

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12203 OF 2017

Union of India	...Petitioner
<i>Versus</i>	
Dr.Kiran Jadhav, IPS & Ors.	...Respondents

Mr.Neel Helekar i/by Mr.Ashutosh R. Gole for the Petitioner.

Mr.Sandeep V. Marne, for Respondent No.1.

**CORAM : SMT.V.K. TAHILRAMANI, Acting Chief, J.
M.S. SONAK, J.**

DATE : 26th FEBRUARY 2018

P.C :

1] Heard Mr.Neel Helekar, learned counsel for the petitioner and Mr.Sandeep V. Marne, learned counsel for respondent No.1.

2] Rule. By consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] This petition takes exception to the judgment and order dated 26.04.2017 made by the Central Administrative Tribunal, Mumbai (CAT) in Original

Application No.210/00205/2015 instituted by the respondent No.1. The respondent No.1 had instituted the OA No.210/00205/2015 to question impugned order/notification dated 16.12.2014 which treated his absence for over seven years as '*deemed resignation*' in terms of Rule 7(2)(a) of the All India Service (Leave) Rules, 1955 (said Rules).

4] Mr.Helekar, the learned counsel for the petitioner-Union of India submits that the CAT has misconstrued the said rules and further, the finding that there was no compliance with principles of natural justice before action was taken under the said rules, is vitiated by perversity. He submits that respondent No.1, an IPS Officer, remained absent from 10.09.2007 until the impugned order was made on 16.12.2014, without even bothering to send intimation or applying for leave and in any case, without furnishing explanation for such inordinate and unauthorized absence. Mr.Helekar submits that the respondent No.1 has admitted in his Original Application that he was gainfully employed undertaking business along with his maternal uncle in Mumbai during the period of his unauthorized absence.

5] Mr. Helekar submits that leave was sanctioned for the period between 10.09.2007 to 19.09.2007 but thereafter, the respondent No.1, remained absent unauthorizedly. Mr.Helekar points out that on 24.09.2007, the respondent No.1 applied for voluntary retirement despite being aware that the respondent No.1 did not have the qualifying service to seek such retirement. Mr.Helekar submits that soon thereafter, the respondent No.1 purported to resign from services but after several years, even withdrew his resignation. In the meanwhile, since there was continuous absence exceeding five years, action was taken under Rule 7 to treat the same as deemed resignation. Necessary notices were issued to the respondent No.1 and even the explanation furnished by respondent No.1 was duly considered. Mr.Helekar submits that Tribunal has failed to consider all these aspects while granting respondent No.1 relief based upon hyper technical grounds, mis-construction of rules and perverse findings. For all these reasons, Mr.Helekar submits that the impugned judgment and order made by the CAT is liable to be set aside.

6] Mr.Marne, the learned counsel for the respondent No.1, at the outset submits that the directions in the impugned judgment and orders made by CAT apply to the State of Uttar Pradesh and since, the State of Uttar Pradesh has chosen not to question the impugned judgment and order, the Union of India, lacks the *locus standi* to institute the present petition. Mr.Marne further submits that the respondent No.1 has secured information under the Right to Information Act which reveals that no approval was obtained from the concerned authorities for instituting the present petition. On these two grounds, Mr.Marne submits that the present petition be not entertained. Mr.Marne however, made submissions on merits without prejudice to the preliminary objections regards maintainability of the present petition.

7] Mr.Marne, submits that on account of serious illness of the father and son of respondent No.1, the respondent No.1 had to stay in Mumbai and could not report for duties in the State of Uttar Pradesh. Mr.Marne submits that in fact, it was possible for the respondents to grant the

respondent No.1 posting at Mumbai International Airport but such posting was unreasonably denied to the respondent No.1. Mr.Marne points out that son to of respondent No.1 was diagnosed with Cancer in the year 2009 and the respondent No.1 had to take his son UK and Jerusalem for the purpose of treatment. Mr.Marne points out that this was more than sufficient cause which respondents ignored without any reason.

8] Mr.Marne points out that there is total non-compliance with the proviso to Rule 7 of the said rules which mandates afford of reasonable opportunity to explain the reason for absence. Mr.Marne, submits that so called notice issued to the respondent No.1 had no nexus whatsoever with Rule 7 or the proviso to Rule 7 of the said Rules. He submits that the notice was in the context of the resignation tendered by respondent No.1 out of desperation.

9] Mr.Marne, submits that the CAT has appreciated the facts and circumstances on record as well as the legal provisions as applicable and correctly granted some limited relief to the respondent No.1. Mr.Marne submits that this

petition may therefore be dismissed.

