

No. 9/20/2023-1Trg.

HARYANA GOVERNMENT
CHIEF SECRETARY OFFICE
TRAINING DEPARTMENT

Dated Chandigarh the 29th August, 2023.

To

All the Administrative Secretaries of Haryana State.

Subject: Latest Newsletter for the Month of July from National Centre for Law and Administration at LBSNAA.

Sir/Madam,

I am directed to refer to the subject noted above and to inform that a copy of email dated 18th August, 2023, received from Sh. Nitesh Jha, Centre Director, NCLA, Lal Bahadur Shastri National Academy of Administration, Mussoorie, has been uploaded on the website of CS Haryana (<https://csharyana.gov.in>).

2. It is to inform that the National Centre for Law and Administration (NCLA) at LBSNAA share the latest newsletter to provides insights into the recent developments, research, and activities conducted by NCLA. It can be downloaded and read the soft copy of the newsletter directly from the following link: PDF Book: <https://km.lbsnaa.gov.in/f/3353730> and Flip Book: <https://online.anyflip.com/ajsam/jusf/mobile/index.html>.

3. This issues with approval of Chief Secretary to Government, Haryana.

Yours faithfully,

Bhisham 04/09/2023
Deputy Superintendent, Training
for Chief Secretary to Govt., Haryana. *sl*

Endst.No. 9/20/2023-1Trg.

Dated Chandigarh the 29th August, 2023.

A copy is forwarded to SH. NITESH JHA, CENTRE DIRECTOR, NCLA, Lal Bahadur Shastri National Academy of Administration, Mussoorie-248179, w.r.t. his email no. nil dated 18.08.2023 for information.

Bhisham 04/09/2023
Deputy Superintendent, Training
for Chief Secretary to Govt., Haryana. *sl*

Email

CFMS-113354

kaushalsanjeev@nic.in

Latest Newsletter for the Month of July from National Centre for Law and Administration at LBSNAA

Training Branch

Diary No. 112482

Dated 22/08/2023

From : Alumni Association LBSNAA
<alumni.lbsnaa@nic.in>

Fri, Aug 18, 2023 01:43 PM

Subject : Latest Newsletter for the Month of July
from National Centre for Law and
Administration at LBSNAA

To : kaushalsanjeev@nic.in



22/08/2023
1 Tg.

Under Secretary, HR-II & Training

Diary No. 112482

Date 22/8/23

Dear LBSNAA Alumni,

I hope this email finds you well. We are excited to share the latest newsletter from the National Centre for Law and Administration (NCLA) at the Lal Bahadur Shastri National Academy of Administration (LBSNAA).

The newsletter provides insights into the recent developments, research, and activities conducted by NCLA. We believe you'll find the content engaging and informative.

You can download and read the soft copy of the newsletter directly from the following link:

PDF: <https://km.lbsnaa.gov.in/f/3353730>

Flip Book: <https://online.anyflip.com/ajsam/jusf/mobile/index.html>

Thank you for your continued support and involvement with LBSNAA. We hope you enjoy reading the newsletter and stay connected with us.

Best regards,

Nitesh Jha

Centre Director, NCLA

Lal Bahadur Shastri

National Academy of Administration, Mussoorie.

75
Azadi Ka
Amrit Mahotsav



वसुधैव कुटुम्बकम्
ONE EARTH • ONE FAMILY • ONE FUTURE

July 2023

Issue No.- 5

LEGAL

ADMINISTRATOR



LEGAL MAXIM

"Sublato Fundamento Cadit Opus"

(When the foundation is removed the superstructure falls)

This maxim has been approved and applied by the Courts in India to hold subsequent proceedings originating from an illegal order non est. In "Mangal Prasad Tamoli v. Narvadeshwar Mishra" (2005) 3 SCC 422 the SC has held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto shall be non est and have to be necessarily set aside.

Non Est: Latin term meaning 'he is not found'; in other words, non-existent; Non est orders are those orders which can be ignored altogether.



News snippets

1. Launch and implementation of Neutral Citation System at Supreme Court of India in a phased manner.

W.e.f. 06 July 2023, a uniform, reliable and secure methodology for identifying and citing judgments and orders of the Supreme Court of India has come into existence. The phase-I of neutral citation shall cover the

judgments and orders pronounced during the relevant period of 01.01.2014 to 05.07.2023 and 06.07.2023 onwards. The format is as follows: 2023INSCI (i) The first four characters, 2023, are the year of pronouncement of

judgment, order; (ii) The abbreviation INSCI stands for the relevant court i.e., India Supreme Court, and (iii) i is the in serial number of the judgment, order. There will also be a quick response (QR) code on the top left corner of the first page of such judgment, order.

https://main.sci.gov.in/pdf/Notice/06072023_105658.pdf

2. AOB of the SC has noted that the practice of summoning authorities of the State to Court should not be adopted as a routine.

The Officers of the State Governments are required to discharge their duties towards the citizens of the country. Their presence in the Court wastes precious time which could be otherwise utilized for rendering service to the citizens, leaving such directions at the drop of the hat, rather than upholding the majesty of the Court, undermines it. No doubt that the authorities of the State are bound to comply

with the directions issued by the High Court. In a matter wherein there is a patent disregard and disobedience to the directions issued by the Court, the Court would be justified in securing the presence of the officers.

<https://www.livemint.com/india/politics/supreme-court-summoning-state-officers-to-court-at-the-drop-of-a-hat-undermines-majesty-of-the-court-supreme-court-233268>

1. Mediation Bill 2021 approved by Union Cabinet with amendments. Key features of mediation voluntary process of resolution as provided for in the original Bill issued in Rajya Sabha in Dec 2021.

The Bill aims to decongest the Courts ailing from massive pendency of cases by creating an institutional mechanism to encourage pre-litigation mediation, in both civil and commercial matters, irrespective of whether an agreement for mediation exists before parties approach a court/tribunal. The Bill also proposes to set up a Mediation Council of India that will register mediators and recognise mediation service providers and institutes. It is

expected to suggest subjects where mediation will be mandatory and other areas where such a process cannot be initiated.

<https://www.livemint.com/news/india/cabinet-nod-for-press-mediation-bills-11669796147865.html>
http://timesofindia.indiatimes.com/articleshow/701569726.cms?utm_source=contentofinterest&utm_medium=stext&utm_campaign=expst

MEDIATION BILL, 2021



Preventive Detention

Gujarat Prevention of Anti-Social Activities Act, 1985 (PASA)

Union Daman & Diu, Criminal Writ Petition Nos. 560, 706, and 767 of 2023 Bombay HC

Held: The detention order issued by the DM was passed in a very mechanical and cavalier manner and as such, cannot be sustained in law. The case in hand is nothing but an abuse of the law of preventive detention (Para 2.12). The object of the law of preventive detention is not punitive but only preventive. There is a discretion vested with the Executive Authority which has to be exercised in accordance with law. Under the detention law, a person's personal liberty is deprived and hence, it is imperative that the law of preventive detention is strictly construed, and a meticulous compliance with the procedural safeguards, however technical, is mandatory (Para 3.6). An inference becomes inevitable that the detention orders authorising detention of the detainees in the instant case, are passed sans any material, which is shocking, to say the least, and as such, the detention orders cannot be sustained in law (Para 3.8).

