

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

WRIT PETITION NO. 10310 OF 2025

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Smt. Kalpana Subhash Kedar

....Petitioner

Versus

State of Maharashtra & Ors.

....Respondents

Mr Vinayak R. Kumbhar, Mr. Rajendra B. Khaire i/b Ms. Ashwini N. Bandiwadkar, Advocates for Petitioner.

Mr. Kedar B. Dighe, Add. G.P. a/w Ms. Nisha M. Mehra, AGP for State.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.**

DATE : 14th JANUARY, 2026

P.C. :-

1. Admittedly, the Petitioner and her deceased husband, have three children. The first daughter was born on 05th November, 2015. A son was born on 15th July, 2016, and another son was born on 17th August, 2022. The Petitioner widow seeks compassionate appointment placing reliance on the Division Bench Judgment delivered by this Court at Nagpur dated 19th November, 2015 in Writ Petition No. 1841/2015 (*Smt. Chaya Deepak Chahare Vs. Director of Education Pune and Ors*).

2. The learned AGP points out that this issue was referred

to the Full Bench of this Court, to which one of us (Ravindra V. Ghuge J.) was a party, in Writ Petition No. 9284 of 2022 (***Sunita Dinesh Gaikwad and Another Vs. State of Maharashtra and CEO Zilla Parishad, Nanded***).

3. He further points out that the Full Bench has considered two different views delivered by two Division Benches of this Court at the Principle seat. One was in the case of ***Kashabai Sheshrao Wagh Vs. The Zilla Parishad, Nashik and Ors.*** (Writ Petition No. 7742 of 2014) decided on 03.07.2019 wherein, this court concluded that the GR dated 28th March, 2001 was ultra vires. The subsequent Division Bench of this Court in the matter of ***Bhagyashree Pradip Chopade Vs. MIDC & Ors*** [WP No. 6819/2021] decided on 08th March, 2022 concluded that the said GR is not ultra vires and no clause of the GR is arbitrary.

4. These Judgments led to the formation of the Full Bench which concluded in paragraph nos. 8 to 19 as under:

"8. We find that the submissions of the learned AGP Shri Karlekar are well placed. The order in ***Kashabai (supra)***, more particularly in paragraph 7 reproduced above, clearly indicates that there was no prayer to declare the said condition (clause E) as

unconstitutional. However, it is trite that if the parties address the Court on the constitutional validity of any particular clause or if the submissions of the litigating parties strike at the root of a particular clause, the Court may grant an opportunity of hearing to the litigating parties so as to support their respective submissions in favour of and against the validity of a particular clause of the Government Resolution. Ideally, the Court would permit the parties to amend the pleadings and add to the grounds/prayers. In our view, even if this is not so done, the minimum that would be required is that the parties must be granted an opportunity of addressing the Court and the conclusions of the Court must be supported with reasons.

9. *In **Kamleshkumar Ishwardas Patel vs. Union of India and others, 1994 (2) Mh.L.J. 1669, Full Bench**, it was held that when the High Court is confronted with two contrary decisions of the Supreme Court emanating from Benches of co- equal strength, the High Court is not necessarily bound to follow the decision which is later in point of time, but must follow the one which, in it's view, is better or more accurate in the light of the provisions of law. It was noted in paragraphs 14 and 15 as under:-*

*“14. It has been pointed out by one of us, while speaking for a **Special Bench of the Calcutta High Court in Bholanath v. Madanmohan** on the question as to the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder :-*

"..... When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was

recommended by our ancient Jurists - "Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate" - in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts - "Prayoge Hi Virodha Syat". But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P. B. Mukharji, J. (as his Lordship then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in Pramatha Nath v. Chief Justice, took a similar view, S. P. Mitra, J. (as his Lordship then was) also took such a view in the Division Bench decision of this Court in Sovachand Mulchand v. Collector, Central Excise, AIR 168 Cal 174 at p. 186, para 56. To the same effect is the decision of a Division Bench of the Mysore High Court in New Krishna Bhavan v. Commercial-Tax Officer, AIR 1961 Mys 3 at p. 7 and the decision of the Division

Bench of the Bombay High Court in Vasant v. Dikkaya. A Full Bench of the Allahabad High Court in U.P. State Road Transport Corpn. V. Trade Transport Tribunal has also ruled to that effect. The view appears to be that in case of conflicting decisions by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new."

