

Precedents on the Constitution

AIR 1986 SUPREME COURT 468

O. CHINNAPPA REDDY, E.S. VENKATARAMIAH, V. BALAKRISHNA ERADI, R.B. MISRA, AND V. KHALID, JJ.

Prakash Amichand Shah, Appellant v. State of Gujarat and others, Respondents.

(B) Constitution of India, Art.141 - Precedent - What is - Duty of Court while applying, stated. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision would be binding as a precedent in case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions 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. (Para 26)

An inappropriate purpose for which a precedent is used at a later date does not take away its binding character as a precedent, in such cases there is good reason to disregard the later decision. Such occasions in judicial history are not rare.

AIR 1986 SUPREME COURT 806

P.N. BHAGWATI, C.J.I. AND R.S. PATHAK AND AMARENDRA NATH SEN, JJ.**

(1) Union of India and others, Appellants v. Godfrey Philips India Ltd., Respondents.

AND

(2) The Union of India and others, Appellants v. India Tobacco Co.Ltd., Respondent.

AND

(3) Union of India and other, Appellants v. The Vazir Sultan Tobacco Co. Ltd.etc., Respondents.

(C) Precedents - Decision of bench of two Judges of Supreme Court - Co-ordinate Bench cannot differ from decision of earlier bench - Subsequent bench finding itself unable to agree with earlier decision - It should refer earlier decision to larger bench.

Constitution of India, Art.141. (Para 12)

AIR 1986 SUPREME COURT 1440

= 1986 Cri. L.J. 1074

(From : Delhi)

V. KHALID AND M.M. DUTT, JJ.

Criminal Appeal No. 184 of 1979, d/-25-4-1986.

Maj. Genl. A.S. Gauraya and another, Appellants v. S.N. Thakur and another, Respondents.

(B) Constitution of India, Art.141 - Precedent - Supreme Court's decision - Binding nature - Law laid down by Supreme Court applies to all pending proceedings even with retrospective effect.

Where the Sessions Court allowed a revision before it by passing the decision of Supreme Court on the point involved with the observation that a pronouncement as to the position of law in a judicial decision by the Supreme Court cannot be treated as a sort of legislation by the Parliament giving retrospective effect as to enjoin re-opening of all matters which have already become final and closed, the order of Sessions Court was held unjustified. There is nothing like any prospective operation alone of the law laid down by Supreme Court. The law laid down by that Court applies to all pending proceedings. If there would have been an earlier order of the High Court binding on Sessions Judge it would have been a different matter. He got rid of the

effect of Supreme Court's judgment by observing that a decision by that Court cannot be treated as "a sort of legislation by Parliament" and thus overlooked the binding nature of the law declared by Supreme Court, mandating under Art. 141, every Court subordinate to that Court to accept it. (Para 12)

AIR 1986 SUPREME COURT 1455

(From : Gujarat)*

R.S. PATHAK, A.P. SEN AND D.P. MADON, JJ.

Civil Appeals Nos. 2359 of 1816 of 1980, D/-6-4-1986.

G.K. Dudani, and others, Appellants v. S.D. Sharma and others, Respondents.

AND

State of Gujarat, Appellant v. S.D. Sharma and others, Respondents.

(C) Constitution of India, Art.141 - Decision of Supreme Court - Division Bench of High Court cannot sit in appeal over it - High Court should take the words in the judgment in the sense in which they were used and apply to the facts before it. (Para 19)

AIR 1987 SUPREME COURT 179

R.S. PATHAK AND SABYASACHI MUKHARJI, JJ.

Civil Misc. Petns. Nos. 20021-22 of 1986, (In Civil Appeal No. 2924 of 1984), D/-12-9-1986.

M/s. Star Diamond Co. India, Applicant v. Union of India and others, Respondents.

(A) Constitution of India, Art.141 - Supreme Court decisions laying down position in law are laws binding on all - Party need not be served with any notice or be a party to the said proceedings. (Paras 1,4)

AIR 1987 SUPREME COURT 413

O. CHINNAPPA REDDY AND V. KHALID, JJ.

Writ Petn. Nos. 1730-1731 of 1978, D/-4-12-1986.