Facts: A lawyer, an ex-Public Prosecutor and his two clients, one a law student, filed a complaint under Sec 133 of the CrPc before the Sub-Divisional Magistrate for removal of nuisance caused by dumping marble waste near their land. No steps were taken and they filed several representations before authorities such as Resident Deputy Collector, Gujarat Pollution Control Board, Pollution Control Committee, Collector, District etc. and allegedly still no action was taken. Eight allegedly false FIRs were registered against the lawyer allegedly by the marble lobby, and whilst he was in judicial custody for one case (having obtained bail in all the others), a detention order was issued by the DM to him under Sec. 3(2) of the PASA Act on 06 Dec. 2022. He only got to know about the detention order on 17 January 2023, when he was not released from jail despite getting bail. Several FIRs were also lodged against his clients for offences such as extortion and cheating and a detention order was issued against them also in Dec 2022.

Analysis: The detention order was based "upon perusal of the documents on record", whereas no documents were placed before the DM and as such, were not made available to the petitioner. None of the bail orders were also placed in front of the DM (Para 2.10). The impugned detention order was hence very casually passed without application of mind and without there being any documents on record to arrive at any subjective satisfaction that the petitioner was a dangerous person and a threat to the peace and

tranquility of the general public in the District of Daman and Diu. Inference has to be drawn from the material on record, in the absence of such material on record, the mere ipse dixit of the Detaining Authority is not sufficient to sustain the order of detention" (Para 2.11).

(Note: **ipse dixit** is a Latin term that translates to "he himself said it". In legal contexts, it refers to an assertion or statement made by an individual based solely on their own authority, without any supporting evidence or proof.)

<https://www.livemint.com/pdf/upload/section-martin-16697-432418.pdf>
<https://www.livemint.com/high-court/bombay-high-court/bombay-high-court-preventive-detention-procedural-safeguards-mandatory-adversarial-claim-detainees-costs-233259>

Jharkhand Control of Crimes Act, 2002

Dr. Prakash Chandra Yadav v. State of Jharkhand
Civil Appeal No. 4324 OF 2023 (Arising out of SLP (C) No. 5331/2023)

Held: In a plea regarding the continued detention of a person under a preventive detention law in Jharkhand, The Supreme Court emphasized the need of strongly complying with procedures in matters involving preventive detention. The bench held that preventive detention statutes are by their very nature strict since they restrict individual freedom without a trial. Therefore, the procedure becomes crucial for the detainee's rights. The further court stated that laws on preventive detention must

be strictly applied and laid down that "All laws on Preventive Detention are harsh, in such cases, procedure is all, a Detainee has. Thus, strict adherence to the procedure is of utmost significance in such cases."

Facts: The appeal was filed by an individual who was detained under the Jharkhand Control of Crimes Act, 2002. According to Section 19 of the Act, within three weeks of detention, the government must present the grounds for the detention order and the affected citizen's representation to the Advisory Board. Ultimately, the Advisory Board in this case decided that there was enough evidence to extend the detention beyond three months. Based on the Board's report, the State Government issued an order confirming the initial detention.

Analysis of the Court: The Court held that the decision of the Advisory Board, made without considering the appellant's representation, violated Section 19 of the Act and, more importantly, Article 22(4)(a) of the Constitution of India. As per Article 22(4)(a), no law providing for preventive detention is permitted to authorise the detention of a person for a longer period than three months unless an Advisory Board has reported before the expiration of the period of three months, that there was sufficient cause for such detention. Consequently, the Court deemed the extended period of detention beyond three months against the appellant as unauthorized and illegal.

Link: <https://www.livemint.com/pdf/upload/168920223232143052-order19-jun-2023-432418.pdf>

Criminal Writ Petition No. 596/2022

Held: The right to represent against an order of detention flows from Article 22(5) of the Constitution of India, which casts an obligation on the authority to ensure that the detenu is afforded the earliest opportunity to exercise that right, if he so desires. Therefore, the original preventive detention order dated 16th September 2022 has turned invalid, unconstitutional and illegal on account of inordinate and unexplained delay in disposal of representation of the petitioner and the procedural illegalities as mentioned in the order and is accordingly quashed. As a consequence thereof, the orders dated 15th December 2022 and 15th March 2023 by which preventive detention of the petitioner has been successively extended are also quashed.

The power exercisable by the State Government under the Crimes Control Act is a statutory power which can be exercised only by the authority concerned and no other authority.

Facts: The following were under challenge: (i) order of preventive detention dated 16.9.2022 passed by the District Magistrate-cum-Deputy Commissioner, u/s 12(2) of the Jharkhand Control of Crimes Act, 2002; (ii) The confirmation order dated 22.11.2022 issued under the signature of Under Secretary, Department of Home, Prison and Disaster Management, Government of Jharkhand by which the preventive detention of the petitioner for a period of 3 months from 16th September 2022 to 15th December 2022 was approved. Subsequently a further extension upto 15th March 2023 was approved.

Analysis: Even where the order of preventive detention reflects proper application of mind inasmuch as the detention order records the reason for detention, any violation of the Constitutional safeguards shall render the preventive detention order illegal. There are as many as 3 affidavits filed by the respondents but there is no

explanation as to how the matter was 'under process' between 3rd November 2022 (date of representation by detenu) to 1st December 2022 (initiation of file for decision / approval on next extension of detention of petitioner and for decision on representation of the petitioner) (para 25). The law on this issue is in no uncertain terms that if there is unreasonable delay in considering representation of the detenu it would have the effect of invalidating the preventive detention order. Further, order dated 15-12-2022 made it clear that the petitioner's representation was decided by the Under Secretary, Department of Home, Prison and Disaster Management, who was not the competent authority under the Crimes Control Act. The records reveal that there was no independent application of mind by the Departmental Minister and he has simply accorded his approval to the proposal for rejecting representation of the

detenu, prepared by the Joint Secretary, Department of Home, Prison and Disaster Management. Therefore, since the initial order of preventive detention of the petitioner has been held invalid the subsequent orders issued by amending the original order have also become bad in law.

<https://www.scconline.com/blog/post/2023/07/15/detenu-hardened-criminal-smuggler-constitution-mandates-representation-without-delay-jharkhand-nc/>
https://hservices.ecourts.gov.in/ecourtindian/cases/display_pdf.php?filename=20108VSUW02_460X1040X1710087TyqnaGrVHT8100

who retired both pre and post 1.1.2016, but subsequently the government later declared that the revised pension would be applicable only for those retiring post 1.1.2016.

Analysis: The SC took into consideration the contention that the Petitioners cannot approach the tribunal collectively and since thousands of senior citizens are aggrieved in this matter, the entire process would be cumbersome. The court ordered that retired officers would be permitted to file the matter in a representative capacity but no federations would be allowed.

<https://www.livelaw.in/supreme-court/supreme-court-dismisses-ex-servicemen-revised-pension-appeal-2315597infinitecreation>

VII. Ranjan Chandra V. Union of India
Ministry of Defence, Government of India
Civil Appeal No. 4208 of 2023 arising out of SLP (Civil) No. 732/2016

Held: The law on payment of back wages is very well settled. Even if the Court passes an order of reinstatement in service, an order of payment of back wages is not automatic. It all depends on the facts and circumstances of the case. Initial burden is on the employee to establish that he was not gainfully employed during the period of dismissal.

Considering the conduct of the appellant of withdrawing the affidavit affirming unemployment filed in Aug 1997, and subsequently not raising the

Service Matters

VII. Voice of Ex-servicemen society
Union of India
Writ Petition (Civil) No 419 of 2016

Held: The SC dismissed a petition by an organization of ex-servicemen seeking a direction for payment of revised pension for those who retired before 1.1.2016. The court directed them to

approach the Armed Forces Tribunal since pension is covered within Service matters, and that the AFT must decide the issue expeditiously.

