

13/12/14

HIGH COURT OF TRIPURA

Examination for Recruitment to Grade-I of the Tripura Judicial Service.

PAPER-I

Total Marks 100

Three Hours

I. Answer by tick [✓]

30 Marks (1 Mark for each correct answer)

1) Which among the following do/does not belong/belongs to the GSM Family?

- | | | | |
|-----------------------|---|---|---|
| a) EDGE | : | [|] |
| (b) LTE | : | [|] |
| (c) DSL | : | [|] |
| (d) Both EDGE and LTE | : | [|] |

2) Why do you feel cool under a tree but not so under a tin shed on a sunny day?

- | | | | |
|---|---|---|---|
| a) The greenness of the tree gives the cool feeling. | : | [|] |
| (b) Photosynthesis absorbs heat. | : | [|] |
| (c) The leaves covert under vapours into water which is a heat absorbing process. | : | [|] |
| (d) The leaves give out water which vaporizes absorbing some heat. | : | [|] |

3) Harsha was the last great royal patron of :

- | | | | |
|-----------------|---|---|---|
| a) Jainism | : | [|] |
| (b) Buddhism | : | [|] |
| (c) Shaivism | : | [|] |
| (d) Bhagavatism | : | [|] |

- 4) Who amongst the following is most famous for the establishment of elaborate system of municipal administration?
- a) Kanishka : []
- (b) Harshavardhana : []
- (c) Chandragupta Maurya : []
- (d) Ashoka : []
- 5) The founder of the first Afghan dynasty in India was:
- a) Bahlol Lodi : []
- (b) Ibrahim Lodi : []
- (c) Sikandar Lodi : []
- (d) Sher Shah Suri : []
- 6) "Mansabdars" in Mughal period were:
- a) Officers of the State : []
- (b) Those who had to give revenue : []
- (c) Landlords and zamindars : []
- (d) Revenue collectors : []
- 7) Under the leadership of which of the following Gurus did the Sikh become a political and military force?
- a) Guru Harkishan : []
- (b) Guru Teg Bahadur : []
- (c) Guru Arjun Dev : []
- (d) Guru Gobind Singh : []
- 8) Who amongst the following is most famous for the establishment of an elaborate system of municipal administration?
- a) Kanishka : []
- (b) Harshavardhana : []
- (c) Chandragupta Maurya : []
- (d) Ashoka : []
- 9) Consider the following statements:
- a) In the Third Battle of Panipat, Ahmed Shah Abdali defeated Ibrahim Lodi : []
- b) Tipu Sultan was killed in the Third Anglo Mysore War : []

- c) Mir Jafar entered in a : []
conspiracy with the English for
the defeat of Nawab Siraj-ud-
daulah in the battle of Plassey
- 10) Which among the following was the most immediate factor for the spread
of Swadeshi and boycott of foreign goods during the first decade of the
last century:
- a) Curzon's design to curtail the : []
sphere of local self-government
- b) Curzon's attempt to control the : []
Universities
- c) Curzon's partition of Bengal : []
- d) Curzon's plan to curb the : []
growing popularity of the
Indian National congress
- 11) Which of the following is the correct chronological order of the formation
of the following states in India?
- (i) Sikkim (ii) Mizoram
(iii) Goa (iv) Arunachal Pradesh
- a) 3,1,2,4 : []
- b) 1,2,3,4 : []
- c) 1,2,4,3 : []
- d) 1,4,2,3 : []
- 12) Which of the following is not a state's Capital in India?
- a) Dispur : []
- b) Srinagar : []
- c) Ahmedabad : []
- d) Bangaluru : []
- 13) Which one of the following pairs of state's tribe is not correctly matched?
- a) Assam : Miri : []
- b) Nagaland : Konyak : []
- c) Arunachal Pradesh : Apatani : []
- d) Madhya Pradesh : Lambada : []

14) According to the Citizenship Act, 1955, Indian citizenship cannot be acquired by:

- a) incorporation of territory not forming part of India at the commencement of the Constitution : []
- b) children of the diplomatic personnel or alien enemies born in India on or after 26th January, 1950 : []
- c) children born of Indian citizens abroad : []
- d) naturalization : []

15) Indian Constitution recognises minorities on the basis of:

- a) caste : []
- b) population : []
- c) religion : []
- d) colour : []

