Panchayat by virtue of Section 10(1)(a) read with Section 4(1) of the 1964 Act, unlike the Naib Sarpanch mediately elected under Section 14(1) – Removing a directly elected Sarpanch is a serious matter, inasmuch as it nullifies the popular mandate handed in an election that was periodically held for the office in question – It is notable that once No Confidence Motion succeeds, he ceases to be the Sarpanch and that he has no Membership credentials in the Panchayat – It is so because, he is elected directly from the voters of the entire constituency of the Panchayat concerned, and not by the collegium of elected Members, unlike the Naib-Sarpanch – In other words, he is rendered a *persona non grata qua* the Panchayat – This view gains support from Sub-Section (4) of Section 115 of the Act which has the following text:

“(4). A Sarpanch or Naib-Sarpanch on removal from office under Sub-Section (1) shall also cease to be a member of the Grama Panchayat, and such person shall not be eligible for election as member for a period not exceeding four years as the State Government may specify.”.

Therefore, the prescription of procedure under the law providing for the removal of Sarpanch by way of No Confidence Motion, has to be construed as mandatory consistent with legislative policy content & intent.

As already mentioned, Sub-Section (2)(c) is clear & emphatic in prescribing the procedure for issuance of notice of No Confidence Motion – The structure is: Firstly, Notice should be a minimum of seven (7) days – Secondly, it should contain date, time & place of meeting – Thirdly, it should be accompanied by a copy of requisition – Fourthly, it should also be accompanied by a copy of ‘resolution proposed’ – This provision employing the expression *‘such notice along with a copy of the requisition and of the proposed resolution’* has been continuing on the Statute Book since more than six decades – The Act has seen a plethora of amendments till now, but the text of this provision has conspicuously remained unaltered – Provisions of the kind are made in the accumulated legislative wisdom gained through years of experience – We add that when the text of a statute is unambiguous, it does not admit any interpretation – It has to be taken as it is. Maxwell on ‘The Interpretation of the Statutes’, writes;

“Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.... Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be – The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient”

Nabanita Kapat Patra V. Collector, Kandhamal & Anr.

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1222

ODISHA GRAMA PANCHAYATS ACT, 1964 – Section 25(1)(v) – Disqualification – More than two children – Concurrent findings – The election of the returned candidate as Sarpanch was challenged on the ground that he had more than two children born after the cut-off date prescribed under the Amendment Act, 1994 – The Civil Judge (Junior Division), on appreciation of oral and documentary evidence including statutory registers maintained by health and ICDS authorities, declared the returned candidate disqualified – The finding was affirmed by the District Judge in election appeal – In writ proceedings, the returned candidate assailed the concurrent findings as perverse – Whether the concurrent findings of the Courts below suffer from any illegality.

Held: No – In so far as the plea of the returned candidate that two of his children, namely, Gurumurthy Gamango and Chandra Sekhar Gamango are of his brother, namely, Benu, the same has been disbelieved by the learned Courts below – In support of such claim, no documentary evidence has been adduced – Though, independent witnesses have been examined as D.Ws. 2 to 6, who corroborated the above claim of the returned candidate examined as D.W.1 but their evidence was disbelieved and rightly so, since such a bald plea is unworthy of acceptance in juxtaposition to the overwhelming evidence received to the contrary – Nothing could be shown to the Court by Mr. Seth, learned counsel for the returned candidate claiming that the decision of the learned Courts below in any way to be perverse – The entire evidence disclosed that the returned candidate is having more than two children born after the cut-off date, which readily invites disqualification under law – The Court is not inclined to take a different view than the one expressed by both the Courts below on issue of disqualification.

Ramesh Chandra Majhi V. B.D.O.-cum-Election Officer of Panchayat Samiti, R. Udayagiri, Gajapati & Anr.

2025 (III) ILR-Cut.....

1315

ODISHA GRAMA PANCHAYATS ACT, 1964 – Sections 34 and 40 – Declaration of elected candidate – More than one candidates – Election petitioner secured second highest votes – The election petitioner, who secured the second highest number of votes in an election contested by five candidates, was declared elected by the Trial Court after disqualification of the returned candidate – The appellate court affirmed the disqualification but set aside the declaration and directed afresh election – Whether the findings of the appellate court suffer from any perversity or legal infirmity warranting interference in writ jurisdiction?

Held: No – Law is well settled that the candidate, who polled the second highest number of votes is not automatically declared as duly elected – The principle is based on the rationale that a voter's intent is to elect a particular person in the election and not to vote the candidates in the preferential order – The votes cast for the disqualified candidate may be considered as stray, if he is disqualified and cannot simply be transferred to the candidate, who polled the second highest – Any such decision even when the voters may not have supported the election petitioner as the returned candidate, not being the election declaring any one of them as the elected candidate upon such disqualification, in the considered view of the Court, is likely to override the voters will and decision – In other words, an election is considered a contest of the individuals and voters cast their votes to a particular candidate of their choice – If the winning candidate is later found to be ineligible, it invalidates the mandate they received – The votes cast for the disqualified candidate even when treated as invalid, the result cannot simply be passed on to the next candidate securing higher number of votes – The Courts have consistently ruled that the voters, who supported the disqualified candidate intended him to win the election and not for their votes to be transferred to the second in line and therefore, automatically declaring the candidate, who polled the second highest number of votes would be like disrespecting the choice – According to the Court, even under the Representation of People Act, a candidate can only be declared as elected, if he is entitled to and the second highest polled candidate is not entitled to a similar relief, unless the election is between two candidates and upon disqualification of one of them – It has also been consistently held by the Apex Court that the standard practice and procedure in case of disqualification when more than two candidates in the fray would be to declare the election void and to go for a fresh one and not to declare the second highest polled candidate as duly elected – In *Dhableswar Sahu* (supra), the dispute was primarily over the election of a returned candidate for having more than two children born after the cut-off date and it was confirmed in appeal and therefore, for the concurrent findings, the writ jurisdiction was not invoked to upset it – Such a question to declare someone else as the elected candidate after a

disqualification was never an issue for consideration in *Dhableswar Sahu* (supra) – For the reasons discussed hereinbefore, the Court is, therefore, of the conclusion that the finding on disqualification of the learned Court below does not suffer from any perversity and hence, therefore, it has to be upheld.

Ramesh Chandra Majhi V. B.D.O.-cum-Election Officer of Panchayat Samiti, R. Udayagiri, Gajapati & Anr.

2025 (III) ILR-Cut.....

1315

OIL INDUSTRY TRANSPORT DISCIPLINE GUIDELINES –

Clause 8.2.2.14 – Unauthorised use of tank truck outside contract – Scope and applicability – Petitioner/transporter held an IOC transport contract with six attached tank trucks (TTs) – Two TTs developed mechanical issues – Petitioner sought (i) permission to replace them with newer, higher-capacity TTs and (ii) an NOC to list these TTs in another PSU tender – IOC initially issued the NOC but later cancelled it invoking Clause 8.2.2.14, alleging “unauthorised use of TT outside the contract.” – However, these were never withdrawn or actually deployed elsewhere – Whether cancellation of the NOC under Clause 8.2.2.14 was valid when no actual unauthorised use of the TTs had occurred.

Held: No – Mere intention to use the TTs by reflecting the same in other tender at the stage of its participation for which the no objection was given cannot be said that the said TTs have been unauthorisedly used as the situation for its use has not arisen – The said clause can only be activated in the event the petitioner emerges successful in the other contract and using the said TTs therein without any formal authority or the permission granted by the existing contracting parties – We, thus, have no hesitation that shelter under Clause 8.2.2.14 is completely misplaced and the action taken thereupon is not justifiable nor can be sustained.

M/s. Omm Shree Transport V. Indian Oil Corporation Ltd. & Ors.

2025 (III) ILR-Cut.....

1114

Principle for appreciation of case based on circumstantial evidence –
Discussed.

Rupa Jerai & Ors. V. State of Odisha

2025 (III) ILR-Cut.....

1189

PROPERTY LAW – The original owner sold the properties to defendants No. 3 to 5 through registered sale deed dtd. 30.03.1960 and delivered possession thereof – Subsequently the defendants No. 3 to 5

sold the suit properties to plaintiff through two registered sale deeds – At the time of execution of registered sale deed dtd. 30.03.1960 the settlement operation was almost completed and the final Hal ROR of the suit properties were published in the name of original owner – The son of original owner illegally executed a registered sale deed dtd. 23.10.1976 in respect of suit properties in favour of Defendants No. 1 & 2 – The plaintiffs filed the suit praying for declaration of their right, title and interest over the suit properties and to confirm their possession – The defendant No. 1 & 2 challenged the sale deed dated 30.03.1960 upon on the ground of non-payment of entire consideration amount – Whether validity of the sale deed can be questioned on the ground of non payment of consideration by a person not party to the said sale deed.

Held: No – It is the settled propositions of law that, when languages employed in a deed or instrument are clear and unambiguous, in that case, common literary meaning ought to be assigned in interpreting the said deed – As per law, non-payment of entire consideration amount or part payment of consideration amount of a sale deed cannot make the sale deed invalid under law – It is also the law that, a person, who is not a party to the sale deed, the said person, cannot challenge the sale deed on the ground of non-payment of consideration amount – As such, a stranger to the deed is estopped under law to challenge the validity of a sale deed on the ground of non-payment of the consideration amount.

When it is held that, the undisputed owners of the suit properties i.e. Hadu Baliarsingh and Maheswar Baliarsingh had transferred their right, title interest and possession of the suit properties in favour of the Defendant Nos.3 to 5 (vendors of the plaintiffs) by executing and registering the sale deed No.2268 dated 30.03.1960 (Ext.2) and had delivered possession thereof, then at this juncture, in view of the principles of law enunciated in the ratio of the aforesaid decisions, as per law, no title and possession of the suit properties was available with the vendors of the Defendant No.1 i.e. sons of Hadu Baliarsingh along with Maheswar Baliarsingh to transfer the same in favour of the Defendant No.1 through RSD No.7805 dated 23.10.1976 vide Ext. A – For which, the said sale deed No.7805 dated 23.10.1976 vide Ext. A executed by sons of Hadu Baliarsingh along with Maheswar Baliarsingh in favour of the Defendant No.1 in respect of the suit properties is void ab-initio being non-est in the eye of law.

Badani Kumari Patra (dead) & Ors. V. Purna Chandra Jena (dead) & Ors.

RAILWAYS ACT, 1989 – Sections 78, 83 r/w Railway Board Rates Circular No. 36 of 2009 – In the present Appeal the order passed by Railway claims Tribunal directing to refund ₹ 58,01,110.80 (Distance Based Charges) with simple interest @ 6% per annum from 2/12/2015 till payment is under challenge – The appellant is the East Coast Railway Authority & the respondent is a Government of India Enterprises engaged in the production and commercial dissemination of iron oxide pellets – The respondents/company is entirely dependent upon the services of the Indian Railways for the conveyance of iron ore domestically as well as to the foreign countries – The respondent/ company booked a railway rake for carriage of its material – The Appellant railway administration while assessing the freight payable of the said consignment, not only levied the regular freight charges but also imposed an additional Distance Based Charges – The respondent pleaded that the iron ore fines in question were intended exclusively for domestic industrial consumption not for the exportation – The appellant contended that the respondent/company is an 100% export oriented unit and the respondent had not submitted the requisite documents i.e. Affidavit by consignee before taking delivery and indemnity note by consignee as specified vide Para 3(B) (III) and Para 3(B) (V) of the Rate Circular 36 of 2009 – The tribunal after examining the records, exhibits filed by the both parties observed that no pellets were sold outside India and all the pellets sold domestically – Whether this court exercising limited appellate jurisdiction can re-appreciate/re-evaluate the factual determination duly rendered upon an adequate evidentiary foundation?

Held: No – In the absence of any demonstrated perversity, patent illegality, or mis-appreciation of evidence, such a finding warrants judicial deference under the well-settled doctrine governing appellate circumspection – This Court, exercising limited appellate jurisdiction under Section 23 of the Railway Claims Tribunal Act, 1987, is not tasked with re-evaluating factual determinations duly rendered upon an adequate evidentiary foundation – The principle of concurrent factual finality, deeply embedded in appellate jurisprudence, obliges this Court to respect the factual conclusions of the Tribunal, particularly when they emanate from contemporaneous industrial and fiscal records, and exhibit both coherence and evidentiary integrity.

Union of India V. M/s. KIOCL Ltd., Bangalore

2025 (III) ILR-Cut.....

1289

REGISTRATION ACT, 1908 – Sections 22-A(C), 71, 77 – Petitioner executed a power of attorney on 13.01.2021 in respect of the properties covered there in favour of the Opposite Party No. 3/S.N Construction and

Developer – The attorney holder did not develop the properties and also did not construct any building as per the deed for which the petitioner revoked the power of attorney and intimated about the same through a letter dated 18.04.2024 to the Opp. Party No. 3 – Petitioner presented the deed of revocation/ cancellation before the sub-registrar for registration which was refused on the ground that the deed of revocation/cancellation is a sharing power – Whether refusal of registration of cancellation/revocation deed, on the ground that it relates to a sharing power and is a Development agreement- cum- General Power of attorney, is sustainable under the law.

Held: Yes – When, it is held above that, the Annexure-1 is a development agreement-cum-General Power of Attorney and when there is no reflection/indication in the said Annexure-1 about its unilateral cancellation, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the refusal of registration to the unilateral cancellation of the Development Agreement-cum-General Power of Attorney (Annexure-1) by the O.P. Nos.2 & 1 through the orders dated 22.05.2024 (Annexure-4) & 04.03.2025 (Annexure-5) under Sections 71 & 72 of the Indian Registration Act, 1908 passed by the Sub-Registrar, Khandagiri (O.P. No.2) and District Registrar, Khordha (O.P. No.1) cannot be held as illegal.

Manoranjan Biswal V. Adl. Dist. Magistrate-cum-District Registrar, Khordha & Ors.

2025 (III) ILR-Cut.....

1465

SERVICE JURISPRUDENCE – Cancellation of Regularization – Principle of Natural Justice – Petitioner was duly appointed as a contractual staff nurse as per the ORV Act – The High Power Committee in its proceeding extended the benefit of regularization vide order dated 19.08.2020 – The authority vide order dated 11.01.2021 withdrawn/ cancel the benefit of regularization without following the principle of Natural Justice – Whether the order of withdrawn/cancellation of the benefit of regularization without following the principle of Natural Justice is sustainable under the law.

Held: No – Since Petitioner was duly regularized after completion of 6 years of continuous engagement as a Contractual Staff Nurse and the impugned order under Annexure-11, basing on the impugned letter under Annexure-12, has been issued without following the principle of natural justice, placing reliance on the *decisions as cited supra*, this Court is of

the view that letter under Annexure-12 and consequential order impugned under Annexure-11 could not have been issued/passed.

While disposing the Writ Petition with quashing of the order under Annexure-11 and communication issued under Annexure-12, this Court directs Opp. party No.2 to extend all the benefits as due and admissible in terms of order under Annexure10 in favour of the Petitioner within a period of 4 (four) months from the date of receipt of this order.

Gitanjali Panigrahi V. State of Odisha & Anr.

2025 (III) ILR-Cut.....

1400

SERVICE JURISPRUDENCE – Recovery – Principle of Natural Justice – While the petitioner was working as Junior Engineer, L.I. Division Berhampur, repeated thefts occurred in the Central Store of the Corporation – Materials were stolen from the said store on three occasions during the year of 2004 and 2005, for which FIRs were lodged before the local police station by the petitioner – The executive Engineer, L.I. Division, Berhampur also informed the Managing Director of the Corporation regarding such theft of stock materials from Central Store – The Opposite Party No. 2 issued the common office order dated 26.09.2018 for recovery of the outstanding amount from the petitioner without any prior communication or notice – Whether the order of recovery without affording an opportunity of hearing is sustainable under the law?

Held: No – Law is well settled that fair play in action warrants that no such order, which has the effect of an employee suffering civil consequences, should be passed without putting the concerned to notice and giving him a hearing in the matter.

This Court is of further view that the Authority concerned was not justified to recover the alleged outstanding from the Petitioner without fixing any responsibility on the Petitioner thereby asking him to show cause and making an enquiry to the said effect and in absence of any finding to the effect that the Petitioner was responsible for such repeated thefts occurred in the Central Store of the Corporation at Berhampur – Such unilateral action to deduct the outstanding amount under 18’3’ Head of A/c to the tune of Rs.1,24,774.20 is illegal and unjustified, being hit by the principles of natural justice and deserves interference.

Mohan Behera V. M.D., Odisha Lift Irrigation Corpn. Ltd., Bhubaneswar & Anr.

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1413

SERVICE JURISPRUDENCE – Reservation – Odisha Medical Education Service (Method of Recruitment and Conditions of Service) Rules, 2021 r/w Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 – Recruitment to the post of Asst. Professor (Super Specialty) – Advertisement issued on dated 10.11.2021 – The Writ Petitions have been filed challenging the Advertisement on the ground that in terms of the provisions contained under Rule 6 of the 2021 Rules r/w Section 3 of the 1975 Act, no reservation has been provided in respect of the discipline in Neurology and Gastroenterology – Whether the selection process in respect of these two discipline should be interfered on the ground of violation of Rule 6 of 2021 Rules r/w section 3 of the 1975 Act.

Held: No – Since in terms of the decision in the case of *Indra Sawhney* so followed in *Preeti Srivastav* and *Faculty Association of AIIMS* as cited (supra), no step has been taken by the State as to whether reservation can be followed against recruitment to the post of Asst. Professor in Super Specialty, it is the view of this Court that no illegality or irregularity has been committed by the Opp. Parties while issuing the impugned advertisement – Accordingly, this Court is not inclined to interfere with the recruitment process so undertaken by the Commission pursuant to the advertisement issued vide Advertisement No. 20/2021-22 on 10.11.2021 – Consequentially, both the writ petitions fail and dismissed accordingly – The interim order passed earlier stands vacated.

Dr. Nihar Ranjan Biswal & Anr. V. State of Odisha & Ors.
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1386

SERVICE LAW – Promotion – Reservation – Rule – Petitioner's as well as private opposite parties were working as Asst. Revenue Inspector & Amin in the different Tahasils of the District of Keonjhar – Appointment of petitioners were through the Special recruitment drive for the SC & ST category, in the year of 2009 – Private opposite parties were appointed in the years of 2012 & 2013 under the General Category – Gradation list published – Petitioners were placed in the serial No. 1 to 5 & the private opposite parties were remained below to the petitioners in the gradation list – Departmental Promotion Committee for promotion to the post of Revenue Inspector were held on 18.01.2019 – Private Opposite parties were promoted on the ground that, the promotional post for R.I was earmarked for the general category not for the reserved category – Petitioners contended, Rule 11 of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 mandates promotion is to be given on the principle of Merit-cum-Suitability with due regard to Seniority but petitioners were denied promotion on the

ground that, the promotional post was meant for unreserved category only – On the other hand Opposite Parties contended that as the petitioners were initially appointed in a special recruitment drive, they have already availed relaxation in the initial level, and therefore cannot be considered for promotion in the reserved category & the ceiling limit of 50% already exhausted – In the view of the above contentions, whether petitioners, being senior reserved category employee, can be denied promotion as they are not coming under the unreserved category?

Held: No – The implication of this judgment is that the slots earmarked for specific categories are to be filled up by candidates belonging to those categories alone – When the matter under consideration relates to reservation, it obviously refers to the reserved categories, namely, SC, ST and OBC – It must be kept in mind that ‘unreserved’ by itself is not a category for reservation but in any given recruitment it is the half of the posts in the cadre that remain open for all candidates irrespective of their social categories – In the case of **R.K. Sabharwal v. State of Punjab**, the Constitution Bench of the Supreme Court held as follows:

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts – On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation – Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State.”

Same view was reiterated in the case of **Virpal Singh Chauhan** (supra). What the State Government has done is to treat the unreserved as a category meant for reservation of candidates not coming within the reserved social categories – This is obviously a fallacious approach as by its very nature, the word ‘unreserved’ admits of no reservation whatsoever – It does not and cannot mean that a reserved category candidate cannot vie for a post as an unreserved candidate by competing on his own merit – This was recognized by the Constitution Bench of the Supreme Court even earlier in the case of **Indra Sawhney** (supra), wherein the following was held.

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation – It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

The chance to compete on merit is open to all irrespective of their social categories and cannot be denied to any candidate – This would amount to direct violation of the principles of equality enshrined under Article 14 as well as 16(4) of Constitution of India. In a recent case i.e., **Union of India v. Sajib Roy**, the Supreme Court held as follows:

“32. On an analysis of the aforesaid cases, we summarise as follows:

Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case – That is to say, in the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats – However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.”

Be it noted that no such embargo is available in the ODRS Rules, 1983 – Obviously, the clarification issued by the Government on 11.01.2019 cannot override the provisions of the ODRS Rules, 1983.

Sanjay Kumar Perei & Ors. V. State of Odisha & Ors.

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1332

WORDS & PHRASES – Fraud – Meaning of – Discussed.

Since much is argued as to the contentious issue of fraud, the same requires a deeper examination so that one will have a clear idea as to what fraud means in the realm of law.

(i) Kerr on fraud says as under:

“...It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood ... Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud

– *Fraud is infinite in variety... courts have reserv(ed) to themselves the liberty to deal with it under whatever form it may present itself – Fraud ... may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another – All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud – Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to...*”

(ii) ‘Fraud vitiates everything’, said Lord Edward Coke centuries ago in *REX vs. DUCHESS OF KINGSTON*, – Our Apex Court adopted this as a native norm as reiterated in *S.P.CHENGALVARAYA NAIDU vs. JAGANNATH*, – However, Coke’s statement is of wide sweep and has several implicationary reflections: fraud in public law vis-à-vis fraud in private law; fraud on the parties vis-à-vis fraud on the court; fraud going to the root of matter vis-à-vis fraud operating at the periphery and the like.

However, fraud & fabrication have to be strictly pleaded & demonstrated – Fraud cannot be chanted like mantra – Added, the person who had sworn to affidavit is dead & gone leaving the widow.

Susama Mishra V. State of Odisha & Ors.

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1250

WORDS & PHRASES – Possession – Meaning of – Discussed.

Possession consists of two ingredients which Salmond on Jurisprudence (7th ed.) page 297-308 mentions viz., (i) *corpus possessionis* and (ii) *animus possidendi* – The former, he says, comprises of both the power to use the thing possessed and the existence of grounds for the expectation that the possessor's use will not be interfered with; the later consists of intent to appropriate to oneself the exclusive use of the thing possessed – Learned Author P.J.Fitzgerald who edited 'Salmond's Jurisprudence' 12th Edition (at page 272) states "(i) The distinction between animus and corpus was made in Roman law: Dig.41.2.3.1., and has been accepted by such jurists as Savigny, Thering, Pollock, Salmond and Holmes" – Apex Court too in the case of Poonaram Vs. Motiram, at paragraph 9 has considered this aspect quoting Salmond. The Apex Court at paragraph 13 observes as under:

"13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property..."

Susama Mishra V. State of Odisha & Ors.

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WORKS CONTRACT – Withholding of dues despite completion of work – Pending extension of time – Justification – Petitioner, a B-Class contractor, completed construction works under the Deo Irrigation Project – Despite issuance of completion certificate and verification of bills, authorities withheld (i) ₹6,80,000 from R/A bills, (ii) ₹6,00,000 security deposit, and (iii) ₹3,41,000 bank guarantee, citing pending extension-of-time approval – Question raised, Whether a writ petition is maintainable when the principal relief sought is recovery of money withheld under a works contract.

Held: Yes – It is axiomatic to record that there is no complete bar in entertaining the writ petition claiming relief of refund of admitted and/or crystallised amount – The Writ Court shall refuse to grant such relief if it involves a disputed question of facts, the voluminous documents to be considered and the evidence to be laid by the authorities – In such situation the Writ Court may refuse to exercise such jurisdiction and relegate the parties to the Civil Court – The Court must ascertain before it embarks its journey on such parameters as to whether the action or the function of the public authorities or its officials are unreasonable, irrational and deprives the right accrued to the litigant to have the said amount refunded to it.

Reverting to the instant case, as indicated hereinabove, there is no denial that the petitioner executed the work in terms of an agreement to the satisfaction of the authorities, but there was a delay perceived, which cannot be attributed to the conduct of the petitioner, which has been highlighted by the competent authority in the letter dated 27.02.2025 of the Chief Construction Engineer, Deo Irrigation Project, Karanjia addressed to the Engineer-in-Chief, Procurement – Even the counter affidavit filed by the opposite party nos. 3 and 4 contained a clear admission so far as the initial security deposit, the bank guarantee and other security deposits made by the petitioner in terms of the said agreement.

We thus do not find any fetter in directing the release of the amount withheld in anticipation of final decision to be taken on the extension of time after meticulously going into the said letter dated 27.02.2025 – So far as the claim of compensation because of the delay caused by the authorities, which in our opinion requires an evidence to be gone into and, therefore, cannot be awarded at this stage.

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2025 (III) ILR-CUT-1114

**M/s. OMM SHREE TRANSPORT
V.
INDIAN OIL CORPORATION LTD. & ORS.**

[W.P.(C). NO. 25005 OF 2025]

28 NOVEMBER 2025

[HARISH TANDON, C.J. & MURAHARI SRI RAMAN, J.]**Issue for Consideration**

Whether the action of the IOC in cancelling the no objection certificate under Clause 8.2.2.14 of the Guidelines is justified.

Headnotes

OIL INDUSTRY TRANSPORT DISCIPLINE GUIDELINES – Clause 8.2.2.14 – Unauthorised use of tank truck outside contract – Scope and applicability – Petitioner/transporter held an IOC transport contract with six attached tank trucks (TTs) – Two TTs developed mechanical issues – Petitioner sought (i) permission to replace them with newer, higher-capacity TTs and (ii) an NOC to list these TTs in another PSU tender – IOC initially issued the NOC but later cancelled it invoking Clause 8.2.2.14, alleging “unauthorised use of TT outside the contract.” – However, these were never withdrawn or actually deployed elsewhere – Whether cancellation of the NOC under Clause 8.2.2.14 was valid when no actual unauthorised use of the TTs had occurred.

Held: No – Mere intention to use the TTs by reflecting the same in other tender at the stage of its participation for which the no objection was given cannot be said that the said TTs have been unauthorizedly used as the situation for its use has not arisen – The said clause can only be activated in the event the petitioner emerges successful in the other contract and using the said TTs therein without any formal authority or the permission granted by the existing contracting parties – We, thus, have no hesitation that shelter under Clause 8.2.2.14 is completely misplaced and the action taken thereupon is not justifiable nor can be sustained. (Para 6.4)

Citations Reference

Mohinder Singh Gill and another v. The Chief Election Officer, New Delhi and others, **AIR 1978 Supreme Court 851 – referred to.**

List of Acts

Oil Industry Transport Discipline Guidelines (OITDG), Version 5.0

Keywords

Unauthorised use; Contractual obligations; Tender participation; Mechanical issues in Tank Trucks; Operational diversion; Misinterpretation of guidelines; Arbitrariness; Reasonableness.

Case Arising From

Cancellation of NOC by the IOC under Clause 8.2.2.14 on dated 2.9.2025.

Appearances for Parties

For Petitioner : Mr. Subir Palit, Sr. Adv. & Ms. Ananya Pradhan.

For Opp.Parties : Mr. Satya Sindhu Kashyap, Senior Panel Counsel

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. Although the matter is listed at the stage of admission, the counsel appearing for the respective parties proceeded to argue the matter on the basis of the documents annexed to the writ petition and tried to interpret the same what they perceived from the language used therein.

2. After hearing respective counsel, we find that the facts are undisputed but they are not *ad idem* on the applicability of certain terms and conditions constituting the contract between the parties. In view of the same, we did not find any impediment in proceeding to decide the matter as the gamut of the dispute is founded and/or based upon the applicability of the clauses embodied in the contract.

3. Before we proceed to address the pivotal issue raised in the instant writ petition, the undisputed facts are adumbrated for the purpose of clarity and precision in determining the points raised before us.

3.1 Pursuant to the tender floated by the opposite party No.1 for “road transportation of bulk petroleum products by bottom loading tank trucks-MS/HSD/Branded fuels” from Paradip terminal to different locations within the State and outside the State, undeniably, the petitioner was declared the successful tenderer having quoted the lowest price and a letter of acceptance dated 2nd December, 2021 was issued by the opposite party No.1 to the petitioner. The said letter of acceptance revealed that the petitioner is required to furnish the requisite security deposit within fifteen days from the date of issuance of the said letter of acceptance and execute the agreement as per the tender terms. Apart from the same, the list of the Tank Trucks (TTs) of six numbers out of which two numbers of TTs have 12 to 16 Kilo Liter capacity and the rest have 18 to 40 Kilo Liter capacity to be attached thereto for the purpose of its utilization in terms of the contract. In order to eradicate any confusion in discerning the fact, it is to be noted that while participating in the tender, one of the requisite conditions is to disclose the TTs of the specified capacity and on awarding the contract, those TTs would be attached for the purpose of transportation with the opposite party No.1. The contract was awarded for such purpose for a period of five years and is still in operation.

3.2 The genesis of the dispute can be traced from a letter dated 31st July, 2025 issued by the petitioner to the opposite party No.1 for exchange of two TTs having a capacity of 12 to 16 KL as they are experiencing mechanical issues, i.e., the engine performance, the frequent breakdowns and the loading failures impeding the continuous, uninterrupted and seamless service of transportation with a request to replace the said vehicles with the other two vehicles. On the next day, i.e., 1st August, 2025, the petitioner further wrote a letter to the opposite party No.1 seeking the replacement of the above two TTs with the new TTs having higher capacity and of a recent model as they intend to participate in another tender floated by other oil company.

3.3 The Indian Oil Corporation responded by issuing a “no objection certificate” of the even date for participation of those TTs in the other tender. Immediately thereafter the proposal was made on 06.08.2025 by the petitioner to replace the aforesaid TTs of recent model with higher capacity which was duly received by the Indian Oil Corporation, but did not release those two TTs nor communicated the replacement thereof. The reminders were made by the petitioner through e-mail that despite no objection certificate having issued, the said TTs have not been released and reminded them of releasing those two TTs. Subsequently, on 29.08.2025 Indian Oil Corporation issued an e-mail communicating that the issuance of no objection certificate shall not be construed to mean that the said TTs are out of contract and, therefore, those TTs should be immediately placed at the site for transportation. The petitioner was further served with the notice through e-mail on 02.09.2025 that the said TTs for which said no objection was issued initially shall not be released and the said no objection is cancelled and stands null and void as it violates Clause 8.2.2.14 of Oil Industry Transport Discipline Guidelines (Version 5.0). The challenge is made to the said communication in the instant writ petition.

4. Senior Counsel for the petitioner submits that the said Clause-8.2.2.14 of the said Guidelines being the foundation for cancellation of no objection certificate is not applicable and, therefore, the said order of cancellation is liable to be quashed and set aside. It is further submitted that the said clause is relatable to an eventuality when the TTs which are attached to the contract are unauthorizedly used for any other contract which in fact has not been done in the instant case. It is further submitted that the authorities cannot take a plea which is inconsequential and not relatable to an eventuality as foundation for cancellation of the no objection certificate and placed reliance upon the judgment of the apex Court in the case of *Mohinder Singh Gill and another v. The Chief Election Officer, New Delhi and others*, reported in *AIR 1978 Supreme Court 851*.

5. On the other hand, learned counsel for the Indian Oil Corporation took a stand that since the petitioner has used the TTs attached to the contract, it attracts violation of the said guidelines and, therefore, there is no infirmity on the part of the authorities in rejecting the no objection certificate. It is further submitted that the

petitioner initially asked for release of those TTs for the purpose of repair, but subsequently changed this stand to unauthorizedly use of those TTs in other contract and, there is no fetter on the part of the authorities in recalling the no objection certificate after noticing the change of the stand taken by the petitioner subsequently.

6. On the conspectus of the aforesaid facts and submissions so advanced, the seminal point involved in the instant writ petition is whether the action of the authorities in cancelling the no objection certificate upon taking shelter under Clause 8.2.2.14 of the Guidelines is justified. It would be apposite and profitable to quote the said Clause, which runs thus:

Clause No.	Type of malpractice/irregularity	Penalty against number of instances		
		First	Second	Third
8.2.2.14	Unauthorized use of TT outside the contract	TT shall be blacklisted		

On a bare reading of the said Clause, it is manifest that once the TTs are attached to a contract, any unauthorised use *dehors* the same may attract blacklisting of the transporter. Once the consequences are provided for a thing done, the authorities cannot take shelter for any other consequences not provided in the said guidelines. Both the parties have relied upon the said Clause and did not take plea whether such guidelines have any legal force and, therefore, we do not intend to go into the nuances of such aspect.

6.1 The facts adumbrated hereinbefore clearly stipulate that initially the said two TTs which were attached to the contract were sought to be released on the pretext of the repair to be effected, but subsequently, the no objection was sought for as the petitioner intended to attach those TTs in other tender floated for similar nature of work which was issued by the Corporation. The tenet of the correspondences exchanged between the parties are galore that the petitioner never intended to detach those TTs, but sought permission to incorporate those TTs while participating into the contract and in the event he emerges successful bidder in the said contract, the situation for replacement with the higher capacity and the model shall be made. Mere participation in the tender cannot be construed as unauthorized use of the TTs outside the contract for such eventualities being contingent to the finalization of the other tender in the event the petitioner emerged successful bidder therein.

6.2 We are conscious of the inconvenience and/or impediment which the Corporation would face if the TTs are withdrawn as it would affect the seamless transportation of the oil from the depot to the destination. The reason for declaration of the TTs at the time of participating into the tender is laudable that the transporter will not use such TTs in any other contract. Apart from the same, it also ensures that once the TTs are attached to the contract, it will facilitate the other procedural aspects with an intent to avoid any unauthorised transportation of the goods by the transporter. The correspondences reveal that no objection was issued for participation in that tender,

which cannot be construed that the same will be unauthorizedly used outside the contract.

6.3 The word ‘unauthorized’ in common parlance means anything done without the authority and once the same is used in conjunction with the word ‘used’, it leads to an inference that anything done for implementation of something without any authority given actually or impliedly.

6.4 Mere intention to use the TTs by reflecting the same in other tender at the stage of its participation for which the no objection was given cannot be said that the said TTs have been unauthorizedly used as the situation for its use has not arisen. The said clause can only be activated in the event the petitioner emerges successful in the other contract and using the said TTs therein without any formal authority or the permission granted by the existing contracting parties. We, thus, have no hesitation that shelter under Clause 8.2.2.14 is completely misplaced and the action taken thereupon is not justifiable nor can be sustained.

6.5 We are conscious of the somewhat settled proposition of law that the Courts should be slow and circumspect in interfering with the decision of the authority within the four corners of the terms and conditions embodied in the contract, but if the parties have misinterpreted any of the clauses, which do not invite any ambiguity in interpreting the same, the Court may interfere and quash the decision taken in violation thereof. The decision of the contracting authorities is tested not only on the intention to be gathered from the expressed words used in the contract, but also on the reasonability and, therefore, such decision must withstand on the test of reasonability. Though the conditions incorporated in the contract are to disclose the registration number of the TTs at the time of participation in the tender process with full disclosure of its capacity, but the moment the transporter offers the TTs of higher capacity and intended to replace the same with the recent model, we do not find any justification in the stand of the Corporation in taking shelter under the said Clause. What can be reasonably gathered from the mandate of disclosing the registration number of the TTs and the capacity to carry the goods is to ensure the uninterrupted and continuous transportation of the goods and if the old TTs are replaced by new model of higher capacity, there is no justification in denying such permission. An impression is created in us that the Corporation does not intend the transporter to transport the goods of another company dealing in the said goods and such restriction cannot be said to be reasonable.

7. We, thus, set aside the letter cancelling the no objection certificate issued earlier and accordingly, all the consequential steps taken thereupon are also quashed and set aside.

8. The writ petition is thus disposed of. Pending interlocutory application(s), if any, is disposed of accordingly. No costs.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Writ petition disposed of.

2025 (III) ILR-CUT-1119

**MAHESWAR BEHERA
V.
STATE OF ODISHA & ORS.**

[W.P.(C). NO. 32436 OF 2024]

03 DECEMBER 2025

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

Issue for Consideration

Whether a writ petition is maintainable when the principal relief sought is recovery of money withheld under a works contract.

Headnotes

WORKS CONTRACT – Withholding of dues despite completion of work – Pending extension of time – Justification – Petitioner, a B-Class contractor, completed construction works under the Deo Irrigation Project – Despite issuance of completion certificate and verification of bills, authorities withheld (i) ₹6,80,000 from R/A bills, (ii) ₹6,00,000 security deposit, and (iii) ₹3,41,000 bank guarantee, citing pending extension-of-time approval – Question raised, Whether a writ petition is maintainable when the principal relief sought is recovery of money withheld under a works contract.

Held: Yes – It is axiomatic to record that there is no complete bar in entertaining the writ petition claiming relief of refund of admitted and/or crystallised amount – The Writ Court shall refuse to grant such relief if it involves a disputed question of facts, the voluminous documents to be considered and the evidence to be laid by the authorities – In such situation the Writ Court may refuse to exercise such jurisdiction and relegate the parties to the Civil Court – The Court must ascertain before it embarks its journey on such parameters as to whether the action or the function of the public authorities or its officials are unreasonable, irrational and deprives the right accrued to the litigant to have the said amount refunded to it. (Para 15)

Reverting to the instant case, as indicated hereinabove, there is no denial that the petitioner executed the work in terms of an agreement to the satisfaction of the authorities, but there was a delay perceived, which cannot be attributed to the conduct of the petitioner, which has been highlighted by the competent authority in the letter dated 27.02.2025 of the Chief Construction Engineer, Deo Irrigation Project, Karanjia addressed to the Engineer-in-Chief, Procurement – Even the counter affidavit filed by the opposite party nos. 3 and 4 contained a clear admission so far as the initial

security deposit, the bank guarantee and other security deposits made by the petitioner in terms of the said agreement. (Para 16)

We thus do not find any fetter in directing the release of the amount withheld in anticipation of final decision to be taken on the extension of time after meticulously going into the said letter dated 27.02.2025 – So far as the claim of compensation because of the delay caused by the authorities, which in our opinion requires an evidence to be gone into and, therefore, cannot be awarded at this stage. (Para 17)

Citations Reference

Godavari Sugar Mills Limited v State of Maharashtra and others, (2011) 2 SCC 439; Sughanmal v. State of M.P., AIR 1965 SC 1740; Union of India and others v. Puna Hinda, (2021) 10 SCC 690 – referred to.

List of Acts

Constitution of India, 1950

Keywords

Writ Petition; Maintainability; Recovery of Money; Withheld Dues; Works Contract; Security Deposit; Bank Guarantee; Completion Certificate; Extension of Time; Admitted Amounts.

Case Arising From

Withholding of admitted dues, security deposit, and bank guarantee of the petitioner by the State authorities despite completion of works.

Appearances for Parties

For Petitioner : Mr. Satrughna Dash
For Opp.Parties : Mrs. Suman Pattnaik, A.G.A.

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The seminal point involved in the instant writ petition revolves around the issue whether the writ Court can direct the authorities to refund the amount of money withheld without any justifiable reasons.
2. At the very outset, we must record that the principal and primary relief claimed in the writ petition is the recovery of an amount withheld by the respondent authorities not as an ancillary relief coupled with the other substantive reliefs.
3. Shorn of unnecessary details, the facts emerged from the instant writ petition needs recapitulation in order to determine the points as indicated hereinabove.

3.1 Undeniably, the writ petitioner is registered as a B-Class contractor with the Public Works Department in the State of Odisha and participated in the tender floated for “*excavation & construction of Saharpada Minor, Balabhadrapur Minor and Tail Minor off-taking from RD 23805m to RD 25205m of left Main Distributary including structure of Deo irrigation project*”. The petitioner after having adjudged successful bidder was awarded a contract and an agreement in this regard was also entered into by and between the parties. Undeniably, the project commenced on 10.01.2022 and the petitioner perceived several difficulties and obstacles because of frequent deviation made to the approved plan, which resulted into a delay in completion of the project work and the same, according to the petitioner, was beyond his conceivable imagination. Yet the petitioner continued to execute the work as per the instructions given by the authorities from time to time and also sought for an extension of the period for completion of the said project, which appears to have been granted by the authorities. Despite the work assigned to the petitioner in terms of the tender, additional and extra work was also imposed upon the petitioner by the authority, which was also executed. Apart from the aforementioned hurdles having created in timely execution of the construction work, the delay was also attributed to the dispute raised by several persons claiming their rights in respect of the lands over which such construction was to be undertaken, which includes the felling of the trees and clearance of dense forest, which requires the permission from the competent authority. The petitioner submitted the R/A bills from time to time after execution of the work, which was paid after retaining certain amount in contemplation of a final decision to be taken by the authority after proper verification and scrutiny to be made in this regard. The 9th and 10th R/A bills appear to have been withheld partially despite the completion certificate having issued by the authority and for such action of the authorities which according to the petitioner is irrational and unreasonable, the instant writ petition has been filed for the following reliefs.

“(i) To Admit and allow the writ petition by calling the records from the opp. Parties in connection with engineering contract work undertaken for Excavation and construction of Saharpada minor, Balabhadrapur minor and tail minor off-taking from RD 23805m to RD 25205m of left main distributary including structure of DEO irrigation project.

AND

(ii) To issue rule NISI directing to the O.P.s, to file show cause, if the O.P. fail file show cause or file insufficient cause then the rule may be made absolute.

AND

(iii) To issue writ of mandamus, or any other writ of like nature, directing to O.P.-1 to 5, to pay the withheld amount 26,80,000/-, security money 26,00,000/- and initial security deposit in shape of bank guarantee ₹3,41,000/- along with additional expenditure incurred by the petitioner during the construction of DEO irrigation project to the tune of ₹1,30,06,750/-, total due admissible to petitioner 21,49,66,750/-.”

3.2 Amidst pendency of the writ petition, an interlocutory application, i.e. I.A. No. 16694 of 2024 is taken out by the petitioner for return of the withheld amount of Rs.6,80,000.00, security money to the tune of Rs.6,00,000.00 and initial security

deposit in shape of bank guarantee to the extent of Rs.3,41,000.00, as the petitioner has completed the entire project and completion certificate is also issued by the authority corroborating the aforesaid fact. An additional affidavit is also filed by the writ petitioner bringing the facts that after the completion of the entire project the same has been cross-checked by the Sub Divisional Accounts Officer, which was accepted and ratified by the Superintending Engineer on 21.03.2024. It was also pleaded in the said affidavit that despite the cross checking of the bills, the payment has been deferred and partially disbursed after a lapse of one year without compensating the petitioner in the form of payment of interest and also without any tangible explanation from the side of the authorities.

4. The opposite parties were invited to file counter affidavit to respond the facts pleaded in the writ petition, which in fact has been filed by the opposite party nos. 3 and 4. Although the opposite parties took a usual stand that the writ petition is not maintainable, yet clear admission can be perceived in paragraphs-4 and 6 of the said counter affidavit. The statement made in the aforementioned paragraphs can be summarized that the petitioner completed the work, though beyond the time stipulated therefor and an extension of time proposal to the Engineer-in-Chief, Procurement is pending approval. It is categorically averred that the bank guarantee and security deposit may be released after the final decision is taken on the extension of time. An admission can also be manifestly seen from paragraph-6 that the petitioner was directed to undertake an additional or extra work beyond the scope of contract on the directions or the order passed by the opposite party nos. 3, 4 and 5, which was also duly executed. However, the claim made by the petitioner that because of the delayed decision taken by the authorities, the machineries, employees, labours and technical persons were made to sit idle, which caused an extra monetary burden on the petitioner, for which he should be monetarily compensated, was denied.

5. The *summum bonum* of the pleadings made in the counter affidavit leaves no ambiguity that the authorities have accepted withholding of the money so far as the security deposits and the other undisputed amounts are concerned subject to the final approval to be taken on the extension of time by the competent authority. There is also no denial of the execution of the extra work on the instruction given by the competent authority and withholding of an amount is dependent upon the final decision to be taken on the extension of time in completing the project.

6. On the backdrop of the aforesaid facts discerned from the pleadings filed by the respective parties the question boils down to whether a writ for recovery of the amount due and payable to the petitioner is maintainable.

7. It would be pertinent to recapitulate the letter dated 27.02.2025 issued by the Chief Construction Engineer, Deo Irrigation Project, Karanjia, which contains necessary compliances in point wise manner including the reasons for delay in submission of the extension of time application. It is indicated that the delay was caused because of the tree felling and also handing over the possession of the land

as the compensation to the land owners was not paid. The said letter was issued to the Engineer in Chief, Procurement and appears to have been taken as a defence as the final decision has not been taken thereupon by the said authority. It can be reasonably gathered from the said document that the delay in completion of the project is not attributable to the conduct of the petitioner, but appears to have been caused because of the impediments having faced, which was beyond the control of the writ petitioner. Several documents have been annexed which includes the R/A bills and partial payment thereupon including the work completion certificate issued by the competent authority signifying the satisfactory completion of the work entrusted upon the petitioner in terms of the said agreement.

8. A legal plea is taken by the opposite parties that the writ for recovery of an amount of money is not maintainable and the petitioner should be relegated to the Civil Suit, as it involves the determination of a disputed question of facts, which can only be decided on the basis of the evidences to be adduced in this regard.

9. The issue pertaining to maintainability of the writ petition strike at the root of the jurisdiction to be exercised by the writ Court needs deeper scrutiny and, therefore, we invited the parties to argue on the said point.

10. According to the petitioner, there is no complete embargo created in law in maintaining the writ petition for recovery of an admitted sum and, therefore, the stand of the opposite parties has to be understood in such perspective. It is submitted that the amount which is undisputed or impliedly accepted by the opposite parties can be directed to be disbursed to the petitioner under Article 226 of the Constitution of India. It is arduously submitted that the opposite parties have not denied withholding of the security deposit or other deposits being *sine qua non* to the execution of the agreement in the counter affidavit and, therefore, there is no fetter on the part of the writ Court to direct the opposite parties to release the said amount.

11. *Per contra*, the Additional Government Advocate submits that since the dispute revolves around a private law domain and there is no public law element involved therein, the writ Court is not competent to entertain the writ petition, which is founded upon the solitary relief of recovery of money. It is further submitted that the authorities have taken a conscious decision to release the amount only after a final decision on extension of time is taken, which would further be evident from the stand taken in the counter affidavit.

12. There has been a considerable debate on the scope and jurisdiction exercised by the writ Court under Article 226 of the Constitution of India to enforce the civil liabilities arising from breach of a contract to pay an amount due to the claimant. The Courts of the country often faced such situation and takes divergent views as in some cases the writ was held not maintainable if the solitary relief is claimed for recovery of money and in some the same is entertained in granting the relief. It would be apposite to consider a decision of the Apex Court in the case of

Godavari Sugar Mills Limited v State of Maharashtra and others, reported in (2011) 2 SCC 439 wherein the apex Court formulated the points as to whether the writ petition for recovery of money is maintainable or not. In the said case, a notification was issued under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 declaring that the appellant therein is holding and possessing surplus agricultural land the possession thereof was taken by the authorities. Subsequently, the claim was submitted to the authorities for payment of the compensation and an award under the said Act was made containing an interest on the compensation @ 3% per annum. The writ petition was filed for an interest @ 9% instead of 3%, which ultimately travelled to the apex Court. In the perspective of the aforesaid facts, the apex Court formulated a question as to whether the writ petition for recovery of money *simpliciter* is maintainable or not. Reliance was placed upon a judgment of the Apex Court rendered in the case of ***Suganmal v. State of M.P.***, reported in AIR 1965 SC 1740 wherein it is held that the writ petition to enforce the money claim is not maintainable. The said judgment was subsequently taken into consideration in the subsequent cases and was explained and distinguished which was noticed by the apex Court in the said report. The Apex Court succinctly and lucidly laid down the principles in relation thereto, more particularly in what circumstances a writ for money claim can be maintained in the following:

*“(i) Normally, a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers. (Vide *Burmah Construction Co. v. State of Orissa.*)*

*(ii) If a right has been infringed-whether a fundamental right or a statutory right and the aggrieved party comes to the Court for enforcement of the right, it will not be giving complete relief if the Court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realised by the Government without the authority of law. (Vide *State of M.P. v. Bhailal Bhai.*)*

*(iii) A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. (Vide *Suganmal v. State of M.P.*)*

(iv) There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment, etc. While a petition praying for mere issue of a writ of mandamus to the State to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of

law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct refund in a writ petition. (Vide Salonah Tea Co. Ltd. v. Supdt. of Taxes.)

(v) It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide U.P. Pollution Control Board v. Kanoria Industrial Ltd.)

(vi) Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. (Vide Sanjana M. Wig v. Hindustan Petroleum Corpn. Ltd.)

13. What can be reasonably gathered from the aforesaid decision that ordinarily the writ petition under Article 226 of the Constitution to enforce the civil rights touching upon the breach of the contract is not maintainable, but there is no fetter on the part of the writ Court in directing the payment thereof if it relates to enforcement of a statutory right or on the functions of its officials. It is further held that the moment the question involves the public law functions dependent upon the peculiarity of the facts, there is no absolute inhibition in the writ Court in granting the reliefs in the form of refund of the amount.

14. However in a recent decision rendered in the case of ***Union of India and others v. Puna Hinda***, reported in (2021) 10 SCC 690, the apex Court held that the writ Court may refuse to entertain the writ petition involving the disputed question of facts or the relief is dependent upon an evidence to be laid in this regard, but there is no fetter on the part of the writ Court to issue direction upon the authorities to make the payment of money if the same is admitted or otherwise crystallised in the following paragraph.

“24. Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallized. Therefore, in the absence of any acceptance of Joint Survey Report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e.,

arbitration and not by the Writ Court as it does not have the expertise in respect of measurements or construction of roads.

15. It is axiomatic to record that there is no complete bar in entertaining the writ petition claiming relief of refund of admitted and/or crystallised amount. The writ Court shall refuse to grant such relief if it involves a disputed question of facts, the voluminous documents to be considered and the evidence to be laid by the authorities. In such situation the writ Court may refuse to exercise such jurisdiction and relegate the parties to the Civil Court. The court must ascertain before it embarks its journey on such parameters as to whether the action or the function of the public authorities or its officials are unreasonable, irrational and deprives the right accrued to the litigant to have the said amount refunded to it.

16. Reverting to the instant case, as indicated hereinabove, there is no denial that the petitioner executed the work in terms of an agreement to the satisfaction of the authorities, but there was a delay perceived, which cannot be attributed to the conduct of the petitioner, which has been highlighted by the competent authority in the letter dated 27.02.2025 of the Chief Construction Engineer, Deo Irrigation Project, Karanjia addressed to the Engineer-in-Chief, Procurement. Even the counter affidavit filed by the opposite party nos. 3 and 4 contained a clear admission so far as the initial security deposit, the bank guarantee and other security deposits made by the petitioner in terms of the said agreement.

17. We thus do not find any fetter in directing the release of the amount withheld in anticipation of final decision to be taken on the extension of time after meticulously going into the said letter dated 27.02.2025. So far as the claim of compensation because of the delay caused by the authorities, which in our opinion requires an evidence to be gone into and, therefore, cannot be awarded at this stage.

18. We, therefore, allow the writ petition to the extent that the authorities shall pay a sum of Rs.6,80,000.00 which has been withheld, a sum of Rs.6,00,000.00 which was submitted by the petitioner as security deposit and also a sum of Rs.3,41,000.00 lying with the authorities as initial security in the form of bank guarantee within a period of four weeks from the date of communication of this order. So far as the claim of compensation in causing delay by the authorities in execution of the work is concerned, it is open to the petitioner to claim the said amount by approaching the Civil Court.

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

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Writ petition is disposed of.

2025 (III) ILR-CUT-1127

HARAPRASANNA TRIPATHY
V.
PRINCIPAL SECY., DEPARTMENT OF HIGHER EDUCATION,
BHUBANESWAR & ORS.

[WA NO. 1275 OF 2025]

04 DECEMBER 2025

[HARISH TANDON, C.J. & MURAHARI SRI RAMAN, J.]**Issue for Consideration**

Whether a writ petition challenging the order of Director, Higher Education can be maintained without first approaching the Odisha Education Tribunal.

Headnotes

ODISHA EDUCATION ACT, 1969 – Section 24-B – Jurisdiction of Education Tribunal – Maintainability of writ petition – Appellant, appointed as Demonstrator in the year 1987 and was permitted to hold 7th Lecturer post from the year 2000 in KBDVA College, Nirakarpur – Governing Body resolved to approve his promotion in the year 2003 and approached the Director, Higher education for approval, who rejected it – Appellant approached the High Court, then the Education Tribunal, which in 2022 directed for reconsideration of his claim – Director finally rejected the claim on 27-03-2025 pursuant to Tribunal's direction – Instead of challenging it before the Tribunal, appellant filed a writ petition, which was dismissed by the learned Single Bench due to availability of statutory remedy – Question raised, Whether a writ petition challenging the order of Director, Higher Education can be maintained without first approaching the Odisha Education Tribunal.

Held: No – It is axiomatic to record that the appellant has been taking steps assailing the action of the authorities either by filing writ petition before this Court and at times before the Tribunal, which appears to be convenient to him – It is a matter of concern that such proceedings are being dealt with, obviously in absence of any plea relating to the jurisdiction – A litigant cannot choose the forum at his convenience as the jurisdictional issue strikes at the root and, therefore, it is the foremost duty of a Court while dealing any litigation to satisfy itself whether it has a jurisdiction to deal with the disputes/issues raised therein – Any uncertainty in relation to jurisdictional issue would not only invite an anomaly situation, but also conflicting decisions bringing uncertainty in its due implementation – Once the Legislature has provided a forum for redressal and/or determination of the disputes, it would be preposterous to suggest that such forum is a forum of

convenience and does not limit or abridge the right of the litigant to approach another forum – Even if the power of High Court under Article 226 of the Constitution of India cannot be ousted being a basic structure of the Constitution, yet the Writ Court may decline to entertain the writ petition if a forum is provided in the statute, which is competent to deal with such issues within its folds – The order dated 27th March, 2025 was passed in due implementation of the direction issued by the Tribunal and, therefore, we do not find any infirmity in the impugned order, which relegate the appellant to move the forum provided under Section 24-B of the said Act. (Para 21)

We have discussed in *extenso* the scope and jurisdiction of the Tribunal constituted under Section 24-A of the said Act and the dispute comes within the four-corners of the said jurisdiction and, therefore, the challenge to the order dated 27th March, 2025 can be made by approaching the said Tribunal. (Para 22)

Citations Reference

State of West Bengal v. Swapan Kumar Guha, (1982) 1 SCC 561; Bihar State Electricity Board v. Pulak Enterprises, (2009) 5 SCC 641 – referred to.

List of Acts

Odisha Education Act, 1969; Odisha Education (Recruitment and Conditions of Service of Teachers and Members of Staff of Aided Educational Institutions) Rules, 1974; Odisha Education (Amendment) Act, 1998.

Keywords

Education Tribunal; Jurisdiction; Maintainability of Writ; Alternative Remedy; Lecturer Approval; Promotion Claim; Grant-in-Aid.

Case Arising From

Order dated 27th March 2025 passed by the Director, Higher Education and the subsequent dismissal of the W.P.(C) No. 15175 of 2025 on the ground that the Appellant should pursue the statutory remedy before the Odisha Education Tribunal.

Appearances for Parties

For Appellants : Mr. Surya Prasad Mishra, Sr. Adv. (Amicus Curiae)
Mr. Haraprasanna Tripathy, In-person
For Respondents : Mr. Saswat Das, A.G.A. for State

Judgment/Order

Judgment

HARISH TANDON, C.J.

1. The seminal point involved in the instant writ appeal is whether a writ petition can be maintained / entertained against an order dated 27th March, 2025

passed by the Director, Higher Education, Government of Odisha in rejecting the representation of the appellant claiming for approval of his promotion to the post of Lecturer in Physics, the 7th post, without approaching the Odisha Education Tribunal (the ‘Tribunal’ for short) constituted under the Odisha Education Act, 1969 (the ‘O.E. Act’ for short).

2. The learned Single Judge disposed of the writ petition being W.P.(C) No.15175 of 2025 filed by the appellant solely on the ground that in view of the provisions contained under Section 24-B of the O.E. Act, the Tribunal is competent and vested with the power to adjudicate the dispute raised in the writ petition and, therefore, the writ petition, by passing the said provision, does not deserve to be entertained as it is open to the appellant to challenge the said order before the Tribunal.

3. Shorn of unnecessary details and in order to determine the point as formulated hereinbefore, it would be apposite to recapitulate the prelude to the litigations ensued at the behest of the appellant in different fora. Undeniably, the appellant (petitioner) was appointed as a Demonstrator in Physics on 8th September, 1987 by the Governing Body of the KBDV College, Nirakarpur (‘college’ for short). While discharging the duties and responsibilities attached to the said post, the appellant was permitted to hold the 7th post of Lecturer in Physics with effect from 6th August, 2000 as the Lecturer in Physics tendered resignation on 5th August, 2000. Subsequently, in a meeting held on 9th April 2003, the Governing Body of the college took a resolution to approve the promotion and/or appointment of the appellant in the 7th post of Lecturer in Physics and approached the Director, Higher Education, Government of Odisha to grant the final approval to such resolution. The Director vide its letter No.47870 dated 4th December, 2012 declined to grant approval to the resolution adopted by the Governing Body of the college on the premise that a Demonstrator in Direct Payment Scheme does not come within the purview of the initial recruitment procedure prescribed for Lecturer in terms of the provisions contained in the O.E. Act and Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institution) Rules, 1974 (‘1974 Rules’ for short).

3.1. Feeling aggrieved by such decision, a writ petition being W.P.(C) No.9325 of 2013 was filed by the appellant before this Court. Amidst the pendency of the said petition, a letter was caused by the Director, Higher Education as posted in the official website of the Higher Education Department asking the Principal of the college to appear with the relevant documents for verification in order to file the counter affidavit in the aforementioned writ petition and upon completion of such exercise, the writ petition was disposed of on 27th April, 2017 without extending any benefits in absolute terms to the appellant. However, the Court observed that the grievance raised by the appellant should be considered by the said authorities as the appellant has demonstrated the act of discrimination founded upon the fact that one of the Demonstrators, who was subsequently appointed as a Lecturer, was granted a

post facto approval. As the said grievance petition remained pending in the domain of the said authority, the application being GIA Case No.70 of 2018 was filed before the Tribunal, which came to be disposed of on 23rd February, 2022 in the following:

“12. xxx. On the face of the above documents and keeping in view the afore quoted observations of the Hon’ble Court in the matter of Nilambar Satapathy, the claim of the petitioner cannot be brushed aside on the ground that it is not in terms of Rule8(2)(b) of the 1974 Rules. The O.P. Nos.1 and 2 are required to consider the claim of the petitioner in the manner the claims of above mentioned Demonstrators were considered.

13. Thus, the G.I.A. application is allowed in part against the O.P. Nos.1 and 2 and ex parte against the O.P. No.3, Governing Body. The O.P. Nos.1 and 2 are directed to consider the claim of the petitioner in the light of the observations made above, within four months from the date of receipt of a certified copy of this judgment. The petitioner be given an opportunity of personal hearing.”

4. Despite the direction as above having passed by the Tribunal, the authorities kept the claim raised by the appellant in the said representation in suspended animation, which constrained the appellant to file the Execution Case No.8 of 2023 before the Tribunal. Amidst the pendency of the said execution case, the representation was taken up by the Director and rejected the claim by passing an order No.17373/HE dated 27th March, 2025. The aforesaid facts were brought on record in the said execution proceeding which was disposed of with the categorical findings that *“since the O.P. Nos.1 and 2 have been directed to consider the claim of the petitioner, as it appears, they have considered the same by affording an opportunity of personal hearing to the petitioner and rejected his claim vide Order No.17373/HE dtd. 27.03.2025. So, nothing is left in this proceeding to be executed. Therefore, the objection filed by the petitioner to the aforesaid rejection order of the O.P. No.2 is rejected.”*

5. Instead of challenging the said order dated 27th March, 2025 before the Tribunal, the appellant approached the writ Court by filing the writ petition, which was disposed of by the impugned order relegating the appellant to challenge the said order before the Tribunal.

6. Though the order impugned in the instant writ appeal does not in explicit term contained the genesis of the dispute, yet it can be reasonably inferred that the learned Single Judge declined to entertain the writ petition assailing the order of the Director dated 27th March, 2025 taken on the basis of a direction passed in the order dated 23rd March, 2022 by the Tribunal as the appellant cannot be permitted to jump the forum.

7. A piquant situation arose on the provisions contained under Section 24-B of the O.E. Act, which provides the power, authority and the jurisdiction exercised by the Tribunal in relation to the disputes and differences between the Managing Committee, the Governing body of any private institution, any teacher or employee of such institution or the State Government or any officer or authority of the said

Government, relating to the eligibility, entitlement, payment or non-payment of grant-in-aid. Initially, an impression was created on the meaningful reading of the language employed in the aforementioned Section with regard to the expression “Grant-in-Aid” having nexus with the eligibility and entitlement and in order to have the clarity on the same and to ponder upon such issues, we invited Mr. Surya Prasad Mishra, learned Senior Counsel to assist the Court as Amicus Curiae for the reason that the appellant is pursuing his cause by appearing in person and the arguments were advanced by him purely on a factual matrix.

8. Before we proceed to determine the point as involved in the instant writ appeal, it would be profitable to quote the said provision in *extenso*, which runs thus

“24-B. Adjudication by Tribunal - (1) *The Tribunal shall have jurisdiction, power and authority to adjudicate all disputes and differences, between the Managing Committee or, as the case may be, the Governing body of any private educational institution and any teacher or employee of such institution or the State Government or any officer or authority of the said Government, relating to or connected with the eligibility, entitlement, payment or non-payment of grant-in-aid.*

(2) *Any person, aggrieved by an order pertaining to any matter within jurisdiction of the Tribunal, may make an application to the Tribunal for the redressal of his grievance.*

(3) *On receipt of an application under Subsection (2), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the application is a fit case for adjudication by it, admit such application, but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons:*

Provided that no application before the Tribunal seeking a claim of grant-in-aid against the State Government or any officer or authority of the said Government shall be admitted, unless the applicant has served a notice on the State Government or concerned officer or authority furnishing the details of the claim and a period of two months has expired from the date of receipt of the said notice by the State Government or, as the case may be, the concerned officer or authority.

(4) *The Tribunal shall not admit an application under Sub-section (2), unless it is made within one year from the date of expiry of the period of two months referred to in Sub-section (3).*

(5) *The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to any rules made by the Government, shall have power to regulate its own procedure.*

(6) *All the proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code, 1860.*

9. Initially, the point would have been set at rest on the factual aspect discerned from the record that on an earlier occasion, the appellant approached the Tribunal wherein the orders were passed and the impugned order being resultant

effect thereof, it is impermissible for the litigant to choose the forum of his convenience ignoring the Statute and the provisions contained therein. The point involved in the instant writ appeal relates to a harmonization of the expressions—‘eligibility’ and ‘entitlement’ in conjunction with the payment or non-payment of grant-in-aid.

10. Mr. Mishra, learned Senior Counsel fervently submits that Section 7-C of the O.E. Act was introduced by way of an Amendment Act No.14 of 1993 to extend grant-in-aid to non-Government Institutions on account of placement of teachers and the payment of salary in commensurate with the others subject to the economic capacity of the State. According to Mr. Mishra, the use of „comma“ (punctuation) cannot be a sole determinant factor in ascertaining the intent and the purport underlining the introduction of the said provision and, therefore, the Court must bear in mind the object and purpose envisaged from the decision of the Government or the Cabinet taken in this regard. According to Mr. Mishra, the eligibility and/or entitlement is intricately connected with the payment or nonpayment of grant-in-aid and, therefore, the jurisdiction exercised by the Tribunal under Section 24-B of the O.E. Act must be confined to a grand-in-aid, which necessarily excludes such jurisdiction and the competence of the Tribunal in relation to any other disputes being outside the purview thereof. Mr. Mishra arduously submits that expression “relating to or connected with” appearing in sub-section (1) of Section 24-B of the O.E. Act should be ascribed a reasonable meaning relatable to the eligibility, entitlement, payment or nonpayment of grant-in-aid, which denuded the Tribunal to adjudicate any other disputes outside the ambit of the grant-in-aid. He thus submits that there is no ambiguity in perceiving the intent and the purport of applicability of the said provision in ascertaining the jurisdiction, the power and the authority exercised by the Tribunal under the aforesaid provision and, therefore, the writ petition assailing the order of the Director, Education Department is maintainable and should not be thrown out solely on the ground of an alternative efficacious remedy provided in the Statute.

11. Learned Additional Government Advocate for the State however took a dissenting opinion on the interpretation of the words, the expressions and the language employed in Sub-section (1) of Section 24-B of the O.E. Act as each word or expression used therein has to be given a proper meaning and the moment the intention is manifested providing an unambiguous meaning, the Court should not employ the interpretative tools in giving a meaning not perceived at the time of its introduction in the Statute. According to learned AGA, the appellant should not be permitted to choose the forum at his convenience, more particularly, on an earlier occasion the approach was made to the Tribunal and the impugned orders sees the birth therefrom. According to him, the purpose of constituting a Tribunal and bestowing the authority powers and jurisdiction should not be abridged by taking a view, which is not in consonance therewith.

12. On the conspectus of the facts adumbrated hereinabove and the points so urged, the pivotal issue as narrated in the opening paragraphs of this Judgment is required to be determined not only on a meaningful reading of the words or expressions used in the said statutory provision but also to be gathered from the legislative intent, more particularly, the Bills and the Cabinet decisions of the State Government.

13. The Grant-in-Aid was envisioned and felt inevitable by the Government as the educational institution set up within the State was felt inadequate to cater the need and in order to ratify its commitment in providing the quality education as ordained in the Constitution of India, the Government decided to extend grant-in-aid subject to its economic capacity to the private educational institutions within the State. Despite such aid being granted to such private educational institutions, the reports continued pouring into the Government that there is no uniform standard adopted by the educational institutions in appointing the teachers as the Managing Committees or the Governing Bodies of such institutions were indiscriminately appointing the teachers without following the standards or the procedures relating thereto. In order to put an end to such perceived discrepancies, it was felt that the standard and the procedures as provided by the other institutions including the University Grants Commission should be strictly followed. Despite such decision having taken, a spate of litigations were pouring in the docket of the High Court concerning the eligibility, the entitlement and the payment or non-payment of the grant-in-aid, which led the Government to establish a special forum to adjudicate such issues not only to ease out the burden of the High Court in dealing with such issues in exercise of writ jurisdiction but also to provide a specialized forum by constituting a Tribunal. Based upon such infirmities, Section 24-B of the O.E. Act was introduced into the said Act by way of an amendment not only encompassing the jurisdiction, powers and the authority to adjudicate all disputes and differences between the educational institutions, the State or its officers or authority but also the eligibility, entitlement and payment and non-payment of the grant-in-aid, which are intricately related to the educational institutions or any teachers or the employees of such institutions.

14. A point is taken that the ‘comma’ (punctuation) used in the said Section is distinctive in the sense that the eligibility or entitlement must be construed in conjunction with the grant-in-aid. It is sought to be contended that the punctuation cannot be used as an effective tool of interpretation but are used to effectuate the clarity in languages. We are not unmindful of the proposition that the punctuation though one of the cannon of interpretation of the statutory provisions, but may at times, has an infallible guide resulting into an ambiguity to be brought in juxtaposition with the legislative intent.

15. The apex Court in *State of West Bengal v. Swapan Kumar Guha* reported in (1982) 1 SCC 561 in explicit, lucid and unambiguous term held that the grammar and/or the punctuation are hapless victims of a pace of life, yet have been placed as a

matter of convenience and meaningfulness. It is further held that any clause that follows with ‘comma’ often brings a sense of doubt and, therefore, it would be appropriate for the Court / Tribunal to ascertain the true meaning of the provision with due regard to the substance of the matter emerging from the object and the purpose of the Act.

16. The importance of the ‘comma’ used in the statutory provision is succinctly dealt with in a subsequent decision of the Supreme Court in case of ***Bihar State Electricity Board v. Pulak Enterprises*** reported in (2009) 5 SCC 641 in the following:

“40. Counsel for the writ petitioners referred to the “comma” occurring prior to the words “out of”. Though sometimes presence or absence of comma has been taken aid of in interpreting the particular provision, the ordinary rule is that punctuation mark is a minor element in the interpretation of statute (see Aswini Kumar Ghose v. Arabinda Bose [(1952) 2 SCC 237 : AIR 1952 SC 369]). More so, in the case of subordinate legislation.”

What can be culled out from the aforementioned report that the significance of ‘comma’ used in a statutory provision though a minor element in the interpretative process, but at times, may be used as useful tool to ascertain the true meaning of the provision flowing from the object and purpose of the Act. The support can be lent from various discussions and discourse undertaken in the Cabinet meeting leading to the amendment to be brought to enlarge the scope, authority and the jurisdiction of the Tribunal in dealing with the cases concerning the grant-in-aid to the institutions or the individual teaching and non-teaching employees.

17. We had a privilege of perusing the memorandum issued by the Commissioner-cum-Secretary to the Government for proposal to bring an amendment in the Odisha Education Act, 1969 in order to regulate the payment of the grant-in-aid to the private educational institutions and the matters connected therewith. The Bill was placed before the Cabinet in the meeting dated 7th September, 1997 and a decision was taken to constitute a Cabinet Sub-committee to formulate appropriate proposals with an intent to streamline the payment of grant-in-aid to private educational institutions. The Subcommittee of the Cabinet recommended the amendment to be brought in the said Act upon taking into consideration the spate of litigations filed before the High Court concerning the eligibility of payment or non-payment of grant-in-aid in paragraph-8 of the Cabinet memorandum of the even date in the following:

“(8) It is observed that there are a large number of cases in the form of writ petitions filed by employees of the Non-Government colleges and schools claiming that their institutions or posts should be brought within the grant-in-aid fold. Attending to such large number of cases on time has become well-nigh impossible. Both Higher Education and School & Mass Education Departments and the Directorates are at present crushed under the burden. There is hardly any time left

for long-term, even medium term, planning for the development of education and measures necessary for ensuring quality of education. Experience reveals that large number of cases are being filed before the Hon'ble High Court invoking its extraordinary jurisdiction in the matter of dispute relating to eligibility of payment or non-payment of grant-in-aid. As a result Hon'ble High Court is unnecessarily burdened with large number of such cases and it is desirable that the cases filed in the High Court should be reduced through a process of screening at the lower level. It would, therefore, be appropriate to enlarge the jurisdiction of the Educational Tribunal constituted under section 24-A of the Orissa Education Act, 1969 so that such dispute can be adjudicated by the said Tribunal. It is proposed that the Tribunal may adjudicate the followings:

- (i) (a) Disputes relating to eligibility of an educational institution and/or of teaching and non-teaching staff of educational institution to receive grant-in-aid.*
- (b) Any dispute or difference between the managing committee or the governing body or any employee of any private educational institution and the State Government or any authority which is connected with the grant-in-aid.*
- (ii) No petition before the Education Tribunal seeking to make a claim against the Government or any other authority of Government shall be entertained unless the petitioner has served a notice on the concerned authority furnishing the details of the claim and a period of 2 months has expired from the date of receipt of that notice by the said authority or Government, as the case may be.*
- (iii) Any person aggrieved by an order of the Tribunal including the Government may prefer an appeal before the High Court within 60 days."*

Ultimately, the proposal was mooted out to amend Section 7-B and 7-C of the O.E. Act and also to insert new Sections as 24-B and 24-C to give effect to the proposal as above. The Odisha Education (Amendment) Bill, 1998 was placed on the floor of the House of the Assembly and after having passed by majority, the Odisha Education (Amendment) Act, 1998 received assent of the Governor on 2nd April, 1998 and was published in the Odisha Gazette on 7th April, 1998.

18. The conjoint reading of the aforementioned factual events leading to incorporation of Section 24-B of the Act manifestly indicates the intention of the Legislators in bringing such amendment in relation to a dispute concerning the eligibility of not only the educational institution, but also of teaching and non-teaching staff of the institution to receive grant-in-aid. Such being the manifest intention apparent from the object and purpose underlining the incorporation of a newly inserted Section 24-B removes any doubt or ambiguity by using the punctuation after 'eligibility' and 'entitlement' before "payment or non-payment of grant-in-aid" which is relatable to the eligibility towards the grant-in-aid. The grant-in-aid as evident from the proposal of the Sub-committee includes the entitlement and also eligibility of a teaching or non-teaching staff to get the grant-in-aid, which in unambiguous term includes the salary attached to the post. Thus, the denial of payment of the salary and also the approval to the post, which is intricately and intrinsically connected to the payment of the salary, comes within the purview

thereof. Any other meaning assigned to the provision contained under Section 24-B of the O.E. Act by giving due importance to the punctuation and ascribing the meaning in segregation shall be opposed to the legislative intent and purpose and object for bringing the said provision by way of an amendment shall be meaningless. Section 7-C of the said Act, which was also amended contemporaneously with the insertion of Section 24-B, is exposit of such intention that the salary cost or any other expenses made by the private educational institutions or for any post or to any person employed in such institutions comes within the ambit of grant-in-aid.

19. Having held so, let us now revert to the facts involved in the instant case in pursuit of determining whether the judgment of the learned Single Judge in relegating the appellant to the Education Tribunal warrants any interference.

20. As indicated hereinbefore, the appellant, who was admittedly appointed as a Demonstrator by the Governing body of the college until he was permitted to hold the 7th post of Lecturer in Physics with effect from 6th August, 2000. Though the resolution was taken by the Governing body of the college to approve such promotion, but the Director of the Higher Education, Government of Odisha declined to grant such approval as the Demonstrator in direct payment scheme does not come within the purview of the initial appointment procedure prescribed in this regard. Though the appellant moved a writ petition challenging the said decision before this Court, but subsequently the issue was again activated by the Director by causing a letter to the Principal of the college to submit the relevant documents for verification. Subsequently, the Writ Court relegated the matter to the authorities as the appellant pleaded the act of discrimination that the similarly circumstanced people were granted *post facto* approval. Interestingly, the appellant approached the Tribunal as the authority remained silent and did not take any decision on the grievance petition, which was allowed in part directing the authorities to consider the claim of the appellant in the light of the observations made therein. The said order was passed on 23rd February, 2022 and attained finality as no challenge was made from any corner. Despite such specific direction to consider and dispose of the said grievance petition within a time frame, the authorities sat over the same for which an execution petition was filed before the Tribunal. During the pendency of the said execution proceeding, the decision was taken by the Director on 27th March, 2025 and after noticing the aforesaid fact, the execution case was disposed of. Although the order dated 27th March, 2025 passed by the Director in terms of the direction passed by the Tribunal, the appellant challenged the said order before the learned Single Judge in a writ proceeding instead of assailing the same before the Tribunal. The learned Single Judge relegated the appellant to the Tribunal as the appellant cannot choose the forum at his convenience.

21. It is axiomatic to record that the appellant has been taking steps assailing the action of the authorities either by filing writ petition before this Court and at times before the Tribunal, which appears to be convenient to him. It is a matter of concern

that such proceedings are being dealt with, obviously in absence of any plea relating to the jurisdiction. A litigant cannot choose the forum at his convenience as the jurisdictional issue strikes at the root and, therefore, it is the foremost duty of a Court while dealing any litigation to satisfy itself whether it has a jurisdiction to deal with the disputes/issues raised therein. Any uncertainty in relation to jurisdictional issue would not only invite an anomaly situation, but also conflicting decisions bringing uncertainty in its due implementation. Once the Legislature has provided a forum for redressal and/or determination of the disputes, it would be preposterous to suggest that such forum is a forum of convenience and does not limit or abridge the right of the litigant to approach another forum. Even if the power of High Court under Article 226 of the Constitution of India cannot be ousted being a basic structure of the Constitution, yet the Writ Court may decline to entertain the writ petition if a forum is provided in the statute, which is competent to deal with such issues within its folds. The order dated 27th March, 2025 was passed in due implementation of the direction issued by the Tribunal and, therefore, we do not find any infirmity in the impugned order, which relegate the appellant to move the forum provided under Section 24-B of the said Act.

22. We have discussed *in extenso* the scope and jurisdiction of the Tribunal constituted under Section 24-A of the said Act and the dispute comes within the four-corners of the said jurisdiction and, therefore, the challenge to the order dated 27th March, 2025 can be made by approaching the said Tribunal.

23. We, thus, do not find any infirmity and/or illegality in the impugned order. The appeal is, thus, dismissed.

Headnotes prepared by:

Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:

Writ Appeal dismissed.

2025 (III) ILR-CUT-1138

SHAKTI PRASAD MISHRA & ORS.
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 29894 OF 2022]

31 OCTOBER 2025

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

Issue for Consideration

Whether the advertisement dated 02.11.2022 issued by the Odisha Staff Selection Commission prescribing new eligibility norms for ATO recruitment is valid in law.

Headnotes

(A) CRAFTSMEN TRAINING SCHEME RECRUITMENT EXAMINATION RULES, 2022 — Industrial Training — Recruitment of Assistant Training Officers (ATO) — Validity of Eligibility Criteria — Petitioners, long-serving Part-Time Guest Instructors (PTGIs) in various Government ITIs, challenged the OSSC advertisement dated 02-11-2022 and the SD&TE Department's selection guidelines prescribing CITS qualification and revised Career Assessment criteria under the CTSRE Rules, 2022 — They relied on earlier guidelines (23-06-2016 and 30-11-2021) which gave weightage to experience and contended that the new rules unfairly disqualify them — Whether the State's advertisement dated 02.11.2022 prescribing new eligibility norms for ATO recruitment is valid in law.

Held: Yes — The legislature/executive is well within its competence to enact the Rules 2022 — The power is relatable to the proviso to Article 309 of the Constitution of India — The CTSRE Rules, 2022 expressly supersedes earlier rules, regulations, orders, instructions with regard to the subject matter except as respect things done or omitted to be done before such supersession. (Para 18)

The wisdom of the legislature/executive requiring 'CITS' training cannot be faulted with inasmuch as it is within their domain to prescribe a particular qualification. (Para 20)

The qualification prescribed, CITS has been made uniformly applicable and there is no intelligible differentia between the petitioners and other candidates for not applying the said notification/eligibility condition to the petitioners in the writ petition — The availability of candidates having CITS qualification is evident from the fact that as many as 171 candidates

have been recruited as per the advertisement dated 02.11.2022 issued by the opposite party no.2(Odisha Staff Selection Commission) and have got appointment/posted by the opposite party no.3-DTET, office letter dated 20.01.2024 — We may reiterate the government is vested with the authority to prescribe qualification for recruitment of any post under the Government establishment. (Para 22)

(B) ADMINISTRATIVE LAW — Challenge to Recruitment Rules — Scope of Judicial Review — Facts — Petitioners questioned the vires of the CTSRE Rules, 2022 indirectly by attacking the advertisement and selection process.

Held — In view of our aforesaid analysis and reasoning and applying the principles laid down by the Apex Court as we have noted above in the decisions *All India Shri Shivaji Memorial Society* (supra) and *Tej Prakash Pathak* (supra) which fortify our reasoning and analysis we hold the writ petition is liable to be and is dismissed being devoid of merit. (Para 25)

Citations Reference

All India Shri Shivaji Memorial Society v. State of Maharashtra, **(2025) 6 SCC 605**; Tej Prakash Pathak v. High Court of Rajasthan, **(2025) 2 SCC 1** — referred to.

List of Acts

Constitution of India, 1950; Craftsmen Training Scheme Recruitment Examination (CTSRE) Rules, 2022.

Keywords

ATO Recruitment; CITS Qualification; Eligibility Criteria; Validity of Advertisement; Experience Claim; Legitimate Expectation; No Vested Right; Judicial Review.

Case Arising From

Advertisement dated 02.11.2022 issued by the Odisha Staff Selection Commission Opposite Part no 2 for recruitment to the post of Assistant Training officer.

Appearances for Parties

For Petitioners : Mr. Sidheswar Mallik

For Opp. Parties :Mr. Debaraj Mohanty, AGA (O.P. Nos. 1,3 & 5)
Mr. S.N. Patnaik (O.P. No.2)
Mr. Durga Prasad Pattnaik (O.P. No. 4)
Mr. Biswabihari Mohanty (O.P. Nos. 6 to 15)
Mr. Sourav Das (For Intervenors-O.P. Nos. 16 to 21)

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

The subject matter of the writ petition is challenge to advertisement dated 02.11.2022 issued by the Odisha Staff Selection Commission-opposite party no.2(OSSC-O.P. No.2) for recruitment to the post of Assistant Training officer (ATO) in Government Industrial Training Institutes (ITIs) under Combined Technical Services Recruitment Examination for Group-B posts/services, for various Departments of Govt. of Odisha. The last date of online application was 10.12.2022. At Sl. No.7 of the advertisement for recruitment is the impugned recruitment for the post of ATO indicated, as per the following details:

Sl. No	Name of the Post/Service	Name of the Department in which vacancy exists for this recruitment.	Total No. of vacancy	Classification of posts	Level of Pay
7	Assistant Training Officer	Director of Technical Education & Training	217	Group-B	Level-9 (Rs.35,400-1,12,400)

2. All the petitioners have stated to be working as Part Time Guest Instructors (PTGIs) in the Government ITIs. They have further stated that they have completed more than fifteen years of service and their case for regularization against the existing vacancies was not considered by the Government. They had approached the Odisha Administrative Tribunal (since abolished) for a direction for regularization against the existing regular vacancies almost 10 years earlier to filing of the writ petition, i.e. in the year around 2012.

3. The further fact not in dispute is that the Government of Odisha in the Department of Skill Development and Technical Education vide circular dated 23.06.2016 notified and circulated the 'Amendment of Guidelines, terms & conditions to be followed for recruitment of contractual ATOs for ITIs. By the said notification, the Government approved the revised draft guidelines, terms and conditions for advertisement and recruitment of regular/contractual ATOs in various ITIs and Skill Development Centres (SDCs) as submitted by the Director, Technical Education and Training, Odisha.

4. The said notification dated 23.06.2016 has provided in Paragraph-2 ten years age relaxation to PTGIs, who are already working in different Government ITIs. Obviously the petitioners-PTGIs are not aggrieved by grant of such relaxation, but they are aggrieved by the qualification and experience prescribed in the notification dated 23.06.2016 required for competing in the selection process for ATOs. Clause-3 of the notification dated 23.06.2016 (supra) provides the required

qualification and experience for participating in the selection process of ATOs; Paragraph-4(c)(iii) provides mandatory teaching experience.

5. The challenge in the writ petition is mainly against condition that the participants intending to participate in the selection process for ATOs should have CITS qualification. CITS stands for Craft Instructors Training Scheme (CITS) qualification, under the aegis of National Council of Vocational Training (NCVT), New Delhi. The requirement of CITS qualification, which has been taken exception to by the petitioners and is challenged is mentioned at paragraph-4.B of advertisement and is reproduced herein :

“4.B. The Career Assessment :

i. 60% weightage fixed for marks secured in relevant technical qualifications i.e. Degree/Diploma or CTS out of 60 marks.

ii. 30% weightage fixed for marks secured in Craft Instructors Training Scheme (CITS) qualification under the aegis of NCVT, New Delhi to ensure that CITS passed candidates are engaged as Instructors out of 30 marks.

(N.B: Career assessment is based on guidelines of GoI/MoSDE vide letter No.19/03(08)/2015-CD dated 07.01.2016).”

6. It is further indicated at paragraph-6.2 of the advertisement and is reproduced herein:

“(6.2) Training:

(6.2.1) Craft Instructors Training:

(a) Each of the Engineering trade/non-engineering trade Contractual ATO if not CITS trained shall have to undergo Semester pattern Craft Instructor’s Training Scheme (CITS) within the period of Contractual engagement in any field Institute of the Directorate General of Training, Government of India/Institutes for Training of Trainers (IToTs) affiliated to NCVT, New Delhi as would be deputed by the Director of Technical Education and Training, Odisha in phased manner as per GoI/MoLE letter No.DGET-19/07/02/2014-CD dated 26.05.2014, letter No MSDE-19/7/2/2014-CD dated 21.09.2015 and other prevailing guidelines of State and Central Government.

(b) The Director of Technical Education and Training, Odisha, Cuttack shall phase out the training of all Contractual ATOs and left out regular ATOs without dislocation of the training activities in ITIs.

(d) The Regular/Contractual ATOs already in possession of Crafts Instructor’s Training Certificate under the aegis of NCVT, New Delhi at the time of their recruitment shall be exempted from such training.”

7. Initially the writ petition was assignment of the learned Single Judge and was taken up upto 21.11.2023. Thereafter it was listed before Division Bench as per the assignment, the relevant extract, i.e., paragraph-8 of the order dated 21.11.2023 is reproduced herein:

“8. Since the petitioners have challenged the virus of the Odisha Combined Technical Services Recruitment Examination-2022, the matter is required to be placed before the appropriate Division Bench. However, despite the order dated 21.08.2023 to place the

matter before the appropriate assigned Bench, the matter is again listed before this Court.”(sic)

8. We have heard extensively and at considerable length, the learned counsel for the petitioners, Mr. Mallik, Mr. Surya Narayan Patnaik, learned counsel for opposite party no.2-Odisha Staff Selection Commission and Mr. Biswabihari Mohanty, learned counsel for the Intervenors. Mr. Sourav Das, learned counsel appearing for some of the Intervenors was also heard and we also heard Mr. Durga Prasad Pattnaik, learned CGC appearing for Union of India.

9. Notices were issued by order dated 15.11.2022 by the then assigned Bench of learned Single Judge, thereafter the following interim order was passed. Paragraph-4 of interim order dated 27.01.2023 passed in I.A. No.538 of 2023 is reproduced:

“4. As an interim measure, the corrigendum issued by opposite party no.2 on 04.01.2023, to the Advertisement No.6506/OSSC dated 02.11.2022 under Annexure-1 to the I.A. shall not be given effect to, till 03.02.2023.”

10. The interim order dated 27.01.2023 was recalled by order dated 25.04.2023 in I.A. No. 3120 of 2023 by another assigned Single Bench and paragraph-8 of the said order modifying the earlier order is reproduced herein:

“8. After hearing learned counsel for the petitioner as well as Mr. Das learned counsel for the State and Mr. S.N. Patnaik learned counsel appearing for the OSSC, this Court is of the considered view that the present writ application is confined to the Assistant Training Officer post and the eligibility condition prescribed for selection and appointment to such post. In such view of the matter the interim order on 27.01.2023 is recalled. The OSSC-opposite party no.2 shall proceed with the selection process. However, so far the selection process to the Assistant Training Officer is concerned, the final select list shall not be published without the leave of this Court.”

11. Thereafter by order dated 21.08.2023 the Single Bench allowed the prayer made by the petitioners in I.A. No.12484 of 2023 as the petitioners sought for amendment of the pleadings and prayer. Amended prayer was challenge to the vires of the Rules, namely, “Combined Technical Services Recruitment Examination Rules, 2022” (in short the ‘Rules 2022’) notified vide the Government of Odisha, General Administration and Pension Grievance Department notification dated 26.10.2022.

By another order dated 21.11.2023 in I.A. No.13063 of 2023 the interim order was further modified to the extent as quoted herein :

“5.In such view of the matter, the interim order dated 25.04.2023 is modified to the extent that the result shall be published, however 9 posts of Assistant Training Officer (ATO) pursuant to the advertisement under Annexure-2 shall not be filled up till the next date.”

12. Thereafter since the amendment was challenge to the vires of the 2022 Rules, the matter was placed before the assigned Division Bench by order dated 06.12.2023 of Hon’ble the Acting Chief Justice in the Administrative side. The

matter was heard by us on 19.08.2025 and thereafter on 21.08.2025. After hearing of the matter on 19.08.2025, it was brought to our notice that as per the interim order passed earlier, 9 posts were kept vacant for appointment to the post of ATOs though the advertisement is dated 02.11.2022. The Rules 2022 were annexed to the writ petition marked as Annexure-3 in the amended cause title dated 03.09.2023. The amended prayer as included on 03.09.2023 is reproduced herein :

(I) *Quash the impugned advertisement as at Annexure-2 in so far it relates to the post of ATOs in Govt. it is, the terms of advertisement being contrary to the terms prescribed by the Govt. of Odisha and NCVT.*

(II) *Direct/order that fresh advertisement shall be published for recruitment to the post of ATOs prescribing the qualification and experience in terms of the guidelines and NCVT norms.*

(III) *Declare/Hold that the “Combined Technical Services Recruitment Examination Rules, 2022” under annexure-3 is ultra-vires Article 14 of the Constitution of India and set aside the same.*

(IV) *Direct/Order that the post of ATOs shall be excluded from the purview of the “Combined Technical Services Recruitment Examination Rules, 2022” and separate recruitment test shall be made for the post of ATOs in terms of the Circular dated 23.06.2016 and the NCVT guideline under annexure-1.”*

Further by amendment the candidates those were selected were also impleaded as opposite parties.

13. The provision of the notification dated 26th October, 2022 under challenge is indicated herein for convenience of reference:

4. Eligibility Conditions.- Subject to other provisions of this rule in order to be eligible for direct recruitment, a candidate must-

(a) be a candidate must be a citizen of India;

(b) have a minimum educational qualification and experience as prescribed in the relevant Recruitment Rule or Government Resolution noted in Column (3) of the Schedule-1.”

SCHEDULE-I

<i>Sl. No</i>	<i>Name of the Post</i>	<i>Recruitment Rules or Resolution or Executive Instruction</i>
2.	<i>Assistant Training Officer under Director Technical Education & Training</i>	<i>Guidelines issued by the SD & TE Department vide letter No.5304/ SDTE dated 30.11.2021.</i>

It is submitted by the learned counsel appearing for the petitioners that as provided in Schedule-I (above) the guidelines issued by the SD & TE Department notification dated 30.11.2021 has been made applicable. Therefore, the subsequent guideline dated 18.12.2021 issued by the SD & TE Department and the CTSRE Rules, 2022 notified vide G.A. & P.G. Department notification dated 26.10.2022 shall not be applicable. The advertisement for recruitment is silent about the

teaching experience though they have benefit of age relaxation but their teaching experience should also have been given preference which has not been done. It is further stated and submitted that the stipulated conditions for selection are not as per NCVT norms. The fresh candidates have been shown 'undue favour' by not giving weightage to experience of the petitioners who have been working for more than 10 years. There is no necessity for promulgating another statutory Rule for the purpose of direct recruitment to notified vacancies such as CTSRE Rules 2022. It is contended that to follow the existing Rule would mean the Government of Odisha Circular dated 23.06.2016, i.e., Amendment of Guidelines, terms and conditions to be followed for recruitment of contractual ATOs for ITIs issued by SD & TE Department and not the CTSRE Rules, 2022. Further, relying on the 2022 Rules Schedule-I, it is contended that the guidelines issued by the SD & TE Department dated 30.11.2021 should be the guiding factor for recruitment and not the rules.

14. Learned Standing Counsel Mr. S.N. Pattnaik appearing for the opposite party no.2-OSSC relied on the counter affidavit dated 04.02.2023 to contend that the writ petition is devoid of any merit and should be rejected in limine and the petitioners are not entitled to any relief.

To elaborate it is argued by Mr. Pattnaik that working as Part Time Guest Instructor cannot be a distinguishing factor for granting preference to the petitioners. The petitioners have relied on the earlier guidelines of the Skill Development and Technical Education Department of the year 2016, whereas, the said guidelines have been revised by notification/letter dated 30.11.2021 of Skill Development and Technical Education Department. Further it is contended the statutory rule i.e. CTSRE Rules, 2022 issued by the State Government, GA and PG Department notification dated 26.10.2022 now occupies the field and the advertisement clearly stipulates that recruitment is to be conducted as per the conditions laid down in the Rules, 2022.

It is submitted the Rules have superseded the earlier letter No.23.06.2016. Therefore, the reliance of the petitioners on the 2016 Rules is misconceived to say the least.

It is stated and submitted that 10 years age relaxation has been granted taking note of the grievance of the petitioners/ PTGIs having general, technical and CITs qualification. The petitioners cannot plead that the statutory requirements of any rule to be discriminatory as the requirement is part of the statutory mandate.

15. The opposite party no.1-State represented through Commissioner-cum-Secretary, Department of Skill Development and Technical Education, Opposite party no.3-Director of Technical Education and Training, Odisha have filed their counter dated 07.02.2023. In counter to the writ petition, of the opposite parties no.1 and 3, the case is that earlier the original applications filed by the petitioners/persons situated similar to the petitioners i.e. PTGIs were transferred to this Court upon abolition of Odisha Administrative Tribunal. The Original Applications were

renumbered as WPC (OAC) No.2480/2015 and WPC(OAC) No.3237/2016 and disposed of by judgment dated 12.11.2021. The copy of the judgment dated 12.11.2021 passed by the learned Single Judge in the writ petition is enclosed to the Counter. It is submitted that after the judgment of this Court dated 12.11.2021 (supra) which has attained finality the petitioners cannot re-agitate the self-same cause after dismissal of the earlier writ petitions.

The advertisement dated 02.11.2022 specifically gives 10 years age relaxation in case of PTGIs. The SD & TE Department office letter/notification dated 17.05.2022 supersedes all the earlier guidelines regarding recruitment to the post of Assistant Training Officer.

It is contended thereafter, the rules have come into force i.e. CTSRE Rules, 2022 w.e.f. 27.10.2022 being published in the Gazette. Rule 8 of the Rules 2022 takes care of the situation as it explicitly provides for overriding effect on all the recruitment rules/resolution/executive instructions/orders issued by the Administrative Departments governing the method of recruitment procedure.

16. The candidates who are successful and have been arrayed as opposite parties in the representative capacity have filed counter through opposite party no.5 on behalf of opposite parties no.5 to 14. They have vehemently opposed the prayer of the petitioners to grant special treatment to the 9 (nine) petitioners. It is contended that the Rules 2022 is as per the competence under Article 309 of the Constitution of India read with the Article 162 of the Constitution. It is contended that educational qualification i.e. the requirement of CITs cannot be relaxed for the petitioners and that would itself be discriminatory. The candidates who intend to compete for the recruitment and already working as ATOs have been given 10 years age relaxation. The reliance of State-Opposite parties no.1 and 3 and the OSSC (Opposite party no.2) on the recruitment rules is just and proper. The guideline dated 30.11.2021 read with the Rules 2022 make the selection process transparent, just and fair, therefore, no interference is called for as prayed by the petitioners.

17. Regarding the present status of the recruitment and the vacancies, after hearing on 19.08.2025 as we have indicated above, we directed the opposite parties to file their response. The learned Additional Government Advocate filed memo dated 21.08.2025 enclosing office letter dated 20.08.2025 from the office of the opposite party no.3(DTET, Odisha). The relevant extract of the said letter is reproduced herein.

“Earlier, the OSSC, Odisha, Bhubaneswar, the Recruiting Agency was requested vide this office letter No.11929 dt. 13.09.2022 to recommend 217 nos. of candidates for appointment against the post of ATO. As per direction of the Hon’ble Court vide order dt. 21.11.2023, the OSSC, Odisha, Bhubaneswar, the recruiting Agency after keeping 14 post of ATOs reserved for the petitioners (09 nos. of post of ATOs against WPC No.29894/2022 and 05 nos. of post of ATOs against the WPC No.30062/2022) and recommended 203 nos. of selected candidates for appointment. Accordingly, the 191 nos. candidates were given appointment as against the post of ATOs under the disposal of DTE&T, Odisha.”

The affidavit on behalf of opposite party no.2-OSSC also states that 12 posts are kept vacant in obedience to Court's order in W.P.(C) No.29894 of 2022 and W.P.(C) No.30062 of 2022. The said affidavit further indicates that two posts of ATO for 'Mechanic Motor Vehicle' and 'Sign Language Interpreter' remain vacant due to non-availability of eligible candidates. The Additional affidavit filed on behalf of opposite parties no.6 to 15 also agrees with the statistics furnished by opposite parties no.1 and 3 and opposite party no.2. It indicates that 171 newly recruited ATOs have joined under the opposite party no.2-DTE&T and they have been given posting by office order dated 21.01.2024.

Analysis and Reasons

18. The legislature/executive is well within its competence to enact the Rules 2022. The power is relatable to the proviso to Article 309 of the Constitution of India. The CTSRE Rules, 2022 expressly supersedes earlier rules, regulations, orders, instructions with regard to the subjectmatter except as respect things done or omitted to be done before such supersession. The preamble of the Rules 2022 is reproduced herein.

“In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of any Rules or Regulation or Orders or Instructions except as respect things done or omitted to be done before such supersession, the Governor of Odisha is pleased to make the following rules to regulate the procedure of recruitment and conditions of service of persons appointed to different posts and services in the State Government.”

19. The schedule-I of the Rule makes the guideline dated 30.11.2021 applicable to the recruitment of ATOs and in our view the guideline dated 30.11.2021 has been made statutorily applicable. Rule 3 of the Rules 2022 is reproduced herein.

“3. Direct Recruitment. - Appointment to Services or Posts mentioned in Column (2) of Schedule-I which are required to be filled up by direct recruitment as per the provisions under the relevant recruitment Rules or Resolutions as mentioned in column (3) thereof shall, notwithstanding anything contrary in such Rules or Regulations, be made in order of merit from out of the candidates recommended by the Commission:

Provided that the Government may include any service or Posts in Schedule-I for regulating direct recruitment to that Service or Posts or exclude any Service or Posts from Schedule-I by notification in the official Gazette”

20. The wisdom of the legislature/executive requiring 'CITS' training cannot be faulted with inasmuch as it is within their domain to prescribe a particular qualification. The guidelines for selection of Initial Appointee Assistant Training Officers (IAATOS) provides for the CITS examination to be relevant for selection as indicated below.

“4.b. (iv) Method of recruitment;

(a) The main examination which will be conducted by the Commission shall comprise 'Trade Skill Examination' and English language test of 150 marks weightage, Career

Assessment of Craft Instructor Training Scheme (CITS) for 20 marks weightage and Viva-Voce Test for 20 marks weightage, of total 190 marks.”

4. B. The Career Assessment: - 20 marks

i. 20 marks shall be awarded by the Commission to the candidates who has possessed Craft Instructors Training Scheme (CITS) examination final pass certificate under the aegis of NCVT in the relevant trade.”

21. A similar prayer made by the PTGIs has been earlier rejected by judgments dated 12.11.2021 in WPC (OAC) No.2480/2025 (All Odisha Govt. I.T.I. Part-Time Guest Instructor’s Association & others v. Director General of Employment & Training, Ministry of Labour & Employment, Govt. of India & others) and WPC(OAC) No.3237 of 2026 (All Odisha Govt. I.T.I. Part-Time Guest Instructor’s Association & others v. State of Orissa & others) when the petitioners and other similarly situated persons had sought for regularization.

22. The qualification prescribed, CITS has been made uniformly applicable and there is no intelligible differentia between the petitioners and other candidates for not applying the said notification/eligibility condition to the petitioners in the writ petition. The availability of candidates having CITS qualification is evident from the fact that as many as 171 candidates have been recruited as per the advertisement dated 02.11.2022 issued by the opposite party no.2(Odisha Staff Selection Commission) and have got appointment/posted by the opposite party no.3-DTET, office letter dated 20.01.2024. We may reiterate the government is vested with the authority to prescribe qualification for recruitment of any post under the Government establishment.

23. In *All India Shri Shivaji Memorial Society v. State of Maharashtra, (2025) 6 SCC 605*, the Hon’ble Supreme Court dealt with entitlement of incumbent lecturers/Assistant Professors to benefit of revised pay scale in terms of 6th Central Pay Commission. In the context of scope of judicial review of prescription of essential qualification of Ph.D. by AICTE, it was held (paragraphs-31, 32, 33 and 34 of SCC Online Print).

“31.Aicte which is an expert body mandated by law, inter alia, to prescribe essential qualifications for a teaching post, and hence we cannot question the logic and wisdom of this expert body which prescribes the essential qualifications for these posts. No one has challenged such a qualification, which is PhD in the present case, on the ground that it should not have been made an essential qualification. Further in the present case, the law not only prescribes qualifications but also gives the consequences of not having these qualifications. We find nothing arbitrary in such prescriptions.

32.This Court time and again has reiterated thatthe responsibility, of fixing qualifications for purposes of appointment, promotion, etc. of staff or qualifications for admissions, is that of expert bodies (in the present case, Aicte), and so long as qualifications prescribed are not shown to be arbitrary or perverse, the courts will not interfere.

33.In Aicte v. Surinder Kumar Dhawan [Aicte v. Surinder Kumar Dhawan, (2009) 11 SCC 726 : 3 SCEC 520] , this Court while dealing with the question regarding decision

taken by AICTE whether a bridge course should be permitted to make diploma-holders eligible for engineering course, observed as under : (SCC p. 732, paras 15-17)

“15. ... AICTE consists of professional and technical experts in the field of education qualified and equipped to decide on those issues. In fact, a statutory duty is cast on them to decide these matters.

16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education.

...

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in.”

34. In other words, normally, courts should not interfere with the decisions taken by expert statutory bodies regarding academic matter : may it relate to qualification for admission of students or qualification required by teachers for appointment, salary, promotion, entitlement to a higher pay scale, etc. However, this does not mean that courts are deprived of their powers of judicial review. It only means that courts must be slow in interfering with the opinion of experts in regard to academic standards and powers of judicial review should only be exercised in cases where prescribed qualification or condition is against the law, arbitrary or involves interpretation of any principle of law [Also see : Medical Council of India v. Sarang [Medical Council of India v. Sarang, (2001) 8 SCC 427 : 5 SCEC 183].

Consequently, where a candidate does not possess the minimum qualifications, prescribed by an expert body, for appointment or promotion to a particular post in an educational institution, such a candidate will not be entitled to get appointed or will be deprived of certain benefits, which is the case we have in hand.”

[Underlined to supply emphasis]

24. In *Tej Prakash Pathak v. High Court of Rajasthan: (2025) 2 SCC 1* Constitution Bench of Hon’ble Apex Court in the context of discussing discretion conferred on recruiting authority to devise appropriate selection procedure held thus: [Paragraphs quoted from SCC Online print]

“51. What is clear from above is that the object of any process of selection for entry into a public service is to ensure that a person most suitable for the post is selected. What is suitable for one post may not be for the other. Thus, a degree of discretion is necessary to be left to the employer to devise its method/procedure to select a candidate most suitable for the post albeit subject to the overarching principles enshrined in Articles 14 and 16 of the Constitution as also the rules/statute governing service and reservation.

xxx xxxxx

54. As already noticed in Section (A), a recruitment process inter alia comprises of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Subject to the rule against arbitrariness, how tests or viva voce are to be conducted, what questions are to be put, in what manner evaluation is to be done,

whether a shortlisting exercise is needed are all matters of procedure which, in absence of rules to the contrary, may be devised by the competent authority. Often advertisement(s) inviting applications are open-ended in terms of these steps and leave it to the discretion of the competent authority to adopt such steps as may be considered necessary in the circumstances albeit subject to the overarching principle of rule against arbitrariness enshrined in Article 14 of the Constitution.