Facts: The Petitioners contended that 6th pay commission, 7th pay commission as well as government via gazette notification had accepted revised pension would be paid to those



contention of unemployment in the fresh affidavit in 2008, the appellant cannot be granted the benefit of back wages for the entire period from the date of termination till reinstatement. However, the respondent DTC also failed to prove that the appellant had a source of income, nor anything material was elicited by the respondent while cross examining the appellant. A sum of Rs 3 lakhs is ordered to be paid to the appellant in lieu of back wages, as he had discharged the burden on him by establishing that he was gainfully employed at least till August 1997.

Facts: The appellant, employed as a conductor in 1985 by Delhi Transport Corporation was removed from service in 1996 for failing to issue tickets for Rs 4. The Labour Court in 2009 reinstated him after 13 years but denied back wages as the appellant had not discharged the burden of proving that he was not gainfully employed from the date of removal from service. In 2015, the denial of back wages was upheld by the Division Bench of Delhi HC.

Analysis: In the case of *National Gandhi Museum v. Sudhir Sharma*, this Court held that the fact whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge. Considering the principle incorporated in Section 106 of the Evidence Act, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination. It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon peculiar facts & circumstances of each case, on the pleadings and evidence on record. Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer.

https://main.sci.gov.in/supremecourt/2018/5432/5432_2018_17_1902_42/18_Judgement_05-Jul-2023.pdf

<https://www.livelaw.in/supremecourt/supreme-court-back-wages-employee-gainfully-employed->

daughter of the deceased employee, shall be considered for compassionate appointment treating her to be eligible for such claim.

Facts: The petitioner's father who was employed as Assistant Branch Accountant with the respondent-Bank, unfortunately, died in harness and accordingly the petitioner being his daughter applied for compassionate appointment, which was denied

solely on the ground that she is a married daughter of the deceased employee.

Analysis: As per Regulation 104 of the U.P. Cooperative Societies Employees Service Regulations, 1975, it is only an unmarried daughter who is eligible for being offered a compassionate appointment and not a married daughter. An amendment was proposed by the U.P. Cooperative Institutional Service Board to include daughters irrespective of their marital status, which was not accepted by the State Government. However, on 12 November 2021, The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 were amended from "unmarried daughters, unmarried adopted daughters", to "daughters (including adopted daughters)". The HC observed that if in the case of the State Government employees, compassionate appointment has been made available to the daughters irrespective of their marital status, there does not appear to be any reason why such benefit should be refused to the daughters of the deceased employees who have served a Cooperative Society in the State of Uttar Pradesh. The HC noted that the DB Judgment of the Court in the case of *Vimla Srivastava and Neha Srivastava*, and the dismissal of the SLP filed by the State in the case of *Neha Srivastava* paving the way to give the benefit of compassionate appointment to all the daughters of the deceased employees irrespective of their marital status had also not been considered by

the Govt whilst refusing to accept the proposed amendment above.

https://www.livelaw.in/pdf_upload/neelam-devi-v-state-481781.pdf

<https://www.livelaw.in/high-court/allahabad-high-court-compassionate-appointment-eligibility-married-daughters->

X. The Bombay Madan Prasad Shrivastava vs. State of U.P. 2023 INSC 658

Held: Discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service. Dismissal from the Army by a Courts Martial for absence without leave for 108 days upheld.

Facts: The appellant, a driver in the Army overstayed his leave by 108 days without sufficient cause.

Analysis: The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.

https://www.livelaw.in/pdf_upload/6181201814150145542_judgement28-jul-2023-483617.pdf

National Highways Act, 1956.



National Highways Authority of India Act, 1988 and the 2008 Rules.

XI. Naveen Agrawal v. National Highway Authority of India

WP (C) 7461/2023

Held: The Delhi HC held NHAI is free to enter into contracts for the purpose of collecting toll, and such toll that is collected takes into account the fee that is to be paid to the Central Government under the 2008 Rules and also the amount that is paid to the toll contractor under the contract. Such contracts with toll collectors not violative of national highways act and 2008 rules.

Facts: The PIL contended that all the fees collected by the NHAI have to be remitted to the Central Government. However, as per the contract entered into between NHAI and Toll Collectors (Concessioners), a fixed amount is payable by these concessioners to NHAI, irrespective of the Toll Collection. This methodology of distribution of toll between the concessioners and NHAI violates Rule 7 of the 2008 Rules and takes away the substantial portion of profit which should be earned by the NHAI to be given to the Central Government, which instead is pocketed by the toll operators; thus, huge losses are being suffered by NHAI which has resulted in deterioration of the quality of

services rendered by NHAI and adversely affects the growth of National Highways in the country.

Analysis: The responsibility for the development and maintenance of national highways which was with the Central Government has now been entrusted to the NHAI under Rule 7 of the 2008 Rules (which were framed in exercise of powers conferred under Section 9 of the National Highways Act, 1956) the fee which is prescribed and collected is to be remitted to the Central Government. A wholesome reading of Section 14 of the NHAI Act, 1988 and Rule 7 of the 2008 Rules shows that NHAI can enter into contracts for the purpose of collecting fees on behalf of the Central Government for the services and benefits rendered under Section 7 of the National Highways Act, 1956, which is one of its functions prescribed under Section 16 of the NHAI Act, 1988. The contracts which have been entered into by the NHAI for the purpose of performing its functions to collect fees on behalf of the Central Government cannot be said to be violative of Rule 7 of the 2008 Rules.

https://www.livelaw.in/pdf_upload/judgement28-jul-2023-483617.pdf

<https://www.livelaw.in/high-court/delhi-high-court-dhnhai-high-court-order-rein-emission-contractors-against-national-highways-act-2008-rule-7-483617.pdf>

IX. Neelam Devi v. State of U.P., Dr. Prati Bhai Das v. State of U.P. & Ors

Writ A No. 18566 of 2021

Held: The word "unmarried" occurring in the note appended to Regulation 104 of U.P. Cooperative Societies Employees' Service Regulations, 1975 struck down. The claim of the petitioner, a married

Civil Appeal No. of 2023
(Arising out of Special Leave
Petition (Civil) No. 26491 of
2018)

Held: High Court was under an obligation to consider the cross objections filed by the Appellants during appeal; since this obligation was not discharged while passing the judgment in appeal, the matter was remanded to the High Court for fresh adjudication on the cross objections.

Facts: Subsequent to the possession and acquisition of land in 1993-94 under the Act, a dispute re the market value of the plots was determined by the District Judge in 2002. On an appeal by the Greater Noida, the appellants filed their cross-appels seeking further

enhancement and the HC confirmed the compensation determined by the District Judge in 2017. The appellants aggrieved by the fact that their cross objections were not properly considered, filed a review but the same was dismissed.

Analysis: When a Decree is partly in favour and partly against a party, and the opposing party files a first appeal against part or whole of the original decree, in such cases, to ensure that the party is also given a fair chance to be heard, he is given the right to file his cross objections within the appeal already so instituted by the other party, against not only the contentions raised by the other party, but also against part or whole of the decree passed by the court of first instance (Order 41 Rule-22, CPC) as in this case the HC failed to consider the cross objections.

<https://www.verdictum.in/court-updates/supreme-court/7881-objections-issues-raised-not-considered-matter-remanded-to-high-court-1483566>

T

2023 INBC 620

field. Noting that a citizen had lost his valuable property by way of compulsory acquisition, the SC took a very serious view of vendors encroaching upon a pavement abutting the metro depot which was a part of the acquired land, and directed DDA to take immediate action in accordance with the law. The compulsory acquisition had been made for a public purpose and therefore, the DDA and all the concerned authorities cannot allow the pavement to be used for any purpose except for allowing people to walk.

