

(2010) 09 OHC CK 0043

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 433 of 2007, 318, 330, 390, 443, 498, 524, 549, 562, 588, 633, 644, 710, 743 and 754 of 2008, 8, 18, 33, 42, 43, 54, 55, 56, 57, 90, 107, 114, 139, 158, 163, 185, 187, 196, 206, 225, 243, 255, 294, 330, 389, 430, 445, 450, 540

Dibyadarshi Biswal and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

All India Services Act, 1951 — Section 2, 2A
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 4, 5
Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 123, 14, 15(3), 15(4), 15(5)
Criminal Law (Amendment) Ordinance, 1944 — Section 8, 9
Criminal Procedure Code, 1973 (CrPC) — Section 177, 248(2), 378, 378(1), 397
Government of India Act, 1935 — Section 107
Orissa Special Courts Act, 1990 — Section 16
Orissa Special Courts Act, 2006 — Section 22, 24, 3(1), 3(2), 5
Orissa Special Courts Rules, 2007 — Rule 2(1), 3(2)
Prevention of Corruption Act, 1988 — Section 10, 12, 13, 14, 15

Citation : (2010) 2 ILR (Ori) 652

Hon'ble Judges : V. Gopala Gowda, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Gopala Gowda, C.J.—In these writ petitions, the petitioners have challenged the constitutional validity of the Orissa Special Courts Act, 2006 and the Rules framed thereunder urging various facts and legal grounds.

2. Brief facts in nutshell are stated as under:

The petitioner in each of the writ petitions is accused of offence punishable u/s 13(2) read with Section 13(1)(a) of the Prevention of Corruption Act, 1988. Originally each one of the petitioners case was pending either in the Court of Special Judge, Vigilance at Bhubaneswar or Cuttack or other places in the State.

After establishment of the Special Courts pursuant to the notification issued by the State Government establishing Special Courts, the case of the petitioners were transferred to the respective Special Judge of the Special Courts established under the Orissa Special Courts Act.

3. The Orissa Special Courts Act has been passed by the Orissa Legislative Assembly and the same has been assented to by the President of India on 19.9.2007 and published in the Extra ordinary Orissa Gazette on 15.10.2007. The State Government in exercise of its power conferred u/s 24 of the Orissa Special Courts Act, 2007, has framed rules called the Orissa Special Court Rules, 2007 (hereinafter called as "the Rules" in short). The Rules specified the form of declaration. The State Government represented by the Home Department in exercise of power conferred u/s 5 of the Act issued declaration vide Annexure-1 in each of the cases which was published in the Extra Ordinary Orissa Gazette on various dates.

4. The grounds of attack of the provisions of the Act and the Rules are briefly stated and the legal submissions made in support of the same are adverted to in this judgment.

5. The provisions of the Act in not defining as to who is holding "high public or political office" and defining the same in the Rules is not permissible in law. The provisions of the Act and the Rules are unworkable on account of which there would be arbitrariness and discrimination in issuing the declaration in Form I. It is further urged that the Special Courts Act is prospective in nature and not applicable to the pending cases in the court of the Special Judges prior to 15.10.2007 when the impugned Act came into operation. The entire Rules framed there under and the declarations issued pursuant to the Act are violative of Article 14 of the Constitution. The provisions of Section 2(a) and 2(e) are violative of Article 235 of the Constitution. Sections 4 and 9 of the Act are violative of Article 21 of the Constitution. Further the provisions contained in Chapter III of the Act are in contravention of the Constitutional provisions of Articles 14, 21(2) and (3) of the Constitution and apart from the same they are also violative of the principles of natural justice.

We have heard Shri H.K. Mund, Mr. L.N. Patnaik, Mr. G.N. Mohapatra and Mr. Pradipta Mohanty, the learned Counsel appearing for the petitioners in this batch of writ petitions and Mr. Balaram Rout, the petitioner in W.P. CrI. No. 390 of 2008 in person. They raised more or less similar contentions. Leading the argument, Shri Mund placing reliance upon the judgment of the Supreme Court in *R. Kalyani Vs. Janak C. Mehta and Others*, and Paragraph 630 of the Halsbury's Laws of England, Third Edition, 1961 Volume 36 contended that the Act is a penal statute and expropriatory in nature in view of the provisions introduced for confiscation of monies and properties of the accused under Chapter III. Therefore, the said provisions are required to be strictly construed in view of the interpretation made by the Supreme Court in *R. Kalyani* (supra) and according to paragraph 630 of Halsbury's Laws of England referred to above, which interpreted that a statute is

to be regarded as penal for the purposes of construction if it imposes a fine, penalty or forfeiture other than a penalty in the nature of liquidated damages, or other penalties which are in the nature of civil remedies. The general rule is that the same has to be strictly construed and should not be extended beyond their clear meaning. The provisions of Sections 4, 12, 13, 14 to 16 and 18 of the impugned Act are stated to be procedural in nature and the provisions of Section 3 and 15 thereof cannot be said to be procedural but substantive.

The Prevention of Corruption Act, 1988 was enacted by the Parliament to provide a special jurisdiction to the persons who are facing the prosecution under the provisions of the said Act by trying their cases by the Special Judges appointed by the Central/State Government for such area or areas or for such case or group of cases as may be specified in the notification with a view to expedite the proceedings and for achieving day to day trial of cases. The Act amongst other things discourages stay of proceedings of the revisional jurisdiction of the High Court u/s 397 read with Section 401 of the Code of Criminal Procedure.

The Prevention of Corruption Act being a complete code in itself, is applicable to all corruption cases, whereas the State Act is confined to cases of corruption u/s 13(1)(e) of the Central Act against holder of high public and political office. The provision of Section 5 neither describes nor defines the same. Learned Counsel for the petitioner contends that in the absence of definition of "high public and political office" it is the duty of the Court to interpret the expression or the provision through internal or external aids provided in the legislation only if the expression or the provision could be so interpreted, otherwise the Court would be left with no alternative but to strike down the provision as being unworkable.

Reliance is placed upon the decision of the Supreme Court in *Utkal Contractors and Journey v. State of Orissa* AIR 1987 S.C. 1954 in support of the proposition of law wherein the apex Court made certain general observation regarding the interpretation of the statute that a statute is best understood if we know the reason for it-the same being safest guide to its interpretation. In support of the said contention, he placed reliance upon the Constitution Bench decision in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, . It is further urged that when the Act omitted to describe or define the past holders of "high public or political office" the Rules, 2007 defines the same in Rule 2(1)(e) and (f) respectively to cure the provisions of the Act which is not permissible in law, for the reason that the definition provided by the Rules cannot govern the provisions of the Act as it is being a superior legislation, the rules are subordinate legislation framed by the State Government. Therefore, the impugned Act is vague without giving the definition of "high public and political office". Therefore, the State Government in defining the said office in the aforesaid Rules in exercise of its rule making power has exceeded its jurisdiction which is not provided in the State. Therefore, the provisions of the Act are vague and are liable to be struck down.

6. In support of the aforesaid contentions, a passage from the Halsbury's Laws

of England was quoted by the Apex Court in the case of Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc., (paras 29-30). It is further contended that in the absence of anything mentioned in the statement of objects and reasons, headings, marginal notes or preamble portion of the Act giving any indication as to what is meant by the State Legislature, when it used the expression "persons who held high public and political office" in Section 5 of the Special Courts Act, the omission cannot be supplied through any purposive interpretation given by the Court. For this reason also, the Act needs to be struck down as it is vague and violative of Article 14 of the Constitution.

