
(2011) 02 MP CK 0032
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 49 of 2009

Gurunanak Medical and Surgical Agency	APPELLANT
Vs	
Sitaram Shivhare	RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Madhya Pradesh Stamp Rules, 1942 — Rule 10, 11, 12, 13, 17
Registration Act, 1908 — Section 6, 6(1), 6(5)
Stamp Act, 1899 — Article 1, 19, 24, 28, 36

Citation : AIR 2011 MP 115 : (2011) ILR (MP) 1637 : (2011) 2 JLJ 138 : (2011) 2 MPHT 443 : (2011) 2 MPJR 183 : (2011) 2 MPLJ 101

Hon'ble Judges : S.N. Aggarwal, J;S.K. Gangele, J;Anil Kumar Sharma, J

Bench : Full Bench

Judgement

S.K. Gangele, J.

On a reference by the learned Single Judge, Hon'ble the Chief Justice has constituted this Full Bench to answer the following reference:

(i) In view of two kinds of stamps described in Sub-rule (2) of Rule 3 of the M.P. Stamp Rules, 1942, whether special adhesive stamps may be treated as something in addition to adhesive stamps and not opposed or in contradistinction to adhesive stamp as required for promissory note?

(ii) Whether the word "may" in Rule 17 of M. P. Stamp Rules, 1942 is of permissive nature and not of mandatory nature?

(iii) Whether the decision of the learned Single Judge in the case of Ismail Khan Vs. Ram Prakash Verma, that only adhesive stamps bearing inscription of "revenue" should be used on promissory note is not a good law in view of earlier Division Bench decision of this Court in the case of Ganpat Singh and Another Vs. Gurucharan Singh and Another,

Facts arising out of the reference in short are that one M/s Gurunanak Medical and Surgical Agency filed a revision before this Court against the judgment and

decree dated 2-9-2008 passed by the Court of First Additional District Judge, Gwalior in Civil Appeal No. 47A/2007. By the aforesaid judgment and decree, the Lower Appellate Court decreed the suit of the Plaintiff and ordered recovery of Rs. 10,000/- with interest. The Plaintiff instituted a Suit against the Defendant for recovery of an amount of Rs. 10,000/- on the allegation that he had advanced a loan to the Defendant on 29-11-2000 with promise of repayment upto 29-5-2001 with interest at the rate of 1.30% per month. A receipt was executed by the Defendant to this effect, however, the repayment was not made. The Defendant denied the claim of the Plaintiff and pleaded that the Plaintiff obtained his signature fraudulently on the alleged receipt. The Defendant further pleaded that he did not borrow the amount and further raised an objection in the written statement about the admissibility of the pronote receipt on the ground that it was improperly stamped, hence, it is not admissible in evidence. The trial Court dismissed the suit vide judgment and decree dated 31-8-2007 holding that the Plaintiff failed to prove his case. Against the aforesaid judgment and decree, Plaintiff filed an appeal i.e. Civil Appeal No. 47A/2007, which was allowed by the Lower Appellate Court vide judgment and decree dated 2-9-2008. The Lower Appellate Court decreed the suit with interest. Against the aforesaid judgment and decree, the Defendant filed a revision before this Court, which was registered as Civil Revision No. 49/2009.

The learned Counsel for revisionist before the learned Single Judge contended that Ex.P/1 is a promissory note with a special adhesive stamp without inscription of word "revenue", hence, it is not admissible in evidence in accordance with law laid down by a Single Judge of this Court in the case of Ismail Khan Vs. Ram Prakash Verma, . The learned Single Judge of this Court in Ismail Khan (supra) has held as under:

For the purpose of Sections 10, 74 and 75 of the Act, Madhya Pradesh Stamps Rules, 1942 (hereinafter referred to as the "Rules") have been enacted. Rule 5 provides that a promissory note or bill of exchange shall, except as provided by Section 11 or by Rules 13 and 17, be written on paper on which a stamp of proper value with or without the word "hundi" has been engraved or embossed. Thus, promissory note can be executed on a stamp paper of proper valuation. Rule 17 of the rules is reproduced below:

Adhesive stamp or stamps denoting duty of ten naye paise or five naye paise. - Except as otherwise provided by these rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words "Twenty-five naye Paise" or "Fifteen naye paise" or "ten naye paise" or "Five naye paise" and such stamps may be inscribed for use for revenue.