16) In India right to "freedom of speech and expression" is restricted on the grounds of:

- (i) the sovereignty and integrity of India. (ii) contempt of court.
- (iii) friendly relation with foreign states (iv) protection of minorities

Select the correct answer using the code given below:

- a) 1,2 and 3 : []
- b) 2,3 and 4 : []
- c) 1 and 3 : []
- d) 1,2 and 4 : []

17) After approval by both Houses of Parliament, the proclamation of emergency issued by the President shall be valid:

- a) for period of six months : []
- b) for an indefinite period unless revoked by the subsequent proclamation : []

[5]

- c) for an indefinite period if both Houses of Parliament approves the proclamation after every six months : []
- d) for further period of two months only : []

18) Match the following:

Amendment	Provision
a) 42 nd	(i) Panchayati Raj
b) 44 th	(ii) Fundamental Duties
c) 61 st	(iii) Voting age lowered from 21 years to 18 years
d) 73 rd	(iv) Right to Property abolished

19) The President of USA is elected after every:

- a) 3 years : []
- b) 4 years : []
- c) 5 years : []
- d) 6 years : []

20) The expression 'Creamy Layer' used in the judgment of the Supreme Court relating to the case regarding reservations refers to:

- a) those sections of the society which pay income tax : []
- b) those sections of socially and educationally backward classes of the society that are developed : []
- c) those sections of the society that are considered advanced according to the Karpuri Thakur formula : []
- d) all sections of the upper castes of the society : []

21) Department of Border Management is a Department of which one of the following Union Ministers?

- a) Ministry of Defence : []
- b) Ministry of Home Affairs : []
- c) Ministry of Shipping, Road Transport and Highways : []

d) Ministry of Environment and Forests : []

22) Which of the following Constitution Amendment Acts seeks that the size of the Councils of Ministers at the Centre and in a State must not exceed 15 percent of the total number of members in the Lok Sabha and the total number of members of the Legislative Assembly of that State, respectively?

a) 91st : []

b) 93rd : []

c) 95th : []

d) 97th : []

23) Which one of the following can be provided under RTI Act, 2005?

a) Information leading to incitement of an offence : []

b) Information leading to disclosure that may constitute contempt of court : []

c) Conditional disclosure relating to information on intellectual property : []

d) Information relating to Cabinet Papers recording deliberations of Council of Ministers : []

24) Which city hosts the ceremonial function for conferring the Nobel peace prize every year?

a) Oslo : []

b) Stockholm : []

c) Brussels : []

d) Geneva : []

25) 'Operation Flood' refers to:

a) Food Control : []

b) Increasing production of consumer goods : []

c) Milk production : []

d) Nuclear warfare control : []

26) Kathakali is a folk dance prevalent in which of the following states?

a) Kerala : []

b) Odisha : []

- c) Manipur : []
- d) Karnataka : []
- 27) Who is the ex-officio Chairman of Rajya Sabha?
- a) President : []
- b) Vice-President : []
- c) Minister of Parliamentary Affairs : []
- d) Leader of Opposition : []
- 28) Who among the following was never the Lok Sabha Speaker?
- a) K.V.K. Sundaram : []
- b) G.S. Dhillon : []
- c) Baliram Bhagat : []
- d) Hukum Singh : []
- 29) Who is authorised to decide over a dispute regarding disqualification of a Member of Parliament?
- a) Election Commissioner : []
- b) Speaker of Lok Sabha : []
- c) President : []
- d) A Committee set up by the Parliament : []
- 30) The two Houses of Parliament enjoy co-equal power in all spheres except:
- (I) financial matters
- (II) responsibility of the council of Ministers
- (III) amendment procedure
- (IV) election of President
- a) III and IV : []
- b) II, III and IV : []
- c) I, II and III : []
- d) I and II : []

II. Summarise the fact and proposition of law within hundred words.

30 marks (15 marks each)

**(1) M/s Zandu Pharmaceutical Works Ltd. & Ors., Appellant
Vs.
Md. Sharaful Haque & Ors., Respondents**

[AIR 2005 SC 9]

ARIJIT PASAYAT, J. :

Leave granted.

2. Appellants call in question legality of the judgment rendered by a learned Single Judge of the Patna High Court holding that the issuance of summons to the appellants by learned Judicial Magistrate, 1st Class, Patna in complaint case No. 1613 (C) of 2002 filed by the respondent No. 1 is proper.

