

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2339 of 2018

In
Civil Writ Jurisdiction Case No.5134 of 2017

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Suo Motu Contempt Initiation In C W J C No 5134/2017 On Behalf Of High
Court Of Judicature At Patna

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Shakti Kumar, Principal, Ideal Higher Secondary Public Shool, Delha, Gaya.
3. Sri Hari Om Kumar, Chairman, Samaj Sevi Son of Sri Kedar Prasad New Colony, Delha, Gaya.
4. Sri Shakti Kumar- Principal-cum-Post Secretary, Education Son of Late Tarkeshwar Prasad Nabab Colony, Delha, Gaya.
5. Sri Tarun Kumar-Member-Samaj Sevi, Son of Ramlakhan Prasad, Resident of Village- Garju Bigha, P.O. and P.S.- Guraru, District- Gaya.
6. Sri Rahul Kumar-Member-Samaj Sevi, Son of Late Rana Pratap Singh, Resident of Budhlal Bhagat Lane, Delha, Gaya.
7. Sri Prakash Agarwal-Member-Samaj Sevi Son of Sri Kanhaiya Agrawal Resident of Chauk, K.P. Road, Gaya.
8. Sri Mundrika Kumar-Member-Samaj Sevi Son of Sri Bachchan Prasad Resident of Village- Kujap, P.O.- Kujap, P.S.- Chandauti, District- Gaya.
9. Smt. Rubi Kumar-Founder-cum-Director, Samaj Sewa D/o Sri Shyamdeo Prasad R/o New Colony, Delha, Gaya.
10. Smt. Sulochna Devi-Chairman-Samaj Seva W/o Sri Ramashray Singh R/o Nabab Colony, Delha, Gaya.
11. Smt. Nilu Devi, Principal Secretary, Samaj Seva D/o Late Lala Prasad R/o New Colony, Delha, Gaya.
12. Sri Subhash Agrawal, Treasure Samaj Seva S/o Sri Kanhaiya Prasad Agrawal R/o Chauk, K.P. Road, Gaya.
13. Smt. Meenakshi Kumar, Secretary, Samaja Seva W/o Sri Mukesh Prasad R/o Budhlal Bhagat Lane, Delha, Gaya.
14. Anjani Kumari, Member, Samaj Seva W/o Sri Gautam Kumar R/o New Colony, Delha Gaya.
15. Indirawati Devi, Member, Samaj Seva S/o Late Ramsharan Singh R/o New Colony, Delha, Gaya.
16. Khusboo Kumari-Teacher-Education D/o Surendra Prasad R/o Budhlal Bhagat Lane, Delha, Gaya.
17. Rajnish Kumar-Teacher-Education S/o Ramnandan Prasad Gol Bagicha Adda, Gaya.
18. Smt. Baijanti Devi, House Wife D/o Rameshwar Saw New Colony, Delha, Gaya.



19. Sri Rakesh Kumar- Business S/o Sri Kishori Singh R/o New Colony, Delha, Gaya.
20. Rakhi Kumar D/o Late Ramashish Prasad R/o Barki Delha, Praiya Road, Gaya.
21. Sri Shivshankar Singh, Ex-Headmaster-Education Son of Late Ramdeo Mahto R/o Kharkhua, Delha, Gaya.

... ... Opposite Party/s

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with

Letters Patent Appeal No. 230 of 2023

In

Miscellaneous Jurisdiction Case No.2339 of 2018

=====

Rahul Kumar Son of Late Rana Pratap Singh, Resident of Village- Madho Bigha, Sonsihari, Orhanpur, Nawada, PIN- 805123