On bare reading of this rule, it provides for denoting duty of requisite number of stamps bearing "Twenty-five naye paise", or "Fifteen Naye Paise", or "ten naye paise" or "Five naye paise" and such stamps may be inscribed for the revenue. Rule 18 of the rules prescribes specific provision for affixing special adhesive stamps can be affixed on promissory notes if they are drawn or made out of

India and chargeable with duty of more than one anna. Thus, Section 11 of the Act, read with Rule 18 provides for use of adhesive stamps on the pronote drawn outside India. This section does not empower affixation of adhesive stamps if pronote is executed in India. Thus, since Section 11 of the Act prohibits use of adhesive stamp executed in India, therefore, no adhesive stamp can be affixed on pronote. Rule 5 of the rules provides that the promissory note can be written on a paper on which stamp of the proper value has been engraved or embossed.

From the aforesaid discussion of the provisions, considering Rule 17 of the Rules, it is apparent that no adhesive stamp on pronote can be used except the stamp inscribed for the use of revenue. Thus, considering the rules, it is quite clear that on pronotes only adhesive stamp bearing inscription "revenue" should be used.

This question is considered by this Court in Civil Revision No. 392 of 1971 Kailash Chandra and Ors. v. Lakhmichand and Anr., decided on 30-8-1972. This judgment is not yet overruled and there is no reason to differ with the law laid down in the aforesaid judgment. In para 3 of the judgment, it is held as under:

3. Rule 3 provides that all duties with which any instrument is chargeable shall be paid, and such payment shall be indicated on such instrument by means of stamps issued by the State Government or by the erstwhile State of Madhya Bharat bearing the words "Madhya Bharat" in Hindi for the purpose of the Act. It further provides that a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument shall not be used for an instrument of any other kind. This Rule also provides that there shall be two kinds of stamps, namely, impressed stamps and adhesive stamps.

Rules 4 to 12 prescribed how and when impressed stamps should be used. Rule 13 then provides as follows:

The following instruments may be stamped with adhesive stamps, namely:

- (a) xxx
- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx
- (f) Instruments chargeable with stamp duty under Articles 19, 36, 37, 49(a)(ii) and (iii) and 52 of Schedule I.
- (g) xxx.

Article 49 refers to pro-notes. It is thus clear that, in case of pro-notes, adhesive stamps are to be used. Under Clauses (ii) and (iii) of Article 49(a), the stamp duty prescribed is 15 np. and 25 np. respectively. Rule 17 then provides that except as otherwise provided by these Rules, the adhesive stamps used to

denote duty shall be the requisite number of stamps bearing the words "4 annas", or "2 annas" or "1 anna" or "1/2 anna" must be read as "25 np.", "15 np." and "5 np." respectively, This Rule clearly indicates that the stamps bearing the inscription "Revenue" are to be used when they are of the denomination of "25 np.", "15 np." etc. Rule 18 then provides that certain categories of instruments described in Clauses (a) to (h) should be stamps with adhesive stamps of particular description. None of these clauses refer to a promissory note. In the rules referred to above, there is also no reference to any special adhesive stamp. On the contrary, if Rules 13(f) and 17 are read together, it is quite clear that on pro-notes only adhesive stamps bearing inscription "revenue" should be used, I do not, therefore, find any substance in the contention of the Petitioners that the pro-note in question was not properly stamped. I may note here that Rule 3 has been subsequently amended so as to include revenue stamps issued by Government of India amongst the stamps that can be validly used. There is no controversy on this point.

Considering the facts of the case, it is settled position that no adhesive stamp can be affixed on the pronotes executed within the territory of India and only adhesive stamps bearing inscription "Revenue" should be used.

