

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 407 of 2001

1. Chhattisgarh State Power Distribution Company Limited (CSPDCL), through its Secretary, Raipur (C.G.)
2. Superintending Engineer (Sanchalan and Suraksha) Chhattisgarh State Power Distribution Company Limited (CSPDCL), Jagdalpur Circle, Chhattisgarh.
3. Sr.Accounts Officer, Chhattisgarh State Power Distribution Company Limited (CSPDCL), Gudhiyari, Raipur, Chhattisgarh.

-----Appellants / Defendants

Versus

1. P. Suryanarayana Ayer, S/o K.P. Ayer, aged about 40 years, Office Assistant, Grade – II, R/o Vidyut Mandal Colony, Gudhiyari Raipur (C.G.)

---- Respondent / Plaintiff

For Appellants	:	Mr. Ghanshyam Patel, Advocate.
For Respondent	:	Mr. Yogesh Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/09/18

1. The substantial questions of law involved, formulated and to be answered by this Court in the defendants' second appeal are as under :-

“(i) Whether in the facts and circumstances of the case and in view of the Clause- II of letter dated 27.09.1977 of the State Government adopted by the Board, the plaintiff was entitled to the advance increments / increase of increment in his pay on account of sterilization operation of his wife as said letter clearly states that one who gets operated will get the increments ?

(ii) Whether the learned lower appellate Court has correctly

interpreted clause VII of circular dated 21.12.1989 as the said clause is applicable only when the husband and wife both are board employees and not when one of them is not a board employee ?

2. In view of submissions made by the parties and facts apparent on the fact of record, with the consent of learned counsel for the parties, the substantial questions of law are re-framed as under :-

“(I) Whether the first Appellate Court is justified in taking judicial notice of the document dated 21.12.1989 for granting the decree in favour of the plaintiff under Section 57(1) of the Indian Evidence Act, 1872 ?”

3. The imperative facts required for determination of above-stated substantial question of law are as under :-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

(3.1) The plaintiff filed a suit for declaration and permanent injunction that the orders dated 30.09.1995 and 31.10.1995 passed by the defendants No. 2 and 3 are null and void and injunction be granted against deduction of Rs. 12,734.38/- from the plaintiff.

(3.2) The defendants filed their written statement before the trial Court stating inter-alia that the benefit granted to the plaintiff on account of sterilization operation of the plaintiff's wife was not in accordance with the circular dated 27.09.1977 and the revised circular dated 21.12.1989 is not

applicable to the plaintiff and suit has no merit and deserves to be dismissed.

4. During the course of trial, the parties led no evidence but Exhibits – P/5 and P/6 were admitted and assigned as exhibits pursuant to application under Order 12 Rule 3 of the C.P.C. filed on 18.10.1996. The document dated 27.09.1977 issued by the Secretary, GAD, State of Madhya Pradesh, as well as the document dated 21.12.1989 issued by the Madhya Pradesh Electricity Board were neither admitted nor exhibited but it was produced before the trial Court. The trial Court took judicial notice of the document dated 27.09.1977 under Section 57 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Act of 1872') and held that plaintiff was not entitled for the increment which was granted to him and dismissed the suit. On an appeal being filed, the First Appellate court decreed the suit on the basis of document dated 21.12.1989 and granted declaration and permanent injunction in favour of the plaintiff. Questioning the judgment and decree granted by the First Appellate Court, this second appeal under Section 100 of the C.P.C. has been preferred by the defendants in which the substantial questions of law have been formulated by this Court, as set out in the opening paragraph of this judgment.

5. Mr. Ghanshyam Patel, learned counsel appearing for the appellants / defendants would submit that the document dated 21.12.1989 is an order issued by the Madhya Pradesh Electricity Board which is a sort of executive instruction and is not an order issued under the statutory provision and therefore, it is not covered by Section 57(1) of the Act of

1872 and it was required to be proved in accordance with Section 78 of the Act of 1872. Therefore, the first Appellate Court is absolutely unjustified in granting decree on the basis of the order dated 21.12.1989 and as such, the judgment and decree of the first Appellate Court deserves to be set aside.

