

CONTENTS

| | | |
|---|-------|-----|
| Abhay Singh Chautala v. C.B.I | ..... | 949 |
| Achyut Kashinath Karekar & Another; Rajeev Hitendra Pathak & Others v. | ..... | 513 |
| Arif (Mohd.) @ Ashfaq v. State of NCT of Delhi | ..... | 56 |
| Arjun Singh & Ors. etc.; State of Rajasthan v. | ..... | 823 |
| Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu, thr. Its Joint Commissioner v. The Director General of Post Offices, Department of Posts & Ors. | ..... | 43 |
| Arun Kumar Aggarwal v. State of Madhya Pradesh and Ors. | ..... | 850 |
| Balchandra L. Jarkiholi & Ors. v. B.S. Yeddyurappa & Ors. | ..... | 877 |
| Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra & Anr. | ..... | 685 |
| Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma Dead by Lrs. and Ors. | ..... | 819 |
| Bhushan Kumar Meen v. State of Punjab and Ors. | ..... | 844 |
| Budhadev Karmaskar v. State of West Bengal | ..... | 577 |
| C.B.I; Abhay Singh Chautala v. | ..... | 949 |
| Chakas v. State of Punjab & Ors. | ..... | 618 |
| Commissioner, Central Excise, Surat-II; Uniflex Cables Ltd. v. | ..... | 591 |

(i)

(ii)

| | | |
|---|-------|------|
| Commnr. of Central Excise, Meerut-II v. M/s. Sundstrand Forms P. Ltd. | ..... | 764 |
| Director General of Post Offices(The), Department of Posts & Ors.; Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu, thr. Its Joint Commissioner v. | ..... | 43 |
| Elavarasan v. State rep. By Inspector of Police | ..... | 1147 |
| Emmsons International Ltd. (M/s.) and Anr.; State Bank of India and Anr. v. | ..... | 436 |
| Furu Ram & Anr. etc.; Ramesh Kumar & Anr. v. | ..... | 453 |
| Gangamma and others; Nanjegowda and Anr. v. | ..... | 700 |
| Gautam Rasiklal Ashra & Anr.; Bharat Rasiklal Ashra v. | ..... | 685 |
| Gurdeep Singh v. State of Punjab and Ors. | ..... | 655 |
| Hon. High Court of Allahabad Thr. R.G.; Sanjoy Narayan Editor in Chief Hindustan & Ors. v. | ..... | 781 |
| Hon'ble Judges Inquiry Committee & Ors; Justice P. D. Dinakaran v. | ..... | 1064 |
| Howrah Ganatantrik Nagarik Samity & Ors.; State of West Bengal v. | ..... | 871 |
| Inderjit Singh Grewal v. State of Punjab & Anr. | ..... | 557 |
| Indiresan (P.V.) v. Union of India & Ors. | ..... | 384 |
| J.K. Synthetics Ltd. & Anr.; State of Rajasthan & Anr. v. | ..... | 993 |

| (iii) | | | (iv) | | |
|--|-------|------|--|-------|------|
| Jagdish Kaur; State of Punjab & Ors. v. | ..... | 728 | Nanjegowda and another v. Gangamma and others | ..... | 700 |
| Jahid Shaikh & Ors. v. State of Gujarat & Anr. | ..... | 1 | National Insurance Company Ltd. v. Kusuma and Anr. | ..... | 546 |
| Jeev Raj & Ors.; State of Rajasthan & Ors. v. | ..... | 241 | Nitinbhai Saevatilal Shah & Another v. Manubhai Manjibhai Panchal & Another | ..... | 804 |
| Justice P.D. Dinakaran v. Hon'ble Pudges Inquiry Committee & Ors | ..... | 1064 | Oriental Bank of Commerce and Anr. v. R.K. Uppal | ..... | 218 |
| Kandarpa Sarma v. Rajeswar Das and Ors. | ..... | 644 | Orissa Power Transmission Corporation Ltd. v. Khageswar Sundaray and Ors. | ..... | 196 |
| Khageswar Sundaray and Ors.; Orissa Power Transmission Corporation Ltd. v. | ..... | 196 | Parthasarathy (P.) v. State of Karnataka & Ors. | ..... | 599 |
| Khushboo Shrivastava & Ors.; The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. & Ors. v. | ..... | 286 | Prakash Jha Production (M/s.) and Anr. v. Union of India and Ors. | ..... | 496 |
| Kusuma and Anr.; National Insurance Company Ltd. v. | ..... | 546 | Praveen Enterprises; State of Goa v. | ..... | 1026 |
| Luxmi Kant Shukla; State of U.P. & Ors. v. | ..... | 531 | Prem Prakash @ Lillu & Anr. v. State of Haryana | ..... | 27 |
| Maharani Biswal and Ors.; Spl. Land Acquisition Officer v. | ..... | 609 | Puneet Gulati (Dr.) and Ors. etc. etc. v. State of Kerala and Ors. etc. etc. | ..... | 279 |
| Malik Traders (M/s); State of Haryana & Ors. v. | ..... | 372 | Raghubir Singh v. State of Rajasthan and Ors. | ..... | 739 |
| Maloth Somaraju v. State of A.P. | ..... | 349 | Raj Marketing & Anr.; The State of Maharashtra and Ors. v. | ..... | 722 |
| Manickam (M.) and Ors.; The Registrar General, High Court of Madras v. | ..... | 324 | Rajeev Hitendra Pathak & Others v. Achyut Kashinath Karekar & Another | ..... | 513 |
| Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors. | ..... | 634 | Rajeswar Das and Ors.; Kandarpa Sarma v. | ..... | 644 |
| Manubhai Manjibhai Panchal & Another; Nitinbhai Saevatilal Shah & Another v. | ..... | 804 | Rajinder Singh Pathania & Ors. v. State of N.C.T. of Delhi & Ors. | ..... | 260 |
| Murtaza (Md.) & Ors. v. State of Assam & Ors. | ..... | 755 | | | |

| (v) | | | (vi) | | |
|---|-------|------|---|-------|-----|
| Ram Kumar v. State of U.P. & Ors. | ..... | 506 | State of Gujarat & Anr.; Jahid Shaikh & Ors. v. | ..... | 1 |
| Ram Mehar Singh v. State of N.C.T. of Delhi and Ors. | ..... | 253 | State of Haryana & Ors. v. M/s Malik Traders | ..... | 372 |
| Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. | ..... | 453 | State of Haryana; Prem Prakash @ Lillu & Anr. v. | ..... | 27 |
| Raviraj Udupa v. M/s United India Insurance Company Ltd. & Ors. | ..... | 276 | State of Karnataka & Ors.; Parthasarathy (P.) v. | ..... | 599 |
| Sanjoy Narayan Editor in Chief Hindustan & Ors. v. Hon. High Court of Allahabad Thr. R.G. | ..... | 781 | State of Kerala and Ors. etc. etc.; Puneet Gulati (Dr.) and Ors. etc. etc. v. | ..... | 279 |
| Sanyam Lodha; State of Rajasthan & Ors. v. | ..... | 662 | State of Madhya Pradesh and Ors.; Arun Kumar Aggarwal v. | ..... | 850 |
| Satimbla Sharma (Mrs.) and Ors. v. St. Paul's Senior Secondary School and Ors. | ..... | 203 | State of Maharashtra and Ors. v. Subhash Arjundas Kataria | ..... | 708 |
| Shiv Cotex (M/s.) v. Tirgun Auto Plast P. Ltd. & Ors. | ..... | 787 | State of N.C.T. of Delhi & Ors.; Rajinder Singh Pathania & Ors. v. | ..... | 260 |
| Special Tehsildar (Land Acquisition) and another etc.; Valliyammal and Anr. v. | ..... | 293 | State of N.C.T. of Delhi and Ors.; Ram Mehar Singh v. | ..... | 253 |
| Spl. Land Acquisition Officer v. Maharani Biswal and Ors. | ..... | 609 | State of NCT of Delhi; Arif (Mohd.) @ Ashfaq v. | ..... | 56 |
| St. Paul's Senior Secondary School and Ors.; Satimbla Sharma (Mrs.) and Ors. v. | ..... | 203 | State of Jharkhand (The) & Ors.; Surendra Prasad Shukla v. | ..... | 799 |
| State Bank of India and Anr. v. M/s. Emmsons International Ltd. and Anr. | ..... | 436 | State of Maharashtra (The) and Ors. v. Raj Marketing & Anr. | ..... | 722 |
| State of A.P.; Maloth Somaraju v. | ..... | 349 | State of Punjab & Anr.; Inderjit Singh Grewal v. | ..... | 557 |
| State of Assam & Ors.; Murtaza (Md.) & Ors. v. | ..... | 755 | State of Punjab & Ors. v. Jagdish Kaur | ..... | 728 |
| State of Goa v. Praveen Enterprises | ..... | 1026 | State of Punjab & Ors.; Chakas v. | ..... | 618 |

| (vii) | | (viii) | |
|--|------|---|-----|
| State of Punjab and Ors.; Bhushan Kumar Meen v. | 844 | Tirgun Auto Plast P. Ltd. & Ors.; Shiv Cotex (M/s.) v. | 787 |
| State of Punjab and Ors.; Gurdeep Singh v. | 655 | Ugrasen (D) by Lrs. & Ors.; Manohar Lal (D) by Lrs. v. | 634 |
| State of Rajasthan & Anr. v. J.K. Synthetics Ltd. & Anr. | 993 | Uniflex Cables Ltd. v. Commissioner, Central Excise, Surat-II | 591 |
| State of Rajasthan & Ors. v. Jeev Raj & Ors. | 241 | Union of India & Ors.; Indiresan (P.V.) v. | 384 |
| State of Rajasthan & Ors. v. Sanyam Lodha | 662 | Union of India and Ors.; Prakash Jha Production (M/s.) and Anr. v. | 496 |
| State of Rajasthan and Ors.; Raghubir Singh v. | 739 | United India Insurance Company Ltd. (M/s) & Ors.; Raviraj Udupa v. | 276 |
| State of Rajasthan v. Arjun Singh & Ors. etc. | 823 | Uppal (R.K.); Oriental Bank of Commerce and Anr. v. | 218 |
| State of U.P. & Ors. v. Luxmi Kant Shukla | 531 | Valliyammal and Anr. v. Special Tehsildar (Land Acquisition) and Anr. etc. | 293 |
| State of U.P. & Ors.; Ram Kumar v. | 506 | Vinod Kumar Sharma Dead by Lrs. and Ors.; Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. | 819 |
| State of West Bengal v. Howrah Ganatantrik Nagarik Samity & Ors. | 871 | Yeddyurappa (B.S.) & Ors.; Balchandra L. Jarkiholi & Ors. v. | 877 |
| State of West Bengal; Budhadev Karmaskar v. | 577 | | |
| State rep. By Inspector of Police; Elavarasan v. ... | 1147 | | |
| Subhash Arjundas Kataria; State of Maharashtra and Ors. v. | 708 | | |
| Sundstrand Forms P. Ltd. (M/s.); Commnr. of Central Excise, Meerut-II v. | 764 | | |
| Surendra Prasad Shukla v. The State of Jharkhand & Ors. | 799 | | |
| The Registrar General, High Court of Madras v. M. Manickam and Ors. | 324 | | |
| The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. & Ors. v. Khushboo Shrivastava & Ors. | 286 | | |

CASES-CITED

| | | |
|--|-----|-----|
| A.P. Housing Board v. K.Manohar Reddy 2010 (11) SCR 1107 | ... | 294 |
| A.P.S.R.T.C. and Ors. v. G. Srinivas Reddy and Ors. 2006 (2) SCR 494 | | |
| – relied on. | ... | 636 |
| Abdul Nazar Madani v. State of T.N. & Anr. 2000 (3) SCR 1028 | ... | 7 |
| Abdul Rashid Abdul Rahiman Patel & Ors. v. State of Maharashtra (2007) 9 SCC 1 | | |
| – relied on. | ... | 827 |
| Abdul Wahab Ansari v. State of Bihar 2000 (3) Suppl. SCR 747 | | |
| – cited. | ... | 961 |
| Abhinandan Jha v. Dinesh Mishra, AIR 1968 SC 117 | ... | 853 |
| ADM Jabalpur etc. v. Shivkant Shukla 1976 (0) Suppl. SCR 172 | | |
| – cited. | ... | 961 |
| Aftab Ahmad Anasari v. State of Uttaranchal 2010 (1) SCR 1027 | | |
| – relied on | ... | 75 |
| Ahmed Noormohmed Bhatti v. State of Gujarat and Ors. 2005 (2) SCR 879 | ... | 263 |

| | | |
|--|-----|------|
| Air Commodore Kailash Chand v. The State (S.P.E. Hyderabad) (1973) 2 AWR 263 | ... | 960 |
| Air India Statutory Corporation v. United Labour Union 1996 (9) Suppl. SCR 579 | ... | 819 |
| Ajay Agarwal v. Union of India & Ors. 1993 (3) SCR 543 | | |
| – relied on | ... | 77 |
| Ajay Kumar Agrawal and Ors. v. State of U.P. 1990 (3) Suppl. SCR 184 | ... | 390 |
| Anand (R.K.) v. Delhi High Court 2009 (11) SCR 1026 | | |
| – cited. | ... | 1073 |
| Anbazhagan (K.) v. Supdt. of Police 2003 (5) Suppl. SCR 610 | | |
| – cited | ... | 5 |
| Anbazhagan (K.) v. Superintendent of Police, Chennai & Ors. 2004 (2) SCR 495 | ... | 7 |
| Ashok Kumar Shrivastava & Ors. v. Ram Lal & Ors. 2008 (1) SCR 299 | | |
| – relied on. | ... | 730 |
| Ashok Kumar Todi v. Kishwar Jahan and Ors. JT (2011) 3 SC 50 | ... | 263 |
| Ashok Kumar Yadav v. State of Haryana 1985 (1) Suppl. SCR 657 | ... | 1072 |
| Ashoka Kumar Thakur v. Union of India 2008 (4) SCR 1 | | |
| – clarified. | ... | 388 |

| (xi) | (xii) |
|--|---|
| Atma Singh (D) through Lrs. and Ors. v. State of Haryana and Another. 2007 (12) SCR 1120 | Bhim Singh, MLA v. State of J&K and Ors. AIR 1986 SC 494: 1985 (4) SCC 677 ... 264 |
| – relied on. ... 621 | Bihar State Mineral Development Corporation v. Encon Builders (I) (P) Ltd. 2003 (2) Suppl. SCR 812 ... 1072 |
| Atma Singh v. State of Haryana 2007 (12) SCR 1120 ... 294 | Bimbadhar Pradhan v. The State of Orissa 1956 SCR 206 |
| Babu Barkya Thakur v. State of Bombay and Ors. AIR 1960 SC 1203 | – relied on ... 77 |
| – followed. ... 600 | Bishan Lal v. State of Haryana (AIR 1977 P&H 7) |
| Bachan Singh v. State of Punjab AIR 1980 SC 898 | – cited ... 534 |
| – relied on ... 80 | Board of Secondary Education v. Pravas Ranjan Panda and Anr. (2004) 13 SCC 383 ... 287 |
| Baij Nath Prasad Tripathi v. State of Bhopal 1957 (1) SCR 650 | Chairman, Railway Board and Ors. v. Mrs. Chandrima Das and Ors. AIR 2000 (1) SCR 480 ... 265 |
| – cited. ... 961 | Charuvil Koshy Verghese v. State of Goa 1998 (2) SCC 21 ... 1032 |
| Balakrishnan Ravi Menon v. Union of India 2007 (1) SCC 45 | Chattar Singh v. State of Rajasthan 1996 (6) Suppl. SCR 6 ... 394 |
| – relied on ... 960 | Chinthamani Ammal v. Nandagopal Gounder and Anr. 2007 (2) SCR 903 |
| Basu (D.K.) v. State of West Bengal 1996 (10) Suppl. SCR 284 ... 263 and 265 | – relied on ... 439 |
| Bhanwar Singh & Ors. v. State of M.P. 2008 (15) SCR 879 | Commissioner of Police and Ors. v. Sandeep Kumar 2011 (3) SCALE 606 ... 506 |
| – held inapplicable. ... 743 | Commissioner of Police v. Registrar, Delhi High Court 1996 (7) Suppl. SCR 432 |
| Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi and Ors. 2009 (15) SCR 662 ... 265 | – relied on ... 6 |
| Bhikari v. State of Uttar Pradesh 1965 SCR 194 ... 1154 | |

