

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

**W.P. NOS.2392, 6009 & 8931 OF 2013; 23800 OF 2016
AND
W.P.(SR) NO.140820 OF 2016**

COMMON ORDER
(Per Hon'ble Sri Justice Sanjay Kumar)

Fueled by a chequered history stretching over three years, this *lis* implores a quietus.

Genesis of this litigation lies in the preliminary examination held by the erstwhile Andhra Pradesh Public Service Commission (APPSC) on 27.05.2012 pursuant to Notification Nos.15 and 18 of 2011 issued for recruitment to various posts falling in Group-I services under the State. Notification No.15 of 2011 dated 30.06.2011 was in respect of two carry forward vacancies in such posts reserved for Scheduled Castes/Scheduled Tribes, while Notification No.18 of 2011 dated 28.11.2011 related to 312 vacancies. The APPSC declared the result of this preliminary examination, released the answer key and identified 16,426 eligible candidates, having fixed the cut off mark as 88. These candidates were declared qualified to appear for the main examination, maintaining a ratio of 1:50, i.e., 50 candidates vying for each post. However, as complaints were received as to some of the answers given in the key, the APPSC got the answer key verified and revised it. Thereafter, as per the revised answer key, the cut off mark was fixed at 91 and the evaluation was redone. Consequently, 845 out of the 16,426 candidates identified earlier stood deleted and 1,201 new candidates came to be included, bringing the total figure of candidates qualified to appear for the main examination to 16,782. The main examination was thereafter conducted by the APPSC from 18.09.2012 to 29.09.2012. The identified eligible candidates and others, covered by Court orders, were permitted to appear for the main examination.

While so, O.A.Nos.7809, 7306, 7426, 7455 and 7653 of 2012 came to be filed before the Andhra Pradesh Administrative Tribunal, Hyderabad, by several candidates who appeared in the preliminary examination.

Their common grievance was as to the mistakes allegedly committed in the answer key in relation to some of the questions in the said preliminary examination and their consequential prayer was to set aside the main examination held from 18.09.2012 to 29.09.2012 and to conduct the main examination afresh after rectification of the mistakes.

Relevant to note, the complaint in each of the O.As. was in relation to answers in the key to different questions. In O.A.No.7809 of 2012, the complaint was with regard to 7 questions (wrongly mentioned as 6) - Question Nos.107 (D series), 4 (D series), 43 (D series), 130 (D series), 61 (D series), 141 (B series) and 62 (D series). O.A.No.7306 of 2012 related to the answers shown in the key in relation to Question Nos.64, 148, 129 and 73. O.A.No.7426 of 2012 related to Question No.34 (C series), while O.A.No.7455 of 2012 related to Question Nos.62 and 130 (both D series). Finally, O.A.No.7653 of 2012 laid a challenge to the answers in the key for Question Nos.64, 103, 121 and 122 (all B series). The O.As were disposed of by the Tribunal by common order dated 04.01.2013. Thereunder, the Tribunal directed the APPSC and the Government to constitute an Expert Committee consisting of more than two experts to decide the correct answers to Question Nos.4, 43, 61 and 130 of D series as well as the same questions in all the other series, A, B and C; call for objections from the candidates, including the applicants; refer the same to the Expert Committee; and then decide the correct key for the said questions basing on the opinion of the Expert Committee. This exercise was directed to be completed within a time frame and in the meanwhile, the Tribunal permitted publication of the results of the main examination and further processing of the selections, but the selection process and the appointments made pursuant thereto were directed to be made subject to the outcome of the final key to be arrived at by the Expert Committee and after such finalization of the key, the authorities were directed to revise the selection process in accordance therewith and issue appropriate orders.

