

CONTENTS

ABP Pvt. Ltd. & Anr. v. Union of India & Ors.	.....	393
Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr.	.....	291
Badal Murmu and Ors. v. State of West Bengal	.....	323
Bastiram v. State of Rajasthan	.....	567
Lingaram Kodopi v. State of Chhattisgarh	.....	459
Purshotam Kumar Kaundal (Dr.) v. State of H.P. and Others	.....	470
Rajinder Kumar v. Shri Kuldeep Singh & Others	.....	356
Renu & Ors. v. District & Sessions Judge, Tis Hazari & Anr.	.....	537
S.V.A. Steel Re-Rolling Mills Ltd. Etc. Etc. (M/s) v. State of Kerala & Ors. Etc. Etc.	.....	336
Suhas H. Pophale (Dr.) v. Oriental Insurance Co. Ltd. and Its Estate Officer	.....	480

SUBJECT-INDEX

ADMINISTRATIVE LAW:

(1)(i) Legal bias.

(ii) Natural justice - Opportunity of hearing.
(See under: Working Journalists and other
Newspaper Employees (Conditions of Service)
and Miscellaneous Provisions Act, 1955) 393

(2) (i) Policy decision - State of Kerala declared a policy to give uninterrupted 100% electricity supply at exempted rate for a period of 5 years to newly set up manufacturing unit - Pursuant to said policy, appellants set up their manufacturing units - However, there were frequent power cuts which adversely affected these units - Respondent-State granting extension of period of assured power supply to new units by number of days during which supply of electricity to them was cut to the extent of 50% or more - Held: Framing such policies and doing the needful for its implementation are administrative functions of State and, therefore, normally interference with its policies is not called for - But looking at the peculiar facts of the case, where an assurance was given for uninterrupted supply of electricity, respondent-State ought to have made necessary arrangements to provide 100% uninterrupted supply of electricity for 5 years to the new units - Without proper appreciation of all the relevant factors, State should not give any

(iii)

assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise - Benefit extended by respondent State is not sufficient - Respondent-State ought to have extended the period even for the days when supply of electricity was more than 50% but not 100% as assured - Therefore, respondents are directed to give the said benefit by extending the period of incentive - Doctrine of promissory estoppel - Electricity Act, 1910 - s.22B.

(ii) Promissory estoppel.

*M/s S.V.A. Steel Re-Rolling Mills Ltd. Etc.
Etc. v. State of Kerala & Ors. Etc. Etc.* 336

BAIL:

Bail - Appellants accused of likely to work as conduit for paying huge amount to Naxalites by a company - Refused bail by trial court and High Court - Allegation of false implication - Held: On the basis of orders of the Court, both appellants are on interim bail with the condition that they would not enter the State - Other two accused, have already been granted bail - Charges are yet to be framed - One of the appellant has medical problems - She has also to look after her children who are of tender age - Other appellant is a young man of 24 years and he claims to be genuinely attempting to establish himself as a good citizen in the society - There are certain circumstances, pleaded by appellants, and if ultimately established, there may be a possibility of proving the innocence of

(v)

appellants - Taking into consideration all these circumstances and going by the past history, appellants are enlarged on bail during pendency of trial on conditions enumerated in judgment.

Lingaram Kodopi v. State of Chhattisgarh 459

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, 1947:

Leave and licence.

(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) 480

CODE OF CIVIL PROCEDURE, 1908:

(1) O.8, r. 10.

(See under: Decree) 356

(2) (See under: Representation of the People Act, 1951) 291

CONDUCT OF ELECTIONS RULES, 1961:

r.73(2)(d) - Marking and writing on ballot papers - Held: r.73(2)(d) provides that a ballot paper shall be invalid if "there is any mark or writing by which elector can be identified." - There must be some causal connection between the mark and the identity of voter and such writing or marking itself must reasonably give indication of voter's identity - Marking or writing must be such as to draw an inference about identity of voter.

(Also see under: Representation of the People Act, 1951).

Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr. 291

(vi)

CONSTITUTION OF INDIA, 1950:

(1) Arts. 14, 19(1)(a) and 19(1)(g) - Constitutional validity of Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and Amendment Act of 1974 - Held: In *Express Newspaper*, the Constitution Bench has held the 1955 Act as intra vires the Constitution - The Act being a beneficent legislation, intended to regulate conditions of service of working journalists, does not have the effect of taking away or abridging the freedom of speech and expression of petitioners-newspapers and does not, therefore, infringe Art. 19(1)(a) - Nor could it be held to be violative of Art. 19(1)(g) in view of the test of reasonableness - Challenge as to vires of the Act on the premise of it being ultra vires the Constitution and violative of fundamental rights is wholly unfounded, baseless and completely untenable.

ABP Pvt. Ltd. & Anr. v. Union of India & Ors. 393

(2)(i) Art. 32 - Writ of quo warranto - Appointment to public office - Held: Before a person can effectively claim a writ of quo warranto, he has to satisfy the court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of alleged usurper has been made in accordance with law or not - For issuance of writ of quo warranto, court has to satisfy that appointment is contrary to statutory rules and person holding the post has no right to hold it.

(vii)

(ii) Arts. 14 and 16 - Public employment - Held: Transparency in public employment is an important requirement - Advertisement must specify the number of posts available for selection and recruitment - The qualifications and other eligibility criteria for such posts and schedule of recruitment process should be published with certainty and clarity as also the rules/procedure under which the selection is likely to be undertaken - Any appointment even on temporary or ad hoc basis without inviting applications is in violation of Arts. 14 and 16 and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of employer to invite applications from all eligible candidates from open market.

(iii) Arts. 229 and 235 r/w Arts.14 and 16 - Appointments of staff in High Courts and courts subordinate thereto - Held: Appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Art.14 r/w Art. 16 and under no circumstance any appointment which is illegal should be saved - Employment, whether of Class IV, Class III, Class II or any other class in High Courts or courts subordinate to it, falls within the definition of "public employment" - Such an employment, therefore, has to be made under rules and orders of competent authority.

(iv) Art.229 - Appointment to posts in High Court and courts subordinate thereto - Held: High Court is a constitutional and an autonomous authority subordinate to none - Therefore, nobody can

(viii)

undermine the constitutional authority of High Court and, as such, Supreme Court can only advise the High Court that if its rules are not in consonance with the philosophy of the Constitution, the same may be modified and no appointment in contravention thereof should be made - In order to control the menace of adhocism, methodology to make appointments in High Courts and courts subordinate thereto suggested and directions given in this regard - High Courts may also examine the desirability of centralized selection of candidates for subordinate courts, and to formulate rules to carry out the purpose - Constitutional law - Independence of judiciary.

*Renu & Ors. v. District & Sessions Judge,
Tis Hazari & Anr.* 537

(3) Art.142.
(See under: Specific Relief Act, 1963) 356

CONSTITUTIONAL LAW:

Independence of judiciary.
(See under: Constitution of India, 1950) 537

DECREE:

Execution of ex-parte decree in a suit for specific performance - Held: Merely because it is an ex parte decree, the same does not cease to have the force of decree - It is a valid decree for all purposes - Once decree for specific performance attained finality, defendants cannot make lame contentions regarding executability of the decree - Even if there is any ambiguity, it is for executing court to construe the decree if necessary after

(ix)

referring to the judgment - If sufficient guidance is not available from judgment, court is even free to refer to pleadings so as to construe true import of decree - No doubt, court cannot go beyond the decree - But while executing a decree for specific performance, court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to intention of parties - Code of Civil Procedure, 1908 - O.8, r. 10.

Rajinder Kumar v. Shri Kuldeep Singh & Others 356

DOCTRINES/PRINCIPLES:

Doctrine of equity.

(1) (See under: Representation of the People Act, 1951) 291

(2) (See under: Specific Relief Act, 1963) 356

ELECTION LAWS:

(1) (i) Election dispute - Applicability of doctrine of equity - Held: Statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, doctrine of equity, etc. does not apply in such dispute - All technicalities prescribed/mandated in election law have been provided to safeguard the purity of election process and courts have a duty to enforce the same with all rigours and not to minimize their operation - Representation of the People Act, 1951.

