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of the amount i.e. the actual cost of the machines – Held: Contracts of insurance are generally in the nature of contracts of indemnity – Except the cases of life insurance, personal accident, sickness and contingency insurance, all other contracts of insurance entitle the insured only to the actual loss suffered, not exceeding the amount stipulated in the contract – The happening of event against which insurance cover taken, by itself does not entitle the insured to claim – Insured not entitled to damage in respect of the machine which was not damaged – The machine which was damaged requires complete replacement – The insured is entitled to the cost of machine and custom duty component paid on the said machine.

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Issue as regards determination of right to mine iron ore.
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(1) Exception clause – Interpretation of – Held: Is to be strictly interpreted and cannot be assumed but is to be proved – Exception clause is always

subject to the rule of construction and in case of doubt, it must befriend the general provision and disfavour the exception – If any category of person claims exception from the operation of the statute, it must establish that it comes within the exception.

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(2) Rules of interpretation – Held: First and primary rule of construction is that intention of the legislature must be found in the words used by the legislature itself – The other rule is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so.

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(3) Vague and ambiguous provision – An interpretation that would avoid absurd results should be adopted – When the object or policy of a statute can be ascertained, imprecision in its language not to be allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy – A court cannot supply a real casus omissus nor can it interpret a statute to create a casus omissus when there is really none.

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KERALA COURT-FEES AND SUITS VALUATION ACT, 1959:

s.40 – Interpretation of – Suits for cancellation of sale deed – Computation of Court fees – Held: When there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method – Deeming clause in substantive part of s.40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, court fees is required to be computed on the value of the property for which the document was executed, and not on its market value – Expression 'value of property' used in s.40(1) should not be substituted with the expression 'market value of the property'.

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KERALA SERVICE RULES, 1959:

r.60(b) – Exception clause conferring benefit of higher age of superannuation for specified category of government employees – Respondent worked as a full time menial in an aided school from 1968 to 1976 – Subsequently, he resigned from the post and joined a government department – Claim by respondent that since he was in service of an aided school as on 7-4-1970, he was entitled to benefit u/r.60(b) and thus continue in service upto 60 years of age as against the normal superannuation age of 55 years – Tenability

of – Held: Not tenable.

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Reinstatement with back wages – Absence without leave – Deemed as resignation as per Bye-Laws and Rules – Reappointment on compassionate ground – After re-appointment, employee again absented without permission – Absence again deemed as his resignation – Writ petition by employee seeking his re-instatement in compliance with order of re-appointment – High Court held that despite the order of re-appointment, he was not employed and directed reinstatement with back wages – In compliance thereof, employee reinstated – Thereafter, again he failed to report for work – In departmental inquiry for misconduct, found guilty – Held: The decision of High Court was based on erroneous facts – The order regarding reinstatement is not interfered with – The order is modified to the extent that the employee is entitled to full back wages from the date of his joining duty on reinstatement, in compliance of order of High Court till the date he failed to report for work – Tamil Nadu Co-operative Societies Rules, 1988 – r. 149(10)(1).

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LAND ACQUISITION:

(i) Acquisition of land for planned development of city – Deletion from the proposed acquisition – Basis for – Held: Deletion should be only with regard to areas which are already well-developed in a planned manner – Sporadic small unauthorized constructions in unauthorized colonies are not to be deleted – If hardship is the reason for deletion, appropriate course is to give preference to the land-owners in allotment of developed plots and help them to resettle – Development authority should either provide orderly development or should stay away from development – Urban Development.

(ii) Land acquisition governed by Land Acquisition Act – Present system of – Held: Requires urgent attention of the State Government and Development Authorities – It is necessary to evolve tailor-made schemes to suit particular acquisition to make it smooth, speedy, litigation free and beneficial to all concerned – Acquisition should be for the benefit of society and to improve the city and not to benefit the development authority – Need for the Law Commission and the Parliament to revisit the Land Acquisition Act – Land Acquisition Act, 1894.

(Also see under: Constitution of India, 1950; Bangalore Development Authority Act, 1976 as also under Constitution of India, 1950)

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LAND ACQUISITION ACT, 1894:

ss. 4, 5-A and 6 – Applicability of – To acquisition under Bangalore Development Authority Act –

Held: ss. 4 to 6 would not apply to acquisition under BDA Act – In view of s.36 of BDA Act, only such provisions of Land Acquisition Act are applicable to the acquisition under BDA Act, for which a corresponding provision is not found in the BDA Act – ss.17 to 19 of the BDA Act are the corresponding provisions to ss.4 to 6 – Bangalore Development Authority Act, 1976 – ss.17 to 19 and 36.