62. There can therefore be no doubt that where there are no rules or the rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the rules or the statute or the Constitution. But where the rules expressly or impliedly cover the field, the recruiting body would have to abide by the rules.” [Underlined to supply emphasis]

25. In view of our aforesaid analysis and reasoning and applying the principles laid down by the Apex Court as we have noted above in the decisions *All India Shri Shivaji Memorial Society* (supra) and *Tej Prakash Pathak* (supra) which fortify our reasoning and analysis we hold the writ petition is liable to be and is dismissed being devoid of merit.

26. The interim order dated 21.11.2023 in I.A. No.13063 of 2023 passed by the coordinate Bench merges with the final order of dismissal of writ petition.

27. In the facts and circumstances of the case we feel it appropriate to pass further orders and direct 9 posts of ATOs directed by the interim order dated 21.11.2023 not to be filled up, shall be filled up as per the recommendation of the opposite party no.2-OSSC as per the merit list and availability of the candidates. The PTGIs, who have already got selected through the selection process and have availed the benefit of age relaxation as per the advertisement and have joined as ATOs shall continue in their respective posts. The present adjudication shall have no bearing on their recruitment. The candidates who are already selected will get appointment after disposal of the writ petition against the posts directed not to be filled up by interim order(s), shall have their initial date of appointment to be reckoned from the date of appointment of the candidates in their respective category immediately above them or the date of appointment, if it has been taken to be a single particular date in the respective category as the case may be.

No costs.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Writ petition dismissed.

2025 (III) ILR-CUT-1150

PRITIPRAGNYA MALLIK
V.
UNION OF INDIA & ORS.

[W.P.(C) NO. 24344 OF 2025]

26 NOVEMBER 2025

[MANASH RANJAN PATHAK, J. & MRUGANKA SEKHAR SAHOO, J.]**Issue for Consideration**

Whether the petitioner is entitled to correction of her NEET (UG) 2025 result and declaration as successful despite NIC-verified records showing an unattempted OMR sheet and zero mark.

Headnotes

NATIONAL ELIGIBILITY CUM ENTRANCE TEST (UG), 2025 – Result dispute – Alleged application number mismatch – OMR answer sheet – The Petitioner, a NEET (UG) 2025 aspirant claimed that due to a technical error there was a discrepancy in her application number, as a result of which she was awarded zero mark despite her claim of having secured 579 marks – The Respondents contended that NIC-verified records shows a different application number and revealed that the Petitioner had not marked any response in the OMR sheet – Original records were produced before the Court in sealed cover – Whether a Writ Court can direct declaration of a candidate as successful in NEET (UG) when original NIC-verified records show zero mark and the documents relied upon by the candidate are disputed?

Held: No – In view of our above detailed discussions after taking into consideration the averments made by the petitioner in the writ petition as well as her other pleadings, the statements made and contentions raised in the counter affidavit and upon perusal of the original records, we have no hesitation and we hold that the reliefs sought for in the writ petition are based on incorrect assumptions and statements, as well as baseless and reckless allegation made against the opposite parties, particularly Opposite Parties Nos.1, 2 and 3 – The Petitioner has neither taken care nor responsibility of approaching the Court with assertions, contentions and allegations which at least she herself could have supported to make out a case in her favour. (Para 77)

We further find and observe that the petitioner not answering any of the questions in her OMR sheet, but subsequently claiming that she had

answered as per the 'OMR' annexed to the writ petition which she claimed to be her own without any supporting material cannot be a mere coincidence.

(Para 78)

List of Acts

Constitution of India, 1950

Keywords

Competitive examination; NEET (UG); Result dispute; Application number discrepancy; NIC-verified records; OMR answer sheet; Unattempt OMR; Zero mark; Sealed cover records; QR code verification; Technical error; Forged documents.

Case Arising From

Challenging the declaration of NEET (UG), 2025 result.

Appearances for Parties

For Petitioner : Ms. Saswati Mohapatra

For Opposite Parties : Mr. P.K. Parhi, DSGI along with
Mr. S.S. Kashyap, Sr. Panel Counsel (O.P. No.1 to 3)
Mr. Subir Palit, Sr. Adv. along with
Mr. Amitav Mishra, (for Opposite Party No.4)

Judgment/Order

Judgment

MRUGANKA SEKHAR SAHOO, J.

The petitioner appeared in the National Eligibility cum Entrance Test (Undergraduate) [NEET (U.G.)], 2025-26 for admission to undergraduate M.B.B.S. course. By filing the writ petition she seeks interference of this Court to declare her successful in the examination.

2. We have heard learned counsel for the petitioner extensively, particularly on 22.09.2025 for the entire day of Court hours. The learned DSGI, learned Senior Panel Counsel appearing for opposite parties were heard at length in their response. The Director, Legal National Testing Agency (NTA) was present in person and also through V.C. mode and assisted the Court in response to the specific queries of the Court on different dates of hearing.

The Writ Petition and submissions of the learned counsel for petitioner and discussions by the Court

3. It is suggested in the petition that there is some discrepancy in the application number of the petitioner and after much effort she has been able to find

out her result, marks secured to be 'Zero' in her NEET U.G. 2025-26 for admission to undergraduate MBBS Course.

4. The Optical Mark Reader Answer Sheet (OMR Sheet) of the petitioner, in the examination appeared by the petitioner was produced in original, kept in sealed cover, by the opposite parties No.1 to 3. The sealed cover was opened, and the contents were perused by us.

5. The original OMR answer sheet has the following distinct features, it contains the Bar Code, contains one of the Biometric indicators i.e. the left thumb impression of the candidate (petitioner), signature of the petitioner along with time of putting the signature, name of the petitioner written herself in her own handwriting, her mother's name handwritten by her and her father's name handwritten by her, signature of the two invigilators in the exam hall with time. The roll number has been written by the petitioner herself in her own handwriting and also the text booklet number in her handwriting. The pen used by the petitioner in black ink. The entries made look to be identical to the naked eye for all the entries made by her in her handwriting. The Bar Code and the answer-sheet number has been written in hand by the petitioner which matches with the answer-sheet number.

6. Considering the fact that the petitioner may have been motivated in making allegations as she is very young, appearing at a very tough competitive entrance examination; before considering the discrepancies in the documents relied on by the petitioner annexed to the writ petition and the originals produced by opposite parties 1 to 3 and 4, we have asked the learned counsel for the petitioner that the original OMR Sheet as we have seen after opening the sealed cover does not match with Annexure-4 suggested by the petitioner to be her OMR Sheet. However, learned counsel for the petitioner insisted that the copy of OMR sheet, copy annexed as Annexure-4 is correct and actual and not the original one produced in sealed cover by the opposite parties no.2 and 3-NTA before the Court.

7. Referring to Annexure-4, the following has been stated in the writ petition: -

"3.(c). It is permitted to mention here that the Petitioner downloaded the OMR sheet and final Answer key for Test Book Code No.46 on 02.06.2025. Result was published on 14.06.2025. The Petitioner has secured total 576 marks, out of total 720 marks.

Copy of the OMR Sheet along with final answer, is filed herewith and marked as ANNEXURE-4.

Copy of the Score Card, is filed herewith and marked as ANNEXURE-5."
(sic)

8. Before proceeding to take up the matter, we had asked the learned counsel for the petitioner for her response to our prima facie finding that copies of correct documents have not been annexed. In response, she replied that she is not being given any opportunity to respond. Obviously, she grossly misunderstood the proposition of the Court that since we will be considering the matter on merit

regarding various acts of commission involving a youth, we had asked her whether after finding the Annexure-4 not to be correct, we should further examine the veracity of other allegations made by the petitioner or dispose of the matter at that stage. The learned counsel has been given full opportunity to explain the case of the petitioner and the proceeding being in hybrid mode are recorded and kept for reference.

9. Learned counsel for the petitioner filed further affidavit dated 17.09.2025, without seeking any leave from the Court after notices were issued. However, the affidavit was taken on record, keeping the issue open whether such affidavit could be filed after notices were issued to the opposite parties. The affidavit contains further averments of the petitioner and further annexures are also enclosed.

The opposite parties without prejudice to their rights and contentions in counter already filed were directed to obtain instructions in response to the averments made in the affidavit dated 17.09.2025 and the newly added Annexures-11 to 16.

10. Learned counsel for the petitioner referred to paragraph-3(a) of the writ petition, which is reproduced herein:-

“The Petitioner is a candidate for NEET (U.G.) 2025-2026 and she filled up the for aforesaid Examination. The Petitioner has been preparing for the aforesaid Examination for last 6 years and 4 times she appeared in the said Examination. The Petitioner applied for NEET (U.G.) and the same has been confirmed on 02.02.2025 and Application was mentioned as 250410852162 (in short 62).

Copy of the Admit Card, issued dated 20.02.2025, is filed herewith and marked as ANNEXURE-1”

11. Learned counsel for the petitioner was asked regarding the ‘application confirmation page’ generated by the candidate as she has annexed the copy of the said page to the writ petition marked as Annexure-1. The Annexure-1 to the writ petition is distinctly different from what has been produced by the National Testing Agency (NTA) under the Ministry of Education, Government of India, annexed to their counter affidavit marked as Annexure-A/2.

In response: on instruction from the petitioner, the learned counsel for the petitioner submits that the petitioner stands by the Annexure-1 which she has filed before this Court supported by affidavit, though it varies with the ‘confirmation page’ produced, the coloured photocopy of which is filed before the Court annexed to the counter affidavit on behalf of opposite parties No.1, 2 and 3, marked as Annexure-A/2 at page-18 of the affidavit.

12. The learned counsel appearing for the petitioner referred to Annexure-2 to the Writ Petition which has been stated to be the ‘copy of the Admit Card’ issued in favour of the petitioner; Annexure-3 to be the ‘copy of text booklet’; Annexure-4 to be the ‘Optical Mark Recognition (OMR) answer sheet’; ‘copy of the Score Card’ is

annexed to the Writ Petition marked as Annexure-5 and copy of the 'e-mail to the petitioner' is also annexed marked as Annexure-6.

It is submitted by the learned counsel for the petitioner that she has done lot of research and her contention is that the copies of documents produced by the opposite parties annexed to their counter is not correct, they have purposefully filed the said documents before this Court to mislead the Court. Apart from the averments of the petitioner, learned counsel for the petitioner stated that she is herself confident that Annexure-1 to the writ petition as at page-10 is the proper document and not Annexure-A/2 at page-18 of the counter of the Opposite Party Nos.1, 2 and 3.

13. The relevant paragraphs of the Writ Petition describing the above referred annexures i.e. paragraphs-3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) are reproduced herein for our consideration and analysis:

“3. (a): The Petitioner is a candidate for NEET (U.G.) 2025-2026 and she filled up the for aforesaid Examination. The Petitioner has been preparing for the aforesaid Examination for last 6 years and 4 times she appeared in the said Examination. The Petitioner applied for NEET (U.G.) and the same has been confirmed on 02.02.2025 and Application was mentioned as 250410852162 (in short 162).

Copy of the Confirmation, dated 20.02.2025, is filed herewith and marked as ANNEXIJRE-1.

3.(b). Pursuant to the application No. 162, Admit Card was issued to the Petitioner on 01.05.2025 with same Application No. as mentioned. The Petitioner appeared in the Examination on 04.05.2025. The Petitioner has been given Test Booklet with Code No. '46' with Test Booklet Number.

Copy of the Admit Card, issued in favour of the Petitioner, is filed herewith as ANNEXURE-2.

Copy of the Test Booklet, is filed herewith and marked as ANNEXURE-3.

3.(c). It is pertinent to mention here that the Petitioner downloaded the OMR sheet and final Answer key for Test Book Code No.46 on 02.06.2025. Result was published on 14.06.2025. The Petitioner has secured total 579 marks, out of total 720 marks.

Copy of the OMR Sheet along with final answer, is filed herewith and marked as ANNEXURE-4

Copy of the Score Card, is filed herewith, and marked as ANNEXURE-5

3.(d). It is not out of place to mention here that the Score Card also reveals that the Application No. is 162. On 29.07.2025 the Petitioner received E-mail from NTA for Documents Verification of the Petitioner. The Petitioner also allotted a Verification Code i.e. 1Q5010.

Copy of the E-mail of the Petitioner, is filed herewith as ANNEXURE-6.

3.(e). Odisha Joint Entrance Examination published Revised Final State Merit List and the Petitioner has been assigned State Position at 211, indicating Application No. 162.

Copy of the Revised State Merit List, published, is filed herewith and marked as ANNEXURE-7.

3.(f). When the Petitioner was unable to generate the Score Card, filed a On-line Complaint before the Authorities. In response to same, the Authorities have given an E-mail, stating therein that due to some technical issues, this thing was happening and Registration for State Counselling is successful and reiterated that Application No. is 162.

Copy of the E-mail of the Authority, is filed herewith and marked as ANNEXURE-8.

Copy of the Score Card downloaded for State Counselling, is filed herewith and marked as ANNEXURE-9.”

14. It is stated and submitted by the learned counsel for the petitioner that the annexures those have been marked and annexed to the Writ Petition are copies of the originals downloaded from official website of National Testing Agency/National Informatics Centre/Odisha Joint Entrance Examination (NTA/NIC/OJEE) as the case may be. It is submitted, though it is not stated in the Writ Petition, that the copy of the OMR answer sheet is available for only three days in the NTA website on 04.08.2025, 05.08.2025 and 06.08.2025.

15. It is submitted that in Annexure-5 i.e. scorecard issued by the NTA for National Eligibility Cum Entrance Test (NEET)(UG)-2025, below the photograph, ‘there is a unique number’ mentioned.

16. The learned counsel referred to another number which is part of the said Annexure-5 i.e. above the table, “Cut-off percentile mark and marks as per NMC/DCI/NCISM Regulations” to submit that the said number in the right hand margin above the table is also an ‘unique number’.

17. It is submitted and asserted that Annexure-5 at page-16 to the Writ Petition is the Scorecard of the petitioner and not what has been produced by the NTA annexed to the Writ Petition marked as Annexure-10 series(Pages-21 to 23 to the writ petition), which includes a series of documents i.e. scorecard, OMR answer sheet and calculation sheet.

It is submitted that the two ‘identification numbers’ as are suggested above, are same as at page-21 and page -16 of the Writ Petition. It is suggested and submitted that page-21 is incorrect and page-16 is correct.

The learned counsel referred to the ‘Quick Response Code’ (‘QR Code’) as contained in Annexure-5, page-16 to submit that, if it is scanned, the QR code would show the roll number of the petitioner to be ‘3604106090’, but concededly no application number is shown if the QR code is scanned.

17.1. The learned counsel then referred to Annexure-10 to the Writ Petition at page-21 of the brief to submit and highlighted the table i.e. captioned ‘percentile obtained’ which is reproduced herein:

Percentile obtained				
Physics	15.1239953			
Chemistry	7.7420759			
Biology (Botany & Zoology)	1.4384083			
Percentile (Based on total marks obtained)	0.7223952			
Percentile (Based on total marks obtained) in words	Zero point Seven Two Two Three Nine Five Two Only			
Total marks obtained (out of 720)	0			
Total marks obtained (out of 720) in words	Zero Only			
NEET All-India Rank	Category	Category rank	PwBD	Category-PwBD rank
2191941	General	661378	NO	----

It is submitted, the percentile obtained in the subjects i.e. Physics, Chemistry, Biology (Botany and Zoology) would not add up to Percentile (based on total marks obtained) is 0.7223952 (Zero point Seven Two Two Three Nine Five Two Only).

18. Thereafter, the learned counsel referred to page-22, it is submitted that page-22, as has been produced by the NTA does not show optical mark (bubble made by the examinee) in any of the answers; thus a question is raised: if any answer is not bubbled then how the percentile can come to be 0.7223952.

19. Referring to page-21 at the bottom of the page which mentions IP address-14.139.49.130, application no. 250410852174 and date & time 25/08/2025, it is submitted by the learned counsel for the petitioner that Annexure-10 at page-21 has been received from the counseling center of Odisha Joint Entrance Examination (OJEE) counseling cell in the office of the OJEE at Pokhariput, Bhubaneswar as indicated in the said page at 09:57:23 hours on 25.08.2025.

20. It is submitted that in contrast, Annexure-5 to the Writ Petition i.e. copy of the Scorecard that has been downloaded by the petitioner with IP address-49.42.179.110, application No.250410852162 and date & time-14/06/2025 15:31:07 hours.

21. It is submitted that due to certain errors that could happen, like “data entry bug”, “algorithm bug”, “mistake of the Data Entry Operator”, page-16 shows the application number at the bottom and the top to be 250410852162, whereas the one that has been produced by the opposite party-NTA annexed to the Writ Petition at page-21 shows the application number to be 250410852174, both at the top and the bottom.

22. The sealed cover envelopes produced by the opposite parties-NTA, the documents contained in the sealed cover were again sealed and retained by the

Court to be kept in second sealed cover. For convenience of reference the sealed envelopes were marked (1) to (4). The opened envelope (1) containing “Original copy of OMR No.3604106090, Pritipragnya Mallik, NEET (UG)-2025. The other envelopes are: (2) Original office copy of OMR Roll No.3604106090, Pritipragnya Mallik, NEET (UG)-2025, (3) Original Pink Envelop Roll No.3604106090, Pritipragnya Mallik, NEET (UG)-2025 and (4) Original copy of Attendance sheet Roll No.364106090, Pritipragnya Mallik, NEET (UG)-2025.

Counter Affidavits and Submissions of the learned counsel for the Opposite Parties No.1, 2 and 3 and discussions by the Court

23. We have heard Mr. Satya Sindhu Kashyap, learned Senior Panel counsel along with Mr. Parhi, learned Deputy Solicitor General of India (DSGI) in presence of the Director (Legal) of National Testing Agency (NTA) being present in VC.

It is submitted by Mr. Kashyap, that the opposite parties No.1, 2 and 3, strongly dispute the contention of the petitioner regarding the copies of the original downloaded documents to have been annexed to the writ petition.

24. It is submitted that the counter affidavit filed on behalf of opposite parties No.1, 2 and 3 annexing the corresponding documents those are available in the website of the National Testing Agency has been confirmed by the National Informatics Centre (NIC), which is independent and no way connected with the NTA as far as independence and administration is concerned. The computer server storing the digital data and the website is not managed by NTA but is managed by NIC which has not been made a party.

At this stage, we reiterate that we had directed NIC to preserve the data through the learned DSGI for Union of India as NIC is an independent authority under the Union of India.

It is further clarified by the learned DSGI that NIC which maintains the production of digital transfer and storage of digital data is under the Ministry of Electronics and Information Technology, Government of India.

25. The learned Senior Panel Counsel emphatically denied the submission of the petitioner that the petitioner disputes the application number allotted to the petitioner as she claims to end with ‘162’. It is submitted as per NTA data obtained from the NIC, the application number ends with ‘174’.

The learned Senior Panel Counsel drew our attention to Annexure-1, page 10 of the writ petition to be compared with Annexure-A/2, internal page-18 of the counter affidavit filed on behalf of opposite parties No.1, 2 and 3. At this stage, the learned Senior Panel Counsel produced the sealed envelope produced by the NIC in Court, which was opened. He submitted that he did not have opportunity to go through the contents of the sealed envelope.

26. We find the envelope is captioned: (i) the letter No.NIC/PEP/NEET/2025/22 dated 19.09.2025 issued by the HoD- Public Examination Projects Division, National Informatics Centre, New Delhi under the Ministry of Electronics and Information Technology, Government of India (ii) copy of the original application No.250410852174 of the petitioner, Pritipragnya Mallik with her original fingerprints, (iii) NEET (UG)-2025 Admit Card-Provisional issued in favour of the petitioner having her signature on it, counter signed by the Invigilator concern, her thumb impression (iv) Original application No.250410852162 issued in the name of Mane Kshitija Vitthal, a female /OBC-NCL (central list candidate) from Sangli, Maharashtra. The said envelope is marked as 'Envelope-5'.

27. It is submitted by the Senior Panel Counsel that the 'confirmation page of application number', the 'ten fingerprints digitally captured' have been obtained with the forwarding letter from the National Informatics Centre, addressed to the Joint Director, Examination National Testing Agency, issued by the HOD, i.e. Head of the Department/ Examination/ Project Division. It is submitted that based upon the said data/ information/ revelation by the NIC, the NTA disputes the Annexure-1 submitted and relied upon by the petitioner to be the 'confirmation page of application number'.

Documents produced by the Opposite Parties and the submissions made thereon

28. On consent of the learned DSGI and learned Senior Panel Counsel also endorses by the learned counsel for the petitioner, we scan and reproduce the letter No. NIC/PEP/NEET/2025/22 dated 19.09.2025, in original as contained in the sealed cover-5 to be the part of our order so that we can deal with the documents annexed to the said letter reproduced in the subsequent eight pages of judgment.

2b
Page 10



भारत सरकार
इलेक्ट्रॉनिक्स और सूचना प्रौद्योगिकी विभाग
राष्ट्रीय सूचना-विज्ञान केंद्र
ए-ब्लॉक, केन्द्रीय कार्यालय परिसर, लोधी रोड,
नई दिल्ली-110 003
Government of India
MINISTRY OF ELECTRONICS & INFORMATION TECHNOLOGY
NATIONAL INFORMATICS CENTRE
A-BLOCK, C.G.O. COMPLEX, LODHI ROAD
NEW DELHI-110 003
ग्राम्स / GRAMS : INCENT HQ
फैक्स / FAX :
ई-मेल / E-mail :

No. NIC/PEP/NEET/2025/22

To,
Joint Director (Exams)
National Testing Agency
NSIC-MDBP Building, Okhla Industrial Estate, New Delhi - 110020

Dated: 19.09.2025

Subject - Request for Confirmation page in total and the fingerprint impression vide Application No. 250410852174 in the matter of W.P.(C) No. 24344 of 2025 in the matter of Pritipragnya Mallik Vs. UOI & Ors. – reg.

This has reference to letter no NTA/Exam-2/NEET/2025 dated 19 September 2025 regarding the above-mentioned subject.

For Application No - 250410852174, Candidate Name - Pritipragnya Mallik

- a) Application form details (Application Form - 250410852174.pdf).
b) Confirmation Page generated by system is attached (ConfirmationPage -250410852174.pdf).
c) Left and Right hands Fingers and Thumb impressions as uploaded by candidate during application form filling process is attached (Left and Right hands Fingers and Thumb impressions – 250410852174.jpg)

For Application No - 250410852162, Candidate Name – Mane Kshitija Vitthal

- a) Application form details (Application Form - 250410852162.pdf).
b) Confirmation Page generated by system is attached (ConfirmationPage - 250410852162.pdf).

Regards,

Yours Sincerely,

[Handwritten Signature]

HoD - Public Examination Projects Division

Form titled 'National Eligibility Cum Entrance Test (UG) - 2025' with fields for Application No., Personal Details, Exam Selection, and Contact Information. Includes logos of the Department of Higher Education and National Testing Agency.

INDIAN LAW REPORTS, CUTTACK SERIES [2025]

उम्मीदवार द्वारा अपलोड किए गए चित्र (Images Uploaded by Candidate)

फोटो (Photo)	बाएं और दाएं हाथ की उंगलियों और अंगूठे के निशान (Left and Right hands Fingers and Thumb Impressions)	हस्ताक्षर (Signature)
		<i>Pritipragnya Mallik</i>

Application Number : 250410852174 IP Address : 10.25.97.216 Date and Time : 19/09/2025 05:00:38 PM [Page 1 of 1]



Application No - 250410852174, Candidate Name - Pritipragnya Mallik

व्यक्तिगत विवरण (Personal Details)

Public Examination:	National Eligibility Cum Entrance Test (UG) - 2025
Application No:	250410852174
उम्मीदवार का नाम (Candidate's Name):	PRITIPRAGNYA MALLIK
उम्मीदवार की जन्म तिथि (Candidate's Date of Birth):	09-11-2002
लिंग (Gender):	Female
क्या उम्मीदवार 'एनओ' हैं? (Are you only girl child of your parents?):	No
पिता / अभिरक्षक का नाम (Father's/Guardian's Name):	PRANAKAR MALLIK
माता / अभिरक्षक का नाम (Mother's/Guardian's Name):	HINDAGNI MALLIK
श्रेणी (Category):	General
क्या आप PwD / PwBD उम्मीदवार हैं? (Are you a PwD / PwBD candidate having a valid and live Disability Certificate issued by Medical Board of Govt?):	No
उम्मीदवार के अग्रज राज्य की श्रेणी (State of Eligibility as per candidate):	ODISHA
निवास की जगह (Place of Residence):	Rural
वार्षिक परिवारिक आय (Annual Family Income):	UPTO 190000
अल्पसंख्यक के हैं (Belongs to Minority):	No
राष्ट्रियता (Nationality):	Indian
निवास का देश (Country of Residence):	India
क्या आपको मधुमेह है? (Are You Diabetic?):	No
क्या आप NEET (UG) -2025 में कस्टमरी ड्रेस के विरुद्ध अपना चेहरा दिखाने का इरादा रखते हैं? (Do you intend to wear Customary Dress contrary to the Dress Code while appearing in NEET (UG) -2025):	No
तैयारी का तरीका (Mode of Preparation):	Self Study



परीक्षा के लिए चयन करें (Select for Exam)

परीक्षा के लिए चयन करें (Select for Exam):	National Eligibility Cum Entrance Test(UG),
पिता / अभिजातक व्यवसाय (Father's/Guardian's Occupation):	PRIVATE SERVICE
पिता / अभिजातक योग्यता (Father's/Guardian's Qualification):	MATRICULATE
माता / अभिजातक व्यवसाय (Mother's/Guardian's Occupation):	OTHERS (INCLUDING HOUSE WIFE)
माता / अभिजातक योग्यता (Mother's/Guardian's Qualification):	GRADUATE
पत्र का माध्यम (Question Paper Medium):	English
परीक्षा राज्य / राष्ट्र-स्तरीय विकल्प (Exam State / City-1st choice):	ODISHA - Bhubaneswar
परीक्षा राज्य / राष्ट्र-स्तरीय विकल्प (Exam State / City-2nd choice):	ODISHA - Cuttack
परीक्षा राज्य / राष्ट्र-स्तरीय विकल्प (Exam State / City-3rd choice):	ODISHA - Puri

शैक्षणिक विवरण (Educational Details)

श्रेणी (Qualification)	पूरी होने की तिथि (Pass Status)	योग्यता परीक्षा (Qualifying Exam)	स्थान का स्थान (Place of School)	स्थान का प्रकार (Type of School/College)	योग्यता परीक्षा राज्य (Qualifying Examination State)	योग्यता परीक्षा जिला (Qualifying Examination District)	पुस्तक बोर्ड (School Board)	वर्ष / अभियोग होने का वर्ष (Year of Passing / Appearing)	परिणत मोड (Result Mode)	विशेष विवरण (Marks Detail)	रोल नंबर (Roll Number)	पुस्तक / अभियोग का नाम और पता (School / College Name & Address)	पुस्तक / अभियोग कोड (School / College PIN Code)
10th or equivalent (details as per Class 10th board marksheet)	Passed	10th or Equivalent	Urban	Private Unaided	ODISHA	KHORDHA	Board of Secondary Education, Odisha	2018	Percentage	Obtained Mark: 521 Total Mark: 600 Marks (%): 86.83	320BB0158	SARASWATI SISHU VIDYAMANDIR BADAGADA BRIT COLONY	751018
12th or equivalent (details as per Class 12th board marksheet)	Passed	CODE: 02	Urban	Government School	ODISHA	KHORDHA	COUNCIL OF HIGHER SECONDARY EDUCATION, ODISHA	2020	Percentage	Obtained Mark: 415 Total Mark: 600 Marks (%): 69.17	303MA287	BUXI JAGABANDHU BIDYADHAR H S SCHOOL BHUBANESWAR	751014



अभ्यर्थक का विवरण (Applicant Details)

क्या आप जुड़वा हैं और दोनों चयन (दोनों) के लिए आवेदन कर रहे हैं? (Are you a Twin and both applying for NEET (UG) - 2025?) NO

अभ्यर्थक का विवरण (Applicant Details)

क्या आप अभी NEET (UG) परीक्षा में उपस्थित हुए हैं? (Have you ever appeared in the NEET (UG) examination?) Yes

पिछले (पूर्व) में पिछले प्रयासों की संख्या (No. of Previous Attempts in NEET (UG)): 4

जन्म स्थान (Place of Birth): India
राज्य (State): ODISHA
जिला (District): KHURDA

वर्तमान पता (Present Address)

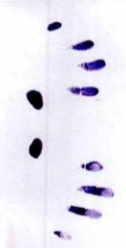
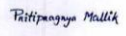

पता (Premises No/ Name): KURUMAPADA
उप-स्थान (Sub-Locality): BAIDESWAR
स्थान (Locality): BAIDESWAR
Country: India
राज्य (State): ODISHA
जिला (District): CUTTACK
पिन कोड (PIN Code): 754009
ईमेल पता (Email Address): msp*****@gmail.com
मोबाइल नंबर (Mobile Number): 91 - 637****787



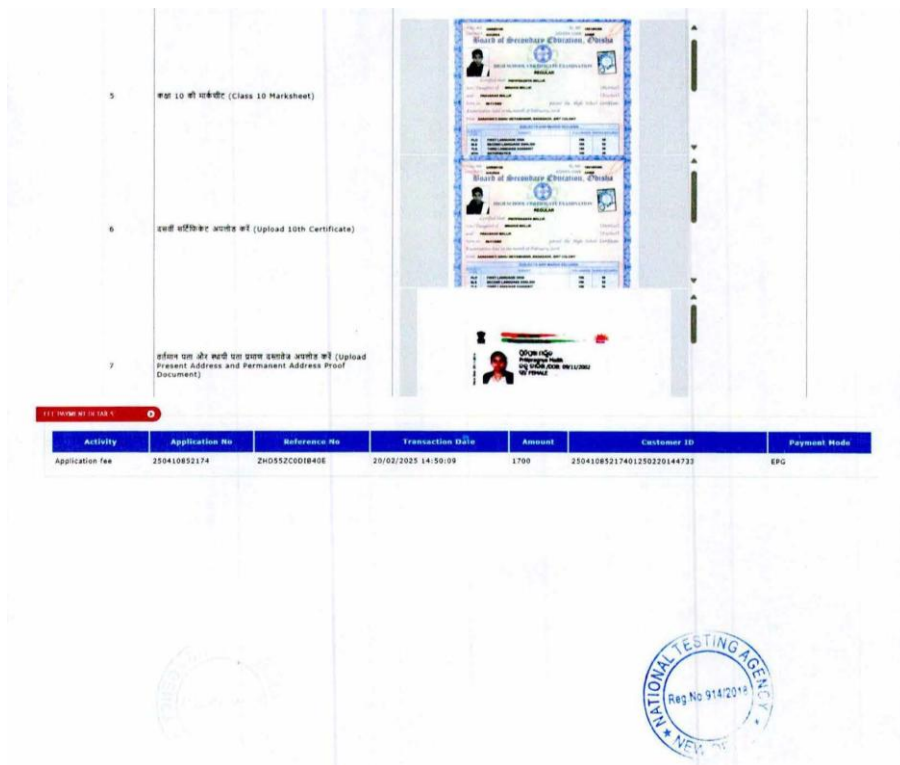
INDIAN LAW REPORTS, CUTTACK SERIES [2025]

Permanent Address	
पता (Premises No/ Name)	KULIKAPADA
उप-मण्डल (Sub-Locality)	BAIDESWAR
मण्डल (Locality)	BAIDESWAR
Country	India
राज्य (State)	ODISHA
ज़िला (District)	CUTTACK
पिन कोड (PIN Code)	754009

View Uploaded Files		
S.No	Type of File	View Uploaded Document
1	पासपोर्ट साइज की फोटो (बिना मास्क के 80% चेहरे के साथ) (Passport Size Photograph (with 80% face without mask))	 <p>PRITYANGYA MALLIK DT:- 26/02/2025</p>

2	बाएँ और दाएँ हाथ की उंगलियों और अंगूठे के निशान (Left and Right hands Fingers and Thumb impressions)	
3	हस्ताक्षर (Signature)	 <p>Prityangya Mallik</p>
4	पोस्टकार्ड साइज फोटो (Postcard Size Photo)	





Purposefully, we are not reproducing the other documents received from the NIC.

29. The learned Senior Panel Counsel referred to the Annexurer-2 to the writ petition produced in original and the copy of which has been annexed to the writ petition purportedly being copy of 'Admit Card' issued in favour of the petitioner. He refers to Annexure-B/2 of the counter affidavit filed on behalf of opposite parties No.1, 2 and 3, (internal page-19) to submit that Annexure-B/2, as has been annexed to the counter is the correct document not Annexure-2 to the writ petition.

The learned Senior Panel Counsel referred to Annexure-4 of the writ petition at page-14 of the brief i.e. copy of the OMR Sheet. He submitted that said document Annexure-4 is forged, recreated and manufactured one. He asserts NTA relies on the Annexure-E/2 series at page -28 of their counter affidavit.

30. The learned Senior Panel Counsel referred to paragraphs-8, 9 and 10 to the counter affidavit filed on behalf of opposite parties No.1, 2 and 3, to substantiate his submission that the documents relied on up by the petitioner i.e. Annexure-1 and Annexure-2 are not the correct documents. He referred to paragraph-11, 12, 13 and 14, to substantiate his arguments that the documents annexed to the writ petition

marked as Annexure-4 (at pages 14 and 15 of the Writ Petition) are ‘forged documents’. We reproduce the relied upon paragraphs-8, 9 and 10 from counter:

“8. That, in response to the said Public Notice, the Petitioner registered online for NEET (UG) 2025 with Application Number: 250410852174 and submitted the said Application Form on 20.02.2025.

A copy of the Confirmation Page of her Online Application Form as per the record of NTA is filed herewith and marked as ANNEXURE-A/2.

9. That the NEET (UG) 2025 Exam was conducted by NTA on 04.05.2025 from 02:00 P.M to 05:00 P.M in Pen and Paper Mode (OMR based) in 13 languages for 22,76,069 lakhs candidates at 5468 Examination Centers in 552 Cities across India and in 14 cities outside India.

10. That the petitioner appeared in NEET (UG)-2025 as a Candidate with Application Number: 250410852174, Roll Number:3604106090 and Test Booklet Code-'46' on 04.05.2025 from 2:00 PM to 5:00 PM at College of Basic Science & Humanities, Ouat, Bhubaneshwar, Odisha (Centre Code: 3604106).

A copy of the Admit Card issued online to the petitioner by NTA with Application Number: 250410852174, Roll Number:3604106090, is filed herewith and marked as ANNEXURE- B/2.”

31. We also reproduce the paragraphs-11, 12, 13 & 14 of the counter affidavit filed by opposite parties No.1, 2 & 3 herein below:-

“11. That, the OMR Answer Sheets collected from the candidates were placed/packed in the prescribed paper envelope and the same was sealed by the Room Invigilators in front of the candidates in the exam rooms itself. As proof of the sealing of the envelope in the exam room itself, two candidates signed that envelope as witness. After this, the sealed paper envelope(s) were taken by the Room Invigilators to the Control Room of the Exam Center. As per the packing instructions of NTA, the Centre Superintendent in the presence of the Independent Observer(s) deployed by NTA at the exam center, placed the sealed paper envelopes collected from all the exam rooms at the Control Room of the Centre, along with other prescribed envelopes containing attendance sheets and absentee proforma, appendices, etc. inside a sealed trunk. The said sealed trunk(s) from all the exam centres (including the exam Centre of the petitioner) were later on received by the City Coordinator of NTA in Bhubaneshwar. OMR Answer Sheets, Attendance Sheets, etc. received in sealed covers from the Exam Centres were handed over in sealed trunk(s) by the City Coordinator to the India Post on the same day for dispatching them to NTA Headquarters in New Delhi.

The copy of the paper envelope in which OMR Answer Sheets of the Candidates in the Room (Assembly- 4) including that of the petitioner, that was received in sealed condition at NTA HQ (with the signature of the petitioner as one of the witnesses of the sealing of the same in the exam room), is filed herewith and marked as ANNEXURE-C/2”

12. That, the sealed paper envelopes containing the original OMR Answer Sheets of the candidates received in sealed envelopes / trunks at NTA Headquarters were opened by the authorized Secrecy Team of NTA and were scanned by using OMR scanner machines in a fully secured environment for evaluation purposes. In the entire process, there is no scope for anyone tampering with the OMR Answer Sheet of any candidate (including the petitioner).

13. That, the scanned copy of the OMR Answer Sheet (bearing Answer Sheet No. 115721626), which was submitted by the Petitioner at her exam centre and subsequently scanned / evaluated in secured environment at NTA Headquarter in New Delhi (after the receiving of the same from the exam centres along-with others in sealed condition), was displayed to her on 03.06.2025 (and not on 02.06.2025 as claimed by her), under intimation through Public Notice dated 03.06.2025. This scanned copy of the OMR Answer Sheet remained available to her online till 05.06.2025. However, it is pertinent to mention here that the Petitioner did not raise any objection or challenge to her OMR Sheet /Responses obtained therefrom, which was displayed to her during the said official challenge window. Further, the petitioner has visited the Website of the NTA 96 times but has preferred silent for all these months and now has come up with certain forged documents which are not as per the record of these Opp. Parties.

The copy of the Public Notice dated 03.06.2025, vide which challenge to OMR Answer Sheet and Provisional Answer Keys were invited from all candidates (including the petitioner), is filed herewith and marked as ANNEXURE- D/2.

14. That, the scanned copy of the petitioner's OMR Answer Sheet (bearing Answer Sheet No.115721626) was also sent to her on her on 05.06.2025 registered email id-minakshimallik8787@gmail.coni, with CC to her alternate registered email id mallikpravakar02326@gmail.com. However, supply of scanned copy of her OMR answer sheet through the said email ids, has been suppressed by the petitioner in her writ application to gain undue advantage of marks awarded to her over other genuine candidates.

The Copy of the said email as well as the scanned copy of her OMR Answer Sheet which was sent through this email, are filed herewith and marked as ANNEXURE-E/2 SERIES."

32. It is submitted that the application number would be found both at top horizontal table at Annexure-1 as well as Annexure-A/2, the first digits '25041' are common for the entire Country of India for all candidates appearing in NEET (UG)-2025. The next seven digits are distinct to the candidate. Annexure-1 produced by the candidate stated to have been downloaded from the website of NTA indicates the last two digits to be '62' whereas it is emphasized by the NTA and confirmed by the NIC that the last two digits are '74' for the petitioner.

It is further submitted that the customer ID starts with '25041.....'. The customer ID as indicated in Annexure-1 of the writ petition though not distinct but seems to be 25041085216201250220144733. When the opposite parties have obtained the same from the NIC and it is clearly visible that the customer ID is "25041085217401250220144733"

33. Referring to the Annexure-2 of the writ petition i.e. page-11 and compared with Annexure-B/2 at page-19 of the counter affidavit, it is brought to our notice that the documents contain a 'QR Code' and a roll number 'bar code'. The bar code itself is captioned as roll number bar code which when scanned gives the roll number i.e. 3604106090 and is not disputed by the petitioner to be her roll number.

It is submitted that the QR Code given at Annexure-2 (by the petitioner) when scanned, does not disclose any document / details such as the application

number, roll number, centre number, name of the candidate, which is otherwise available in the QR Code available in the page-19 of the counter affidavit of the Opposite Parties 1, 2 and 3.

Responding to Annexure-4 of the writ petition it is submitted by the learned Senior Panel Counsel that it is a manufactured, recreated and forged document.

34. Responding to Annexure-5 produced by the candidate-petitioner marked as Annexure-5 at page-16, learned Senior Panel Counsel as well as the Director, Legal of NTA being present in VC referred to Annexure-F/2, page-31 of their counter affidavit. It is brought to the Court's notice that "percentile obtained" table, produced by the petitioner at Annexure-5 (page 16 of writ petition), the numericals towards right-hand side of the decimal remain intact. However, towards left at the 10th place for Physics '8' has been substituted for '1'; for Chemistry, '9' has been added at the 10th place; for Biology, '9' has been added; and to the 'total percentile' '9' has been added in the 10th position towards left of the decimal. It is submitted that numerical remaining towards the right of decimal being intact, and only the numerical at the 10th position to the left of the decimal, getting changed, is mathematically impossible.

35. The learned Senior Panel Counsel referring to the Annexure-6 of the writ petition submitted that the purported copy of the e-mail opened apparently in a mobile phone on "Wednesday, 20 Aug. 11.10" have been verified and it is ascertained from NIC that no such e-mail was ever sent by the NTA or NIC to the petitioner or to any other student/candidate for that matter. The learned counsel relies on the paragraph-24 of the counter, that is reproduced herein:-

"24. That, petitioner at para 3 (d) in her writ application (page 4) has claimed that she received an Email from NTA on 29.07.2025 with Verification Code 1Q5010 for documents (Annexure-6 of the writ application). However, a bare perusal of Annexure-6 shows that it is an SMS from 'ADNICECN-S', and not an e-mail from NTA. Moreover, NTA does not carry out document verification of the candidates, nor it allots any verification code in this regard, as this is the role of Counselling Authorities."

36. Referring to the Annexure-8(page-19) of the writ petition the same submission is made by the learned Senior Panel Counsel Mr. Kashyap along with learned DSGI, Mr. P.K. Parhi that the 'e-mail' is neither sent by the NTA nor by the NIC as is also asserted in the counter of the OJEE.

37. The learned DSGI along with learned Senior Panel Counsel refer to the Annexure-G/2 series that is at page-35 of their counter. They draw our attention to page-40 that shows the application number ending with '74'; it shows the application number of the petitioner and it is submitted that as per the report obtained from the NIC by NTA, referring to the attempts made by the petitioner to

look into website; the details of attempts consistently show 96 times, the application number of the petitioner to be 250410852174.

38. Paragraphs-18, 19 and 20 of the counter affidavit filed by the opposite parties no.1 to 3 are reproduced below:

*“18. That, her actual **Application No.** for NEET (UG) 2025 is 250410852174, which has been generated at the time of registration of online application form by the petitioner herself and the same has been reflected in the documents relating to the petitioner as cited above by NTA. However, this Application No. has been changed to 250410852162 by the petitioner in the confirmation page as Annexure-1 at page 10, admit card as Annexure-2 at page 11, score card as Annexure-5 at page 16 and Annexure-9 at page 20.*

19. The petitioner has relied upon the OMR answer sheet enclosed as Annexure-4 at page 14 of the writ application to substantiate her score of 579 marks. The copy of the OMR Answer Sheet, which has been filed by the Petitioner as Annexure - 4 of the Petition, is not as per the record of NTA and the same is vehemently denied. As mentioned earlier in para 14 above, the OMR Answer Sheet maintained by NTA in respect of the petitioner, is the one which was sent to her through email and enclosed to this reply as ANNEXURE-E/2 SERIES and as confirmed by NIC vide their Letter dated 07.09.2025 at ANNEXURE-G/2 SERIES. As per this official OMR Answer Sheet in respect of the petitioner with Application No.: 250410852174 is without any answer/response marked against any question. In contrast, the OMR Answer Sheet annexed by the Petitioner as Annexure-4 depicts responses marked against most of the questions. It is evident that the said document is a fabricated or manipulated version, created by the petitioner with the intention of falsely projecting a higher score.

20. That the copy of the scorecard, which has been filed by the petitioner as Annexure-5 at page 16 of the writ application, does not tally with the copy of the Score Card enclosed by her as Annexure-10 at page 21 of the writ application which matches with the score card as per the official record of NTA. The QR code on the Score Card at Annexure-5 (page 16) and Annexure-9 (page 20), upon scanning, redirects to NIC Server and confirms that the Candidate's Application No. is '250410852174', Roll No. is '3604106090', marks awarded to her is '0' and NEET All India Rank (AIR) is '2191941'. On the other hand, the QR Code on Annexure-10 (page 21) of the writ application, upon scanning, redirects to NIC Server and confirms that the Candidate's Application No. is '250410852174', Roll No. is '3604106090', marks awarded to her is '0' and NEET All India Rank (AIR) is '2191941', thereby exposing the score card copy fabricated by the petitioner as enclosed to her writ application as Annexure-5 & Annexure-9 to substantiate her false claims of securing 579 marks with AIR 6898.”

Submission of the learned Sr. Advocate and learned instructing counsel on behalf of Opposite Party No.4 and discussions of the Court

39. Mr. Palit, learned Senior Counsel appearing for the OJEE along with Mr. A. Mishra, learned counsel referred to paragraphs-9, 10, 11, 13, 14 and 16 to the counter affidavit filed by Opposite Party No.4, which are reproduced herein :-

“9. That, it is humbly and most respectfully submitted that, the state rank 211 as mentioned in the present writ petition is also not against to this application No.2504108521562 which the petitioner is claiming as her application number. Actual

OJEE State rank 211 has been assigned to application number 250410452757. The said application number has been assigned to Simpall Patmaik, who has secured 565 Marks in NEET-UG 2025 and secured All India Rank-6897 in the National Eligibility cum Entrance Test (NEET).

10. That, it is humbly and most respectfully submitted that, OJEE never invited any candidates for counselling individually. OJEE informs the candidates by public notice in newspaper publication and its own websites by giving wide publication. Different OJEE notice gives information about detail schedule of counselling dates and other activities for counselling and admission process. Accordingly interested NEET UG 2025 qualified candidates are participating in the counselling process. National Testing Agency (NTA) has also well informed and advised to the aspirant candidate to remain in touch with website of the counselling authorities for updates. It is also responsibility of the aspirant candidates to be vigilant for counselling process conducted by the O.J.E.E. for taking part in the counselling and admission process of the State. The O.J.E.E. never individually call any candidates to appear on counseling. Hence, averment stated by the petitioner in the writ petition that the petitioner has been invited by the O.J.E.E. for counselling is factually incorrect. It is also incorrect that on 29-07-2025 document verification of the petitioner has been done by the present deponent. It is evident that as the petitioner has not registered in OJEE 2025 MBBS/BDS counselling process in 2025-26, therefore the statement of claiming as document verification is not correct.

11. That, it is humbly and most respectfully submitted that, the petitioner has visited to the OJEE office to know about her allotment status with her parent. The present deponent after verification of the rank card and basing on the date base shared by National Testing Agency (NTA), has been ascertained that the application number mentioned on the copy of the rank card brought by the petitioner i.e. application No.250410852162 is not correct and the said application has been assigned to Mane Kshitiya Vitthal of Maharashtra. After verifying the database in the name of candidate, with matching father's name, mother's name and DOB, it was ascertained that the Petitioner's application Number is 250410852174 and she has obtained total 0 marks out of 720 securing all India rank as 2191941.

13. That, it is humbly and most respectfully submitted that, A QR code is printed to each rank/score card of a candidate which is unique in nature. In the present case, The QR Code printed to the present score card attached in Annexure-5 (mentioned application No. 250410852162) of the present writ petition filed by the Petitioner is mismatching and downloading the score card having application no.-250410852174. On the other hand, if the QR Code attached to the Annexure-10 filed by the Petitioner will scan it shows also same score card having application no: 250410852174 as Petitioner's actual application number. So, the application No.250410852174 is the actual application number assigned to the petitioner for NEET-UG 2025. It can also be concluded that the Rank/score card enclosed in the present petitioner at Annexure-5 has been manipulated in all the fields like application number percentile of scores secured, all India Rank etc, but not able to tamper the QR code.

14. That, it is humbly and most respectfully submitted that, the petitioner has a copy of OJEE published merit list which was manipulated. The petitioner was also asked to open her login id in OJEE counselling portal, as she was claiming to be a registered candidate having a State rank, then also she failed to do so. A registered candidate participated in OJEE counselling needs correct NEET-UG 2025 application number along with the password created by the candidate during the registration process. In the

present case of the petitioner, she failed to login in OJEE portal as she has not been registered, hence not created a password.

16. That, it is humbly and most respectfully submitted that, the petitioner was also asked by the present deponent to produce the information slip of NEET application process. While the petitioner checked application confirmation page on her E-mail the application number was 250410852174 and not 250410852162, the application number claimed by the Petitioner. The application number 250410852174 carries all the credential of the petitioner like her name, mother name, father name, date of birth etc. are matching to the data base supplied by National Testing Agency to the OJEE i.e. O.P. No.2.”

40. We have also heard Mr. A. Mishra, learned counsel on behalf of opposite party no.4-OJEE. He refers to Annexure-A/4 (though wrongly typed in the affidavit as Annexure-A/2) and referred to paragraph-8 of the counter affidavit to submit that the application number as has been stated by the petitioner to be her application number is not allotted to OJEE for counseling in the State of Odisha. The relied upon paragraph-8 of counter of Opposite Party No.4 is reproduced herein:

“8. That, it is humbly and most respectfully submitted that, no candidate has been registered in OJEE counselling registration process having application No.2504108521562 as mentioned in the petition. Furthermore, After 1st round registration process the OJEE merit list published for the eligible registered candidates indicating State Rank have not listed the registration number 2504108521562, as this number has not been registered by the Odisha Joint Entrance Examination in its registration process of admission to MBBS/BDS course in 2025-26 session. Therefore, the OJEE merit list annexed at Annexure-07 in the petition is not genuine one.

(Copy of the Merit List after 1st round registration process is annexed herewith as Annexure-A/2)”

41. Mr. Mishra then referred to internal page-13 of the counter affidavit filed by the opposite party no.4, 10th horizontal line from the bottom that indicates ‘211’. We have scanned and reproduced the same in the next page.

ODISHA JOINT ENTRANCE EXAMINATION - 2025	
REVISED FINAL STATE MERIT LIST FOR MBBS / BDS ADMISSION 2025-26 (AFTER 1ST PHASE REGISTRATION)	
Merely being listed in the State merit list will not ensure allotment under MBBS/BDS seat. Newly registered candidates have been given rank with decimal point. Allotment will be based on the rank, choice filled, availability of the seat as per Rank/category.	
It is for the information of all concerned that, the merit list published is purely provisional. The merit list has been drawn based on All India Rank of NEET UG 2025 and the copy of the required documents uploaded by the candidates. During reporting/Admission process all concerned documents in original will be verified. If any deviation/tampering / forged found in the documents during the verification will lead cancellation of the allotment and may also lead to cancellation of the candidature.	
As per reports received from SCB, MCH, Cuttack & other designated Medical Boards by NMC all eligible PwBD candidates have been given PC rank & ineligible PwBD candidate's are considered under General Category.	
All merit listed NRI candidates, if allotted a seat during counselling have to submit all original documents as per the NRI notice of MCC during reporting/Admission.	
No. OJEE/0403	Dated: 03-08-2025

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NEET App. No.	Domicile	Category	GC	PC	EX	NRI	SG	NEET_AIR	State Rank	EW_R	SC_R	ST_R	GC_R	PC_R	EX_R	SGS_R	NRI_R
250410348140	Odisha	GN						5792	165								
250410677133	Odisha	GN						5800	166								
250410579852	Odisha	GN	Yes					5821	167			10					
250410747866	Odisha	GN						5836	168								
250410753420	Odisha	GN						5862	169								
250411026563	Odisha	EW						5882	170.00	10.00							
250410112373	Odisha	GN						5898	171								
250410165489	Odisha	GN						5929	172								
250410877241	Odisha	GN						5942	173								
250410569792	Odisha	GN						5970	174								
250410422455	Odisha	GN						5992	175								
250410563170	Odisha	GN						6010	176								
250411094319	Odisha	EW						6018	177.00	11.00							
250411699609	Odisha	GN						6050	178								
250410993123	Odisha	GN						6078	179								
250412081455	Odisha	GN						6095	180								
250410660297	Odisha	EW						6129	181.00	12.00							
250410307557	Odisha	GN						6149	182								
250411407273	Odisha	GN						6179	183								
250410900985	Odisha	GN						6223	184								
250410790559	Odisha	EW						6228	185.00	13.00							
250411091289	Odisha	EW						6262	186.00	14.00							
250410115453	Odisha	GN			Yes			6275	187						5		
250411281970	Odisha	GN						6281	188								
250410904070	Odisha	GN						6291	189								
250410199289	Odisha	GN						6297	190								
250410301930	Odisha	EW						6333	191.00	15.00							
250410505019	Odisha	GN						6370	192								
250410363254	Odisha	GN						6411	193								
250410826853	Odisha	GN						6487	194								
250410922494	Odisha	GN						6547	195								
250410546776	Odisha	GN						6575	196								
250410869666	Odisha	GN						6577	197								
250410555480	Odisha	GN						6598	198								
250410763230	Odisha	GN						6603	199								
250410812870	Odisha	EW						6641	200.00	16.00							
25041117509	Odisha	GN						6647	201								
250410888655	Odisha	SC						6672	202		4						
250410362966	Odisha	GN			Yes			6722	203						6		
250411743385	Odisha	GN						6734	204								
250410188981	Odisha	GN						6771	205								
250411095547	Odisha	EW						6799	206.00	17.00							
250410421496	Odisha	GN						6808	207								
250411043583	Odisha	GN						6831	208								
250410428192	Odisha	GN						6840	209								
250410555022	Odisha	GN						6848	210								
250410452757	Odisha	GN						6897	211								
250410660812	Odisha	GN						6965	212								
250410056396	Odisha	GN						6976	213								
250410689982	Odisha	GN						6990	214								
250410436035	Odisha	GN						7006	215								
250410014877	Odisha	GN						7007	216								
250410897915	Odisha	GN						7032	217								
250411205529	Odisha	GN						7050	218								
250411207494	Odisha	GN						7052	219								
250410221816	Odisha	GN						7054	220								

Mr. Mishra refers to the Application Number 250410452757. It is submitted that the candidate corresponding to the application number is Simpal Pattnaik, category General, All India Rank-6897, State Rank-211.

42. He again reiterated his submissions as noted in our earlier order No.3 dated 17.09.2025 that the OJEE never invites any candidate individually for counseling as there is no occasion to do so apart from the mass counseling process involving all candidates together. It is submitted that the petitioner's assertion regarding she being invited by the OJEE, she appearing on 29.07.2025 before the authority of OJEE is

not correct and denied. He again reiterated and referred to paragraph-11 of the counter by the OJEE-O.P. No.4 that the assertion of the petitioner regarding her application to be 250410852162 is not correct. It is found that the said application has been assigned to one Mane Kshitija Vitthal of Maharashtra.

Mr. Mishra submits that after verifying the data base of name of candidate, by matching father's name, mother's name and Date of Birth of the candidate, it is ascertained that the Petitioner's application Number is 250410852174 and she has obtained total '0' marks her All India Rank being 2191941.

43. Mr. Mishra further relied on paragraph-12 of the counter affidavit of the Opposite Party No.4 to refute the allegations and assertions made by the petitioner and we reproduce the relied upon paragraph-12 of the counter filed by O.P.4.

"12. That, it is humbly and most respectfully submitted that, the application No.2504108521562 is not belongs to the petitioner and her correct Application No. is 250410852174, During the application process for appearing the NEET-UG 2025 the candidates to apply through online and after completing the application process successfully the candidate receives a conformation page mentioning the application number and which is unique in nature and used as login id for any future login by the candidates. The application number and the password created by the candidate is also used for any future reference and also for rank card download. When the deponent was asked to the petitioner on her visit to the OJEE counselling cell for download the rank card In front of the OJEE officials she failed to download the application as password created by her mismatched to application No.2504108521562.

(Copy of the confirmation page issued by the O.P. No.2 is annexed herewith as Annexure-B/2)"

44. Learned counsel for the OJEE-opposite party no.4 submitted that Annexure-B/4 that is confirmation page of the petitioner's application have been obtained by it downloading the same from the NTA website as per standard practice and annexed a copy of the said downloaded copy to its counter marked as Annexure-B/4. He reiterated his submissions that Annexure-8 annexed to the writ petition purportedly an e-mail from the OJEE is incorrect; neither have they issued any such e-mail nor they have issued any communication to the petitioner to appear before them. He therefore, disputes the 'email' to be (as has been annexed as Annexure-8) a print out of e-mail or message.

It is submitted that whatever interaction those have been referred to by the petitioner in the writ petition are in the context of the fact that the petitioner and her parents visited OJEE Cell at Bhubaneswar and they were never invited as there was no occasion to invite them.

45. On perusal, we found the following distinct/ discrepancies with Annexure-A/2 at page-18 of the counter affidavit of Opposite Party No.4 which comparing with Annexure-1 at page-10 of the writ petition annexed by the petitioner that pertains to NEET (UG)-2025 continuation page and we note the same. Learned counsel for the petitioner has also produced the coloured photocopy of the

document, said to be 'original downloaded' though not filed before the Court and the said copy is returned to the learned counsel for the petitioner.

By comparing the Annexure-1 of the writ petition and Annexure-2/A of the counter of the Opposite Party No.4 on the face of it, we find following discrepancies: -

- (i) 'Application number' is different,
- (ii) The 'Bar Code' is different at the top,
- (iii) At the bottom last line 'application number' is different.
- (iv) The 'customer ID' is different.


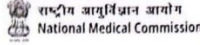



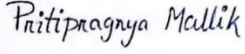


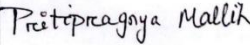

46. The petitioner was put to notice that the 'confirmation page' of application sought to be relied upon by the petitioner by annexing copy of the same supported by affidavit annexed to the writ petition marked at Annexure-1 does not tally with the original records made available to us. She was also put to notice through her counsel that we have no reason to disbelieve the original records moreso, when there is no human intervention and it has been generated by the petitioner-applicant for the examination herself.

47. As we have heard the learned DSGI present in VC, Mr. Kashyap, Senior Panel Counsel and the Director, Legal NTA, responding to Court's query, regarding availability of finger prints of all 10 fingers of the petitioner, it is stated that as a part of procedure followed for all candidates, the fingerprints of the petitioner were captured digitally, and it is stored, and retained by the Agency and it can be produced by the National Informatics Centre (NIC) for identification, which is an independent Agency under the Government of India.

Accordingly, the opposite parties-NTA were directed to keep all the originals and digital data preserved to be required for verification. Though NIC is not a party, it was directed by us through the learned DSGI to preserve all the original digital data captured during the process of the application made by the applicant-petitioner up to publication of result of examination which may be required for adjudication of the matter.

48. Since the records are produced in a sealed cover, after opening of the sealed cover, we find the Admit Card of the petitioner is produced, which was her hall ticket to get entry into the examination hall with regard to her NEET (UG) 2025. The said Admit Card contains the two signatures of the petitioner in the first page at the relevant space in a table and again her two signatures on the second page. One of the signatures in the second page is on the photograph itself. In both the pages of the Admit Card, the application number has been mentioned ending with '74'. We find that it is also correctly stated by the opposite parties no.1, 2 and 3 that the Invigilator has signed the said document, who is a witness to the Admit Card being produced and also it buttresses the fact that the petitioner had produced her Admit Card to get

entry to the examination hall. Both the pages of the original Admit Card of the petitioner are scanned and reproduced herein on the next two pages:

 Ministry of Education Ministry of Health and Family Welfare Government of India		National Eligibility Cum Entrance Test (UG) - 2025 Admit Card-Provisional		 राष्ट्रीय परीक्षा एजेंसी National Testing Agency	
 राष्ट्रीय आयुर्विज्ञान आयोग National Medical Commission				 PRITIPRAGNYA MALLIK DT:- 20/02/2025 Candidate's Photograph	
Roll Number:	3604106300	Application Number:	250410852174		
Candidate's Name:	PRITIPRAGNYA MALLIK	Father's / Mother's Name:	PRANAVAR MALLIK		
Gender:	Female	Date of Birth:	09-11-2002		
Category:	General	State of Eligibility:	ODISHA		
Person with Disability:	No	Scribe:	--		
Mode of Authentication during Registration Process:	Aadhaar	Type of Disability:	--		
		Roll Number Barcode 		 Candidate's Signature	
Test Details					
Question Paper Medium	English				
Date of Examination	04.05.2025				
Reporting / Entry Time at Centre	11.00 A.M (IST)				
Gate Closing Time of Centre	01.30 P.M (IST) Sharp				
Timing of Examination	02.00PM to 05.00PM (IST)				
Test Centre Number	3604106				
Test Centre Name	COLLEGE OF BASIC SCIENCE & HUMANITIES, OUAAT				
Test Centre Address (Venue of Test)	SIRIPUR CHOWK, OUAAT, BHUBANESWAR, ODISHA-751003				
 SENIOR DIRECTOR - NTA					
SELF DECLARATION (UNDERTAKING)					
I, PRITIPRAGNYA MALLIK, resident of KURUMAPADA BAIDESWAR BAIDESWAR CUTTACK ODISHA 754008, do hereby, declare the following: 1. I have read the instructions, Guidelines, Information Bulletin, Instructions and Notices related to this examination available on the website https://nta.nic.in/ and www.nta.ac.in 2. I have read the detailed "IMPORTANT INSTRUCTIONS FOR CANDIDATES" as given on Page-3 and I undertake to abide by the same.					
 Candidate's Photograph PRITIPRAGNYA MALLIK DT:- 20/02/2025		Declaration Form to be affixed before reaching the Centre, except for the candidate's signature which has to be affixed in the presence of the invigilator only.		 Candidate's left hand thumb Impression (To be affixed before reaching the Centre)	
				 Candidate's Signature (To be signed on the Day of Examination in the presence of the invigilator only)	
					
Application Number : 250410852174 IP Address : 49.37.116.114 Date and Time : 01/05/2025 12:41:42 PM [Page 1 of 3]					

INDIAN LAW REPORTS, CUTTACK SERIES [2025]



Ministry of Education
Ministry of Health and Family Welfare
Government of India

National Eligibility Cum Entrance Test (UG) - 2025
Admit Card-Provisional



Preetipagnya Mallik
Pret
(The)

Jyoti Prakash Sahoo

Date of Examination:	04.05.2025	Timing:	02.00PM to 05.00PM (IST)
Roll Number:	3604106090	Application Number:	250410852174
Candidate's Name:	PRETIPRAGNYA MALLIK	Father's/ Mother's Name:	PRIVAKAR MALLIK
<i>Jyoti Prakash Sahoo</i> Signature of Invigilator		<i>Preetipagnya Mallik</i> Candidate Signature <small>(To be signed on the Day of Examination, in presence of invigilator only)</small>	
<p>INSTRUCTIONS FOR CANDIDATES</p> <p>a. The Candidate is to paste a latest colored postcard size (4" x 6") photograph of his/her own in the designated space</p> <p>b. Invigilator shall ensure that the photograph and signature on this page match with the photograph and signature of candidate on Page 1 of Admit Card</p> <p>c. The Candidate to sign across the photograph on left side.</p> <p>d. The Invigilator should sign across the photograph of the candidate on the right side.</p> <p>e. It is mandatory for the candidate to bring this page of the Admit Card with pasted photograph. If she/he doesn't bring this, then she/he will not be allowed to sit in the examination, and this shall lead to her/his disqualification.</p>			

49. This Court takes note of the fact that at the stage of conducting the examination, significantly, none of the authority like NTA or the NIC or any other authority for that matter have received any complaint regarding the petitioner not appearing examination by producing the above reproduced Admit Card, having application number '250410852174' at three places, one in the first page and two in the second page.

50. For a comparison of the signature of the petitioner the declaration in her writ petition at page-9, vakalatnama signed and executed by petitioner filed before this Court is scanned and reproduced herein:

9



Declaration

I, Pritipragnya Mallik, the deponent / Petitioner above named, do hereby solemnly affirm that the facts stated in paragraphs No.1, 2, 3(a) to 3(g), 4 and 5 are true to my own knowledge and are true to best of my information, which I obtained from my personal source:-

I believe the information to be true for the following reason: Basing upon official records and information.

Solemnly declare at the above said this 2nd day of September, 2025.

Identified by:

Saswati Mohapatra
2.9.25
Advocate

Pritipragnya Mallik

DEPONENT

Solemnly affirm before me by Pritipragnya Mallik, who is identified by before me by Ms. Saswati Mohapatra, Advocate, whom I personally know.

FORM OF VAKALATNA
 IN THE HIGH COURT OF THE ORISSA, CUTTACK,
 WP (C) No- 24344 of 2025

Appellant(s)/Petitioner(s)
PratiPragnya Mallick
 VERSUS
 Respondent(s)/Opp. Party(ies)
Saswati Mahapatra

Know all men by these presents, that by this Vakalatnama.
 I/We PratiPragnya Mallick, D.O. 22.9.25, D. PratiPragnya Mallick, A/E/S, Lakshmi Colony, Khandagiri, PO: Khandagiri, BBSR, 751012 Dist: Cuttack

Appellant /Respondents /petitioner /Opposite Party the aforesaid Revision /Appeal Case do here by appoint and retain Mr. SASWATI MAHAPATRA, C.No. D-290/1998, Mob: 9437159531

Advocate appear for me /us in the above case and to conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of any application connected with the same, or and decree or order of documents or receipt of any morn and also in application for leave to Advocate(s) to admit any compromise Dated 2.9.25

Received from the executant(s)
 Satisfied and accepted as I hold
 No brief for the other side.

Accepted as above
 Advocate [Signature]
 Accepted as above
 Advocate
 Accepted as above
 Advocate

PratiPragnya Mallick
 Signature of the executant(s)

It is observed and noticed that the signature of the petitioner in the Admit Card reproduced above does match with her signature in the declaration and vakalatnama signed by petitioner.

51. It is submitted by the learned Sr. Panel Counsel on being asked by us to verify the activity log and the documents annexed after obtaining a copy from such activity i.e. downloading, if anything matches, he after verification submits that at Serial No.40 of the activity log the entry matches with page-11 except the time and Serial No.91 of the activity log everything matches with Annexure-10, page-21 including the time. After seeing the discrepancies, we have asked the learned counsel for the petitioner that at page-11 of the writ petition i.e. Annexure-2 the time is shown to be “04:11:06 PM”, whereas in the entire activity log of the petitioner obtained from the NIC nowhere records such time. If it is 04:11:06, then it has to be

4 AM (Ante Meridiem) in the early morning and if it is Post Meridiem (after Midday), then it has to be 16:11:06 PM.

This Court takes note of the fact that the activity log at Serial No.40 shows the Application No.250410852174, Activity Name-‘Admit Card Downloaded’, IP Address-157.41.245.48 and Activity Time-01/05/2025 16:11:00 PM.

52. ‘Page-21 marked as Annexure-10’ to the writ petition i.e. score card as we have observed and noted above the percentile is different. However, the application number at all places remains the same that is ending with 74 and not ‘62’ as asserted by the petitioner.

53. The learned Senior Panel Counsel referred to the original pink envelope, which contained the OMR sheet of the petitioner after being sealed in the exam-hall. The original envelope has been produced before us i.e. packet No.(3). We have verified that there is no tampering of the said pink envelope that was produced in original before us. The cover page of the pink envelope is reproduced in the next page:

028356

ENVELOPE-1

OMR ANSWER SHEETS (ORIGINAL COPY)

(Room wise (of 24 candidates) collection of OMR Answer Sheets from the candidates, separation from Office Copy and Sealing of Original Copy in presence of candidates in the class room)

Centre No.	City	Centre Name with Address
3604106	Bhubaneswar	College of Basic Science & Humanities, O.U.A.T Bhubaneswar

It is certified that we the following have personally counted the OMR answer sheets (ORIGINAL COPY) in the presence of candidates and sealed the envelope in presence of the candidates. Further two candidates whose roll no. are mentioned below were present during sealing and certify the same. The OMR answer sheets (ORIGINAL COPY) in Pink Paper Envelope tallies with the number of candidates present in the room. The details of the answer sheets brought from the above room in this center are as follows:

Room No. ASSEMBLY-2p.

Note: It should be ensured that

> No. of candidates Allocated 24 = No. of candidates Absent Nil + No. of candidates Present 24

> No. of OMR Answer Sheets Collected = No. of OMR Answer Sheets ORIGINAL Copy 24 = No. of Candidates Present in this Room: 24

Details of Roll No(s). of Impersonation/Unfair Means (UFM) case(s), if any, in this room: _____

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	Name in Capital letters	Roll No.	Signature with Date and Time of Packaging	Mobile No./ Telephone No.	Count
Candidate - 1	AKASH KUMAR DASH	3604106089	Akash Kumar Dash 5-10 PM	9378089362	
Candidate - 2	PRITI PARANJAYAMALLIK	3604106090	Pritiparagaya Mallik 5-10 PM	8984818642	
Invigilator - 1	DR. DEBASIS DASH		Debasish Dash 5-10 PM	9861130580	
Invigilator - 2	JYOTI PRAKASH SAHOO		Jyoti Prakash Sahoo 5-10 PM	9090213141	

The Room Wise Pink Paper Envelope (ORIGINAL Copy) has been obtained duly sealed by the Invigilator and it is certified that the sealed envelope is being sent to NTA duly sealed in front of the candidates in examination room

	Name in Capital letter	Signature with Date and Time of Packaging	Mobile No./ Telephone No.
Observer	SAMPRITI PANDA	S.Panda: 4/5/25 5:10 PM	9716954745
Observer	SOUMYA R. SAHOO	S.R. Sahoo 04-05-25 5:10 PM	8373820520
Centre Superintendent	PRADIP KU JANA	P.K. Jana 4/5/25 5:10 PM	7008671287
Deputy Centre Superintendent	NANDITA SINGH	N. Singh 04/5/25	9861068830 Centre Superintendent CBSH, OJAT, Bhubaneswar-3 Seal of Centre Superintendent

Dated: 04-05-2025

Note:

1. OMR Answer Sheets (ORIGINAL copy) should not be tagged/ stapled.
2. The OMR Answer Sheet (ORIGINAL copy) should be brought by the Invigilators duly sealed from Room to Examination Control Room immediately after the conclusion of examination.
3. This sealed PINK Paper Envelope be packed in PINK Tamper Evident Envelope.

E1

Further Submissions of the Learned Counsel for the petitioner and discussions of the Court on them:

54. Learned counsel for the petitioner submitted that the statement made by the Director, Legal, NTA that the digits '25014' is common throughout India is not correct and the statement is misleading. She refers to the rejoinder dated 19.09.2025 filed on 19.09.2025 before this Court. Referring to Annexure-20, page-18 of the rejoinder i.e. merit list of Government of Maharashtra 2025-26. She submits that the 'CET Form Number' she understands to mean 'Common Entrance Test Form Number' is same as application number given by the NEET.

We cannot accept such submission and we reject the same for the reasons that we cannot interpret and accept as suggested.

55. Learned counsel for the petitioner has annexed to the rejoinder the letter/notice issued by the office of the Commissioner for Entrance Examinations, Govt. of Maharashtra at Annexure-21. The Annexure-20 at page-18 of the rejoinder and Annexure-21 at page-20 of the rejoinder are reproduced in the next page:

ANNEXURE-20



GOVERNMENT OF MAHARASHTRA
State Common Entrance Test Cell, Maharashtra, Mumbai
Admissions to Health Science Courses, NEET (UG) -2025-2026
PROVISIONAL SELECTION LIST ONLY FOR MBBS/BDS COURSES-CAP ROUND 1

Note: 1. Last Date of joining the respective college: 22/08/2025 upto 5.30 pm(Excluding 15/08/2025 & 16/08/2025).
2. Last Date to fill the Status Presentation Form at College: 22/08/2025 upto 5.30 pm(Excluding 15/08/2025 & 16/08/2025).
3. Admitting Institute will verify the original documents and ascertain eligibility of the candidates as per the NEET(UG) -2025 brochure.
4. This Provisional Selection is done on the basis of information given by the candidate in the application form and the admission will be confirmed after verification and submission of Original documents as per Candidate's claim.
5. Candidates should submit all the original documents as per his/her claim and pay requisite fees in the selected college within the stipulated time, failing which this selection status is cancelled.
6. This seat allotment is conducted on the seat(s) that are approved/permited by MCI/MNC/DCI and affiliated to MMS/NMS only.
Printed On: 15/08/2025 Pg: 1

Sl. No.	AIR	NEET Roll No.	CEET Form. No.	Name	G. Cat.	Quota	Current Selection Details	Code College
1	10	3114101176	256003954	AARAV AGRAWAL	M	OPEN	(BMD)	1103:GSMC MUMBAI
2	26	3112106097	256021321	RAHUL SIDDH NARAYAN	M	OPEN	(BMD)	1103:GSMC MUMBAI
3	40	3112035372	256025226	ANISH KANODKAR SHAMANT	M	OPEN	(BMD)	1103:GSMC MUMBAI
4	46	3110306212	256045038	ABHANI VARUN CHAVLA	M	OPEN	(BMD)	1103:GSMC MUMBAI
5	96	3114102301	256045280	SIRVI DATTATRAYA BHUSARE	F	OPEN	(W)	1103:GSMC MUMBAI
6	113	3114102301	256045280	SIRVI DATTATRAYA BHUSARE	F	OPEN	(W)	1103:GSMC MUMBAI
7	119	3110411013	256011682	HIRAL DEEPAK MAHALJI	F	OPEN	(W)	1103:GSMC MUMBAI
8	131	3110214122	256034655	PATIL DEEPAK RAJESH	M	OPEN	(BMD)	1103:GSMC MUMBAI
9	176	3114114064	256033301	PRATHAMESH BHARGAVANAND KUTKANT	M	OPEN	(BMD)	1103:GSMC MUMBAI
10	178	310208180	256017273	VIJAY KARANDE RAJESH	M	OPEN	(BMD)	1103:GSMC MUMBAI
11	179	310208180	256017273	VIJAY KARANDE RAJESH	M	OPEN	(BMD)	1103:GSMC MUMBAI
12	193	3106102447	256024438	HALDOLKAR UPKARASHA CHANDRANDEKAR	F	OPEN	(W)	1103:GSMC MUMBAI
13	235	3112101032	256059914	KORUDE ADMINATOR MADHAVAO	M	OPEN	(W)	1103:GSMC MUMBAI
14	264	3111191913	256059876	ADITYA SHIVAJI SAMALE	M	OPEN	(W)	1103:GSMC MUMBAI
15	275	3115406010	256018601	MANAV KOTYANK VAIDYA	M	OPEN	(W)	1103:GSMC MUMBAI
16	338	3114111171	256040850	DAKSH GHANASHYAM PATIL	M	OPEN	(W)	1103:GSMC MUMBAI
17	351	3115307445	256011417	ZAHRA MOHAMEDALI SOMJI	F	OPEN	(W)	1103:GSMC MUMBAI
18	357	3112501238	256011680	SHRIRAM KALIT FOKALE	M	OPEN	(W)	1103:GSMC MUMBAI
19	372	3112501238	256011680	SHRIRAM KALIT FOKALE	M	OPEN	(W)	1103:GSMC MUMBAI
20	382	3114105232	256000227	ANURVA PARASRANT KADPDE	M	OPEN	(W)	1103:GSMC MUMBAI
21	417	3115205560	256061414	ANISH LINGNE	M	OPEN	(W)	1103:GSMC MUMBAI
22	427	3114102123	256011157	ANANYA MEHTA	F	OPEN	(W)	1103:GSMC MUMBAI
23	429	3110310472	256006336	HUSSAIN ALIANSAR MOVIADI	M	OPEN	(BMD)	1103:GSMC MUMBAI
24	556	3109212119	256047303	RAMANUJ PUSHPAK NARAND	M	OPEN	(BMD)	1110:BYMC FUDR
25	562	3110310472	256006336	HUSSAIN ALIANSAR MOVIADI	M	OPEN	(BMD)	1110:BYMC FUDR
26	581	3111031006	256029298	KANAKYA RAJESH KARANDE	M	OPEN	(BMD)	1103:GSMC MUMBAI
27	595	3110310472	256010146	HARSHIT SHERYANSHI MOKHALKAR	M	OPEN	(BMD)	1103:GSMC MUMBAI
28	600	3113206582	256013151	YAKSH PATIL	M	OPEN	(BMD)	1103:GSMC MUMBAI
29	602	3110305287	256014318	MANISHAN MEHUL VORA	M	OPEN	(BMD)	1103:GSMC MUMBAI
30	614	3109311710	256037844	TIDKE SHIVANAND YASHWANT	M	OPEN	(BMD)	1103:GSMC MUMBAI
31	622	3101103110	256033693	RITVA JYOTIRAMBI KOLANGE	F	OPEN	(W)	1103:GSMC MUMBAI
32	627	3108109183	256033033	KADAM SUDHISTI YOTAM	F	OPEN	(W)	1103:GSMC MUMBAI
33	652	3110310472	256014216	SOHANIKA SHRITISH WALEKAR	F	OPEN	(W)	1103:GSMC MUMBAI
34	658	3110310472	256014216	SOHANIKA SHRITISH WALEKAR	F	OPEN	(W)	1103:GSMC MUMBAI
35	675	3110208058	256005027	ISHITA ANHAR SHINDHARTI	F	OPEN	(W)	1103:GSMC MUMBAI

Legends : AIR: All India Rank Cat: Category Bp:illy Area D1: Def1 D2: Def2 D3: Def3 VVA:V(A) NMS:R(B)/R(L) NMC:R(C)/R(T) NMD:R(G)/R(T) I.O.:Institute Quota, Mni:Minority Candidate, OMP-N:O-P-B:Orphan (Institutional-INC/IOG), OMP-C:Orphan (Outside Institution-NIN), Gender:W:Male F:Female W:Woman Quota EMD: Benchmarking Donor, EMI: Benchmarking Recipient

20

Office of the Commissioner for Entrance Examinations
Phone : 0471-2332120, 0471-2338487 E-mail: ceekinfo.cee@kerala.gov.in

KEAM 2025

Kerala State Medical Rank List - 2025
Based on NEET (UG) 2025 Rank

ANNEXURE-21
19 SEP 2025
CLEARANCE

Sl.No.	AppI.No.	NEET Score	NEET Rank	State Rank	Sl.No.	AppI.No.	NEET Score	NEET Rank	State Rank
1.	1187010	643	109	1	2.	1101397	633	200	2
3.	1203078	632	213	3	4.	1174402	628	274	4
5.	1113253	627	290	5	6.	1127656	626	309	6
7.	1158305	623	384	7	8.	1144759	621	426	8
9.	1131971	620	462	9	10.	1161519	619	480	10
11.	1104977	619	494	11	12.	1145496	617	547	12
13.	1175213	616	566	13	14.	1160619	615	616	14
15.	1155532	615	633	15	16.	1162129	614	638	16
17.	1196790	612	726	17	18.	1190207	611	758	18
19.	1186974	610	776	19	20.	1155802	610	788	20
21.	1103162	610	791	21	22.	1144549	610	821	22
23.	1132759	609	836	23	24.	1134559	609	837	24
25.	1143499	609	843	25	26.	1149379	609	844	26
27.	1232376	609	853	27	28.	1145967	609	856	28
29.	1200899	608	884	29	30.	1193775	608	886	30
31.	1236305	608	887	31	32.	1110552	608	892	32
33.	1177565	608	895	33	34.	1108259	607	944	34
35.	1216358	607	949	35	36.	1190246	607	977	36
37.	1107790	606	1003	37	38.	1157297	605	1035	38
39.	1144307	605	1045	39	40.	1215572	605	1061	40
41.	1119724	605	1066	41	42.	1173266	604	1113	42
43.	1106044	604	1121	43	44.	1133086	604	1139	44
45.	1123020	603	1161	45	46.	1120991	603	1162	46
47.	1176358	603	1164	47	48.	1162384	603	1173	48
49.	1111858	603	1180	49	50.	1131238	603	1192	50
51.	1118884	602	1197	51	52.	1109694	602	1212	52
53.	1118186	602	1229	53	54.	1120467	602	1240	54
55.	1158832	602	1241	55	56.	1100459	602	1243	56
57.	1102044	601	1254	57	58.	1106798	601	1267	58
59.	1161620	601	1281	59	60.	1105235	601	1312	60
61.	1102890	601	1313	61	62.	1187117	601	1319	62
63.	1136977	601	1323	63	64.	1145879	600	1336	64
65.	1138284	600	1342	65	66.	1162487	600	1357	66
67.	1130797	600	1375	67	68.	1107281	600	1379	68
69.	1117189	600	1385	69	70.	1101767	600	1388	70
71.	1116294	600	1390	71	72.	1124542	600	1406	72
73.	1153042	599	1416	73	74.	1100986	599	1431	74
75.	1182804	599	1432	75	76.	1126633	599	1451	76
77.	1102544	598	1500	77	78.	1100913	598	1544	78
79.	1251528	597	1553	79	80.	1140831	597	1556	80
81.	1184795	597	1566	81	82.	1221339	597	1569	82
83.	1122714	597	1573	83	84.	1105788	597	1578	84
85.	1189097	597	1584	85	86.	1186074	597	1596	86
87.	1165807	596	1614	87	88.	1122045	596	1636	88
89.	1126187	596	1647	89	90.	1176951	596	1652	90

Provisionally Included, Subject to the decision of screening committee.

Page 1

28.07.2025

56. From perusal of the above two annexures as we have reproduced in the judgment order by scanning the said pages, the contention that in Maharashtra

notification 'CET Form Number' stands for the 'NEET Application Number' and in Kerala the 'application number' stands for 'NEET Application Number', are without any basis. The suggestion/submission is only a guess work leading to far fetched conclusions that the application number has to be read as 'NEET Application Number'.

57. In any event the authorities of the States Kerala and Maharashtra whose documents are sought to be relied upon are not party to the present proceeding nor these said notifications have any bearing as far as the present lis is concerned. This Court has to and does reject the contention that by referring to any document where 'Application Number' is mentioned and 'CET Form Number' is mentioned those numbers are to be read as 'NEET Application Number'.

58. Then learned counsel for the petitioner took us to page-9 of the rejoinder filed by the petitioner dated 19.09.2025 which is reproduced in the next page:



9
INFORMATION BULLETIN NEET (UG)-2025



Appendix-V

State/Union Territory Wise List of Examination Cities for National Eligibility cum Entrance Test (NEET-UG-2025)

S. No	City Code	State	District	City
1.	1101	Andaman & Nicobar Islands (UT)	South Andaman	Port Blair
2.	1211	Andhra Pradesh	Guntur	Amaravathi
3.	1212	Andhra Pradesh	Anantapur	Anantapur
4.	1213	Andhra Pradesh	West Godavari	Bhimavaram
5.	1214	Andhra Pradesh	Prakasam	Chirala
6.	1215	Andhra Pradesh	Chittoor	Chittoor
7.	1216	Andhra Pradesh	West Godavari	Eluru
8.	1217	Andhra Pradesh	Anantapur	Gooty
9.	1218	Andhra Pradesh	Nellore	Gudur
10.	1219	Andhra Pradesh	YSR Kadapa	Kadapa (YSR Kadapa)
11.	1220	Andhra Pradesh	East Godavari	Kakinada
12.	1221	Andhra Pradesh	Kurnool	Nandyal
13.	1222	Andhra Pradesh	Prakasam	Ongole
14.	1223	Andhra Pradesh	Ysr Kadapa	Proddatur
15.	1224	Andhra Pradesh	East Godavari	Rajahmundry
16.	1225	Andhra Pradesh	Srikakulam	Srikakulam
17.	1227	Andhra Pradesh	West Godavari	Tadepalligudem
18.	1228	Andhra Pradesh	West Godavari	Tanuku
19.	1229	Andhra Pradesh	Vizianagaram	Vizianagaram
20.	1201	Andhra Pradesh	Guntur	Guntur
21.	1202	Andhra Pradesh	Kurnool	Kurnool
22.	1203	Andhra Pradesh	Nellore	Nellore
23.	1204	Andhra Pradesh	Chittoor	Tirupathi/Tirupati
24.	1205	Andhra Pradesh	Krishna	Vijayawada
25.	1206	Andhra Pradesh	Vishakapatnam	Visakhapatnam
26.	1207	Andhra Pradesh	Tenali	Tenali
27.	1208	Andhra Pradesh	Guntur	Narasaraopet
28.	1209	Andhra Pradesh	Machilipatnam	Machilipatnam

29.	1210	Andhra Pradesh	Mangalagiri	Mangalagiri
30.	1304	Arunachal Pradesh	Pasighat/East Siang	Pasighat
31.	1303	Arunachal Pradesh	Namsai	Namsai
32.	1301	Arunachal Pradesh	Papum Pare	Itanagar/Naharlagun
33.	1405	Assam	Baksa	Baksa
34.	1406	Assam	Barpeta	Barpeta
35.	1407	Assam	Darrang (Mangaldoi)	Mangaldoi
36.	1408	Assam	Dhubri	Dhubri
37.	1409	Assam	Goalpara	Goalpara
38.	1410	Assam	Golaghat	Golaghat
39.	1411	Assam	Hailakandi	Hailakandi

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59. Referring to the City Code as we have reproduced page-9, above it is suggested and submitted that for Andhra Pradesh there is a City Code for Arunachal Pradesh and Assam there is different City Code. It is suggested that from the City Code read with the Roll Number of a candidate it can be ascertained to which State and district the candidate belongs.

60. In our opinion, the said contention has to be rejected in limine because it has no basis, based only on surmises. By producing a information bulletin of the NTA, the petitioner cannot suggest how the roll number is to be read whether City Code has to be read with the State Code; whether the State Code has to be read with the roll number and whether by reading the 'CET' in case of State of Maharashtra and 'application number' in case of State of Kerala it has to be inferred by Court that those are all 'NEET Application Number'. The contentions of petitioner are thoroughly misconceived and are hereby rejected.

61. We take judicial notice of the fact that the OJEE has produced Odisha JEE-2025 revised final State merit list for MBBS-BDS admission marked as Annexure-A/4 to their counter at page-10 which is scanned and reproduced in the next page:

ODISHA JOINT ENTRANCE EXAMINATION - 2025	
REVISED FINAL STATE MERIT LIST FOR MBBS / BDS ADMISSION 2025-26 (AFTER 1ST PHASE REGISTRATION)	
Merely being listed in the State merit list will not ensure allotment under MBBS/BDS seat. Newly registered candidates have been given rank with decimal point. Allotment will be based on the rank, choice filled, availability of the seat as per Rank/category.	
It is for the information of all concerned that, the merit list published is purely provisional. The merit list has been drawn based on All India Rank of NEET UG 2025 and the copy of the required documents uploaded by the candidates. During reporting/Admission process all concerned documents in original will be verified. If any deviation/tampering / forged found in the documents during the verification will lead cancellation of the allotment and may also lead to cancellation of the candidature.	
As per reports received from SCB, MCH, Cuttack & other designated Medical Boards by NMC all eligible PwBD candidates have been given PC rank & ineligible PwBD candidate's are considered under General Category.	
All merit listed NRI candidates, if allotted a seat during counselling have to submit all original documents as per the NRI notice of MCC during reporting/Admission.	
No. OJEE/0403	Dated: 03-08-2025

NEET App_No.	Domicile	Category	GC	PC	EX	NRI	SG	NEET_AIR	State Rank	EW_R	SC_R	ST_R	GC_R	PC_R	EX_R	SGS_R	NRI_R
250410877088	Odisha	SC					Yes	180	1		1					1	
250410367149	Odisha	GN						204	2								
250410836215	Odisha	GN						320	2.01								
250411275717	Odisha	GN						456	3								
250410002276	Odisha	GN						466	4								
250410113565	Odisha	GN						679	5								
250410512989	Odisha	GN						762	6								
250410784207	Odisha	GN						801	7								
250410950178	Odisha	GN						827	8								
250410296378	Odisha	GN						918	9								
250411093352	Odisha	GN						946	10								
250411832224	Odisha	GN						967	11								
250410782800	Odisha	GN						978	12								
250410256522	Odisha	GN						990	13								
250411159552	Odisha	EW						1034	14.00	1.00							
250410556566	Odisha	GN						1075	15								
250410553567	Odisha	GN						1120	16								
250410297499	Odisha	GN						1176	17								
250410742532	Odisha	GN						1247	18								
250410324520	Odisha	GN						1251	19								
250410441754	Odisha	EW						1347	20.00	2.00							
250410200583	Odisha	GN						1382	21								
250410913090	Odisha	GN						1430	22								
250410176232	Odisha	GN						1454	22.01								
250410001106	Odisha	GN						1476	23								
250410125367	Odisha	GN						1485	24								
250410236619	Odisha	GN						1539	25								
250410109681	Odisha	GN						1638	26								
250410138744	Odisha	GN						1660	27								
250411531629	Odisha	GN						1686	28								
250411189946	Odisha	EW						1703	29.00	3.00							
250410758545	Odisha	GN						1785	30								
250410120128	Odisha	GN						1787	31								
250410008853	Odisha	GN						1818	32								
250410926596	Odisha	GN	Yes				Yes	1828	33				1			2	
250410122559	Odisha	GN						1941	34								
250410181702	Odisha	GN						1942	35								
250410500791	Odisha	GN						1956	36								
250410679926	Odisha	GN						1975	37								
250410066742	Odisha	GN	Yes					2002	38				2				
250410239285	Odisha	SC						2010	39		2						
250410009682	Odisha	GN						2058	40								
250410753908	Odisha	GN						2070	41								
250410354411	Odisha	GN						2092	42								
250410495830	Odisha	GN						2134	43								
250410357182	Odisha	GN						2141	44								
250410878010	Odisha	GN						2151	45								
250410635923	Odisha	GN						2211	46								
250410686955	Odisha	GN						2229	47								
250411698999	Odisha	GN						2241	48								
250410830064	Odisha	GN						2276	49								
250410837464	Odisha	GN						2295	50								
250410228365	Odisha	GN						2316	51								
250410375350	Odisha	GN						2333	52								
250411117440	Odisha	GN						2339	53								
250410054555	Odisha	GN						2367	54								

62. We find the data captured in the notification of OJEE is completely under different headings, if OJEE notification as reproduced above, is compared with Maharashtra notification relied upon by the petitioner at Annexure-20 and Kerala notification also relied upon by the petitioner at Annexure-21 (as we have reproduced above).

63. Since it was repeatedly asserted by the learned counsel for the petitioner that “NEET Application Number” is written above in Kerala and Maharashtra, we pointedly asked learned counsel to place/point out before us where NEET Application finds mention in the results of Maharashtra and Kerala, she has not been able to bring to our notice anything further. Necessarily, the extrapolation by the learned counsel for petitioner that ‘application number’, ‘CET Form Number’ would mean the NEET Application Number is misconceived, far fetched and has to be and is rejected.

64. Learned counsel for the petitioner submits that Test Booklet of the petitioner which she relies on was not filed in the writ petition and subsequently she has filed copy of the said document marked as Annexure-22 to the rejoinder dated 19.09.2025. It is submitted that the petitioner had thought it prudent only to file the first page marked as Annexure-3, page-13 of the writ petition, now the entire booklet has been filed at pages-22 to 53 of the rejoinder dated 19.09.2025. An allegation is made at the Bar by the learned counsel for petitioner that “they are selling seats and doing business”(i.e by the respondent authorities).

65. Learned counsel on being asked what turns on the Annexures-3 and 22 and why the copies of said documents have been filed in the Court; in response she submitted that the authorities should have also produced test booklet No.115721626 and should have produced the test booklet of other two candidates (whose names have cropped up in the counters filed) one pertaining to Ms. Simpal Pattnaik of Odisha and other pertaining to Ms. Mane Kshitija Vitthal of Maharashtra.

66. Learned counsel for the petitioner has drawn a correlation to submit that it is evident that the candidate having roll number having No.250410852162 (Mane Kshitija Vitthal) with Roll No. 311910, has secured NEET All India Rank-756452 and has secured 210 marks, but she is not in the State merit list of Maharashtra and also not in the OJEE merit list.

It is submitted and repeatedly asserted by the learned counsel for the petitioner that the candidate bearing Roll No. 250410852162 is a ghost candidate because the NEET Application Number cannot be from Maharashtra.

67. In our considered view, it would be inappropriate to probe into the OMR answer sheets and other aspects of other candidates when no prima facie case is made out regarding the claim made by the petitioner in the writ petition. There is no basis for the submissions made by learned counsel that the other two candidates have benefited at the cost of the petitioner or that they are ‘ghost candidates’.

We have absolutely no reason to put any credence to such preposterous ideas of the petitioner. Further the petitioner’s case has to stand on it’s legs.

68. The allegation made by the petitioner is unfounded and are rejected. In our considered opinion, the contentions are besides the issue, inasmuch as, we are not addressing any issue regarding other candidates securing whatever rank they have

got or whether they have secured the correct rank. We are trying to ascertain whether the averments made in the writ petition are correct and whether the petitioner is entitled to any relief based on the averments.

69. Now this Court feels it apt to summarise the details of records produced before us and upon perusal of the records the findings of fact:

NTA / NIC Record

70. Envelop No. 1

Original OMR Answer Sheet of the Petitioner Pritipragnya Mallik (in red colour) –

Roll No. 3604106090, Test Booklet No. 115721626, Test Booklet Code – 46

Answer Sheet No. 115721626 (with Bar Code) with Declaration of the Candidate, her Mother's Name, Father's Name, her Name, her left hand thumb impression, all filled up by the candidate herself with two signatures of the Invigilator, one at 1:50 pm and the other at 5 pm.

The OMR Answer Sheet also contains two numbers, vertically on the edge of its right side, one at the top with No. 2229396 and the other towards bottom with No. S229286.

71. Envelop No. 2

Carbon Copy of the above noted Original OMR Answer Sheet of the Petitioner in Blue Colour, other side containing Instructions relating to Answer Sheet.

72. Envelop No. 3

Pink Colour Envelop-1 with No. 028356 containing Original OMR Answer Sheet of the Petitioner Pritipragnya Mallik and three others with Centre No. 3604106, City – Bhubaneswar, Centre Name with Address – College of Basic Science & Humanities, O.U.A.T., Bhubaneswar, Room No. ASSEMBLY – 4, with names and signatures of the candidates, their Mobile Numbers; Names and signatures of two Observers, one Centre Superintendent and one Deputy Centre Superintendent, with their respective Mobile Numbers; Date and time of Packaging of those four Original OMR Answer Sheets dated 04-05-2025, including that of the petitioner.

73. Envelop No. 4

Original NEET UG 2025 Attendance Sheet relating to Centre Number and Name – 3604106, College of Basic Science & Humanities, Shirpur Chowk, OUAT, Bhubaneswar, Odisha of the candidates (i) Payal Priyadarshini Behera, Roll No. 3604106088, Application No. 250410949074, Test Booklet No. 115721624, Code – 48, OMR Answer Sheet No. 115721624, Code – 48; (ii) Akshaya Kumar Dash, Roll No. 3604106089, Application No. 250410371174, Test Booklet No. 115721625, Code - 45, OMR Answer Sheet No. 115721625, Code – 45 and (iii) Pritipragnya Mallik (petitioner) Roll No. 3604106090, Application No. 250410852174, Test

Booklet No. 115721624, Code - 46, OMR Answer Sheet No. 115721624, Code – 46 (in red colour), with the names of their respective parents (mother's name filled by the candidates in their own hand writings), with their respective thumb impressions below their photographs, their respective signatures on two separate blocks with time, duly countersigned by the invigilators with times; further countersigned by the NTA Observer and Centre Superintendent.

Moreover, the Attendance Sheet also contains the respective QR Code of each of the candidates under their Application Numbers.

74. Envelop No. 5

Letter of the HoD – Public Examination Projects Division, dated 19.09.2025, NIC, Ministry of Electronics & Information Technology, Government of India, New Delhi containing –

(A) NEET (UG) – 2025 Confirmation Page of Application No. 250410852174

(i) Name of the Candidate - Pritipragnya Mallik (petitioner)

(ii) Confirmation Page of Application No. 250410852174 (in pdf format) generated by system of NIC

(iii) Left and Right hands Fingers and Thumb impressions of Application No. 250410852174 (in jpg format) generated by system of NIC

(B) NEET (UG) – 2025 Confirmation Page of Application No. 250410852162

(i) Name of the Candidate – Mane Kshitija Vitthal

(ii) Confirmation Page of Application No. 250410852162 (in pdf format) generated by system of NIC

75. It is seen from the 2nd page of the Admit Card-Provisional of NEET (UG) – 2025, the Petitioner Pritipragnya Mallik gave her signature across her photograph that was countersigned by an invigilator Jyoti Prakash Sahoo, wherein she specified (in the first page of Admit Card) her Application No. as 250410852174.

76. Differences between Application Nos. 25041085217 and 250410852162 of NEET (UG) – 2025 as found by us are summarised herein:

Srl No.	Headings	Application No. 250410852174	Application No. 250410852162
a	b	c	d
1	Name	Pritipragnya Mallik	Mane Kshitija Vitthal
2	Date of Birth	09-11-2002	12-09-2006
2	State of Eligibility	Odisha	Maharashtra
3	Category	General	OBC- NCL (Central List)

Srl No.	Headings	Application No. 250410852174	Application No. 250410852162
4	Place of Residence	Rural	Urban
5	Place of Birth/State/District	India/Odisha/Khurda	India/Maharashtra/Sangli
6	Earlier appearance in the NEET (UG)	4	1
7	Alternate Contact Number (Optional)	Not Provided	Provided
8	Finger Prints of both hands and Thumbs	Horizontally, fingers towards right (East)	Vertically, fingers towards up (North)
9	Fee Payment Details –		
i	Reference No.	ZHD55ZC0DIB40E	ZHD5NJR0DIC55R
ii	Transaction Date & Time	20/02/2025, 14:50:09	20/02/2025, 14:59:20
iii	Application Fee.	1700	1600
iv	Customer ID	2504108521740 1250220144733	2504108521620 1250220145902
v	Payment Mode	EPG	EPG

77. In view of our above detailed discussions after taking into consideration the averments made by the petitioner in the writ petition as well as her other pleadings, the statements made and contentions raised in the counter affidavit and upon perusal of the original records, we have no hesitation and we hold that the reliefs sought for in the writ petition are based on incorrect assumptions and statements, as well as baseless and reckless allegation made against the opposite parties, particularly opposite parties no.1, 2 and 3. The petitioner has neither taken care nor responsibility of approaching the Court with assertions, contentions and allegations which at least she herself could have supported to make out a case in her favour.

78. We further find and observe that the petitioner not answering any of the questions in her OMR sheet, but subsequently claiming that she had answered as per the ‘OMR’ annexed to the writ petition which she claimed to be her own without any supporting material cannot be a mere coincidence.

79. We had pointedly asked the learned counsel for the petitioner before we embarked upon somewhat forensic scrutiny of the examination related documents such as ‘Application Form’, ‘Admit Card’, ‘Customer ID’, ‘Application Number’, ‘OMR sheet’, ‘envelope containing the OMR sheet’ and ‘attendant sheet’ etc including the entries made in those documents, that upon our scrutiny the

conclusions and the consequences may be adverse, as we have recorded in our order dated 17.09.2025 paragraphs-4, 12, 18; learned counsel for the petitioner upon instructions agreed for further examination and probing by the Court as we have done and recorded in our judgment.

80. In view of the above discussions, the writ petition has to be and is dismissed being devoid of any merit. The petitioner is not entitled to any of the reliefs sought for.

The original records produced by the opposite parties shall be kept in sealed cover and returned to the learned DSGI/Sr. PC who had produced them.

81. Regarding Certain further action to taken as per our directions we have passed separate orders.

Headnotes prepared by:

Shri Hara Prasad Padhy, Editor-in-Chief, I/C

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Result of the case:

Writ Appeal dismissed.

2025 (III) ILR-CUT-1188

**1. RUPA JERAI
2. BHARAT @ KRUSHNA JERAI
3. GHASIRAM JERAI
4. JAGAMOHAN @ TASO JERAI**

V.

STATE OF ODISHA

[CRA NO. 226 OF 2000]

28 OCTOBER 2025

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

Issues for Consideration

- Whether the conviction can be sustained on the basis of the alleged extra-judicial confession.
- Whether the recovery of the alleged weapon of offence (katari) at the instance of one appellant, in the absence of bloodstains or forensic linkage, constitutes a reliable incriminating circumstance against the appellants?

Headnotes

(A) INDIAN PENAL CODE, 1860 – Sections 302/34 & 201/34 – Murder – Causing disappearance of evidence – Extra-judicial confession – Voluntariness and reliability – Inconsistency with medical evidence –

The appellants were convicted for murder and for causing disappearance of evidence on the basis of an extra-judicial confession that they killed the deceased by throttling – The confessional statement was stated to have been made after initial denial by the appellants – Further, the manner of death disclosed in the alleged confession was inconsistent with the medical evidence, which established death by decapitation with a sharp-cutting weapon – Whether the conviction can be sustained on the basis of the alleged extra-judicial confession.

Held: No – The extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind – The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime – The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility – The extrajudicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it – [Ref.: Sk. Yusuf -Vrs.- State of W.B. : (2011) 11 Supreme Court Cases 754 and Pancho v. State of Haryana : (2011) 10 Supreme Court Cases 165].

In the case in hand, we find no earthly reason for the appellants to repose confidence on P.W.2 and others to make the so-called disclosure – At this juncture, we found that the statements of the witnesses including P.W.2 are that all the appellants made extrajudicial confession and thereafter, P.W.1 went to the police station to lodge the first information report, but in the first information report, it is stated that it was only the appellant no.1 Rupa Jerai, who made the extrajudicial confession and whatever has been brought out by confronting the previous statements of the witnesses to them and proved through the I.O., it also indicates that it was the appellant no.1, who had made the extrajudicial confession – Therefore, the learned trial Court has erred in observing that the appellants voluntarily came to the house of P.W.2 and made the extrajudicial confession – Though it seems that the contention was raised by the learned defence counsel before the learned trial Court that in the circumstances in which the confession was made by the appellant no.1, it cannot be said to be voluntary in nature, but the learned trial Court has not given any importance to the same and erroneously held that the extrajudicial confession is true, free and voluntary one.

In the factual scenario, we are of the view that since it was only the confession of the appellant no.1 and not by the other appellants and it further appears that such confession was made when P.W.2 stated to the appellants that if the matter would be reported, then it would be complicated and further assured to the appellants that he could subside the matter in the village about the assault on the deceased, if the deceased would be available, it is difficult to hold that it was a voluntary one and as such no

reliance can be placed on the extrajudicial confession and it is not admissible in the eyes of law.