7. In the Act there is vagueness with regard to the jurisdiction of the Special Court over any "local area" or otherwise, remains unknown. The same is contrary to the well known principle that jurisdiction of a Court or a Judge implies the competence of such Court or a Judge to entertain and decide a disputed question of fact or law. In the absence of the same, once again the provisions of the Act suffer from vagueness. A comparison between the provision of Section 3(1) of the Central Act and Section 3(1) of the State Act would clearly go to show that the Central Legislature required a notification by the Central or the State Government to make it clear as to class or classes, group or group of persons and the area or areas that were being covered by the jurisdiction of the Special Judges appointed for the purpose whereas the State Act in the corresponding Section 3(1) requires the State Government to make a notification for appointment of Special Courts, without further specifying the class or classes, group or group of persons, area or the areas or the territory of territories intended to be brought within the purview of the jurisdiction of such Courts. The same is further confounded by Rule 3(2) of the Rules which is not provided in the Statute. Therefore, the same is not permissible in law. Hence, the impugned Act is liable to be struck down.

8. The definition of the term "offence" is incomplete as could be seen from Section 2(d) as it is simply stated that the said offence is punishable u/s 13(2) of the P.C. Act. Section 13(1)(e) of the P.C. Act defines the offence and the penal consequence is being provided in Section 13(2) of the Act. Therefore, any charge for an offence which does not mention the penal consequence will be illegal. Hence the Act is unworkable in practice and is liable to be struck down.

9. De novo trial of the cases transferred to a Special Court u/s 6(2) and Section 10 of the Act is an inevitable consequence that would follow from cognizance being taken over again by a Special Court, as required u/s 4 of the Act. In support of the contention, learned Counsel placed reliance on the decision of the Supreme Court in the case of S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others, to the effect that taking of cognizance is a sine qua non or condition precedent for holding a valid trial. The omission of the same in the provisions of the Act for taking cognizance before conducting a de novo trial in the Special Courts Act in respect of the transferred cases from the Special Judge Court is once again the Act is visited by vagueness and liable to be struck

down.

10. Not providing the provision for appeal in the impugned Act against judgment of acquittal is bad in law for the reason that Section 248(2) of the Code of Criminal Procedure provision is applicable to all criminal trials is governed by warrant procedure which governs the prosecution under the P.C. Act and Section 8(1) of the Act envisages an order or sentence following a finding of guilt. Sub-section (1) of Section 8 envisages an order of acquittal. Therefore, there is no escape from the provisions that a judgment holding a person guilty or not guilty is to be followed by a sentence or an order of acquittal, as the case may be. Section 378(1)(b) of the Code of Criminal Procedure provides for an appeal against the original or an appellate order of an acquittal by any court other than a High Court. That provision cannot be called in aid to sustain the glaring omission of an appeal or provision of an appeal from an order of acquittal as it clearly provides for an appeal against conviction. The omission negating the right of appeal or revision to the accused is a significant departure from Section 27 of the P.C. Act.

11. The various statutory rights and remedies that are provided under the Prevention of Corruption Act have been taken away by the Special Courts Act in the guise of expediting trial of cases by enacting the provision u/s 13(1) which empowers the State Government to authorize the Public Prosecutor to initiate proceedings for confiscation, based on opinion of the State Government that a person who had held high public or political office and accused of offence u/s 13(1)(e) of the Central Act had committed the said offence, which provisions of the Act do not envisage disclosure of any such evidence or materials or furnishing copies thereof to a person subjected to confiscation proceedings. Existence of prima facie evidence or otherwise being an essential function of the Court at the time of taking cognizance of the offence and thereafter at the time of framing of charge, declaration of the State Government as to existence of prima facie evidence against a person alleged against of having committed the offence after submission of the police report as provided u/s 5 of the State Act does not fit into the scheme of administration of justice as contemplated under the Code of Criminal Procedure, which provision is applicable to the proceedings before the Special Courts in view of Section 8(2) of the Act. When the Court of a Judicial Magistrate is in seisin of the proceedings following the submission of the charge-sheet, such a declaration by the State Government has an unmistakable tendency to influence or interfere with the course of administration of justice and is liable to be condemned and struck down as violative of Article 21 of the Constitution. The confiscation of money and property is provided in sections 13 to 19 of the Act, which is not mentioned in the statement of objects and reasons or the preamble portion of the Act, except in the heading of the same. Appointment of authorized officers before whom proceedings for confiscation could be initiated are provided in Section 2(a) and Section 13(1) of the Act. On the culmination of the proceedings, monies and properties of the accused which are the subject matter of such proceedings are ordered to be confiscated and

possession of which are required to be delivered or surrendered before the authorized officer u/s 18(1). Eviction of an affected person or accused from any part of the residential premises, beyond the permitted period of the stay through use of force is provided in Section 18(2) of the Act which is bad in law. Conferment of power to use force as provided u/s 18(2) of the Act to take possession of such house is once again unreasonable and arbitrary exercise of power and violation of Article 19(1)(e) read with Article 21 of the Constitution. Therefore, the aforesaid provisions are violative of the aforesaid Constitutional provisions and, therefore, the same are liable to be struck down.

12. The jurisdiction as to any enquiry or trial is provided in Chapter XIII of the Code of Criminal Procedure. Section 177 thereof provides for local jurisdiction. Orissa Act 9 of 2007 being a Special Act, does not provide that the aforesaid provisions of Chapter XIII of the Code of Criminal Procedure would be applicable for conducting trial. The said provisions are violative of Articles 14, 19 and 21 of the Constitution. Learned Counsel for the petitioners placed reliance on the decision of the Supreme Court in the case of *Mirza Iqbal Hussain through Askari Begum Vs. State of Uttar Pradesh*, in support of the legal contention that the confiscation is one of the powers exercisable by a Court u/s 452 Code of Criminal Procedure at the conclusion of the trial, whereas the power now vested with the Authorised Officer at the stage of the proceedings is totally opposed to the substantial statutory rights of the accused conferred under the Code of Criminal Procedure. Therefore, taking away such rights under the provisions of the Special Courts Act renders the Act arbitrary and the same is liable to be struck down. Confiscation provisions are provided under the various statutes, namely, Essential Commodities Act, 1955, Customs Act, 1962, Orissa Forest Act, 1972, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, N.D.P.S. Act, 1985, Special Court Trial of Offences Relating to Transactions in Securities Act, 1992. The aforesaid Acts are to protect National wealth or to prevent smuggling and evasion of customs duties or hawala transactions that are offences against nation's finance etc. whereas the monies and properties that may be subject matter of prosecution u/s 13(1)(e) of the Prevention of Corruption Act, prima facie belong to the person who has title or possession thereof and confiscation of the same before he or they are found guilty by a court trying him/them and recording a finding further that any part of the monies and properties were illegally obtained through corrupt means, confiscation of the same seems highly obnoxious on the face of it. Accusation of the alleged offence u/s 13(1)(e) of the Prevention of Corruption Act is one of acquisition of assets disproportionate to the known source of income and probable resources over the years of the accused who occupied a public position and exercised public power for a spell during which, it is alleged, that the accused by accepting illegal gratification aggrandized him self a pattern of accusation tragically and traumatically so common against public persons who have exercised and exited from public power, and a phenomenon so suggestive of Lord Acton's famous dictum. The charge has a wide ranging scope and considerable temporal sweep,

covering activities and acquisitions, sources and resources private and public dealings and nexus with finances personal and of relatives. The scope and object of the laws, thus do not afford any comparison with the laws cited supra although all the laws have one thing in common, i.e., they deal with offences and provide for forfeiture and confiscation which is not adequate to bring those provisions as being in pari materia with the State law under consideration.

