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Page 1 Monday, March 07, 2022
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(2006) 3 Supreme Court Cases 690

(BEFORE S.B. SINHA AND DALVEER BHANDARI, JJ.)

MAHARASHTRA STATE SEEDS CORPN. LTD. . . Appellant;

Versus

HARIPRASAD DRUPADRAO JADHAO AND ANOTHER . . Respondents.

Civil Appeal No. 3071 of 2004†, decided on February 24, 2006

A. **Labour Law — Domestic/Departmental enquiry — Imposition of punishment — Second show-cause notice — Power of disciplinary authority to change its mind/correct mistake as to punishment to be imposed — Held, such power inherently exists, subject to any statutory interdict in that behalf — In present case, there being no such statutory interdict, by reason of enquiry officer mistakenly recommending a minor penalty, based on which disciplinary authority had issued the first show-cause notice, the respondent delinquent officer could not have been inflicted with a minor penalty although he deserved a major penalty — Therefore, disciplinary authority committed no illegality in issuing the second show-cause notice in respect of imposition of the correct major penalty in supersession of the first show-cause notice — Administrative Law — Service Law**

In the present case the enquiry officer recommended certain punishments [set out in para 4 herein] including that of a permanent withholding of two increments. On the basis of the said recommendations, the Managing Director of the appellant Company on 27-1-1994 issued a show-cause notice to the first respondent workman as to why two increments of pay from his salary should not be directed to be withheld permanently. The first respondent filed his show-cause thereto. However, another show-cause notice in supersession of the earlier notice was issued on 21-3-1994 by the Managing Director on the ground that the charges which were proved against the first respondent being serious in nature and having regard to the gravity thereof, why the punishment of dismissal, inter alia, should not be imposed. The respondent filed his show-cause in furtherance of the said notice. Upon consideration of the said show cause the services of the first respondent were terminated. He questioned the legality of the said order by filing a writ petition before the High Court.

By reason of the impugned judgment although the High Court held that the disciplinary proceedings had been held in accordance with law, interfered with the quantum of punishment directing his reinstatement with continuity in service and full back wages opining that "withholding of two increments of pay permanently" should be imposed on him. It was observed that if the disciplinary authority intended to differ with the enquiry officer, it was incumbent upon him to assign specific reasons therefor and the disciplinary authority could not thus change his mind and take different views at different times. The appellant Company is before the Supreme Court thereagainst.

Allowing the appeal, the Supreme Court

Held :

An administrative order can be recalled. A mistake can be rectified. The Managing Director of the Corporation as a disciplinary authority did not lack

† From the Judgment and Order dated 25-7-2003 of the Bombay High Court in WP No. 1343 of 1995

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Page 2 Monday, March 07, 2022
Printed For: Assam Judcial Academy .
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inherent jurisdiction in relation thereto. The High Court proceeded on the basis that in the absence of the specific provision the second show-cause notice was impermissible. It failed to consider that there was no statutory interdict in this behalf. (Para 22)

The disciplinary authority might have committed a mistake in issuing the first show-cause notice but by reason thereof he cannot be held to be wholly precluded from issuing a second show-cause notice as thereby he intended to rectify the mistake committed by him. Mistake furthermore, may either be of law or fact. By reason of mistake on the part of the enquiry officer, the respondent could not have been inflicted with a minor penalty although he deserved a major penalty. (Paras 18 and 21)

As the enquiry officer had no jurisdiction to recommend any punishment to be imposed on the respondent by the disciplinary authority, the disciplinary authority although acted thereupon at the first instance, could have corrected his mistake as the same was apparent on the face of the record. He, therefore, did not commit any illegality in issuing the second show-cause notice. (Para 21)

Indian Council of Agricultural Research v. *T.K. Suryanarayan*, (1997) 6 SCC 766 : 1998 SCC (L&S) 359; *Poothundu Plantations (P) Ltd.* v. *Agricultural ITO*, (1996) 9 SCC 499; *M. Ahammedkutty Haji* v. *Tahsildar*, (2005) 3 SCC 351, *relied on*

B. **Labour Law — Domestic/Departmental enquiry — Imposition of punishment — Second show-cause notice — Natural justice — Right to hearing after second show-cause notice — Held, same had been complied with in present case (Paras 21 and 14)**

