

CONTENTS

Aayush Buildwell Pvt. Ltd. v. Haryana Urban Development Authority & Ors.	.....	181
Anil @ Anthony Arikswamy Joseph v. State of Maharashtra	.....	34
Commercial Tax Officer, Rajasthan v. M/s Binani Cement Ltd. & Anr.	.....	1
Gohil Jesangbhai Raysangbhai & Ors. v. State of Gujarat & Anr.	.....	110
Justice Ripusudan Dayal (Retd.) & Ors. v. State of M.P. & Ors.	.....	242
Larsen & Toubro Ltd. (M/s.) v. M/s. Mohan Lal Harbans Lal Bhayana	.....	162
M.D. (The), Chennai Metro Rail Ltd. v. N. Ismail & Ors.	.....	64
Nand Kumar v. State of Bihar	.....	193
Nesar Ahmed & Anr. v. State of Jharkhand & Ors.	.....	144
Pal Singh & Anr. v. State of Punjab	.....	231

Rajkumar v. State of M. P.	.....	212
Secretary to Government, School Education Department, Chennai v. Thiru R. Govindaswamy & Ors.	.....	84
Shyamal Saha & Anr. v. State of West Bengal	.....	90

SUBJECT-INDEX**ARBITRATION AND CONCILIATION ACT, 1996:**

s.11(6) - Application before High Court for appointment of arbitrator - Agreement between employer-SCOPE and appellant-contractor - Clause 25 of agreement bearing arbitration clause - Appellant engaging respondent sub-contractor - Application by respondent for appointment of arbitrator - Allowed by High Court - Held: SCOPE being Principal/Employer of appellant, liability for honouring the claim of respondent was that of SCOPE and appellant was not supposed to make any payment from its coffers - Further, by virtue of first supplementary agreement, modalities of settling the dispute between parties underwent a significant change - It was unambiguously provided that in view of arbitration between appellant and SCOPE, pertaining to claims of respondent as well, even if disputes between appellant and respondent were deemed to have been settled and were not referable to arbitration again between these two parties - Order of High Court set aside.

M/s. Larsen & Toubro Ltd. v. M/s. Mohan Lal Harbans Lal Bhayana 162

BIHAR AGRICULTURE PRODUCE MARKET (REPEAL) ACT, 2006:

(i) s.6 - 'All officers and employees' - Whether include daily wagers - Held: Daily wagers are not included within the meaning of 'all officers and employees' as used in s.6(i) - Daily wagers cannot

(iii)

be treated as permanent Government employees - s.6(i) makes it clear that after the repeal of Agriculture Produce Act, 1960, all officers and employees of the Board are to continue in employment and they shall continue to be paid what they were getting earlier as salary and allowance till such time the State Government takes an official decision as per the further provisions of s.6 - Scheme of alternative appointment framed for regular employees of abolished organisation cannot, thus, confer a similar entitlement on daily wagers of abolished organisation to such alternative employment.

(ii) s.6(ii) - Power of Committee of Secretaries - Held: Is to prepare a scheme of absorption as well as of retirement, compulsory retirement or voluntary retirement and other service conditions of officers and employees of the Board - Scheme prepared by Committee of Secretaries is only in the nature of recommendation and State has the power either to accept, modify or amend the same before granting its official approval.

Nand Kumar v. State of Bihar 193

BOMBAY PARAGANA AND KULKARNI WATANS (ABOLITION) ACT, 1950:

(See under: Gujarat Tenancy and Agricultural Lands Act, 1948) 110

CENTRAL PROVINCES AND BERAR SPECIAL POLICE ESTABLISHMENT ACT, 1947:

(See under: Constitution of India, 1950) 242

CODE OF CRIMINAL PROCEDURE, 1973:

s.235(2) r/w s.354(3) - Death sentence - Held: When culpability assumes the

(v)

depravity, the court has to give special reasons within the meaning of s.354(3) for imposition of death sentence - Legislative policy is that when special reasons do exist, as in the instant case, the court has to discharge its constitutional obligations and honour the legislative policy by awarding appropriate sentence, that is the will of the people - Sentence/Sentencing.