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(2) Challenge to validity of legislation – Basis for – Held: Legislation can be declared unconstitutional or invalid only on the grounds of legislative competence or for violation of fundamental rights or constitutional provisions including the provisions which enshrine the principles of Rule of Law, separation of power and independence of judiciary – Legislation cannot be held invalid for violating basic structure of the

Constitution – Constitution of India, 1950.

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(3) Land acquisition – Suggestion to Law Commission and Parliament to revisit Land Acquisition Act, 1894.

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MAHARASHTRA CIVIL SERVICES (REGULATION AND SENIORITY) RULES, 1982:

r. 4(2) – Seniority of recruits selected in one batch – 22 posts of DSP – First 14 meant for candidates from open stream and remaining 8 for reserved candidates – Petitioner unable to qualify for the 14 posts and placed after the list of successful candidates – Petitioner appointed as Sales Tax Officer which was his second preference – Out of the initially selected candidates, three found ineligible for the post – Appointment of petitioner to the post of DSP – Claim for seniority over candidates who had been selected at the initial stage – Held: Selection of petitioner along with two other candidates as substituted candidates in place of the ineligible candidates, was under fortuitous circumstances – Petitioner was brought in as a replacement candidate, not from any waiting list, but from the list of successful candidates in the examination held as per marks obtained by them, on the basis of the representation made by him – Thus, Rule 4(2) not applicable and petitioner's seniority to be reckoned only from the date of his joining his duties as DSP – Maharashtra State Service (Main),

Examination, 1990.

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MAHARASHTRA STATE SERVICE (MAIN), EXAMINATION, 1990:
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MEMBERS OF PARLIAMENT LOCAL AREA DEVELOPMENT SCHEME:

(i) Accountability under the scheme – Role of MP in the scheme – Held: Every MP is authorised to only recommend such works which are of general public utility in his own constituency – Role of MP is very limited to the initial choice of a selection of projects subject to approval of the District Authority/ Commissioner or Municipal authority – Mere allegation of misuse of funds under the scheme by some MPs by itself may not be a ground for scrapping of the scheme as checks and safeguards are provided therein.

(ii) Funds under the MPLAD scheme – Held: Use of funds for development work which results in better performance of the MP and if that leads to people voting for the incumbent candidate would not amount to an unfair advantage or corrupt practices under Representation of the People Act – Representation of the People Act, 1951 – Unfair practice.

Bhim Singh v. Union of India and Ors. 218

MINES AND MINERALS:

Right to mine iron ore – Boundaries of areas

covered under mining leases disputed – Committee constituted to demarcate boundaries – Held: Meanwhile, the respondent No.1-Company can be allowed to start the mining operation only in the undisputed area which neither falls in the State of Karnataka nor would be abutting Karnataka boundary – It will not be permitted to do any mining operation in those areas which according to the base Map dated 4.5.2010 fall within its leased area but may be falling in the leased area of other lessees – For the purpose of effective demarcation to be carried out by the Committee, it shall be open for it to ask respondent No.1 to stop mining operations in that area where demarcation is to be done and the same shall be strictly obeyed by respondent No.1.

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Validity of the Act.
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NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) s.138 – Conviction under – Imposition of fine of Rs. 5 lakhs with default stipulation – As per order of appellate court as well as revision court, accused deposited amount of Rs. 2 lakhs towards compensation – Revision court directing the accused to deposit Rs. 4 lakhs towards balance amount of compensation – Held: Direction to deposit amount of Rs. 4 lakhs was based on factual error – Since accused had already deposited Rs. 2 lakhs, he was required to deposit only Rs. 3 lakhs as due compensation.

K. A. Abbas v. Sabu Joseph & Anr. 822

(2) (i) ss.139 and 138 – Presumption in favour of holder – Manner of rebuttal of statutory presumption – Held: Presumption mandated by s.139 includes existence of legally enforceable debt or liability – It is in nature of rebuttable presumption – Accused can raise a defence wherein existence of legally enforceable debt or liability can be contested – However, initial presumption favours the complainant – Reverse onus clause is included and the same is guided by the test of proportionality – Accused cannot be expected to discharge an unduly high standard of proof – If accused is able to raise a probable defence which creates doubts about the existence of legally enforceable debt or liability, prosecution can fail.

(ii) s.138 – Applicability of – Held: s.138 is applicable when cheque is dishonoured on account of 'stop payment' instructions sent by accused to his bank in respect of post-dated

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Reservation in Panchayats.