10] In alternate, Mr.Marne submits that the respondent No.1 be treated to have voluntarily retired with effect from 16.12.2014 under Rule 16(2) of All India Services (Death cum Retirement), Rules 1958 and paid Pension and Other admissible retrial benefits, so that almost 16 years service rendered by the respondent No.1 is not rendered futile.

11] Rival contentions now fall for our determination.

12] In this case, admittedly, the Union of Indian had been impleaded as a respondent to the Original Application. Since the respondent no. 1 was a member of the IPS cadre, the responsibility for taking final decisions, rests with the Union of India. In fact, the impugned order dated 16.12.2014 which was challenged by the respondent no. 1 before the CAT had been issued by the Union of India. In these circumstances, there is no merit in the contention of Mr. Marne, that the Union of India lacks *locus standi* to institute the present petition. There is also no substance in

the contention that there is no approval for the institution of the present petition. No material has been produced on record to substantiate this aspect and in any case, the petition has been signed and verified by the authorised officer representing the Union of India. Accordingly, we are unable to uphold any of the preliminary objections to the maintainability of the present petition.

13] The respondent No.1 was inducted into the IPS in the year 1991 and was allotted the Uttar Pradesh Cadre. The respondent No.1 applied for and was granted leave from 10.09.2007 to 19.09.2007. Thereafter, respondent No.1 applied for medical leave of 60 days in two spells with effect from 19.09.2007 to 17.11.2007. Such application was neither in the prescribed format nor was it accompanied by medical certificates. The application was therefore returned to respondent No.1. In any case, there is no dispute that post 19.09.2007 no leave was ever sanctioned to respondent No.1. There is also no dispute that apart from the application seeking medical leave upto 17.11.2007, respondent No.1 made further no applications for leave. There is also no dispute that factually the

respondent No.1 failed to report for duties from 19.09.2007 till the date the impugned order dated 16.12.2014 was made treating the absence of respondent No.1 as over 7 years as deemed resignation under Rule 7 of the said Rules.

14] The record indicates that the petitioner's request for deputation to Mumbai International Airport Pvt Ltd was turned down and the petitioner did not question this communication at any time. Record also indicates that several letters were issued to respondent No.1 to resume duties at Uttar Pradesh. Respondent No.1 despite receipt of such letters, failed to either respond or resume duties at Uttar Pradesh.

15] The respondent No.1 vide letter dated 24.09.2007 purported to tender unconditional resignation. However, by letter dated 29.07.2013 that is after about 6 years purported to withdraw such resignation.

16] Since, the CAT has granted relief to the respondent No.1 on ground of non-compliance with procedure prescribed in Rule 7 of the said Rules, it will be

appropriate to refer to the Rule which reads as follows :-

“7. Maximum period of absence from duty -(1) No member of the Service shall be granted leave of any kind for a continuous period exceeding five years.

(2) A member of the Service shall be deemed to have resigned from service if he-

(a) is absent without authorisation for a period exceeding one year from the date of expiry of sanctioned leave or permission, or

(b) is absent from duty for a continuous period exceeding five years even if the period unauthorized absence is for less than a year, or

(c) continues of foreign service beyond the period approved by the Central Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation of foreign service shall be given to the member of the Service before the provisions of this sub-rule are invoked.”

(emphasis supplied)

17] Rule 7(1), in terms provide that no member of the service shall be granted leave for continuous period exceeding five years. Rule 7(2), *inter alia* provides that the member of the service shall be deemed to have resigned from services if he is absent without authorization for a period exceeding one year from the date of expiry of sanctioned leave or permission; or is absent from duty for

continuous period exceeding five years even if the period of unauthorized absence is for less than a year. The proviso provides that reasonable opportunity to explain the reason for such absence shall be given to the member of the service before the provisions of Sub rule 2 of Section 7 are invoked.

18] In the present case, there is no factual dispute that the respondent No.1 has remained absent without authorization for the period of exceeding one year from the date of expiry of sanctioned leave or permission. There is also no dispute that the respondent No.1 was absent from duty for the continuous period exceeding five years even if the period of unauthorized absence is for less than a year. The only reason which has prompted the CAT to interfere with the impugned order dated 16.12.2014 invoking Rule 7(2) of the said rules is the alleged non compliance with the proviso relating to afford of reasonable opportunity to explain the reason of absence. Mr.Helekar is right that the finding of the CAT that no reasonable opportunity was afforded to the respondent No.1 to explain his absence is vitiated by perversity and hyper technical approach.