The learned Single Judge who was hearing the revision doubted the correctness of the law laid down in the case of Ismail Khan (supra). The learned Single Judge also directed the Government Advocate to keep present a responsible officer of the office of Collector, Stamps with the Special Adhesive Stamp of Re. 1/- bearing inscription of "revenue". The District Treasury Officer was also directed to remain present to verify the fact about the existence of Special Adhesive Stamp of Re. 1/- bearing inscription of "revenue". The Indian Security Press, Nasik vide letter dated 11-8-2010 informed the Registrar of this Court that Special Adhesive Stamp of Re. 1/- inscribing the word "revenue" had never been printed.

In the meanwhile, a Division Bench of this Court in the case of Khamir Singh v. Radheshyam Bansal, 2011 (1) MPLJ 43 has implicitly approved the ratio of learned Single Judge in the case of Ismail Khan (supra) and held as under:

In order to give positive effect to different provisions of the Act, aforesaid Stamp Rules have been framed. Looking to the Rule 5 of the said Rules, we find that a promissory note or bill of exchange shall, except as provided by Section 11 or by Rules 13 and 17, be written on paper on which a stamp of the proper value with or without the word "hundi" has been engraved or embossed. Thus, promissory note can be executed on a paper having a revenue stamp of proper valuation. If we go through Rule 17 which speaks about adhesive stamp, denoting duty of ten naye paise or five naye paise, we find that such stamp may be inscribed for use for revenue only. We think it apposite to quote said Rule 17, which reads thus:

Adhesive stamp or stamps denoting duty often naye paise or five naye paise. - Except as otherwise provided by these rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words "Twenty-five

naye Paise" or Fifteen naye paise" or "ten naye paise" or "Five naye paise" and such stamps may be inscribed for use for revenue.

On bare perusal of the impugned promissory note (Annexure P/2), we find that requisite revenue stamp has been affixed on the pronote or bare perusal of Rule 17 of the Rules. We find that no adhesive stamp on the pronote can be used except the stamp inscribed for use of revenue, and therefore, according to us, even if, apart from requisite revenue stamp, an adhesive stamp was additionally affixed, it cannot be said that the document (promissory note) is inadmissible in evidence, and therefore, according to us, Petitioner's application (annexure P/6) has rightly been rejected by the learned trial Court. The decision of Ismail Khan (supra) placed reliance by the learned Counsel for the Petitioner/Defendant does not support the case of the Petitioner, rather, it supports the case of the Plaintiff/Respondent, because in that decision, the requisite revenue stamp was not affixed and the pronote was having only an adhesive stamp, and therefore, in that situation the learned single Bench rightly held that the document of pronote is not admissible in evidence. But in the present case, admittedly, the document of pronote is already having requisite revenue stamp and, therefore, this decision supports the case of Plaintiff/Respondent.

Thereafter, the learned Single Judge referred the matter to Hon"ble the Chief Justice for reference to the Full Bench. Consequently, the Hon"ble the Chief Justice made this reference.

Learned Senior counsel appearing on behalf of the Petitioner has contended that the judgment passed by the learned Single Judge of this Court in Ismail Khan (supra) is as per law. He further submitted that as per the provisions of Rule 17 of Madhya Pradesh Stamp Rules, 1942 (hereinafter referred to "Rules of 1942"), it is necessary to affix a revenue stamp on a promissory note inscribing the word "revenue" and if the aforesaid stamp has not been affixed, then the promissory note is not admissible in evidence.

Contrary to this, learned Counsel for the Respondent has contended that the judgment of the learned Single Judge in the case of Ismail Khan (supra) is contrary to law. It is not necessary to affix a Special Adhesive Stamp inscribing the word "revenue" on a promissory note for the purpose of admissibility of a promissory note in evidence, because no such revenue stamp has been published by the Indian Security Press, Nasik Road.