(ii) Recounting of votes - Essential conditions to be satisfied - Discussed.

(x)

(iii) Jurisdiction of court to order recount of votes - Held: Court cannot exercise discretion of ordering recounting of ballots just to enable election petitioner to indulge in a roving inquiry with a view to fish material for declaring the election to be void - The order of recounting can be passed only if petitioner sets out his case with precision supported by averments of material facts.

(iv) Instructions contained in the Handbook for Returning Officer - Binding effect - Held: It is a settled legal proposition that instructions contained in handbook for Returning Officer are issued by Election Commission in exercise of its statutory functions and are therefore, binding on Returning Officers.

(Also see under: Representation of the People Act, 1951).

Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr. 291

ELECTRICITY ACT,1910:

s.22B.

(See under: Administrative Law) 336

EQUITY:

(See under: Specific Relief Act, 1963) 356

EVIDENCE:

Medical evidence - Evidentiary value of - Held: There is no doubt that ocular evidence should be accepted unless it is completely negated by medical evidence - The expression "medical evidence" compendiously refers to facts stated by doctor either in injury report or in post mortem report

(xi)

or during his oral testimony and opinion expressed by doctor on the basis of facts stated - Whether injury caused death of person is opinion of doctor - On the same set of facts, two doctors may have different opinion - Therefore, opinion of a particular doctor is not final or sacrosanct - An opinion given by a doctor, based on the facts recorded on an examination of a victim of a crime, could be rejected by relying on cogent and trustworthy eye witness testimony.

Bastiram v. State of Rajasthan 567

EVIDENCE ACT, 1872:

(See under: Representation of the People Act, 1951) 291

GUIDELINES:

"Guidelines to Prevent Arbitrary use of Powers to Evict Genuine Tenants from Public Premises Under the Control of Public Sector Undertakings/ Financial Institutions (dated 30-5-2002, published in the Gazette of India dated 8-6-2002).

(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) 480

HIMACHAL PRADESH MEDICAL EDUCATION SERVICE RULES, 1999:

r.2(n) - Promotion to post of Assistant Professor in Pharmacology - Respondent possessing M.D. in Pharmacology - Consideration of case of respondent for promotion - Challenged on the ground that he did not possess an M.D. degree in Pharmacology duly recognized by MCI - Held: There is nothing to suggest that recognition of post

(xii)

graduation degree must be by MCI - Respondent was entitled to be considered for promotion and if found suitable, entitled to all consequential benefits - Service law - Promotion.

Dr. Purshotam Kumar Kaundal v. State of H.P. and Others 470

LEAVE AND LICENCE:

(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) 480

MAHARASHTRA RENT CONTROL ACT, 1999:

(See under: Public Premises (Eviction of Unauthorised Occupants) Act, 1971) 480

PENAL CODE, 1860:

(1) s.302 r/w s.34; s.307 r/w s.34 - Murder - Appellants armed with pistols attacked complainant party resulting in death of 3 persons and injury to one - Conviction by courts below - Held: Plea of alibi by one appellant not acceptable as evidence showed that he was present when incident occurred and participated in the crime - Regarding other appellants, there was overwhelming evidence given by eye witnesses about use of firearms by all - Evidence of eye witnesses in regard to these appellants was consistent and there was no reason to differ with concurrent findings arrived at by courts below - Appellants cannot take advantage of death of one and injuries caused to other members of their group in the clash - Both courts below were right in holding that appellants were armed with pistols and that they had fired at victims with intention of killing them.

Bastiram v. State of Rajasthan

(xiii)

(2) s.304 (part II) - Assault with lathis leading to death - Conviction u/s.302 r/w s.149 by courts below - Held: Evidence of prosecution witnesses was truthful and, therefore, rightly relied upon by courts below - However, evidence showed that some of the accused had tangies (sharp cutting weapon) in their hand but they did not use it - All accused were stated to have assaulted the deceased simultaneously with lathis - No individual role was ascribed to any one - Doctor also did not state which injury was fatal - In peculiar facts, it cannot be held that accused shared common object to murder deceased and that in prosecution of that common object they caused his death - It is unusual case where a trivial incident of theft of hen by deceased led to his murder - Accused cannot be said to be guilty of murder - Accused were poor tribals and have been in jail for 14 years - In the interest of justice, conviction u/s.302 r/w s.149 is set aside and accused are convicted u/s.304 (Part II) and sentence already undergone is directed to be treated as sentence imposed on them u/s. 304 (Part II).