Gopal Upadhyaya and others, Petitioners v. Union of India and others, Respondents.

(B) Constitution of India, Art.141 - 'Law declared by Supreme Court' - Question answered by Supreme Court expressly or by necessary implication - Such answer to question constitutes precedents - Reference to decisions appealed against for decision as to question involved - Not proper.

Precedents - Supreme Court decision.

When a question is answered expressly or by necessary implication by Supreme Court the answer cannot be ignored by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the Judges themselves are what constitute precedents. (Para 4)

AIR 1998 SUPREME COURT 1855

(From : Madhya Pradesh)*

Dr. A.S. ANAND AND K. VENKATASWAMI, JJ.

Civil Appeal No. 2140 of 1998 (arising out of S.L.P. (C) No. 13190 of 1997), D/- 20-4-1998.

M/s. Chetak Construction Ltd., Appellant v. Om Prakash and others, Respondents.

(C) Constitution of India, Art.141 - High Court Judge - Powers - Cannot direct that appeal pending before him be decided finally by Supreme Court - Such order is subversive of judicial discipline.

It is improper for a Judge of the High Court to "direct" that an appeal pending before him be decided by the Supreme Court itself "finally" and to further suggest that the Supreme Court

should not "remand the appeal" to the learned single Judge or to any other Judge of any High Court. No authority or power exists in a single Judge of the High Court to make such an order of "remand" to the Supreme Court. The direction, is subversive of proper judicial discipline. By asking Supreme Court to "finally" decide the appeal and not to "remand" it to any Judge in the country, the learned single Judge appears to have @page-SC1856 arrogated to himself a power which he does not possess. (Para 25)

AIR 1997 SUPREME COURT 3021

K. RAMASWAMY AND D.P. WADHWA, JJ.*

(D) Constitution of India, Art.142, Art.145(6), Art.32, Art.141 — Relief — Public interest litigation involving question of rescue, rehabilitation etc. of fallen women/prostitutes and their children — Not adversarial in nature — Directions therein — Difference of opinion between two judges — Direction/order issued by one of them — May be appropriate and efficacious to enforce fundamental and human rights of neglected and exploited segments of society.

AIR 1997 SUPREME COURT 3011

J.S. VERMA, C.J.I., Mrs. SUJATA V. MANOHAR AND B.N. KIRPAL, JJ.

Writ Petn. (Criminal) Nos. 666-70 of 1992, D/- 13-8-1997.

Vishaka and others, Petitioners v. State of Rajasthan and others, Respondents.

(C) Constitution of India, Art.32, Art.141, Art.14, Art.21 — Gender equality and guarantee against sexual harassment and abuse more particularly of working woman at work places — Law for effective enforcement absent — Supreme Court in exercise of powers under Art. 32 laid down guidelines and norms — Guidelines and norms to be treated as law declared under Art. 141 — Applicable to both public and private sector.(Para 16)

AIR 1997 SUPREME COURT 2658

S.C. SEN, K. VENKATASWAMI AND V.N. KHARE, JJ.

Civil Appeals Nos. 4897-4901 of 1990*, D/- 7-7-1997.

M/s. Sun Export Corporation, Bombay, Appellant v. Collector of Customs, Bombay and another, Respondents.

(B) Constitution of India, Art.141 — Precedents — Appeal to S.C. — Rejected in limine at admission stage — Does not constitute binding precedent. (Para 13)

AIR 1997 SUPREME COURT 2270

(From: Kerala)

K. RAMASWAMY AND G.B. PATTANAIK, JJ.

Spl. Leave Petn. (C) No. 21792 of 1996, with 23650 of 1996, (CC-5886/96), D/- 18-11-1996.

State of Kerala, etc., Petitioners v. Guruvayur Devaswom Managing Committee and others etc., Respondents.