3. Factual background in nutshell is as follows:

Respondent No. 1 (hereinafter referred to as the 'complainant') filed a complaint on 9.8.2002 alleging that the appellants had committed offences punishable under Sections 406 and 409 of the Indian Penal Code, 1860 (in short the 'IPC'). The date of occurrence was indicated to be between 12.7.1995 to 8.5.2002. The basic allegations in the complaint were that an advertisement was issued by the appellant No. 1 seeking applications for appointment to the post of Area Manager. The complainant, who was then working in another concern applied for the post, was called to the interview on 14.7.1995 and was asked to report at the Bombay office of the appellant No. 1-company on 1.8.1995 for training. After completion of the training period the complainant was asked to report to the Patna depot. He was given appointment from 9.9.1995 by letter dated 1.9.1995 wherein it was indicated that he was appointed as Field Officer and not Area Manager. According to the respondent, on receipt of the appointment letter the complainant asked the concerned officials i.e. the other accused persons as to how he was being appointed as Field Officer when he had appeared at the interview for the post of Area Manager. He was assured that the letter for the post of Area Manager will be issued in the first week of April, 1996. But no such letter came to be issued and he was not appointed as Area Manager. Grievance was, therefore, made that the accused persons had initially deceived him by appointing as Field Officer and not as Area Manager, though he was assured that the appointment letter in that regard will be issued. Therefore, they were liable to face trial for offences punishable under Sections 406 and 409 IPC.

4. Statement of complainant was recorded on 13.2.2002. By order dated 8.10.2002 the learned Judicial Magistrate held that sufficient material existed to proceed under Section 418 IPC against the appellants and, therefore, summons were issued for their appearance. An application under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed before the High Court challenging legality of the order and summons. It was, inter alia, submitted that complaint was mis-conceived; the complainant had not come to Court with clean hands and had suppressed material facts. It was stated that the complainant had

filed a Title Suit No. 178/2002 before the learned Sub-Judge claiming his transfer order was mala fide. The prayer for interim protection was rejected. Case No. 11/99 has been filed before the Labour Court in which complainant claimed certain payments and compensation. There was no grievance made of any cheating neither in the civil suit nor in the matter pending before the Labour Court. The complaint was stale, and in any event, beyond the prescribed period of limitation as provided in Section 468 of the Code. It was pointed out that there was no proof of the complainant having resigned from his previous employment. There was no material to show commission of any offence even if complaint petition is considered in its entirety. No foundation for proceeding under Section 418 of the Code was made out. For the first time in 2002 the alleged breaches were agitated. Stand of the complainant on the other hand was that finally his claim was rejected on 15.12.2001 and subsequently his services were terminated on 29.4.2002. That being so, the plea of complainant having been filed beyond the period of limitation cannot be maintained. The petition was, as noted above, rejected by the High Court.

5. In support of the appeal, Mr. R.F. Nariman, learned senior counsel submitted that the High Court has missed the essential features of the case. In the complaint petition there is no reference to the letter dated 5.12.2001 which forms foundation for the High Court's conclusion to hold that the application was not belated. In the complaint petition a clearly wrong statement was made that the complainant had never accepted appointment as Field Officer. On the contrary, in his endorsement below the letter of appointment on 9.9.1995 he has in his own signature stated as follows:

"I have gone through the terms and conditions stated hereinabove in my appointment letter and I accept them in toto. I will join your company with effect from 1st August, 1995. I declare that my date of birth is 1.3.1959 and in support I submit my documentary evidence."

6. Another interesting feature is that a letter is purported to have been written on 9.9.1995, the existence of which is very much in doubt. The complainant claims to have written that he was unable to send copy of the joining letter. As noted above, he has clearly done so. Therefore, complainant has fabricated documents to suit his own purpose. In the matter pending before the Labour Court which was filed on 6.7.1999 also the complainant has not made any reference to the so called illegality in his appointment as Field Officer, and on the other hand he has clearly stated that he was employed with the company and posted as Field Officer. Similar is the position in the suit filed in 2002, challenging the order of transfer. There is no explanation for the silence between 1995 to 2001. Therefore, it is submitted that the High Court was not justified in rejecting the application. Further offence in terms of Section 418 IPC is clearly not made out. Therefore, the learned Magistrate was not justified in directing issuance of summons.