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PENAL CODE, 1860:

(1) s.302 – Accused persons, carrying deadly weapons, chased the informant and his associates – Death of one person – Conviction of accused by courts below – Held: Justified – Four prosecution witnesses narrated the incident in the same manner – Though the witnesses did not place their medical reports about their injuries, their presence at the spot could not be doubted – Presence of the accused at the scene of occurrence was established satisfactorily by prosecution through reliable evidence – Plea of alibi by appellant no.1 not substantiated.

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(2) s.302 – Single knife blow on vital part of the body resulting in death of victim – Conviction u/s.302 by courts below – Held: Does not call for interference – There were categorical statements of eye-witnesses proving the involvement of accused in the offence – Acquittal of other co-accused would not affect the conviction of appellant as there was cogent, credible and truthful evidence of witnesses against him – Evidence. (Also see under: Evidence)

Balraje @ Trimbak v. State of Maharashtra 764

(3) ss.302/149 – Previous enmity over land – Mob of 75-100 persons entered into clash with complainant party – Two persons belonging to complainant party died and about 9 persons received injuries – About 14 accused persons received injuries and some suffered grievous injuries – Conviction of 35 accused persons by trial court – High Court acquitted 21 and upheld conviction of 14 accused – Held: There was no evidence to specifically ascribe any definite role to any of the accused – Also there was no explanation regarding the injuries on accused persons – Appellants entitled to benefit of doubt and hence acquitted.

Eknath Ganpat Aher and Ors. v. State of Maharashtra and Ors. 577

(4) ss.376/34 – Conviction under – Held: Evidence of eye-witness supporting prosecution case – There was no material contradiction in the evidence of prosecutrix and eye-witness in order to disbelieve them – Prosecutrix was a grown up lady with 2 children and in such circumstance absence of injuries on her private parts would not in any manner support the case of defence – Plea of consensual sex, raised for the first time before Supreme Court not sustainable – Crime against women – Rape.

Utpal Das & Anr. v. State of West Bengal 495

(5) ss.498-A/34, ss.302/34 – Conviction under – Accused persons poured kerosene on deceased-daughter-in-law and lit fire on her – Conviction based on dying declaration – Held: The dying declaration has got due weight in the evidence –

Evidence of eye-witnesses also proved that accused ill-treated the deceased and subjected her to cruelty and that they were involved in the commission of the offences – Conviction upheld – Crime against Women – Evidence Act, 1872 – s.32 – Dying declaration.

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(1) Plea of bias against the Presiding Officer – Held: Wild and bald allegation of bias, without any basis liable to be rejected.

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(2) Plea raised for the first time before Supreme Court – Not sustainable.

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REPRESENTATION OF THE PEOPLE ACT, 1951:		
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<i>Dr. K. Krishna Murthy & Ors. v. Union of India & Anr.</i>	972
(2) Unfair practice – Use of development fund whether amount to unfair practice. (See under: Members of Parliament Local Area Development Scheme)	218
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SECURITIES CONTRACT REGULATION ACT, 1956:		
s.16 – Transaction into securities – Circular dated 27.6.1969 issued under the Act providing that transactions into securities which were permissible were spot delivery contract; contract for cash; hand delivery and special delivery – Contract note in relation to the transaction in question showed that it was not a spot delivery contract – Thus, transaction was contrary to the Circular and was not capable of being enforced. (Also see under: Words and Phrases)		
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(1) Appointment of Primary School Teachers. (See under: Contempt of Court)	161
(2) (i) Misconduct – Penalty – State Transport Corporation – Charges of misconduct against conductor – Findings against him by disciplinary authority – Employee relegated to status of Daily Rated Conductor – He challenged the action – Plea of bias – Further plea that the punishment imposed was not provided for in the Regulations – Held: Mere appointment of Enquiry Officer, while framing the charge-sheet, before considering the reply of respondent, did not reflect any bias –		

However, punishment imposed, not being one of the punishments enumerated in Regulation 36, not permissible in law – Reinstatement directed on technical ground, hence, without back wages – Punishment modified to penalty of reduction to lowest stage in time scale of pay applicable to Conductors – South Bengal State Transport Corporation Service Regulations – Regulations 36 and 38.

(ii) Reversion to a post lower than the post in which employee entered service – Held: Not permissible.

(iii) Reversion to a post outside the cadre i.e. from regular post to a daily wage post – Held: Not permissible.

