



# MONTHLY NEWSLETTER

The Law Desk

May 2021 / TLD-02

## CONTENTS

Patna High Court Clears The Dust On The Powers Of A Vacation Judge.....2

Unconstitutional: Imposition of ICST on oxygen concentrators imported for personal use.....3

The right to be forgotten' vis-a-vis removal of a court order from public domain.....6

Expeditious disposal of cases before MP/MLA courts.....8

Legal News and Updates.....10



1

## PATNA HIGH COURT CLEARS THE DUST ON THE POWERS OF A VACATION JUDGE

The Hon'ble Patna High Court has ruled that in accordance with the Patna High Court Rules, 1916 (**"the Rules"**) the Vacation Judge cannot decide and dispose cases on its merits.

The Single Bench of **Hon'ble Chakradhari Sharan Singh** in the case of **Prof. (Dr.) Shlok Kumar Chakravarti v. The State of Bihar & Ors.**<sup>1</sup> observed that the Rule 4 of the Chapter II of the Rules states that, *"Notwithstanding anything to the contrary contained in these Rules, a Single Judge, while acting in long vacation as a vacation Judge, may issue notice or Rule, as the case may be, in any criminal matter, and in such other matters, civil or under the Constitution, as he may consider emergent, and may also pass interim orders regarding stay, injunction, bail and other reliefs, as may be deemed fit."* The Patna High Court announced its Summer Vacations from 23<sup>rd</sup> May, 2021 till 21<sup>st</sup> June, 2021. Every High Court in India decides

its annual calendar in terms of the procedure established by the High Court Rules.

The High Court further clarified that the language of the Rules is crystal clear which begins with a *non-obstante* clause. A Single Judge, while acting in a long vacation may issue notice or Rule, as the case may be, in any criminal matters and in such other matter, civil, or under the Constitution '*as he may consider emergent*' and in the same may also pass interim orders regarding stay, injunction, bail and other reliefs as he may deem fit.

Therefore, only interim orders or notices may be issued by the Vacation Judge in emergent cases, but he does not have the power to finally dispose the case on merits during the long vacations of the Court.



<sup>1</sup> Civil Writ Jurisdiction Case No. 7739 of 2020 dated 24.05.2021

2

**UNCONSTITUTIONAL:  
IMPOSITION OF IGST ON  
OXYGEN CONCENTRATORS  
IMPORTED FOR PERSONAL  
USE**

The Delhi High Court in the case of **Gurcharan Singh v. Ministry of Finance, Government of India**<sup>2</sup> has declared the Notification No. 30/2021 dated 01.05.2021 issued by the Ministry of Finance, Government of India as **unconstitutional**. The notification imposed a payment of **Integrated Goods & Services Tax (IGST)** of **12%** for the clearance of the oxygen concentrator imported for personal use to India.

The Division Bench comprising of Hon'ble Justices Rajiv Shakti and Talwant Singh came down heavily on the Central Government and remarked it as a **"George Floyd moment for the citizens of this country"**. The court went on to remark that the course correction which we thought that the State would follow after the issuance of notice and take a morally reasonable stand has come to cropper.

The issue arises out of the imposition of IGST on the import of oxygen concentrator gifted

to the petitioner by his nephew. The petitioner asserted that the imposition of this tax infringes upon his Right to Life and death and violates Article 21 of the Constitution of India.

The State claimed that the Notification dated 01.05.2021 removed the dissonance between the taxing of oxygen concentrators for personal and commercial use, bringing it IGST slab for personal use down to 12% from 28%. It was also brought to the notice by the Court that vide notification dated 03.05.2021, the Government had exempted completely the imposition of IGST on oxygen concentrators where the importer was the State Government or any entity, relief agency authorized in this regard by the State Government till 30.06.2021.

After hearing the parties and the arguments of Senior Advocate Mr. Arvind Datar who was appointed as *Amicus Curiae*, the Court framed four issues:

- (i) Whether imposition of IGST on oxygen concentrators, which are directly imported by individuals, free of cost without the aid of a canalizing

---

<sup>2</sup> W.P (C) 5149/2021 dated 21.05.2021

agency runs contrary to the Article 14 of the Constitution of India?