7. In response, learned senior counsel for complainant-respondent No. 1 submitted that based on the assurance held out that he will be appointed as Area Manager, the complainant had resigned from the job he was holding on the date of joining. He raised his protest when he was appointing as Field Officer. He continuously made grievances and finally when his claim was rejected by letter dated 5.12.2001, he filed a complaint and, therefore, the same is within time.

8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex a liquid alicui concedit, concedere videtur et id sine qua recipe esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur v. State of Punjab* : 1960 CriLJ 1239, this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where

there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* : 1992 Supp (1) 335. A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act

concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H.S. Chowdhary: 1993CriLJ600 , and Raghubir Saran (Dr.) v. State of Bihar : 1964CriLJ1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar , State of Bihar v. P.P. Sharma : 1991CriLJ1438 , Rupan Deol Bajaj v. Kanwar Pal Singh Gill : 1996CriLJ381 , State of Kerala v. O.C. Kuttan : 1999CriLJ1623 , State of U.P. v. O.P. Sharma : 1996CriLJ1878 , Rashmi Kumar v. Mahesh Kumar Bhada : (1997)2SCC397 , Satvinder Kaur v. State (Govt. of NCT of Delhi) : 1996CriLJ1878 and Rajesh Bajaj v. State NCT of Delhi : 1999CriLJ1833).

11. The above position was recently highlighted in State of Karnataka v. M. Devendrappa and Anr. : 2002CriLJ998 .

12. The factual position as highlighted above clearly goes to show that the complainant had not come to Court with clean hands. There was no explanation whatsoever for the inaction between 1995 and 2001. The High Court seems to have been swayed by the fact that the appellants have rejected claim of the complainant on 5.12.2001. It failed to notice that the communication dated 5.12.2001 was in response to the letter of the complainant dated 24.11.2001.

13. Section 468 of the Code deals with delay in taking cognizance after lapse of the period of limitation. It reads as follows:

"468. BAR TO TAKING COGNIZANCE AFTER LAPSE OF THE PERIOD OF LIMITATION:

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

14. The learned Magistrate has issued process in respect of offence under Section 418 IPC. The punishment provided for said offence is imprisonment for three years. The period of limitation in terms of Section 468(2)(c) is 3 years. That being so, the Court could not have taken cognizance of the offence. Section 473 of the Code provides for extension of period in certain cases. This power can be exercised only when the Court is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary to do so in the interest of justice. Order of learned Magistrate does not even refer to either Section 468 or Section 473 of the Code. High Court clearly erred in holding that the complaint was not hit by limitation. As noted above, there was not even a reference that the letter dated 5.12.2001 was in response to the letter of complainant dated 24.11.2001. The factual position clearly shows that the complaint was nothing but a sheer abuse of the process of law and this is a case where the power under Section 482 should have been exercised. The High Court unfortunately did not take note of the guiding principles as laid down in Bhajan Singh's case (supra), thereby rendering the judgment

indefensible. The judgment of the High Court is set aside, the proceedings initiated by the complaint lodged are quashed. The appeal is allowed.

**(2) Friends Colony Development Committee, Appellant
Vs.
State of Orissa & Ors., Respondents**

[AIR 2005 SC 1]

R.C. Lahoti, C.J.I. :

1. The Friends Colony Development Committee, the appellant before us, is a society registered in the year 1982 under the Societies Registration Act, 1860. One of its objects is to oversee development of the residential area known as 'Friends Colony' in Cuttack city. M/s Modern Mechatech Housing Ltd., the respondent No. 2, is a company incorporated under the Companies Act, and engaged in building activity. Pratap Kumar Biswal, respondent No. 3, is its Managing Director. The other parties impleaded in this appeal are - the State of Orissa, through the Commissioner-cum-Secretary, Housing and Urban Development Department, and Cuttack Development Authority (hereinafter the 'Authority' for short). The property involved in this litigation is a six storeyed apartment situated in Friends Colony and known as 'Kalyani Apartment'.