6. Mr. Yogesh Pandey, learned counsel appearing for the respondent / plaintiff would oppose the submissions made by learned counsel for the appellants / defendants and would support the judgment and decree.

7. I have heard learned counsel for the parties.

8. The trial Court has taken judicial notice of order dated 27.09.1977 issued by the Secretary, GAD, State of Madhya Pradesh under Section 57(1) of the Act of 1872 whereas the first Appellate Court has taken judicial notice of the order dated 21.12.1989 issued by the Secretary, M.P. Electricity Board to grant decree in favour of the plaintiff under Section 57(1) of the Act of 1872.

9. Section 56 and 57 of the Act of 1872 states as under :-

“56. Fact judicially noticeable need not be proved – No fact of which the Court will take judicial notice need to be proved.

57. Facts of which Court must take judicial notice –
The Court shall take -

(1) All laws in force in the territory of India.

(2) to (13) xxx xxx xxx ”

Clause (1) of Section 57 of the Act of 1872 states that Court shall

take judicial notice of all laws in force in India and Section 56 of the Act of 1872 thereby lays down that no fact of which the Court will take judicial notice need to be proved.

10. The word 'law' has not been defined by the Indian Evidence Act but now it is well settled that it includes not only legislative enactments but also regulations or orders which have the force of law provided, they are in nature legislative and not executive. An order of legislative character which is made by an authority in exercise of the power conferred by legislative provisions owes its legal efficacy to its provision and in the eye of law therefore, it is the force of law made by the legislature itself.

11. The Full Bench of the Madhya Pradesh High Court in the case of **State of M.P. v. Ramchara**¹ considered the issue in great detail and after comparison of Section 57 and 78 of the Act of 1872 it has been held that the Acts, Orders, Notifications of the Central Government or the State Government require proof in the meaning prescribed under Section 78 of the Act of 1872 unless they amount to law in force and can be taken judicial notice of under Section 57 of the Act of 1872. In the case of *Ramchara* (supra), the Full Bench has stated as under :-

“5. A comparison of [Sections 57](#) and [78](#) of the Evidence Act goes to show that acts, orders or notifications of the Central or any State Government require proof in the manner prescribed by [Section 78](#), unless they amount to law in force and can be taken judicial notice of under [Section 57](#). [The Act](#), however, does not contain any definition of "law." [The Act](#) also does not provide as to when

1 AIR 1977 MADHYA PRADESH 68

an order or a notification amounts to law and this question has, therefore, to be solved on general principles. Many definitions of law have been formulated at various times by philosophers and jurists, but there is yet no sign of a universally acceptable definition. That task still awaits its master. Paton in his work on Jurisprudence, after a critical examination of the various definitions, observes that law may shortly be described in term of a legal order tacitly or formally accepted by a community. It consists of the body of rules which are seen to operate as binding rules in that community backed by some mechanism accepted by the community by means of which sufficient compliance with the rules may be secured to enable the system or set of rules to continue to be seen as binding in nature."

This may be accepted as a good working definition. Our legal order is based on the Constitution which is the organic law of the country. The Legislative, Executive and Judicial powers of the State are respectively conferred by the Constitution on the Legislature, Executive and Judiciary of the Union and the States, and there is separation of powers to a large extent. Thus although Parliament and State Legislatures have power to enact retrospective Acts and thereby nullify the effect of a judicial decision, they have no power to pass a bill of attainder or to make a law which in substance is akin to a judicial verdict. Indeed, quite recently, even a Constitution amendment Act enacted by Parliament failed to stand the test of validity on the ground that it was nothing but a legislative judgment disposing of an election petition. The Constitution, however, does not provide for an absolute separation of powers. Though the legislative power is primarily conferred on Parliament and State Legislatures, the Executive, and even the Judiciary, exercise some measure of legislative power. For example