In view of the fact that the acquirer's land had already been put to use for an important public purpose of the metro depot, the SC condoned the delay of 1231 days in approaching the SC but awarded DDA with costs of ₹50,600/- . The compensation is to be paid as per the 1894 Act and not the 2013 Act.

Facts: In 1899 the first respondent's land was acquired and his WP was dismissed by the Delhi HC in 2005. In 2006, DDA took over possession of the acquired land. In 2014, the 1894 Act was repealed and the provisions of the Land Acquisition Act, 2013 were brought into force. In May 2019, after 17 months, the first respondent filed a WP contending that in view of Section 24(2) of the 2013 Act, the acquisition shall be deemed to have lapsed (by which time the acquired land had already been put to use for an important public purpose of the metro project by the DDA). In 2019, the HC held that

Sec. 24(2) of the 2013 Act will apply only if the compensation has not been paid to the first respondent although physical possession of the disputed land had been taken over by the applicant. The HC, however, stated that the applicant to pay compensation to the first respondent in accordance with the 2013 Act in 2020 or Constitution Bench of the SC in the case of Indore Development Authority vs. Manoharlal (2020) interpreted Section 24(2) to say that in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid and possession has not been taken then there is no lapse.

Analysis: the fact that the decision on which the impugned HC judgment is based has been overturned is by itself no ground to overturn a long delay. Further, it is true that the SLP has been filed two years and three days after the date of the decision of the SC. Constitution Bench in 2020, and the application for condonation of delay has been drafted rather casually. However, considering the peculiar facts of the case, by adopting a justice-oriented and liberal approach, the delay will have to be condoned so that the substantive rights of the parties are not defeated only on the ground of delay.

https://main.sci.gov.in/supremecourt/2022/7509/7509_2022_11_1501_44552_Judgement_13-Jul-2023.pdf

<https://www.livelaw.in/supreme-court/supreme-court-weekly-foundup-17-july-2023-2329637>

info@naccr.in

Indian Penal Code

XIV/2001 **Public Interest Litigation**
Real Estate Reg. Act
VCH
CRLM.C. 456/2020

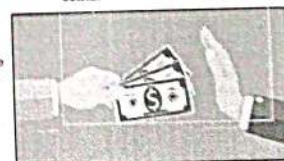
Held: The discharge of a public servant on account of invalid sanction under the PC Act will not absolve the private individuals from the offence allegedly committed under the IPC. The Delhi HC refused to quash an FIR registered by Central Bureau of Investigation (CBI) against three private entities.

trial was sought by the Appellate.

Analysis: The allegations of conspiracy in the chargesheet have two facets viz. the conspiracy of contractors to dupe/cheat the railway by charging them for ball. Near on supplying cheaper POW involves public servants against whom sanction has not been received. The conspiracy of the petitioners can be proved/disproved only after a trial. The matter of sanction qua public servant would have no effect upon allegations of conspiracy and alleged cheating by private accused and the only effect would not be used to prosecute private individuals for the offences under the Prevention of Corruption Act (Para 37). Merely because the sanction is not granted does not mean the findings qua conspiracy/cheating cannot stand true.

https://www.livemint.com/
pdf_upload/judgement/ha-3-
48028.pdf
https://www.livemint.com/high-
court/ae/hi-high-court/ae/hi-
high-court/sanction-public-
servant-conspiracy-cheating-
private-accuser-eb-
3222787-0-text/ha-3-48028.pdf
2019hi20Court120naa, Penal
20Code20cannot%20stand%
20trial

Facte: The CBI alleged that a dual conspiracy viz. a) amongst private persons and b) private persons with the Government Officials existed by which the Caterers deliberately supply 20 cheaper POW other than Rail Neer but claim a reimbursement at the higher rate of Rail Neer and thus caused loss of Rs 19.55 crores to the government exchequer and corresponding undue pecuniary gain to themselves. The CBI filed charges under Sec 120-B(i)/w 420 IPC and Sec 132(1)/w 131(1)(a) of the PC Act against a number of private servants and various licensees (Caterers). Despite multiple efforts, the Railway Board did not grant sanction for prosecution of its officials allegedly involved in the racket. Quashing of FIRs against the licensees on this ground in-



Margo raised a demand-cum-invocation notice raising certain claims against Roiffel and also assailed the RFP's dispute resolution mechanism on the aspect of

appointment of the arbitrator as being "one-sided, onerous and contrary to the law." Railtel insisted upon strict compliance with the RFP, asking Margo to appoint its nominee arbitrator from the panel maintained by the Indian Railways. This panel had a total of ten arbitrators, all of whom were former employees of either the Indian Railways or Railtel. Margo approached the Delhi HC u/s 11 of the Act seeking constitution of an independent arbitral tribunal consisting of three arbitrators to adjudicate the disputes between the parties.

Analysis: The Court examined and rejected Railtel's reliance on the judgment of *Central Organization for Railway Electrification v ECI-SPIC-SMO-MCM (JV) a Joint Venture Company* and clarified its applicability. CORE had held that the constitution of the tribunal should strictly be in accordance with the terms of the contract, and merely because arbitrators in a panel consist of names of retired employees of the Indian Railways, the same does not make them ineligible. The Court held that certain critical questions raised in that case were not covered in CORE, and therefore, the said judgment was distinguishable.

Discussed below is the Court's summarization of the issue into two relevant parts –

1. i) The requirement of having a 'broad-based' panel of arbitrators. The Court relied on *Voestalpine Schienen GmbH v Delhi Metro Rail Corporation Ltd*, wherein it was held that giving a panel of five names from which a party had to nominate its arbitrator was

restrictive, creating room for suspicion over the selected names. It was further held that the two arbitrators chosen by the parties should be free to choose the third arbitrator and the panels should not be restricted to appointing serving or retired government employees. Such panels should also consist of lawyers, judges as well as prominent engineers from the private sector. The Court observed that the panel shared in the case had only ten names, all of whom were ex-Railway and Railtel employees, therefore not meeting the 'broad-based' requirement. If this requirement is not met, it is incumbent upon the courts under Section 11 of the Act to appoint an impartial arbitrator.

2. ii) The need to 'counter-balance' the advantages that parties may have while appointing arbitrators. The Court examined various judgments on the aspect of counterbalancing where one of the parties had the power to appoint 2/3rd of the arbitral tribunal. Thereafter, the Court concluded that in the case at hand, where one of the parties has a right to choose from a panel and where the remaining two out of three arbitrators are appointed by the other party, the test of counterbalancing as laid down in the case of *Perkins* is not met.

Link- https://www.verdictum.in/pdf_upload/margo-networks-pvt-ltd-ani-v-railtel-corporation-of-india-11d-1521328.pdf

Persons With Disability (Equal Opportunity, Protection of Rights and Full Participation) Act 1995

XX. Seema Grijja and Anr. v. Uoi and Ors.
Writ Petition (Civil) Diary No. 29329/2021

Held: State Governments directed to ensure compliance with the provisions of the Act so as to rectify the deficiencies which have been noted in the affidavit filed by the Union government expeditiously on or before 30 September 2023. Further, the States/UTs shall ensure appointment of the Commissioners by 31 August 2023, since the Commissioners are entrusted with an important statutory function of overseeing the implementation of the provisions of the Act.

All State Governments/Union Territories shall upload the relevant data pertaining to the status of compliance on the dashboard of the Union Ministry of Social Justice and Empowerment, and submit a



status report to the SC by 15 September 2023. The case is now listed for 18 Sep 2023.