Learned Counsel appearing on behalf of Bar, Mr. Aniket Naik and Shri A. V. Bhardwaj have contended that the judgment passed by the learned Single Judge in the case of Ismail Khan (supra) is contrary to law. The Indian Stamp Act is a fiscal enactment intending to secure revenue for State, hence, if the word "revenue" has not been inscribed on a Special Adhesive Stamp affixed on a promissory note then also it is admissible in evidence. The learned Counsel further submitted that the learned Division Bench of this Court, which has approved the decision of Ismail Khan (supra) in the case of Khamir Singh (supra)

did not consider the earlier judgment of Division Bench of this Court passed in Ganpat Singh and Another Vs. Gurucharan Singh and Another, 3.

The Hon'ble Supreme Court in the case of Thiruvengada Pillai Vs. Navaneethammal and Another, has held that the Indian Stamp Act is a fiscal enactment and it is intended, to secure "revenue" for the State. Section 2(26) of the Indian Stamp Act, 1899 (hereinafter referred to "the Act of 1899") defines "Stamp", which reads as under:

(26) "Stamp" means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purpose of duty chargeable under this Act.

Similarly Section 2(13) of the Act of 1899 defines the "Impressed Stamp", which is as under:

"Impressed Stamp" includes

- (a) labels affixed and impressed by the proper Officer; and
- (b) stamps embossed or engraved on stamped paper.

Section 10 of the Act of 1899 prescribes the duty how to be paid, which is as under:

Duties how to be paid. - (1) Except as otherwise expressly provided in this Act, all duties with which the instruments are chargeable shall be paid and such payment shall be indicated on such instrument by means of Stamps, franked stamps or a certificate endorsed under Sub-section (5), by the Registrar or Sub-Registrar appointed u/s 6 of the Registration Act, 1908 (No. 16 of 1908):

- (a) According to the provisions herein contained; or
- (b) when no such provision is applicable thereto as the State Government may by rules prescribe:

Provided that if the State Government is satisfied that circumstances exist in public interest to restrict the mode of indicating the payment of duty on any instrument or a particular class of instruments to any or the modes as specified in Sub-section (1), it can do so by an order published in this behalf in the official Gazette.

(2) The rules made under Sub-section (1) may, among other matters, regulate:

- (a) in the case of any or all kinds of instruments the number or description of stamps which may be used;
- (b) the size or other description of the paper which may be used;
- (c) the types or brand of franking machine or any other such machine used to make impressions on instruments chargeable with duty to indicate payment of duties payable on such instruments; and

(d) the form of certificates which may be endorsed on the instruments to indicate payment of sums into Government account as stamp duties.

Section 11 of the Act prescribes use of adhesive stamps. As per the aforesaid section, the following instruments may be stamped with adhesive stamp:

(b) bill of exchange, and promissory notes drawn or made out of India.

In exercise of powers conferred u/s 10 of the Act of 1899, State of Madhya Pradesh framed rules known as the Madhya Pradesh Stamp Rules, 1942 (hereinafter referred to as "the rules of 1942"). Rule 3 of the Rules of 1942 describes the stamps:

Description of Stamps. - (1) Except as otherwise provided by the Act or by these rules.-

(i) All duties with which any instrument is chargeable shall be paid and such payment shall be indicated on such instrument, by means of stamps issued by the State Government, or the erstwhile State of Madhya Bharat, bearing the words "Madhya Bharat" in Hindi for the purposes of the Act; and

(ii) a stamp which by any word or words on the face of it is appropriated to any particular kind of instrument, shall not be used for an instrument of any other kind.

Explanation. - Stamps bearing the word "India" or "Bharat" in Hindi shall be and shall always be deemed to have been issued by the State Government.

(2) There shall be two kinds of stamps for indicating the payment of duty with which instruments are chargeable, namely:

(a) impressed stamps, and

(b) adhesive stamps.

Rule 3 of the Rules of 1942 has further been amended and following substitution has been introduced by virtue of a notification (40) B-4-13-07-2-V dated 15th November, 2007.

Notification (40) B-4-13-07-2-V dated 15th November, 2007. - In exercise of the powers conferred by Sections 10, 74 and 75 of the Stamp Act, 1899 (No. II of 1899), the State Government, hereby makes the following amendment in the Madhya Pradesh Stamp Rules, 1942, namely:

Amendment

In the said rules, for Rule 3, the following rule shall be substituted, namely.-

Description of Stamps. - (1) Except as otherwise provided by the Act or by these rules all duties with which any instrument is chargeable shall be indicated on such instrument by means of stamps issued by the State of Madhya Pradesh for the purpose of this Act.