... ... Appellant/s

Versus

1. The State of Bihar
2. Shakti Kumar, Principal, Ideal Higher Secondary Public School, Delha, Gaya.
3. Sri Hari Om Kumar, Chairman, Samaj Sevi, son of Sri Kedar Prasad, New Colony, Delha, Gaya.
4. Sri Shakti Kumar, Principal-cum-Post Secretary, Education, son of Late Tarkeshwar Prasad, Nabab Colony, Delha, Patna.
5. Sri Tarun Kumar, Member, Samaj Sevi, Son of Ramlakhan Prasad, Resident of village Garju Bigha, P.O. and P.S. Guraru, District Gaya.
6. Sri Prakash Agarwal, Member, Samaj Sevi, Son of Sri Kanhaiya Agrawal, resident of Chauk, K.P. Road, Gaya.
7. Sri Mundrika Kumar-Member-Samaj Sevi, Son of Sri Bachchan Prasad, Resident of village Kujap, P.O. Kujap, P.S. Chandaoti, District Gaya.
8. Smt. Rubi Kumar-Founder-cum Director, Samaj Sewa, D/o Sri Shyamdeo Prasad, R/o New Colony, Delha, Gaya.
9. Smt. Sulochna Devi-Chairman-Samaj Seva, W/o Sri Ramashray Singh, R/o Nabab Colony, Delha, Gaya.
10. Smt. Nilu Devi, Principal Secretary, Samaj Seva, D/o Late Lala Prasad, R/o New Colony, Delha, Gaya.
11. Sri Subhash Agrawal, Treasure Samaj Seva, S/o Sri Kanhaiya Prasad Agrawal, R/o Chauk, K.P. Road, Gaya.
12. Smt. Meenakshi Kumar, Secretary, Samaj Seva, W/o Sri Mukesh Prasad, R/o Budhlal Bhagat Lane, Delha, Gaya.
13. Anjani Kumari, Member, Samaj Seva, W/o Sri Gautam Kumar, R/o New Colony, Delha, Gaya.
14. Indirawati Devi, Member, Samaj Seva, S/o Late Ramsharan Singh, R/o New



Colony, Delha, Gaya.

15. Khusboo Kumari-Teacher-Education D/o Surendra Prasad R/o Budhlal Bhagat Lane, Delha, Gaya.
16. Rajnish Kumar-Teacher-Education S/o Ramnandan Prasad Gol Bagicha Adda, Gaya.
17. Smt. Baijanti Devi, House Wife D/o Rameshwar Saw New Colony, Delha, Gaya.
18. Sri Rakesh Kumar- Business S/o Sri Kishori Singh R/o New Colony, Delha, Gaya.
19. Rakhi Kumar D/o Late Ramashish Prasad R/o Barki Delha, Praiya Road, Gaya.
20. Sri Shivshankar Singh, Ex-Headmaster Education Son of Late Ramdeo Mahto R/o Kharkhua, Delha, Gaya.

... .. Respondent/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 2339 of 2018)

For the Petitioner/s : Mr. Rajesh Mohan, Advocate

For the Opposite Party/s : Mr. S. D. Yadav, AAG-9

(In Letters Patent Appeal No. 230 of 2023)

For the Appellant/s : Mr. Y. V. Giri, Senior Advocate

Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr. S.D. Yadav, AAG-9

Mr. Anil Kumar Verma, AC to AAG-9

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-11-2023

LPA No. 230 Of 2023

In

Miscellaneous Jurisdiction Case No.2339 of 2018

LPA No.230 of 2023 is arising out of M.J.C.

No. 2339 of 2018 and it is filed by the appellant-Rahul Kumar.

2. M.J.C. No.2339 of 2018 is Suo Motu



Contempt Initiation arising out of order passed in C.W.J.C. No.5134 of 2017. In C.W.J.C. No.5134 of 2017, Suraj Kumar and 10 others filed a petition against six respondents in which Rahul Kumar was not arrayed as necessary and proper party to adjudicate C.W.J.C. No.5134 of 2017, while deciding on 06.10.2017. For non-compliance of the order, this Court Suo Motu initiated contempt of court proceedings in C.W.J.C. No.5134 of 2017 on behalf of High Court of Judicature at Patna. In which the learned Single Judge proceeded to implead Rahul Kumar and others on 27.04.2022. Thus, Rahul Kumar - appellant preferred this L.P.A. in so far as arraying him as respondent party in MJC No.2239 of 2018, on the score that he was not arrayed as party in C.W.J.C. No.5134 of 2017, in such an event he cannot be impleaded as party in M.J.C. No.2339 of 2018 (contempt petition).