Anil @ Anthony Arikswamy Joseph v. State of Maharashtra 34

COMMITTEES:

Committee of Secretaries - Power of.
(See under: Bihar Agriculture Produce Market (Repeal) Act, 2006) 193

COMPENSATION:

Resumption of land.
(See under: Government Grants) 64

CONSTITUTION OF INDIA, 1950:

(1)(i) Art. 32 r/w Art. 142 - On a complaint alleging irregularities in certain construction works, after inquiry, case registered by SPE, Lokayukt Organisation against Secretary and Deputy Secretary, Vidhan Sabha and other officers - Notice by Secretary Vidhan Sabha to Lokayukt alleging breach of privilege of Vidhan Sabha - Writ petition by Lokayukt - Held: Maintainable - For the application of provisions of Lokayukt Act, and Prevention of Corruption Act, jurisdiction of Lokayukt or the Madhya Pradesh Special Police Establishment is for all public servants and no privilege is available to the officials and, in any case, they cannot claim any privilege more than an

(vi)

ordinary citizen to whom the provisions of the said Acts apply - Privileges do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiation - Action taken by petitioners under the said Act cannot constitute a breach of privilege of Legislative Assembly - Impugned letters/notices are quashed - Madhya Pradesh Lokayukt and Uplokayukt Act, 1981.

(ii) s.11(2) - Proceedings before Lokayukta - Held: Any proceeding before Lokayukt shall be deemed to be a judicial proceeding within the meaning of ss. 193 and 228 IPC and as per s. 11(3), the Lokayukt is deemed to be a court within the meaning of Contempt of Courts Act, 1971 - Central Provinces and Berar Special Police Establishment Act, 1947 - Procedures and Conduct of Business of the Madhya Pradesh Vidhan Sabha - Rule 164 - Contempt of Courts Act, 1971.

Justice Ripusudan Dayal (Retd.) & Ors. v. State of M.P. & Ors. 242

(2) Arts. 32 and 309.
(See under: Service Law) 144

CONTEMPT OF COURTS ACT, 1971:

Lokayukt - Deemed to be a court within the meaning of Contempt of Courts Act, 1971
(See under: Constitution of India, 1950) 242

CRIMES AGAINST WOMEN:

(See under: Penal Code, 1860) 212

DEATH PENALTY:

(1) (See under: Code of Criminal Procedure, 1973 as also Penal Code, 1860)

34

(vii)

(2) (See under: Sentence/Sentencing) 212

DOCTRINES/PRINCIPLES:

Principle of equal pay for equal work - Part time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on basis of the principle.

Secretary to Government, School Education Department, Chennai v. Thiru R. Govindaswamy & Ors. 84

EVIDENCE:

(1)(See under: Medical Jurisprudence as also Penal Code, 1860) 34

(2) (See under: Penal Code, 1860) 90

(3) (See under: Witness) 212

GOVERNMENT GRANTS:

Grant of land with conditions - Resumption of land when it ceased to be used for the purpose for which it was granted - Land required for Metro Rail Project - Steps taken by State Government to resume the land - Held: State Government as owner of the land and having regard to the right retained by it while making the grant in the years 1898 and 1899 and in the larger public interest of setting up of Chennai Metro Rail Project, lands were required by it, cannot be questioned by original grantee or by lessees whose holding was subordinate in character to original grantee - Since based on valid orders of High Court and AG & OT, first respondent developed its Hotel business in the lands in question, while resuming the lands, State Government along with Chennai Metro is bound to compensate first respondent for the buildings which

(viii)

were erected in the said land based on the valuation to be made by appropriate authorities.

The M.D., Chennai Metro Rail Ltd. v. N. Ismail & Ors. 64

GUJARAT TENANCY AND AGRICULTURAL LANDS ACT, 1948:

s. 43 r/w Government Resolution dated 4.7.2008 - Restriction on transfer of agricultural land for non-agricultural purposes - Transfer of land with previous sanction of Collector and in consideration of such amount as State Government may determine - Amount determined on the basis of rates called 'Jantri' on prior sanction to be obtained from Collector - High Court upholding the provision - Interference with - Held: Not called for - Application u/s.43 speaks of previous sanction - It cannot be kept pending indefinitely and, thus, Collector expected to decide such applications as far as possible within 90 days from its receipt - State Government reduced levy from 80 to 40 per cent which is obviously quite reasonable - Therefore, Jantri rate to be applied will be on the date of sanction by Collector, and not on the date of application made by party - Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950.