South Bengal State Transport Corporation v. Ashok Kumar Ghosh and Ors. 176

(3) Recruitment drive – Malpractice in the written examination came to notice after preparation of select list – Authorities directing re-test of candidates who had obtained minimum qualifying marks in the written test – Tribunal upheld the order for re-test – In writ petition, High Court applying principle of *wednesbury*, setting aside the order of re-test and directing appointment of all the candidates except those against whom there was allegation of impersonation – Held: High Court wrongly applied the principle of *wednesbury* and misdirected itself in rejecting the decision of re-test – Applying the test of *wednesbury* as well as proportionality test, decision of the authorities, in facts of the case was fair, reasonable, balanced and harmonious – Candidates challenging the re-

test have no legal right to appointment, as final merit list was not published – Doctrines/Principles – Doctrine of proportionality – Principle of *wednesbury*.

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(4) Retirement – Claim for higher age of superannuation.

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(5) (i) Seniority – Amendments made to r.2 of Service Rules with retrospective effect – Validity of – Challenged on the ground that it adversely affected *inter-se* seniority and thus took away the vested or accrued rights of employees – Held: Challenge not tenable – Seniority of a Government servant is not a vested right – An Act of the State Legislature or a Rule made under Article 309 of the Constitution can retrospectively affect the seniority of a Government servant – Andhra Pradesh Forest Service Rules, 1965 – r.2 – Constitution of India, 1950 – Article 309.

(ii) Recruitment Rules – Publication of.
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(6) Seniority – Claim for.

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(7) Special pay – Re-fixation of.

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(8) Termination – On the ground of illegal appointment – Voluntary Health Workers, working on monthly honorarium in State run dispensaries – Appointed by way of regularization/absorption as Primary Health Workers – After 15 years, their services were terminated on the ground that their initial appointments were manifestly illegal – Held: Termination justified – The appointment process itself was completely violative of the constitutional scheme underlying public employment – Court cannot allow such an illegality to continue irrespective of the length of time for which it has continued – Constitution of India, 1950 – Articles 14 and 16.

Md. Ashif and Ors. v. State of Bihar and Ors. 191

SHARES AND SECURITIES:

Two transactions for purchase of 1 lakh shares each – Delivery of only 1 lakh shares – Purchasers' claim for balance 1 lakh shares – Held: Claim not sustainable as the first transaction was cancelled – The delivery of shares pertained to the second transaction.

Naresh K. Aggarwala and Co. v. CanBank Financial Services Ltd. and Anr. 1

SOUTH BENGAL STATE TRANSPORT CORPORATION SERVICE REGULATIONS:

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SUBSEQUENT EVENTS:

Consideration of – Held: Where larger public interest is involved, subsequent events can be

seen for examining validity of an order.

Chairman, All India Railway Rec. Board & Anr. v. K. Shyam Kumar & Ors. 291

SUCCESSION ACT, 1925:

s. 230 – Renunciation of executorship – Form and effect of – Held: s. 230 lays down as to how executor renounces his character as an executor – There cannot be a deemed renunciation – There has to be a scrupulous adherence to the section before executor is refused probate u/s. 230 – On facts, property sold was to go under the Will to daughters and wife of testator, with rights to wife to sell the property for welfare of unmarried daughters – Executor of Will putting his signatures as a witness to sale deed of the property covered by Will – It cannot be said that executor had taken a hostile stance against testator – There was no trace of renunciation or deemed renunciation on part of the executor – Order of High Court that probate could not be granted in favour of executor since there was renunciation on part of executor, set aside – Also issue regarding renunciation not argued before trial court nor raised by way of written statement nor in memo of appeal before High Court – Matter remanded back for decision on merits regarding the valid execution or attestation of Will.

Samir Chandra Das v. Bibhas Chandra Das & Ors. 528

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Suit for cancellation of sale deed.

(See under: Kerala Court-Fees and Suits Valuation Act, 1959) 657

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(From 05.05.2010 to 12.05.2010)

Hon'ble Mr. Justice Cyriac Joseph, Judge, Supreme Court of India was on leave for two days from 06.05.2010 and 07.05.2010 on full allowances.

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2010 (5)	26	3 & 4	it is <u>required the</u> direction in paragraph 106, <u>quoted above</u> in D' souza (supra)	it is <u>required, the</u> direction in paragraph 106, in D'souza (supra)
2010 (5)	1131	4 from bottom	that <u>no</u> proposal	that <u>a</u> proposal
2010 (5)	1139	14	embodied in <u>Chapter II, Part III</u>	embodied in <u>Chapter II of Part VI</u>