Another important feature is that the extrajudicial confession as stated in the first information report is that the deceased was throttled to death and thereafter thrown in the river water – When the post mortem examination over the dead body was conducted, the penetrating wounds were noticed on the person of the deceased and the doctor has stated very categorically that the cause of death was due to decapitation of the head and probably by sharp cutting weapons – Therefore, we are of the view as rightly pointed out by the learned counsel for the appellants that the manner in which the death is stated to have been caused in the extrajudicial confession runs contrary to the death as has been found by the doctor (P.W.14) which is another ground for not placing reliance on the evidence of extrajudicial confession. (Para 11)

(B) INDIAN PENAL CODE, 1860 – Sections 302/34 & 201/34 – Recovery of weapon – Evidentiary value – Absence of forensic linkage – In a case resting on circumstantial evidence, the prosecution relied upon the recovery of a katuri (weapon of offence) at the instance of one appellant – Chemical examination of the recovered weapon revealed absence of bloodstains and no forensic linkage – Whether the recovery of the alleged weapon of offence (katuri) at the instance of one appellant, can bring home the charges levelled against the appellants.

Held: No – The evidence relating to the recovery of the weapon of offence i.e. katuri (M.O.I) at the instance of appellant no.1 cannot be given much importance, since in view of the chemical examination report, no blood was detected in the katuri – Merely because the doctor (P.W.14) has stated that the injuries sustained by the deceased could be possible by such katuri, we are of the humble view that this circumstance alone is not sufficient to hold the appellants guilty. (Para 12)

(C) Principle for appreciation of case based on circumstantial evidence – Discussed. (Para 10)

Citations Reference

Sharad Birdhichand Sarda -Vrs.- State of Maharashtra, **A.I.R. 1984 S.C. 1622**; Kishore Chand -Vrs.- State of Himachal Pradesh, **(1991) 1 Supreme Court Cases 286**; Gambhir -Vrs.- State of Maharashtra, **(1982) 2 Supreme Court Cases 351**; Devi Lal -Vrs.- State of Rajasthan, **(2019) 19 Supreme Court Cases 447**; Jaharlal Das -Vrs.- State of Orissa, **A.I.R. 1991 S.C. 1388**; Budhram -Vrs.- State of Chhattisgarh, **(2012) 11 Supreme Court Cases 588**; Sahadevan and another -Vrs.- State of Tamil Nadu, **A.I.R. 2012 S.C. 2435**; Balwinder Singh -Vrs.- State of Punjab, **1995 Supp. (4) SCC**

259; Pakkirisamy -Vrs.- State of T.N., (1997) 8 Supreme Court Cases 158; Kavita -Vrs.- State of T.N., (1998) 6 Supreme Court Cases 108; State of Rajasthan -Vrs.- Raja Ram, (2003) 8 Supreme Court Cases 180; Aloke Nath Dutta -Vrs.- State of W.B., (2007) 12 Supreme Court Cases 230; Rameshbhai Chandubhai Rathod -Vrs.- State of Gujarat, (2009) 5 Supreme Court Cases 740; Sk. Yusuf -Vrs.- State of W.B., (2011) 11 Supreme Court Cases 754; Pancho v. State of Haryana, (2011) 10 Supreme Court Cases 165 – referred to.

List of Acts

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

Keywords

Causing disappearance of evidence; Circumstantial evidence; Extra-judicial confession; Voluntariness; Reliability; Inconsistency with medical evidence; Recovery of weapon; Absence of bloodstains; No forensic linkage; Chain of circumstances.

Case Arising From

Judgment and order dated 21.06.2000 passed by the Additional Sessions Judge, Rairangpur in S.T.Case No.7/26 of 2000.

Appearances for Parties

For Appellants : Mr. Saktidhar Das, Sr. Adv.

For Respondent : Mr. Arovinda Mohanty, A.S.C.

Judgment/Order

Judgment

BY THE BENCH.

This criminal appeal has been filed by four appellants, namely, Rupa Jerai, Bharat @ Krushna Jerai, Ghasiram Jerai and Jagamohan @ Taso Jerai challenging the judgment and order dated 21.06.2000 passed by the learned Additional Sessions Judge, Rairangpur in S.T. Case No.7/26 of 2000 in convicting them under sections 302/34 and 201/34 of the Indian Penal Code (hereinafter, 'I.P.C.')

 and sentencing each of them to undergo life imprisonment under section 302/34 of the I.P.C. and R.I. for three years under section 201/34 of the I.P.C. and further directing the sentences to run concurrently.

The appellants were charged under section 302/34 and section 201/34 on the accusation that in the night of 25th September, 1999 at village Kathabharua under Badampahad police station in the district of Mayurbhanj, they committed murder of Raimati Jerai (hereinafter, 'the deceased') in furtherance of their common intention and knowing that the offence had been committed, they caused certain evidence

connected with the said offence to disappear to screen themselves from legal punishment in furtherance of their common intention.

Prosecution Case:

2. As per the first information report (Ext.1) lodged by P.W.1 Sasmita Jerai before the Officer in-charge of Badampahad police station on 26.09.1999, in short, is that, her father Gopinath Jerai died since five to six years prior to the lodging of the F.I.R. and the deceased was her mother and she along with her younger brother Rupendra Jerai and aunt Sita Jerai (P.W.7) were staying in joint mess along with the deceased mother. On 25.09.1999, the female child of appellant no.2 Bharat @ Krushna Jerai fell ill and died for which the appellants suspected that the deceased had practised witchcraft for which the daughter of appellant no.2 died. Accordingly, they challenged the deceased and quarrelled with her and also assaulted her by fist and slaps. The informant (P.W.1), her aunt (P.W.7) and the co-villager Jatia Jerai (P.W.11) subsided the dispute and thereafter, the deceased came back home and all of them took their dinner and went to sleep. The deceased slept in a separate room alone which was situated at a distance of 300 yards from the house where P.W.1 and P.W.7 were residing. In the early morning hours of 26.09.1999, when P.W.1 and P.W.7 came to the room where the deceased was sleeping, they found the deceased was not available there. Accordingly, they searched for the deceased at different places but could not locate her. They intimated about the missing of the deceased to P.W.5 Gopal Jerai, who happened to be the brother-in-law of P.W.1, so also to the Grama Rakhi (P.W.9) and co-villager Sudarsan Gagrai (P.W.6). All of them proceeded to the house of the Sarpanch (P.W.2) and disclosed before him about the missing of the deceased. Then, all of them came near the house of the appellants and P.W.2 asked the appellants about the deceased. The appellant no.1 Rupa Jerai confessed before them that on 25.09.1999 night, they killed the deceased by throttling and threw the dead body in the water of river Jalapai. On getting such information, the informant (P.W.1) and others searched in the river water Jalapai, but they could not trace out the dead body of the deceased. Then P.W.1 came along with others to the police station and reported the matter.

On the basis of the first information report lodged by P.W.1, Badampahad P.S. Case No.25 dated 26.09.1999 was registered under section 302/34 of the I.P.C. against all the appellants by P.W.15, the O.I.C. of the police station and he himself took up investigation of the case.

During course of investigation, P.W.15 visited the spot, searched for the appellants and arrested them and seized the wearing apparels of the appellants as per the seizure list Ext.4. The appellant no.1 Rupa Jerai while in police custody confessed his guilt in presence of the witnesses and led the police party and the witnesses to a place where he concealed a katuri and gave recovery of the same, which was seized under seizure list Ext.2. P.W.15, the Investigating Officer found the dead body in a decapitated condition and held inquest over the head and trunk separately and also combining the head and trunk of the deceased on 27.09.1999 and

prepared the inquest reports Ext.3, Ext.10 and Ext.11 respectively. He sent the dead body for post mortem examination to S.D. Hospital, Rairangpur. He examined the witnesses, sent the appellants to the Medical Officer, Badampahad C.H.C. for collection of nail clippings and sample blood and seized the same as per seizure list Ext.5 and then forwarded the appellants to the Court. He also sent the seized katuri to the Medical Officer of Rairangpur S.D. Hospital for examination and opinion and he also seized the sample blood of the deceased collected by the doctor, which was produced by the escort party under seizure list Ext.12. On 17.01.2000, he sent the material objects to the S.F.S.L., Rasulgarh through the Court of S.D.J.M., Rairangpur for chemical examination and on 24.01.2000, on completion of investigation, he submitted charge sheet against the appellants under sections 302/201/34 of the I.P.C.

Framing of Charges:

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

Prosecution Witnesses, Exhibits and Material Objects:

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

P.W.1 Sasmita Jerai is the daughter of the deceased and also the informant in the case. She supported the prosecution case.

P.W.2 Suklal Jerai was the Sarpanch of the village. He stated that on 25.09.1999, P.W.1 and P.W.7 came to his house and told him about the incident and thereafter, he along with P.W.1, P.W.7 and P.W.9 went to the house of the deceased but could not locate her. He further stated that thereafter coming to know that the appellants assaulted the deceased on the previous day, they called the appellants through P.W.9 but the appellants denied by saying that they had not assaulted the deceased nor killed her. He further stated that after some time, the appellants told him that they had killed the deceased and thrown the deceased in the river. He is a witness to the seizure of katuri as per seizure list Ext.2.

P.W.3 Kusal Jerai is a witness to the inquest report (Ext.3).

P.W.4 Suklal Hembram stated that he had seen the dead body of the deceased in the river.

P.W.5 Gopal Jerai stated that the deceased died on 25.09.1999 and on the same day at about 6.30 p.m., the appellants were quarrelling with the deceased.

P.W.6 Sudarsan Gagrai did not support the prosecution case.

P.W.7 Sita Jerai is the sister-in-law of the deceased. She stated that in presence of P.W.2 and others, the appellants confessed their guilt.

P.W.8 Jema Hembram is the daughter of the deceased. She stated that the appellants confessed their guilt by saying that they killed the deceased and thrown the dead body in the river.

P.W.9 Sukadev Murmu was the grama rakhi of the village. He stated that the appellants confessed their guilt by saying that they killed the deceased and thrown the dead body in the river. He further stated that he and others brought the dead body in the meeting place of Jhalpa and Kanhu rivers.

P.W.10 Khudu Gagrai is a witness to the seizure of wearing apparels and nail clipping of the appellants as per seizure lists Ext.4 and Ext.5 respectively.

P.W.11 Jatia Jerai stated that after returning from the call of nature, he found that the appellants were making hulla with the deceased.

P.W.12 Gobinda Gagrai stated that he himself and P.W.9 had been to the other side of the river and they recovered one katuri and police seized the said katuri on their production.

P.W.13 Dr. Sarat Chandra Majhi was working as O.G. Specialist at Badampahad C.H.C., who on police requisition collected sample blood, nail scrapping and hand washing of the appellants and handed over the same in sealed bottles to P.W.15 and proved his report vide Ext.6.

P.W.14 Dr. Prasannajit Kar was the O.G. Specialist at S.D. Hospital, Rairangpur, who on police requisition, conducted post mortem examination over the dead body of the deceased and proved the P.M. report vide Ext.7 and also proved the query report vide Ext.8 pursuant to the query made by the I.O.

P.W.15 Jagabandhu Naik was the O.I.C. of Badampahad police station who is the Investigating Officer of the case.

The prosecution exhibited twelve documents. Ext.1 is the F.I.R., Ext.2 is the seizure list of katuri, Ext.3, Ext.10 and Ext.11 are the inquest reports, Ext.4 is the seizure list of wearing apparels of the appellants, Ext.5 is the seizure list of nail clipping of the appellants, Ext.6 is the report of P.W.13, Ext.7 is the post mortem report, Ext.8 is the query report, Ext.9 is the statement of appellant Rupa Jerai and Ext.12 is the seizure list of sample blood of the deceased collected by the doctor.

The prosecution also proved one material object. M.O.I is the katuri.

Defence Plea:

5. The defence plea of the appellants was one of denial.

Findings of the Trial Court:

6. The learned trial Court, after assessing the oral as well as documentary evidence on record, came to hold that there is no direct evidence in the case that the

appellants were the actual assailants of the deceased and it is a case based on circumstantial evidence and the case is mainly based on extra judicial confession of the appellants before P.Ws.1, 2, 7, 8 and 9. The learned trial Court after assessing the evidence of these witnesses, came to hold that the evidence of these witnesses relating to the extrajudicial confessional, which is stated to have been made by the appellants before these witnesses appears to be true, free and voluntary and it is the consistent evidence of these prosecution witnesses that the appellants confessed before them that they had killed the deceased. Learned trial Court also placed reliance on the leading to discovery of the weapon of offence i.e. katuri, which was seized by the I.O. at the instance of the appellant no.1 Rupa Jerai and came to hold that since the deceased was challenged regarding the practising of witchcraft for the death of the child of the appellant no.2 Bharat @ Krushna Jerai, the appellants assaulted her and in furtherance of their common intention, they killed the deceased and took the deceased from her house to the river side and severed her head and body by means of M.O.I. It was further held that though there are some minor discrepancies in the evidence of the witnesses, but the same is not fatal to the prosecution case. Accordingly, the learned trial Court came to conclude that there was a quarrel between the deceased and the appellants before the occurrence and they also confessed their guilt and the appellant no.1 gave recovery of M.O.I and from these evidence, it is apparent that all the appellants in furtherance of their common intention had killed the deceased by means of M.O.I and accordingly, found the appellants guilty under sections 302/34 and 201/34 of the I.P.C.

7. From the documents filed by the learned counsel for the State, it appears that the appellant no.1 Rupa Jerai has been released prematurely. Therefore, we are confining this appeal to the rest three appellants i.e. appellant no.2 Bharat @ Krushna Jerai, appellant no.3 Ghasiram Jerai and appellant no.4 Jagamohan @ Taso Jerai.

Contentions of the Parties:

8. Mr. Saktidhar Das, learned Senior Advocate appearing for the appellants argued that it is a case based on circumstantial evidence and the evidence available on record do not form a complete chain. The learned trial Court has erroneously held the appellants guilty of the offences charged and that the extra judicial confession is not at all believable and it appears from the evidence of P.W.2 that such confession is not a voluntary one and the learned trial Court erroneously placed reliance on the confession. Learned counsel further argued that even though in the first information report, it is stated that it was only appellant no.1 Rupa Jerai, who had made the extra judicial confession and it was also the case of the prosecution during investigation, but during trial, the witnesses have stated that all the appellants made extra judicial confession. It is further argued that though in the extra judicial confession, it is stated that the deceased was throttled to death and thereafter she was thrown in the river water, but the post mortem report shows that some penetrating wounds were found on the body of the deceased and the head was decapitated from the trunk and

therefore, the extra judicial confession runs contrary to the medical evidence and even though at the instance of the appellant no.1, the katuri (M.O.I) was recovered, but on chemical examination, it was found that there was no blood on the katuri and therefore, the recovery of the katuri cannot have any link with the offence in question and since from the circumstances available on record, it cannot be said that it was the appellants, who are the authors of the crime, it is a fit case where benefit of doubt should be extended in favour of the appellants.

Mr. Aurovinda Mohanty, learned Additional Standing Counsel, on the other hand, supported the impugned judgment and argued that since the minor daughter of appellant no.2 died, the appellants were suspecting that the death took place on account of the witchcraft practised by the deceased and they also assaulted the deceased and thus the same can be said to be the motive behind the commission of offence. It is further argued that even though there is no direct evidence, but the extra judicial confession of the appellants before the witnesses corroborated each other and since the medical evidence also supports that it is a case of homicidal death and the weapon of offence was recovered at the instance of the appellant no.1, the learned trial Court has rightly placed reliance on the evidence to hold the appellants guilty and therefore, the appeal should be dismissed.

Whether the deceased met with a homicidal death?:

9. Adverting to the contention raised by the learned counsel for the respective parties, let us first examine the evidence on record to see whether the prosecution has successfully established that the deceased had died a homicidal death or not.

In this context, the evidence of the doctor (P.W.14) is very relevant. P.W.14 was attached to S.D. Hospital, Rairangpur, who conducted post mortem examination on 28.09.1999 over the dead body of the deceased and found that head and rest part of the body were brought separated. The decapitated head was fixed with the body at the neck. Body was swollen and decomposed. On examination of the decapitated head, he found the eyes were closed, face swollen and skull intact. On dissection of skull, brain and membrane were intact. He found a penetrating injury of size 3 cm. x 2 cm. x 1” on the lower part of face on the right side just above the mandible and another penetrating injury of size 3 cm. x 3 cm. x 1” on the left face 2 cm. from the angle of mouth. On examination of the body, he found the body to be swollen, foul smelling discharge from anus and vagina. Pupa and maggots were present on the body, abdomen distended. On dissection, trachea, larynx and major vessels in the neck were found completely divided. On dissection of thorax, heart and lungs were found intact. On dissection of abdomen, stomach distended contained 20 ml. of digested food, small and large intestine were distended, spleen, liver, kidney and bladder were found intact. He opined that the injuries were ante mortem in nature and the cause of death was due to decapitation of head, probably by any sharp cutting weapons and the death was between 48 to 72 hours at the time of his examination. He also examined the weapon of offence i.e. katuri (M.O.I), which was

produced by the Investigating Officer and answered to the query that the injuries sustained by the deceased were possible by M.O.I.

After going through the evidence on record, more particularly, the inquest reports (Ext.3, Ext.10 and Ext.11), the evidence of the doctor (P.W.14) and the post mortem report findings vide Ext.7, we are of the humble view that the learned trial Court has rightly come to the conclusion that the deceased met with a homicidal death. The homicidal death aspect of the deceased has also not been challenged by Mr. Das, learned Senior Advocate appearing for the appellants.

Principles for appreciation of case based on circumstantial evidence:

10. Admittedly, there is no direct evidence relating to the commission of murder of the deceased and the case is based on circumstantial evidence and the law relating to the basing conviction on circumstantial evidence is clear in view of the five golden principles laid down by the Hon'ble Supreme Court in the case of **Sharad Birdhichand Sarda -Vrs.- State of Maharashtra reported in A.I.R. 1984 S.C. 1622**, wherein it has been laid down that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

- (i) the circumstances from which the conclusion of guilt is to be drawn should be fully established;
- (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (iii) the circumstances should be of a conclusive nature and tendency;
- (iv) they should exclude every possible hypothesis except the one to be proved; and
- (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused.

These five golden principles, according to the Hon'ble Supreme Court, constitute the panchsheel of the proof of a case based on circumstantial evidence.

It is thus clear that even in the absence of direct evidence, if various circumstances relied on by the prosecution relating to the guilt of the accused are fully established beyond all reasonable doubt and the chain of events are complete, the Court is free to award conviction on the basis of such circumstantial evidence.

In the case of **Kishore Chand -Vrs.- State of Himachal Pradesh reported in (1991) 1 Supreme Court Cases 286**, the Hon'ble Supreme Court held as follows:

- “4. The question, therefore, is whether the prosecution proved guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully

and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of a conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis but the one proposed to be proved. The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. It is not necessary that each circumstance by itself be conclusive but cumulatively must form unbroken chain of events leading to the proof of the guilt of the accused. If those circumstances or some of them can be explained by any of the reasonable hypothesis then the accused must have the benefit of that hypothesis.”

In the case of **Gambhir -Vrs.- State of Maharashtra reported in (1982) 2 Supreme Court Cases 351**, the Hon’ble Supreme Court held as follows:

“9. It has already been pointed out that there is no direct evidence of eye witness in this case and the case is based only on circumstantial evidence. The law regarding circumstantial evidence is well-settled. When a case rests upon the circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; (3) 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 none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

In a case based on circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court has to be watchful and ensure that suspicion, howsoever strong, should not be allowed to take the place of proof. A moral opinion howsoever strong or genuine and suspicion, howsoever grave, cannot substitute a legal proof. A very careful, cautious and meticulous appreciation of evidence is necessary when the case is based on circumstantial evidence. The prosecution must elevate its case from the realm of ‘may be true’ to the plane of ‘must be true’.

The core principles which need to be adhered to by the Court, while examining and appreciating circumstantial evidence, have been strenuously discussed by the Hon’ble Supreme Court in the case of **Devi Lal -Vrs.- State of Rajasthan reported in (2019) 19 Supreme Court Cases 447** in the following words:

“17.....It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances

adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused."

In the case of **Jaharlal Das -Vrs.- State of Orissa reported in A.I.R. 1991 S.C. 1388**, it is held as follows:

"The Court has to bear in mind a caution that in cases depending largely upon circumstantial evidence, there is always a danger that the conjecture or suspicion may take the place of legal proof and such suspicion however so strong cannot be allowed to take the place of proof. The Court has to be watchful and ensure that conjectures and suspicions do not take the place of legal proof. The Court must satisfy itself that the various circumstances in the chain of evidence should be established clearly and that the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused".

In case of **Budhram -Vrs.- State of Chhattisgarh reported in (2012) 11 Supreme Court Cases 588**, it is held as follows:

"12. The law relating to proof of a criminal charge by means of circumstantial evidence would hardly require any reiteration, save and except that the incriminating circumstances against the accused, on being proved, must be capable of pointing to only one direction and to no other, namely, that it is the accused and nobody else who had committed the crime. If the proved circumstances are capable of admitting any other conclusion inconsistent with the guilt of the accused, the accused must have the benefit of the same."

Keeping in view the ratio laid down in the aforesaid decisions of Supreme Court, the evidence on record needs to be analysed to see how far the prosecution has proved the circumstances as enumerated by the learned trial Court and whether the circumstances taken together form a complete chain to come to the irresistible conclusion that the appellants are the perpetrators of the crime in question.

Extrajudicial Confession:

11. In the case in hand, the learned trial Court has observed in the impugned judgment that the prosecution case to prove the charges against the appellants is based mainly on the extrajudicial confession made by the appellants before the witnesses.

It is apparent that from the first information report, that after the extrajudicial confession was made, the first information report was lodged by P.W.1. However, in the first information report, there is no mention that all the appellants made extrajudicial confession rather it is stated therein that it was only the appellant no.1 Rupa Jerai, who made such confession.

Though during trial, the witnesses to the extrajudicial confession, have stated that all the appellants had made such confession, but the previous statements of those witnesses have been confronted to them and it has been proved through the

I.O. (P.W.15) that most of them have not stated in their previous statements that all the appellants made the confession rather it was only the appellant no.1, who made extra judicial confession. The witnesses have stated that when at the first instance, the appellants were asked about the whereabouts of the deceased, they denied and they also denied about their involvement and when the appellants were again called and asked about the death of the deceased, then the so-called extrajudicial confession was stated to have been made. In this context, the evidence of P.W.2, the Sarpanch is very relevant before whom all the witnesses have stated that the extrajudicial confession was made.

P.W.2 has stated that P.W.1 and P.W.7 came to his house on 25.09.1999 and they told that they could not get the deceased after search and P.W.9, the village Chowkidar also told him that he searched for the deceased but could not get her. P.W.2 further stated that thereafter, he himself along with P.W.1, P.W.7 and P.W.9 went to the house of the deceased but could not locate her and when he came to know that the appellants assaulted the deceased on the previous day, they called the appellants through village Chowkidar (P.W.9). P.W.2 further stated that on his question to the appellants, they denied by saying that they had not assaulted the deceased nor killed her. P.W.2 further stated that after some time, the appellants told him that they had killed the deceased and further stated on his query that they had thrown the deceased in the river. In the cross-examination, P.W.2 has stated that at first the appellants denied about the death of the deceased and when he asked them twice, they also denied about the whereabouts of the deceased. He further stated that when he told the appellants that if the matter would be reported, then it would be complicated and further told the appellants that he could subside the matter in the village about the assault on the deceased, if the deceased would be available and then the extrajudicial confession is stated to have been made. The evidence of P.W.2, which has been elicited in the cross-examination clearly indicates that when the appellants were told about the matter to be reported before the police, it would be complicated and that it would be subsided in the village, the so-called confession has been made and therefore, it cannot be said that the confession was voluntarily made before P.W.2 and others.

In the case of **Sahadevan and another -Vrs.- State of Tamil Nadu reported in A.I.R. 2012 S.C. 2435**, it is held as follows:-

"12.....in case of circumstantial evidence, where the prosecution relies upon an extrajudicial confession, the Court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extrajudicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extrajudicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extrajudicial confession suffers from materials discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the Court to base a conviction on such a confession. In such circumstances, the Court would be fully justified in ruling such evidence out of consideration".

In the case of **Balwinder Singh -Vrs.- State of Punjab reported in 1995 Supp. (4) SCC 259**, it is held as follows:-

"10. An extrajudicial confession, by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extrajudicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The Courts generally look for independent reliable corroboration before placing any reliance upon an extrajudicial confession."

In the case of **Pakkirisamy -Vrs.- State of T.N. reported in (1997) 8 Supreme Court Cases 158**, it is held as follows:-

"8.... It is well settled that it is a rule of caution where the Court would generally look for an independent reliable corroboration before placing any reliance upon such extrajudicial confession. It is no doubt true that extrajudicial confession by its very nature is rather a weak type of evidence and it is for this reason that a duty is cast upon the Court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extrajudicial confession is surrounded by suspicious circumstances, needless to state that its credibility becomes doubtful and consequently it loses its importance."

In the case of **Kavita -Vrs.- State of T.N. reported in (1998) 6 Supreme Court Cases 108**, it is held as follows:-

"4. There is no doubt that convictions can be based on extrajudicial confession, but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the Court to decide on the acceptability of the evidence having regard to the credibility of the witnesses."

In the case of **State of Rajasthan -Vrs.- Raja Ram reported in (2003) 8 Supreme Court Cases 180**, it is held as follows:-

"19. An extrajudicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.....Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused."

In the case of **Aloke Nath Dutta -Vrs.- State of W.B. reported in (2007) 12 Supreme Court Cases 230**, it is observed as follows:-

"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the Court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration."

In the case of **Rameshbhai Chandubhai Rathod -Vrs.- State of Gujarat reported in (2009) 5 Supreme Court Cases 740**, it is held as follows:

"53. It appears therefore, that the appellant has retracted his confession. When an extrajudicial confession is retracted by an accused, there is no inflexible rule that the Court must invariably accept the retraction. But at the same time, it is unsafe for the Court to rely on the retracted confession, unless, the Court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true."

The extrajudicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extrajudicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extrajudicial confession should inspire confidence and the Court should find out whether there are other cogent circumstances on record to support it. [Ref.: **Sk. Yusuf -Vrs.- State of W.B. : (2011) 11 Supreme Court Cases 754** and **Pancho v. State of Haryana : (2011) 10 Supreme Court Cases 165**].

In the case in hand, we find no earthly reason for the appellants to repose confidence on P.W.2 and others to make the so-called disclosure. At this juncture, we found that the statements of the witnesses including P.W.2 are that all the appellants made extrajudicial confession and thereafter, P.W.1 went to the police station to lodge the first information report, but in the first information report, it is stated that it was only the appellant no.1 Rupa Jerai, who made the extrajudicial confession and whatever has been brought out by confronting the previous statements of the witnesses to them and proved through the I.O., it also indicates that it was the appellant no.1, who had made the extrajudicial confession. Therefore, the learned trial Court has erred in observing that the appellants voluntarily came to the house of P.W.2 and made the extrajudicial confession. Though it seems that the contention was raised by the learned defence counsel before the learned trial Court that in the circumstances in which the confession was made by the appellant no.1, it cannot be said to be voluntary in nature, but the learned trial Court has not given any importance to the same and erroneously held that the extrajudicial confession is true, free and voluntary one.

In the factual scenario, we are of the view that since it was only the confession of the appellant no.1 and not by the other appellants and it further appears that such confession was made when P.W.2 stated to the appellants that if the matter would be reported, then it would be complicated and further assured to the appellants that he could subside the matter in the village about the assault on the deceased, if the deceased would be available, it is difficult to hold that it was a voluntary one and as such no reliance can be placed on the extrajudicial confession and it is not admissible in the eyes of law.

Another important feature is that the extrajudicial confession as stated in the first information report is that the deceased was throttled to death and thereafter thrown in the river water. When the post mortem examination over the dead body was conducted, the penetrating wounds were noticed on the person of the deceased and the doctor has stated very categorically that the cause of death was due to decapitation of the head and probably by sharp cutting weapons. Therefore, we are of the view as rightly pointed out by the learned counsel for the appellants that the manner in which the death is stated to have been caused in the extrajudicial confession runs contrary to the death as has been found by the doctor (P.W.14) which is another ground for not placing reliance on the evidence of extrajudicial confession.

Recovery of Katuri (M.O.I):

12. The evidence relating to the recovery of the weapon of offence i.e. katuri (M.O.I) at the instance of appellant no.1 cannot be given much importance, since in view of the chemical examination report, no blood was detected in the katuri. Merely because the doctor (P.W.14) has stated that the injuries sustained by the deceased could be possible by such katuri, we are of the humble view that this circumstance alone is not sufficient to hold the appellants guilty.

Sum Up:

13. In view of the foregoing discussions, we find that there is no clinching evidence on record that the appellants committed the murder of the deceased and after committing the murder, they caused disappearance of the evidence by throwing the dead body into the river water. The so-called extra judicial confession as we have already discussed is not admissible since it is not voluntary one.

Accordingly, we are of the humble view that the circumstances available on record do not form a complete chain so as to come to an irresistible conclusion that it was the appellants, who are the authors of the crime and therefore, the impugned judgment and order of conviction of the appellants under sections 302/34 and 201/34 of the I.P.C. is not sustainable in the eye of law.

14. In the result, the criminal appeal is allowed and the impugned judgment and the order of conviction and the sentence passed thereunder is hereby set aside and the appellants are acquitted of the charges under sections 302/34 and 201/34 of the I.P.C.

The appellants are on bail by virtue of the order of this Court. They are discharged from the liability of bail bonds. The personal bonds and the surety bonds stand cancelled.

Before parting with the case, we would like to put on record our appreciation to Mr. Saktidhar Das, learned Senior Advocate appearing for the appellants for rendering his valuable help and assistance towards arriving at the decision above mentioned. This Court also appreciates the valuable help and assistance provided by Mr. Aurovinda Mohanty, learned Additional Standing Counsel.

The trial Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Criminal Appeal allowed.

2025 (III) ILR-CUT-1204

**MADHA @ SACHIDANANDA KHUNTIA
V.
STATE OF ODISHA**

[CRA NO. 238 OF 2001]

&

NIKHIL MOHANTY V. STATE OF ODISHA
[IN CRLA 373 OF 2007]

25 NOVEMBER 2025

[S.K. SAHOO, J. & CHITTARANJAN DASH, J.]**Issue for Consideration**

Whether the conviction of the appellants under Section 302 read with Section 34 of IPC can be sustained on the testimony of P.W.4 and P.W.8, despite their belated examination.

Headnotes

INDIAN PENAL CODE, 1860 – Sections 302/34 – Murder – Common intention – Conviction based on eyewitness testimony – Delay in examination of witnesses – The appellants were tried for the murder of the deceased, with infliction of multiple incised injuries – The prosecution case rested primarily on the testimonies of P.W.4 and P.W.8, being the natural companions of the deceased and the eyewitnesses at the time of occurrence – Though their statements were recorded after a delay of four to five days, the prosecution explained the delay on the ground of threats extended by the appellants – The medical evidence established that the deceased suffered multiple incised wounds on vital parts of the body – The Trial Court relied upon the ocular testimony, corroborated by medical evidence, and convicted the appellants under Section 302 read with Section 34 IPC – Whether the conviction of the appellants under Section 302 read with Section 34 of IPC can be sustained on the testimony of P.W.4 and P.W.8, despite their belated examination?

Held: Yes – The law is well settled that delay in the examination of witnesses, particularly those who claim to be present at the scene of occurrence does not, by itself, render the prosecution case untenable, especially when their presence is not in dispute – However, such delay can certainly affect the creditworthiness and overall reliability of the testimony, depending on whether the prosecution offers a satisfactory and plausible explanation – Unexplained or inordinate delay may cast a serious shadow on the veracity of the evidence and may allow the defence to argue the

possibility of embellishment, improvement, or manipulation, requiring the Court to approach the testimony with circumspection and, therefore, what the Court must evaluate is whether the delay has caused prejudice to the accused in effectively defending themselves; for instance, due to non-availability of material witnesses, loss of evidence, or fading recollection – Where such prejudice is shown, delay assumes significance – Conversely, where the prosecution offers a rational and acceptable explanation, the Court is required to scrutinise the evidence with care, ensuring that no undue prejudice is occasioned to either side while still upholding the cause of justice. (Para 13)

Despite strenuous and prolonged cross-examination, neither P.W.4 nor P.W.8 faltered on the fundamental aspects of the prosecution case – Their depositions remained coherent on the identity of the assailants, the nature of the weapons carried, the manner in which the deceased was repeatedly assaulted, and the role of Appellant-Madha both in restraining the deceased and in actively inciting the attack – Minor deviations or omissions in their earlier police statements particularly as regards the attribution of specific blows do not go to the root of their credibility, especially when the medical evidence conclusively demonstrates multiple incised wounds caused by sharp-cutting weapons, thereby fully supporting their core version.

The explanation tendered by these witnesses for the delay in their examination that they had been threatened with dire consequences by the assailants and had therefore left the village, appears both plausible and natural in the circumstances. (Para 16)

Citation Reference

Firoz Khan Akbarkhan vs. The State of Maharashtra, **2025 LiveLaw (SC) 349**; Rajendra @ Rajappa & Ors. Vs. State of Karnataka, **AIR 2021 SC 2064**; Narayan Chetanram Chaudhary & Anr. vs. State of Maharashtra, **(2000) 8 SCC 457**; Naresh @ Nehru vs. State of Haryana, **2023 INSC 88 – referred to.**

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973.

Keywords

Common intention; Eyewitness testimony; Belated examination of witnesses; Credibility; Threat to witnesses; Ocular evidence; Medical corroboration; Non-seizure of weapon; Minor inconsistencies; Benefit of doubt; Appreciation of evidence; Criminal appeal; Confirmation of conviction.

Case Arising From

Judgment and order dated 05.10.2001 passed by learned Second Additional Sessions Judge, Cuttack, in S.T. Case No. 313 of 1998.

Appearances for Parties

For Appellant : Mr. B.S. Rayaguru, Amicus Curiae (CRA 238/2001)
Mr. S. Satapathy (CRLA 373 OF 2007)

For Respondent : Mr. Partha Sarathi Nayak, A.G.A. (in both Appeals)

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. The Appellants in both the Appeals having stood trial before the learned 2nd Additional Sessions Judge, Cuttack in S.T. Case No.313 of 1998 being charged for the commission of offence under Section 302/34 of Indian Penal Code (hereinafter in short called “IPC”) found guilty and upon their conviction sentenced to undergo imprisonment for life each for the said offences in furtherance of their common intention.

2. The prosecution case, as unfolded before the learned Trial Court, is that on 12.03.1996 at about 10:00 p.m., Biranchi @ Pranakrushna Choudhury (hereinafter referred to as ‘the deceased’) along with his two friends, namely Bapi Mohanty (P.W.4) and Baban @ Sanjay Mohapatra (P.W.8), proceeded on a Bullet motorcycle belonging to the deceased to witness a Depati Jatra (drama). As the mother of the deceased had suffered an injury earlier in the evening and required to be shifted to the hospital, they first decided to proceed to Balikuda Chhak to arrange for a trekker driver. When they reached Alinga Chowk, the Appellant-Madha Khuntia, who was present there with a Luna moped, intercepted them and detained them. He asked the deceased to alight from the motorcycle. Accordingly, the deceased and P.W.8 got down, while P.W.4 proceeded to arrange the trekker driver. Thereafter, Appellant-Madha Khuntia led the deceased to a nearby canal, followed by P.W.8, and both the deceased and P.W.8 sat on the ridge of the adjoining land. In the meantime, after arranging for the trekker driver, P.W.4 returned to Alinga Chowk and was brought by Appellant-Madha to the place where the deceased and P.W.8 were seated. Appellant-Madha then called Ghana @ Satrugna, who arrived in a rushing manner armed with a sword. Ghana began scolding the deceased for allegedly abusing Appellant-Madha, which the deceased denied. At this juncture, Appellant-Nikhil also arrived at the spot. According to the prosecution, Appellant-Nikhil gave a fist blow to the deceased, causing him to fall. Thereafter, Appellant-Madha shifted the deceased to another spot, where Ghana forcibly made him to sit and demanded that he become a follower of Appellant-Madha. It is further alleged that Appellant-Madha instigated accused Biju Ray, using abusive language, upon which Biju repeatedly dealt sword blows on the deceased. Appellant-Nikhil is also stated to have delivered 3 to 4 sword blows after taking the weapon from Biju Ray.

Appellant-Madha too assaulted the deceased with the sword, resulting in the deceased dying at the spot due to profuse bleeding injuries. P.W.4 and P.W.8 were allegedly threatened by Appellant-Madha with dire consequences if they disclose the incident to anyone. Thereafter, the Appellants, the co-accused persons, as well as Bapi (P.W.4) and Baban (P.W.8) left the place, leaving the deceased's body at the spot. It further transpires from the record that P.W.8 disclosed the occurrence to one Rama Chandra Parida and subsequently to the informant, Harekrushna Choudhury (P.W.6), upon receiving the information, proceeded to the spot and found his brother (the deceased) lying dead with multiple injuries. He, thereafter, lodged a written report before the Officer-in-Charge, Gobindpur Police Station, on 13.03.1996, which was registered as Gobindpur P.S. Case No.31 of 1996 vide Ext.1 which was treated as the FIR, and investigation commenced accordingly.

3. In course of investigation, the Investigating Officer, P.W.10, Brajabandhu Das, examined the Informant, requisitioned the services of the police dog squad and the scientific team, visited the spot, conducted the inquest over the dead body of the deceased under Ext.2, prepared the spot map marked Ext.5, examined other witnesses, and sent the dead body for post-mortem examination through a Constable under the dead body challan vide Ext.3. Further, he seized the Bullet motorcycle from the spot under seizure list Ext.6, and also seized a broken wrist-watch glass, a spectacle cover, and a money purse under the same seizure list. The seized motorcycle was subsequently released in the zima of Pramod Kumar Choudhury under zimanama Ext.7. The I.O. also examined witnesses and recorded the statement of P.W.8, and on 15.03.1996 caused his statement to be recorded by the Magistrate under Section 164 Cr.P.C. On the same line, he examined P.W.4 Jyoti Ranjan Mohanty, recorded his statement under Section 161 Cr.P.C., and thereafter got his statement recorded under Section 164 Cr.P.C. The I.O. also sent a requisition to the Officer-in-Charge, Niali Police Station, for arrest of the Appellants Madha Khuntia, Ghana @ Satrugna Mallik, Nikhil Mohanty, and Biju Mohanty @ Ray. He received the scientific reports from the SFSL under Exts.8 and 9, and issued requisition to the Tahasildar, Niali for a survey report of the spot, which was furnished under Ext.10. He also received the post-mortem report under Ext.4. On 08.07.1996, owing to his transfer, P.W.10 handed over charge of the investigation to his successor, S.I. Ashok Kumar Das of Gobindpur Police Station, who, after examining the case records and the steps already undertaken, submitted the charge-sheet on completion of investigation.

4. The plea of the defence is one of complete denial and false implication.

5. To establish the charges, the prosecution examined ten witnesses in all. P.W.1 was an independent witness. P.W.2 was a relative of the deceased who spoke to the events immediately preceding and following the occurrence. P.W.3 was the constable who transported the dead body of the deceased to the hospital for post-mortem examination. P.W.4 and P.W.8 were the principal eyewitnesses who had accompanied the deceased and were present at the scene of occurrence. P.W.5 was a

retired Inspector. P.W.6 was the informant and the elder brother of the deceased. P.W.7 spoke to the fact of the investigation having been handed over to the successor Investigating Officer. P.W.9 was the doctor who conducted the post-mortem examination on the dead body of the deceased. P.W.10, the Sub-Inspector of Police attached to Gobindpur Police Station, registered the case on the basis of the report lodged by P.W.6 and initially took up the investigation as narrated hereinbefore. The defence examined none in support of their case.

6. The learned Trial Court, having believed the testimony of P.W.4 and P.W.8, who were stated to be present at the scene of occurrence and to have witnessed the assault allegedly committed by the Appellants resulting in the death of the deceased at the spot, held that the prosecution to have proved its case beyond reasonable doubt through their ocular evidence. Relying on the said eye-witnesses account, the Trial Court found the Appellants guilty and, upon conviction, sentenced them as indicated hereinbefore.

7. Mr. Rayaguru, learned counsel Amicus Curiae for Appellant-Madha @ Sachidananda Khuntia, submitted that the impugned judgment of the learned Trial Court is vitiated by relying upon extraneous and unreliable material, inasmuch as the acceptance of the testimony of P.W.4 and P.W.8 as eye-witnesses to the occurrence is misconceived. It was contended that although these witnesses claim to have witnessed the incident, they did not disclose the same before any person immediately after the occurrence, nor did they divulge material particulars before the Investigating Officer at the earliest opportunity. Their statements, recorded after an unexplained delay of four to five days, cast serious doubt not only on their presence at the scene but also on the genuineness and voluntariness of their versions as recorded during investigation. Therefore, their evidence ought not to have been accepted as the basis for fastening culpability for murder upon the Appellants. Learned counsel, further drew the attention of this Court to several infirmities in the statements of the prosecution witnesses touching upon the alleged complicity of Appellants-Madha as well as Nikhil. Mr. Rayaguru argued that the narration in the FIR, the statements made during investigation, and the depositions before the Court suffer from material inconsistencies regarding the manner of assault attributed to the Appellants. The non-seizure of the alleged weapon of offence, despite the prosecution version of repeated sword blows, also renders the prosecution case doubtful. In such circumstances, it was submitted that the learned Trial Court ought not to have relied upon the testimony of P.W.4 and P.W.8 to sustain the conviction.

8. Mr. S. Satapathy, learned counsel for the Appellant-Nikhil Mohanty, adopted the arguments advanced by Mr. Rayaguru and urged that it is a fit case where benefit of doubt should be extended to the Appellants.

9. Mr. Partha Sarathi Nayak, learned Additional Government Advocate, on the other hand, vehemently opposed the submissions advanced on behalf of the Appellants and contended that the learned Trial Court has undertaken a thorough and proper appreciation of the evidence on record. He submitted that the testimonies

of the witnesses, particularly those of P.W.4 and P.W.8, are free from embellishment, and that mere delay in their examination does not in any manner vitiate the prosecution case, which otherwise remains coherent, consistent, and credible. According to him, both these witnesses were natural witnesses present at the scene of occurrence and had clearly narrated not only the presence of the assailants but also the specific manner in which the assault was carried out with weapons, and therefore, the non-seizure of the weapon of offence does not, in his submission, erode the substratum of the prosecution case as candidly narrated by P.W.4 and P.W.8. Mr. Nayak further argued that the contention that the testimony of these witnesses should be discarded solely on the ground of delayed examination is untenable in law, particularly when their presence at the spot has not been disputed. He submitted that it is natural that the witnesses who had directly seen the assault and were threatened with dire consequences by the Appellants would initially be reluctant to come forward, and such apprehension fully explains the delay in their examination. This conduct, therefore, lends credence rather than suspicion to their testimony. In the above background, learned counsel submitted that the absence of immediate disclosure by the witnesses does not, by itself, impair their credibility, and their consistent and precise narration of the occurrence establishes them as trustworthy witnesses. He, accordingly, urged that the learned Trial Court rightly relied upon their evidence and that the impugned judgment warrants confirmation.

10. Before examining the rival submissions and the legal issues involved, it is apposite to briefly recapitulate the substance of the evidence adduced by the prosecution. A succinct summary of the depositions of the relevant witnesses is, therefore, set out hereunder, for proper appreciation of the case.

P.W.2, the cousin of the deceased Biranchi, stated that he knew both the Appellants as well as the other co-accused persons. On the night of 12.03.1996, at about 10:00 p.m., his mother sustained a leg fracture after falling, and the deceased proceeded on a Bullet motorcycle along with Bapi (P.W.4) and Baban (P.W.8) to arrange for a driver to shift her to the hospital. When they did not return, P.W.2's cousin Prakash took the injured mother in a trekker towards Adaspur hospital, and P.W.2 accompanied them. On the way, near a village, one Raba Behera allegedly dashed against their trekker and informed them in an alarmed tone that some persons were assaulting each other nearby. They did not go towards that place and proceeded directly to the hospital. The next morning, P.W.2 learned about the death of Biranchi. He went to Ailing village and found the deceased lying dead in a groundnut field with cut injuries on the neck, head, hand, and other parts of the body. His brother Harekrushna lodged the FIR. P.W.2 further stated that P.W.4 and P.W.8 narrated the occurrence to him the following day, and he was examined by the Investigating Officer that evening.

In cross-examination, P.W.2 denied the suggestion that he had earlier expressed inability to identify the assailants or give any clue about the incident. He stated that his house was about half a kilometre from the place of occurrence and

that he did not pass through the spot while going to the hospital. He confirmed that he did not report the matter to any police station and that the police arrived at Ailing Chhak at about 9:00 a.m., though he did not give any statement at that time. He denied suggestions that he had not told the Investigating Officer about knowing the accused persons, the disclosures made by P.W.4 and P.W.8, the injuries to his mother, the information from Raba Behera, or the injuries noticed on the deceased. He maintained that his evidence-in-chief was truthful.

P.W.4, also known as Bapi, stated that he knew both Appellant-Madha and Appellant-Nikhil, as well as the deceased Biranchi, who was his friend. On 12.03.1996, at about 6:00 p.m., he, the deceased, and P.W.8 decided to go to Kasarda village to witness a festival. Later that night, at around 10:00–10:30 p.m., they were asked by the deceased's elder cousin to bring a trekker driver to shift an injured family member to the hospital. The three of them proceeded on a Bullet motorcycle towards Balikuda Chhak, with P.W.4 driving. Upon reaching Ailing Chhak, Appellant-Madha stopped them. After the deceased identified himself on being questioned, Appellant-Madha asked him to get down. The deceased and P.W.8 remained at the spot while P.W.4 went ahead to call the trekker driver. When he returned, he found only Appellant-Madha present. Appellant-Madha then sat on the pillion seat, threatened P.W.4 with death if he shouted, searched his pockets, and directed him to drive towards Gopinathpur. Near Badam Kiaris (groundnut field), Appellant-Madha forced him to hide the motorcycle in a ditch, put out the light, and sit down. He then loudly called out for the deceased. According to P.W.4, the deceased, P.W.8, and two others including Appellant-Nikhil soon arrived at the spot. Shortly thereafter, absconding accused Biju Ray appeared with a sword and struck the deceased on the head, causing him to fall face-down. P.W.4 stated that Appellant-Madha repeatedly instigated Biju Ray, after which 5 to 6 sword blows were inflicted. Appellant-Nikhil took the sword and administered 3 to 4 more blows. When the deceased began groaning, Appellant-Madha snatched the sword and assaulted him as well. The deceased died on the spot with bleeding injuries. P.W.4 further stated that Appellant-Madha threatened him and P.W.8 with death and destruction of their houses if they disclose the incident. On noticing vehicle lights and hearing commotion from Ailing Chhak, P.W.4 fled, leaving the motorcycle behind. He stated that he informed P.W.2 and Prakash, the deceased's brother, the next morning at Kusunpur village. He then went to Rourkela and later returned with Trilochan Mohanty, after which he narrated the incident at Govindpur Police Station. His statement under Section 164 CrPC was recorded.

In cross-examination, P.W.4 stated that his house was about two kilometres from the deceased's house, and that the deceased's house was about half a kilometre from Ailing Chhak. He admitted that he did not go to the police station immediately as he was in mental shock and claimed that he spent the night at his uncle's house. He acknowledged that he did not disclose the incident to villagers or to his uncle's family. He denied suggestions of tutoring, false implication, lack of prior

acquaintance with the Appellants, or omissions in his earlier statements regarding the identity of the assailants, instigation, the number of blows, or his ability to recognise the accused. He also denied the suggestion that he never went to Rourkela or that his evidence was fabricated.

P.W.6, the informant and elder brother of the deceased Biranchi, stated that he knew all the accused persons, including the absconding accused Biju Ray and Satrughna Mallik, as well as P.W.4 and P.W.8. The deceased Biranchi was his youngest brother. On 12.03.1996, at about 8:30 p.m., the deceased came home along with P.W.4 and P.W.8. His mother had sustained a fracture in her leg earlier that day, and therefore P.W.6 asked the deceased, P.W.4, and P.W.8 to go to village Chalisahi to call the trekker driver so that she could be taken to the hospital. The three left on a Bullet motorcycle. When they did not return, P.W.6 himself shifted his mother to Adaspur PHC for treatment. The next morning, at about 7:00 a.m., he heard that the deceased had been killed. He went to the spot and found his brother lying dead in a Badam Kiari (groundnut field) with bleeding injuries on his head. He lodged the FIR vide Ext.1. The inquest was also conducted in his presence.

In cross-examination, P.W.6 admitted that in the FIR he did not mention that the deceased, P.W.4, and P.W.8 had come to his house before proceeding to call the trekker driver. He stated that he did not see P.W.4 after the deceased left the house and confirmed that there was no criminal case pending against the deceased. He stated that there was a police outpost at Kasarda village. He denied lodging any missing report when the deceased and P.W.4 did not return and denied the suggestion that the deceased, P.W.4, and P.W.8 had never come to his house.

P.W.8 is also called Baban, in his sworn testimony stated that he knew both Appellants Madha and Nikhil, as well as the absconding accused Biju Ray and Satrughna Mallik. The deceased Biranchi was known to him as the younger brother of his friend Radhakrushna Choudhury, and he was acquainted with P.W.4. The occurrence took place on 12.03.1996 at about 10:15 p.m. Earlier that evening, around 6:00 p.m., he, the deceased, and P.W.4 had decided to go to Kasarda village to witness a festival. In the meantime, the deceased's mother sustained a leg injury, and her elder son Nabakrushna Choudhury asked Biranchi to call the trekker driver to take her to the hospital. Accordingly, he along with the deceased and P.W.4 left on a Bullet motorcycle driven by P.W.4. P.W.8 further stated that at Ailing Chhak, Appellant-Madha signalled them to stop. On being informed that they were going to call the driver to shift the injured mother, Appellant-Madha directed P.W.4 to go ahead alone while detaining the deceased and P.W.8. Thereafter, Appellant-Madha led the deceased towards a canal-side Badam Kiari, with P.W.8 following. They were made to sit on the ridge of the field. Appellant-Madha then shouted to call others, and the absconding accused Ghana arrived with a sword. Ghana asked Appellant-Madha to confirm the identity of the deceased and P.W.8, which he did. The deceased denied Ghana's accusation that he had abused Appellant-Madha. By that time, Appellant-Nikhil reached the spot. Ghana identified the deceased to

Appellant-Nikhil, who gave a fist blow, causing the deceased to fall. Appellant-Madha outwardly protested but then took the deceased aside in an apparently sympathetic manner. P.W.8 also stated that had P.W.4 arrived then and immediately thereafter absconding accused Biju Ray reached the spot with a sword. Seeing P.W.8, Biju abused him and moved towards the deceased. Biju then took the sword from Ghana and struck a blow on the deceased's back neck, causing him to fall with bleeding injuries. According to P.W.8, Biju delivered about 5-7 sword blows. Appellant-Nikhil then took the sword and dealt around 4-5 more blows. Ghana also gave 4-5 blows after snatching the sword. Throughout this assault, Appellant-Madha instigated them to strike the deceased on the head. Thereafter, Appellant-Madha took the sword again from Ghana and delivered two blows while shouting, and then threatened both P.W.8 and P.W.4 not to disclose the incident. P.W.8 stated that when vehicle lights appeared on the road, Appellant-Madha held P.W.4's hands and directed him to leave with them, while P.W.8, frightened, fled in another direction. He fell near a cremation ground but was unhurt. At about 4:00 a.m., he reached the house of one Rama Chandra Parida and narrated the incident to him. He was examined by the I.O. the next day, and his statement under Section 164 Cr.P.C. was recorded later.

In cross-examination, P.W.8 stated that his house was about half a kilometre from that of the deceased and that two villages lay between his house and Ailing Chhak. He also stated that he undertook contract work and was a childhood acquaintance of the deceased's family. He denied suggestions that he was financially dependent on the deceased's brother or that he had been tutored. He stated that the police detained him for 24 hours before producing him before the Magistrate for recording his statement. He denied various suggestions of omissions such as failure to identify the accused before the police, failure to mention the fist-blow by Appellant-Nikhil, the number of sword blows, the threats issued, or the specific acts attributed to the accused. He further denied that he was set up as a witness or that he was deposing falsely.

11. Having regard to the charge faced by the Appellants in the offence under Sections 302 IPC, the first and foremost point requires determination is whether the deceased died a homicidal death. In this context, the medical evidence adduced by the prosecution through P.W.9 as follows, deems importance besides the oral evidence through P.W.4 and 8.

External Injuries:

(i) A cut wound of 21 cm x 1.25 cm x bone deep situated on the right-side forehead to left side chin crossing and cutting the nose at its root. The upper end lies 6 cm above the outer end of right eye brow and the lower end 1 cm below and 2.5 cm outer to left angle of mouth.

(ii) Cut wound of 15 cms x 0.25 cm x cranial cavity situated horizontally on the right side of the head just above the right ear extending backwards from the outer and of right eye brow to right posterior auricular area.

- (iii) Cut wound 19 cms x 1.5 cm x cranial cavity on the postero parietal region of head mostly over the right side.
- (iv) Cut wound 18 cms x 1.5 cm x cranial cavity situated 1 cm below the injury no.iii
- (v) Cut wound 17 cms x 1.5 cm x cranial cavity situated obliquely downwards and backwards and medially on the right occipital region of head.
- (vi) Cut wound 10 cms long obliquely situated on the dorsum of left-hand palm extending to the left-hand little finger. All the underlying structures including the bones were found cut and separated and loosely attached to the palmar skin.
- (vii) Cut wound of 10 cm x 1.5 cm x bone deep situated on the palmar aspect of left-hand palm. All the structures including the muscles and vessels were found cut.
- (viii) The left-hand thumb is found cut and partially amputated at its root.
- (ix) Cut wound 5 cm x 2 cm x bone deep situated horizontally on the back of left elbow 2 cms above the bony prominence.
- (x) Cut wound 4 cm x 2 cm x muscle deep situated on the anterior boarder of left shoulder at its middle part.
- (xi) Cut wound involving the bone situated on the back of right elbow obliquely.
- (xii) Stabbed wound 2 cm x 1 cm x muscle deep situated on the anterior boarder of right arm 10 cm below shoulder tip.
- (xiii) Stab wound 3 cm x 1.9 cm x muscle deep situated on the posterior boarder of right arm 4 cm below the axillary cleft.
- (xiv) Three small superficial cut on the outer aspect of right forearm measuring 2 cm x 1 cm x skin deep 12 cm above the wrist, 2cm x 1 cm x skin deep 6 cm above the lower end of radius and 2 cm x 1 cm x skin deep 7 cm above the lower end of ulna.
- (xv) Cut wound 1.5 cm x 0.5 cm x skin deep on the front of right knee.
- (xvi) Cut wound 1.5 cm x 0.5 cm x muscle deep on the inner aspect of left knee,
- (xvii) Stand wound 3 cm x 1 cm x chest cavity on the right side back 10 cms away from mid line and 126 above the right heel.

On dissection the following Internal Injuries were found:

- (i) The scalp, skull, meninges and brain were found cut corresponding external injury nos. (i) to (v). The brain was puppy and hemorrhagic. Cranial cavity was almost collapsed.
- (ii) The soft tissues of the face and the bones corresponding to External injury no. i were found cut including the nazal bone and left maxillary bone.
- (iii) The posterior thoracic wall was found penetrated through and through corresponding to eternal injury no. xvii with extravasation of blood to the adjacent intercostal muscles. The pleura was found perforated and the right lung at its lower

lobe was also found perforated. Right side chest cavity contained about 500 ml of blood.

In his evidence on oath, as narrated above, P.W.9 has given a vivid description of nature of injuries sustained by the deceased. All the injuries being incise in nature and multiple injuries having found in the person of the deceased, it is abundantly clear that the deceased had suffered repeated blows inflicted by a sharp-cutting weapon. The injuries, as opined by P.W.9, were sufficient in the ordinary course of nature to cause death, having been directed at vital parts of the body. The medical evidence thus unequivocally establishes that the death of the deceased was homicidal in nature.

The oral evidence coming through P.W.4 and 8 too finds support to the aforesaid injuries dictated by the doctor in course of the autopsy leads only to the conclusion that the death of the deceased would be one of homicidal in nature. The defence found not very keen in disputing the nature of the death and as such, the findings recorded by the learned Trial Court holding the death of the deceased to be homicidal being sacrosanct are confirmed.

12. The next question that engages the attention of this Court is with regard to the culpability of the Appellants and whether they can be held to be the assailants/authors of the assault in question. Though the prosecution has examined several witnesses, the core of the prosecution case, so far as attribution of specific overt acts to the Appellants is concerned, rests principally on the evidence of P.W.4 and P.W.8. At the outset, it may be stated that the defence challenges the impugned judgment of the learned Trial Court primarily on the ground of the credibility of these two witnesses. The contention of the learned amicus curiae is that P.W.4 and P.W.8 were examined belatedly, which, according to the defence, casts a serious doubt on the reliability of their testimony.

13. The law is well settled that delay in the examination of witnesses, particularly those who claim to be present at the scene of occurrence does not, by itself, render the prosecution case untenable, especially when their presence is not in dispute. However, such delay can certainly affect the creditworthiness and overall reliability of the testimony, depending on whether the prosecution offers a satisfactory and plausible explanation. Unexplained or inordinate delay may cast a serious shadow on the veracity of the evidence and may allow the defence to argue the possibility of embellishment, improvement, or manipulation, requiring the Court to approach the testimony with circumspection and, therefore, what the Court must evaluate is whether the delay has caused prejudice to the accused in effectively defending themselves; for instance, due to non-availability of material witnesses, loss of evidence, or fading recollection. Where such prejudice is shown, delay assumes significance. Conversely, where the prosecution offers a rational and acceptable explanation, the Court is required to scrutinise the evidence with care, ensuring that no undue prejudice is occasioned to either side while still upholding the cause of justice.

The aforesaid legal position stands succinctly enunciated in the recent decision of the Hon'ble Apex Court in the matter of *Firoz Khan Akbarkhan vs. The State of Maharashtra*, reported in **2025 LiveLaw (SC) 349**, as follows:

21. Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 1615 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in *Ganesh Bhavan Patel v State of Maharashtra*, (1978) 4 SCC 371; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.' In *Jagjit Singh v State of Punjab*, (2005) 3 SCC 689 and *State of A.P. v S Swarnalatha*, (2009) 8 SCC 383, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in *Lal Bahadur v State (NCT of Delhi)*, (2013) 4 SCC 557. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in *Baldev Singh v State of Punjab*, (2014) 12 SCC 473. Delay in recording witness statements was held not fatal per se in *Sunil Kumar v State of Rajasthan*, (2005) 9 SCC 283 and *V K Mishra v State of Uttarakhand*, (2015) 9 SCC 588. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in *Shahid Khan v State of Rajasthan*, (2016) 4 SCC 96 and *Jafarudheen v State of Kerala*, (2022) 8 SCC 440. It was held, in *Goutam Joardar v State of W. B.*, (2022) 17 SCC 549, by a Coordinate Bench that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.' Per our understanding, *Ganesh Bhavan Patel* (supra) is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, stricto sensu, delay in recording witness statements, more so when the said delay is explained, will not aid an accused. Of course, no hard-and fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code.

From the above, it is clear that mere non-examination of eye-witnesses immediately after the occurrence does not, by itself, vitiate the prosecution case. If the Court is satisfied with the explanation furnished by the prosecution and finds that the material brought on record is adequate to sustain the charge, no prejudice can be said to have been caused to the accused. Likewise, where the Court is of the view that the evidence withheld is not material or is available to the other side, no adverse

inference is warranted solely on the ground of non-production of a particular witness. The burden rests on the party alleging deliberate suppression of a witness to establish the same.

14. On the touchstone of the principles enunciated by the Hon'ble Apex Court, when the case at hand is examined, it emerges that P.W.4 and P.W.8 are the two witnesses who had admittedly accompanied the deceased on the night of the incident, and the trio had proceeded on the Bullet motorcycle to witness the Jatra. The defence has not challenged this aspect nor put any suggestion to either of them that they had not accompanied the deceased on the night of the occurrence. The evidence further reveals that, in order to shift the deceased's injured mother to the hospital, they were asked to arrange a trekker driver, and accordingly the deceased along with P.W.4 and P.W.8 was proceeding for that purpose. On the way, it was Appellant-Madha who obstructed their passage by raising his hands, bringing the motorcycle to a halt. Appellant-Madha directed the deceased as well as P.W.8 to alight, while, upon the request of P.W.4, he permitted him to proceed to arrange the driver. The narration of P.W.4 and P.W.8 that Appellant-Madha thereafter took the deceased from the chowk a little ahead towards the cultivable land and called the others to the spot, who appeared almost instantly as though prepared with weapons to respond to his call, appears consistent with the surrounding circumstances. Their further evidence, that P.W.4 returned to the spot and was again brought near the place where the deceased had been forced to sit, and that the assailants, more particularly Appellant-Nikhil, the absconding accused Satrugna and Biju arrived armed with swords and dealt indiscriminate blows on the deceased while Appellant-Madha instigated them with abusive exhortations, remains uncontroverted.

The only contradiction that emerges relates to whether the witnesses had, in their earlier statements before the police, attributed specific blows to Appellant-Madha, which they later stated in Court. Such discrepancy, though apparent, is not fatal. The law does not demand mathematical precision between statements recorded under Section 161 or Section 164 Cr.P.C. and the evidence before the Court, so long as the core of the testimony remains consistent. The same has been reiterated by the Hon'ble Apex Court in the matter of *Rajendra @ Rajappa & Ors. Vs. State of Karnataka*, reported in AIR 2021 SC 2064, while relying upon *Narayan Chetanram Chaudhary & Anr. vs. State of Maharashtra*, reported in (2000) 8 SCC 457, as below:

“...It is held in the said judgment that only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. Relevant portion of Para 42 of the judgment reads as under:

“42. Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution becomes doubtful and not otherwise. Minor contradictions are bound to appear in

the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness...”

The facts clearly establish that the deceased was taken with the premeditated intention of being killed. The readiness of the assailants to appear immediately upon the call given by Appellant-Madha indicates that they were positioned close by, waiting and prepared to act. The evidence of P.W.4 and P.W.8 that the assailants challenged the deceased as to why he did not follow Appellant-Madha's group further exposes the underlying motive; his refusal resulted in his being done to death by indiscriminate sword blows. Any minor discrepancy regarding which assailant delivered which specific blow does not in any manner weaken the prosecution case, particularly when the medical evidence unequivocally establishes that the deceased sustained multiple incised injuries inflicted by sharp-cutting weapons. The presence of the assailants at the scene in a premeditated manner, acting in concert, is sufficient to infer that Appellant-Madha and Appellant-Nikhil shared the common intention to eliminate the deceased. As regards the delayed examination of P.W.4 and P.W.8, and their initial reluctance to disclose the occurrence or the identity of the assailants before the Investigating Agency, the evidence makes it abundantly clear that the assailants had threatened them with dire consequences should they reveal the incident. Although the continuation of such threat is not specifically corroborated by the informant or by Rama Chandra Parida (who was not examined), such omission does not impeach the credibility of P.W.4 or P.W.8. Their conduct in leaving the village and returning only after four to five days, as they explained, appears plausible and consistent with the fear they experienced. Their presence at the scene is unquestioned; their versions remain materially consistent; and the explanation furnished for the delay is cogent. We are, therefore, of the considered view that the learned Trial Court has rightly accepted their testimony as truthful and natural.

15. In assessing whether the ocular version of the prosecution witnesses is of such quality that a conviction may safely rest upon it; it becomes necessary to advert to the settled principles governing appreciation of eye-witness testimony. The Hon'ble Supreme Court has consistently held that where the prosecution case hinges upon direct ocular evidence, the Court must examine whether such witnesses satisfy the standard of reliability, consistency, and of sterling quality, as per law. Reference may usefully be made to the recent decision of the Hon'ble Supreme Court in *Naresh @ Nehru vs. State of Haryana, 2023 INSC 889*, wherein the contours of this principle have been restated in emphatic terms, as follows:

“9.3 As noticed hereinabove, the evidence of the eye-witness should be of very sterling quality and calibre and it should not only instil confidence in the court to accept the same but it should also be a version of such nature that can be accepted at

its face value. This Court in the case of *Rai Sandeep @ Deepu alias Deepu Vs. State (NCT of Delhi)*, (2012) 8 SCC 21 has held:

“22. In our considered opinion, the “sterling witness” should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.””

16. In view of the above, this Court finds that the core testimony of P.W.4 and P.W.8 substantially satisfies the characteristics of a witness whose evidence may be safely accepted. Both witnesses are natural companions of the deceased on the night of the occurrence; their presence at the scene is inherently probable, undisputed by the defence, and supported by the surrounding circumstances, including the medical evidence. The sequence narrated by them, beginning with the interception by Appellant-Madha, the subsequent forcible separation of the deceased, the movement towards the cultivable land, the sudden arrival of the assailants, the role of Appellant-Madha in summoning and instigating them, and the participation of Appellant-Nikhil and others in the assault is consistent in all material particulars in their statements under Section 164 Cr.P.C. and in Court.

Despite strenuous and prolonged cross-examination, neither P.W.4 nor P.W.8 faltered on the fundamental aspects of the prosecution case. Their depositions remained coherent on the identity of the assailants, the nature of the weapons

carried, the manner in which the deceased was repeatedly assaulted, and the role of Appellant-Madha both in restraining the deceased and in actively inciting the attack. Minor deviations or omissions in their earlier police statements particularly as regards the attribution of specific blows do not go to the root of their credibility, especially when the medical evidence conclusively demonstrates multiple incised wounds caused by sharp-cutting weapons, thereby fully supporting their core version.

The explanation tendered by these witnesses for the delay in their examination that they had been threatened with dire consequences by the assailants and had therefore left the village, appears both plausible and natural in the circumstances.

The fact that at one hand they apprehended threat to their lives and on the other hand disclosed to the Informant's family though found not corroborated by P.W. 6 and further the non-examination of Ram Chandra Parida or anyone to support the versions of the witnesses as to their leaving the village cannot in itself be taken abortive to the testimony of the witnesses though could have made the versions of the said witnesses emboldened but absence of corroboration cannot be seen the versions of P.W.4 and 8 with doubt. This is because the very aspect of their company with the deceased and presence in the scene of occurrence remained uncontroverted and nothing could be inferred from the evidence of the defence has questioned their presence except by some suggestions that did not mature with any conclusion showing their absence in the scene of occurrence.

Furthermore, nothing has been elicited in cross-examination to suggest that either witness stood to gain from falsely implicating Appellant-Madha or Appellant-Nikhil. Their account being consistent with the inquest and medical findings further reinforces the intrinsic trustworthiness of their testimony. Examined cumulatively, their evidence forms an unbroken chain linking the conduct and presence of the Appellants with the homicidal death of the deceased, thereby satisfying the test of a credible, reliable, and confidence-inspiring eye-witness account as envisaged by the Supreme Court. In view of the foregoing analysis of the ocular and medical evidence, there remains no doubt that the deceased suffered a homicidal death squarely attracting the offence under Section 302 IPC.

17. The circumstances established through the consistent testimony of P.W.4 and P.W.8 reveal that Appellant-Madha deliberately intercepted the deceased, isolated him, led him towards the cultivable land, and summoned the assailants who appeared armed within moments. His subsequent instigation during the assault further demonstrates conscious participation. Appellant-Nikhil, upon arrival, immediately joined the group and inflicted sword blows on the deceased, reinforcing the pre-concerted plan. The collective conduct of both Appellants, the coordinated assault with deadly weapons, the nature and number of injuries caused to the deceased and their threats to the eye-witnesses thereafter, cumulatively establish that the fatal act was carried out in furtherance of a shared intention. Accordingly, the

acts of Appellant-Madha and Appellant-Nikhil clearly attract Section 34 IPC, rendering them jointly liable for the murder of the deceased.

18. In view of the foregoing analysis, this Court finds that the deceased suffered a homicidal death and the role of Appellant-Madha and Appellant-Nikhil stands clearly established. The consistent and reliable testimony of P.W.4 and P.W.8, duly corroborated by the medical evidence, proves beyond reasonable doubt that the fatal assault was carried out in furtherance of their common intention, attracting Section 302/34 IPC.

19. Accordingly, we find no compelling reason to interfere with the well-reasoned findings recorded by the learned 2nd Additional Sessions Judge, Cuttack in S.T. No.313 of 1998 vide order dated 05.10.2001.

20. As a result, both Criminal Appeals stand dismissed.

Since the Appellants are on bail, their bail bonds stand cancelled. They are directed to surrender before the learned trial court within a period of three weeks from today to serve out the sentence imposed upon them. In the event of their failure to do so, the learned court shall take all necessary steps to secure their apprehension in accordance with law.

Before parting, this Court places on record its sincere appreciation for the valuable assistance rendered by Mr. B. S. Rayaguru, learned Amicus Curiae. The Court acknowledges his diligent efforts and the able assistance extended in the effective adjudication of the present appeal. The Court also records its appreciation for Mr. Partha Sarathi Nayak, learned Additional Government Advocate, for his comprehensive submissions and the clarity with which he presented the case. Their assistance has been of immense value in the disposal of this matter.

Headnotes prepared by:

Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:

Criminal Appeals dismissed.

2025 (III) ILR-CUT-1221

NABANITA KAPAT PATRA
V.
COLLECTOR, KANDHAMAL & ANR.

[W.A. NO. 1367 OF 2025]

29 NOVEMBER 2025

(LARGER BENCH)

[K.R. MOHAPATRA, J., DIXIT KRISHNA SHRIPAD, J.,
Dr. SANJEEB KUMAR PANIGRAHI, J.]

Issue for Consideration

Whether notice for a no-confidence motion issued without enclosing the proposed resolution U/s. 24(2)(c) of the Grama Panchayats Act, 1964 is invalid.

Headnotes

ORISSA GRAMA PANCHAYATS ACT, 1964 – Section 24 (2) (c) – No confidence motion against Sarpanch or Naib Sarpanch – Notice along with the copy of the requisition and the proposed resolution – Whether it is mandatory to give notice along with copy of the requisition and the proposed resolution to all the members holding offices in the Grama Panchayat?

Held: Yes – The bone of contention between the parties is as to the meaning of clause (c) of Sub-Section (2), which *inter alia* states that the Sub-Divisional Officer, on requisition, ‘**shall give notice**’ to all the Members of Panchayat, ‘along with a copy of the requisition **and of the proposed resolution**’ – Notice is not valid if it is not accompanied by the ‘proposed resolution’, is the submission of Appellant’s counsel, whereas notice is not vitiated merely because copy of ‘proposed resolution’ did not accompany it, is the retort of counsel representing the private Respondents – Both they rely upon certain decisions which we would advert to, a little later – We agree with the proposition of Appellant’s counsel because clauses (a) (b) (c) & (d) of Sub-Section (2) of Section 24 textually employ the word ‘shall’, there being no scope for reading it as ‘may’, regard being had to the serious implications such as, if the Motion succeeds, Sarpanch would be ousted from office once for all and he would not retain membership too.

Added to the above, the contention that notice sent with requisition *sans* copy of draft Resolution would suffice the requirement of Section 24(2)(c), if countenanced would render the statutory expression ‘and of the proposed resolution’ otiose – The sages of law have long been saying that

every part and every word of a statute should be given its due meaning – In **Poppatlal Shah v. The State of Madras**, it has been reiterated in the following words:

“It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself...”

Appellant is a popularly elected Sarpanch of the Panchayat by virtue of Section 10(1)(a) read with Section 4(1) of the 1964 Act, unlike the Naib Sarpanch mediately elected under Section 14(1) – Removing a directly elected Sarpanch is a serious matter, inasmuch as it nullifies the popular mandate handed in an election that was periodically held for the office in question – It is notable that once No Confidence Motion succeeds, he ceases to be the Sarpanch and that he has no Membership credentials in the Panchayat – It is so because, he is elected directly from the voters of the entire constituency of the Panchayat concerned, and not by the collegium of elected Members, unlike the Naib-Sarpanch – In other words, he is rendered a *persona non grata qua* the Panchayat – This view gains support from Sub-Section (4) of Section 115 of the Act which has the following text:

“(4). A Sarpanch or Naib-Sarpanch on removal from office under Sub-Section (1) shall also cease to be a member of the Grama Panchayat, and such person shall not be eligible for election as member for a period not exceeding four years as the State Government may specify.”

Therefore, the prescription of procedure under the law providing for the removal of Sarpanch by way of No Confidence Motion, has to be construed as mandatory consistent with legislative policy content & intent.

As already mentioned, Sub-Section (2)(c) is clear & emphatic in prescribing the procedure for issuance of notice of No Confidence Motion – The structure is: Firstly, Notice should be a minimum of seven (7) days – Secondly, it should contain date, time & place of meeting – Thirdly, it should be accompanied by a copy of requisition – Fourthly, it should also be accompanied by a copy of ‘resolution proposed’ – This provision employing the expression *‘such notice along with a copy of the requisition and of the proposed resolution’* has been continuing on the Statute Book since more than six decades – The Act has seen a plethora of amendments till now, but the text of this provision has conspicuously remained unaltered – Provisions of the kind are made in the accumulated legislative wisdom gained through years of experience – We add that when the text of a statute is unambiguous, it does not admit any interpretation – It has to be taken as it is. Maxwell on ‘The Interpretation of the Statutes’, writes;

“Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise.... Where, by the use of clear and

unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be – The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient”
(Para 4.4)

Citations Reference

Poppatlal Shah v. The State of Madras, **AIR 1953 SC 274**; Jyoti Basu v. Debi Ghosal, . **(1982) 1 SCC 691**; Taylor v. Taylor, **1875 LR 1 ChD 426**; Prahallad Dalai v State of Orissa, **AIR 2014 Ori 17**; Pramod Kumar Sahu v. State of Odisha, **W.A. No.3473 of 2024 – referred to.**

List of Acts

Orissa Grama Panchayats Act, 1964; Representation of the People Act, 1951; Constitution of India, 1950.

Keywords

No confidence Motion; Sarapanch; Naib Sarapanch; Meeting; Notice; Copy of requisition; Proposed resolution; Draft resolution; Deemed vacation of office; *Persona non-grata*; *Per incurium*.

Case Arising From

Order dated 13.08.2025 of this Hon'ble Court.

Appearances for Parties

For Appellants : M/s Gopinath Mishra & P.P. Mohanty

For Respondents : Mr. Sabita Ranjan Pattanaik, AGA [R Nos.1 & 2]
M/s Upendra Kumar Samal, M.R. Mohapatra, S.P.Patra
& N. Samal, [R Nos. 3 to 11]

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD. J.

In this intra-Court appeal, interpretation of Section 24 of the Orissa Grama Panchayat Act, 1964 had fallen for consideration before a Division Bench of this Court. Arguably, two conflicting decisions rendered by two different Division Benches were cited at the Bar on the question involved. That is how, present reference is made to this Bench, vide order dated 13.08.2025, which is self-explanatory and therefore reproduced below:

“1. The point involved in the instant writ appeal pertains to the interpretation of Section 24 of the Odisha Gram Panchayats Act, 1964 (for short, “the OGP Act”).

2. According to the appellant, the modalities and/or the requirements appearing from the said provision of the OGP Act shall be strictly adhered to and any

departure therefrom would entail the action of the authority liable to be quashed and set aside. In pursuit of the same, a reliance was placed upon a Division Bench judgment of this Court in Prahallad Dalai vs. State of Odisha, reported in AIR 2014 Orissa 179, wherein it is held that the copy of the Resolution and the requisition are twin mandatory conditions and departure from any such condition would make the Notice issued by the Sub-Collector invalid.

3. Our attention is further drawn to an unreported judgment of the Division Bench of this Court (one of us is a party), delivered on 15th April, 2025 in W.A. No.3473 of 2024 (Prمود Kumar Sahu Vs. State of Odisha and others), wherein harmonious construction was adopted and the intention of the Legislature can be reasonably inferred and/or seen therefrom. The technicality should not outweigh the fairness and the transparency in the system. We thus find that both the judgments to some extent run counter to each other and, therefore, this Bench feels that it would be proper that the matter be referred to a larger Bench to decide, whether the 'requisition' and the 'Resolution' appearing in Section 24 of the OGP Act invites any stringent interpretation that the 'requisition' and the 'Resolution' must be separate and distinct from each other or a harmonious construction is required to be adopted where the purpose of requisition relating to no confidence motion against the Sarpanch is evidently manifest therefrom and the Ward Members are made aware of the Resolutions as well as the Agenda of the said meeting.

4. Let the matter be placed before the Hon'ble the Chief Justice to constitute a larger Bench."

2. Foundational facts of the case:

2.1. Appellant herein is the elected Sarpanch of Hatimunda Grama Panchayat, Daringbadi Block, Kandhamal district. This Grama Panchayat comprises of fourteen (14) Ward Members. Of them, eight (8) had proposed a No Confidence Motion and accordingly a draft resolution came to be passed on 20.09.2024. They sent a requisition to the Sub-Collector on 08.10.2024 requesting him to convene the Panchayat meeting for formalizing the No Confidence Motion.

2.2. On receipt of the requisition, the Sub-Collector, Balliguda instructed the Block Development Officer of Daringbadi Block to enquire & ascertain genuineness of the proposal for No Confidence. The BDO, on 27.11.2024, reported that the subject proceedings were genuine. On 29.11.2024, the Sub-Collector sent a notice, along with requisition, to all the Grama Panchayat Members, including the Appellant herein, scheduling the meeting for 16.12.2024. He had designated the jurisdictional Tahasildar to be the Presiding Officer for the meeting in contemplation.

2.3. Appellant filed WP(C) No.31072 of 2024 laying a challenge to the above notice dated 29.11.2024 inter alia on the ground that the same was not accompanied by the proposed resolution, and therefore the same is vitiated. A learned Single Judge, vide ad interim order dated 13.12.2024 granted a conditional reprieve, in the following words:

“....3. Since, the State is not ready with the response and as Mr.Mohanty, learned ASC has been allowed further time to file the same, this Court, as an interim measure, though not inclined to stay the impugned Notice i.e. Annexure-1 but is of the view that the motion should take place without the result of the same being published till the next date and accordingly, it is directed.....”

Thereafter, nine elected Ward Members had moved intervening applications in the petition.

2.4. The petition was heard and dismissed, vide order dated 01.08.2025, wherein the following observations occur:

“.....Having considered the above facts and submissions of learned counsel for the respective parties and considering the counter of opposite party no.2, it is clear and conspicuous that a Resolution was held on the date fixed by the Ward Members and it was followed by a requisition and upon receiving such requisition, opposite party no.2 said to have issued the impugned Notice i.e. Annexure-1 accompanied with the copies of the Resolution and requisition.’

On the following day, i.e., 02.09.2025, the No Confidence Motion was passed by 2/3rd of the Members and the Appellant came to be voted out of office.

3. Contentions of the parties:

3.1. Learned counsel appearing for the Appellant drawing our attention to the provisions of Section 24 of the 1964 Act argued that the law relating to election is of special features and it is what the statute says, namely, the said Act; clause (c) of Sub-Section (2) mandates that the contemplated notice has to be accompanied by both a copy of the requisition and a copy of the proposed resolution; in the instant case a copy of the resolution having not been sent to his client, the Motion of No Confidence passed on the basis of inherently defective notice, is vitiated. So arguing, he seeks invalidation of learned Single Judge’s order and for allowing the Writ Petition. In support of his submission, certain rulings are pressed into service.

3.2. Per Contra, learned AGA appearing for the official respondents and learned Advocate representing the private respondents contended that: The provisions of Section 24 of the Act should receive a harmonious construction; non accompaniment of proposed resolution would not affect the validity of notice, since appellant had full knowledge; clause (c) of Sub-Section (2) of this Section, being directory, its non-compliance does not vitiate the subject notice; this clause enacts only the principles of natural justice which have been substantially complied with; the ousted Sarpanch, having understood the content & intent of notice accompanied by requisition, has not suffered any demonstrable prejudice; the decisions cited on behalf of the Appellant are per incuriam. So contending, he prayed for the dismissal of Appeal, citing certain rulings to adumbrate his position.

4. We have heard learned counsel for the parties and perused the appeal papers, along with their Written Submissions. We have also examined relevancy of the rulings cited at the Bar and more particularly those on which the Reference

Order is structured. It solicits the answer to the questions raised. Having done our collective exercise, we are answering the Reference as under and for the following reasons:

4.1. As to the nature & content of notice and its enclosures.

(i) The jugular vein of the case is the notice of No Confidence Motion dated 29.11.2024. The same in vernacular reads as under:

“ବିଷୟ: ହାତିମୁଣ୍ଡା ଗ୍ରାମ ପଞ୍ଚାୟତର ସରପଞ୍ଚ ଶ୍ରୀମତୀ ନବନିତା କପାଟପତ୍ର କୁ ଅନାମ୍ନା ପ୍ରସ୍ତାବ ନିମନ୍ତେ ସ୍ୱତନ୍ତ୍ର ବୈଠକ ।

ମହାଶୟ/ମହାଶୟା,

ଉପରୋକ୍ତ ବିଷୟ ପ୍ରତି ଧ୍ୟାନ ଆକର୍ଷଣ କରି ଜଣାଇ ଦିଆଯାଉଅଛିଯେ ଆସକ୍ତ ତା । ୧୭.୧୨.୨୦୨୪ ସମୟ ଘ. ୧୧.୦୦ ମିନିଟ ସମୟରେ, ହାତିମୁଣ୍ଡା ଗ୍ରାମ ପଞ୍ଚାୟତର ସରପଞ୍ଚ ଶ୍ରୀମତୀ ନବନିତା କପାଟପତ୍ର କୁ ବିଷୟରେ ଆସିଥିବା ଅନାମ୍ନା ପ୍ରସ୍ତାବ ଉପରେ ଆଲୋଚନା ସହ ଗୁପ୍ତଭାବେ ଗ୍ରହଣ ପ୍ରିୟାଜଣ୍ଡିଆ ଅଫିସର ଶ୍ରୀ ଶରତ ଶବର, OAS-I (JB), ତହସିଲଦାର, ଦାରିଙ୍ଗବାଡ଼ି କୁ ଉପସ୍ଥିତରେ ସ୍ୱତନ୍ତ୍ର ବୈଠକ ପରିଚାଳନା କରାଯିବ । ଏଥିସହିତ ହାତିମୁଣ୍ଡା ଗ୍ରାମ ପଞ୍ଚାୟତର ଝାଡ଼ି ସଭ୍ୟ/ସଭ୍ୟାମାନଙ୍କର ବରାଦି ପତ୍ର ସଲଗ୍ନ କରାଯାଇ ନିର୍ଦ୍ଧାରିତ ତାରିଖ ଓ ସମୟରେ ହାତିମୁଣ୍ଡା ଗ୍ରାମ ପଞ୍ଚାୟତ କାର୍ଯ୍ୟାଳୟରେ ଆପଣ ଉପସ୍ଥିତ ରାହି ସ୍ୱତନ୍ତ୍ର ବୈଠକରେ ଭାଗନେବା ପାଇଁ ଅନୁରୋଧ କରାଗଲା

ଏହା ଅତ୍ୟନ୍ତ ଜରୁରୀ ଅଟେ ।”

The near English version of this notice is as follows:

“Sub: Special Meeting for No Confidence Motion against Smt. Nabanita Kapat Patra, Sarpanch, Hatimunda Grama Panchayat.

Sir/Madam

Drawing attention to the above noted subject, it is hereby informed that on 16.12.2024 at 11:00 hours, a discussion with secret ballot will be held on No Confidence Motion against Smt. Nabanita Kapat Patra, Sarpanch of Hatimunda Grama Panchayat, in a Special Meeting in the presence of the Presiding Officers Sri Sarat Sabar, OAS-I (JB) and the Tahsildar, Daringbadi. Enclosed herewith is a proposed resolution of Ward Member/Members of Hatimunda Grama Panchayat. Your presence in the special meeting on the scheduled date & time is requested.

It is most urgent.”

(ii) There is a broad consensus at the Bar that the Odia term ‘ପ୍ରସ୍ତାବ ନିର୍ଦ୍ଧାରଣ’, i.e., ‘*resolution proposed*’ is conspicuously absent in the subject notice. Even otherwise, it can be reasonably gathered from the contents of said notice that it was not accompanied by a copy of draft resolution that was proposed in the meeting held on 20.09.2024, although a copy of ‘requisition, was enclosed to the notice. It is in this context, the said notice is assailed by the Appellant. Learned AGA appearing for the official Respondents and learned Counsel representing the private Respondents contended that notice of the kind is valid even when it is not accompanied by a copy

of the „*resolution proposed*“. They submitted that the notice was accompanied by a copy of the requisition and that would serve the purpose of notice.

4.2. As to what the statutory provisions say:

Both the learned counsel appearing the parties heavily banked upon the text of Section 24(1) & Clauses (a) to (e) of Sub-Section (2) of 1964 Act and therefore, the same are reproduced for the ease of perusal:

“24. Vote of no confidence against Sarpanch or Naib-Sarpanch :- (1) Where at a meeting of the Grama Panchayat specially convened by the Sub-divisional Officer in that behalf a Resolution is passed, supported by a majority of not less than two-thirds of the total membership of the Grama Panchayat, regarding want of confidence in the Sarpanch or Naib-Sarpanch the Resolution shall forthwith be forwarded by the Sub-Divisional Officer to the Collector, who shall immediately on receipt of the Resolution publish the same on his Notice-board and with effect from the date of such Publication the member holding the Office of Sarpanch or the Naib-Sarpanch, as the case may be, shall be deemed to have vacated such Office.

(2) In convening a meeting under Sub-Section (1) and in the conduct of business at such meeting the procedure shall be in accordance with such rules, as may be prescribed, subject however to the following provisions, namely :

(a) no such meeting shall be convened except on a requisition signed by at least one-third of the total membership of the Grama Panchayat along with a copy of the resolution proposed to be moved at the meeting;

(b) the requisition shall be addressed to the Sub-divisional Officer;

(c) the Sub-Divisional Officer on receipt of such requisition shall fix the date, hour and place of such meeting and give Notice of the same to all the members holding Office on the date of such Notice along with a Copy of the requisition and of the proposed Resolution, at least fifteen clear days before the date so fixed

(d) the aforesaid Notice shall be sent by post under Certificate of posting and a Copy thereof shall be published at least seven days prior to the date fixed for the meeting in the Resolution-board of the Samiti;

(e) the proceedings of the meeting shall not be invalidated merely on the ground that the Notice has not been received by any member;”

4.3. A Thumbnail description of above statutory provisions:

(i) Sub-Section (1) of Section 24 provides for the removal of Sarpanch or Naib Sarpanch. Sub-Section (2) prescribes the operational procedure therefor. For the purpose of this case, advertence to clauses (a) to (e) of Sub-Section (2) would suffice. A conjoint reading of these provisions lead to the following summary: There should be want of confidence in the Sarpanch/Naib Sarpanch. A draft resolution should be passed to that effect, by not less than 1/3rd of the total membership of Grama Panchayat. A requisition shall be sent to the Sub-Divisional Officer for convening the meeting of No Confidence Motion. The requisition should accompany the draft resolution.

(ii) The Sub-Divisional Officer shall issue Notice to all the Members fixing the date, hour & place of such meeting. The Notice should be at least of fifteen (15) clear days. The Notice should be accompanied by a copy of requisition & of draft resolution. The mode of service of Notice is by certificate of posting. In addition, a copy of Notice shall be published on the Notice Board of Panchayat seven (7) days prior to the scheduled date of meeting.

(iii) Let us elaborate little more on Sub-Section (1) of Section 24: This provision has certain building blocks, such as ‘meeting specially convened’, ‘resolution is passed’, not less than $2/3^{\text{rds}}$ of the total membership’; ‘Sub-Divisional Officer forwarding the resolution to the Collector’, ‘the Collector immediately publishing the resolution on his Notice Board’; ‘deemed vacation of office’, etc. The textual meaning of this Section is as clear as Gangetic waters. Same is the case with clauses (a) to (e) of Sub-Section (2) as well.

4.4. As to whether Section 24(2)(c) of the Act is mandatory:

(i) The bone of contention between the parties is as to the meaning of clause (c) of Sub-Section (2), which *inter alia* states that the Sub-Divisional Officer, on requisition, ‘**shall give notice**’ to all the Members of Panchayat, ‘along with a copy of the requisition **and of the proposed resolution**’. Notice is not valid if it is not accompanied by the ‘proposed resolution’, is the submission of Appellant’s counsel, whereas notice is not vitiated merely because copy of ‘proposed resolution’ did not accompany it, is the retort of counsel representing the private Respondents. Both they rely upon certain decisions which we would advert to, a little later. We agree with the proposition of Appellant’s counsel because clauses (a) (b) (c) & (d) of Sub-Section (2) of Section 24 textually employ the word ‘shall’, there being no scope for reading it as ‘may’, regard being had to the serious implications such as, if the Motion succeeds, Sarpanch would be ousted from office once for all and he would not retain membership too.

(ii) Added to the above, the contention that notice sent with requisition *sans* copy of draft Resolution would suffice the requirement of Section 24(2)(c), if countenanced would render the statutory expression ‘and of the proposed resolution’ otiose. The sages of law have long been saying that every part and every word of a statute should be given its due meaning. In *Poppatlal Shah v. The State of Madras*¹, it has been reiterated in the following words:

“It is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself....”

(iii) Appellant is a popularly elected Sarpanch of the Panchayat by virtue of Section 10(1)(a) read with Section 4(1) of the 1964 Act, unlike the Naib Sarpanch

¹

AIR 1953 SC 274

mediately elected under Section 14(1). Removing a directly elected Sarpanch is a serious matter, inasmuch as it nullifies the popular mandate handed in an election that was periodically held for the office in question. It is notable that once No Confidence Motion succeeds, he ceases to be the Sarpanch and that he has no Membership credentials in the Panchayat. It is so because, he is elected directly from the voters of the entire constituency of the Panchayat concerned, and not by the collegium of elected Members, unlike the Naib-Sarpanch. In other words, he is rendered a *persona non grata* qua the Panchayat. This view gains support from Sub-Section (4) of Section 115 of the Act which has the following text:

“(4). A Sarpanch or Naib-Sarpanch on removal from office under Sub-Section (1) shall also cease to be a member of the Grama Panchayat, and such person shall not be eligible for election as member for a period not exceeding four years as the State Government may specify.”

Therefore, the prescription of procedure under the law providing for the removal of Sarpanch by way of No Confidence Motion, has to be construed as mandatory consistent with legislative policy content & intent.

(iv) As already mentioned, Sub-Section (2)(c) is clear & emphatic in prescribing the procedure for issuance of notice of No Confidence Motion. The structure is: Firstly, Notice should be a minimum of seven (7) days. Secondly, it should contain date, time & place of meeting. Thirdly, it should be accompanied by a copy of requisition. Fourthly, it should also be accompanied by a copy of ‘resolution Proposed’. This provision employing the expression ‘*such notice along with a copy of the requisition and of the proposed resolution*’ has been continuing on the Statute Book since more than six decades. The Act has seen a plethora of amendments till now, but the text of this provision has conspicuously remained unaltered. Provisions of the kind are made in the accumulated legislative wisdom gained through years of experience. We add that when the text of a statute is unambiguous, it does not admit any interpretation. It has to be taken as it is. Maxwell on ‘The Interpretation of the Statutes’², writes;

“Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise... Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient”

4.5. Election law is what the statute enacts:

(i) Sub-Sections (1) & (2) of Section 24 of the Act in a sense enact a specific procedure for ousting *inter alia* an elected Sarpanch. The decision on No Confidence

Motion is to be taken by secret ballot, as is mentioned in the impugned notice. Thus, on the floor of Panchayat, the elected Members cast their votes in the No Confidence Motion, which if succeeds, the Sarpanch will be ousted from office. Therefore, these provisions constitute a kind of election law relating to removal of Sarpanch by due process. Ordinarily, law relating to election is, what the statute says it to be, namely, the 1964 Act, herein. In **Jyoti Basu v. Debi Ghosal**³, it is observed as under:

“A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An Election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of Equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down....”

(ii) There is a finer aspect to the invocation of the above ruling: **Jyoti Basu supra** related to an election to the State Legislature, held inter alia under the provisions of the Representation of the People Act, 1951. Therefore, a question may arise as to the invocability of its ratio to the case at hand which involves de-election of a Sarpanch of the Panchayat. State Legislature is a constitutional institution under Article 168(1). Similarly, amendments to Part IX have been introduced by virtue of 73rd Amendment to the Constitution w.e.f 24.04.1993. Grassroot local bodies like Panchayats too have been conferred with constitutional status. Article 243(d) defines ‘Panchayat’ to mean an institution (by whatever name called) of self-government constituted under article 243B, for the rural areas. Article 243B(1) reads:

“There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part....”

(iii) We are aware that the nature, composition, stature & functions of Legislatures differ from that of Panchayats in degrees. But both are democratic institutions, cannot be disputed. Therefore, there is nothing wrong in drawing wisdom from the ratio of **Jyoti Basu supra** in construing the subject provisions of 1964 Act. We hasten to observe that *where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden* vide **Taylor v. Taylor**⁴. In the case at hand, a provision of statute namely, Section 24(2)(c) prescribes a particular

³ (1982) 1 SCC 691.

⁴ 1875 LR 1 ChD 426.

procedure for accomplishing a particular task of serious nature, and there is no reason or rhyme for not following the said procedure.

4.6. As to conflicting decisions:

The Reference Order, whereby the matter is placed at our hands, refers to two Division Bench decisions. Let us examine the same:

(i) In *Prahallad Dalai v State of Orissa*⁵, the notice dated 11.06.2014 issued by the „Sub-Collector“ under Section 24(2)(c) of the Act was accompanied by the proposed resolution for No Confidence Motion whereas a copy of requisition dated 30.05.2014 was not enclosed to the said notice. In the case at our hands, the notice is accompanied by a copy of the requisition but the copy of proposed resolution is not enclosed. However, this minor difference is not much significant to the view we are taking, inasmuch as Section 24(2)(c) prescribes that the notice should be accompanied by both a copy of requisition & a copy of proposed resolution. In stressing the requirement of Notice being accompanied by a copy of requisition, the said Bench has discussed *inter alia* about the text & context of Section 24(2)(a), as well. We are in agreement with this decision, since it broadly accords with our reasoning above.

(ii) Another Co-ordinate Bench in *Pramod Kumar Sahu v. State of Odisha*⁶ decided on 15.04.2025 at paragraph 15 observed as under:

“We are unable to comprehend the contention of the appellant that the expression 'copy of the resolution' appearing in the aforementioned statutory provision is to be interpreted in a sense that it should be a part of annexure to the notice/requisition; in other words, such resolution must be recorded in a separate piece of paper and to accompany along with the notice. The purpose of the resolution having taken in the meeting to be accompanied with the copy of the notice is to be made known to all the members that the meeting would be held and the discussion shall be made on the agenda or the decision taken by the requisitionist in an earlier meeting pertaining to a no confidence against the Sarpanch. Such procedure is to ensure the fairness, transparency and the meaningful discussions to be made on the proposed agenda of the resolution and none of the members should be put on surprise on the date of such meeting. The purpose is laudable as the authority convening the meeting has to ensure not only the strict compliance thereof but also to secure equal participation of the members for the meaningful discussion in the proposed meeting. There is no prescribed mode as of now that such resolution must be transcribed in the separate sheet as the interpretation sought to be made by the appellant if accepted would frustrate the legislative intent and would be opposed to the provisions relating thereto....”

⁵

AIR 2014 Ori 179.

⁶

W.A. No. 3473 of 2024

The logic & reason of these observations run counter to ours above. We cannot leave it unsaid that both the decisions lack in spectrum which we have discussed in so many words.

4.7. As to miscellaneous submissions:

(i) Learned Advocate appearing for the private Respondents vehemently submitted that the decision in **Prahallad Dalai** *supra* is *per incuriam* and therefore, it lacks the precedential force. This contention does not merit acceptance, notwithstanding that the said decision did not consider broader aspects of the matter which we have adverted to. However, in principle, it accords with our view, cannot be disputed. We also notice that Section 24(4) is amended vide OGE No.1112 dated 27.06.2016. However, Section 24(2)(a) & (c), as construed in **Prahallad Dalai** *supra*, has not been meddled with. There is a strong presumption that the Legislature takes cognizance of decisions of constitutional Courts.

(ii) Learned Advocate lastly contended that the provisions of Section 24(2) have to be harmoniously construed, as has been done by the other Co-ordinate Bench in **Pramod Kumar Sahu** *supra*. Rules of harmonious construction have no scope for application to the case, inasmuch as we do not find any disharmony in or discordance between clauses (a) to (e) of Sub-Section (2) of Section 24, *inter se*. He also stressed on clause (e) of this Sub-Section for seeking shelter thereunder. We are not impressed, here too. Non-receipt of Notice by a Member is one thing and giving of Notice is another. Once notice is given, its validity has to be adjudged in the light of what has been prescribed *inter alia* under clauses (a) to (d) of Section 24(2). Where Notice has been given by the Sub-Divisional Officer and it is received by the candidate concerned, the case does not travel to the precincts of clause (e) of Section 24(2).

In the above circumstances, the Reference having been accepted is answered as above.

Registry to place the matter at the hands of the Roster Bench for consideration.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Reference answered.

2025 (III) ILR-CUT-1233

**THE MANAGEMENT OF
THE VICE PRESIDENT (OPERATIONS),
M/s. IMFA LTD., THERUBALLI
V.
THE GOVERNMENT OF ODISHA
(DEPTT. OF LABOUR & ESI) BHUBANESWAR & ORS.**

[W.P.(C). NO. 27772 OF 2013]

10 DECEMBER 2025

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

Issues for Consideration

1. Whether the industrial reference arising out of the 21-point Charter of Demands raised by the workmen is maintainable in law.
2. Whether the Industrial Tribunal can travel beyond the terms of the industrial reference or record findings without proper consideration of the material evidence relating to the issues referred.

Headnotes

(A) INDUSTRIAL DISPUTES ACT, 1947 – Sections 10 & 12 – Industrial reference – 21-point Charter of Demands – Maintainability and scope – The workmen, through their recognised Labour Union, raised a 21-point Charter of Demands before the Management seeking upward revision of wages, dearness allowance, allowances and other service benefits – Upon failure of conciliation, the appropriate Government made a three-point industrial reference to the Industrial Tribunal for adjudication – The Management assailed the maintainability of the reference, contending that a prior settlement was subsisting, several demands were non judiciable – Whether the industrial reference arising out of the 21-point Charter of Demands raised by the workmen is maintainable in law?

Held: Yes – Before delving into the matter in details, the wage settlement between the Management and Opposite Party No.3-Union made on 28th November, 2002 (Annexure-5) should be kept in mind – Such settlement was valid till 31st December, 2004 – During subsistence of such settlement, the Union submitted 21-point charter of demand at Ext.6 – Pursuant to the said charter of demand tripartite discussion was attempted, but it failed on 22nd September, 2005 (Ext.M) – Since the charter of demand submitted by the workers' Union assumed the characteristics of an industrial dispute, the

Conciliation Officer attempted for a conciliation and on failure of the tripartite discussion submitted a failure report on 16th March, 2006 – Conciliation failure report has been annexed to the Writ Petition as Annexure-1 – On perusal of the conciliation report under Annexure-1, it reveals that there was no possibility of promoting settlement and to resolve the issues – Hence, the conciliation proceeding was declared as failed and closed – The failure report was submitted to the appropriate Government which culminated in referring the matter for adjudication under Annexure-2. (Para 20)

(B) JURISDICTION OF INDUSTRIAL TRIBUNAL – Scope of reference – Pursuant to a three-point industrial reference, the Tribunal answered Issues (i) and (ii) in favour of the workmen and Issue (iii) against them – The petitioner contended that the Tribunal failed to consider material evidence and did not adjudicate the issues in accordance with the terms of the reference – Whether the Industrial Tribunal can travel beyond the terms of the industrial reference or record findings without proper consideration of the material evidence relating to the issues referred?

Held: No – Mr. Ray, learned counsel for the Workmen verily relied upon the case law in the case of *Syed Yakub* (supra) – There cannot be any quarrel to the principles decided in the said case – In the instant case, learned Tribunal failed to take into consideration the material evidence in the record while discussing different points of the reference – Hence, learned Tribunal has failed to exercise its jurisdiction vested in it – Thus, this Court has ample power under Article 227 of the Constitution of India to interfere with such findings, which are based on no material – The principles decided in *The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar* (supra) has no application to the instant case, as the learned Tribunal had failed to discuss the evidence on record to record its finding – It is not the case of any of the parties that the impugned award was not elaborative – The Management took a stand that the material evidence available on record was neither discussed nor taken into consideration by learned Tribunal – In *The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar* (supra), the discussions made by learned Tribunal was not elaborative but it had discussed such relevant material evidence on record to arrive at a conclusion, which is not available in the instant case. (Para 27)

We would have not hesitated to discuss the evidence on record and arrive at a conclusion, but that may prejudice the case of either of the parties, more particularly when there is a scope for the parties to place on record certain additional evidence in support of their respective cases, as in

view of the passage of time, some developments may have taken place in the meantime. (Para 28)

Citations Reference

Hindustan Antibiotics Ltd. Vs. the Workman, **1967 (14) FLR 37**; Kamani Metals and Alloys Ltd. Vs. the Workmen, **AIR 1967 (SC) 1175**; Deepak Bajaj Vs. State of Maharashtra and another, **2008 AIR SCW 7788**; Airfreight Limited Vs. State of Karnataka, **(1999) 6 SCC 567**; Workmen of M/s Williamson Magor and Co. Limited Vs. M/s Williamson Magor and Co. Limited, **AIR 1982 SC 78**; State of Rajasthan Vs. Ganeshi Lal, **2007 AIR SCW 7810**; TELCO Vs. Their Workmen, **AIR 1981 SC 2163**; Jaihind Roadways Vs. Maharashtra Rajya Mathadi Transport and General Kamgar Union and others, **(2005) SCC (L and S) 1129**; Williamsons (India) Private, Ltd. Vs Its Workmen, **1962 (1) LLJ 302**; Indian Metals & Ferro Alloys Ltd. Vs Indian Charge Chrome Ltd, **2006 Supp. (II) OLR 508**; Shivraj Fine Arts Litho Works & others Vs State industrial Court, Nagpur, **AIR 1978 SC 1113**; Hindustan Motors Workers Union Vs Hindustan Motor Ltd. & another, **1962 (II) LLJ 352**; Brooke Bond India Ltd. Vs Workmen, **1981 (II) LLJ 184 (SC)**; Workmen of Balmer Lawrie and Co. Ltd. Vs Balmer Lawrie Co.Ltd. & another, **AIR 1964 SC 728**; Syed Yakoob Vs K.S Radhakrishnan & others, **AIR 1964 SC 477**; Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar v. Prasanna Kumar Sethi, **2025 (1) ILR Cutt. 1082 – referred to.**

List of Acts

Industrial Disputes Act, 1947.