Gohil Jesangbhai Raysangbhai & Ors. v. State of Gujarat & Anr. 110

INTERPRETATION OF STATUTES:

(i) General entry over specific - Held: Where a Statute contains both a general provision as well as specific provision, latter must prevail - In other words, where a general statute and a specific statute relating to the same subject matter cannot

(ix)

be reconciled, the special or specific statute ordinarily will control - Principle finds its origins in the latin maxim of *generalia specialibus non derogant*, i.e., general law yields to special law should they operate in the same field on same subject.

(Also See under: Sales Tax New Incentive Scheme for Industries, 1989)

(ii) Rule of Harmonious Construction - Conflict between independent provisions of law - Held: When there is an apparent conflict between two independent provisions of law, special provision must prevail - This rule has application in construction of taxing statutes along with the proposition that the provisions must be given the most beneficial interpretation - While determining whether a statute is a general or a special one, focus must be on the principal subject-matter coupled with a particular perspective with reference to the intendment of the Act.

Commercial Tax Officer, Rajasthan v. M/s Binani Cement Ltd. & Anr. 1

LAND LAWS AND AGRICULTURAL TENANCY:

Transfer of agricultural land for non-agricultural purposes - Restriction.
(See under: Gujarat Tenancy and Agricultural Lands Act, 1948) 110

LOKAYUKTA:

(See under: Madhya Pradesh Lokayukt Evam Uplokayukt Adhiniyam, 1981) 242

MADHYA PRADESH LOKAYUKT AND UPLOKAYUKT ACT, 1981:

(See under: Constitution of India, 1950) 242

(x)

MADHYA PRADESH LOKAYUKT EVAM

UPLOKAYUKT ADHINIYAM, 1981:

s.2(g) of 1981 Act r/w s.2(c) of Prevention of Corruption Act - 'Public servant' - Complaint to Lokayukt regarding irregularities in certain construction works - Case registered by SPE, Lokayukt Administration against Secretary Vidhan Sabha, Deputy Secretary Vidhan Sabha and other officers - Notice by Secretary Vidhan Sabha alleging breach of privilege of Vidhan Sabha - Held: Inquiry or investigation into an allegation of corruption against some officers of Legislative Assembly cannot be said to be interfering with the legislative functions of the Assembly - Officers working under the office of the Speaker are also public servants within the meaning of s.2(g) of the Lokayukt Act and s. 2 (c) of Prevention of Corruption Act and, therefore, Lokayukt and his officers are entitled and duty bound to make inquiry and investigation into the allegations made in any complaint filed before them - Prevention of Corruption Act, 1988 - s.2(c).

Justice Ripusudan Dayal (Retd.) & Ors. v. State of M.P. & Ors. 242

MAXIMS:

Generalia specialibus non derogant - Meaning of.
(See under: Interpretation of Statutes) 1

MEDICAL JURISPRUDENCE:

Deoxyribonucleic acid or DNA - Evidentiary value of - Held: DNA is a molecule that encodes the genetic information in all living organisms - DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. - Generally, when DNA pro

(xi)

found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin - DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory - Penal Code, 1860 - Evidence.