W.P.No.2392 of 2013 was filed by the 2nd applicant in O.A.No.7809 of 2012 aggrieved by the common order dated 04.01.2013 to the extent that the Tribunal did not refer Question Nos.62 and 107 also to the Expert Committee for reviewing the answers in relation thereto. His further grievance was with regard to the Tribunal directing the APPSC to

constitute the Expert Committee and he contended that the Tribunal itself ought to have constituted a third party Committee with external experts to have an unbiased report as to the correctness of the answers to the questions in dispute. He sought a consequential direction to the APPSC to redraft the list based on the outcome of the third party Expert Committee's report and to hold the main examination afresh in terms of the final key. In the interregnum, he sought a direction to the APPSC not to continue with further selections pursuant to Notification Nos.15 and 18 of 2011 and to stay the conduct of interviews and issuance of appointment orders.

By order dated 19.02.2013 passed in this writ petition, this Court permitted the selection process to go on in terms of the Tribunal's order but directed that no appointments should be made till the report of the Expert Committee was considered and a final decision was taken thereon. Thereafter, on 30.04.2013, this Court took note of the fact that the Expert Committee had already expressed an opinion on the four questions in dispute referred to it by the Tribunal and modified the earlier order dated 19.02.2013, to the effect that the authorities could proceed with the selection process but the selection list should not be leaked; no information should be furnished with regard to it and no appointments should be made pursuant to the said selection until further orders.

On similar lines, W.P.No.6009 of 2013 was filed before this Court by the sole applicant in O.A.No.7455 of 2012 aggrieved by the common order dated 04.01.2013 passed by the Tribunal, in so far as the Tribunal refused to refer Question No.62 (D series) to the Expert Committee for verification of the answer given in the key. He sought a consequential direction to the APPSC to refer the said question also to the Expert Committee constituted as per the direction of the Tribunal. Following the order dated 19.02.2013 passed in W.P.No.2392 of 2013, this Court granted interim orders on 06.03.2013 in this case also, directing the APPSC not to finalize the selection on the basis of the selection process undertaken in terms of the Tribunal's order. The order dated 30.04.2013 passed in W.P.No.2392 of 2013 was passed in this writ petition also.

A common order thereafter came to be passed in both the above writ petitions on 26.07.2013, whereby this Court expressed its

dissatisfaction with the report submitted by the Expert Committee constituted pursuant to the direction of the Tribunal and opined that it was a fit case to call for further opinion from Experts on Question Nos.4, 61, 62 and 130 (D series). This Court accordingly called for a report from the Union Public Service Commission (UPSC) as to the correct answers to these four questions and directed the matter to be put up after receipt of the report from the UPSC.

Aggrieved by this common order passed in these two cases, the APPSC approached the Supreme Court by way of Civil Appeal Nos.9140 and 9141 of 2013. The grievance of the APPSC therein was as to the UPSC being brought into the picture.

By order dated 07.10.2013, the Supreme Court allowed the appeals opining that six questions, viz., Question Nos.4, 43, 61, 62, 107 and 130 (D series) were problematic and confusing as they did not have one clear answer. The Supreme Court therefore concluded that these questions could not be retained and the marks secured by the candidates had to be recounted based on the remaining 144 questions, after deleting these six questions. The Supreme Court accordingly directed that revaluation should be done and those who succeeded after such revaluation alone would be eligible to appear for the main examination and the APPSC was directed to hold the main examination *de novo* thereafter. The Supreme Court observed that on the basis of these 144 questions, some new candidates may succeed or some candidates may fail and it would be the new list of candidates passing the examination of 144 questions who would take the second main examination.

This final order was modified thereafter by order dated 20.01.2014. Thereunder, the Supreme Court took note of the complaint of the APPSC that it was facing difficulty in implementing the earlier order and the alternative solutions suggested by it and directed that the 7,711 eligible candidates who had chosen not to appear for the main examination held between 18.09.2012 and 29.09.2012 of their own volition, though they had qualified in the earlier preliminary examination, need not be permitted to take the main examination which was to be held *de novo*. The Supreme Court observed that these 7,711 candidates had given up their right to participate in the main examination on the earlier occasion and were

deemed to have given up their claim to participate in the main examination to be held *de novo*. The APSCC was permitted to restrict the participation in the main examination to be held *de novo* to approximately 16,000 candidates, who would pass the preliminary examination after revaluation, after excluding these 7,711 candidates. The APPSC was also permitted to extend age relaxation in favour of the candidates who had crossed the age bar because of the litigation.