- (ii) Whether the imposition of taxes in times of a pandemic would subserve public interest and violate Article 21 of the Constitution which includes right to health and affordable treatment?
- (iii) Whether through Article 21 the State is casted with a duty to provide adequate resources for protecting the health of people residing within its jurisdictions?
- (iv) Reliefs.

While dealing with the first issue the Court took note of the acute shortage of Liquid Medical Oxygen (LMO) in the nation. The country is looming without inadequate medical resources and at this juncture oxygen concentrators are the alternative. The State has taken several ameliorative steps to resolve the crisis by exempting the imposition of BCD and health cess on several goods including oxygen concentrators and enabling the import of certain drugs/medicines/ oxygen concentrators as gifts. However, the notification dated 03.05.2021 excludes individuals like the

petitioner who have received the concentrator as a gift on the sole ground that they have not received the same through a canalizing agency of the State. This is manifestly arbitrary and in violation of Article 14 of the Constitution.

While dealing with the second and third issues the Court recognized that the Article 21 of the Constitution has an extensive approach and includes the right to health, as it directly flows from the right to life. The State must adopt a humanistic approach while imposing taxes on these life saving medicines and medical equipment in these trying times. A failure to do so would lead to an unbridgeable chasm between law and justice resulting in the disruption of the social order. Following the observations made in the **Navtej Singh Johar**<sup>3</sup> Case, that, *“Article 21 does not impose upon the State only negative obligations not to act in such a way as to interfere with the right to health. This Court also has the power to impose positive obligations upon the State to take measures to provide adequate resources or access to treatment facilities to secure enjoyment of the right to health”*.

The bare perusal of the IGST Act clearly shows the Government has powers to

---

<sup>3</sup> (2018) 10 SCC 1



**exempt** the imposition of taxes leviable on good or services or both, either absolutely or subject to such conditions as it may specify, if it is satisfied that it is **necessary in the public interest** to do so based on a recommendation from the GST Council in that behalf. It is also profound to note that the notifications dated 01.05.2021 and 03.05.2021 show case that the State has exercised its powers under Section 25 (1) and (2) of the Customs Act and not reference of Section 6(1) of the IGST Act has been made.

The argument by the State that no mandamus can be issued by the Court to grant exemption or waiver from tax does hold value. The Court stated that a taxing statute can be tested on the anvil of Article 14 on the ground that the justification for classification proffered by the State is unreasonable. The power to issue an exemption under Section 25 of the Customs Act vests with the State. However, the court is not prevented from judicially reviewing such notification once it is issued by the State. The route for quashing for the notification dated 03.05.2021 would subserve the process of justice and it must be saved as it serves a greater good. A declaratory relief can be accorded by the Courts, whereby the interpretation can be altered by including **“lifesaving drugs/medicines for personal**

**use”** in the General Exemption No. 190 of the notification.

Therefore, in the terms of the declaratory relief accorded by the Court, the Notification No. 30/2021 dated 01.05.2021, imposing a 21% IGST to be paid on oxygen concentrators imported as gifts for personal use is hereby quashed and set aside.



3

## 'THE RIGHT TO BE FORGOTTEN' VIS-A-VIS REMOVAL OF A COURT ORDER FROM PUBLIC DOMAIN

The Delhi High Court recently dealt with the interplay of the Right to Privacy and the Right to Information of public and judicial records, elucidated the **"Right to be Forgotten"** in the case of **"Jorawar Singh Mundy @ Jorawar Singh Mundy v. Union of India & Ors."** from the platforms of Google, Indian Kanoon and vLex.in.

The Single Bench of **Hon'ble Justice Pratibha Singh** was hearing a petition filed for the removal of the judgement titled as **"Custom v. Jorawar Singh Mundy"**<sup>5</sup>.



It was the case of the petitioner that he is an Indian origin, American citizen by birth. A case against the petitioner was registered in 2009 when he was travelling to India under

the **Narcotics Drugs and Psychotropic Substances Act, 1985** ("NDPS Act"). The trial court acquitted him of all charges in 2011 and subsequently vide judgment dated 29.01.2013, the High Court upheld the order of his acquittal.