Keywords

Industrial reference; 21-point Charter of Demands; Maintainability; Subsisting settlement; Conciliation failure; Scope of reference; Jurisdiction of Industrial Tribunal; Terms of reference; Adjudication beyond reference; Consideration of material evidence.

Case Arising From

Award of the Industrial Tribunal passed pursuant to a three-point industrial reference made by the appropriate Government.

Appearances for Parties

For Petitioner : Mr. Narendra Kishore Mishra, Sr. Adv. assisted by Mr. Nitish Kumar Mishra

For Opp.Parties : Mr. Siba Narayan Biswal, A.S.C. (for O.P.Nos. 1 & 2)
Mr. Kamal Ray, (for O.P.No.3)

Judgment/Order

Judgment**K.R. MOHAPATRA, J.**

1. This matter is taken up through hybrid mode.
2. The Vice-President (Operations), Indian Metal and Ferro Alloys (for brevity, 'IMFA'), Theruballi in the district of Rayagada being the Petitioner seeks to assail the award dated 10th October, 2013 (Annexure-14) passed by learned Presiding Officer, Industrial Tribunal, Bhubaneswar (for brevity, 'learned Tribunal') in Industrial Dispute Case No.6 of 2006 answering the reference in favour of Opposite Party No.3, namely, the General Secretary, IMFA Shramik Sangha, Theruballi in the district of Rayagada.
3. For the sake of convenience in discussion, parties are described as per their status before the learned Tribunal.
4. The Labour Union-Opposite Party No.3 representing the Workmen raised 21-Point Charter of Demand before the Petitioner-Management on 17th December, 2004. A tripartite discussion although held, was not successful and ultimately failed on 22nd September, 2005. Thus, the Conciliation Officer submitted failure report under Section 12(4) of the Industrial Disputes Act, 1947 (for brevity, 'the Act') to the appropriate Government. Accordingly, reference was made to the learned Tribunal for adjudication.

4.1 The three point terms of reference were as under:-

"i) Whether the demands of the union of onward revision of basic wages/salary, Dearness Allowance, increments and like L.T.A, Conveyance Allowance, Attendance, Bonus, Washing allowances, Night shift allowances and HRA are justified and need any upward revision? If so, what should be the details?"

ii) Whether the demand of the union for payment of Addl. Dearness Allowance on the basis of All India Price Index 1960, Base-100 is legal and or justified? If so, what should be the details?"

iii) Whether the demand of the union for time bound promotion and rationalization of existing grades are legal and/or justified? If so, what should be the details?"

Receiving the reference, as aforesaid, learned Tribunal registered Industrial Dispute Case No.6 of 2006 and notices were issued to the Petitioner-Management and Labour Union/Opposite Party No.3 to participate in the adjudication process.

5. The 2nd Party-Labour Union representing Workmen filed its statement of claim stating, *inter alia*, that the Management of IMFA laid foundation stone at Theruballi in the year 1963 and started its commercial production in the year 1967. With passage of time, the Management introduced improved technology and there was modernization of the plant and machinery. The capacity and assets of the unit at

Theruballi was more than Rs.10,000/- crore then. Right from the beginning, the Management was earning huge profits. The Management announced Rs.700/- crores trading result for the first half of the year 2006. Despite continuous profit, the Management kept the wage structure of the workforce at the minimum wage level. The Management also set up new units such as Indian Charge-Chrome Limited, Captive Power Plant, Ferro Alloys Factories at Choudwar and Theruballi, Utkal Manufacturing and Services Limited at Choudwar and Theruballi. The total number of permanent employees in the Management were 432 and there were 600 contract labourers and 126 officers/executives at Theruballi Unit. The salary and wages paid to permanent workers at Theruballi was much less than the salary and wages of other industries existing within the region and similar industries in Odisha. Due to sharp rise of prices of all commodities, value of money decreased. Therefore, the Workmen through their Union submitted 21 Points charter of Demand to the Management on 17th December, 2004, which has given rise to the present reference. The 2nd Party Workmen in their statement of claim gave details of minimum basic wage of Workmen in different grades which was effective from 1st February, 2004 by virtue of tripartite settlement dated 28th November, 2002 in order to justify their claim on different heads as detailed in the reference. The Workmen also stated details of claim in their statement of claim. Thus, they prayed for answering the reference in their favour.

6. The 1st Party Management in its written statement assailed the maintainability of reference. It was also stated, *inter alia*, that prior to the charter of demand submitted on 17th December, 2004, there was a tripartite settlement between the parties on 28th November, 2002, which was valid till 31st December, 2004. When the tripartite settlement dated 28th November, 2002 was in force, 21 points charter of demand was submitted by the 2nd Party Workmen through their Union which relates to the period from 1st January, 2005 to 31st December, 2007. It was also stated in the written statement that most of the items of the aforesaid demands were either not industrial dispute or could not be the subject matter of adjudication under the provisions of the Act. It was also stated that though the Management expressed its views for an overall enhancement of claim made by the Workmen, but due to rigid attitude of the Labour Union relating to enhancement of Additional DA linking with All India Consumer Price Index and ultimate walk out from the table in the conciliation proceeding, no settlement could be arrived at in the bipartite or tripartite discussion before the Conciliation Officer. The provision of entitlement of additional DA to the Workmen on the basis of All India Consumer Price Index was abolished in the agreement dated 20th June, 1994 and a new component of special wages was introduced. It was also specifically stated, *inter alia*, that the basic wages/salary, DA, increment, LTA, conveyance allowance, special allowance, tapping allowance, attendance allowance, washing allowance, night-shift allowance, HRA, additional DA were adequately provided to the Workmen. Thus, it did not require onward enhancement. The 1st Party Management also denied the claim of the Labour Union

regarding education allowance stating that the Management provided adequate financial assistance as well as infrastructure to different Schools existing at Theruballi for providing educational facilities to the children of its employees. Similarly, it denied the claim of time bound promotion and rationalization, as it required satisfactory performance. Thus, the same could not be the subject matter of reference. Further, there was no stagnation of Workmen in a particular grade and the Workmen were getting promotion regularly in their hierarchy ranging from W-1 to W-8 and S-0 to S-5 subject to their satisfactory performance and following the established procedure. Thus, stating that the Workmen are not entitled to the demand raised, the Management prayed for answering the reference in its favour. Both 1st Party Management and 2nd Party Workmen filed their rejoinder and reply to the rejoinder in support of their stand.

7. Learned Tribunal on the basis of the rival claim of the parties, framed as many as three issues such as—

- i) Whether the demands of the Union for onward revision of basic wage/salary, DA, increment and allowances like LTA, conveyance allowance, special allowance, education allowance, tapping allowance, attendance bonus, washing allowance, night-shift allowance and HRA are justified and need any upward revision? If so, what should be details?*
- ii) Whether the demand of the union for payment of Additional Dearness allowance on the basis of All India Price Index 1960, Base- 100 is legal and or justified? If so, what should be the details?*
- iii) Whether the demand of the union for time bound promotion and rationalization of existing grades are legal and/or justified? If so, what should be the details?*

8. In support of their case, the 2nd Party Workmen examined as many as six witnesses and exhibited twenty-seven documents with enclosures, which were marked as Ext.1 to Ext.27. Similarly, the 1st Party Management examined seven witnesses and filed twenty-eight documents with enclosures which were marked as Ext. 'A' to Ext 'BB'. It would not be out of context to mention that during pendency of the industrial dispute before learned Tribunal, the Management signed settlements with some of the Workmen, in groups involving the aforesaid reference and those Workmen opted out of the adjudication process.

8.1 The three-point reference was heard on several dates and written notes of argument were also filed by the parties to the reference. Learned Tribunal thus passed the impugned award under Annexure-14 on 10th October, 2013. Being aggrieved, the 1st Party Management has filed this Writ Petition.

9. Mr. Mishra, learned Senior Advocate appearing for the Petitioner-Management vehemently argued that the reference itself was not maintainable. Specific objections were raised by the Management to that effect in their written

statement. But, neither any issue was framed nor did the Tribunal make any attempt to adjudicate the same. The reference was limited to three items which were considered as issues in the Industrial Dispute Case. Learned Tribunal merely quoting the relevant paragraphs of two judgments of the Hon'ble Supreme Court in the case of *Hindustan Antibiotics Ltd. Vs. the Workman*; 1967 (14) FLR 37 and *Kamani Metals and Alloys Ltd. Vs. the Workmen*; AIR 1967 (SC) 1175 jumped to the impugned conclusion. Further, merely by referring to the profit status of the Management as per Exts.13/5, 13/6 and 13/7 deriving it from the Annual Reports of the Management, learned Tribunal made a speculative calculation without disclosing the mode of computation thereof and jumped to the conclusion in answering point Nos.1 and 2 of the reference in favour of the Workmen and answering point No.3 of the reference against them.

10. It is submitted by Mr. Mishra, learned Senior Advocate that both the case laws referred by learned Tribunal in the impugned award were in respect of fixation of wage scales and revision of wages and allowances after considerable time (20 years). In the instant case, the reference and issues being specific with regard to onward revision of basic wages/salary, dearness allowance, increments and several allowances besides payment of additional dearness allowance on the basis of Consumer Price Index 1960 etc., the same required discussion by learned Tribunal with regard to the applicability of the ratio therein to the instant case. Learned Tribunal miserably failed to discuss the details thereof in the impugned award, which was also the requirement in the terms of reference. Thus, learned Tribunal failed to adjudicate the reference in terms of Section 10(1) read with 10(4) of the Act. It was further submitted that the Management has two production Units, one at Theruballi and the other at Choudwar and employees are covered under time-to-time settlement in respect of their demands. While settlements were signed in respect of Choudwar Unit smoothly on all occasions, but the Unit at Theruballi witnessed settlement till 2002, whereafter the Labour Union walked out from the conciliation/discussion and refrained from signing any settlement. Even if it is assumed that the reference required consideration in terms of the ratio in two case laws referred to by learned Tribunal on the principles of region-cum-industries formula, then discussion in respect of other Unit of the Petitioner-Management should have been made instead of travelling to other industry far and distant from the Petitioner-Unit at Theruballi. Even though submissions were made and materials were placed by the Management before the learned Tribunal in the form of comparative chart and the manpower status along with written note of argument (Annexure-13), the same were not considered at all in the impugned award.

11. During pendency of the industrial dispute before learned Tribunal, the Opposite Party No.3-Labour Union was subjected to intra-Union rivalry. Civil Court being moved, intervened in the matter by passing judgment and decree invalidating status of Office bearers of the said Union who were representing the Workmen. On account of such anomalous position, and incapacitation of the Union Office bearers,

majority of Workmen volunteered to have settlement with the Management by settling their demands and disputes including the items of the reference which were considered as issues and the same were marked as exhibits on behalf of the Management in the industrial dispute case. Out of thirty-nine Workmen, twenty-five had also availed benefit from the Management through the settlement. Exhaustive evidence was adduced by the contesting parties, but learned Tribunal miserably failed to consider the same in the impugned award for which the award is not sustainable for non-consideration of material evidence on record. The formula set out in aforesaid two case laws should have been examined and discussed by learned Tribunal in the context of the case and details of the benefit, if any, the Workmen are entitled to, should have been discussed by learned Tribunal while answering the reference. The findings on issue Nos.(i) and (ii) run contrary to the findings on issue No.(iii), which has been answered against the Workmen. The abrupt conclusion recorded by learned Tribunal at paragraphs-10 to 12 of the impugned award, without considering the material evidence on record and taking note of extraneous materials beyond the oral and documentary evidence adduced by the respective parties, makes the impugned award perverse. While discussing applicability of case laws, the facts and circumstances of the case at hand should have been examined minutely. A little detail of facts or additional facts may make a lot of difference in the precedential value of a decision. Observation of the Courts are neither to be read as Euclid's Theorems nor as provisions of statute as observed by the Hon'ble Supreme Court in ***Deepak Bajaj Vs. State of Maharashtra and another***; 2008 AIR SCW 7788. It is also argued that a decision is a precedent on its own facts and circumstantial flexibility, one additional or different facts may make a world of difference in conclusion in both cases, as held in ***State of Rajasthan Vs. Ganeshi Lal***; 2007 AIR SCW 7810. Mr. Mishra, learned Senior Advocate relied upon the following case laws in support of his submission.

- i) ***Airfreight Limited Vs. State of Karnataka***; (1999) 6 SCC 567,
- ii) ***Workmen of M/s Williamson Magor and Co. Limited Vs. M/s Williamson Magor and Co. Limited***; AIR 1982 SC 78,
- iii) ***Deepak Bajaj Vs. State of Maharashtra and another***; 2008 AIR SCW 7788,
- iv) ***State of Rajasthan Vs. Ganeshi Lal***; 2007 AIR SCW 7810,
- v) ***TELCO Vs. Their Workmen***; AIR 1981 SC 2163
- vi) ***Jaihind Roadways Vs. Maharashtra Rajya Mathadi Transport and General Kamgar Union and others***; (2005) SCC (L and S) 1129,

12. Mr. Ray, learned counsel appearing for Opposite Party No.2-the Workmen advancing argument on the first point of reference submitted that for revision of wages, certain factors are to be taken into account as laid down by Hon'ble Supreme Court in ***Williamsons (India) Private, Ltd. Vs Its Workmen***, 1962 (1) LLJ 302 at page-305, which reads as under:-

- (1) Profits;
- (2) Extent of business;
- (3) Extent of standing;
- (4) Dividend to share holders;
- (5) Remuneration of Board of Directors;
- (6) Customers of the Company;
- (7) Profits and losses incurred some years before the date of award;
- (8) Capable to meet additional liability for new wage structure;
- (9) Industry-Cum-Region Principles;

12.1 So far as profit of the Management is concerned, the total owned profit of the Management shown in the Annual Report for the reference periods, i.e., 2005-06, 2006-07 and 2007-08 were as follows:-

- (i) 2005-06 - Rs.18.58 crores – (Ext. 13/4),
- (ii) 2006-07 - Rs.19.99 crores – (Ext 13/5),
- (iii) 2007-08 - Rs.104.80 crores – (Ext 13/6)

Thus, he submitted that the Company earned a net profit of Rs.143.37 crores during the financial year 2005 to 2008.

12.2 Highlighting the extent of business, Mr. Ray, learned counsel submitted that the gross sale of the Management for 2004-05 was increased by 25.47% than the previous year (Ext.13/3). Likewise, gross sale for the year 2006-07 was increased by 26.67 % (Ext.13/5) and in 2007-08 by 28% (Ext.13/6) than the previous years. It had also an export turnover of Rs.3,110/- lakh in the year 2004-05 (Ext.13/3), Rs.317.74 crores in the year 2006-07 (Ext.13/5) and Rs.541.52 crores in the year 2007-08 (Ext.13/6). Likewise, the Management also earned foreign exchange of Rs.3063.70 lakh (Ext.13/3) for the year 2004-05, Rs.20388.29 lakh (Ext.13/4) for the year 2005-06, Rs.30306.89 lakh (Ext.13/5) for the year 2006-07 and Rs.528.63 crores (Ext.13/6) for the year 2007-08.

12.3 The Management has also an outstanding performance. For the financial year 2004-05, it had a reserve and surplus of Rs.54.05 crores (Ext.13/3); Rs.102.69 crores for the year 2005-06 (Ext.13/4); Rs.116.47 crores for the year 2006-07 (Ext.13/5) and Rs.201.29 crores (Ext.13/6) for the year 2007-08. The Indian Charge Chrome Limited, Choudwar, which was running at loss was also taken over by the Petitioner-Management Company. It had borne the liability of Rs.2949.02 crores of Indian Charge Chrome Ltd. He derived the said data from the case law reported in *Indian Metals & Ferro Alloys Ltd. Vs Indian Charge Chrome Ltd.*; 2006 Supp. (II) OLR 508. The Management was paying 20% bonus and ex-gratia to its employees everywhere. IMFA (Indian Metals and Ferro Alloys) owned two aircrafts.

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12.4 The Management also paid dividend to its share holders at rate of 20% in the year 2003-04 (Ext.13/2); 25% dividend in the year 2004-05 (Ext.13/3), 30% dividend for the year 2006-07 (Ext.13/5) and 80% dividend for the year 2007-08 (Ext.13/6).

12.5 Mr. Ray, learned counsel for the Workmen also drew attention of this Court to the remuneration of the Board of Directors, which was as follows:-

	2005-06 <i>Ext.13/4</i>	2006-07 <i>Ext.13/5</i>	2007-08 <i>Ext.13/6</i>
Executive Chairman	not shown	Rs.1,17,51,420/-	Rs.4,00,79,602/-
Vice-Chairman	not shown	Rs.1,31,88,976/-	Rs.4,03,23,750/-
Managing Director, IMFA	Rs.41,50,932/-	Rs.1,31,46,550/-	Rs.4,06,61,626/-
Director, J. K. Mishra	not shown	Rs.26,83,909/-	Rs.43,74,529/-

2005-06 (Ext.-13/4)	2006-07 (Ext.-13/5)	2007-08 (Ext-13/6)
14 Directors	14 Directors	15 Directors
136.52 Lakhs	440.80 Lakhs	1298.19 Lakhs

12.6 The leading customers of the Management were Steel Authority of India Limited (SAIL), China and South Korea. Mr. Ray, learned counsel also stated before the Court about the profits and losses incurred by the Management some years before the date of the award, which is as follows:-

Net Profits shown in Annual Report

<i>Financial Year</i>		
2002-2003	Rs. 9.64 crores	Ext.13/1
2003-2004	Rs.19.35 crores	Ext.13/2
2004-2005	Rs.30.31 crores	Ext.13/3
2005-2006	Rs.18,58 crores	Ext.13/4
2006-2007	Rs.19.99 crores	Ext.13/5
2007-2008	Rs.104.80 crores	Ext.13/6
2008-2009	Rs.260.64 crores	Filed by way of Memo.
2009-2010	Rs. 41.01 crores	
2010-2011	Rs. 165.44 crores	
2011-2012	Rs. 63.93 crores	
2012-2013	Rs. 52.82 crores	

Thus, the Management was thus capable to meet the additional liability of the new wage structure as follow:-

<i>Period</i>	<i>Net profit (in crore)</i>
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2008-09	260.64
2009-10	41.01
2010-11	165.44
2011-12	63.93
2012-13	53.89
2013-14	39.12
Total	627.13

12.7 In order to explain the industry and region principle, Mr. Ray, learned counsel for the Workmen submitted that MWs-1 and 3 in their deposition stated that FACOR at Bhadrak and FACOR, Shreeramnagar (Garibadi) are similar industries in the region producing Ferro Chrome like the Petitioner-Management (Company). Both FACOR at Shreeramnagar and FACOR, Bhadrak were running at loss at the relevant time. Despite such losses, scale of pay and other allowances of FACOR, Bhadrak (Ext.7) and FACOR, Shreeramnagar (Ext.8) were higher than the Petitioner-Management (Company).

12.8 Submitting on pattern of additional dearness allowance, it is highlighted by Mr. Ray, learned counsel that the employees of the Petitioner-Management received additional DA as per All India Consumer Price Index by virtue of tripartite settlement till 1st June, 1994. Similar industries in the region like FACOR at Shreeramnagar and FACOR at Bhadrak were paying DA as per the All-India Consumer Price Index on point basis. The neighbouring industries like JK Paper Mill was paying additional DA as per the All-India Consumer Price Index on point basis. He also relied upon the case of *Shivraj Fine Arts Litho Works & others Vs State industrial Court, Nagpur*; AIR 1978 SC 1113 in support of his argument that the pattern of DA would be determined on the basis of pattern prevailing in other concerns in the same region. It is also stated that the principle as aforesaid was adopted for the purpose to neutralize the increase in the cost of living and should be on sliding scale as held in the case of *Hindustan Motors Workers Union Vs Hindustan Motor Ltd. & another*; 1962 (II) LLJ 352. But the Workmen were getting fixed additional DA of Rs.800/- per month since 1994. At the relevant period, All India Consumer Price Index was 2350.49 point at Vizag (Ext.8). FACOR at Bhadrak, Odisha had adopted the Consumer Price Index of Vizag.

12.9 Mr. Ray, learned counsel also made his submission on bipartite settlement. It was submitted that during pendency of the dispute before learned Tribunal, the Petitioner-Management entered into a bipartite settlement (Ext.AA and Ext. BB) with some of the representatives of the Workmen who were not duly authorized by the Workers as envisaged under Rule 64 (2) (b) of the Odisha Industrial Dispute Rules, 1959 read with Section 2 (p) of the Act. Thus, it is not binding on the Workmen. In support of his submission, Mr. Ray, learned counsel relied upon the case law in the case of *Brooke Bond India Ltd. Vs Workmen*; 1981 (II) LLJ 184

(SC). It is specifically argued that additional DA was not settled in the bipartite settlement as claimed by the Management.

12.10 While dealing with revision of wage scale, learned Tribunal considered the material facts and circumstances which were proved by documentary evidence. It is submitted that revision of wage scale cannot be decided merely on the interested testimony either of the Workmen or of the employer and his witnesses as per the ratio in the case of *Workmen of Balmer Lawrie and Co. Ltd. Vs Balmer Lawrie Co. Ltd. & another*; AIR 1964 SC 728. Learned Tribunal considered all the factors laid down by Hon'ble Supreme Court which were reflected in the Annual Reports (Ext.13) to Ext.13/7) to arrive at the conclusion.

13. Mr. Ray, learned Counsel for the Workmen also relied upon the case law in the case of *Syed Yakoob Vs K.S Radhakrishnan & others*; AIR 1964 SC 477 and submitted that this Court should not interfere with the findings of learned Tribunal except where the findings were perverse and not based on any material evidence or have resulted in miscarriage of justice. In the instant case, no such case has been made out by the Petitioner-Management. It was further submitted by Mr. Ray, learned counsel that the award cannot be assailed on the ground that the same was not elaborative, particularly when the award is based on admitted pleadings available on record. In view of the above, Mr. Ray, learned counsel for Opposite Party No.3-Workmen represented through their Union prayed for dismissal of the Writ Petition.

14. Heard learned counsel for the parties. Perused the record and case laws placed before us.

15. On analysis of the rival contentions of learned counsel for the parties, it emanates that issue No.3 of the reference has been answered against Workmen represented through their Union. Since the Writ Petition has been filed by the Management assailing the correctness of findings on issue Nos.1 and 2 of the reference recorded by learned Tribunal, the adjudication of the Writ Petition is confined to the findings on issue Nos.1 and 2 only and not in respect of findings on issue No.3 of the reference. Voluminous records were placed before us and several aspects were brought to the notice of this Court in course of argument by learned counsel for the parties. We have also meticulously read the award passed by learned Tribunal at Annexure-14. On close reading of the impugned award, it reveals that learned Tribunal analyzed the matter in issue on the basis of the principle decided in *Hindustan Antibiotic Limited* (supra), *Kamani Metals and Alloys* (supra). *Hindustan Antibiotic Limited* (supra), which discussed the principles to improve the service conditions of industrial labour so as to provide ordinary amenities of life to the Workmen and in that process to bring about industrial peace which in its turn accelerates procedure of productivity activity. *Kamani Metals and Alloys* (supra) deals with the principles of fixation of wage structure. Since the reference so also the demands raised by the Union was with regard to onward revision of basic

wage/salary, dearness allowance, increments and allowances like LTA, conveyance allowance, special allowance, education allowance etc. and point No.2 of the reference deals with the legitimacy of demand of the Unit for payment of additional dearness allowance on the basis of All India Consumer Price Index, 1960 base-100, learned Tribunal thought it proper to deal with the issues involved, relying upon the principles decided in the aforesaid two case laws.

16. Lengthy arguments were made by both Mr. Mishra, learned Senior Advocate appearing for the Petitioner- Management and Mr. Ray, learned counsel for the Workmen.

17. The main plank of argument of Mr. Mishra, learned Senior Advocate was that learned Tribunal, after reproducing the principles in aforesaid case laws in the impugned award, straightway jumped to the conclusion answering issue Nos.1 and 2 in favour of the Workmen. Learned Tribunal, neither dealt with nor discussed evidence either oral or documentary and the rival cases of the parties. It did not discuss the details of entitlement, if any, of the Workmen. According to him, the impugned award is cryptic and non-speaking. It is based on speculation and hypothesis as well as assumption. Learned Tribunal did not make any attempt to analyze the case of either of the parties in reaching at the conclusion. He, therefore, argued that rival case of the parties as well as evidence both oral and documentary available on record should have been analyzed by learned Tribunal to adjudicate the claim of the Workmen, if any. According to him, the developments that took place during pendency of the reference before learned Tribunal though referred to in the impugned award, but the learned Tribunal miserably failed to discuss effect of such settlement/development on the case of the Workmen. He verily relied upon the case of *TELCO* (supra) and submitted that settlement arrived at by a majority of the Workmen is presumed to be fair and should not have been lightly interfered by the learned Tribunal.

18. Mr. Ray, learned counsel for the Workmen, on the other hand, submitted that though not in too many words but learned Tribunal discussed the claim of the Workmen basing upon the materials on record keeping in mind the principles decided in aforesaid two case laws. It is not required by the learned Tribunal to deal with each and every line of deposition and each document relied upon by the parties to reach at a conclusion. In support of his submission, he relied upon the case of the *Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar v. Prasanna Kumar Sethi*; 2025 (1) ILR Cutt. 1082. Thus, he submitted that learned Tribunal has exercised its jurisdiction in a manner which is not open to be re-appreciated by this Hon'ble Court on analysis of the evidence on record. The Workmen are fighting litigations for their legitimate claim since 2004. They are deprived of their rights prior to that. Learned Tribunal, on assessment of the evidence on record and rival claims of the parties arrived at a conclusion. Since the conclusion arrived at by learned Tribunal is based upon the principles set by the Hon'ble Supreme Court in

the aforesaid two case laws, the same is not open to be challenged or re-appreciated by this Court under Article 227 of the Constitution. Hence, he prayed for dismissal of the Writ Petition.

19. Keeping in view of the aforesaid rival contentions of learned counsel for the parties, this Court proceeds to analyze the matter.

20. Before delving into the matter in details, the wage settlement between the Management and Opposite Party No.3-Union made on 28th November, 2002 (Annexure-5) should be kept in mind. Such settlement was valid till 31st December, 2004. During subsistence of such settlement, the Union submitted 21-point charter of demand at Ext.6. Pursuant to the said charter of demand tripartite discussion was attempted, but it failed on 22nd September, 2005 (Ext.M). Since the charter of demand submitted by the workers' Union assumed the characteristics of an industrial dispute, the Conciliation Officer attempted for a conciliation and on failure of the tripartite discussion submitted a failure report on 16th March, 2006. Conciliation failure report has been annexed to the Writ Petition as Annexure-1. On perusal of the conciliation report under Annexure-1, it reveals that there was no possibility of promoting settlement and to resolve the issues. Hence, the conciliation proceeding was declared as failed and closed. The failure report was submitted to the appropriate Government which culminated in referring the matter for adjudication under Annexure-2.

21. During pendency of the reference before learned Tribunal, the Management entered into a settlement with a group of Workmen on the items of reference. Thus, the Workmen who entered into such settlement with the Management opted themselves out of the adjudication process of the reference. It was submitted by Mr. Mishra, learned Senior Advocate that although the settlement was made on all the three points of reference with a majority group of Workmen, but the benefit was extended to all the Workmen irrespective of the fact that some of them were not parties to such settlement. The learned Tribunal, at paragraph-11 of the impugned award though referred to said bipartite settlement, but has not discussed the subject matter of the bipartite settlement and its effect on the claim of the Workmen. Had the subject matter of bipartite settlement been discussed, it would have thrown a light on the legitimacy of the claim of the Workmen in the impugned award. Learned Tribunal also did not take into consideration the principles laid down in the case of *TELCO* (supra), while adjudicating the reference.

22. Further, learned Tribunal observed that on fulfillment of the demand relating to wages and other amenities except additional dearness allowance during the year 2005, the Management would have borne an additional burden of Rs.1,29,17,652/-. It was also observed that during the said period, the 1st Party-Management had made profit of Rs.18.58 crores. However, learned Tribunal did not discuss the source from which the aforesaid figures were derived. Mr. Ray, learned counsel for the Workmen, however, submitted that the figures as aforesaid were gathered from

the Annual Report (Ext.13/7) of the 1st Party Management. On perusal of the Annual Report of the 1st Party Management it gives an impression that the same were prepared in respect of all the Units of the Indian Charge Chrome Limited and not the 1st Party Management alone. But the learned Tribunal was only dealing with the claims of the Workmen of Theruballi Unit of the Management. Thus, the said figure, as indicated by learned Tribunal, appears to be doubtful in absence of any material in support of the same. In the case of *Airfreight Limited* (supra) Hon'ble Supreme Court held that where minimum wage is linked with cost-of-living index, the amount paid on the basis of dearness allowances is not to be taken as an independent component of the minimum wages but as part and parcel of computing the rates of minimum wages, which is to be determined after taking into consideration the cost of various necessities. This material aspect was completely lost sight of by the learned Tribunal.

23. It might be so that the remuneration given to the Workmen might be lesser than that of the industries carrying out similar industrial activity like FACOR at Bhadrak and FACOR at Shreeramnagar, Garibadi. But that itself may not be a determining factor to accept the claim of the workers' Union representing the Workmen. Apparently, learned Tribunal has not discussed the evidence on record and the particulars available on record in terms of the principles decided in the case of *Hindustan Antibiotic Limited* (supra) and *Kamani Metals and Alloys Limited* (supra). Learned Tribunal, while answering point No. (i) of the reference in the affirmative in favour of the Workmen, did not state the details of the entitlement of the Workmen, if any, although the same was required to be answered as per the terms of the reference. Thus, it appears that learned Tribunal has not answered the point No.(i) of the reference in its proper perspective. The learned Tribunal appears to have casually dealt with such an important issue. Thus, the findings of learned Tribunal with regard to point No.(i) is not sustainable in law.

24. The learned Tribunal appears to have dealt with the point No.(ii) in similar fashion. Although learned Tribunal appears to have commenced the discussion on point No.(ii) of the reference taking into consideration the observations made by the Hon'ble Supreme Court in *Kamani Metals and Alloys Limited* (supra), but failed to apply the principle decided therein to the instant case. It appears that learned Tribunal proceeded with an assumption that the Management had earned a profit of Rs.18.58 crores in the year 2005. Though it is not stated from which source learned Tribunal could get the aforesaid figure, but Mr. Ray, learned counsel for the Workmen/Labour Union, submitted in course of his argument that the figure is borne out from the Annual Report (Ext.13/7) of the Management, which also forms part of the record. But as discussed earlier, the figure of profit mentioned in the Annual Report related to all the Units of Indian Charge Chrome Limited and not exclusively to the Management Unit, i.e., Unit at Theruballi alone. Learned Tribunal appears to have not discussed at all the evidence available on record to arrive at the conclusion. Further, learned Tribunal, while answering point No.(ii) in favour of the

Workmen/Labour Union, failed to give details of such entitlement, if any, which was required to be answered by learned Tribunal as per the terms of reference.

25. In the case of *Hindustan Antibiotic Limited* (supra) and *Kamani Metal and Alloys Limited* (supra), Hon'ble Supreme Court set out the procedure and principle to determine the wages/salary of the Workmen and the dearness allowance/additional dearness allowance etc. But learned Tribunal was under an obligation to answer each of the points of the reference discussing the evidence on record and applying the principles as stated in the aforesaid case law. A close reading of the impugned award under Annexure-14 also makes the same apparent. In the written note of submissions, Mr. Ray, learned counsel for the Workmen provided some detail particulars of the relevant materials, but the same appears to have not been discussed by learned Tribunal. There cannot be any quarrel over the principles set out in *Workmen of Balmer Lawrie* (Supra). But, learned Tribunal appears to have not discussed at all the evidence available on the record.

26. Mr. Ray, learned counsel appearing for the Labour Union in course of his argument contended that the comparable industries were running at loss at the relevant time. Further, the Management has not given any particulars or the comparative statements involving similar activity in the region. Thus, learned Tribunal had no occasion to deal with the same. Since the 21-point charter of demand contained onward revision of wage structure of the Workmen of the Management, burden was on them (Workmen) to place materials in support of the same more particularly when they are being represented by the Labour Union. Further, they could have called for such documents to prove their case. In the instant case, no such endeavour appears to have been made by the Workers' Union. Learned Tribunal also failed to call for those documents for just and fair adjudication of the claim of the Workmen. Hence, no fault can be attributed or no adverse inference should be drawn against the Management for non-production of comparable materials of industries involving similar activity in the reason.

27. Mr. Ray, learned counsel for the Workmen verily relied upon the case law in the case of *Syed Yakub* (supra). There cannot be any quarrel to the principles decided in the said case. In the instant case, learned Tribunal failed to take into consideration the material evidence in the record while discussing different points of the reference. Hence, learned Tribunal has failed to exercise its jurisdiction vested in it. Thus, this Court has ample power under Article 227 of the Constitution of India to interfere with such findings, which are based on no material. The principles decided in *The Management of M/s. Hare Krushna Mahatab Library, Bhubaneswar* (supra) has no application to the instant case, as the learned Tribunal had failed to discuss the evidence on record to record its finding. It is not the case of any of the parties that the impugned award was not elaborative. The Management took a stand that the material evidence available on record was neither discussed nor taken into consideration by learned Tribunal. In *The Management of M/s. Hare Krushna*

Mahatab Library, Bhubaneswar (supra), the discussions made by learned Tribunal was not elaborative but it had discussed such relevant material evidence on record to arrive at a conclusion, which is not available in the instant case.

28. We would have not hesitated to discuss the evidence on record and arrive at a conclusion, but that may prejudice the case of either of the parties, more particularly when there is a scope for the parties to place on record certain additional evidence in support of their respective cases, as in view of the passage of time, some developments may have taken place in the meantime.

29. In view of the discussions made above, this Court unhesitatingly records that the impugned award suffers from non-consideration of material evidence on record, which requires fresh consideration. Thus, we do not consider it necessary to discuss each of the case laws relied upon by learned counsel for the parties in detail.

30. Accordingly, the impugned award under Annexure-14 is set aside and the matter is remitted to the learned Tribunal for fresh adjudication of the reference providing opportunity of hearing to the parties concerned. For proper adjudication, the parties are at liberty to adduce further evidence in support of their case with leave of learned Tribunal.

31. Since the parties are being represented by learned counsel, this Court in order to avoid further delay in the matter, directs the parties to appear before learned Tribunal on 6th January, 2026 to receive further instruction in the matter.

32. The Writ Petition is accordingly allowed to the aforesaid extent. In the fact and circumstances of the case, there shall be no order as to costs. LCR be sent back forthwith.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
Writ petition allowed.

2025 (III) ILR-CUT-1250

SUSAMA MISHRA
V.
STATE OF ODISHA & ORS.

[W.P.(C) NO. 8344 OF 2022]

14 AUGUST 2025

[DIXIT KRISHNA SHRIPAD, J.]**Issue for Consideration**

Whether the impugned order of the Opposite Party Authority cancelling the allotment is sustainable under the law?

Headnotes

(A) CONSTITUTION OF INDIA, 1950 – Articles 226 & 227 – Writ petition – In the present writ petition the order passed by the Opposite Party No. 3 cancelling the allotment of the house and directing to handover the possession is under challenge – Petitioner is a lady and the allotment was made in the favor of her husband in the year 1993 under Kalinga Nagar Project – The Opposite Party Authority cancelled the allotment on the ground of false affidavit, to the effect he did not possess any site, when he was possessing one – The petitioner pleaded that, the said affidavit was made decades ago and mere issuance of allotment does not amount to granting possession and also further contended that such allotment of site was not under the area of the Municipality/BDA rather it was coming under the Gram Panchayat – The petitioner also contended that there is enormous delay that remain unexplained as to why for the decades, the Opposite Party Authorities slept over the matter when the original allottee was very much alive to answer the allegation of fraud – In the circumstances above, whether the impugned Order of the Opposite party authority cancelling the allotment is sustainable under the law?

Held: No – There is enormous delay that remains unexplained as to why for decades the OPs slept over the matter, when the original allottee, i.e., the husband of the petitioner was very much alive to answer allegation of fraud, had it been made then – That exercise they did not undertake. Now, all of a sudden having woken up from the deep slumber, they have taken a prejudicial decision – Law does not come to the protection of sleepy & tardy, said Jeremy Bentham, an English Jurist of yester centuries – Any public power of the kind has to be exercised within a reasonable time at least as a concession to the shortness of human life – Why nothing was done when petitioner's husband was alive, is not explained. (Para 4.7)

(B) WORDS & PHRASES – Possession – Meaning of – Discussed.

Possession consists of two ingredients which Salmond on Jurisprudence (7th ed.) page 297-308 mentions viz., (i) *corpus possessionis* and (ii) *animus possidendi* – The former, he says, comprises of both the power to use the thing possessed and the existence of grounds for the expectation that the possessor's use will not be interfered with; the latter consists of intent to appropriate to oneself the exclusive use of the thing possessed – Learned Author P.J.Fitzgerald who edited 'Salmond's Jurisprudence' 12th Edition (at page 272) states "(i) The distinction between animus and corpus was made in Roman law: Dig.41.2.3.1., and has been accepted by such jurists as Savigny, Thering, Pollock, Salmond and Holmes" – Apex Court too in the case of Poonaram Vs. Motiram, at paragraph 9 has considered this aspect quoting Salmond. The Apex Court at paragraph 13 observes as under:

"13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property..."

(Para 4.2)

(C) WORDS & PHRASES – Fraud – Meaning of – Discussed.

Since much is argued as to the contentious issue of fraud, the same requires a deeper examination so that one will have a clear idea as to what fraud means in the realm of law.

(i) Kerr on fraud says as under:

"...It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood ... Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud – Fraud is infinite in variety... courts have reserv(ed) to themselves the liberty to deal with it under whatever form it may present itself – Fraud ... may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another – All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud – Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to..."

(ii) 'Fraud vitiates everything', said Lord Edward Coke centuries ago in *REX vs. DUCHESS OF KINGSTON*, – Our Apex Court adopted this as a native norm as reiterated in *S.P.CHENGALVARAYA NAIDU vs. JAGANNATH*, – However, Coke's statement is of wide sweep and has

several implicationary reflections: fraud in public law vis-à-vis fraud in private law; fraud on the parties vis-à-vis fraud on the court; fraud going to the root of matter vis-à-vis fraud operating at the periphery and the like.

However, fraud & fabrication have to be strictly pleaded & demonstrated – Fraud cannot be chanted like mantra – Added, the person who had sworn to affidavit is dead & gone leaving the widow. (Para 4.6)

Citations Reference

Poonaram Vs. Motiram, **AIR 2019 SC 813**; REX vs. DUCHESS OF KINGSTON, **20 How. St. Tr. 544**; S.P.CHENGALVARAYA NAIDU vs. JAGANNATH, **(1994) 1 SCC 1** – referred to.

List of Acts

Constitution of India, 1950.

Keywords

False Affidavit; Allotment; Cancellation; Handover; Possession; Residential Plot: Fraud; *Corpus possession*; *Animus possidendi*; Omission; Concealment; Equitable duty; Trust; Confidence; Title.

Case Arising From

Order dated 04.03.2022 issued by Opposite Party No.3.

Appearances for Parties

For Petitioner : M/s. Soubhagya S. Das, S.Das & T.R. Mohapatra
 For Opp. Parties : Mr. Satya Brata Mohanty, AGA, (O.P. 1),
 Mr. Dayananda Mohapatra, Sr. Adv., with
 M/s. M.R. Pradhan, J. Barik & P.K. Singhdeo.
 [O.P.Nos.2 & 3]

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD. J.

Petitioner, an old lady in the evening of her life, is knocking at the doors of Writ Court for assailing the order dated 04.03.2022 issued by Opposite Party No.3 at Annexrue-6, whereby allotment of subject house having been cancelled, she is directed to hand over its possession within thirty days.

2. Learned counsel appearing for the petitioner seeks to falter the impugned order contending that: the same has been issued without due opportunity of hearing; the author of the order arbitrarily assumed that the deceased-husband of the petitioner having possessed another house site had filed a false affidavit and thereby

procured the second site; the authorities committed a grave error in misconstruing the words ‘possession’ and ‘ownership’ that have long been obtained as legal concepts; in any circumstance petitioner or her husband owned or possessed two sites within the specified jurisdictional limits, which later came to be comprised in Bhubaneswar Municipal Corporation.

3. Learned Senior Advocate appearing for the answering Opposite Parties vehemently resisted the petition making submission in justification of the impugned order and the reasons on which it has been structured. He contended that the petitioner’s husband had sworn to a false affidavit to the effect that he did not possess any site, when he was possessing one; but for the said affidavit, the subject site/plot on which now stands a structure would have been allotted; it is a policy of the State that persons who are already possessing sites/plots should not secure one more to the detriment of other aspiring people. So contending, he seeks dismissal of the writ petition.

4. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

4.1. The first submission of learned counsel appearing for the petitioner that his client’s husband, during his life time, had filed true & correct affidavit and that he had not made any false statement therein, merits acceptance. Reasons for this are not far to seek: There is a format of affidavit, as it then was, which aspiring allottee of site had to swear to. The said format prescribed at paragraph-2, the following requirement:-

“That, I or my spouse or any of my minor children do not own or possess any (Residential Site/House/Flat) in the jurisdiction of the Municipal Corporation area, Bhubaneswar”

Petitioner’s husband had sworn to the affidavit decades ago and on that basis, the Allotment Letter No.974/93 was issued in respect of MIG Plot No.K-7-468 under Kalinga Nagar Project. A mere issuance of Allotment Letter does not amount to granting possession of site to the allottee, much less ownership. In other words, allotment of plot is one thing and delivery of its possession pursuant to such allotment is another. Possession, thus precedes allotment; therefore, unless it is further shown that the possession as such was given of the subject site, one cannot readily equate the Allotment Letter to delivery of possession. The impugned order proceeds on a factually wrong premise that petitioner possesses two allotments when the first allotment of MIG Plot No.K-7-468 was transferred to one Krishna Kalpana Pattnaik vide Office Order No.KNM-974/93/BDA dated 22.06.1998 issued by the Allotment Officer pursuant to her husband’s letter dated 12.06.1998.

4.2. The submission of learned Senior Advocate for the BDA that the text of the formal affidavit has to be understood in common parlance to the effect that the Allotment Letter itself should be treated as delivery of possession, is not supported

by any precedent or practice of the answering Opposite Parties. Formats of the kind are structured by the higher officials of the Department in the light of accumulated experience. What is not there cannot be found and what is there, cannot be ignored, while construing deed poles of the kind. No rule or ruling to support the contra view is cited. Since much is argued on the idea of possession, a bit more discussion is warranted. Possession consists of two ingredients which Salmond on Jurisprudence (7th ed.) page 297-308 mentions viz., (i) *corpus possessionis* and (ii) *animus possidendi*. The former, he says, comprises of both the power to use the thing possessed and the existence of grounds for the expectation that the possessor's use will not be interfered with; the later consists of intent to appropriate to oneself the exclusive use of the thing possessed. Learned Author P.J.Fitzgerald who edited 'Salmond's Jurisprudence' 12th Edition (at page 272) states "(i) The distinction between animus and corpus was made in Roman law: Dig.41.2.3.1., and has been accepted by such jurists as Savigny, Thering, Pollock, Salmond and Holmes". Apex Court too in the case of *Poonaram Vs. Motiram*,¹ at paragraph 9 has considered this aspect quoting Salmond. The Apex Court at paragraph 13 observes as under:

"13. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property..."

4.3. Since the affidavit in the format speaks of possession/ownership, learned counsel for the petitioner is more than justified in contending that the deponent of the affidavit had not 'possessed' any plot and therefore his version in the affidavit cannot be said to be false. This stands further adumbrated by the Show Cause Notice dated 04.12.2015 issued by the Allotment Officer at Annexure-4 wherein in respect of subject site, the column as to date of possession is kept conspicuously blank. This aspect has not been dealt with in the counter filed by the OPs to the specific plea taken up by the petitioner in her pleadings.

4.4. Learned Senior Advocate appearing for the Opposite Parties is right in telling that the object of housing schemes of the kind is to ensure distributive justice in the sense that material resources of the State are not held by a chosen few, but reach larger number of people, right to residence being a constitutional guarantee under Article 19(1) read with Article 39(b & c). For implementation of such a laudable object, necessary provisions have to be made by an instrument of law. When the legal literature in that connection is lacking, right of the citizens cannot be abridged arbitrarily, that too years having passed without a leaf being turned. Petitioner, a widow in the evening of her life, cannot be now troubled for what her deceased husband is said to have done, especially when alleged act is not shown to be culpable.

4.5. There is yet another aspect to the matter: As on the date the affidavit was sworn to by the spouse of petitioner, i.e., way back years ago, there was no

¹ AIR 2019 SC 813

Bhubaneswar Municipal Corporation. Secondly, even assuming that the very Letter of Allotment is tantamount to possession, no case is made out for the cancellation of the allotment of house, inasmuch as the subject site as on that date, was not situate within the jurisdictional limits of any Municipal Corporation much less BMC. It is not in dispute that the allotment of site under Kalinga Nagar Plotted Scheme was not made by BDA and further the area comprised in the Scheme was then situate within the jurisdictional limits of Gram Panchayat. The provision for cancellation of allotment on the ground of fraud or fabrication has to be construed strictly, regard being had to enormity of implications involved.

4.6. Since much is argued as to the contentious issue of fraud, the same requires a deeper examination so that one will have a clear idea as to what fraud means in the realm of law.

(i) Kerr on fraud² says as under:

“...It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood ... Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... courts have reserv(ed) to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include properly all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. All surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to...”

(ii) ‘*Fraud vitiates everything*’, said Lord Edward Coke centuries ago in *REX vs. DUCHESS OF KINGSTON*,³. Our Apex Court adopted this as a *native norm* as reiterated in *S.P.CHENGALVARAYA NAIDU vs. JAGANNATH*,⁴. However, Coke’s statement is of wide sweep and has several implicationary reflections: fraud in public law vis-à-vis fraud in private law; fraud on the parties vis-à-vis fraud on the court; fraud going to the root of matter vis-à-vis fraud operating at the periphery and the like.

However, fraud & fabrication have to be strictly pleaded & demonstrated. Fraud cannot be chanted like mantra. Added, the person who had sworn to affidavit is dead & gone leaving the widow.

4.7. There is enormous delay that remains unexplained as to why for decades the OPs slept over the matter, when the original allottee, i.e., the husband of the petitioner was very much alive to answer allegation of fraud, had it been made then. That exercise they did not undertake. Now, all of a sudden having woken up from the deep slumber, they have taken a prejudicial decision. Law does not come to the protection of sleepy & tardy, said Jeremy

² KERR ON FRAUD AND MISTAKE, BY SYDNEY EDWARD WILLIAMS, PART I.—FRAUD, FIFTH EDITION

³ 20 *How. St. Tr.* 544

⁴ (1994) 1 SCC 1

Bentham, an English Jurist of yester centuries. Any public power of the kind has to be exercised within a reasonable time at least as a concession to the shortness of human life. Why nothing was done when petitioner's husband was alive, is not explained

In the above circumstances, this petition succeeds; a Writ of Certiorari issues quashing the impugned order and as a consequence, there shall be no action from the side of Opposite Parties that would affect the ownership and possession of the subject house property of the petitioner.

Costs made easy.

Web copy of this judgment to be acted upon by all concerned.

Headnotes prepared by:

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

Result of the case:

Writ Petition allowed.

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2025 (III) ILR-CUT-1256

**PRUTHIRAJ MANIK
V.
STATE OF ODISHA & ORS.**

[W.P.(C) NO. 31022 OF 2025]

10 NOVEMBER 2025

[DIXIT KRISHNA SHRIPAD, J.]

Issue for Consideration

Whether the action of the Authority while denying the rectification of date of Birth is correct under the law.

Headnotes

ORISSA BOARD OF SECONDARY EDUCATION REGULATIONS – Rule 39 r/w Section 8 of the Registration of Births & Deaths Act, 1969 – Register of Births and Deaths – Rectification/Correction in date of Birth – In the present Writ Petition the rejection order for rectification of date of Birth in the school record is under challenge – Birth Certificate of the Petitioner has been issued by the appropriate Authority – Petitioner prays for rectification of his date of birth in the school record as per the Birth Certificate – Limitation of 3 years as provided under the Rule 39 of the Regulation – Authority denied the rectification on the ground of delay in application for correction/rectification – Whether the action of the Authority while denying the rectification of Date of Birth is correct under the law?

Held: No – There is force in the submission of learned counsel appearing for the Petitioner that, may be by inadvertence, in the school records the date of registration of birth has been reflected as the date of birth of her client – It is not uncommon to see such mistakes occurring at the hands of parents who secure school admission, their wards being obviously juveniles and therefore, such juveniles would not have had any say in the matter – At times, in the rural society, the admission of children to the schools is done by persons other than parents also, i.e., relatives or friends who may not have that degree of seriousness which the parents would have – Presumably, it is for this reason, the law provides for rectification of date of birth in the school records subject to certain conditions & limitations – Regulation 39 of the extant Regulations reads as under:

“The date of birth once entered in the Board’s records cannot be changed unless it is of the nature of clerical error or printing mistake – Application for the correction of the date of birth should be made within three years of passing the examination – No change in date of birth recorded shall be made unless the application for correction is received through the head of the institution concerned within three years of passing the examination.”

The above Regulation prescribes a limitation period of three years for applying for rectification and the reckoning point is the examination – The word “examination” is defined under section 2(b) of the Orissa Secondary Education Act, 1953 to mean the one conducted by the Board of Secondary Education – The contention of Mr. Rao that going by the text of this Regulation, petitioner’s application was belated, is true – However, what one has to see is the intent & policy content of the Rule Maker and not just *litera legis* – In other words, rule of the kind should be construed with purposive approach and not literal approach, vide Justice Aharon Barak the ‘Purposive Interpretation in Law’ (2005) – Added, if there is a delay, there is no prohibition in the Regulations for the authorities to condone it keeping in view justice of the case – It is more so, when there is no allegation of fraud or fabrication. (Para 4.2)

The reasoning in the impugned order, that the subject date of birth is reflected in other contemporaneous school records, does not stand to logic – It is so because, once the date of birth is recorded at the entry point of admission to educational institution, the same would be reflected in the records of other institutions, wherein a person has studies in due course – If the entry in the base document is shown to be incorrect, the exercise for correction has to be undertaken, for keeping the record straight – It hardly needs to be stated, the date of birth assumes importance in many matters, such as professional courses, employment (appointment, seniority & retirement), travel documents (passport, visa, etc.), election (voting, staking

candidature, etc.) – It has been a settled position of law that ordinarily wherever the issue of age of a person crops up, the entry of date of birth made in the HSC/SSLC certificates should be acted upon. (Para 4.5)

Citations Reference

CIDCO v. Vasudha Gorakhnath Mandevlekar, (2009) 7 SCC 283; Jigyada Yadav (Minor) V. Central Board of Secondary Education, AIR 2021 SC 274 – referred to.

List of Acts

Registration of Births and Deaths Act, 1969; Orissa Secondary Education Act, 1953; Code of Civil Procedure, 1908; Orissa Board of Secondary Education Regulations.

Keywords

Birth; Death; Registration; Correction; Rectification; School record; Certificate of Birth; Limitation; *Litera Legis*; Purposive Interpretation; *Ex Debito Justitiae*.

Case Arising From

Order dated 03.10.2025 passed by the Authority while rejecting the prayer for rectification of the date of Birth.

Appearances for Parties

For Petitioner : M/s. K.K. Rout, K Rout, S.K. Rout, T.S. Swaraj, (Ms.) S. Sthitapranjna, S. Sahoo, P.N. Pattnaik & R. Sharma

For Opp. Parties : Mr. J.K. Khandayatray, ASC [O.P. Nos.1 to 3, 6 & 7] Mr. S.S. Rao, Sr. Adv [O.P. Nos. 4 & 5]

Judgment/Order

Judgment

DIXIT KRISHNA SHRIPAD. J.

“Mistakes can be corrected by those who pay attention to facts but dogmatism will not be corrected by those who are wedded to a vision.

– Thomas Sowell in “Intellectuals and Society, 2010”

Short grievance of the Petitioner is as to rejection of his request for the change of date of birth in the school records.

2. Learned counsel for the Petitioner submits that some confusion having cropped up because of entry of wrong date of birth in the school records, and that the rectification of the same ought to have been permitted by the jurisdictional OPs, especially when the birth is registered by the competent authority in the Register of Births & Deaths, which is not disputed. He points out that the Birth Certificate mentions both the date of birth & the date of registration of birth. According to the Petitioner, the school authorities then, mindlessly entered the date of registration of

birth as the date of birth, when the two are poles asunder. This is creating too many problems and therefore, Court should come to the rescue. So contending, counsel seeks to falter the impugned order dated 03.10.2025 at Annexure-11, whereby her client's request for rectification of date of birth in the school records has been negated.

3. Learned ASC-Mr. Khandayatray appearing for OP Nos. 1 to 3, 6 & 7 and learned Senior Counsel- Mr. Rao appearing for OP Nos.4 & 5 resist the petition heavily placing reliance on the text of Rule-39 of Regulations of the Board of Secondary Education Orissa. They submit that the subject Board Regulation comes in the way of granting relief to the Petitioner, since the request for rectification was made belatedly; there are contemporaneous school records that contain the very same date of birth and therefore, rectifying it in one set of records would not come to the aid of Petitioner in any way, the alleged wrong entry continuing in the other set. They also highlight the likely consequences if claim of the Petitioner is favoured, laying a wrong precedent that will have enormous mischief potential. So contending, they seek dismissal of the petition.

4. Having heard learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

4.1. Provisions of the Registration of Births & Deaths Act, 1969 cast a duty inter alia on the parents & nursing homes to report births of babies to the Registrar of Births & Deaths. Section 8 of the Act reads as under:

"8. Persons required to register births and deaths.—(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under sub-section (1) of section 16,—

(a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in clauses (b) to (e) the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognised by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

(b) in respect of births and deaths in a hospital, health centre, maternity or nursing home or other like institution, the medical officer in charge or any person authorised by him in this behalf;

(c) in respect of births and deaths in a jail, the jailor in charge;

(d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

(e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere:

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

(f) in any other place, such person as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the State Government, having regard to the conditions obtaining in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in clause (a) of sub-section (1) instead of the persons specified in that clause.”

Accordingly, a report having been made, birth of the Petitioner came to be registered by the jurisdictional Registrar years ago. Petitioner has produced the Certificate of Birth issued on 19.04.2025. The same reflects that the Petitioner is born on 09.11.2006 and registration of his birth is effected on 15.11.2006. This document is not in dispute. The Apex Court in **CIDCO v. Vasudha Gorakhnath Mandevlekar**, (2009) 7 SCC 283 held as follows:

“18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the Respondent....”

4.2. There is force in the submission of learned counsel appearing for the Petitioner that, may be by inadvertence, in the school records the date of registration of birth has been reflected as the date of birth of her client. It is not uncommon to see such mistakes occurring at the hands of parents who secure school admission, their wards being obviously juveniles and therefore, such juveniles would not have had any say in the matter. At times, in the rural society, the admission of children to the schools is done by persons other than parents also, i.e., relatives or friends who may not have that degree of seriousness which the parents would have. Presumably, it is for this reason, the law provides for rectification of date of birth in the school records subject to certain conditions & limitations. Regulation 39 of the extant Regulations reads as under:

“The date of birth once entered in the Board’s records cannot be changed unless it is of the nature of clerical error or printing mistake. Application for the correction of the date of birth should be made within three years of passing the examination. No change in date of birth recorded shall be made unless the application for correction is received through the head of the institution concerned within three years of passing the examination.”

The above Regulation prescribes a limitation period of three years for applying for rectification and the reckoning point is the examination. The word “examination” is defined under section 2(b) of the Orissa Secondary Education Act, 1953 to mean the one conducted by the Board of Secondary Education. The contention of Mr. Rao that going by the text of this Regulation, petitioner’s

application was belated, is true. However, what one has to see is the intent & policy content of the Rule Maker and not just *litera legis*. In other words, rule of the kind should be construed with purposive approach and not literal approach, vide Justice Aharon Barak the ‘Purposive Interpretation in Law’ (2005). Added, if there is a delay, there is no prohibition in the Regulations for the authorities to condone it keeping in view justice of the case. It is more so, when there is no allegation of fraud or fabrication.

4.3. The above apart, the rule of limitation enacted in the subject Regulation cannot be strictly construed, though it begins with the term “no change in date of birth..... shall be made”. After all, it is a piece of delegated legislation intended to grant redressal to the innocent students, who have written the Board Examination. The principal object of the Regulation is to facilitate rectification of mistake in the date of birth appearing in the school records and therefore, the interpretation that would advance this object has to be placed on the text of Regulation. Even otherwise, whatever little delay that has been brooked in applying for rectification could have been waived or condoned, no third party interest having been created in any sense. It is not that the rectification of date of birth in the Service Records of an employee is being sought for. If it were to be one such, different factors would have entered the fray of consideration. Civilized jurisdictions graciously accommodate the claim for rectification of mistakes in birth records consistent with the canons of Epistemology. Section 152 of Code of Civil Procedure, 1908 and such other provisions in several statutes are enacted on that philosophy. Therefore, when errors occur in judgments & orders, the same are addressed by the Courts/Tribunals *ex debito justitiae*, i.e., as a matter of justice.

4.4. In United Kingdom, USA & Australia provisions of law do obtain whereunder one can apply for the correction of birth registration when the information furnished and/or recorded by the officials is demonstrably wrong. This mistake may be as to the date & place of birth, names of parent(s) or the like. If application is approved after a summery inquiry, a correction is made in the concerned register maintained by the competent authority in the jurisdictional offices, ordinarily where the child was born. In UK the original information will always be shown in the register. After the correction has been effected, a note will be added to the margin of the register which will shortly explain what the correct information is and when the correction was made. After all, it was St. Augustine, who said in his ‘Sermones’ (5th Century CE) *humanum fuit errare, diabolicum est per animositatem in errore manere* literally meaning: *to err is human, but to persist in error is diabolical*’.

4.5. The reasoning in the impugned order, that the subject date of birth is reflected in other contemporaneous school records, does not stand to logic. It is so because, once the date of birth is recorded at the entry point of admission to educational institution, the same would be reflected in the records of other institutions, wherein a person has studies in due course. If the entry in the base

document is shown to be incorrect, the exercise for correction has to be undertaken, for keeping the record straight. It hardly needs to be stated, the date of birth assumes importance in many matters, such as professional courses, employment (appointment, seniority & retirement), travel documents (passport, visa, etc.), election (voting, staking candidature, etc.). It has been a settled position of law that ordinarily wherever the issue of age of a person crops up, the entry of date of birth made in the HSC/SSLC certificates should be acted upon.

4.6. It is very pertinent to advert to the normative process which a 3-Judge Bench of the Apex Court in *Jigya Yadav (Minor) V. Central Board of Secondary Education*, AIR 2021 SC 274 has spelt out:

“170. The first is where the incumbent wants “correction” in the certificate issued by the CBSE to be made consistent with the particulars mentioned in the school records. As we have held there is no reason for the CBSE to turn down such request or attach any precondition except reasonable period of limitation and keeping in mind the period for which the CBSE has to maintain its record under the extant regulations. While doing so, it can certainly insist for compliance of other conditions by the incumbent, such as, to file sworn affidavit making necessary declaration and to indemnify the CBSE from any claim against it by third party because of such correction. The CBSE would be justified in insisting for surrender/return of the original certificate (or duplicate original certificate, as the case may be) issued by it for replacing it with the fresh certificate to be issued after carrying out necessary corrections with caption/annotation against the changes carried out and the date of such correction. It may retain the original entries as it is.... We repeat that if the application for recording correction is based on the school records as it obtained at the time of publication of results and issue of certificate by the CBSE, it will be open to CBSE to provide for reasonable limitation period within which the application for recording correction in certificate issued by it may be entertained by it.... Indeed, it would be open to the CBSE to reject the application in the event the period for preservation of official records under the extant regulations had expired and no record of the candidate concerned is traceable or can be reconstructed.....”

171. As regards request for “change” of particulars in the certificate issued by the CBSE, it presupposes that the particulars intended to be recorded in the CBSE certificate are not consistent with the school records. Such a request could be made in two different situations. The first is on the basis of public documents like Birth Certificate, Aadhaar Card/Election Card, etc. and to incorporate change in the CBSE certificate consistent therewith. The second possibility is when the request for change is due to the acquired name by choice at a later point of time. That change need not be backed by public documents pertaining to the candidate.

(a) Reverting to the first category, as noted earlier, there is a legal presumption in relation to the public documents as envisaged in the 1872 Act (Indian Evidence Act). Such public documents, therefore, cannot be ignored by the CBSE. Taking note of those documents, the CBSE may entertain the request for recording change in the certificate issued by it. This, however, need not be unconditional, but subject to certain reasonable conditions to be fulfilled by the applicant as may be prescribed by the CBSE, such as, of furnishing sworn affidavit containing declaration and to indemnify the CBSE and upon payment of prescribed fees in lieu of administrative expenses. The CBSE may also insist for issuing Public Notice and publication in the Official Gazette before recording the

change in the fresh certificate to be issued by it upon surrender/return of the original certificate (or duplicate original certificate, as the case may be) by the applicant.....

(b) However, in the latter situation where the change is to be effected on the basis of new acquired name without any supporting school record or public document, that request may be entertained upon insisting for prior permission/declaration by a Court of law in that regard and publication in the Official Gazette including surrender/return of original certificate (or duplicate original certificate, as the case may be) issued by CBSE and upon payment of prescribed fees. The fresh certificate as in other situations referred to above, retain the original entry (except in respect of change of name effected in exercise of right to be forgotten) and to insert caption/annotation indicating the date on which it has been recorded..... This is so because the CBSE is not required to adjudicate nor has the mechanism to verify the correctness of the claim of the applicant.

172. In light of the above, in exercise of our plenary jurisdiction, we direct the CBSE to process the applications for correction or change, as the case may be, in the certificate issued by it in the respective cases under consideration. Even other pending applications and future applications for such request be processed on the same lines and in particular the conclusion and directions recorded hitherto in paragraphs 170 and 171, as may be applicable, until amendment of relevant Byelaws. Additionally, the CBSE shall take immediate steps to amend its relevant Byelaws so as to incorporate the stated mechanism for recording correction or change, as the case may be, in the certificates already issued or to be issued by it.”

The above observations although have been made in a bit different context, the school authorities have to draw wisdom from the same. What approach these authorities should have in entertaining the request for change/correction of entries, is indicated by the Apex Court.

In the above circumstances, petition succeeds. A Writ of Certiorari issues quashing the impugned order dated 03.10.2025 at Annexure-11 coupled with a Writ of Mandamus to OP Nos.4 & 6 to rectify the errors in the school records, in terms of Birth Certificate issued on 19.04.2025 at Annexure-1, within six weeks. The OP No.6 shall take all steps to facilitate implementation of this order at the hands of OP No.4. Petitioner to cooperate and coordinate by producing necessary documents, as may be sought, for accomplishing the task.

Costs made easy.

The Registry to send a copy of this order to the Principal Secretary, Department of Education, Government of Odisha, Bhubaneswar, who shall circulate the same in the concerned circles.

Web copy of this order to be acted upon by all concerned.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition allowed.

2025 (III) ILR-CUT-1264

UNION OF INDIA & ORS.
V.
PARBATI DAS & ANR.

[C.M.P. NO. 912 OF 2025]

25 NOVEMBER 2025

[B.P. ROUTRAY, J.]

Issue for Consideration

Whether the Executing Court was justified in directing payment of interest @12% per annum on the compensation amount from the date of filing of the suit.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order XXI Rule 1 – Execution of decree – Award of interest – Jurisdiction of Executing Court – The Trial Court awarded compensation with interest at 8% per annum – In appeal, the compensation was enhanced and the appellate court directed payment of interest at 8% per annum from the date of filing of the suit, with a further direction that interest at 12% per annum would apply only if the amount was not deposited within two months from the date of the appellate judgment – The decree of the Appellate court was affirmed in the second appeal – During execution, the Executing Court treated the delayed deposit as a default and directed payment of interest at 12% per annum from the date of filing of the suit, instead of applying it only after the expiry of the two-month period – Whether the Executing Court was justified in directing payment of interest @12% per annum on the compensation amount from the date of filing of the suit.

Held: No – A thorough reading of the aforesaid order of the first appellate court speaks that, 12% interest will be applicable on the compensation amount in the event the Defendant failed to deposit the amount within a period of two months from the date of the order – Since the second appeals were dismissed on 14.12.2021 without interfering the order of the first appellate court, counting two months thereof, the period is completed on 14.02.2022 – Admittedly, the Defendant-Railways did not deposit the compensation amount as on 14.02.2022, but paid on 29.06.2022 – Thus, it implies from the direction of the first appellate court that the Defendant is liable to pay interest @8% on the compensation amount till 14.02.2022 and thereafter the interest rate will be applicable @12% per annum from 14.02.2022 onwards. (Para 7)

Since it is admitted that a sum of Rs.12,14,946/- was already deposited on 29.06.2022, therefore the interest to be calculated @12% per annum for the period from 14.02.2022 to 29.06.2022. (Para 8)

It is settled that in terms of the provisions contained under Order 21 Rule 1 of the C.P.C., interest will cease to run from the date, the amount is paid. (Para 9)

Citations Reference

V. Kala Bharathi and others vs. Oriental Insurance Co. Ltd, Br. Chittoor, **AIR 2014 SC 1563 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Execution of decree; Award of interest; Default clause; Enhanced rate of interest; Interpretation of decree; Jurisdiction of Executing Court; Travelling beyond the decree; Cessation of interest.

Case Arising From

Order dated 20.03.2025 of learned Executing Court passed in Execution Case No. 25 of 2021.

Appearances for Parties

For Petitioners : Mr. B.B. Mishra, Sr. Panel Counsel
For Opp. Parties : Mr. K.K. Jena (O.P. No. 1)

Judgment/Order

Judgment

B.P. ROUSTRAY, J.

1. Heard Mr. B.B. Mishra, learned Senior Panel Counsel for the Petitioner-Union of India and Mr. K.K. Jena, learned counsel for the Opposite Party No.1.
2. Present Petitioner, the Union of India represented by General Manager, East Coast Railway, Bhubaneswar, has preferred the present C.M.P. challenging the order dated 20.03.2025 of learned Executing Court passed in Execution Case No.25 of 2021.
3. The background facts of the case is that, present Opposite Party No.1 filed C.S. No.102 of 2009 praying for realization of compensation to the tune of Rs.10,00,000/- from Railways and the learned trial court vide judgment and decree dated 06.01.2015 directed for payment of compensation to the tune of Rs.4,00,000/- along with 8% interest from the date of filing of the suit till actual realization. The

same was challenged in first appeal and the first appellate court vide judgment dated 16.07.2019 modified the compensation amount to Rs.8,15,400/- payable along with interest @8% per annum from the date of filing of the suit, i.e.15.07.2009, till realization with default clause that failing to pay the amount directed on the part of the Railways then they are liable to pay the amount along with interest @12% per annum after completion of two months from the date of judgment of the first appellate court till realization of payment.

4. Against the first appellate court's judgment, both parties preferred second appeals before this Court and both the second appeals were dismissed on 14.12.2021 confirming the direction of the first appellate court.

5. Thereafter, the claimant-Plaintiff filed Execution Case and the Executing Court in the impugned order interpreted the direction of the first appellate court to direct the Railways to pay compensation amount along with interest @12% per annum from the date of filing of the suit, i.e. 15.07.2009, on the ground that the Railways have failed to make payment within two months in terms of the direction of the first appellate court.

6. Admittedly after dismissal of the second appeals preferred by both parties, the compensation amount was deposited on 29.06.2022 and payment was made in favour of the Plaintiff. The entire dispute revolves on the interpretation of the direction of the first appellate court concerning whether interest at the rate of 8% or 12% is applicable on the award amount. The compensation amount is to the tune of Rs.8,15,400/- and as per the direction of the first appellate court, the same will carry interest @8% from the date of filing of the suit, i.e.15.07.2009. There is no dispute about the same regarding payment of interest @8% with effect from 15.07.2009. As per the interpretation of the learned Executing Court, the same would be converted to 12% since the Defendant has defaulted in making payment of the compensation amount within a period of two months as per the direction of the first appellate court. In view of such dispute, it is important to re-produce the ordering portion of the first appellate court which reads as follows:-

“The R.F.A be and the same preferred by the appellant-plaintiff is allowed in part on contest against the respondents no.1 to3 and *ex-parte* against respondent no.4, but without any cost. The Respondent No.1 Is directed to pay the total compensation amount of **Rs.8,15,400/-** (*Rupees Eight Lakhs fifteen thousand and four hundred*) only with simple interest at the rate of 8% per annum with effect from the date of filing of the suit i.e **15.07.2009** to the appellant-plaintiff through the learned court below within two months hence, failing which the appellant-plaintiff would be at liberty to realize the awarded amount along with the interest at the rate of **12 %** per annum after completion of two months from to-day till the payment is made from respondent no. 1 through the process of law.

In the event of making such payment, the same shall be disbursed by the learned Court below to the appellant-plaintiff in the following manner:

Out of the total awarded compensation amount, a sum of **Rs.6,00,000/-** shall be deposited in the name of appellant-plaintiff **Parbati Das** (*mother of the deceased*) in

shape of fixed deposit in any Nationalized Bank for a period of six years with quarterly interest payable to her; and the **balance amount** along with the interest accrued on the total compensation amount be released in favour of appellant-plaintiff, **Parbati Das** (*mother of the deceased*) by way of cash.

The concerned Bank is directed not to allow any loan or advance on the Fixed Deposits treating the same as security nor it shall allow any premature withdrawal of the same without leave of the Court.”

7. A thorough reading of the aforesaid order of the first appellate court speaks that, 12% interest will be applicable on the compensation amount in the event the Defendant failed to deposit the amount within a period of two months from the date of the order. Since the second appeals were dismissed on 14.12.2021 without interfering the order of the first appellate court, counting two months thereof, the period is completed on 14.02.2022. Admittedly, the Defendant-Railways did not deposit the compensation amount as on 14.02.2022, but paid on 29.06.2022. Thus, it implies from the direction of the first appellate court that the Defendant is liable to pay interest @8% on the compensation amount till 14.02.2022 and thereafter the interest rate will be applicable @12% per annum from 14.02.2022 onwards.

8. Since it is admitted that a sum of Rs.12,14,946/- was already deposited on 29.06.2022, therefore the interest to be calculated @12% per annum for the period from 14.02.2022 to 29.06.2022.

9. It is settled that in terms of the provisions contained under Order 21 Rule 1 of the C.P.C., interest will cease to run from the date, the amount is paid. In this regard, the Hon’ble Supreme Court in the case of **V. Kala Bharathi and others vs. Oriental Insurance Co. Ltd, Br. Chitoor, AIR 2014 SC 1563** have observed as follows:

“14. A bare perusal of the aforesaid provisions makes it amply clear that the scope of Order 21 Rule 1 CPC is that the judgment debtor is required to pay the decretal amount in one of the modes specified in sub-rule (1) thereof. Sub-rule (2) of Rule 1 provides that once payment is made under sub-rule (1), it is the duty of the judgment debtor to give notice to the decree holder through the court or directly to him by registered post acknowledgment due. Sub-rule (3) of Rule 1 merely indicates that in case money is paid by postal money order or through a bank under clause (a) or clause (b) of sub-rule (1) thereof, certain particulars are required to be accurately incorporated while making such payment. Sub-rules (4) and (5) of Rule 1 states from which date, interest shall cease to run - in case amount is paid under clause (a) or (c) of sub-rule (1), interest shall cease to run from the date of service of notice as indicated under sub-rule (2); while in case of out of court payment to the decree holder by way of any of the modes mentioned under clause (b) of sub-rule (1), interest shall cease to run from the date of such payment.

15. The language contained in the aforesaid sub-rules clearly indicates the appropriation of amount to be made in case the decree contains a specific clause, specifying the manner in which the money deposited is to be appropriated. Sub-rule (1)(c) of Rule 1 indicates the money deposited is to be appropriated as per the

direction of the court, if there is a provision in that behalf. In the absence of specific direction with regard to appropriation, then only the manner of appropriation would arise for consideration. Sub-rules (2) to (5) of Rule 1 indicate the procedure to be followed when the deposit is made either under clause (a) or (b) of sub-rule (1) thereof, but it does not leave any scope for interpretation with regard to appropriation of deposited amount by the decree-holder.

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17. The Privy Council in *Venkatadri Appa Row v. Parthasarathi Appa Row* [(1920-21) 48 IA 150 : (1921) 14 LW 25 : AIR 1922 PC 233] , held as follows : (IA p. 153)

“The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. There are monies that are received without a definite appropriation on the one side or on the other, and *the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital.*” (emphasis supplied)

The above principle was reiterated by the Privy Council in *Rai Bahadur Seth Nemichand v. Seth Ratha Kishen* [(1921) 14 LW 391 : AIR 1922 PC 26] .

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19. In *Mathunni Mathai [Mathunni Mathai v. Hindustan Organic Chemicals Ltd., AIR 1995 SC 1572]*, it was held the right of the decree holder to appropriate the amount deposited by the judgment debtor, either in Court or paid outside, towards interest and other expenses is founded both on fairness and necessity. It was observed that the courts and the law have not looked upon favourably where the judgment debtor does not pay or deposit the decretal amount within the time granted as one cannot be permitted to take advantage of his own default. Therefore, the normal rule that is followed is to allow the deposit or payment, if it is in part, to be adjusted towards the interest due, etc.

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26. In view of above and more particularly keeping in view the ratio of the Constitution Bench judgment in *Gurpreet Singh* [(2006) 8 SCC 457] , where considering an identical question in respect of Order 21 Rule 1 CPC, it was held that if the amount deposited by the judgment debtor falls short of the decretal amount, the decree holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the decree; we are of the opinion that the appellants herein are entitled to the amount awarded by the executing court, as the amounts deposited by the judgment debtor fell short of the decretal amount. After such appropriation, the decree holder is entitled to interest only to the extent of unpaid principal amount. Hence, interest be calculated on the unpaid principal amount.”

10. In the given facts of the case at hand as per the narrations made above, with regard to the date of deposit and the applicability of enhanced interest as per the order of the first appellate court, it is thus observed that the total amount including interest @8% till 14.02.2022 on the compensation amount to be calculated at the first instance and the amount of Rs.12,14,946/- as deposited by the Defendant has to

be adjusted therefrom. For the rest period from 14.02.2022 onwards till 29.06.2022, the amount, if any found undeposited, shall carry the interest @12% and the same shall be deposited within a period of 30 (thirty) days from today. Upon calculation, if any balance amount is found in favour of the Defendant as on 14.02.2022, the same shall be refunded to them. The impugned order of the executing court is modified accordingly.

11. With the aforesaid observation and direction, the C.M.P. is disposed of.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
C.M.P. disposed of.

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2025 (III) ILR-CUT-1269

**LUMENKAI POWER PVT. LTD.
(FORMERLY AES INDIA PVT. LTD.), EAST DELHI
V.
M/s. KALINGA INSULATION, PARADIP**

[C.M.P. NO. 1480 OF 2025]

03 DECEMBER 2025

[B.P. ROUSTRAY, J.]

Issues for Consideration

1. Whether the proviso to Section 13 of the Commercial Courts Act, 2015 restricts the right of appeal under both sub-sections (1) and (1-A) to the categories of orders specified therein.
2. Whether a petition under Article 227 of the Constitution of India is maintainable against an order of a Commercial Court when no appeal lies under Section 13 of the Commercial Courts Act, 2015?

Headnotes

(A) COMMERCIAL COURTS ACT, 2015 – Section 13 – Right of appeal – Interpretation of a proviso – Scope – The opposite party contended that the proviso to Section 13 of the Commercial Courts Act, 2015 applies only to sub-section (1-A) and not to sub-section (1), relying upon the punctuation used in the statute – The petitioner contended that the proviso qualifies both sub-sections (1) and (1-A) and restricts appeals only to orders enumerated under Order XLIII of the Code of Civil Procedure, 1908 and Section 37 of the Arbitration and Conciliation Act, 1996 – Whether the proviso to Section 13 of the

Commercial Courts Act, 2015 restricts the right of appeal under both sub-sections (1) and (1-A) to the categories of orders specified therein.

Held: Yes – Having considered the purpose and intention of introduction of sub-section (1-A) after its amendment in 2018 and the changes in words from decision to judgment or order, since no major difference is seen except providing two different forums for preferring appeal by the aggrieved party, it can be reasonably concluded that the proviso applies to both sub-section (1) and sub-section (1-A) – A bare look to the Gazette Notification also seems that the provision is meant to apply to both sub-section (1) and sub-section (1-A) – Except the difference in the marking of the punctuations, i.e. full-stop (.) and colon (:), there is nothing to support the contention that the proviso is applicable to sub-section (1-A) alone excluding sub-section (1) – In other words, if it is accepted then it means that the provision for appeal would be applicable with such restrictions, as per the provisions in Order 43 of the CPC, in respect of the orders passed by the court at the level of District Judge, but the restrictions will not be applicable to such other courts below the level of District Judge – This reasoning is seen somehow illogical, because the purpose of the proviso would then not be in conformity with the object of the Act (The Commercial Courts Act, 2015) – The object of the Act is for providing speedy disposal of high value commercial disputes – Therefore, the conclusion would be that the proviso is meant to apply to sub-section (1) and sub-section (1-A) both and its application cannot be limited to such provisions appearing in sub-section (1-A) only. (Para 13)

(B) COMMERCIAL COURTS ACT, 2015 – Section 13 – Appeal – Constitution of India – Article 227 – Maintainability of Writ Petition – Supervisory jurisdiction – Bar of appeal – The petitioner challenged an order passed by the Commercial Court by invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India – A preliminary objection was raised that the petition was not maintainable since Section 13 of the Commercial Courts Act, 2015 provides for an appellate remedy against orders of Commercial Courts – The petitioner contended that in view of the restricted nature of the appellate remedy under Section 13, no appeal lies against the impugned order and therefore recourse to Article 227 was maintainable – Question raised, whether in such scenario a writ petition is maintainable?

Held: Yes – Thus, considering the submissions of both parties with regard to interpretation of the proviso clause appearing in Section 13, in the opinion of this Court, the same applies to both sub-section (1) and sub-section (1-A) to restrict the scope of appeal within the ambit of Order 43 of the Civil Procedure Code, 1908 – Thus, it is held that the present C.M.P. is

maintainable in the present form – The preliminary objection is answered thus. (Para 14)

Citations Reference

Indore Development Authority vs. Manoharlal and others, (2020) 8 SCC 129; Delhi Chemical and Pharmaceutical Works Pvt. Ltd. and another vs. Himgiri Realtors Pvt. Ltd. and another, 2021 SCC OnLine Del 3603 – referred to.

List of Acts

Commercial Courts Act, 2015; Constitution of India, 1950.

Keywords

Writ Petition; Maintainability; Supervisory jurisdiction; Commercial Courts; Restricted right of appeal; Proviso; Interpretation of statute; Punctuation; Legislative intent; Absence of statutory appeal.

Case Arising From

Order dated 09.09.2025 of the learned Commercial Court, Cuttack passed in Execution Case No. 61 of 2024.

Appearances for Parties

For Petitioner : Mr. A.K. Parija, Sr. Adv. & Mr. B.P. Das
For Opp. Party : Mr. M.K. Mishra, Sr. Adv. & Mr. D. Mishra

Judgment/Order

Judgment

B.P. ROUSTRAY,

1. Heard Mr. A.K. Parija, learned Senior Advocate along with Mr. B.P. Das, learned Advocate for the Petitioner and Mr. M.K. Mishra, learned Senior Advocate along with Mr. D. Mishra, learned Advocate for the Opposite Party.
2. Present C.M.P. is directed against the order dated 09.09.2025 of the leaned Commercial Court, Cuttack passed in Execution Case No.61 of 2024, wherein the prayer of the J.Dr. under Order 21 Rule 11, C.P.C. read with Section 36 of the Arbitration and Conciliation Act was rejected.
3. Before entering into the merit of the dispute, a preliminary objection is raised by the present Opposite Party, who is the D.Hr., regarding maintainability of the present C.M.P. under Article 227 of the Constitution of India.
4. It is submitted by Mr. M.K. Mishra, learned Senior Advocate for the Opposite Party that as per Section 13(1) of the Commercial Courts Act, 2015 all such judgment or order of the Commercial Court below the level of District Judge may be appealed before the Commercial Appellate Court and cannot be tested under exercise of jurisdiction of the High Court under Article 227 of the Constitution of India. It is further submitted that since after closure of sub-section (1) of Section 13 a “full stop (.)” is occurring whereas the “colon (:)” is occurring at the end of sub-

section (1-A), the proviso coming after sub-section(1-A) would not qualify to such provisions mentioned in sub-section (1) of Section 13.

5. Conversely, refuting to such objections raised by the Opposite Party, Mr. A.K. Parija, learned Senior Advocate for the Petitioner submits that, the provisions of the Act, i.e. the Commercial Courts Act, cannot be interpreted in such a way that are submitted by the Opposite Party. Specifically, the proviso contained in Section 13, appearing after sub-section (1-A) by its plain reading and meaning qualifies to both the provisions under sub-section (1) and sub-section (1-A). It is also submitted that putting the “full-stop (.)” or “colon (:)” after the sub-section (1) and sub-section (1-A) does not make any distinction in the meaning of the interpretation of the proviso attached to Section 13.

6. In view of the rival contentions raised with regard to maintainability of the present proceeding before this Court, it needs to refer the provisions under Section 13 of the Commercial Courts Act, 2015. It reads as follows:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.—

[(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

7. For the purpose of interpretation, the original Gazette Notification of the amended provision of Section 13 which came as the Commercial Courts, Commercial Division and Commercial Appellate Division of High Court (Amendment) Act 2018 (Act No.28 of 2018) has been referred to.

8. Mr. Mishra, learned Senior Advocate for the Opposite Party also takes notice of this Court to the intent and object of bringing such amendment to the Commercial Courts Act by the Amendment Bill 2018. Here it would be profitable to re-produce the pre-amended provisions of Section 13 of the Commercial Courts Act, 2015. It reads as follows:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.—

(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

9. As seen from the above quoted provisions of Section 13 of the Commercial Courts Act, 2015, as it is after the amendment, that, sub-section (1) ends with a “full-stop (.)”, wherein after end of sub-section (1-A) a “colon (:)” is used attaching the proviso thereof before writing sub-section (2). In *Indore Development Authority vs. Manoharlal and others*, (2020) 8 SCC 129, in the context of interpretation of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, it is explained as follows:

“90.2. The relevant provisions of the 2013 Act are as follows:

“24. *Land acquisition process under Act 1 of 1894 shall be deemed to have lapsed in certain cases.*—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

114. *Repeal and saving.*—(1) The Land Acquisition Act, 1894 (1 of 1894), is hereby repealed.

(2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.”

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94. Undoubtedly, the 2013 Act has provided safeguards, in the form of higher compensation and provisions for rehabilitation, which are necessary. In that light, the court has to interpret its provisions, to give full and meaningful effect to the legislative intent keeping in mind the language and tenor of the provisions, it is not for the court to legislate. The Court can only iron out creases to clear ambiguity. The intended benefit should not be taken away. At the same time, since the 2013 Act, envisages lapse of acquisitions notified (and in many cases, completed by the issuance of the award) due to indolence and inaction on the part of the authorities and therefore, intends acquisition at a fast track, the full effect has to be given to the provisions contained in Section 24.

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(b) *Punctuation used in Section 24(2)*

176. Parliament has used the full stop (.) after Section 24(1) and colon (:) after Section 24(2). It cannot be gainsaid that punctuation plays a vital role, particularly when an attempt is made to relocate any part of the provision. The use of the colon is to introduce a sub-clause that follows logically from the text before it. We are examining this aspect of the colon, additionally. Though as the interpretation of the provision of Section 24(2) and its proviso needs no further deliberation regarding its placement, the same is to be read as a proviso to Section 24(2) and not Section 24(1)(b). Use of punctuation colon reinforces our conclusion and punctuation mark has been an accepted method of statutory interpretation when such a problem arises. Though sometimes punctuation can be ignored also but not generally. The full stop after Section 24(1)(b) expresses deliberate intent to end a particular sentence and detach it from the next part. With regard to the meaning of the punctuation colon, the *University of Oxford Style Guide* states as under:

“Use a colon to introduce a sub-clause which follows logically from the text before it, is not a new concept and depends logically on the preceding main clause. Do not use a colon if the two parts of the sentence are not logically connected.”

(emphasis supplied)

177. The note of the University of England “Writing Correctly” has also been relied upon on behalf of the State of Haryana. Following discussion has been made:

“Colons have a number of functions in a sentence. If you use colons in your writing, use them sparingly, and never use a colon more than once in any sentence.

Rule 1 : Colons can be used to introduce a list, but they must *follow* a complete sentence (independent clause).

Rule 2 : Colons can be used to explain, summarise or extend the meaning in a sentence by introducing a word, phrase or clause that *enlarges on the previous* statement.

Rule 3 : Colons are used to *separate the title from the subtitle*.

Rule 4 : Colons can be used to *introduce a quotation* in formal academic writing.”
(emphasis supplied)

178. It is clear that the colon (:) has a reference to the previous statement and enlarges the same and extends the meaning of the sentence. The colon indicates that the text is intrinsically linked to the previous provision preceding it i.e. Section 24(2) in this case and not Section 24(1). The colon indicates that what follows. The colon proves, explains, defines describes or lists elements of what precedes it. In case the proviso is bodily lifted and placed after Section 24(1)(b), Section 24(2) will end with a “colon”, which is never done to end a provision. Certain decisions have been referred to saying that importance and weightage are to be given to punctuation marks. The earlier view was that punctuations were added by the proof readers, and the Acts passed by Parliament did not contain any punctuation. However, it was submitted that in the past century, the English courts realised that the drafts placed before the Parliament also carry punctuations and, thus, it is important to give meaning to the same. *Bennion on Statutory Interpretation* has this to say regarding punctuation marks:

“16.8. Punctuation is a part of an Act and may be considered in construing a provision. It is usually of little weight, however, since the sense of an Act should be the same with or without its punctuation.

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Although punctuation may be considered, it will generally be of little use since the sense of an Act should be the same with or without it. Punctuation is a device not for making meaning, but for making meaning plain. Its purpose is to denote the steps that ought to be made in oral reading and to point out the sense. The meaning of a well-crafted legislative proposition should not turn on the presence or absence of a punctuation mark.”

179. In *Marshall v. Cottingham* [*Marshall v. Cottingham*, 1982 Ch 82 : (1981) 3 WLR 235 : (1981) 3 All ER 8] , Ch p. 88, at 12 while referring to the change of position and establishing that punctuation may be used in interpretation, it was held that : (Ch p. 88)

‘... the day is long past when the courts would pay no heed to punctuation in an Act of Parliament.’

In *Hanlon v. Law Society* [*Hanlon v. Law Society*, 1981 AC 124 : (1980) 2 WLR 756 (HL)] , AC p. 197 it was held as under : (AC p. 198)

“... not to take account of punctuation disregards the reality that literate people, such as parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as Judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by Parliament?”

Yet again in *Houston v. Burns* [*Houston v. Burns*, 1918 AC 337 (HL)] , AC p. 348, it was held that : (AC p. 348)

“... Punctuation is a rational part of English composition and is sometimes quite significantly employed. I see no reason for depriving legal documents of such significance as attaches to punctuation in other writings.”

180. Other decisions were also cited. [*Dingmar v. Dingmar*, 2007 Ch 109 : (2006) 3 WLR 1183 : (2007) 2 All ER 382 (CA), *Kennedy v. Information Commr.*, (2012) 1 WLR 3524 (CA)] On similar lines, the American approach to the interpretation of punctuations is different.

180.1. In *Taylor v. Caribou* [*Taylor v. Caribou*, 102 Me 401 : 67 A 2 (1907)] , it was held as under:

“We are aware that it has been repeatedly asserted by courts and jurists that punctuation is no part of a statute, and that it ought not to be regarded in construction. This rule in its origin was founded upon commonsense, for in England until 1849 statutes were entrolled upon parchment and enacted without punctuation....*Such a rule is not applicable to conditions where, as in this State, a Bill is printed and is on the desk of every Member of the Legislature, punctuation and all, before its final passage. There is no reason why punctuation, which is intended to and does assist in making clear and plain the meaning of all things else in the English language, should be rejected in the case of the interpretation of statutes. “Cessante ratione legis cessat ipso lex”. Accordingly we find that it has been said that in interpreting a statute punctuation may be resorted to when other means fail ...; that it may aid its construction ...; that by it the meaning may often be determined; that it is one of the means of discovering the legislative intent ...; that it may be of material assistance in determining the legislative intention....”*

(emphasis supplied)

180.2. In *Aswini Kumar Ghose* [*Aswini Kumar Ghose v. Arabinda Bose*, (1952) 2 SCC 237 : 1953 SCR 1 : AIR 1952 SC 369] stated that : (AIR pp. 383 & 389, paras 57 & 78)

“57. ... Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English courts. Cockburn, C.J. said in *Stephenson v. Taylor* [*Stephenson v. Taylor*, (1861) 1 B&S 101 : 121 ER 652] : (B&S p. 106)

‘On the Parliament Roll there is no punctuation and we therefore are not bound by that in the printed copies.’

It seems, however, that in the Vellum copies printed since 1850 there are some cases of punctuation, and when they occur they can be looked upon as a sort of *contemporanea exposition* [See *Craies on Statute Law*, p. 185] . When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the [Ed. : The word between two asterisks has been emphasised in original.] *punctuation* [Ed. : The word between two asterisks has been emphasised in original.] [Vide *Crawford on Statutory Construction*, p. 343.] . I need not deny that punctuation may have its uses in some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text [Vide *Crawford on Statutory Construction*, p. 343.] .

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78. *The High Court has rejected* [*Aswini Kumar Ghose v. Arabindo Bose*, 1951 SCC OnLine Cal 248 : (1951-52) 56 CWN 145] *the contention of the petitioner Aswini Kumar Ghosh on two grounds. In the first place, it has been said that the comma was no part of the Act. That the orthodox view of earlier English Judges was that punctuation formed no part of the statute appears quite clearly from the*

observations of Willes, J. in Claydon v. Green [Claydon v. Green, (1868) LR 3 CP 511] . Vigorous expression was given to this view also by Lord Esher, M.R. in Duke of Devonshire v. Connor [Duke of Devonshire v. Connor, (1890) LR 24 QBD 468 (CA)] where he said:

‘... in an Act of Parliament there are no such things as brackets any more than there are such things as stops.’

This view was also adopted by the Privy Council in the matter of interpretation of Indian statutes as will appear from the observations of Lord Hobhouse in Maharani of Burdwan v. Murtunjoy Singh [Maharani of Burdwan v. Murtunjoy Singh, 1887 SCC OnLine PC 1 : (1886-87) 14 IA 30] , namely, that ‘it is an error to rely on punctuation in construing Acts of the legislature’. Same opinion was expressed by the Privy Council in Pugh v. Ashutosh Sen [Pugh v. Ashutosh Sen, 1928 SCC OnLine PC 93 : (1928-29) 56 IA 93] .

If, however, the rule regarding the rejection of punctuation for the purposes of interpretation is to be regarded as of imperfect obligation and punctuation is to be taken at least as *contemporanea expositio*, it will nevertheless have to be disregarded if it is contrary to the plain meaning of the statute. If punctuation is without sense or conflicts with the plain meaning of the words, the court will not allow it to cause a meaning to be placed upon the words which they otherwise would not have. This leads me to the second ground on which mainly the High Court rejected the plea of the petitioner Aswini Kumar Ghosh, namely, that the word “other” in the phrase “any other law” quite clearly connects the Indian Bar Councils Act with other laws as alternatives and subjects both to the qualification contained in the adjectival clause. I find myself in complete agreement with the High Court on this point. If the intention was that the adjectival clause should not qualify the Indian Bar Councils Act, then the use of the word “other” was wholly inapposite and unnecessary. The use of that word unmistakably leads to the conclusion that the adjectival clause also qualifies something other than “other law”. If the intention were that the Indian Bar Councils Act should remain unaffected by the qualifying phrase and should be superseded *in toto* for the purposes of this Act the legislature would have said ‘or in any law regulating the conditions, etc.’

It would have been yet simpler not to refer to the Indian Bar Councils Act at all and to drop the adjectival clause and to simply say ‘Notwithstanding anything contained in any law’. In the light of the true meaning of the title of the Act as I have explained above and having regard to the use of the word “other” I have no hesitation in holding, in agreement with the High Court, that what the non obstante clause intended to exclude or supersede was not the whole of the Indian Bar Councils Act but to exclude or supersede that Act and any other law only insofar as they or either of them purported to regulate the conditions subject to which a person not entered in the roll of advocates of a High Court might be permitted to practise in that High Court and that the comma, if it may at all be looked at, must be disregarded as being contrary to this plain meaning of the statute.”

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183. *Aswini Kumar Ghose [Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237 : 1953 SCR 1: AIR 1952 SC 369] also dealt with full stops and held that as*

long as punctuation does not detract from the meaning of the words in the text, it can be a controlling factor in interpretation. In *State of W.B. v. Swapan Kumar Guha* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283], this Court observed that grammar and punctuation are hapless victims of the pace of life and sometimes are used both as a matter of convenience and of meaningfulness. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. This Court observed that : (*Swapan Kumar Guha case* [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283], SCC p. 568, para 5)

“5. Since the sole question for consideration arising out of the FIR, as laid, is whether the accused are conducting a money circulation scheme, it is necessary to understand what is comprehended within the statutory meaning of that expression. Section 2(c) of the Act provides:

‘2. (c)“money circulation scheme” means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any event or contingency relative or applicable to the enrolment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;’

Grammar and punctuation are hapless victims of the pace of life, and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I, therefore, consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences.”

184. The present case involves placement of colon preceding to the proviso to Section 24(2) and not Section 24(1), which ends with a full stop, and it makes sense and the true meaning where Parliament has placed it. The proviso is part of Section 24(2). It is not permissible to alter the provision and to read it as a proviso to Section 24(1)(b), mainly when it makes sense where Parliament so placed it. To read the proviso as part of Section 24(1)(b), will create repugnancy with the provisions contained in Section 24(1)(b). The window period of 5 years is provided to complete the acquisition proceedings where the award has been passed, and the provisions of the 1894 Act shall be applied as if it has not been repealed. Section 24(2) starts with a non obstante clause; it plainly is notwithstanding Section 24(1), and the proviso to Section 24(2) enlarges the scope of Section 24(2). When the window period has been provided under Section 24(1)(b) i.e. Section 24(2) and its proviso, higher compensation cannot follow in case of an award which has been passed within 5 years of the enactment of the 2013 Act otherwise anomalous results shall accrue. In case the proviso is read as a part of Section 24(1)(b), it would be

repugnant to the consideration of the provision which has been carved out saving acquisition and providing window period of 5 years to complete the acquisition proceedings. There were cases under the 1894 Act, in which award may have been made in December 2013, a few days before the Act was enforced on 1-1-2014. As the provisions of the 1894 Act are applicable to such awards, obviously notice of the award has to be given under Section 12 of the said Act. There is no question of outright deposit. In such event as the deposit is to be made when the Collector is prevented by the exigencies specified in Section 31(2) from making payment. The deposit is not contemplated directly either in the court or the treasury, as the case may be as provided in Section 31(2), corresponding to Section 77(2) of the 2013 Act.”

10. Thus, from the aforesaid decision as explained by the Hon’ble Apex Court that use of the punctuations is not that relevant for the purpose of interpreting the meaning of the provisions under the Act when the express meaning of the provisions is clear without any ambiguity. It is said that all the punctuations may be considered but it will generally be of little use since the sense of an Act should be the same with or without it.

11. Here, it would be important to refer the pre-amended provisions for the purpose of interpretation of the proviso appearing in Section 13. Before its 2018 amendment, it was read as re-produced above and the difference in the pre-amended provision and sub-section (1) of the amended provision is clearly spelt out. In the pre-amended provision, the word, “decision” was used where after amendment the words “judgment or order” has been used. To see minutely, the difference in sub-section (1) and sub-section (1-A) appears to be that sub-section (1) applies for such judgment or order of a Commercial Court below the level of District Judge and sub-section (1-A) applies for such judgment or order at the level of District Judge. There is actually no other difference in sub-section (1) and sub-section (1-A) of Section 13, except providing different forums for the purpose of appeal to be availed by the aggrieved party in respect of the order passed by a court below the District Judge and at the level of District Judge. Even the time period for preferring the appeal is also the same as 60 days from the date of the judgment or order. So, what is submitted on behalf of the Petitioner that, the proviso appearing in Section 13 is qualifying to both sub-section (1) and sub-section (1-A) is found support from the analysis made above that it only classifies two different forums for the judgment and order passed by two different level of courts. This proviso as appearing in Section 13 after the amendment was also there at the pre-amended stage when there was only sub-section (1) was there before the proviso comes to Section 13. After insertion of sub-section (1-A), though the entire sub-section (1) under Section 13 was substituted by way of 2018 Amendment, but the major change seen is that insertion of sub-section (1-A) after sub-section (1) before the proviso appears. Thus, in other words, it is that the proviso was there before the amendment, which would apply to such decision of all the Commercial Courts or Commercial Division of a High Court to appeal subject to the provisions contained in Order 43 of the Code of Civil

Procedure, 1908 as applied to by the Commercial Courts Act, 2015 and Section 37 of the Arbitration and Conciliation Act, 1996. Therefore, the insertion of new provision under sub-section (1-A) is not meant to create a sea of difference in the pre-amended and post-amended provisions, but it is only intended to create two different forums for appeal for two level of Courts. But at the same time, the limitation of appeal, in terms of the provisions contained in Order 43 of the C.P.C., has been continued to be same. Thus, the intention of the legislation is not seen with any ambiguity to take further foreign aid for an entirely different interpretation with regard to punctuations which is of little consequence as per the principle laid down by the Hon'ble Apex Court in *Indore Development Authority* (supra).

12. In a case before Delhi High Court, i.e. *Delhi Chemical and Pharmaceutical Works Pvt. Ltd. and another vs. Hingiri Realtors Pvt. Ltd. and another*, 2021 SCC OnLine Del 3603, the learned Single Judge while dealing with same question has observed that, as far as the interpretation of application of the proviso to sub-section (1) and sub-section (1-A) is concerned such proviso was there before the amendment and even after insertion of sub-section (1-A) after the amendment and is *pari materia* to the erstwhile proviso to sub-section (1) and there is nothing in the proviso specifically to indicate that the same is applicable only to sub-section (1-A).

13. Having considered the purpose and intention of introduction of sub-section (1-A) after its amendment in 2018 and the changes in words from decision to judgment or order, since no major difference is seen except providing two different forums for preferring appeal by the aggrieved party, it can be reasonably concluded that the proviso applies to both sub-section (1) and sub-section (1-A). A bare look to the Gazette Notification also seems that the provision is meant to apply to both sub-section (1) and sub-section (1-A). Except the difference in the marking of the punctuations, i.e. full-stop (.) and colon (:), there is nothing to support the contention that the proviso is applicable to sub-section (1-A) alone excluding sub-section (1). In other words, if it is accepted then it means that the provision for appeal would be applicable with such restrictions, as per the provisions in Order 43 of the CPC, in respect of the orders passed by the court at the level of District Judge, but the restrictions will not be applicable to such other courts below the level of District Judge. This reasoning is seen somehow illogical, because the purpose of the proviso would then not be in conformity with the object of the Act (The Commercial Courts Act, 2015). The object of the Act is for providing speedy disposal of high value commercial disputes. Therefore, the conclusion would be that the proviso is meant to apply to sub-section (1) and sub-section (1-A) both and its application cannot be limited to such provisions appearing in sub-section (1-A) only.

14. Thus, considering the submissions of both parties with regard to interpretation of the proviso clause appearing in Section 13, in the opinion of this Court, the same applies to both sub-section (1) and sub-section (1-A) to restrict the scope of appeal within the ambit of Order 43 of the Civil Procedure Code, 1908.

Thus, it is held that the present C.M.P. is maintainable in the present form. The preliminary objection is answered thus.

15. List the C.M.P. on 12th January 2026.
16. The interim order dated 17.09.2025 shall continue till 12th January 2026.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
C.M.P. maintainable.

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2025 (III) ILR-CUT-1281

BHARAT CHANDRA MALLICK
V.
BRANCH MANAGER, STATE BANK OF INDIA

[W.P.(C) NO. 19648 OF 2025]

17 OCTOBER 2025

[Dr. SANJEEB KUMAR PANIGRAHI, J.]

Issue for Consideration

Whether the bank can, on its own deduct money from pension account to recover dues arising from borrower's default?

Headnotes

CONSTITUTION OF INDIA, 1950 – Articles 21, 300-A – Right to livelihood & Right to Property – In the present Writ Petition the action of Bank authority, whereby the unilateral debit of ₹5,00,000 from the pension account of petitioner is under challenge – Petitioner is a guarantor and his wife is the loanee/borrower, petitioner & his wife is the joint account holder – The Bank unilaterally debited the said amount from the pension account of the petitioner without giving any demand notice – Whether the bank can, on its own deduct money from pension account to recover dues arising from borrower's default?

Held: No – The fact that the amount was taken from a joint account, held by the petitioner and his wife, does not legalize the recovery – If a debt is owed by one person, the bank cannot simply seize money from a joint account held with another person who is not a co-debtor – In this case, while the petitioner (guarantor) and his wife (borrower) are both liable for the loan, the joint account was effectively being treated as a convenient source without distinguishing whose funds were being taken – The petitioner is a retiree whose contribution to that account was his pension, which is protected.

Simply because the account was joint does not strip the funds of their pensionary nature in his hands – The Chander Udey Singh (Supra) ruling is instructive: pension funds do not lose their statutory protection merely by being in a joint account, and contractual consent in a guarantee cannot waive the exemption given to pension under law – Thus, the Bank’s resort to the joint account in this manner was legally improper. (Para 13)

Citations Reference

D.S. Nakara v. Union of India, **judgment dated 04.03.2025 passed in W.P.(C) No. 35266/2024**; Radhey Shyam Gupta v. Punjab National Bank, (2009) 1 SCC 376; State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; J&K Bank Ltd. v. Chander Udey Singh, **CM (M) No. 156/2022, Jammu & Kashmir High Court – referred to.**

List of Acts

Constitution of India, 1950; Code of Civil Procedure, 1908.