Badal Murmu and Ors. v. State of West Bengal

..... 323

PLEADINGS:

Relevance of pleadings - Held: A decision should not be based on grounds outside the pleadings of parties - In absence of pleadings, evidence, if any, produced by parties, cannot be considered - No party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case

(xiv)

set up by them.

(Also see under: Representation of the People Act, 1951).

Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr.

..... 291

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971:

(i) ss.15 and 2(e) r/w s.2(d) - "Public premises" - Eviction of unauthorized occupants - Appellant in occupation of suit property belonging to predecessor-in-title of first respondent, Oriental Insurance Co. Ltd. - Held: Appellant was protected as a 'deemed tenant' u/s 15A of Bombay Rent Act, prior to merger of erstwhile insurance company with first respondent-Government Company and continued to be protected as tenant u/s 7(15)(a)(ii) of Maharashtra Rent Control Act - He could be removed only in accordance with procedure available under Bombay Rent Act or Maharashtra Rent Act - Leave and licence - Maharashtra Rent Control Act, 1999.

(ii) s.2(e) - "Public premises" - Eviction of unauthorized occupants - Appellant in occupation of suit property prior to their being acquired under the Act - Held: - The appellant's status as a deemed tenant was accepted under the State enactment and, therefore, he could not be said to be in "unauthorised occupation" - If first respondent wanted to evict the appellant, remedy was to resort to the procedure available under Bombay Rent Act or Maharashtra Rent Act, by approaching the forum thereunder, and not by resorting to provisions of

Public Premises Act.

(iii) s.2(e) - "Public premises" - Eviction of unauthorized occupants - Held: In *Ashoka Marketing*, it has been observed that Public Premises Act is enacted to deal with mischief of 'rampant unauthorised occupation' of public premises - Clause 2(1) of guidelines dated 30.5.2002 emphasises that the Act was meant to evict (a) totally unauthorised occupants of the public premises or subletees, or (b) employees who have ceased to be in their service, and were ineligible to occupy the premises - "Guidelines to Prevent Arbitrary use of Powers to Evict Genuine Tenants from Public Premises Under the Control of Public Sector Undertakings / Financial Institutions (dated 30-5-2002, published in the Gazette of India dated 8-6-2002).

(iv) Application of the Act - Held: For any premises to become public premises, the relevant date will be 16.9.1958 or the date on which premises become public premises as belonging to or taken on lease by Corporation/Companies, whichever is later - All those persons falling within the definition of tenant occupying the premises prior thereto will not come under the ambit of Public Premises Act and cannot, therefore, be said to be persons in "unauthorized occupation" - Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of tenant under the Bombay Rent Act have, are continued under Maharashtra Rent Act - If possession of premises

in their occupation is required, that will have to be resorted to by taking steps under the Bombay Rent Act or Maharashtra Rent Act - Maharashtra Rent Control Act, 1999.

Dr. Suhas H. Pophale v. Oriental Insurance Co. Ltd. and Its Estate Officer

..... 480

REPRESENTATION OF THE PEOPLE ACT, 1951:

(i) ss.87 and 102 - Election petition - Applicability of Code of Civil Procedure and Evidence Act - Discussed.

(ii) ss.97, 100 - Election petition filed on the ground that 3 votes in favour of election petitioner were wrongly rejected and one vote of returned candidate ought to have been declared invalid - Order for recounting of votes - Held: Election petition had raised dispute only about 4 votes and the case should have been restricted only to that limited question - High Court wrongly enlarged the scope of dispute by counting and recounting - On consideration of alleged 4 votes in election petition, it was found that both parties got equal number of votes - In such a situation, matter required to be decided by draw of lots u/s.102 - Lots drawn in the presence of all parties in open court - Result in favour of appellant and he succeeded.