Review Petition (C) Nos.773–774 of 2014 filed in Civil Appeal No.9140 of 2013 and Review Petition (C) Nos.775–776 of 2014 in Civil Appeal No.9141 of 2013 were dismissed by the Supreme Court, confirming the earlier order dated 20.01.2014. Thereafter, Curative Petition (C) Nos.8–9 of 2015 in Civil Appeal No.9140 of 2013 and Curative Petition (C) Nos.6–7 of 2015 in Civil Appeal No.9141 of 2013 were also dismissed by a Bench of four Judges of the Supreme Court, under order dated 25.02.2015. Contempt proceedings were then moved before the Supreme Court complaining that no action had been taken pursuant to the final orders in the civil appeals. Thereupon, order dated 29.06.2016 was passed by the Supreme Court, taking note of the submissions made by the States of Telangana and Andhra Pradesh and their respective Service Commissions to the effect that they were ready to implement the orders passed in civil appeals provided reasonable time was granted to them, permitting both the States to conduct the fresh main examination in terms of the final orders in the civil appeals, within three months. Pursuant to the aforesaid order, the Service Commissions of both the States issued revised schedules proposing to hold the main examination afresh pursuant to Notification Nos.15 and 18 of 2011, in September, 2016.

At the outset, this Court must recognize that in the normal progression of human conduct, candidates who appeared for the main examination held in September, 2012, must have been aware of all the events that were unfolding during this period of time. It is represented before us that some such candidates also participated in the proceedings before the Supreme Court. However, no orders passed by the Supreme Court on their applications, if any, are placed before us.

It may also be noted that W.P.No.8931 of 2013, which is before us

in this batch, was filed by the APPSC aggrieved by the common order dated 05.03.2013 passed by the Tribunal in O.A.Nos.7375 of 2012 and batch, in so far as it related to O.A.No.7352 of 2012. This batch of cases was filed by about 180 candidates out of the 845 candidates who stood deleted from the list of eligible candidates after the revision. Their grievance was with regard to their exclusion from the selection process pursuant to the revision of the answer key and the cut off mark. Pursuant to the interim orders passed in the batch of cases, they were allowed to appear for the main examination held in September, 2012. Thereafter, by common order dated 05.03.2013, the Tribunal took the view that the interest of justice required that they should be allowed to participate in the selection process and directed the APPSC to declare their result in the main examination and allow them to participate in the selection process in accordance with the procedure, if they were otherwise eligible and qualified and came within the zone of consideration. This common order was called in question by the APPSC. By order dated 25.03.2013 passed in this writ petition, this Court granted interim suspension of the Tribunal's order and on 25.04.2013, directed that the same should continue pending further orders.

While so, W.P.No.23800 of 2016 was filed by four candidates who appeared for the main examination in September, 2012, after obtaining leave, seeking to challenge the common order dated 04.01.2013 passed by the Tribunal in so far as it pertained to O.A.No.7809 of 2012 and to quash the same as erroneous and contrary to law. In the affidavit filed in support thereof, they contended that the O.As. had been filed without impleading the affected parties as the main examination had already concluded by then and therefore, the O.As. ought not to have been entertained. They asserted that about 16,472 candidates had already appeared for the said main examination and their rights could not be set at naught by cancelling the same behind their back at the behest of applicants who were not vigilant enough to seek their legal remedies before commencement of the main examination. Though they also adverted to the orders passed by the Supreme Court in the civil appeals filed by the APPSC, they remained significantly silent as to their own inaction all through this period. Though they claimed ignorance of all that

was happening, this Court cannot believe that candidates, who appeared for the main examination as long back as in September, 2012, would not have enquired as to the result thereof all this while and as to what was keeping the APPSC from proceeding further in the matter. They therefore cannot claim blissful ignorance of all that had transpired after the main examination was held in September, 2012.