3. Rahul Kumar-appellant has presented this LPA belatedly, in this regards I.A. No.1 of 2023 has been filed and seeking condonation of delay of 7 months 5 days. Reasons stated for condonation of delay is that he was not party to the writ petition and he is not aware of the order dated 27.04.2022. Having regard to the aforementioned reason and other reasons stated in application read with affidavit, delay of 7 months and 5



days stands condoned. I.A. No.1 of 2023 is allowed.

4. With the consent of the respective parties, L.P.A. No.230 of 2023 is taken up for final disposal. We have posed a question in respect of maintainability of L.P.A. against order passed in M.J.C. No.2339 of 2018 (contempt petition) dated 27.04.2022.

5. Learned senior counsel for the appellant vehemently contended that L.P.A. is maintainable in the light of Chapter-II read with Chapter XXVIII of Rules of the High Court at Patna. He has specifically pointed out under Chapter-II Rule 2 (f) and (j). Rule 2 relates to matters which shall be listed before the Division Bench, (f) deals with Letters Patent Appeals under Clause X of the Letters Patent Appeals or the Appeals under the Companies Act, 1956 from the orders of Company Judge and (j) deals with a case coming before the court in the exercise of its ordinary or extraordinary original criminal jurisdiction, including the cases under Section 15 of the Contempt of Courts Act, 1971.

6. Chapter-XXVIII, Rules 6 and 18, particularly Rule 6 is in respect of Single Judge, whereas Rule 18 deals with the appeal and appeal is subject to Section 19 (i) (a) of the Contempt of Courts Act, 1971. In support of the



maintainability of the L.P.A., learned counsel for the petitioner relied on Division Bench decision of this Court passed in L.P.A. No.1159 of 2014 and connected matter in the case of ***Rajesh Kumar and others Vs. The State of Bihar and others***, reported in ***2016 (4) PLJR 329***, he is relying on paragraph Nos.27, 33, 38 and 39. In light of the aforementioned provision read with a cited decision, the present L.P.A. is maintainable.

7. Per contra, learned counsel for the respondent-State, resisted the aforementioned contention and submitted that L.P.A. is not maintainable against order passed in M.J.C. No.2339 of 2018 (contempt petition) in the absence of specific provision under the Rules of High Court at Patna.

8. Heard, learned counsel counsel for the respective parties.

9. Core issue involved in the present L.P.A. is whether, L.P.A. is maintainable against order passed in M.J.C. No.2339 of 2018 (contempt proceedings) or not?

10. It is necessary to take note of the relevant provision of law.

Section 19 of the Contempt of Courts Act, 1971 reads as under:

19. Appeals.-(1) An appeal shall lie as of right from any Order or decision of High Court in



the exercise of its jurisdiction to punish for contempt-

(a) where the Order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the Order or decision is that of a Bench, to the Supreme Court:

Provided that where the Order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the Appellate Court may Order that -

(a) the execution of the punishment or Order appealed against be suspended;

(b) if the applicant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant as not purged his contempt.

(3) Where any person aggrieved by any Order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal; the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed -

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the



*Supreme Court, within sixty days,
from the date of the Order appealed
against.*

**Chapter-(II) Rule 2 (f) and (j) of Rules of the High
Court at Patna reads as under:**

*“2. Matter which shall be listed before
the Division Bench.*

*(f) Letters Patent Appeals under Clause
X of the Letters Patent or the Appeals under the
Companies Act, 1956 from the orders of the
Company Judge.*

*(j) A case coming before the court in the
exercise of its ordinary or extraordinary original
criminal jurisdiction, including the cases under
Section 15 of the Contempt of Courts Act, 1971.”*

**Chapter-XXVIII Rules 6 and 18 of Rules of the
High Court at Patna reads as under:**

*6. Every petition for initiating a
contempt proceeding shall be posted before a
Bench of the Court for preliminary hearing and for
orders as to issue of notices, except petitions in
respect of civil contempt which relates to orders or
directions passed by a Judge of this Court which
shall be listed for preliminary hearing and orders
as to issue of notice before a Judge of this Court.
Upon such preliminary hearing the Court if
satisfied that no prima facie case has been made*



out for issue of notice, may dismiss the petition, and if not so satisfied, direct that notice of the petition be issued to the contemner.