| (xiii) | | (xiv) | |
|---|----------|--|---------|
| Dahyabhai Chhaganbhai Thakkar v. State of Gujarat (1964) 7 SCR 361 | ... 1154 | Firozuddin Basheeruddin & Ors. v. State of Kerala 2001 (7) SCC 596 | ... 77 |
| Dhirendra Nath Gorai v. Sudhir Chandra 1964 SCR 1001. | ... 1077 | Francis (G.X.) & Ors. v. Banke Behari Singh & Anr. AIR 1958 SC 309 | ... 7 |
| Director of Settlement, State of A.P. v. M.R. Apparao 2002 (2) SCR 661 | | Frank Anthony Public School Employees' Association v. Union of India & Ors.1987 (1) SCR 238 | |
| – cited. | ... 961 | – held inapplicable. | ... 205 |
| Disha v. State of Gujarat and Ors. JT (2011) 7 SC 548 | ... 263 | Friends Colony Development Committee v. State of Orissa 2004 (5) Suppl. SCR 818 | ... 756 |
| Divert v. State of Gujarat 1986 SCR 479 | ... 756 | Gajanand & Ors. v. State of U.P. AIR 1954 SC 695 | |
| Divisional Controller, KSRTC v. Mahadeva Shetty 2003 (2) Suppl. SCR 14 | | – relied on. | ... 743 |
| – relied on. | ... 854 | Ganesh Santa Ram Sirur v. State Bank of India and Anr. 2004 (6) Suppl. SCR 101 | |
| – cited. | ... 961 | – relied on | ... 221 |
| Employees State Insurance Corporation v. All India ITDC Employees Union and Ors. 2006 (3) SCR 361 | | Ganga Sugar Corpn. v. State of U.P. 1980 (1) SCR 769 | ... 960 |
| – relied on. | ... 636 | General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr. 2008 (11) SCR 927 | |
| Eureka Estates (P) Ltd. (M/s) v. A.P. State Consumer Disputes Redressal Commission and Others AIR 2005 AP 118 | | – relied on. | ... 620 |
| – cited. | ... 515 | Giani Devender Singh v. Union of India 1995 (1) SCR 27 | |
| Faguna Kanta Nath v. The State of Assam 1959 Suppl. SCR 1 | | – relied on. | ... 853 |
| – relied on. | ... 560 | Girnar Traders v. State of Maharashtra 2007 (9) SCR 383 | |
| Faridabad Gas Power Project, NTPC v. Om Prakash (2009) 4 SCC 719 | | – relied on. | ... 855 |
| – cited | ... 298 | | |

(xv)

| | | |
|--|-----|-----|
| Grewal (M.S.) & Anr. v. Deep Chand Sood & Ors. 2001 (2) Suppl. SCR 156 | ... | 549 |
| Gulzari Lal Agarwal v. Accounts Officer 1996 (6) Suppl. SCR 708 | ... | 515 |
| – cited | ... | 515 |
| Gurcharan Dass Chadha v. State of Rajasthan (1966) 2 SCR 678 | ... | 7 |
| H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 | ... | 294 |
| – relied on | ... | 294 |
| H.P. Public Service Commission v. Mukesh Thakur and Anr. 2010 (7) SCR 189 | ... | 637 |
| – relied on. | ... | 637 |
| Habibullah Khan v. State of Orissa & Anr. 1995 (1) SCR 819 | ... | 961 |
| – cited. | ... | 961 |
| Hanif Quareshi v. State of Bihar AIR 1958 SC 731 | ... | 756 |
| Hanumantha (V.) Reddy v. Land Acquisition Officer and Mandal Revenue Officer (2003) 12 SCC 642 | ... | 294 |
| – relied on | ... | 294 |
| Harakchand v. Union of India 1970 (1) SCR 479 | ... | 756 |
| Hari Singh v. State of Haryana 1993 (3) SCR 61 | ... | 960 |
| Helen C. Rebello & Ors. v. Maharashtra State Road Transport Corporation & Anr. 1998 | ... | 890 |

(xvi)

| | | |
|--|-----|------|
| (1) Suppl. SCR 684 | ... | 549 |
| – relied on. | ... | 549 |
| Hemani Malhotra v. High Court of Delhi 2008 (5) SCR 1066 | ... | 390 |
| Hitesh Bhatnagar v. Deepa Bhatnagar AIR 2011 SC 1637 | ... | 561 |
| Hoskot (M.H.) v. State of Maharashtra 1979 (1) SCR 192 | ... | 1072 |
| – cited. | ... | 1072 |
| Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, Lakhimpur kheri (1964) 6 SCR 411 | ... | 853 |
| – relied on. | ... | 853 |
| Indian Oil Corporation Ltd. v. Amritsar Gas Service and Ors.1990 (3) Suppl. SCR 196 | ... | 1038 |
| Indian Oil Corporation Ltd. v. M/s SPS Engineering Ltd. 2011 (2) SCALE 291 | ... | 1038 |
| Indiresan (P.V.) v. Union of India 2009 (7) SCC 300 | ... | 388 |
| – clarified | ... | 388 |
| Indra Sawhney v. Union of India 1992 Suppl. (3) SCC 217 | ... | 394 |
| Jagannath v. Arulappa and Anr. (2005) 12 SCC 303 | ... | 439 |
| – relied on | ... | 439 |
| Jagjit Singh v. State of Haryana 2006 (10) Suppl. SCR 521 | ... | 890 |
| – distinguished. | ... | 890 |
| Jagraj Singh v. Birpal Kaur 2007 (2) SCR 496 | ... | 561 |

(xvii)

| | | | |
|--|-----|------------------|--|
| Jamuna Singh v. State of Bihar 1967 SCR 469 | | | |
| – relied on. | ... | 560 | |
| Japani Sahoo v. Chandra Sekhar Mohanty 2007 (8) SCR 582 | ... | 562 | |
| Jeevak Almast (Dr.) v. Union of India 1988 (2) Suppl. SCR 385 | ... | 390 | |
| Joginder Kumar v. State of U.P. and Ors. AIR 1994 SC 1349 | ... | 263 | |
| Jyoti Pershad v. Union Territory of Delhi 1962 SCR 125 | ... | 756 | |
| Jyotsana Arvind Kumar Shah & Others v. Bombay Hospital Trust (1999) 4 SCC 325 | | | |
| – upheld | ... | 515 | |
| Kanhiya Lal Omar v. R.K. Trivedi & Ors. 1985 (3) Suppl. SCR 1 | | | |
| – relied on. | ... | 853 | |
| Kanoria Chemicals and Industries Ltd. v. UP State Electricity Board 1997 (2) SCR 844 | | | |
| – relied on. | ... | 1000 and 1005 | |
| Kapur (B.R.) v. State of T.N. 2001 (3) Suppl. SCR 191 | ... | 890 | |
| Karunakaran (K.) v. State of Kerala 2006 (10) Suppl. SCR 283 | | | |
| – relied on | ... | 960 | |

(xviii)

| | | | |
|--|-----|------|--|
| Kasturi v. State of Haryana 2002 (4) Suppl. SCR 117 | | | |
| – relied on | ... | 294 | |
| Kehar Singh v. State (Delhi Admn.) 1988 (2) Suppl. SCR 24 | | | |
| – relied on | ... | 78 | |
| Kendriya Vidyalaya Sangathan and Ors. v. Ram Ratan Yadav 2003 (2) SCR 361 | | | |
| – distinguished. | ... | 506 | |
| Kihoto Hollohan v. Zachillhu & Ors. 1992 (1) SCR 686 | ... | 890 | |
| Kiran Tandon v. Allahabad Development Authority 2004 (3) SCR 467 | | | |
| – relied on | ... | 294 | |
| Kraipak (A.K.) v. Union of India 1970 (1) SCR 457 | ... | 1071 | |
| Krishena Kumar v. Union of India 1990 (3) SCR 352 | ... | 960 | |
| Krishi Utpadan Mandi Samiti v. Bipin Kumar (2004) 2 SCC 283 | ... | 295 | |
| Krishna Swami v. Union of India and others 1992 (1) Suppl. SCR 53 | | | |
| – cited. | ... | 1073 | |
| Krishnamacharyulu (K.) and Others v. Sri Venkateswara Hindu College of Engineering and Another (1997) 3 SCC 571 | ... | 207 | |

(xix)

| | | |
|---|-----|------|
| Kuldip Yadav v. State of Bihar (2011) 5 SCC 324 | | |
| – relied on | ... | 829 |
| Lachhman Dass v. Ram Lal - 1989 (2) SCR 250 | | |
| – relied on | ... | 466 |
| Lachhu Mal v. Radhey Shyam 1971 SCR 693 | ... | 1077 |
| Lal Chand v. Union of India 2009 (13) SCR 622 | ... | 294 |
| Land Acquisition Officer and Revenue Divisional Officer v. Ramanjulu (2005) 9 SCC 594 | ... | 295 |
| Lata Wadhwa & Ors. v. State of Bihar & Ors. 2001 (1) Suppl. SCR 578 | ... | 549 |
| Laxmi Khandsari v. State of UP. 1981 (3) SCR 92 | ... | 756 |
| Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambekar and Anr. AIR 1994 (2) SCR 163 | | |
| – relied on. | ... | 636 |
| Machhi Singh v. State of Punjab 1983 (3) SCR 413 | | |
| – relied on | ... | 79 |
| Madhukar and Others v. Sangram and Others 2001 (3) SCR 138 | | |
| – relied on | ... | 439 |

(xx)

| | | |
|---|-----|------------------|
| Madhya Pradesh Housing Board v. Mohd. Shafi and Ors. 1992 (1) SCR 657 | | |
| – distinguished | ... | 600 |
| Mahachandra Prasad Singh (Dr.) v. Chairman, Bihar Legislative Council & Ors. 2004 (5) Suppl. SCR 692 | | |
| – distinguished | ... | 889 |
| Maharajadhiraja Mahdavi (H.H.) Rao Jiwaji Rao Scindia Bahadur v. Union of India 1971 (3) SCR 9 | | |
| – cited. | ... | 961 |
| Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupeshkumar Sheth and Ors. (1984) 4 SCC 27 | | |
| – relied on | ... | 287 |
| Malleswara (Y.) Rao v. Chief General Manager, State Bank of India, Hyderabad & Ors. 2006 LAB. I.C. 1384 | ... | 222 |
| Managing Director, ECIL, Hyderabad and others v. B. Karunakar and Ors. 1993 (2) Suppl. SCR 576 | ... | 222 |
| Manak Lal v. Dr. Prem Chand Singhvi 1957 SCR 575 | ... | 1072 and 1077 |
| Maneka Gandhi v. Union of India 1978 (2) SCR 621 | ... | 1072 |
| Maneka Sanjay Gandhi & Anr. v. Miss Rani Jethmalani (1979) 4 SCC 169 | ... | 7 |

(xxi)

| | | |
|---|-----|-----|
| Manganese Ore (India) Ltd. v. CST 1976 (3) SCR 99 | ... | 960 |
| Manjusree (K.) v. State of A.P. 2008 (2) SCR 1025 | ... | 390 |
| Manohar Lal (Dead) by Lrs. v. Ugrasen (Dead) by Lrs. and Ors. 2010 (7) SCR 346 | ... | 637 |
| Mansukh Lal Vithaldas Chauhan v. State of Gujarat 1997 (3) Suppl. SCR 705 | ... | 853 |
| Marta Silva & Ors. v. Piedade Cardazo & Ors. AIR 1969 Goa 94 | | |
| – cited. | ... | 961 |
| Medley Pharmaceuticals Ltd. v. The Commissioner of Central Excise and Customs, Daman 2011 (1) SCR 741 | | |
| – relied on. | ... | 768 |
| Meenakshi (M.) and Ors. v. Metadin Agarwal (dead) by Lrs. and Ors. 2006 (5) Suppl. SCR 505 | ... | 560 |
| Meghmala and Ors. v. G. Narasimha Reddy and Ors. 2010 (10) SCR 47 | | |
| – relied on. | ... | 559 |
| Mehta (M.C.) v. Union of India and Ors. 1996 (10) Suppl. SCR 973 | ... | 872 |
| Mohini Jain v. State of Karnataka 1992 (3) SCR 658 | ... | 207 |
| Morgan Stanley Mutual Fund v. Kartick Das 1994 (1) Suppl. SCR 136 | | |
| – cited | ... | 515 |

(xxii)

| | | |
|--|-----|------|
| Municipal Corporation of Delhi v. Gurnam Kaur 1988 (2) Suppl. SCR 929 | | |
| – relied on | ... | 854 |
| Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101 | ... | 712 |
| Municipal Corporation, Ludhiana v. Inderjit Singh and Another 2008 (14) SCR 95 | | |
| – cited. | ... | 534 |
| Munshi Singh Gautam (D) and Ors. v. State of M.P. 2004 (5) Suppl. SCR 1092 | ... | 265 |
| Narendrajit Singh and Anr. v. The State of U.P. and Anr. 1970 (3) SCR 278 | | |
| – distinguished | ... | 600 |
| Narmada Bai v. State of Gujarat JT (2011) 4 SC 279 | ... | 263 |
| Narsimha Rao (P.V.) v. State 1998 (2) SCR 870 | ... | 960 |
| National Council Education and Ors. v. Shri Shyam Shiksha Prashikshan Sansthan and Ors. 2011 (2) SCR 291 | | |
| – relied on | ... | 197 |
| National Highways Authority of India v. Ganga Enterprises & Anr. 2003 (3) Suppl. SCR 114 | | |
| – relied on. | ... | 375 |
| National Insurance Co.Ltd. v Boghara Polyfab Private Ltd. 2008 (13) SCR 638 | ... | 1038 |
| – relied on. | ... | 689 |

(xxiii)

| | | |
|---|-----|------|
| Nav Bharat Ferro Allays Ltd v. Transmission Corporation of Andhra Pradesh Ltd 2010 (14) SCR 900 | | |
| – relied on. | ... | 1001 |
| Navanath and Others v. State of Maharashtra 2009 (6) SCR 632 | | |
| – relied on | ... | 612 |
| Nayak (R.S.) v. A R. Antulay 1984 (2) SCR 495 | | |
| – explained and | | |
| – relied on | ... | 960 |
| Nazir Ahmad v. King Emperor 63 Indian Appeals 372 | ... | 890 |
| Nazir Khan & Ors. v. State of Delhi 2003 (2) Suppl. SCR 884 | | |
| – relied on | ... | 77 |
| New India Assurance Co. Ltd. v. R. Srinivasan 2000 (1) SCR 1228 | | |
| – overruled | ... | 515 |
| New India Assurance Company Ltd. v. Satender & Ors. 2006 (8) Suppl. SCR 745 | ... | 549 |
| Nicco Corporation Ltd. v. Commissioner of Central Excise, Calcutta 2006 (203) ELT 362 (S.C.) | | |
| – relied on. | ... | 593 |
| Nilabati Behera (Smt.) v. State of Orissa and Ors. 1993 (2) SCR 581 | ... | 264 |
| Nirmal Jeet Kaur v. State of M.P. 2004 (3) Suppl. SCR 1006 | ... | 960 |