2. The background facts leading to the present appeal are briefly stated hereinafter. The property belonged to one Abhiram Panda. He gave a power of attorney to the builder (respondent No. 2 and 3) for construction of a multi-storeyed apartment on the said land. On an application made by the builder, the Authority accorded sanction on 3.3.1993 for construction of a four storeyed building in accordance with the building plans sanctioned by the Authority. The construction commenced and when the building came up it was found to have been built up grossly in excess of the sanctioned plan on all the floors. Though the sanction accorded by the Authority permitted only four stories but even a fifth floor had also come up. On 7.2.1994, the Authority initiated proceedings under Section 92 of the Orissa Development Authorities Act (hereinafter referred to as 'the Act', for short) against the builder calling upon it to show cause why the offending portions be not demolished. The stand taken by the builder in its response was that the deviations were very minor ones calling for a sympathetic view and compounding of the deviations instead of being demolished. On 25.9.1994 the appellant made a representation to the Authority complaining of the offending construction and submitting that the deviations from the sanctioned plan damaged the environment and endangered life and safety of not only the occupants of the building, but also of other inhabitants of the locality. The representations by the appellant were made not only to the Authority, but also to the Cuttack Municipality, the Pollution Control Board and the State Government.

3. By order dated 8.11.1994, the Authority directed 5th floor of the building to be demolished as also the unauthorized projections of 605 sq. ft. on each floor to be demolished. In respect of certain deviations which were compoundable, the Authority permitted compounding on payment of Rs. 2.09 lakhs by the builder. A notice-cum-order for securing compliance of the order dated 8.11.1994 of the Authority was issued on 30.11.1994 to the builder.

4. On 2.12.1994 the builder filed an appeal before the appellate authority which granted interim stay of demolition as directed by the Authority, but subject to the condition that the builder shall stop all further constructions. However, the builder proceeded with the building activity by defying the conditions incorporated in the order of the stay granted by the appellate authority. The appellants representations inviting attention of the Authority did not serve any purpose.

5. On 5.12.1994 the appellant filed a writ petition in public interest in the High Court of Orissa which was registered as OJC No. 8128/94 laying challenge to the illegal, unauthorized and dangerous construction in the building and seeking demolition to the extent necessary. The appellant also sought for its impleadment in the appeal filed by the builder which was pending before the appellate authority. The impleadment was allowed, though opposed by the builder.

6. By order dated 28.6.1995 the appellate authority directed the builder's appeal to be dismissed. The appellate authority found inter alia that the offending construction was a threat to the environment and, if not demolished, it would encourage other builders to make similar violations much to the detriment of the planned development of the city. Laying challenge to the order of the appellate authority, the builder filed a writ petition in the High Court which was registered as OJC No. 4995/95. Though the appellant was a party before the appellate authority, it was not joined by the builder as a party in the writ petition filed by him. However, the appellant moved for its impleadment in the writ petition and filed a counter affidavit controverting several averments made and pleas raised by the builder. The appellant also prayed for the writ petition filed by it in public interest being taken up for hearing along with the writ petition filed by the builder so that all the issues relating to the said building could be heard and decided together. However, the writ petition filed by the builder was taken up for hearing, while the writ petition filed in public interest by the appellant remained pending.

7. By its judgment dated 16.4.1996 the Division Bench held that the appellant had no right to participate in the hearing; it was neither a necessary nor a proper party; it was not entitled to be heard in the writ petition filed by the builder, and the remedy, if any, of the appellant was to file a civil suit for protection and enforcement of its rights, if any. Having said so, the High Court proceeded to examine, on merits, the pleas urged by the builder in his writ petition.

8. The plea of the builder was that in spite of the construction having come up, it could yet move a fresh application and submit revised plan for approval in respect of construction already undertaken and then it will be for the Authority to consider and approve or not to approve the same. It seems to have been urged before the High Court by the learned counsel for the builder, as noted in the Judgment of the High Court, that at different points of time the Planning Member and Vice-Chairman of the Authority had suggested certain courses of action which would obviate difficulties of the builder while not making any departure from the requirements of law and such suggestions were, by and large, accepted by the builder. However, from the records we find that this was only an oral submission made, not supported by any documents, and the judgment of the High Court also does not make reference to any document or affidavit filed by or on behalf of the Authority or any of its officials in support of the plea urged by the builder. The High Court disposed of the writ petition by directing that if

the builder made a fresh application and/or submitted a revised plan for approval in respect of construction already undertaken by it, the Authority should deal with the same in accordance with law. The learned counsel for the builder undertook before the High Court to maintain status quo and not to make any further construction till a decision was taken by the Authority on re-submission of the application accompanied by plans for sanction as permitted by the High Court. The High Court allowed one month's time from the date of its judgment for filing a written undertaking by the builder incorporating the oral undertaking given before the High Court and also for filing the application and plan for sanction before the Authority. The High Court left the question of deviations already made open for consideration and to be dealt with in accordance with law after the Authority had taken decisions on such application.