Anil @ Anthony Arikswamy Joseph v. State of Maharashtra

34

PENAL CODE, 1860:

(1) s.302 - Charge sheet filed against five accused including petitioners u/ss.148, 302/149, 120B - Trial court convicted all accused under the charged offences - During pendency of appeal before High Court, one accused died - High Court acquitted two accused while upheld conviction of petitioners u/s.302 - Plea of petitioners that conviction u/s.302 simpliciter for which no charge was ever framed not proper - Held: Initially, charges were framed by trial court u/s.302 r/w s.34 and s.120-B against all the accused persons - Fresh charges were subsequently framed u/ss.148, 302, 302/149 and 120-B - Therefore, ultimate situation remained that there was charge u/ss.302, 302/149 and 120-B - Version of prosecution and injuries found on the person of deceased stood proved by evidence of PWs as well as by deposition of the doctor - Applying the test that injuries caused by accused were sufficient in the ordinary course of nature to cause death, both the petitioners can be convicted u/s.302 simpliciter as both of them could be convicted u/ss.302/34 since both came fully armed with iron rods and gave two blows each on the vital part of the body i.e. head and forehead which

(xii)

proved fatal for the deceased - No interference called for.

Pal Singh & Anr. v. State of Punjab

231

(2) s.302 - Murder - Allegation that the victim-deceased was taken across the river by appellants in a boat and thereafter, taken to jungle and killed - Trial court found that evidence of witnesses was inconsistent and acquitted the appellant - High Court applied the last seen theory and set aside the order of acquittal - Held: Order of acquittal passed by trial court restored.

Shyamal Saha & Anr. v. State of West Bengal

90

(3) ss. 302, 377 and 201 - Sodomy, buggery and bestiality - Murder - Minor aged 10 years subjected to carnal intercourse and then strangled to death - Conviction and death sentence - Held: Evidence of prosecution witnesses trustworthy and reliable - Prosecution clearly established that after subjecting the boy to Pederasty, he was strangled to death - Case u/ss.302, 377 and 201 clearly made out - Accused committed the crime at the age of 35 years when he was a fully matured person - No mitigating circumstance favouring him - Nothing to show that he was under any emotional or mental stress - Offence committed only to satisfy his lust, in a perverted way - Murder committed in an extremely brutal, grotesque, diabolical and dastardly manner and accused was in a dominating position and victim was an innocent boy - On facts, incarceration of a further period of thirty years, without remission, in addition to the sentence already undergone, will be an adequate punishment rather than death sentence - Sentence/Sentencing.

(xiii)

(Also See under: Medical Jurisprudence)

Anil @ Anthony Arikswamy Joseph v. State of Maharashtra 34

(4) ss.302, 376, 450 - Rape and murder of 14 year old girl - Accused-appellant on visiting terms with the family of victim-deceased was asked to sleep in their house on the fateful night by parents of deceased as they had to irrigate fields at night and children would be alone - Appellant committed rape on deceased and then caused grievous injuries resulting in her death - Conviction and death sentence by courts below - Held: Courts below rightly drew adverse inference against appellant - Findings of fact recorded by courts below affirmed.

Rajkumar v. State of M.P. 212

PREVENTION OF CORRUPTION ACT, 1988:

s. 2(c) - Officers working under the office of the speaker, 'public servant'.
(See under: Madhya Pradesh Lokayukt Evam Uplokayukt Adhinyam, 1981) 242

PROCEDURES AND CONDUCT OF BUSINESS
RULES 164 OF THE MADHYA PRADESH
VIDHAN SABHA:

(See under: Constitution of India, 1950) 242

SALES TAX NEW INCENTIVE SCHEME FOR
INDUSTRIES, 1989:

Item 1E (Annexure C) - New cement industry - Entitlement to exemption under the Scheme - Held: Item 1E classified cement units for eligibility of tax exemption into three categories: small, medium and large - Small and medium cement units have

(xiv)

been prescribed to have maximum Fixed Capital Investment (FCI) of Rs.60 lakhs and Rs.5 crores respectively and FCI of large to be over Rs.5 crores - As against items 1, 4, 6 and 7 which deal with units of all industries and not only cement, Item 1E restricted to only cement units and therefore, being a special entry override the general provision - Respondent-Company only eligible for grant of exemption under Item 1E as a large new cement unit in accordance with its FCI being above Rs.5 crores.