(xxiv)

| | | |
|---|-----|------|
| Noida Entrepreneurs Association v. Noida and Ors. (2011) 6 SCC 508 | ... | 562 |
| Olga Tellis v. Bombay Municipal Corporation 1985 (2) Suppl.SCR 51 | ... | 1072 |
| Om Prakash Sharma and Ors. v. M.P. Audyogik Kendra Vikas Nigam and Ors. (2005) 10 SCC 306 | | |
| – distinguished. | ... | 600 |
| Ombir Singh and Ors. v. State of U.P. 1993 Suppl. (2) SCC 64 | ... | 390 |
| P.P.Enterprises v. Union of India 1982 (3) SCR 510 | ... | 756 |
| Partap (S.) Singh v. State of Punjab (1964) 4 SCR 733 | ... | 890 |
| Parthasarathi (S.) v. State of A.P. 1974 (1) SCR 697 | ... | 1072 |
| Parveen Jindal v. State of Haryana 1993 Suppl. (4) SCC 70 | ... | 390 |
| Payare Lal v. State of Punjab AIR 1962 SC 690 | | |
| – relied on. | ... | 809 |
| Peerless v. Reserve Bank 1992 (1) SCR 406 | ... | 756 |
| Postmaster Dargamitta, H.P.O., Nellore v. Raja Prameeelamma (Ms.) (1998) 9 SCC 706 | | |
| – held applicable | ... | 45 |

(xxv)

| | | |
|--|-----|------|
| Prakash Singh Badal v. State of Punjab 2006 (10) Suppl. SCR 197 | | |
| – relied on | ... | 960 |
| Pramod Kumar Srivastava v. Chairman, Bihar Public Service Commission, Patna and Ors. 2004 (3) Suppl. SCR 372 | | |
| – relied on | ... | 287 |
| Pulukuri Kottaya v. King Emperor AIR 1947 PC 67 | ... | 809 |
| – relied on | ... | 71 |
| Punjab & Haryana High Court at Chandigarh v. Megh Raj Garg and Another 2010 (7) SCR 172 | | |
| – relied on | ... | 327 |
| Punjab Land Development Reclamation Corporation Ltd. v. Presiding Officer 1990 (3) SCR 111 | ... | 960 |
| Puthumma v. State of Kerala 1978 (2) SCR 537 | ... | 756 |
| Rajasthan Housing Board v. Krishna Kumari 2005 (13) SCC 151 | | |
| – relied on. | ... | 1001 |
| Rajendra Singh Rana & Ors. v. Swami Prasad Maurya & Ors. 2007 (2) SCR 591 | ... | 890 |
| Rajinder Nath v. CIT 1979 (1) SCR 272 | | |
| – relied on. | ... | 853 |
| Ram Chander v. Union of India & Ors. 1986 (2) SCR 980 | ... | 222 |

(xxvi)

| | | |
|---|-----|------|
| Ram Niwas Bansal v. State Bank of Patiala & Anr. (1998) 4 SLR 711 | ... | 221 |
| Ramakant Rai v. Madan Rai and Others 2003 (4) Suppl. SCR 17 | | |
| – relied on. | ... | 330 |
| Ramdeo Chauhan alias Raj Nath v. State of Assam 2001 (3) SCR 669 | ... | 328 |
| Rameshwar Bhartia v. The State of Assam 1953 SCR 126 | | |
| – relied on. | ... | 853 |
| Ramrao v. All India Backward Class Bank Employees Welfare Association 2004 (1) SCR 19 | ... | 197 |
| Ranganjan (S.) v. P. Jagjivan Ram & Ors.1989 (2) SCR 204 | ... | 497 |
| Ranjit Singh v. U.T. of Chandigarh (1992) 4 SCC 659 | ... | 295 |
| Ranjit Thakur v. Union of India 1988 (1) SCR 512 | ... | 1072 |
| Ratan Lal Sharma v. Purshottam Harit 1974 (3) SCR 109 | | |
| – relied on | ... | 466 |
| Rathore (S.P.S.) v. State of Haryana and Ors. (2005) 10 SCC 1 | ... | 265 |
| Ravi S. Naik v. Union of India 1994 (1) SCR 754 | | |
| – distinguished | ... | 889 |

(xxvii)

| | |
|---|------|
| Revenue Divisional Officer-cum-L.A.O. v. Shaik Azam Saheb etc. (2009) 4 SCC 395 ... | 295 |
| Royappa (E.P.) v. State of Tamil Nadu 1974 (2) SCR 348 ... | 890 |
| S.B.P. & Co. v. Patel Engineering Ltd. 2005 (4) Suppl. SCR 688 – relied on. | 689 |
| Sabharwal (R.K.) v. State of Punjab 1995 (2) SCR 35 ... | 394 |
| Sabitri Dei and Others. v. Sarat Chandra Rout and Others 1996 (1) SCR 1168 – relied on | 244 |
| Sales Tax Officer v. Shree Durga Oil Mills 1997 (6) Suppl. SCR 488 ... | 756 |
| Samsher Singh v. State of Punjab and Another 1975 (1) SCR 814 – cited | 534 |
| Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad 2005 (1) SCR 624 ... | 890 |
| Sant Ram Sharma v. State of Rajasthan & Anr. 1968 SCR 111 – relied on. | 730 |
| Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs. 2001 (1) SCR 948 – relied on | 439 |
| Sarana (G.) (Dr.) v. University of Lucknow 1977 (1) SCR 64 ... | 1072 |

(xxviii)

| | |
|---|------|
| Sardar Jogendra Singh v. State of U.P. (2008) 17 SCC 133 ... | 295 |
| Saurabh Chaudri & Ors. v. Union of India & Ors. 2003 (5) Suppl. SCR 152 ... | 280 |
| Saurashtra Cement and Chemical Industries Ltd. v. Union of India 2000 (4) Suppl. SCR 44 – distinguished. | 1005 |
| Savitaben Somabhai Bhatiya v. State of Gujarat and Ors. 2005 (2) SCR 638 – distinguished | 562 |
| SBP & Co. v. Patel Engineering Ltd. 2005 (4) Suppl. SCR 688 ... | 1038 |
| Sebastian M. Hongray v. Union of India 1984 (3) SCR 544 ... | 264 |
| Secretary to Government, Transport Department v. Munuswamy Mudaliar 1988 (Supp.) SCC 651 ... | 1072 |
| Secretary, W.B. Council of Higher Secondary Education v. Ayan and Ors. 2007 (10) SCR 464 – cited. | 287 |
| Shaji Kuriakose v. Indian Oil Corporation Limited 2001 (1) Suppl. SCR 573 ... | 294 |
| Shanker Raju v. Union of India 2011 (2) SCR 1 – relied on | 960 |
| Sharad Birdhichand Sarda v. State of Maharashtra 1985 (1) SCR 88 – relied on | 75 |

| (xxix) | |
|--|----------------------|
| Shiba Shankar Mohapatra & Ors. v. State of Orissa & Ors. 2009 (15) SCR 866 | |
| – relied on. | ... 730 |
| Shri Rani M. Vijayalakshamma Rao Bahadur v. Collector of Madras (1969) 1 MLJ (SC) 45 | |
| – relied on. | ... 620 |
| Singhal (B.P.) v. Union of India (2010) 6 SCC 331 | |
| – relied on. | ... 668 |
| Sneh Gupta v. Devi Sarup and Ors. 2009 (2) SCR 553 | ... 560 |
| South Eastern Coalfields Ltd. v. State of M.P. 2003 (4) Suppl. SCR 651 | |
| – relied on. | ... 1000 and 1001 |
| – distinguished | ... 1005 |
| State (NCT of Delhi) v. Navjot Sandhu 2005 (2) Suppl. SCR 79 | ... 77 |
| – relied on | ... 71, 75 |
| State Bank of Patiala v. Mahendra Kumar Singhal (1994) Supp (2) SCC 463 | |
| – relied on | ... 221 |
| State of Assam and another v. Nahar Chutia and another 1974 Assam Law Reports 163 | ... 646 |
| State of Assam and Others v. Kanak Chandra Dutta 1967 SCR 679 | ... 646 |

| (xxx) | |
|--|----------|
| State of Bihar and Ors. v. Ramjee Prasad and Ors. 1990 (2) SCR 468 | |
| – relied on | ... 197 |
| State of Gujarat v. Shantilal 1969 (3) SCR 341 | ... 756 |
| State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Others (1995) 4 SCC 507 | ... 207 |
| State of Haryana v. Ranbir 2006 (3) SCR 864 | |
| – relied on. | ... 855 |
| – cited. | ... 961 |
| State of Haryana v. S.K.Singhal 1999 (2) SCR 714 | ... 534 |
| State of Himachal Pradesh v. Krishna Lal Pradhan 1987 (2) SCC 17 | ... 77 |
| State of Karnataka and Anr. v. All India Manufacturers Association and Anr. 2006 (1) Suppl. SCR 86 | |
| – cited | ... 600 |
| State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) and Ors. 1995 (6) Suppl. SCR 139 | |
| – relied on. | ... 559 |
| State of M.P. v. Ram Singh 2000 (1) SCR 579 | ... 890 |
| State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd. 1995 Supp (1) SCC 642 | ... 1005 |
| State of Madras v. Row 1952 SCR 597 | ... 756 |

(xxxi)

| | | |
|---|-----|------|
| State of Orissa v. Dr. (Miss) Binapani Dei (1967) 2 SCR 625 | ... | 1072 |
| State of Orissa v. Sudhansu Sekhar Misra 1968 SCR 154 | | |
| – cited. | ... | 961 |
| State of Punjab v. Amar Nath Goyal 2005 (2) Suppl. SCR 549 | ... | 197 |
| State of Punjab v. Mohinder Singh 2005 (2) SCR 758 | | |
| – relied on | ... | 330 |
| State of Tamil Nadu v. Nalini 1999 (3) SCR 1 | | |
| – relied on | ... | 79 |
| State of U.P. v. Banne (2009) 4 SCC 271 | ... | 743 |
| State of U.P. v. Deoman Upadhyaya AIR 1960 SC 1125 | | |
| – relied on | ... | 71 |
| State of U.P. v. Ram Swarup and Anr. 1975 (1) SCR 409 | ... | 1154 |
| State of U.P. v. Shiv Narayan Upadhyaya 2005 (1) Suppl. SCR 847 | | |
| – relied on. | ... | 329 |
| State of U.P. v. Singhara Singh (1964) 4 SCR 485 | ... | 890 |
| State of Uttar Pradesh v. Dr. Anupam Gupta 1993 Supp (1) SCC 594 | ... | 390 |
| State of Uttar Pradesh v. Ram Kumari Devi (1996) 8 SCC 577: 1996 (2) SCR 749 | | |
| – cited | ... | 298 |

(xxxii)

| | | |
|---|-----|--------|
| State through Superintendent of Police, CBI/SIT v. Nalini & Ors. 1999 (3) SCR 1 | ... | 77 |
| State v. Navjot Singh Sandhu 2005 (2) Suppl. SCR 79 | | |
| – relied on | ... | 79 |
| Steel Authority of India v. National Union Waterfront Workers 2001 (2) Suppl. SCR 343 | | |
| – held inapplicable. | ... | 819 |
| Sub-Committee on Judicial Accountability v. Union of India (1991) 4 SCC 699 | ... | 1071 |
| Sube Singh v. State of Haryana and Ors. 2006 (2) SCR 67 | ... | 265 |
| Subh Ram v. State of Haryana 2009 (15) SCR 287 | ... | 294 |
| Sultan Sadik v. Sanjay Raj Subba and Ors. 2004 (1) SCR 82 | ... | 560 |
| Surendra Pratap Singh v. State of U.P. & Ors. 2010 (11) SCR 909 | | |
| – cited | ... | 6 |
| Suresh Chandra Bahri v. State of Bihar 1994 (1) Suppl. SCR 483 | | |
| – relied on | ... | 71, 73 |
| Suresh Koshy George v. University of Kerala 1969 SCR 317 | ... | 1071 |
| Suresh Kumar Singh v. State of Uttar Pradesh 2009 (7) SCR 1068 | | |
| – relied on. | ... | 656 |

(xxxiii)

| | | |
|---|-----|------|
| Sureshta Devi (Smt.) v. Om Prakash AIR 1992 SC 1304 | ... | 561 |
| Sushil Kumar Mehta v. Gobind Ram Bohra 1989 (2) Suppl. SCR 149 | | |
| – relied on | ... | 244 |
| Sushma Sharma (Dr.) v. State of Rajasthan 1985 supp. SCC 45 | ... | 197 |
| Sushmita Basu & Ors. v. Ballygunge Siksha Samity & Ors. 2006 (6) Suppl. SCR 506 | ... | 207 |
| Swami (H.K.N.) v. Irshad Basith (Dead) by LRs. (2005) 10 SCC 243 | | |
| – relied on | ... | 439 |
| Tanviben Pankaj Kumar Divetia v. State of Gujarat 1997 (1) Suppl. SCR 96 | | |
| – relied on | ... | 75 |
| Tayabbhai M. Bagasarwalla and Anr. v. Hind Rubber Industries Pvt. Ltd. 1997 (2) SCR 152 | | |
| – relied on. | ... | 559 |
| Tejuma! Bhojwani v. State of U.P. 2003 (2) Suppl. SCR 1044 | | |
| – relied on | ... | 294 |
| The General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel (2008) 14 SCC 745 | ... | 295 |
| Triveniben v. State of Gujarat 1989 (1) SCR 509 | | |
| – cited. | ... | 1072 |

(xxxiv)

| | | |
|--|-----|------|
| UGC v. Sadhana Chaudhary 1996 (6) Suppl. SCR 392 | ... | 197 |
| Umerkhan v. Bismillabi @ Babulal Shaikh and Ors. 2011 (9) SCC 684 | | |
| – relied on. | ... | 789 |
| Union of India & Anr. v. P.K. Roy & Ors. 1968 SCR 186 | | |
| – relied on. | ... | 220 |
| Union of India and Anr. v. Jesus Sales Corporation 1996 (3) SCR 894 | ... | 222 |
| Union of India and Others v. Sayed Muzaffar Mir 1994 (3) Suppl. SCR 729 | | |
| – held inapplicable. | ... | 534 |
| Union of India v. Harnam Singh 1993 (1) SCR 862 | | |
| – relied on. | ... | 327 |
| Union of India v. K.M. Shankarappa 2000 (5) Suppl. SCR 117 | | |
| – relied on. | ... | 497 |
| Union of India v. P.K. Roy 1968 SCR 186 | ... | 1071 |
| Union of India v. Paras Laminates (P) Ltd. 1990 (3) SCR 789 | ... | 960 |
| Union of India v. Raguhbir Singh 1989 (3) SCR 316 | ... | 960 |
| Union of India v. Tulsiram Patel 1985 (2) Suppl. SCR 131 | ... | 890 |

(xxxv)

| | |
|---|------------|
| United Commercial Bank v. Bank of India and others (1981) 2 SCC 766 | |
| – relied on | ... 438 |
| Veerappa Pillai (G.) v. Raman and Raman Ltd. 1952 SCR 583 | |
| – relied on. | ... 636 |
| Veeraswami (K.) v. Union of India 1991 (3) SCR 189 | |
| – cited. | ... 961 |
| Velusamy (D.) v. D. Patchaiammal 2010 (13) SCR 706 | |
| – distinguished | ... 562 |
| Venkataraman (S.A.) v. State 1958 SCR 1040 | |
| – relied on | ... 960 |
| Vikram Singh & Ors v. State of Punjab 2010 (2) SCR 22 | |
| – relied on | ... 71, 75 |
| Viluben Jhalejar Contractor v. State of Gujarat 2005 (3) SCR 542 | ... 294 |
| Viswanathan (G.) v. Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr. 1996 (1) SCR 895 | ... 890 |
| Waman Rao v. Union of India 1981 (2) SCR 1 | ... 960 |
| Whirlpool of India Ltd. v. Union of India and Ors. (2007) 14 SCC 468 | ... 712 |

(xxxvi)

| | |
|---|--------|
| Yashpal Mittal v. State of Punjab 1978 (1) SCR 781 | |
| – relied on | ... 77 |
| Zahira Habibulla H. Sheikh v. State of Gujarat 2004 (3) SCR 1050 | |
| – relied on | ... 8 |

(xxxvii)

(xxxviii)

SUBJECT-INDEX

ADMINISTRATION OF JUSTICE:

(1) Adjournments.