(2) There shall be two kinds of stamps for indicating the payment of duty with which the instruments are chargeable, namely:

(a) impressed stamps over printed with the word "Madhya Pradesh" and bearing Serial Number;

(b) adhesive stamps overprinted with the word "India" in English and word "Bharat" in Hindi.

This notification shall come into force with effect from 1st December, 2007.

[Published in M. P. Rajpatra (Asadharan) dated 15-11-2007 Page 1088]

The aforesaid notification came into force with effect from 1st December, 2007.

Rule 5 of the Rules of 1942 defines Promissory Note and Bill of Exchange.

5. Promissory notes and bills of exchange. - A promissory note or bill of exchange shall, except as provided by Section 11 or by Rules 13 and 17, be written on paper on which a stamp of the proper value with or without the word "hundi" has been engraved or embossed.

Rule 13 under Chapter III describes use of Adhesive Stamps on certain instruments, which reads as under:

Use of adhesive stamps on certain instruments. -- The following instruments may be stamped, with adhesive stamps, namely:

(a) Bill of exchange payable otherwise than on demand and drawn in sets, when the amount of duty does not exceed ten naye paise for each part of the set.

(b) Transfers of debentures of public companies and associations.

(c) Copies of maps or plans, printed copies and copies of or extracts from, registers given on printed forms chargeable with duty under Article 24 of Schedule I-A.

(d) Instruments chargeable with stamp duty under Article 1, 5(a) and (b), 19, 28, 36 and 43 of Schedule I-A.

(e) Instruments chargeable with stamp duty Article 47 of Schedule I.

(f) Instruments chargeable with stamp duty under Articles 37, 49(a)(ii) and (iii) and 52 of Schedule I and

(g) Bonds executed under any law relating a central duty of excise or any rules made thereunder.

Article 49 of Schedule I is as follows:

49. Promissory Note [as defined by Section 2(22)]:

(a) When payable on demand:

(i) When the amount or value does not exceed Rs. 250;

Ten nayepaise

(ii) When the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000;

Fifteen nayepaise

(iii) In any other case

Twenty Five nayepaise

(b) When payable otherwise than on demand:

The same duty as a Bill of Exchange (No. 13) for the same amount payable otherwise than on demand.

It has been amended by Ministry of Finance (Department of Revenue) Order No. S.O. 130(E) dated 28th January, 2004 published in the Gazette of India Part II Section 3(ii) dated 28th January, 2004, reads as under:

Promissory Note (As defined by Section 2(22):

(a) When payable on demand:

(i) When the amount or value does not exceed Rs. 250;

Five paise

(ii) When the amount or value exceeds Rs. 250 but does not exceed Rs. 1,000;

Ten paise

(iii) In any other case

Fifteen paise

(b) When payable otherwise than on demand:

The same duty as a Bill of Exchange (No. 13) for same amount payable otherwise than on demand.

Rule 17 of the Rules of 1942 prescribes "adhesive stamp or stamps denoting duty of "ten naye paise" or "five naye paise" as under:

Adhesive stamp or stamps denoting duty of ten naye paise or five naye paise. - Except as otherwise provided by these rules, the adhesive stamps used to denote duty shall be the requisite number of stamps bearing the words "Twenty-five naye Paise" or "Fifteen naye paise" or "ten naye paise" or "Five naye paise" and such stamps may be inscribed for use for revenue.

From the Rule 5 of the Rules of 1942, it is clear that a Promissory Note has to be written on a paper on which a stamp of the proper value with or without the word "hundi" has been engraved or embossed.

Article 49 of the Schedule I prescribes the duty which has to be paid on a promissory note by way of affixing of a particular denoting stamp and Rule 17 of the Rules of 1942 prescribes the Adhesive Stamp used to denote duty shall be the requisite number of stamps bearing the words "Twenty-five naye Paise" or "Fifteen naye Paise" or "Ten naye Paise" or "Five naye Paise" and such stamps may be inscribed for use of revenue.