9. Feeling aggrieved by the judgment of the High Court this appeal has been filed by special leave.

10. By order dated 7.10.1996 leave was granted and, at the same time, this Court directed the operation of the impugned judgment of the High Court to remain stayed. 30 occupants of the apartment have sought for intervention at the hearing in this Court. On 5.5.1997, in the presence of the parties, this Court directed the order of stay made on 7.10.1997 to be confirmed and clarified that no demolition of the construction already made would be done during the pendency of this appeal, but the unauthorized portion would not be permitted to be occupied and no third party interest would be created therein in the meantime. After 5.5.1997 the appeal came up for hearing before this Court on 6.11.2003. Having noticed that it was a case of unauthorized constructions made by a builder in a multi-storeyed building and the High Court had permitted the possibility of regularization of unauthorized constructions to be explored afresh as per law, this Court made the following directions :-

(i) The respondents Nos. 5 and 6 shall have a plan of the existing structure prepared through their architects/engineers. The authority shall consider in accordance with the existing building bye-laws/regulations as to how much of the unauthorized construction can be regularized and if so then subject to what terms and conditions. The Plan showing in different colours, the sanctioned construction, the unauthorized construction and the construction to the extent to which it can be regularized shall be filed.

(ii) The terms and conditions on which the regularization can take place shall also be filed.

(iii) The status of the area which cannot be regularized shall be stated, i.e., whether it is occupied or unoccupied."

11. The compliance by the Authority was directed to be reported within eight weeks along with plans and statement as above being filed duly supported by affidavit.

12. On 14.1.2004 another two week's time was sought for by the Authority for reporting compliance with the order dated 6.11.2003. However, the learned counsel, who is appearing in this court for the

builder, pointed out that his client, that is the builder, was not responding to his communications. The notices of hearing issued by the Registry of this Court to the builder company and its Managing Director were returned with postal remarks 'refused'.

13. Later, on 10.2.2004 the Managing Director of the builder company was present in Court on having been served and pointed out that during the pendency of these proceedings he has shifted his residence to Bangalore. The Court directed him to remain present in person on all the dates of hearing unless otherwise permitted by this Court and also to keep his counsel and this court informed of his address and his availability thereat.

14. On behalf of the Authority affidavit in compliance with the order dated 6.11.2003 was filed. Shri S.M. Patnaik, the Planning Member in the Authority was also present in person. The plan filed by the Authority showed the authorized and unauthorized constructions and also the extent of unauthorized constructions which could be regularized subject to terms. This Court directed as under :-

"The Cuttack Development Authority shall file an additional affidavit pointing out how much of the unauthorized construction though not available for regularization as per the existing law can still be tolerated without any loss of public interest and how much unauthorized construction must necessarily go in public interest. The Authority shall also state and suggest the terms on which the builder should be placed for the purpose of regularization of the permissible unauthorized construction and the terms on which the builder should be placed for tolerating the extent of unauthorized construction though not available for regularization.

Compliance in six weeks."

15. The builder was also allowed the liberty of filing a statement on affidavit incorporating such relevant facts and information as would enable the Court to arrive at a just and equitable decision. That further affidavit has been filed.

16. According to the Stability Report submitted by the Structural Analysis & Design Cell to the Planning Member of the Authority the following facts have been reported about the Kalyani Apartment :-

"(1) It is a framed structure building having partial parking area in the ground floor and five floors above it along with the access to the terrace with the load of overhead water tanks and head rooms.

(2) There is a 5 feet width cantilever used as living areas such as toilet, Kitchen & bedrooms projected to all sides in each floors.

(3) The peripheral walls are of 10" width K.B. brick masonry wall and all internal walls are 5" width.

(4) 1" thick mosaic tiles are laid in all floors as flooring materials.

(5) Average width of building is 41'-8" feet and average height of building is 58 feet.