They further contended that they were not made parties to the O.A. and raised the issue as to what would be the impact thereof on the orders passed by the Tribunal in the first instance and the higher Courts thereafter. Another contention advanced by them, which requires to be addressed, is that the Supreme Court orders would not be final as they arose out of the interlocutory order passed by this Court in W.P.Nos.2392 and 6009 of 2013, and as the main writ petitions are still pending, the final adjudication therein would still override the orders of the Supreme Court in the civil appeals mentioned hereinbefore.

On the same lines, W.P.(SR) No.140820 of 2016 was filed by three other candidates who appeared for the main examination in September, 2012. Their leave application in W.P.M.P.No.32610 of 2016 in the said writ petition is yet to be ordered. In the affidavit filed in support of this writ petition, these petitioners were fair enough to state that though they were not made respondents to the O.A., being affected parties, they were aware of the ongoing litigation but were under the *bonafide* impression that the State and the APPSC would protect their legitimate rights. However, in the light of the turn of events pursuant to the orders of the Supreme Court, they now seek leave to challenge the common order dated 04.01.2013 passed by the Tribunal in so far as it related to O.A.No.7809 of 2012 and the consequential revised schedule of the main examination to be held in September, 2016. They seek a further direction to declare the select list of candidates who had qualified for the interviews pursuant to the main examination held in September, 2012, pursuant to Notification No.18 of 2011 dated 28.11.2011, and fill up the 312 posts in Group-I services accordingly. They also echoed the contention that as the orders of the Supreme Court were in appeals which arose out of an interlocutory order passed by this Court, the same would not be binding and that the main issues in the two pending writ petitions are still open to adjudication by

this Court, uninfluenced by the Supreme Court orders.

Heard Sri J.Sudheer, Sri P.V.Krishnaiah, Sri Gopala Rao Amancharla V., Sri C.Srinivasa Baba, Sri D.Balakishan Rao, learned counsel appearing for the respective parties, and the learned Government Pleaders for the States of Telangana and Andhra Pradesh. Implead petitions, having been filed in W.P.Nos.2392 and 6009 of 2013, by candidates who appeared for the main examination held in September, 2012, the same are ordered permitting them to come on record.

Sri J.Sudheer, learned counsel for the petitioners in W.P.Nos.2392 and 6009 of 2013, Sri C.Srinivas Baba and Sri D.Bala Kishan Rao, learned counsel for the Service Commissions of the two States, and the learned Government Pleaders of both the States, would argue that in the light of the orders passed by the Supreme Court in Civil Appeal Nos.9140 and 9141 of 2013, nothing remains to be adjudicated in these writ petitions and that the authorities are bound to implement the final order dated 29.06.2016 of the Supreme Court, in the contempt proceedings.

Sri P.V.Krishnaiah, learned counsel, and Sri Gopala Rao Amancharla V., leading the arguments on behalf of candidates who appeared for the main examination in September, 2012, would contend, on the contrary, that the Supreme Court never observed that the main cases would stand concluded by virtue of the orders passed by it and therefore, the issues raised in these writ petitions are still open to final adjudication by this Court, notwithstanding the order dated 29.06.2016 passed by the Supreme Court. An abundance of case law is sought to be pressed into service by Sri P.V.Krishnaiah, learned counsel, in support of his contentions, and primarily on the point that orders passed behind the back of affected parties would be *per se* unsustainable.

Though there can be no dispute with the general norm that the principles of natural justice and more particularly, the rule of *audi alteram partem* requires an affected party to be given an opportunity of hearing before an adverse order is passed against it, it is now a settled position of law that the principles of natural justice are not absolute and in so far as the rule of *audi alteram partem* is concerned, an affected party who complains of denial of a hearing would have to demonstrate the prejudice caused thereby.

Applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law and it depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and the attendant circumstances. (**MAHARASHTRA STATE BOARD OF SECONDARY AND HIGHER SECONDARY EDUCATION V/s. K.S. GANDHI**^[1]).

The question for consideration presently is whether, in a case where a competitive mass examination is sought to be interfered with by the Court on the ground that some of the questions therein should be excluded as the answers prescribed therefor are incorrect, all the candidates who appeared for such examination need to be put on notice and given a hearing. Be it noted, such a lapse would not be attributable to them and it would therefore not be for them to justify the same. In effect, they have nothing significant to contribute even if they are put on notice, as the relevance and correctness of the answers in question have to be determined independently after hearing the authority responsible therefor and cannot be left to the individual opinion of each of the candidates who appeared for the examination.

The law laid down by the Supreme Court in this regard is clear that candidates who appeared in an examination which is sought to be cancelled for reasons which are solely attributable to the authority holding the same need not be put on notice or given an opportunity of hearing on irregularities in which they have no role to play.

In **BIHAR SCHOOL EXAMINATION BOARD V. SUBHAS CHANDRA SINHA**^[2], the Supreme Court observed:

This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the

matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

(emphasis is ours)

Again, in **UNION TERRITORY OF CHANDIGARH V/s. DILBAGH**

SINGH^[3], the Supreme Court said thus:

If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected.

(emphasis is ours)

The same principle was reiterated more recently in **ALL INDIA**

RAILWAY RECRUITMENT BOARD V/s. K. SHYAM KUMAR^[4]. We therefore see no reason to burden this opinion with the plethora of precedential law cited before us.

It may be noted that the questions identified as troublesome ones were quantified as six by the Supreme Court and the APPSC was directed to delete them altogether while reckoning the result of the preliminary examination. In terms of such an exercise, the inevitable consequence would be that the main examination already held in September, 2012, basing on the full 150 questions, including the six troublesome ones, would have to be scrapped and a new list of eligible candidates would

emerge after the revaluation done upon deletion of the six questions, leaving only 144 questions in the zone of consideration. The candidates who participated in the main examination, pursuant to the evaluation undertaken earlier on all 150 questions, have no role to play in the exercise of deciding as to whether these questions were troublesome ones. Once the Court was seized of the matter, it was ultimately for the Court to identify the troublesome questions and take necessary action accordingly. In this regard, it would be pertinent to remember that some of the questions targeted before the Tribunal and this Court were other than those finally identified by the Supreme Court as bothersome ones. That is perhaps the reason why neither the Tribunal nor this Court in the first instance and ultimately, the Supreme Court, thought it appropriate or necessary to involve all the candidates whose participation in the selection process would stand nullified owing to interference with the preliminary examination. The very fact that the Supreme Court referred to exclusion of the 7,711 candidates, who had passed the earlier preliminary examination but did not choose to appear for the main examination in September, 2012, and the observation that about 16,000 candidates could be permitted to appear for the main examination to be held *de novo*, indicates the knowledge and consciousness of the Supreme Court as to the number of candidates who would be affected by its order. It cannot therefore be said that the orders of the Supreme Court were passed in ignorance of the number of candidates involved.

Though Sri P.V.Krishnaiah, learned counsel, would contend by way of his written submissions that the O.As. in question ought not to have been entertained at all by the Tribunal, we are of the opinion that too much water has flown under the bridge for the clock to be set back now. The contention that the O.As. were not maintainable on the ground of *locus standi* and laches on the part of the applicants, apart from the fact that they did not choose to implead the affected parties, cannot be accepted as a valid basis of challenge at this late stage after the matter has been canvassed up to the Supreme Court. These aspects ought to have been raised, if at all, at the earliest point of time by the candidates who appeared for the main examination in September, 2012, be it before the Tribunal, this Court or even the Supreme Court. As already pointed out

supra, it is not open to such candidates to feign ignorance of the pendency of the proceedings whereby their selection stood stalled all these years. Having either left the matter to the APPSC or having chosen to remain as mute bystanders, it is not open to such candidates to seek to turn back the clock at this late stage and reopen the issue of maintainability of the cases.