18. Appeal. - *The appeal presented to the Court against the decision of a Single Judge under Section 19(1)(a) of the Act shall be filed in accordance with the Patna High Court Rules meant for Letters Patent Appeals and such appeal shall be placed before a Division Bench for admission and hearing. After admission of the appeal, the provisions regarding issuance of notice, and preparation of paper book shall be governed by the Patna High Court Rules meant for Letters Patent Appeals.*

11. Perusal of the aforementioned provisions of law there is no specific provision against order of the learned Single Judge passed in M.J.C. (contempt matter) other than conditions stipulated under Section 19 of the Contempt of Courts Act, 1971 for filing L.P.A.. In the present case, the appellant does not fulfill the requisite criteria under Section 19 of the Contempt of Courts Act, 1971, so as to invoke Rule 18 under Chapter-XXVIII of the Rules of High Court at Patna. Therefore, we have to draw inference that present L.P.A. against order dated 27.04.2022 passed in M.J.C. No.2339 of 2018 is in the absence of any provision of law. Therefore, *prima facie* the



appellant has not made out a case, so as to interfere with the order dated 27.04.2022 passed in M.J.C. No.2339 of 2018 in the form of present LPA.

12. In **Rajesh Kumar's** (*supra*) case, it is necessary to take note of the relevant portion of the judgment in particularly paragraph Nos. para 24, 27, 33, 38 and 39 reads as under:

24. In the light of the rival submissions, which have been made before us on behalf of the parties concerned, the issues, which arise for determination, in these appeals, are as follows:

(i) Whether the present appeals, which have been preferred against the order, dated 16.07.2014, passed by the learned single Judge, while exercising jurisdiction in contempt proceedings, could have been appealed against, or are maintainable, under Clause 10 of Letters Patent Constituting The High Court of Judicature at Patna, or whether the order, dated 16.07.2014, aforementioned, is an appealable order under Section 19 of the Contempt of Courts Act, 1971, read with Article 215 of the Constitution of India?

(ii) Whether the present appeals are maintainable at the instance of such persons, who were neither parties in the writ petitions, which gave rise to contempt proceedings, nor were they parties in the contempt proceedings, which gave



rise to the impugned order, dated 16.07.2014?

(iii) Whether the learned single Judge, while passing the impugned order, dated 16.07.2014, in the contempt proceedings, decided the merit of the issue and, thus, travelled beyond what a Court, exercising contempt jurisdiction, must keep itself confined to?

(iv) In view of the principle of merger, whether the applications, seeking drawing of the proceedings of contempt, were maintainable before the learned single Judge, when the order, dated 15.01.2001, passed by the learned single Bench had been affirmed, in Letters Patent Appeals, by a Division Bench on 16.12.2004, and Special Leave to Appeals, preferred by the State, were dismissed by the Supreme Court on 28.08.2012?

27. While answering the issue with regard to the maintainability of the present appeals, it is necessary to take notice of the relevant provisions of law. Section 11 of the Contempt of Courts Act, 1971, as well as Article 215 of the Constitution of India confer powers on High Court to inquire into or try contempt of itself or of any court subordinate to it. It will not make any difference, on the power of the Court, whether the contempt is alleged to have been committed within or outside the local limit of its territorial jurisdiction and whether the person, alleged to be guilty of contempt, is within or outside such limits. Section



12 of the Contempt of Courts Act, 1971, provides punishment for contempt of court.