C. **Labour Law — Penalty/Punishment — Scope of judicial review — Recording of reasons — Need for — Held, scope of judicial review in such cases is limited — Further, when High Court intends to interfere with quantum of punishment on ground that it is shockingly disproportionate, it must record reasons for coming to such conclusion — Dismissal — Constitution of India — Art. 226**

D. **Labour Law — Dismissal — Judicial review/Validity — Defalcation, preparation of false documents, misappropriation of goods of employer, violation of instructions and absenteeism on part of delinquent employee — Punishment of dismissal imposed — Interference by High Court — Unsustainability — Held, in such a situation it was improper for High Court to interfere with quantum of punishment — Constitution of India — Art. 226 — Misconduct**

The first respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. The charges levelled against the first respondent were serious in nature. He was found guilty of grave misconduct including defalcation of a huge amount, preparation of false documents as also misappropriation of 22 bags of DCH-32 cotton seeds. It was also proved that he had violated instructions for distribution of seeds, apart from remaining absent from work. In the aforementioned situation it was improper for the High Court to interfere with the quantum of punishment. In a matter of disciplinary proceedings the High Court exercises a limited power. The grounds for judicial review are limited. When the High Court intends to interfere with the quantum of punishment on the ground that the same is shockingly disproportionate, it must record reasons for coming to such a conclusion. (Paras 15, 23 and 24)

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Page 3 Monday, March 07, 2022
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Govt. of A.P. v. *Mohd. Nasrullah Khan*, (2006) 2 SCC 373 : 2006 SCC (L&S) 316; *L.K. Verma* v. *H.M.T. Ltd.*, (2006) 2 SCC 269 : 2006 SCC (L&S) 278; *Karnataka Bank Ltd.* v. *A.L. Mohan Rao*, (2006) 1 SCC 63 : 2006 SCC (L&S) 59; *Hombe Gowda Educational Trust* v. *State of Karnataka*, (2006) 1 SCC 430 : 2006 SCC (L&S) 133; *Damoh Panna Sagar Rural Regional Bank* v. *Munna Lal Jain*, (2005) 10 SCC 84 : 2005 SCC (L&S) 567, *followed*

E. **Labour Law — Domestic/Departmental enquiry — Imposition of punishment — Authority that may impose punishment — Disciplinary authority — Power to determine punishment — Need to assign reasons — When arises (Paras 16 to 18 and 21)**

F. **Labour Law — Domestic/Departmental enquiry — Imposition of punishment — Authority that may impose punishment — Enquiry officer — Power to recommend punishment — Held, there need to be specific provisions in this regard, either statutory rules or in the manual of departmental enquiries (Para 14)**

G. **Labour Law — Domestic/Departmental enquiry — Imposition of punishment — Punishing/Disciplinary authority differing from enquiry officer — Such situation, when obtains (Para 16)**

D-M/ATZ/33942/CL

Advocates who appeared in this case :

Uday Kr. Sagar, Ms Bina Madhavan and Ms Pooja Nanekar (for Lawyer's Knit & Co.), for the Appellant;

Uday B. Dube, Kuldip Singh, A.P. Mayee and Ravindra Keshavrao Adsure, Advocates, for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (2006) 2 SCC 373 : 2006 SCC (L&S) 316, *Govt. of A.P.* v. *Mohd. Nasrullah Khan* 698*f*
2. (2006) 2 SCC 269 : 2006 SCC (L&S) 278, *L.K. Verma* v. *H.M.T. Ltd.* 698*f*
3. (2006) 1 SCC 430 : 2006 SCC (L&S) 133, *Hombe Gowda Educational Trust* v. *State of Karnataka* 698*f-g*
4. (2006) 1 SCC 63 : 2006 SCC (L&S) 59, *Karnataka Bank Ltd.* v. *A.L. Mohan Rao* 698*f*
5. (2005) 10 SCC 84 : 2005 SCC (L&S) 567, *Damoh Panna Sagar Rural Regional Bank* v. *Munna Lal Jain* 698*f-g*
6. (2005) 3 SCC 351, *M. Ahammedkutty Haji* v. *Tahsildar* 698*a-b*
7. (1997) 6 SCC 766 : 1998 SCC (L&S) 359, *Indian Council of Agricultural Research* v. *T.K. Suryanarayan* 697*e*
8. (1996) 9 SCC 499, *Poothundu Plantations (P) Ltd.* v. *Agricultural ITO* 697*f-g*

The Judgment of the Court was delivered by

S.B. SINHA, J.— The appellant herein is a company incorporated and registered under the Companies Act, 1956. It deals in production and supply of seeds to farmers. The respondent herein was appointed as an Assistant Field Officer. While he was working at Nanded, misconducts committed by him came to the notice of his superior officer. A preliminary enquiry was conducted thereabout whereafter a charge-sheet was issued to him. A disciplinary proceeding was thereafter initiated against him.