(6) Soil condition is sandy loamy type.

(7) There was no sign of any sinking of foundation in the static load at present.

(8) There was no scope to check the actual foundation provided in the building.

(9) size of all existing column are 10" x 15" where as the size is 12" x 24" in the drawing approved in CDA.

(10) I have considered the column X 5' (Column Lay-out drawing is attached) for example, to calculate all the loads in it to check the stability of the said column. The detail calculation of the column X 5' is as follows."

17. Calculations and analysis data and documents have been made available. In Calculations it is stated as under :-

"As per the above Calculations and observations it is observed that this building is unsafe for the ground plus five floors along with cantilever in all sides because the section of column is not adequate. It is also noticed that during the structural design of this building the wind load calculation has not taken into consideration. Also the seismic load consideration has not been included in it though this area comes under seismic zone-III.

To make the building structurally stable the load in the building should be reduced. The load can be reduced by removing the fifth floor in total. The load can also be reduced by removing the cantilever portion in all sides of each floor. A strong impact load may affect the main building during the breaking of cantilevers but if we break the top floor no such impact load may not affect the structure in the lower floors."

18. In the subsequent affidavits filed the builder has pointed out and relied on certain changes in the regulations framed by the Authority in support of his plea that all deviations in the building are compoundable. The builder has also sought to contend that there are several other buildings with more or less similar deviations which have either been compounded or not proceeded against. On such averments the builder has sought for the deviations being condoned and regularized.

19. On the other hand, the affidavit sworn in by Shri Gupteshwar Acharya, Law Officer of the Authority, filed on 2.2.2004 with the plan of the building specifically and separately setting out the deviations -
- compoundable and non-compoundable, as also the calculation sheets have been filed. It is stated inter alia:-

(1) that the floor wise coverage and deviation are set out in detail in the chart annexed to the present affidavit. From a perusal of the said chart it is submitted that as per draft CDA regulations dated 29.12.1994 the case was considered for regularization etc. After detailed examination it was found that the entire 5th floor which

was constructed without prior permission covering the area 4009.5 sq. ft. was beyond the permissible norms for regularization / compounding and hence the same has to be demolished. On account of operation of stay order from this Hon'ble Court the demolition work could not be carried out.

(2) that from the remaining unauthorized construction area a total area of 5735.5 sq. ft. could be compounded upon payment of Rs. 2,09,160/- as per the then prevailing fee. It is relevant to mention that the said amount till date has not been deposited and therefore in the absence of the said amount being deposited the said compounding also has not been carried out and the area is liable for demolition.

(3) that with effect from 13.12.2001 the Cuttack Development Authority (Planning & Building Standard) Regulation, 2001 has come into force. Under the said 2001 Regulation more stringent condition in respect of high-rise building pertaining to setbacks etc. have been laid down. Applying the standards laid down in the Regulation, 2001 the permissible compounding area of unauthorized construction would be far less than what was offered under the earlier draft regulation.

(4) that since the offer for regularization / compounding had already been made under the regulation then applicable the Authority can consider compounding / regularization of an area of 5735.5 sq. ft. subject to payment of Rs. 2,09,160/- with interest as deemed fit and proper by this Hon'ble Court.

(5) that upon site inspection and personal visit carried out by the Planning Member and the technical staff it is noticed that all the floors are in occupation."

20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unbearable burden and are often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent

actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

21. The conduct of the builder in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorized. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the state. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and

other structures; the percentage of a plot that may be occupied; the size of yards, courts, and open spaces; the density of population; and the location and use of buildings and structures. All these have in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. [For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence, 2d, Vol.82.]

25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

26. The application for compounding the deviations made by the builders should always be dealt with at a higher level by multi-member High Powered Committee so that the builders cannot manipulate. The officials who have connived at unauthorized or illegal constructions should not be spared. In developing cities the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorized constructions.

27. In the facts and circumstances of the present case, we are of the opinion that the controversy should not have been brought to an end by the High Court merely by directing reconsideration of the application of revised building plans submitted by the respondent builder. The matter needs a further probe and hearing in public interest.

