



THE INDIAN LAW INSTITUTE (Deemed University)

WHAT THE SUPREME COURT HAS SAID

The services of an employee on probation could be terminated before completion of probation

In *Municipal Committee, Sirsa v. Munshi Ram* (Civil Appeal No. 21 of 2003 decided on 2/2/05) the apex court has held that if an employer terminates the services of a probationer by an order of discharge *simpliciter* on the ground that his services are unsuitable, it does not cast any stigma on the employee nor is it punitive. Even the principle of natural justice will not apply in such cases. For an order of termination to be termed as punitive there has to be prior to termination a full scale formal enquiry into the allegations involving moral turpitude or misconduct resulting in a finding of guilt.

In the instant case the respondents appointment letter had stated that his services could be terminated during the probation period without assigning any reasons. He was accordingly, by letter dated 12/3/80 discharged from the duty as (his services were) no longer required by Municipal Committee, Sirsa with immediate effect. Prior to the termination letter, on inspection to the octroi post by the administrator, it was found that the respondent had allowed certain vehicles carrying goods to go without charging octroi fees. He was also found to have in possession, contrary to the rules, excess money of Rs. 15.80. The Labour Court reinstated him but the single judge of the High Court disallowed the same on the ground that a person on probation is on trial. The employer is not bound to suffer an incompetent employee for the full term of probation. The division bench, however, reinstated him holding the order of discharge *simpliciter* was, in reality, a colourable exercise of termination since no enquiry was held. Disagreeing, the Supreme Court held that the respondents was a case of termination *simpliciter* and it did not cast any stigma on him. The mere fact that there was some kind of enquiry earlier would not by itself render the termination invalid.

Accuseds belonging to rural area is no ground for mitigation of punishment

State of M.P. v. Munna Choubey, Cr. App. No. 167 of 2005 decided on 24.1.2005

Reversing an order of the High Court reducing sentence awarded to the accused under sections 376(1) and (2) by the trial Court, the Supreme Court pointed out that in order to exercise the discretion of reducing sentence the requirement is that the court has to record adequate and special reasons in the judgment. The only ground recorded by the High Court for reducing the sentence in the instant case was that the accused persons came from rural areas. The Supreme Court found the High Courts order unsustainable. It was set aside.

Proportion between Crime and Punishment

State of U.P. v. Satish, Cr. App. Nos. 256-257 of 2005 decided on 8.2.2005

Reversing an acquittal of charges including one of murder ordered by the High Court the Supreme Court emphasised the importance of proportionality of punishment thus:

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

The Supreme Court restored death sentence imposed by the trial court.

Need for adducing reasons for decisions

The Supreme Court in *State of Haryana v. Ram Pal*, Cr. App. 234 of 2005 reiterated the need for adducing reasons for decisions. Granting leave to appeal against an acquittal, the Supreme Court said:

Right to reason is an indispensable part of a sound judicial system; reasons at least

sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The inscrutable face of a sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.

Supreme Court deprecates media practice of publishing sub-judice issues

M.P.Lohia v. State of West Bengal, Cr. App. No. 219 of 2005

While examining the prayer for anticipatory bail by persons accused in a dowry death case the Supreme Court noted that a weekly published the version of the tragedy quoting the father of the deceased as to his version of the case. The Court deprecated this practice and observed thus:

We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub-judice.

Payment of interest - whether exigible

In *Southern Agrifurane Industries Ltd. v. Commercial Tax Officer* (Civil Appeal Nos. 8607-8610 A 2002) the question was-whether the appellants were entitled for exemption from payment of interest on the deferred payment of tax for certain industries including sick units.

Both the Tamil Nadu Taxation Special Tribunal as well as the Madras High Court found as a matter of fact that the scheme which was sanctioned by Board of Industrial and Financial Reconstruction (BIFR) initially provided for a limit on the quantum of sales tax deferral namely Rs. 623 lacs - Held that there is no reason to interfere with these concurrent findings of fact - Further held that the appellants were entitled to the relief of sales tax deferral only to the extent it was necessary to take it out of sickness that is on rehabilitation. Anything over and above this amount would not be exempt but chargeable to interest Appeals were accordingly dismissed without any order as to costs.