2. The enquiry officer held:

"(*1*) It is proved that Shri Hariprasad Drupadrao Jadhao, AFO has violated the instructions of DM, Nanded for distribution of foundation

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Page 4 Monday, March 07, 2022
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seeds on credit to the eligible seed-growers of Deglur and Mukhed. He is also responsible for non-recovery of outstanding amount of Rs 19,938.50 from the seed-growers towards cost of foundation seeds, inspection fees and application fees, etc. out of this amount. Shri Gorthekar is responsible for non-deposition of Rs 2675 as per his undertaking and hence Shri Jadhao stands responsible for non-recovery of net amount of Rs 17,263.50.

For the amount of Rs 2437 towards shortage of foundation seeds Shri Jadhao as well as Shri Gorthekar stand responsible.

(*2*) Shri Jadhao cannot be held responsible totally for late submission of record since the persons involved in distribution of foundation seeds, etc. were absconding and hence some time was required to collect the information from the seed-growers. Also the charge of non-recovery of outstanding amount of Rs 35,190 from the seed-growers in the absence of the record cannot be proved.

(*3*) It cannot be proved that the amount paid to Shri Jadhao by the seed-growers or their representatives has not been deposited by him. However, it is concluded that the entire mess has been created on account of negligence on the part of Shri Jadhao.

(*4*) It is proved beyond doubt that an amount of Rs 26,104 collected from the seed-growers has been misappropriated by Shri Jadhao.

(*5*) Since the 22 bags of hybrid cotton DCH-32 have been traced out, the charge of misappropriation of this stock by Shri Jadhao cannot be proved.

(*6*) It is also concluded that Shri Jadhao proceeded on leave without prior permission of the superior from time to time. Similarly he has not attended the weekly meetings called by the DM without satisfactory reasons. As a result he was not aware about the instructions given by the DM from time to time."

3. The enquiry officer, in his report, thus, found him guilty of commission of the following misconducts: (*1*) he violated the instructions issued by the District Magistrate, Nanded; (*2*) he misappropriated a huge amount of monies of the Corporation; (*3*) he remained on leave without prior approval of leave and failed to attend the meetings.

4. It is not in dispute that the enquiry officer recommended punishment of the respondent for commission of the said misconducts in the following terms:

"(*1*) An amount of Rs 17,263.50 should be recovered from Shri Jadhao in suitable instalments along with interest.

(*2*) It is also proposed to recover interest on an amount of Rs 26,104 for the period from 18-6-1991 to 17-9-1991.

(*3*) 50% cost of shortages in foundation seeds i.e. Rs 1219 should also be recovered from Shri Jadhao.

(*4*) Two increments should be barred permanently.

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Page 5 Monday, March 07, 2022
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(*5*) Warning letter may be issued to Shri Jadhao to be punctual in attending the Corporation's work, in future not to leave the headquarters without prior permission of the superior and follow all the instructions scrupulously henceforth, failing which stern action will be taken against him.

(*6*) It is further proposed that an amount of Rs 2675 as well as Rs 1218 towards 50% costs of shortages in foundation seeds should be recovered from Shri Gorthekar."

5. The Managing Director of the appellant Company on or about 27-1-1994 issued a show-cause notice as to why two increments of pay from his salary should not be directed to be withheld permanently. The first respondent filed his show-cause thereto. However, another show-cause notice in supersession of the earlier notice was issued on 21-3-1994 by the Managing Director of the appellant Company on the ground that the charges which were proved against the first respondent being serious in nature and having regard to the gravity thereof, why the punishments specified therein should not be imposed, stating:

"(*4*) After scrutinising the documents again I have come to the conclusion that the punishment of freezing two increments is very mild. Therefore, I am cancelling previous Notice No. Mahabeej/Admn., 94/10893 dated 2-2-1994 and I have decided that Shri Hariprasad Drupadrao Jadhao, Assistant Field Officer is a person not worth keeping in the service. And therefore, the undersigned has imposed dismissal from service on him. Similarly, due to your misappropriation the Corporation had a loss of Rs 15,234 which is proposed to be recovered from you. The Corporation has reserved its right to recover the said amount from you through civil suit. Also the Corporation has reserved its right to file criminal case against you for the misappropriation of the Corporation's funds.