Keywords

Bank loan; Recover; Right to livelihood; Right to property; Pension Account; Deduction from the pension account; Joint account; Statutory Protection; Contractual consent.

Case Arising From

Challenging the action of unilateral debit of ₹5,00,000 from the pension account of the petitioner by the Bank without giving any prior notice.

Appearances for Parties

For Petitioner : Mr. Braja Mohan Sarangi

For Opp. Party : Mr. Manoj Kumar Mohapatra-1

Judgment/Order

Judgment

Dr. S. K. PANIGRAHI. J.

1. In this Writ Petition, the Petitioner seeks a direction from this Court to declare the Bank’s unilateral debit of ₹5,00,000/- from his pension account as illegal and arbitrary, and to direct refund of the said amount with consequential reliefs and protection of his pensionary dues.

I. FACTUAL MATRIX OF THE CASE:

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

(i) The petitioner, Bharat Chandra Mallick, is a retired employee of the Rail Coach Factory, Mancheswar, and presently a pension holder maintaining Account No. 10368202110 with the State Bank of India (SBI). His monthly pension is approximately ₹35,000, which constitutes his primary source of livelihood.

(ii) The petitioner's wife, Smt. Susila Mallick, had availed several loan facilities from the Opposite Party-Bank. These included two transport vehicle loans, Loan Account No. 61275175315 for ₹5,90,000 sanctioned on 12.06.2015, and Loan Account No. 61299626102 for ₹8,00,000 sanctioned on 07.12.2015, amounting to ₹13,90,000 in total, as well as a car loan of ₹7,45,000 under Loan Account No. 37268579099 sanctioned on 31.10.2017.

(iii) The petitioner stood as guarantor for the transport vehicle loans taken by his wife and executed Guarantee Agreements to that effect. Both borrower and guarantor were jointly and severally liable for repayment.

(iv) Due to default in repayment of the said loans, the two transport vehicle loan accounts were classified as Non-Performing Assets (NPA) on 07.11.2018. The Bank states that, despite repeated demands, neither the borrower nor the guarantor cleared the dues.

(v) On 17.02.2024, a sum of ₹2,30,000, and on 19.02.2024, a further sum of ₹2,70,000 were debited from Account No. 10368202110 held jointly by the petitioner and his wife, totalling ₹5,00,000. The Bank claims this amount was utilized to close the two transport vehicle loan accounts.

(vi) The petitioner contends that he is not a borrower, only a guarantor, and that the said loans were already closed under the CGTMSE scheme in 2023. He alleges that the Bank's deduction of ₹5,00,000 from his account, without notice or due process, is illegal, arbitrary, and violative of Article 21 of the Constitution of India.

(vii) The Bank, on the other hand, asserts that the car loan account (No. 37268579099) still remains outstanding and continues as an NPA with dues of ₹6,02,650.50 as of 01.07.2024, along with further interest.

(viii) The petitioner made a representation dated 07.01.2025 to the Bank seeking release of the withheld amount, stating that it was required for his daughter's marriage, but no response was received from the Bank.

(ix) The petitioner relies upon judicial precedents, *D.S. Nakara v. Union of India*¹ wherein Karnataka High Court has observed that even if a pensioner is indebted, at least 50% of pension must remain untouched, and in his case, being a guarantor, the entire recovery is impermissible.

(x) The Bank maintains that the joint account from which recovery was made is not an exclusive pension account, and that the petitioner continues to withdraw his monthly pension regularly since March 2024, implying that his pension has not been attached or withheld.

(xi) The Bank further submits that the debit transactions were made lawfully from a jointly operated account between husband and wife, both being liable for the loan, and that the petitioner was aware of the recovery since February 2024.

(xii) The Bank contends that the writ petition was filed after more than a year of the said debit transactions and hence suffers from delay, laches, and suppression of material

¹

judgment dated 04.03.2025 passed in W.P.(C) No. 35266/2024

facts, whereas the petitioner maintains that the recovery was arbitrary and violative of his fundamental right to livelihood.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

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

(i) The petitioner submits that the impugned withholding of ₹5,00,000 from his pension account is wholly illegal, arbitrary, and unconstitutional, being in violation of Article 21 and settled judicial precedents. The action amounts to deprivation of livelihood without authority of law.

(ii) The petitioner relies on D.S. Nakara (Supra) to assert that pension is not a bounty but a right to livelihood and social security. Any unauthorized deduction defeats the constitutional protection extended to pensioners.

(iii) The Karnataka High Court in W.P.(C) No. 35266/2024 categorically held that even if a pensioner is a borrower, the Bank cannot deduct more than 50% of the pension amount. Since the petitioner herein is only a guarantor and not a borrower, the Bank's act of withholding 100% of his pension savings is per se arbitrary.

(iv) The Bank's conduct amounts to unilateral recovery without due process, as no notice, opportunity of hearing, or lawful order preceded the debit transactions of 17.02.2024 and 19.02.2024. This violates principles of natural justice and the Reserve Bank of India's guidelines on recovery from pension accounts.

(v) The petitioner contends that since the underlying loan has already been closed under the CGTMSE scheme in 2023, there is no subsisting liability. Hence, the impugned recovery has no legal foundation and constitutes unjust enrichment by the Bank.

(vi) The action of withholding pension deposits has caused grave financial hardship, depriving the petitioner of means for subsistence and his daughter's marriage expenses, amounting to a violation of the right to dignity under Article 21.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

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

(i) The Opposite Party-Bank submits that the petitioner, as guarantor, is equally liable with the borrower under the principle of joint and several liability recognized in contract law and banking practice. Therefore, the recovery of dues from the joint account is fully lawful and within the contractual rights of the Bank.

(ii) The debit of ₹5,00,000 from the joint account was carried out to close the NPA transport vehicle loan accounts, for which both borrower and guarantor were jointly responsible. There was no illegality or violation of rights since the account belonged to both and was used for recovery of public money due to default.

(iii) The Bank emphasizes that the loans were sanctioned without collateral security. In such a situation, the Bank was compelled to debit funds from the joint account to

mitigate loss to public money. Hence, its actions were consistent with prudential banking norms and lawful contractual obligations.

(iv) The claim of the petitioner that his pension was withheld is factually incorrect. The Bank has demonstrated through the account statement (Annexure R/5) that the petitioner has been regularly withdrawing his monthly pension since March 2024 without any obstruction. Thus, no violation of his right to pension or Article 21 arises.

(v) The Bank argues that the cause of action is stale, as the transactions occurred in February 2024 and the writ petition was filed more than a year later. The petitioner's delay indicates an afterthought attempt to misuse the writ jurisdiction and interfere with legitimate recovery of dues.

(vi) The Bank maintains that the doctrine of limitation and the principle against suppression of material facts should apply. The petitioner knowingly concealed the existence of his guarantee obligations and the fact of joint account operations with his wife, thereby misleading the Court. Such suppression warrants dismissal with exemplary cost.

(vii) It is further submitted that loan dues constitute public money, and recovery actions taken by the Bank to safeguard such funds cannot be equated with arbitrary deprivation. The petitioner's plea of violation of Article 21 is misplaced, as the debit was from a joint account lawfully held and used for loan transactions.

(viii) The Bank thus prays that the writ petition be dismissed at the threshold, as it is devoid of merit, filed with suppression of material facts, barred by limitation, and aimed solely at obstructing lawful recovery of public money.

IV. COURT'S REASONING AND ANALYSIS:

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

6. This case raises a narrow but important question: whether a bank can, on its own, deduct money from a pensioner's account to recover dues arising from a borrower's default. What appears at first glance to be a routine banking dispute, in fact, cuts to the core of a larger issue: the protection of pension as a lifeline for survival in old age, and the limits of contractual power when weighed against the constitutional right to livelihood.

7. It is evident from the legal framework that pensionary benefits are accorded special protection. Section 60(1)(g) of the Code of Civil Procedure, 1908 exempts government pensions from attachment in execution of a decree. In fact, the Supreme Court in the case of *Radhey Shyam Gupta v. Punjab National Bank*² underscored that even after a pension or gratuity amount is credited to a bank, it does not lose its character as a protected sum. The Court held that such retiral benefits could not be attached under the provisions of the Code of Civil Procedure despite being in the bank's possession. The relevant excerpts are produced below:

²

(2009) 1 SCC 376.

“However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court decree in view of proviso (g) to Section 60(1) of the Code.”

8. In other words, what the law forbids by way of formal attachment cannot be indirectly accomplished by the bank unilaterally adjusting or debiting pension funds.

9. The petitioner’s reliance on *D.S. Nakara (Supra)* is apt. Pension is not a matter of charity or a bounty from the State, but rather a hard-earned benefit which accrues to an employee, reflecting the right to live with dignity in old age. In *State of Jharkhand v. Jitendra Kumar Srivastava*³ the Supreme Court took a similar stance and held that a person cannot be deprived of pension without the authority of law, as pension is considered “property” under Article 300A of the Constitution. Any executive or contractual action that takes away a pensioner’s money without explicit legal sanction is ultra vires. The relevant excerpts are produced below:

“It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold - even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different”

10. Here, the Bank’s debit of ₹5,00,000 from the petitioner’s account, which contained his pension, was done without any court order or prior notice, and thus prima facie violates the principle that pension cannot be taken except by due process.

11. The Bank contends that because the petitioner stood as a guarantor and the account was held jointly with the borrower (his wife), it was within its rights to debit the joint account for loan recovery. However, this argument cannot override the statutory safeguards on pension funds. The High Court of Jammu and Kashmir in the case of *J&K Bank Ltd. v. Chander Udey Singh*⁴ was faced with a strikingly similar matter, wherein it held that pension retains its exempt status even after being deposited in a bank account and such funds cannot be attached or deducted

³ (2013) 12 SCC 210.

⁴ CM (M) No. 156/2022, Jammu & Kashmir High Court

unilaterally, even under contractual agreements like deeds of guarantee. The relevant excerpts are produced below:

“...pension amounts are statutorily insulated from any coercive recovery measures, including unilateral deduction by banks.

...

Pensionary benefits, being the sole means of sustenance for most retired individuals, acquire heightened significance in such circumstances. The withholding or deduction of pension funds, particularly when such funds are statutorily protected, would not only cause financial distress but also amount to a violation of the respondent's right to live with dignity... Thus, when weighed against the irreparable inconvenience to the bank if any does not tilt the balance of convenience in its favour.”

12. In the present case, although the petitioner's liability as a guarantor is co-extensive with the borrower, the mode of recovery chosen by the Bank, a unilateral withdrawal from an account fed by pension, runs afoul of this public policy.

13. The fact that the amount was taken from a joint account, held by the petitioner and his wife, does not legalize the recovery. If a debt is owed by one person, the bank cannot simply seize money from a joint account held with another person who is not a co-debtor. In this case, while the petitioner (guarantor) and his wife (borrower) are both liable for the loan, the joint account was effectively being treated as a convenient source without distinguishing whose funds were being taken. The petitioner is a retiree whose contribution to that account was his pension, which is protected. Simply because the account was joint does not strip the funds of their pensionary nature in his hands. The Chander Udey Singh (Supra) ruling is instructive: pension funds do not lose their statutory protection merely by being in a joint account, and contractual consent in a guarantee cannot waive the exemption given to pension under law. Thus, the Bank's resort to the joint account in this manner was legally improper.

14. The manner in which the recovery was effected also fails basic norms of natural justice. It is undisputed that the Bank did not issue any prior notice or obtain consent from the petitioner before debiting the amounts on 17.02.2024 and 19.02.2024. A unilateral debit from a customer's account, especially when it consists of pension money, is an extreme step. The petitioner was entitled to at least a notice or demand, and an opportunity to be heard on why the sum was being taken. He could have, for instance, pointed out his contention that the loans had been settled under a credit guarantee scheme, or offered an alternate repayment plan. By bypassing any dialog or process, the Bank's action was arbitrary. The proper course for a bank in case of loan default is to resort to lawful recovery channels, such as invoking security, filing a suit or approaching a tribunal, rather than self-help by dipping into a pension account.

15. The Bank contends that the petition is vitiated by delay and laches, having been filed more than a year after the recovery, and further alleges suppression of material facts such as the petitioner's guarantor role and joint account details. The

Court, however, is not convinced that these technical objections foreclose relief. The petitioner has shown that he made a representation to the Bank in January 2025, within eleven months of the disputed debit, seeking restitution of the amount, yet received no response. He approached this Court only after realizing that the Bank would not rectify the matter.

16. Given the continuing impact on his livelihood and the fundamental rights violation alleged, a marginal delay cannot defeat substantive justice. There is no indication that the petitioner ever acquiesced in the recovery; merely continuing to use the same account for pension credits cannot be construed as consent to the ₹5,00,000 deduction. As for the existence of alternative remedies, while monetary disputes ordinarily fall within the realm of civil courts or tribunals, that does not curtail writ jurisdiction where a public sector bank acts with manifest illegality infringing constitutional guarantees.

17. The writ jurisdiction of this Court is designed to check arbitrary executive action and to uphold the rule of law without being constrained by procedural formalities. Where a citizen's basic means of sustenance is imperilled by an unlawful act of the State or its instrumentalities, the Court's duty is to intervene. Accordingly, the matter deserves adjudication on its merits.

V. CONCLUSION:

18. In view of the foregoing discussion, the impugned action of the Opposite Party-Bank in debiting a sum of ₹5,00,000 from the petitioner's joint account (Account No. 10368202110) is held to be illegal and unsustainable in law. It violated the statutory protections afforded to pension funds as well as the petitioner's fundamental right to livelihood under Article 21.

19. Consequently, the Bank is directed to reverse the sum of ₹5,00,000/- to the petitioner's account within four weeks from the date of publication this judgment. The petitioner shall be permitted to operate his account freely, and the Bank shall not *de futuro* recover any amount from his pension without adhering to due process of law.

20. It is clarified that this judgment does not extinguish the underlying loan obligations; the Bank remains at liberty to recover any outstanding dues by lawful means, for instance by enforcing security or pressing its claim before the appropriate forum. However, under no circumstances can the Bank directly appropriate a pensioner's entire pension or savings in violation of the guidelines discussed above.

21. The Writ Petition is **allowed** with the above directions.

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

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition allowed.

2025 (III) ILR-CUT-1289

UNION OF INDIA
V.
M/s. KIOCL LTD., BANGALORE

[FAO NO. 371 OF 2019]

WITH

[FAO NO. 372 OF 2019]

07 NOVEMBER 2025

[Dr. SANJEEB KUMAR PANIGRAHI, J.]**Issue for Consideration**

Whether this court exercising limited Appellate jurisdiction can re-appreciate/ re-evaluate the factual determination duly rendered upon an adequate evidentiary foundation.

Headnotes

RAILWAYS ACT, 1989 – Sections 78, 83 r/w Railway Board Rates Circular No. 36 of 2009 – In the present Appeal the order passed by Railway claims Tribunal directing to refund ₹ 58,01,110.80 (Distance Based Charges) with simple interest @ 6% per annum from 2/12/2015 till payment is under challenge – The appellant is the East Coast Railway Authority & the respondent is a Government of India Enterprises engaged in the production and commercial dissemination of iron oxide pellets – The respondents/company is entirely dependent upon the services of the Indian Railways for the conveyance of iron ore domestically as well as to the foreign countries – The respondent/company booked a railway rake for carriage of its material – The Appellant railway administration while assessing the freight payable of the said consignment, not only levied the regular freight charges but also imposed an additional Distance Based Charges – The respondent pleaded that the iron ore fines in question were intended exclusively for domestic industrial consumption not for the exportation – The appellant contended that the respondent/company is a 100% export oriented unit and the respondent had not submitted the requisite documents i.e. Affidavit by consignee before taking delivery and indemnity note by consignee as specified vide Para 3(B) (III) and Para 3(B) (V) of the Rate Circular 36 of 2009 – The tribunal after examining the records, exhibits filed by the both parties observed that no pellets were sold outside India and all the pellets sold domestically – Whether this court exercising limited appellate jurisdiction can re-appreciate/re-evaluate the factual determination duly rendered upon an adequate evidentiary foundation?

Held: No – In the absence of any demonstrated perversity, patent illegality, or mis-appreciation of evidence, such a finding warrants judicial deference under the well-settled doctrine governing appellate circumspection – This Court, exercising limited appellate jurisdiction under Section 23 of the Railway Claims Tribunal Act, 1987, is not tasked with re-evaluating factual determinations duly rendered upon an adequate evidentiary foundation – The principle of concurrent factual finality, deeply embedded in appellate jurisprudence, obliges this Court to respect the factual conclusions of the Tribunal, particularly when they emanate from contemporaneous industrial and fiscal records, and exhibit both coherence and evidentiary integrity.

(Para 12 (B) (vi))

Citations Reference

Bal Kishan Bansal Vs Prमित Bansal and another, **2006 (4) AWC 3509 in Civil Revision No.369 of 2004 dated May 2006**; Hindustan Petroleum Corporation Ltd Vs. Pinkcity Midway Petroleum, **Civil Appeal No.5156 of 2003 (Arising out of SLP (C) No.21154/2002) Supreme Court of India**; State of Haryana v. Raghubir Dayal, **AIR 1995 SC 2130 – referred to.**

List of Acts

Railways Act, 1989; Railway Boards Rates Circular No. 36 of 2009.

Keywords

Distance Base Charges; Freight; Levy of fine; Iron ore; Oxide pellets; Export; Domestic Industrial Consumption; Assessment of freight; Re-appreciation; Re-valuation; Appellate Jurisdiction; Factual determination; Consignment; Affidavit of declaration; Subordinate legislation; End use

Case Arising From

Judgment dated 04.02.2019 passed by the Railway Claims Tribunal, Bhubaneswar Bench (“RCT”) in case No. OA III/9/2015.

Appearances for Parties

For Appellant : Mr. Bhabani Shankar Rayguru, Sr. P.C.
For Respondent : Mr. Satya Smruti Mohanty

Judgment/Order

Judgment

Dr. S.K. PANIGRAHI, J.

A. Since common question of facts and laws are involved in both the above mentioned FAOs, the same are heard together and are disposed of by this common judgment. However, this Court feels it apposite to deal with the FAO No.371 of 2019 as the leading case for proper and effective adjudication of both the cases.

B. In filing this FAO, the Appellant being represented through its General Manager, East Coast Railway, Chandrasekharpur has challenged the impugned

judgment dated 04.02.2019 passed by the learned Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar in Case No.OA III/9/2015.

C. These appeals assail the judgment dated 04.02.2019 passed by the Railway Claims Tribunal, Bhubaneswar Bench (“RCT”) in OA III/9/2015, whereby the RCT directed refund to Rs.58,01,110.80 (Distance Based Charges, “DBC”) with simple interest @ 6% per annum from 02.12.2015 till payment, holding that DBC was impermissibly levied on a rake of iron-ore fines booked under RR No. 261002668 dated 15.12.2012 when the resultant pellets were not exported but sold domestically.

D. The controversy turns on a narrow compass, as to whether on the facts and the governing tariff circular—Railway Board Rates Circular No. 36 of 2009 dated 01.06.2009 (“RC-36/2009”)—the subject consignment attracted export tariff (Class-180 + DBC) or domestic tariff (Class-140 without DBC). The answer rests on (a) the legally relevant “end-use” at the time of carriage; (b) compliance with documentary conditions in RC-36/2009 to qualify for the domestic rate; and (c) the effect, if any, of Sections 78 and 83 of the Railways Act, 1989 (“the Act”) on the levy in question.

I. FACTUAL MATRIX OF THE CASE:

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

i) The Respondent—Company, a Government of India enterprise engaged in the metallurgical sector, is primarily devoted to the production and commercial dissemination of iron oxide pellets, and operates a fully integrated industrial establishment encompassing both upstream and downstream facilities. The said establishment comprises, inter alia, a pelletization plant endowed with an installed production capacity of 3.5 million tonnes per annum, together with a blast furnace unit designed to yield approximately 2.16 lakh tonnes per annum of foundry-grade pig iron. In order to secure a continuous and assured supply of its principal raw material, namely iron ore fines, the Respondent entered into a long-term contractual covenant with M/s. National Mineral Development Corporation Limited (NMDC), under which the requisite quantities of iron ore were to be loaded at NMDC’s Kirandul and Bachelu loading stations in the Bailadila sector and transported through railway rakes placed and operated by the East Coast Railway, Bhubaneswar. Pursuant to the said arrangement, the Respondent regularly procured substantial consignments of iron ore fines from NMDC’s Bailadila mines located at Kirandul/Bachelu. The said iron ore fines, though forming part of the Respondent’s broader stream of industrial procurement, were, during the relevant period, not earmarked for export, but were rather consumed captively within the Respondent’s domestic manufacturing operations for conversion into iron oxide pellets. The resultant pellets were predominantly channelled into the domestic market for industrial utilisation, and only such incidental or residual quantities, as may have remained unabsorbed in domestic demand, were thereafter diverted for export on a need-based and on ancillary basis.

ii) The Respondent–Company is entirely dependent upon the services of the Indian Railways for the conveyance of its raw material, namely iron ore fines, from the Kirandul and Bachelu loading stations to the Visakhapatnam Port (VSKP), such transportation being effected through a dedicated private railway siding integrated into its logistical chain. Upon arrival at Visakhapatnam, the said iron ore fines are trans-shipped and thereafter conveyed via maritime route to the Respondent’s Pelletization Plant at Mangalore, where they constitute the indispensable feedstock for the continuous operation and sustenance of its iron oxide pellet production process. The Respondent’s dependence on the railway network is thus absolute and structural, the entire supply chain being intrinsically interlinked with the efficiency and regulatory framework of the East Coast Railway, without which the Respondent’s industrial production cycle would inevitably be rendered inoperative.

iii) The payment of freight charges in respect of the railway rakes loaded for the Respondent–Company, M/s. KIOCL Limited, at the NMDC, Kirandul Loading Station, was effected through an Online e–Freight Payment System, a digital mechanism instituted for seamless remittance of freight dues to the Railway Administration. In order to operationalize this arrangement, a tripartite agreement was executed on 29th February, 2012 among the parties like the State Bank of India, Panambur Branch, Mangalore, the Respondent–Company, and the East Coast Railway, Bhubaneswar, stipulating the modalities for payment of freight and rake charges through the e–payment mode. Under the terms of the said covenant, the Respondent was obligated to ensure the availability of requisite funds on a daily basis, which were to be transferred from its designated account maintained with SBI, Mangalore Branch, to a dedicated account of the East Coast Railway. The said account, maintained at the State Bank of India, Main Branch, Bhubaneswar, was to serve as the authorized repository for receipt of such e–payments, thereby facilitating a continuous and automated settlement of freight liabilities arising out of the Respondent’s consignment movements.

iv) In the ordinary course of its operations, the Respondent–Company booked a railway rake vide Railway Receipt (RR) No. 261002668 dated 15th December, 2012, which was loaded on 14th December, 2012 at the NMDC’s NMVK Siding for carriage to its destination at VPTG, covering a distance of approximately 562 kilometres. The Appellant–Railway Administration, while assessing the freight payable on the said consignment, not only levied the regular freight charges but also imposed an additional Distance Based Charge (DBC) component thereon. Consequently, the total freight realised from the Respondent aggregated to ₹1,14,46,604/-, which sum comprised, inter alia, a DBC component of ₹58,01,110.80/-, notwithstanding the fact that there was no default or misfeasance attributable to the Respondent, nor was the consignment intended for export. It is of some considerable significance that the Respondent had, contemporaneously, furnished an affidavit of declaration affirming that the iron ore fines in question were intended exclusively for domestic industrial consumption and not for exportation. Notwithstanding such declaration, the Appellant proceeded to levy the

DBC, which under the governing Rate Circular No. 36 of 2009 is impermissible in cases where the consignment is meant for domestic use and not for export-oriented processing. Upon being apprised of the said levy, the Respondent promptly lodged a formal claim for refund of the excess freight amounting to ₹58,01,110.80/-, vide its representation dated 6th February, 2013, asserting that the charge had been illegally and unjustifiably imposed.

v. The full particulars of payment of freight are furnished hereunder:-

Sl. No.	Date of Booking	RR	Station	Freight paid in Rs.		Amount of refund of claim in Rs.
1	15/12/12	261002668	NMVK	VPTG	1,14,46,604/-	58,01,110.80
Total						58,01,110.80

The Appellant–Railway Administration was, therefore, under a legal and equitable obligation to refund the sum of ₹58,01,110.80/- (Rupees Fifty-Eight Lakhs One Thousand One Hundred Ten and Eighty Paise only), representing the excess freight erroneously recovered by way of Distance Based Charges (DBC), notwithstanding that the consignment in question was not destined for export. The Respondent had, in its claim, further sought interest at the rate of 18.25% per annum, computed from the date of lodging of the claim until the date of actual realisation, on the principle that the Railway Administration had unjustly enriched itself by retaining amount collected in contravention of the governing tariff instrument, namely Railway Board’s Rate Circular No. 36 of 2009, which explicitly prohibits the levy of DBC in cases involving domestic consumption of iron ore fines. The impugned collection, thus, stood squarely opposed to the statutory framework and administrative instructions regulating freight computation, warranting restitution of the amount together with appropriate interest to neutralise the pecuniary prejudice occasioned to the Respondent.

v) Challenging the said action of the Appellant, the Respondent herein (who was the applicant in the learned Court below) preferred an application vide Case No. OAI/9/2015 before the learned Railway Claims Tribunal, Bhubaneswar Bench, Bhubaneswar. While hearing the said application, the learned Tribunal had framed the following issues for determination:-

- i. Is the O.A. maintainable?
- ii. Whether the use of iron ore fines, or the end use of the iron oxide pellets, determines the freight rate, i.e. domestic consumption rate of export rate?
- iii. Whether the respondents entitled to levy Distance Based Charges for manufacture of pellets by the applicant?
- iv. Whether the applicant is entitled for refund of Rs.58,01,110/- collected by the respondent?
- v. To what reliefs the applicant is entitled?

vi) Accordingly, on hearing both the sides, the learned Tribunal decided the above noted issues in favour of the Respondent herein vide judgment dated 04.02.2019. The direction portion of the said judgment dated 04.02.2019 is reflected hereunder:-

ORDER

“The OA is allowed on contest. The Respondent is directed to pay a sum of Rs.58,01,110/- (Rupees Fifty Eight Lakhs One Thousand and One Hundred Ten) only along with simple interest @ 6 per cent per annum from the date of application i.e. 02/12/2015 till the date of the payment to the applicant.

In the peculiar circumstance of the case there shall be no order as to costs.”

Being aggrieved by the said judgment dated 04.02.2019 passed in the above noted Case bearing No. OA III/9/2015 the Appellant-East Coast Railway, Bhubaneswar has preferred this present appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

2. Learned counsel for the Appellant earnestly made the following submissions in support of his contentions:

i) It is the contention of the Appellant–Railway Administration that, in terms of the enabling provisions enshrined under Sections 78 and 83 of the Railways Act, 1989, the Railway Administration is vested with the statutory prerogative to re-measure, re-calculate, or re-assess the freight charges and, if necessary, to raise a consequential demand at a subsequent stage upon discovery of any error or omission in the initial computation. It is urged that the learned Railway Claims Tribunal, while adjudicating the dispute, failed to take cognizance of or give due interpretative weight to these provisions, which according to the Appellant, confer upon the Railway Administration an unfettered statutory authority to review and rectify freight assessments retrospectively whenever found inconsistent with the prescribed tariff or circular. The grave omission to consider the statutory latitude embodied in Sections 78 and 83, has vitiated the impugned decision by rendering it juridically incomplete and procedurally infirm.

ii) The Appellant–Railway Administration further contends that the Respondent–Company, M/s. KIOCL Limited, is an admittedly 100% Export-Oriented Unit (EOU), a material aspect which the learned Railway Claims Tribunal failed to properly appreciate while adjudicating the issue concerning the levy of Distance Based Charges (DBC). It is further submitted that the Tribunal, while rendering its judgment, deviated from the significant interpretative framework delineated under Paragraph 3(B)(III) of the Railway Board’s Rate Circular No. 36 of 2009, dated 1st June, 2009, which governs the conditions and parameters for classification of freight at domestic or export tariff rates. By departing from the binding administrative guidelines and by placing disproportionate reliance upon the deposition of A.W.-1 representing M/s. KIOCL Limited, the Tribunal has arrived at a conclusion bereft of empirical foundation and unsupported by the statutory

scheme, thereby vitiating the adjudicatory process with manifest error in appreciation of evidence and misapplication of governing circular instructions.

iii) It is further submitted on behalf of the Appellant–Railway that the determinative criteria expressly enunciated in Rate Circular No. 36 of 2009 have been completely disregarded by the learned Railway Claims Tribunal in the course of adjudication. The said circular, which constitutes the operative framework governing the levy or exemption of Distance Based Charges (DBC), mandates that the eligibility for concessional or domestic tariff is conditioned upon the establishment of actual end-use of the iron ore consignment in the manufacture of consumable goods within a pre-declared domestic manufacturing unit. Unless such end-use is affirmatively demonstrated through cogent documentary evidence, the consignment, by necessary implication, continues to attract the export tariff classification, inclusive of DBC. However, the learned Tribunal, while rendering the impugned decision, appears to have proceeded on a presumptive premise that the iron ore fines transported were utilised by the Respondent–KIOCL Limited for domestic industrial consumption, without undertaking the requisite factual and evidentiary verification mandated under the said circular. The impugned finding is therefore legally unsustainable, being contrary to the express stipulations of the governing tariff regime and unsupported by the evidentiary record.

iv) The learned Tribunal has not considered the issue that the Respondent–KIOCL Ltd. had not submitted the requisite documents i.e. Affidavit by consignee before taking delivery and indemnity note by consignee as specified vide Para 3(B)(III) and Para 3(B)(V) respectively of the Rates Circular 36 of 2009, to avail domestic rate and passed the impugned judgment against the Appellant which is per se not maintainable.

v) Learned counsel for the Appellant has raised the following issues for determination by this Court:-

a) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with regard to applicability of domestic tariff rate or export tariff rate to the Applicant/ Respondent is just and proper?

b) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with regard to entitlement of the Appellant/ Respondent-Railways to levy Distance Based Charges for manufacture of pellets by the applicant/ Company is sustainable in the eye of law?

c) Whether the finding of the learned Railway Claims Tribunal, Bhubaneswar with regard to entitlement of Rs.58,01,110/- collected by the Appellant-Railways is justified?

d) What relief the applicant/ Company is entitled to?

vi) The present Respondent has suppressed the end use and it is a 100% export oriented company which exports iron oxide pellets which can be clarified / verified from the Excise Return of the applicant / respondent for the month of October, 2012. The Respondent had availed “domestic freight rate” for the period from 22.05.2008

to 31.03.2012 based on its false declaration on forwarding notes and on detection of such false declaration by the Central Audit. Further, upon a query made by the Appellant in the matter, the Respondent submitted its reply on 26.01.2013 thereby admitting the export of 4,76,298 tons of iron oxide pellets during the period from June, 2009 to September, 2011.

vii) It was further pleaded by the Appellant before the learned RCT that the applicant/ the Respondent herein had availed “domestic tariff rate” instead of “export tariff rate” by giving false declaration in the forwarding notes during the period from 22.05.2008 to 31.03.2012 and as such, the Appellant/Respondent had raised demand to a tune of Rs.414.45 crores against the applicant/Respondent therein. Thereafter, the applicant/Respondent herein had challenged the said penalty before this Court through Writ Petition vide W.P.(C) No.22943 of 2013 and this Court vide order dated 13.12.2013 granted interim order of stay in respect of 50% of the demand subject to payment of the balance 50% wherein this 50% was the freight charges only, excluding the penalty and pursuant to such order passed by this Court, the Applicant has paid a sum of Rs.51.80 crores only to the Appellant.

viii) For similar miss-declaration made by the applicant/ Respondent this Appellant had raised demand of Rs.182,09,16,780/- on 13.10.2014 in respect of 2,82,848 tons of iron ore for the period from 11.07.2008 to 05.06.2009 and on the same day i.e. on 13.10.2014 demand of Rs.6,27,77,95,421/- was raised in respect of 8,71,015.32 tons of iron ore for the period from 06.06.2009 to 23.08.2011 for miss-declaration furnished by the applicant/ Respondent vide letter dated 13.10.2014 and all these documents clearly shows that the iron oxide pellets were exported by the applicant/ Respondent for which the applicant was liable to pay export tariff rate.

ix) When iron ore is moved for pelletization (for export), such carriage of iron ore will be charged at Class 180 along with levy of Distance Based Charges which ultimately means that it will attract export tariff rate and paragraph no.5 of the Rate Circular No.36 of 2009 dated 01.06.2009 under Annexure-R/7 of the Written Statement filed by the Appellant clarifies such position. Moreover, for violation of the provisions stipulated under paragraph 3(B)(III) and paragraph 3(B)(V) of the Rate Circular No.36 of 2009 dated 01.06.2009, the applicant is also liable to pay freight charge at Class 180 and distance based charge under paragraph 4(c) thereof. It is pertinent to mention here that the end use of the goods transported determines as to whether domestic consumption rate or export rate would apply and this is the essence of the Rate Circular No.36 of 2009. The said circular prescribes the submission of specific documents by the applicant in order to avail the domestic consumption rate. Further, the applicant/ Respondent is registered as a Company to carry out the works of filtration of iron ore concentrate and its export and production of iron ore pellets and its export.

x) Further, the applicant/ Respondent-Company at the time of booking of iron ore from KRDL and BCHL, had submitted the monthly excise returns as applicable to 100% export oriented unit and no document in support of domestic manufacture

of pig iron was submitted to the Appellant and only on forwarding note the applicant had declared the consignment was meant for domestic consumption and by virtue of such declaration, the Company availed the domestic tariff rate, though such declaration was false. The applicant/Respondent manufactures and exports pellets. The production record of the Company during the period from 22.05.2008 to 31.03.2012 shows that 6423 MT pellets generally meant for export, was produced and as against only 180 MT pig iron and by mis-declaration, the company unduly availed domestic tariff rate.

x) Further, the date of booking of consignment in respect of the instant case is 15.12.2012 and as such, the Rate Circular No.30 of 2008 has no application, but the Rate Circular No.36 of 2009 will be applicable, as it supersedes the former circular. But, in this case, while adjudicating the matter the learned Railway Claims Tribunal failed to consider the above aspects in its proper perspective, so also did not considered the provisions stipulated under the Rate Circular No.36 of 2009. The Ld. Tribunal settled the issues in favour of the applicant in a mechanical and routine manner which is not only erroneous, but also unsustainable in the eye of law and as such, the impugned judgment dated 04.02.2019 requires to be set aside.

xii) The actual end-use was export of pellets which is the key factor as per the applicable Rate Circular No.36 of 2009. When iron ore is moved for pelletization for export, the applicable rate is Class-180 + DBC=Export Tariff, whereas in case of Domestic Rate, Class-140 without DBC is only allowed, if conditions in paragraph No.3 of the Rate Circular No.36 of 2009 are fulfilled, including affidavits and proof of use in domestic production like pig iron. Here in this case, the conduct of the applicant-Company shows export use, as the applicant produced 6423 MT of pellets (exportable), but out of which only 180 MT of pig iron was for domestic use. Further, the applicant admitted the export of 4,76,298 MT iron ore and despite this, the applicant's claim for domestic tariff rate is quite inconsistent and amounts to misdeclaration.

xiii) Further, it is trite that in case of statutory circulars or rate circulars, the binding effect on the parties and authorities is emphasized, unless contrary to law. Hence, the rate Circular No.36/2009 is binding unless it is set aside and as such, it must be complied with. Misdeclaration or false representation disentitles a person from availing concessional tariff which is squarely applicable to the case of the applicant/Respondent.

Learned counsel for the Appellant, accordingly, prays for allowing the prayer made in both the FAOs.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

3. The Learned Counsel for the Respondents earnestly made the following submissions in support of his contentions:

- i) The Respondent—KIOCL Limited, a Government of India enterprise under the aegis of the Ministry of Steel, instituted O.A. No. III/9/2015 before the Railway Claims Tribunal, Bhubaneswar, impugning the levy of Distance Based Charges (DBC) amounting to ₹58,01,110.80, in respect of R.R. No. 261002668 dated 15.12.2012. The Respondent contended that the consignment of iron ore fines was exclusively utilised for domestic industrial production of iron oxide pellets, and not for export-oriented processing, thereby rendering the DBC levy contrary to the statutory tariff prescription embodied in Rate Circular No. 36 of 2009.
- ii) Upon a scrupulous evaluation of the evidentiary record, including the excise returns for the quarter October–December 2012, the learned Railway Claims Tribunal (RCT) arrived at a clear and empirically substantiated finding that no iron oxide pellets were exported outside India during the relevant period and that the entire production was sold within the domestic market. This finding, resting on primary contemporaneous documents, was untainted by conjecture or extraneous inference. The Tribunal also noted that the collection of DBC was not disputed, being reflected in the Railway Receipt entries (Sl. Nos. 33–34) and duly remitted through the e-payment mechanism prevailing at that time.
- iii) Proceeding on these foundational premises, the learned Tribunal held that the levy of DBC was inherently unsustainable in law, being in direct contravention of Rate Circular No. 36 of 2009, which—having the force of subordinate legislation—explicitly excludes the imposition of DBC on domestic consumption consignments. The Tribunal, applying the equitable doctrine of *restitutio in integrum*, directed the Appellant—Railways to refund the said amount of ₹58,01,110.80 together with simple interest at 6% per annum, reckoned from 02.12.2015 until payment, thereby effectuating the principle of restitutionary justice that seeks to restore the aggrieved party to its rightful financial position had the illegal exaction not occurred.
- iv) Responding to the Appellant’s reliance on Sections 78 and 83 of the Railways Act, 1989, it is contended that these provisions are purely procedural and enabling in nature, authorising recalculation of freight or recovery of undercharges, but they do not create a substantive head of charge. The present dispute, which turns on the validity of a tariff classification and the illegality of the DBC levy, therefore falls outside the ambit of these provisions.
- v) On the argument that KIOCL, being a 100% Export-Oriented Unit (EOU), could not claim the domestic rate, the Respondent submits that an EOU is statutorily entitled to engage in domestic tariff area transactions to the extent permitted under the Foreign Trade Policy. This is corroborated by the excise returns for October–December 2012, where **Column 4A** (Domestic Tariff Area sales) records the transactions in question, while **Column 4B** (exports) remains blank—decisively establishing that the pellets were sold domestically and not exported.

vi) The Appellant's plea of non-submission of the requisite affidavit and indemnity note is untenable. The Appellant's own written statement (para 10) before the Tribunal categorically acknowledges that the Respondent had duly submitted these documents. Even assuming *arguendo* a procedural lapse, the doctrine of substantial compliance would operate to prevent a purely technical omission from defeating a substantive entitlement, particularly where no prejudice has been demonstrated.

vii) The reliance placed on the pendency of S.L.P. (C) No. 15869 of 2015 and Transfer Petitions (C) Nos. 832–854 of 2015 before the Hon'ble Supreme Court is, it is urged, misconceived both in law and in fact. The order of the Supreme Court dated 14.12.2015 merely stayed proceedings in certain identified writ petitions, which were specifically enumerated in the order. The present appeal is not among them, nor has any specific stay been issued restraining its adjudication. The said order, being context-specific, cannot be expanded into a blanket interdiction covering all matters involving the issue of DBC.

viii) The Respondent further clarifies that the proceedings pending before the Supreme Court concern the constitutional validity of the Rate Circular and the Distance Based Charge regime in general. In contrast, the instant case raises a question of application, not of *vires*. The Respondent has not challenged the competence of the circular but has merely asserted that its operative terms are inapplicable to the present factual matrix. The issue, therefore, lies within the interpretative rather than constitutional domain.

ix) Lastly, it is emphasised that although O.A. No. III/9/2015 was filed in 2015 and decided on 04.02.2019, the Appellant never disclosed the alleged pendency of proceedings before the Supreme Court during the Tribunal's adjudication. The belated invocation of this plea at the appellate stage betrays an absence of bona fides, constituting an afterthought calculated to delay restitution of the amount unlawfully retained. Such conduct, it is urged, offends the duty of candour and procedural fairness incumbent upon public authorities.

For all these reasons, the Respondent prays that the appeal be dismissed, and the well-reasoned judgment of the Railway Claims Tribunal be affirmed in toto.

IV. FINDINGS OF THE TRIBUNAL:

4. The Railway Claims Tribunal, Bhubaneswar Bench heard the parties, perused the documents on record, and upon the basis of the pleadings framed five issues for consideration.

5. On the issue of maintainability, the Tribunal observed that on perusal of the agreement placed before the Bench on the date of arbitration, the tripartite agreement among Chief Commercial Manager, East Coast Railway, KIOCL Ltd and State Bank of India dated 29/02/2012 is an agreement which governs the methodology of transfer of fund electronically relating to payment/realisation of

freight and any dispute thereof from KIOCL Ltd. by State Bank of India on advice from Railways/ and is not related to charge of freight based on classification of goods as well as type of materials to transport as in this claim case and is not applicable to the subject issue concerned in this particular claim. There is no record available in the WS and during the proceeding of the case wherein the respondent neither mentioned the presence of the agreement nor did they make any application for referring the case to arbitration. The pleading of the respondent thus fails to satisfy the observations of the Apex Court mentioned under serial No. i) to iv) at page 13 of that judgement.

6. In view of above, the Bench is convinced and decide this issue against the respondent. This is also in the conformity of the judgment of Allahabad High Court in the case of *Bal Kishan Bansal Vs Pramit Bansal and another*¹ and the judgment of the Supreme Court of India in the Civil Appeal No.5156 of 2003 (Arising out of SLP (C) No.21154/ 2002) and the judgment in the case of *Hindustan Petroleum Corporation Ltd Vs. Pink city Midway Petroleum* decided by the Supreme Court of India in the Civil Appeal No.5156 of 2003 (Arising out of SLP (C) No.21154/2002).

7. So far as the issue with regard to use of iron ore fines, or the end use of the iron oxide pellets, determines the freight rate i.e. domestic consumption rate or export rate is concerned, the Tribunal observed that the applicant as well as the respondent relied upon the Rate Circular No.36 of 2009 dated 01/06/2009 (Exhibit R/7) extended thereafter time to time in support of the irrespective case. Paragraph 5 of the Rates Circular mandates that carriage of pallets of export as well as carriage of iron ore moved for such pelletization for export will be charged at class 180 plus DBC (Distance Based Charges) and the applicant is required to prove that iron ore transported and pallets produced are used domestically and not exported.

8. While discussing the issue No.3, the Tribunal observed that on scrutiny of the records and exhibits filed by both parties, the Bench observes that the concerned RR was raised on 15th December 2012. The examination of Exhibit R/3, Exhibit A/9 & Exhibit A/10 i.e. Excise Returns of KIOCL for the month of October 2012, November and December 2012 show that no pellets KIOCL outside India and all the pellets sold domestically. There was no other evidence available in the case file to and were exported by were sold accept the pleading of the respondent that the iron ore fines / pellets were exported.

9. Concerning to the RR, the Bench is, therefore, convinced that the respondent plea is not supported by any cogent evidence and thereby fails to prove the plea.

10. So far the issue nos.4 and 5 are concerned, it is observed that the applicant filed documents and stated that the freight charges along with Distance leased Charges (DBC) collected by the respondent vide RR i.e. Annexure-3 is not

1 2006 (4) AWC 3509 in Civil Revision No.369 of 2004 dated May 2006

controverted by the respondent. The document is in respect to the collection of the amount by the respondent. There is no denial with respect to the collection of the amount by the respondent with an entry as DPOU on the RR. On scrutiny, the Tribunal is convinced that the said ER was a paid RR and the Distance Based Charges (DBC) under the entry as DPOU on RR amounting to R5.58,01,110/- has been collected through e-payment system by the respondent.

11. Accordingly, the O.A. was allowed by the Tribunal directing the appellant/ Union of India to pay a sum of Rs.58,01,110/- only along with simple interest @ 6 per cent per annum from the date of application till the date of payment to the respondent.

V. COURT'S REASONING AND ANALYSIS:

12. Upon hearing learned counsel for the respective parties and upon an anxious consideration of the pleadings, documents, and materials placed on record, this Court deems it appropriate to structure its analysis in a systematic and comprehensive manner, so as to ensure clarity of reasoning and logical coherence in adjudication. Accordingly, the analytical framework of this judgment is delineated under the following heads:

A. Statutory and Tariff Framework:

i) The controversy arising in the present appeal is situated within the delicate interstices of statutory authority and administrative discretion that define the freight regulation regime under the Railways Act, 1989. The Act, being a comprehensive legislative framework, delineates the contours of the Railway Administration's power to levy, assess, and recover freight, while simultaneously circumscribing that authority through procedural safeguards and tariff rationalization mechanisms.

ii) The issue assumes further complexity in light of the binding tariff circulars issued by the Railway Board in exercise of its delegated legislative competence under the Act. These circulars constitute subordinate legislation, having the force of law, and are intended to secure uniformity, transparency, and fiscal discipline in freight computation. The interplay between the statutory provisions—particularly Sections 78 and 83 of the Act, which confer limited powers of recalculation and recovery—and the administrative tariff prescriptions such as Rate Circular No. 36 of 2009, forms the crux of the present adjudication.

iii) The analytical fulcrum of the present adjudication pivots upon a twofold inquiry. Firstly, it necessitates an examination into the nature, scope, and limits of the authority conferred upon the Railway Administration under Sections 78 and 83 of the Railways Act, 1989—provisions which, though procedural in formulation, often assume interpretive significance in the assessment and re-determination of freight liability. The inquiry must, therefore, address whether these sections merely empower the Railway Administration to rectify computational or clerical

discrepancies, or whether they extend to authorise a substantive reclassification of tariff heads once the transaction has been consummated.

iv) Secondly, the analysis must engage with the interpretive reach and normative import of the Railway Board's Rate Circular No. 36 of 2009, which governed the field during the relevant period of booking. This circular, issued in the exercise of delegated legislative competence, constitutes not merely an administrative guideline but a binding fiscal instrument, defining the operative tariff structure applicable to the carriage of iron ore for both domestic consumption and export.

v) The interpretive exercise thus requires reconciling the statutory empowerment under Sections 78 and 83 with the regulatory prescriptions of the circular, so as to ascertain whether the impugned levy of Distance Based Charges (DBC) conforms to the tariff logic and legislative intent underlying the framework of railway freight governance.

B. Sections 78 and 83 of the Railways Act, 1989

i) Section 78 of the Act empowers the Railway Administration to undertake re-measurement, re-weighment, or re-calculation of freight, thereby enabling correction of computational or clerical errors. However, Section 83 authorises the Administration to recover under-charges arising from such re-assessment. These provisions, by their very structure and context, are procedural and ancillary, designed to secure the fidelity of freight computation to the governing tariff. They do not, in jurisprudential contemplation, create a substantive head of charge, nor do they vest any discretion to alter the character of the levy or reclassify traffic contrary to the tariff instrument that was legally applicable at the time of booking.

ii) The principle underlying these provisions is one of administrative correction, not of substantive reassessment. The power to recalculate does not carry within its fold, the power to reimagine the transaction. Any interpretation to the contrary would subvert the fundamental rule that the delegated administrative authority must operate within the four corners of the enabling statutory and tariff framework, and cannot, under colour of recalculation, import a new incidence of charge alien to the governing schedule.

Rate Circular No. 36 of 2009 — the Normative Matrix

i) The Railway Board's Rate Circular No. 36 of 2009, which superseded Circular No. 30 of 2008, codifies a dual tariff structure premised upon the end-use of iron ore consignments, distinguishing between traffic for export-oriented processing and those intended for domestic consumption. Being a form of subordinate legislation of fiscal character, the circular possesses binding normative force upon both the Railway Administration and the consignor, subject only to judicial review on grounds of illegality, irrationality, or procedural impropriety.

ii) The Rate Circular No. 36 of 2009, which constituted the operative tariff framework during the relevant period, delineates a dual-stream classification predicated upon the intended end-use of the consignment and the corresponding fiscal consequence. Under the Export Stream, where iron ore is transported for pelletisation or beneficiation with the ultimate object of export, the freight is chargeable at Class-180 together with the levy of Distance Based Charges (DBC), cumulatively forming the export tariff—a structure designed to align higher freight incidence with the commercial orientation and profit-yielding character of export transactions. In contrast, under the Domestic Stream, where the movement of iron ore is demonstrably for domestic end-use within a pre-declared manufacturing unit, the applicable freight rate stands reduced to Class-140, exempt from DBC, subject to compliance with specific procedural and evidentiary safeguards such as the filing of an affidavit by the consignee prior to delivery, an indemnity note, and a verified end-use declaration. These safeguards serve a regulatory purpose, ensuring transparency, accountability, and prevention of fiscal evasion. The dual classification thus embodies a teleological balance between industrial facilitation and revenue protection, linking tariff incidence to the consignment's economic destination and thereby integrating the principles of functional differentiation and proportionality into the railway freight regime.

iii) In fact, two doctrinal consequences emanate from the above scheme namely, *first*, the *end-use* of the consignment is not a mere ancillary fact but a constitutive element of tariff classification. The freight liability crystallises *ex ante*, by reference to the intended and declared use of the consignment, as corroborated by contemporaneous records such as excise returns, manufacturing declarations, and affidavits. In other words, purpose conditions classification. This jurisprudential position aligns with the broader administrative law principle that tax or tariff incidence must attach to objective and ascertainable factual predicates existing at the time of levy, not to speculative or retrospective assessments of conduct. *Second*, Documentary Compliance as Condition Precedent. The filing of the requisite documents under Paragraphs 3(B)(III) and 3(B)(V) of the Circular is not a matter of procedural triviality but a substantive evidentiary safeguard designed to ensure transparency in tariff application. Yet, once the foundational fact of domestic end-use stands established through primary and contemporaneous evidence, such as excise returns evidencing domestic sales and absence of export, a purely technical deficiency in paperwork cannot serve as a juridical basis for transmuting a domestic consignment into an export on

iv) In the realm of administrative law, the doctrine of substantial compliance occupies a position of settled authority. It postulates that procedural imperfections or technical omissions cannot be permitted to defeat a substantive entitlement, particularly where the statutory purpose has been fulfilled in essence and the public authority has suffered no demonstrable prejudice. The doctrine thus preserves the equilibrium between administrative discipline and substantive justice, recognising

that procedural form is a means to an end, not an end in itself. Viewed through such lens, Rate Circular No. 36 of 2009 epitomizes a teleological synthesis—it insists upon procedural fidelity to ensure transparency and regulatory uniformity, yet it accords primacy to substantive truth over formal compliance. Where the end-use of the consignment, being the decisive normative criterion, stands established beyond cavil through contemporaneous and credible evidence, form must yield to substance, and procedure must bend to purpose. Such a construction alone harmonises the spirit of the circular with the broader principles of administrative fairness and equitable enforcement.

v) The Railway Claims Tribunal (RCT), upon an assiduous and methodical appraisal of the evidentiary corpus—including, *inter alia*, the excise returns for the quarter October to December 2012—arrived at an unequivocal finding that no iron oxide pellets were exported during the relevant accounting period, and that the entire quantum of production was sold within the domestic market. This conclusion is anchored in primary contemporaneous documentary evidence, unsullied by conjecture, speculation, or extraneous inference, and therefore commands a high degree of evidentiary sanctity.

vi) In the absence of any demonstrated perversity, patent illegality, or misappreciation of evidence, such a finding warrants judicial deference under the well-settled doctrine governing appellate circumspection. This Court, exercising limited appellate jurisdiction under Section 23 of the Railway Claims Tribunal Act, 1987, is not tasked with re-evaluating factual determinations duly rendered upon an adequate evidentiary foundation. The principle of concurrent factual finality, deeply embedded in appellate jurisprudence, obliges this Court to respect the factual conclusions of the Tribunal, particularly when they emanate from contemporaneous industrial and fiscal records, and exhibit both coherence and evidentiary integrity.

vii) The Railways' endeavour to impugn the Tribunal's factual finding by advertent to instances of export activity during previous accounting periods (2008–2011) betrays a fundamental misapprehension of the normative structure of the prevailing tariff regime. Under the framework of Rate Circular No. 36 of 2009, tariff classification is conceived as transaction-specific rather than reputation-based, attaching legal consequence to the particular consignment and its contemporaneous end-use, not to the general business profile or historical conduct of the consignor. The mere fact that a consignor has, in previous years, engaged in export operations cannot, in the absence of cogent nexus or contemporaneous linkage, retroactively transmute the juridical character of a distinct and subsequent consignment. If this Court holds otherwise, it would offend the principle of temporal specificity in tariff incidence, a cardinal tenet of fiscal jurisprudence which mandates that liability crystallises with reference to the factual matrix existing at the time of the transaction, and not by retrospective attribution of character from unrelated periods. Consequently, in the absence of any evidentiary continuum connecting Railway Receipt No. 261002668 with an export transaction, the attempt of the Appellant—

Railways to predicate its claim on the Respondent's prior export history is legally misconceived and untenable.

viii) The plea advanced by the Appellant–Railway Administration, alleging non-submission of the requisite affidavit and indemnity note by the Respondent–Company, stands squarely refuted by the Appellant's own pleadings before the learned Tribunal, wherein the filing of such documents was expressly acknowledged. The argument, therefore, collapses under the weight of the Appellant's own admissions. Even assuming *arguendo* that certain procedural formalities may not have been adhered to in a manner of absolute precision, such deviation, being *de minimis* and merely technical, cannot vitiate a transaction otherwise grounded in substantive compliance with the governing Rate Circular.

ix) Upon analysing from the administrative law standpoint, the doctrine of substantial compliance operates to distinguish between form and substance, recognising that procedural prescriptions are designed to advance, not obstruct, the attainment of statutory objectives. In the absence of demonstrable prejudice, fiscal detriment, or impairment of regulatory purpose, the invocation of minor procedural lapses cannot serve as a legitimate ground for withholding a benefit that is otherwise legally due. The Appellant's failure to establish any causal nexus between the alleged omission and material prejudice renders this contention juridically untenable and doctrinally unsound.

x) The freight was duly paid through the e-payment system, delivery was effected without objection, and the contemporaneous excise documentation corroborates domestic utilisation. In such circumstances, the doctrine of substantial compliance, long entrenched in Indian administrative jurisprudence as echoed in ***State of Haryana v. RaghubirDayal***² must be invoked to immunise bona fide industrial transactions from technical nullification.

xi) The Scope and limitation of Sections 78 and 83 demonstrates that the statutory power to re-measure or re-calculate freight under Sections 78 and 83 operates within, not beyond, the four corners of the governing tariff. These provisions presuppose the existence of a legally correct tariff classification, and their purpose is to rectify quantitative miscalculations, not to effect qualitative reclassification. In order to employ them as instruments of substantive reassessment would be to invert their legislative intent and to allow administrative overreach under the guise of procedural rectitude. Thus, when RC–36/2009 does not authorise the levy of DBC for domestically consumed consignments, Sections 78 and 83 cannot be deployed as vehicles for its imposition.

xii) The Pendency of case before the Supreme Court vide SLP (C) No. 15869 of 2015 and connected Transfer Petitions (Civil) Nos. 832–854 of 2015 is equally misplaced. The order of the Hon'ble Supreme Court, dated 14th December 2015,

confers a limited stay upon specific writ petitions enumerated therein; it does not extend to this appeal, nor was any such order ever produced before the Tribunal during the pendency of the proceedings. In the absence of a specific stay, the adjudicatory process must proceed unhindered—mere pendency of SLP does not *ipso facto* translate into prohibition.

xiii) The doctrine of appellate restraint has long attained the status of a juridical axiom. An appellate court does not sit as a court of second evaluation on matters of fact or appreciation of evidence; interference is justified only where the order under challenge suffers from manifest perversity, patent illegality, or jurisdictional infirmity. The impugned judgment of the Ld. Railway Claims Tribunal discloses none of these vices. On the contrary, the Tribunal has correctly identified the determinative legal test—that of end-use as the decisive criterion—and has duly applied the governing tariff instrument, namely Rate Circular No. 36 of 2009, to the established facts. The findings recorded are empirically grounded, documentarily substantiated, and logically coherent, reflecting a reasoned adjudicatory process. In the absence of any perversity or material misdirection, this Court finds no warrant or justification for appellate interference, the judgment being juridically sound and evidentially unassailable.

13. CONCLUSION:

14. In view of the foregoing discussions, the RCT directed refund of the DBC component amounting to ₹58,01,110.80, with simple interest at 6% per annum from 2nd December 2015 (date of filing of the claim application). Although the Respondent had claimed interest at 18.25% per annum, the Tribunal's grant represents a judicious equilibrium between restitutionary fairness and fiscal restraint. The principle of *restitution in integrum* obliges the public authority to restore the aggrieved party to the financial position it would have occupied had the unlawful exaction not occurred. Interest, in this context, is not a windfall but a juridical recognition of the time-value of money wrongfully detained. Nevertheless, as the Respondent has not appealed for enhancement and the Appellant contests even the existing award, this Court, exercising appellate prudence, affirms the rate so determined, while clarifying that interest shall continue to accrue until the actual date of refund, if not already effected.

15. Regarding costs, the Tribunal's decision to make no order as to costs was predicated upon the "peculiar facts and circumstances" of the case. In view of the foregoing analysis, the appeals are devoid of merit and are accordingly dismissed. It is hereby ordered as follows:

- a. The judgment dated 04.02.2019 rendered by the Railway Claims Tribunal, Bhubaneswar Bench in O.A. No. III/9/2015 is affirmed in toto.
- b. The Appellant–Railway Administration shall refund the sum of ₹58,01,110.80 (Rupees Fifty-Eight Lakhs One Thousand One Hundred Ten and Eighty Paise only), representing the Distance Based Charges (DBC)

component, to the Respondent–KIOCL Limited, together with simple interest at 6% per annum from 02.12.2015 until the date of actual payment (or until the date of refund, if already effected). The refund shall be effected not later than **Two Months** from today.

16. Accordingly, both the FAOs are disposed of.

17. Interim order, if any, passed earlier in any of the afore-mentioned FAOs stands vacated.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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Result of the case:

FAOs disposed of.

2025 (III) ILR-CUT-1307

ROKIYA BIBI & ANR.

V.

Sk. NASIM & ORS.

I.A. NO.974 OF 2025

(ARISING OUT OF CMP NO.437 OF 2025)

10 NOVEMBER 2025

[R.K. PATTANAİK, J.]

Issue for Consideration

Whether the status quo order passed in CMP No. 437 of 2025 in respect of Schedule-B land is sustainable when the compromise decree governing the said property subsists and its validity is yet to be adjudicated.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Order 23 Rule 3-A – Compromise decree – Bar to separate suit – Effect on interim orders – Petitioners instituted a suit seeking partition, injunction and a declaration that the compromise decree dated 08.10.2007 passed in C.S. No. 946 of 2007-(I) was invalid in respect of Schedule-B property – The Trial Court and the Appellate Court refused injunction over Schedule-B property – In CMP No. 437 of 2025, this Court directed parties to maintain status quo over Schedule-B and Schedule-C properties – Opposite Party No.1 filed the present I.A. seeking modification of the said order, contending that challenge to a compromise decree by a separate suit is barred under

Order 23 Rule 3-A CPC – Whether the order of status quo passed by this court in respect of the Schedule B property is sustainable.

Held: No – The conclusion of the Apex Court in the decision (supra) is based on the underlying principle to put an end to the various disputes pending before the Courts once and for all creating a bar to institute another suit to challenge the decree managed by a compromise – In the facts and circumstances of the case at hand, the petitioners have instituted the suit for a declaration and also claiming partition in respect of all the properties with permanent injunction and though, any such interim order of injunction via-a-vis Schedule-B property has been denied by the learned Courts below and rightly so, the Court is of the humble view that the order of status quo cannot be sustained, when it is certainly to prejudice the defendants who, as on date, are possessed of a valid decree (unless declared unlawful and avoided) obtained in C.S. No.946 of 2007-(I)– According to the Court, the suit may be maintainable to the extent concerning other reliefs except the declaration and the petitioners are definitely to be affected, if future alienations do take place but cannot avoid it, unless the compromise decree is set aside – Of course, the fate of the suit for partition is dependent on the result in CMA No. 218/98 of 2025 but till such time, the plea of the petitioners is accepted and the decree on compromise is nullified and invalidated it would not be proper and justified to direct status quo in respect of Schedule-B property, which, as on date, is validly possessed by the defendants, who acquired interest therein by purchases made – To be honest, the said aspect escaped the attention of this Court, while disposing of the CMP at the stage of admission – The bar under Order 23 Rule 3-A CPC is certainly a ground to demand modification of the Court's order dated 12th May, 2025 in the CMP since the suit for a declaration though coupled with other reliefs is filed but not sufficient enough to interfere with the rights of the defendants, who acquired the interest post-alienation by defendant No.1, against whom, partition is pleaded involving all the properties – For the discussions hereinabove, the Court is constrained to hold that the decision in the CMP needs a revisit thereby modifying the order of status quo excluding therefrom the Schedule-B property. (Para 16)

Citation Reference

Triloki Nath Singh Vrs. Anirudh Singh (D) through LRs & Ors., (2020) 4 S.C.R. 650 – referred to.

List of Acts

Code of Civil Procedure, 1908

Keywords

Status quo; Compromise decree; Bar to suit; Separate suit; Declaration; Partition; Injunction; Alienation; Prima facie case; Valid decree; Oral gift;

Mutation RoR; Sale deeds; Purchasers; Maintainability of the suit; Prejudice to the defendants; Modification of order; Interim order.

Case Arising From

Order dated 12 May 2025 passed in CMP No. 437 of 2025

Appearances for Parties

For Petitioners : Mr. S.K. Mishra, Sr. Adv. & Mr. J. Pradhan
For Opposite Parties : Mr. A. P. Bose for Opposite Party No.1

Judgment/Order

Judgment

R.K. PATTANAIK, J.

1. Instant IA is at the behest of opposite party No.1 seeking modification of the Court's order dated 12th May, 2025 in CMP No.437 of 2025 on the grounds stated therein.

2. In fact, the CMP was disposed of by this Court by order dated 12th May, 2025 with a direction to the learned Senior Civil Judge, Balasore to proceed and to dispose of the suit in C.S. No.1692/1082 of 2018-(I) within the stipulated period, while modifying the order dated 21st February, 2025 in F.A.O. No.17 of 2022 of the learned 3rd Additional District Judge, Balasore directing the parties to maintain status quo also in respect of the Schedule-B property without further alienations by defendant Nos.3 to 9.

3. Heard Mr. Mishra, learned Senior Advocate appearing for the petitioners and Mr. Bose, learned counsel for opposite party No.1.

4. By this Court's order dated 18th October, 2023 in CMP No.1149 of 2023, re-hearing of the F.A.O was directed, whereafter, the learned Court below passed the impugned order vide Annexure-9 to the CMP dismissing the same confirming the order of the learned Senior Civil Judge, Balasore in I.A. No.380 of 2018. In the appeal, the maintainability of such a relief vis-à-vis compromise decree passed in an earlier suit i.e. C.S. No.946 of 2007-(I) was questioned and the learned Court below considering the same concluded that there should not be any injunction in respect of Schedule-B property, however, upheld the status quo order with respect to Schedule-C property. The aforesaid order in appeal dated 21st February, 2025 at Annexure-9 was finally modified in the CMP, which is sought to be modified, at present.

5. The contention of Mr. Bose, learned counsel for opposite party No.1 is that the suit instituted by the petitioners is not maintainable because Schedule-B property was already involved in the previous suit, decree of which, cannot be a subject of challenge in the suit instituted and pending before the learned court below in view of Order 23 Rule 3-A CPC. The further submission is that injunction having been refused, the status quo vis-à-vis the parties directed by this Court, while disposing of

the CMP in respect of Schedule-B property is certainly to prejudice opposite party No.1 and the purchasers and hence, the order dated 12th May, 2025 passed therein is required to be modified.

6. On the other hand, Mr. Mishra, learned Senior Advocate for the petitioners would submit that since the petitioners are having legitimate interest over and in respect of Schedule-B property besides the property under Schedule-C, in order to avoid alienations in future, this Court directed both the sides to maintain status quo, hence, therefore, the order dated 12th May, 2025 in the CMP is perfectly justified and hence, need not be recalled.

7. The petitioners are seeking relief of partition, injunction and to declare the compromise decree in C.S. No.946 of 2007-(I) to be invalid, inoperative and not binding to them in respect of Schedule-B property. A copy of the plaint is at Annexure-1 and the same is gone through. In the suit, the petitioners moved an application under Order 39 Rules 1 and 2 CPC as per Annexure-2 demanding interim order in respect of the Schedule-B and C properties morefully described in Annexure-1 and therein, a status quo order only in respect of the Schedule-C property was passed and it was challenged in F.A.O. No.17 of 2022 and though, partly modified by order dated 8th September, 2023 but finally, stood confirmed vide Annexure-9 upon a rehearing and its disposal directed pursuant to the order in CMP No.1149 of 2023. As against the order in appeal, the petitioners filed the CMP with a plea that they have a specific claim clearly pleaded on record in respect of Schedule-B property being the exclusive interest of their mother in contrast to the plea that it was succeeded by defendant No.1 alone on the basis of an oral gift dated 10th May, 2004 followed by the compromise decree in C.S. No.946 of 2007-(I).

8. The contention of Mr. Mishra, learned Senior Advocate is that the learned Court below fell into error and confirmed the order at Annexure-6 in I.A. No. 380 of 2018 while dealing with the suit and in so far as Schedule-B property is concerned, it has been the subject of alienation by defendant No.1 in favour of defendant Nos.3 to 9 but the learned Court below even though took judicial notice of the Will of the year, 2007 and the claim of the mother of the petitioners virtually denying any such oral gift having been executed in favour of the defendant No.1, declined to pass restraint order in respect thereof and hence, it was questioned in the CMP and rightly, therefore, this Court considering all such aspects directed parties to maintain status quo to avoid any alienations by defendant Nos.3 to 9 till disposal of the suit.

9. Mr. Bose, learned counsel for opposite party No.1 relies on the decision of the Apex Court in **Triloki Nath Singh Vrs. Anirudh Singh (D) through LRs and others (2020) 4 S.C.R. 650** to contend that the petitioners cannot challenge a compromise decree in the suit not being a party thereto in view of the bar contained in Order 23 Rule 3-A CPC and hence, the learned Trial Court is having no competence to adjudicate and dispose of the suit and therefore, any such order in the CMP vis-s-vis Schedule-B property is impermissible, thus, to be modified confining it only to Schedule-C property.

10. In CMP No.1149 of 2023, opposite party No.1 had challenged the order in F.A.O No.17 of 2022 dated 8th September, 2023 when the decision dated 16th April, 2022 of the learned Senior Civil Judge, Balasore in I.A. No.380 of 2018 was partly set aside directing status quo even in respect of Schedule-B property and therein, this Court considering the plea advanced with reference to the decision of **Triloki Nath Singh** (supra) restored the appeal and directed for a fresh consideration and disposal after providing opportunity of hearing to both the parties regard being had to the observations made therein. After the disposal of the CMP, complying the direction issued therein by order dated 18th October, 2023 at Annexure-8, the learned Court below passed the impugned order i.e. Annexure-9 confirming the order in I.A. dated 16th April, 2022. While dealing with the appeal, the learned Court below concluded that the petitioners do not have a prima facie case and taking cognizance of the facts pleaded on record, reached at a conclusion that the order dated 16th April, 2022 in I.A. No.380 of 2018 is needed to be affirmed.

11 In **Triloki Nath Singh** (supra), it has been held and observed that any such suit separately instituted challenging the validity of compromise decree by a stranger is not maintainable in view of the prohibition in Rule 3-A of Order 23 CPC. According to Rule-3-A, no suit shall lie to set aside the decree on the ground that the compromise, on which, it is based, was not lawful. In fact, Order 23 Rule 3-A CPC was introduced by way of the Civil Procedure Code (Amendment) Act, 1976 vide Section 74 thereof with effect from 1st February, 1977. As a result, a party challenging a compromise decree may file an application under Proviso to Rule 3 of Order 23 or appeal under Order 43 Rule 1-A CPC since it is no more appealable with Clause (m) of Rule 1 of Order 43 CPC to have been omitted vide the Amendment Act but not with a separate suit instituted. In other words, in view of the above provisions, when a compromise is recorded in a disposed of suit and the same is to be avoided, a party aggrieved thereby cannot file one more but to question its validity in one of modes discussed hereinabove.

12. In so far as the suit of the petitioners is concerned, the same is for declaration of compromise decree as invalid, partition and injunction in respect of the Schedule-B and C properties. The parties are Mohammedans and guided under the Hanif School of Mohammedan Law. Of course, the compromise decree dated 8th October, 2007 in C.S. No.946of 2007-(I) of the learned Civil Judge(Senior Division)Balasore and Mutation RoR prepared thereafter in the name of Defendant No.1 and sale deeds executed in favour of defendant Nos.3 to 9 are under challenge with a declaration that the same to be void as against their legitimate shares but considering the plea of opposite party No.1 that such a declaration is impermissible in view of Order 23 Rule 3-A CPC, the Court is of the humble view that there is a need for modification of the order dated 12th May, 2025 in the CMP since the petitioners are not entitled to demand any such relief vis-à-vis the compromise decree passed in the earlier suit. The order of status quo including Schedule-B property cannot therefore be retained on the premise that there would be further

alienation by defendant Nos.3 to 9, who admittedly derived the title in respect thereof from defendant No.1, who, in turn, claimed to have acquired the interest over the same by virtue of the transactions allegedly carried out by his mother.

13. It has been brought to the notice of the Court by Mr. Bose, learned counsel for opposite party No.1 that CMA No.218/98 of 2025 is filed in the meantime in C.S. No.946 of 2007-(I) by the petitioners challenging the compromise and the decree passed therein on the ground that the same is not lawful and it is pending orders before the Court of learned Senior Civil Judge, Balasore. It is further submitted by Mr. Bose, learned counsel that the petitioners finally acknowledged the fact that the suit is not maintainable for a declaration vis-a-vis compromise decree as invalid by filling the CMA and in such view of the matter, the order dated 12th May, 2025 of this Court in the CMP should be modified confining the order of status quo to Schedule-C property.

14. For better appreciation, the relevant provisions are extracted herein below:

“3. Compromise of suit-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise, or satisfaction is the same as the subject matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this Rule.

3-A. Bar to suit - No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

15. In **Triloki Nath Singh** (supra), while dealing with maintainability questioning the validity of a compromise decree passed in another suit, it has been held and observed by the Apex Court in the following words:

“14. What has emerged as a legislative intent has been considered in extenso by this Court in Pushpa Devi Bhagat (Dead) Through LR Sadhna Rai (Smt) Vs. Rajinder Singh, after taking note of the scheme of Order 23 Rule 3 and Rule 3-A added with effect from 1-2-1977.

The relevant paragraphs are as under:

“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.XXX”.

15. The scope of intent of Order 23 Rule 3 and Rule 3-A was further considered by this Court in R. Rajanna Vs. S.R. Venkataswamy and Others wherein this Court held as under:

“11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court.”

16. The conclusion of the Apex Court in the decision (supra) is based on the underlying principle to put an end to the various disputes pending before the Courts once and for all creating a bar to institute another suit to challenge the decree managed by a compromise. In the facts and circumstances of the case at hand, the petitioners have instituted the suit for a declaration and also claiming partition in respect of all the properties with permanent injunction and though, any such interim order of injunction vis-a-vis Schedule-B property has been denied by the learned Courts below and rightly so, the Court is of the humble view that the order of status quo cannot be sustained, when it is certainly to prejudice the defendants who, as on date, are possessed of a valid decree (unless declared unlawful and avoided) obtained in C.S. No.946 of 2007-(I). According to the Court, the suit may be maintainable to the extent concerning other reliefs except the declaration and the petitioners are definitely to be affected, if future alienations do take place but cannot avoid it, unless the compromise decree is set aside. Of course, the fate of the suit for partition is dependent on the result in CMA No.218/98 of 2025 but till such time, the plea of the petitioners is accepted and the decree on compromise is nullified and invalidated it would not be proper and justified to direct status quo in respect of Schedule-B property, which, as on date, is validly possessed by the defendants, who acquired interest therein by purchases made. To be honest, the said aspect escaped the attention of this Court, while disposing of the CMP at the stage of admission. The bar under Order 23 Rule 3-A CPC is certainly a ground to demand modification of the Court's order dated 12th May, 2025 in the CMP since the suit for a declaration though coupled with other reliefs is filed but not sufficient enough to interfere with the rights of the defendants, who acquired the interest post-alienation by defendant No.1, against whom, partition is pleaded involving all the properties. For the discussions hereinabove, the Court is constrained to hold that the decision in the CMP needs a revisit thereby modifying the order of status quo excluding therefrom the Schedule-B property.

17. Hence, it is ordered.

18. In the result, the I.A. stands allowed. As a necessary corollary, the Court's order dated 12th May, 2025 in CMP No.437 of 2025 is hereby modified confirming the decision of the learned 3rd Additional District Judge, Balasore in F.A.O. No.17 of 2022 dated 21st February, 2025 as at Annexure-9, thus, restricting the order of status quo only in respect of Schedule-C property leaving it open for the petitioners to work out the remedy demanding interim orders vis-a-vis Schedule-B property in CMA No.218/98 of 2025 filed by them questioning the validity of compromise decree passed in C.S. No.946 of 2007-(I).

19. In the circumstances, there is no order on costs.

20. Urgent copy of the judgment be issued to the petitioners as per rules.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
I.A. allowed.

2025 (III) ILR-CUT-1315

RAMESH CHANDRA MAJHI
V.
B.D.O.-CUM-ELECTION OFFICER OF PANCHAYAT SAMITI,
R. UDAYAGIRI, GAJAPATI & ANR.

[W.P.(C) NO. 28836 OF 2024]

AND

DALIMBA GAMANGO V. B.D.O.-CUM-ELECTION OFFICER OF PANCHAYAT
SAMITI, R. UDAYAGIRI, GAJAPATI & ANR.
[IN W.P(C) NO. 25066 OF 2024]

12 NOVEMBER 2025

[R.K. PATTANAİK, J.]**Issues for Consideration**

1. Whether the concurrent findings of the Courts below holding the returned candidate disqualified for having more than two children born after the cut-off date, suffer from any perversity.
2. Whether the appellate court was justified in setting aside the Trial Court's declaration of the petitioner as duly elected and in ordering a fresh election after disqualification of the returned candidate.

Headnotes

(A) ODISHA GRAMA PANCHAYATS ACT, 1964 – Section 25(1)(v) – Disqualification – More than two children – Concurrent findings – The election of the returned candidate as Sarpanch was challenged on the ground that he had more than two children born after the cut-off date prescribed under the Amendment Act, 1994 – The Civil Judge (Junior Division), on appreciation of oral and documentary evidence including statutory registers maintained by health and ICDS authorities, declared the returned candidate disqualified – The finding was affirmed by the District Judge in election appeal – In writ proceedings, the returned candidate assailed the concurrent findings as perverse – Whether the concurrent findings of the Courts below suffer from any illegality.

Held: No – In so far as the plea of the returned candidate that two of his children, namely, Gurumurty Gamango and Chandra Sekhar Gamango are of his brother, namely, Benu, the same has been disbelieved by the learned Courts below – In support of such claim, no documentary evidence has been adduced – Though, independent witnesses have been examined as D.Ws. 2 to 6, who corroborated the above claim of the returned candidate examined as D.W.1 but their evidence was disbelieved and rightly so, since such a

bald plea is unworthy of acceptance in juxtaposition to the overwhelming evidence received to the contrary – Nothing could be shown to the Court by Mr. Seth, learned counsel for the returned candidate claiming that the decision of the learned Courts below in any way to be perverse – The entire evidence disclosed that the returned candidate is having more than two children born after the cut-off date, which readily invites disqualification under law – The Court is not inclined to take a different view than the one expressed by both the Courts below on issue of disqualification. (Para 12)

(B) ODISHA GRAMA PANCHAYATS ACT, 1964 – Sections 34 and 40 – Declaration of elected candidate – More than one candidates – Election petitioner secured second highest votes – The election petitioner, who secured the second highest number of votes in an election contested by five candidates, was declared elected by the Trial Court after disqualification of the returned candidate – The appellate court affirmed the disqualification but set aside the declaration and directed afresh election – Whether the findings of the appellate court suffer from any perversity or legal infirmity warranting interference in writ jurisdiction?

Held: No – Law is well settled that the candidate, who polled the second highest number of votes is not automatically declared as duly elected – The principle is based on the rationale that a voter's intent is to elect a particular person in the election and not to vote the candidates in the preferential order – The votes cast for the disqualified candidate may be considered as stray, if he is disqualified and cannot simply be transferred to the candidate, who polled the second highest – Any such decision even when the voters may not have supported the election petitioner as the returned candidate, not being the election declaring any one of them as the elected candidate upon such disqualification, in the considered view of the Court, is likely to override the voters will and decision – In other words, an election is considered a contest of the individuals and voters cast their votes to a particular candidate of their choice – If the winning candidate is later found to be ineligible, it invalidates the mandate they received – The votes cast for the disqualified candidate even when treated as invalid, the result cannot simply be passed on to the next candidate securing higher number of votes – The Courts have consistently ruled that the voters, who supported the disqualified candidate intended him to win the election and not for their votes to be transferred to the second in line and therefore, automatically declaring the candidate, who polled the second highest number of votes would be like disrespecting the choice – According to the Court, even under the Representation of People Act, a candidate can only be declared as elected, if he is entitled to and the second highest polled candidate is not entitled to a similar relief, unless the

election is between two candidates and upon disqualification of one of them – It has also been consistently held by the Apex Court that the standard practice and procedure in case of disqualification when more than two candidates in the fray would be to declare the election void and to go for a fresh one and not to declare the second highest polled candidate as duly elected – In Dhabaleswar Sahu (supra), the dispute was primarily over the election of a returned candidate for having more than two children born after the cut-off date and it was confirmed in appeal and therefore, for the concurrent findings, the writ jurisdiction was not invoked to upset it – Such a question to declare someone else as the elected candidate after a disqualification was never an issue for consideration in Dhabaleswar Sahu (supra) – For the reasons discussed hereinbefore, the Court is, therefore, of the conclusion that the finding on disqualification of the learned Court below does not suffer from any perversity and hence, therefore, it has to be upheld.

(Para 18)

Citation Reference

Dhaneswar Mallick Vrs. Narayan Behera and another, **2006 (I) OLR 132**; Dingar Panda and others, Vrs. Bhima Pradhan and others **LAWS (ORI) 1950-10-6**; Jogo Bhatra Vrs. State of Odisha & others, **2020 (I) OLR 940**; Jitendra Muduli Vrs. State of Orissa & others, **2016 (Supp.-1) OLR 891**; Dhabaleswar Sahu Vrs. Ashok Kumar Sahu, **2006 (Supp.-II) OLR 762**; Khimji Vidhu Vrs. Premier High School, **(1999) 9 SCC 264 – referred to.**

List of Acts

Odisha Grama Panchayats Act, 1964

Keywords

Disqualification; More than two children; Cut off date; Sarpanch; Election-petition; Returned-candidate; Concurrent-findings; Admissible evidence; Entries in Registers; Scope of writ jurisdiction; Second-highest-number-of-votes; Declaration as duly elected; Casual vacancy; Fresh-election.

Case Arising From

Judgment dated 12.09.2024 passed by the District Judge, Gajapati–Paralakhemundi in Election Appeal No. 01 of 2024.

Appearances for Parties

For Petitioners : Mr. T.K. Mishra [In W.P.(C) No.28836 of 2024]
Mr. B. Seth [In W.P.(C) No.25066 of 2024]

For Opposite Parties : Mr. P.K. Sahoo, ASC, Mr. B. Seth, for O.P.No.2
[In W.P.(C) No. 28836 of 2024]
Mr. P.K. Sahoo, ASC, Mr. T.K. Mishra, for O.P.No.2
[In W.P.(C) No. 25066 of 2024]

Judgment/Order**Judgment****R.K. PATTANAİK, J.**

For the sake of brevity and convenience, both the writ petitions have been clubbed together for disposal by the following common judgment.

1. W.P.(C) No.28836 of 2024: Instant writ petition is filed by the petitioner (shortly as 'the election petitioner') assailing the impugned judgment dated 12th September, 2024 passed in connection with Election Appeal No.01 of 2024 by the learned District Judge, Gajapati- Paralakhimundi as at Annexure-2 to the extent denying him a declaration as duly elected Sarpanch of Chellagada Gram Panchayat and for a direction for the competent authority to take steps to fill up the vacancy by a fresh election, while setting aside the decision of the learned Civil Judge (Junior Division), R. Udayagiri in Election Petition Case No.03 of 2022 on the grounds stated.

2. W.P.(C) No.25066 of 2024: Whereas, the present writ petition is filed by the returned candidate and opposite party No.2 in W.P.(C) No.28836 of 2024 challenging the correctness, legality and judicial propriety of the impugned judgment in Election Appeal No.01 of 2024 of learned District Judge, Gajapati-Paralakhemundi and also the decision in Election Petition Case No.03 of 2022 on the grounds inter alia that the findings rendered therein as untenable for having not appreciated the material evidence on record in its proper perspective.

3. The election petitioner filed Election Petition Case No.03 of 2022 challenging the election of the returned candidate as the Sarpanch of the concerned GP primarily on the ground that the latter is having more than two children born after the cut-off date, hence, therefore, stands disqualified in view of Section 25(1)(v) of the Odisha Grama Panchayats Act, 1964 (hereinafter referred to as 'the Act'). The learned Civil Judge (Junior Division), R. Udayagiri framed the following issues, such as;

- (i) Whether the case is maintainable?
- (ii) Whether the election petitioner has any locus standi and cause of action to file the petition?
- (iii) Whether the returned candidate elected as the Sarpanch of the GP in question is liable to disqualification under Section 25(1)(v) of the Act for having more than two children born after the commencement of the Amendment Act, 1994, if not, within one year for such commencement of the Act?
- (iv) Whether the election petitioner is entitled to such other reliefs with a declaration him to be duly elected as the Sarpanch consequent upon disqualification of the returned candidate? and
- (v) To any other relief(s), the petitioner is otherwise entitled to as per law?

4. Upon receiving evidence, the learned Trial Court ultimately declared the election of the returned candidate as null and void and the election petitioner to be duly elected as per the result of the election dated 26th February, 2022 in terms of Section 38(2)(b) read with Sections 32, 34 and 40 of the Act followed by a direction in that regard.

5. Being aggrieved of, the returned candidate approached the learned Court below and filed Election Appeal No.01 of 2024. The appeal was disposed of by a judgment dated 12th September, 2024 confirming the disqualification of the returned candidate, however, interfered with the decision in declaring the election petitioner to be duly elected as the Sarpanch of the GP and set it aside with a consequential direction, in view of the casual vacancy created, to fill up the same by holding a fresh election. Being further dissatisfied, the returned candidate filed W.P.(C) No.25066 of 2024, whereas, the election petitioner questioned that part of the judgment denying him the declaration as the duly elected candidate by filing W.P.(C) No. 28836 of 2024.

6. The election petitioner examined eighteen witnesses and led documentary evidence with Exts.1 to 73 in support of the case before the learned Civil Judge (Junior Division), R. Udayagiri challenging the election of the returned candidate. On the other hand, the returned candidate adduced evidence with the examination of six witnesses with no any exhibit proved in rebuttal.

7. Heard Mr. Mishra, learned counsel for the election petitioner and Mr. Seth, learned counsel for the returned candidate and besides Mr. Sahoo, learned ASC for the State.

8. According to Mr. Seth, learned counsel for the returned candidate, the learned Courts below fell into gross error in not considering the evidence properly, hence, declaring the election of the returned candidate as null and void is liable to be set at naught. On the contrary, Mr. Mishra, learned counsel for the election petitioner submits that concurrent findings of the learned Courts below are not to be disturbed. The further submission is that the learned Trial Court elaborately discussed and deliberated upon the evidence received from the side of the election petitioner and correctly reached at a conclusion regarding the disqualification of the returned candidate and also directing the election petitioner to be declared as duly elected as the Sarpanch of the GP but it has been intervened by the learned Court below, which is unjustified and therefore, to that extent, the impugned judgment in appeal is to be set aside. The Court recorded the submission of Mr. Sahoo, learned ASC for the State.

9. As regards the documentary evidence, the Original Family Survey Register maintained by the Multi-Purpose Health Worker (MPHW) of Chellagada Sub-Centre was marked as Ext.13 and it was proved through P.W.1 vis-à-vis the relevant entry therein as Ext.-13/C and her signature thereon as Ext.13/A including the signature of the maker as Ext.13/B. The House Survey Register maintained by the

ASHA worker of Purunadiha has also been marked proved by her as Ext.14 containing the family details related to the returned candidate etc. It has been testified by P.W.1 that based on the information furnished to her as per Exts.13 and 14 through Exts.3 and 5 respectively, she shared it vide Ext.1 under the RTI Act regarding the family members of the returned candidate and about him having a 3rd child, a daughter, namely, Minakshi Gamango born on 3rd January, 2009. All such further details have been deposed by P.W.1, while she was under examination. The maker of Ext.13 stood examined as P.W.4 and she deposed that the information was furnished by her to the Medical Officer, CHC, R. Udayagiri through Ext.17 after verifying the same. Likewise, the maker of Ext.14 as P.W.5 proved the ASHA Family Folder maintained as Ext.30 and her signature thereon as Ext.30/A and also proved the signature of the Superintendent Medical Officer as Ext.30/B besides the relevant entry of Ext. 30 to reveal that the returned candidate is having four children, whose dates of birth have been entered therein after due verification. On perusal of the record, the Court finds that though P.Ws.1, 4 and 5 have been subjected to cross-examination by the returned candidate but nothing contrary could be elicited from them.

10. The Anganwadi Register and Birth Death Register have been proved through P.Ws.2 and 6. In fact, P.W.2 is the Supervisor-cum-PIO, ICDS Project of R. Udayagiri and deposed that as per Ext.6, she had provided the information under the RTI Act regarding the birth dates of the children of the returned candidate and the same is based on the data maintained at the village level by the Anganwadi Worker and also proved the relevant entry of the Anganwadi Survey Register as Ext.9. Similarly, P.W.6, the Anganwadi Worker deposed that she had submitted a report to P.W.2 and proved the Original Anganwadi Register as Ext.31 claiming that the entries therein were made by her after conducting door-to-door survey. That apart, the Birth Death Register has been marked as Ext.11 through P.W.6 and the relevant entry as Ext.11/C with all other details mentioned therein. On perusal of the depositions of P.Ws.2 and 6, the Court finds that nothing substantial could be brought out from them to disprove the relevant entries in Exts.9, 11 and 31. In fact, all such Registers have been maintained in due course of business at the Anganwadi Centre with respect to Ext.9 as also Ext.-11 based on the information received at the appropriate stage.

10.1. The CDPO, ICDS Project, R. Udayagiri was examined as P.W.7 and the inquiry report prepared by her stands marked as Ext.32, which was submitted to the Collector cum-District Magistrate, Gajapati required in connection with Misc. Case No.13 of 2022 and deposed that it was prepared after a local inquiry held in presence of Anganwadi Worker, Supervisor and others, though, she admitted that the same does not specify the details of the RTI application, for which such inquiry was conducted. According to P.W.7, the inquiry was with regard to the number of children of the returned candidate, with whom, she had no prior acquaintance and only upon the inquiry held, the information was furnished as per Ext.32. The

Supervisor of ICDS, Challagada GP was examined as P.W.8 and she corroborated the testimony of P.W.7. It has been revealed from P.W.8 that no statement of any of the witnesses examined during such inquiry were recorded in writing. It is suggested that the inquiry was conducted and finally, on completion of the same, the report was prepared as per Ext.32.

11. Since good number of exhibits have been marked by the election petitioner and there is detailed discussion by the learned Trial Court, according to the Court, further elaboration on the family details of the returned candidate is unnecessary. Mr. Seth, learned counsel for the returned candidate could not cite anything contrary to the claim of the election petitioner demolishing the evidence on the children born after the cut-off date. The learned Trial Court has taken judicial notice of all the material evidence and considering the fact that the entries in the Registers have been made routinely and in due course of regular business held it admissible under law and concluded that the same are sufficient to hold that the returned candidate is having more than two children born after the commencement of the Amendment Act, 1994. A decision of this Court in **Dhaneswar Mallick Vrs. Narayan Behera and another 2006 (I) OLR 132** has been referred to by the learned Trial Court to support the view that the entries in the concerned Registers would be admissible under Section 35 of the Indian Evidence Act. As regards, the local inspection and report proved, the decision in **Dingar Panda and others Vrs. Bhima Pradhan and others LAWS (ORI) 1950-10-6** was taken notice of with a conclusion that the same is relevant and also admissible and placed reliance on two other decisions, such as, **Jogo Bhatra Vrs. State of Odisha & others 2020 (I) OLR 940** and **Jitendra Muduli Vrs. State of Orissa & others 2016 (Supp.-1) OLR 891**. The Court is of the view that the conclusion of the learned Trial Court is legally tenable and rightly confirmed in appeal as it is based on admissible evidence.

12. In so far as the plea of the returned candidate that two of his children, namely, Gurumurthy Gamango and Chandra Sekhar Gamango are of his brother, namely, Benu, the same has been disbelieved by the learned Courts below. In support of such claim, no documentary evidence has been adduced. Though, independent witnesses have been examined as D.Ws. 2 to 6, who corroborated the above claim of the returned candidate examined as D.W.1 but their evidence was disbelieved and rightly so, since such a bald plea is unworthy of acceptance in juxtaposition to the overwhelming evidence received to the contrary. Nothing could be shown to the Court by Mr. Seth, learned counsel for the returned candidate claiming that the decision of the learned Courts below in any way to be perverse. The entire evidence disclosed that the returned candidate is having more than two children born after the cut-off date, which readily invites disqualification under law. The Court is not inclined to take a different view than the one expressed by both the Courts below on issue of disqualification.

13. With respect to the declaration of the election petitioner as duly elected consequent to the disqualification of the returned candidate, the conclusion of the

learned Trial Court is that the election petitioner since secured second highest number of votes, he, therefore, in view of Section 34 of the Act, is entitled to such relief, especially, when there is nothing on record to showcase that his candidature suffered from disqualification on any of the grounds specified under Section 25 thereof. Since, no evidence of any manipulation of votes could be shown alleging corrupt practice and as the issue in question predominately based on children born to the returned candidate born after the cut-off date, hence, invited disqualification, the learned Trial Court declared the election petitioner to be elected but, such declaration has been set aside in appeal. Whether, the learned Court below was right and justified in interfering with the declaration in favour of the election petitioner is to be examined.

14. Mr. Mishra, learned counsel for the election petitioner would submit that the learned Court below was unjustified in overruling the decision of the learned Trial Court on the ground that there were more than two candidates in the election fray, a conclusion, which is supported by the other side. In fact, a returned candidate, whose election is declared void could lead to the following consequences, such as, the election petitioner may be declared as elected provided he received valid votes; or to declare casual vacancy to have been created for a fresh election. An election may be challenged claiming declaration in terms of Section 34 of the Act that the election of all or any of the returned candidates is void with a further declaration that the election petitioner or any other candidate to have been elected. As per Section 38 of the Act, if the Civil Judge after making such enquiry, as deemed necessary, finds in respect of any person, whose election is called in question by a petition that his election was valid, he shall dismiss the election petition as against such person and may award costs at his discretion. But, if it is declared invalid, as earlier stated, the consequential direction would be either to hold a casual vacancy to have been arisen or declare another candidate as duly elected, whichever, action in the circumstances of the case to be more appropriate. Section 40 of the Act provides the grounds for which a candidate other than the returned candidate may be declared to have been elected and stipulates that such a declaration may be allowed, if the election petitioner proves that he or such other candidate received majority of valid votes; or but for the votes obtained by the returned candidate by corrupt practice, he or such other candidate would have obtained majority of valid votes. The learned Court below held that the case of the returned candidate does not fall in any of the categories mentioned in Section 40 of the Act.

15. As far as the returned candidate is concerned, he secured 852 votes, whereas, the election petitioner polled 691 votes and three other candidates received 409, 315 and 132 votes. So, to say, the election petitioner secured 28% of the total votes polled at the election. The learned Court below held that though the election petitioner received second highest number of votes but as there were more than two candidates in the election, hence, on the disqualification of the returned candidate, a casual vacancy should be declared for a fresh election to be held with the reason that

if opposite party No.2 had not have been allowed to contest the election on the ground of having more than two children born after the cut off date, the votes polled by him would have been distributed among other candidates. A reference has been made to a case law reported in **2006 (Supp.-II) OLR 117**, while reaching at such a conclusion.

16. Mr. Mishra, learned counsel for the election petitioner opposed any such declaration with the casual vacancy created for fresh election to be held by placing reliance on a decision in **Dhableswar Sahu Vrs. Ashok Kumar Sahu 2006 (Supp.-II) OLR 762**. In the decision (supra), a Division Bench of this Court held and concluded that in case of concurrent findings of fact of the Courts below, it should not be interfered with, while exercising writ jurisdiction under Article 226 of the Constitution of India. In so far as disqualification is concerned, the findings are concurrent herein but the declaration in favour of the election officer stood reversed in the appeal. In **Dhableswar Sahu** (supra), a few other decisions have been referred to on the point that the power conferred under Article 226 of the Constitution of India is for superintendence and unless, there is error of fact and law apparent on the face of the record, the decision should not be interfered with. But, as discussed hereinabove, the finding on the issue on further declaration of the election petitioner as duly elected has not been concurrent, rather, the decision in that regard of the learned Civil Judge has been overruled in appeal. But, such a decision in an appeal can be reversed provided the same is found to be perverse.

17. In **Khimji Vidhu Vrs. Premier High School (1999) 9 SCC 264** which has been followed in **Dhableswar Sahu** (supra), it has been held by the Apex Court that the findings of fact cannot be interfered with in exercise of writ jurisdiction under Article 227 of the Constitution of India, which must be sparingly exercised to correct error of jurisdiction, which falls in the domain of an Appellate Court. This Court is inclined to adopt the same course of action and not to upset the decision of the learned Court below even though it is not concurrent with any such conclusion in favour of the election petitioner. This Court is not a Court of appeal to resort to any such exercise like the learned Court below. Of course, the decision on the issue at hand is not based on facts but purely a question of law with reference to Section 40 of the Act but, before reversing the decision of the learned Court below, it has to be held and concluded that the finding thereon is illogical and perverse. Admittedly, it was not an election between two candidates but among five in the fray and the election petitioner was the one, who polled the second highest number of votes. Had the election been between two candidates, the situation would have been different and in such an event, the learned Court below could have held that the election petitioner should be declared as duly elected. A discretion is left with the Court to consider, whether, the election petitioner should be declared as such. Section 40 of the Act is applied only when the conditions stipulated therein are fulfilled and only if it is proved that the election petitioner received majority of the valid votes after the returned candidate is disqualified.

18. Law is well settled that the candidate, who polled the second highest number of votes is not automatically declared as duly elected. The principle is based on the rationale that a voter's intent is to elect a particular person in the election and not to vote the candidates in the preferential order. The votes cast for the disqualified candidate may be considered as stray, if he is disqualified and cannot simply be transferred to the candidate, who polled the second highest. Any such decision even when the voters may not have supported the election petitioner as the returned candidate, not being the election declaring any one of them as the elected candidate upon such disqualification, in the considered view of the Court, is likely to override the voters will and decision. In other words, an election is considered a contest of the individuals and voters cast their votes to a particular candidate of their choice. If the winning candidate is later found to be ineligible, it invalidates the mandate they received. The votes cast for the disqualified candidate even when treated as invalid, the result cannot simply be passed on to the next candidate securing higher number of votes. The Courts have consistently ruled that the voters, who supported the disqualified candidate intended him to win the election and not for their votes to be transferred to the second in line and therefore, automatically declaring the candidate, who polled the second highest number of votes would be like disrespecting the choice. According to the Court, even under the Representation of People Act, a candidate can only be declared as elected, if he is entitled to and the second highest polled candidate is not entitled to a similar relief, unless the election is between two candidates and upon disqualification of one of them. It has also been consistently held by the Apex Court that the standard practice and procedure in case of disqualification when more than two candidates in the fray would be to declare the election void and to go for a fresh one and not to declare the second highest polled candidate as duly elected. In **Dhableswar Sahu** (supra), the dispute was primarily over the election of a returned candidate for having more than two children born after the cut-off date and it was confirmed in appeal and therefore, for the concurrent findings, the writ jurisdiction was not invoked to upset it. Such a question to declare someone else as the elected candidate after a disqualification was never an issue for consideration in **Dhableswar Sahu** (supra). For the reasons discussed hereinbefore, the Court is, therefore, of the conclusion that the finding on disqualification of the learned Court below does not suffer from any perversity and hence, therefore, it has to be upheld.

19. Before departure, it is stated that the Court is alive to the provisions of the Act vis-à-vis the declaration in favour of the election petitioner as he may be declared elected after disqualification of the returned candidate but it has to be with proper exercise of judicial discretion. A candidate must have received majority of votes polled by him to be eligible for such a declaration. In the case of the election petitioner herein, the voting share was apparently 28% of the total votes cast, which means, himself, the returned candidate and others combined managed 1/3rd share each in the election. It is not that the other defeated candidates in the fray received negligible votes in comparison to the parties at battle. Under such circumstances, it

would not, therefore, be proper to declare the election petitioner as duly elected after disqualification of the returned candidate, hence, the decision of the learned Court below in that regard is justified and thus, not to be tinkered with and accordingly, it is ordered.

20. In the result, the writ petitions stand dismissed.

Headnotes prepared by:

Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:

Writ Petitions dismissed.

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2025 (III) ILR-CUT-1325

**RABINDRA PANIGRAHI
V.
GOURANGA PANIGRAHI & ORS.**

[CMP NO. 735 & 736 OF 2024]

SAMIRA PANIGRAHI & ANR. V. GOURANGA PANIGRAHI & ORS.
[CMP NO. 736 OF 2024]

12 DECEMBER 2025

[SASHIKANTA MISHRA, J.]

Issues for Consideration

1. Whether a Second Application for injunction can be entertained after dismissal of the first application?
2. Whether the trial court can pass the order to maintain status quo in spite of dismissing the application for injunction on the absence of necessary ingredients to grant the same?

Headnotes

(A) CODE OF CIVIL PROCEDURE, 1908 – Order XXXIX, Rule 1 & 2 r/w Section 151 – Application for Injunction – Dismissed – Second Application – Maintainability – Whether a Second Application for injunction can be entertained after dismissal of the first application?

Held: Yes – In the case of **Arjun Singh v. Mohindra Kumar**, the Supreme Court held that rejection of an interim application does not bar a subsequent application based on new facts. (Para 10)

(B) CODE OF CIVIL PROCEDURE, 1908 – Order XXXIX, Rule 1 & 2 r/w Section 151 – Application for Injunction – Dismissed – The trial court dismissed the application for injunction on the ground of absence of necessary ingredients for the injunction but pass the order to maintain status quo – Question raised that, once the trial court dismissed the application for injunction on the ground of absence of necessary ingredients, the order to maintain status quo is maintainable under the law?

Held: Yes – There is no quarrel with the proposition that in the absence of the necessary ingredients, such as, prima facie case, balance of convenience and irreparable loss, injunction cannot be granted but fact remains that the application for injunction (I.A. No. 51 of 2023) was filed not only under the provisions of order XXXIX Rule 1 and 2 but also Section 151 of C.P.C. It is trite law that Section 151 C.P.C., which saves the inherent powers of the Civil Court, confers wide power on it to pass such orders as may be necessary in a particular fact-situation for preservation of the subject matter of the suit – It cannot therefore, be said that only because the Court did not find the existence of the ingredients necessary to pass an order of injunction, it became powerless to pass any order for protection of the subject matter of the suit – In fact, reading of the impugned order would reveal that the Trial Court, despite holding that the petitioners are not entitled to the relief of injunction, held that if the defendants continue with their construction work exceeding their share it may cause great hardship to the plaintiffs, if equity is claimed – Therefore, in the interest of justice and for the purpose of preservation of the suit property, the order of status quo was passed – Learned District Judge, finding the order of the Trial Court to be reasonable, concurred with it. (Para 12)

Citations Reference

Arjun Singh v. Mohindra Kumar, **1963 SCC OnLine SC 43 : (1964) 5 SCR 946 : AIR 1964 SC 993**; Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd., **(2012) 6 SCC 792**; Kishorsinh Ratansinh Jadeja v. Maruti Corpn, **(2009) 11 SCC 229**; Dalpat Kumar v. Prahlad Singh, **(1992) 1 SCC 719 – referred to.**

List of Acts

Code of Civil Procedure, 1908.

Keywords

Injunction; Necessary Ingredients; Absence; Second Application for injunction; Maintainability; Status quo; Inherent power of the court; Interim application; Interim order; Prima facie case; Balance of convenience; Irreparable loss.

Case Arising From

Order dated 20.12.2024 passed by the District Judge in FAO No. 61 of 2023.

Appearances for Parties

For Petitioner : M/s. J.R. Deo, A.K. Das & A. Moharana & A.P. Bose

For Opp. Parties : M/s. S.S. Chaini & S.K. Sahoo

Judgment/Order**Judgment****SASHIKANTA MISHRA. J.**

Though both the applications filed under Article 227 of the Constitution of India are individually directed against two separate orders passed in connection with the same civil suit, yet the facts involved in both being intricately connected, both were heard together and are being disposed of by this common judgment.

2. The petitioner in CMP No.735 of 2024 is defendant No.2 in C.S. Case No.19 of 2022 pending in the Court of learned Civil Judge (Senior Division), Basudevpur. He is also petitioner No.2 in CMP No.736 of 2024, while petitioner No.1 thereof is defendant No.1 in the aforementioned suit. The present opposite parties are the plaintiffs in the said suit.

3. The suit is one filed by the plaintiffs for partition of the scheduled properties claiming that the same are the ancestral properties. The plaintiffs filed an application being I.A. No.25 of 2023 in the said suit under Order XXXIX, Rules 1 and 2 of CPC, read with section 151 of CPC for temporary injunction against the defendants. The defendants filed their objection. By order dated 15.05.2023, the Trial Court finding no merit in the application, rejected the same. The plaintiffs thereafter filed another application being I.A. No. 51 of 2023 with prayer to restrict the defendants from constructing any house over the suit land till disposal of the suit. The defendants filed objection. By order dated 03.07.2023, the Trial Court allowed the application by directing both parties to maintain status quo.