(Sections 17A and 24 (3) of Tami Nadu General Sales Tax Act,1959 and Sic Industries (Special Provisions) Act, 1985)

Precedential Value of Judgements of Different Benches of the Supreme Court

Rule of precedents in relation to different Benches of the Supreme Court has been reiterated by the Supreme Court in the *Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr.* I.A. No. 4 (WP) (C) 740 of 1986 (10).

The question raised in this case was as to whether a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Benches of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law, the correctness of which is doubted.

The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing.

In the facts and circumstances of the present case, the Court ruled that it should be heard by a Bench of five Judges.

Appointment of President of the State Consumer Disputes Redressal Commission

In response to a reference of a bench of three judges raising the issue whether consultation with an acting Chief Justice would be sufficient compliance of the requirement of consultation under section 16 of the Consumer Protection Act for making appointment of the president of the State Consumer Dispute Redressal Commission a five judge bench of the Supreme Court ruled in *Ashok Tanwar v. State of H.P.* Civil Appeal No. A 2408 of 2004 that a consultation for the purpose of section 16 of Act in relation to an appointment of a judge or a retired judge of a High Court as President of a State Commission cannot be taken or equated to consultation process as

required under Article 217 of the Constitution. The court explained further : for the purpose of section 16 of the Act, the Chief Justice of a High Court need not consult two senior most colleagues in the High Court for recommending a sitting or retired judge of a high court for appointment as a President of the State Commission.

In such process action must be initiated by the Chief Justice under section 16 of the Act and consultation contemplated with the said section is again consultation only with the Chief Justice of the High Court and not with the collegiums.

The Court finally ruled when Article 223 of the Constitution in specific terms confers powers of acting Chief Justice to discharge the functions of the office of the chief Justice without any limitation or rider, it cannot be accepted that an acting Chief Justice can not perform the duties expected to be performed by him under section 16 of the Act Consultation with acting Chief Justice under section 16 of the Act is to be taken as consultation with the Chief Justice of a High Court.

Salaries of Employees: Human and Constitution Right

Kapila Hingorani v State of Bihar (Writ Petition (civil) No. 488 of 2002)

Interlocutory applications have been filed asking court to clarify the order made by it dated 9th May, 2003, as to whether the State of Bihar or State of Jharkhand or both would be required to pay the unpaid salary to the employees of Bihar Hill Area Lift Irrigation Corporation (BHALCO). And also to order the State of Bihar and/or State of Jharkhand to deposit sufficient money in order to pay the salaries to the employees of BHALCO.

While clarifying the course of action on the technical issues arising from the order Supreme Court made it clear that the order dated 9th May, 2003 was passed on the premise that the employees have a human right as also a fundamental right under Article 21 which the states are bound to protect and not by way of an enforcement of their legal right to arrears of salaries.

Principal of Estoppel: Hingorani reiterated

M/s. Larsen & Toubro Ltd. v Union of India (Civil Appeal No. 3025 of 2003)

The Supreme Court reiterated the principles laid down in *Union of India v RR Hingorani* that the before an estoppel can arise, there must be a representation of an existing fact distinct from a

mere promise made by one party to other; secondly, that the other party believing it must have been induced to act on the faith of it and thirdly, that he must have so acted to his detriment. In the present case, no representation had ever been made by the Union of India that IPRS would be applicable to the units located in FTZ.

Interference with respect to the quantum of Punishment

Bharat Forge Co. Ltd. v Uttam Manohar Nakate (Civil Appeal No. 4399 of 2002)

The Supreme Court observed that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. *Regional Manager, Rajasthan State Road Transport Corporation v Sohan Lal* (2004) 8 SCC 218 was relied upon in this case and found that there was no reason for the division bench of Bombay High Court to interfere with the decision of the single bench affirming the decision of revisional court with respect to the quantum of punishment. In this case the labour court set aside the dismissal of respondent. In revision, the industrial tribunal upheld the dismissal, which was later confirmed by the single bench of the Bombay High Court. The division bench, however, modified the punishment and ordered the payment of Rs. 2,50,000/= to the respondent on the ground that the punishment is not proportionate the misconduct proved.