Constitution of India, Art.226, Art.141 - Discretionary jurisdiction - Exemplary work done by Administrator on deputation in connection with conducting examination as per directions of Court - High Court directing payment of monetary consideration in addition to commendation of work done by him - It being discretion exercised in extraordinary situation, not interfered with - Direction, however cannot be treated as precedent. (Para 3)

AIR 1995 SUPREME COURT 1729

(From : Madhya Pradesh)

A.M. AHMADI, C.J.I., J.S. VERMA, P.B. SAWANT, B.P. JEEVAN REDDY AND N.P. SINGH, JJ.

Civil Appeal No. 5061 of 1993, with 5062 of 1993, with 5511 of 1995 (arising out of S.L.P. (C) No. 17232 of 1993) and 7486 of 1993, D/-12-5-1995.

Sarwan Singh Lamba and others, Appellants v. Union of India and others, Respondents.

WITH

R.P. Kapoor, Appellant v. Union of India and others, Respondents.

WITH

The Industrial and Labour Bar Association, Bhopal and another, Appellants v. Union of India and others, Respondents.

AND

Union of India, Appellant v. Daulat Singh and others, Respondents.

(B) Constitution of India, Art.141 - Obiter dictum by Supreme Court - Is expected to be obeyed and followed. (Para 19)

AIR 1995 SUPREME COURT 1480

(From : Madhya Pradesh)

J.S. VERMA AND Mrs. SUJATA V. MANOHAR, JJ.

Special Leave Petn. (Civil) No.2504 of 1995, D/- 7-4-1995.

Indian Oil Corporation Ltd., Petitioner v. Municipal Corporation and another, Respondents.

(A) Constitution of India, Art.141 - Decision of Supreme Court - Binds High Court - That Court cannot take the view that it does not bind it - Such view even co-equal bench of Supreme Court cannot take.

1989 MPLJ 20, Overruled.

AIR 1995 SUPREME COURT 31

M.N. VENKATACHALIAH, C.J.I. AND S. MOHAN, J.

Writ Petn. No. 239 of 1993, D/-9-9-1994.

Kheda Mazdoor Chetana Sangath, Petitioner v. State of M.P. and others, Respondents.

(B) Constitution of India, Art.141 - Precedent - Successive pronouncements of Supreme Court condemning practice of hand-cuffing under-trial prisoners by police - It constitute law of the land - Attitude of Judicial Magistrate in not taking any action against hand-cuffing of under-trial prisoners - Deprecated.

Precedent - Successive pronouncements of Supreme Court against practice of hand-cuffing under-trial prisoners by police - Constitute law of land.

Hand-cuffing - Successive pronouncements by Supreme Court against such practice - Inaction of judicial officers deprecated. (Paras 35, 43)

AIR 1994 SUPREME COURT 2489

(From : 1977 Tax LR 1771 (Madh. Pra.))

M.M. PUNCHHI, S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.

Civil Appeal Nos. 230-233 of 1977, D/22-7-1994.

Organon (India) Ltd. (Now known as INFAR (India) Ltd. and another, Appellants v. The Collector of Excise and others, Respondents.

(C) Constitution of India, Art.141 - Precedents - Long standing and consistently affirmed concept Rejection of, by Court - Cannot be inferred - If it is proposed to be rejected, it must be put in issue in a straight manner and be pronounced upon. (Para 25)

AIR 1994 SUPREME COURT 1074

(From : Andhra Pradesh)*

M. N. VENKATACHALIAH, C.J.I., P.B. SAWANT, K. RAMASWAMY, S. MOHAN AND B. P. JEEVAN REDDY, JJ.**

Managing Director, ECIL, Hyderabad, etc. etc., Appellants v. B. Karunakar, etc. etc., Respondent.

(G) Constitution of India, Art.311, Art.141 - Law that "delinquent is entitled to copy of Inquiry Officer's report" - It is made applicable prospectively w.e.f. 20-11-1990 by Supreme Court in Mohd. Ramzan Khan's case - Relief granted to Mohd. Ramzan Khan and his companions held per incuriam (Per Majority, K. Ramaswamy J. disagreeing) Prospective overruling - Effect.