Facts: The petitioners, members of a forum for parents, professionals and other stakeholders dealing with the rights of children with disabilities had highlighted that the diverse provisions of the Rights of Persons with Disabilities Act 2016 have not been implemented by the States. The Union government had filed an affidavit through the Joint Secretary, Department of Empowerment of Persons with Disabilities in the Ministry of Social Justice and Empowerment which indicated the status of the implementation of the provisions of the Rights of Persons with Disabilities Act 2016 in the States/Union Territories as on 11 May 2023. The SC observed that the status of implementation of the legislation indicates a dismal position across the country.

Analysis: Sections 75(1)(h) and Section 80(g) of the Act entrust

the Chief Commissioners with the statutory duty of monitoring the implementation of the provisions of the Act, hence they shall be accountable to the SC for ensuring that due compliance has been effected in terms of this order.

https://main.sci.gov.in/supremecourt/2021/29329/29329_2021_1_10_40593_Order_13-Jan-2023.pdf

https://main.sci.gov.in/supremecourt/2021/29328/29328_2021_1_10_43947_Order_24-Apr-2023.pdf

https://main.sci.gov.in/supremecourt/2021/29328/29328_2021_1_21_46164_Order_17-Jul-2023.pdf

<https://www.livelaw.in/top-stories/supreme-court-directs-states-to-appoint-chief-commissioners-frames-rules-under-rights-of-persons-with-disabilities-act-2016-222526#:~:text=The%20bench%20comprising%20C.J.%20D.V.%20implementing%20the%20RPwD%20Act.>

Civil Appeal No. 529 of 2023
Supreme Court Citation: 2023 INSC 613

Held: The PuD Act, 1995 not only mandated reservation in appointment but also contemplated reservation in promotion. Accordingly, in exercise of its powers u/Art 142, the SC directed the RBI to grant national promotion to the post of Assistant Manager Grade - 'A', w.a.f from the date of filing CWP before the SC i.e., 2006 and actual promotion from 2014, i.e., the last date for compliance of the order of the High Court, and directed that due regard shall be given to his promotion in computing his retirement benefits, w.a.f 2008 (para 56, 57).

Facts: The respondent, with 50% disability, was unable to secure promotion to the post of Assistant Manager in the RBI by failing short of the qualifying marks by only 3 (three) marks in the All-India Merit Test for the Panel Vacar 2003. He sought grant of benefit of relaxation as available to him "on par with SC/ST category candidates" as per the circulars issued by the GoI which granted condonation of shortfall to the extent of 5 (five) marks for SC/ST candidates. The RBI denied the request as there was no provision for extending grace marks to persons with disabilities in promotional examinations.

Analysis: In *Indira Sawhney v Union of India*, a nine-judge constitution bench in 1992 had held that reservations in promotions were impermissible under Article 16. It was held that

reservations under Article 16 for backward classes of citizens were limited only to initial appointments, and did not extend to promotions based on the reasoning that while provision of reservations in initial appointments furthers the mandate of substantive equality, its application to promotions militates against the same mandate (para 4 & 11 of Shett, JJ). However, the 77th Constitutional Amendment Act of 1995 extended reservations in promotions to members of the Scheduled Castes and Scheduled Tribes alone. Parliament later enacted the Rights of Persons with Disabilities Act, 2016 (PWD Act, 2016) repealing the PwD Act, 1995. Thereafter, in *State of Kerala v. Leelamma Joseph* (2021) 9 SCC 276, the SC held in unequivocal terms that reservations in promotions could not be denied

to persons with disabilities (Para 9). The statutory duty enjoined by section 33 of the 1995 Act is that there must be appointment of persons with disabilities in every establishment which ought not to be less than 3 per cent. The SC interpreted the term "appointment" to be quite broad and to include appointment by direct recruitment as well as appointment by way of promotion (para 9, Datta, JJ). When the provisions of the PwD Act, 1995 and the PwD Act, 2016 in relation to reservation in promotion for persons with disabilities are contrasted, it is crystal clear that what was implicit in the former has been made explicit by the latter (para 18). There is no dearth of authority for the proposition that the PwD Act, 1995 not only mandated

reservation in appointment but also contemplated reservation in promotion (para 40). However, this interpretation that reservation in promotion is permissible in respect of Group 'A' posts was not rendered in 2021 when the Respondent appeared for the exam. It is a principle well settled in law that the interpretation of a provision of law relates back to the date of the law itself, subject to the exception that this Court may, in a given case, declare that its interpretation would have effect prospectively (para 46).

https://main.sci.gov.in/supremecourt/2014/30371/30371_2014_9_1801_44377_Judgement_04-Jul-2023.pdf

<https://www.liveflow.in/top-stories/persons-with-disability-act-1995-mandated-reservation-in-promotion-16a-supreme-court-grants-relief-to-rbi-employee-232514>

Constitution for any other provision of the Constitution, or on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the legislative enactment (para 74). The amendments were upheld as none of the above grounds were made out.

- (i) Legislative exercise: The SC has issued a specific mandamus that no further determination shall be granted to the second respondent in the Common Cause case (2022) which was pending on the dates before it (para 104, III). The effects of the judgments of this SC, can be nullified by a legislative act removing the basis of the judgment. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. The SC has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. The respondent No.1 could not have issued orders dated 17th November 2021 and 17th November 2022 in breach of the mandamus issued by this Court vide its judgment dated 8th September 2021 in Common Cause (2021) (para 16).

https://main.sci.gov.in/supremecourt/2023/16592/16592_2023_4_1801_45094_Judgement_17-Jul-2023.pdf

Article 14 of the Constitution of India.

2018 Roman Kumar & Ors. v. Union of India
Civil Writ Jurisdiction Case No.2223 of 2018

Held: Regularizing the services of only some employees and not of other entitled employees, is discriminatory and violative of Article 14 of the Constitution of India. The services of the appellants were directed to be regularized from the date on which the services of other 35 employees were regularized and the back wages and other consequential benefits etc., to be paid to them within a period of six months.

Facts: The Chief Commissioner of Income Tax in his report dated 14.02.2013 had found that, in the exercise conducted in pursuance of the judgment of the SC in the case of Secretary, State of Karnataka & Ors. v. Umadevi & Ors. (2006) 4 SCC 1, though 65 employees were entitled to regulari-

tation of employment but only 35 could be regularized, since only 35 vacancies were available.

Analysis: In the Constitution Bench judgment passed in *Uma Devi* (supra), though the SC has held that backlog entries should not be permitted, it has permitted a one-time measure to be conducted for regularization of the services of those employees who had completed the service of more than ten years. The Court rejected the contention that since posts were not available and, therefore, Group 'C' posts have been furnished, the appellants could not have been regularized.

https://www.liveflow.in/pdf_upload/roman-kumar-232507.pdf

<https://www.liveflow.in/supremecourt/supremecourt-trailing-regularization-employees-discrimination-article-14-332308>

Central Vigilance Commission (Amendment) Act, 2021



XXII. Dr. Jaya Thattai v. Union of India & Ors.
Writ Petition (Civil) No.456 Of 2022

Held: (i) Validity of Central Vigilance Commission (Amendment) Act, 2021, (inserting two new provisos to Section 25(d)), the Delhi Special Police Establishment (Amendment) Act, 2021 (inserting two new provisos to Section 48 (i)) and the Fundamental

(Amendment) Rules, 2021 (whereby the fifth proviso to F.R. 56(a) substituted by a new proviso) upheld. These amendments permit the extension of tenure of the Director of Enforcement up to one year at a time subject to the maximum period of five years including the period mentioned in the initial appointment.

(ii) The impugned orders dated 17th Nov 2021 and 17th Nov 2022 granting extensions to the tenure of the respondent No.2, i.e., Director ED for a period of one year each held to

be illegal; however, the respondent No.2 permitted to continue to hold office till 31st July, 2023.