19] The CAT, it appears, was swayed by the fact that the show cause notice issued to the respondent made no specific reference to Rule 7(2) of the said Rules or that in the show cause notice dated 19.05.2014 there was no specific line which required the respondent no. 1 to explain the reason for his absence. That by itself, was certainly not sufficient to conclude that the respondent was denied reasonable opportunity to explain the reason for his absence. That by itself could not have been construed as non compliance with the proviso to Rule 7(2) of the said Rules. The show cause notice dated 19.05.2014, may not have been very happily worded. However, the show cause notice made reference to the absence of the respondent no. 1 and required the respondent no. 1 to explain his position within 21 days from the date of receipt of the show cause notice. Besides, there is ample correspondence on record between Union of India and the State of Uttar Pradesh as regards action under Rule 7(2) of the said Rules. Most of such correspondence was marked to the respondent no. 1. The show cause notice, was required to be read and construed along with such other correspondence which was

admittedly received by the respondent no. 1 in the context of his absence of over 7 years from service. Thus construed, there was really no material on record to render a finding that there was any non compliance with the proviso to Rule 7(2) of the said Rules which requires that a reasonable opportunity to explain the reason of the absence is to be afforded to the member of the service before the provisions of Rule 7(2) of the said Rules are invoked.

20] From the material on record it is also clear that the respondent no. 1 read, understood and construed the show cause notice dated 19.05.2014 as a notice requiring him to explain the reason of his absence of over 7 years. This is evident from the response dated 19.06.2014 furnished by the respondent no. 1 to the show cause notice dated 19.05.2014. In this response, even the respondent no. 1 made reference to the previous correspondence in which he claimed to have explained the reasons. He made reference to the position of his son's and father's health. The respondent no. 1 after almost 6 long years, purported to even withdraw the resignation tendered by him way back

in the year 2007. The reply dated 19.06.2014 was followed by a yet another response dated 17.07.2014, to the same effect. From the replies / responses furnished by the respondent no. 1, it is quite clear that there was no prejudice whatsoever caused to the respondent no. 1 on account of the show cause notice dated 19.05.2014 making no specific reference to Rule 7(2) of the said Rules. Further, from the replies / responses furnished by the respondent no. 1, it is very clear that the reasonable opportunity as contemplated by proviso to Rule 7(2) of the said Rules was indeed afforded to the respondent no. 1.

21] The CAT, has construed the show cause notice in quite a hyper technical manner to hold that there was non compliance with the proviso to Rule 7(2) of the said Rules. The CAT, has based its decision on some sort of '*technical breach*' arising out of the non reference to Rule 7(2) of the said Rules in the show cause notice. The CAT has emphasized upon the format of the notice, ignoring thereby the substance or content. Besides, the CAT, has failed to advert to the other material on record from which, it is quite evident that there was compliance with the proviso to Rule

7(2) of the said Rules. Further, the CAT, has not even adverted to the aspect of the prejudice, if any, suffered from the respondent no. 1 on account of the so-called technical breach in the compliance with the principles of natural justice. Such an approach is contrary to the settled position in law in matters where breach of principles of natural justice is alleged.

22] The explanation furnished by the respondent no.1 has been duly considered before the impugned order dated 16.12.2014 came to be made. The reasons furnished by the respondent no. 1 i.e. the position of his father's and son's health has been duly considered. The material on record suggests that the respondent no.1's son was diagnosed with cancer some time in the year 2009. However, the respondent no. 1 remained absent between 2007 and 2009 as well, for which, there is no satisfactory explanation. In fact the material on record indicates that the respondent no. 1 was sanctioned leave between 10.09.2007 to 19.09.2007. Thereafter the respondent no. 1 did apply for leave of 60 days in two spells. However, such application was neither accompanied by any medical certificate nor

was the same in the prescribed format. Said applications were therefore returned to the respondent no. 1. There is no dispute that post 19.09.2017, no leave was sanctioned to the respondent no. 1. Rather, there is material on record to indicate that several letters and communications were issued to the respondent no. 1 to report for duties. Despite receipt of these letters and communications, the respondent no. 1 who was an IPS Officer failed to either respond to such letters and communications or to report for duties.