The law whether after the 42nd Constitution Amendment the delinquent was entitled to copy of Inquiry Officer's report was in an unsettled condition till 20th Nov. 1990 on which day Mohd. Ramzan Khan's case, (AIR 1991 SC 471) was decided by the Supreme Court holding that the delinquent is entitled to copy of the report of the Inquiry Officer is as to enable him to make representation to the Disciplinary Authority against it. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so, notwithstanding the ultimate relief which was granted in Mohd. Ramzan Khan's case, (AIR 1991 SC 471) which was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in courts / tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case. This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by the Supreme Court in R. K. Vashist's case (1993 Suppl. (1) SCC 431). In view of the unsettled position of the law on the subject, the authorities / managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

AIR 1988 SC 1338, Explained and Disting. (Paras 7, 8)

AIR1993 SC 2005

E) Constitution of India, Art.141 - Precedents - Question regarding payment of interest on deposit for electricity supply - Not adjudicated earlier by Court - Decision in earlier petition by Bench of three Judges entirely based on interlocutory order - Not a bar for deciding question on merits by subsequent Bench of two Judges. (Para 129)

AIR 1993 SUPREME COURT 477

M.H. KANIA, C.J.I., M.N. VENKATACHALIAH, S. R. PANDIAN, Dr. T. K. THOMMEN, A.M. AHMADI, KULDIP SINGH, P.B. SAWANT, R.M. SAHAI AND B.P. JEEVAN REDDY, JJ.*

Indra Sawhney etc. etc., Petitioners v. Union of India and others, etc. etc., Respondents.

* Note :- In this case the Judges of the Supreme Court differ in their views. The Majority view is taken by M.H. Kania, C.J., M.N. Venkatachaliah, S. Ratnavel Pandian, A.M. Ahmadi, P.B. Sawant and B.P. Jeevan Reddy, JJ. and the minority view by Dr. T.K. Thommen, Kuldeep Singh, R.M. Sahai, JJ.

The judgments are printed in the order in which they are given in the certified copy - Ed.

(C) Constitution of India, Art.141 - Stare decisis - Relevance and significance Certainty, consistency and continuity are highly desirable features in law - Decision that has stood test of time and has never been doubted - Has to be respected. (Per B.P. Jeevan Reddy, J. (for himself and on behalf of M.H. Kania, C.J. and M.N Venkatachaliah, A.M. Ahmadi, JJ.)

Precedents - Law of long standing - To be respected. (Para 26A)

AIR 1993 SUPREME COURT 43

(From : 1977 Tax LR 716 (Cal))

YOGESHWAR DAYAL AND Dr. A.S. ANAND, JJ.

Civil Appeal Nos. 3251-52 of 1979, D/- 17-9-1992.

Commissioner of Income-tax, Appellant v. M/s. Sun Engineering Works (P.) Ltd., Respondent.

(B) Constitution of India, Art.141 - Supreme Court judgment - Interpretation of - It has to be read as whole - Picking out a word or sentence divorced from context and treating it as "law" declared by Supreme Court - Not proper.

It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Supreme Court and not to pick out words or sentences from the judgment divorced from the context of the questions under consideration by the Court, to support their reasonings. (Para 39)

AIR 1992 SUPREME COURT 248

(From : Madhya Pradesh)*

RANGANATH MISRA, C.J.I., K.N. SINGH, M.N. VENKATACHALIAH, A.M. AHMADI AND N.D. OJHA, JJ.**

Civil Misc. Petns. Nos. 29377-A of 1988, 7942-43, 16093 and 17965 of 1989, Review Petns. Nos. 229 & 623-24 of 1989, In Civil Appeal Nos. 3187-88 of 1988, (with W.P. Nos. 257, 297, 354, 379, 293, 399, 420, 231, 300, 378 & 382 of 1989) In C.A. Nos. 3187-88 of 1988 I.A. No. 1 of 1990 (in W.P. Nos. 281 of 1989) and W.P. Nos. 741 of 1990 & 3461 of 1989), D/-3-10-1991.