(*5*) Shri Hariprasad Drupadrao Jadhao is given an opportunity through this memorandum to formally submit his reply to the proposal of disciplinary action to be taken against him. However, such formal reply can be made based on the evidence submitted by him during the departmental enquiry. Any formal reply against the proposed disciplinary action desired by him should be in writing which can be considered by the undersigned. The formal reply should reach the undersigned within fifteen days from receipt of this memorandum."

6. The respondent filed his show-cause in furtherance of the said notice. Upon consideration of the said show cause the services of the first respondent were terminated by an order dated 27-9-1994. He questioned the legality of the said order by filing a writ petition before the Aurangabad Bench of the Bombay High Court, which was marked as WP No. 1343 of 1995.

7. The High Court in the impugned judgment noticed that he committed the following misconducts:

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Page 6 Monday, March 07, 2022
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"(*i*) The petitioner distributed seeds on credit to those who were not eligible.

(*ii*) The amount collected from seed-growers towards cost of foundation seed names was deposited late i.e. 17-9-1989.

(*iii*) The petitioner prepared false documents for dispatching of 21 bags and had misappropriated 22 bags of DCH-32 cotton seeds.

(*iv*) The petitioner remained absent for weekly meetings.

(*v*) The petitioner was negligent in writing the foundation seed delivery register in time, wherein shortages amounting to Rs 2437 were noticed."

8. By reason of the impugned judgment although the High Court held that the disciplinary proceedings had been held in accordance with law, interfered with the quantum of punishment directing his reinstatement with continuity in service and full back wages opined that "withholding of two increments of pay permanently" should be imposed on him. The Division Bench of the High Court assigned the following reasons in support of its order:

(*i*) two show-cause notices, on the quantum of punishment could not have been issued;

(*ii*) the Managing Director of the appellant Company should have followed the rules and procedure laid down in the manual of departmental enquiries, and in relation thereto relied on Rule 42 of the said manual which is as under:

> "No order imposing on an employee any of the penalties shall be passed by the competent authority without the charge or charges being communicated to him in writing and without his having been given reasonable opportunity of defending himself against such charge or charges and/or showing cause against the action proposed to be taken against him. Procedure laid down in the manual of departmental enquiries of the Government of Maharashtra will be referred to and the same shall be made applicable."

9. It was observed that if the disciplinary authority intended to differ with the enquiry officer, it was incumbent upon him to assign specific reasons therefor and the disciplinary authority could not thus change his mind and take different views at different times.

10. It was held:

"It has come on record that the amount of defalcation of Rs 17,263.50 was to be recovered from the petitioner by way of punishment. It has also come on record that, in the meantime, the respondents did file a civil suit for recovery of the said amount from the petitioner. The matter was amicably settled between the parties and the respondents, thereafter, and, to that extent, the matter was compromised between the parties, out of court. Taking into consideration all the circumstances appearing in this case, in their sequence, it appears that,

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Page 7 Monday, March 07, 2022
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the punishment of withholding two increments of pay, permanently, as proposed in the show-cause notice (Ext. E), is just and proper. Therefore, we are of the opinion that, such punishment, which was proposed by the enquiry officer, of withholding two increments of pay, permanently, should be accepted and confirmed."

11. Mr Udaya Kumar Sagar, learned counsel appearing on behalf of the appellant in assailing the judgment of the High Court submitted that the High Court was not justified in setting aside the second show-cause notice on the ground that the same was not provided for under the rules although no embargo in this behalf was to be found. In any event, it was urged, the High Court was not correct in directing back wages without appreciating the totality of the facts and circumstances of the case.

12. Mr Uday B. Dube, learned counsel appearing on behalf of the respondent, on the other hand, contended that the issuance of second show-cause notice was illegal. The learned counsel further submitted that the enquiry officer committed an error in holding the respondent guilty of the charge of defalcation. It was furthermore brought to our notice that pursuant to the interim order of this Court dated 6-5-2004, 1/4th of the salary had already been paid to the first respondent and, thus, the same may not be directed to be recovered.

13. The High Court in its impugned judgment opined that the correctness of the report could not be doubted. Having held so, as noticed hereinbefore, it proceeded to interfere with the quantum of punishment on the premise that the second show-cause notice was illegal.