13. Further it is contended that "right to property" though no more a fundamental right yet, nonetheless it is a constitutional right recognized under Article 300A. It has to be considered as a human right covered under Article 21 of the Constitution. IN support of this contention, reliance has been placed by the learned Counsel on behalf of the petitioners in the case of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, . The impugned enactment provides for confiscation of monies and properties of a person accused of possession of assets disproportionate to his known sources of income before he is found guilty in trial, is expropriatory in nature. The accused who is deprived of possession and beneficial use of such monies or properties while awaiting trial by a court of competent jurisdiction, cannot obtain restitution of the same, if it is not possible to return the property in which event he is entitled to the price of the property with interest at the rate of 5% upon his acquittal which provision begs the question as to whether a person accused of the offence be allowed to be deprived of the use of his own monies and properties until he is found guilty by a competent court of law and secondly whether confiscation should be permitted pending trial when there may be circumstances that may not permit complete restitution, in the event of his acquittal. Therefore, the provisions of confiscation as provided in Section 24 of Chapter III of the impugned Act cannot be said to provide the authority of law as contemplated under Article 300A of the Constitution.

14. Another ground of attack of the impugned Act is, that the provisions of the impugned Act is repugnant to the provisions of the Prevention of Corruption Act enacted by the Parliament. Therefore, the same is violative of Article 254(2) of the Constitution of India. On this ground also the impugned enactment is liable to be struck down.

15. It is further urged that the provisions of the impugned Act are repugnant to the provisions of Prevention of Money Laundering Act, 2002 as amended by the Prevention of Money Laundering (Amendment) Act, 2009 (Act 21 of 2009) and hence violative of the provisions of Article 254(1) of the Constitution of India.

16. Section 26 of the impugned Act provides for a non-obstante clause that notwithstanding anything contained in the Prevention of Corruption Act and the Criminal Law Amendment Ordinance, 1944 or any other law for the time being in force, the provisions of the impugned Act shall prevail in case of any inconsistency. Therefore, the State Act contemplates inconsistencies and repugnancy between the said law and other Central Laws occupying the field. Therefore, Article 254(1) of the Constitution stipulates unless the State law

enacted in respect of any matter covered under the Concurrent List in the Seventh Schedule under Article 246 of the Constitution, has been reserved for the assent of the President of India and assent of the President has been obtained, after pointing out all the specific inconsistencies and the repugnancies and the President had applied his mind thereto as required under Article 254(2). The Special Courts Act cannot prevail over Central Act.

17. In so far as the case on hand is concerned, the assent has been obtained from the President of India in respect of certain provisions of the Act. The opposite parties have placed reliance on the letter dated 28.10.2006 addressed by the Commissioner-cum-Secretary to the Governor of Orissa to the Secretary, Ministry of Home Affairs, Government of India, New Delhi. The letter discloses that assent was sought for Clauses 6, 7, 22 and 26 of the proposed Bill as being repugnant to existing provisions of certain Central laws, viz. Prevention of Corruption Act, 1988, Code of Criminal Procedure, 1973 and the Criminal Law Amendment Ordinance, 1944; satisfies the requirement of Article 254(2) of the Constitution of India. In this regard, the learned Counsel for the petitioner disputing the aforesaid position of law placed reliance upon the decision of the Apex Court reported in *Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others*, in support of the proposition that the phrase used in Article 254(2) "is reserved for consideration" cannot be an idle formality, but, would require serious consideration on the material placed before the President. In the present case the consideration could only be to the proposal made by the State Government. If the proposal made by the State is limited qua the repugnancy of the State law and law or laws specified in the said proposal, then it cannot be said that the assent was granted, qua the repugnancy between the State law and other laws for which no assent was sought for.

18. To find out whether "assent" given by the President was restricted or unrestricted, the letter written or proposal made by the State Government for obtaining assent is required to be looked into. The consideration by this Court is limited to the extent that whether the State has sought assent, qua particular earlier law or laws made by the Parliament prevailing in the State or it has sought general assent. It is further contended that granting of assent as required under Article 254(2) is not in exercise of legislative power of President such as contemplated under Article 123 of the Constitution but is part of legislative procedure. Whether the procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court. In the facts of the case, as stated supra, not taking President's assent is an omission which is fatal to the Act and it cannot be remedied by the Court by any recognized cannons of interpretation. It is urged by the learned Counsel for the petitioners, for the reasons stated supra, the impugned Act has been passed in absolute contravention of Article 254(2) so much of it as is repugnant to or inconsistent with the existing law as embodied in the Code of Civil Procedure, the Indian Contract Act and the Transfer of Property Act and therefore the impugned Act must be declared to be void. It is also further urged that the President has to

necessarily consider the nature and extent of repugnancy, the feasibility, practicalities and desirabilities involved therein though may not be obliged to write a judgment in the same manner the courts of law does before arriving at a conclusion to grant or refuse to grant or even grant partially if the repugnancy is with reference to more than one law in force made by the Parliament., then protection cannot be claimed for the State law when the question before courts taking cover under the assent merely asserting that it was in general form irrespective of the actual fact whether the State is entitled for such protection as claimed against a specific law, the attention of the President was invited to at least an apprehended repugnancy vis-?-vis the particular Central law. The same has not been done in the instant case by the State. Therefore, Article 254(2) has no application to the impugned Act.

19. Further, he placed reliance on the decision of the Supreme Court, with regard to the term "repugnancy" in Article 254(2) of the Constitution in *Thirumuruga Kirupananda Variyarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , wherein the Apex Court explained the meaning of "repugnancy" in the contest of Section 107 of the Government of India Act, 1935, that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one said "do" and the other "don't". There is no true repugnancy according to this view, if it is possible to obey both the laws. Repugnancy between two statutes may be ascertained on the basis of three principles, namely, (i) whether there is direct conflict between the two provisions; (ii) whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and (iii) whether the law made by Parliament and the law made by the State Legislature occupy the same field. If the laws made by the two legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other, then, to the extent of the repugnancy the one supersedes the other. Two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not however the only criterion of repugnancy for if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overcome on the ground of repugnance. The aforesaid position of law is observed in the case of *State of Orissa Vs. M.A. Tulloch and Co.*, .

20. Clause 8(2) of the Bill has been omitted from the said letter addressed to the Central Government seeking President of India's assent. Clause 9 of the Bill in omitting provision of appeal against any order of a Special Court as distinguished from appeal against judgment, order and sentence of a Special Judge trying offences under the Prevention of Corruption Act, 1988 provided for in Section 27 thereof as also denial of right of revision to the High Court in Clause 9(2) of the Bill runs counter to Section 5(3) read with Section 27 of the Prevention of

Corruption Act and Sections 378 and 401 read with Section 397 of the Code of Criminal Procedure, 1973 but the State of Orissa on its own showing has not sought the assent of the President with regard thereto. Clause 10 of the Bill that circumscribes the power of the High Court to transfer cases from one criminal court subordinate to its authority to another such court of equal or superior jurisdiction u/s 407 CPC and limits such power of transfer from one Special Court to another only. In this regard no assent has been sought from the President of India in respect of such curtailment of right of an accused, as is clear from the letter of the State Government. Further the State's letter does not show that entire Chapter III contained Clauses 13 to 19 of the Bill that provide for confiscation of monies, properties and also eviction from the residence of a "person affected" including the person accused of offences u/s 13(1)(e) of the Prevention of Corruption Act before trial and by a quasi judicial authority other than was submitted or brought to the notice of the President of India for his assent. Therefore, the aforesaid clauses of the Bill are irreconcilable with the provisions of the Prevention of Corruption Act, permitting interim management of properties during trial in view of Section 5(6) read with Section 29 incorporating the provisions of Sections 8 and 9 of the Criminal Law Amendment Ordinance, 1944 and Section 452 of the Code of Criminal Procedure providing for disposal of properties including confiscation or return of monies and properties to any person found to be entitled thereto at the conclusion of the trial. Clause 19 of the Bill provides only for the return of the property to a person affected upon his acquittal by a Special Court to be established under the aforesaid Bill. That provision rules out a person other than an accused who could avail the benefit of such return in the event of acquittal after trial, whereas the expression "person affected" includes any person holding any money or property on behalf of another person alleged to be possessed of property beyond his known sources of income. Such person, it may further be noted, is deprived of any remedy except by way of appeal to the High Court in view of Clauses 15(6) and 17(1) and access to Civil Court u/s 9 of the Code of Civil Procedure, 1908 in view of Clauses 22 and 23 of the Bill. Transfer of subject matter of confiscation proceeding is also barred during the pendency of confiscation proceedings under Clause 16 of the Bill. The above provisions of the Bill in Chapter III thereof not having been submitted for assent of the President of India cannot be held to be saved by Article 254(2) of the Constitution of India. Further placed reliance upon the decision of the Federal Court reported in AIR 1941 16 (Federal Court) in support of the contention that Section 9 of the CPC postulates the jurisdiction of the Ordinary Civil Courts to try all suits of a civil nature except suits of which cognizance is either expressly or impliedly barred. These qualifying or saving words preclude the contention that the impugned Act which bars a civil remedy u/s 22 of the Special Courts Act is repugnant to the provisions of the Civil Procedure Code. Hence, the impugned provision is bad in law and is liable to be struck down.

21. Another contention urged on behalf of the petitioners is that the services of the Central Government have been classified under the Civil Services

(Classification, Control and Appeal) Rules, 1965. Rule 4 of the said Rules envisages four categories of services. They are:

- (i) Central Civil Service Group-A
- (ii) Central Civil Service Group-B
- (iii) Central Civil Service Group-C
- (iv) Central Civil Service Group-D.

Rule 5 of the aforesaid Rules defines constitution of different group of services. Part I of the Schedule enumerates different service/grade of services which are classified as Group-A Services. A bare reading of the provisions of Section 2 & 2A of the All India Services Act, 1951 read with Rules 4 and 5 of the C.C.S. (C.C.A.) Rules makes it clear that the All India Service do not belong to Group-A Services. If the expression as defined in the Rules is applied to the impugned Act for the sake of argument, then also the Special Courts Act, 2006 being applicable to only to the Group-A services of the Central or State Government, the said classification is arbitrary, irrational and mala fide and thus hit by Article 14 of the Constitution.

22. A detailed statement of counter has been filed on behalf of opposite party No. 1 sworn to by Shri Kanhu Charan Sarangi, working as Deputy Secretary to Government of Orissa, Home (Special) Department traversing the various petition averments and the legal contentions urged in the writ petitions.

23. With reference to the validity of the Act and the Rules framed there under, it has been stated that the similar Act is already held to be constitutionally valid placing reliance upon the judgment of the Supreme Court regarding the legislative competence to enact the Special Courts Act for establishing Special Courts. Strong reliance is placed upon the decision of the Supreme Court in V.C. Shukla and Others Vs. State (Delhi Administration), in which the Supreme Court with reference to the impugned Act therein has held that the Act has assumed a new complexion. The heading of the Act shows that its main object is to provide for the speedy trial of a certain class of offences with reference to the Commission of Enquiry and investigation conducted by the Government through its agency disclosed the similar offences committed during the period of conferment of powers upon the officers of the State is a trust and holders of high public and political offices are accountable for the exercise of their powers in all cases where Commission of Inquiry Act, 1952, or investigations conducted by Government through its agencies disclose offences committed by such holders. Further it is stated that the Constitutional, Moral and legal obligations of the State to prosecute persons involved in committing such offences and whereas the ordinary criminal courts due to congestion of work and other reasons cannot reasonably be expected to bring those prosecutions to a speedy termination, therefore, it was imperative for the efficient functioning of the parliamentary democracy and the institutions created by or under the Constitution of India that

the Commission of offences referred to in the recitals aforesaid should be judicially determined with utmost dispatch and for the said purpose it is necessary to establish additional Courts presided over by sitting Judges of High Courts and whereas it is expedient to make some procedural changes whereby avoidable delay in the final determination of the innocence or guilt of the persons to be tried is eliminated without interfering with the right to a fair trial. Section 2 of the Act defines "Code", "declaration" and "Special Court" and the residuary Clause (d) thereof says that words and expressions not defined in the Act would have the same meaning as in the Code of Criminal Procedure. Section 3(1) gives power to the Central Government to establish an adequate number of Special Courts by notification in the Official Gazette. Section 3(2) enacts that a Special Court shall consist of a sitting Judge of the High Court nominated by the Chief Justice thereof with the concurrence of the Chief Justice of India. Sections 5(1), 5(2), 9 and 9(3) are referred to and held that provisions of Sections 238 to 243 and 248 regarding the procedure prescribed under the CPC is made applicable. All these things are stated with reference to the Special Court Act which provisions have been examined in the Shukla's case. The same are placed reliance by the learned Senior Counsel on behalf of the opposite party No. 1 in justification of the constitutional validity of the provisions of the impugned Act and the Rules.

24. Learned Senior Counsel also placed reliance upon certain decisions of the Supreme Court referred to in Shukla's case with regard to observations made by Chandrachud, C.J. and Krishna Iyer, J. with reference to Parliamentary democracy that it will see its halcyon days in India, when law will provide for a speedy trial of all offenders who misuse the public offices held by them. He also placed reliance upon the decision of the Supreme Court in J. Jayalalitha Vs. U.O.I. and Another, and a Division Bench decision of this Court in Kishore Chandra Patel and Vs. State of Orissa and Others, and Anr. Division Bench decision of the Allahabad High Court in the case of Phoolan Devi v. The State of U.P. and Ors. 1997 Cri.L.J. 4134 in support of the proposition that, the Special Courts Act is a procedural statute and does not in any way affect the rights and liabilities of the petitioners under the Act and also placed reliance upon the Privy Council judgment in the case of AIR 1927 242 (Privy Council) in the case of Jose Da Costa and Another Vs. Bascora Sadasiva Sinai Narcornim and Others, and Gurbachan Singh Vs. Satpal Singh and others, wherein the statement in Maxwell on the Interpretation of Statutes is adverted to, in support of the legal contention that no person has a vested right in any course of procedure. He has only the right of prosecution and defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. The said observation has been quoted with approval in several decisions of the apex Court, namely Anant Gopal Sheorey Vs. The State of Bombay, and union of india (UOI) Vs. Sukumar Pyne, . It has been held in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, that a trial

under a procedure different from what obtained at the time of the commission of the offence or by court different from that which had competence at the time cannot ipso facto be held to be unconstitutional and no accused has any fundamental right to trial of a particular court or by a particular procedure. Therefore, the provisions of the Act cannot be challenged on the ground of violation of Article 14 of the Constitution. Hence, the challenge made on this legal contention must fail.

25. It is further contended that, with the specific intention to avoid unnecessary delay and keeping in view the concept of speedy trial, the State Legislature has enacted the Orissa Special Courts Act, 2006 and has constituted the Special Courts to exclusively try the offences of disproportionate assets against persons holding "high public and political offices". Further the attack on Section 5(1) contending that it is enacted to oust the jurisdiction of all Courts is untenable on the ground that the declaration as provided u/s 5(1) of the Act is a procedural step to segregate the cases meant for Special Courts from other cases instituted by Vigilance, in furtherance to achieve the object of the Act to dispose of such special category cases exclusively in specially constituted Courts. Such procedural step is not prejudicial nor adverse to the interest of the accused concerned so as to confer a right of challenge to such procedural step to stall further proceeding which will be an antithesis to the object sought to be achieved by the Act. Hence, the State Legislature has consciously barred interference of any court of law.

26. Further it is contended that the petitioner in W.P. (C) No. 390 of 2008 who is an IAS Officer belong to a category other than Officers of "Group A" service in the definition in the Rules is to be read in the context of categorization of the Government Officers by the State Government on the basis of their "pay scales" into Groups A, B, C and D vide resolution dated 7th June, 1999 and, therefore, he belongs to Group A category in accordance with the said Government resolution and comes under the purview of the Orissa Special Courts Act, 2006.

27. He further submitted that in Kishore Chandra Patel (supra), similarly placed petitioner questioned the constitutional validity of Orissa Special Courts Act, 1990 more or less on similar grounds, excepting the ground of repugnancy between the Central Law and the State law under Article 254(1) of the Constitution of India. Validity of the said provision of the Act was threadbare examined by this Court and this Court made certain observations at paragraph 116 with regard to the constitutional validity of certain provisions contained in the said Act and the specific observation is made in paragraph 118 giving time to the State legislature to comply with the same to bring about the amendment to the said provision in the Act. The judgment in Kishore Chandra Patel's case was delivered on 22.7.1993.

28. Thereafter in compliance with the direction made by the High Court, the State Government promulgated. The Orissa Special Courts (Amendment) Ordinance, 1993 which was published in the Extra Ordinary Orissa Gazette on

13.8.1993 with regard to Sections 2, 5, 14, 16 and 19. The said provision was carefully examined by the Division Bench of this Court which held that the aforesaid proposed amendment to the Act by way of Ordinance would show that the two suggestions which this Court gave in Kishore Chandra Patel's case to take care of Articles 14 and 21 of the Constitution, in so far as the provisions contained in Chapter III are concerned, have been incorporated in the Ordinance. Therefore, according to the Division Bench of this Court the provisions of Chapter III of the Act as amended by the aforesaid Ordinance do not violate, according to the Division Bench, Articles 14 and 21 of the Constitution. The said observation is made after noting the contention of Mr. Rath appearing for the petitioners that the Ordinance was not valid with the observation "we do not express any opinion on this aspect". Having made such observation, at paragraph 5 it is held that the result is that the Act as amended by the aforesaid Ordinance does not suffer from any infirmity. Therefore, all the petitions stood rejected.

29. In view of the Division Bench judgment in Kishore Chandra Patel's case and the decision of the Supreme Court in V.C. Sukla's case, learned Senior Counsel submits that there is no merit in the challenge to the provisions of the impugned Act. Hence the petitions are devoid of merit and the same are liable to be dismissed.

30. In so far as new grounds urged in this writ petitions are concerned, it is contended by the learned Senior Counsel Shri Padhi that Article 254(1) is not available to the petitioners for the reason that undisputedly the Act has received the assent of the President after satisfying from the documents sent by the State Government as directed by the office of the Governor with regard to the various clauses of the bill which was passed in the State legislature and sent for assent of the President. The said correspondence has been made available for our perusal and the same have been considered by the President who has given assent to the impugned Act. Therefore, there is no repugnancy between the P.C. Act and other laws as contended by the petitioners counsel in view of the undisputed fact that the President has given assent to the Special Courts Act which falls within purview of Article 246(2) of the Constitution. Therefore, there is no inconsistency or repugnancy between the Central Act and the Special Courts Act enacted by the Orissa State Government. Hence, the said contention is wholly untenable in law. Therefore, the petitions are liable to be rejected.

31. With reference to the aforesaid rival legal contentions urged on behalf of the parties, the following points would arise for consideration:

(1) Whether the similar provisions in the present impugned Act is required to be re-examined in these writ petitions with reference to either the definition clause or declaration u/s 5(1) and other provisions of Chapter III of the impugned Act in view of the decision rendered by this Court in Kishore Chandra Patel's case (supra) wherein the provisions of Section 5 and other similar provisions of the impugned Act and Chapter III (Confiscation) have already been held to be constitutional, legal and valid as the same do not offend Articles 14 and 21 of the

Constitution.

(2) Whether the impugned Act is repugnant or inconsistent with the provisions of the Prevention of Corruption Act and other Central Acts to the impugned Special Courts Act, 2006?

(3) Whether the provisions of the Orissa Special Courts Act, 2006 are repugnant to the provisions of the Prevention of Money Laundering Act as amended by Amendment Act, 2009?

(4) Whether the impugned notification issued u/s 5(1) of the Act is liable to be quashed?

(5) Whether introducing the bill as Money Bill is legal and valid?

(6) Whether the case of Balaram Rout does not fall within the purview of the Special Courts Act?

(7) To what order?

Answer to point Nos. 1 and 4:

32. Both the points being inter-related are taken up together. Similar enactment, i.e. Special Courts Act with certain loopholes enacted in the year 1990 was challenged before this Court urging various similar legal contentions excepting the contention regarding Article 254 on the ground of violation of Articles 14, 21, 22, 23 and 300A of the Constitution. This Court after elaborately referring to the provisions of the said Act and the rival legal contentions urged on behalf of the parties, referring to the various constitutional and other decisions of the Supreme Court of which one of the aspects examined was if the impugned provisions fell for consideration in the same enactment and was answered in favour of the State holding the Act as constitutional, legal and valid with certain observations regarding certain amendment to be made further holding that Section 16 is held to be unconstitutional. Thereafter at para 118 certain directions were reissued to the State. That paragraph reads thus:

The cases shall be fixed for further hearing after a month when we shall be informed whether the provisions of Chapter III have been amended; if so, how? We shall then record our opinion on the question whether the provisions of Chapter III as these would be found when the cases shall be taken up for further hearing, violate both Articles 14 and 21 or any one these.

In the aforesaid judgment, the constitutional validity of Part III regarding confiscation of the monies and properties of the accused persons who were facing the criminal trial in the Special Court constituted under the said Act by the State Government for speedy disposal is also held to be legal and valid and does not affect either the fundamental rights or constitutional rights and the same are not inconsistent with the statutory rights conferred either under the Criminal Procedure Code, Criminal Law Amendment Act and Civil Procedure Code. Pursuant to the direction issued at paragraph 118 in Kishore Chandra Patel's

case, the State Government issued the Ordinance of 1993. The same was placed before this Court as directed in the judgment. The same was examined by this Court in its order dated 16.8.1993 and after noting the submissions of the petitioners' counsel therein at paragraph 5, the Division Bench of this Court which decided Kishore Chandra Patel's case made observation as hereunder:

The result is that the Act as amended by the aforesaid Ordinance does not suffer from any infirmity. All the petitions, therefore, stand rejected.

33. In view of the decision in Kishore Chandra Patel's case and the observations made in the subsequent order with reference to the Ordinance, this Court in unmistakable terms held that the provisions of the Special Courts Act, 1990 including Part III dealing with the confiscation of the monies and properties of the accused persons who are facing the criminal trial is held to be constitutionally legal and valid and therefore the same does not call for interference. For the reasons stated supra, there is no occasion for us to examine/consider all the legal contentions which were adverted to in the earlier part of the judgment wherein the legal contentions urged have been dealt with, and upheld the validity of the Act except the provision of Section 16 of the Special Courts Act of 1990 and therefore there is no need for us once again to refer the same and record findings and reasons. The decision in Kishore Chandra Patel's case has attained finality. Apart from the said decision, the learned Senior Counsel who is the Special Counsel on behalf of the State Government has rightly placed reliance upon the decision in Delhi Administration v. V.C. Shukla (supra) wherein the Apex Court once again examined similar Special Courts Act of 1979 enacted by the Delhi State Legislature. The constitutionality of the said enactment has been extensively examined by the Supreme Court with reference to the similar legal contentions, except Article 254(1) of the Constitution and each one of the legal contentions raised in the said case has been answered by it in favour of the Special Courts Act which was impugned in the said case. That case is also referred to by the Division Bench of this Court in Kishore Chandra Patel's case. Hence, the legal contentions urged regarding various aspects as adverted to above are not required to be examined and answered by this Court in this case. In addition to the reasons assigned by the Division Bench of this Court in the case of Kishore Chandra Patel regarding the discretionary power to be exercised by the State Government in picking and choosing the specific cases of persons, who are holding high public and political office against whom criminal cases are launched qua the Special Courts Act, 2006 is wholly untenable in law for the reason that the State Government has filed an affidavit in Court on 23.7.2010. Relevant paragraphs of the affidavit read thus:

3. That as informed by the Special Counsel for the State, during the course of hearing a doubt has arisen as to whether the State Government has any discretion in issuing the notification u/s 5 of the Special Courts Act if a case comes within the category of persons holding high public or political office as defined under the Act and Rules and there is prima facie evidence of the

commission of offence u/s 13(1)(e) of the Prevention of Corruption Act.

4. That it is humbly submitted that in the event there is prima facie evidence of the commission of an offence alleged to have been committed by person who held high public or political office in the State of Orissa as defined under the Act and the Rules, the State Government shall mandatorily make a declaration to that effect and the State Government does not have any discretion on the subject.

5. That the role of the State Government is limited to satisfy that the ingredients of Section 5(1) of the Special Courts Act are satisfied and if the ingredients of Section 5(1) of the Special Courts Act is satisfied, the State Government shall make a declaration to that effect.

34. In view of the aforesaid facts sworn to by the Joint Secretary to the State Government, Home Department, Government of Orissa, the apprehension regarding the declaration of certain cases after picking and choosing amongst the offenders who are charged u/s 13(1)(e) of the P.C. Act for the purpose of invoking the provision of Chapter III is also untenable in law. Therefore, the contention urged in this regard has no merit and is liable to be rejected.

In V.C. Shukla's case, the apex Court had the occasion to consider the challenge to Section 5 of the Delhi Special Courts Act, 1979. Considering contention raised by the learned Counsel for parties, the apex Court held as under:

79. It was next contended by Mr Bhatia that Section 5 of the Act suffers from several constitutional and legal infirmities.

80. Sub-sections (1) and (2) thereof may be extracted here:

5. Declaration by Central Government of cases to be dealt with under this Act.--

(1) If the Central Government is of opinion that there is prima facie evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in India and that in accordance with the guidelines contained in the preamble hereto the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

(2) Such declaration shall not be called in question in any court.

81. In the first place, it was contended that Section 5(1) suffers from the vice of excessive delegation of powers so as to violate Article 14 inasmuch as the discretion conferred on the Central Government is absolute, naked and arbitrary and is clearly discriminatory as it is open to the Central Government to pick and choose persons and make declarations in respect of them while excluding others. In our opinion, this contention is based on a serious misconception of the provisions of the Act. For one thing, no unguided or uncanalised power has been conferred on the Central Government. A basic condition imposed on the Central Government is that there must be a proper application of mind regarding the

existence of prima facie evidence of the commission of an offence. Secondly, the discretion has to be exercised in accordance with the guidelines contained in the preamble. The various clauses of the preamble which have been set out in an earlier part of this judgment, lay down clear guidelines and provide sufficient safeguards against any abuse of power. Thirdly, Clause (4) of the preamble clearly lays down that the power u/s 5 is exercisable only after the commission of an offence by the holder of a high public or political office has been disclosed as a result of an inquiry conducted under the Commissions of Inquiry Act or of an investigation conducted by the Government through its agencies. It is well settled that discretionary power is not the same thing as power to discriminate nor can the constitutional validity of a law be tested on the assumption that where a discretionary power is conferred on a high authority, the same may or would be exercised in a discriminatory manner. In the case of *Dr. N.B. Khare Vs. The State of Delhi*, Kania C.J. dealing with the same aspect of the matter observed as follows:

Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of power given by a law sometimes occurs, but the validity of the law cannot be contested because of such an apprehension. In my opinion, therefore, this contention of the petitioner cannot be accepted.

In the case of *Kathi Raning Rawat Vs. The State of Saurashtra*, , this Court observed:

The discretion that is conferred on official agencies in such circumstances is not an unguided discretion, it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested.

The same view was taken in a later decision of this Court in the case of *Matajog Dobey Vs. H.C. Bhari*, where the court observed as follows:

It has to be borne in mind that a discretionary power is not necessarily a discriminatory power and that abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official.

Referring to the aforesaid decisions, the apex Court in *V.C. Shukla's* case held that as the power has been conferred on the Central Government which is to make a declaration in accordance with the conditions laid down in Section 5(1) and, therefore, in conformity with the guidelines mentioned in the preamble, the attack based on discrimination is unfounded and is hereby repelled. In this view of the matter, there is no merit in point No. 5. Accordingly, point Nos. 1 and 4 are answered against the petitioners.

Answer to point No. 2:

35. In so far as point No. 2 is concerned, the question of repugnancy or inconsistency between the Prevention of Corruption Act and other laws, namely, Criminal Procedure Code, Criminal Law Amendment Act and the CPC regarding confiscation proceedings on the ground that certain clauses of the bill were sought for assent of the President and the function of the President is legislative in character under Article 123 of the Constitution of India is also examined by us. The Prevention of Corruption Act and other Central Acts referred to supra are enacted from Entry 1 of the Concurrent List for which both the Parliament and the State legislature have got legislative power to enact the laws on the subject in exercise of their legislative power under Article 246 of the Constitution of India. In the instant case, from Entry I of List III of 7th Schedule, no doubt the Prevention of Corruption Act and Code of Criminal Procedure have been enacted by the Parliament. In so far as Criminal Procedure Code is concerned though this Act was an Old Act, after the Constitution has come into force it has been amended by Act of 1973. From the said entry the Orissa Legislature derived the legislative power and enacted the impugned Act. In view of the aforesaid constitutional provision, the Article 254(1) is not attracted here for the reason that the Special Courts Act has received the assent of the President. Therefore, Article 254(2) is applicable to the fact-situation. Hence, the impugned Special Courts Act prevails over the Central Laws referred to supra. Point No. 2 is required to be answered against the petitioners and in favour of the State.

Answer to point No. 3:

36. In so far as point No. 3 is concerned, the same is required to be answered against the petitioners for the following reason. The impugned Act is enacted by the State Legislature deriving powers from Entry Nos. 1 and 2 of the Concurrent List which has received the assent of the President. The Prevention of Money Laundering Act, 2002 had no repugnancy with the State Act when the State Act was enacted. Prevention of Money Laundering Act was amended in the year 2009 and the offences u/s 13 of the Prevention of Corruption Act came to be incorporated in the Schedule of Part B of the Prevention of Money Laundering Act, 2002. The said amendment was inserted by the Prevention of Money Laundering (Amendment) Act, 2009 with effect from 1.6.2009. Article 254(1) upon which reliance is placed by the petitioners counsel would not be applicable in these cases for the reason that during the period the State Legislature had enacted the law and the same received Presidential assent, the provisions of the Amending Act, 2009 of the Prevention of Money Laundering Act was not in force. Therefore the question of repugnancy of State law to a pre-existing Central law on the same subject does not arise. The entire issue for consideration is whether it would come within Clauses of Article 254(2) proviso which provides that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. The Prevention of Money Laundering Act, 2002 could be traceable to Entry No. 93 of List I of the VII Schedule. In this view of the matter, by Amendment Act, 2009, bringing the

offences u/s 13 of the Prevention of Corruption Act in Part B of the Schedule of the Prevention of Money Laundering Act cannot prevail over the Prevention of Corruption Act for the reason that Money Laundering Act is enacted by the Parliament from Entry 93 read with Entry 44 of List I. Offences by persons who are holding high public and political office are governed by the Prevention of Corruption Act u/s 13(1)(e) which statutory enactment was enacted from entry at sl. No. 1 & 2 of Concurrent List III of the Seventh Schedule. Therefore, the field is occupied by law. Hence, the Prevention of Money Laundering (Amendment) Act, 2009 upon which reliance is placed by the petitioners counsel cannot prevail upon either the Prevention of Corruption Act or the Special Courts Act and the question of repugnancy as contended by them does not arise as the Special Courts Act which has received the assent of the President and the Prevention of Money Laundering Act is operating in the different field.

37. In this regard, learned senior counsel on behalf of the State has placed reliance upon the decision of the Supreme Court in the case of *M. Karunanidhi Vs. Union of India and Another*, where in a five Judge Bench of the Hon'ble Supreme Court held that in order to decide the question of repugnancy it must be shown (i) that the two enactments contain inconsistent and irreconcilable provision so that they cannot stand together or operate in the same field; (ii) that there can be no repeal by implication unless the inconsistency appears on the face of the two statutes; (iii) that where the two statutes occupy a particular field, but there is room or possible of both the statutes operating in the same field without coming into collision with each other, no repugnancy results; (iv) that where there is no inconsistency but the statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statute continued to operate in the same field.

He has also placed reliance upon the decision of the Supreme Court in the case of *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, wherein the Supreme Court held as under:

The question of repugnancy under Article 254(1) between a law made by Parliament and a law made by the State legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy, become void.

The issue which has arisen for consideration in this case is, whether there is repugnancy between the Prevention of Money Laundering Act, 2002 as amended in 2009 with the Orissa Special Courts Act. The State law has primarily two facets: (1) It gives jurisdiction to try the offences u/s 13(1)(e) of the Prevention of Corruption Act of special category of offenders as provided under the Act and the Rules and (2) it gives power of confiscation of the monies and properties under the procedure established by law. The Prevention of Money Laundering Act as amended in 2009 provides that it would be applicable to the offences specified

under Part B of the Schedule with the total value involved in such offence of Rs. 30.00 lakhs or more as provided in Section 2(y)(ii). The question of punishment of the petitioners under the Prevention of Money Laundering Act, 2002 does not arise for the reason that in all these cases the petitioners are charged u/s 13 of the Prevention of Corruption Act and by operation of State statute, the same has been transferred to the Special Courts constituted for this purpose for adjudication, the Prevention of Corruption Act, 2002 only gives power for attachment of the property and filing of complaint by the Director or Deputy Director of Central Government. The Director or Deputy Director of the Central Government are the authorities as defined u/s 2(j) and 2(k) of the said Act, they are appointed by the Central Government may not have jurisdiction to initiate proceedings in respect of all cases under the Prevention of Corruption Act, unless specifically notified under the Rules. It is not known whether these authorities are entitled under law to prosecute the offenders u/s 13(1)(e) of the Prevention of Corruption Act, if an offender happens to be a public servant working under the State Government. In that event, it would be of different jurisdiction and therefore there would be no conflict between the above enactments. There is no repugnancy between the two statutes for one more reason namely that there is different procedures under two statutes for confiscation of monies and properties of the accused. Therefore, both the statutes are essentially can co-exist. Prevention of Money Laundering Act does not efface the prosecution against the persons who will be facing prosecution under the Prevention of Corruption Act as it would be apparent from the Schedule of the Prevention of Money Laundering Act, 2002. Both Part-A & B provide that in case of specified offences under the I.P.C., N.D.P.S. Act, 1995 and the Explosive Substance Act, 1998, Prevention of Corruption Act, 1988 apart from the prosecution under the respective statutes, the person concerned can be prosecuted under the Prevention of Money Laundering Act, 2002 as well as his property is liable to be confiscated. In this view of the matter, in the instant case, a person has been charged and prosecuted for violation of Section 13(1)(e) of the Prevention of Corruption Act. Therefore, their cases cannot be barred and rightly the learned Senior Counsel on behalf of the State Government has placed reliance on the following judgments of the Supreme Court: M.P. Shikshak Congress and Others Vs. R.P.F. Commissioner, Jabalpur and Others, wherein the Supreme Court has clearly stated that before Article 254 is attracted there must be repugnancy between the State law and the provisions of the Central Statute. In S. Satyapal Reddy and Others Vs. Govt. of A.P. and Others, the Apex Court held that to determine that there is an apparent repugnancy or conflict between Central and State Laws occupying the same field and that they cannot operate harmoniously in each case, the Court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Repugnancy arises when both the laws are fully inconsistent with each other or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. But the Court has to make every attempt to reconcile the provisions of the

apparently conflicting laws and to make an endeavour to give harmonious construction of the provisions of the Acts. He has also referred to the case of Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, in support of his legal submission that there is no repugnancy between the above Statutory enactments in which the Constitution Bench of the Apex Court has laid down the procedure for considering inconsistency and for harmonious construction in paragraphs 606, 607, 608 and 609 of the judgment which are extracted below:

606. While contradictory, I am able to read them harmoniously. Learned Senior Counsel for the petitioners, Mr. K.K. Venugopal, argued that Articles 15(5) and 15(4) are inconsistent to the extent that Article 15(5) exempts minority institutions from reservation and Article 15(4) incorporates aided minority institutions in the reservation scheme. Because both provisions contain "non-obsante clauses", they render each other void. He further submitted that the Court is in the position of having to chooses between them in regard to this inconsistency. He provided three tests of statutory interpretation that give us guidance in resolving such a conflict.

607. First, if the Court cannot harmonise the two provisions, it must invalidate the one that completely destroys the other's purpose. (Sarwan Singh v. Kasturi Lal SCC pp. 760-61, at para 20). In the instant case, one of the express purposes of Article 15(5) was to exempt minority institutions and thus avoid conflict with Article 30(1). This is found in the text of Article 15(5) itself.

608. With nothing in the text of Article 15(4) to guide us, we turn to its Statement of Objects and Reasons:

The Act also amplifies Article 15(3) so as to ensure that any special provisions that the State may make for the educational, economic or social advancement of any backward class citizens may not be challenged on the ground of being discriminatory.

Thus, Article 15(4) was not passed with an express intention to include minority institutions; nor did it arise out of a case in which minority institutions were a party. Then again, it was open to First Parliament to exclude minority institutions from the beginning. Articles 15(4) and 15(5) 's purposes do not necessarily conflict. I find the first test inconclusive and thus turn to the other ones. The second test asks which provision came into effect at a later date (i.e. was "later in time?")? That which is later shall prevail. Here, Article 15(5) was enacted later in time. In J.K. Cotton Spg. And Wvg. Mills Co. Ltd. v. State of U.P. AIR at p. 1174, para 9, I find the third test; it provides that the specific clause must trump the general. Article 15(5) is specific in that it refers to special provisions that relate to admission in educational institutions, whereas Article 15(4) makes no such reference to the type of entity at which special provisions are to be enjoyed.

609. Because Article 15(5) is later in time and specific to the question presented, it must neutralize Article 15(4) in regard to reservation in education. Mr. K. Parasaran, learned Senior Counsel for the respondents, correctly pointed out that

constitutional articles are to be read harmoniously, not in isolation.(See T.M.A. Pal at p. 582, para 148.) Our interpretation is harmonious because Article 15(4) still applies to other areas in which reservation may be passed.

In view of the aforesaid, statement of law laid down by the Constitution Bench of the Apex Court in the case referred to supra, this point is also answered against the petitioners holding that the Special Court Act and the Prevention of Money Laundering Act are operating in different fields and therefore the said fact has no application to the fact-situation.

Answer to Point No. 5

38. Strong reliance is placed upon Articles 198 and 199 of the Constitution of India by the learned Counsel for the petitioners to contend that introducing the bill as money bill though the bill comes under the Penal Law under Entry I of List III of Seventh Schedule. Therefore, the procedure followed by the Parliamentary Affairs Department in passing the bill by the State legislature is bad in law. This contention is stoutly denied by the learned senior counsel appearing for the State Government placing reliance on Articles 198 and 199. He submits that Article 198 stipulates a special procedure in respect of Money Bills. Article 199 defines Money Bills. Article 199(1)(g) provides that a Money Bill will be a Money Bill if it is in any manner incidental to any of the matters specified in Sub-clause (a) to (f). Therefore, it cannot be said that the Orissa Special Courts Act does not fall under the category of money bill nor a statute can be invalidated on the ground that a Bill not being a money bill has been styled as money bill. Rebutting the said contention, he has rightly placed reliance upon Article 212 which reads as under:

Courts not to inquire into the proceedings of the legislature (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

39. Learned senior counsel for the State Government has rightly placed reliance upon the decision in the case of State of Punjab Vs. Satya Pal Dang and Others and Baldev Parkash and Others, , wherein the Constitution Bench of the Apex Court held that there are several tests to determine when the provision may be treated as mandatory.

The relevant paragraph is extracted below:

30. There are several tests to determine when the provision may be treated as mandatory and when not and they have been culled from books and set down by Subba Rao, J. (as he then was) in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, , at p. 765) and earlier by Venkatarama Iyer J. in The State

of *Bombay Vs. R.M.D. Chamarbaugwala*, at p. 96 : 50 (sic). For our purpose it is necessary to emphasize only one distinction. In those cases where strict compliance is indicated to be a condition precedent to the validity of the act itself the neglect to perform it is indicated is fatal. But in cases where although a public duty is imposed and the manner of performance is also indicated in imperative language, the provision is usually regarded as merely directory when general injustice or inconvenience results to others and they have no control over those exercising the duty.

40. In cases where although a public duty is imposed and the manner of performance is also indicated in the imperative language, the provision is usually regarded as merely directory and where strict compliance is indicated to be a condition precedent to the validity of the act itself, the neglect to perform is indicated as fatal, then the same is mandatory. The Apex Court further held that Article 212 Clause (1) provides that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Further the learned senior counsel rightly placed reliance on the case of *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, in support of the proposition of law that, where the validity of a law made by a competent legislature is challenged in the court of law, the court is bound to presume in favour of its validity and further the court will not consider itself restricted to the pleadings of the State and would be free to satisfy itself whether under any provision of the law can be sustained. In this view of the matter, this point is also required to be answered against the petitioners.

Answer to point No. 6:

41. With regard to the plea of the petitioner in W.P. CrI No. 390 of 2008 he being an I.A.S. Officer belongs to a category other than Officers of Group A service and hence the declaration bringing the petitioner under the Act is illegal and without application of mind, the case of the opposite party No. 1 is that by resolution No. 17555/Gen. dated 7th June, 1999 (Annexure-D/2), the State Government abolished the erstwhile segmentation of Government Employees into "Gazetted and Non-Gazetted Categories and classified the posts in Government Offices into four groups, namely, Group-A, Group-B, Group-C and Group-D according to the scale of pay. All posts in the pay scales the maximum of which is not less than Rs. 13, 5000.00 came under Group-A according to the aforesaid resolution. The petitioner being in the cadre of I.A.S. belongs to Group-A category in view of the aforesaid Government resolution and, therefore, comes under the purview of the impugned Act, is the justification given by the State Government. The petitioner has not been able to demonstrate that an I.A.S. Officer belongs to different category other than the four categories mentioned in the aforesaid resolution. No doubt an I.A.S. Officer comes under Group-A post and since the definition of "person holding high public office" includes a public servant belonging to Group A service and the petitioner being holder of a Group A post comes within the purview of the impugned Act. Therefore, this point is answered against the

petitioner.

42. For the reasons assigned in answer to the points 1 to 6 in favour of the State Government and against the petitioners by placing strong reliance upon the judgment of the Supreme Court in the case of *State of Delhi v. V.C. Shukla* (supra) which decision has been followed by the Division Bench judgment in the case of *Kishore Chandra Patel v. State of Orissa* (supra) wherein similarly placed petitioners questioned the constitutional validity of the Special Courts Act, 1990 on the similar grounds and the said writ petitions were dismissed by answering the points that arose for consideration in the said case with certain observation after striking down Section 16 of the Act. The said observations have been complied with by the State Legislature by issuing the Ordinance which was accepted by this Court. Thereafter the impugned legislation has been enacted by the State Legislature and received the assent of the President as required under Article 254(2) of the Constitution of India and the same is challenged on the very same grounds and also on additional ground of Article 254(2) contending that the impugned Act is repugnant to the P.C. Act of 1988 and also placed strong reliance upon the Prevention of Money Laundering (Amendment) Act, 2009. In our considered view therefore the writ petitioners are not entitled for any one of the reliefs.

43. Accordingly, the writ petitions being devoid of merit are dismissed without costs.

44. Since we have dismissed the writ petitions and the cases are pending for more than one decade and the object and intendment of the State Legislature in enacting the Act is for speedy and expeditious disposal of the cases, which will serve the public interest to have a corruption free society in the State, we direct the Special Courts which are constituted under the provisions of the Act to conduct expeditious trial and dispose of the cases by following the Criminal Procedure Code by taking up the case day to day basis.