"The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab & Haryana High Court in Indo-Swiss Time Ltd. v. Umarao took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in Govinda Naik v. West Patent Press Co., the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J. in the Full Bench decision in Indo-Swiss Time (supra)."

"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declare - Dharmashastra Virodhe Tu Yuktikyukta Vidhe Smrita - that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhawalia, C.J. in Indo-Swiss Time (supra, at p. 220) and the learned Jurist has observed that

"judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment."

"It appears that the Full Bench decision of the Madras High Court in R. Rama Subbnarayalu v. Rengammal, would also support this view where it has been observed (at p. 452) that "where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one". According to the Nagpur High Court also, as would appear from its Full Bench decision in D. D. Bilimoria v. Central Bank of India, AIR 1943 Nag. 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."

"Needless to say that it would be highly embarrassing for the High Court to declare one out of the two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task,

however uncomfortable, has got to be performed."

"We are inclined to think that a five- Judge Bench of the Supreme Court in Atma Ram v. State of Punjab, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength, perhaps the better course would have been to constitute a larger Bench, it has, however, been observed that for otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task "of preferring one view to another"

".... We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated herein before, and as has also been indicated by the Supreme Court in Atma Ram (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction.

The law as enunciated in that Special Bench decision, as quoted hereinabove, has our

unqualified concurrence.

15. *Our attention has been drawn by Mrs. Ranjana Desai to the Full Bench decision of the Allahabad High Court in Ganga Saran v. Civil Judge where also a similar view has been taken by the three Judge Bench (at p. 118). With respect, this can be the only reasonable solution and the only way out, when we are confronted with contrary decisions of the Supreme Court emanating from co-equal Benches. Both being binding on us by reason of their authority, we cannot but have the unpleasant task of choosing that one which appears to have better authority of reasons. During the preparation of this judgment our attention has also been drawn to the Division Bench of this High Court in **Manasing Surajsingh (1968) 70 Bom LR 654 at 669** where Tarkunde, J., speaking for the Bench, has also taken the same view after referring to, with approval, the following observations in Salmond on Jurisprudence, 12th Edition Page 153 :-*

"Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these two courses the court adopts depends, or should depend, upon its own view of what the law ought to be."

It may also be noted that the same view was taken by one of us (Bhattacharjee, C.J.) in Gopal Chandra Kalay v. State (1981 Lab IC 422) and in Union of India v. Ashok (AIR 1983 Sikkim 19) and also by a learned single Judge of this Court in Special Land Acquisition Officer v.

Municipal Corporation. We may, however, note that the Full Bench of the Allahabad High Court in Ganga Saran (supra) has failed to notice an earlier Full Bench decision of that Court itself in U.P. State Road Transport Corporation (AIR All 1) which laid down a contrary proposition.”

10. In Jaydeo s/o Mahadeo Parate vs. The State of Maharashtra and others, 2006 (2) Mh.L.J. 497, the Division Bench of this Court followed Kamleshkumar (supra).

Precedent Sub-Silentio.