33. The Supreme Court further holds, in Midnapore Peoples" Cooperative Bank Ltd. (supra), that if a High Court decides an issue or makes any direction relating to the merit of the dispute, the aggrieved person is not remediless and can challenge the same not by way of an appeal under Section 19 of the Contempt of Courts Act, 1971, but by means of intra court appeal if there is a provision of such an appeal and, in absence of any such provision, the aggrieved party can seek Special Leave to Appeal under Article 136 of the Constitution of India.

38. In view of the fact that we have concluded that the impugned order, dated 16.07.2014, was not an order, which falls under Section 12 of the Contempt of Courts Act, 1971, and was, thus, not appealable under Section 19(1)(a) thereof, the other issue, which falls for consideration, is:

Whether the present intra court appeal would be maintainable at the instance of the present appellants, who were not parties to the writ petitioners, wherein the order, dated 15.02.2001, was made, nor were they (i.e., the present appellants) parties to the letters patent appeals, which were decided by the Division Bench, on 16.12.2004, and left undisturbed even before the



Supreme Court?

39. From the decision in Midnapore Peoples' Cooperative Bank Ltd. (supra), it is clear, as we have already indicated above, that if a High Court decides an issue or makes any direction relating to merits of the dispute, such an order is open to challenge in an intra court appeal. It would, therefore, necessitate examination of the issue as to whether the learned single Judge, while making the impugned order, dated 16.07.2014, issued directions, which run contrary to, or deviate from, the directions, which the Writ Court had passed, and whether, in such a situation, these appeals, at the instance of the appellants, are maintainable....”

13. This Court has taken note of Apex Court decision, namely, **Midnapur Peoples Cooperative Bank Ltd.**, whereas, this Court has not taken note of statutory rules of the High Court at Patna, namely, Chapter-II Rule (2) (f) and (j) read with Chapter-XXVIII, Rule 6 and 18. Rule 18 is the only appeal provision. L.P.A. could have been entertained under Rule 18, provided the petitioner fulfill the criteria mentioned in Section 19 of the Contempt of Courts Act, 1971. On the other hand L.P.A. has been presented against MJC No.2339 of 2018 dated 27.04.2022 only on the score that Rahul Kumar-appellant was



not party to the C.W.J.C. No.5134 of 2017 and it is not against any punishment order. Therefore, the present L.P.A. is not maintainable.

14. It is necessary to take note of Apex Court decision in the case of ***Shivdeo Singh & others Vs. State of Punjab & others*** reported in ***AIR 1963 SC 1909*** (Constitution Bench), paragraph no.8 reads as under:

“(8) The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Art. 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Art. 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right



to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court that the second application was entertained by Khosla, J.”

15. Similar principle has been reiterated by the Apex Court while referring to Section 19 of the Administrative Tribunal Act, 1985 in the case of ***Rama Rao and Others Vs. M.G. Maheshwara Rao and others*** reported in (2007) 14 SCC 54, para 8 reads as under:

“8. This contention raised was met by the High Court by pointing out that even though the assistants belong to a different cadre, since there was a confluence of the two streams leading to the promotional posts, the assistants had locus standi to file an application under Section 19 of the Act in which, to ventilate their grievances they could canvass the correctness of the decision earlier rendered on 6-7-1994 by the Administrative Tribunal. The High Court referred to the decision in K. Ajit Babu v. Union of India to find that the proper procedure to be adopted by persons situated like the assistants in this case and who were not made parties to a prior decision which had effect on their career, was to move an application under