14. It has not been shown to us, despite repeated query made in this behalf, as to whether under the statutory rules, the enquiry officer was empowered to make any recommendation to the disciplinary authority as regards quantum of punishment to be imposed upon a delinquent employee. The High Court has noticed that the disciplinary proceedings are governed by the manual of departmental enquiries. However, no provision therein has been pointed out to show that the enquiry officer was statutorily or otherwise empowered to make recommendations as regards quantum of punishment. Reference to Rule 42 of the said manual by the High Court was wholly irrelevant as indisputably the procedures laid down therein for holding departmental enquiry had been complied with. It is not the case of the first respondent either before the High Court or before us that no charge was framed and communicated to him and he has not been given an opportunity to show cause against the action proposed to be taken against him. He admittedly participated in the departmental enquiry. It is also not his case that in the said departmental proceedings principles of natural justice had not been complied with.

15. The charges levelled against the first respondent were serious in nature. He has been found guilty of grave misconduct including defalcation of a huge amount, preparation of false documents as also misappropriation of 22 bags of DCH-32 cotton seeds. It has also been proved that he has violated instructions for distribution of seeds apart from remaining absent from work.

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Page 8 Monday, March 07, 2022
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16. It is not a case, with respect to the High Court, where the disciplinary authority had differed with the findings of the enquiry officer. The question of differing with the findings of the enquiry officer by the disciplinary authority would arise only when the delinquent officer is exonerated either wholly or in part of the charges levelled against him, whereas the disciplinary authority forms a different opinion. Most of the charges have been found proved, and the disciplinary authority to that extent did not differ with the report of the enquiry officer. So far as the quantum of punishment proposed by the enquiry officer is concerned if in terms of the rules he* had no authority to do so, the Managing Director was entitled to apply his own mind and could come to a conclusion as regards the quantum of punishment which should be imposed on the delinquent officer. He in that view of the matter was not obligated to assign any, far less sufficient and cogent reasons, as it was not the requirement of law. In any view of the matter, from the second notice dated 22-3-1994 issued by the Managing Director of the Corporation it is evident that sufficient and cogent reasons have been assigned therein.

17. A departmental proceeding *stricto sensu* is not a judicial proceeding.

18. There is nothing in the rules to show that the disciplinary authority cannot consider the materials on record with a view to form an independent opinion as regards the quantum of punishment to be imposed upon the delinquent employee. He might have committed a mistake in issuing the first show-cause notice but by reason thereof he cannot be held to be wholly precluded from issuing a second show-cause notice as thereby he intended to rectify the mistake committed by him.

19. In *Indian Council of Agricultural Research* v. *T.K. Suryanarayan*[1] a promotion granted by mistake in ignorance of the service rules was held to be capable of being rectified, stating: (SCC p. 770, para 8)

> "Incorrect promotion either given erroneously by the Department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory service rules. In a court of law, employees cannot be permitted to contend that the Service Rules made effective on 1-10-1975 should not be adhered to because in some cases erroneous promotions had been given."

20. In *Poothundu Plantations (P) Ltd.* v. *Agricultural ITO*[2] it was stated: (SCC p. 501, para 4)

> "*4*. There can be no doubt that only an apparent error of fact or law can be rectified by an officer. If the mistake of law has to be established by construing the words of a section to find its proper meaning, then such an error cannot normally be a rectifiable error under Section 36. If two views are possible, then obviously the error will not be an error apparent from the record."

* **Ed.**: That is, the enquiry officer.

1 (1997) 6 SCC 766 : 1998 SCC (L&S) 359

2 (1996) 9 SCC 499

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Page 9 Monday, March 07, 2022
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21. As the enquiry officer had no jurisdiction to recommend any punishment to be imposed on the respondent by the disciplinary authority, he although acted thereupon at the first instance, could have corrected his mistake as the same was apparent on the face of the record. He, therefore, did not commit any illegality in issuing the second show-cause notice as the enquiry officer had no jurisdiction in that behalf. See *M. Ahammedkutty Haji* v. *Tahsildar*[3]. Mistake furthermore, may either be of law or fact. By reason of mistake on the part of the enquiry officer, the respondent could not have been inflicted with a minor penalty although he deserved a major penalty. If in law the quantum of punishment to be imposed upon a delinquent officer is within the exclusive domain of the disciplinary authority, unless otherwise delegated to any other authority, he alone could exercise the said jurisdiction and determine the same having regard to the nature and guilty (*sic* culpability) of the misconduct on the part of the delinquent officer as the enquiry officer or any other authority had no jurisdiction in relation thereto. The matter might have been different if prior to the imposition of penalty of dismissal from service against the first respondent, no opportunity of hearing had been given to him. Admittedly, the second show-cause notice was issued to him and he showed cause. It is also not contended that the order passed by the disciplinary authority suffers from the vice of non-application of mind. The principles of natural justice admittedly have been complied with.