Powers of the Governor

Pu Myllai Hlychho & Ors. V State of Mijoram & Ors. (Civil Appeal Nos. 661-662 of 2003)

In the instant case, the termination of the membership and the nomination of four new members by the Governor of Mizoram to the Mara Autonomous District Council (MADC) was challenged on the ground that the Governor acted on the advice of the council of ministers and so did not exercise his discretion. The Supreme Court observed that our constitution envisages the Parliamentary or Cabinet system of Government of the British model both for the Union and the States. Under this system, Governor is the constitutional or formal head of the State and he exercises all his powers and functions conferred on him by or under the Constitution on the aid and advice of the Council of Ministers save in sphere where the Governor is required by or under the Constitution to exercise his functions in his discretion. The Court followed the principles laid down in *Ram Jawaya Kapur* (AIR 1955 SC 549); *A. Sanjeevi Reddy* (1970) 3 SCR 505 and *U N R Rao* (1971) 2 SCC 63.

Continuous Employment Under Section 25F of The Industrial Disputes Act, 1947

In *DGM Oil & Natural Gas Corpn. Ltd. & Anr. v. Ilias Abdulrehman* (Civil Appeal No. 7229 of 2002) the Respondent workman contended that his services were terminated without complying section 25 of the Industrial Disputes Act, 1947.

The Supreme Court said that the number of days of work put in by a workmen in broken periods in different departments cannot be taken as continuous employment for the purpose of section 25F of the Industrial Disputes Act, 1947.

The court reiterated that the law applicable on the point is governed by the principles laid down in *Indian Cable Co. Ltd. V. Its Workmen*, 1962 (1) LLJ 409.

Widows right to get the tenant evicted

A Constitution Bench of the Supreme Court in *Nathi Devi v. Radha Devi Gupta* (Civil Appeal No. 5027 of 1999) on December 17, 2004 held that a widow or her late husband who acquired a tenanted premises by sale or transfer cannot invoke the provisions of section 14D of the Delhi Rent Control Act, 1958 to evict a pre-existing tenant.

Respondents husband had purchased the property which was let out at the time of purchase. Thereafter Respondents husband died. She sought the eviction of the tenant under section 14D of the Delhi Rent Control Act, 1958 which creates special provision for widows for the purpose of eviction. Section 14D of the Delhi Rent Control Act, 1958 states:

Right to recover immediate possession of premises to accrue to a widow. Where the landlord is a widow and the premises *let out by her or her husband* are required by her for her own residence, she may apply to the Controller for recovering the immediate possession of such premises.

In this case the premises were not *let out by her* or her husband. The court adopting a strict interpretation held that section 14 D of the Delhi Rent Control Act, 1958 benefits only a class of widows viz. a widow who or whose husband has let out the premises.

Service Matter: Mere allegation of criminal charge

Sunil Kumar Singh v. Union of India & Ors. (Civil Appeal No. 13 of 2005)

The appellant was given contractual appointment in postal department on 12/10/1993. On 15.10.1993 a case of kidnapping was filed against the appellant in which he was granted a bail. Thereafter appellant joined the post on 26/04/94. His appointment was challenged before Central Administrative Tribunal (CAT) on the grounds that he was involved in a criminal case. The appellant did not appear to deny the charges before the CAT. The CAT set aside the appointment order on the ground that since the appellant faced a criminal charge, there is a strong possibility of criminalization of Government office. The High Court on appeal concurred with the CAT and dismissed the application.

The appellant filed an SLP before the Supreme Court, which observed that CAT nullified the appointment on the basis of allegations of criminal charge. By the time the High Court decided the matter, the appellant had already been acquitted. But the High Court did not take into account the fact of acquittal. The Supreme Court remitted the matter back to the High Court for fresh consideration as to whether the appellant deserves to continue his job. The Apex Court observed that mere non-appearance before CAT cannot be the determinative factor.