From the aforesaid rules, it is clear that the word "use of revenue" has been mentioned with the word "and such stamps may be inscribed" and the meaning of the aforesaid word could not mean that "if the word for revenue" has not been mentioned with the word "stamp which has to be affixed on a promissory note", then the promissory note is inadmissible in evidence, because the purpose of the Stamp Act and Rules, is to secure revenue for State. It is a fiscal enactment. Rule 3(2) of the Rules-of 1942 prescribes only two types of stamps; "impressed stamp and adhesive stamp" and Rule 17 clearly prescribes "adhesive stamp" denoting the duty of "Twenty-five naye paise" or "Fifteen naye paise" or "Ten naye paise" or "Five naye paise". The aforesaid stamps have to be used for the purpose of payment of revenue on a promissory note and when a adhesive stamp of correct value is embossed on a promissory note, then certainly the promissory note is admissible in evidence .

The Hon"ble Supreme Court in the case of Thiruvengada Pillai Vs. Navaneethammal and Another, has considered the fact of some anomaly in the stamp paper in view of Stamp Act and question of admissibility of those documents in evidence and held as under:

13. The Stamp Act is a fiscal enactment intended to secure revenue for the State. In (he absence of any rule requiring consecutively numbered stamp papers purchased on the same day, being used for an instrument which is not intended to be registered, a document cannot be termed as invalid merely because it is written on two stamp papers purchased by the same person on different dates. Even assuming that use of such stamp papers is an irregularity, the Court can only deem the document to be not properly stamped, but cannot, only on that ground, hold the document to be invalid. Even if an agreement is not executed on requisite stamp paper, it is admissible in evidence on payment of duty and penalty u/s 35 or 37 of the Stamp Act, 1899. If an agreement executed on a plain paper could be admitted in evidence by paying duty and penalty, there is no reason why an agreement executed on two stamp papers, even assuming that they were defective, cannot be accepted on payment of duty and stamp. But admissibility of a document into evidence and proof of genuineness of such document are different issues.

A Division Bench of this Court in the case of Ganpatsingh v. Gurucharansingh reported in 1972 MPLJ 616 has held that if an instrument stamped in accordance with the Article 49(a)(iii) of Schedule I to the Indian Stamp Act is valid, it may be admissible in evidence. The relevant findings of the Division Bench in the aforesaid case are as under:

The use of the erstwhile Madhya Bharat Stamp in the State of Madhya Pradesh is justified by Rule 3 made by the State Government. As for the use of the adhesive stamp we find it permitted by Rule 13(f) this being an instrument that has to be stamped in accordance with Article 49(a)(iii) in Schedule I, to the Indian Stamp Act. Accordingly, this application is also without any force. The trial Court has addressed itself only to the preliminary issue though some remarks have been made in the judgment regarding the merits. They should of course be ignored while the trial Court examines the merits in a formal manner. This case is also sent back to the trial Court for disposal on merits.

From the aforesaid judgment of the Hon"ble Supreme Court in Thiruvengada Pillai Vs. Navaneethammal and Another, and the Division Bench's judgment of this Court in Ganpatsingh v. Gurucharansingh reported in 1972 MPLJ 616, it is clear that if there is any irregularity in the use of stamp, then on this ground the document could not be termed as invalid or could not be classified as inadmissible in evidence.

Question of admissibility of the pronote has to be considered in the light of the fact mentioned in the letter, dated 11-8-2010 that special adhesive stamp of Re. 1/- inscribing the word "revenue" was never printed. It means that special adhesive stamp of Re. 1/- inscribing the word "revenue" was never available for use. In such circumstances, if it is held that a pronote without affixture of special adhesive stamp inscribing the word "revenue" is inadmissible in evidence, it would mean an impossibility to be performed because no such adhesive stamp was printed by the Security Press.

The Hon"ble Supreme Court in Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, held that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided. The relevant dictum is as under:

43. Although golden rule of interpretation viz. Literal rule should be given effect to, if it is to be held that the Devasthan Commissioner appointed u/s 7 of the Act would be an agency of the State, the same would lead to an absurdity or anomaly. It is a well-known principle of law that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided.