Union Carbide Corporation, etc., etc, Petitioners v. Union of India, etc. etc., Respondents.

(K) Constitution of India, Art.141 - Bhopal Gas Leak Disaster (Processing of Claims) Act (21 of 1985), S.4 - Binding Precedent - What is - Court considering constitutionality of Act of 1985 and scope of obligation under S. 4 to afford hearing - Suggesting curatives in case of non-compliance of obligation to afford hearing - Curatives suggested cannot be treated as obiter dicta.

Precedent - What is - Observations in judgment - When can be called obiter dicta.

Obiter dicta - What constitutes.

The Supreme Court in Sahu's case AIR 1910 SC 1480 was not only sitting in judicial review of legislation namely the Bhopal Gas Disaster (Processing of Claims) Act 1985; but was a Court of construction also, for, it is upon proper construction of the provisions, questions of

constitutionality come to be decided. The Supreme Court was considering the scope and content of the obligations to afford a hearing implicit in S.4 of the Act of 1985. It cannot be said to have gone beyond the pale of the enquiry when it considered the further question as to the different ways in which that obligation to afford a hearing could be complied with or satisfied. It cannot be said @page-SC253 that these observations were made by the way and had no binding force.

AIR 1990 SC 1480, Explained. (Para 79)

AIR 1991 SUPREME COURT 2176

K.N. SINGH, KULDIP SINGH AND N.A. KASLIWAL, JJ.

Writ Petn. (Cri.) Nos. 517 with 518 of 1989 With Contempt Petn. (Cri.) Nos. 6, 523-524, 525-26, 527 of 1989 With Cri. Misc. Petn. Nos. 1110 of 1990 With 4271, 4272, 4274, 4277-4282 of 1989 With Cri. Contempt Petn. No. - of 1989 With Cri. Misc. Petn. No. 1110 of 1990, D/- 11-9-1991.

Delhi Judicial Service Association, Tis Hazari Court, Delhi, Petitioner v. State of Gujarat and others, Respondents

I) Precedents - Decisions of Federal Court - Supreme Court is not bound by them.

Constitution of India, Art.141. (Para 32)

AIR 1990 SUPREME COURT 560

(From : AIR 1988 Punj and Har 281 (FB))

SABYASACHI MUKHARJI AND S. RANGANATHAN, JJ.

Civil Appeal Nos. 2448 of 1989 with 2449 to 2459 of 1989 (Arising out of S.L.P. (Civil) Nos. 7709, 9217, 14887, 8108, 8365, 9012 and 10709 of (1988) with Writ Petn. Nos. 925, 1183, 1188 and 1199 of 1988 and 169 of 1989, D/- 21-4-1989.

Ramesh Birch and others, etc. etc., Appellants v. Union of India and others, Respondents.

WITH

R.K. Saxena and etc. etc., Petitioners v. Union of India and others, Respondents.

(A) Precedents - Clear conclusion arrived at by majority of judges in a case arising out of Legislation framed on advice of Supreme Court reference made after Independence in respect of felt legislative needs - Conclusion arrived at by different judges by different processes of reasoning - It cannot be ignored.

Constitution of India, Art.141.

One may doubt the wisdom of attempting to trace a common ratio decidendi from divergent views expressed by different judges in support of a conclusion but it seems equally illogical to altogether ignore a clear conclusion arrived at by the majority of judges only because they arrived at that conclusion by different processes of reasoning. One would rather have thought that a conclusion stands more fortified when it can be supported not on one but on several lines of reasoning. At least for an identical problem, the final answer should be the same. This should particularly be so when it is remembered that the case arose because, soon after India became a Republic, the Government, envisaging the necessity of having recourse to legislation of the type as contained in S. 87 of the Punjab Reorganisation Act (1966)) where-under power is conferred on the executive to extend to the Union Territory of Chandigarh any law in force in any part of India in the context of the changing topography of India took the precaution of seeking the advice of the Supreme Court for its future guidance and that they have acted upon the answer propounded by the Supreme Court in enacting a provision of this type. (Para 20)