- Analysis:** (i) The challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject, or, such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the



Equality for all

Dismissal of Judicial Officer

XXIV Judgment
Alakh Ashish Srivastava vs. Union of India
WP (C) 739/2022

Held: The Delhi HC upheld the major penalty of dismissal from service with immediate effect of a judicial officer of the Delhi Higher Judiciary Service, for allegedly accepting a "favour" from a "stranger", holding that in the capacity of a Judicial Officer, the charge of accepting money in the nature of a favour from a "stranger" is in itself serious and thus the penalty imposed is commensurate to the charge.

Facts: The Full Court of the HC vide decision dated 28.10.2022 dismissed the petitioner from service for travelling abroad along with his family members in 2016, by accepting a favour in the form of sponsorship of his stay at Radisson Blu Hotel, Disneyland, Paris and Best Western Plus Hotel, Milton Roma, Rome, by a "stranger" who, at best, was connected with a friend of his younger brother.

https://www.liveflow.in/pdf_upload/5122052522cw72912522157419-485022.pdf



Inquiry under Section 174 CrPC: Unnatural Death

WP (CRL) NO. 1025 OF 2022

Held: The victim/relatives have the right to be informed of the conclusions of the inquiry, and cannot be treated as aliens or total strangers to the criminal proceedings (para 42). The HC directed that:

(i) In cases registered under Section 174 of the Code culminating in the non-registration of FIR under Section 154 of the Code on the ground that no cognizable offence is revealed, the Executive Magistrate shall inform the same to the relatives of the deceased;

(ii) During inquiry under Sections 174 to 176 of the Code, in cases where the matter culminates in non-registration of the FIR under Section 154 of the Code, if the Executive Magistrate receives information of the commission of a cognizable offence, he shall immediately inform the same to the Judicial Magistrate concerned as provided in Section 190(c) of the Code;

(iii) The Judicial Magistrate concerned shall, upon receipt of the information, proceed in accordance with law (para 47).

The State Government will ensure that the Executive Magistrates dealing with the inquiry under Sections 174 to 176 of the Code are sensitized to the relevant subjects, and accordingly the judgment is forwarded to the Chief Secretary, Government of Kerala for necessary action (para 48, 54).

Facts: The petitioner alleged that he had received credible information indicating that the police were attempting to close the case of his missing daughter's suicide and sought an effective investigation by filing a complaint before the District Superintendent of Police. His daughter was found hanging in her bedroom in 2021 within seven years of her marriage. Before her death, she had complained of severe harassment from her in-laws and other marital issues. The police registered a Report under Section 154 of the CrPC and proceedings were pending before the Sub-District Magistrate. The Public Prosecutor submitted before the Kerala HC that the police were about to submit a report stating that no cognizable offence has been revealed. One of the Amicus Curiae stated that the facts warranted the registration of an FIR under Section 34 of the CrPC, and the other Amicus Curiae submitted that the in-laws' conduct before the HC criminalised the deceased. The HC criminalised the offence under Section 304-B or 305 of IPC and at times was directly dereliction of duty on the part of the two concerned in not registering the crime and

conducting the investigation. The order of the HC requires that the investigation be transferred to the Crime Branch. The HC accordingly directed that the investigation into the matter shall be entrusted to a special team in the Crime Branch department.

Analysis: An inquiry u/s 174 of the CrPC is very limited and the same cannot be equated to an investigation u/s 157 of the CrPC. The purpose of registration of FIR under Section 154 is the preparation of an inquired report and submission of the same. The moment it is revealed that a cognizable offence is committed, the FIR registered under the caption 174 of the Code gets

transformed to an FIR under Section 154 of the Code and the mode of investigation thereafter would be under Section 157 of the Code (para 23). It is held that the nature of the request will in no way interfere with the power of the Police to investigate u/s 154. The relatives of the deceased have the right to be informed of the conclusions of the inquiry u/s 174.

https://www.liveflow.in/pdf_upload/5122052522cw72912522157419-485022.pdf

<https://www.liveflow.in/high-court/modern-high-court/modern-high-court-section-174-para-1-until-death-death-education-magistrate-inquiry-criminal-branches-221012>

the petitioner was ordered to publish a Compendum in the first page/homepage in all the publications contending that they had published a fake news, without verifying the truth and veracity of the same and nobody should follow and post the same and rendering unconditional apology to this court and the people of Tamil Nadu.

Facts: The allegation leveled against the petitioner was that he being an Editor of a reputed News Media Group, had spread false and fake news in the Media as if people from a particular part of the nation were being violently attacked in Tamil Nadu and thereby he had created panic in the public and caused hazard and annoyance to public tranquility.

Analysis: The Media is considered to be the fourth pillar of democracy as it carries such a huge power and responsibility that the public repose their trust and confidence in the Media. The Media and Press need to adopt their professional ethics and take care of public interest instead of concentrating on sensational news alone for promoting their own commercial interest. Such a bounden duty cannot be shirked by them under the guise of freedom of speech.

<https://www.liveflow.in/high-court/modern-high-court/modern-high-court-section-174-para-1-until-death-death-education-magistrate-inquiry-criminal-branches-221012>

<https://www.liveflow.in/>

Social Media/Print Media

WP - A No. - 9074 of 2022

Held: Whilst granting anticipatory bail to the News Editor of the Digital Division of Hindi Newspaper namely "Dainik Bhaskar", the Madras HC observed that it was painful to note that the petitioner, without verifying or exercising due diligence to find out the veracity of the news and without understanding the sensitivity, merely in order to sensitize the public, had published a fake news. The Court strongly

deprecated the act of the petitioner in publishing such a sensitive news, without verifying the correctness of the same. The HC relied upon the SC judgement in *Alakh Ashish Srivastava vs. Union of India* [2022 SCC OnLine SC 345], wherein the SC has observed that the Media (Print, electronic or social) is expected to maintain a strong sense of responsibility and ensure that unverified news capable of causing panic is not disseminated.



XXVIII. **Shakthi V. Anand, Copalany and Others**

Crit.P (MD) Nos.1494 & 1203 of 2018

Crit.P Nos.5099 of 2019 & 5211 of 2021 &

all connected pending Crit.MPs.

Held: The Madras HC refused to quash the criminal proceedings initiated against the petitioner, an actor and politician for his abusive, derogatory and vulgar remarks against women journalists, as it found no ground to do so, observing that the defense taken by the petitioner has to be established only before the Special Court, which has to decide the same on appreciation of the evidence whether the petitioner had forwarded the message inadvertently or not. The HC did not accept his unconditional apology for quashing the proceedings stating that as the sender of the message, he must take the ownership for the consequences of the damage done by that message and face the consequences.

The stature of a person is directly proportional to his influence on his followers on social media. People must exercise social responsibility while creating or forwarding a message. This is more so when the person concerned, by virtue of his position, can really influence the minds of the general public. A person, who gets a dopamine high by looking at the "likes" for the message forwarded by him, must also be equally prepared to face the consequences, if that message has a derogatory content.

Facts: The petitioner, a past Member of the Legislative Assembly, had published/ circulated an abusive, derogatory and vulgar comment in his Facebook account on 19.4.2018. Accordingly, a FIR was registered under u/sec.504, 505(1)(c) and 506 of the IPC and Sec.4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 in the Cyber Crime Cell, Central Crime Branch, Chennai. For the same cause of action, private complaints were filed against the petitioner in various parts of Tamil Nadu. The petitioner contended that he was not the author of the message and that he had merely forwarded the message, that immediately after coming to know of the derogatory remarks contained in the message, he had removed the contents w. in a couple of hours on the same day, thereafter he followed it up with a letter dated 20.4.2018 whereby he tendered an unconditional apology to the concerned woman journalist and also to the Press and Media in Tamil Nadu at large.