4. Being aggrieved, the defendants carried appeal to the District Judge being FAO No.61 of 2023. By order dated 20.02.2024, the appeal was dismissed. Said order is impugned in CMP No. 735 of 2024.

5. After dismissal of the appeal by the District Judge, the defendants filed an application in the Trial Court being CMA No.21 of 2024 seeking permission to complete their half-constructed house. The plaintiffs filed objection. By order dated 25.04.2024, the Trial Court rejected the application, against which CMP No. 736 of 2024 has been filed.

For the sake of convenience, the parties are referred to as per their respective status in the trial Court.

6. Heard Mr. A.P. Bose, learned counsel for the defendants and Mr. S.S. Chaini, learned counsel for the plaintiffs.

7. Mr. Bose would argue that a second application for injunction could not have been entertained after dismissal of the first application by the Trial Court. Further, the Trial Court having found that the three ingredients for passing an order of injunction being absent, could not have passed an order directing both parties to maintain status quo. He further submits that the defendants having constructed their house in part shall be put to immense difficulties if they are not allowed to complete the construction. Mr. Bose has relied upon several judgments in support of his contentions.

8. Per contra, Mr. Chaini would argue that the first application having been rejected on technical grounds but not on merits, the second application was maintainable particularly as there was change in circumstances. He further argues that in a suit for partition every co-sharer has a right over every inch of joint property until the same is partitioned by metes and bounds. The principle of res judicata does not apply to interlocutory applications. Though the Trial Court refused to grant injunction but passed the impugned order with the intent of preserving the property as it is till disposal of the suit as otherwise it would cause prejudice to the parties. Having once passed an order of status quo, the Trial Court rightly rejected the application filed by the defendants seeking permission to complete the so-called half-constructed house as it would alter the nature of the property and thereby defeat the very purpose of the partition suit.

9. After hearing learned counsel for the parties, this Court finds that the first point for consideration is the correctness of the order dated 03.07.2023 passed by the Trial Court directing both parties to maintain status quo, which was confirmed by the learned District Judge in appeal by order dated 20.02.2024. It has been argued that such order could not have been passed on an application filed by the plaintiffs subsequent to rejection of identical prayer made in a previous application. As already stated, the first application for injunction being I.A. No. 25 of 2023 was rejected by order dated 15.05.2023. Reading of the said order reveals that the Trial Court was not convinced on the facts placed before it that the necessary ingredients for grant of injunction were in existence. In particular, the Trial Court noted that there was lack of specific pleadings and averments as regards the particular plot on which the defendants were attempting to make construction. There was also absence of pleadings with regard to date of arising of the cause of action. The Trial Court also weighed the comparative mischief likely to be caused by granting an order of injunction and refusing it. As such, the application was rejected. It cannot be said that the application was rejected on technical grounds. Be that as it may, the second application was filed being I.A. No.51 of 2023 by the plaintiffs stating that after dismissal of the earlier application the defendants were making preparation to construct a house over the suit land for which they approached the Sub-Divisional Magistrate, Bhadrak to initiate a proceeding under Section 144 of Cr.P.C. in view of

the summer holidays of the Court. In fact, the learned SDM also directed both parties to maintain status quo. When the said order was in operation, the defendant allegedly gathered house building materials and started digging earth for construction of the new house. Whether the allegations are correct or not is a different matter, but it can certainly be said that if true, it was a different cause of action that had arisen after disposal of the earlier application.

10. In the case of **Arjun Singh v. Mohindra Kumar**¹, the Supreme Court held that rejection of an interim application does not bar a subsequent application based on new facts.

“14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of court. There are other orders which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under O. IX, Rule 7 would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to “set the clock back” does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages so as to preclude its being reconsidered. Even if the rule of res judicata does not apply it would not follow that on every subsequent day which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of res judicata. Thus, if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose

even if based on the same facts, is not barred on the application of any rule of res judicata, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of res judicata and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of res judicata is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the Other case, on proof of fresh facts, the court would be competent, nay would be bound to take those into account and make an order conformably to the facts freshly brought before the court.”

This Court is therefore, unable to accept the argument that the second application was not maintainable.

11. Coming to the next ground raised, that is, legality of passing an order of status quo in the absence of the necessary ingredients for grant of injunction, it has been argued that the Trial Court found that the necessary ingredients are absent and recorded such fact in its order. Having noted so, it could not have directed both parties to pass an order of status quo. The District Judge also confirmed the order of the Trial Court. Mr. Bose, learned counsel for the defendants has relied upon the following judgments of the Supreme Court to buttress his contention as above.

1. Best Sellers Retail (India) (P) Ltd. v. Aditya Birla Nuvo Ltd.²

2. Kishorsinh Ratansinh Jadeja v. Maruti Corpn.³

3. Dalpat Kumar v. Prahlad Singh⁴,

Learned counsel for the plaintiffs however, has argued that the order was passed with the intent of preserving and protecting the suit property during pendency of the suit.

12. There is no quarrel with the proposition that in the absence of the necessary ingredients, such as, prima facie case, balance of convenience and irreparable loss, injunction cannot be granted but fact remains that the application for injunction (I.A. No. 51 of 2023) was filed not only under the provisions of order XXXIX Rule 1 and 2 but also Section 151 of C.P.C. It is trite law that Section 151 C.P.C., which saves the inherent powers of the Civil Court, confers wide power on it to pass such orders as may be necessary in a particular fact-situation for preservation of the subject matter of the suit. It cannot therefore, be said that only because the Court did not find the existence of the ingredients necessary to pass an order of injunction, it became powerless to pass any order for protection of the subject matter of the suit. In fact, reading of the impugned order would reveal that the Trial Court, despite holding that the petitioners are not entitled to the relief of injunction, held that if the

2 (2012) 6 SCC 792

3 (2009) 11 SCC 229

4 (1992) 1 SCC 719

defendants continue with their construction work exceeding their share it may cause great hardship to the plaintiffs, if equity is claimed. Therefore, in the interest of justice and for the purpose of preservation of the suit property, the order of status quo was passed. Learned District Judge, finding the order of the Trial Court to be reasonable, concurred with it.

13. Considering the fact that there is an allegation that the defendants are attempting to make construction over a portion of the suit land exceeding their share, this Court is also of the considered view that the status quo ought to be maintained till disposal of the suit as it would preserve the property as it is. This is being said for all the more reason that the suit has been targeted for expeditious disposal by the learned District Judge.

14. Now, coming to the order of the Trial Court refusing to grant permission to the defendants to complete construction of their house, in view of the fact that this Court also concurs with the order of status quo passed by the Trial Court and confirmed by the Appellate Court, finds no illegality in the order of the Trial Court refusing such permission.

15. In the fitness of things and for ends of justice, it is necessary that status quo with regard to the suit property should be maintained till disposal of the suit.

16. Thus, from the analysis of facts, law involved and the contentions raised, this Court is not persuaded to interfere with the orders impugned in both the applications. Both the CMPs are therefore, dismissed.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

CMPs dismissed.

2025 (III) ILR-CUT-1332

SANJAY KUMAR PEREI & ORS.**V.****STATE OF ODISHA & ORS.**

[WPC (OA) NO. 363 OF 2019]

31 OCTOBER 2025

[SASHIKANTA MISHRA, J.]**Issue for Consideration**

Whether senior reserved category employees can be denied promotion to the higher post under unreserved category ignoring their seniority.

Headnotes

SERVICE LAW – Promotion – Reservation – Rule – Petitioner’s as well as private opposite parties were working as Asst. Revenue Inspector & Amin in the different Tahasils of the District of Keonjhar – Appointment of petitioners were through the Special recruitment drive for the SC & ST category, in the year of 2009 – Private opposite parties were appointed in the years of 2012 & 2013 under the General Category – Gradation list published – Petitioners were placed in the serial No. 1 to 5 & the private opposite parties were remained below to the petitioners in the gradation list – Departmental Promotion Committee for promotion to the post of Revenue Inspector were held on 18.01.2019 – Private Opposite parties were promoted on the ground that, the promotional post for R.I was earmarked for the general category not for the reserved category – Petitioners contended, Rule 11 of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 mandates promotion is to be given on the principle of Merit-cum-Suitability with due regard to Seniority but petitioners were denied promotion on the ground that, the promotional post was meant for unreserved category only – On the other hand Opposite Parties contended that as the petitioners were initially appointed in a special recruitment drive, they have already availed relaxation in the initial level, and therefore cannot be considered for promotion in the reserved category & the ceiling limit of 50% already exhausted – In the view of the above contentions, whether petitioners, being senior reserved category employee, can be denied promotion as they are not coming under the unreserved category?

Held: No – The implication of this judgment is that the slots earmarked for specific categories are to be filled up by candidates belonging to those categories alone – When the matter under consideration relates to reservation, it obviously refers to the reserved categories, namely, SC, ST

and OBC – It must be kept in mind that ‘unreserved’ by itself is not a category for reservation but in any given recruitment it is the half of the posts in the cadre that remain open for all candidates irrespective of their social categories – In the case of **R.K. Sabharwal v. State of Punjab**, the Constitution Bench of the Supreme Court held as follows:

“4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts – On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation – Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State.”

(Para 20)

Same view was reiterated in the case of **Virpal Singh Chauhan** (supra). What the State Government has done is to treat the unreserved as a category meant for reservation of candidates not coming within the reserved social categories – This is obviously a fallacious approach as by its very nature, the word ‘unreserved’ admits of no reservation whatsoever – It does not and cannot mean that a reserved category candidate cannot vie for a post as an unreserved candidate by competing on his own merit – This was recognized by the Constitution Bench of the Supreme Court even earlier in the case of **Indra Sawhney** (supra), wherein the following was held.

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation – It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

(Para 21)

The chance to compete on merit is open to all irrespective of their social categories and cannot be denied to any candidate – This would amount to direct violation of the principles of equality enshrined under Article 14 as well as 16(4) of Constitution of India. In a recent case i.e., **Union of India v. Sajib Roy**, the Supreme Court held as follows:

“32. On an analysis of the aforesaid cases, we summarise as follows:

Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case – That is to say, in the event there is no embargo in the recruitment

rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats – However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.”

Be it noted that no such embargo is available in the ODRS Rules, 1983 – Obviously, the clarification issued by the Government on 11.01.2019 cannot override the provisions of the ODRS Rules, 1983. (Para 22)

Citations Reference

M. Nagaraj v. Union of India, (2006) 8 SCC 212; Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217; Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684; Lalit Kumar Nayak vs. State of Odisha, W.P.(C) No. 12516 of 2020; R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745; Union of India v. Sajib Roy, 2025 SCC OnLine SC 1943 – referred to.

List of Acts

Orissa District Revenue Service (Method of Recruitment & Condition of Service) Rules, 1983.

Keywords

Appointment; Promotion; Reservation; Gradation; List of gradation; Seniority; Merit-cum-seniority; Special recruitment drive; Departmental Proceeding; Reservation policy; Reserved Category; Unreserved Category; Assistant Revenue Inspector; Revenue Inspector; Percentage of promotion; Zone of Consideration; 50% ceiling; *Per incuriam*.

Case Arising From

Challenging the order dated 17.01.2019 passed by the Collector of Keonjhar.

Appearances for Parties

For Petitioners : Mr. Rajib Rath

For Opp. Parties : Mr. S.N. Pattnaik, AGA [For O.P Nos. 1 & 2]
M/s. P.C. Acharya & S.K. Parida [For O.P. Nos.3 to 8]

Judgment/Order

Judgment

SASHIKANTA MISHRA. J.

The issue that arises for consideration in this writ application is, whether senior reserved category employees can be denied promotion to the higher post under unreserved category ignoring their seniority.

FACTS

2. Petitioner Nos.1, 2 and 3, at the time of filing of the writ application were serving as Asst. Revenue Inspectors (ARI) while petitioner Nos.4 and 5 were

servicing as Amins. All of them were posted in different Tahasils of Keonjhar District. Petitioner No.1 and 3 belong to the SC category, while petitioner Nos. 2, 4 & 5 belong to the ST category. Petitioner Nos. 1, 2 and 3 entered into Government service as ARI on 09.11.2009, 13.11.2009 and 05.11.2009 respectively. Petitioner Nos.4 & 5 entered into Government service as Amins on 13.11.2009 and 16.11.2009 respectively.

3. The Collector, Keonjhar vide letter dated 06.09.2018 published draft gradation list as on 31.07.2018 in respect of Revenue Supervisors, Revenue Inspectors, Asst. Revenue Inspectors and Amins. In the draft gradation list of ARIs, petitioner Nos.1 to 3 were placed at serial Nos. 1, 2 and 5 respectively and petitioner Nos. 4 & 5 were placed at serial nos. 1 and 2 respectively in the draft gradation list of Amins. All the petitioners have passed departmental examination and have completed five years of service in their respective posts. As such, they claim to be eligible for being considered for promotion to the post of Revenue Inspector taking into account their seniority as per Rule-11 of the Orissa District Revenue Service (Method of Recruitment and Conditions of Service) Rules, 1983 (in short, “the ODRS Rules, 1983”).

4. By letter dated 16.08.2018, the Collector, Keonjhar sought clarification from the Government as to whether the employees belonging to the reserved categories could be considered for promotion to the post of Revenue Supervisor and Revenue Inspector in the UR category in view of excess representation of the reserved category employees. In response, the Government in Department of Revenue and Disaster Management, vide letter dated 11.01.2019 clarified that post-based reservation policy is being followed pursuant to the judgment of the Supreme Court in the case of **M. Nagaraj v. Union of India**¹, wherein it was held that specific slots are to be earmarked for specific category of candidates. As such, excess number of reserved category candidates having been employed in their prescribed slots over and above the limit, their cases for promotion against the posts earmarked for UR category cannot be considered.

5. Pursuant to such clarification of the Government, the Collector by order dated 17.01.2019 constituted a Departmental Promotion Committee (DPC) to be held on 18.01.2019. On 19.01.2019, the private opposite party Nos. 3 to 8 belonging to the general category were given promotion to the rank of Revenue Inspector ignoring the seniority of the petitioners and in violation of the ODRS Rules, 1983. The Collector also directed them to be relieved from their posts for joining in the new places of posting.

6. According to the petitioners, the impugned order of promotion issued in favour of the private opposite parties is unsustainable in law because seniority of the petitioners was completely ignored. As per the gradation list, all the petitioners

¹ (2006) 8 SCC 212

joined in Government service on different dates in November, 2009 whereas the private opposite parties joined in June, 2012 and January, 2013. As such, they were placed below the petitioners in the respective gradation lists. According to the petitioners, there is no bar in law for filling up unreserved vacancies by promoting reserved category candidates, if they are more meritorious. On such facts, the petitioners approached the erstwhile Odisha Administrative Tribunal in O.A. No. 363 of 2019, which has since been transferred to this Court and registered as WPC(OA) No. of 2019. The petitioners have claimed the following relief:

“In view of the facts mentioned in the foregoing paragraphs, the applicant prays for the following relief(s):-

(i) The Hon'ble Tribunal be pleased to quash the promotion order dated 19.1.2019 of private respondents as at Annexure-5 given in pursuance of the DPC recommendation dated 17.1.2019 as at Annexure- 4 and clarification letter dated 11.1.2019 issued by respondent No.1 as at Annexure-3/1

And

The Hon'ble Tribunal be pleased to direct the State respondents that to give promotion to the present applicants taking into account their seniority in the gradation lists of ARI/Amin as at annx-2 series by convening a review DPC with all retrospective consequential service and financial benefits.

And

i. The Hon'ble Tribunal be pleased to declared that the clarification letter dated 11.01.2019 issued by the respondent nc-1 as at Annexure-3/1 as illegal.

ii. The Hon'ble Tribunal be pleased to pass such order/orders as is deemed fit and proper under the facts and circumstances of the case.

7. Counter affidavit has been filed by the Collector (opposite party No.2), wherein the averments made in the writ application relating to the date of joining of the petitioners and private opposite parties is admitted. Reference has been made to the clarification issued by the Government. It is stated that in the DPC held on 18.01.2019, the norms laid down in Government circulars, instructions and clarification dated 11.01.2019 were strictly followed. The private opposite parties, who belong to the general category, were given promotion following the post-based reservation policy. As the present petitioners do not belong to the UR category, their cases were not considered though they appear above the private opposite parties in the gradation list. On the contrary, the private opposite parties belong to the UR category and have been promoted under such category. There is thus, no illegality.

8. The Collector has also filed an additional affidavit at the time of final hearing of the case stating inter alia, that the petitioners belong to the reserved category and there being excess employees against the reserved category posts, their cases for promotion against posts earmarked for UR category were not considered. Further, the petitioners are all beneficiaries of recruitment by special drive in 2009 and therefore, having availed relaxation at the relevant time, they cannot be treated to have been selected on merit in the feeder cadre. Denial of promotion to them

therefore, is not wrong. It is also stated that the contention regarding appointment of reserved category candidates against unreserved posts is applicable to initial appointment but not with respect to promotion.

9. The private opposite parties have also filed a counter more or less adopting the stand taken by the opposite party No.2. It is admitted that the petitioners were placed above them in the gradation list but they having been appointed without facing any competition from general category candidates have to be treated as reserved category candidates, for which they cannot occupy posts meant for UR category. It is further stated that in Keonjhar district there is excess appointment of SC candidates in the post of Revenue Inspector. Therefore, such candidates cannot be promoted to the said post as it would amount to further exceeding the quota.

SUBMISSIONS

10. Heard Mr. Rajib Rath, learned counsel for the petitioners, Mr. S.N. Pattnaik, learned Addl. Government Advocate for the State and Mr. P.C. Acharya, learned counsel for the private opposite party Nos. 3 to 8.

11. Mr. Rath would argue that the concerned authorities have acted on complete misconception and misinterpretation of law laid down by the Supreme Court in the case of **M. Nagaraj** (supra), inasmuch as in the said judgment, the Supreme Court merely held that the percentage of reservation fixed in respect of a particular cadre with the roster indicating the reserved points implies that the post shown against such reserved point are to be filled up from amongst the members of reserved category candidates, to which candidates belonging to the general category are not entitled to be considered. This bar placed for general category candidates is not available while considering appointments to general category posts as the same are open to all irrespective of the category to which they belong. Therefore, by restricting the so-called UR posts to only general candidates, the authorities have not only acted in violation of the ratio decided in **M. Nagaraj** (supra) but also the principles underlying Articles 14 and 16(2) of the Constitution of India. Mr. Rath further cites the judgment of the Supreme Court in the case of **Indra Sawhney v. Union of India**², and **Union of India v. Virpal Singh Chauhan**³ to argue that it is always open to the reserved category candidates to be considered for selection in open competition on the basis of their own merit and once they are so selected they cannot be counted against the quota reserved for them in the reserved categories. In such event, they are to be treated as unreserved candidates. Mr. Rath has also relied upon the judgment passed by a coordinate Bench of this Court in **Lalit Kumar Nayak vs. State of Odisha**⁴ to buttress his contention as above. Mr. Rath sums up his argument by submitting that Rule-11 of the ODRS Rules, 1983 mandates that

² 1992 Supp (3) SCC 217

³ (1995) 6 SCC 684

⁴ W.P.(C) No. 12516 of 2020.

promotion is to be given on the principle of merit-cum-suitability with due regard to seniority. In the instant case, though the petitioners are admittedly senior to the private opposite parties, they were not even considered for promotion on the ground that the promotional posts available to be filled up are of unreserved category.

12. Mr. S.N. Pattnaik, learned Addl. Government Advocate on the other hand submits that the petitioners were initially appointed in a special recruitment drive to fill up the reserved category posts. Thus, having availed relaxation and other benefits available to reserved category candidates at the initial level, they cannot claim to be considered as unreserved candidates at the promotional level. Mr. Pattnaik further argues that even otherwise the representation of SC candidates in the promotional post of Revenue Inspector in Keonjhar District was in excess of the admissible limit of 16.25% while the total limit for ST candidates (22.5%) was completely exhausted. As such, considering the case of the petitioners would have breached the ceiling limit of 50% in matters of promotion. The petitioners not having been selected on merit in the feeder cadre cannot claim consideration on merit at the promotional level. As regards the judgment of this Court in the case of **Lalit Kumar Nayak**, Mr. Pattnaik submits that the same is under challenge in an appeal being W.A. No.2395 of 2024 before the Division Bench, which is pending. Therefore, the implementation of the judgment by granting promotion to the petitioner in the said case (**Lalit Kumar Nayak**) must be treated as provisional and not final decision of the Government.

13. Mr. P.C. Acharya, learned counsel appearing for the private opposite parties while adopting the arguments of the State Counsel would submit that as per the ratio decided in **M. Nagraj** (Supra), persons are to be appointed/promoted against slots earmarked for their respective categories. There can be no deviation in such regard. In the instant case, the ST posts were all filled up, whereas four excess appointments were made in respect of SC category posts. The petitioners admittedly belong to ST/SC categories and therefore, following the ratio decided in **M. Nagraj** (supra) as applied and implemented by the State Government, they cannot be considered against UR posts which are meant only for UR category. Further, the DPC was held to specifically fill up 6 vacancies in the UR category only. Mr. Acharya further contends that this Court in W.P.(C) No. 15448 of 2020 held that SC/ST candidates in that case were rightly not considered for promotion against general category posts as their slots had already been filled up. The Writ Appeal filed against the said judgment was dismissed.

ANALYSIS AND FINDINGS

14. Before delving into the merits of the rival contentions referred above, it would be apposite to refer to some of the statutory provisions governing the field. The ODRS Rules, 1983 provides for four different cadres in the District Revenue Service. Rule-3, which is relevant, is reproduced below.

“3. The service of each District shall comprise the following cadres, namely:-

- (a) the cadre of Revenue Supervisors;
- (b) the cadre of Revenue Inspectors;
- (c) the cadre of Amins; and
- (d) the cadre of Collection Moharirs:

Provided that Government shall be competent to order inclusion in or exclusion from these cadres any category of posts as considered necessary.”

The method of recruitment of service is governed by Rule-4. Sub-Rule (2) provides as follows:-

“(2) Recruitment to the posts in the cadre of Revenue Inspector shall be made by the following methods, namely:-

- (a) by direct recruitment to the extent of fifty per cent of the vacancies arising in a year in accordance with Rules 6 and 7, and
- (b) by promotion from the cadres of Amins and Collection Moharirs to the extent of fifty percent of the vacancies arising in a year in accordance with rule 11:

Provided that if adequate number of candidates suitable for promotion are not available in a particular year the vacancies earmarked for promotion shall be filled up by direct recruitment.”

Rule-11 relates to promotion to the cadre of Revenue Inspectors and reads as follows:

“Promotion to the cadre of Revenue Inspectors shall be made, on the basis of merit and suitability in all respects with due regard to seniority, from among the Amins and Collection Moharirs of the District who, on the first day of January of the year in which the Committee meets-

- (a) have completed at least five years of service as such and
- (b) have passed such Departmental examination/tests as may be prescribed from time to time;

Provided that the percentage of promotion of the Amins and Collection Moharirs to the rank of Revenue Inspector shall as nearly as possible, be proportionate to the total strength of such employees continuing on regular basis in the district.”

Be it noted that as per ODRS Amendment Rules, 2006, the words “Collection Moharir”’s has been substituted with the words “Asst. Revenue Inspector”.

15. It is thus evident that both Amins and ARIs can be promoted to the cadre of Revenue Inspector to the extent of 50% of the vacancies arising in a year. Further, such promotion shall be made on the basis of “merit and suitability in all respects with due regard to seniority”.

16. What is the implication of the expression ‘merit-cum-suitability with due regard to seniority’ occurring in Rule-11?

17. In the case of **B.V. Sivaiah v. K. Addanki Babu**⁵, the Supreme Court held as follow:

“9. The principle of “merit-cum-seniority” lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which prescribed that “selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority” Mathew, J. in Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5] has said: (SCC p. 856, para 37)

“[F]or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale.”

Similarly, Beg, J. (as the learned Chief Justice then was) has said: (SCC p. 851, para 22)

“22. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant Rules, is that the ‘entrance’ or ‘inclusion’ test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor.”

10. On the other hand, as between the two principles of seniority and merit, the criterion of “seniority-cum-merit” lays greater emphasis on seniority. In State of Mysore v. Syed Mahmood [AIR 1968 SC 1113 : (1968) 3 SCR 363 : (1970) 1 LLJ 370] while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the Rule required promotion to be made by selection on the basis of “seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion”. It was pointed out that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.”

18. Thus, as per Rule-11, merit-cum-suitability is the primary criterion for promotion but seniority cannot be altogether ignored. This Court would not detain itself on this point any longer for the reason that in the instant case the petitioners have not been considered at all for promotion by the DPC and hence the question of

⁵ (1998) 6 SCC 720

determining their merit and suitability does not arise. This takes the Court to the question whether ignoring the petitioners altogether from the zone of consideration is legally tenable? Before proceeding to answer this question, this Court deems it proper to deal with a preliminary point raised by the State Counsel as well as the counsel for the private opposite parties, namely, the petitioners having been appointed in a special recruitment drive for reserved category candidates cannot claim any further benefits. This argument can be considered only to be rejected. This is being said for the reason that there is no provision in the ODRS Rules, 1983 supporting such contention. Moreover, the Rules do not make any distinction between the source of recruitment of employees in the feeder cadre. Once a person is recruited, from whatever source, he becomes part of the cadre. In fact, this has been implicitly acknowledged by the authorities themselves by preparing a common gradation list of all employees in different cadres irrespective of their source of recruitment. The gradation list is prepared only on the basis of date of joining of the employees and nothing else.

19. Coming back to examine the moot point involved, it is to be noted at the outset that the position that all the petitioners having been appointed in the year 2009 are senior to the private opposite parties is an admitted fact. That they were placed higher than the private opposite parties in their respective draft gradation lists is also an admitted fact. As already stated, they were not brought within the zone of consideration by the DPC for promotion to the higher post of Revenue Inspector on the ground that the posts available to be filled up belonged to the UR category. The petitioners being admittedly reserved category candidates were denied consideration because of their status as such. The Collector, Keonjhar having noted that the percentage meant for ST candidates in the promotion cadre has been exhausted and there were four excess candidates under the SC category, sought for clarification from the Government as to whether the ST and SC category employees could be considered for promotion in UR category. In response, the Government vide letter dated 11.01.2019 issued a clarification, which is reproduced below:

**“GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT
DEPARTMENT**

No. RDM- NGEB- CLRFIC-0013-2018 1499 /Dated 11 JAN 2019

From

*Sri Bijay Kumar Mohanty
Deputy Secretary to Government*

To

ADM, Keonjhar

Sub: Clarification regarding filling up vacant posts of Revenue Supervisors and Revenue Inspectors in Keonjhar District.

Sir,

In inviting a reference to your letter No.1869 dtd. 16.8.2018 on the subject cited above, I am directed to say that Post-Based Reservation Policy is currently

being followed in the State consequent upon the Judgment dtd-19.10.2006 of the Hon'ble Supreme Court of India in case of M. Nagraj. It has further been held by Hon'ble Supreme court of India that specific slots shall be earmarked for specified categories and for dearth of a certain category candidate, those vacancies may remain unfilled.

In view of the above, since excess number of reserved category candidates are there over and above their prescribed slots, their case for promotion against the posts earmarked for UR category cannot be considered.

This has been concurred in by ST & SC Development Department.

*Yours faithfully,
Sd/-*

Deputy Secretary to Government

Thus, purportedly relying upon the ratio decided in **M. Nagraj** (supra), a decision was taken to deprive the petitioners from the zone of consideration. It, therefore, becomes important to examine as to what was decided in **M. Nagraj** (Supra). In the said case, the Supreme Court was seized with the challenge to the constitutionality of the 77th, 81st, 82nd and 85th Constitutional amendment. It was clarified that reservation cannot exceed 50% ceiling under any circumstances. It was also held that the cadre strength as a unit has to be applied in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Each point in the roster indicates a post which on falling vacant has to be filled up by the particular category of candidate to be appointed against it and any subsequent vacancy has to be filled up by that category candidate alone. For want of candidates in a particular category, the post may remain unfilled. The slot has to be filled up only by the specified category.

20. The implication of this judgment is that the slots earmarked for specific categories are to be filled up by candidates belonging to those categories alone. When the matter under consideration relates to reservation, it obviously refers to the reserved categories, namely, SC, ST and OBC. It must be kept in mind that 'unreserved' by itself is not a category for reservation but in any given recruitment it is the half of the posts in the cadre that remain open for all candidates irrespective of their social categories. In the case of **R.K. Sabharwal v. State of Punjab**⁶, the Constitution Bench of the Supreme Court held as follows:

"4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the

⁶ (1995) 2 SCC 745

State Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State.”

21. Same view was reiterated in the case of **Virpal Singh Chauhan** (supra). What the State Government has done is to treat the unreserved as a category meant for reservation of candidates not coming within the reserved social categories. This is obviously a fallacious approach as by its very nature, the word ‘unreserved’ admits of no reservation whatsoever. It does not and cannot mean that a reserved category candidate cannot vie for a post as an unreserved candidate by competing on his own merit. This was recognized by the Constitution Bench of the Supreme Court even earlier in the case of **Indra Sawhney** (supra), wherein the following was held.

“In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.”

22. The chance to compete on merit is open to all irrespective of their social categories and cannot be denied to any candidate. This would amount to direct violation of the principles of equality enshrined under Article 14 as well as 16(4) of Constitution of India. In a recent case i.e., **Union of India v. Sajib Roy**⁷, the Supreme Court held as follows:

“32. On an analysis of the aforesaid cases, we summarise as follows:

Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case. That is to say, in the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats. However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.”

Be it noted that no such embargo is available in the ODRS Rules, 1983. Obviously, the clarification issued by the Government on 11.01.2019 cannot override the provisions of the ODRS Rules, 1983.

23. Coming to the judgment cited by Mr. Acharya as passed in W.P.(C) No. 15448 of 2020 and confirmed in W.A. No. 480 of 2020, a perusal of the said judgment reveals that implication of the expression “merit-cum-suitability with due regard to seniority” occurring in Rule-11 of the ODRS Rules does not appear to have been considered by the Court. Further, the observations of the Constitution Bench of the Supreme Court in the case of **R.K. Sabharwal** (supra), quoted in paragraph-19 of this judgment as also the ratio decided in **Virpal Singh Chauhan**

⁷ 2025 SCC OnLine SC 1943

(supra) and **Indra Sawhney** (supra) as quoted in paragraph-20 of this judgment does not appear to have been considered. Therefore, in the humble view of this Court, the said judgments must be held to have been rendered *per incuriam* to the statutory provision as well as the position of law delineated by the Supreme Court of India in the above referred cases. This Court therefore, holds that the judgments cited by Mr. Acharya have no application to the present case.

24. Applying the ratio decided in the judgments referred to earlier to the facts of the present case vis-à-vis Rule-11 of the ODRS Rules, 1983, this Court finds not only that the petitioners were deprived from competing on merit with the other candidates, their inherent seniority in the cadre as per the gradation list was also ignored. Thus, the very principle envisaged in the Rule, i.e., merit-cum-suitability with due regard to seniority was given a completely go-bye. Had the petitioners been so permitted and found to be less meritorious and unsuitable than the other candidates, denial of promotion would have been justified but not so in the present scenario where they were not even brought into the fray. Thus, looked at from any angle, the action of the authorities in not considering the case of the petitioners for promotion and promoting their rank juniors in the cadre amounts to gross violation of the principles of equality enshrined under the Constitution as well as Rule-11 of the ODRS Rules, 1983. The impugned order of promotion (Annexure-5) issued in favour of the private opposite parties cannot therefore, be sustained.

25. In the considered view of this Court, the question of promotion to the post of Revenue Inspector needs to be revisited by considering the merit, suitability as well seniority of all eligible candidates.

CONCLUSION

26. In view of the discussions made hereinabove, the writ application is allowed. The impugned order under Annexure-5 is hereby quashed. It is observed that the promotion granted to the private opposite parties was made subject to the result of this writ application (O.A.) as per order dated 21.01.2019 passed by the Tribunal. Since this Court has now quashed the order of promotion, the promotees shall be reverted to the feeder cadre. However, it is made clear that no recovery shall be effected from them towards the salary and other financial benefits drawn by them during the interregnum. The authorities are directed to convene a review DPC for promotion to the post of Revenue Inspector, by considering the inter se merit, suitability and seniority of all eligible candidates. Basing on the outcome of such review DPC, necessary orders of promotion shall be issued. The entire exercise shall be completed within a period of three months from today.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition allowed.

2025 (III) ILR-CUT-1345

**SURESH CHANDRA SAHU @ SURESH SAHU & ANR.
V.
STATE OF ODISHA & ANR.**

[CRLMC NO. 2810 OF 2025]

07 NOVEMBER 2025

[A.K. MOHAPATRA, J.]**Issue for Consideration**

Whether, at the stage of discharge prior to framing of charge, the accused can invoke Section 91 Cr.P.C. (Section 94 of BNSS) to summon documents not forming part of the charge-sheet.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 91 (corresponding to Section 94 of BNSS) – Summoning of documents – Stage of discharge – Scope of accused’s right – The accused-petitioners sought summoning of the Notary Register to prove an alleged affidavit executed by the informant-victim, by invoking Section 91 of Cr.P.C at the stage of discharge prior to framing of charge – The trial court rejected the application – Whether, at the stage of discharge prior to framing of charge, the accused can invoke Section 91 Cr.P.C.

Held: No – Be that as it may, as has already been comprehensively discussed, before framing of the charge, at the stage of discharge, the learned trial court can only examine the documents and materials on the record, i.e. only the materials filed along with the Chargesheet – At the stage of framing of charge, it is not the guilt of the accused that is under adjudication, rather, the rial court considers whether there are sufficient grounds to proceed to the stage of trial – Upon an evaluation of the impugned order of the learned trial court, in light of the aforesaid analysis, this Court is of the view that the learned ADJ-cum-special Judge, Bhanjanagar, Ganjam has not committed any illegality in passing the order dated 26.06.2025 under Annexure-7 – As such, the impugned order dated 26.06.2025 does not warrant any interference by this Court in exercise of its inherent powers under section 528 of the BNSS (i.e. erstwhile section 482 Cr.P.C) is necessary. (Para 34)

Citations Reference

State of Maharashtra vs. Natwaral Damodardas Soni, (1980) 4 SCC 669; Dr. Sublendu Prakash Diwakar v. The State of Maharashtra, **Criminal Writ Petition(ST) NO.17507 of 2023, Supreme Court**; Manoj v. State of M.P., (2023) 2 SCC 353; Nitya Dharmananda v. Gopal Sheelum Reddy, (2018) 2

SCC 93; State of Odisha v. Debendra Nath Padhi, (2005) 1 SCC 568; State of Rajasthan v. Swarn Singh, 2024 SCC OnLine SC 5537; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715; Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4; State of Bihar v. Ramesh Singh, (1977) 4 SCC 39; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338; Sheoraj Singh Ahlawat v. State of U.P., (2013) 11 SCC 476; Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561; Ram Prakash Chadha v. State of U.P., (2024) 10 SCC 651; M.E. Shivalingamurthy v. CBI, (2020) 2 SCC 768; State v. Eluri Srinivasa Chakravarthi, 2025 SCC OnLine SC 1215; State of M.P. v. Rakesh Mishra, (2015) 13 SCC 8; Satish Mehra v. Delhi Administration, (1996) 9 SCC 766; State of Gujarat v. Dilipsinh Kishorsinh Rao, (2023) 17 SCC 688; State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709; Sarla Gupta v. Enforcement Directorate, (2025) 7 SCC 626; Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re, (2021) 10 SCC 598; V.K. Sasikala v. State, (2012) 9 SCC 771; Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1; Om Parkash Sharma v. CBI, (2000) 5 SCC 679; Rohit Kumar Behera v. State of Odisha, 2021 SCC OnLine Ori 1482; Partha Sarathi Das v. State of Orissa & Ors., 2023 SCC OnLine Ori 5657; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023

Keywords

Stage of discharge; Before framing of charge; Summon the Notary Register; Documents not forming part of the charge-sheet; Defence of the accused; Roving and fishing inquiry; Prima facie case; Sufficient ground to proceed; Materials produced by the prosecution; Stage of the proceedings.

Case Arising From

Order dated 26.06.2025 passed by learned ADJ-cum-Special Judge, Bhanjanagar in G.R. Case No. 80/2024 (Special Act) arising out of Tarasing P.S. Case No. 0376/2024.

Appearances for Parties

For Petitioners : Mr. Tirth Kumar Sahu

For Opp. Parties : Ms. Babita Kumari Sahu, AGA

Judgment/Order

Judgment

A.K. MOHAPATRA, J.

1. The present CRLMC application has been filed by the Petitioners with a prayer to quash the impugned order of the ADJ-cum-Special Judge, Bhanjanagar, dated 26.06.2025 under Annexure-7 passed in G.R. Case No. 80/2024 (Special Act) arising out of Tarasing P.S. Case No.0376/2024, for commission of offence punishable under sections 417/ 376(2)n)/ 379/ 506/294/ 34 of the I.P.C, 1860 read with sections 3(1)(r)/ 3(1)(s)/ 3(1)(w)/3(2)(v)/ 3(2)(va) of the SC&ST (PoA) Act, 1989. A further prayer has also been made to direct the learned trial court to call for Notary Register from the Notary Public, Dasapalla, Sri S.K.Patra, Regd. No.29/99, so as to bring on record the registration of affidavit dated 23.05.2024 allegedly sworn by the informant-victim.

FACTUAL MATRIX OF THE CASE

2. The factual background leading to the filing of the present application as culled out from the FIR and the chargesheet, in short, is that initially the Opposite Party No.2-victim, on 09.12.2024, lodged a complaint that one Sriram Prasad Sahu @ Lipun (i.e. the principal accused), who is the son of the present Petitioners, gradually developed a friendship with the victim. Taking advantage of the friendship, the principal accused Sriram Prasad Sahu entered into the Victim's house and while she was fetching water for him, the accused caught hold of the victim from the back and sexually assaulted the victim forcibly without her consent. Thereafter, the accused threatened to kill the victim-Opposite Party No.2 if she divulged the incident to either the police or her husband. It is also pertinent to mention here that the victim is a married woman with two children and, at one point, the husband of the victim had chanced upon the principal accused and the victim while they were lying in a compromised position. The final form also reveals that the aforementioned principal accused has repeatedly committed rape on the victim with the promise to marry her and, in doing so, he has taken cash (around one lakh rupees) and jewellery (gold and silver) from the victim. Later, when the victim contacted the parents of the principal accused, i.e. the present Petitioners, it has been alleged that the present Petitioners have made casteist aspersions on the victim and threatened to oust her from the village.

3. The Final form at Annexure-4, further reveals that at the time of filing of the final form, the principal accused-Sriram Prasad Sahu had not yet been arrested and his medico-legal examination was yet to be conducted. However, the present Petitioners were earlier arrested and had approached this Court in ABLPL No.14596 of 2024 for anticipatory bail. Although this Court did not grant anticipatory bail to the Petitioners, they were directed to surrender before the court below, upon which they were to be released on bail subject to appropriate terms and conditions. Pursuant thereto, the Petitioners surrendered before the learned Special Judge, Bhanjanagar, and were released on bail vide order dated 25.01.2025 under Annexure-3. Subsequently, vide order dated 06.02.2025 in Spl.G.R.80/2024, the

learned Special Judge, Bhanjanagar has taken cognizance of the offences as mentioned hereinabove.

4. At present, while the trial court is about to frame the charge and for consideration of their discharge application the Petitioners have moved a petition under section 91 of Cr.P.C (i.e. section 94 of BNSS) before the learned court in seisin over the matter to call for the Notary Register from the Notary Public, Daspalla, Sri S.K.Patra to bring on record the fact of the execution of an affidavit by the victim-Opposite Party No.2. It is the Petitioners' stance that that the Victim-Opposite Party No.2 has actually married the principal accused, i.e. the son of the present Petitioners, and she has sworn an affidavit in that respect, the record of which is available in the aforesaid notary register. The aforesaid petition, a copy of which is available under Annexure-6, has been rejected by the learned ADJ-cum-Special Judge, Bhanjanagar, Ganjam vide order dated 26.06.2025, under Annexure-7. Aggrieved by the aforesaid rejection, the Petitioners have approached this Court by filling the present CRLMC application.

CONTENTIONS OF THE PETITIONERS

5. Heard Mr. Tirth Kumar Sahu, learned counsel appearing for the Petitioners. It is the Petitioners' firm stance that the present FIR is false and motivated and has been filed at the instance of the Opposite party No.2-victim who has married the principal accused, i.e. the son of the Petitioners, and has executed a notarized affidavit evidencing such fact. At the very outset, the learned counsel for the Petitioners contended that the I.O in the present case, being biased, has submitted the chargesheet without conducting proper investigation and has falsely mentioned in the chargesheet that a prima facie case is well made out against the present Petitioners. He has also submitted that the learned Special Judge, Bhanjanagar has also arbitrarily taken cognizance of the offences mentioned hereinabove without applying judicial mind to the same.

6. Continuing his submission, the learned counsel for the Petitioners further stated before this Court that the Opposite Party No.2-victim is a married lady who has now married the son of the present Petitioners, i.e. the principal accused at the Bagdevi temple premises and she has done so by suppressing the fact of her previous marriage. He further contended that the Opposite Party No.2-victim has also sworn an affidavit dated 23.05.2024 before the Notary Public, Daspalla, affirming therein that she has married the son of the present Petitioners out of '*excessive love and affection*' and that the said affidavit has been made so as to remove any hindrances to their spousal arrangement. It was submitted that the production of the Notary Register of the aforesaid Notary Public is essential in the present case insofar as it will enable a proper inquiry/ investigation/ trial, enlighten the trial court regarding the actual facts of the case and bring to light the truthfulness/ falsehood of the informant's case.

7. Next, referring to the acknowledgement of dispatch at Annexure-9 series, the learned counsel submitted before this Court that the present Petitioners have conveyed the aforesaid fact regarding the affidavit sworn by the Opposite Party No.2-victim to the IIC of Tarasing police station and the Superintendent of Police, Ganjam. However, the IO has not considered the same while conducting the investigation in the matter and he has not included the same in the chargesheet. Further, the learned counsel for the Petitioners contended that trial court has also not taken the aforesaid fact into consideration while rejecting the petition dated 21.06.2025 filed by the Petitioners.

8. Thereafter, the learned counsel for the Petitioners contended that the term 'Seizure', in the context of criminal investigation, has been judicially interpreted to mean the act of taking possession of property, documents, or any item believed to be relevant to a criminal case. In order to reinforce his statement, the learned counsel referred to the decision of the Hon'ble Supreme Court in *State of Maharashtra vs. Natwaral Damodardas Soni*, reported in (1980) 4 SCC 669, and submitted that seizure also includes legal possession and control over evidence. In such context, the learned counsel for the Petitioners stated that the very act of the IO receiving the aforesaid documents during the investigation constitutes a constructive seizure, which then creates a legal obligation upon the IO to forward the materials to trial court. Additionally, it was submitted that as per the Draft Criminal Rules of Practice 2021, specifically Rule-4, a duty is cast upon the IO to list and disclose before the Court all the documents collected during investigation, irrespective of whether such documents were relied upon. A failure on the part of the IO to do so results in investigative suppression and operates to the prejudice of the right of the accused to defend himself.

9. It was further contended that since the aforesaid materials were in the knowledge of the IO, not forwarding the aforesaid materials to the trial court constitutes a serious procedural irregularity which not only violates the right of the accused to a fair trial under Article 21 of the Constitution of India but also infringes upon the established procedure under the Cr.P.C which mandates that all the documents collected by the prosecution must be furnished to the accused. The learned counsel has stated that the aforesaid materials are exculpatory and crucial to fundamentally disprove the allegations against the Petitioners. Therefore, deliberate non-inclusion of such materials amounts to *suppression veri, expression falsi*, i.e. suppression of truth is equivalent to expression of falsehood. Moreover, even if prosecution chose not to rely upon the aforesaid documents, their submission during the investigation makes such documents part of the investigation, i.e. they are relevant under section 91 of the Cr.P.C.

10. Learned counsel for the Petitioners, at this point, referred to the impugned order under Annexure-7 and contended that the learned trial court while passing the impugned order has not properly interpreted Section 91 of Cr.P.C, i.e. section 94 of the BNSS. It was submitted that the aforesaid provision clearly states that summons

for production of any document or other things can be issued at any time of the proceeding. The learned counsel for the Petitioners further contended that the ultimate objective behind section 91 of the Cr.P.C (i.e. section 94 BNSS) is to empower the Court to bring on record any document or other thing which, in the opinion of the Court, are not on record and are relevant and cogent to the conduction of the investigation/ inquiry/ trial/ other proceedings. It was contended that the learned trial court has failed to properly exercise the supplementary powers under section 91 of the Cr.P.C and has failed to uphold the ultimate objective of the aforesaid section.

11. To further substantiate his position, the learned counsel for the Petitioners has relied on the decision of the Bombay High Court in *Dr. Sublendu Prakash Diwakar v. The State of Maharashtra*, bearing Criminal Writ Petition(ST) NO.17507 of 2023, the decision of the Hon'ble Supreme court in *Manoj v. State of M.P.*, reported in (2023) 2 SCC 353 and in *Nitya Dharmananda v. Gopal Sheelum Reddy*, reported in (2018) 2 SCC 93.

12. Lastly, the learned counsel submitted that the production of the Notary Register is not only expedient in the interest of justice but also crucial to ascertain whether the ingredients of the alleged offences are fulfilled, especially since the FIR has been filed by the informant to harass the Petitioners and their family members. As such, it was contended that the impugned order under Annecure-7, being illegal, erroneous and arbitrary, be set aside by this Court and the learned court below be directed to summon Sri S.K. Patra, Notary Public, Dasapalla, Nayagarh, Regd. No. 29/99 with a direction to produce the aforesaid Notary Register.

CONTENTIONS OF THE OPPOSITE PARTIES

13. Heard M/s. Babita Kumari Sahu, learned AGA appearing on behalf of the Opposite Party-State. At the very outset, the prosecution has supported the impugned order dated 26.06.2025 of the learned ADJ-cum-special judge, Bhanjanagar, Ganjam and has maintained the stance that there is no illegality with the aforesaid impugned order.

14. The learned counsel for the Opposite Party-State submitted before this Court that contrary to the submission of the Petitioners, the affidavit being referred to by them has not been seized by the police during the investigation. Instead, the Petitioners have been handed over the police papers as per section 207 Cr.P.C. Moreover, since the Petitioners had filed the petition under section 91 of Cr.P.C at the stage of discharge, the trial court is not required to examine such evidence at the time of framing of charge. It was contended that during the stage of framing of charge, the trial court will analyse the materials in the police papers and decide if there are sufficient materials to proceed with the framing of the charge and there is no requirement to peruse the documents relied upon by the Petitioners.

15. To reinforce her arguments, the learned counsel relied upon the dictum of the Hon'ble Apex Court in *State of Odisha v. Debendra Nath Padhi*, reported in

(2005) 1 SCC 568 and *State of Rajasthan v. Swarn Singh*, reported in 2024 SCC OnLine SC 5537, and submitted before this Court that the accused, at the time of framing of charge, cannot invoke section 91 of the Cr.P.C. Referring to the aforesaid judgement, she further contended that Accused-Petitioners shall not be entitled to avail the benefit of section 91 of Cr.P.C until the trial reaches the stage of defence. Moreover, the necessity and desirability of the document or other thing sought for under section 91 Cr.P.C is to be appraised with reference to the stage at which such section 91 Cr.P.C petition is made and the party by whom it is filed. Learned counsel for the Opposite Party No.2-State contended that since in the instant case the chargesheet has been filed, cognizance has been taken, and it is prior to the framing of charge that the Accused-Petitioners have filed the petition under section 91 Cr.P.C, it can very well be said that the aforesaid section does not per se confer any right on the Accused-Petitioners to produce any document in their possession to prove their defense.

16. Furthermore, the learned counsel for the Opposite party-State contended that even though the accused-Petitioners have maintained that they have not filed the petition under section 91 of Cr.P.C for consideration of the charge, the learned counsel, referring to the copy of the petition filed by the accused-Petitioners under section 91 of Cr.P.C under Annexure-6, specifically paragraph 6 thereof, contended that the accused-Petitioners have filed the aforesaid petition to bring out the “real fact and circumstance of the case so also the truthfulness and falsehood of the case of the informant”. This indicates that the petition under section 91 of Cr.P.C was filed to establish the evidence before the charge. Accordingly, the learned counsel for the Opposite Party-State contended that the truthfulness of the case can only be determined after adducing evidence at the stage of trial and not prior to the trial as has been attempted by the Petitioners. As such, it was contended that the learned trial court has not committed any illegality in rejecting the application of the Petitioners under section 91 of Cr.P.C.

17. Lastly, referring the Bombay High Court decision in *Sublendu Prakash Diwakar's case* (*supra*), the learned AGA submitted that in the aforesaid case the IO had seized a document which was then not forwarded to the trial court. In the instant case however, the affidavit cited by the Petitioner has not been seized by the IO. Therefore, the aforesaid decision in *Sublendu Prakash Diwakar's case* (*supra*) is not applicable to the case of the Petitioners. In such view of the matter, learned counsel for the Opposite Party-State submitted that the impugned order of the learned ADJ-cum-Special Judge dated 26.06.2025, under Annexure-7, is well-reasoned and does not call for interference by this Court. Accordingly, the learned counsel for the Opposite Party-State submitted that the present CRLMC application by the Petitioners, being devoid of merit, is liable to be dismissed.

ANALYSIS

18. Heard the learned counsels appearing for the respective parties, perused the documents on record and the submissions of the parties. The instant case emanates

out of an FIR filed by the Opposite Party No.2-victim alleging commission of the aforementioned offences, against the principal accused, who is the son of the present Petitioners. At present, the final form has been filed and the trial court is about to frame the charge. Before framing of the charge, at the stage of discharge, the Petitioners have filed an application under section 91 of Cr.P.C (presently section 94 of the BNSS) before the trial court with a prayer to summon the Notary Register from the Notary Public, Daspalla, so as to bring on record an affidavit which, as per the Petitioners, has been executed by the Opposite Party No.2-victim evidencing the fact of her marriage with the principal accused i.e. son of the present Petitioners. Such application of the Petitioners has been rejected by the learned trial court. It is this impugned order of rejection dated 26.06.2025 of the learned ADJ-cum-Special Judge, Bhanjanagar which is under challenge in the present CRLMC application.

19. After a thorough examination of the CRLMC application and the submissions of the learned counsels appearing for the parties, it is clear that the central issue in the present case is as to whether the Petitioners have a right to seek for documents under section 91 of Cr.P.C at the stage of discharge. Furthermore, since the order of rejection of the trial court has been assailed, this Court is also required to ascertain the legality and validity of the impugned order dated 26.06.2025, under Annexure-7.

20. In the context of the present matter, it is pertinent to note that the criminal process is ordinarily set in motion with the registration of an FIR, which forms the foundation for investigation into the alleged offence. Upon registration of the FIR, the IO undertakes an investigation to collect evidence and identify the persons involved. Once the investigation is completed, the IO prepares a chargesheet or final form setting out the details of the investigation, including the articles and documents seized, the witnesses examined, the offences alleged to have been committed etc. The chargesheet is thereafter submitted to the Magistrate under Section 193 of the BNSS (corresponding to Section 173 of the Cr.P.C), which forms the basis for the Court's consideration at the pre-trial stage.

21. After receipt of the chargesheet, the Magistrate takes cognizance of the offences under Section 210 of the BNSS (corresponding to Section 190 of the Cr.P.C). In the event the proceeding has been instituted on a police report, as in the present case, the accused is entitled, free of cost, to copies of the police papers including the FIR, statements recorded under Sections 161 and 164 Cr.P.C, and any document or extract thereof forwarded to the Magistrate under Section 193(6) of the BNSS (i.e. Section 173(5) Cr.P.C), in accordance with Section 230 of the BNSS (erstwhile Section 207 Cr.P.C). Thereafter, the stage of framing of charge commences under Section 251 of the BNSS (i.e. Section 228 Cr.P.C). However, prior thereto, in terms of Section 250 of the BNSS (i.e. Section 227 Cr.P.C), it is incumbent upon the trial court to consider the record of the case, the documents submitted therewith, and the submissions of both the prosecution and the accused. If, upon consideration of the aforesaid materials, the trial court arrives at a conclusion

that there is no sufficient ground to proceed against the accused, then the trial court shall discharge the accused and record the reasons for doing so. What this means is that, the stage of discharge only requires the trial court to consider whether there exists any sufficient ground to proceed against the accused. Here, the expression ‘ground’ does not import a finding of guilt but merely denotes the existence of material warranting a trial. It is only at the stage of the trial that the guilt or innocence of the accused can be ascertained. At the stage of discharge the court is not expected to undertake an elaborate evaluation or to scrutinize the probative value of the evidence. It is sufficient if the available material, when accepted as it stands, prima facie connects the accused with the alleged crime (see *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, reported in (1989) 1 SCC 715; *Union of India v. Prafulla Kumar Samal*, reported in (1979) 3 SCC 4; and *State of Bihar v. Ramesh Singh*, reported in (1977) 4 SCC 39).

22. The aforesaid position of law has been reiterated and supplemented by the Hon’ble Apex Court in *State of M.P. v. Mohanlal Soni*, reported in (2000) 6 SCC 338, wherein, after referring to several of its previous decisions, it was observed by the Apex Court that the settled judicial position is that the framing of charge is warranted when the court, upon a prima facie consideration of the record and the materials available therein, finds sufficient ground to proceed against the accused. The court is not expected to undertake an elaborate appraisal of evidence or determine whether the material adduced would suffice for conviction. Hence, the established principle is that at this preliminary stage, the court must only ascertain the existence of a prima facie case and refrain from assessing the probative worth of either the prosecution’s materials or defence of the accused. Likewise in *Sheoraj Singh Ahlawat v. State of U.P.*, reported in (2013) 11 SCC 476, the Hon’ble Apex Court referring to its previous pronouncements in *Onkar Nath Mishra v. State (NCT of Delhi)*, reported in (2008) 2 SCC 561 and other judgements, observed that at the stage of framing of charge, the court only examines whether the materials that are available on record, taken at face value, disclose the ingredients of the alleged offence. It is not incumbent upon the court to assess the probative value of evidence, rather a strong suspicion based on the materials is sufficient to justify framing of charge.

23. Proceeding along similar lines, recently in *Ram Prakash Chadha v. State of U.P.*, reported in (2024) 10 SCC 651, the Hon’ble Supreme Court allowed the appeal filed against the order of the High Court dismissing an application under section 482 Cr.P.C which was filed against the order of dismissal of the appellant’s discharge application. The Hon’ble Apex Court, after discussing in detail the legal position regarding section 227 of the Cr.P.C, has made the following observations;

“3. Before narrating the facts, we should bear in mind that **exercise of power under Section 227CrPC, is legally permissible only by considering “the record of the case and the documents submitted therewith”.** Therefore, necessarily, the question is what is the meaning of the expression “the record of the case and documents submitted therewith”? According to us, it refers only to the materials produced by the

prosecution and not by the accused. A three-Judge Bench of this Court considered this question in *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415]. It was held that the said expression as postulated in Section 227CrPC, relates to the case and the documents referred to under Section 209CrPC.

5. In view of Section 209 CrPC, as extracted above, to know what exactly are the documents falling within the said expression Sections 207 and 208 CrPC, are also to be looked into.

6. We referred to the provisions under Section 227 and the decision in *Debendra Nath Padhi* case [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] only to conclude that **even for the purpose of referring to the facts leading to the case, as also for consideration of the contentions for the purpose of Section 227CrPC, we cannot refer to the grounds carrying or referring to the case of the appellant-accused, in view of the aforesaid provisions of law and position of law, requiring to confine such consideration only with reference to the materials produced by the prosecution.**

16. We have already considered the meaning of the expression “the record of the case and the documents submitted therewith” relying on the decision in *Debendra Nath Padhi* case [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415] only to reassure us to what are the materials falling under the said expression and thus, available for consideration of an application filed for discharge under Section 227CrPC. **In the light of the same, there cannot be any doubt with respect to the position that at the stage of consideration of such an application for discharge, defence case or material, if produced at all by the accused, cannot be looked at all. Once “the record of the case and the documents submitted therewith” are before the Court they alone can be looked into for considering the application for discharge and thereafter if it considers that there is no sufficient ground for proceeding against the accused concerned then he shall be discharged after recording reasons therefor. In that regard, it is only appropriate to consider the authorities dealing with the question as to what exactly is the scope of consideration and what should be the manner of consideration while exercising such power.**

24. In the light of the decisions referred supra, **it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227 CrPC, and entering into the scope of power under Section 232 CrPC, cannot be ruled out as such instances are aplenty.** In this context, it is relevant to refer to a decision of this Court in *Om Parkash Sharma v. CBI* [*Om Parkash Sharma v. CBI*, (2000) 5 SCC 679 : 2000 SCC (Cri) 1014]. **Taking note of the language of Section 227 CrPC, is in negative terminology and that the language in Section 232 CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227 CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically**

acting under Section 232CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232CrPC, available only after taking the evidence for the prosecution and examining the accused. (Emphasis supplied)

24. Likewise, the Hon'ble Supreme Court in *M.E. Shivalingamurthy v. CBI*, reported in (2020) 2 SCC 768, while entertaining an appeal against the order of the High Court, whereby the order of the Magistrate allowing the Appellant's application for discharge was set aside, summarised the legal principles governing an application seeking discharge in the following words;

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488] and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

*17.3. **The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.***

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial".

*17.5. **It is open to the accused to explain away the materials giving rise to the grave suspicion.***

*17.6. **The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.***

*17.7. **At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.***

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

*18. **The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar [State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, "the record of the case", used in Section 227***

CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568 : 2005 SCC (Cri) 415 : AIR 2005 SC 359]).” (Emphasis supplied)

25. As is clear from the aforesaid discussion, it is a fairly well established principle of law that at the stage of framing of charge the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The trial court/ magistrate is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. A roving and fishing inquiry is impermissible at the stage of framing of charge, and at the stage of considering the discharge application. In doing so, the trial court can only look at the ‘record of the case and the documents submitted therewith’. As to what constitutes the ‘record of the case and the documents submitted therewith’, the position of law regarding the same has been clarified by the Hon’ble Supreme Court in *State of Orissa v. Debendra Nath Padhi*, reported in (2005) 1 SCC 568, which has thereafter been followed in a catena of decisions (see *State of Rajasthan v. Swarn Singh*, reported in 2024 SCC OnLine SC 5537; *State v. Eluri Srinivasa Chakravarthi*, reported in 2025 SCC OnLine SC 1215; *Sheoraj Singh Ahlawat v. State of U.P.*, reported in (2013) 11 SCC 476; *State of M.P. v. Rakesh Mishra*, reported in (2015) 13 SCC 8; *M.E. Shivalingamurthy* (*supra*) and other similar pronouncements). In *Debendra Nath Padhi’s case* (*supra*), the respondent was a public servant charged under the Prevention of Corruption Act, 1988. After filing of chargesheet, when the matter was put up for framing of charge, the respondent filed an application under section 91 Cr.P.C to call for certain documents, which according to the respondent, were essential to provide him with an opportunity to demonstrate that there were no sufficient grounds to proceed against him. The trial court rejected the such application of the respondent but the High Court reversed the decision of the lower court. The Hon’ble Supreme Court then allowed the appeals, set aside the impugned judgement of the High Court and also overruled the dictum of the two-judge bench in *Satish Mehra v. Delhi Administration*, reported in (1996) 9 SCC 766 wherein it was held that the trial court can consider the materials produced by the accused at the stage of discharge. The Hon’ble Supreme Court, while holding that the accused has no right to produce any material at the stage of framing of charge or taking cognizance (in paragraph 23) and that the accused cannot invoke section 91 of Cr.P.C at the stage of discharge to summon documents not part of the records of the case, made the following observations;

“8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit “the case” to the Court of

Session and send to that court “the record of the case” and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in *State Anti-Corruption Bureau v. P. Suryaprakasam* [1999 SCC (Cri) 373] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that. (emphasis supplied) The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same — whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the

record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression “hearing the submissions of the accused” cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.” (Emphasis supplied)

26. The Hon’ble Supreme Court in *Debendra Nath Padhi’s case* (supra) have also referred to section 91 of the Cr.P.C, and have made the following observations, specifically pertaining to the scope, purpose and limitations of section 91 Cr.P.C;

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. **The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage.** When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. **Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence.** Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

(Emphasis supplied)

27. Along the same lines, recently in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, reported in (2023) 17 SCC 688, the respondent had initially filed a discharge application which was rejected by the trial court. The respondent then approached the High Court by filing a revision application against the earlier order of rejection, which was allowed by the High Court. The Hon’ble Apex Court, while allowing the appeal and setting aside the impugned order of the High Court, relying on its earlier dictum in *State of T.N. v. N. Suresh Rajan*, reported in (2014) 11 SCC 709, made the following observation;

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.” (Emphasis supplied)

28. In the aforesaid context, it would also be most expedient to place reliance on the recent pronouncement of the Hon’ble Apex Court in *Sarla Gupta v. Enforcement Directorate*, reported in (2025) 7 SCC 626. The Hon’ble Apex Court, while dealing with the issue concerning the right of an accused to seek production of documents not relied upon by the prosecution, has undertaken a detailed exposition of the relevant statutory provisions under the Cr.P.C, the Draft Rules in *Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re*, reported in (2021) 10 SCC 598, and the governing judicial precedents. After an exhaustive discussion on the scope and ambit of such right, the Hon’ble Supreme Court has enunciated the following principles in paragraphs 38 and 40 of the judgment;

“38. Therefore, it is held that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91CrPC (Section 94 BNSS) for providing copies of the documents which are not relied upon by the prosecution. This decision upholds the right of the accused to apply for the supply of copies of the documents which are not relied upon by the prosecution at an appropriate stage by making an application to the court

40. Therefore, what can be deduced from the above decisions is that the accused has the right to ask for the supply of documents not relied upon by the prosecution by making an application to the court. The question is at what stage the accused can demand copies of the documents.” (Emphasis supplied)

Thereafter, in paragraphs 41 through till 52 of *Sarla Gupta (supra)*, the Hon’ble Apex Court proceeded to examine the issue as to whether, at the stage of framing of charge, an accused is entitled to seek production of the documents that have not been relied on by the prosecution. After a thorough analysis of the relevant statutory provisions (including sections 227, 91 and 94 of the Cr.P.C, 1973 as well as section 94 of the old Cr.P.C, 1898) and governing judicial precedents (including the landmark pronouncement in *Debendra Nath Padhi (supra)*, along with *V.K.*

Sasikala v. State, reported in (2012) 9 SCC 771; *Manu Sharma v. State (NCT of Delhi)*, reported in (2010) 6 SCC 1; *Manoj v. State of M.P.*, reported in (2023) 2 SCC 353; *Om Parkash Sharma v. CBI*, reported in (2000) 5 SCC 679 and other case laws), the Hon'ble Supreme Court has arrived at the following conclusion, the relevant portion of which is quoted herein below;

“44. Thus, this Court observed that the entitlement of the accused to seek an order under Section 91CrPC for the production of the documents that are not relied upon would ordinarily not come till the stage of defence. These observations are in the context of what constitutes “the record of the case” for the purposes of Section 227CrPC. Even this judgment recognises the right of the accused to seek documents at the time of leading defence evidence by invoking Section 91CrPC. We may note here that what is observed by this Court is that there is no absolute prohibition on an accused making an application under Section 91CrPC, before the stage of entering upon defence. It is held that ordinarily, the entitlement of the accused to apply under Section 91 will not arise till the stage of defence.

47. The right of the accused to apply under Section 91CrPC for production of the documents not relied upon by the prosecution at the stage of leading defence evidence has been recognised by the decisions of this Court including the decisions in Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re [Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re v. State of A.P., (2021) 10 SCC 598 : (2022) 1 SCC (Cri) 100] and Manoj [Manoj v. State of M.P., (2023) 2 SCC 353 : (2023) 2 SCC (Cri) 1].

52. Thus, we conclude that at the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the charge-sheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaint. Though the accused will be entitled to the list of documents, objects, exhibits, etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.

68.4. At the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the charge-sheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaints. Though the accused will be entitled to a list of documents, objects, exhibits, etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.” (Emphasis supplied)

29. Reverting back to the instant case at hand, the Opposite Party-State has asserted that all relevant documents, as mandated under Section 207 Cr.P.C., i.e. the police papers, have been duly supplied to the Petitioners. The Petitioners have also nowhere specifically denied the same. However, the petitioners have alleged suppression of exculpatory evidence on the part of the IO. In this regard, as is clear from the aforesaid analysis, it is once again reiterated that at the stage of framing of

charge the question of presenting evidence from the side of the accused does not arise. The Petitioners have further contended that since the IO was in possession of the affidavit, it amounted to a constructive seizure, thereby casting an obligation upon the IO to forward the same to the trial court. The Petitioners have relied on the Draft Criminal Rules on Practice, 2021 (i.e. “Draft Rules”), specifically Rule 4 thereof, to contend that the IO is bound to disclose all documents collected during the investigation, whether relied on or not. In this context, the Petitioners have also relied on the documents under Annexure-9.

30. Upon perusal of the documents appended to Annexure-9, it appears that the same comprises of representations addressed to the IIC of Tarasingi Police Station and the Superintendent of Police, Chatrapur, requesting inclusion of one notary public and one advocate who had identified the deponent (i.e. the victim-Opposite Party No.2) within the scope of investigation. The said annexure also contains copies of a consignment tracking report showing delivery of a consignment to IIC and Superintendent of Police. However, there is nothing on record to suggest that the consignment contains the affidavit, the notary register, or any record thereof, as claimed by the Petitioners. Therefore, it cannot be conclusively ascertained at this stage that the IO was indeed in possession of the Notary Register or the affidavit which has allegedly been executed by the Victim-Opposite Party No.2. Similarly, Annexure-8 comprises of a copy of an affidavit allegedly executed by the Victim before the Notary Public, Daspalla, declaring therein her marriage with the principal accused, i.e. the son of the present petitioners. At present, the genuineness of the affidavit remains unverified, and the circumstances of its execution are equally uncertain. It is pertinent to note that the legality of notarial marriages and of notaries issuing marriage certificates has been consistently questioned by this Court (reference in this regard may be had to the decision by a Division Bench of this court in *Rohit Kumar Behera v. State of Odisha*, reported in *2021 SCC OnLine Ori 1482* and in *Partha Sarathi Das v. State of Orissa & Ors.*, reported in *2023 SCC OnLine Ori 5657*).

31. Nevertheless, this Court is of the considered view that the aforesaid issues can effectively be determined only at the stage of trial where the parties can adduce evidence in support of their claims, and, as such they bear little consequence for the present adjudication and need not detain this Court further, since, the veracity of the Petitioners’ prayer falls squarely to be examined in the context of the impugned order dated 26.06.2025, under Annexure-7, passed by learned ADJ-cum-Special Judge, Bhanjanagar, Ganjam. If the said order is found to be free from infirmity, the Petitioners’ challenge cannot be sustained. Conversely, if any illegality or irregularity is discerned therein, the Petitioners’ contention would merit acceptance.

32. Furthermore, since the Petitioners have relied on the Draft Rules, it would be apropos to refer to *Criminal Trials Guidelines Regarding Inadequacies & Deficiencies, In re*, reported in *(2021) 10 SCC 598*, wherein the Hon’ble Supreme Court has observed that;

*“11. The Amici Curiae pointed out that at the commencement of trial, accused are only furnished with list of documents and statements material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This Court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208CrPC, the Magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. **This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under CrPC** [“91. Summons to produce document or other thing.—(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.(3) Nothing in this section shall be deemed—(a) to affect Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”] **for their production during the trial, in the interests of justice.** It is directed accordingly; the Draft Rules have been accordingly modified. [Rule 4(i)]”* (Emphasis supplied)

Ergo, it can clearly be seen that in the aforesaid paragraph-11, while modifying the Draft Rules, specifically Rule 4 thereof which has been relied on by the Petitioners, the Hon’ble Supreme Court has affirmed the right of the accused to seek production of relevant documents under section 91 of the Cr.P.C at the stage of trial. As has been already clarified hereinbefore, the present proceeding has not yet reached the stage of trial.

33. At present, the proceeding is at the stage of discharge before the charge is framed by the trial court. It is at this stage of the proceeding that the accused-Petitioners have filed a petition under section 94 of BNSS (i.e. section 91 of the Cr.P.C), a copy of which is available at Annexure-6, with a prayer to summon the Notary Register of the Notary Public, Daspalla so as to bring on record the registration of the purported affidavit dated 23.05.2024 executed by the Victim-Opposite Party No.2 evidencing the fact of the marriage between the victim and the son of the present Petitioners, who is also the principal accused. It is the Petitioners’ contention that the document in question was available to the IO during the investigation but he has consciously chosen not to include the same in the chargesheet. Per contra, the Opposite Party No.2-State contends that the said document was never seized by the IO in the first place, therefore there is no obligation on the part of the IO to introduce/ forward the same to the trial court.

34. Be that as it may, as has already been comprehensively discussed, before framing of the charge, at the stage of discharge, the learned trial court can only examine the documents and materials on the record, i.e. only the materials filed along with the Chargesheet. At the stage of framing of charge, it is not the guilt of the accused that is under adjudication, rather, the rial court considers whether there are sufficient grounds to proceed to the stage of trial. Upon an evaluation of the impugned order of the learned trial court, in light of the aforesaid analysis, this Court is of the view that the learned ADJ-cum-special Judge, Bhanjanagar, Ganjam has not committed any illegality in passing the order dated 26.06.2025 under Annexure-7. As such, the impugned order dated 26.06.2025 does not warrant any interference by this Court in exercise of its inherent powers under section 528 of the BNSS (i.e. erstwhile section 482 Cr.P.C) is necessary.

35. Lastly, as regards the apprehension expressed by the accused-Petitioners that they may be compelled to undergo trial despite being in possession of material of unimpeachable character or sterling quality, it is pertinent to note that they are not left remediless. To allay such apprehension, this Court finds guidance in the observations of the Hon'ble Supreme Court in paragraph 29 of *Debendra Nath Padhi's case* (*supra*), that the plenitude of the High Court's powers under Section 482 of the Code and Article 226 of the Constitution enables it to intervene in appropriate cases to prevent abuse of the process of law or to secure the ends of justice, within the parameters delineated in *State of Haryana v. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*. Therefore, if the Petitioners possess such unimpeachable material and choose to file an appropriate application at a later stage, it would be open to them to invoke the inherent jurisdiction of this Court.

36. Ultimately, in view of the aforesaid analysis, the present CRLMC application is hereby rejected. However, liberty is granted to the Petitioners to file a suitable application before the appropriate forum, at an appropriate stage, to bring their evidence on record, if they so desire. There shall be no order as to costs.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
CRLMC rejected.

2025 (III) ILR-CUT-1364

**DEBDEEP PANDA @ DEBJEET PANDA
V.****STATE OF ODISHA & ANR.**

[CRLMC NO. 256 OF 2025]

20 NOVEMBER 2025

[ADITYA KUMAR MOHAPATRA, J.]**Issue for Consideration**

Whether the rejection of the application under Section 323 Cr.P.C. by the learned Magistrate, seeking commitment and joint trial of the two cases, is justified in law.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 323 – Commitment of case – Joint trial – Scope – The accused/petitioner sought commitment of a Magistrate-trialable case and its joint trial with a pending Sessions Trial, contending that both cases arose out of the same transaction and constituted case and counter-case – The learned Magistrate rejected the application holding that the FIRs disclosed distinct allegations, involved different offences, and that the Sessions Trial had already progressed substantially – Petitioner contended that both the FIRs are interconnected and the same should have been tried together – Whether the rejection of the application under Section 323 Cr.P.C. by the learned Magistrate is justified in law.

Held: Yes – With regard to the submission made by the learned counsel for the Petitioner that both the F.I.Rs. are interconnected and the same should have been tried together by the Court of Sessions, this Court found that although the offence alleged relates to a single family and some of the parties are common, however, nature of allegations are quite different in both the F.I.Rs – So far as the Dhamnagar P.S. No.101 of 2020 is concerned, the same has been registered on the allegation of dowry related death of the daughter of the Informant in the hands of some in-law family members. In Dhamnagar P.S. Case No.12 of 2023, the allegation is basically by the in-law family members against the family of the daughter-in-law alleging harassment – Therefore, it cannot be construed that the nature of the allegations or the transaction out of which both the F.I.Rs. arise are one and the same – Thus, the trial court has rightly held that Dhamnagar P.S. Case No.12 of 2023 cannot be considered to be a cross case of Dhamnagar P.S. Case No.101 of 2020 – Moreover, this Court was informed that more than 20 witnesses from the prosecution side have already been examined in

the S.T. Case No.58 of 2020, which arises out of Dhamnagar P.S. Case No.101 of 2020. (Para 16)

In the aforesaid factual background, this Court is constrained to hold that the learned Magistrate has rightly rejected the application of the Petitioner under Section 323 of Cr.P.C. as the provision contained in Section 323 of Cr.P.C. is not applicable to the facts of the present case. (Para 17)

List of Acts

Code of Criminal Procedure, 1973

Keywords

Commitment of the case; Joint trial; Self-same occurrence; Cross case; Case and counter case; Distinct allegations; Nature of allegations are quite different; Offences triable by Magistrate; Case triable by the Court of Session; Trial has progressed substantially.

Case Arising From

Order dated 04.01.2025 passed by the learned J.M.F.C., Dhamnagar in G.R.Case No. 23 of 2023.

Appearances for Parties

For Petitioner : Mr. Bhabani Sankar Mishra
For Opp. Parties : Ms. Babita Kumari Sahu, A.G.A, (For O.P. No.1)
M/s. Jatindra Ku. Mohapatra & P.R. Chhatoi
(For O.P. No.2)

Judgment/Order

Judgment

ADITYA KUMAR MOHAPATRA, J.

1. Heard the learned counsel for the Petitioner, learned counsel for the Opposite Party No.2-Informant, and learned counsel for the State. Perused the application as well as the prayer made therein.

2. The present application has been filed by the Accused-Petitioner in G.R. Case No.23 of 2023 pending before the learned J.M.F.C., Dhamnagar, which arises out of Dhamnagar P.S. Case No.12 of 2023, for quashing of the impugned order dated 04.01.2025 passed by the learned J.M.F.C., Dhamnagar in G.R. Case No.23 of 2023 under Annexure-6 in exercise of inherent power of this Court under Section 482 of Cr.P.C.

3. The impugned order dated 04.01.2025 under Annexure-6 was passed by the learned J.M.F.C., Dhamnagar on the application under Section 323 of Cr.P.C filed at the instance of the son of Informant after the death of the original Informant on 04.05.2024 with a prayer to commit the case record to the court of learned Additional Sessions Judge, Bhadrak to have a joint trial with S.T. Case No.58 of

2020, arising out of Dhamnagar P.S. Case No.12 of 2023, which corresponds to G.R. Case No.23 of 2023 (Learned counsel for the Petitioner, at this juncture, contended that the P.S. Case Number has been wrongly typed out in the prayer portion of the petition filed under Section 323 of the Cr.P.C. and the correct number should be Dhamnagar P.S. Case No.101 of 2020).

4. By virtue of the impugned order dated 04.01.2025, the learned J.M.F.C., Dhamnagar in G.R. Case No.23 of 2023, arising out of Dhamnagar P.S. Case No.12 of 2023, rejected the prayer of the Petitioner for a joint trial of the case involved in both G.R. Case No.23 of 2023, arising out of Dhamnagar P.S. Case No.12 of 2023, rejected the prayer of the Petitioner for a joint trial of the cases involved in both Dhamnagar P.S. Case No.101 of 2020 and Dhamnagar P.S. Case No.12 of 2023. Being aggrieved by such order, the Petitioner has approached this Court by filing the present application.

5. On perusal of the record, it appears that initially an F.I.R. was lodged at the instance of one Swarnalata Sarangi on 19.04.2020 before Dhamnagar Police Station, which was registered as Dhamnagar P.S. Case No.101 of 2020 and filed along with this application as Annexure-1. In the said F.I.R., the Informant has alleged a commission of crime, which is punishable under Sections 498-A/302/304-B/34 of the I.P.C. read with Section 4 of the Dowry Prohibition Act. As per the allegation in the said F.I.R., the daughter of the Informant, who had married to the present Petitioner, was staying at her in-laws house after her marriage. The daughter of the Informant was subjected to dowry torture as has been narrated details in the F.I.R. As per the F.I.R. allegation, the daughter of the Informant was subjected to physical as well as mental torture and harassment with a demand of dowry on several occasions which has been specifically narrated in the body of the F.I.R. A specific allegation has also been made with regard to the physical harassment and assault that the daughter of the informant was subjected to as torture by her in-law family members. Finally, the daughter of the Informant was found dead. Thereafter, the present F.I.R. was registered alleging that the in-law family members including the present Petitioner murdered the daughter of the Informant. Such F.I.R. was accepted and registered as Dhamnagar P.S. Case No.101 of 2020. Accordingly, the investigation was carried out and finally charge sheet has also been filed in the meantime. It further appears that on the basis of the charge sheet, charge has been framed and the trial has commenced in S.T. Case No.58 of 2020, which is now pending in the court of the learned Additional Sessions Judge, Bhadrak. It is not disputed by the parties that more than 20 witnesses from the prosecution side have already been examined in the said case.

6. While the above was the ground position, another complaint was lodged at the instance of the in-law family members by the father of the present Petitioner, who happens to be the father-in-law of the deceased. Since the complaint was not accepted by the police, the father of the present Petitioner was compelled to approach this Court by filing CRLMP No.2598 of 2022 challenging the police

inaction in registering the case. Pursuant to the order passed by this Court, the complaint lodged by the father of the Petitioner was accepted by the Dhamnagar Police Station and the same was registered as Dhamnagar P.S. Case No.12 of 2023. Accordingly, investigation was also carried out in the said case.

7. Learned counsel for the Opposite Party No.2 submitted that initially, after conclusion of the investigation final form was submitted. Thereafter, the father of the present Petitioner filed a protest petition which was not accepted by the learned Magistrate. Such order of rejection of the protest petition dated 03.08.2023 was assailed before this Court at the instance of the father of the Petitioner by filing CRLMC No.3971 of 2023. Learned counsel for the Opposite Party No.2 further contended that the above noted CRLMC has already been withdrawn in the meantime, as the father of the Petitioner, who had approached this Court, died during the pendency of the said CRLMC application.

8. Learned counsel for the Petitioner, on the other hand, contended that the fact submitted by the learned counsel appearing Opposite Party No.2 is not correct, inasmuch as the protest petition was filed at the instance of the father of the present Petitioner challenging deletion of offence of Section 307 of I.P.C. So far as it relates to the other allegations made in the F.I.R., arising out of Dhamnagar P.S. Case No.12 of 2023, a final charge sheet has already been submitted by the Investigation Officer. He further contended that it is only after filing of the charge sheet, that the Petitioner after the death of the original Informant, i.e. his father, filed an application under Section 323 of Cr.P.C. before the learned Magistrate with a prayer for joint trial of both the cases as involved in S.T. Case No.58 of 2020 as well as G.R. Case No.23 of 2023. Such application having been rejected vide order dated 04.01.2025 at Annexure-6, the Petitioner has approached this Court by filing the present application.

9. In course of his argument, learned counsel for the Petitioner contended that both the F.I.Rs. in Dhamnagar P.S. Case No.101 of 2020 as well as Dhamnagar P.S. Case No.12 of 2023 arise out of self-same occurrence. He further contended that the only difference is that the F.I.R. in Dhamnagar P.S. Case No.101 of 2020 was lodged at the instance of the mother of the deceased, who happens to be the daughter-in-law of the Informant in Dhamnagar P.S. Case No.12 of 2023, alleging commission of a crime as has been indicated hereinabove. Similarly, the F.I.R. in Dhamnagar P.S. Case No.12 of 2023 was registered at the instance of the father of the Petitioner, who happens to be father-in-law of the deceased, alleging harassment at the instance of the family of the Informant in Dhamnagar P.S. Case No.101 of 2020. In view of the aforesaid factual position, learned counsel for the Petitioner strenuously argued to convince this Court that both the cases arise out of self-same challenge and that the Dhamnagar P.S. Case No.12 of 2023 is a counter case to the Dhamnagar P.S. Case No.101 of 2020. In such view of the matter, learned counsel for the Petitioner contended that both the cases be tried together in view of the provisions contained under Section 323 of the Cr.P.C.

In view of the aforesaid submission, learned counsel for the Petitioner contended that the rejection of his application for a joint trial under Section 323 of Cr.P.C. by the learned Magistrate on the ground that Dhamnagar P.S. Case No.12 of 2023 is not a cross case and that subsequent progress has been made in S.T. Case No.58 of 2020, which arises out of P.S. Case No.101 of 2020, is unsustainable in law and that the same will be against the spirit of Section 323 of Cr.P.C.

10. In reply to the submission made by the learned counsel for the Petitioner, the learned counsel for the private Opposite Party No.2 contended before this Court that the trial court has not committed any illegality in rejecting the application of the Petitioner under Section 323 of Cr.P.C. vide order dated 04.01.2025. Further, referring to order dated 04.01.2025, learned counsel for the private Opposite Party No.2 contended before this Court that the learned Magistrate, while considering the application of the Petitioner under Section 323 of Cr.P.C., has discussed the factual background of the present case vivid detail and ultimately has come to a conclusion that the present F.I.R. is not a cross case to the Dhamnagar P.S. Case No.101 of 2020. Moreover, the trial in S.T. Case No.58 of 2020 has progressed substantially and the same being a case triable by the court of sessions exclusively, the present case cannot be tried jointly in the above noted S.T. Case. On such ground, learned counsel for the Opposite Party No.2 contended that the present application filed at the instance of the Petitioner challenging rejection of his application under Section 323 of Cr.P.C. with a prayer for a joint trial is unsustainable in law.

11. Learned counsel for the State, on the other hand, supported that the order dated 04.01.2025 passed by the learned J.M.F.C., Dhamnagar in G.R. Case No.23 of 2023 under Annexure-6. She further submitted that the learned Magistrate has not committed any illegality as both the F.I.Rs. are quite distinct and those cases cannot be tried jointly. It was also contended that the S.T. Case has progressed substantially as most of the witnesses from prosecution side has already been examined in the meantime. On such ground, learned counsel for the State contended that the present application filed by the Petitioner has no substance at all and the same is liable to be dismissed.

12. Having heard the learned counsels appearing for the respective parties, on a careful examination of the background facts, and upon a close scrutiny of the impugned order dated 04.01.2025 at Annexure-6, this Court, at the outset, observes that the question that falls for determination in the present case is as to whether both the cases arising out of Dhamnagar P.S. Case No.101 of 2020 and Dhamnagar P.S. Case No.12 of 2023 are to be tried together or not, and that whether the trial court has committed an illegality in rejecting the application of the Petitioner filed under Section 323 of Cr.P.C.?

13. While answering the question with regard to the application filed by the Petitioner before the trial court under Section 323 of Cr.P.C., this Court deems it appropriate to refer to the provision of Section 323 of Cr.P.C, and same is quoted herein below: -

323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed – If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained ¹[and thereupon the provisions of Chapter XVIII shall apply to the commitment so made].

14. On a careful reading of the above noted provision, it appears that the same provides a procedure to be adopted by the Magistrate when it comes to the notice of the learned Magistrate that the case should be committed to the court of sessions. Of course, such opinion of the learned Magistrate is to be formed on the basis of the inquiry or examination of the materials placed before the learned Magistrate. After commencement of the inquiry or trial, if learned Magistrate comes to a conclusion that the case before him should have been tried by the court of sessions, then, even before signing of the final judgment, he shall commit it to the Court of Sessions under Section 323 of Cr.P.C. In the aforesaid scenario, the procedure as is applicable for commitment of cases triable by Sessions Court is also applicable to such cases.

15. The question now, that is to be decided by this Court is whether the facts of the present case call for application of provisions of Section 323 of Cr.P.C. Taking into consideration the admitted factual position, this Court observes that Dhamnagar P.S. Case No.101 of 2020, which was filed at the instance of the mother of the deceased as Informant, was registered for commission of an offence punishable under Section 498-A/302/304-B/34 of I.P.C. read with Section 4 of the Dowry Prohibition Act. Therefore, there is no difficulty in coming to a conclusion that such case is triable by the Court of Sessions and, accordingly, the trial is proceeding in the said case. So far as the other F.I.R. which registered at the instance of the father of the present Petitioner, as he is the original Informant, is concerned, the same was registered subsequently on 11.01.2023 pursuant to an order passed by this Court in the above referred CRLMP application and the same F.I.R. was registered under Sections 341/294/323/325/427/379/506/34 of I.P.C. The offences alleged in the F.I.R. are triable by Magistrate. Although, according to the Petitioner, a protest petition was filed before the learned Magistrate to incorporate the offence under Section 307 of I.P.C., however, such protest petition was rejected by the learned Magistrate and, being aggrieved by such order, the father of the Petitioner has approached this Court by filing CRLMC No.3971 of 2023. Further, the record reveals that the said CRLMC application has been dismissed as infructuous vide order dated 12.11.2024 passed by a Coordinate Bench of this Court. While disposing of the said application, learned Coordinate Bench has observed that the petition has become infructuous and, accordingly, the same has been dismissed. Moreover, the record reveals that the order dated 03.08.2023 rejecting the protest petition of the father of the Petitioner to incorporate the Section 307 of I.P.C. has attained finality, as the same has not been challenged in any higher forum. Thus, there is no difficulty in coming to a conclusion that the F.I.R. in Dhamnagar P.S. Case No.12 of 2023 has been registered and charge sheet has been filed under the offences, as has been

indicated in the said F.I.R., are all triable by Magistrate. Since the offences are all triable by Magistrate in Dhamnagar P.S. Case No.12 of 2023, the case is also to be tried by the Magistrate as has been held by the trial court in this case.

16. With regard to the submission made by the learned counsel for the Petitioner that both the F.I.Rs. are interconnected and the same should have been tried together by the Court of Sessions, this Court found that although the offence alleged relates to a single family and some of the parties are common, however, nature of allegations are quite different in both the F.I.Rs. So far as the Dhamnagar P.S. No.101 of 2020 is concerned, the same has been registered on the allegation of dowry related death of the daughter of the Informant in the hands of some in-law family members. In Dhamnagar P.S. Case No.12 of 2023, the allegation is basically by the in-law family members against the family of the daughter-in-law alleging harassment. Therefore, it cannot be construed that the nature of the allegations or the transaction out of which both the F.I.Rs. arise are one and the same. Thus, the trial court has rightly held that Dhamnagar P.S. Case No.12 of 2023 cannot be considered to be a cross case of Dhamnagar P.S. Case No.101 of 2020. Moreover, this Court was informed that more than 20 witnesses from the prosecution side have already been examined in the S.T. Case No.58 of 2020, which arises out of Dhamnagar P.S. Case No.101 of 2020.

17. In the aforesaid factual background, this Court is constrained to hold that the learned Magistrate has rightly rejected the application of the Petitioner under Section 323 of Cr.P.C. as the provision contained in Section 323 of Cr.P.C. is not applicable to the facts of the present case. Hence, the impugned order dated 04.01.2025 passed by passed by the learned J.M.F.C., Dhamnagar in G.R. Case No.23 of 2023 under Annexure-6 does not call for any interference by this Court.

18. Accordingly, the CRLMC petition filed at the instance of the Petitioner seeking invocation of the power of this Court to set aside the order dated 04.01.2025 under Annexure-6 is hereby dismissed.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
CRLMC dismissed.

2025 (III) ILR-CUT-1371

ASHWINI MEHRA & ORS.

V.

STATE OF ODISHA

[ABLAPL NO. 5818 OF 2025 & BATCH]

09 SEPTEMBER 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the Petitioners/Accused are entitled to be released on Pre-arrest bail?

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 438 – Pre-arrest bail – Offence U/Ss. 418, 420/34 of IPC – Contractual dispute between the parties – Matter is pending before the National Company Law Tribunal – Petitioners are co-operating in the investigation – Guideline of the Honorable Supreme Court with regard to grant of Pre-arrest bail considered – Whether the Petitioners/Accused are entitled to be released on Pre-arrest bail?

Held: Yes – It is apt to note that on the date of registration of the FIR the Informant was evidently aware of the institution of the proceeding before the National Company Law Tribunal, Principal Bench, New Delhi as he has cited Mr. Ashwini Mehra, Petitioner in ABLAPL No.5818 of 2025 in his capacity as “Resolution Professional”.

Evidently the claim in the FIR prima facie arises out of and in connection with the contract between the Informant and the Corporate Debtor Punj Lloyd Ltd. whose officials are Petitioners in ABLAPL Nos.4807, 5819, 5822 and 5839 of 2025.

It is indeed baffling that the statutory provisions contained in the Insolvency and Bankruptcy Code, 2016 were not taken into account by the investigating agency. (Para 12)

On a conspectus of the materials on record, considering the nature of allegations, this Court is persuaded to hold that in the light of the judgment of the Apex Court in the case of **Gurbaksh Singh Sibbia & Others Vrs. State of Punjab** and **Satender Kumar Antil (supra)** the Petitioners are entitled to the exceptional remedy of pre-arrest bail.

Accordingly, it is directed that in the event of arrest of the Petitioners in connection with the aforesaid case, they shall be released on bail by the Arresting Officer on such terms and conditions deemed just and proper.

(Para 13)

Citations Reference

Shikhar Chemicals vrs. State of Uttar Pradesh & Another, **2025 SCC Online SC 1643**; Satender Kumar Antil vrs. Central Bureau of Investigation & Another, **2023 SCC OnLine SC 452**; Gurbaksh Singh Sibbia & Others Vrs. State of Punjab, **(1980) 2 SCC 565 – referred to.**

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860.

Keywords

Contractual dispute; Pre-arrest bail; Co-operation in the investigation

Case Arising From

Kamakhya Nagar P.S. Case No. 644 of 2024.

Appearances for Parties

For Petitioners : Mr. B.A. Mahanti, Sr. Adv., Ms. M. Tripathy
(In ABLAPL Nos. 5818, 5819, 5822 & 5839 of 2025)
Mr. S.S. Tripathy (In ABLAPL No. 4807 of 2025)
For Opp. Party(s) : Mr. S. Panda, ASC, Mr. B. Nayak (Informant)
(In all ABLAPL)

Judgment/Order**Judgment**

V. NARASINGH, J.

1. Since all these ABLAPLs relate to the same FIR, on the consent of the learned counsel for the parties, they are taken up together and are disposed of by this common judgment.

2. Heard Mr. Mahanti, learned Senior Advocate for the Petitioners in ABLAPL Nos.5818 of 2025, 5819 of 2025, 5822 of 2025 and 5839 of 2025 and Mr. Tripathy, learned counsel for the Petitioner in ABLAPL No.4807 of 2025, Mr. Panda, learned Addl. Standing Counsel and Mr. Nayak, learned counsel for the Informant in all the ABLAPLs.

3. The Petitioners are seeking pre-arrest bail in connection with Kamakhya Nagar P.S. Case No.644 of 2024 pending in the court of learned Court in seisin for commission of offences punishable under Sections 418/420/34 IPC.

4. It is submitted by the learned Senior Advocate that contractual disputes between the Informant and the accused persons, save and except the Petitioner (Ashwini Mehra) in ABLAPL No.5818 of 2025, who is the official liquidator, is being cloaked with criminality making false allegations against the Petitioners. As such they are entitled to be protected by pre-arrest bail. In this context, learned

Senior Counsel relies on the judgment of the Apex Court in the case of **Shikhar Chemicals vrs. State of Uttar Pradesh and another**¹.

It is the further submission of the learned Senior Counsel that in terms of the order passed by this Court all the Petitioners except the Petitioner-Rahul Maheswari in ABLAPL No.5822 of 2025 have joined the investigation. Since they have joined and cooperated with the investigation, the same should weigh with this Court in considering the prayer for pre-arrest bail.

5. Such submission is opposed by the learned counsel for the State, Mr. Panda, inter alia, on the ground that though the Petitioners have appeared, they have not given necessary clarifications.

5-A. Learned counsel for the Informant, Mr. Nayak submitted that from the very inception, the Petitioners had intention of committing the offence under Section 420 IPC and taking a cue from the learned Public Prosecutor that the accused Petitioners have not extended the desired cooperation submitted that they should not be granted exceptional remedy of pre-arrest bail.

5-B. Learned Senior Advocate, Mr. Mohanty instructed by Ms. Tripathy appearing for the Petitioners submitted that in view of the constitutional shield provided under **Article 20(3) of the Constitution of India**² the Petitioners cannot be compelled to give statement implicating themselves. Referring to the very submissions of the learned Public Prosecutor and learned counsel for the Informant, Mr. Nayak, it is stated that considering the overzealous manner in which the investigating agency is proceeding insisting on self-incrimination, the Petitioners have made out more than a prima facie case to be protected by prearrest bail.

6. Mr. Mohanti, learned Senior Advocate for the Petitioners in ABLAPL Nos.5818 of 2025, 5819 of 2025, 5822 of 2025 and 5839 of 2025 and Mr. S.S. Tripathy, learned counsel for the Petitioner in ABLAPL No.4807 of 2025 relied on the provisions contained under Chapter III of the Insolvency and Bankruptcy Code, 2016 (Code) under the heading “Liquidation Process” and placed reliance on the provisions contained in Section **33(3), 33(5) and 33(7)**³ as well as **Section 233**⁴ of

¹ 2025 SCC Online SC 1643

² **20.Protection in respect of conviction for offences.-**

(1) & (2) xxx xxx xxx

(3). No person accused of any offence shall be compelled to be a witness against himself.

³ **33. Initiation of liquidation.**

(1) & (2) xxx xxx xxx

(3) Where the resolution plan approved by the Adjudicating Authority [under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority

the Code. Since, admittedly, National Company Law Tribunal, Principal Bench, New Delhi is in seisin of the dispute in a proceeding under the IBC Code, 2016 instituted by the Financial Creditor, ICICI Bank in respect of which the FIR has been filed.

6-A. Per contra, learned counsel for the Informant submitted that merely because of pendency of the proceeding before the NCLT the Petitioners ought not to be ensconced by an order of pre-arrest bail since there is no bar or institution of the FIR when a prima facie case is well made out and more so since the Petitioners are not willing to cooperate with the ongoing investigation, as stated by the learned Public Prosecutor.

7. In its recent dictum in the nature of continuing mandamus the Apex Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another*⁵ has laid down the principles which ought to guide a Court while considering the prayer for pre-arrest bail.

8. The arguments advanced by the parties have to be considered and decided on the touchstone of the law as laid down by the Apex Court in the case of **Satender Kumar Antil (supra)**⁶.

9. The recital of the FIR which is relevant for consideration of the submission of the parties is extracted hereunder for convenience of reference;

“xxx xxx xxx

for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) xxx xxx xxx

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor: Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) xxx xxx xxx

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.

⁴ **233. Protection of action taken in good faith-** No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government, or the Chairperson, Member, officer or other employee of the Board or an insolvency professional or liquidator for anything which is in done or intended to be done in good faith under this Code or the rules or regulations made thereunder.

⁵ 2023 SCC OnLine SC 452

“11.....We would like to clarify that what we have enunciated qua bail would equally apply to anticipatory bail cases. Anticipatory bail after all is one of the species of a bail.”

The Company, M/s Punj Lloyd Ltd. took up a contract work for the construction of Steel Pipeline along with associated facilities from Dhamra to Angul i.e., 0 to 207kms. This work order was taken from GAIL (Gas Authority of India Ltd.). However, Punj Lloyd Ltd. sub-contracted the work to many other contractors out of which we (DSP Infracon Pvt. Ltd. were one of the sub-contractors.

We then took up the work of laying and construction of steel pipeline along with associated facilities in Dhenkanal District from village Jamunakot to village Tumusingha from 140.00km to 170.000kms of Dhamra to Angul Pipeline Project. The same was done vide work order no. 523132 dated 18.01.2021 for a total cost of 32.67 crores.

The contract between GAIL and Punj Lloyd Ltd. was terminated from the side of GAIL on 22.03.2022 which was during the course of execution of the work order. Consequent to termination GAIL has awarded the balance work to M/s. Amprocon Infrastructure, which could not be executed smoothly as local and outside vendors have not allowed them to work in the project without their outstanding being cleared by us. On the date of termination we have an outstanding liability of vendors Rs. 9.74 crores, which was partially settled by GAIL directly with our vendors against our "work done but not billed".

We had completed almost 90% (Rs. 29.40 crores) approx. and we had billed them only Rs. 19.17 crores due to various milestones, with remaining work done but not billed Rs.10.23 crores. Out of the total amount billed Rs. 19.17 crores, Punj Lloyd still owes Rs. 3.28 crores. (comprising Invoice No. RA13-Rs 2.32 cr + Retention Rs 0.71+ Equipment RentalRs 0.25).Punj Lloyd RP AshwiniMehra along with CEO Manoj Mangaine, Project head Mukesh Kumar Jiswal, Odisha Project Manager RajibBanarjee, CFO Rahul Maheswari, conjointly withhold the outstanding amount and deceitfully availed the GST amount of Rs. 35.95 lakh against Invoice RA 13 (enclosed form 2B of GST department) with the intention to cheat the outstanding amount and unattended since the year end of 2022.

Therefore humbly request to initiate legal action against M/s. Punj Lloyd RP AshwiniMehra along with CEO Manoj Mangaine, Project head Mukesh Kumar Jiswal Odisha Project Manager RajibBanarjee, CFO Rahul Maheswari for cheating of my toilsome amount and made us bad debt resulting company financial distress.

xxx xxx xxx"

(Emphasized)

10-A. Factual matrix of the case runs thus :

Gas Authority of India Ltd. (GAIL) awarded a contract for the construction of steel pipeline along with associated facilities from Dhamra to Angul i.e. 0 to 207 kms to one M/s. Punj Lloyd Ltd. The Informant-Dwarkamai Sai Prasad Infracon Private Limited was one of the Sub-Contractors engaged by M/s. Punj Lloyd Ltd. to execute the work in question.

The work entrusted to the Informant- DSP Infracon Pvt. Ltd. was from the village Jamunakot to village Tumusingha i.e. from 140.00 km to 170.000 kms of Dhamra to Angul Pipeline Project. And, the said work was awarded as per the Work Order No.523132 dated 18.01.2021 for a total cost of Rs.32.67 Crores.

The principal GAIL terminated its contract with Punj Lloyd Ltd.

In this background the allegation is made that though the Informant has completed 90% of the work, out of total amount of Rs.19.17 crores, Punj Lloyd Ltd. still owes Rs.3.28 crores, which is covered, inter alia, by invoice No. RA 13. It is the further allegation that they have availed the “GST amount of Rs.35.95 lakh”.

11. Prima facie FIR in question is an offshoot of the contractual obligation inter se between the parties. Admittedly, the matter is pending before the NCLT at the instance of the Financial Creditor ICICI Bank Limited wherein Punj Lloyd Ltd. is cited as a corporate debtor.

11-A. In ABLAPL No.4807 of 2025, the order dated 27.05.2022 of the NCLT is on record by which the Petitioner-Ashwini Mehra has been appointed as a liquidator and Paragraph-e thereof reads as under;

“e. This order shall be deemed to be notice of discharge to all the officers, employees and the workmen of the corporate debtor as per Section 33(7) of the Insolvency and Bankruptcy Code, 2016.”

12. On a perspicuous analysis of the materials on record, this Court finds merit in the submissions made by the learned Senior Advocate, Mr. Mohanti and Mr. Tripathy that contractual dispute is being tainted with criminality.

It is apt to note that on the date of registration of the FIR the Informant was evidently aware of the institution of the proceeding before the National Company Law Tribunal, Principal Bench, New Delhi as he has cited Mr. Ashwini Mehra, Petitioner in ABLAPL No.5818 of 2025 in his capacity as “Resolution Professional”.

Evidently the claim in the FIR prima facie arises out of and in connection with the contract between the Informant and the Corporate Debtor Punj Lloyd Ltd. whose officials are Petitioners in ABLAPL Nos.4807, 5819, 5822 and 5839 of 2025.

It is indeed baffling that the statutory provisions contained in the Insolvency and Bankruptcy Code, 2016 were not taken into account by the investigating agency.

13. On a conspectus of the materials on record, considering the nature of allegations, this Court is persuaded to hold that in the light of the judgment of the Apex Court in the case of **Gurbaksh Singh Sibbia & Others Vrs. State of Punjab**⁶ and **Satender Kumar Antil (supra)**⁶ the Petitioners are entitled to the exceptional remedy of pre-arrest bail.

Accordingly, it is directed that in the event of arrest of the Petitioners in connection with the aforesaid case, they shall be released on bail by the Arresting Officer on such terms and conditions deemed just and proper.

14. It is needless to state that the observations made hereinabove are only for the purpose of consideration of the Petitioners’ prayer for pre-arrest bail and the same

⁶ (1980) 2 SCC 565

ought not to be considered as this Court expressing any opinion regarding complicity of the Petitioners which has to be probed independently.

The ABLAPLs are accordingly disposed of.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

ABLAPLs disposed of.

— o —

2025 (III) ILR-CUT-1377

**DIRECTOR, DIRECTORATE OF PRINTING,
STATIONERY & PUBLICATION, ODISHA, CUTTACK
V.
PRESIDING OFFICER, E.P.F.
APPELLATE TRIBUNAL, NEW DELHI & ORS.**

[W.P.(C) NO. 23220 OF 2015]

22 DECEMBER 2025

[V. NARASINGH, J.]

Issue for Consideration

Whether the provisions of the Limitation Act can be applied while condoning the delay under the Special statute namely EPF & MP Act, 1952?

Headnotes

EMPLOYEES' PROVIDENT FUNDS & MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7-A,(I)(Q) – Determination of moneys dues from employers and Appeals to Tribunal – In the present Writ petition the order passed by learned Appellate Tribunal refusing the admission of appeal on the ground of limitation is under challenge – The petitioner/State Govt. has challenged the order of the learned Tribunal by applying Sections 5 & 14 of the Limitation Act – Question raised that, Whether the provisions of the Limitation Act can be applied while condoning the delay under the Special statute namely EPF & MP Act, 1952?