11. In Municipal Corporation of Delhi vs. Gurnam Kaur, 1989 (1) SCC 101, it was concluded by the Hon'ble Supreme Court in paragraphs 11 and 12 as under:-

“11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal

Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:

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. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. *In Gerard v. Worth of Paris Ltd. (k)., [1936] 2 All E.R. 905 (C.A.), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. V. Bremith Ltd., [1941] 1 KB 675. the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of*

the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

12. In *Arnit Das vs. State of Bihar, 2000 (5) SCC 488*, it was held in paragraph 20 as under:-

*"20. A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined. (See *State of U.P. Vs. Synthetics & Chemicals Ltd. 1991 (4) SCC 138, para 41*)."*

13. In *State of U.P. and others vs. Jeet S. Bisht and another, 2007 (6) SCC 586*, the Honourable Supreme Court referred to *Gurnam Kaur (supra)* and concluded in paragraphs 18, 19 and 22 as under:-

*"18.No doubt in the aforesaid decision various direction have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed sub silentio . The meaning of a judgment sub silentio has been explained by this Court in *Municipal Corporation of**

Delhi Vs. Gurnam Kaur (1989) 1 SCC 101 (vide paras 11 and 12) as follows :-

“19.The principle of sub silentio has been thereafter followed by this Court in State of U.P. & Anr. Vs. Synthetics & Chemicals Ltd. & Anr. (1991) 4 SCC 139, Arnit Das Vs. State of Bihar (2000) 5 SCC 488, A-One Granites Vs. State of U.P. & Ors. (2001) 3 SCC 537, Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr. (2003) 7 SCC 197 and State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr. (2004) 11 SCC 26.”

“22.In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty, 2003 (7) SCC 197, this Court observed as follows:

“..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. 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.””

*14. We are conscious of the task entrusted to this Full Bench and more so, when the issue is as regards whether the conclusion drawn by the Division Bench in **Kashabai** (supra), could be restricted to the facts of the said case. It is often said that reasons are*

the heart and soul of a decision. If a decision is bereft of reasons, an attempt to supplant reasons cannot be countenanced.

15. *It does not call for any debate that unless a conclusion in the facts and circumstances of that case, does not lay down a law, it would not be a precedent. It is only a decision with reasons, upon due appreciation of the pleadings and the law applicable, that can be said to have laid down a principle of law, amounting to be a precedent.*

16. *In **Delhi Administration vs. Manohar Lal, 2002 (7) SCC 222**, the Honourable Supreme Court noted that a mere direction without laying down any principle of law, is not a precedent. In **Divisional Controller, KSRTC vs. Mahadeva Shetty, 2003 (7) SCC 197**, the Honourable Supreme Court recorded that the decision delivered, is a decision ordinarily on the case (facts of the case) before the Court, while the principle underlying the decision would be binding as a precedent to cases with similar facts which come up subsequently for decision. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.*

17. *As is held in **Gurnam Kaur (supra)**, such pronouncements which are not part of the ratio decidendi, are classed as obiter dicta and are not authoritative. The view taken in **Jamna Das vs. Delhi Administration in Writ Petition No.981- 82 of 1984**, was held to be not binding on the Court as it was delivered without any arguments and without any exposition on the subject before the Court.*

18. *In **State of U.P. vs. Synthetics and Chemicals Limited, 1991 (4) SCC 139**, the Honourable Supreme Court has concluded that a decision not expressed, nor accompanied by reasons and not proceeding on a conscious consideration of an issue, cannot be deemed to be a law declared to have a binding effect as is*

contemplated under Article 141 of the Constitution of India. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio.

*19. In view of the above, we are unable to accept the contention of the Petitioner that the declaration in **Kashabai (supra)** would have a binding effect in perpetuity. The said conclusion would, at best, be restricted only to the facts of the said case. For the reasons recorded herein above, in the light of the law crystallized by the Honourable Supreme Court, the declaration in **Kashabai (supra)** that clause E of the Government Resolution dated 28.03.2001 is unconstitutional, shall not be deemed to have been so declared for other matters and would be restricted to the facts of the said case. We answer the issue addressed to us, accordingly.”*

5. In view of the above, since the Full Bench of this Court has concluded that the said GR would apply to the Zilla Parishad, we do not find that this Petition could be entertained.

6. In view of the above, **this Petition is dismissed.**

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)