

JUDGMENTS PER INCURIUM AND JUDICIAL DISCIPLINE — A Study in the Light of Supreme Court's Decision in Siddharam Satlingappa Mhetre Vs. State of Maharashtra, AIR 2011 SC 312

By Dr. Mukund Sarada

(Dean & Principal, New Law College, Bharatiya Vidya Peet University, Pune)

1) A Judgment per incurium is a decision, when the Court has acted in ignorance of a previous decision of its own or a Court of co-ordinate jurisdiction which covered the case before it¹. In such a case, the Court has to decide which case to follow². When the Court has acted in ignorance of a House of Lords decision, in which case it must follow the decision or where a case or statute had not been brought to the Court's attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incurium³. The Supreme Court ruled that 'the rule of per incurium can be applied where a Court omits to consider a binding precedent of the same Court or the superior Court rendered on the same

issue or where the Court omits to consider any statute while deciding that issue⁴. Chief Justice Pathak observed⁵: "The doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions and enables an organic development of law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs". In *Thota Sesharathamma's* case⁶ the Supreme Court held in a two bench decision that a three bench decision in *Mst. Karmi*⁷ was per incurium as it was against the statute. In *R. Thiruvirkolam's* case⁸, the question arose whether the Court should follow the decision rendered in *Gujarat Steel Tube Ltd.*, case⁹ which was not in conformity with a decision of a Constitution Bench in *P.H.*

- 1 See Halsbury's Laws of England (4th Edition) Vol 26: Judgments and orders: Judicial decisions as Authorities (PP.297-98) Para 578
- 2 Young and Bristol Aeroplane
- 3 *Huddersfield Police Authority Vs. Watson*, (1947)2 ALL ER 193
- 4 *Government of Andhra Pradesh and another Vs. B. Sathyanarayana Rao & others*, AIR 2000 SC P.1729
- 5 *Union of India Vs. Raghuvir Singh*, AIR 1989 SC P.1933
- 6 *Thota Sesharathamma and another Vs. Thota Manikamma*, (1991)4 SCC P.312
- 7 *Mst. Karmi Vs. Amru*, AIR 1971 SC P.745
- 8 *R. Thiruvirkolam Vs. Presiding Officer and another*, AIR 1997 SC P.633
- 9 *Gujarat Steel Tubes Ltd. Vs. Mazdoor Sabha*, AIR 1980 SC P.1896

*Kalyani's case*¹⁰ and it was held that the Court was bound to follow the decision in *P.H. Kalyani's case*, which is the binding authority on the point. In *Bharath Petroleum Corporation Ltd.*¹¹, a Constitution Bench of the Supreme Court ruled that a decision of the Constitution Bench binds a Bench of two Judges and that Judicial discipline obliges them to follow it, regardless of their doubt about its correctness. A Constitution Bench of Supreme Court in *Central Board of Dawoodi Bohra Community*¹² observed that the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

2) In the *Official Liquidator's case*¹³, the Supreme Court by a three-Bench decision stated the clear position of law by the virtue of Article 141 of the Constitution. The question of the binding effect of the Constitution Bench decision in the *State of Karnataka's case*¹⁴, was examined. The Supreme Courts including the Supreme Court till the same is over-ruled by a larger bench, and the ratio of the Constitution Bench has to be followed by Benches of lesser strength. The Court in *Siddaram Sathlingappa Mhetre's case*¹⁵ made the following observations:

(i) There has been increasing number of cases involving the basics of judicial discipline;

(ii) High Courts refuse to accept and follow the rulings by co-ordinate and larger Benches citing minor differences;

(iii) Disrespect of the Constitutional ethos and breach of discipline have great impact on the credibility of Judicial institutions and encourages chance litigation;

(iv) Predictability and certainty is an important hall-mark of Judicial Jurisprudence developed in the Country in the last six decades; and

(v) Increase in the frequency of conflicting judgments of the superior Judiciary will do incalculable harm to the system, as the Courts at the gross roots will not be able to decide as to which of the Judgments lay down the correct law and which one to be followed.

3) In *Subhash Chandra and another*¹⁶, the Supreme Court affirmed the law as declared earlier that Benches of lesser strength are bound by the Judgments of the Constitution Bench and any Bench of smaller strength taking contrary view is per incurium.

4) In *Siddharam Sathlingappa Mhetre's case*¹⁷ the decision of a two Judge Bench of the Supreme Court¹⁸ observed: "the power exercisable under Sec 438 Cr. P.C. is somewhat extra-ordinary in character and it should be exercised only in exceptional cases". This

10 *P.H. Kalyani Vs. Air Franch*, AIR 1963 SC P.1756

11 *Bharath Petroleum Corpn. Ltd. Vs. Mumbai shramik Sangh and others*, 2001 AIR SCW P.1846

12 *Central Board of Dawoodi Bohra Community Vs. State of Maharashtra*, AIR 2005 SC P.752

13 *Official Liquidator Vs. Dayanand and others*, AIR 2008 SC P.1177

14 *State of Karnataka and others Vs. Uma Devi*, AIR 2006 SC P.1806

15 *Supra* Para 147

16 *Subhash Chandra and another Vs. Delhi Subordinate Services Selection Board and others*, (2009)15 SCC P.438

17 *Supra* Para 136

18 *Naresh Kumar Yadav Vs. Ravinder Kumar*, AIR 2008 SC P.218

observation was held contrary to the legislative intent and the decision of the Supreme Court's in the Constitution Bench in *Sibbias's case*¹⁹. The Court also declared on the same reasoning, the following decisions as per incurium:

- (i) *Saladdin Abdulsamad Shaikh Vs. State of Maharashtra*²⁰
 - (ii) *K.L. Verma Vs. State and another*²¹
 - (iii) *Adri Dharan Das Vs. State of West Bengal*²², and
 - (iv) *Sunita Devi Vs. State of Bihar and another*²³
- 5) The above cases clearly indicate a breach of Judicial discipline resulting in miscarriage of justice in regard to anticipatory bail cases. By shifting the reasons as one attributable to the lawyers appearing in the cases concerned in not bringing the Constitution Bench decisions to the notice of the Court, the eventual injustice caused cannot be remedied,

and the Court cannot escape the criticism that it has to some extent become an instrument of injustice, while the apex Court as the fountain of ultimate justice might not have acted in a manner in which it has acted. Courts should not become an instrument of injustice on any Court. It is therefore, appropriate to suggest that such cases of per incurium should be immediately reviewed by the apex Court by the exercise of powers under Art 137 of the Constitution. It should be a 'suo motto Jurisdiction', - the Supreme Court acting by itself. A special wing is necessary to be established in the Supreme Court consisting of experts to immediately bring to the notice of the Chief justice for placing the matter before an appropriate Bench of the Court to correct the error and put the justice on the path of right and justice, so that the resultant injustice is avoided by Judgments per incurium.

* * * * *