Held: No – So far as condonation of delay is concerned, this Court respectfully refers to the recent dictum of the Apex Court in the case of **Shivamma v. Karnataka Housing Board** and contentions as raised have to be examined in the context of the judgment of the Apex Court also in the case of **Commissioner of Sales Tax, U.P., Lucknow vs. M/s. Parson**

Tools and Plants, Kanpur laying down that where power of condoning delay is specified under any special statute, the general provisions of Section 5 and 14 of the Limitation Act would have no application in cases where appellate and revisional authority is not a Court. (Para 15)

Admittedly, in the case at hand even excluding the period of pendency before this Court as per Section 14 of the Limitation Act, the period of delay comes to 289 days. Undisputedly, the appeal was not filed within the time line “15 days” fixed by this Court. (Para 16)

Be that as it may, the another distinguishing feature which is of seminal importance and cannot be lost sight of is that, it can be reasonably concluded that this Court being conscious of the limitation prescribed notwithstanding the schematic arrangement of effective statutory remedy having been bypassed in preferring writ petition under article 226 and 227 of the Constitution of India and there being no exceptional cause to entertain the same in exercise of its plenary jurisdiction still, taking a liberal view granted 15 days time to the Petitioner-State establishment to prefer the statutory appeal. But admittedly, the same was not filed within the time as stipulated, as noted by the impugned order 17.09.2015 and quoted hereunder for convenience of reference;

“xxx xxx xxx

Appeal actually filed on behalf of appellant on 01.09.2015. It becomes clear that appellant not adhered order dated 10.07.2015 passed by Hon’ble High Court, so again and again, appellant can not be allowed to take benefits of its own wrong/fault, so accordingly present appeal is hereby dismissed being time-barred.

xxx xxx xxx”

(Para 17)

There being no prayer for extension of time stipulated by this Court, the Tribunal could not have entertained such appeal – And, considering the matter on merits in the factual matrix of the case at hand would have been contumacious.

As such, this Court does not find any infirmity in the order passed by the tribunal warranting interference by this Court.

The Writ Petition is accordingly dismissed – Costs made easy.

The order of 17.09.2015 passed in Section 7A proceeding along with interest component in terms of the provisions of 7Q of the Act, 1952 shall be complied by the Petitioner within four months from the date of receipt/production of copy of this judgment. (Para 18)

Citations Reference

M/s Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur and others, (2008) 3 SCC 70; Assistant Regional Provident Fund Commissioner

vs. Employees Provident Fund Appellate Tribunal and others, **(2006) 2 LLJ 388**; Prudential Spinners Ltd. Vs. The Employees P.F. Appellate Tribunal, **142 (2007) DLT 361**; Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and others, **(2020) 17 SCC 643**; Shivamma v. Karnataka Housing Board, **2025 SCC OnLine SC 1969**; Commissioner of Sales Tax, U.P., Lucknow vs. M/s. Parson Tools and Plants, Kanpur, **AIR 1975 SC 1039 – referred to.**

List of Acts

Employees' Provident Funds & Miscellaneous Provisions Act, 1952

Keywords

Appeal; Limitation; Delay; Condonation; Beneficial legislation; Statement of object; Special Statute; Extension of time; Interest component.

Case Arising From

Order dated 17.09.2015 passed by the Employees' Provident Fund Appellate Tribunal in Case No. ATA 1011(10)/2015.

Appearances for Parties

For Petitioner : Mr. C.R. Swain, AGA
For Opp. Parties : Mr. S. Das, Mr. B. Barik

Judgment/Order

Judgment

V. NARASINGH, J.

1. Heard Mr. Swain, learned Additional Government Advocate for the Petitioner and Mr. Das and Mr. Barik for the Opposite Parties.

2. This writ petition has been filed under article 226 and 227 of the Constitution of India assailing the order dated 17.09.2015 passed by the Employees Provident Fund Appellate Tribunal, New Delhi (Opposite Party No.1) in ATA No.1011(10)/2015 refusing to admit the appeal filed by the Petitioner-Establishment against the order dated 12.11.2014 passed under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act 1952') on the ground of limitation.

3. Before considering the rival contentions, it would be apposite to refer to the relevant provisions of Act 1952;

“7A. Determination of moneys due from employers.- [(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—

(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and

(b) determine the amount due from any employer under any provision of this Act, the Scheme or the ³[Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order [***] shall be made under sub-section (1), unless ⁵[the employer concerned] is given a reasonable opportunity of representing his case.

[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]

[(4) Where an order under sub-section (1) is passed against an employer *ex parte*, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.

Explanation.—Where an appeal has been preferred under this Act against an order passed *ex parte* and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the *ex parte* order.

(5) No order passed under this section shall be set aside on any application under subsection (4) unless notice thereof has been served on the opposite party.]]

[7-I. Appeals to Tribunal.— (1) Any person aggrieved by a notification issued by the Central Government, or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or sub-section (1) of section 7A, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(Emphasized)

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed.]

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(Emphasized)

³**[7Q. Interest payable by the employer.—** The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

7(2) of the Tribunal (Procedure) Rules, 1997:-

“7. Fee, time for filing appeal, deposit of amount due on filing appeal.—

(1) xxx xxx xxx

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer shall be entertained by a Tribunal unless he has ¹[deposited with the Tribunal a Demand Draft payable in the Fund and bearing] 75 per cent of the amount due from him as determined under Section 7-A.

Provided also that the Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.” (Emphasized)

4. Admittedly, this is the third journey of the Petitioner-the State Establishment to this Court.

5. Liability of the Petitioner-Establishment was determined by an enquiry held under Section 7A of the Act, 1952 on 27.02.2013. The said order was issued on 01.03.2013. The Petitioner employer filed an application on 04.04.2013 under Section 7B of the Act, 1952 for review of the said order. Such application was rejected on 12.11.2013. The Petitioner employer filed W.P.(C) No.1005 of 2014 before this Court for quashing of the orders dated 27.02.2013 and 07.11.2013 and this Court by order dated 04.08.2014 quashed the said order and remanded back the matter for fresh hearing and after adjudication, the following order dated 12.11.2014

under Section 7A was passed which is culled out hereunder for convenience of reference;

“Therefore, I, S.N. Bhuyan, Asst. Provident Fund Commissioner, Orissa having regard to the facts and circumstances of the case and having considered all the matters involved therein hereby determine the following dues against M/s. Director, Printing, Stationery & Publication, Odisha on account of Provident Fund, Pension Fund and Insurance Fund contribution and Administrative Charges towards Provident Fund and Insurance Fund for the period from 01/1994 to 02/2012 in accordance with the provisions of the EP.F. & M.P. Act, 1952 and the Schemes framed there under.

Account	Dues (Rs.)	Deposit (Rs.)	Balance (Rs.)
Account No.1 EES ER	2206333 731104	872554	1333779 731104
Account No.10	1548072	---	1548072
Account No.2	197262	---	197262
Account No.21	98461	---	98461
Account No.22	1970	---	1970
Total:	4783202	872554	3910648

In addition to the above, the establishment is liable to pay interest under Section 7Q of the Act @ 12% as on date of remittance of dues/date of assessment of dues which continues to accrue till its actual payment and is exclusive of Penal Damages under Section 14B of the Act Further if I have reason to believe in future that any amount has escaped determination, I shall reopen the and pass appropriate orders determining the amount due from the employer u/s-7C of the Act.

Interest U/s 7Q

Account No.1	2787673
Account No.10	1521135
Account No.2	190418
Account No.21	91312
Account No.22	1822
Total:	4592360

I further order, that the aforesaid amount shall be paid by the establishment in respective accounts within a period of 15 days from the date of receipt of this order and the receipted copy of the challans/D.Ds be produced in support thereof failing which, the same shall be recovered in the manner prescribed in Section 8B to 8G of the Act. Further, the establishment is required to submit the statutory returns as prescribed for the entire period. This will be without prejudice to any other action that may lie under the provisions of the law for which the establishment has already rendered itself liable.

This order is without prejudice to action u/s 7C & 14B of the Act.

6. Instead of availing the statutory remedy of appeal as detailed above, the Petitioner challenged the aforesaid order passed under 7A of the Act, 1952 and interest under Section 7Q of the said Act to the tune of RS.39,10,648/- and Rs.45,92,360/- respectively by filing W.P.(C) No.12001 of 2015.

7. This Court by order dated 10.07.2015 taking note of the schematic arrangement of the Act providing effective statutory remedy disposed of the same by the following order;

“Challenge is made to the order dtd. 12.11.2014 passed by the Assistant Provident Fund Commissioner under Section 7-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act, 1952")

Heard learned Counsel for the petitioner.

Against the said order, appeal lies to the Employees Provident Fund Appellate Tribunal, New Delhi under Section 7-I of the Act.

Learned Counsel for the petitioner submits that the petitioner will file an appeal under Section 7(I) of the Act before the Employees Provident Fund Appellate Tribunal, New Delhi and till disposal of the same, the Opp.Parties may be directed not to take any coercive action against it.

In view of the same, this Court disposes of the writ application granting liberty to the petitioner to file an appeal before the learned Tribunal. For the said purpose the petitioner will send a copy of the appeal memo along with the certified copy of this Order and all the documents to the learned Tribunal, New Delhi by registered post within a period of fifteen days from today. After receipt of the same, the learned Tribunal shall do well to assign the number and dispose of the appeal on merit after affording opportunity of hearing to the petitioner at its Circuit Bench to be held at Bhubaneswar. For a period of thirty days, no coercive action shall be taken against the petitioner.” (Emphasized)

8. It would be apt to note that this Court while relegating the Petitioner to invoke the statutory remedy directed that no coercive action shall be taken for a period of 30 days in the light of its order extracted herein above that the appeal shall be filed “within a period of fifteen days from today”.

9. Admittedly, the appeal was filed on 01.09.2015 after expiry of 15 days prescription as imposed by this Court. Admittedly no extension of time was sought from this Court.

10. By the impugned order at Annexure-1, since the appeal was not preferred within the time frame as stipulated by this Court, the same was rejected at the threshold thereby affirming the order passed under Section 7A and also interest component as imposed in terms of Section 7Q of Act, 1952.

11. It is submitted by the learned State counsel appearing for the Petitioner that certified copy of the order of this Court granting 15 days time was received on 04.08.2015 and the appeal was admittedly filed on 01.09.2015 and the same ought to

have been entertained on merits without adopting hyper technical pedantic approach of dismissing it on the ground of limitation.

12. Per contra, learned counsel for the EPF, Mr. Das, as well for the beneficiary employees, Mr. Barik, who were allowed to intervene, submit that there is no infirmity in the impugned order at Annexure-1 passed by the Appellate Tribunal. Hence, the writ petition does not merit consideration. And, it is their further submission that taking into account the beneficial nature of the legislation, the limitation has to be applied strictly and the same cannot be extended in any way.

13. To fortify their submission that this Court has no power to condone the delay, the parimeteria provisions of the Central Excise Act were relied upon referring to the judgment of the Apex Court in the case of **M/s Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur and others**⁷ and to buttress their argument that the delay cannot be condoned by invoking provisions of Limitation Act reliance has been placed on the following precedents of the Delhi High Court;

i. Assistant Regional Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal and others⁸

ii. Prudential Spinners Ltd. Vs. The Employees P.F. Appellate Tribunal⁹

14. There cannot be two opinions that the Act 1952 is a beneficial legislation and the same has been succinctly stated in the “statement of object” of the said Act. Reference can also be gainfully made to the dictum of the Apex Court in the case of **Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and others**¹⁰.

15. So far as condonation of delay is concerned, this Court respectfully refers to the recent dictum of the Apex Court in the case of **Shivamma v. Karnataka Housing Board**¹¹ and contentions as raised have to be examined in the context of the judgment of the Apex Court also in the case of **Commissioner of Sales Tax, U.P., Lucknow vs. M/s. Parson Tools and Plants, Kanpur**¹² laying down that where power of condoning delay is specified under any special statute, the general provisions of Section 5 and 14 of the Limitation Act would have no application in cases where appellate and revisional authority is not a Court.

16. Admittedly, in the case at hand even excluding the period of pendency before this Court as per Section 14 of the Limitation Act, the period of delay comes

⁷ (2008) 3 SCC 70

⁸ (2006) 2 LLJ 388

⁹ 142 (2007) DLT 361

¹⁰ (2020) 17 SCC 643

¹¹ 2025 SCC OnLine SC 1969

¹² AIR 1975 SC 1039

to 289 days. Undisputedly, the appeal was not filed within the time line “15 days” fixed by this Court.

17. Be that as it may, the another distinguishing feature which is of seminal importance and cannot be lost sight of is that, it can be reasonably concluded that this Court being conscious of the limitation prescribed notwithstanding the schematic arrangement of effective statutory remedy having been bypassed in preferring writ petition under article 226 and 227 of the Constitution of India and there being no exceptional cause to entertain the same in exercise of its plenary jurisdiction still, taking a liberal view granted 15 days time to the Petitioner-State establishment to prefer the statutory appeal. But admittedly, the same was not filed within the time as stipulated, as noted by the impugned order 17.09.2015 and quoted hereunder for convenience of reference;

“xxx xxx xxx

Appeal actually filed on behalf of appellant on 01.09.2015. It becomes clear that appellant not adhered order dated 10.07.2015 passed by Hon’ble High Court, so again and again, appellant can not be allowed to take benefits of its own wrong/fault, so accordingly present appeal is hereby dismissed being time-barred.

xxx xxx xxx”

18. There being no prayer for extension of time stipulated by this Court, the Tribunal could not have entertained such appeal. And, considering the matter on merits in the factual matrix of the case at hand would have been contumacious.

As such, this Court does not find any infirmity in the order passed by the tribunal warranting interference by this Court.

The Writ Petition is accordingly dismissed. Costs made easy.

The order of 17.09.2015 passed in Section 7A proceeding along with interest component in terms of the provisions of 7Q of the Act, 1952 shall be complied by the Petitioner within four months from the date of receipt/production of copy of this judgment.

19. Before parting, this Court is constrained to observe that the case at hand stands as a testimony of bureaucratic inertia to the orders passed by this Court in not taking steps within the time stipulated nor making any motion to get the time extended. Unless a mechanism is put in place at each level fixing accountability to ensure due compliance of orders passed by the Courts, the cause of the State is bound to suffer because of administrative malaise and institutional apathy.

20. In view of the disposal of the Writ Petition, all the pending I.As. stand disposed of.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition dismissed.

2025 (III) ILR-CUT-1386

Dr. NIHAR RANJAN BISWAL & ANR.

V.

STATE OF ODISHA & ORS.

[W.P.(C) NO. 15074 OF 2022]

AND

Dr. SAMBIT KUMAR BEHERA & ANR. V. STATE OF ODISHA & ORS.

[W.P.(C) NO. 9597 OF 2022]

01 DECEMBER 2025

[BIRAJA PRASANNA SATAPATHY, J.]**Issue for Consideration**

Whether the recruitment process should be interfered on the ground of violation Rule 6 of 2021 Rules r/w section 3 of the 1975 Act.

Headnotes

SERVICE JURISPRUDENCE – Reservation – Odisha Medical Education Service (Method of Recruitment and Conditions of Service) Rules, 2021 r/w Section 3 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 – Recruitment to the post of Asst. Professor (Super Specialty) – Advertisement issued on dated 10.11.2021 – The Writ Petitions have been filed challenging the Advertisement on the ground that in terms of the provisions contained under Rule 6 of the 2021 Rules r/w Section 3 of the 1975 Act, no reservation has been provided in respect of the discipline in Neurology and Gastroenterology – Whether the selection process in respect of these two discipline should be interfered on the ground of violation of Rule 6 of 2021 Rules r/w section 3 of the 1975 Act.

Held: No – Since in terms of the decision in the case of *Indra Sawhney* so followed in *Preeti Srivastav* and *Faculty Association of AIIMS* as cited (supra), no step has been taken by the State as to whether reservation can be followed against recruitment to the post of Asst. Professor in Super Specialty, it is the view of this Court that no illegality or irregularity has been committed by the Opp. Parties while issuing the impugned advertisement – Accordingly, this Court is not inclined to interfere with the recruitment process so undertaken by the Commission pursuant to the advertisement issued vide Advertisement No. 20/2021-22 on 10.11.2021 – Consequentially, both the writ petitions fail and dismissed accordingly – The interim order passed earlier stands vacated. (Para 8.3)

Citations Reference

Fida Hussain & Ors. Vs. Moradabad Development Authority & Anr., (2011) 12 SCC 615; Faculty Association of All India Institute of Medical Sciences Vs. Union of India & Ors., (2013) 11 SCC 246; Indra Sawhney Vs. Union of India, (1992) Supp. (3) SCC 217; Preeti Srivastav (Dr.) & Anr. Vs. State of M.P. & Ors., (1999) 7 SCC 120; Jagadish Saran (Dr) vs. Union of India, (1980) 2 SCC 768; Pradeep Jain Vs. Union of India, (1984) 3 SCC 654; Christian Medical College Vellore Assn. Vs. Union of India, (2020) 8 SCC 705; Neil Aurelio Nunes (OBC Reservation) Vs. Union of India, (2022) 4 SCC 1; Mohan Bir Singh Chawla Vs. Punjab University, (1997) 2 SCC 171; K. Duraisamy Vs. State of T.N., (2001) 2 SCC 538; Dr. Shah Faesal & ors. Vs. Union of India & Ors., (2020) 4 SCC 1 – referred to.

List of Acts

Odisha Medical Education Service (Method of Recruitment and Conditions of Service) Rules 2021; Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975.

Keywords

Reservation; Super Specialty post; Advertisement; Terms and Conditions; Selection Process.

Case Arising From

Advertisement No.20/2021-22 dated 10.11.2021 issued by Odisha Public Service Commission.

Appearances for Parties

For Petitioners : Mr. B. Routray, Sr. Adv., &
Mr. J. Biswal, (In W.P.(C) No. 15074 of 2022)
Mr. S.S. Das, Sr. Adv. & Ms. S. Das,
(In W.P.(C) No. 9597 of 2022)

For Opp. Parties : Mr. M.R. Mohanty, AGA, Mr. P.K. Mohanty, Sr. Adv. &
Ms. K.T. Mudali, (in O.P. 3 in W.P.(C) No. 15074 of 2022)
Mr. T. Patnaik, (in O.P. 3 in W.P.(C) No. 9597 of 2022)

Judgment/Order

Judgment

B.P. SATAPATHY, J.

Since both these writ petitions have been filed challenging the process of the selection initiated vide Advertisement No. 20/2021-22 dtd.10.11.2021 so issued by the Odisha Public Service Commission (in short Commission) for recruitment to the post of Asst. Professor (Super Specialty) in Group-A under the Odisha Medical

Education Service (in short OMES) Cadre, both the matters were heard analogously and disposed of by the present common order.

2. It is the main contention of the learned Sr. Counsels appearing for the Parties in both the writ petitions that while issuing the impugned advertisement vide Advertisement No. 20/2021-22 for the post in question, since reservation has not been provided in terms of the provisions contained under Rule 6 of the Odisha Medical Education Service (Method of Recruitment and Condition of Service) Rules, 2021 (in short 2021 Rules), the selection process initiated pursuant to the impugned advertisement is not sustainable in the eye of law and requires interference of this Court. Rule 6 of the 2021 Rules reads as follows:-

“6. Reservations.- Notwithstanding anything contained in these rules reservations of vacancies or posts, as the case may be, for-

(a) Scheduled Castes and Scheduled Tribes shall be made in accordance with the provisions of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Caste and Scheduled Tribes) Act, 1975 and the rules made there under; and

(b) SEBC, Women, Sports Persons, Ex- servicemen and Persons with Disabilities shall be made in accordance with the provisions made under such Act, Rules, Orders or instructions issued in this respect by the Government, from time to time.”

3. It is contended that Petitioners in both these cases since belong to reserve category and because of the nature of advertisement issued, no reservation was provided for any of the candidates belonging to reserve category and all the 19 posts so advertised were meant for UR candidates, the process of selection so undertaken by the Commission is vitiated.

3.1. It is also contended that pursuant to the interim order passed initially vide order dtd.22.06.2022, further modified vide order dtd.17.04.2023, two (2) posts in the discipline of Neurology and Gastroenterology, Sl. Nos. 6 & 9 of the Advertisement were kept reserved while permitting the Opp. Parties to proceed with the selection process in respect of other disciplines.

3.2. It is also contended that appointment made pursuant to the impugned advertisement was further held to be subject to final outcome of the writ application. It is however contended that since in the impugned advertisement, in respect of other disciplines, only one post was advertised, there was no occasion to make reservation for reserve category candidates as against those disciplines. However, since in the discipline Urology, Neurology, Gastroenterology and Surgical Gastroenterology, the post advertised was more than one, in view of the provisions contained under Rule 6 of the 2021 Rules, required no. of posts should have been kept reserved for reserve category candidates.

3.3. It is further contended that Petitioners as provided under Rule 4 of the 2021 Rules were having the required eligibility criteria as against the post of Asst. Professor in the discipline Neurology and Gastroenterology. However, since there

was no reservation provided for reserve category candidates in respect of the discipline Neurology and Gastroenterology, both the Petitioners were deprived to make their applications and accordingly were deprived from getting the benefit of appointment as against the said disciplines.

3.4. It is further contended that since post of Asst. Professor in OMES cadre is a base level post, in terms of the provisions contained under Sec. 3 of the Odisha Reservation of Vacancies Act, 1975, required reservation should have been provided in the recruitment in question. Sec. 3 of the Act reads as follows:-

“3. This Act shall apply to all appointments to the Posts and Services under the State except-

(a) those meant for conducting or guiding or directing research;

(b) those classified as scientific posts;

(c) tenure posts;

(d) those filled up on the basis of any contract;

(e) ex-cadre posts:

(f) those which are filled up by transfer or deputation;

(g) those in purely temporary establishments, such as, work-charged staff including daily-rated and monthly-rated staff and such staff the duration of whose appointment does not extend beyond the term of office of the person making the appointment;

(h) temporary appointments of less than forty-five day's duration;

(i) those in respect of which recruitment is made in accordance with any provision contained in the Constitution; and

(j) such other posts as the State Government may, from time to time, by order, specify:

Provided that all orders made under clause (j) shall, as soon as after they are made, be laid before the State Legislature for a total period of fourteen days which may be comprised in one or more sessions.”

3.5. It is further contended that while issuing similar nature of advertisement for recruitment as against the post of Asst. Professor in various disciplines, AIIMS, Bhubaneswar vide the advertisement issued under Annexure-5 provided for reservation in favour of reserve category candidates. It is also contended that, in similar advertisement issued by the Uttar Pradesh Public Service Commission vide Advertisement issued under Annexure-6 series and by Rajasthan Public Service Commission as against the post of Asst. Professor in various disciplines, reservation was provided for reserve category candidates.

3.6. It is accordingly contended that taking into account the provisions contained under Rule 6 of the 2021 Rules r/w. Sec. 3 of the 1975 Act and the reservation principle followed by AIIMS, Bhubaneswar and by Rajasthan and Uttar Pradesh Public Service Commission in similar nature of advertisement issued under

Annexure-5 & 6 series, Opp. Party No. 3 while issuing the impugned advertisement should have made provision for reserve category candidates. Since in the impugned advertisement dt.10.11.2021, no reservation has been provided, the process of selection in terms of the said advertisement stands vitiated.

3.7. In support of his aforesaid submission, learned Sr. Counsel appearing for the Parties relied on a decision of the Hon'ble Apex Court in the case of ***Fida Hussain & Ors. Vs. Moradabad Development Authority & Anr.***, (2011) 12 SCC 615. Hon'ble Apex Court in Para 19 of the said judgment has held as follows:-

“19. In Director of Settlements v. M.R. Apparao [(2002) 4 SCC 638] this Court held: (SCC pp. 650-51, para 7)

“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. ... A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. ... The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case.”

4. Mr. M.R. Mohanty, learned Addl. Govt. Advocate on the other hand while supporting the impugned advertisement made his submission basing on the stand taken in the counter affidavit so filed by Opp. Party No. 1. It is the main contention of the learned AGA that the recruitment pursuant to the impugned advertisement being as against the post of Asst. Professor (Super Specialty), claim of the Petitioners that required posts should have been reserved for reserve category candidates is untenable in the eye of law in view of the decision of the Hon'ble Apex Court in the case of ***Faculty Association of All India Institute of Medical Sciences Vs. Union of India & Ors.***, (2013) 11 SCC 246. Hon'ble Apex Court in the case of ***Faculty Association of AIIMS*** in Para 2 and 22 to 25 has held as follows:-

“2. Although the matter is now before a Bench of five Judges, the terms of reference are not very clear. From what we have been able to gather from the pleadings and the judgment [Faculty Assn. of Aiims v. Union of India, (2002) 63 DRJ 807] of the Division Bench of the High Court, the question to be considered is whether reservation was inapplicable to speciality and superspeciality faculty posts in the All India Institute of Medical Sciences (hereinafter referred to as “Aiims”). Faced with the decisions of this Court in Indra Sawhney v. Union of India [1992 Supp (3) SCC 215 : 1992 SCC (L&S) Supp 482 : (1992) 22 ATC 384] ; Jagadish Saran v. Union of India [(1980) 2 SCC 768 : (1980) 2 SCR 831] and Pradeep Jain v. Union

of India [(1984) 3 SCC 654 : (1984) 3 SCR 942] wherein reservation in admission to speciality and super speciality courses was disallowed, the Division Bench of the High Court confined itself to the limited issue, namely, whether reservation policy was inapplicable for making appointments to the entry level faculty post of Assistant Professor and to super speciality posts and also whether the resolutions adopted by AiiMS on 11-1-1983 and 27-5-1994 were liable to be struck down.

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22. *Although the matter has been argued at some length, the main issue raised regarding reservation at the super speciality level has already been considered in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] by a nine-Judge Bench of this Court. Having regard to such decision, we are not inclined to take any view other than the view expressed by the nine-Judge Bench on the issue. Apart from the decisions rendered by this Court in Jagadish Saran case [(1980) 2 SCC 768 : (1980) 2 SCR 831] and Pradeep Jain case [(1984) 3 SCC 654 : (1984) 3 SCR 942], the issue also fell for consideration in Preeti Srivastava case [(1999) 7 SCC 120] which was also decided by a Bench of five Judges. While in Jagadish Saran case [(1980) 2 SCC 768 : (1980) 2 SCR 831] and in Pradeep Jain case [(1984) 3 SCC 654 : (1984) 3 SCR 942] it was categorically held that there could be no compromise with merit at the super speciality stage, the same sentiments were also expressed in Preeti Srivastava case [(1999) 7 SCC 120] as well.*

23. *In Preeti Srivastava case [(1999) 7 SCC 120], the Constitution Bench had an occasion to consider Regulation 27 of the Post Graduate Institute of Medical Education and Research, Chandigarh Regulations, 1967, whereby 20% of seats in every course of study in the institute was to be reserved for candidates belonging to the Scheduled Castes, Scheduled Tribes or other categories of persons, in accordance with the general rules of the Central Government promulgated from time to time. The Constitution Bench came to the conclusion that Regulation 27 could not have any application at the highest level of super speciality as this would defeat the very object of imparting the best possible training to selected meritorious candidates, who could contribute to the advancement of knowledge in the field of medical research and its applications. Their Lordships ultimately went on to hold that there could not be any type of relaxation at the super speciality level.*

24. *In para 836 of the judgment in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385], it was observed that while the relevance and significance of merit at the stage of initial recruitment cannot be ignored, it cannot also be ignored that the same idea of reservation implies selection of a less meritorious person. It was also observed that at the same time such a price would have to be paid if the constitutional promise of social justice was to be redeemed. However, after making such suggestions, a note of caution was introduced in the very next paragraph in the light of Article 15 of the Constitution. A distinction was, however, made with regard to the provisions of Article 16 and it was held that Article 335 would be relevant and it would not be permissible not to prescribe any minimum standard at all. Of course, the said observation was made in the context of admission to medical colleges and reference was also made to the decision in State of M.P. v. Nivedita Jain [(1981) 4 SCC 296], where admission to medical courses was regulated by an entrance test.*

It was held that in the matter of appointment of medical officers, the Government or the Public Service Commission would not be entitled to say that there would not be minimum qualifying marks for Scheduled Castes/Scheduled Tribes candidates while prescribing a minimum for others. In the very next paragraph, the nine-Judge Bench while discussing the provisions of Article 335 also observed that there were certain services and posts where either on account of the nature of duties attached to them or the level in the hierarchy at which they stood, merit alone counts. In such situations, it cannot be advised to provide for reservations. In the paragraph following, the position was made even more clear when Their Lordships observed that they were of the opinion that in certain services in respect of certain posts, application of rule of reservation may not be advisable in regard to various technical posts including posts in super specialty in medicine, engineering and other scientific and technical posts.

*25. We cannot take a different view, even though it has been suggested that such an observation was not binding, being obiter in nature. We cannot ascribe to such a view since the very concept of reservation implies mediocrity and we will have to take note of the caution indicated in *Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]* . While reiterating the views expressed by the nine-Judge Bench in *Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]* , we dispose of the two civil appeals in the light of the said views, which were also expressed in *Jagadish Saran case [(1980) 2 SCC 768 : (1980) 2 SCR 831]* , *Pradeep Jain case [(1984) 3 SCC 654 : (1984) 3 SCR 942]* , *Preeti Srivastava case [(1999) 7 SCC 120]*. We impress upon the Central and State Governments to take appropriate steps in accordance with the views expressed in *Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385]* and in this case, as also the other decisions referred to above, keeping in mind the provisions of Article 335 of the Constitution.”*

4.1. It is also contended that the post in question being a Super Specialty post in the rank of Asst. Professor, reservation is not required to be made in view of the decision of the Hon’ble Apex Court in the case of ***Indra Sawhney Vs. Union of India***, (1992) Supp. (3) SCC 217. Hon’ble Apex Court in Para 838 of the said Judgment has

“838. While on Article 335, we are of the opinion that there are certain services and positions where either on account of the nature of duties attached to them or the level (in the hierarchy) at which they obtain, merit as explained hereinabove, alone counts. In such situations, it may not be advisable to provide for reservations. For example, technical posts in research and development organizations/departments/institutions, in specialties and super-specialties in medicine, engineering and other such courses in physical sciences and mathematics, in defence services and in the establishments connected therewith. Similarly, in the case of posts at the higher echelons e.g., Professors (in Education), Pilots in Indian Airlines and Air India, Scientists and Technicians in nuclear and space application, provision for reservation would not be advisable.”

4.2. It is further contended that Hon'ble Apex Court in the case of **Preeti Srivastav (Dr.) & Anr. Vs. State of M.P. & Ors.**, (1999) 7 SCC 120 also clearly held that there cannot be any reservation at the level of super specialization. Hon'ble Apex Court in Para 23, 25, 26 & 62 of the said judgment has held as follows:-

“23. This Court has repeatedly said that at the level of super specialization there cannot be any reservation because any dilution of merit at this level would adversely affect the national goal of having the best possible people at the highest levels of professional and educational training. At the level of a super specialty, something more than a mere professional competence as a doctor is required. A super specialist acquires expert knowledge in his specialty and is expected to possess exceptional competence and skill in his chosen field, where he may even make an original contribution in the form of new innovative techniques or new knowledge to fight diseases. It is in the public interest that we promote these skills. Such high degrees of skill and expert knowledge in highly specialised areas, however, cannot be acquired by anyone or everyone. For example, specialized sophisticated knowledge and skill and ability to make right choices of treatment in critical medical conditions and even the ability to innovate and devise new lines of treatment in critical situations, requires high levels of intelligent understanding of medical knowledge or skill and a high ability to learn from technical literature and from experience. These high abilities are also required for absorbing highly specialized knowledge which is being imparted at this level. It is for this reason that it would be detrimental to the national interest to have reservations at this stage. Opportunities for such training are few and it is in the national interest that these are made available to those who can profit from them the most viz. the best brains in the country, irrespective of the class to which they belong.

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25. The specialty and super speciality courses in Medicine also entail on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335, therefore, colour the selection of candidates for these courses and the rules framed for this purpose.

26. In the premises the special provisions for SC/ST candidates — whether reservations or lower qualifying marks — at the speciality level have to be minimal. There cannot, however, be any such special provisions at the level of super specialities.

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62. In the premises, we agree with the reasoning and conclusion in Dr. Sadhna Devi v. State of U.P. [(1997) 3 SCC 90] and we overrule the reasoning and conclusions in Ajay Kumar Singh v. State of Bihar [(1994) 4 SCC 401] and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan [(1997) 6 SCC 283 : 1997 SCC (L&S) 1449] . To conclude:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education.

2. *A common entrance examination envisaged under the regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.*

3. *Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest.*

4. *At the level of admission to the super speciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection."*

4.3. Learned Addl. Govt. Advocate also relied on various decisions of the Hon'ble Apex Court in the case of **Jagadish Saran (Dr) vs. Union of India**, (1980) 2 SCC 768, **Pradeep Jain Vs. Union of India**, (1984) 3 SCC 654, **Christian Medical College Vellore Assn. Vs. Union of India**, (2020) 8 SCC 705, **Neil Aurelio Nunes (OBC Reservation) Vs. Union of India**, (2022) 4 SCC 1, **Mohan Bir Singh Chawla Vs. Punjab University**, (1997) 2 SCC 171, **K. Duraisamy Vs. State of T.N.**, (2001) 2 SCC 538.

4.4. It is also contended that since the posts so advertised are Super Speciality post and not a post belonging to Broad Speciality, a clarification was issued by the Govt. in the Health & Family Welfare Department on 21.06.2021, wherein it was fairly indicated that as per the Supreme Court's order in Civil Appeal No. 4500 of 2002 with Civil Appeal No. 5119 of 2002 decided on 18.07.2013, no reservation is applicable for recruitment for the post of Asst. Professor in Super Speciality discipline vide Annexure-R/1. It is accordingly contended that in view of the clarification issued by the Govt. –Opp. Party No. 1 on 21.06.2021 vide Annexure-R/1, while issuing the impugned advertisement, no reservation was made for the candidates belonging to reserve category.

4.5. It is also contended that while issuing similar advertisement vide Advertisement No. 12 of 2018-19 under Annexure-R/2, no reservation was made as against the post of Asst. Professor in Super Speciality. Relying on the aforesaid decisions of the Hon'ble Apex Court and the clarification issued under Annexure-R/1, learned Addl. Govt. Advocate contended that no illegality or irregularity has been committed by the Opp. Parties in not providing reservation in the impugned advertisement issued by the Commission vide Advertisement No. 20/2021-22 issued on 10.11.2021.

5. To the submission made by the learned Addl. Govt. Advocate, learned Sr. Counsels appearing for the Petitioners made further submissions contending inter alia that the word Broad-Speciality and Super-Speciality has been defined under Rule 2(v) & (vi) of the 2021 Rules and the same reads as follows:-

“2(v) “*Broad-Speciality*” means any of the subjects which may be declared as a *Broad-Speciality* by the MCI or NMC or DCI from time to time;

(vi) “*Super-Speciality*” means any of the subjects of Medicines, Surgery or Dentistry as may be declared by MCI or NMC or DCI from time to time;”

5.1. Since by the time the Advertisement was issued on 10.11.2021, vide notification dtd.25.02.2021, OMES (Method of Recruitment & Conditions of Service) Rules, 2021 was already notified, in view of the provisions contained under Rule 6 of the said Rules, even if the post is a Super Speciality post, reservation is required to be made.

5.2. It is also contended that as per Rule 3 of the 2021 Rules, as against the Teaching Posts so provided under Rule 3(a), post of Asst. Professor being at the lowest rank, in view of the provisions contained under Sec. 3 of 1975 Act, reservation was required to be provided for reserve category candidates. Rule 3(a) of the Rules reads as follows:-

“3(a) *Teaching Posts*-

(i) *Professor*

(ii) *Associate Professor*

(iii) *Assistant Professor*

5.3. It is further contended that the aforesaid 2021 Rules having been framed in terms of the provisions contained under Art.309 of the Constitution of India and in supersession of the 2013 Rules, the clarification issued under Annexure-R/1 cannot be made applicable on the face of the provisions contained under Rule 3(a), which is a statutory Rule.

5.4. It is further contended that reliance placed by the learned State Counsel to the decisions in the case of ***Faculty Association of AIIMS*** as well as ***Preeti Srivastav*** as cited (supra) cannot be made applicable to the facts of the present case as in those cases no ratio has been decided and the matter was left upon for the Central Govt. and State Govt. to take appropriate step in accordance with the views expressed in the case of ***Indra Sawhney*** as cited (supra).

5.5. It is contended that since in terms of the decision of the Hon’ble Apex court in the case of ***Faculty Association of AIIMS***, no step has been taken by the State of Odisha by debarring reserve category candidates to participate in the selection process for super Speciality discipline, the decisions in those cases are not applicable to the facts of the present case. Hon’ble Apex Court in the case of ***Faculty Association of AIIMS*** in Para 17 to 19 has held as follows:-

“17. Appearing for the institute, Mr Mehmood Pracha, learned advocate contended that people from Backward Classes and the Scheduled Castes and the Scheduled Tribes were often discriminated against and even in spite of having excellent qualities, they were not provided with sufficient opportunities to come up to the standards, as contemplated by the various medical colleges and, in particular, the All India Institute of Medical Sciences, which is an institution of national importance. Mr Pracha urged that although reservation at all different levels of the institute had been introduced, for quite some time, there is no available data to indicate that there has been any deterioration in the quality of medical services being provided in Aiims. On the other hand, Aiims was one of the most sought after medical institute, not only for promotion and research work, but also for the purpose of medical education.

18. Taking a leaf out of Hindu mythology, Mr Pracha drew an analogy from the story of Eklavya and Arjun in the Mahabharata. While Arjun belonged to the princely class, Eklavya was a tribal boy, who without actual training or guidance from any teacher, by his own efforts, excelled in the art of archery. The famous Dronacharya was Arjun's teacher in archery and Eklavya had acquired the skills that he had by merely watching Dronacharya guiding Arjun. However, when it came to an archery competition, Dronacharya, who was more or less certain that, if allowed an opportunity, Eklavya would possibly beat Arjun, requested Eklavya that if he really loved and respected him, he should give his right thumb as gurudakshina to his master. Eklavya dutifully obeyed the person he had chosen as his master and was thus prevented from competing in the competition which Arjun won. Mr Pracha submitted that simply because Eklavya was a tribal boy he was denied the opportunity of competing with Arjun, despite his brilliance and excellence. Mr Pracha submitted that there are many more Eklavyas in today's society, who, if not suppressed and given a chance, would possibly even outshine those belonging to the higher echelons of society.

19. Mr Pracha strongly supported the concept of reservation at all stages, including at the super speciality stage. He urged that at the entry level for recruitment to the faculty posts, which were all treated as super speciality disciplines after the postgraduate course, a member of the Backward Classes had to sit for an examination with others without any separate weightage given for reservation. It is only after having passed the written examination along with other candidates, was a member of the Backward Classes appointed in a teaching post on the basis of reservation. Mr Pracha submitted that this was done only with the intention of giving such a candidate an opportunity of reaching the level of his other fellow faculty members. Mr Pracha submitted that a little support was intended to help people from the backward communities to make their presence felt in academia, so as to encourage others similarly situated. Mr Pracha also relied on the decision of this Court in Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , in support of his contention that members of the Scheduled Castes and Scheduled Tribes and Other Backward Classes were not adequately represented and for the said purpose a certain amount of reservation was necessary so that they could compete with others and excel in academics. Strongly supporting the policy adopted by the Institute, Mr

Pracha submitted that the civil appeal filed by the Faculty of Association of Aiums was liable to be dismissed."

5.6. It is also contended that, since no ratio has been decided in the case of **Faculty Association, AIIMS** as well as **Preeti Srivastav** as cited (supra) and ratio being the essence of the judgment, the same is required to be understood in the context of the relevant facts of the case. In support of his submission, learned Sr. Counsels relied on a decision of the Hon'ble Apex Court in the case of **Dr. Shah Faesal & ors. Vs. Union of India & Ors.**, (2020) 4 SCC 1. Hon'ble Apex Court in Para 25 of the said Judgment has held as follows:-

"25. In this line, further enquiry requires us to examine, to what extent does a ruling of coordinate Bench bind the subsequent Bench. A judgment of this Court can be distinguished into two parts: ratio decidendi and the obiter dictum. The ratio is the basic essence of the judgment, and the same must be understood in the context of the relevant facts of the case. The principle difference between the ratio of a case, and the obiter, has been elucidated by a three-Judge Bench decision of this Court in Union of India v. Dhanwanti Devi (1996) 6 SCC 44, wherein this Court held that:

"9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi A decision is only an authority for what it actually decides. concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution."

5.7. It is also contended that in view of the provisions contained under Art. 335 of the Constitution of India and provisions contained under Para 5 of 2021 Rules, reservation was required to be provided for reserve category candidates and the same having not been followed in the impugned advertisement, the same requires interference of this Court.

6. To the submission made by the learned Sr. Counsels appearing for the Petitioners, learned Addl. Govt. Advocate contended that as per the MCI norm, Assistant Professor in Super Speciality comes under Level 12 and Assistant Professor in Broad Speciality comes under Level 11. Since in the impugned advertisement the post carries the scale of pay of Level 12, the post cannot be treated as the base level post or in the lowest of the rank against teaching post so provided under Rule 3(a) of the 2021 Rules.

6.1. It is further contended that after coming into force of the Teacher Eligibility Qualification in Medical Institutions, Regulation 2022 so issued by the National Medical Commission, posts of Senior Resident (Medical Post Graduates) Iniquitous Non-Medical Post Graduates are the base level post and Asst. Professor with Super Speciality is not a base level post.

6.2. It is also contended that as provided under Regulation 5(2) of the 2022 Regulation, eligibility for being designated as Post Graduate Guide in Super Specialties, a teacher in Medical College or Institution having a total of 3 years of teaching experience as Asst. Professor and above, after obtaining super Speciality degree in the concerned super Speciality subject, shall be recognized as post graduate guide in the super Speciality subject, provided the Department has been recognized/permitted for conducting super Speciality courses in that subject.

6.3. It is also contended that as reflected in Table 3-B of Regulation 6 of the 2022 Regulation, with regard to appointment of faculty on promotion in super Specialities (DN/MCH), post of Senior Resident is the base level post and not the post of Asst. Professor in Super Speciality post. Table 3-B providing the appointment and promotion in Super Specialities, contained various posts starting from Professor to Senior Resident. It is accordingly contended that since post of Asst. Professor (Super Speciality) is not a base level post and the post of Senior Resident is a base level post, provisions contained under Sec. 3 of the 1975 Act is not applicable as claimed by the learned Sr. Counsel appearing for the Petitioners.

6.4. It is also contended that as provided in Table 4.A(ii), the discipline Medical Gastroenterology and Neurology comes under Medical Super Speciality Department.

6.5. A further submission was also made that in the meantime pursuant to the impugned advertisement the post in different disciplines, save and except the discipline Gastroenterology and Neurology have already been filled up. It is accordingly contended that since the selection process in respect of other disciplines has already been completed with appointment of the recommended candidates, it will cause prejudice to the selected and appointed candidates in other disciplines, if the relief as claimed in both the writ petitions will be allowed.

6.6. It is also contended that none of the selectees recommended and appointed in other disciplines since are Party to the writ petition, their selection and appointment cannot be interfered with, unless they are given an opportunity of hearing. It is accordingly contended that the challenge made to the impugned advertisement with the prayer as made is not entertainable and the writ petitions are liable for dismissal.

7. I have heard Mr. B. Routray, learned Sr. Counsel and Mr. S.S. Das, learned Sr. Counsel appearing for the Petitioners and Mr. M.R. Mohanty, learned Addl. Govt. Advocate appearing for the Opp. Parties. On the consent of the Parties and with due exchange of pleadings, the matter was heard and disposed of at the stage of admission.

8. Having heard learned counsel appearing for the Parties and considering the submissions made, this Court finds that recruitment to the post of Asst. Professor (Super Speciality) was issued by the Commission vide Advertisement No. 20 of 2021-22 on 10.11.2021. Both the writ petitions have been filed challenging the

advertisement inter alia on the ground that in terms of the provisions contained under Rule 6 of the 2021 Rules r.w. Sec. 3 of the 1975 Act, since no reservation has been provided in respect of the discipline Neurology and Gastroenterology, Sl. No. 6 & 9 of the Advertisement, the process of selection initiated in respect of those two disciplines is not sustainable in the eye of law. Rule 6 of the Rules no doubt provides for reservation of vacancies for post to be filled up in OMES cadre. As provided under Rule 3 of the Rules, the teaching post in the service cadre comprises of three (3) posts and the post of Asst. Professor is the base level post in the said cadre.

8.1. Therefore, in terms of the provisions contained under Rule 6 r/w. Rule 3(a) of the 2021 Rules and Sec. 3 of the 1975 Act, necessary reservation should have been provided for reserve category candidates in the impugned advertisement. However, in view of the decision of the Hon'ble Apex Court in the case of *Indra Sawhney* followed in the case of *Preeti Srivastav and Faculty Association of AIIMS* as cited supra, since the recruitment is as against the post of Asst. Professor in Super Speciality and in terms of the decision of the Hon'ble Apex Court in the case of *Faculty Association of AIIMS*, neither the Central Govt. nor the State Govt. have taken appropriate step, taking into account the view expressed in the case of *Indra Sawhney*, it is the view of this Court that in absence of any such step being taken by the State, while filling up the post of Asst. Professor in Super Speciality discipline, reservation cannot be made.

8.2. It is also found that pursuant to the impugned advertisement, the post in other disciplines have already been filled up and none of the appointees are Party to the writ petition and in absence of them, their selection and appointment cannot be interfered with.

8.3. Since in terms of the decision in the case of *Indra Sawhney* so followed in *Preeti Srivastav and Faculty Association of AIIMS* as cited (supra), no step has been taken by the State as to whether reservation can be followed against recruitment to the post of Asst. Professor in Super Speciality, it is the view of this Court that no illegality or irregularity has been committed by the Opp. Parties while issuing the impugned advertisement. Accordingly, this Court is not inclined to interfere with the recruitment process so undertaken by the Commission pursuant to the advertisement issued vide Advertisement No. 20/2021-22 on 10.11.2021. Consequentially, both the writ petitions fail and dismissed accordingly. The interim order passed earlier stands vacated.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petitions dismissed.

2025 (III) ILR-CUT-1400

GITANJALI PANIGRAHI
V.
STATE OF ODISHA & ANR.

[W.P.(C) NO. 1154 OF 2021]

15 DECEMBER 2025

[BIRAJA PRASANNA SATAPATHY, J.]**Issue for Consideration**

Whether the order of withdrawn/cancellation of the benefit of regularization without following the principle of Natural Justice is sustainable under the law.

Headnotes

SERVICE JURISPRUDENCE – Cancellation of Regularization – Principle of Natural Justice – Petitioner was duly appointed as a contractual staff nurse as per the ORV Act – The High Power Committee in its proceeding extended the benefit of regularization vide order dated 19.08.2020 – The authority vide order dated 11.01.2021 withdrawn/cancel the benefit of regularization without following the principle of Natural Justice – Whether the order of withdrawn/cancellation of the benefit of regularization without following the principle of Natural Justice is sustainable under the law.

Held: No – Since Petitioner was duly regularized after completion of 6 years of continuous engagement as a Contractual Staff Nurse and the impugned order under Annexure-11, basing on the impugned letter under Annexure-12, has been issued without following the principle of natural justice, placing reliance on the *decisions as cited supra*, this Court is of the view that letter under Annexure-12 and consequential order impugned under Annexure-11 could not have been issued/passed. (Para 7.4)

While disposing the Writ Petition with quashing of the order under Annexure-11 and communication issued under Annexure-12, this Court directs Opp. party No.2 to extend all the benefits as due and admissible in terms of order under Annexure10 in favour of the Petitioner within a period of 4 (four) months from the date of receipt of this order. (Para 7.6)

Citations Reference

Menaka Gandhi vs. Union of India, **AIR 1978 SC-597**; State of Orissa vs. Binapani Das, **AIR 1967 SC-1269**; State Bank of India And Others Vs. Rajesh Agarwal & Ors., **(2023) 6 SCC 1**; Dushyant Mainali Vs.Diwan Singh Bora & Another, **SLP (C) No.15191 of 2022**; Krishnadatt Awasthy Vs. State

of M.P & Others, **Civil Appeal No(s) 4806 of 2011 (2025 INSC 126) – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Principle of Natural Justice; Regularization; Contractual appointment; Withdrawn/cancellation of the regularization; Principle of *audi alteram partem*.

Case Arising From

Challenging order dated 11.01.2021 issued under Annexure 11.

Appearances for Parties

For Petitioner : M/s. B.S. Tripathy-1, Sr. Adv., A.Tripathy, A. Sahoo
For Opp. Parties : M/s. P.K. Panda, AGA

Judgment/Order

Judgment

B.P. SATAPATHY, J.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel appearing for the parties.
3. The present Writ Petition has been filed inter alia challenging order dt.11.01.2021 so issued under Annexure-11, basing on the letter issued by the Government-Opp. Party No.1 on 06.01.2021 under Annexure-12.
4. It is contended that pursuant to the Advertisement issued under Annexure-1 by Opp. Party No.2, Petitioner after coming out successful in the interview, was selected and appointed as a Staff Nurse on contractual basis vide order dt.14.11.2011 under Annexure-2. It is contended that Petitioner was so appointed basing on the decision taken by the Government with due creation of the posts vide letter dt.25.10.2012 under Annexure-3 and proceeding of the Selection Committee held on 07.03.2013 under Annexure-4. It is further contended that in the Proceeding of the meeting under Annexure-4, it was clearly observed that provisions of ORV Act has been followed, while recommending the names of selected candidates for their appointment against the post so advertised under Annexure-1.
- 4.1. It is contended that while so continuing as a contractual Staff Nurse in the establishment of Opp. Party No.2 pursuant to order dt.14.11.2011 under Annexure-2, basing on the G.A. Department Resolution issued on 17.09.2013 under Annexure-7 and the decision taken by the high power Committee in its proceeding dt.29.06.2020 under Annexure-9, Petitioner vide Office order dt.19.08.2020 under

Annexure-10 was regularised as a Staff Nurse in the establishment of Opp. Party No.2.

4.2. However, subsequent to such extension of the benefit of regularisation vide order under Annexure-10 and consequential joining of the Petitioner in the regular establishment, benefit of order under Annexure-10, was cancelled vide the impugned order dt.11.01.2021 under Annexure-11, basing on the letter issued by the Government-Opp. party No.1 on 06.01.2021 under Annexure-12.

4.3. Learned counsel appearing for the Petitioner contended that since Petitioner was engaged as a Contractual Staff Nurse in the establishment of Opp. Party No.2 vide order dt.14.11.2011 and she was allowed to continue without any break, in view of the resolution issued by the G.A.& P.G Department on 17.09.2013 under Annexure-17 and subsequent resolution issued on 14.01.2014, Petitioner became eligible and entitled to get the benefit of regularisation after continuing as a contractual employee for a period extending more than 6 years.

4.4. It is contended that such claim of the Petitioner in the light of the resolution issued by the G.A. Department was recommended by the High Power Committee in its proceeding dt.29.06.2020 under Annexure-9 and in the said proceeding, Petitioner was recommended to get the benefit of regularisation w.e.f 23.11.2017, her initial date of joining being 23.11.2011. Recommendation of the Committee was accepted by extending the benefit of regularisation vide Order dt.19.08.2020, under Annexure-10.

4.5. However, such benefit was cancelled vide the impugned order dt.11.01.2021 under Annexure-11 basing on the letter issued under Annexure-12. It is contended that since there is no dispute that Petitioner is continuing all through as a Contractual Staff Nurse w.e.f 23.11.2011 in terms of the order of engagement issued under Annexure-2, the same could not have been cancelled after extending the benefit vide order under Annexure-10 basing on the decision taken by the High Power Committee in its proceeding dt.29.06.2020 under Annexure-9, vide the impugned order under Annexure-11 relying on Annexure-12 and that too without following the principle of natural justice. It is accordingly contended that the impugned order under Annexure-11 relying on the letter issued under Annexure-12 are not sustainable in the eye of law and requires interference of this Court.

4.6. A further contention was also made that on the face of the interim order passed by this court on 15.1.2021 and continuance of the Petitioner as a regular Staff Nurse, salary as due and admissible was never released and accordingly Petitioner has filed I.A. No.16129 of 2023, claiming extension of the benefit of salary.

5. Learned Addl. Standing Counsel on the other hand made his submission basing on the counter affidavit so filed by Opp. party No.2. It is contended that since in terms of the advertisement issued under Annexure-1, Petitioner only faced a walk-in-interview to get the benefit of appointment vide order dt.14.11.2011 under Annexure-2 and while making such selection process, provisions of ORV Act was

never followed, petitioner in terms of resolution dt.17.09.2013 under Annexure-7 was not eligible and entitled to get the benefit of regularisation.

5.1. However, basing on a wrong recommendation made by the High Power Committee in its proceeding dt. 29.06.2020 under Annexure-9, Petitioner was regularised vide order dt.19.08.2020 under Annexure-10. When the same came to the knowledge of Opp. party No.1, letter dt.06.01.2021 was issued by the Government-Opp. party No.1, directing Opp. party No.2 to cancel the order, so issued under Annexure-10. Accordingly, while cancelling the benefit so issued vide order under Annexure-10, Annexure-11 was passed on 11.01.2021.

5.2. It is contended that since Petitioner when was appointed, provisions of ORV Act was never followed and Petitioner was so appointed only by facing a walk-in interview, even though Petitioner continued as a Contractual Staff Nurse in the establishment of Opp. party No.2 w.e.f 23.11.2011, she is not eligible and entitled to get the benefit which was wrongly extended vide order under Annexure-10. Stand taken in Para-10 of the counter affidavit reads as follows:

10. That, in reply to the averments made in Para-6 of the writ petition, it is humbly submitted that, the service of the petitioner was inadvertently regularized on completion of six year as per G.A. Deptt. Resolution No.26108/Gen Dtd. 17.09.2013. However, Govt. Health & F.W. Deptt., Odisha vide letter No.PT2-HFW-MSIII-MSNG3M-0004-2019- 356/H&FW Dtd.06.01.2021 issued instruction that the regularization of services of the employees of Regional Spinal Injury Centre (RSIC) including the petitioner were engaged/appointed on pick and choose basis without observance of required recruitment formalities and without concurrence of Finance Department against a Centrally Sponsored Planned Scheme funded by Govt. of India and State Govt. on 90:10 basis hence could not be regularized. Thus, the impugned order of cancellation under Annexure-11 was issued.

6. To the submission made by the learned Addl. Standing Counsel, Mr. B.S.Tripathy, learned Sr. Counsel appearing for the Petitioner basing on Annexure-4, made his submission contending inter alia that while providing appointment to the Petitioner vide order under Annexure-2 basing on Annexure-1 advertisement, provisions of ORV Act was duly followed and the same is clearly reflected in Annexur-4. It is accordingly contended that the ground taken by the State that ORV Act was not followed when Petitioner was appointed is not sustainable, in view of the decision taken by the Selection Committee in its proceeding dt.07.03.2013 under Annexure-4.

6.1. It is also contended that since Petitioner pursuant to Annexure-2 order, continued as a Contractual Staff Nurse in the establishment of Opp. party No.2, she became eligible and entitled to get the benefit of regularisation on completion of 6 years of continuous engagement and her claim was duly recommended by the High Power Committee in its proceeding dt. 29.06.2020 under Annexure-9, with extension of the benefit of regularisation vide order dt. 19.08.2020 under Annexure-10. It is also contended that once the benefit of regularisation was extended; the

same could not have been withdrawn/cancelled without following the principle of natural justice.

6.2. Learned counsel for the Petitioner in support of his aforesaid submission relied on the decisions of the Hon'ble Apex Court in the case of *Menaka Gandhi vs. Union of India*, AIR 1978 SC-597, *State of Orissa vs. Binapani Das*, AIR 1967 SC-1269, *State Bank of India And Others Vs. Rajesh Agarwal & Ors.*, (2023) 6 SCC 1, *Dushyant Mainali Vs. Diwan Singh Bora & Another*, SLP (C) No.15191 of 2022 and *Krishnadatt Awasthy Vs. State of M.P & Others*, Civil Appeal NO(s) 4806 of 2011 (2025 INSC 126).

6.3. In *Menaka Gandhi (supra)*, Hon'ble Supreme Court in Paragraphs-57, 58 and 61 has held as under:-

"57. The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the, test of this requirement ? Is it 'right or fair or just' ? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandsworth Maneka Gandhi vs Union Of India on 25 January, 1978 Indian Kanoon - <http://indiankanoon.org/doc/1766147/> 57 Board of Works(2). "A long course of decision---, beginning with Dr. Bentley's case and ending with some very recent cases, establish that, although there are no positive words in the statute requiring that the party shall be heard, yet-the justice of the common law will supply the omission of (1) [1974]2S.C.R.348. (2) [1863]14C.B.N.S.180. the legislature". The principle of audi alteram partem, which mandates that no one shall be condemned unheard, part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport ?

58. We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with' fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club : "We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law

by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception ? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fair play in action-who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose %, will not be fulfilled; it lacks more exalted inspiration." (Current Legal Problems, 1973, Vol. 26, p. 16) And then again, in his speech in the House of Lords in Wiseman v. Borneman(1), the learned Law Lord said in words of inspired felicity: "that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches : there we may find what Byles, J., called "the justice of the common law". Thus, the soul of natural justice is fair play in action' and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Henning, M.R. in these terms in Schmidt v. Secretary of State for Home Affairs(1) :-where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations. Vide American Journal of International Law, Vol. 67, page 479. Magarry, J., describes natural justice "as a distillate of due process of law". Vide Fontaine v. Chesterton(2). It is the quintessence of the process of justice inspired and guided by fair play in action'. If we look at the speeches of the various law Lords in Wiseman's case, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", ,or, was the procedure adopted by the Tribunal 'in all the circumstances unfair'? The test adopted by every law Lord was whether the procedure followed was "fair in all the circumstances" and 'fair play in action' required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him." The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?.

61. *This Court, speaking through Hegde, J., in I. K. Kraipak's case quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add : "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it-Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the, application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice One fails to see why those rules should be made inapplicable, to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi- judicial enquiry. As observed by this Court in Suresh Koshy George v. The University of Kerala and Ors. (1969)1 S.C.R. 317 the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case." This view was reiterated and re-affirmed in a subsequent decision of this Court in D.F.O. South Khari v. Ram Sanehi Singh(1). The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.*

6.4. In *State of Orissa vs. Binapani Das*, Hon'ble Supreme Court in Paragraph-12 has held as under:-

"12. It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. The rafter the first respondent was required to show cause why April 16, 1907, should not be accept das the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State."

6.5. Hon'ble Apex Court in the case of *Rajesh Agarwal* in Para 41 & 42 has held as follows:-

"41. In State of Orissa v. Binapani Dei [State of Orissa v. Binapani Dei, AIR 1967 SC 1269], a twoJudge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil

consequences must be made consistent with the rules of natural justice : (AIR p. 1271, para 9)

“9. ... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.”

42. In Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , a seven-Judge Bench of this Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court.”

6.6. Hon’ble Apex Court in the case of ***Dushyant Mainali***, in para-5 of the said judgment held as follows:

5. There is no necessity to reiterate that even the Courts, including a highest court of the Country, are bound by principle of natural justice. Nobody can be condemned unheard.

6.7. Hon’ble Apex Court in the case of ***Krishnadatt Awasthy*** in para-68 of the said judgment held as follows:

68. The principle of audi alteram partem is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary decision-making, and is needed more so in cases of unequal power dynamics.

7. Having heard learned counsel appearing for the parties and considering the submission, this Court finds that pursuant to the advertisement issued by Opp. party No.2 on 14.01.2011 under Annexure-1, Petitioner by facing due selection process was engaged as a Contractual Staff Nurse vide order dt.14.11.2011 under Annexure-2. Pursuant to the said order, Petitioner joined in the establishment of Opp. party No.2 on 23.11.2011.

7.1. Placing reliance on the stipulation contained in Resolution dt.17.09.2013 so issued by the G.A. Deptt. under Annexure-7 and the fact that Petitioner continued as a Contractual Staff Nurse for a period exceeding 6 years, High Power Committee in its proceeding dt. 29.06.2020 under Annexure-9 recommended the claim of the Petitioner to get the benefit of regularisation. Basing on such recommendation of the High Power Committee, Petitioner was regularised vide order dt.19.08.2020 under Annexure-10.

7.2. However, such benefit was cancelled vide the impugned order dt.11.01.2021 under Annexure-11, placing reliance on the direction issued by the Government-

Opp. party No.1 in its letter dt.06.01.2021 under Annexure-12. This Court taking into account the order of appointment issued in favour of Petitioner under Annexure-2 and the proceeding of the Selection Committee so available under Annexure-4, is of the view that Petitioner was appointed as a Contractual Staff Nurse by facing due selection process initiated pursuant to Annexure-1 and provisions of ORV Act was adhered to.

7.3. Since it is not disputed that Petitioner continued as a Contractual Staff Nurse pursuant to order under Annexure-2 w.e.f 23.11.2011, this Court is of the view that Petitioner basing on the resolution issued by the G.A & P.G. Deptt. on 17.09.2013 under Annexure-7 and subsequent resolution issued on 14.1.2014 was duly recommended by the High Power Committee for her regularisation vide proceeding dt.29.06.2020 under Annexure-9. Petitioner as per the considered view of this Court was duly regularised vide order dt.19.08.2020 under Annexure-10.

7.4. Since Petitioner was duly regularised after completion of 6 years of continuous engagement as a Contractual Staff Nurse and the impugned order under Annexure-11, basing on the impugned letter under Annexure-12, has been issued without following the principle of natural justice, placing reliance on the *decisions as cited supra*, this Court is of the view that letter under Annexure-12 and consequential order impugned under Annexure-11 could not have been issued/passed.

7.5. In view of the aforesaid analysis, this Court is inclined to quash order dt.11.01.2021 so issued by Opp. party No.2 under Annexure-11 and so also the letter issued by the Government-Opp. party No.1 on 06.01.2021 under Annexure-12. While quashing the order under Annexure-11 and the communication issued under Annexure-12, this Court upheld the order issued in favour of the Petitioner on 19.08.2020 under Annexure-10.

7.6. While disposing the Writ Petition with quashing of the order under Annexure-11 and communication issued under Annexure-12, this Court directs Opp. party No.2 to extend all the benefits as due and admissible in terms of order under Annexure-10 in favour of the Petitioner within a period of 4(four) months from the date of receipt of this order.

7.7. The Writ Petition accordingly stands disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition disposed of.

2025 (III) ILR-CUT-1409

**SWARNAPRAVA DASH & ANR.
V.
PRANAB KUMAR SATAPATHY & ORS.**

[TRP(C) NO. 375 OF 2025]

11 NOVEMBER 2025

[SANJAY KUMAR MISHRA, J.]**Issue for Consideration**

Whether the ground of old age ailments and a travel distance of 40 Kms is sufficient to transfer the Civil Suit from the Court at Puri to the Court at Bhubaneswar.

Headnotes

CODE OF CIVIL PROCEDURE, 1908 – Section 24 – Transfer of the case – The petitioners are the plaintiffs in the Civil Suit – Present petition has been filed to transfer the Civil Suit from the Court of learned 2nd Additional Civil Judge (Sr. Div.), Puri to the Court at Bhubaneswar on the ground of old age ailments, and a travel distance of 40 kms for deposition as PW's in the Civil Suit – Suit is pertaining to partition of immovable properties situated within the territorial Jurisdiction of the Court at Puri – At the time of presenting the suit in the year 2023, both the petitioners were residing in Bhubaneswar and continue to reside there – Whether the ground of old age ailments and a travel distance of 40 Kms is sufficient to transfer the Civil Suit from the Court at Puri to the Court at Bhubaneswar.

Held: No – This Court is of the view that such grounds are not convincing to consider the prayer made in this transfer petition – That apart, the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, are not supposed to attend the said proceeding on each and every date, as they are represented through a lawyer – Only their presence would be required in the said proceeding, if they intend to depose as PWs in Civil Suit No.414 of 2023 – If there is any inconvenience for them to remain physically present before the said Court for adducing evidence because of their health issues, they can be examined through Video Conferencing mode following due procedure prescribed under the Orissa High Court Video Conferencing for Courts Rules, 2020, or on commission, as provided under Order 26, Rule 4 C.P.C, if it is prayed so by moving an appropriate application to the said effect at the stage of trial. (Para 7)

Citations Reference

Kulwinder Kaur Alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust, **(2008) 3 SCC 659**; Santilata Prusty Vrs. Shibani Prusty and others, **TRP(C) No.292 of 2022**; Indian Overseas Bank, Madras Vs. Chemical Construction Company and others, **(1979) 4 SCC 358**; Benudhar Swain and others Vs. Nilamani Swain and others, **2005 (II) OLR 509 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Orissa High Court video conferencing for Court Rules, 2020.

Keywords

Transfer of suit; Old age ailments; Distance; Jurisdiction of the Court; Territorial jurisdiction

Case Arising From

Transfer petition filed for transfer the Civil Suit No. 414/2023 from the court of learned 2nd Additional Civil Judge (Sr. Div.) Puri to the Court of learned Civil Judge (Sr. Div.) Bhubaneswar.

Appearances for Parties

For Petitioners : Mr. Tanmay Mishra

For Opp. Parties : None

Judgment/Order

Judgment

S.K. MISHRA, J.

1. This Transfer Petition has been preferred by the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, for transfer of proceeding in the said Suit from the Court of learned 2nd Additional Civil Judge (Senior Division), Puri to the Court of learned Civil Judge (Senior Division), Bhubaneswar on the ground that both the Petitioners are residing in Bhubaneswar, having old age ailments.

2. A further ground has been urged in the transfer petition that the Opposite Party Nos.1 to 5, who are the defendants in the said suit, are residing in Sakhigopal. The distance from Sakhigopal to Puri is around 20 KMs whereas, the distance from Sakhigopal to Bhubaneswar is around 40 KMs. If the suit is transferred to Bhubaneswar, they will have to travel extra 20 Kms only.

3. To substantiate his submission, learned Counsel for the Petitioners relies on the judgment of the Supreme Court reported in (2008) 3 SCC 659 (***Kulwinder Kaur Alias Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust***). Paragraph No.23 of the said judgment, being relevant, is reproduced below:

“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a “fair trial” in the court from which he seeks to transfer a case, it is not only the power, but the duty of the court to make such order.”

4. As is ascertained from the Complaint in Civil Suit No.414 of 2023, as at Annexure-1, the following prayers have been made:

“a) Preliminary decree for partition be passed declaring the legitimate 1/8th share of each of the plaintiffs, defendants No.1 to 3 and proforma defendant in respect of suit properties and the defendant No.1 to 3 may be directed to make partition of the suit properties within the stipulated time as may be fixed by the Court.

Failing which said preliminary decree be made final through process of Court.

b) Decree be passed for setting aside the deed of relinquishment vide No.11541500260 dt.25.04.2015 as it is void and illegal and not binding on the plaintiffs.

c) Decree be passed declaring the Regd. Lease Sale deed vide R.L.D. No.11542300396 dt. 20.03.2023 executed by defendant No.1 to 3 in favour of defendant No.4 as void, illegal and not binding on the plaintiffs.

d) Cost of the suit be awarded in favour of the plaintiff.

e) Any other relief as the Court think proper be granted in favour of the plaintiffs.”

5. As is revealed from the prayers made in the Complaint, the issue involved in the said lis is pertaining to partition of immovable properties situated within the territorial jurisdiction of the Court at Puri. Even though the Petitioners are staying in Bhubaneswar, the suit for partition was rightly preferred by them in Puri in the year 2023, before the Court having territorial jurisdiction.

6. A query being made, learned Counsel for the Petitioners fairly submits before this Court that at the time of presenting the said Suit in the year 2023, both the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, were residing in Bhubaneswar and at present also they are residing in Bhubaneswar.

7. After taking into consideration the grounds urged in the Transfer Petition for transfer of proceeding from Puri to Bhubaneswar, submission made by the learned

counsel for the Petitioner and the settled position of law, this Court is of the view that such grounds are not convincing to consider the prayer made in this transfer petition. That apart, the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, are not supposed to attend the said proceeding on each and every date, as they are represented through a lawyer. Only their presence would be required in the said proceeding, if they intend to depose as PWs in Civil Suit No.414 of 2023. If there is any inconvenience for them to remain physically present before the said Court for adducing evidence because of their health issues, they can be examined through Video Conferencing mode following due procedure prescribed under the Orissa High Court Video Conferencing for Courts Rules, 2020, or on commission, as provided under Order 26, Rule 4 C.P.C, if it is prayed so by moving an appropriate application to the said effect at the stage of trial.

8. In a recent judgment passed in TRP(C) No.292 of 2022 (*Santilata Prusty Vrs. Shibani Prusty and others*), this Court, taking note of the judgments passed by the Supreme Court in *Indian Overseas Bank, Madras Vs. Chemical Construction Company and others*, reported in (1979) 4 SCC 358 so also coordinate Bench in *Benudhar Swain and others Vs. Nilamani Swain and others*, reported in 2005 (II) OLR 509, took a similar view.

9. In view of the above, this Court is not inclined to allow the prayer made in the transfer petition.

10. However, it is made clear that rejection of the prayer made in the Transfer Petition shall not be a bar for the Petitioners, who are the Plaintiffs in Civil Suit No.414 of 2023, to move appropriate application before the Court of learned 2nd Additional Civil Judge, (Senior Division), Puri, seeking leave of the said Court to allow them to be examined through Video Conferencing mode, apart from seeking remedies under the C.P.C for recording of their evidences through Commission, if they are so advised.

11. Accordingly, the transfer petition stands disposed of.

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

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Transfer Petition disposed of

2025 (III) ILR-CUT-1413

MOHAN BEHERA
V.
M.D., ODISHA LIFT IRRIGATION CORPN. LTD.,
BHUBANESWAR & ANR.

[W.P.(C) NO. 17399 OF 2018]

12 NOVEMBER 2025

[SANJAY KUMAR MISHRA, J.]**Issue for Consideration**

Whether the order of recovery without affording an opportunity of hearing is sustainable under the law?

Headnotes

SERVICE JURISPRUDENCE – Recovery – Principle of Natural Justice – While the petitioner was working as Junior Engineer, L.I. Division Berhampur, repeated thefts occurred in the Central Store of the Corporation – Materials were stolen from the said store on three occasions during the year of 2004 and 2005, for which FIRs were lodged before the local police station by the petitioner – The executive Engineer, L.I. Division, Berhampur also informed the Managing Director of the Corporation regarding such theft of stock materials from Central Store – The Opposite Party No. 2 issued the common office order dated 26.09.2018 for recovery of the outstanding amount from the petitioner without any prior communication or notice – Whether the order of recovery without affording an opportunity of hearing is sustainable under the law?

Held: No – Law is well settled that fair play in action warrants that no such order, which has the effect of an employee suffering civil consequences, should be passed without putting the concerned to notice and giving him a hearing in the matter. (Para 14)

This Court is of further view that the Authority concerned was not justified to recover the alleged outstanding from the Petitioner without fixing any responsibility on the Petitioner thereby asking him to show cause and making an enquiry to the said effect and in absence of any finding to the effect that the Petitioner was responsible for such repeated thefts occurred in the Central Store of the Corporation at Berhampur – Such unilateral action to deduct the outstanding amount under 18'3' Head of A/c to the tune of Rs.1,24,774.20 is illegal and unjustified, being hit by the principles of natural justice and deserves interference. (Para 16)

Citations Reference

State of Punjab and others Vs. The Senior Vocational Staff Masters Association and others, **2017 (II) OLR 503 SC**; Sarat Chandra Dash Vs. Orissa State Cooperative Agricultural & Rural Development Bank Ltd. and others, **2017 (I) OLR 922 – referred to.**

List of Acts

Constitution of India, 1950

Keywords

Principle of Natural Justice; Recovery; Opportunity of hearing; Outstanding; Unilateral action; Notice; Theft; Fair Play

Case Arising From

Office order dated 26.09.2018 passed by Finance Advisor and Chief Accountant Officer, OLIC Ltd.

Appearances for Parties

For Petitioners : Mr. Somanath Mishra

For Opp. Parties : Mr. B.K. Sharma, Sr. Adv.

Judgment/Order**Judgment**

S.K. MISHRA, J.

The Petitioner, who is working as Junior Engineer (Civil) in the Opposite Parties-Corporation i.e. Odisha Lift Irrigation Corporation Limited, shortly hereinafter, “OLIC Ltd.”, has preferred the present writ petition with a prayer to set aside office order dated 26.09.2018 (Annexure-6), so far as it relates to the Petitioner, and to pass further appropriate order, as deemed fit and proper, in the facts and circumstances of the case.

2. So far as Office Order dated 26.09.2018, it is a common order, vide which the Financial Advisor and Chief Accounts Officer, OLIC Ltd. (Opposite Party No.2) ordered to recover the alleged outstanding amount under Corporation H/A-18(03) from the existing employees of the Corporation, as per the list enclosed to the said order, including the present Petitioner, whose name finds place at Sl. No.24 of the said list.

3. The admitted facts on record, which compelled the Petitioner to knock the door of this Court, is that while the Petitioner was working as Junior Engineer, L.I. Division, Berhampur, repeated thefts occurred in the Central Store of the Corporation. Some materials were stolen from the said store on three occasions during the year 2004 & 2005, for which F.I.Rs. were lodged before the local Police Station by the Petitioner. The Executive Engineer, L.I. Division, Berhampur also informed the Managing Director of the Corporation (Opposite Party No.1) vide his letter dated 03.10.2007 regarding such theft of stock materials from the Central Store of the L.I. Division, Berhampur.

4. Pursuant to such communication of the Executive Engineer, L.I. Division, Berhampur dated 03.10.2007, the Superintending Engineer, Southern Circle, OLIC Ltd. Berhampur also wrote to the Director (Technical), OLIC Ltd., Bhubaneswar suggesting therein to drop the amount shown as outstanding against the Petitioner, who was the In-charge of the Central Store, Berhampur. The Petitioner also, on being asked by the Executive Engineer, L.I. Division, Berhampur, submitted a compliance report dated 21.10.2017, so far as a sum of Rs.1,24,774.20, which was booked against him towards shortage of stock materials in the Central Store due to thefts occurred during his incumbency, i.e., on 18.08.2004, 14.12.2004 and 27.11.2005. Such compliance report being forwarded to the Financial Advisor and Chief Accounts Officer (Opposite Party No.2), it was returned vide letter dated 04.12.2017 to the Executive Engineer, L.I. Division, Berhampur (Ganjam) advising to verify the same at his end and report to him immediately. Pursuant to such communication, the concerned Executive Engineer did the needful and reported to the Opposite Party No.2 vide letter dated 30.01.2018.

5. However, without considering the said communication made by the Executive Engineer, the Opposite Party No.2 issued the common Office Order dated 26.09.2018 (Annexure-6) for recovery of the outstanding amount from various employees/officers, including the Petitioner, without any prior communication, thereby giving him an opportunity to have his say in the said regard.

6. Though the writ petition was pending since 2018, after about six years, a Counter Affidavit was filed on behalf of the Opposite Parties in January, 2025, taking a stand therein that the concerned Executive Engineer, vide his communication dated 18.09.2018, proposed to recover the said amount from the Petitioner, as the said amount was shown as an outstanding amount against him. It has further been stated in the Counter Affidavit that the communications made by the Officers of the Corporation are not binding on the Head Office, as those communications are mere suggestions. That apart, it has been stated that, in the communication dated 30.01.2018 the concerned Executive Engineer had alternatively suggested to recover the said amount from the Petitioner, since such loss was caused to the Corporation because of the latches and negligence of the Petitioner. Hence, it being public money, the Corporation was justified to order to recover the said amount from the Petitioner and nothing wrong has been committed by passing such order of recovery.

7. Learned Counsel for the Petitioner, reiterating the facts detailed in the writ petition so also drawing attention of this Court to various communications/letters /office orders, as at Annexures-1 to 5 submitted that, the Petitioner could not have been blamed for the thefts occurred in the Central Store of L.I. Division, Berhampur of the Corporation. That apart, vide the communication made by the then Executive Engineer, L.I. Division, Berhampur dated 03.10.2007, it was brought to the notice of the Managing Director of the Corporation that as most of the staff have gone on VRS on 18.08.2004, due to lack of staff, even though a Home Guard has been

engaged for watch and ward of the Central Store of the Division, still such thefts have occurred.

7.1 That apart, the Petitioner also promptly reported the said incidents to the Police and lodged F.I.Rs. and investigations were made by the Police in presence of the Petitioner, Division Officer and Division Staff. A recommendation was made by the then Executive Engineer, L.I. Division, Berhampur that as such materials cannot be realized because of the inaction of the Police, to treat the same as loss of Corporation property and take necessary action to waive out the cost of the materials. It was also requested to intimate the office of the Executive Engineer, L.I. Division, Berhampur to square up the 18'3' Head of A/c in the name of J.E. and A.E. of Central Store. Despite such recommendation, action has been taken by the Opposite Party No.2 for recovery, which is legally unsustainable.

7.2. Learned Counsel for the Petitioner further submitted that, before taking such decision to recover the alleged outstanding amount because of the theft of materials from the Central Store of the L.I. Division, Berhampur, the Petitioner was neither asked to show cause as to why such amount shall not be recovered from him nor any responsibility was fixed on the Petitioner alleging therein that he is responsible for such theft repeatedly occurred in the Central Store of the L.I. Division, Berhampur during his incumbency. No enquiry was made to the said effect, giving due opportunity of hearing to the Petitioner so also determining the amount to be recoverable from the Petitioner. Hence, the entire action of the authority concerned to take a decision to recover the said amount from the salary of the Petitioner is illegal and unjustified.

7.3. Learned Counsel for the Petitioner submitted that, though the Petitioner has filed I.A. No.14738 of 2018 along with the writ petition praying therein to stay operation of the impugned order regarding recovery of Rs.20,000/- from his salary during pendency of the writ petition, instead of staying the said action of recovery of the Management, as an interim measure, it was ordered on 11.12.2018 that, any recovery made from the salary of the Petitioner shall abide by the result of the present writ petition. In the meantime, the entire amount has been recovered from the salary of the Petitioner and to the said effect an Affidavit has been filed, pursuant to order dated 19.08.2025 passed by this Court.

7.4 Accordingly, learned Counsel for the Petitioner submitted that the impugned order, so far as the present Petitioner is concerned, deserves to be set aside. That apart, direction be given to the Opposite Parties-Corporation to refund the said amount illegally deducted from the salary of the Petitioner with interest so also costs be imposed on the Opposite Parties-Corporation for harassing the Petitioner. To substantiate his submission, learned Counsel for the Petitioner relied on the judgment of the Supreme Court reported in 2017 (II) OLR 503 SC (*State of Punjab and others Vs. The Senior Vocational Staff Masters Association and others*) and judgment of this Court reported in 2017 (I) OLR 922 (*Sarat Chandra Dash Vs.*

Orissa State Cooperative Agricultural & Rural Development Bank Ltd. and others).

8. Per Contra, Mr. Sharma, learned Senior Counsel for the Opposite Parties-Corporation, drawing attention of this Court to the letter dated 18.09.2018 of the Executive Engineer, L.I. Division, Berhampur, as at Annexure-B/1 to the Counter Affidavit, submitted that it being so recommended by the concerned Executive Engineer, the Authority concerned took a decision to recover the said outstanding amount from the Petitioner, whose name finds place at Sl. No.24 of the enclosure of the said communication, as the Petitioner was the concerned Junior Engineer posted during the period on which repeated thefts occurred in the Central Store of the L.I. Division, Berhampur. Hence, such decision of the Authority concerned to recover the value of the stolen articles, which occurred during tenure of the Petitioner, is legally justified and deserves no interference by this Court.

9. As is revealed from the contents of the letters dated 03.10.2007 so also dated 30.01.2018 of the Executive Engineer, L.I. Division, Berhampur (Ganjam) and other correspondences on record, the alleged outstanding amounts shown against the Petitioner were admittedly towards value of materials stolen from the Central Store of the L.I. Division, Berhampur during the tenure of the Petitioner. The Executive Engineer in his letter dated 03.10.2007 also intimated to the Managing Director of the Corporation regarding such theft occurred due to lack/shortage of staff, which happened as most of the staff took VRS on 18.08.2004 and the watch and ward duty was assigned to a Home Guard. The contents of the said letter dated 03.10.2007, as at Annexure-1, being relevant for proper adjudication of the present lis, are extracted below:

***“OFFICE OF THE EXECUTIVE ENGINEER:
L.I. DIVISION, BERHAMPUR***

Letter No.4383

Dated: 3.10.2007

To

*Managing Director,
O.L.I.C. Ltd., Bhubaneswar*

Sub: Theft of stock materials of Central Store of L.I. Division, Berhampur

Sir,

In inviting a kind reference to the subject cited above it is to intimate you that an amount of Rs.1,15,333.20 has been booked in 18' 03' in the name of Central Store J.E(C) Sri Mohan Behera as the materials have been stolen from the Central Store of L.I. Divn., Berhampur. In this connection it is to intimate you that on 18.08.2004 theft had been occurred in Central Store of L.I. Divn., Berhampur by some miscreants. Even though a home Guard had been engaged for watch & ward of this division due to lack of staff as most of the staff have gone on Vrs on 18.08.04. The J.E. Central Store has reported to police vide Lr.No.82 dt. 19.08.2004. After lodging of F.I.R. the police has investigated the Central Store in presence of A.E.s Divisional Officer & Division staff. On 14.12.2004 again theft has been occurred in the same Central Store i.e. within one 'O' clock to four 'O' clock. The J.E. Central Store has lodged FIR vide Lr.No.117 dt.14.12.04 at Bada Bazar Police Station, Berhampur and letter No. 81 dt. 28.11.05 and reminder

No.32 Dt. 6.9.06 regarding loss of Central Store Materials. The Police has investigated the matter and has mentioned that this is under investigation. The undersigned has given a reminder to Bada Bazar Police Station vide Lr.No.4812 dt. 30.11.04 for realization of the materials and Investigation report about loss of materials of OLIC. Further above matters has been intimated to Superintendent of Police, Police Dist., Berhampur vide this Office Lr.No.146 dt. 24.01.2005. The Xerox copy of all the relevant papers are enclosed separately for your kind scrutiny. The details of loss of materials are enclosed separately for your kind verification.

When the shortage of materials are incorporated in the books of Account as loss in the stock register the above amount was booked under 18' 03' in the name of the concerned J.E. of Central Store. At present after several reminder when the A..E. and J.E. approached the concerned police station about the Docket No. of F.I.R. and the investigation report of the loss of materials, the police refused to give the investigation report as well as FIR number lodged by the concerned J.E. the undersigned has instructed the Asst. Executive Engineer (Elect) of this division to enquire on the theft of materials the concerned A.E.E. (Elect.) has investigated the matter and submitted report to the undersigned which is enclosed for your verification.

In this context I am to request you that the above materials cannot be realized at present and these materials may be treated as loss of Corporation property.

Necessary action may be taken to waive out the cost of the materials and intimate to this office to square up the 18'3' Head of A/c. in the name of J.E. and A.E. of Central Store.

This is submitted for favour of kind information and perusal action.

Yours faithfully,

Sd/-

Executive Engineer

L.I. division, Berhampur"

(Emphasis supplied)

10. From the contents of the said letter, it is amply clear that despite the Central Store of the Corporation at Berhampur being guarded by a Home Guard, theft occurred repeatedly during the tenure of the Petitioner as Junior Engineer In-charge of the Central Store, L.I. Division, Berhampur. That apart, as is revealed from the correspondences made by the then Executive Engineer, so also the compliance report submitted by the Petitioner, the Petitioner did his duty by lodging F.I.Rs before the concerned Police Station and was pursuing the said matters with the Police to do the needful.

11. That apart, a report being submitted vide communication dated 21.10.2017 before the Executive Engineer, L.I. Division, Berhampur regarding the action taken by the Petitioner, a recommendation was made by the Executive Engineer, L.I. Division, Berhampur (Ganjam) vide letter dated 30.01.2018 to treat the said value of the stolen articles as loss to the Corporation and to drop the amount shown against the Petitioner to be outstanding. However, the Opposite Parties failed to act in terms of the said recommendation on the plea that such recommendation of the concerned Authority, i.e., Executive Engineer, L.I. Division, Berhampur, is not binding on them. The contents of the said recommendation submitted by the Executive Engineer, L.I. Division, Berhampur (Ganjam), being relevant, are extracted below.

**“OFFICE OF THE EXECUTIVE ENGINEER: LIFT
IRRIGATION DIVISION: BERHAMPUR (GANJAM)”**

Letter No:

/OLIC Date:

To

*The Financial Advisor &
Chief Accounts Officer,
Odisha Lift Irrigation Corporation Ltd.,
Plot No.17/2, Nayapalli,
Bhubaneswar-751012*

Sub:- Submission of compliance report of Sri Mohan Behera, Ex-Junior Engineer (Civil), Central Store, Berhampur.

Ref:- Your Letter No.14483 dtd. 4.12.2017 & 236 dtd.10.01.2018 of the Deputy Chief Accounts Officer, OLIC Ltd., Bhubaneswar.

Madam,

*With reference to the above cited subject and letter it is to inform you that the compliance submitted by Sri Mohan Behera, Ex-Junior Engineer (Civil) Central Store, Berhampur has been verified by the undersigned and **I am to say that the theft case is true, FIR lodged to Police Station by the Junior Engineer, and Executive Engineer but final report of Police is not received till date. Superintending Engineer (S.C), OLIC Ltd., Berhampur had also communicated vide his No.1124(WE) dtd. 5.10.2007 to the Director (Tech.), OLIC Ltd., Bhubaneswar to drop the above amount. The Xerox copy the above Letter is enclosed for your reference. The Xerox copy of the E.I.R. of Junior Engineer and Executive Engineer also enclosed for your kind reference.***

*Hence, Head Office may kindly instruct to Division whether the amounting to Rs.1,24,774.20 will be dropped or recovered from Sri Mohan Behera, Ex-Junior Engineer(Civil), Central Store, Berhampur. **Since Sri Behera has observed all official formalities to get recover the materials as it was theft, but it was in a vain. Hence the above cost is loss to the Corporation. Looking to the above circumstances the above amount, if desired may be treated as loss to the Corporation and suggestion may be issued for drop the amount 18(03) against Sri Mohan Behera.***

Accounting adjustment may kindly be issued to this Division for settlement of his case.

This is for favour of your kind information and necessary action.

*Yours faithfully,
Sd/-
Executive Engineer”
(Emphasis supplied)*

12. A stand has been taken in the Counter Affidavit that such a decision to recover from the Petitioner was taken by the Authority concerned, based on the recommendation of the Executive Engineer, L.I. Division, Berhampur dated 18.09.2018. As is ascertained from the said communication made to the Managing Director of the Corporation by the then Executive Engineer, L.I. Division, Berhampur (Ganjam), he did not take note of the previous communications made by his predecessors to the Opposite Party Nos.1 & 2 in the said regard, which have been extracted above.

13. Further, the Opposite Parties have also failed to demonstrate before this Court that when a stand has been taken in the Counter that any recommendation made by the Executive Engineer is not binding on them, how they could act on the subsequent recommendation made by the succeeding Executive Engineer vide letter dated 18.9.2018, that too without making any communication to the said effect to the Petitioner, thereby giving him an opportunity to have his say in the said regard.

14. Law is well settled that fair play in action warrants that no such order, which has the effect of an employee suffering civil consequences, should be passed without putting the concerned to notice and giving him a hearing in the matter.

15. From the discussions made above, this Court is of the view that, responsibility could not have been fixed on the Petitioner for such thefts and no recovery should have been made from his salary showing the value of the stolen articles from the Central Store to be outstanding against the Petitioner, only on the ground that he was then working as the Junior Engineer, Central Store, L.I. Division, Berhampur.

16. This Court is of further view that the Authority concerned was not justified to recover the alleged outstanding from the Petitioner without fixing any responsibility on the Petitioner thereby asking him to show cause and making an enquiry to the said effect and in absence of any finding to the effect that the Petitioner was responsible for such repeated thefts occurred in the Central Store of the Corporation at Berhampur. Such unilateral action to deduct the outstanding amount under 18'3' Head of A/c to the tune of Rs.1,24,774.20 is illegal and unjustified, being hit by the principles of natural justice and deserves interference.

17. Accordingly, this Court is inclined to set aside the impugned order dated 26.09.2018, as at Annexure-6, so far as the Petitioner is concerned, whose name finds place at Sl. No.24 of the list appended to the said order.

18. Pursuant to the order dated 19.08.2025, since an Affidavit has been filed by the Petitioner on 8th September, 2025 before this Court that an amount of Rs,1,24,774.20 has already been deducted from his salary during pendency of the present writ petition, which was not disputed by the Corporation, the Opposite Parties are directed to refund the said amount to the Petitioner with 7% simple interest thereon from the date of last deduction made from the salary of the Petitioner till the date of actual payment. Refund shall be made within a period of four weeks from the date of production of the certified copy of this Judgment, failing which the Corporation shall be liable to pay 12% penal interest for the entire period.

19. The writ petition stands allowed and disposed of accordingly. No order as to costs.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter.

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition allowed.

2025 (III) ILR-CUT-1421

NAKUL @ SUSHANTA GHARAMI
V.
STATE OF ORISSA

[BLAPL NO. 10498 OF 2025]

27 NOVEMBER 2025

[G. SATAPATHY, J.]**Issue for Consideration**

Whether the petitioner is entitled to be released on bail under Section 37 of the NDPS Act on the ground of parity.

Headnotes

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 – Punishments U/ss. 20(b)(ii)(C) & 25 of the Act – Bail – Commercial quantity – Rigour of Section 37 – The petitioner seeks bail for offences under Ss. 20(b)(ii)(C) and 25 of the NDPS Act – It is pleaded that the co-accused, who is allegedly placed on a graver footing, has already been granted bail by a co-ordinate Bench of the High Court – The petitioner contends that he has been in custody for a considerable period, and on the principle of parity, he should also be enlarged on bail – The State strongly opposes the bail application on the ground that the quantity of contraband ganja seized is 370 Kgs and 800 grams, which is far above the commercial quantity prescribed under the NDPS Act – Whether the petitioner is entitled to be released on bail under Section 37 of the NDPS Act on the ground of parity and prolong custodial detention.

Held: No – It is, therefore, very clear from the precedent as laid down by the Apex Court in Satpal Singh (supra) that an order granting bail must demonstrate the conditions of Section 37 of NDPS Act, but if the order granting bail to co-accused does not discuss/demonstrate about the satisfaction of the conditions of Section 37 of NDPS Act, it would not have any binding precedent for grant of bail to co-accused – Further, it is not in dispute that no person accused of offence under NDPS Act involving commercial quantity shall be released on bail; where Public Prosecutor opposes such bail application, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and he is unlikely to commit offence while on bail – In the present scenario and taking into consideration the materials placed on record, the Petitioner is hardly found to have satisfied the conditions of Sec. 37 of NDPS Act.

(Para 4)

Citations Reference

Satpal Singh Vrs. State of Punjab, (2018) 13 SCC 813 – referred to.

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Narcotic Drugs and Psychotropic Substances Act, 1985.

Keywords

Commercial quantity; Contraband ganja; Transporting of contraband ganja; Sine Qua non for granting bail; Parity; Co-accused granted bail.

Case Arising From

Application for grant of bail under section 483 of the BNSS in connection with Special GR Case No. 77 of 2022 arising out of Motu P.S Case No. 45 of 2022.

Appearances for Parties

For Petitioner : Ms. M. Mohanty

For Opp. Party : Mr. P. Satpathy, Addl. PP.

Judgment/Order**Judgment*****G. SATAPATHY, J.***

1. This is an application U/S.483 of BNSS Act by the petitioner for grant of bail in connection with Special GR Case No. 77 of 2022 arising out of Motu PS Case No.45 of 2022 pending in the Court of learned Sessions Judge-cum-Special Judge, Malkangiri for commission of offences punishable U/Ss. 20(b)(ii)(C)/25 of the NDPS Act, on the main allegation of transporting 370Kgs and 800 Grams of Contraband Ganja.

2. In the course of hearing, Ms. Monalisha Mohanty, learned counsel for the Petitioner submits that co-accused Bipul Gharami standing on graver footing has already been granted bail, but the Petitioner having detained in custody for sufficient period, may kindly be admitted to bail by extending the principle of parity.

2.1. On the contrary, Mr. P. Satpathy, learned Addl. Public Prosecutor, however, strongly opposes the bail application of the Petitioner by contending inter-alia that since the quantity of Contraband Ganja recovered in this case being well above the commercial quantity, the Petitioner cannot be said to have satisfied the conditions of Sec. 37 of NDPS Act and, therefore, the bail application of the Petitioner may kindly be rejected.

3. After having considered the rival submissions upon perusal of record, there appears not only allegation against the Petitioner for transporting 370Kgs and 800 Grams of Contraband Ganja, but also he has been named in the FIR. The quantity of Contraband Ganja seized in this case is definitely coming under commercial quantity and thereby, the Petitioner has to satisfy the conditions of Sec. 37 of NDPS Act for

grant of bail to him. No doubt, co-accused has been granted bail by a co-ordinate Bench of this Court, but the order granting bail does not discuss about the accused therein satisfying the conditions of Sec. 37 of NDPS Act and thereby, parity cannot be claimed by the petitioner as a matter of right. In this regard, this Court is fortified with the decision of the Apex Court in *Satpal Singh Vrs. State of Punjab; (2018) 13 SCC 813*, wherein the pre-arrest bail application of one accused namely Satpal Singh was turned down by one of the Bench of High Court, whereas the pre-arrest bail application of co-accused Beant Singh and Gurwinder Singh had been allowed by another Bench of the said High Court, but after noticing the provision of Sec.37 of NDPS Act, the Apex Court while upholding the view of the learned Judge declining to give protection to accused Satpal Singh for not recording satisfaction of the conditions U/S.37 of NDPS Act cancelled the pre-arrest bail granted by the High Court to co-accused Beant Singh and Gurwinder Singh for not recording satisfaction of the conditions U/S.37 of the NDPS Act which is sine qua non for granting bail to an accused for offences involving commercial quantity. The relevant observation of Apex Court in *Satpal Singh (supra)*, in Paragraph-14 is extracted as under:-

“14. xx xx. The quantity is reportedly commercial. In the facts and circumstance of the case, the High Court could not have and should not have passed the order U/S.438 or 439 of CrPC without reference to Sec.37 of NDPS Act and without entering a finding on the required level of satisfaction in case the Court was otherwise inclined to grant bail. Such a satisfaction having not been entered, the order dated 21.09.2007 (granting pre-arrest bail to accused person) is only to be set aside and we do so.”

4. It is, therefore, very clear from the precedent as laid down by the Apex Court in *Satpal Singh (supra)* that an order granting bail must demonstrate the conditions of Section 37 of NDPS Act, but if the order granting bail to co-accused does not discuss/demonstrate about the satisfaction of the conditions of Section 37 of NDPS Act, it would not have any binding precedent for grant of bail to co-accused. Further, it is not in dispute that no person accused of offence under NDPS Act involving commercial quantity shall be released on bail; where Public Prosecutor opposes such bail application, unless the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and he is unlikely to commit offence while on bail. In the present scenario and taking into consideration the materials placed on record, the Petitioner is hardly found to have satisfied the conditions of Sec. 37 of NDPS Act.

5. For the reasons stated hereinabove and taking into account the other circumstances on record in entirety, this Court is not inclined to grant bail to the petitioner.

6. Hence, the bail application of the petitioner stands rejected. Accordingly, the BLAPL stands disposed of.

Headnotes prepared by:
Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:
BLAPL stands rejected.

2025 (III) ILR-CUT-1424

TULSIRAM SAHU
V.
ASHUTOSH PANDA

[MACA NO. 977 OF 2025]

05 DECEMBER 2025

[G. SATAPATHY, J.]**Issue for Consideration**

Whether dismissal of a claim under Section 166 of the Motor Vehicles Act for non-joinder of the owner is sustainable after findings on negligence and assessment of compensation.

Headnotes

MOTOR VEHICLES ACT, 1988 – Section 166 – Application for Compensation – Non-joinder of owner of the offending vehicle – The claimant, while riding a bicycle, suffered injuries in a motor accident caused by rash and negligent riding of a motorcycle – The Motor Accident Claims Tribunal recorded findings in favour of the claimant on negligence and quantified compensation payable – However, the Tribunal dismissed the claim petition as not maintainable solely on the ground that the owner of the offending vehicle had not been impleaded – Whether such dismissal of claim by the Tribunal is sustainable.

Held: No – It is no doubt true that the Respondent has set up the plea of non-joinder of necessary parties, but the Appellant-petitioner being not vigilant, has not impleaded the owner of the motor cycle as a party to the claim proceeding, however, since the Act is beneficial social provision of law and its objective is to save the persons suffering on account of Motor Vehicular accident, the learned Tribunal should have directed the Appellant-petitioner to implead the owner of the offending motor cycle as a party and on failure to comply such direction, the learned tribunal could have dismissed the claim, however, the learned Tribunal has never directed the Appellant-Petitioner to implead the owner as a party – Further since the Act is a social legislation, the learned Tribunal was not prevented from impleading suo motu the owner of the offending motor-cycle as a party inasmuch as the innocent party/petitioner should not suffer from the laches and negligence of his counsel, but dismissing the claim of the Appellant-petitioner merely on technical ground would not sub-serve the purpose of the legislation which is actually meant to advance social justice and to provide succor to the person suffering from accident – It is also not in dispute that the learned Tribunal has answered issue Nos. (ii) and (iii) in favor of the claimant

by holding that the accident occurred due to rash and negligent driving of the rider of the motor cycle and the claimant is entitled to compensation, but even after holding so and deciding issue nos.(ii) & (iii) in favor of the claimant, the learned Tribunal has lost sight of true provision of law and dismissed the claim by holding it to be not maintainable, but without allowing the Appellant-Petitioner to implead the owner of the offending motor-cycle as party. (Para 5)

List of Acts

Motor Vehicles Act, 1988, Code of Civil Procedure, 1908

Keywords

Motor vehicular accident; Rash and negligent riding; Compensation; Injuries; Loss of avocation; Mental agony, Non joinder of necessary parties, Beneficial social provision of law, Dismissal of claim; Technical ground; Opportunity to implead

Case Arising From

Judgement dated 28.07.2025 passed by the Learned 3rd MACT, Dharamgarh, Kalahandi in MAC No. 28 of 2023

Appearances for Parties

For Appellant : Mr. D. Dash
For Respondent : None

Judgment/Order

Judgment

G. SATAPATHY, J.

1. This appeal under section 173 of Motor Vehicle Act, 1988 (In short “the Act”) by the Appellant seeks to challenge the impugned judgment dated 28.07.2025 passed by the learned 3rd MACT, Dharamgarh, Kalahandi (in short “the Tribunal”) in MAC No. 28 of 2023 dismissing the claim of the petitioner (Appellant) by holding it to be not maintainable, even after assessing the compensation amount to the Appellant-injured who sustained injuries in a motor vehicular accident.

2. The short facts involved in this case are that on 22.02.2023 at about 05:00PM, the Appellant-petitioner while going to Dharamagarh by his bi-cycle met with an accident near Indrabati Chowk when he was hit by a Hero Honda HF Deluxe Motorcycle bearing Registration No. OD-08-J-3061 due to rash and negligent riding of the Motorcycle and due to such accident, the Appellant-petitioner sustained injuries and was immediately shifted to SDH, Dharamgarh, where he immediately received some treatment, but later on was referred to DHH, Bhawanipatna for better treatment and subsequently, the Appellant-petitioner received treatment in a private

hospital namely Manikeswar Hospital. According to the Appellant-petitioner, due to the accident, he suffered not only injuries, but also lost his avocation. Further, the accident was reported to the Dharamgarh Police resulting in registration of Dharamgarh PS Case No. 59 of 2023 which subsequently culminated in submission of charge sheet. On the aforesaid averments, the Appellant-petitioner filed a claim application U/S.166 of the Act before the learned Tribunal claiming compensation of Rs. 5 Lakhs towards suffering, loss of income and mental agony etc by impleading the rider of the offending motor cycle as sole OP.

2.1 In response to the notice of the claim, the rider of the offending motor cycle-cum-OP appeared before the tribunal and filed his written statement denying all the allegations leveled against him and pleading *inter-alia* that the claim suffers from misjoinder and non-joinder necessary parties i.e. owner of the offending vehicle. Accordingly, the sole OP prays to dismiss the claim.

2.2. In view of the rival pleadings, the learned Tribunal stuck with the following issues:-

ISSUES

(i) *Whether the claim application/petition filed by the petitioner against the O.P. is maintainable under law?*

(ii) *Whether on 22.02.2023, at about 05.00 P.M., due to the rash and negligent riding of the rider of the motorcycle bearing regd. no.OD-08-J-3061, the accident took place near Indrabati NH Road under Dharamagarh PS, in which one Tulasiram Sahu sustained injuries?*

(iii) *Whether the petitioner is entitled to get compensation and if so, to what extent?*

(iv) *Whether the O.P. is liable to pay the compensation to the petitioner?*

(v) *To what other relief (s) the petitioner is entitled as per law and equity?*

2.3 The learned Tribunal accordingly, allowed the parties to lead evidence and after analyzing the evidence, the learned Tribunal answered issue Nos. (ii) & (iii) in favour of the Appellant-petitioner by assessing the compensation amount to the tune of Rs. 1,99,900/, but decided issue Nos. (i), (iv) & (v) against the Appellant-petitioner by holding the claim to be not maintainable for non-joinder of necessary party, the owner of the offending motor-cycle. In holding so, the learned Tribunal dismissed the claim of the Appellant petitioner. Being aggrieved, the Appellant has approached this Court in this claim Appeal.

3. This appeal is taken up for hearing at the threshold of admission only on the prayer as advanced by Mr. Debabrata Dash, learned counsel for the Appellant without issuing any notice to the Respondent, since the issue of maintainability has been answered against the Appellant. In the course of argument, Mr. Dash submits that although the claim has been answered in favour of the Appellant, but the learned Tribunal without providing any opportunity to the Appellant-petitioner to implead the owner of the offending motor-cycle, has mechanically and technically passed the impugned judgment dismissing the claim of the petitioner by holding it to be not

maintainable even after assessing the compensation for the Appellant-injured and therefore, the impugned judgment being contrary to the law may kindly be set aside and the matter be remitted back for fresh disposal. Accordingly, Mr. Dash prays to allow the Appeal.

4. Indisputably, the learned Tribunal has dismissed the claim of the Appellant by holding it to be not maintainable for non-joinder of necessary party i.e the owner of the offending motor cycle, but it is to be remembered that claim application U/S. 166 of the Act is a beneficial social provision of law and strict procedure of law is not applicable, since the aim and objective of the act is to provide compensation to the destitute person who had suffered loss and injury on account of motor vehicular accident. Be that as it may, Order-I, Rule-9 of the Code of Civil Procedure, 1908 (in short “the CPC”) provides as under:-

“9. Misjoinder and non-joinder-No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.”