Commercial Tax Officer, Rajasthan v. M/s Binani Cement Ltd. & Anr. 1

SALES TAX:

Exemption - To new cement industry under the new incentive scheme.
(See under: Sales Tax New Incentive Scheme for Industries, 1989) 1

SENTENCE/SENTENCING:

(1) Death sentence - Held: Extreme penalty of death need not be inflicted except in gravest cases of extreme culpability - Before opting for the death penalty the circumstances of the offender also require to be taken into consideration alongwith the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception - Penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime - Appellant committed a heinous crime and raped an innocent, helpless and defenceless minor girl who was in his custody

- He is liable to be punished severely but not in a category of rarest of rare cases - Death sentence set aside and life imprisonment awarded.

Rajkumar v. State of M.P. 212

(2)(i) Rarest of rare case - Held: R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not - While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy of certain types of crimes like sexual assault and murder of minor girls, intellectually challenged minor girls, minors suffering from physical disability, old and infirm women, etc. - In the instant case, offence u/ss.377 and 302 fully proved - Indian society and also International society abhor pederasty - When victim is a minor, consent is not a defence, irrespective of the views expressed at certain quarters on consensual sex between adults.

(ii) Reformation and rehabilitation - Determination of sentence - Duty of courts - Held: It is the duty of the court to ascertain whether the accused would be a menace to the society and there would be no possibility of reformation and rehabilitation and State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of accused.

(Also See under: Penal Code, 1860 as also Code of Criminal Procedure, 1973)

Anil @ Anthony Arikswamy Joseph v. State of Maharashtra 34

SERVICE LAW:

(1) Appointment - Trained teachers in State of Jharkhand - Filing writ petition u/Art. 32 - Seeking directions to authorities to appointment them as Assistant Teachers in Government Schools in order of seniority irrespective of their being overage, in terms of judgment in *Ram Vinay Kumar's* case as followed in State of Bihar - Held: State of Jharkhand has framed its own rules for recruitment to posts of Assistant/primary teachers - Further, in terms of High Court order, rules were amended and appointments were made by following the recruitment rules scrupulously - Thus, not permissible for the petitioners to compare their case with their counterparts in Bihar - In such circumstances, Court not inclined to grant any relief to petitioners in the petitions, more so when it is found that State of Jharkhand has taken steps in conformity with the statutory recruitment rules framed under proviso to Art. 309 - Constitution of India, 1950 - Arts. 32 and 309.

Nesar Ahmed & Anr. v. State of Jharkhand & Ors. 144

(2) Regularisation

(i) Regularisation - Daily wagers even if appointed for a long time are not entitled to be absorbed and regularised.

Nand Kumar v. State of Bihar 193

(ii) Regularisation - Part time sweepers - Working for more than 10 years - Writ Petitions seeking regularisation of their services allowed - Held: Mere continuation of service by temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any

right to be absorbed into service, as such service would be "litigious employment" - Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post - Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right - Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work - On fact, since the Department has already implemented the impugned judgment, services of the respondent which stood regularized should not be affected.

*Secretary to Government, School Education
Department, Chennai v. Thiru R.
Govindaswamy & Ors.*

84

URBAN DEVELOPMENT:

Allotment of institutional plots - Discrepancies in allotment process - High Court setting aside the allotments made - Held: Appellant was an unsuccessful party in the initial allotment, which was set aside by High Court, but it did not give any right to appellant to claim allotment as a matter of right - Therefore, when no right arises to applicant in a vitiated/cancelled allotment procedure, subsequent claim for allotment depends upon factual circumstances of each case - Right of appellant not been crystallized - Appellant to comply with the process followed by HUDA for allotment of plots.

*Aayush Buildwell Pvt. Ltd. v. Haryana
Urban Development Authority & Ors.*

181

VALUATION:

Resumption of land.

(See under: Government Grants) 64

WITNESSES:

(1) Child witness - Evidentiary value of - Held: Every witness is competent to depose unless the court considers that he is prevented from understanding the question put to him, or from giving rational answers by reason of tender age or extreme old age or disease or because of his mental or physical condition - Evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him - On facts, eye-witness was a child aged 10 years at the time of incident - Courts below rightly found him reliable - No cogent reason to take a view contrary to the same.

Rajkumar v. State of M.P. 212

(2) Evidence of prosecution witnesses - Reliability.
(See under: Penal Code, 1860) 34

(3) (See under: Penal Code, 1860) 90