Analysis: The HC observed that in a world suffering from a virtual information diarrhea, where everyone is bombarded with messages, a message sent/ forwarded becomes permanent evidence and it is almost impossible to wriggle out of the consequence that falls out by sending or forwarding a message. A message/ information sent by a normal citizen and the same information/ message sent by a person with a stature having followers, will have a lot of difference in its impact/ consequences on the society or a particular group of persons. In the

former, such messages or information may not have an impact on society. However, when it comes from a person with stature, its repercussions will be higher and therefore such a person carries a lot of responsibility in what he says and does. The petitioner himself, having admitted that he has nearly 5000 followers for his FB account, should have exercised caution, as the messages sent/ forwarded by the petitioner will multiply, if those followers, in turn, keep forwarding those messages to others. If such caution has been taken to the winds and as a result, it has had a very serious impact, the petitioner has to necessarily face it and cannot try to run away from the consequences by merely tendering an unconditional apology.

<https://www.livemint.com/high-court/madras-high-court-weekly-roundup-july-10-to-july-16-2023-2228487indianexpress.html>

https://www.livemint.com/pdf_upload/sve-shakthi-v-anand-copalan-481284.pdf

Motor Vehicles Amendment Act 2019

XXVIII. **Shakthi V. Anand, Copalany and Others**

Civil Appeal No. 9222 of 2022

Held: State Governments/UTs and High Courts directed to submit Compliance reports/affidavits on or before 14th August, 2023. In case compliance report is not filed by the remaining HC's or the State authorities, before the next date, this Court shall be constrained to pass an order seeking presence of the Registrar General of the concerned HC's and the Chief Secretaries of the concerned State/Union Territories.

The matter is now fixed on 18th August, 2023

Facts: (i) On 15 Dec 2022, the SC had directed the Chief Secretary/ Director General of Police in each and every State/Union Territory to develop a specialized unit in every police station or at town level and post the trained police personnel to ensure the compliance of the provisions of the M.V. Amendment Act and the Rules, within a period of three months from the date of the order. The State Authorities were also asked to take appropriate steps to develop a joint web portals/platform to coordinate

and facilitate the stakeholders for the purpose of carrying out the provisions of M.V. Amendment Act and the Rules in coordination with any technical agency and to be notified to the public at large. The Registrar General of the High Courts, States Legal Services Authority and State Judicial Academies are requested to sensitize all stakeholders as early as possible with respect to the provisions of Chapters IX and XI of the M.V. Amendment Act and the M.V. Amendment Rules, 2022 and to ensure the mandate of law. In a nutshell, the directions as contained in Paras 52, 55 and 51 (i) to (vi) of the aforesaid judgement were to be complied with.

(i) On 16 May 2023, the SC issued notice to the Registrar General of all High Courts and the Chief Secretary/ Administrator of all the States/Union Territories to apprise the Court regarding compliance of the directions. On 10 July 2023, the above directions were passed.

https://main.sci.gov.in/supremecourt/2018/44842/44842_2018_11_1501_40433_Judgement_18-04-2022.pdf

https://main.sci.gov.in/supremecourt/2022/12545/12545_2022_18_7_44547_Order_18-May-2023.pdf

https://main.sci.gov.in/supremecourt/2022/12545/12545_2022_18_17_44517_Order_10-Jul-2023.pdf

Insolvency and Bankruptcy Code 2016

XXIX. **Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL) v. Raman Ispat Private Limited & Ors.**

Civil Appeal Nos. 7976 of 2019

Held: The appeal filed by PVVNL against the NCLAT order directing the District Magistrate and Tehsildar, to immediately release the attached property so as to enable sale of the property, and after realisation of the property's value, to ensure its distribution in accordance with the relevant provisions of the IBC, dismissed.

At the same time, the liquidator was directed to decide the claim exercised by PVVNL in the manner required by law and to complete the process within 10 weeks, after providing such opportunity to the appellant as is necessary under law.

Facts: PVVNL raised bills for supply of electricity to the corporate debtor, the dues ₹ 4,32,33,583/- remained unpaid of this, the District Collector issued notice for recovery of outstanding dues to the tune of ₹

Analysis: PVVNL contention was that the Electricity Act 1993 is a special enactment, and would prevail over the IBC, which is a later general law, dealing with insolvency. The SC disagreed and held that Section 238 of the IBC overrides the provisions of the Electricity Act, 1993, that IBC treats the dues payable to secured creditors at a higher footing than dues payable to Central or State Government. The judgment analyzed the waterfall mechanism under the Section 53 IBC and noted that the

https://www.livelaw.in/supremecourt/supreme-court-the-electricity-act-vested-creditors-pschismalambidat-vitrans-algama-114-vs-rcman-ispat-private-limited-2013-livlaw-sc-156-732976.html?i=1&h=The%20Supreme%20Court%20observed%20that%2010%20Justices%205%20Badrinaray%20Jha%20

https://main.sci.gov.in/supremecourt/2019/103156/10316_2019_0_1501_45743_Judgement_17-Jul-19_73.pdf

Section 144 of Cr.P.C

XXX. Jumma Masjid Trust Committee v. State of Maharashtra and Ors.
Criminal Writ Petition No. 1028 of 2023

Perusal of the relevant provisions do not show that any appeal is provided against the interim order passed by District Magistrate under Section 144(i) of Cr.P.C. The remedy of filing an application before the same authority or before the State Government for alteration of the order cannot be equated with an Appeal.

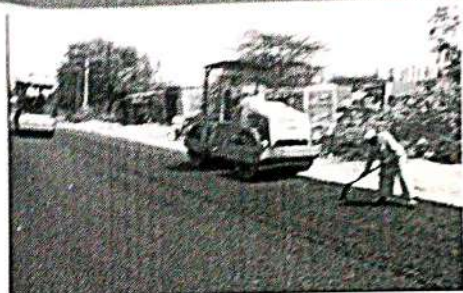
Analysis Section 144 of Cr.P.C. no doubt provides the powers to the District Magistrate even to take suo moto action, however, existence of likelihood of causing disturbance of public peace or tranquility is sine qua non to the exercise of such power. In *prima facie* opinion of this HC, for this

[illegible]

BLACKLISTING GUIDELINES

[illegible]

HELD: A decision of blacklisting by the government or its instrumentalities, is open to scrutiny on the touchstone of fairness, relevance, natural justice, non-discrimination, equality, reasonableness and proportionality. Fearing of show cause notice specifying the grounds on the basis of which an action is proposed to be taken, is a mandatory requirement so as to enable the person to answer the case before passing the order of blacklisting/banning since the same has not only long-lasting civil consequence, but it also tarnishes the blacklisted person's reputation. This is notwithstanding that it is well settled that the power to blacklist is inherent in the party attesting the contract and the same is unqualified.