[Provided that nothing in this rule shall apply to non-joinder of a necessary party.]

5. It is no doubt true that the Respondent has set up the plea of non-joinder of necessary parties, but the Appellant-petitioner being not vigilant, has not impleaded the owner of the motor cycle as a party to the claim proceeding, however, since the Act is beneficial social provision of law and its objective is to save the persons suffering on account of Motor Vehicular accident, the learned Tribunal should have directed the Appellant-petitioner to implead the owner of the offending motor cycle as a party and on failure to comply such direction, the learned tribunal could have dismissed the claim, however, the learned Tribunal has never directed the Appellant-Petitioner to implead the owner as a party. Further since the Act is a social legislation, the learned Tribunal was not prevented from impleading suo motu the owner of the offending motor-cycle as a party inasmuch as the innocent party/petitioner should not suffer from the laches and negligence of his counsel, but dismissing the claim of the Appellant-petitioner merely on technical ground would not sub-serve the purpose of the legislation which is actually meant to advance social justice and to provide succor to the person suffering from accident. It is also not in dispute that the learned Tribunal has answered issue Nos. (ii) and (iii) in favor of the claimant by holding that the accident occurred due to rash and negligent driving of the rider of the motor cycle and the claimant is entitled to compensation, but even after holding so and deciding issue nos.(ii) & (iii) in favor of the claimant, the learned Tribunal has lost sight of true provision of law and dismissed the claim by holding it to be not maintainable, but without allowing the Appellant-Petitioner to implead the owner of the offending motor-cycle as party.

6. In view of the aforesaid facts involved in the matter and taking into account the purpose and objective of the Act which is a social welfare legislation to provide the benefit of the compensation to the sufferer of motor vehicular accident and taking into account the other circumstances on record in entirety, this Court has no

other option left, but to remit the matter back for fresh adjudication by allowing the Appellant-Petitioner to implead the owner of the motor cycle as a party to the claim proceeding. In the event, the Appellant-petitioner files any application for impleading the owner of the offending motor-cycle as a party within four weeks from the date of receipt of the copy of this order by the Tribunal, the same shall be disposed of in accordance with law and if the learned tribunal allows such application of the Appellant petitioner, the owner of the offending motor-cycle must be provided with sufficient opportunity to file his written statement and to lead evidence and also if situation so demands, the learned Tribunal may allow the other parties to lead further evidence in the matter and dispose of the claim application afresh as expeditiously as possible.

7. In the result, this claim appeal stands allowed to the extent indicated above, but without any cost. Consequently, the impugned judgment is hereby set aside and the tribunal is requested to dispose of the matter within a period of nine months from the date of receipt of copy of this order.

Headnotes prepared by:

Shri Hara Prasad Padhy, Editor-in-Chief, I/C

Result of the case:

Claim Appeal allowed.

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2025 (III) ILR-CUT- 1428

**BAIKUNTHA NATH MOHARANA
V.
STATE OF ODISHA (VIGILANCE) & ORS.**

[CRLREV NO. 349 & 350 OF 2024]

07 NOVEMBER 2025

[CHITTARANJAN DASH, J.]

Issue for Consideration

Whether while considering an application U/s. 239 of Cr.P.C, the Court is required to examine the evidence meticulously.

Headnotes

CODE OF CRIMINAL PROCEDURE, 1973 – Section 239 r/w Section 13(2) and 13 (1)(d) of Prevention of Corruption Act, 1988 and Section 409/468/47/120-B of the Indian Penal Code – Allegation of misuse of official position and fraudulent drawn of an amount of ₹1,00,000/- from the GPF account of one Krushna Chandra Barik by preparing forged record and misappropriation of the said amount – Petitioner contended that there is no expert opinion conclusively establishing the signature

appearing on the documents in question were appended by the petitioner – Whether while considering an application U/s. 239 of Cr.P.C., the Court is required to examine the evidence meticulously.

Held: No – The question of the Petitioners' innocence and their alleged involvement in the aforesaid acts can only be determined upon full-fledged trial based on evidence. (Para 5)

At this stage, therefore, it cannot be held prima facie that the Petitioners are not involved in the offence or that the impugned order suffers from any legal infirmity – While considering an application under Section 239 Cr.P.C., the Court is required to examine whether a prima facie case exists against the accused and not to undertake a meticulous evaluation of the evidence on record. (Para 6)

Citations Reference

State by Deputy Superintendent of Police vs. R. Soundirarasu Etc., (2023) 6 SCC 768; Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561; State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659; State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338; Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another, (2013) 11 SCC 476; Munna Devi v. State of Rajasthan & Anr., (2001) 9 SCC 631 – referred to.

List of Acts

Code of Criminal Procedure, 1973; Prevention of Corruption Act, 1988; Indian Penal Code, 1860.

Keywords

Prima facie case; Appreciation of evidence; Misappropriation; Fraudulent transfer;

Case Arising From

Order dated 09.05.2024 passed by the learned Special Judge, Vigilance, Cuttack in T.R. Case No.48 of 2012.

Appearances for Parties

For Petitioner : Ms. P. P. Mohanty, on behalf of Mr. G. P. Mishra
For Opp. Parties : Mr. Sangram Das, SC (Vigilance)

Judgment/Order

Judgment

CHITTARANJAN DASH, J.

1. The legality, propriety and correctness of the order dated 09.05.2024 passed by the learned Special Judge, Vigilance, Cuttack in T.R. Case No.48 of 2012 has been called in question in this Revision.

2. The background facts of the case, in brief, are that the Petitioner, a public servant, is alleged to have misused his official position and fraudulently drawn an amount of ₹1,10,000/- from the GPF account standing in the name of one Krushna Chandra Barik by preparing forged records and misappropriating the said amount. It is further alleged that accused Nabakishore Das submitted a proposal for sanction of GPF in favour of Krushna Chandra Barik, which was approved by Ananta Kumar Behera. Pursuant thereto, Nabakishore Das prepared the bill, and after drawal from the District Treasury, the amount was reflected in the Cash Book as having been paid to Krushna Chandra Barik in cash, in violation of the prevalent government orders, by Shri B. K. Parida.

On the basis of the aforesaid allegations, a case was registered under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 409/468/471/120- B of the Indian Penal Code. Upon completion of investigation, charge-sheet was submitted, including against the present Petitioner. The Petitioner thereafter approached the learned Special Judge, Vigilance, seeking discharge from the offences alleged. The learned trial court, upon hearing both sides, declined to allow the prayer for discharge. Aggrieved thereby, the Petitioner has approached this Court in revision.

3. Ms. Mohanty, learned counsel for the Petitioner appearing on behalf of Mr. G. P. Mishra, learned Advocate, argued in support of the contentions raised in the application and submitted, inter alia, that there is no expert opinion conclusively establishing that the signatures appearing on the documents in question were appended by the Petitioner. It is contended that the handwriting expert has not given a definite report linking the Petitioner with the disputed signatures. She placed reliance on the expert opinion, which states that “*for want of sufficient basis, it is not possible to express any definite opinion as to whether the person who wrote the red-enclosed specimen and admitted writings stamped and marked as identified vide S-1 to S-36 and A-1 to A-3 wrote the red-enclosed disputed signature.*” Ms. Mohanty further submitted that there has been an inordinate delay in initiating and conducting the prosecution. Considering that the Petitioner has since retired from service and is of advanced age, continuation of the criminal proceeding against him would amount to an abuse of the process of law. Accordingly, it is submitted that the impugned order deserves to be quashed.

4. At this stage, it is apposite to recall the settled legal position. In ***State by Deputy Superintendent of Police vs. R. Soundirarasu Etc.***, reported in (2023) 6 SCC 768, the Hon’ble Supreme Court reiterated and clarified the governing principles, observing as follows: –

“55. *The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the*

offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

56. Then again in the case of *Som Nath Thapa* (supra), a three- Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

“32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

57. In a later decision in *Mohanlal Soni* (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7) “7. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

58. Reiterating a similar view in *Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another*, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the accused. It was held that the Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

75. In *Munna Devi v. State of Rajasthan & Anr.*, (2001) 9 SCC 631, this Court held as under:-

“3.....The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts

are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.”

76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with appellate power. A revisional court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.”

5. In the present case, from the submissions of Ms. Mohanty, learned counsel for the Petitioners, it is evident that the documents relied upon, including the handwriting expert’s report, are matters that can be appreciated only during trial through evidence. Admittedly, the allegations reveal that the note sheet at page 6 of the relevant GPF sanction file of the D.I. of Schools, Kendrapara, indicates that accused Nabakishore Das had submitted a proposal to the D.I. of Schools for sanction of non-refundable GPF amounts in respect of six teachers, including one relating to Krushna Chandra Barik, Assistant Teacher of Tunupur U.P. School, Kendrapara, for sanction of ₹1,10,000/-. It has been found during investigation that the said Assistant Teacher, Krushna Chandra Barik, has disowned the signature appearing on the proposal, stating that he had not signed any such document. The investigation further reveals that there were irregularities and illegalities in the sanction and withdrawal of the GPF amount, particularly concerning the account of Krushna Chandra Barik. In such circumstances, the question of the Petitioners’ innocence and their alleged involvement in the aforesaid acts can only be determined upon full-fledged trial based on evidence.

6. At this stage, therefore, it cannot be held prima facie that the Petitioners are not involved in the offence or that the impugned order suffers from any legal infirmity. While considering an application under Section 239 Cr.P.C., the Court is required to examine whether a prima facie case exists against the accused and not to undertake a meticulous evaluation of the evidence on record.

7. In view of the above discussion, this Court finds no apparent illegality in the order dated 09.05.2024 passed by the learned Special Judge, Vigilance, Cuttack in T.R. Case No.48 of 2012.

8. Both the CRLREVs are accordingly disposed of.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

CRLREVs disposed of.

2025 (III) ILR-CUT-1433

BIJOY KUMAR SAHU
V.
STATE OF ORISSA

[CRA NO. 195 OF 1998]

27 NOVEMBER 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether the impugned order of conviction is sustainable under the Law.

Headnotes

CRIMINAL TRIAL – Offence U/s. 20(b)(i) of the NDPS Act r/w. Section 47(a) of Bihar & Orissa Excise Act – The order of conviction is under challenge – Accused challenged the order of conviction on the ground of non-compliance of the mandatory provisions contained U/s. 42 & 50 of the NDPS Act, Non Production of brass seal before the Court & Non examination of the Gazetted Officer before whom search was made – The prosecution contended that in the fact scenario of the present case, sections 42 & 50 are not required to be complied with – As per the evidence of P.W.1 it is clear that, there was no written offer made to the accused intimating him regarding his right U/s. 50 of the NDPS Act for getting searched in the presence of a Magistrate or a Gazetted Officer – Further the evidence of P.W.8 (I.O) reveals that, the Gazetted Officer in the presence of whom the search & seizure was made is conspicuously withheld by the prosecution to be examined – The liquor alleged to have seized from the possession of the accused has not been measured – The brass seal used for sealing the samples was not produced before the Court – In the facts & circumstances whether the impugned order of conviction is sustainable under the Law?

Held: No – Applying the ratio laid down by the Hon'ble Supreme Court in the aforementioned two judgments to the facts of the present case, it could be safely concluded that the I.O. has not complied the requirements of Sections 42 and 50 of the NDPS Act, because the evidence at large illuminating on record to the effect that the accused was apprehended while he was holding the bag – The search and seizure were simultaneously carried out on the person of the accused along with the bag – Therefore, the I.O. was obliged under the Act to comply the statutory safeguards contemplated under Sections 42 and 50 of the Act. (Para 15)

By taking me to the evidence of the witnesses, Ms. Mishra, learned counsel for the appellant has also pointed out that the liquor alleged to have

been seized from the possession of the accused has not been measured – This part of the submission made by Ms. Mishra could not be controverted by the State Counsel – That apart, by taking to the evidence of P.Ws.7 and 8, the counsel for the appellant has stated that the brass seal used for sealing the samples were not produced before the court, which is mandatory requirement under law. P.W.8 in paragraph-7 of his evidence deposed as under:-

“7. After sealing the three pkts of Ganja my personal brass seal was given in zima of witness Locahan Sahu (P.W. 7). Ext. 3/1 is the zimanama executed by him – These are the two sample pkts. sent back to the court after examination by the Chemical examiner – These are the two paper slips which contained the signature of accused and witnesses marked M.O. VI and VII – After making seizure of the Ganja and liquor I handed over the three packets of Ganja and two bottles of liquor in the zima of I.I.C., Ngr. P.S. to keep it in P.S. Malkhana till its production before the S.D.J.M., Ngr.”

(Para 16)

However, when P.W.7 was examined as a witness, he did not support the prosecution and stated that the signature in the zimanama was simply obtained from him and he had no knowledge about the same – Therefore, regarding the production of the brass seal before the court, the evidence is shaky – The other points raised by the learned counsel for the appellant need not be delved upon, in view of my findings that the I.O. (P.W.8) of the present case has not complied with the requirements under Sections 42 and 50 of the NDPS Act.

(Para 17)

Citations Reference

State of Rajasthan vrs. Parmanand & Anr., **(2014) 57 OCR (SC) 1087**; Ranjan Kumar Chadha vrs. State of Himachal Pradesh, **2023 SCC OnLine SC 1262 – referred to.**

List of Acts

Narcotic Drugs and Psychotropic Substances Act, 1985; Bihar and Orissa Excise Act, 1915.

Keywords

Offences under the NDPS Act, Non-Compliance of the mandatory provisions, Search & Seizure, Presence of Gazetted Officer, Brass Seal, Production of sample before the Court, Non examination of the Gazetted Officer.

Case Arising From

Judgment of conviction and order of sentence dated 30.06.1998 passed by the learned Additional District and Sessions Judge, Nayagarh in Sessions Trial No. 117/19/117 of 97/96.

Appearances for Parties

For the Appellant : Ms. Bini Mishra

For the Respondent : Mr. S.J. Mohanty, ASC

Judgment/Order**Judgment*****SIBO SANKAR MISHRA. J.***

The present Criminal Appeal is preferred by the appellant-Bijoy Kumar Sahu questioning the judgment of conviction and order of sentence dated 30.06.1998 passed by the learned Additional District and Sessions Judge, Nayagarh in Sessions Trial No. 117/19/117 of 97/96, whereby the appellant was found guilty of offence punishable under Section 20(b)(i) of the NDPS Act read with Section 47(a) of Bihar and Orissa Excise Act, and on the count of such conviction, the appellant has been sentenced to undergo R.I. for one year with fine of Rs.2000/-, in default to undergo S.I. for six months for offence under Section 20(b)(i) of the NDPS Act. Further, on the count of the guilt under Section 47(a) of Bihar and Orissa Excise Act, the appellant was sentenced to undergo R.I. for three months with fine of Rs.200/-, in default to undergo S.I. for fifteen days. Both the sentences were directed to run concurrently.

2. Heard Ms. Bini Mishra, learned counsel for the appellant and Mr. S.J. Mohanty, learned Additional Standing Counsel for the State.

3. The prosecution case, in short, is that on 06.10.1995 night P.W. 1, who was working as A.S.I. of Nayagarah P.S., had been to perform Anti Dacoity Patrol duty along with some A.P.R. force and returned to the headquarters in the early morning of 6/7-10-95. He stopped the Police Van at Nayagarah Bus Stand. In the bus stand he found the accused was moving in a suspicious manner holding a foam bag. He detained the accused and searched his bag suspecting keeping of some contraband articles and found one paper packet and two bottles were kept in it. On opening of the paper packet, he found Ganja in it and I.D. liquor in two bottles. He prepared a written report at the spot and sent the same to Nayagarah P.S. through a Constable. The I.I.C. treated the same as F.I.R. and registered P.S. Case No. 282 of 1995 under section 20 of the N.D.P.S. Act and Sec. 47 (a) of Bihar and Orissa Excise Act and directed the S.I., G.R. Mohapatra to take up investigation. The I.I.C. and the S.I. G.R. Mohapatra immediately came to the spot and effected the search after observing the formalities. They recovered the Ganja and I.D. liquor from inside the bag and seized the same. The S.I., G.R. Mohapatra got weighed the Ganja through one Lochan Sahu and on weighing, it was found to be 425 gms. He drew up two samples, out of that Ganja weighing 25 gms. each and packed them separately and put the brass impression seal on each packet and took the signature of the accused and witnesses on the paper slips affixed on each three packets. As the accused could not produce any licence in support of such possession, he was arrested by him and taken to the P.S. along with seized articles and on the same day, he forwarded the

accused to the court along with the seizure list and the seized articles. He made a prayer to the court to send the sample packet of Ganja and liquor to S.F.S.L., Rasulgarah, Bhubaneswar for examination. But the learned S.D.J.M., in-charge, re-sealed the Ganja packets by putting his own seal and handed over the same to the I.O. directing to produce in the court on 11.10.95 for sending to S.F.S.L., Rasulgarah for examination and accordingly on 11.10.95 the I.O. produced the same before the S.D.J.M. and the latter found the seals put on it were intact and forwarded the same to S.F.S.L., Rasulgarah for examination. The latter, on examining the sample packets of Ganja and liquor, opined that the exhibits contain cannabis (ganja) and liquor.

4. On the basis of the aforesaid allegations, police registered the case and investigation was conducted and charge sheet was filed. On the stance of denial and claim of trial, the appellant was put to trial after framing of the charges.

5. The prosecution in order to bring home the charges, examined as many as eight witnesses in toto and exhibited several documents. P.W.1 was the ASI of Police of Nayagarh P.S., whereas P.W.8 was the I.O. of the present case. P.Ws.6 and 7 were the independent witnesses and of them P.W.6 was the witness to the search and seizure. The other witnesses, i.e., P.Ws.2, 3, 4 and 5 were the members of the armed forces, who had accompanied the P.W.1 in Anti Dacoity Patrol Duty in the preceding night of 07.10.1995.

6. After analysis of the evidence brought on record and appreciation of the oral and documentary evidence, the learned trial court convicted and sentenced the appellant, by which the appellant is aggrieved and has filed the present appeal.

7. Ms. Bini Mishra, learned counsel appearing for the appellant has taken me to the evidences of all the witnesses extensively and tried to flag all the contradictions. She has also taken me to the statutory provisions, which according to her, has not been complied by the prosecution. From the entirety of her argument, five prominent issues has been culled out, namely, (i) the investigating agency has not scrupulously followed the provisions contained under Section 42 and 50 of the NDPS Act; (ii) reading of the evidence of P.Ws.7 and 8 revealed that the brass seal used for packing and sealing of the sample has not been produced before the court; (iii) the I.D. Liquor alleged to have been recovered from the appellant was not measured; (iv) the Gazetted Officer, in whose presence the search was carried out, was deliberately not examined; and (v) out of the two independent witnesses, only one of them was examined, who did not support the prosecution case.

On the basis of the aforementioned highlighted points, Ms. Mishra submitted that it is inevitable for this Court to interfere in the present appeal and to set aside the same by extending the benefit of doubt to the appellant.

8. Per contra, Mr. Mohanty, learned counsel for the State has contended that the learned trial court has rightly arrived at conclusion finding the appellant of guilty. In the fact scenario of the present case, Sections 42 and 50 are not required to

be complied with. He further submitted that quantity of prosecution evidence is not essential; rather the quality of the evidence is essential to bring home the charges, which the prosecution has rightly discharged.

9. I have carefully gone through the record and in the light of the materials available on record in the form of oral testimony of the witnesses and documentary evidence, analyzed the impugned judgment.

10. P.W.1, who was the ASI of Police accompanied with the police party, has deposed that on 07.10.1995 night at 5.00 A.M. while on duty they suspected the accused and apprehended him. The accused was holding a foam bag in his hand. On opening the bag, he found two bottles of ID liquor and ganja in a packet were kept and he disclosed his identity. The witness demanded the authority from the accused for transporting the liquor, but the accused could not produce the same. He prepared a written report at the spot and sent the same to the IIC, Nayagarh Police Station. He further stated that the IIC, G.P. Dash arrived at the spot and wanted to search the accused and before doing that he gave an offer to the accused that he has right to be searched either before a Magistrate or before a Gazetted Officer, but the accused told that he can give search before the police and also before him, as he is a Gazetted Officer.

Reading of the evidence of P.W.1 makes it clear that there was no written offer made to the accused intimating him regarding his right under Section 50 of the NDPS Act for getting searched in presence of a Magistrate or a Gazetted Officer. It is also evident that whether the IIC, G.P. Dash is a Gazetted Officer or not, is obviously not known to the accused. G.P. Dash was not examined by the prosecution.

11. P.W.4 is also a police official accompanied with P.W.1. He testified that P.W.1 went inside the bus to detect the transportation of contraband articles. He came out from that bus with a bag, M.O.I. and we took the accused and M.O.I to Nayagarh Police Station. That part of the evidence of P.W.4 is directly running contrary to the narration of incident made by P.W.1.

12. P.W.8 is the I.O. of the present case. He in his testimony has stated as under:-

3. I came to Ngr. Bus stand along with B.P. Das I.I.C.; Ngr-Ps. I found the accused in dock (Identified) was standing in bus stand with a bag (M.O. I) and he was detained by A.S.I., R.C. Mohanty (P.W.1) along with some A.P.R. force: I examd. P.W. 1 at the spot.

4. I asked the accd, his name and identity to which he has staed that he is Bijoy Ku. Sahu s/o Gangadhara Sahu of Bolagarah P.S. Then I expressed my intention of search of the bag and person as suspected that some contraband articles were kept in that bag. I also asked give him offer whether he is intended to be searched before a Magistrate or before a Gazetted Officer. He expressed his willingness to be searched before a Gazetted Officer. Then I.I.C.-Nayagarah B.P. Das gave his identity to the accd. stating that he is Inspector of Police and Gazetted Officer. Accused has stated that he has no objection if he will be searched before I.I.C. who is a Gazetted Officer.

5. Before effecting search, I gave my personal search to the accused in presence of witnesses. Then searched the foam bag of the accused (M.O. I) in presence of the said "Gazetted officer and witnesses, and on search I found one Paper pocket containing Ganja and two bottles of I.D. liquor. Before effecting search I also called two independent witnesses Chhabi Behera (P.W. 6) and one Kalia Behera. Then I called for a one Lochan Sahu to come to the spot with sweighing instruments to weigh the Ganja on which Locahn Sahu came to the spot and weighed the Ganja in presence of the accd. and wintneses. It was 425 gms.of Ganja. I demanded the authority of transporting contraband N.D.P.S. articles to the accused, but he could not produce any. I prepared two sample packets from the Ganja each containing 25 gms, and the rest 375 gm of Ganja was kept in a separate paper packet. I sealed all the three packets by affixing my personal brass seal and before it he the wax seal was prepared in three separate white peice of papers containing the signature of witnesses and the accused. The wax seal were kept inside the sealed pkt. This is the paper pkt. containing the rest 375 gms of Ganja marked as M.O. II. These are the two bottles containing I.D. liquor marked M.Os. III & IV. M.O..V. is the paper packet wrapped in a piece of cloth duly sealed before the S.D.J.M., Nayagarah at the time of forwarding two sample packets to the State F.S.L., B.B.S.R. On my prayer vide forwarding report Ext. 4. After examining the two sample Pkts., the report from the Chemical examiner was received and after examination, the Chemical Examiner found that the seal impression (wax seal) in Ext. B was found to be similar with lac seal impression in Ext. C. And the sample packets are found to contain Canabis (Ganja). He also found a contents of M.O. III and IV found to contain liquor and the percentage of Alcohol Ethylcohol to be of 20% volume by volume. This is the report Ext. 5 of the Chemical Examiner."

13. The said witness sustained vivid cross examination at the hands of the defence counsel only to create dent to the prosecution. The reading of evidence of P.W.8, the I.O. further strengthened the argument of the learned counsel for the appellat that while conducting the search and seizure, the procedural safeguard provided under Sections 42 and 50 of the NDPS Act, indeed has not been complied in its letter and spirit. It is also revealed from the record that IIC, G.P. Dash, who stated to be a Gazetted Officer, in front of whom the search and seizure was made, is conspicuously withheld by the prosecution to be examined, although he was part of the police team. The prosecution further tried to rope in two independent witnesses so as to comply Section 100 of Cr.P.C., i.e., one Kalu and one Chhabi Behera. Kalu was not examined, however Chhabi Behera was examined as P.W.6. He has stated that P.W.1 came to him and took his signature on the blank papers and he did not know the accused and also having no idea about the search and seizure. This witness was declared hostile and cross examined by the prosecution, but nothing could be elucidated from him. On the face of these evidences, the learned trial court in paragraph-6 of the judgment has recorded as under:-

"6. From the evidence of P.Ws. 1 to 5 it reveals that in the previous night, they had been to perform Anti Dacoity Patrol duty and returned to Nayagarah at 5 a.m. and stopped near Nayagarah Bus stand. It was stated by the P.W. 1 that he found the accused moving at the Bus Stand with a foam bag and he behaved suspiciously when saw the police party. So, he suspected his movements and went to him and immediately searched the bag and recovered one paper packet and two bottles and on opening of the same he found the Ganja in the -paper packet and I.D. liquor inside the two bottles. As he was

not the empowered officer to conduct search in respect of contraband articles like Ganja which is a Narcotic Drug, so he sent a written report to the I.I.C., Nayagarah P.S. vide Ext. 1 informing his such detection and the latter treated the same as F.I.R. and registered P.S. Case and directed the S.I. P.W.8) to take up investigation. It appears from the evidence of P.Ws. 1 & 8 that immediately the I.I.C. and the P.W. 8 came to the spot and found the detention of the accused by the P.W. 1. They effected the search after observing formalities. It was stated by P.Ws. 1 & 8 that they informed the accused of his right of giving search either before a Magistrate or a Gazetted Officer so as to give compliance of Section 50 of the Act and the accused expressed his intention to give search in the presence of Police and thereafter they effected the search. Now the question would arise for consideration if in the given fact and circumstances of the case, does the law requires such compliance. In this respect I may say that it would be profitable to refer to the decision reported in (1996)-10-O.C.R. 24 in the case between Sitansu Sekhar Kanungo vs. State where it has been held that the empowered officer while about to search and during questioning without any concrete intention to search, the accused voluntarily handed over the contraband articles to him and at that circumstances, Section 50 was held to have no application. The said decision is squarely applicable to the present facts and circumstances of this case. In this case, the P.W. 1 after making recovery of the contraband Ganja and I.D. liquor sent a report to the I.I.C. informing such recovery and the latter treated the same as F.I.R. and registered the P.S. case and proceeded to the spot along with P.Ws 8. In my considered view at that premises, there is no need to follow the mandatory provisions of the Section 50 of the Act as the same has no application at that circumstances of the case. Similarly, Sec. 42 of the Act has also no application to the present facts and circumstances of the case as the information lodged to the I.I.C. in a written report disclosed about the positive recovery of Ganja from the possession of the accused and at that circumstances there is no need on the part of the I.O. to take down the same into writing before proceeding to verify the truth of it. More-over, the I.I.C. treated the report as F.I.R. and after registering the case came to the spot to do further investigation. Since, the P.W. 1 is not empowered officer to detect such type of offence, he therefore sent the report about such recovery to the I.I.C. who is competent to investigate into the case and thereafter P.W. 8 proceeded further in investigating the case. In all these views, I am of opinion that the procedure contained in Section 42 and 50 of the Act need not required to be followed by the I.O. in the case in question at all.”

14. I am in disagreement with the reasoning recorded by the learned trial court to arrive at a conclusion that in the facts of the present case Sections 42 and 50 of the NDPS Act was not required to be followed by the I.O. In that regard, the judgment of the Hon’ble Supreme Court in the case of ***State of Rajasthan vs. Parmanand & Anr.***, reported in (2014) 57 OCR (SC) 1087, is relevant to be relied upon. The Hon’ble Supreme Court has held thus:-

“12. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand’s bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.”

Similarly, the Hon'ble Supreme Court in the case of **Ranjan Kumar Chadha vs. State of Himachal Pradesh**, reported in **2023 SCC OnLine SC 1262**, has held as under:-

“127. In the facts of the present case, there is no scope of applying the ratio of Parmanand (supra) and SK. Raju (supra). At the cost of repetition, we may state that in the case on hand, there is nothing to indicate that the search of the person of the accused was also undertaken along with the bag which he was carrying on his shoulder.”

15. Applying the ratio laid down by the Hon'ble Supreme Court in the aforementioned two judgments to the facts of the present case, it could be safely concluded that the I.O. has not complied the requirements of Sections 42 and 50 of the NDPS Act, because the evidence at large illuminating on record to the effect that the accused was apprehended while he was holding the bag. The search and seizure were simultaneously carried out on the person of the accused along with the bag. Therefore, the I.O. was obliged under the Act to comply the statutory safeguards contemplated under Sections 42 and 50 of the Act.

16. By taking me to the evidence of the witnesses, Ms. Mishra, learned counsel for the appellant has also pointed out that the liquor alleged to have been seized from the possession of the accused has not been measured. This part of the submission made by Ms. Mishra could not be controverted by the State Counsel. That apart, by taking to the evidence of P.Ws.7 and 8, the counsel for the appellant has stated that the brass seal used for sealing the samples were not produced before the court, which is mandatory requirement under law. P.W.8 in paragraph-7 of his evidence deposed as under:-

“7. After sealing the three pkts of Ganja my personal brass seal was given in zima of witness Locahan Sahu (P.W. 7). Ext. 3/1 is the zimanama executed by him. These are the two sample pkts. sent back to the court after examination by the Chemical examiner. These are the two paper slips which contained the signature of accused and witnesses marked M.O. VI and VII. After making seizure of the Ganja and liquor I handed over the three packets of Ganja and two bottles of liquor in the zima of I.I.C., Ngr. P.S. to keep it in P.S. Malkhana till its production before the S.D.J.M., Ngr.”

17. However, when P.W.7 was examined as a witness, he did not support the prosecution and stated that the signature in the zimanama was simply obtained from him and he had no knowledge about the same. Therefore, regarding the production of the brass seal before the court, the evidence is shaky. The other points raised by the learned counsel for the appellant need not be delved upon, in view of my findings that the I.O. (P.W.8) of the present case has not complied with the requirements under Sections 42 and 50 of the NDPS Act.

18. In view of the aforesaid findings, the imperative conclusion that could be drawn is that the prosecution has failed to establish the charges under Section 20(b)(i) of the NDPS Act read with Section 47(a) of Bihar and Orissa Excise Act. Hence, the appellant is entitled to the benefit of doubt. Accordingly, the judgment of

conviction and order of sentence dated 30.06.1998 passed by the learned Additional District and Sessions Judge, Nayagarh in Sessions Trial No. 117/19/117 of 97/96, is set aside and the appellant is acquitted of all the charges. The bail bond furnished by him stands discharged.

19. Accordingly, the Criminal Appeal is allowed.

Headnotes prepared by:

Shri Jnanendra Ku. Swain, Judicial Indexer

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

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Result of the case:

Criminal Appeal allowed.

2025 (III) ILR-CUT-1441

BHABA @ BHABAGRAHI PANDA & ORS.

V.

STATE OF ODISHA

[CRA NO. 252 OF 1990]

09 DECEMBER 2025

[SIBO SANKAR MISHRA, J.]

Issue for Consideration

Whether in the facts & circumstances the impugned order of conviction warrants any interference?

Headnotes

CRIMINAL TRIAL – Offences under Sections 395 & 457 of the IPC – The Accused Persons are the Co-villagers of the informant – The alleged offences of dacoity was committed in the night when the informant along with other family members were sleeping in their home – There was previous enmity amongst the informant & the accused persons – In the present appeal the order of conviction is under challenge – Accused persons are challenging the order of conviction on the grounds of delay in lodging of F.I.R, Previous enmity, Interested witnesses & Non-recovery of looted materials etc. – On the other hand prosecution argued that mere delay in lodging of F.I.R. does not vitiate an otherwise credible prosecution case – The delay in lodging of the F.I.R is satisfactorily explained and prior hostility is the motive for the occurrence – The prosecution witnesses are clear & mutually corroborative – Whether in the facts & circumstances the impugned order of conviction warrants any interference?

Held: No – The prosecution case receives further corroboration from the seizure of various articles recovered from the houses of multiple accused persons during investigation – The Test Identification Parade conducted by P.W.8, the Judicial Magistrate was carried out in accordance with established procedure, and P.W.7 correctly identified the articles belonging to the household – The contention that the articles were common household items or that identification by a single witness is inadequate is untenable in law – It is well settled that familiarity of a householder with his own property is a sufficient basis for identification. (Para 22)

As regards the delay in lodging and forwarding the FIR, this Court finds that the explanation provided by P.W.7 is both natural and convincing – Fear of encountering the accused on the direct route and the decision to take a longer pathway in the dead of night constitute sufficient justification – Moreover, no question was put to the Investigating Officer on this aspect; no adverse inference can therefore be drawn – The settled legal position, as reaffirmed in *Pattipati Venkaiah* (supra), is that mere delay, when satisfactorily explained, cannot by itself erode the credibility of the prosecution. (Para 24)

The core plea of false implication on account of prior enmity is equally unconvincing – While the existence of enmity is admitted, it furnishes a possible motive for the accused to commit the offence rather than for the victims to falsely implicate several co-villagers in a grave charge of dacoity – The evidence of the prosecution witnesses has been scrutinized carefully with due caution and found to be cogent, credible, and corroborated on all material particulars. (Para 25)

On an overall conspectus, this Court finds no material infirmity, perversity, or illegality in the approach or findings of the learned trial Court – The prosecution has proved the charges under Sections 395 and 457 IPC beyond reasonable doubt, and the defence has not been able to create even a shadow of uncertainty sufficient to dislodge the conviction. (Para 26)

Citations Reference

Pattipati Venkaiah v. State of Andhra Pradesh, AIR 1985 SC 1715 – referred to.

List of Acts

Indian Penal Code, 1860.

Keywords

Dacoity; Motive; Identification; Recovery of material object; Delay in lodging of F.I.R; Interested witness; Natural Witness; Identification Parade; Prior hostility; Medical evidence; Broad Probabilities.

Case Arising From

Judgment and order dated 7th of August 1990 passed by the learned Sessions Judge, Balasore in S.T. Case No.91 of 1984.

Appearances for Parties

For the Appellants : M/s. Ananya Mishra

For the Respondent : Mr. Raja Bhusan Dash, ASC

Judgment/Order**Judgment*****SIBO SANKAR MISHRA. J.***

The present Criminal Appeal is directed against the judgment and order dated 7th of August 1990 passed by the learned Sessions Judge, Balasore in S.T. Case No.91 of 1984. By the said judgment, the learned trial Court found the appellants guilty of the offences punishable under Sections 395 and 457 of the Indian Penal Code, and sentenced each of them to undergo rigorous imprisonment for 7 years for offence U/s.395 of the Indian Penal Code and further R.I. for 6 months for offence under Section 457 of IPC. All substantive sentences were directed to run concurrently.

2. Vide order of this Court dated 01.07.2025, the appeal stood abated qua appellant no. 3, he having expired in the year 2017. During hearing of the present appeal, when the judgment was reserved, learned counsel for the State submitted that appellant no. 2, Benguli @ Surendra Tripathy, had also expired on 14.09.2020. Consequently, in the absence of any application under Section 394 Cr.P.C. filed by their legal heirs or next friends, the appeal stands abated insofar as appellant nos. 2 and 3 are concerned. As regards appellant nos. 1, 4, 5 and 6, they are stated to be alive. The report and the death certificates have been taken on record.

3. Heard Ms. Ananya Mishra, learned Advocate for the appellants and Mr. Raj Bhusan Dash, learned Additional Standing Counsel for the State.

Brief Facts of the Case

4. Briefly stated, the case of the prosecution is that after taking dinner on the night of 12.10.1982, the members of the family of Jagabandhu retired to bed. The family members present in the house were: Puspalata Mishra (P.W.1), wife of Jagabandhu; Bijay Mishra (P.W.2), son of Jagabandhu; Pakan Mishra (P.W.3), daughter-in-law of Jagabandhu; Ajay Mishra (P.W.7), another son of Jagabandhu; and one Santosh Mishra, brother of Ajay Mishra. Jagabandhu slept in his bedroom, while Puspalata slept in the passage room leading to the backyard (badi). P.W.2 Bijay, P.W.7 Ajay and Santosh slept in another bedroom, and P.W.3 Pakan slept in her own room.

At about 10:00 p.m., P.W.1 Pusalata and P.W.7 Ajay heard knocking at the badi door. When Pusalata enquired about the identity of the caller, the response came from accused Bhabagrahi Panda, who identified himself as “Manus.” Both Pusalata and Ajay recognised his voice. On being questioned as to the purpose of his presence, accused Bhaba stated that they had come to take Rs. 500/- for consuming liquor. Immediately thereafter, Bhabagrahi Panda and his associates broke open the badi door and entered the house, armed with deadly weapons and carrying torch lights.

The prosecution further asserts that some of the accused assaulted Pusalata, and Jagabandhu was forcibly tied to a pole fixed in the courtyard. When P.W.2 Bijay protested, one of the accused dealt a knife blow on the left side of his chest, causing a bleeding injury. It is also alleged that the accused persons forcibly removed the earrings and necklace worn by Pusalata. When they attempted to snatch the earrings of P.W.3 Pagan, she pleaded with them not to touch her, stating that she would voluntarily hand over her ornaments, which she then did.

Thereafter, the accused persons allegedly confined all the inmates, including Jagabandhu, in a bedroom and proceeded to break open trunks and boxes kept in various rooms, removing gold and silver ornaments, clothes, utensils and other household articles. Some of the accused persons also broke open the granary and removed a substantial quantity of paddy stored therein, along with a large amount of molasses kept in the house.

After the accused persons fled with the looted property, P.W.7 Ajay Mishra went to Tihidi Police Station to report the incident. The FIR was registered at 7:30 a.m. on 14.10.1982. Sridhar Nayak (P.W.11), A.S.I. of Tihidi Police Station, took up investigation, as the then O.I.C., Sri R. Nayak, was on leave, and P.W.11 was in charge. He visited the spot, examined witnesses, and seized the stolen articles from different accused persons. Upon completion of investigation, charge-sheet was submitted, and the accused persons stood trial. By judgment dated 18.10.1985, the learned trial Court acquitted all the accused persons.

Aggrieved by the acquittal, the victims preferred Criminal Revision No. 579 of 1985 before this Court. Vide order dated 20.10.1989, the revision was allowed and the matter was remitted to the learned trial Court for fresh disposal. On remand, the learned trial Court passed the impugned judgment, which is under challenge in this appeal.

5. The prosecution examined eleven witnesses. P.W.1 Pusalata Misra, P.W.2 Bijay Misra, P.W.3 Pagan Misra and P.W.7 Ajay Misra were the inmates of the house of Jagabandhu and claimed to be eyewitnesses to the occurrence. These witnesses sought to establish that all the accused persons committed dacoity in their house on the night of the incident.

P.W.4 Krushna Chandra Tiadi @ Tripathy is a seizure witness to a bucket allegedly recovered from the possession of accused Nakula Naik, which was

claimed to belong to the family of Jagabandhu. P.W.5 Dinabandhu Rout, the Medical Officer, examined and certified the injuries sustained by P.W.1 Pusalata, P.W.2 Bijaya Kumar Misra and Jagabandhu Misra. P.W.6 Pagala Tripathy is a witness to the seizure of various articles recovered from the house of accused Bhabagrahi Panda.

P.W.8 B.N. Misra, the then Judicial Magistrate First Class, conducted the Test Identification Parade (T.I. Parade) of the properties recovered from the houses of different accused persons. P.W.9 Harekrishna Padhi claimed to be a seizure witness of a "Dekchi" (M.O. VII) from the house of accused Kasi Tiadi and Rabi Tiadi. He also stated that he had seen broken boxes and trunks lying scattered in the house of Jagabandhu.

P.W.10 N.N. Padhi, the C.I. of Police stationed at Chandbali, took over the investigation from P.W.11 and ultimately submitted the charge sheet against the accused persons. P.W.11, the A.S.I. of Police, carried out the major part of the investigation.

Verdict of the Trial Court

6. After the matter was remitted vide the order passed in Criminal Revision No. 579 of 1985, the learned trial Court undertook a fresh appreciation of the evidence on record. It placed substantial reliance on the testimonies of the inmates of the house P.W.1 Pusalata Misra, P.W.2 Bijay Misra, P.W.3 Pakan Misra and P.W.7 Ajay Misra who consistently narrated the sequence of events in detail and unequivocally named the accused persons as the perpetrators of the offence. The Court also drew support from the evidence of the seizure witnesses, including P.W.4 Krushna Chandra Tiadi @ Tripathy, P.W.6 Pagala Tripathy and P.W.9 Harekrishna Pahadi, whose testimonies regarding the recovery of stolen articles lent corroboration to the prosecution version. Taking into consideration the totality of the circumstances, the detailed and specific nature of the evidence and their categorical identification of the accused persons by the witness, the learned trial Court proceeded to hold as under:

“25. In the result, I hold that the accused Bhaba alias Bhabagrahi Panda, Benguli alias Surendra Tripathy Balaram Panda, Kasinath Tiadi, Nakula Naik and Gayadhar Tiadi alias Tripathy are found guilty U/Ss.395 and 457 I.P.C. and convicted thereunder. As per the above discussion, I hold that the prosecution has failed to bring home the charge against the other accused persons namely Purusottam Tripathy, Ramachandra Nath, Abhimanyu Jena, Bata Krushna Jena, Prahallad Panda, Ananda Panda, Kalandi Jena, Karunakar Panda, Babaji alias Brajamohan Nayak, Rabindra Tiadi, beyond reasonable doubt and are thus acquitted of the Charges.”

7. Aggrieved by the aforementioned Judgement of conviction and the order of sentence passed by the learned Sessions Judge, Balasore, the present appeal has been preferred.

Submission by the learned Counsel for the Appellants

8. Ms. Mishra, learned Counsel appearing for the appellants, submitted primarily that the conviction of the appellants is wholly unsustainable in law and on facts. She contended, at the outset, that the appellants had been duly acquitted of all charges by the learned trial Court in the year 1985, and it was only pursuant to the revision filed by the informant before this Court, wherein the matter was remitted for fresh disposal, that the learned trial Court, in the year 1990, reversed the earlier acquittal and recorded the present conviction. According to her, such reversal was founded on an erroneous and impermissible re-appreciation of the evidence.

Learned Counsel further submitted that the prosecution case stands materially weakened in view of the non-recovery of any gold or silver ornaments, or the alleged 11,200 kilograms of paddy, molasses, and other articles said to have been looted during the occurrence. She argued that the absence of any independent and disinterested witness to the incident; the inconsistencies between the medical evidence and the ocular testimony; and the glaring embellishments and falsehoods in the statements of P.Ws.1, 2, 3 and 7 cumulatively render the entire prosecution version doubtful. Ms. Mishra also pointed out that the FIR, despite being lodged after an unexplained delay of one full day, contains an unusually elaborate and detailed description of events, which, in her submission, seriously dents the credibility of the prosecution case.

9. It was next urged that the conviction of the appellants appears to have been founded on a standard of “broad probabilities,” both by this Court in revision as well as by the learned trial Court upon remand. She argued that such an approach is contrary to the settled legal position that the prosecution must prove the guilt of the accused beyond all reasonable doubt and that no conviction can be sustained on mere conjectures, surmises, or preponderance of probabilities.

10. It was also submitted by Ms. Mishra that, the alleged incident occurred in the year 1982, and the conviction was recorded in 1990. The appellants have, therefore, been subjected to the trauma of prolonged litigation for over 43 years, living under constant fear, social stigma, and mental agony. She contended that this prolonged ordeal has, in effect, served the deterrent purpose contemplated by law, and to mandate the appellants to undergo a custodial sentence of seven years at this distant point of time would amount to a grave miscarriage of justice. In the above premises, learned Counsel prayed that the appeal be allowed and the appellants be acquitted of all charges, thereby securing their release.

Submission by the learned Additional Standing Counsel for the Respondent-State

11. On the contrary, Mr. Dash, learned Additional Standing Counsel appearing for the State, supported the impugned judgment and submitted that the conviction

recorded by the learned Sessions Judge, after remand, is based on a thorough, independent, and comprehensive re-evaluation of the entire evidence on record. He contended that the findings of guilt under Sections 395 and 457 IPC are well-reasoned, detailed, and firmly grounded in the oral, documentary, medical, and seizure evidence adduced during trial.

12. Learned ASC submitted that the incident occurred at night in a remote rural village, where the informant and his family members were brutally assaulted, threatened with weapons, unlawfully confined, and subjected to large-scale looting. In the circumstances, the decision of the victims to avoid the direct route to the police station and instead travel through a longer but safer path was both natural and a consequence of the fear instilled by the accused persons themselves. He submitted that in cases of dacoity, night-time violence, and rural insecurity, delay in lodging the FIR is not only expected but also considered natural by judicial precedents, and hence such delay does not weaken the prosecution case.

13. He further submitted that the detailed narration in the FIR cannot be construed as fabrication, particularly in a case involving multiple intruders, violence, and extensive looting. The fact that the FIR was drafted with the assistance of an advocate's clerk only lends coherence to the narrative and does not diminish its credibility. The defence sought to challenge the prosecution on the ground of delay in lodging and forwarding the FIR; however, the learned trial Court rightly rejected such contention after accepting the explanation of P.W.7 that he took a longer route out of fear of encountering the accused. Further, the defence did not cross-examine the Investigating Officer regarding the time of dispatch of the FIR to the Magistrate and hence, no adverse inference can be drawn. Reliance was placed on the judgment of the Hon'ble Supreme Court in *Pattipati Venkaiah v. State of Andhra Pradesh*¹, wherein it has been held that mere delay in forwarding the FIR to the Magistrate is insufficient to discard an otherwise credible prosecution case.

14. Learned ASC submitted that the testimonies of P.W.1, P.W.2, P.W.3 and P.W.7 the injured and natural eyewitnesses are clear, consistent, and mutually corroborative. He submitted that minor discrepancies highlighted by the defence are natural after a traumatic event and do not detract from the core of the prosecution case, which remains unshaken that the accused persons forcibly entered the house at night, assaulted the victims, tied and confined them, removed household articles and valuables, and thereafter fled.

15. He submitted that the medical evidence of P.W.5 fully supports the prosecution version. The injuries on P.W.1 and P.W.2 were medically verified and the timeline (24–36 hours) falls squarely within the time of the incident. The fact that the injuries were simple in nature does not undermine the prosecution case, as even minor injuries are sufficient to establish violence in a charge of dacoity.

¹ AIR 1985 SC 1715

It was further submitted that multiple articles were seized during investigation from different accused persons, and these articles were subjected to a duly conducted Test Identification Parade by P.W.8, the learned Judicial Magistrate. P.W.7 identified all the articles without hesitation. The fact that the articles were common household items does not vitiate the recovery, as the law does not require that stolen property be unique in character. Identification by a single competent witness is legally sufficient, especially when the witness is an inmate of the house and familiar with the articles.

16. Learned ASC emphasised that the accused persons failed to furnish any explanation regarding possession of the seized articles. During their examination under Section 313 Cr.P.C., they offered only evasive replies, which strengthen the inference of guilt. No defence witnesses were examined, nor any credible alternative narrative put forward to dislodge the prosecution case.

17. Regarding the plea of enmity, learned ASC submitted that although prior hostility existed, it provided motive for the accused to commit the offence rather than for the victims to falsely implicate several co-villagers. Courts have consistently held that while evidence in cases involving enmity requires careful scrutiny, it cannot be rejected when it is otherwise cogent, convincing, and corroborated by material evidence, as in the present case.

Learned ASC also highlighted the detailed and consistent testimonies of the eyewitnesses:

- **P.W.1** described the group of 25–30 armed co-villagers forcibly entering the house, assaulting and tying her husband, snatching ornaments, stabbing P.W.2, and removing valuables.
- **P.W.2** corroborated the forcible entry, assault, stabbing, confinement, and looting, and identified all the accused in Court.
- **P.W.3** narrated the snatching of her ornaments and sari, tying of her father-in-law, breaking of boxes, and extensive looting by accused who were known villagers.
- **P.W.7** provided a consistent account of the unlawful entry, assault, snatching, stabbing of Bijay, confinement, looting, and his subsequent fear-driven decision to take an indirect route to the police station.

Learned ASC further submitted that P.W.8, the Judicial Magistrate, conducted the Test Identification Parade strictly in accordance with law and confirmed that P.W.7 identified the articles without any police interference. P.W.5, the Medical Officer, fully corroborated the injuries sustained by the victims. P.W.11, the Investigating Officer, detailed the steps taken during investigation, including seizure of broken doors, damaged boxes, paddy, and other material objects from the houses of various accused persons.

18. In view of the above evidence, learned ASC submitted that the prosecution has proved the charges under Sections 395 and 457 IPC beyond all reasonable doubt. The conviction recorded by the learned trial Court is based on overwhelming, consistent, and credible evidence, and the grounds urged in appeal are wholly untenable.

Accordingly, he prayed that this Court may be pleased to uphold the judgment and order of conviction passed by the learned trial Court and dismiss the present appeal, the same being devoid of merit.

Observations

19. At the outset, it is evident that the learned Sessions Judge, after remand, undertook a fresh and independent appraisal of the entire evidentiary matrix and recorded detailed findings based on the testimonies of the injured eyewitnesses, seizure witnesses, medical evidence, recovery of articles, and the Test Identification Parade conducted by the Judicial Magistrate. The findings are not derivative but are founded squarely on the substantive evidence on record.

20. The testimonies of P.W.1, P.W.2, P.W.3 and P.W.7 all victims and natural witnesses stand out for their clarity, consistency, and corroborative value. Each of these witnesses has narrated the sequence of events in substantial detail, identified the appellants as members of the armed group that forcibly entered the house, assaulted the inmates, tied and confined them, and removed valuables and household articles. Their presence at the spot is natural and undisputed, and their evidence remained firm even after lengthy cross-examination. Minor discrepancies pointed out by the defence are superficial, do not touch the substratum of the prosecution case, and are rather reflective of natural variations expected from traumatized witnesses recounting a violent night-time attack.

21. The medical evidence furnished by P.W.5 corroborates the injuries sustained by P.W.1 and P.W.2 and supports the prosecution version of assault. The estimated age of the injuries falls well within the timeframe of the incident. The argument that the injuries were simple in nature does not in any manner dilute the prosecution case, as even minimal injuries suffice to prove the use of force and violence in an offence of dacoity.

22. The prosecution case receives further corroboration from the seizure of various articles recovered from the houses of multiple accused persons during investigation. The Test Identification Parade conducted by P.W.8, the Judicial Magistrate was carried out in accordance with established procedure, and P.W.7 correctly identified the articles belonging to the household. The contention that the articles were common household items or that identification by a single witness is inadequate is untenable in law. It is well settled that familiarity of a householder with his own property is a sufficient basis for identification.

23. The appellants have not furnished any plausible explanation for the possession of the seized items. Their evasive answers under Section 313 Cr.P.C. add strength to the prosecution case. The absence of defence witnesses also weakens the appellants' challenge to the prosecution version.

24. As regards the delay in lodging and forwarding the FIR, this Court finds that the explanation provided by P.W.7 is both natural and convincing. Fear of encountering the accused on the direct route and the decision to take a longer pathway in the dead of night constitute sufficient justification. Moreover, no question was put to the Investigating Officer on this aspect; no adverse inference can therefore be drawn. The settled legal position, as reaffirmed in *Pattipati Venkaiah* (supra), is that mere delay, when satisfactorily explained, cannot by itself erode the credibility of the prosecution.

25. The core plea of false implication on account of prior enmity is equally unconvincing. While the existence of enmity is admitted, it furnishes a possible motive for the accused to commit the offence rather than for the victims to falsely implicate several co-villagers in a grave charge of dacoity. The evidence of the prosecution witnesses has been scrutinized carefully with due caution and found to be cogent, credible, and corroborated on all material particulars.

Conclusion

26. On an overall conspectus, this Court finds no material infirmity, perversity, or illegality in the approach or findings of the learned trial Court. The prosecution has proved the charges under Sections 395 and 457 IPC beyond reasonable doubt, and the defence has not been able to create even a shadow of uncertainty sufficient to dislodge the conviction.

27. Having considered the rival submissions and upon a meticulous re-examination of the entire evidence and materials available on record, this Court is of the view that the appellants have failed to make out any ground warranting interference with the well-reasoned judgment of the learned trial Court. In view of that, this Court is of the considered opinion that the appeal is devoid of merit.

28. Learned Counsel for the appellants at this point makes an additional submission that the appellant nos. 2 and 3 have already expired during the pendency of the proceedings, and the remaining appellants are now of significantly advanced age. Appellant no. 4 is presently about 88 years old, and appellant no. 5, who was only 18 years of age at the time of the incident, is now approximately 61 years old. It was urged that all surviving appellants suffer from age-related physical infirmities, and that subjecting them to a sentence of rigorous imprisonment for seven years at this stage of their lives would be unproductive, medically burdensome, and contrary to the principles of reformatory and humane sentencing.

It was further submitted that having regard to the compelling mitigating circumstances, including the age of the appellants, their prolonged exposure to

litigation for over four decades, and their unblemished conduct during this entire period, this Court, in exercise of its appellate jurisdiction, is fully empowered to modify, reduce, or suitably alter the substantive sentence imposed by the learned trial Court.

29. In light of the aforesaid submissions advanced on the question of sentence, and upon due consideration of the advanced age of the surviving appellants, their prolonged exposure to the rigours of the criminal process for over four decades, as well as the mitigating circumstances placed on record, this Court deems it appropriate to interfere with the quantum of sentence. Accordingly, while upholding the conviction of the appellants for the offence punishable under Section 395 of the I.P.C., the substantive sentence of rigorous imprisonment is reduced to a period of one year. No separate sentence is awarded for the offence under Section 457 of the I.P.C. The period of sentence already undergone by the appellants shall be set off in terms of Section 428 Cr.P.C.

However, in order to balance the ends of justice, the appellants are directed to pay a fine of Rs.10,000/- (Rupees Ten Thousand) each within a period of three months, which shall be disbursed to the victims or their legal representatives in accordance with Section 357 Cr.P.C. It is made clear that in the event of default in payment of the fine, the consideration extended by this Court for reduction of the substantive sentence shall stand withdrawn, and the appellants shall be liable to undergo the sentence as originally awarded by the learned Trial Court.

The convict-appellants shall appear before the learned Trial Court within one month from today to serve the remainder of the modified sentence, failing such appearance, they may be taken into custody in accordance with law.

30. In the result, the appeal, insofar as it challenges the conviction, stands dismissed. The appeal is, however, conditionally allowed to the limited extent of modification/reduction of the sentence as indicated above.

Headnotes prepared by:

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

Result of the case:
Appeal Dismissed.

2025 (III) ILR-CUT-1452

**BADANI KUMARI PATRA (DEAD) & ORS.
V.
PURNA CHANDRA JENA (DEAD) & ORS.**

[SA NO. 362 OF 1999]

14 NOVEMBER 2025

[A.C. BEHERA, J.]**Issue for Consideration**

Whether a registered sale deed can be invalidated at the instance of a third party on the plea that the consideration under the sale deed was not paid.

Headnotes

PROPERTY LAW – The original owner sold the properties to defendants No. 3 to 5 through registered sale deed dtd. 30.03.1960 and delivered possession thereof – Subsequently the defendants No. 3 to 5 sold the suit properties to plaintiff through two registered sale deeds – At the time of execution of registered sale deed dtd. 30.03.1960 the settlement operation was almost completed and the final Hal ROR of the suit properties were published in the name of original owner – The son of original owner illegally executed a registered sale deed dtd. 23.10.1976 in respect of suit properties in favour of Defendants No. 1 & 2 – The plaintiffs filed the suit praying for declaration of their right, title and interest over the suit properties and to confirm their possession – The defendant No. 1 & 2 challenged the sale deed dated 30.03.1960 upon on the ground of non-payment of entire consideration amount – Whether validity of the sale deed can be questioned on the ground of non payment of consideration by a person not party to the said sale deed.

Held: No – It is the settled propositions of law that, when languages employed in a deed or instrument are clear and unambiguous, in that case, common literary meaning ought to be assigned in interpreting the said deed – As per law, non-payment of entire consideration amount or part payment of consideration amount of a sale deed cannot make the sale deed invalid under law – It is also the law that, a person, who is not a party to the sale deed, the said person, cannot challenge the sale deed on the ground of non-payment of consideration amount – As such, a stranger to the deed is estopped under law to challenge the validity of a sale deed on the ground of non-payment of the consideration amount. (Para 14)

When it is held that, the undisputed owners of the suit properties i.e. Hadu Baliarsingh and Maheswar Baliarsingh had transferred their right, title

interest and possession of the suit properties in favour of the Defendant Nos.3 to 5 (vendors of the plaintiffs) by executing and registering the sale deed No.2268 dated 30.03.1960 (Ext.2) and had delivered possession thereof, then at this juncture, in view of the principles of law enunciated in the ratio of the aforesaid decisions, as per law, no title and possession of the suit properties was available with the vendors of the Defendant No.1 i.e. sons of Hadu Baliarsingh along with Maheswar Baliarsingh to transfer the same in favour of the Defendant No.1 through RSD No.7805 dated 23.10.1976 vide Ext. A – For which, the said sale deed No.7805 dated 23.10.1976 vide Ext. A executed by sons of Hadu Baliarsingh along with Maheswar Baliarsingh in favour of the Defendant No.1 in respect of the suit properties is void ab-initio being non-est in the eye of law. (Para 19)

Citations Reference

Kamal Kishore Sehgal (D) thr. L.Rs. and others Vrs. Murti Devi (Dead) thr. LRs., **2024 (4) C.C.C. (SC) 94**; P.Mahalingam and another Vrs. The Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others, **2008 (4) CTC 661 (Madras)**; Nrusinghanath Deb and others Vrs. Banamali Panda and others, **AIR 1970 (Odisha) 218**; Vidhyadhar Vrs. Manikrao and others, **AIR 1999 (SC) 1441**; Thankamoni Amma Padmakumari Amma and others Vrs. Ganapathi Suresh and others, **2019 (1) Civ.C.C. (Kerala) 277**; Nataraja Naidu (Died) Vrs. Soundararajan, **2020 (4) Civ.C.C. 264 (Madras)**; Shri Govind Real Infra India Pvt. Ltd. Vrs. Govind Town Planers Pvt. Ltd. and others, **2023 (4) CCC 281 (Rajasthan)**; Jarnail Singh and others Vrs. Angrez Kaur and others, **2019 (1) Civ.C.C. 451 (P & H)**; Dahiben Vrs. Arvindbhai Kalyanji Bhanusali (D) thr. LRs and others, **2020 (2) CCC 449 (SC)**; Sanatan Mohapatra and others Vrs. Hakim Mohammad Kazim Mohmmad and others, **AIR 1977 (Orissa) 194**; Muddasani Venkata Narsaiah (D) Th. Lrs. Vrs. Muddasani Sarojana, **2016 (I) CLR (SC) 1225 in Para No.17 and 2016 (II) OLR 324**; Parkash Kaur Vrs. Surjit Kaur and others, **2010 (4) Civ.C.C. 565 (P & H)**; Prem Chand Vrs. Ameshwar Singh, **2017 (2) Civ.C.C. 462 (H.P.)**; P.Kishore Kumar Vrs. Vittal K.Patkar, **2023 Live Law (SC) 999**; Savitri Bai and others Vrs. Savitri Bai, **2024 (I) CCC (SC) 203 & 2024 (1) CLJ (SC) 398**; Shyam Kumar Inani Vrs. Vinod Agrawal and others, **2024 (4) CCC (SC) 188**; Kaushik Premkumar Mishra and others Vrs. Kanji Ravaria and others, **2024 (3) CCC 261 (SC)**; Gobinda Chandra Sahoo and others Vrs. State of Orissa and others, **2009 (Supp-2) OLR 118**; Shanti Budhiya Vesta Patel and others Vrs. Nirmala Jayprakash Tiwari and others, **2010 (II) OLR 126 (SC)**; Alekh Rajhans Vrs. Joint Commissioner, Consolidation and others, **2013 (1) OLR 584**; Shyamlal Poddar Vrs. Sukhdeo Mandal and others, **2025 (3) CCC 286 (Jharkhand)**; Board of Secondary Education, Odisha, Cuttack Vrs. Joint Commissioner, Consolidation & Settlement and others, **2010 (2) OJR 303**; United Bank of India Vrs. Farhana Khan and others, **2012 (1) CCC 181 (Delhi)**; Rama

Chandra Sahu and others Vrs. Gopinath Panigrahi, **2014 (1) OJR 792**; Pragnya Rout Vrs. Hemaprava Ray and others, **2005 (II) CLR 460**; Indore Development Authority Vrs. Mohanlal and others decided by five Judges Bench, **AIR 2020 Supreme Court 1496 – referred to.**

List of Acts

Transfer of Property Act, 1882

Keywords

Sale; Consideration; Registered Sale Deed; Payment; Part payment; Subsequent Sale deed; Doctrine of bonafide purchaser; Subsequent purchaser; Recovery of Possession; Non payment of consideration amount

Case Arising From

Judgment and decree passed by learned Trial Court in O.S. No. 110/34 of 1981-1 and by the order passed by the learned 1st Appellate Court in T.A. No. 2 of 1984.

Appearances for Parties

For Appellants : Mr. A. Mishra

For Respondents : Mr. S. Patnaik

Judgment/Order

Judgment

A.C. BEHERA, J.

This Second Appeal has been preferred against the confirming judgment.

2. The Appellants in this Second Appeal were the Defendant Nos.1 and 2 before the Trial Court in the suit vide O.S. No.110/34 of 1981-I and Appellants before the 1st Appellate Court in the first appeal vide T.A. No.2 of 1984.

The Respondent Nos.4 to 12 are the successors of the Defendant Nos.3 and 4 in the suit vide O.S. No.110/34 of 1981-I and Respondent Nos.4 to 5(h) before the 1st Appellate Court in the first appeal vide T.A. No.2 of 1984.

The Respondent No.13 in this 2nd appeal was the Defendant No.5 before the Trial Court in the suit vide O.S. No.110/34 of 1981-I and Respondent No.6 before the 1st Appellate Court in the first appeal vide T.A. No.2 of 1984.

The Respondent Nos.1 to 3 in this 2nd Appeal were the Plaintiffs before the Trial Court in the suit vide O.S. No.110/34 of 1981-I and Respondent Nos.1 to 3 before the 1st Appellate Court in the first appeal vide T.A. No.2 of 1984.

3. The suit of the Plaintiffs (Respondent Nos.1 to 3 in the 2nd appeal) against the Defendants (Appellants and Respondent Nos.4 to 13 in the 2nd appeal) vide O.S. No.110/34 of 1981-I was a suit for declaration of title, confirmation of possession, in

alternative recovery of possession, if they (plaintiffs) are found to be dispossessed from the suit properties during the pendency of the suit vide O.S. No.110/34 of 1981-I.

The suit properties are Ac.0.061 Dec. of Sabik Plot No.270 under Sabik Khata No.113 in Mouza Kalaraput under Sahid Nagar Police Station, which corresponds to Hal Plot No.675 under Hal Khata No.212 described in Schedule A of the Plaint.

As per the averments made by the Plaintiffs in their plaint in the suit vide O.S. No.110/34 of 1981-I, the suit properties originally belonged to Hadu Baliarsingh and Maheswar Baliarsingh, sons of late Natabar Baliarsingh. The said Hadu Baliarsingh and Maheswar Baliarsingh sold the suit properties to the Defendant Nos.3 to 5 i.e. to Dhadu Sahu, Bhramar Sahu and Loknath Sahu through registered sale deed No.2268 dated 30.03.1960 (Ext.2) and delivered possession thereof. Accordingly, the Defendant Nos.3 to 5 were the owners of the suit properties. While, the Defendant Nos.3 to 5 were the owners and in possession over the suit properties, they (Defendant Nos.3 to 5) sold the same to the Plaintiffs through two registered sale deeds vide registered sale deed Nos.5493 and 5494 dated 10.7.1979 (Ext.1 and Ext.5). The Registered Sale deed No.5493 dated 10.07.1979 was executed by Defendant No.5 (Loknath Sahu) in favour of the Plaintiffs and the Registered Sale deed No.5494 dated 10.07.1979 were executed by the Defendant Nos.3 and 4 (Dhadu Sahu and Bhramar Sahu) in favour of the Plaintiffs. As such, after purchasing the suit properties through the above two registered sale deeds vide registered sale deed Nos.5493 and 5494 dated 10.7.1979 (Exts.1 and 5), the Plaintiffs possessed the same being the owners thereof.

At the time of execution and registration of the sale deed by Hadu Baliarsingh and Maheswar Baliarsingh i.e. Sale Deed No.2268 dated 30.03.1960 (Ext.2) in favour of the vendors of the Plaintiffs i.e. in favour of the Defendant Nos.3 to 5 (Dhadu Sahu, Bhramar Sahu and Loknath Sahu), almost all stages of settlement operation were completed. For which, the final Hal R.o.R. of the suit properties were published in the year 1962 in the names of its previous owners i.e Hadu Baliarsingh and Maheswar Baliarsingh, though, Hadu Baliarsingh and Maheswar Baliarsingh had no interest in the suit properties due to the selling of the same by them to the Defendants Nos.3 to 5 (Dhadu Sahu, Bhramar Sahu and Loknath Sahu) through registered sale deed No.2268 dated 30.3.1960 (Ext.2).

When, the Hal R.o.R. of the suit properties was erroneously published in the year 1962 in the name of Hadu Baliarsingh and Maheswar Baliarsingh (vendor's vendor of the Plaintiffs), the Sons of Hadu Baliarsingh along with Maheswar Baliarsingh illegally executed a registered sale deed bearing sale deed No.7805 dated 23.10.1976 (Ext.A) in respect of the suit properties in favour of the Defendant No.1 knowing fully well that, they have no right, title, interest and possession in the same.

The Plaintiffs had kept the suit properties vacant in order to construct their residential building on the same. The Defendant No.2 is the husband of the Defendant No.1. On the strength of the aforesaid illegal sale deed No.7805 dated 23.10.1976 (Ext.A) in respect of the suit properties executed by the sons of Hadu Baliarsingh along with Maheswar Baliarsingh in favour of the Defendant No.1, the Defendant Nos.1 and 2 (husband and wife) tried to establish their possession over the suit properties and started construction of a pucca structure in a portion of a suit properties on dated 10.02.1981, to which, the Plaintiffs protested and approached the Police and when the Police expressed that, the dispute between them is a civil dispute, then, the Plaintiffs approached the Civil Court by filing the suit vide O.S. No.110/34 of 1981-I against the Defendant Nos.1 and 2 and arraying the vendors of the Plaintiffs i.e. Defendant Nos.3 to 5 as proforma Defendants praying for declaration of their right, title and interest over the suit properties and to confirm their possession on the same, in alternative to recover the possession of the same, if they (Plaintiffs) are found to be dispossessed from the same during the pendency of the suit through issuance of mandatory injunction against the Defendant Nos.1 and 2 for demolition of their illegal constructions on the suit properties and to injunct them (Defendant Nos.1 and 2) permanently from coming over the suit properties and from creating any sort of disturbances in their possession on the same along with other reliefs, to which, they (Plaintiffs) are entitled for.

4. Having been noticed from the Trial Court in the suit vide O.S. No.110/34 of 1981-I, the Defendant Nos.1 and 2 contested the same by filing their joint written statement denying the averments made by the Plaintiffs in their plaint taking their specific stands/pleas that, Hadu Baliarsingh and Maheswar Baliarsingh are the real owners of the suit properties and after the death of Hadu Baliarsingh, the sons of Hadu Baliarsingh along with Maheswar Baliarsingh sold the suit properties in favour of the Defendant No.1 through Sale deed No.7805 dated 23.10.1976 (Ext.A) for a consideration amount of Rs.1500/- and gave delivery of possession of the same to her (Defendant No.1) and since then i.e. since 23.10.1976, they (Defendant Nos.1 and 2) being the wife and husband respectively are in peaceful possession over the suit properties and they (Defendant Nos.1 and 2) have surrounded the suit properties in the year 1976 through a fence and they are running a firewood gola on a portion of the same and they have also constructed a thatched house on the northern side of the suit properties. After closing their firewood gola, they (Defendant Nos.1 and 2) have raised constructions of five rooms on the suit properties up to lintel level. They (Defendant Nos.1 and 2) are also running a control shop on the same and the said control shop has been running in the name of the son of the Defendant No.1. When an injunction order was passed by the Trial Court, then, they (Defendant Nos.1 and 2) stopped their constructions on the suit properties. As such, they (Defendant Nos.1 and 2) are the real owners of the suit properties, in which, the Plaintiffs have no interest. The sale deed vide Ext.2 executed by Hadu Baliarsingh and Maheswar Baliarsingh in respect of the suit properties in favour of the Defendant Nos.3 to 5 in the year 1960 has not been acted upon. Because, it was decided between the

Defendant Nos.3 to 5 and Hadu Baliarsingh and Maheswar Baliarsingh that, only after the payment of the entire consideration amount by the Defendant Nos.3 to 5 to Hadu Baliarsingh and Maheswar Baliarsingh, the title of the suit properties shall pass to them (Defendant Nos.3 to 5), but, when the defendant Nos.3 to 5 did not pay the entire consideration amount to their vendors i.e. to Hadu Baliarsingh and Maheswar Baliarsingh in respect of the suit properties, the title of the suit properties had not passed from Hadu Baliarsingh and Maheswar Baliarsingh to the Defendant Nos.3 to 5 and the title thereof had remained with Hadu Baliarsingh and Maheswar Baliarsingh in spite of execution and registration of the sale deed No.2268 dated 30.03.1960 (Ext.2) by Hadu Baliarsingh and Maheswar Baliarsingh in favour of the Defendant Nos.3 to 5 (Dhadu Sahu, Bhramar Sahu and Loknath Sahu).

For which, in the Hal Settlement of the year 1962, the final R.o.R. of the suit properties was lawfully published in the name of Hadu Baliarsingh and Maheswar Baliarsingh. The sons of Hadu Baliarsingh along with Maheswar Baliarsingh have executed and registered the sale deed No.7805 dated 23.10.1976 vide Ext.A in respect of the suit properties properly in favour of the Defendant No.1 and delivered possession of the same. As such, the Defendant No.1 is the lawful purchaser and owner of the suit properties, in which, the Plaintiffs have no right, title, interest and possession.

Therefore, the suit of the Plaintiffs is liable to be dismissed against them (Defendant Nos.1 and 2).

The Defendant Nos.3 to 5 had not chosen to contest the suit vide O.S. No.110/34 of 1981-I filed by the Plaintiffs, for which, they (Defendant Nos.3 to 5) were set ex-parte.

5. Basing upon the aforesaid pleadings and matters in controversies between the parties, altogether eight numbers of issues were framed by the learned Trial Court in the suit vide O.S. No.110/34 of 1981-I and the said issues are:-

I s s u e s

1. Is the suit maintainable?
2. Have the plaintiffs any cause of action?
3. Is the suit barred by limitation?
4. Have the plaintiffs any right, title and interest over the suit properties?
5. Had the vendors of the plaintiffs acquired any title and possession over the suit property on purchase?
6. Has Defendant No.1 any right, title, interest and possession over the suit properties?
7. Are the Plaintiffs entitled to the reliefs i.e. mandatory and perpetual injunction as claimed?
8. To what relief, if any, the plaintiffs are entitled?

6. In order to substantiate the aforesaid reliefs sought for by the Plaintiffs against the Defendant Nos.1 and 2, they (Plaintiffs) examined altogether nine numbers of witnesses including the Plaintiff No.2 as P.W.8 and exhibited several documents on their behalf vide Exts.1 to 11.

On the contrary, in order to defeat/nullify the suit of the Plaintiffs, the contesting Defendant Nos.1 and 2 examined seven numbers of witnesses from their side including the son of the Defendant Nos.1 and 2 i.e. Ramesh Chandra Patra as D.W.7 and exhibited several document on their behalf vide Exts.A to G.

7. After conclusion of hearing and on perusal of the materials, evidence and documents available in the record, the learned Trial Court answered all the issues in favour of the Plaintiffs and against the Defendant Nos.1 and 2 and basing upon the findings and observations made by the learned Trial court in all the issues in the favour of the Plaintiffs and against the Defendant Nos.1 and 2, the learned Trial Court decreed the suit of the Plaintiffs vide O.S. No.110/34 of 1981-I on contest against the Defendant Nos.1 and 2 and ex-parte against the proforma Defendant Nos.3 to 5 as per its judgment and decree dated 26.11.1983 and 08.12.1983 respectively and declared the right, title and interest of the Plaintiffs over the suit properties entitling them (Plaintiffs) to recover the possession of the suit properties from the Defendant Nos.1 and 2 and directed the Defendant Nos.1 and 2 for the removal of the structures raised by them on the same and to deliver the vacant possession of the same to the Plaintiffs within a period of four months from the date of its judgment and decree giving liberty to the Plaintiffs to take the possession of the same through Court, if they (Defendant Nos.1 and 2) fails to deliver vacant possession of the suit properties removing the illegal structures therefrom within the said stipulated period and injuncted/restrained the Defendant Nos.1 and 2 permanently from interfering in the peaceful possession of the Plaintiffs over the suit properties assigning the reasons that,

after execution of the sale deed vide Ext.2 by Hadu Baliarsingh and Maheswar Baliarsingh in respect of the suit properties in favour of the Defendant Nos.3 to 5 on dated 30.03.1960, the said Hadu Baliarsingh and Maheswar Baliarsingh had no interest in the suit properties. For which, the Defendant Nos.3 to 5 being the owners of the suit properties, they had transferred the suit properties in favour of the Plaintiffs lawfully through execution and registration of the sale deed bearing Nos. 5493 and 5494 dated 10.07.1979 vide Exts.1 and 5 respectively and since the date of purchase, the Plaintiffs are the owners of the suit properties, in which, the Defendants including the Defendant Nos.1 and 2 have no interest, but, the Defendant Nos.1 and 2 without having their any interest in the suit properties, they (Defendant Nos.1 and 2) had entered into the suit properties forcibly and made some illegal constructions up to the lintel level, for which, they (Defendant Nos.1 and 2) are directed to deliver possession of the same to the Plaintiffs removing the illegal structures therefrom.

8. On being dissatisfied with the aforesaid judgment and decree dated 26.11.1983 and 08.12.1983 respectively passed by the learned Trial Court in the suit vide O.S. No.110/34 of 1981-I in favour of the Plaintiffs and against the Defendant

Nos.1 and 2, they (Defendant Nos.1 and 2) challenged the same preferring the 1st Appeal vide T.A. No.2 of 1984 being the Appellants against the Plaintiffs arraying them (Plaintiffs) as Respondent Nos.1 to 3 and also arraying the proforma defendant Nos.3 to 5 as Respondent Nos.4 to 6.

When, during the pendency of the 1st Appeal, the Defendant Nos.4 and 5 expired, then, in their places, their LR's were substituted.

9. After hearing from both the sides, the learned 1st Appellate Court dismissed that first Appeal vide T.A. No.2 of 1984 of the Appellants as per its judgment and decree dated 23.07.1999 and 06.08.1999 respectively concurring/confirming the findings and observations made by the learned Trial Court in the suit vide O.S. No.110/34 of 1981-I in favour of the Plaintiffs.

10. On being aggrieved with the aforesaid judgment and decree of the dismissal of the 1st Appeal vide T.A. No.2 of 1984 of the Appellants (Defendant Nos.1 and 2 in the suit vide O.S. No.110/34 of 1981-I), they (Defendant Nos.1 and 2) challenged the same preferring this 2nd appeal vide S.A. No.362 of 1999 being the Appellants against all the Plaintiffs and Defendant Nos.3 to 5 (Respondents of the 1st Appeal vide T.A. No.2 of 1984) arraying them as Respondents.

When, during the pendency of the 2nd Appeal, the Appellants/Defendants Nos.1 and 2 expired, then, in their places, their LR's have been substituted.

Likewise, when during the pendency of the 2nd appeal, the Respondent No.1 (Plaintiff No.1) expired, then, in his place his LR's have been substituted.

11. This 2nd Appeal was admitted on formulation of the following substantial questions of law and the said questions are :-

i. Whether, the learned Courts below misread and misconstrued Ext.2 (the sale deed dated 30.03.1960) in respect of delivery of possession and passing of consideration amount, even though, there are discrepancies in the evidence of P.Ws.2 and 5 and did not consider the consistent evidence of D.Ws in their proper perspectives?

ii. Whether, the Courts below were justified in rendering a finding that, the vendors of the Defendants lost their title over the suit properties on the basis of the sale deed dated 30.03.1960 (Ext.2) and whether, the title of the Defendant Nos.1 and 2 thereon was created on the basis of the sale deed vide Ext.A in their favour and whether the Plaintiffs have no interest in the same due to non-acted upon of the sale vide Ext.2?

iii. Whether, the learned trial court and the learned 1st Appellate Court have failed to consider the material documents vide Exts. C, D, E and F along with evidence of D.Ws relating to the title and possession of the suit land?

12. I have already heard from the learned counsels of both the sides.

13. As per the findings and observations made by the learned Trial Court and learned 1st Appellate Court on the basis of the pleadings and evidence of the Parties, the aforesaid three formulated substantial questions of law are interlinked having

ample nexus with each other, for which, the aforesaid three substantial questions of law are taken up together analogously for their discussions hereunder:-

When, the Defendant Nos.1 and 2 have challenged the sale deed No.2268 dated 30.03.1960 (Ext.2) executed by Hadu Baliarsingh and Maheswar Baliarsingh in favour of the Defendant Nos.3 to 5 alleging that, the same was not a sale deed and the said deed was not acted upon on the ground of non-payment of entire consideration amount, then at this juncture, it is to be seen, whether the above ground taken by the Defendant Nos.1 and 2 challenging the validity of the sale deed No.2268 dated 30.03.1960 (Ext.2) on the ground of non-payment of entire consideration amount can make such deed vide Ext.2 void as per law.

14. It is the settled propositions of law that, when languages employed in a deed or instrument are clear and unambiguous, in that case, common literary meaning ought to be assigned in interpreting the said deed.

As per law, non-payment of entire consideration amount or part payment of consideration amount of a sale deed cannot make the sale deed invalid under law.

It is also the law that, a person, who is not a party to the sale deed, the said person, cannot challenge the sale deed on the ground of non-payment of consideration amount.

As such, a stranger to the deed is estopped under law to challenge the validity of a sale deed on the ground of non-payment of the consideration amount.

On these aspects, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between **Kamal Kishore Sehgal (D) thr. L.Rs. and others Vrs. Murti Devi (Dead) thr. LR.** reported in **2024(4) C.C.C. (SC) 94 in Para No.18 that,**

where the language employed in the instrument is clear and unambiguous, the common literary meaning ought to be assigned in interpreting the same.

(ii) In a case between **P. Mahalingam and another Vrs. The Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others** reported in **2008 (4) CTC 661 (Madras) that,**

Payment of price alone or delivery of possession does not complete conveyance, but, it is intention of parties to transfer ownership from vendor to purchaser that completes sale.

(iii) In a case between **Nrusinghanath Deb and others Vrs. Banamali Panda and others** reported in **AIR 1970 (Odisha) 218 that,**

Passing of consideration not a condition precedent for transfer of title.

(iv) In a case between **Vidhyadhar Vrs. Manikrao and others** reported in **AIR 1999 (SC) 1441 in Para No.36 that,**

Payment of whole of the price at the time of execution of sale deed is not sine qua non to the completion of sale.

(v) In a case between **Thankamoni Amma Padmakumari Amma and others Vrs. Ganapathi Suresh and others** reported in **2019 (1) Civ.C.C. (Kerala) 277 in Para No.9 that,**

Payment of a part consideration would be sufficient to constitute a complete sale.

(vi) In a case between **Nataraja Naidu (Died) Vrs. Soundararajan** reported in **2020(4) Civ.C.C. 264 (Madras) in Para No.7 that,**

Non-payment of entire sale consideration does not ipso facto invalidate the very sale.

(vii) In a case between **Shri Govind Real Infra India Pvt. Ltd. Vrs. Govind Town Planers Pvt. Ltd. and others** reported in **2023 (4) CCC 281 (Rajasthan) that,**

Actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale.

(viii) In a case between **Jarnail Singh and others Vrs. Angrez Kaur and others** reported in **2019 (1) Civ.C.C. 451 (P & H) in Para No.16 that,**

Non-payment of sale consideration does not make the sale deed void in the absence of a clause to that effect in the sale deed, because, in that case, seller has the only right to recover the consideration amount.

(ix) In a case between **Dahiben Vrs. Arvindbhai Kalyanji Bhanusali (D) thr. LRs and others** reported in **2020 (2) CCC 449 (SC) that,**

The non-payment or part payment of the sale price would not affect the validity of the sale. Once the title in the property is passed, even if, the balance sale consideration is not paid, the sale could not be invalidated on this ground.

(x) In a case between **Sanatan Mohapatra and others Vrs. Hakim Mohammad Kazim Mohmmad and others** reported in **AIR 1977 (Orissa) 194 that,**

A stranger to the sale deed cannot question the payment of consideration etc, because, the deed really operative between the Parties.

(xi) In a case between **Muddasani Venkata Narsaiah (D) Th. Lrs. Vrs. Muddasani Sarojana** reported in **2016 (I) CLR (SC) 1225 in Para No.17 and 2016 (II) OLR 324 that,**

Third party cannot question the execution of the sale deed on the ground of passing of consideration amount.

(xii) In a case between **Parkash Kaur Vrs. Surjit Kaur and others** reported in **2010 (4) Civ.C.C. 565 (P & H) in Para No.11 that,**

A stranger to the sale deed cannot challenge the sale on the ground that, it is without consideration or a paper transaction.

15. When, the contents of the sale deed No.2268 dated 30.03.1960 (Ext.2) are clear and unambiguous in respect of passing of title of the suit properties covered under that Ext.2 (sale deed) from the vendors thereof (owners of the suit properties i.e. Hadu Baliarsingh and Maheswar Baliarsingh) to the vendees thereof i.e. Defendant Nos.3 to 5, then at this juncture, in view of the principles of law enunciated in the ratio of the aforesaid decisions of the Hon'ble Courts and Apex Court, it cannot be held that, the sale deed No.2268 dated 30.03.1960 (Ext.2) executed by the Hadu Baliarsingh and Maheswar Baliarsingh in favour of the Defendant Nos.3 to 5 was not a sale deed and the same was not acted upon. Because, the Defendant Nos.1 and 2 not being a Party to the sale deed No.2268 dated 30.03.1960 vide Ext.2 are estopped/precluded under law to challenge the validity of the said sale deed No. 2268 dated 30.03.1960 vide Ext. 2 on the ground of

non-payment of entire consideration amount by the Defendant Nos.3 to 5 to their vendors i.e. Hadu Baliarsingh and Maheswar Baliarsingh. For which, the concurrent findings and observations made by the learned Trial Court and learned 1st Appellate Court that, the sale No.2268 dated 30.03.1960 vide Ext.2 is a valid sale deed and by which, the title and possession of the suit properties had passed from Hadu Baliarsingh and Maheswar Baliarsingh to the Defendant Nos.3 to 5 are proper and the same are acceptable under law.

16. So far as the legal effect of the Hal R.o.R. of the suit properties in the names of the vendors of the Defendant Nos.3 to 5 i.e. in the names of Hadu Baliarsingh and Maheswar Baliarsingh after execution and registration of the sale deed Nos.2268 dated 30.03.1960 vide Ext.2 in respect of the suit properties in favour of the Defendant Nos.3 to 5 is concerned:-

On this aspect the propositions of law has already been clarified in the ratio of the following decision:-

(i) In a case between *Prem Chand Vrs. Ameshwar Singh* reported in **2017 (2) Civ.C.C. 462 (H.P.) in Para No.11 that,**
merely, because, the sale deed was not given effect in the revenue record, the same does not extinguish right of the purchaser.

17. So, in view of the propositions of law enunciated in the ratio of the aforesaid decision, after transfer of the suit properties through RSD No.2268 dated 30.03.1960 vide Ext. 2 by Hadu Baliarsingh and Maheswar Baliarsingh in favour of the Defendant Nos. 3 to 5, the R.o.R. of the suit properties prepared in the names of Hadu Baliarsingh and Maheswar Baliarsingh by the Settlement Authorities cannot extinguish the right, title and interest of the purchasers of the same i.e. Defendant Nos.3 to 5 in the suit properties in any manner.

18. So far as the legal effect of the subsequent sale deed i.e. the 2nd sale deed in respect of the suit properties executed by the sons of Hadu Baliarsingh along with Maheswar Baliarsingh vide R.S.D. No.7805 dated 23.10.1976 (Ext.A) in favour of the Defendant No.1 is concerned:-

On this aspect the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between *P. Kishore Kumar Vrs. Vittal K.Patkar* reported in **2023 Live Law (SC) 999 in Para No.18 that,**

A vendor cannot transfer a title to the vendee better than he himself possesses, as per the principle arising from the maxim nemo dat quod non habet, i.e., "no one can confer a better title than what he himself has".

(ii) In a case between *Savitri Bai and others Vrs. Savitri Bai* reported in **2024 (I) CCC (SC) 203 & 2024 (I) CLJ (SC) 398 that,**

A person who is not owner of property cannot pass title of property to another person even by executing a registered sale deed.

(iii) In a case between *Shyam Kumar Inani Vrs. Vinod Agrawal and others* reported in **2024 (4) CCC (SC) 188 in Para No. 36 that,**

If, the vendors did not have any rights, the vendees cannot be said to be in any better position.

(iv) In a case between ***Kaushik Premkumar Mishra and others Vrs. Kanji Ravaria and others*** reported in **2024 (3) CCC 261 (SC) in Para No.35 that,**

In case of subsequent sale deed, the doctrine of bona fide purchaser does not protect a subsequent purchaser, if the vendor had already transferred those rights through a prior sale deed.

(v) In a case between ***Gobinda Chandra Sahoo and others Vrs. State of Orissa and others*** reported in **2009 (Supp-2) OLR 118 in Para No.6 that,**

A person cannot transfer title before he himself possess the same. If the title had been passed to the state the sale deed itself becomes void and the sale deed in favour of the Petitioners remained invalid and incapable to confer any right and interest in the property.

(vi) In a case between ***Shanti Budhiya Vesta Patel and others Vrs. Nirmala Jayprakash Tiwari and others*** reported in **2010 (II) OLR 126 (SC) in Para No.28 that,**

No person can confer on another a better title than he himself has.

(vii) In a case between ***Alekh Rajhans Vrs. Joint Commissioner, Consolidation and others*** reported in **2013 (1) OLR 584 that,**

After executing and registering the sale deed earlier. Subsequent sale deed is inconsequential.

(viii) In a case between ***Shyamlal Poddar Vrs. Sukhdeo Mandal and others*** reported in **2025 (3) CCC 286 (Jharkhand) that,**

Vendor cannot pass any better title than what he actually possesses.

(ix) In a case between ***Board of Secondary Education, Odisha, Cuttack Vrs. Joint Commissioner, Consolidation & Settlement and others*** reported in **2010 (2) OJR 303 in Para No.7 that,**

Earlier transferee shall have priority of rights over the subsequent transferee.

(x) In a case between ***United Bank of India Vrs. Farhana Khan and others*** reported in **2012 (1) CCC 181 (Delhi) in Para No.9 that,**

Prior purchaser will have pre-ponderance over subsequent purchaser.

(xi) In a case between ***Rama Chandra Sahu and others Vrs. Gopinath Panigrahi*** reported in **2014 (1) OJR 792 that,**

A 2nd sale deed for the same land is void from its inception i.e. the same is void ab initio and no contract delivery. No declaration is necessary to avoid it.

(xii) In a case between ***Pragnya Rout Vrs. Hemaprava Ray and others*** reported in **2005 (II) CLR 460 in Para No.22 that,**

A registered document, which is otherwise ab initio void need not be set aside. If the deed is void at the threshold, no steps need be taken to set it aside. The vendor may not have title to convey and in such a case the title deed conveys no title and can be ignored as not worth the paper written on.

19. As per the discussions and observations made above, when it is held that, the undisputed owners of the suit properties i.e. Hadu Baliarsingh and Maheswar

Baliarsingh had transferred their right, title interest and possession of the suit properties in favour of the Defendant Nos.3 to 5 (vendors of the plaintiffs) by executing and registering the sale deed No.2268 dated 30.03.1960 (Ext.2) and had delivered possession thereof, then at this juncture, in view of the principles of law enunciated in the ratio of the aforesaid decisions, as per law, no title and possession of the suit properties was available with the vendors of the Defendant No.1 i.e. sons of Hadu Baliarsingh along with Maheswar Baliarsingh to transfer the same in favour of the Defendant No.1 through RSD No.7805 dated 23.10.1976 vide Ext.A.

For which, the said sale deed No.7805 dated 23.10.1976 vide Ext.A executed by sons of Hadu Baliarsingh along with Maheswar Baliarsingh in favour of the Defendant No.1 in respect of the suit properties is void ab-initio being non-existent in the eye of law. Because, as per law, the said sale deed vide Ext.A in respect of the suit properties does not convey any title in favour of the Defendant No.1. Therefore, the said deed vide Ext.A is to be ignored, as not worth the paper written on.

So, the findings and observations made by the learned Trial Court and the learned 1st Appellate Court that, the so-called sale deed No.7805 dated 23.10.1976 (Ext.A) executed by the sons of Hadu Baliarsingh along with Maheswar Baliarsingh in favour of the Defendant No.1 in respect of the suit properties had not conveyed any right, title and interest of the suit properties in favour of the Defendant No.1 and the same is void ab initio cannot be held as erroneous.

20. It is the concurrent findings of the learned Trial Court and learned 1st Appellate Court on facts after proper appreciation of oral and documentary evidence of the Parties that, since the date of purchase i.e. since 10.07.1979 as per sale deed Nos.5493 and 5494 (Exts. 1 & 5), the Plaintiffs were in possession over the suit properties being the owners thereof, but, on dated 10.02.1981, the Defendant Nos.1 and 2 had forcibly entered into the suit properties in spite of the protest of the Plaintiffs and had made some constructions on a portion thereof forcibly up to the lintel level and such construction was stopped only after the order of injunction passed by the learned trial Court, for which, the said forcible possession of the Defendant Nos.1 and 2 in the suit properties was held as illegal, terming the Defendant Nos.1 and 2 as trespassers of the same cannot be held as erroneous.

21. Now, it will be seen, whether the directions given by the learned Trial Court in its judgment and decree to the Defendant No.1 and 2 to deliver possession of the suit properties in addition to the declaration of right, title and interest of the Plaintiffs over the suit properties in favour of the Plaintiffs is sustainable under law is concerned:-

On this aspect the propositions of law has already been clarified in the ratio of the following decision:-

(i) In a case between *Indore Development Authority Vrs. Mohanlal and others decided by five Judges Bench* reported in *AIR 2020 Supreme Court 1496 in Para No.245 that,*

The possession of trespasser always inures for the benefit of the real owner.

22. When, it is held above, as per law that, the Defendant Nos.1 and 2 are the trespassers of the suit properties without having their any interest in the same and when as per the propositions of law enunciated by the Apex Court in the ratio of the aforesaid decision that, the possession of trespassers always inures for the benefit of the real owner and when the Plaintiffs being the owners of the suit properties are not interested for the retention of the illegal/unauthorized possession of the suit properties by the Defendant Nos.1 and 2, then at this juncture, the judgments and decrees passed by the learned Trial Court in the suit vide O.S. No.110/34 of 1981-I against the Defendant Nos.1 and 2 and the confirmation of the same by the learned 1st Appellate Court in T.A. No. 2 of 1984 cannot be held as illegal.

For which, the question of interfering with the same through this 2nd appeal filed by the Defendant Nos.1 and 2 does not arise.

Therefore, there is no merit in the 2nd appeal filed by the Appellants (Defendant Nos.1 and 2). The same must fail.

23. In result, the 2nd appeal filed by the Appellants (Defendant Nos.1 and 2) is dismissed on contest, but without cost.

The judgments and decrees passed by the learned Trial Court in the suit vide O.S. No.110/34 of 1981-I and confirmation of the same by the learned 1st Appellate Court in T.A. No.2 of 1984 are confirmed.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter.

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Second Appeal dismissed.

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2025 (III) ILR-CUT-1465

MANORANJAN BISWAL

V.

**ADDL. DIST. MAGISTRATE-cum-DISTRICT REGISTRAR,
KHORDHA & ORS.**

[W.P.(C) NO. 14195 OF 2025]

14 NOVEMBER 2025

[A.C. BEHERA, J.]

Issue for Consideration

Whether refusal of registration of cancellation/revocation deed, on the ground that it relates to a sharing power and is a Development agreement-cum- General Power of attorney, is sustainable under the law.

Headnotes

REGISTRATION ACT, 1908 – Sections 22-A(C), 71, 77 – Petitioner executed a power of attorney on 13.01.2021 in respect of the properties covered there in favour of the Opposite Party No. 3/S.N Construction and Developer – The attorney holder did not develop the properties and also did not construct any building as per the deed for which the petitioner revoked the power of attorney and intimated about the same through a letter dated 18.04.2024 to the Opp. Party No. 3 – Petitioner presented the deed of revocation/ cancellation before the sub-registrar for registration which was refused on the ground that the deed of revocation/cancellation is a sharing power – Whether refusal of registration of cancellation/revocation deed, on the ground that it relates to a sharing power and is a Development agreement- cum-General Power of attorney, is sustainable under the law.

Held: Yes – When, it is held above that, the Annexure-1 is a development agreement-cum-General Power of Attorney and when there is no reflection/indication in the said Annexure-1 about its unilateral cancellation, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the refusal of registration to the unilateral cancellation of the Development Agreement-cum-General Power of Attorney (Annexure-1) by the O.P. Nos.2 & 1 through the orders dated 22.05.2024 (Annexure-4) & 04.03.2025 (Annexure-5) under Sections 71 & 72 of the Indian Registration Act, 1908 passed by the Sub-Registrar, Khandagiri (O.P. No.2) and District Registrar, Khordha (O.P. No.1) cannot be held as illegal. (Para 12)

Citations Reference

Thankamma George Vrs. Lilly Thomas and Another, **Civil Appeal No.6495 of 2023**; P. Venkata Ravi Kishore and Ors. Vrs. JMR Developers Pvt. Ltd. and others, **(at Para No.40) in 2022 SCC Online 3387 (Telengana)**; Rajashree Gajendra Vrs. District Sub-Registrar, Khordha and Another, **W.P.(C) No.32589/2023 on dtd. 31.01.2024 & W.P.(C) No.17617 of 2025 on dtd. 22.08.2025 – referred to.**

List of Acts

Registration Act, 1908; Constitution of India, 1950.

Keywords

Power of attorney; Registration; Refusal of registration; Revocation of Joint Venture Agreement; Unilateral Cancellation; Development agreement- cum-General power of attorney

Case Arising From

Order No.762 dated 22.05.2024 passed by the Sub-Registrar, Khandagiri and the order dated 04.03.2025 passed in Registration Appeal No.9 of 2024 by the A.D.M.-cum-District Registrar, Khordha.

Appearances for Parties

For Petitioners : Mr. S. K. Nayak-2, Mr. S. S. K. Nayak
For Opp. Parties : Mr. Gyanalok Mohanty, Standing Counsel.

Judgment/Order**Judgment****A.C. BEHERA, J.**

This writ petition under Articles 226 & 227 of the Constitution of India, 1950 has been filed by the petitioner praying for quashing the Order No.762 dated 22.05.2024 (Annexure-4) passed under Section 22-A(c) of the Registration Act, 1908 by the Sub-Registrar, Khandagiri (O.P. No.2) as per Section 71 of the Registration Act, 1908 and the order dated 04.03.2025 (Annexure-5) passed in Registration Appeal No.9 of 2024 under Section 72 of the Registration Act, 1908 by the A.D.M.-cum-District Registrar, Khordha (O.P. No.1).

2. The factual backgrounds of this writ petition, which prompted the petitioner for filing of the same is that, the petitioner executed a power of attorney vide Annexure-1 on dated 13.01.2021 in respect of the properties covered therein in favour of the O.P. No.3 (SN Construction and Developer) and the said Annexure-1 was registered on that day i.e. on 13.01.2021 before the Sub-Registrar, Khandagiri (O.P. No.2). After execution and registration of such power of attorney vide Annexure-1, the attorney holder thereof i.e. O.P. No.3 (SN Construction and Developer) did not develop the properties covered under the said Annexure-1 and also did not construct any building as per the terms of Annexure-1. For which, the petitioner revoked that Annexure-1 (Power of Attorney) and intimated about the same through a letter dated 18.04.2024 vide Annexure-2 to the O.P. No.3. Thereafter, the petitioner presented the deed of revocation/cancellation of the Annexure-1 before the O.P. No.2 (Sub-Registrar, Khandagiri) for registration, but the Sub-Registrar, Khandagiri (O.P. No.2) refused to register the said Annexure-1 assigning its reasons as per refusal Order No.762 dated 22.05.2024 vide Annexure-4 as follows:-

“the said Annexure-1 is a sharing power. As it is a development power, it cannot be permissible for unilaterally cancel. So, the document is liable to be refused under Section 22-A(C) of the Registration Act, 1908.”

3. On being dissatisfied with the above impugned order i.e. refusal Order No.762 dated 22.05.2024 (Annexure-4) passed by the Sub-Registrar, Khandagiri (O.P. No.2), the petitioner challenged the same preferring an appeal vide Registration

Appeal No.9 of 2024 under Section 72 of the Registration Act, 1908 before the Addl. District Magistrate-cum-District Registrar, Khordha (O.P.No.1).

After hearing, the Addl. District Magistrate-cum-District Registrar, Khordha (O.P. No.1) dismissed that Registration Appeal No.9 of 2024 of the petitioner as per its order dated 04.03.2025 (Annexure-5) and confirmed the order dated 22.05.2024 (Annexure-4) of the O.P. No.2.

4. On being aggrieved with the above impugned order dated 22.05.2024 (Annexure-4) passed by the Sub-Registrar, Khandagiri (O.P. No.2) as well as the order dated 04.03.2025 (Annexure-5) passed in Registration Appeal No.9 of 2024 by the Addl. District Magistrate-cum-District Registrar, Khordha (O.P. No.1), the petitioner challenged the same by filing this writ petition under Articles 226 & 227 of the Constitution of India, 1950 praying for quashing the said Annexure-4 & 5 passed by the Sub-Registrar, Khandagiri (O.P. No.2) and Addl. District Magistrate-cum-District Registrar, Khordha (O.P. No.1).

5. I have already heard from the learned counsel for the petitioner and the learned Standing Counsel for the State.

6. In order to assail the impugned orders vide Annexure-4 & 5 passed by the O.P. Nos.2 & 1 respectively, learned counsel for the petitioner relied upon the decision of the Apex Court between *Thankamma George Vrs. Lilly Thomas and another* in *Civil Appeal No.6495 of 2023*.

7. The Sub-Registrar, Khandagiri (O.P. No.2) has refused to register the unilateral cancellation of Annexure-1 on the ground that,

“Annexure-1 is a sharing power. As it is a development power, it cannot be permissible for unilaterally cancel.”

To which, O.P. No.1 (District Registrar) confirmed as per the impugned order dated 04.03.2025 (Annexure-5) passed in Registration Appeal No.9 of 2024.

8. Now, the question arises;

whether, refusal of registration to the unilateral cancellation of Annexure-1 is sustainable under law or not?

9. It is forthcoming from Paragraph Nos.2, 3, 7, 8 & 9 of Annexure-1 that, the said Annexure-1 was executed between the petitioner and O.P. No.3 for the development of the properties described in Schedule-A of the said Annexure-1 constructing buildings and in such constructions, the petitioner will have 33% share and the O.P. No.3 will have 67% share.

So, the contents of the Annexure-1 are clearly and unambiguously going to show that, the said Annexure-1 is virtually a development agreement-cum-General Power of Attorney.

10. The law relating to the registration of the unilateral cancellation of a Development Agreement-cum-General Power of Attorney has already been clarified in the ratio of the following decisions:-

(i) In a case between *P. Venkata Ravi Kishore and Ors. Vrs. JMR Developers Pvt. Ltd. and others* (at Para No.40) reported in *2022 SCC Online 3387 (Telengana)* that,

Whenever registered documents such as Development Agreement-cum-GPA, is sought to be cancelled, execution and registration of such a document/deed must be at the instance of both the parties i.e. bilaterally and not unilaterally.

Unilateral cancellation of documents such as Development Agreement-cum-General Power of Attorney under the Registration Act is not permissible under in law.

(ii) In a case between *Rajashree Gajendra Vrs. District Sub-Registrar, Khordha and another* in *W.P.(C) No.32589/2023* on dated 31.01.2024 and *W.P.(C) No.17617 of 2025* on dated 22.08.2025 that,

For cancellation of a registered deed of JVA (joint venture agreement), presence of both the parties to the said agreement require.

11. There is no indication/reflection in any of the clauses of Annexure-1 about its unilateral cancellation.

12. When, it is held above that, the Annexure-1 is a development agreement-cum-General Power of Attorney and when there is no reflection/indication in the said Annexure-1 about its unilateral cancellation, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions, it is held that, the refusal of registration to the unilateral cancellation of the Development Agreement-cum-General Power of Attorney (Annexure-1) by the O.P. Nos.2 & 1 through the orders dated 22.05.2024 (Annexure-4) & 04.03.2025 (Annexure-5) under Sections 71 & 72 of the Indian Registration Act, 1908 passed by the Sub-Registrar, Khandagiri (O.P. No.2) and District Registrar, Khordha (O.P. No.1) cannot be held as illegal.

For which, the question of interfering with the impugned orders dated 22.05.2024 & 04.03.2025 vide Annexure-4 & 5 passed by the Sub-Registrar, Khandagiri (O.P. No.2) and A.D.M.-cum-District Registrar, Khordha (O.P. No.1) through this writ petition filed by the petitioner does not arise.

Therefore, the decision cited by the petitioner indicated in Paragraph No.6 of this judgment has become inapplicable to this matter at hand on facts for the reasons assigned above.

13. As such, there is no merit in the writ petition filed by the petitioner. The same must fail.

14. In result, the writ petition filed by the petitioner is dismissed on contest and the same is disposed of finally.

Headnotes prepared by:

Smt. Madhumita Panda, Law Reporter

(Verified by: Shri Hara Prasad Padhy, Editor-in-Chief, I/C)

Result of the case:

Writ Petition dismissed.