the President and Governors can make rules under [Article 309](#) of the Constitution regulating the recruitment and conditions of service of persons appointed to Central and State Services until provision in that behalf is made by an Act of the appropriate Legislature. Similarly, the Supreme Court and High Courts can make rules of Court under Articles 145 and 225 of the Constitution. These rules though not made by the Legislature are plainly legislative in nature and have the force of law. Further, having regard to the complexity of problems which a modern State has to face, it is now well accepted that Parliament and State Legislatures have implied authority under the Constitution to delegate subordinate legislative functions to the Executive. As compared to statutes, the volume of delegated legislation, both in England and India, has immensely increased and it has been well said that "in mere bulk, the child now dwarfs the parent". (Alien, *Law in the Making*, 7th Edn., p. 540) Delegated legislation by the Executive under statutory powers conferred by the Legislature appears under various names such as rules, regulations, orders, notifications, directions, schemes, circulars, bye-laws etc. (*Delegated Legislation in India*, Indian Law Institute, p. 1). The Committee on Ministers' Powers in England in 1932 noticed the confusion in the nomenclature of delegated legislation and deprecated the indiscriminate use of these expressions. The Committee recommended that "the expression 'regulation' should be used to describe the instrument by which power to make substantive law is exercised, and the expression 'rule' to describe the instrument by which the power to make law about procedure is exercised." The Committee further recommended that "the expression 'order' should be used to describe the instrument of the exercise of (A) executive

power, (B) the power to take judicial and quasi-judicial decisions". This classification has so far not been adopted either in England or in India (See Alien, Law and Orders, 2nd Edn., p. 112, Delegated Legislation in India, ILI, pp. 1 to 3). Delegated legislation, whatever may be its nomenclature, though made by the Executive, qualifies for the description "law" for the obvious reason that it is made in the exercise of subordinative legislative power conferred by the Legislature. We have here used the expression "delegated legislation" to include even the so-called "conditional legislation" for it has also a content, however small and restricted of the law making power itself : [Lachmi Narain v. Union of India](#), AIR 1976 SC 714 at pages 722, 723. In view of the confusion of nomenclature, rules, regulations, orders, notifications etc. made or issued in the exercise of delegated legislative power must be distinguished from instruments bearing similar names but made in the exercise of executive power. A power conferred by a statute may be purely executive in nature. If an order or a notification is made or issued in the exercise of a non-statutory power or in the exercise of a statutory power which is purely executive in nature, it will have no legislative content and will not amount to law.

8. As a result of the above discussion, it is clear that under our legal order and jurisprudence based on the Constitution, "law" is not limited to legislative enactments. All forms of delegated legislation and conditional legislation amount to law. All orders and notifications made and issued under statutory powers and which are legislative in nature amount to law. A statutory order or notification will be legislative in nature if in substance it adds to, supplements, modifies or amends a statute or exempts certain matters from its operation."

12. Thus, in order to extend the benefit of Section 57(1) of the Act, Notifications or the Orders in question must have the force of law within the meaning of Section 57(1) of the Act and it must be legislative in nature having the force of law and if it is issued in exercise of non-statutory power which is executive in nature, it will have no legislative content and it will not amount to law.

13. Examining the document dated 21.12.1989, in touch stone of the principles of law laid down by the Full Bench of the Madhya Pradesh High Court in *Ramchara* (supra), it is quite vivid that it is merely an order issued by the M.P. Electricity Board which was constituted under Section 5 of the Electricity Supply Act, 1949, it has not been issued under the statutory provision having the force of law and as such it will not fall within the meaning of "law" in force as stipulated under Section 57(1) of the Act of 1872 and as such it ought to have been proved in accordance with Section 78 of the Act of 1872 and judicial notice of that document dated 21.12.1989 could not have been taken by the first Appellate Court and the said Court has committed illegality by taking judicial notice of the order dated 21.12.1989 under Section 57(1) of the Act of 1872 which has no force of law and which was required to be proved in accordance with Section 78 of the Act of 1872 and on the basis of that decree cannot be granted by the first Appellate Court in favour of the plaintiff.

14. As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is hereby restored. The second appeal is

allowed to the extent indicated herein-above. A decree be drawn up accordingly. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge