

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE PANKAJ MITHAL
HON'BLE MR. JUSTICE MANOJ MISRA

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Crl. A No. 3589/2023

HIGH COURT BAR ASSOCIATION ALLAHABAD

vs

THE STATE OF UTTAR PRADESH AND ORS.

TRANSCRIPT OF HEARING

13-December-2023

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1 **RAKESH DWIVEDI:** My Lord, this is about that automatic vacation of stay, My Lords, not
2 only in criminal matters, but civil matters and across the board, My Lords.

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4 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, *Asian Resurfacing*.

5

6 **RAKESH DWIVEDI:** Yes. I need not place those judgments, My Lords, the *Asian*
7 *Resurfacing*, My Lords, because in the interim order Your Lordships have elaborated the
8 contents and from a reading of the first judgment itself, it appears that that was a case where
9 the only question was whether against an interlocutory order, an appeal could be filed, a
10 revision could be filed or Article 226, 227 could be entertained.

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12 **CHIEF JUSTICE DY CHANDRACHUD:** That was in the context of PC Act...

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14 **RAKESH DWIVEDI:** There was no issue of any civil proceedings arising in that. There was
15 no issue equally, My Lord, what should be done with the interim orders, of course it appears
16 that in the course of arguments, the aspect of delay... nobody can deny that proceedings are
17 getting delayed in the High Courts, especially in some High Courts like the Allahabad High
18 Court and Patna High Court and so on... And the delays are...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** The judges also were... that is what was weighing
21 with them. Otherwise, stays just continue for decades to an end, particularly in the larger High
22 Courts.

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24 **RAKESH DWIVEDI:** And sometimes the delays are on account of the fact that the accused
25 person would get an interim order and that continues. So, they take advantage of it, the trials
26 get frustrated, witnesses... long time lapse, My Lords, the memories of the witnesses will fade.
27 In some cases My Lords, the Respondents, the State is the culprit, My Lord. They don't file
28 affidavits promptly and sometimes also, especially in the Courts which I have mentioned, it is
29 systemic fault. Fault itself could be for more than one reason, My Lord, because there are 160
30 vacant posts in the High Court of Allahabad and only 90 judges.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Filing is enormous.

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34 **RAKESH DWIVEDI:** Filing is enormous matters don't get listed sometimes My Lord, and
35 sometimes when they're listed, My Lord, the judges are overloaded with work... 150 cases...

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CHIEF JUSTICE DY CHANDRACHUD: In Allahabad, the problem is magnified that the same issue, whether Justice Oka was saying in Karnataka, I know that same issue in the larger High Courts like Mumbai. And not the fault of Judges or for that matter, the litigant, because if there are 200 matters on board every day, 150 matters, 200 matters and you have to write some reasons, give some order which shows deliberation, application of mind. It's impossible for the entire [UNCLEAR] to be completed.

RAKESH DWIVEDI: And Allahabad is compounded by the strikes. The lawyers, My Lord, I have the Secretary, Nitin Sharma is here, who is this instrumental filing. In fact, My Lord, a very sad episode happened. And that goes back long time ago Justice Misra and Justice Mithal are aware...

CHIEF JUSTICE DY CHANDRACHUD: Absolutely.

RAKESH DWIVEDI: So, for months together the strikes used to go on, and at a drop of hat.

CHIEF JUSTICE DY CHANDRACHUD: No longer actually. I don't think after 2000 and...

RAKESH DWIVEDI: Chief Justice Sodhi, My Lord, was the person who... Despite so many judgements, I don't know why lawyers adopt this Trade Unionism tool. So, it's not that once a while it happens. It happens quite frequently and regularly, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Dwivedi, what is to be done, then what is the solution? Because if a judge grants a stay in a 482, it virtually means that nothing is going to come up in the next...

RAKESH DWIVEDI: The first question, which perhaps Your Lordships will have to look into is do we find a solution, My Lord, which is... creates greater problem...

CHIEF JUSTICE DY CHANDRACHUD: Worse than...

RAKESH DWIVEDI: Which is worse than the disease.

CHIEF JUSTICE DY CHANDRACHUD: It results in one more round, again.

1 **RAKESH DWIVEDI:** We have to create in every discipline, civil, revisions, appeals and tax
2 and a separate bench, which will consider now the extension of same amount of time and the
3 Court says in *Resurfacing*, give reasons while extending which really means, My Lord, that
4 both sides have to be heard. It's not like that we're not able to take up, then we say extend it
5 till the next date automatically and that can happen in any Court, My Lord, even in this Court,
6 it can happen. It doesn't matter, for some reason, some important matter is going on, other
7 matters are not taken up, Your Lordship, normally ask, My Lord, if any extension is required,
8 it is extended in the normal course. So, the judges are not to be blamed. They are making the
9 best efforts, My Lord, in the difficult circumstances.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Granted interim relief after it was argued *prima*
12 *facie*.

13

14 **RAKESH DWIVEDI:** Yes.

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16 **CHIEF JUSTICE DY CHANDRACHUD:** So, when it comes up for extension, even if it's
17 another Bench, It's a principle of judicial respect for the fact that even assuming that the stay
18 has granted by another Bench, it has applied in mind.

19

20 **RAKESH DWIVEDI:** Yes. So, that's one important question, My Lord, do we come out with
21 some formula etc., which in this matter, results in a vacation of a stay order with application
22 of mind and what is this formula, My Lords, automatic... Neither, the Supreme Court is
23 applying its mind because it's a kind of a judicial legislation, automatic vacate for all cases, for
24 all times. So, because of this, the Court is not... this Court is not applying its mind to the facts
25 of that particular case, and High Court is also not applying and the second resurfacing which
26 followed, this Court directs the Magistrates that, 'you have to implement this, proceed.'

27

28 **TUSHAR MEHTA:** In some states, there are contempt petitions filed against the Hon'ble
29 Judges because of the direction that 'it is the responsibility of the concerned learned Judge to
30 proceed.' Some litigants, My Lord, in Punjab, Haryana, in three or four states, contempt
31 petitions are filed, joining the Hon'ble Judges, the Judges who were to conduct trial. So, I join
32 my learned friend, My Lord. The solution, perhaps, is, My Lord, more severe than the disease.
33 We need to find out a solution, but this definitely is not the solution.

34

35 **RAKESH DWIVEDI:** So, I submit that this automatic reservation is no solution... neither
36 practically nor on a legal plane.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** What do you have to say about Article 226(3)?

2

3 **RAKESH DWIVEDI:** That's what I... The first question is, that Article 226 is a basic feature
4 of the Constitution. If 226(3) is to be applied, then it will have to be tested whether that can be
5 done. If Article 226 is part of the basic structure which this Court has repeatedly held, it is, so
6 it cannot be taken away, it cannot be whittled down, neither by constitutional amendment.
7 This is something like *Indira Gandhi's* case where, now by constitutional amendment, you
8 are deciding that it will get automatically vacated. So who is applying the mind? It is
9 interference with the process of judicial review. So, if challenged, it will be liable to be struck
10 down. But the High Courts, in some cases which we have cited have, therefore, said that this
11 is directory. [UNCLEAR] Bombay High Court has also taken that... Madras High Court...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** This provision came in by the 44th Amendment?

14

15 **RAKESH DWIVEDI:** Yes. So, I think that's the best solution to leave it as directory.
16 Otherwise we'll have to amend the petition and question 226(3) as *ultra vires*. 368 cannot be
17 used to bring in a provision of this nature but in a way, the direction in *Asia Resurfacing*,
18 goes much beyond Article 226(3). 226(3) says that, upon the making of an application by the
19 other side to vacate, if then it is not decided in 15 days. Here it is not required. The other side
20 has to just sleep over for six months. It'll get vacated.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** So, technically, even if it is *ex parte* , after six
23 months of stay, it would be vacated.

24

25 **RAKESH DWIVEDI:** In many cases, it has happened. That's why in the second case this
26 Court went ahead logically to direct the Magistrates to proceed, implement.

27

28 **VIJAY HANSARIA:** The judgements are there before Your Lordships, perhaps this may also
29 be necessary for Your Lordships to consider in this with the Constitution Bench, whether
30 226(3) is mandatory or directory because there are diverse opinions among the various High
31 Courts. Although judgments are also there before Your Lordships, by way of a compilation
32 filed by me.

33

34 **RAKESH DWIVEDI:** That will result in widening of this Court, My Lord.

35

36 **VIJAY HANSARIA:** Maybe, but that will be relevant thing also.

37

1 **TUSHAR MEHTA:** Possibly that's not the question right now, 226(3) .

2

3 **RAKESH DWIVEDI:** Then we'll have to come with a petition questioning the validity of
4 226(3).

5

6 **VIJAY HANSARIA:** No, that's an interpretation of 226(3).

7

8 **RAKESH DWIVEDI:** No. Mere interpretation... then we'll like to challenge the validity.

9

10 **RAKESH DWIVEDI:** But if it is to be interpreted, then it is directory.

11

12 **VIJAY HANSARIA:** And the High Courts have given good reasons. Two High Courts have
13 given good reasons.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** See the provision before the amendment, that is
16 in the footnote to this SCC, EBC copy. If you have the red book with you, you have this red
17 one? This earlier provision is in the footnote. This is very good. It gives all the footnotes. Mr.
18 Dwivedi can read it from this book. It's at page 186. The earlier provision said that if you have
19 not...

20

21 **RAKESH DWIVEDI:** [UNCLEAR] for the redress of any injury referred to in subclause B or
22 C of Clause 1 shall be entertained, if any other remedy for such redress... that's alternate
23 remedy... or under law for time being enforced.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Now see 4 and 5.

26

27 **RAKESH DWIVEDI:** No, interim order shall, whether by way of injunction or stay or in any
28 other manner shall be made in any proceedings relating to a petition under Clause 1, unless
29 copies of such petition and of all documents in support of plea for such interim order are
30 furnished to the party against whom such petition is filed or proposed to be filed. Opportunity
31 is given such party to be heard in... That's fine, My Lords.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Now see how 5 was. 5 was very carefully framed.

34

35 **RAKESH DWIVEDI:** The High Court may dispense with the requirements of sub-clauses
36 A, B of Clause 4 and make an interim order, in writing, that it is necessary so, to do, for
37 preventing any loss being caused to the Petitioner which cannot be adequately compensated

1 in money. But any such interim order shall, if it is not vacated earlier, cease to have effect on
2 the expiry of the period of 14 days from the date on which it is made, unless the said
3 requirements have been complied with before the expiry of that period and High Court has
4 continued the operation of the interim order. So that's... the amendment which Your Lordship
5 sees, which is now there...

6

7 **JUSTICE ABHAY S. OKA:** See, this amendment will apply only when interim is granted
8 without [UNCLEAR], without hearing. So therefore, if there is a notice issued or in some High
9 Courts practice is to serve State in advance, this will not apply at all. A copy is given and notice
10 is served, then this will not apply.

11

12 **RAKESH DWIVEDI:** Yes. We don't need to go into... We will not go to 226(3), My Lords in
13 this matter, it operates in a different way...

14

15 **JUSTICE ABHAY S. OKA:** And in very limited cases it will apply.

16

17 **RAKESH DWIVEDI:** Yes.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Because once A and B is complied with, then
20 there is no question of an automatic vacation...

21

22 **RAKESH DWIVEDI:** In High Courts, in most High Courts...

23

24 **TUSHAR MEHTA:** I'll tell your... My Lord, I would submit before Your Lordships why it's
25 not necessary. *Asian Resurfacing* essentially concentrates on stay of trials. Stay of trials
26 would arise either in 482 or other jurisdiction...

27

28 **JUSTICE ABHAY S. OKA:** 227...

29

30 **TUSHAR MEHTA:** 227... not in 226. 226, My Lord, we would be taking support to
31 substantiate other submissions, just to say My Lords, that first it's a part of the Constitution...
32 here it's a judicial continuing mandamus. Second, there is at least a requirement of an
33 aggrieved party applied for vacating the stay... here....

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Automatic, without...

36

1 **TUSHAR MEHTA:** ... Who is not vigilant enough and sits for six months is put to premium
2 by getting the stay against him vacated. He has to do nothing, except being negligent, to put it
3 a little harshly. That's the position. Som 226, may perhaps not require Your Lordships'
4 attention in this matter.

5

6 **RAKESH DWIVEDI:** My Lord, the copies are served in advance on the State Council...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Absolutely.

9

10 **RAKESH DWIVEDI:** Except in private disputes. Otherwise, their State Councils are always
11 served and they have an opportunity of being heard. It's other matter that the State
12 Government advocates may not have been having instructions, etc., so they get time, My Lord.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Anything in particular that you would like to
15 add?

16

17 **TUSHAR MEHTA:** My Lord, only two or three things.

18

19 **RAKESH DWIVEDI:** My Lord, I have not stated...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, we'll hear you. How would you like to
22 summate the submission then, Mr. Dwivedi?

23

24 **RAKESH DWIVEDI:** I have seven points, My Lord.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Seven points? Alright, just tell us. One second.

27

28 **RAKESH DWIVEDI:** The judgments are mentioned in my written submission. I will not be
29 taking Your Lordships through it. The propositions are all well settled and well known to Your
30 Lordships. First is that this direction amounts...

31

32 **JUSTICE J.B. PARDIWALA:** Which is that volume, Mr. Dwivedi, your written
33 submissions?

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35 **CHIEF JUSTICE DY CHANDRACHUD:** Separate volume.

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37 **RAKESH DWIVEDI:** It's a separate volume. High Court Bar...

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JUSTICE J.B. PARDIWALA: Yes.

RAKESH DWIVEDI: They were allowed to intervene in the High Court, My Lords.

CHIEF JUSTICE DY CHANDRACHUD: Correct.

RAKESH DWIVEDI: The first submission is that this direction of automatic vacation is laying down of a general norm...

CHIEF JUSTICE DY CHANDRACHUD: Direction for?

RAKESH DWIVEDI: Automatic vacation of interim order lays down a general norm and therefore, it is in the nature of judicial legislation and this Court, My Lord, does not engage in judicial legislation.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

RAKESH DWIVEDI: In the same sex matter, My Lord, Your Lordships have elaborated. I don't need to, My Lords... The second submission, My Lord, that Article 226 is a part of the basic structure of the Constitution and it can neither be shut out or nor whittled nor whittled down either by constitutional amendment or by legislation. And ought not to be shut out or whittled down in exercise of powers under Article 141 and 142. This is also because My Lord, the High Court...

CHIEF JUSTICE DY CHANDRACHUD: This is the third point or the second point?

RAKESH DWIVEDI: Third point.

CHIEF JUSTICE DY CHANDRACHUD: Third point.

RAKESH DWIVEDI: It's part of the same point, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Alright.

RAKESH DWIVEDI: This is because the High Court enjoys a high Constitution status and it's not subordinate, My Lord, to the Supreme Court. This also, has been held in several

1 judgments. So, merely because there is a problem arising, that doesn't mean that the power of
2 the High Court should be curtailed. And there should be any kind of a general direction that
3 even if you have not applied, even if you have not vacated, we are saying it will stand vacated
4 and even we will not apply our mind, it will get automatically vacated.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

7

8 **RAKESH DWIVEDI:** So, the third point, therefore is, that the automatic vacation is neither
9 hinged on application of mind by the High Court nor by the Supreme Court. And application
10 of mind is the essence of judicial decision making without which the decision would be
11 arbitrary. So, even though Article 14, etc., fundamental rights are not available to test the
12 judicial dictums, yet, Your Lordships have consistently observed that arbitrariness in decision
13 making is to be avoided. The fourth point is, the arbitrariness and the discriminatory character
14 of this direction arises from the fact that it lumps together all sorts of cases, civil, criminal, tax,
15 irrespective of facticity.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Irrespective?

18

19 **RAKESH DWIVEDI:** Of facticity of the cases, nature of jurisdiction and determination of
20 fault. For if I am delaying, My Lord, I, having obtained interim order twice, thrice... I can
21 understand High Court vacates it, not by an automatic direction, but High Court vacates it
22 because... Then, the next is, My Lord, speedy trial includes early termination of vexatious trial,
23 also. And this direction does not reasonably balance the two aspects. So, both Section 482 and
24 226 are available for quashing of FIRs and charge sheets and so, even charges in an
25 appropriate case. So, one can understand that the Court may be directed to be slow or to give
26 reasons or to hear. So, these are three, four directions, which can be and should be rather
27 introduced so that straight away or maybe it can also be said that is, heinous crimes and
28 serious financial irregularities cases or economic offenses, if an interim order is to be given, it
29 should be initially for a short period, as Your Lordship says, till the next date of listing. So, that
30 an opportunity, effective opportunity is there. Government Counsel may not be having
31 instructions so... and that will not prevent the High Court from granting appropriate relief.
32 The relief can vary. Sometimes it can be arrest, sometimes it can be staying the whole
33 proceedings. It all depends upon the circumstances. Because we have also seen that there are
34 cases where matters have been settled up to the Supreme Court and people still My Lords,
35 fight it out by filing FIRs. They resort to criminal proceedings, civil nature disputes, they are
36 all carried only to harass. So, if in such cases a direction is given, till further orders. All that
37 power is there under 226. So, there has to be a proper balancing and some minimal directions

1 alone should be given so that there is a guidance to the High Court. And lastly, this ignores two
2 precedents, My Lords. Though, in the context of trial and not interim order... That is
3 **Antulay's** case and **P. Ramachandra Rao**. At page 4 of my written submission, in
4 paragraph 4, I have given the paragraphs at the footnote. I will stress only para 82, 83, 86, 93
5 and 94 of **Antulay's** case, that is **(1992) 1 SCC 225**.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** In your submissions, where is it, you said?

8

9 **RAKESH DWIVEDI:** Paragraph 4, I'll very briefly state it, My Lords... two Constitution
10 Benches in **A.R. Antulay's** case and **P. Ramachandra Rao** have while dealing with the
11 fundamental right to speedy trial under Article 21, held that it is not permissible for this Court
12 to fix time limits for completion of trials. The reason assigned is that delay in trial could
13 happen for a variety of reasons. May I read these two judgments...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** No... It's a very well settled law.

16

17 **RAKESH DWIVEDI:** **P. Ramachandra Rao** may be seen only, because after **Antulay's**
18 case came, three judgments of this Court, where this Court identically, as in **Asian**
19 **Resurfacing**, proceeded to say if trial is not completed in 360 days, then trial will terminate.
20 So, the matter went back to **P. Ramachandra Rao** and they said that this is judicial
21 legislation.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** It's in your convenience compilation?

24

25 **RAKESH DWIVEDI:** Yes, it is there in the compilation. PDF 1399. My Lords, will find the
26 reference... the issue which was involved and that towards the middle Your Lordships will find
27 **Raj Deo Sharma** 1, 2... all these cases, they said, if not concluded, will terminate. Then, in
28 paragraph 19, **Antulay's** case is noted, and Placitum F, if Your Lordship comes to Placitum
29 F, there are other factors contributing to the delay at the trial. So, all these various reasons for
30 delays are noted and the Court says, it's all relative. First is non availability of the Counsel,
31 non-availability of accused, interlocutory proceedings, other systemic delays. In addition,
32 Court noted that in certain cases there may be a large number of witnesses. In some offences
33 by their very nature, the evidence may be lengthy. In **Kartar Singh**, another Constitution
34 Bench opined that delay is dependent on the circumstances of each case because reasons for
35 delay will vary. Such as one delay in investigation on account of the widespread ramifications
36 of the crime and is designed network, either nationally or internationally. The deliberate
37 absence of witness or witnesses, crowded dockets on the file of the Court, etc. So, all that is

1 said, My Lords. And then paragraph 20, 'several cases coming to our notice while hearing
2 appeals, petitions and miscellaneous petitions such as for bail and quashing of proceedings
3 revealed, apart from inadequate judge strength, other factors contributing to the delay at trial,
4 generally speaking, these are absence of or delay in... Again, those reasons are mentioned. And
5 then 21, the question is posed, is it at all necessary to have limitation bars terminating trial
6 and proceedings? Is there no effective mechanism available for achieving the same end? The
7 Criminal Procedure Code as it stands incorporates a few provisions to which resort can be had
8 for protecting the interest of accused and saving him from unreasonable prolixity or laxity at
9 the trial amounting to oppression.' Section 309 is then referred to, Your Lordships can then
10 leave the rest. Please come to 22. Legislation is that source of law which consists in the
11 declaration of legal... again, this definition of... and then the Court holds... last line at page
12 1421, 'bars of limitation, judicially engrafted are no doubt meant to provide a solution to the
13 aforementioned problems. But a solution of this nature gives rise to greater problems, like
14 scuttling. A trial without adjudications, stultifying access to justice and giving easy exit from
15 the solution, from the portals of justice. Such general remedial measures cannot be said to be
16 apt solutions. For two reasons we hold that such bars of limitations are uncalled for,
17 impermissible. First because it tantamounts to impermissible legislation an activity beyond
18 the power of the Constitution conferred on the Judiciary. And secondly, because such bars of
19 limitation fly in the face of law laid down by the Constitution Bench in **A.R. Antulay's** case.
20 Therefore, run counter to Doctrine of Precedent.' There's a quote from William Wade, judicial
21 activism and so on, I can leave it. And then 27, prescribing periods of limitation at the end of
22 which the Trial Court would be obliged to terminate the proceedings and necessarily grant,
23 acquit or discharge the accused and further making such directions applicable to all the cases
24 in the present and for the future amounts to legislation which, in our opinion, cannot be done
25 by judicial directives and within the arena of judicial lawmaking power available to the
26 constitutional Gods. Howsoever liberally we may interpret Article 32, 21, 141, 142 of the
27 Constitution, the dividing line is but perceptible. Courts can declare the law, they can interpret
28 the law, they can remove obvious lacuna and fill the gaps, but they cannot entrench upon the
29 field of legislation properly meant for the legislature. Binding directions can be issued, for
30 enforcing the law in appropriate directions may issue, including laying down of time limits or
31 chalking out a calendar for proceeding to redeem the injustice done or for taking care of rights
32 violated in a case, in a given case or set of cases, depending on facts brought to the notice of
33 the Court. This is permissible for the judiciary to do so, but it may not like the legislative...
34 legislature, enact a provision, akin to or on the lines of chapter 36 of the Code Of Criminal
35 Procedure, 1973. The other reason why the bars of limitation enacted in **Common Cause**,
36 **Common Cause -2**, **Raj Deo Sharma -1**, **Raj Deo Sharma -2** cannot be sustained is
37 that these decisions though, two or three judge decisions run counter to the extent to the

1 dictum of the Constitution Bench in *Antulay's* case. Therefore, cannot be said to be good law
2 to the extent they are in breach of the Doctrine of Precedents. The well settled Principle of
3 Precedents, which are crystallized into a rule of law. Now, that's known, My Lords. And then,
4 they affirm the directions, My Lords, in paragraph 29. So, My Lords, it's somewhat similar.
5 These kind of directions are actually judicial legislations, something which even Article 368
6 will not include within its fold.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

9

10 **RAKESH DWIVEDI:** And that is, My Lords... apart from these submissions. What happens
11 is in the course of it, My Lord, that by issuing these directions, we are not enabling the High
12 Courts to conduct themselves in appropriately, My Lord, in dealing with the case, but rather
13 disabling them and downgrading their status, over the course of years. And in one such matter,
14 in this Court itself when Chief Justice Khehar was, I think Vijay was there, was retiring there
15 was some letter, My Lord, from the Law Minister, and regarding selections of judicial officers
16 in the High Courts and the rules to be made and then the committee of judges of this Court
17 that accepted that proposition favourably and immediately, a *suo moto* petition was listed and
18 Justice Goel was Chairman of the committee also, and he sat on the Bench also immediately.
19 And this was just a few days before the Chief Justice was retiring, the matter went on for two
20 days, and there were so many judges. I said, how can you intervene? How can you take over
21 the power of the High Court? It was a very serious matter. And ultimately, it's the second case
22 where the Bench was disbanded, after that *Kesavananda* .

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

25

26 **RAKESH DWIVEDI:** Just after the lunch, then he inquired, do you really think this requires
27 serious consideration and we must... I said, don't be hasty in this matter. For the last so many
28 years, this has been continuing. Even if you want to change, please consider it carefully and
29 then come out. So, there is some kind of a tendency sometimes that we try to limit the powers
30 of the High Courts. What we really need is that the High Courts should be getting on with their
31 functions and discharging their duties and functions and powers under the Constitution more
32 effectively. I don't need to elaborate, Your Lordships are all more aware than me what is
33 happening in various High Courts. But then these are not the solutions at all. Let's not curb
34 the High Court. The time is to rebuild the High Court and put them, My Lord, on a strong
35 footing so that High Courts function like High Courts. They are ultimately... there is some kind
36 of... of course, there's no such federalism in the judicial field as we have in the... judiciary is
37 structured differently, My Lord. It has some various elements of unitary operations, but at the

1 same time the High Court is the ultimate Court in the State. 80 or 90% of the litigants are not
2 able to come to the Supreme Court. Now, therefore, we don't need to not keep on... different
3 methods have to be found. Able judges, less strikes, more lawyers because we don't have
4 hearing. I wonder what will happen after some time if the High Courts are not having final
5 hearings. We used to sit, when I was in law, first year, first day I used to come and I heard the
6 whole of ***Kesavananda Bharati*** and I used to sit with the register behind. So, by hearing,
7 even in High Courts, we have learned from the seniors how they are arguing, how they are
8 responding. But today, what we are finding is less of arguments and interim orders. People
9 don't understand what happened in one case, what happened, why not in the other case. So,
10 ultimately, that part somehow, in some way, has to be tackled. Unless the High Courts are put
11 on rails as constitutionally imagined by the framers of the Constitution, there will be dark days
12 for this Court My Lord. Ultimately, High Courts are the feeding source for this Court, main
13 feeding source. So, let's put High Court on the rails, strengthen them. That's the only solution.
14 Not this kind of stickling, My Lord, that after... somebody suggests that after three
15 adjournments, it should be automatically vacated. So, we are distrusting the High Court
16 judges. All these propositions show that we don't have trust on the High Court judges.
17 Somehow we feel something wrong is happening there...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** There's a similar provision actually, in the
20 Central Excise Act, or [UNCLEAR] which was then dealt with several High Courts that there
21 can't be an automatic vacation of stay merely because the Court is not able to apply its mind.

22

23 **RAKESH DWIVEDI:** At page five, My Lord, Your Lordships will find ***Pepsi***...

24

25 **TUSHAR MEHTA:** That was read down, My Lord, by this Court.

26

27 **RAKESH DWIVEDI:** At 5 page, ***Pepsi***.

28

29 **TUSHAR MEHTA:** ***Pepsi***, My Lord.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** That's right, ***Pepsi***... 2021.

32

33 **RAKESH DWIVEDI:** And surprising, My Lords, I was surprised... Justice Nariman went
34 down that line, accepted that proposition. He believes in basic structure. And in this second
35 case, at paragraph 6 of my written submission... In ***Pepsi***, Justice Nariman himself said that...
36 diluted it, struck down portions of it, and said that only if there is fault of the Applicant, then
37 it will stand automatically vacated, not otherwise. So, he adopted the fault principle.

1

2 **CHIEF JUSTICE DY CHANDRACHUD:** So, there are two problems. One, the automatic
3 vacation of stay prejudices a litigant, irrespective of the conduct of that litigant. Because there
4 are circumstances of which the litigant has no control and yet many times, systemic flaws. As
5 a result of which, irrespective of what the litigant has in terms of infrastructure available to
6 him or her, stays are vacated by this logic. And second the vacation... the vacating of an order
7 of stay, is also judicial act. The vacating of an order of stay, is not an administrative act. So, by
8 directing that the stay will stand vacated, without application of mind, a judicial order is
9 enforced. As a result of which, notwithstanding the fact that the earlier Benches have applied
10 it's mind, given reasons for the interim order, applied it's... there's judicial application of mind
11 to what the *prima facie* merits of the case were... subsequently, the stay is vacated without any
12 application of mind. Normally, when we vacate an order of stay, you give reasons for vacating
13 order of stay. Maybe that the litigant had abused his... you know... abused that process or he
14 had concealed facts from the Court.

15

16 **RAKESH DWIVEDI:** And every day, we are having appeals here against interim bails
17 granted, bails granted and interim orders also people are coming...

18

19 **JUSTICE ABHAY S. OKA:** Actually it amounts to withdrawing High Court's jurisdiction...
20 [UNCLEAR] taken away...

21

22 **RAKESH DWIVEDI:** Absolutely. It is actually, My Lord, great distrust in the High Court,
23 which is reflected. That's why I was compelled to make that those submissions... great
24 deference My Lords. It's actually indicating distrust in the High Court judges. So, why are we
25 having the High Courts at all, My Lords?

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, that's why many of us don't lay down
28 outer time limits for the High Courts to decide cases. In fact...

29

30 **RAKESH DWIVEDI:** [UNCLEAR] endeavour to do so and like that ,My Lords. And even
31 when it is said, My Lords, in clear terms, yet Your Lordships consider it to be directory. It's
32 not that a judgment will be set aside merely because it has transgressed 365 days and comes
33 after 367 days. That's why I was compelled, My Lords... these solutions, let's not find solutions,
34 let the High Court have that full wide jurisdiction, which Your Lordships have said under 226.
35 Ultimately, even this court will get clogged, if there are four Benches extending orders every
36 time. Then there will be so many more SLPs coming in, Your Lordships precious time will be
37 involved in dealing with them. Power to grant interim order is... this is the last, My Lords... the

1 power to grant interim order is inherent in Article 226, 227 and 482. It doesn't stand outside
2 it. That is only to preserve and protect. 285 My Lords, the High Court has dealt with this aspect
3 of interim orders, Your Lordships may just note 285 to 287... they have noted... PDF 311...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** In the same Compilation or Convenience
6 Compilation... or the [UNCLEAR]

7

8 **RAKESH DWIVEDI:** And I must commend, My Lord, the judgment is very exhaustive,
9 though a little bit lengthy, but it deals with a High Court dealing with a Supreme Court
10 judgment, My Lords, has to be careful with all due care and... a very well written judgment,
11 My Lords. 13 of my written note, My Lords, at page seven in ***Fazalullah Khan vs Akbar***
12 ***Contractor***. The question was whether this direction will apply to interim orders granted by
13 Supreme Court itself. It will not apply to 32. So, 32, 226, ultimately, both are very important
14 constitutional powers. That observation is *per incuriam* because there was no such issue
15 involved in that issue.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** This was not an issue before the Bench at all.
18 [UNCLEAR]

19

20 **RAKESH DWIVEDI:** So, following what Your Lordships said in Article 370 case about
21 ***Prem Nath Kaul's*** judgement...

22

23 **TUSHAR MEHTA:** I'll not take more than five, seven minutes, My Lord.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

26

27 **VIJAY HANSARIA:** I have filed an intervention application...

28

29 **TUSHAR MEHTA:** If you don't mind, can I complete? Can I complete?

30

31 **VIJAY HANSARIA:** Can we complete this side?

32

33 **RAKESH DWIVEDI:** There is no side here.

34

35 **TUSHAR MEHTA:** There is no side.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** There is no side really. Let the Solicitor complete,
2 then we'll hear you for five minutes.

3
4 **TUSHAR MEHTA:** I'll just summarize, My Lord. For Your Lordship's convenience, I have
5 made certain bullet points which I had mailed today in the morning and I'm not going to read
6 any of them, at the outset, I may say. My Lord, my first respectful submission is that by a
7 judicial mandamus or a continuing mandamus, the judicial discretion of the High Court
8 cannot be curtailed. I'm sorry. Your Lordships, My Lord, High Court would be dealing either
9 in 227 or 482? I'm sorry, My Lord, today it is reversed, Your Lordships have physical copies
10 and I am not having. But I am at fault, My Lord. I'll invite Your Lordships attention only to
11 few points, My Lord. My Lord, suppose in a 227 or a 482 jurisdiction, an accused approaches
12 the Court saying that there is no valid sanction, High Court is satisfied And High Court says
13 that, 'till the sanction is granted, trial not to proceed. The six month period, My Lord, the
14 judgment takes away the discretion of the High Court to say that the stay would inure a
15 particular date, which is beyond the reach of the applicant. Second, **Indore Development**
16 **Authority**, My Lord, a recent judgment has recognized the principle of *actus curiae*
17 *neminem gravabit*. Your Lordships are aware, of that 'act of the Court can prejudice no one.'

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

20

21 **TUSHAR MEHTA:** My Lord, a somewhat similar situation was there under the New Land
22 Acquisition Act, that period of five years from the stay granted by the High Court was to be
23 excluded and Court said that it's not in the litigant's hand when the stay would be vacated,
24 when it could be granted modified, etc. So, My Lord, that is my second point. Coming to page
25 two of my note, there is a Constitution Bench judgment which **Asian Resurfacing** misses to
26 note that is **Raza Buland Sugar Company vs Municipal Board, Rampur**. Proposition
27 is simple in that judgment, that nothing can be done behind the back of, or in absence of the
28 litigant.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

31

32 **TUSHAR MEHTA:** My Lord, on 180th day, 6 months period, matter may be on board,
33 matter may not be on board, he would not be aware of... and by operation of the direction, My
34 Lord, the stay would get vacated. That is contrary to this Constitution Bench judgement. My
35 Lord, at page 2, I have cited one paragraph of **Sharif-Ud-Din vs Abdul Gani Lone**, if Your
36 Lordships can allow me to place it, para 69, that is in my respectful submission, fully
37 applicable. Therefore, it is clear that if the condition imposed by the provision of law, this was

1 statutory law, this is continuing mandamus, to do a certain thing within a time frame is upon
2 an institution, and the consequences of that institution not complying with the condition is to
3 fall upon someone else, who have no control over the institution, which is to perform the duty,
4 then the provision of law cannot be construed as mandatory but only directory. Here, the
5 litigant has no control and even Court has no control over his list. The lists are beyond human
6 potential. Next judgment is, My Lord, ***Pepsi Food***. My Lord, there Section 254.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

9

10 **TUSHAR MEHTA:** My Lord, there was an amendment in the Income Tax Act, Section
11 254(2A), was inserted, that a stay granted by the Tribunal would get automatically vacated
12 after one year. And High Court... this Hon'ble Court, said this, and this, I would respectfully
13 place for Your Lordships' consideration, such provision treats unequals equally.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

16

17 **TUSHAR MEHTA:** The person who has an interim order inuring in his favour, has once
18 persuaded the competent Court to grant it. The Respondent has done nothing to get that
19 vacated. So, unequals are being treated as equals. And therefore, also, this needs to... this is
20 not a correct law. Then next point is, whenever any Court passes an order, it passes broadly
21 strong *prima facie* case, balance of convenience and irreparable injuries. After six months
22 whether those conditions, these three conditions, change or not, the judgment says it stays
23 vacated without any application of judicial mind. Because after six months, the case will not
24 become weak, it would remain strong unless heard. Balance of convenience also would not tilt
25 within... because, merely because six months have passed. And injury also, My Lord.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

28

29 **TUSHAR MEHTA:** Next point is, My Lord, whenever the judgment which Mr. Dwivedi relied
30 upon, I also respectfully rely upon. But I'm not reading that judgment.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

33

34 **TUSHAR MEHTA:** Whenever a time frame is to be stipulated, it is always for the competent
35 legislature to do.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** But even those have been held to be by and large
2 directory.

3

4 **TUSHAR MEHTA:** Directory. For example, My Lord...

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** The IBC, Insolvency and Bankruptcy Code.

7

8 **TUSHAR MEHTA:** IBC or Arbitration Act.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** The Consumer Protection Act.

11

12 **TUSHAR MEHTA:** Consumer. After particular days, your right to file appeal goes, because
13 of the overall scheme of the Act, the intent of the legislation, etc., etc. Because there is one
14 focused area which the Court is examining. This is, My Lord, too wide an area. It can be a civil
15 suit, it can be a criminal trial, it can be criminal revision, it can be 482, it can be civil revision
16 under 115, it can be Superintendent's jurisdiction under Article 227. But nothing is considered,
17 and a judicial mandamus is issued.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Generally speaking, directions for the
20 completion of a trial proceeding by the legislature within a certain stipulated period is held to
21 be directory. But since an appeal is a creature of a statute, directions for the legislative
22 prescriptions for filing of appeals on limitation have been held to be mandatory, like in section
23 34(3) of the Arbitration Act or Section 61... 61 of the Insolvency and Bankruptcy Code.

24

25 **TUSHAR MEHTA:** The curtain falls. You know...

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** You can condone a delay up to 15 days, beyond
28 30 days, but no further.

29

30 **TUSHAR MEHTA:** Because time is the essence of that particular Legislation. So, time
31 fixation, first of all, has to be by the competent legislature... and, for the purpose of the object
32 which that particular Act seeks to achieve. It is always object specific. Then, My Lord, Your
33 Lordships are aware, Order 8, Rule 1, required that unless you file your written statement...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Yes...

36

1 **TUSHAR MEHTA:** The court can extend only for 30 days. That came to be challenged. I'll
2 read, My Lords, only four lines, when, My Lord, this Hon'ble Court dealt with, My Lords, the
3 challenge, that Your Lordships would find at page 4, that the citation is ***Kailash vs Nanhku,***
4 ***(2005) 4 SCC 480,*** para 27, only last three lines... that is relevant for the entire discussion.
5 But I don't wish to My Lord, take time on that My Lord, but last three lines are crucial. The
6 object is to expedite the hearing and not to scuttle the same. The process of justice may be
7 speeded up and hurried, but the fairness, which is a basic element of justice, cannot be
8 permitted to be buried.

9
10 **VIJAY HANSARIA:** This Kailash judgement, My Lords, Mr. Dwivedi was the amicus...

11
12 **TUSHAR MEHTA:** So, My Lord, any judicial discretion, should be left, to the concerned
13 Court, namely the High Court and in some cases, My Lords, the District Court, but generally
14 the question of stay of trial does not arise in case of proceedings before the District Court,
15 except in case of a criminal revision or some civil revision. Generally, it is High Court.

16
17 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

18
19 **TUSHAR MEHTA:** So, My Lord, while the problem is there, trials are stayed and it has its
20 own ramifications but this is not the solution. These are my respectful...

21
22 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Solicitor. Yes, Mr. Hansaria.

23
24 **VIJAY HANSARIA:** My Lord, I appear in the I.A. number 258440 of 2023 on behalf of
25 Guwahati High Court Bar Association and we are supporting My Lord, both Mr. Dwivedi and
26 the learned Solicitor, My Lord. Just to add one or two aspects. My Lord, wherever limitation
27 is provided, it is upon the litigant. Your Lordships, Courts have put a fetter on the litigant.
28 Section 34, Arbitration Act, appeal and not upon the Courts, My Lord. If Your Lordships see
29 the sweep of the directions in ***Asian Resurfacing,*** My Lord, in the compilation page 29... if
30 I can read that, five lines from that judgment... if Your Lordships go to the convenience
31 compilation of Mr. Dwivedi, the judgment started at page 3 of the compilation. At page 29,
32 just before paragraph 38, Your Lordships would see this sweep.

33
34 **CHIEF JUSTICE DY CHANDRACHUD:** What page will that be?

35
36 **VIJAY HANSARIA:** Page 29. Just before... just starting, 'in all pending matters before the
37 High Courts...', My Lords have got it?

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CHIEF JUSTICE DY CHANDRACHUD: Yes.

VIJAY HANSARIA: 'In all pending matters before the High Courts or other Courts, which will include Special Courts, etc., relating to the PC Act and all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today.' The judgment is, My Lord, delivered, 'unless extended by speaking order on the above parameters...' Now, next line is also important. 'Same course may also be adopted by Civil and Criminal Appellate Revisional Courts under the jurisdiction of the High Courts, the Trial Courts may, on expiry of the period, resume the proceedings without waiting for further intimation' My Lords. Sweep of the direction...Your Lordships would see the consequence on a diligent litigant, My Lord. He convinces the Court, passes an interim order. Thereafter, listed after one month, it does not reach or the Respondent seeks an adjournment. The Court is not able to take it up, despite being on the board, I wait for the entire day, it doesn't reach. It happens in so many Courts, both of... all of the Lordships knows so, My Lord. So, My Lord as the learned Attorney has rightly said that it is upon the institution, My Lord, whether it is able to decide it or within that six months' time limit or not.

CHIEF JUSTICE DY CHANDRACHUD: Anything else?

VIJAY HANSARIA: Only one thing, My Lord. Wherever the Courts find that peremptory order is upon again the judicial discretion. Sometimes, Your Lordships and Courts pass it will operate for a period of six months or My Lord, four weeks... that qualification is given in the order itself that this stay will operate for a period of four weeks and it expires automatically. That judicial discretion is available to the Court, which this court in *Asian Resurfacing...* that it automatically vacates, wherever the Court wants, it should automatically vacate, that is stipulated in the order itself, sometimes by Your Lordships, My Lord, while exercising that discretion of the court. So, it cannot automatically vacate by virtue of this.

CHIEF JUSTICE DY CHANDRACHUD: We do it so often over here, instead of saying, notice returnable in six weeks, because if you say notice returnable after six weeks, sometimes we found that matters were coming back after five years.

VIJAY HANSARIA: Yes, My Lord it has happened.

1 **CHIEF JUSTICE DY CHANDRACHUD:** So, we list it on a particular day and say that the
2 interim order will be up to a particular day, so we have control over it. We know that the
3 Petitioner will also come back here for extension of the order.

4

5 **VIJAY HANSARIA:** Thereafter, also, sometimes it does not reach. On that particular day, it
6 is on board, it does not reach and the Respondent seeks an adjournment, circulates a letter
7 and gets an adjournment after... There are various circumstances.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Thank you.

10

11 **VIJAY HANSARIA:** I'm extremely grateful to Your Lordships.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Pai. We've got your note here.

14

15 **AMIT PAI:** 501.1, My lord. I respectfully adopt all that my learned seniors before me have
16 said. Only one or two things that I may want to add. The genesis of my matter is a classic
17 example of the problems with *Asian Resurfacing*. This is a criminal trial, these are
18 advocates, My Lord, who appear for an accused, they have been roped in as conspirators with
19 the accused.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

22

23 **AMIT PAI:** I secured a stay in the High Court in 2014, matter doesn't come up. The stay now
24 stands vacated by the orders that I've impugned before Your Lordships, only on the ground...
25 not on the ground that I'm seeking an adjournment, not on the ground of anything else, not
26 on the ground that the stay deserves to be vacated for A, B or C reasons.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Only the ground of *Asian Resurfacing*.

29

30 **AMIT PAI:** Only on the ground of *Asian Resurfacing*.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

33

34 **AMIT PAI:** So, My Lord, most of it has already been said. I'll just take a couple of minutes.
35 May I only point out, ultimately, judicial discretion is the essence of the adjudicatory process.
36 What *Asian Resurfacing* has done in effect, is completely, My Lord, taken away that
37 discretion that the Hon'ble High Court has exercised or is to exercise in respect of giving

1 interim orders. It's not that an interim order is not given without application of mind. Your
2 Lordships have already observed and others before me have already argued that the aspect of
3 application of mind is taken away. What it also does, is dilutes the power of the High Court
4 under Section 482 as well as 226.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

7

8 **AMIT PAI:** Finally, My Lord, I'll just put it all in the note. I don't want to waste Your
9 Lordships' time. The basis for *Asian Resurfacing*, if Your Lordships see paragraph 36 and
10 37, the basis for *Asian Resurfacing* is a judgment called *Imtiaz*.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

13

14 **AMIT PAI:** Where, Your Lordships, My Lord, have discussed the delays in trials, etc. There
15 is really no reasoning, why *Asian Resurfacing* paragraph 36 and 37... My Lord, the intent
16 is very good. The intent, of course is to avoid delays in trials and promote speedy trials. There
17 can be no doubt about it, but there is no specific... as Mr. Dwivedi has already argued, never
18 arose. I'd like to end with what Justice Holmes said, life of the law is experience, not logic.
19 *Asian Resurfacing* is probably logic, Your Lordships, My Lord, five years of experience.
20 Grateful, My Lord.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Pai.

23

24 **TALHA ABDUL RAHMAN:** My Lord, Mr. Mehrotra is appearing online. If he may be
25 permitted to address?

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Anything else Mr. Mehrotra apart from what has
28 been said? Please unmute yourself, you're not audible. Mr. Mehrotra, you're not audible. You'll
29 have to... you're still muted, actually, at your end. Yes, now you are unmuted. Alright, you just
30 set your house in order. We'll hear Mr. Nazki in the meantime.

31

32 **MAHFOOZ A. NAZKI:** My Lord, I appear in Mr. Pai's matter for the State of Andhra
33 Pradesh. And I completely support, Mr. Pai in that. My Lord, just one addition. What Your
34 Lordships have done, My Lord, in the judgment, is that you have also imposed fetters, My
35 Lord, on the very exercise of jurisdiction, and I would only draw Your Lordships attention to
36 a Constitution Bench judgment of 1964. I have passed on the judgment. It is *AIR 1964 SC*
37 *1573*. Your Lordship Gajendragadkar speaking...

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CHIEF JUSTICE DY CHANDRACHUD: What is the name of the judgment?

MAHFOOZ A. NAZKI: My Lord, the name of the judgment is *B. Rajagopala Naidu vs State Transport Appellate Tribunal*. My Lord, here...

CHIEF JUSTICE DY CHANDRACHUD: What is the para? What para would you be referring to?

MAHFOOZ A. NAZKI: My Lord, para 19 would be relevant, My Lord. I'm only drawing a parallel where, My Lord...

CHIEF JUSTICE DY CHANDRACHUD: We now request all members of the Bar to start citing SCR. SCR is now up to date, up to the last few days.

MAHFOOZ A. NAZKI: There is an SCR citation also. May I...

CHIEF JUSTICE DY CHANDRACHUD: And with neutral citations as well...

MAHFOOZ A. NAZKI: We would certainly do that, My Lord...

CHIEF JUSTICE DY CHANDRACHUD: And now that the Allahabad High Court Bar Association is before us, e-SCR has now 30,000 judgments in Hindi. All judgments of the Supreme Court since Independence are being translated into Hindi. It's in a searchable format. So, exactly the facility which you have available on the English SCR, you have in the Hindi SCR. So, please spread the word and...

MAHFOOZ A. NAZKI: My Lord, what is sought, My Lord, to be done in this judgment, is that by...

CHIEF JUSTICE DY CHANDRACHUD: And this is being now extended to other Indian languages, Brother Oka is very actively monitoring that.

MAHFOOZ A. NAZKI: My Lord, what was sought to be done, in this judgment, is by way of a statute, My Lord. A fetter was sought to be imposed, on how the quasi-judicial authority would exercise jurisdiction. My Lord, that Your Lordships said is not permissible. Would Your Lordships have para 19 My Lord? May I...

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CHIEF JUSTICE DY CHANDRACHUD: How does it begin?

MAHFOOZ A. NAZKI: My Lord, may I just pass on the hard copy?

CHIEF JUSTICE DY CHANDRACHUD: No, we have it here, right in front of us. You have it on your screen as well, all the lawyers. You'll have it on your screen...

MAHFOOZ A. NAZKI: 'In reaching the conclusion'...

CHIEF JUSTICE DY CHANDRACHUD: Yes, we got it.

MAHFOOZ A. NAZKI: That's the one, My Lord. 'In reaching the conclusion, we have been influenced by certain other considerations which are both relevant and material.' Now the relevant part... 'In interpreting section 43(a), we think it would be legitimate to assume that the legislature intended to respect the basic and elementary postulate of rule of law that is, that in exercising their authority and in discharging quasi-judicial function, Tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of essence... it is of the essence of fair and objective administration of law, that decision of the judge or the Tribunal must be absolutely unfettered by the extraneous guidance by the executive or administrative wing of the State. If the exercise of the discretion conferred on the quasi-judicial Tribunal, is controlled by such direction that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well accepted notion of judicial process. My Lords, so...

CHIEF JUSTICE DY CHANDRACHUD: Yes. All right. Thank you.

MAHFOOZ A. NAZKI: My Lord, just drawing a parallel.

CHIEF JUSTICE DY CHANDRACHUD: Anything else?

TALHA ABDUL RAHMAN: My Lord, Mr. Mehrotra, I don't know if he'll be able to...

CHIEF JUSTICE DY CHANDRACHUD: Mr. Mehrotra? Is someone appearing in person?

TALHA ABDUL RAHMAN: If Your Lordships can allow me to place...

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CHIEF JUSTICE DY CHANDRACHUD: Yes, Mr. Mehrotra. The problem still persists Mr. Mehrotra. If you've filed your written submission, we'll read them. If you have filed your written submission, we'll read those. Alright. Anybody else? We're all done?

TALHA ABDUL RAHMAN: I just wanted to add one judgment, My Lord, *Mithu vs Punjab*. Your Lordship will recall, My Lord, taking away of judicial discretion...

CHIEF JUSTICE DY CHANDRACHUD: On the death penalty?

TALHA ABDUL RAHMAN: Yes, death penalty, My Lord. Grateful.

END OF THIS PROCEEDING