(See under: Code of Civil Procedure, 1908) 787

(2) Judicial proceedings - Rule against *bias* or interest - Held: The Judge should be impartial and neutral and must be free from *bias* - If the Judge is subject to *bias* in favour of or against either party to the dispute or is in a position that a *bias* can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated - A pecuniary (*bias*) interest, however small it may be, disqualifies a person from acting as a Judge - Tests for deciding whether non-pecuniary *bias* would vitiate judicial or quasi judicial decision - 'Real likelihood' formula and 'reasonable suspicion' test - In India, courts have, by and large, applied the 'real likelihood test' - Real likelihood of *bias* should appear not only from the materials ascertained by the complaining party, but also from such other facts which it could have readily ascertained and easily verified by making reasonable inquiries - Maxims - "*Nemo debet esse judex in propria causa*".

(Also see under: Constitution of India, 1950).

Justice P. D. Dinakaran v. Hon'ble Judges Inquiry Committee & Ors. 1064

(3) Fraud committed upon Court.

(See under: Advocate; Arbitration Act, 1940; Constitution of India, 1950; Registration Act, 1908; and Suit) 453

ADMINISTRATIVE LAW:

(1) *Bias* - 'Real likelihood' formula and 'reasonable suspicion' test.

(See under: Constitution of India, 1950; and Administration of Justice) 1064

(2) Policy decision - Interference by the courts - Held: In the matters of policy, the courts have a limited role and should only interfere, when it is clearly illegal - On facts, the shifting of the wholesale markets to the outskirts of the city was not illegal - It was a salutary step for undoing a mischief - Thus, interference by the court not called for.

Md. Murtaza & Ors. v. State of Assam & Ors. 755

(3) (i) Public funds - Prime Minister's/Chief Minister's Relief Fund - Nature and purpose of - Explained.

(ii) High Office theory/Doctrine of Office of Trust - Residuary discretionary power vested in Prime Minister/Chief Minister to sanction financial assistance from the Relief Fund - The Relief Funds placed at the disposal of the holders of high office like Prime Minister or Chief Ministers of States are to provide timely assistance to victims of natural calamities, disasters, and traumatic experiences, or to provide medical or financial aid to persons in distress and needy, among other purposes -The Prime Minister/ Chief Minister is given the discretion to choose the recipient of the relief, the quantum of the relief, and the timing of

grant of such relief - Unless such discretion is given, in extraordinary circumstances not contemplated in the guidelines, the Relief Fund may not serve its purpose - When discretion is vested in a high public functionary, it is assumed that the power will be exercised by applying reasonable standards to achieve the purpose for which the discretion is vested.

(iii) Prime Minister's/Chief Minister's Relief Fund - Exercise of discretion in disbursement of monetary relief under - Judicial review of - Held: Whenever the discretion is exercised for making a payment from out of the Relief Fund, the court will assume that it was done in public interest and for public good, for just and proper reasons - Consequently, where anyone challenges the exercise of the discretion, he should establish *prima facie* that the exercise of discretion was arbitrary, mala fide or by way of nepotism to favour undeserving candidates with ulterior motives - Where such a *prima facie* case is made out, the court may require the authority to produce material to satisfy itself that the discretion has been used for good and valid reasons, depending upon the facts and circumstances of the case - But in general, the discretion will not be open to question - Judicial review.

(Also see under: Rajasthan Chief Minister's Relief Funds Rules, 1999).

State of Rajasthan & Ors. v. Sanyam Lodha 662

(4) Principle of natural justice - Applicability of - Held: The requirements of natural justice must

depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with and so forth.

(Also see under: Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982)

Oriental Bank of Commerce & Anr. v. R.K. Uppal 218

ADVOCATE:

Acts of an advocate in arbitration proceedings and before the court - Held: In the instant case, the acts of the advocate are fraudulent, as having functioned as an arbitrator in the matter and made the award, he signed the written statements of defendants in the proceedings u/ss. 14 and 17 of Arbitration Act as their counsel, though he was the third defendant in the said two suits, he appeared as the counsel for the defendants, and without their consent or knowledge, made a statement on their behalf before the court in the proceedings u/ss. 14 and 17 of the Arbitration Act that they have no objection for decrees being made.

(Also see under: Arbitration Act, 1940; Constitution of India, 1950; Registration Act, 1908; and Suit)

Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. 453

APPEAL:

(1) Appeal against acquittal: Acquittal by High Court - Scope of interference u/Article 136 - Held: If the view taken by High Court was plausible or

possible, it would not be proper for the Supreme Court to interfere with an order of acquittal - Various circumstances when Supreme Court would interfere with the judgment of the High Court enumerated - Constitution of India, 1950 - Article 136.

Raghubir Singh v. State of Rajasthan and Ors. 739

(2) Benefit of judgment in appeal to non-appellants. (See under: Land Acquisition Act, 1894) 618

(3) First appeal. (See under: Banks/Banking) 436

(4) Right of appeal - Held: Is not an inherent right - None of the facets of natural justice requires that there should be right of appeal from any decision - Natural justice.

(Also see under: Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982)

Oriental Bank of Commerce & Anr. v. R.K. Uppal 218

ARBITRATION ACT, 1940:

ss. 14 and 17 - Reference agreements - Awards - Applications for making the awards rule of the court- Held: The entire procedure was fraudulent as the reference to arbitration was to avoid stamp duty and registration charges - Obtaining sham and collusive arbitration awards when there was no dispute and then obtaining a nominal decree in terms of the said awards would be a fraud

committed upon the court and the State Government by evading liability to pay the stamp duty and registration charges - Decrees in terms of the awards were obtained by fraud - Stamp fraud - Registration Act, 1908 - s. 17 - Administration of justice - Fraud committed upon court.

(Also see under: Advocate; Constitution of India, 1950; Registration Act, 1908; and Suit)

Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. 453

ARBITRATION AND CONCILIATION ACT, 1996:

(1) s.11 - Appointment of arbitrator - Held: The question whether there is an arbitration agreement is a jurisdictional issue - Such issue ought to have been decided by the designate of the Chief Justice and only if the finding was in the affirmative he could have proceeded to appoint the arbitrator - Unless the first respondent was able to make out that there was a valid arbitration clause as per the partnership deed, there could be no appointment of arbitrator u/s.11 - Since serious allegations of fraud and fabrication were made, the Court could not have proceeded to appoint an arbitrator without deciding the said issue which related to the very validity of the arbitration agreement - Order of the High Court set aside, and matter remitted to it for deciding the questions whether the partnership was forged or fabricated and whether there was a valid and enforceable arbitration agreement between the parties.

Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra & Anr. 685

(2) s.11, s.23 r/w s.2(9) and s.34 - Appointment of arbitrator - Jurisdiction of Chief Justice or his designate - Held: s. 11 requires the Chief Justice or his designate to either appoint the arbitrator/s or take necessary measures in accordance with the appointment procedure contained in the arbitration agreement - The Chief Justice or the designate is not required to draw up the list of disputes and refer them to arbitration - Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions or subject to exceptions), the arbitrator will have jurisdiction to entertain any counter claim, even though it was not raised at a stage earlier to the stage of pleadings before the Arbitrator - In the instant case, in the absence of agreement to the contrary, the counter claims by the appellant were maintainable and arbitrable having regard to s.23 r/w s.2(9) of the Act - Consequently, the award of arbitrator upheld in its entirety.

State of Goa v. Praveen Enterprises 1026

ARMS ACT, 1959:

s. 25.
(See under: Penal Code, 1860) 56

BANKS/BANKING:

Letter of credit - Held: Where the customer instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate - A contract is concluded between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller -If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit

- In the instant case, the trial court dismissed the seller's suit, but the High Court decreed the suit - The order of the High Court was made ignoring and overlooking the finding of the trial court that the seller accepted the encashment of bill and document on collection basis - High Court was required to address itself to the said issue which surely had bearing on the final outcome of the case - It failed to follow the fundamental rule governing the exercise of its jurisdiction u/s.96, CPC that where the first appellate court reverses the judgment of the trial court, it is required to consider all the issues of law and fact - This flaw vitiated the entire judgment of the High Court - Judgment of the High Court set aside and the first appeal restored for re-hearing and decision afresh - Code of Civil Procedure, 1908 - s.96.

State Bank of India and Anr. v. M/s. Emmsons International Ltd. and Anr. 436

BYE-LAWS OF ALL INDIA PRE-MEDICAL/PRE-DENTAL ENTRANCE EXAMINATION, 2007:
(See under: Education/Educational Institutions) 286

CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) ACT, 2006:
(See under: Education/ Educational Institutions) 384

CENTRAL EXCISE ACT, 1944:
s. 11A.
(See under: Central Excise Tariff Act, 1985) 764

CENTRAL EXCISE RULES, 1944:
(1) rr.173Q(1) and 173-B - Exemption Notification

- Benefit under - Claimed in respect of insulated electrical cables manufactured by assessee and supplied to the manufacturers of wind mills for using the same as part of wind mills - Held: So far as eligibility for exemption is concerned, in *Nicco Corporation Ltd*, it has been decided in favour of Revenue - As regards imposition of penalty, the Revenue itself did not take it as a formal case of offence - In view of the facts of the case, no penalty could be imposed on the assessee - Central Excise Tariff Sub-Heading No.8544.00.

Uniflex Cables Ltd. v. Commissioner, Central Excise, Surat-II 591

(2) r. 9(2).
(See under: Central Excise Tariff Act, 1985) 764

CENTRAL EXCISE TARIFF ACT, 1985:

Schedule - Heading 48.16 read with sub-heading 4816.00; and Heading 48.20 - Carbonless stationery - Classification of - Assessee manufacturing computer stationery by processing carbonless paper - Excise duty demanded on carbonless paper - Held: Carbonless paper or self-copying paper emerges at the intermediate stage, it is an intermediary product and is a well known marketable commodity - It is being bought and sold and there is a demand of such articles in the market - The Commissioner rightly recorded the findings that the intermediary products, in the instant case, would fall and are classifiable under Heading 48.16 and duty payable for the said intermediary products is prescribed as 20% - Rules of Interpretation of the Schedule - rr. 2(a) and 3 - Central Excise Rules, 1944 - r. 9(2) -

Central Excise Act, 1944 - s. 11-A - Interpretation of Statutes - Principle of ejusdem generis.

Commnr. of Central Excise, Meerut-II v. M/s. Sundstrand Forms P. Ltd. 764

CENTRAL EXCISE:

(See under: Central Excise Rules, 1944) 591

CINEMA:

(See under: Uttar Pradesh Cinemas (Regulation) Act, 1955. 49

CODE OF CIVIL PROCEDURE, 1908:

(1) s.96 - First appeal - Exercise of jurisdiction in reversal of judgment of trial court.
(See under: Banks/Banking) 436

(2) (i) s.100 - Second appeal - High court deciding the second appeal without formulating a question of law - Held: The High Court failed to keep in view the constraints of second appeal and overlooked the requirement of the second appellate jurisdiction as provided in s. 100 and that vitiates its decision.

(ii) O. 17 rr. 1 and 3(a) r/w. s. 100 - Adjournments - Plaintiff failed to produce evidence on three dates - Trial court proceeded in terms of r. 3 and dismissed the suit - First appellate court dismissed the appeal -High Court allowed the second appeal and directed the trial court to decide the suit afresh - Held: High Court upset the concurrent judgments and decrees of the two courts on misplaced sympathy and non-existent justification observing that the stakes in the suit were very high - Plaintiff deserved no sympathy in second appeal in

exercise of power u/s. 100 CPC.

(iii) O.17 - r.1, proviso - Adjournments - Held: It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process - The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit - Though the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to O. 17, r. 1 should be maintained - 'Justifiable cause', means, a cause which is not only 'sufficient cause' as contemplated in sub-r. (1) of r.1 but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity - Guiding factors, indicated - Administration of justice - Adjournments.

M/s. Shiv Cotex v. Tirgun Auto Plast P. Ltd. & Ors. 787

(3) (See under: Minerals Concession Rules, 1960) 993

CODE OF CRIMINAL PROCEDURE, 1973:

(1) ss.107/151 - Criminal proceedings under - Dispute regarding immovable property - Grievance of writ petitioners that the police illegally detained them by invoking the provisions of ss.107/151 and thereby violated their fundamental rights - High Court quashed the proceedings u/ss.107/151 and awarded a sum of Rs. 50,000 as token compensation to writ petitioners -- Held: Admittedly, the police officials (appellants) were not impleaded by name in the writ petitions - Thus,

while hearing the writ petitions and writ appeals, the appellants were not given an opportunity of hearing at all - The impugned judgments are set aside except to the extent that in all these cases the proceedings u/ss.107/151 stood quashed.

Ram Mehar Singh v. State of N.C.T. of Delhi and Ors. 253

(2) ss.107/151 - Proceedings under, against private respondents - Writ petition by respondents seeking quashing of proceedings u/ss. 107/151 and to initiate proceedings against the constables for illegal detention - High Court quashed the criminal case against the respondents and directed the CBI to investigate the case against the constables and awarded a compensation of Rs.25,000/- each to the respondents for wrongful confinement - Held: It was not a fit case where investigation could be handed over to the CBI - Proceedings u/ss. 107/151 were initiated four years ago and the High Court quashed the proceedings - At such a belated stage correctness of the decision to that extent does not require consideration - As regards the issue of compensation, High Court erred in awarding even token compensation as it did not hold any enquiry, and passed the order merely after considering the status report submitted by the State without hearing any of the persons against whom allegations of abuse of power had been made - Impugned judgment set aside except to the extent that the proceedings u/ss. 107/151 against the respondents stood quashed - Investigation.

Rajinder Singh Pathania & Ors. v. State of N.C.T. of Delhi & Ors. 260

(3) s.154 - FIR - Case of gang rape - Apathy of the investigating agencies in registering the FIR - Held: The father of the prosecutrix, surely must have felt trauma and frustration - In terms of the provisions of s.154, it is obligatory for the police to register a case when the facts constituting a cognizable offence are brought to its notice.

(Also see under: Penal Code, 1860; and Evidence)

Prem Prakash @ Lillu & Anr. v. State of Haryana

27

(4) (i) s. 263 and 264 read with s.326(3) and s.461 - Summary trial - Procedure in part-heard cases on transfer of the Judge/Magistrate - Held: In view of sub-s.(3) of s.326, sub s.(1) of s.326 which authorizes a Magistrate to act on the evidence recorded by his predecessor, does not apply to summary trials - s.326 (3) does not permit the Magistrate to act upon the substance of the evidence recorded by his predecessor - It is well settled that no amount of consent by the parties can confer jurisdiction where there exists none, on a court of law nor can they divest a court of jurisdiction which it possesses under the law - Except in regard to those cases which fall within the ambit of s. 326, the Magistrate cannot proceed with the trial placing reliance on the evidence recorded by his predecessor - He has got to try the case de novo - This is not a case of irregularity but want of competency - There has been no proper trial of the case and there should be one - The impugned judgment is set aside and the matter remanded to Metropolitan Magistrate for retrial in accordance with law - Jurisdiction -

Negotiable Instruments Act, 1881 - s.138.

(ii) ss. 461 and 465 - Void proceedings - Summary trial - Metropolitan Magistrate after recording evidence, transferred - His successor proceeded with the trial from the stage let in and convicted the accused - Held: Provisions of s.461 would be applicable - The proceedings held by the Magistrate, to the extent that he is not empowered by law, would be void, and void proceedings cannot be validated u/s. 465 - This defect is not a mere irregularity and the conviction of the appellants cannot, even if sustainable on the evidence, be upheld u/s. 465 - Therefore, s. 465 has no application - It cannot be called in aid to make what was incompetent, competent.