In Rule 17 of the Rules of 1942, it has mentioned "such stamps may be inscribed for; use of revenue". The word "may" is not the word of compulsion, it is an enabling word and it only confer capacity, power or authority and imply a discretion. The Hon"ble Supreme Court in the case of State of Uttar Pradesh Vs. Singhara Singh and Others, has held in regard to use of word "may" as under:

9. It cannot be disputed that the use of the expression "may" is not decisive. Having regard to the context, the expression "may" used in a statute has varying significance. In some contexts it is purely permissive, in others, it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down.

The Hon'ble Supreme Court further in the case of State of Uttar Pradesh Vs. Jogendra Singh, has held as under:

8. Rule 4(2) deals with the class of gazetted government servants and gives them the right to make a request to the Governor that their cases should be referred to the Tribunal in respect of matters specified in Clauses (a) to (d) of Sub-rule (1). The question for our decision is whether like the word "may" in Rule 4(1) which confers the discretion on the Governor, the word "may" in Sub-rule (2) confers the discretion on him, or does the word "may" in Sub-rule (2) really mean "shall" or "must"? There is no doubt that the word "may" generally does not mean "must" or "shall". But it is well-settled that the word "may" is capable of meant, "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive. The whole purpose of Rule 4(2) would be frustrated if the word "may" in the said rule receives the same construction as in Sub-rule (1). It is because in regard to gazetted government servants the discretion had already been given to the Governor to refer their cases to the Tribunal that the rule-making authority wanted to make a special provision in respect of them as distinguished from other government servants falling under Rule 4(1) and Rule 4(2) has been prescribed, otherwise Rule 4(2) would be wholly redundant. In other words, the plain and an ambiguous object of enacting Rule 4(2) is to provide an option to the gazetted government servants to request the Governor that their cases should be tried by a Tribunal and not otherwise. The rule-making authority presumably thought that having regard to the status of the gazetted government servants, it would be legitimate to give such an option to them. Therefore, we feel no difficulty in accepting the view taken by the High Court that Rule 4(2) imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules. Such a request was admittedly made by the Respondent and has not been granted. Therefore, we are satisfied that the High Court was right in quashing the proceedings proposed to be taken by the Appellant against the Respondent otherwise than by referring his case to the Tribunal under the Rules.

The Single Judge of Madras High Court in the case of P. Moorthy Vs. A.R. Kothandaraman, has held as under in regard to word "may" used in Rule 13 framed by the State of Tamil Nadu under the provisions of Indian Stamp Act:

4. I find there is force in the contention put forth by the learned Counsel for the Respondent Section 10 of the Indian Stamp Act lays down that "Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps:

- (a) according to the provisions herein contained; or
- (b) when no such provision is applicable thereto, as the State Government may by rule direct.

Section 11 of the Indian Stamp Act lays down that the instruments set out under Clauses (a) to (e) thereunder may be stamped with adhesive stamps. Clause (b) of Section 11 refers to "bills of exchange, and promissory notes, drawn or made out of India". Obviously, this clause would not apply to the case in question. Coming to the rules framed under the Act by the State of Tamil Nadu, Rule 5 reads as follows:

Promissory notes and bill of exchange - A promissory note or bill of exchange shall except as provided by Section 11 or by Rule 13, be written on paper on which a stamp of the proper value, with or without the word "hundi", has been engraved or embossed.