Rehabilitation Scheme: Possession and not the title to land is the Criteria

Satluj Jal Vidyut Nigam Ltd. v. Sangh Dass & Anr. (Civil Appeal No. 6220/1999)

The first Respondent was in possession of certain disputed land. A dispute was going on between the original owner and state government under Land Reforms Act, 1953. The sale deed in favour of first respondent provided that if the said land vested in government, in that eventuality, the respondent will pay compensation to the government. Later on, the court decided that the land vested in the State Government and first respondent is liable to pay compensation to the Government. But the respondent did not pay the amount.

The appellant corporation acquired land including first respondents land for establishing Hydel Power Project and paid due compensation. Afterwards the corporation formulated a scheme for resettlement and rehabilitation of persons whose land had been acquired. The first respondent was denied benefit under the scheme on the ground that he was not the real owner because he had not paid the money to the state government.

In a writ petition U/A 226, the High Court held that the first respondent is entitled to get compensation on the ground that he became landless after the acquisition of land.

The Supreme Court affirmed the decision of High Court and observed that he claim of right was flowing from the Resettlement and rehabilitation scheme. It is not open to the corporation to

challenge the ownership issue, which is a matter between the original owner, state Government and the first respondent

Rehabilitation Scheme: Joint holding and not Joint Residence is criteria

Satluj Jal Vidut Nigam Ltd. & Anr. v. Dila Ram & Ors. (Civil Appeal No. 6218-6219/1999)

The appellant, a statutory corporation and the joint venture of Himachal Pradesh Government, acquired certain land after paying due compensation, for execution of power project. Dila Ram and his elder brother Durga Singh, joint holders of the property, were rendered landless due to such acquisition. Subsequently, the corporation formulated a scheme for resettlement and rehabilitation of persons whose land had been acquired, which provided for benefits to be conferred on one member of the family. Durga Singh was given benefit under the scheme but Dila Rams claim was rejected. Aggrieved by the rejection of claim, the present respondent filed a writ petition, claiming benefits in the High Court on the ground that he was living separately from the family. The High Court directed the appellant to make available the benefit of scheme to him.

The Supreme Court, on appeal, set aside the judgement of the High Court and observed that the Scheme emphasizes on joint holding and family relationship. As revenue record indicate the land was held jointly, the contention that one person was residing separately is wholly irrelevant.

Working out the percentage of reservation

State of U.P. & Anr. v. Pawan Kumar Tiwari & Ors. (Civil Appeal No. 4079/2004)

Uttar Pradesh Public Service Commission advertised certain posts of Civil Judge in the U.P. Judicial Service. The Service also provides for reservation for handicapped, dependants of freedom fighters, SC, ST, OBC etc. The dispute in this case is with respect to the application of percentage as against the total number of posts. The respondent belonged to the general category. He was at the top of the waiting list comprising of 3 candidates. Aggrieved by the denial of appointment, respondent filed writ petition in the High Court for the issuance of writ of mandamus direction the appellants to issue a letter of appointment to the respondent. The High Court found mainly two faults in the process adopted by the state government. Firstly, the figure of 46.50% should have been rounded off to 47 and not to 46, and secondly, in the category of freedom fighters and ex-service men, total 3 posts have been earmarked as horizontally reserved. Insertion of this reservation in to general category of 46 had the effect of pushing out 3 candidates from merit list of general category. The High Court allowed writ petition and mandamus issued.

Supreme Court concurred with the reasoning adopted by the High Court. It clarified that the rule of rounding off, based on logic and common sense, is: if part is one-half or more its value shall be increased to one and if part is less than half than its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find place in the list of selected meritorious candidate as and hence entitled to appointment. The Supreme Court dismissed SLP being devoid of any merit.