Nitinbhai Saevatilal Shah & Another v.

Manubhai Manjibhai Panchal & Another 804

(5) s.406 - Bomb blasts - Sessions Trial pending before the Special Judge - Transfer petition - Held: The offences with which the accused have been charged are of a very serious nature, but the communally surcharged atmosphere which existed at the time of the alleged incidents, has settled down considerably and is no longer as volatile as it was previously - Also, the Presiding Officers against whom *bias* had been alleged, will no longer be in charge of the proceedings of the trial - On the other hand, in case the Sessions trial is transferred outside the State, the prosecution will have to arrange for production of its witnesses, who are large in number, to a venue that may be designated outside the State and prejudice may be caused to the prosecution in presenting its

case - In order to dispel the apprehension of the petitioners, liberty given to them that in the event their apprehension are proved to be real during the course of the trial, they will be entitled to move afresh before Supreme Court.

Jahid Shaikh & Ors. v. State of Gujarat & Anr.

1

(6) s. 482 - Parties obtained decree of divorce by mutual consent - Criminal complaints filed by wife against husband - Wife filed a civil suit for declaration that decree for divorce was null and void as it was obtained by fraud - Petition u/s. 482 Cr.P.C. by husband for quashing the complaint - Held: Wife herself had been a party to the alleged fraud committed by the husband upon the civil court for getting the decree of divorce and asked the criminal court to sit in appeal against the judgment and decree of the competent civil court - Permitting the Magistrate to proceed further with the complaint under the 2005 Act is not compatible nor is it in consonance with the decree of divorce which still subsists - It amounts to abuse of the process of court - Complaint pending before the Magistrate and all orders passed therein quashed - Protection of Women From Domestic Violence Act, 2005.

(Also see under:Judgments/Orders).

Inderjit Singh Grewal v. State of Punjab & Anr.

557

(7) s. 482 - Petition seeking to quash criminal proceedings - Complaint by wife against her

husband alleging commission of offence punishable u/s 498A - Held: The complaint made by the wife did not make out a *prima facie* case to go to trial u/s.498-A IPC - The single Judge of the High Court did not appreciate the nature of the on and off relationship between the couple - The impugned order of the High Court set aside and the FIR and all proceedings taken on the basis thereof quashed - Penal Code, 1860 - s.498-A.

Bhushan Kumar Meen v. State of Punjab and Ors.

844

COMPENSATION:

(1) (See under: Motor Vehicles Act, 1988) 276
and 546

(2) (See under: Land Acquisition Act, 1894) 293

CONCESSION OF ADVOCATE/PARTY:

(See under: Minerals Concession Rules, 1960) 993

CONSTITUTION OF INDIA, 1950:

(1) Articles 12, 14, 30 and 39(d).
(See under: Service law) 203

(2) Article 14.
(See under: Service law) 196

(3) Article 19(1)(g) and 19(6) - Shifting of wholesale markets of vegetable and fruit vendors - Held: Right to do business is a fundamental right guaranteed under Article 19(1)(g) but is subject to reasonable restrictions under Article 19(6) - Reasonableness of the restriction has to be determined in an objective manner and has to be

seen from the point of view of the interest of the general public - Shifting of the wholesale markets to the outskirts of the city or beyond was reasonable - State must be left with wide latitude in devising ways and means of social control and regulation, and the court should not, unless compelled by the law, encroach into this field - Thus, the appellants and other wholesale traders should shift to the proposed site.

State of Rajasthan & Ors. v. Sanyam Lodha 662

(4) Article 21.
(See under: Sex workers)... 577

(5) Article 136 - Appeal by special leave - Appreciation of evidence - Suit for declaration and mandatory injunction to correct plaintiff's date of birth recorded in the S.S.L.C. Certificate and the service record - Held: Change of date of birth is a very important responsibility to be discharged - There must be strong, cogent and reliable evidence in support of the claim that the date of birth entered in the service records or S.S.L.C. certificate was wrongly entered by mistake - The evidence adduced by the officer in support of his case is most unreliable - Since the horoscope is the primary document on which reliance is placed, there cannot be any bar to examine the authenticity and evidentiary value of the same while exercising the power under Article 136 as it permits such a scrutiny- On a close examination of the horoscope and the related documents, it is evident that the plaintiff has failed to discharge his onus in proving

the authenticity of the horoscope - Service Law - Evidence.

(Also see under: Service law; and Evidence)

The Registrar General, High Court of Madras v. M. Manickam and Ors. 324

(6) Article 136 - Scope of - Held: Normally Supreme Court would not interfere with a finding of fact relating to fraud and misrepresentation - But, in the instant case, as material evidence produced by the plaintiffs-appellants had been ignored and as the courts below failed to draw proper inferences therefrom and had ignored a cause of fraud, the Court is constrained to interfere with reference to a question of fact - There is variance and divergence between the pleading and documentary evidence, pleading and oral evidence and between the oral and documentary evidence - It is well settled that no amount of evidence contrary to the pleading can be relied on or accepted - The entire case of the respondents is liable to be rejected - The different versions clearly demonstrate fraud and misrepresentation on the part of the respondents - Pleadings - Evidence.

(Also see under: Advocate; Arbitration Act, 1940; Registration Act, 1908; and Suit)

Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. 453

(7) Article 136 - Scope of - Held: Supreme Court ordinarily does not go into the appreciation of evidence, particularly, where there are concurrent findings of fact - However, the Court examined

the oral and documentary evidence not only relating to the appellant, but also to other accused persons - Courts below have fully considered the oral and documentary evidence for coming to the conclusions that they did.

(Also see under: Penal Code, 1860)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi 56

(8) Article 136.
(See under: Appeal) 739

(9) Article 217 r/w Article 124 - Constitution of Inquiry Committee against High Court Judge - Inclusion of an advocate in the Committee - Challenge to, on the ground of *bias* - Held: The petitioner raised the plea of *bias* only after receiving notice dated 16-3-2011 though he could have done so immediately after publication of notification dated 15-1-2010 - Significantly the advocate had taken part in the seminar as Vice-President of the Bar Association - After the seminar, he is not shown to have done anything which may give slightest impression to any person of reasonable prudence that he was ill-disposed against the petitioner - The facts of the case lead to an irresistible inference that the petitioner had waived his right to object to the appointment of the advocate as member of the Committee - The issue of *bias* of the advocate has to be seen from the angle of a reasonable, objective and informed person - It is petitioner's apprehension which is of paramount importance - Petitioner's apprehension of likelihood of *bias* against advocate is reasonable and not fanciful, though, in fact, he

may not be biased -The Chairman is requested to nominate another distinguished jurist in place of the said advocate - The proceedings initiated against the petitioner have progressed only to the stage of framing of charges and the Committee is yet to record its findings on the charges and submit report - Therefore, nomination of another jurist will not hamper the proceedings of the Committee and the re-constituted Committee shall be entitled to proceed on the charges already framed against the petitioner - Judges (Inquiry) Act, 1968 - ss. 3 to 6 - Judges (Inquiry) Rules, 1969 - Rule 9(2)(c).

(Also see under: Administration of Justice)

Justice P. D. Dinakaran v. Hon'ble Judges Inquiry Committee & Ors 1064

(10) Article 226.
(See under: Education/Educational Institutions) 286

(11) (i) Tenth Schedule, Paragraph 2(1)(a) - Disqualification application against MLAs on ground of defection - Manner of disposal by the Speaker - Challenge to - Tests of natural justice and fair play - Held: Except for the affidavit filed by the State President of the B.J.P., and the statements of two others, there was nothing on record in support of the allegations made in the Disqualification application - No presumption could be drawn from the action of the appellants that they had voluntarily given up their membership of the BJP - All along the appellants emphasized their position that they not only continued to be

members of the BJP, but were also willing to support any Government formed by the BJP headed by any leader, other than Respondent no.1, as the Chief Minister of the State - The Speaker acted in hot haste in disposing of the Disqualification application- No convincing explanation was given as to why notices to show cause had been issued to the appellants under r. 7 of the Disqualification Rules, giving the appellants only three days' time to respond to the same, despite the stipulated time of seven days or more - The proceedings conducted by the Speaker did not meet the twin tests of natural justice and fair play -Even if the Disqualification Rules were only directory in nature, sufficient opportunity should have been given to the appellants to meet the allegations levelled against them - Affidavits were served on the advocates appearing for the appellants only on the date of hearing before the Speaker and that too just before the hearing was to commence - Extraneous considerations writ large on the face of the order of the Speaker and, therefore, the same has to be set aside - Disqualification application dismissed - Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 - rr. 6 and 7.

(ii) Tenth Schedule, Paragraphs 2(1)(a) and 6 - Power of the superior Courts to judicially review order passed by Speaker under paragraph 2(1)(a) of the Tenth Schedule - Held: Under paragraph 2(1)(a) of the Tenth Schedule, the Speaker functions in a quasi-judicial capacity, which makes an order passed by him in such capacity, subject

to judicial review - Judicial Review.

(iii) Tenth Schedule, Paragraph 5 - Object of - Held: The object behind the paragraph 5 is to ensure that the Speaker, while holding office, acts absolutely impartially, without any leaning towards any party, including the party from which he was elected to the House.

Balchandra L. Jarkiholi & Ors. v. B.S. Yeddyurappa & Ors

.... 877

CONSUMER PROTECTION ACT, 1986:

(1) s. 2(1)(g) - Deficiency in service - Deposit of huge amount by a temple under the Post Office Time Deposit Scheme - Refunded without interest - Held: In view of r. 17, failure to pay interest cannot be construed as a case of deficiency in service in terms of s. 2(1)(g) - The factual finding arrived at by the State Commission and the National Commission that the Post Master was ignorant of any Notification and as such the institution did not get any interest for the substantial amount are upheld and thus, the department cannot be fastened for deficiency in service in terms of law or contract - Post Office Savings Bank General Rules, 1981 - r. 17.

Arulmighu Dhandayudhapaniswamy Thirukoil, Palani, Tamil Nadu, thr. Its Joint Commissioner v. The Director General of Post Offices, Department of Posts & Ors.

.... 43

(2) (i) ss. 12, 13 and 14 - Power of review and to set aside ex parte orders - Held: District Consumer Forums and State Commissions have

not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the statute cannot be exercised.

(ii) s. 22 (as amended in 2002) read with ss. 12, 13 and 14 and s. 22-A (as introduced in 2002) - Power and procedure applicable to National Commission and power to set aside ex parte orders - Held: After amendment in s. 22 and introduction of s. 22-A, the power of review or recall has vested with the National Commission only - The findings of the National Commission holding that the State Commission can review its own orders are set aside - However, the findings of the National Commission holding that the complaint be restored to its original number for hearing in accordance with law is upheld.

Rajeev Hitendra Pathak & Others v. Achyut Kashinath Karekar & Another 513

CONTEMPT OF COURTS ACT, 1971:

Article published in a newspaper carried adverse information about the then Chief Justice of a High Court - Contempt proceedings - Held: Any wrong or biased information that is put forth can potentially damage the otherwise clean and good reputation of the person or institution against whom something adverse is reported - Pre-judging the issues and rushing to conclusions must be avoided - The newspaper report was apparently based on surmises and conjectures and not based on facts and figures -The judiciary also must be magnanimous in accepting an apology when filed through an affidavit duly sworn, conveying remorse

for such publication - Therefore, the unqualified apology submitted by the contemnors accepted and the contempt proceedings against them dropped - Direction to contemnors to publish the apology as stated in the affidavit in the said newspaper.

Sanjoy Narayan Editor In Chief Hindustan & Ors. v. Hon. High Court Of Allahabad Thr. R.G. 781

CONTRACT ACT, 1872:

s. 5
(See under: Contract) 372

CONTRACT:

Tender - Inviting of bids for collection of toll - Terms of bid requiring to keep the offer/bid open for acceptance upto 90 days after the last date of receipt of bid -Held: A person may have a right to withdraw his offer, but if he has made his offer on a condition that the Bid Security amount can be forfeited in case he withdraws the offer during the period of bid validity, he has no right to claim that the Bid Security should not be forfeited and it should be returned to him -Since the bidder withdrew his offer during the period of bid validity in violation of the agreement, the full value of Bid Security was liable to be forfeited- Contract Act, 1872 - s.5.

State of Haryana & Ors. v. M/s Malik Traders 372

CRIME AGAINST WOMEN:

(1) Dowry death:

- (i) (See under: Code of Criminal Procedure, 1973) 844
- (ii) (See under: Penal Code, 1860) 655
- (2) Gang rape.
(See under: Penal Code, 1860) 27

CRIMINAL LAW:

(1) Explanation of injuries sustained by the accused - Held: Each and every injury on an accused is not required to be explained and more particularly where all the injuries caused to the accused are simple in nature - The facts of the case have to be assessed on the nature of probabilities - In the instant case, the injuries on the accused were not explained as the prosecution witness did not utter a single word as to how they had been suffered by them - The defence can legitimately raise a suspicion that the genesis of the incident was shrouded in mystery - Undoubtedly, there were a large number of injured witnesses, some of them grievously hurt, this fact by itself cannot preclude the accused from claiming that no case was made out against them. (Also see under: Penal Code, 1860).

Raghubir Singh v. State of Rajasthan & Ors. 739

(2) Judgment of acquittal - Sustainability of - Held: Merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. (Also see under: Penal Code, 1860)

Maloth Somaraju v. State of A.P. 349

(3) Motive - Held: Reliable evidence in the case indicates that there was previous enmity between one of the accused and the complainant because of a litigation - Even in the absence of specific evidence as to motive, in view of the evidence of the injured witness, the medical evidence and the fact that two persons have been killed and the third one sustained fire arm injuries, the prosecution case cannot be thrown out on this ground.

(Also see under: Evidence; and Penal Code, 1860)

State of Rajasthan v. Arjun Singh & Ors. etc. 823

CRIMINAL TRIAL:

Role of trial court and High Court - Held: In the instant case, compliments must be paid to the trial court and the High Court - The trial held before the trial Judge was the epitome of fairness, where every opportunity was given to the accused persons and, more particularly, to the appellant - Similarly, the High Court was also very fair in giving all the possible latitude and in giving patient hearing to the accused-appellant.

(Also see under: Penal Code, 1860)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi 56

CUT-OFF DATE:

(See under: Service Law) 196

DOCTRINES/PRINCIPLES:

(1) Doctrine of Office of Trust.
(See under: Administrative Law) 662

(2) Principle of ejusdem generis.
(See under: Central Excise Tariff Act, 1985) 764

(3) Principle of restitution.
(See under: Minerals Concession Rules, 1960) 993

EDUCATION/ EDUCATIONAL INSTITUTIONS:

(1) Central Educational Institutions - Implementation of 27% reservation for other backward classes (OBC) - Expressin, "the maximum cut-off marks for OBCs be 10% below the cut-off marks of general category candidates" in the clarificatory order passed in *P.V. Indiresan's* case, in regard to the decision of the Constitution Bench in *Ashok Kumar Thakur's* case - Meaning and interpretation of - Held: It means that where minimum eligibility marks in the qualifying examinations are prescribed for admission, say as 50% for general category candidates, the minimum eligibility marks for OBCs should not be less than 45% (that is, 50 less 10% of 50) and the same is followed in case of qualifying marks in the entrance examination - Central Educational Institutions (Reservation in Admission) Act, 2006.