The issue that the petitioner was facing was that after travelling back to the United States, he pursued law and while looking after employments faced severe difficulties due to the judgment of the High Court being available online which caused a red flag for him while his background check by the prospective employers.

Now, the question before the Court was whether a Court order can be removed from online platforms. This has to be looked upon the facets of both, the Right to Privacy and the Right to Information of public records. The Right to Privacy has been judicially developed by the judgment of the Hon'ble Supreme Court in **K.S Puttaswamy v. Union of India**<sup>6</sup>, wherein the Court has recognized that the **'Right to be forgotten'** and **'Right to be left alone'** are the inherent aspects of 'Right to Privacy'.

The Court was of the view that this issue has to be examined in length on whether the

<sup>4</sup> W.P (C) 3918/2021 & C.M Appl. 11767/2021

<sup>5</sup> CrI.Appl. No. 14/2013

<sup>6</sup> (2017) 10 SCC 1

'Right to be forgotten' can allow the deletion of judicial order and / or public information, thereby curbing the 'Right to information'.

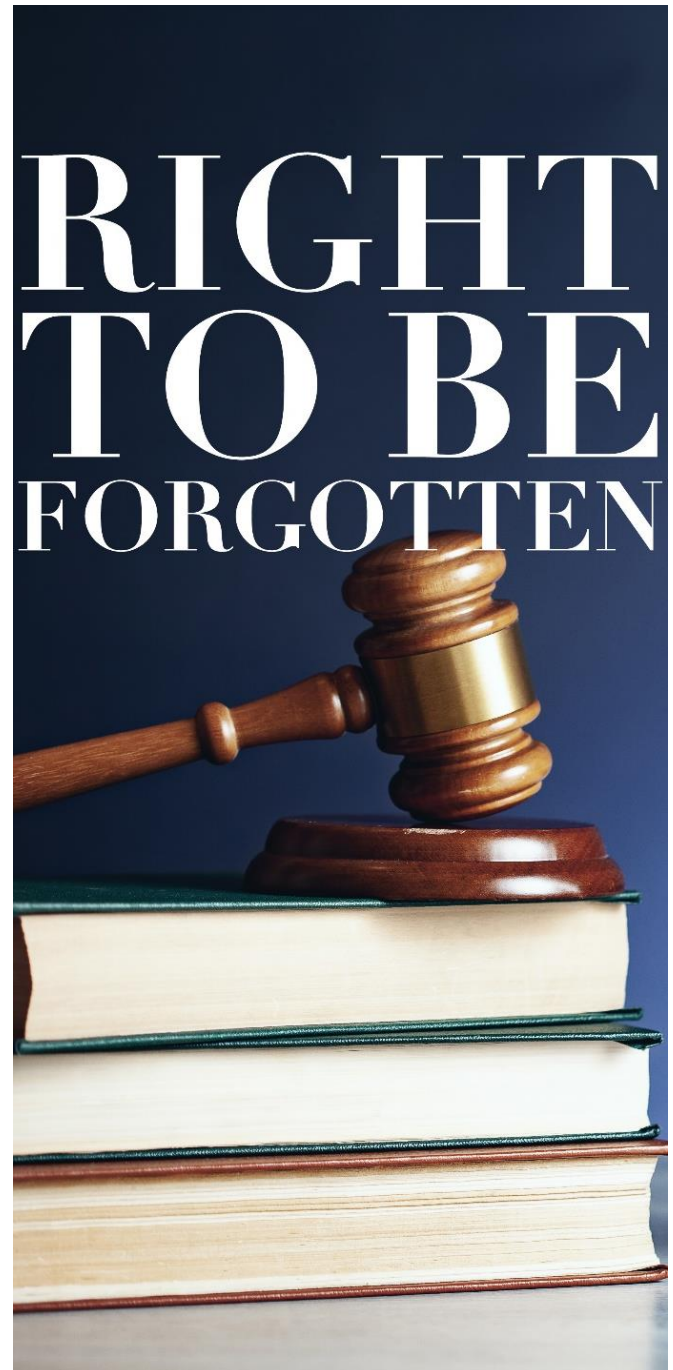
However, in the interim the Court directed to block the said judgment from being accessed by using search engines such as Google/Yahoo etc. till the next date of hearing.