Though it is also contended by Sri P.V.Krishnaiah, and Sri Gopala Rao Amancharla V., learned counsel, that as the writ petitions are still pending and the orders passed by the Supreme Court are relatable to an interlocutory order passed by this Court, the main issues in the writ petitions would still be open for adjudication, we are not persuaded to agree. Once the Supreme Court, in its wisdom, allowed Civil Appeal Nos.9140 and 9141 of 2013 directing the APPSC to re-do the exercise from the stage of the preliminary examination by deleting six questions and limiting the consideration to the remaining 144 questions, all that was done by the APPSC pursuant to the preliminary examination held earlier considering all 150 questions and the steps taken thereon, including holding of the main examination in September, 2012, necessarily and inevitably have to be set at naught. No other meaning can be given to the orders of the Supreme Court. No doubt, the cases before the Supreme Court arose out of the interlocutory order passed by this Court in W.P.Nos.2392 and 6009 of 2013, but the adjudication by the Supreme Court had an irreversible effect on the main issue itself. Judicial etiquette and discipline require us to take note of the impact and import of the said orders of the Supreme Court in the civil appeals, which found confirmation thereafter not only in review but also in the curative petitions, dismissed by a Bench of four learned Judges. Having allowed destiny to take its course, choosing to remain as silent spectators to the ongoing proceedings, it is not open to candidates who appeared for the main examination in September, 2012, to wake up at this late stage at their own leisure and seek to abrogate the entire exercise undertaken by the Tribunal, this Court and the Supreme Court. The orders of the Supreme Court in the civil appeals, which ultimately culminated in the order dated 29.06.2016 in the contempt proceedings arising therefrom, would therefore have to be given effect to and implemented in true letter and

spirit. The States of Telangana and Andhra Pradesh and the Public Service Commissions of both the States undertake to do so and in terms of their commitment in this regard, they have already issued revised schedules of the main examination to be held in both the States during September, 2016.

On the above analysis, no further orders are required to be passed in W.P.Nos.2392 and 6009 of 2013, in the light of the orders passed by the Supreme Court in Civil Appeal Nos.9140 and 9141 of 2013 and the contempt proceedings arising therefrom. These writ petitions are accordingly closed.

W.P.No.8931 of 2013 filed by the APPSC against the order dated 05.03.2013 passed in O.A.No.7352 of 2012 and batch is allowed, setting aside the said order as the main examination held in September, 2012, stands cancelled by virtue of the fresh exercise initiated pursuant to the orders of the Supreme Court.

W.P.No.23800 of 2016 filed against the common order dated 04.01.2013 passed by the Tribunal, in so far as it related to O.A.No.7809 of 2012, is dismissed. In consequence, this Court sees no purpose served in granting leave in W.P.(SR) No.140820 of 2016, whereby the petitioners therein seek to mount an identical challenge to the very same order. W.P.M.P.No.32610 of 2016 in W.P.(SR) No.140820 of 2016 and W.P.(SR) No.140820 of 2016 are also dismissed accordingly.

The States of Telangana and Andhra Pradesh and the Public Service Commissions of both the States shall abide by the order dated 29.06.2016 passed by the Supreme Court in the contempt proceedings arising in Civil Appeal No.9140 of 2013 in terms of the time frame stipulated therein.

In the circumstances, we make no order as to costs.

SANJAY KUMAR, J

Dr. B.SIVA SANKARA RAO, J

22nd AUGUST, 2016

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[\[1\]](#) (1991) 2 SCC 716,
[\[2\]](#) (1970) 1 SCC 648
[\[3\]](#) (1993) 1 SCC 154
[\[4\]](#) (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293