28. The appeal is allowed. The impugned judgment of the High Court is set aside. The writ petition filed by respondents Nos. 2 and 3 herein shall stand restored on the file of the High Court to be taken up for hearing along with the writ petition filed by the appellant. The present status of the writ petition filed by the Friends Colony Development Committee - the appellant before us, is not known as to whether it is pending or has been disposed of and, if so, with what result. Be that as it may, even if the writ petition filed by the appellant has been disposed of, the hearing therein shall be reopened and the hearing in the two

petitions shall proceed in the High court in such manner as the High court may deem fit but keeping in view the following directions :

(1) Both the petitions, that is, the writ petition filed by respondents No. 2 and 3 herein registered as OJC No. 4995 of 1995 and the writ petition filed by the appellant herein registered as OJC No. 8128 of 1994 shall be taken up for hearing together.

(2) The following documents which have come up on the record of this Court during the course of hearing and pursuant to directions issued from time to time by this Court shall be sent to the High Court to be taken up in consideration at the hearing of the writ petitions :-

(i) Affidavit of compliance on behalf of Cuttack Development Authority and Planning Member dated 2.2.2004 along with enclosures.

(ii) Additional affidavit of compliance on behalf of the Planning Member, Cuttack Development Authority, respondent No. 6 herein filed on 5.4.2004.

(iii) Further affidavit on behalf of respondent Nos. 2 and 3 herein dated 25.3.2004 along with enclosures.

(iv) Copy of the report submitted by the Planning Member, Cuttack Development Authority.

(v) Reply to the further/additional affidavit dated 6.4.2003 filed on behalf of respondent Nos. 2 and 3.

(vi) Reply on behalf of respondent Nos. 2 and 3 to the additional affidavit dated 5.4.2004 filed on behalf of the Cuttack Development Authority, respondent No. 6 herein with copy of the structural stability certificate, copies of photographs of the site, copy of sketch map showing the main storm water channel, copy of letter issued by the Project Engineer, Orissa Water Supply and Sewerage Board and copy of the order dated 17.4.2003 passed by the High Court, Orissa in Writ Petition (c) No. 3310 of 2003.

(vii) The Stability Report submitted by the Structural Analysis & Design Cell to the Planning Member, Cuttack Development Authority on 18.3.2003.

29. Photocopies of the documents transmitted to the High Court shall be retained on the record of this Court.

(3) The High Court shall find out and determine how much deviation can be regularized and subject to what terms. If any part of the construction found to be illegal has to be demolished and/or any of the occupants are liable to be displaced, the High Court shall take appropriate steps for their rehabilitation and compensation at the cost of the builder.

(4) Present address at which respondent No. 3 is available, as furnished by him to this Court, shall also be sent to the High Court. During the course of hearing respondent No. 3

shall remain personally present in the High Court unless exempted from personal appearance.

(5) Any non-compliance of the orders of the Court by respondent Nos. 2 and 3 shall be construed as contempt of the orders of the Court and they shall be liable for the legal consequences.

(6) The builder must deposit the compounding fee of Rs. 2,09,160/- within such time as the High Court may allow in this behalf. This deposit shall be treated as a provisional payment of compounding fee subject to adjustment against such amount as the High Court may ultimately arrive at. During the pendency of these proceedings, we are told that new Regulations of the year 2001 - more stringent in nature, have come into force replacing the preceding Regulations. We do not propose to decide the general question - whether in the matter of determining and compounding deviations it is the law as on the date of such decision which would apply or the one as was prevailing on the date of commission of the illegal act would apply. Leaving that question open, in the facts and circumstances of the present case, we direct that the present case shall be determined by reference to the regulations as were prevailing prior to the coming into force of the Cuttack Development Authority (Planning and Building Standard) Regulations, 2001.

(7) The High Court, if it feels that illegal/unauthorized building activities in Cuttack are so rampant as to be noticed judicially, may suo motu register a public interest litigation and commence monitoring the same by issuing directions so as to curb such tendency and fixing liability and accountability.

Order accordingly.

III. Write short notes lucidly (three out of the following topics)

15 marks (5 marks each)

- 1) Due process of Law.
- 2) The extra-legal entities and the rule of law.
- 3) Presumption of innocence and the right to dignity of the accused.
- 4) Locus Standi : Ambit expands.
- 5) Paid columns and the freedom of press.

IV. Write an essay on either of the following topics.

(1500 words)

25 marks

- 1) Speedy trial and travesty of justice.
- 2) Separation of powers and the judicial activism.