P.V. Indiresan v. Union of India & Ors. 384

(2) (i) Medical admissions - Reservation for local students for admission to super specialty Medical Courses in the State of Kerala - Constitutional validity of - High Court while allowing the claim of the candidates who were from outside Kerala, on the ground that 100% reservation was unconstitutional, chose not to give any relief to the

said students on the ground that the course had commenced more than 6 months prior to the matter being heard by the High Court - Held: The decision of High Court regarding the constitutional validity of the first and second prospectus reserving 100% of the seats in the super specialty course for students from Kerala alone is upheld - However, since the appellant was not given admission to the said course, on the strength of an invalid policy, he deserved to be accommodated - Since by interim order, seats were set apart for the writ petitioners, appellant to be accommodated in one of the seats - Directions issued accordingly.

Dr. Puneet Gulati and Ors. etc. etc. v. State of Kerala and Ors. etc. etc. 279

(ii) Medical admissions - Representation for re-examination and re-totalling of marks -Comparison of answers of the candidate with model answers by the Single Judge of the High Court who held that the candidate was given two marks less - Division Bench of the High Court directed that the candidate be admitted in the MBBS course in the next academic session - Held: The Bye-laws did not provide for re-examination or re-valuation of answer sheets - Neither the Single Judge nor the Division Bench of the High Court could have substituted his/its own views for that of the examiners and awarded two additional marks to the candidate in exercise of power of judicial review under Article 226 of the Constitution as these are purely academic matters - Judgments of the Single Judge and the Division Bench of the

High Court set aside and the writ petition dismissed - Bye-laws of All India Pre-Medical/Pre-Dental Entrance Examination, 2007 - Constitution of India, 1950 - Article 226.

The Secretary, All India Pre-Medical/Pre-Dental Examination, C.B.S.E. & Ors. v. Khushboo Shrivastava & Ors. 286

(3) (See under: Service law) 203

ENVIRONMENTAL LAWS:

Protection and preservation of Victoria Memorial Hall and its green surroundings - Government directed to consider the recommendation of NEERI that the bus terminus should be shifted as a long term measure to protect and preserve Victoria Memorial Hall - Public Interest litigation.

State of West Bengal v. Ganatantrik Nagarik Samity & Ors. 871

EVIDENCE ACT, 1872:

(1) s.27.

(See under: Evidence; and Penal Code, 1869) 56

(2) s. 105.

(See under: Penal Code, 1860)

Balchandra L. Jarkiholi & Ors. v. B.S. Yeddyurappa & Ors. 877

(3) s.113 B.

(See under: Penal Code, 1860) 655

EVIDENCE:

(1) Appreciation of evidence - Held: The evidence must be viewed collectively - Statement of a

witness must be read as a whole - Reliance on a mere line in the statement of the witness, out of context, would not serve the ends of justice and the conclusion of the court based on such appreciation of evidence could be faulted.

(Also see under: Penal Code, 1860; and Code of Criminal Procedure, 1973)

Prem Prakash @ Lillu & Anr. v. State of Haryana 27

(2) Circumstantial evidence - Principles explained - Red Fort attack - Held: Prosecution was successful in establishing the circumstances against the appellant, individually, as well as, cumulatively - Penal Code, 1860 - ss. 121, 121-A, 120-B r/w s. 302 IPC.

(Also see under: Penal Code, 1860)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi 56

(3) Date of birth - Proving of - Medical certificate - Held: The medical certificate produced in the instant case is described as "Age Proof Certificate" - It is very vague and unreliable - Whether or not any radiological examination or any ossification test was conducted is not reflected in the certificate - Reliance cannot be placed on the authenticity and validity of the said age proof certificate - Service Law.

(Also see under: Service law; and Constitution of India, 1950)

The Registrar General, High Court of Madras v. M. Manickam and Ors. 324

(4) Evidence of related witness - Discrepancies in evidence - Effect of - Held: The evidence of the eye-witness who suffered gun shot injuries in the incident is supported by medical evidence and other documentary evidence - Merely because he is related to the deceased is not a ground for rejection of his testimony - Certain discrepancies as to number of gun shots are liable to be ignored - Non-recovery of pistol or cartridge does not detract the prosecution case, whose clinching and direct evidence is acceptable - Investigation.

(Also see under: Criminal Law; and Penal Code, 1860)

State of Rajasthan v. Arjun Singh & Ors. etc. 823

(5) (See under: Constitution of India, 1950) 453

EXPLOSIVE SUBSTANCES ACT, 1908:

s. 4.
(See under: Penal Code, 1860) 56

FIR:

(See under: Code of Criminal Procedure, 1973) 27

FOREIGNERS ACT, 1946:

s. 4.
(See under: Penal Code, 1860) 56

FRAUD:

(1) (i) Connotation of fraud - Explained.

(ii) Fraud committed on court.

(iii) Stamp fraud.

(Also see under: Advocate; Arbitration Act, 1940; Constitution of India, 1950;

Registration Act, 1908; and Suit).

Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. 453

(2) Order obtained by fraud.
(See under: Judgments/orders) 557

INTEREST:

(See under: Minerals Concession Rules, 1960). 993

INTERPRETATION OF STATUTES:

Principle of *ejusdem generis*.
(See under: Central Excise Tariff Act, 1985) 764

INVESTIGATION:

(1) (i) Disclosure statement of accused and recoveries of incriminating articles - 'Arresting' of accused and recording of his statement - Held: The accused being in custody of the investigating agency, he need not have been formally arrested - As regards the failure to record the information, it must be held that it is not always necessary - The essence of the proof of a discovery u/s. 27, Evidence Act is only that it should be credibly proved that the discovery made was a relevant and material discovery which proceeded in pursuance of the information supplied by the accused in the custody - Therefore, there is nothing wrong with the discovery even if it is assumed that the information was not "recorded" and it is held that immediately after the accused had been apprehended, he gave the information which was known to him alone and in pursuance of which a very material discovery was made -

However, in the instant case, there is evidence that the accused was "arrested" and his disclosure statement was recorded - Evidence Act, 1872 - s.27.

(ii) Role of investigating agency - Held: The investigation in the instant case was both scientific and fair - This was one of the most difficult cases to be investigated as there could have been no clue available to the investigating agency - The small thread which became available to the investigating agency was the chit, containing the cell phone number, found alongwith some Indian currency - Compliments must be paid to the Investigating Officer as also to all others associated with the investigation for being objective and methodical in their approach - It has to be borne in mind that not a single incidence of ill-treatment to the appellant was reported or proved - Again, the timely recording of the D.D. Entries, scientific investigation using the computer, the depth of investigation and the ability of the investigating agency to reach the very basis of each aspect, lend complete credibility to the fairness of the investigation.

(Also see under: Penal Code, 1860)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi 56

(2) (See under: Code of Criminal Procedure, 1973) 260

(3) (See under: Evidence; and Penal Code, 1860) 823

JUDGES (INQUIRY) ACT, 1968:

ss. 3 to 6.

(See under: Constitution of India, 1950) 1064

JUDGES (INQUIRY) RULES, 1969:

r. 9(2)(c).

(See under: Constitution of India, 1950) 1064

JUDGMENTS/ORDERS:

(1) Order by appellate authority - Held: The appellate authority must record reasons in support of its order to indicate that it has applied its mind to the grounds raised but it is not the requirement of law that an order of affirmance by the appellate authority must be elaborate and extensive - Appeal.

(Also see under: Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982)

Oriental Bank of Commerce & Anr. v. R.K. Uppal 218

(2) (i) *Obiter dictum* - Allegation of corruption against government servants -Final closure report u/s.169, Cr.P.C. submitted exonerating the accused of all the charges - Special Judge rejected the closure report holding that there were sufficient grounds to take cognizance of the offence and matter may be taken up seeking necessary sanction to prosecute them - High Court quashed the order by treating the operative portion of the order of Special Judge as direction issued to the sanctioning authority to sanction the prosecution of the private respondents - Held: Refusal by the Special Judge to accept the final

closure report submitted by Lokayukta Police was the only *ratio decidendi* of the order - The other part of the order dealing with the initiation of Challan proceedings could not be treated as the direction issued by the Special Judge - The wordings of the order clearly suggested that it was not in the nature of the command or authoritative instruction - The order was also not specific or clear in order to direct or address any authority or body to perform any act or duty - Therefore, it cannot be treated as the direction issued by the Special Judge but only 'obiter dictum' or mere passing remark - Therefore, there was no occasion for the High Court to interfere with the order of the Special Judge.

(ii) Direction issued by court - Scope and nature of - Held: Direction issued by court is in the nature of a command or authoritative instruction which contemplates the performance of certain duty or act by a person upon whom it has been issued - Direction should be specific, simple, clear and just and proper.

(iii) *Obiter dictum* - Scope and nature of - Held: Is a mere observation or remark made by the court while deciding the actual issue before it - The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the court and has no authoritative value.

Arun Kumar Aggarwal v. State of Madhya Pradesh and Ors. 850

(3) (i) Order obtained by making misrepresentation or playing fraud upon the competent

authority - Sustainability of - Held: Such order cannot be sustained in the eyes of the law as fraud unravels everything.

(ii) Judgment/Order - Setting aside of an order/decree, even if void or void ab initio - Held: Declaration has to be obtained from the competent court - It cannot be obtained in collateral proceedings.

(Also see under: Code of Criminal Procedure, 1973)

Inderjit Singh Grewal v. State of Punjab & Anr. 557

(4) Reasons for judgment/order.
(See under: Motor Vehicles Act, 1988) 276

JUDICIAL REVIEW:

(1) (See under: Administrative Law) 662

(2) (See under: Constitution of India, 1950) 877

(3) (See under: Education/Educational Institutions) 286

JURISDICTION:

(1) (See under: Code of Criminal Procedure, 1973) 804

(2) (See under: Arbitration and Conciliation Act, 1996) 1026

KARNATAKA INDUSTRIAL AREAS DEVELOPMENT ACT, 1966:

s. 28(4) - Final Notification issued under - Legality and validity of - Held: Land which was sought to be acquired by the respondent was identifiable -

Petitioner was given opportunity to file his objections which were considered - Land was resurveyed and thereafter, the land sought to be acquired was identified, which included the land of the petitioner - Thus, the entire pre-conditions and formalities laid down u/s. 28 were duly complied with and were adhered to and followed - Final Notification u/s. 28 (4) having been validly issued, no interference is called for.

P. Parthasarathy v. State of Karnataka & Ors. 599

KARNATAKA LEGISLATIVE ASSEMBLY
(DISQUALIFICATION OF MEMBERS ON
GROUND OF DEFECTION) RULES, 1986:
rr. 6 and 7.

(See under: Constitution of India, 1950) 877

LABOUR LAWS:

Employer-employee relationship - Finding of fact recorded by labour court - Interference with, by High Court - Scope of - Held: Labour statutes are meant to protect the employees/workmen because the employers and the employees are not on an equal bargaining position - It is implicit in the finding of Labour Court that there was subterfuge by employer to avoid its liabilities under various labour statutes - In the instant case, labour court had recorded a finding that the workmen were the employees of the appellant and not of the contractor - High Court rightly declined to interfere.

Bhilwara Dugdh Utpadak Sahakari S. Ltd. v. Vinod Kumar Sharma Dead by Lrs. and Ors. 819

LAND ACQUISITION ACT, 1894:

(1) ss. 4 and 6 - Land Acquisition - Land policy for allotment of developed land in residential area to the person aggrieved- Allotment of land to land owner in the commercial area as per the direction of the Chief Minister quashed by Supreme Court - Review petition - Held: There is no ground to entertain review petition - Land Policy did not provide allotment of land of the choice of the tenure-holder - Allotment could be made only in residential area - Applicant did not comply with the allotment letters rather approached the Chief Minister, who was not the competent Authority - It tantamounts to transgression/ usurpation of competence - While deciding a representation/ petition, an authority or court may issue direction to the person concerned to consider the grievance - However, it is not permissible to pass the order by the superior authority/court itself.

Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. & Ors. 634

(2) (i) s.23 - Compensation for the land acquired - Computation of - Base price - Comparable sale deed - Held: Market value has to be assessed as at the time of s.4 notification -The sale deed touching the issuance of s.4 notification and for more than 20 bighas of land would be the appropriate comparable sale deed -Tax department granted a clearance certificate with regard to it - It is a genuine and bona fide transaction - As per this sale deed the base price of the land acquired is fixed at Rs. 4,08,000/- per acre.

(ii) s.23 - Market value of land acquired - Deductions - Held: The land was reserved for industrial purposes and several industries are already located in the adjoining area - The bulk of the land has been given to the allottee-beneficiary for setting up its own industry and other infrastructure thereon - Thus, the land likely to be used towards the roads, sewage and other such facilities would be minimum as most of the vacant land would be utilized by the allottee for its own benefits - Therefore, a deduction of 10% from the base price would be reasonable - Reference court directed to calculate the amount of compensation accordingly and pay the same to the appellants and all such other land owners whose lands have been acquired - Appeal - Benefit extended to similarly situated non-appellants also.

Chakas v. State of Punjab & Ors. 618

(3) ss. 4(1), 18(1) and 54 - Compulsory acquisition of small parcels of land for construction of houses by State Housing Board - Market value fixed as also compensation - High Court substantially reducing the compensation determined by reference court - Held: High Court while deducting 40% towards development charges, ignored its own finding that the acquired land was situated in the vicinity of the residential colonies developed by the Housing Board - High Court could have at best applied 1/3rd deduction towards development cost - In view of huge potential of the acquired land for being developed as housing site, High Court should have added 10% per annum in the price specified in the sale deeds relied upon for

fixing market value of the acquired land - Market value of the acquired land fixed accordingly - Majority of the landowners have been deprived of their entire landholding and have waited for 14 to 20 years for getting the compensation -- Landowners would get solatium, interest and other statutory benefits in accordance with the provisions of the Act.

Valliyammal and another v. Special Tehsildar (Land Acquisition) and another etc. 293

(4) Compensation - Determination of - Held: Reference court discussed entire evidence including the deposition of witnesses and on appreciation thereof came to a definite finding that the acquired land on the date of issuance of the notification u/s.4 could not be valued and assessed at more than Rs. 10,000/- per acre - Said amount was just and fair compensation for the land acquired - High Court failed to indicate as to how the said findings were unreasonable and unjustified Judgment passed by the High Court enhancing the compensation to Rs. 75,000/- per acre set aside - Matter remitted to High Court for consideration afresh.

Spl. Land Acquisition Officer v. Maharani Biswal and Ors. 609

LAND ACQUISITION:

(See under: Karnataka Industrial Areas Development Act, 1966) 591

LEGISLATION:

Amendment in recruitment rules suggested.

(See under: Service Law) 728

MAXIMS:

(1) '*Allegans suam turpetudinem non est audiendus*' - Held: Person alleging his own infamy cannot be heard at any forum.

(Also see under: Code of Criminal Procedure, 1973)

Inderjit Singh Grewal v. State of Punjab & Anr. 557

(2) "*Nemo debet esse iudex in propria causa*".
(See under: Constitution of India, 1950; and Administration of Justice) 1064

(3) "*Stare decisis et non quieta movere*".
(See under: Prevention of Corruption Act, 1988) 949

MEDIA:

Powers and responsibilities of - Discussed - Held: The media, in all its forms, whether electronic or print, discharges a very onerous duty of keeping the people knowledgeable and informed - However, with the huge amount of information that they process, it is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong, biased or simply unverified information - The right to freedom of speech enshrined in Article 19(1)(a) of the Constitution is restricted by Article 19(2) in the interest of the sovereignty and integrity of India, security of the State, public order, decency and morality and also Contempt of Courts Act and defamation - In order to avoid biased reporting, one must be careful to verify the facts and do

some research on the subject being reported before a publication is brought out - Constitution of India, 1950 - Article 19(1)(a) and 19(2).