The Committee on **Personal Data Protection Bill, 2018**, headed by Justice B.N Srikrishna has introduced the '**Right to be forgotten**', which refers to the ability of an individual to limit, delink, delete, or correct the disclosure of the personal information on the internet that is misleading, embarrassing, or irrelevant.

According to **Section 27** of the Bill, a data principal has a right to prevent the data fiduciary from using such data or information if data disclosure is no longer necessary, the consent to use data has been withdrawn or if data is being used contrary to the provisions of the law.

Further, **Section 27(2)** says the adjudicating officer (Data Protection Authority) can decide on the question of disclosure, and the circumstances in which he thinks such disclosure can override the freedom of speech and the citizen's right to information.

It will be interesting to see the judicial approach on the '**Right to be forgotten**', at a time when the Personal Data Protection Bill is being deliberated upon by the Joint Parliamentary Committee.





## 4

## EXPEDITIOUS DISPOSAL OF CASES BEFORE MP/MLA COURTS

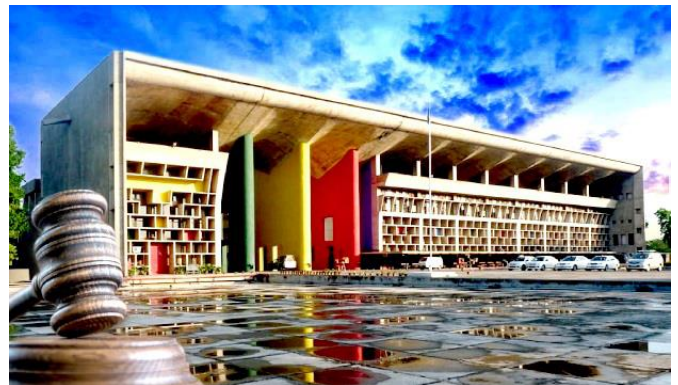
The Hon'ble High Court of Punjab & Haryana on its own motion has directed all the Special Court established to hear and try the criminal cases against sitting or former MP/ MLAs to expedite the disposal of the pending cases before them and strictly adhere to the direction issued by the Hon'ble Apex Court in the case of *Ashwini Kumar Upadhyay v. Union of India & Anr.*<sup>7</sup>.

The Division of the Court comprising of Hon'ble Justices Rajan Gupta and Karamjit Singh in the "Court on its own motion v. State of Punjab & Ors."<sup>8</sup> has been monitoring the progress of cases of MPs/MLAs (sitting or former) pending in the State of Punjab, Haryana and the Union Territory of Chandigarh.

The decision comes in the backdrop of the judgment of the Apex Court in *Ashwini Kumar Upadhyay (supra)* wherein the Court had directed the formation of Special Fast Track Courts in States for the trial of criminal cases against the legislators. The Court had also asked the Chief Justices of the High Courts to formulate an action plan to

rationalize the disposal of criminal cases pending against the legislators.

The Chief Justice of the High Court should designate a Special Bench comprising of himself and a designated Judge to continuously monitor the progress of these trials. The functioning of these Special Courts should not halt due to COVID-19 situation as such matters can be conveniently heard through video conferencing.



The High Courts should prepare a data of all the pending criminal cases involving sitting or former legislators, and list all of them before the appropriate bench comprising of the Chief Justice and/or the Designate Judges. The Court should especially focus on the cases wherein a stay has been granted and upon their listing it should first be decided whether the operation of the stay should continue in view of the judgment of the Apex Court in *Asian Resurfacing of Road Agency Private Limited v. CBI*<sup>9</sup>. If the Court

<sup>7</sup> WP (Civil) No. 699/2016

<sup>8</sup> CWP-PIL-29-2021, order dated 24.05.2021

<sup>9</sup> (2018) 16 SCC 299



are of the considerate opinion that the stay should continue to be in operation, then the matter should be heard on a day-to-day basis and disposed off expeditiously, preferably within two months, *without any unnecessary adjournment.*

As per the Affidavits furnished by Inspector Generals of Police of Punjab and Haryana, a total of 163 and 21 are pending against MP/MLAs are pending in Punjab and Haryana, respectively.