Section 19 of the Act. In that decision, this Court noticed that even though the judgment of an Administrative Tribunal may only be a judgment in personam, occasionally, it could also operate as a judgment in rem and those affected by it had the right to approach the Tribunal again with an application under Section 19 of the Act when they are affected as a consequence of the earlier decision and are entitled to seek reconsideration of the view taken in the earlier decision. The High Court, following it, held that the assistants had the locus standi to move the application under Section 19 of the Act before the Tribunal and seek reconsideration of the earlier decision passed by it without notice to them and to show that the said order required reconsideration or that it was not a legal or a proper one. We see no reason not to accept the reasoning adopted by the High Court. After all, the assistants who were not impleaded in the earlier proceeding must have an avenue to ventilate their grievances. This Court has indicated that that avenue is an approach to the Tribunal and that was in a case in which the very same Act was involved. This Court had also pointed out what the Administrative Tribunal could do in such a situation. If this were not the position, the assistants would be able to say that since they were not parties to the earlier proceedings, they were not bound by it and they are entitled to ignore the decision therein and that the said decision cannot



affect them since it would be a decision that is void in law for non-compliance with the rules of natural justice. There is, therefore, no grace in the submissions that the assistants could not have approached the Administrative Tribunal with their grievance and the Tribunal could not have considered their grievance or gone back on its earlier decision. We are in agreement with the approach made by the High Court and the conclusion arrived at by it and hence have no hesitation in overruling this contention. The argument that the jurisdiction of the High Court came to be recognised only later, cannot change the situation, since when the High Court entertained the writ petition it had the jurisdiction to do so and it had jurisdiction also to consider what was the effect of the earlier order or the proceeding before it and whether the earlier order was legal and justified in the context of the decision of this Court in Ajit Babu case.”

(Underline supplied)

16. It is also necessary to take note of Apex Court decision in the case of ***Nair Service Society Vs. Dr. T. Beermasthan*** reported in ***(2009) 5 SCC 545***, para 48 reads as under:

“48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence



should be understood with reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

17. Nair Service Society decision is taken note of for the purpose of distinguishing the coordinate Bench decision in the case of **Rajesh Kumar** (supra), the general principle in the Nair Service Society is that Court cannot straight away take note of judicial pronouncement, without examining the statutory provision. In the case of Rajesh Kumar, the coordinate Bench has not taken note of statutory rules like Rules of the High Court at Patna in particularly Chapter-II Rule 2 (f) and (j) read with Chapter-XXVIII, Rule 6 and 18. The relevant provision for the purpose of filing L.P.A. is Rule 18. However, there is rider in so far as filing L.P.A. under Rule 18 to the extent that party has to satisfy Section 19 of the Contempt of Courts Act, 1971. Thus, decision of the coordinate Bench in the case of Rajesh Kumar cited is distinguishable and the same is not applicable to the case in hand. Since co-ordinate Bench in



the Rajesh Kumar's case statutory provisions or Rules of the High Court at Patna has not taken note of. Therefore, the principle of judgment in *per curium* is attracted.

18. The Apex Court in the case of ***Jasbir Singh @ Jassa and Ors. Vs. State of Punjab and Ors., (2022) 13 SCC 462*** in para 21 it is held as under:

“21. We may, therefore, observe that if the Rules concerned or procedure or the provisions of the letters patent appeal permit so, the High Courts may do well to list the original writ petitions in the second round of litigation before the Division Bench itself for consideration.

19. In the present case Rule 18 of the Rule of the High Court at Patna is not attracted in the light of the order dated 27.04.2022 passed in M.J.C. No.2239 of 2018 read with criteria under Section 19 of the Contempt of Courts Act, 1971.

20. The Apex Court in the case of ***Divisional Controller, KSRTC Vs. Mahadeva Shetty & Another*** reported in ***(2003) 7 SCC 197***, in paragraph-23, it is held as under:

“23. So far as Nagesha case [(1997) 8 SCC 349] relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a



decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.”

21. Ingredient with the Judgment per incuriam as quoted by Sir John Salmond in his ‘Treatise on jurisprudence’



has aptly stated the circumstances under which a precedent can be treated as per incuriam. It is stated that a precedent is not binding for which it was rendered in ignorance of a statute or a rule having the force of statute or delegated legislation. In the Rajesh Kumar's case statutory provisions have not been interpreted.

22. The Apex Court in the case of ***Government of Andhra Pradesh and Another Vs. B. Satyanarayana Rao*** reported in ***(2000) 4 SCC 262*** observed as under:

“The Rule of per incuriam can be applied where Court omits to consider a binding precedent of the same Court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue.”