(iii) s.94 - Secrecy of a ballot - Held: Is to be preserved in view of statutory provision contained in s.94 - Secrecy of ballot has always been treated as sacrosanct and indispensable adjunct of free and fair election - Such principle of secrecy is based on public policy aimed to ensure that voter may vote without fear or favour and is free from

any apprehension of its disclosure against his will.

(iv) ss.97 and 100 - Election petition and recrimination petition - Held: In a composite election petition wherein petitioner claims not only that election of returned candidate is void but also that petitioner or some other person be declared to have been duly elected, s.97 comes into play and allows returned candidate to recriminate and raise counter-pleas in support of his case, "but the pleas of the returned candidate u/s.97 have to be tried after a declaration has been made u/s.100 of the Act." - If the returned candidate does not recriminate as required by s.97, then he cannot make any attack against alternative claim made by election petitioner.

Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Anr. 291

SERVICE LAW:

Promotion.

(See under: Himachal Pradesh Medical Education Service Rules, 1999) 470

SPECIFIC RELIEF ACT, 1963:

s.28 - Application for rescission - Suit for specific performance decreed in 1984 - Execution petition filed in 1990 - Application u/s 28 filed in 1999 - Held: Though execution petition was filed within the time prescribed, efflux of time assumes importance and seriousness in the background of escalation of price in real estate resulting in liability of vendors towards unearned increase - Court failed to advert to this aspect - On such an

application, court may, by order, rescind the contract "as the justice of the case may require" - In the peculiar facts and circumstances of case, trial court should have passed an equitable order while considering the application for rescission - For doing complete justice to parties, it is a case where purchaser should be directed to pay the land value to vendors as per the circle rate notified - Directions given accordingly - Equity - Constitution of India, 1950 - Art.142.

Rajinder Kumar v. Shri Kuldeep Singh & Others 356

WORKING JOURNALISTS AND OTHER NEWSPAPER EMPLOYEES (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS ACT, 1955:

(i) ss. 9 and 13-C - Government of India Notification dated 11.11.2011 notifying the recommendations of Justice Majithia Wage Boards - Held: As regards constitution of Wage Boards, merely because a person had been in the employment of the Government, he does not cease to become "independent" for the purposes of being a member of the Committee to recommend the fixing of wages - Allegation of bias against independent members of Wage Boards, being based merely on their past status, is entirely baseless in law and amounts to imputing motives - Administrative law - Legal bias.

(ii) ss. 9 and 13 - Composition of Wage Boards - Held: To have common representatives of the employers on the two Wage Boards, four independent members, including the Chairman

being common for both the Wage Boards, and separate set of members representing the working journalists and members representing non-journalist newspaper employees in no way affects interest of employers and the challenge of petitioners in this regard is unfounded.

(iii) s.11(1) r/w s.10(1) - Procedure followed by Wage Boards - Held: Wage Board has special powers to regulate its own procedure - As long as it follows the principles of natural justice and fairness, its functioning cannot be called into question on the ground of irregularity in the procedure - In the instant case, Court is satisfied that the decision making process stands valid - There is no irregularity in the procedure adopted by Wage Boards.

(iv) s.10(2) and 12 - Recommendations of Wage Boards and its acceptance by Central Government - Held: Capacity of newspaper industry to pay is one of the essential circumstances to be taken into consideration while fixing rates of wages under the Act - Comprehensive and detailed study has been carried out by Wage Boards by collecting all relevant materials for the purpose of wage revision - It cannot be held that wage structure recommended by Majithia Wage Boards is unreasonable - Besides, it is the prerogative of Central Government to accept or reject the recommendations of Wage Boards - There is no scope for hearing the parties once again by Central Government while accepting or modifying the recommendations, except that modifications are

of such nature which alter the character of the recommendations and such modification is likely to affect the parties - Recommendations of Majithia Wage Boards are valid in law and there is no valid ground for interference under Art.32 of the Constitution.

(v) Implementation of recommendations of Wage Boards - Held: Wages as revised/determined shall be payable from 11.11.2011, when Government of India notified the recommendations of Majithia Wage Boards, and as directed in the judgment.

*ABP Pvt. Ltd. & Anr. v. Union of India
& Ors.*