It will be relevant to refer to Rule 13 also because Rule 5 referred to above, states that a promissory note or bill of exchange shall except as provided...or by Rule 13 be written on paper on which a stamp of the proper value has been engraved or embossed. Rule 13 reads as follows-

13. Use of adhesive stamps on certain instruments. - The following instruments may be stamped with adhesive stamps namely:

- (a) transfers of debentures of public companies and associations,
- (b) copies of maps or plans, printed copies and copies of or extracts from registers given on printed forms when chargeable with duty under Article 24 of schedule I,
- (c) instruments chargeable with duty under Article 5(a) and (b) of schedule I,
- (d) instruments chargeable with stamp duty under Article 47 of schedule I,
- (e) instruments chargeable with stamp duty under Articles 19, 36, 37, 49 (a) (ii) and (iii) and 52 of schedule I,
- (f) instruments of transfer of shares of public companies or associations,
- (g) bonds executed under any law relating to a central duty of excise or any rule made thereunder,
- (h) deleted....
- (i) security bonds to be furnished by an Appellant or an Applicant in revision under the provisions of Section 31(5), 33(4), 35(4), 36(5), 37(6) or 38(6) and authorisation to be furnished u/s 52 of the Madras General Sales Tax Act, 1959 (Madras Act I of 1959). Article 49(a)(ii) of schedule I relates to promissory notes where the amount or value exceeds Rs. 250 but does not exceed Rs. 1000 and Article 49(a)(iii) of schedule I relates to promissory note of any other case.

The expression used in Rule 13 of the Rules is "may". Interpreting similar rules framed by State of Rajasthan Jagat Narayan J. in *Kalwan Singh v. Bhanwarlal* ILR (1965) Raj 231 held that:

The rule is merely a permissive one, permitting the use of an adhesive stamp on promissory notes payable on demand when the amount or value exceeds Rs. 250. The rule does not lay down that such promissory note shall be stamped with adhesive stamp of the requisite value. The result is that a promissory note exceeding Rs. 250 in value can be written on a paper having an impressed stamp or it can be stamped with adhesive stamps of the requisite value

5. The same learned judge pronounced the same view in *Somdatta Vs. Abdul Rashid*, and the learned Judge observes that in view of the word "may" used in the provisions the promissory notes of any value can also be written on impressed stamps.

From the aforesaid decisions of the Hon"ble Supreme Court quoted above, and the judgment of the learned Single Judge of Madras High Court, it can be safely held that the word "may" used in Rule 17 of the Rules of 1942 is of permissive in nature.

It is an admitted fact that the learned Single Judge of this Court in the case of *Ismail Khan* (supra) and the Division Bench of this Court in the case of *Khamir Singh* (supra) have not considered the earlier Division Bench judgment of this Court passed in the case of *Ganpatsingh* (supra).

A five judges Bench of this Court in the case of *Jabalpur Bus Operators Association and Ors. v. State of M.P. and Ors.* 2003 (1) MPLJ 513, has held as under, in regard to validity of the judgment passed by the Division Bench in which earlier judgment of the Division Bench has not been considered:

With regard to the High Court, a Single Bench is bound by the decision of another Single Bench. In case, he does not agree with the view of the other Single Bench, he should refer the matter to the larger Bench. Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier Division, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.

Hence, the decision of the learned Single Judge in the case of *Ismail Khan* (supra) and the decision of the Division Bench in the case of *Khamir Singh* (supra) is not a good law in view of the earlier Division Bench judgment of this Court in the case of *Ganpatsingh* (supra).

On the basis of aforesaid discussion, we answer the reference accordingly:

(i) That, keeping in view the two kinds of stamps mentioned in Sub-rule (2) of Rule 3 of the Madhya Pradesh Stamp Rules, 1942, the "special adhesive stamp" be treated as in addition to "adhesive stamp" not opposed or in contradistinction to "adhesive stamp" as required for promissory note.

(ii) That, word "may" used in Rule 17 of the Madhya Pradesh Stamp Rules, 1942 is an enabling word and implies a discretion.

(iii) That, the decisions of the learned Single Judge in the case of Ismail Khan Vs. Ram Prakash Verma, and Division Bench in the case of Khamir Singh v. Radheshyam Bansal, 2011 (1) MPLJ 43 are not good law in view of earlier Division Bench's judgment of this Court in the case of Ganpat Singh and Another Vs. Gurucharan Singh and Another, and also on the basis of our findings recorded above in the judgment.

Before parting with the case, we appreciate the valuable assistance rendered to the Court by young counsel Mr. Anand V. Bhardwaj and Mr. Aniket Naik.