High Court not competent to order employer to disregard reservation policy Also Apprenticeship does not confer right to employment

Chairman/M.D. Mahanandi Coalfields Ltd. & Ors. v. Sri Sadashib Behera & Ors. (Civil Appeal No. 30 of 2005)

Sadashib Behera who passed a certificate examination in welders trader and did one year apprenticeship training in the same field with Mahanadi Coalfields Ltd was called for interviews but not selected, for the post of welder. In a writ petition, filed by him, the High Court observed that there were 9 vacancies out of which 5 were reserved for general category. Mr. Sadshib Bheras placement in the merit list was 4th and the person who was on the 4th did not join, so a direction was issued to the appellants to appoint the respondent No.1 within a period of two months.

The appellants filed a review petition mainly on the ground that there were only 7 sanctioned posts and not 9 as has been mentioned in the Judgment. The High Court disposed of the review petition by observing that the numbers of sanctioned posts were not correctly stated for which the petitioners are themselves responsible and thus their prayer to review the order is not reasonable. The Court further instructed the petitioners to de-reserve one reserved post (which was lying vacant) and give appointment to Sadashib Behera within two months.

The Supreme Court, on appeal, declared High Courts view unsustainable and held that the appellants were bound by the reservation policy and it is not open to the High Court to issue a writ for disregarding the reservation policy and give appointment to a general category candidate on a post which is meant for a reserved category candidate.

The Supreme Court further observed that Sec. 22 of the Apprenticeship Act, 1961 does not bind the employer to offer any employment to any apprentice who had completed the period of his apprenticeship training.

Defendant can argue in the First Appeal filed under S.96(2) CPC

on merits of the Suit

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When an application under Order 9, Rule 13 of the Code is dismissed, the defendant can only avail a remedy available there against. Viz. to prefer an appeal in terms of Order 43, Rule 1 of the Code. Once such an appeal is dismissed, the Appellant cannot raise the same contention in the First Appeal. If it be held that such a contention can be raised both in the First Appeal as also in the Proceedings arising from an application under Order 9, Rule 13, it may lead to conflict of decisions which is not contemplated in law.

The dichotomy, the court held, can be resolved by holding that whereas the defendant would not be permitted to raise a contention as regards the correctness or otherwise of the order posting the suit for ex-parte hearing by the Trial Court and/or existence of a sufficient case for non appearance of the defendant before it, it would be open to him to argue in the First Appeal filed by him against Section 96(2) of the Code on the merit of the suit so as to enable him to contend that the materials brought on record by the plaintiffs were not sufficient for passing a decree in his favour or the suit was otherwise not maintainable. Lack of jurisdiction of the court can also be a possible plea in such an appeal.

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Rajasthan Cooperative Societies Act 1965-Govt is revisional authority

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The Supreme Court in *Ishwar Singh v. State of Rajasthan*, Civil Appeal No.31 of 2005 ruled that under Rule 244 of Rajasthan Service Rules applicable to the Sadul Shahr Kray Vikray Sevak Samiti registered under the Rajasthan Societies Act 1965 an employee can be compulsorily retired after completion of 25 years of service or when he attains age of 50 years.

In this case the order passed by the Chief Executive Officer was reversed by the Additional Registrar of Cooperative Societies. This was reversed by the Secretary, Cooperative Department, Govt. of Rajasthan in revision as the Addl. Registrar was not a revisional authority. The petitioners petitions to the single bench and Division bench of High Court of Rajasthan were reversed. Appeal to the Supreme Court was also rejected holding that the Addl. Registrar had no jurisdiction to entertain revision under the Rajasthan Cooperative Societies Act 1965. The Secretary's order setting aside the order passed by the Addl. Registrar was therefore held correct.

Irretrievable breakdown: a ground for divorce

Irretrievable breaking of marriage is not one of the statutory grounds on which Court can direct dissolution of marriage. But the Supreme Court has with a view to do complete justice and

shorten agony of the parties engaged in long drawn battle, directed dissolution of marriage. Indeed, these were exceptional cases. In *A. Jayachandra v. Aneel Kaur*, Civil Appeal No. 7763-7764 of 2004 the Supreme Court examined these cases. And after discussing the fact concluded thus: When the respondent gives priority to her profession over her husbands freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage. The Court found the marriage irretrievably broken down and granted divorce to the husband.