(Underline supplied)

23. In ***Thota Shesharathnamma and Another Vs. Thota Manikyamma (dead) by Legal Representatives*** reported in ***(1991) 4 SCC 312***, a two Judge Bench of Apex Court held that Three Judge Bench decision in the case of Mst. KARMI vs. AMRU, (1972) 4 SCC 86 on per incuriam and observed as under.

“..... It is a short judgment without adverting to any provisions of Section 14(1) or



14(2) of the Act. The Judgment neither makes any mention of any argument raised in this regard nor there is any mention of the earlier decision in Seth Badri Parshad vs Srimati Kanso Devi. The decision in Mst. Karmi cannot be considered as an authority on the ambit and scope of Section 14(1) and 14(2) of the Act.”

24. A decision contrary to law and Rules cannot become precedent as held in the case of ***Union of India vs S K Saigal*** reported in ***(2007)14 SCC 556***. In the matter of ***Paisner Vs. Goodrich*** reported in ***(1955)2 All – ER 530*** referred in ***ICICI Bank Limited and another Vs. The Municipal Corporation of Greater Bombay and others*** reported in ***AIR 2005 SCC 3315***. In the Paisner’s case Lord Denning in his judgment held as under:-

“When the judges of this Court give a decision on the interpretation of an Act of Parliament, the decision itself is binding on them and their successors. But the words which the judges use in giving the decision are not binding. This is often a very fine distinction, because the decision can only be expressed in words. Nevertheless, it is a real distinction which will best be appreciated by remembering that, when interpreting a statute, the sole function of the court



is to apply the words of the statute to a given situation. Once a decision has been reached on that situation, the doctrine of precedent requires us to apply the statute in the same way in any similar situation; but not in a different situation. Whenever a new situation emerges, not covered by previous decisions, the courts must be governed by the statute and not by the words of the judges.

(Underline supplied)

25. It is also a trite law that a point not raised before a Court would not be an authority on the said question. In ***A-One Granites vs. State of Uttar Pradesh*** reported in ***(2001) 3 SCC 537***, it is stated as under:

“This question was considered by the Court of appeal in LANCASTER MOTOR CO. (London) LTD. vs. BREMTH LTD., and it was laid down that when no consideration was given to question, the decision cannot be said to be binding and precedents sub silentio and without arguments of no moment.”

26. In the case of ***State of U.P. Vs. Synthetics and Chemicals Limited*** reported in ***(1991) 4 SCC 139***, paragraphs 40 and 41 read as under:

“40. ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to



mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. the Court did not feel



bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. ShamaRao v. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

27. The decisions 'sub-silentio' and 'per



incuriam' are not binding. Sub-silentio decisions flow when the particular point of law involved in the decision is not perceived by the Court of present to its mind. A point not argued or considered by Court is said to pass sub-silentio."

28. In view of the above analysis of factual and legal aspects, we are of the view that present L.P.A. No.230 of 2023 is not maintainable in the absence of any specific provision of law and factual of the present case. Accordingly, this L.P.A. No.230 of 2023 stands dismissed.

29. Dismissal of present L.P.A. would not be a hurdle for the appellant-Rahul Kumar to invoke appropriate remedy in the light of observation made by the Constitution Bench in the case of ***Shivdev Singh*** (*supra*) read with Principle reiterated in the case of ***Rama Rao*** (*supra*).

M.J.C. No.2339 of 2018

In

Civil Writ Jurisdiction Case No.5134 of 2017

30. Suo Motu contempt proceeding be re-listed on 22.12.2023.

31. It is made clear that no further time will be granted to the counsel. If the counsel has certain inconvenience, he has to make alternative arrangement in addressing the matter.



32. Registry is hereby directed to de-link the present M.J.C. No. 2339 of 2018 from L.P.A. No.230 of 2023.

(P. B. Bajanthri, J.)

(Ramesh Chand Malviya, J.)

S.Katyayan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.12.2023
Transmission Date	07.12.2023