Sanjoy Narayan Editor In Chief Hindustan & Ors. v. Hon. High Court of Allahabad Thr. R.G. 781

MINERALS CONCESSION RULES, 1960:

(i) r. 64-A - Royalty in respect of mining lease - Levy of interest on arrears of royalty - State Government issued notices demanding interest from respondents-lessees @ 24% p.a. - Respondents filed writ petitions - Judgment of Single Judge of High Court upholding the demand for interest only to an extent of 12% p.a. - Affirmed by Division Bench of High Court - Held: From the order of the Single Judge, it is clear that the only submission of the Advocate General before the Single Judge was that the State Government was entitled to interest @ 18% p.a. - The observation in the order that as per the trend of Supreme Court, the State Government should get interest at least @ 12% p.a. on delayed payments, as awarded in the Supreme Court decision in *South Eastern Coalfields*, was an observation of the Single Judge, and not a concession by the Advocate General - The order of the Single Judge was thus not based on consent or concession, but made on merits following the Supreme Court decision in *South Eastern Coalfields* - It was, therefore, open for the State Government to challenge the order of the Single Judge if it was of the view that it was entitled to get a higher rate of interest - Code of Civil Procedure, 1908 -

Concession of Advocate/party - Mines and Minerals (Development and Regulation) Act, 1957 - s.9 and Second Schedule.

(ii) r. 64A - Royalty in respect of mining lease - Notification increasing the rate of royalty - Challenge to, dismissed - Held: Whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order - Code of Civil Procedure, 1908 - s.144 - Principle of restitution.

(iii) rr. 64-A, 31 and 27 - Royalty in respect of mining lease - r. 64A providing for levy of interest on arrears of royalty - Word "may" in r. 64A - Interpretation of - Held: Word 'may' is used in r. 64-A not in the context of giving discretion in regard to rate of interest to be charged, but to give an option or choice to the State Government as to whether it should determine the lease, or charge interest at 24% p.a., or do both - Therefore, where the lease is not determined as a consequence of the default, the State will have to charge interest at 24% p.a. on the outstanding amount - There is no discretion in the State Government to charge interest at any lesser rate - Where the statute or contract prescribed a specific rate of interest, the court should normally adopt such rate while awarding interest, except where the court proposes to award a higher or lower rate of interest, for special and exceptional reasons - On facts, there

was a categorical direction of the writ court while granting interim stay that in the event of failure in the writ petition, the lessee will have to pay interest @ 18% p.a. - It is clear that the lease was governed by the Minerals and Concessions Rules and any term in the lease deed prescribing a lesser rate of interest, shall have to yield to r. 64-A as the rule will prevail over the terms of the lease - In the peculiar and special circumstances, from the date of the notification to the date of dismissal of the respective writ petitions, the rate of interest shall be 18% p.a. on the arrears of royalty etc. and from the date of dismissal of the writ petitions till date of payment, the rate of interest shall be 24% p.a.

State of Rajasthan & Anr. v. J.K. Synthetics Ltd. & Anr. 993

MINES AND MINERALS (DEVELOPMENT AND REGULATION) ACT, 1957:

s.9 and Second Schedule.
(See under: Minerals Concession Rules, 1960) 993

MOTOR VEHICLES ACT, 1988:

(1) s. 166 - Compensation for injuries suffered in a a motor accident awarded by Tribunal- Reduced by High Court - Held: The High Court, while tinkering with the conclusion reached by the tribunal, should have assigned reasons in support of its conclusion - It is time and again said that the reasons are the links between the materials on which certain conclusions are based and the actual conclusions - They disclose how the mind is applied to the subject matter for a decision and

reveal a rational nexus between the facts considered and conclusions reached and thereby, exclude the chances to reach arbitrary, whimsical or capricious decision or conclusion - There is no legal infirmity with the order passed by the Tribunal and the findings and the conclusions reached by it - The judgment and order passed by the High Court reversed and that of the Tribunal restored - Judgments/Orders - Reasons for - Compensation.

Raviraj Udupa v. M/s United India Insurance Company Ltd. & Ors. 276

(2) ss. 166 and 168 - Assessment of quantum of compensation - Meaning of the word "just" as appearing in s.168 - Loss of foetus on account of injury sustained by the claimant-mother in an accident - Claim petition - Held: s.168 casts an obligation on the Tribunal to determine the amount of compensation "which appears to it to be just" - Word "just" connotes something which is equitable, fair and reasonable, conforming to rectitude and justice and not arbitrary - In the instant case, neither the Tribunal nor the High Court applied any principle for determination of the amount of compensation on account of the death of a still born child - Besides, in the judgment of the High Court, there was no discussion on the question of non-pecuniary compensation awarded by the Tribunal to the claimant-mother on account of pain and suffering as a result of death of the child -In the facts and circumstances of the case, judgment of High Court awarding a consolidated sum of Rs. 1,80,000/, not interfered with.

National Insurance Company Ltd. v. Kusuma and Anr 546

NATURAL JUSTICE:

(See under: Administrative Law; and Oriental Bank of Commerce Officer Employed (Discipline and Appeal) Regulations, 1982 218

NEGOTIABLE INSTRUMENTS ACT, 1881:

s.138.
(See under: Code of Criminal Procedure, 1973) 804

ORIENTAL BANK OF COMMERCE OFFICER EMPLOYEES (DISCIPLINE AND APPEAL) REGULATIONS, 1982:

Regulation 17 - Dismissal from service for misconduct - Appeal - Personal hearing - Held: Regulation 17 affords to an employee right of appeal - The said provision does not expressly provide for personal hearing to the delinquent - Therefore, it cannot be said that the very right of appeal is defeated - The order of the appellate authority cannot be said to suffer from vice of lack of reasons -- Judgment/Order - Natural justice.
(Also see under: Administrative law; Judgment/Order and Appeal)

Oriental Bank of Commerce & Anr. v. R.K. Uppal 218

PENAL CODE, 1860:

(1) (i) ss. 84, 304 (Part-II), 307 and 342 - Murder and attempt to murder - Defence of insanity - Held: Accused was guilty of committing culpable homicide of his daughter and an attempt to commit the murder of his wife, even if the assault on his mother is taken as doubtful on account of her turning hostile at the trial and attempting to attribute

the injuries sustained by her to a fall - The fact that the appellant was working as a Government servant and was posted as a Watchman with no history of any complaint as to his mental health from anyone supervising his duties, is significant - Depositions of the doctors dealt with the mental health condition of the accused at the time of the examination by the doctors and not the commission of the offence which is the relevant point of time for claiming the benefit of s.84 IPC - Plea of insanity taken by the accused was neither substantiated nor probablised - The Courts below were, therefore, justified in holding that the plea of insanity had not been proved and the burden of proof cast upon the accused u/s.105 of the Evidence Act remained undischarged - Consequently, no reason to alter the conviction or sentence u/s.342 - Also no reason to interfere with the conviction of appellant u/s.307 but sentence reduced from 10 years to 7 years RI - Conviction of appellant u/s.302 being not justified, altered to conviction u/s.304 (Part-II) alongwith 10 years RI.

(ii) s.84 - Principles governing burden of proof in cases where the accused pleads an exception - Defence of insanity - Burden of bringing case u/ s.84 - Standard of proof for discharge of burden u/s.105 of Evidence Act- Held: The burden of bringing the case u/s.84 of IPC lies squarely upon the person claiming the benefit of the provision - The standard of proof which the accused has to satisfy for the discharge of the burden cast upon him u/s.105 of the Evidence Act is not the same as is expected of the prosecution - Evidence Act, 1872 - s.105.

(iii) s.304(Part-II) or s302 - Culpable homicide without pre-meditation - Accused caused death of his 1½ year old daughter- Conviction u/s.302 - Held: On facts, not justified - There was no pre-meditation in the assault upon the child - There was no intention on the part of the accused to cause the death of the child, though looking to the nature of the injuries suffered by her, the accused must be presumed to have the knowledge that the same were likely to cause death - Accused committed culpable homicide without premeditation in a sudden fight and in the heat of passion - The fact that the appellant did not use the sharp edged weapon with which he was armed also shows that he did not act in a cruel or unusual manner nor did he take an undue advantage - Conviction of accused modified to that u/s.304 (Part-II) with 10 years RI.

Elavarasan v. State Rep. by Inspector of Police.

.... 1147

(2) (i) ss. 121, 121-A, 120-B r/w s. 302, ss. 186/353/120-B, 468/471 and 420/120-B - Conspiracy to wage war against and to overawe Government of India - Red Fort attack - Held: The offence of conspiring to wage a war is proved to the hilt against the appellant, for which he has been rightly held guilty of the offences punishable u/ss. 121, 121-A, and 120-B r/w s. 302, IPC - The High Court rightly came to the conclusion that the appellant was responsible for the incident of shooting inside the Red Fort which resulted in the death of three soldiers of Army - The court agrees with the verdict of the trial court as well as the High Court- Arms Act, 1959 - s. 25 - Explosive Substances Act, 1908 - s. 4 - Foreigners Act, 1946 - s. 4 - Evidence

- Circumstantial evidence - Sentence/sentencing.

(ii) ss. 121 and 121-A - 'Conspiracy to wage war against Government of India' - Explained - Held: Once the prosecution proves that there was a meeting of minds between two persons to commit a crime, there would be an emergence of conspiracy - The fact that barely within minutes of the attack, the BBC correspondents in two different cities were informed, proves that there was a definite plan and a conspiracy - It was undoubtedly an extremely well-planned attempt to overawe and to wage war against the Government of India - Some of the associates of the appellant were killed and others are absconding - Thus, the case of the prosecution that there was a conspiracy to attack the Red Fort and kill innocent persons, was not affected even if the other accused persons who were alleged to have facilitated and helped the appellant, were acquitted.

(Also see under: Constitution of India, 1950; Criminal trial; Evidence; and Sentence/sentencing)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi

56

(3) s. 302 - Accused alleged to have committed murder of his elder brother at night - Acquittal by trial court - Conviction and sentence u/s. 302 by High Court - Held: Trial court got swayed away by the so-called irrelevant suspicious circumstances which resulted into the acquittal of the accused - High Court dealt with all aspects in detail and also considered the evidence without being influenced by irrelevant and imaginary suspicious circumstances - The wife of deceased was a truthful

and reliable eye-witness - Quality of her evidence is very high and sufficient for the conviction of the accused - She had a close relation with the accused and was not expected to commit any mistake in identifying him and she would certainly be interested in naming the culprit since she had lost her husband - She was a natural witness and her presence in her own house was natural - FIR completely corroborates her evidence - She stood her cross examination extremely well - Other prosecution witnesses who had rushed to the scene of incident and had seen the accused, though turned hostile, it cannot be viewed as a suspicious circumstance - Order passed by the High Court upheld.

(Also see under: Criminal law)

Maloth Somaraju v. State of A.P. 349

(4) s.302 - Murder on account of dispute over land - Injuries sustained by both the sides -- Trial court convicted 7 accused u/ss.302, 302/149, 307, 307/149 - High Court modified conviction of accused 'K' to s.304 Part II - Conviction of three accused modified to s.324 and to s.325 - Held: Injury suffered by victim was attributed by the witnesses to accused 'K' - Medical evidence proved that the injury was by the weapon used by the said accused and the extent and gravity of the injury showed that he had the intention to cause death of the victim - Evidence also showed that the said injury was sufficient to cause death in the normal course of nature - Therefore, accused 'K' held guilty u/s.302 for having caused the murder of the victim and the judgment of the trial court to

that limited extent restored - Appeals of other accused dismissed.

(Also see under: Criminal Law).

Raghubir Singh v. State of Rajasthan & Ors.

739

(5) (i) ss.302/34 and 307/34 - Murders of two brothers and attempt to murder the third one - Held: The deposition of the injured, the medical evidence and other materials produced by prosecution clearly prove the guilt of the three convicted accused that they with their guns and with their common intention fired gunshots resulting in death of two brothers and serious injuries to the third - Their conviction and sentence as recorded by courts below confirmed - Evidence.

(ii) s.302 - Victim sustained 7 gunshot injuries and died 35 days thereafter due to septicemia - Held: The injuries were sufficient to cause death - Case falls within the ambit of s.302.

(Also see under: Criminal Law; and Evidence)

State of Rajasthan v. Arjun Singh & Ors. etc.

823

(6) ss.304B, 498A - Allegation of dowry death against appellant-husband, his brothers, parents and sisters - Held: The evidence with respect to the husband was almost identical with that of the six accused who were acquitted of the same charge - Allegation of poisoning was not substantiated as no poisonous substance was found in the report of FSL - Mere fact that the

victim was a young woman would not lead to inference that she had died an unnatural death - Likewise, the evidence of demand for dowry or goods soon before death was also lacking - Indisputably, in order to attract s.304B, it is imperative on the part of the prosecution to establish that the cruelty or harassment has been meted out to the deceased 'soon before her death'- Evidence clearly failed the proximity test - Statements of the brother and the father of the victim in the court are inconsistent with their statements recorded u/s.161, Cr.P.C. - Conviction of husband also set aside - Appellant acquitted - Evidence Act, 1872 - s.113B.

Gurdeep Singh v. State of Punjab and Ors.

655

(7) ss.376(2)(g) and 366 - Gang-rape pursuant to kidnapping - Testimony of prosecutrix - Conviction of all the three accused, upheld by High Court - Appeal of one accused dismissed in limine, and one accused died meanwhile - Held: No reason to disbelieve the version of prosecutrix - Statement of prosecutrix before the court fully supported by other prosecution witnesses and the medical evidence on record - Involvement of the appellant in the entire chain of events was material and as per the prosecutrix he had also raped her - Concurrent finding of conviction against the accused was based upon proper appreciation of evidence - Conviction upheld.

(Also see under: Code of Criminal Procedure; and Evidence)

Prem Prakash @ Lillu & Anr. v. State of Haryana

27

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| (8) 498 A. (See under: Code of Criminal Procedure, 1973) | | 844 |
| PLEADINGS: (See under: Constitution of India, 1950) | | 453 |
| POST OFFICE SAVINGS BANK GENERAL RULES, 1981: r. 17. (See under: Consumer Protection Act, 1986) | .... | 43 |
| PREVENTION OF CORRUPTION ACT, 1988: s.19 - Interpretation of - Previous sanction for prosecution - Appellants were tried before the Special Judge, CBI for offences u/ss.13(1)(e) and 13(2) of the Act r/w s.109 IPC - Allegation that the appellants while working as Members of Legislative Assembly, had accumulated wealth disproportionate to their known sources of income - Held: In <i>Antulay's</i> case, the Court held that the relevant date of sanction would be the date on which the cognizance was taken of the offence and that since the accused in that case did not continue to hold the office that he had allegedly abused on the date of cognizance, there was no necessity of granting any sanction - The law settled in <i>Antulay's</i> case has stood the test of time and as per the maxim <i>stare decisis et non quieta movere</i> , it would be better to stand by that decision and not to disturb what is settled - The High Court was right in relying on the decision in <i>Prakash Singh Badal</i> to hold that the appellants had abused entirely different office or offices than | | |

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| the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction u/s.19 of the Act - Maxims - " <i>stare decisis et non quieta movere</i> ". | | |
| <i>Abhay Singh Chautala v. C.B.I.</i> | .... | 949 |
| PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: (See under: Code of Criminal Procedure, 1973) | .... | 557 |
| PUBLIC INTEREST LITIGATION: (See under: Environmental laws) | .... | 871 |
| RAJASTHAN CHIEF MINISTER'S RELIEF FUND RULES, 1999: (i) r. 5 r/w r. 4 - Chief Minister's Relief Fund -Writ petition alleging arbitrary and discriminatory disbursement of relief to minor victims of rape, - High Court allowing the petition and substituting r. 5 - Held: The Relief Fund Rules are not delegated legislation, but are norms/guidelines issued in exercise of executive power of State under Article 162 of the Constitution and were not under challenge in the writ petition - Therefore, High Court ought not to have modified or read down r. 5. (ii) Relief Fund Rules do not create any right in any victim to claim monetary relief nor do they provide any scheme for grant of compensation to rape victims - Grant of relief amount thereunder is purely <i>ex gratia</i> at the discretion of the Chief Minister and may depend upon several circumstances - There are detailed guidelines and | | |

checks and balances in regard to disbursement of the Relief Fund with a residuary discretionary power with the Chief Minister - Failure to give uniform *ex gratia* relief cannot be said to be arbitrary or unconstitutional - However, it may be appropriate to include a sub-category relating to rape victims under category (i) or (iii) of r. 4. - Administrative Law - Norms/guidelines - Modification suggested - Constitution of India, 1950 - Articles 14 and 162.