23] In the intermittent responses, the respondent no. 1 addressed an application for voluntary retirement / resignation in the year 2007 itself, which, he chose to withdraw in the year 2014. The respondent no. 1 applied for posting at Mumbai International Airport in Mumbai. In his Original Application as well as affidavit in rejoinder, the respondent no. 1 has admitted that whilst in Mumbai, he was assisting his maternal uncle with his business. Now the respondent no. 1 is not some Class IV employee but an IPS Officer with the Uttar Pradesh Cadre. Both he and his wife possessed medical qualifications. No doubt, there may

have been some difficulties on account of a health of the son who was detected with cancer in the year 2009. However, the position was not such as to be unable to respond with proper medical certificates or join duties for a long period of over 7 years. In such circumstances, if the authorities have rejected the explanation furnished by the respondent no. 1, we cannot say that such rejection is either arbitrary or unreasonable so as to warrant interference in the exercise of powers of judicial review. The CAT was therefore not right in interfering with the impugned order dated 16.12.2014 treating the admitted absence of the respondent no. 1 for over 7 years as deemed resignation in terms of Rule 7(2) of the said Rules.

24] As indicated earlier, the approach of the CAT, both on the aspects of evaluating the contention based on natural justice as well as judicial review of the impugned order dated 16.12.2014, is contrary to the approach indicated by the Hon'ble Supreme Court in several matters. This is therefore a fit case to warrant interference with the impugned judgment and order made by the CAT.

25] It is settled position in law that principles of natural justice are not edicts in stone. Besides, there is nothing like technical breach of principles of natural justice. The party which alleges breach of non-compliance with principles of natural justice must establish real prejudice before such plea can be permitted to prevail. The principles of natural justice, though universal have to be realistically and pragmatically applied. The scope and extent of principles of natural justice depends upon the nature of right which is proposed to be affected, character of decision maker, the nature of the decision itself and the statutory or other framework in which it operates. **{See : Lloyd vs. Mc Mahon, (1987) All ER 1118 (HL) and See: Ashwin s. Mehta & Anr. vs. Union of India & Ors. (2012)1 SCC 83}.**

26] In **Board of Mining Examination vs. Ramjee (1977) 2 SCC 256**, the Supreme Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety

being questioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

27] The Constitution Bench of the Supreme Court in ***Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. {(1993) 4 SCC 727}*** has held that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of denial to

him of the report, has to be considered on facts and circumstances of each case. Where, therefore, even after furnish of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of the natural justice to illogical and exasperating limits. It amounts to an unnatural expansion of natural justice which in itself antithetical to justice.

28] In ***State Bank of Patiala & Ors. vs. S. K. Sharma*** {(1996) 3 SCC 364}, the Supreme Court, restricted its earlier rulings in ***Chintapalli Agency Taluk Sales Coop. Society Ltd. vs. Secy. (Food and Agriculture) Govt. of A.P.*** (1977) 4 SCC 337 and ***S. L. Kapoor vs. Jagmohan*** (1980) 4 SCC 379 to the facts of the said cases and, of course, subject to the dicta of the Constitution Bench in Managing Director, *ECIL* (supra). The Supreme Court also made a distinction between cases involving '*no opportunity*' and '*no adequate opportunity*'. In the later cases, the violation of natural justice must be

examined on the touchstone of prejudice. There may be situations where the interests of the State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the court may have to balance the public / state interest with the requirement of natural justice and arrive at an appropriate decision.

29] In ***K. L. Tripathi vs. State Bank of India & Ors*** {(1984) 1 SCC 43}, the Supreme Court has quoted with approval Wade in his Administrative Law, Fifth Edition (at pages 472 to 475), when he says that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. Everything depends on the subject matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as merely technical infringement of natural justice. The requirements of natural justice must depend on the facts

and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth.

30] Applying the aforesaid principles to the facts of the present case, the impugned judgment and order will have to be set aside. This is because the CAT permitted itself to be swayed merely by some sort of a technical breach in the compliance with principles of natural justice. Besides, the CAT, has not at all adverted to the substance of the opportunity as afforded to the respondent no. 1 but has gone by only by the form of such opportunity. The CAT, has also not adverted to the aspect of prejudice, if any, to the respondent no. 1 on account of any alleged non compliance with the principles of natural justice. The approach of the CAT is contrary to the aforesaid rulings of the Hon'ble Supreme Court in such matters. In matters of judicial review as well, the approach of the CAT is contrary to the decisions of the Hon'ble Supreme Court particularly in the context of over-stayal of leave or unauthorised absence on the part of the employees. Besides, in matters of this nature, unless, the approach of the decision maker is

patently arbitrary or unreasonable, normally, it is not for the CAT or this Court to interfere with such value judgments. As noted earlier, this is not a case involving breach of the principles of natural justice and fair play. This is also not a case where the statutory rules can be said to have been breached. On the issue as to whether the explanation furnished by the respondent no. 1 was sufficient or not normally, courts exercising judicial review should go by the decision of the authorities unless, it is demonstrated that there is a case of patent arbitrariness, unreasonableness or dis-proportionality.