Falling standards of legal profession

The Supreme Court expressed anguish over falling standards of professional conduct of lawyers. In this case the High Court of Orissa came to render a decision relying on the judgment of Patna High Court in *J.A.C.Saldanha v. Inspector General of Police Bihar, Patna and others* [(1979) ILR (Patna) 459], which was already overruled by the Supreme Court in *State of Bihar v. J.A.C. Saldanha and Others* [(1980) 1 SCC 554]. The Court lamented the fact that a decision which has been overruled by the Supreme Court nearly quarter of a century back was cited by the Bar and the court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. The Supreme Court pointed out that members of the Bar are officers of the court and that they have a bounden duty to assist the court and not mislead it. [*State of Orissa v. Nalinikanta Muduli* AIR 2004 SC 4272]

Dismissal of application after 30 days justified

Under section 17-A of the Industrial Disputes Act, 1947 an award becomes enforceable on the expiry of 30 days from the date of its publication. Once an award becomes enforceable, the industrial tribunal or the labour court, as the case may be, becomes *functus officio*. Therefore, dismissal of an application for setting aside an *ex parte* award by the labour court, filed after 30 days of its publication, it has been held by the apex court, suffered from no illegality. [*M/s. Sangham Tape Co. v. Hans Raj*, 2004, LLR 1098 (SC)].

Criminal court findings have no impact on labour court proceedings

While adjudicating an industrial dispute, it is open to the labour court to come to an independent conclusion *de hors* the finding of the criminal court. The reason being that the approach and the objectives of both the proceedings criminal and disciplinary are altogether different and distinct. Hence the order of the criminal court acquitting the accused should have no bearing on the finding of the labour court up-holding the dismissal of the workmen. [*Management of*

Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh, 2004 LLR 1056 (SC)].

It is loss of confidence and not the amount misappropriated

It is not the amount of money mis-appropriated rather, it is the loss of confidence, which is the guiding principle while determining the quantum of punishment. The respondent conductor was found in possession of unaccounted money of Rs. 93/- when under the regulations he was not to carry more than Rs. 5/- as his personal money while on duty. Having been found guilty in the departmental enquiry, he was dismissed from service. The labour court terming the dismissal as uncalled for and highly disproportionate directed reinstatement with full back wages, the high court upholding the same. The Supreme Court setting aside the order of reinstatement, held that once the person was found guilty of mis-appropriation, hence loss of confidence in him by the employer, the order of dismissal was not disproportionate and also it was not open to the tribunals or the courts to substitute the punishment based on their subjective opinion [*Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane* (2004 LLR 1105 (SC))].

Right to Privacy Strengthened

The votaries of Right to Privacy attained another victory with the Supreme Court declaring Section 73 of the Indian Stamp Act as amended in its application to the State of Andhra Pradesh *ultra vires* the Constitution of India which sought to grant unhindered power to the Collector to inspect documents with private individuals and banks for the purpose of assessing and levy of stamp duty. In *Distt. Registrar & Collector, Hyderabad & Anr. v. Canara Bank etc.* (CA 7079/2004) the court quashed the provision which empowered any person authorised by the Collector to have access to documents in private custody or custody of a public officer without regard to the fact whether the documents were sought to be used before any authority competent to receive evidence. Putting a premium on the citizen's right to privacy the court said, The documents or copies of documents of the customer which are in bank, must continue to remain confidential vis--vis the person, even if they are no longer at the customer's house and have been voluntarily sent to the bank.

Software is goods

In *Tata Consultancy Services v. State of Andhra Pradesh*, 2004 (10) JT 64, the Supreme Court has resolved the controversy whether software be treated as goods and hence subject to sales tax. The Supreme Court held that though software may be an intellectual property, but such intellectual property once contained in a medium, which can be bought and sold, would be treated

as goods the determining factor being its marketability. Examining the definition of goods under various Indian enactments, the court acknowledged that its meaning is wide enough to cover software contained on any medium.

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