[illegible]

Analysis, therefore, holds that neither form of contract is necessarily superior to the other and so the analysis holds that there is a wide spectrum of branching-inclusiveness in the two dimensions. If only the two members are the children of the two brother-like vertices, branching is the branching-inclusiveness concept the narrower term. The WS, indeed, uses the WS judgement in a couple of places. WS-Like has a "Chief Executive Manager," "Western Hemisphere Project General Secretary" Norman L. Linder and others (1994: 34-35, 72) whereas the ASQ-Cartel would hold that "branching-inclusiveness signifies a business decision by which the party affected by the branch decides not to enter into any contractual relationship with the party committing this breach. The freedom to contract or not to contract is unqualified in the case of private parties. However, a branching-inclusiveness is subject to judicial review if it is borne in relation by the

Order of any of its constituent elements. This implies that only such things as a person's body may not only be the foundation of the preservation of his or her individuality, but also of the existence of "higher" society. A person's body is the only being that can be the basis of a person's individuality. A person's body is a greater element of the power of a living order of individuals, made of people themselves. Whether the order itself is "reasonable" for and proportional to the gravity of the offense, is thus, determined by a unit itself. The fact that a "unit" is a person, by the order of broadcasting indicates that the relevant authority is to have an objective jurisdiction. Fundamentals of the law require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist. This is essential as many civil and/or evil consequences are involved with the order of broadcasting and it is described as "civil class" of a person who is fostered with the order of broadcasting.

<https://www.fishbase.org/news-updates/marine-fish-against-black-shrimp-boom-in-the-gulf-of-mexico>

Registration Act

XXXIII. Balachandran v. Sub Registrar and Connected matters

W.P. No. 2233 of 2019 and
WMP No. 2489 of 2019

Held: The persons executing the document can only transfer the right that they have, and merely because they are purporting to transfer possessory rights and they are not able to produce any prior documents cannot be a ground for the Sub Registrar to refuse registration. The documents presented for registration, directed to be registered subject to compliance of usual formalities without insisting for production of prior documents.

Facts: The Sub Registrar refused to register documents presented by the petitioners on the ground that the petitioners have not produced any prior documents. The State claimed that the prior documents were required only because the petitioners claimed to have obtained verum pattam rights over the property in question. The petitioners in rebuttal submitted that even possessory rights can be transferred and since the property in question is not Government land in any manner, it was not open to the Sub Registrar to deny registration.

Analysis: The matter is covered by the Kerala HC judgement in

Sumathi and another v. State of Kerala and others, 2018 (5) KHC 586 where the HC has held that in the light of the provisions contained in Section 17 of the Registration Act, the Sub Registrar is not legally justified in insisting that the executant should produce prior title deeds to satisfy the title and ownership of the property before he registers the deed concerned, and that even possessory right could also be conveyed and there is no bar or legal impediment in transferring the possessory rights from one person to another, and whether the possession is based on lease or title are not matters of enquiry by the Sub Registrar. A-J only those rights which the executors are having alone could be conveyed to the transferee. In other words, mere execution of the deed by itself will not be conclusive of the title and ownership rights of the person concerned merely on the basis of the description and recitals in the deed concerned.

https://www.livestlaw.in/pdf_upload/balachandran-v-sub-registrar-2019-2019.pdf

<https://www.livestlaw.in/high-court/kerala-high-court-transfer-of-possession-prior-ownership-documents-section-17-registration-act-23210881-text-to-the%20Kerala%20High%20Court%20recently,Sub%20Registrar%20to%20refuse%20registration.>

NGT

XXXIII. Singrauli Super Thermal Power Station V. Ashwini Kumar Dubey & Ors

Civil Appeal No.4529/2022

Civil Appeal No.4525/2022

Civil Appeal No.4581/2022

Held: The SC held that the National Green Tribunal (NGT) being an adjudicatory body must comply with the principles of natural justice and if it intends to rely on the report of an expert Committee or any other material that is brought to its knowledge, the concerned party must be informed of it in advance, and be given an opportunity for discussion and rebuttal.

Facts: The Court was considering a batch of appeals against a common order passed by the NGT, Principal Bench, whereby the appellants were aggrieved by the manner and the nature of the directions that were issued, wherein certain thermal power plants were directed to install air pollution control and monitoring devices and were also directed to timely utilize and disposal of fly ash as remedial measures. It was alleged that the directions were passed in violation of the principle of natural justice, since no opportunity was given to the appellants to file their objections before the expert committee constituted by the NGT.

Analysis: The SC while allowing the appeals and sending the matter back to NGT for

reconsideration held that, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party to allow to give an opportunity for discussion and rebuttal, and to not do so would be violative principles of natural justice. The NGT had simply accepted the recommendations of the expert committee without even inviting the objections from the appellants herein, which would amount to abdication of its jurisdiction and entrusting the judicial functions to an administrative expert committee. The Court also invoked the 'office notice' doctrine, which stipulates that although an authority can rely upon materials familiar to it in its expert capacity without the need of formally introducing them in evidence, nevertheless, the parties ought to be informed of materials by a notice and they ought to be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies.

Link- https://main.sci.gov.in/supremecourt/2022/11778/11778_2022_18_80_44782_Judgement_05-Jul-2022.pdf

CPC

XXXIV. Sajjan Singh v. Ashwini Kumar Dubey & Ors

Civil Appeal No. 4221 of 2023
(Arising out of SLP(C)
No.892/2019)

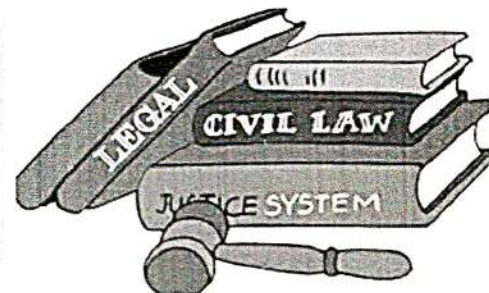
Held: Whether an appropriate prayer should have been sought, is a matter ultimately to be decided in the suit and not an issue to be considered while deciding the application under Order VII Rule 11 of CPC.

Facts: In a suit filed by the appellant herein, the respondents filed an application under Order VII Rule 11 of the Code of Civil Procedure 1908 (for short 'CPC') which was, at the first instance, dismissed by the Trial Court through its order dated 30.10.2017. The respondents were therefore before the High Court in a Revision Petition. The High Court having considered the matter, has through its order dated 25.03.2019, allowed the Revision Petition, and as a

consequence, the application filed under Order VII Rule 11 of CPC was allowed and the plaint was rejected. It is in that light, the appellant filed the impugned case.

Analysis: The SC while setting aside the order of the HC held that whether an appropriate prayer should have sought, is a matter ultimately to be decided in the suit and not an issue to be considered while deciding the application under Order VII Rule 11 of CPC, in the manner in which it had been done in the facts and circumstances arising in the instant case. Order VII Rule 11 of CPC stipulates rejection of a plaint on various grounds, such as non-disclosure of cause of action, relief undervalued, where the suit appears from the statement in the plaint to be barred by any law etc.

Link- https://main.sci.gov.in/supremecourt/2019/13061/13061_2019_7_42_44835_Order_05-Jul-2022.pdf





NCLA Activities

1. **Arbitration Workshop for Senior Civil Servants:** A two and a half days "Arbitration Workshop" held from July 7th to 9th, 2023, was a meticulously designed event aimed at providing valuable insights and knowledge about the arbitration process. This workshop was exclusively organised for individuals holding the esteemed positions of Joint Secretary and above within the administrative framework of the Government of India and State Governments. The event was orchestrated by the prestigious National Centre for Law and Administration, and took place at the esteemed Lal Bahadur Shastri National Academy of Administration, Mussoorie.
2. **Contract Drafting Workshop:** The two day workshop on contract drafting and contract management was organised from 22nd - 23rd July, 2023. The workshop was conducted at the Sardar Patel Hall by the National Centre for Law and Administration for senior civil servants and crucial discussions on several types of contracts, their drafting and efficient management took place. The workshop was facilitated by experienced partners from widely reputed Tier-1 law firms and comprised of practice exercises, group activities and interactive dialogue.



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