## 5

LEGAL NEWS AND  
UPDATES

- Whatsapp LLC has challenged the vires of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code), Rules 2021 before the Delhi High Court. The primary contention of WhatsApp is that IT Rules 2021 are in violation of privacy rights in since it requires social media companies to identify the "first originator of information" when authorities demand it.
- The Vacation Bench of the Supreme Court of India headed by Hon'ble Justice Vineet Saran has stayed the operation of the Order dated 25.05.2021 passed by the Single Bench of the Rajasthan High Court, Jaipur Bench, whereby directions were issued to the Directorate General of Police (DGP) to issue instructions to not to make arrest of persons in cases where accused is charged under an offence where maximum sentence extends upto three years and the offence is triable by First Class Magistrate. Additionally, the Apex Court also stayed the direction of the Order dated whereby the Registrar was directed not to list bail application u/s 438 of Cr.PC in such offences where maximum sentence extends upto 3 years and is triable by the First Class Magistrate till the reopening of Courts after Summer Vacation.
- The Division Bench of the Rajasthan High Court dismissed the plea for temporary suspension of sentence to pursue medical treatment made by the self-styled godman Asharam. The Court after perusing the medical report submitted by AIIMS, Jodhpur, directed the jail administration ensure proper treatment is provided to the convict along with nutritious diet and safe environment.
- The Government of National Capital Territory of Delhi, Act 2021 (GNCTD Act) has been challenged before the Delhi High Court for being ultra vires of the Constitution of India and contrary to the "*Principle of Republican and Democratic System*" as enshrined by the *Keshvananda Bharti Case*.
- The Division Bench of the Bombay High Court comprising of Hon'ble Justices S.J Kathawalla and SP Tavade had a marathon sitting of over 12 hours from 10:30 am to 11:15 pm to complete the matters listed on board.
- The Division Bench of the Delhi High Court comprising of Hon'ble Chief Justice D.N Patel and Hon'ble Justice Jyoti Singh imposed a cost of Rs.10,000/- on the petitioner who filed a Writ Petition seeking the details of the foreign vaccine manufacturers who have applied for approval in India without availing any alternative remedies. The Court

remarked that it was a classic example of public interest litigation being converted into private inquisitiveness litigation and we cannot allow the blatant misuse of the Writ Jurisdiction under Article 226 of the Constitution of India.

- The President of India has nominated Hon'ble Justice Uday Umesh Lalit as the Executive Chairperson of the National Legal Services Authority (NALSA).
- Hon'ble Justice Sanjay Yadav, Justice Rajesh Bindal and Justice Prashant Kumar Mishra have been appointed as the Acting Chief Justice of the Allahabad High Court, Calcutta High Court and Chhattisgarh High Court respectively.
- The Central Government notified the appointments of Hon'ble Justice Alok Kumar Verma as the Permanent Judge of the Uttarakhand High Court and Hon'ble Justice Vikas Bahl as an Additional Judge of the Punjab & Haryana High Court on 24.05.2021. Additionally, appointments of 5 Additional Judges have been notified by the Central Government on 26.05.2021 to bring down the rising judicial vacancies in the country.







## CONTACT US

### J A I P U R

The Law Desk

C-230, Gyan Marg, Tilak Nagar Jaipur  
302004

Phone: + 91- 141- 4110610

Email: [prateek@thelawdesk.org](mailto:prateek@thelawdesk.org)

### D E L H I

The Law Desk

4th Floor, Statesman House Building,  
Barakhamba Road

Cannaught Place, New Delhi-110001

Phone: + 91- 11- 30446410

Email: [prateek@thelawdesk.org](mailto:prateek@thelawdesk.org)

**Disclaimer:** The information contained in this newsletter is meant for information only and does not signify to be advice or opinion, legal or otherwise, whatsoever. Although we try to provide quality information, all information in this newsletter is provided "as is", with no guarantee of completeness, accuracy, timeliness or of the results obtained from the use of this information, and without warranty of any kind, express or implied, including, but not limited to warranties of performance, merchantability and fitness for a particular purpose. The information provided herein is not intended to create an attorney-client relationship and not for advertising or soliciting. The Law Desk in no manner whatsoever intends to advertise its services or solicit work through this newsletter.