31] In ***State of Punjab V/s. P.L. Singla (AIR 2009 SCC 1149)***, the Hon'ble Supreme Court has held that request for condoning the absence may be favorably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously.

32] In ***New India Assurance Co. Ltd. V/s. Vipin Behari Lal Srivastava (2008-3-SCC-446)*** an employee, applied for medical leave and then remained absent for over 600 days despite the fact that no such leave was ever sanctioned. The Industrial Tribunal and the Allahabad High Court interfered with the penalty of dismissal and granted the employee reinstatement with full back wages on the ground that employee was found to be suffering from Tuberculosis and since, management did not pass any order on his leave application, it cannot be said that the employee was absent unauthorizedly. The Hon'ble Supreme Court however reversed these decisions and held that sick leave can be granted only on the basis of medical certificate from a registered practitioner and since this was never produced, there was no question of any implied sanction of leave. The Hon'ble Supreme Court further held that since employee did not join services despite receipt of communication requiring him to so join, management was justified in treating the absence of the employee as unauthorized and ordering his removal from services. It is necessary to note that Hon'ble Supreme Court was dealing

with the case of an employee (Workman) employed in a Insurance Company. In the present case, we are concerned with an IPS Officer, who has chosen to remain absent for over 7 years.

33] In ***Viveka Nand Sethi v/s J & K Bank Ltd {2005-5-SCC-337}***, the Hon'ble Supreme Court has held that mere sending of an application for grant of leave much after the period of leave was over cannot be said to be a *bona fide* act on the part of the employee. The Hon'ble Supreme Court in the said case held that it may be true that in a case of this nature, the principles of natural justice were required to be complied with. But the same would not mean that a full-fledged departmental proceeding was required to be initiated. A limited inquiry as to whether the employee concerned had sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part on being asked so to do, amounts to sufficient compliance of the requirements of the principles of natural justice.

34] In ***Chennai Metropolitan Water Supply &***

Sewerage Board & Ors. v. T.T. Murali Babu, {2014-4-SCC-108}, the Hon'ble Supreme Court held that penalty of dismissal was not disproportionate to the gravity of misconduct where, an employee, remained unauthorizedly absent for a long period i.e. one year and seven months and accepted an adamant attitude in not responding to repeated communications from the employer. The Hon'ble Supreme Court held that employees must adhere to discipline not only for present experience but also collective good of the organization.

35] In ***Government of India & Anr. vs. George Philip (2006) 13 SCC 1***, the Hon'ble Supreme Court, set aside the order made by the High Court reinstating the scientific officer at Bhabha Atomic Research Centre (BARC) who had been compulsory retired from service for overstaying leave granted to him. The Hon'ble Supreme Court, at paragraph 15 has held that there are several decisions wherein order of the disciplinary authority directing removal or dismissal of an employee on the ground of long absence or over stay on leave have been upheld. The Hon'ble Supreme Court, in the context of six months time

granted by the High Court to the scientific officer to report for duties consequent upon setting aside the order of compulsory retirement, made the following observations at paragraph 18 :

"18. Before parting with the case we consider it our duty to refer to a rather unusual one-sided approach of the High Court. In the penultimate paragraph of the judgment, the High Court has observed "that the respondent was not personally representing himself in the proceedings and he had authorized throughout his power of attorney holder, obviously indicating that he was not available for being considered for employment". Then in the operative portion of the order six months' time is granted to the respondent to report for duty. It appears that this long period of time was granted to the respondent as he was not present in India and was abroad. In a case involving overstay of leave and absence from duty, granting six months' time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. [Article 51A\(j\)](#) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of

endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same”.

36] In the present case, as noted earlier, the respondent no. 1, has neither been dismissed nor compulsorily retired from service. Rather, the petitioner, perhaps taking into consideration the reasons furnished by the respondent no. 1, has merely treated the inordinate and unauthorised absence of the respondent no. 1 for over 7 years as deemed resignation in terms of rule 7(2) of the said rules. An order of dismissal or compulsory retirement in pursuance of departmental proceedings might have barred the respondent no. 1 from securing alternate employment, such penalty being stigmatic.

37] Insofar as alternate relief is concerned, we are afraid, we cannot consider the same now that we are satisfied that action under Rule 7(2) of the said rules was justified and has been taken in accordance with the provisions of law.

Besides, the provisions quoted by Mr.Marne do not deal with any situation of deemed voluntary retirement.

38] For all the aforesaid reasons, we allow this Writ Petition and make the Rule absolute in terms of prayer clause (a). There shall be no order as to costs in the facts and circumstances of the present case.

(M. S. SONAK, J.)

(ACTING CHIEF JUSTICE)