*State of Rajasthan & Ors. v. Sanyam
Lodha*

662

RAJASTHAN LAND REVENUE ACT, 1956:

(i) Power to grant patta - Held: It was the Land Revenue Department which alone had the power under the Act to grant land to any person - The allotment of land was without jurisdiction as Public Health and Engineering Department was not empowered to transfer the land.

(ii) s. 259 - Jurisdiction of civil court - Cancellation of Patta for agricultural land - Held: In view of s. 259, jurisdiction of civil court is ousted - Further, the validity of allotment order was not considered on merits - Therefore, principle of *res judicata* shall not apply - Therefore, it is desirable that the State Government may decide the grant of land allotted by earlier order - The Court is also of the view that in larger public interest no land can be allotted or granted if it obstructs the flow of water - Revenue Department of the State Government directed to decide the matter afresh - *Res judicata*.

*State of Rajasthan & Ors. v. Jeev
Raj & Ors.*

241

REFERENCE TO LARGER BENCH:

(See under: Standards of Weights and Measures Act, 1976)

708

REGISTRATION ACT, 1908:

ss. 17 and 49 - Compulsorily registrable documents - Held: If the decree or order of the court is not rendered on merits, but expressed to be made on a compromise and comprises any immoveable property which was not the subject matter of the suit or proceeding, such order or decree is compulsorily registrable - Further, clause (iv) of sub-s. (2) of s. 17 excludes decrees or orders but does not exclude awards of arbitrator - Any arbitration award which purports or operates to create, declare any right, title or interest in any immovable property of the value of more than Rs. 100 is compulsorily registrable - In the instant case, the awards were compulsorily registrable, but as they were not registered, they could not be acted upon u/s.49 of the Registration Act, 1908 nor could a decree be passed in terms of such unregistered awards.

(Also see under: Advocate; Arbitration Act, 1940; Constitution of India, 1950; and Suit)

*Ramesh Kumar & Anr. v. Furu Ram &
Anr. etc.*

453

RES JUDICATA:

(See under: Rajasthan Land Revenue Act, 1956)

....241

RESTITUTION:

(See under: Minerals Concession Rules, 1960)

993

REVIEW:

(See under: Consumer Protection Act, 1986) 513

RIGHT OF CHILDREN TO FREE AND
COMPULSORY EDUCATION ACT, 2009:
ss.23, 38(2)(I)

(See under: Writ) 203

RULE OF INTERPRETATION OF THE SCHEDULE
TO CENTRAL EXCISE TARIFF ACT, 1985:
rr. 2 (a) and 3.

(See under: Central Excise Tariff Act, 1985) 764

SENTENCE/SENTENCING:

Rarest of rare case - Attack on Indian Army stationed in Red Fort - Three soldiers killed by intruders - Held: High Court concurred with the finding of the trial court that this was a rarest of the rare case - This was a unique case where Red Fort, a place of paramount importance for every Indian heart was attacked where three Indian soldiers lost their lives - It was a blatant, brazenfaced and audacious act aimed to over awe the Government of India - Therefore, this case becomes a rarest of rare case - The case satisfies both the tests, namely, shocking the conscience of the community and crime of enormous proportion, as multiple murders were also committed - The sentence of death awarded by courts below is upheld - Penal Code, 1860 - s.121, 121-A, 120-B/302.

(Also see under: Penal Code, 1860)

Mohd. Arif @ Ashfaq v. State of NCT of Delhi 56

SERVICE LAW:

(1) Advance increments - Entitlement to - Cut-off date - Held: The department, as an employer, was fully within its powers to decide the cut-off date for the employees to become a graduate or passing the Accounts Examinations to be eligible to two advance increments in the revised scales of pay and the decision could not be held to be arbitrary only because the reason for decision was not stated in the proceedings of the meeting in which the decision was taken - Constitution of India, 1950 - Article 14.

Orissa Power Transmission Corporation Ltd. v. Khageswar Sundaray and Ors. 196

(2) Appointment/selection:

(I) Cancellation of the order of selection of the appellant as police constable for non-disclosure about his involvement in a criminal case - Held: Though a criminal case was registered against the appellant, but he was acquitted four years prior to the furnishing of the affidavit - Appointing authority instead of considering whether the appellant was suitable for appointment to the post of constable, mechanically held that his selection was irregular and illegal - Order of the appointing authority quashed.

Ram Kumar v. State of U.P. & Ors. 506

(II) (i) Appointment to the post of Gaonburah - Held: Post of Gaonburah is an executive post in the sense that he works under the supervision of the Moujadar - He holds a civil post, and, therefore,

is entitled to protection under Art.311 of the Constitution - In that view of the matter, there has to be some service conditions governing his service, i.e., eligibility criteria, age limit, etc. - Executive Instructions relating to appointment of Gaonburah showed that no such terms and conditions of service were envisaged and laid down - State Government to frame the service conditions and amend and update the existing Executive instructions relating to appointment of Gaonburah.

(ii) Appointment to the post of Gaonburah - Claim for preferential treatment, being the nephew of an earlier Gaonburah - Held: A joint family could be considered to be a family only when they are sharing a common residence and common mess -The word 'nephew' is a very vague expression - It is, therefore, appropriate that the State Government while laying down the criteria, identifies the members of the family who could be entitled to some preferential consideration in the matter of appointment to the post of Gaonburah.

Kandarpa Sarma v. Rajeswar Das and Ors. 644

(3) Date of birth - Change in - Limitation - Held: The application filed by a Munsif for change of his date of birth was filed beyond the period of limitation - Besides, the application was not addressed to the State Government but was addressed to the Registrar of the High Court - Therefore, the Officer did not follow the mandate and requisites of r. 30 and, as such, in terms of sub-r. (c), the application was to be summarily

rejected - The evidence adduced by the Officer in support of his claim is most unreliable - Further, the Officer has failed to discharge his onus of proving the authenticity of the horoscope on which reliance is placed - The Officer has failed to prove that any change of his date of birth is called for - Tamil Nadu State Judicial Service Rules: r. 30 (b) and (c) - Constitution of India, 1950 - Article 136. (Also see under:Constitution of India, 1950; and Evidence).

The Registrar General, High Court of Madras v. M. Manickam and Ors. 324

(4) Effect of notice for voluntary retirement during pendency of disciplinary proceedings. (See under: Uttar Pradesh Fundamental Rules, 1942) 531

(5) (i) Equal pay for equal work - Claim for, by teachers of private unaided schools - Held: Teachers of private unaided schools have no right to claim salary equal to that of their counter-parts working in Government Schools and Government aided schools - Education/Educational Institutions.

(ii) Equal pay for equal work - Claim against private unaided minority schools - Held: Unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) are not State within the meaning of Article 12 - As the right to equality under Article 14 is available against the State, it cannot be claimed against unaided private minority schools - Constitution of

India, 1950 - Articles 12, 14 30, 39(d).
(Also see under: Writ)

Mrs. Satimbla Sharma and Ors. v. St. Paul's Senior Secondary School and Ors. 203

(6) Promotion - Promotion from Class-IV to Class-III posts - Requirement of typing test in Punjabi - Held: In view of circular of Government of Punjab dated 24.08.1983, requirement of the test in Punjabi typewriting is manifestly a criteria for promotion from Class-IV to Class-III posts - The order of High Court striking down the requirement is untenable - Since one of the employee has been promoted and the other has the order of the High Court in her favour, the latter should also be promoted and they should qualify the typing test as stated in the order - Since in the case of direct recruitment to a class III post, the qualification of typing in Punjabi as a requirement has been greatly relaxed, State Government advised to review the criteria for promotion from class IV to class III posts and to bring them at par with the requirements for direct recruitment to class III posts.

State of Punjab & Ors. v. Jagdish Kaur 728

(7) Termination/removal/Dismissal:

(I) Dismissal - Head Constable in State Police - His son along with two others arrested u/s. 392 IPC for robbing a car - Disciplinary authority dismissed appellant from service for misconduct of negligence, indiscipline and conduct unbecoming of a police personnel - Held: No charge against the appellant-employee that he had

in any way aided or abetted the offence u/s. 392 IPC or that he knew that his son had robbed the car and yet he did not inform the police - He was guilty of negligence of not having enquired from his son about the car kept in front of the Government quarters occupied by him - Appellant served the Government as a Constable/Head Constable for 34 years, and for such long service he earned pension - Punishment of dismissal from service so as to deprive him of his pension for the service that he had rendered for 34 years is shockingly disproportionate to the negligence proved against him - Thus, the punishment of dismissal from service is modified to compulsory retirement.

Surendra Prasad Shukla v. The State of Jharkhand & Ors. 799

(II) Termination/Removal/Dismissal.

(See under: Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982) 218

SEX WORKERS:

Rehabilitation of sex workers - Court Panel on Sex Workers appointed by court - Direction given for methodology to be adopted for rehabilitation of sex workers and penal action against those who push girls into the sex trade - Further directions issued for ensuring compliance of court orders - Constitution of India, 1950 - Article 21.

Budhadev Karmaskar v. State of West Bengal 577

STANDARDS OF WEIGHTS AND MEASURES ACT, 1976:

s.2(b) - "Commodity in packaged form" - "Pre-packed commodity" - Placing reliance upon the *Whirlpool* case, the Revenue contended that the products in question (i.e. sun glasses, watches, fixed wireless phones, electrical goods, home appliances, consumer electronics and Microwave Oven) could also be considered as "pre-packed commodity" within the meaning of the Act and the Rules - Held: Though the decision in *Whirlpool* case was made in the context of the Central Excise Act, it cannot be claimed that the said judgment has no bearing on the issues in the instant appeals - Inasmuch as the said decision was rendered by a three-Judge bench, the issue raised in all these appeals have to be heard by a larger Bench.

(Also see under: Standards of Weights and Measures (Packaged Commodities) Rules, 1977)

State of Maharashtra and Ors. v. Subhash Arjundas Kataria 708

STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) RULES, 1977:

r. 2(x) - "Wholesale package" - Declaration to be made on every wholesale package" - Held: In order to attract violation of the Rules, the package seized must fall within the expression "wholesale package" - A package used merely for protection during conveyance or safety would not be pre-packed commodity for the purpose of the Act and the Rules - For the package to be treated as a wholesale package, the package must not be a

secondary package - The secondary outer packing for transportation or for safety of the goods being transported or delivered cannot be described as a wholesale package.

(Also see under: Standards of Weights and Measures Act, 1976).

State of Maharashtra and Ors. v. Raj Marketing & Anr. 722

SUIT:

Suits for declaration that the decrees obtained in suits filed u/ss. 14 and 17 of Arbitration Act were null and void as they were vitiated by fraud - Decreed by trial court on the ground that the arbitration awards were not registered - First appellate court and High Court dismissed the suits holding that the suits were filed only for declaring that the arbitration agreements and awards were invalid and the suit for such declaration were not maintainable in view of ss. 32 and 33 of Arbitration Act - Held: Challenge to the validity of the arbitration agreement and the awards was incidental to challenge to the order making the awards rule of the court and the decrees drawn in pursuance of such orders - Therefore, ss. 32 and 33 were no bar to the suits - The decrees in suits u/ss. 14 and 17 of Arbitration Act were obtained by committing fraud upon the plaintiffs, the court and the State Government evading liability to pay stamp duty and registration charges - Judgments and decrees of trial court decreeing the suits restored.

(Also see under: Advocate; Arbitration Act, 1940; Constitution of India, 1950; and

Registration Act, 1908)

Ramesh Kumar & Anr. v. Furu Ram & Anr. etc. 453

TAMIL NADU STATE JUDICIAL SERVICE RULES:
r. 30.

(See under: Service Law) 324

TRANSFER OF PROPERTY ACT, 1882:

s. 53A - Part performance - When attracted - Suit for declaration and possession over property - Defendants claiming title over the property on basis of an agreement of sale as also irrevocable power of attorney executed by their predecessor-in-title in their favour - Held: The finding recorded by the courts below that defendants did not get possession of the property after execution of the sale deed is on correct appreciation of facts and does not call for interference - Provision of s. 53A is not attracted.

Nanjegowda and another v. Gangamma and others 700

TRANSFER PETITION:

(See under: Code of Criminal Procedure, 1973)1

UTTAR PRADESH CINEMAS (REGULATION) ACT, 1955:

s.6(1) - Suspension of exhibition of the film - Held: The power vested in s.6 could be exercised by the State when a film which is being 'publicly exhibited', could cause a breach of peace - Such an extra-ordinary power cannot be exercised with regard to a film which is yet to be exhibited openly

and publicly in a particular State - The word 'suspension' envisages something functional or something which is being shown or is running - Therefore, the power as vested u/s.6 could not have been exercised by the State Government in view of the fact that the said film was not being exhibited publicly in the theatre halls in the State - Once the Board has cleared the film for public viewing, screening of the same cannot be prohibited in the manner as sought to be done by the State in the instant case - The decision of the State Government suspending the screening of the film in the State set aside.

M/s. Prakash Jha Production and Anr. v. Union of India and Ors. 496

UTTAR PRADESH FUNDAMENTAL RULES, 1942:

F. R. 56 (c) and (d), proviso (i)(ii) proviso - Effect of notice for voluntary retirement given by employee to employer pending disciplinary proceedings - Held: Such notice would be effective only if it is accepted by the appointing authority - In the instant case, the officer gave notice for voluntary retirement during pendency of disciplinary proceedings against him - Since no order of acceptance was passed by the appointing authority, the officer continued in service even after the period of notice of three months expired in August 2009 and his services were terminated only with the order of dismissal passed on 07.09.2009 - Service Law.

State of U.P. & Ors. v. Luxmi Kant Shukla 531

WORDS AND PHRASES:

(1) (i) 'Cut-off marks' - Meaning of - Held: Term

'cut-off marks' in academic and judicial vocabulary has several meanings - Words 'cut off marks' to refer to 'eligibility marks' or 'qualifying marks', and their meaning would depend upon the context. (ii) Words in dictionary - Use of - Held: Lies in choosing the appropriate meaning to the word, with reference to the context in which the word is used - All and every meanings given in a dictionary cannot be applied mechanically nor an inappropriate meaning that the word may carry can be chosen.

(Also see under: Education/ Educational Institutions)

P.V. Indiresan v. Union of India & Ors. 384

(2) 'Fraud' - Meaning of.

(See under: Code of Criminal Procedure, 1973) 557

(3) 'Suspension' - Connotation of.

(See under: Uttar Pradesh Cinemas (Regulation) Act, 1955) 496

WRIT:

(i) Writ of mandamus - Issuance of, to a private unaided school to pay salary and allowances to its teachers equal to the salary and allowance payable to teachers of Government/Government aided Schools - Held: Court cannot issue a mandamus since salary and allowances of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law - State Government directed to consider making rules u/ s.23 r/w s.38(2)(l) of the 2009 Act prescribing the salary

and allowances of teachers keeping in mind Article 39(d) of the Constitution - Article 39(d) - Right of Children to Free and Compulsory Education Act, 2009 - ss.23, 38(2)(l).

(ii) Writ of mandamus - Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to the teachers of Government aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty - In the instant case, there was no statutory provision and, therefore, a mandamus could not be issued to pay to the teachers of private recognized unaided schools the same salary and allowances as were payable to Government institutions.

(Also see under: Service Law)

Mrs. Satimbla Sharma and Ors. v. St. Paul's Senior Secondary School and Ors. 203



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