22. The High Court proceeded on the basis that in the absence of the specific provision the second show-cause notice was impermissible. It failed to consider that there was no statutory interdict in this behalf. An administrative order can be recalled. A mistake can be rectified. The Managing Director of the Corporation as a disciplinary authority, it has not been shown to us, lacked inherent jurisdiction in relation thereto.

23. The first respondent held an office of trust. He distributed seeds to the farmers. He collected a huge amount from them. He not only defalcated a huge amount but also misappropriated some bags of seeds. It was in the aforementioned situation improper for the High Court to interfere with the quantum of punishment. It is now well settled that in a matter of disciplinary proceedings the High Court exercises a limited power. (See *Govt. of A.P.* v. *Mohd. Nasrullah Khan*[4], *L.K. Verma* v. *H.M.T. Ltd.*[5], *Karnataka Bank Ltd.* v. *A.L. Mohan Rao*[6] and *Hombe Gowda Educational Trust* v. *State of Karnataka*[7].)

24. The grounds for judicial review are limited. In *Damoh Panna Sagar Rural Regional Bank* v. *Munna Lal Jain*[8] this Court held that when the High Court intends to interfere with the quantum of punishment on the ground that the same is shockingly disproportionate, it must record reasons for coming to such a conclusion.

3 (2005) 3 SCC 351
4 (2006) 2 SCC 373 : 2006 SCC (L&S) 316 : JT (2006) 2 SC 82
5 (2006) 2 SCC 269 : 2006 SCC (L&S) 278 : JT (2006) 2 SC 99
6 (2006) 1 SCC 63 : 2006 SCC (L&S) 59
7 (2006) 1 SCC 430 : 2006 SCC (L&S) 133
8 (2005) 10 SCC 84 : 2005 SCC (L&S) 567

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Page 10 Monday, March 07, 2022
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25. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, any amount paid to the first respondent may not be recovered pursuant to the order of this Court.

26. In the facts and circumstances of the case, there shall be no order as to costs.

(2006) 3 Supreme Court Cases 699

(BEFORE H.K. SEMA AND ALTAMAS KABIR, JJ.)

Civil Appeal No. 1367 of 2006†

JET PLY WOOD (P) LTD. AND ANOTHER . . Appellants;

Versus

MADHUKAR NOWLAKHA AND OTHERS . . Respondents.

With

Civil Appeal No. 1368 of 2006‡

BISWARUP BANERJEE AND OTHERS . . Appellants;

Versus

MADHUKAR NOWLAKHA . . Respondent.

Civil Appeals No. 1367 of 2006 with No. 1368 of 2006, decided on February 28, 2006

A. **Civil Procedure Code, 1908 — Ss. 151, 114, 115 and Or. 23 R. 1 — Order permitting withdrawal of suit (granted without permission having been sought to file a fresh suit) — Recall of such order — Maintainability of application for — Provision of CPC under which it may be filed — Held, such an application would be maintainable under S. 151 CPC, as the Code of Civil Procedure is silent in this regard — In such cases inherent power of court can come to its aid to act ex debito justitiae for doing real and substantial justice between the parties — The fact that in the present case the trial court had refused to allow such a recall application did not imply that it did not have the power to do so — From a perusal of trial court's orders it was evident that it was not a question of lack of jurisdiction but the conscious decision of the court not to exercise such jurisdiction in favour of the respondent-plaintiff — Practice and Procedure — Inherent power**

(Paras 25 and 26)

B. **Civil Procedure Code, 1908 — Ss. 151, 114, 115 and Or. 23 R. 1 — Order permitting withdrawal of suit (granted without permission having been sought to file a fresh suit) — Recall of — When permissible — Withdrawal of suit by plaintiff on basis of mistake or misrepresentation/**

† Arising out of SLP (C) No. 10024 of 2005. From the Final Judgment and Order dated 4-2-2005 of the Calcutta High Court in CO No. 3982 of 2004

‡ Arising out of SLPs (C) Nos. 9761-62 of 2005