No.C.L/CLC/Complaint/2011,
Office of the Commissioner of Labour,
"Kamgar Bhavan", E-Block, C/20,
Opp.Reserve Bank of India,
Bandra-Kurla Complex,
Bandra (E), Mumbai-400 051.

Date :- 25 FEB 2011

To,

President,
Indian Hotel & Restaurant Association,
Wadala, Mumbai-400 031.

Sub:- Clarification on the issue of child labour.

Dear Sir,

Please refer to your letter dated 17.7.2010 addressed to me requesting for meeting with me and subsequent meeting held in my office on 7.2.2011. In this connection I have to inform you that, the Government of India has included "Employment of children in Dhabas (Roadside eateries), restaurant, Hotels, Motels, Tea shops, resorts, Spas or other recreational centers" in part-A i.e. list of hazardous occupations under the Child Labour (Prohibition & Regulation) Act,1986, by notification dated 10 October,2006. Therefore, employment of a person who has not completed his 14th year of age is prohibited as per the provisions of section 3 of the said Act.

As regards to the provision of section 26 of the Juvenile Justice (Care & Protection of Children) Act, 2000 is concerned, an employment of a child/Juvenile who has not completed 18th year of age in any hazardous occupation and keeps him in bondage and withholds his earning or uses such earning for his on purposes is a punishable offence. The point of misuse of the

raised in the said meeting by you will be taken up in the meeting of State Child Labour Rehabilitation & Welfare Society.

Yours Faithfully,

(Arvind Kumar)
Commissioner of Labour,
Maharashtra State,
Mumbai.

9.2.2011-1007-Ind.Hot.& Rest.Ltr.doc

महाराष्ट्र शासन

उद्योग, ऊर्जा व कामगार विभाग

शासन निर्णय क्रमांकः सीएलए-२००९/(४)/काम-४

मंत्रालय, मुंबई -४०० ०३२.

दिनांक : २ मार्च २००९.

संदर्भ :- १. याचिका क्र. ४६५/१९८६ मधील सर्वोच्च न्यायालयांचा निवाडा,
२. जिल्हास्तरीय बाल कामगार सल्लागार मंडळाची स्थापनेसंदर्भातील शासन निर्णय क्र.सीएलए-१०९७/सीआर-३०७/काम-११, दि.१२.२.१९९७,
३. दिनांक १८ मे २००५ रोजी स्थापन करण्यात आलेले कृती दल.
४. शासन निर्णय क्रमांकः सीएलए-२००६/(२९९)/काम-७अ,दि.२५.४.२००६.

प्रस्तावना :

भारतीय संविधानाचा अनुच्छेद ३२ अंतर्गत, याचिका क्र.४६५/१९८६ मध्ये मा. सर्वोच्च न्यायालयाने दिलेल्या निर्णयातील निर्देशानुसार बालमजूरी ही अनिष्ट प्रथा आहे. त्याचे महाराष्ट्र राज्यातून समूळ उच्चाटन करुन बालमजूरांना शिक्षणाच्या मूळ प्रवाहात समाविष्ठ करुन घेणे, त्यांचे व आवश्यकता असल्यास त्यांचे कुटूंबियांचे पुनर्वसन करणे आवश्यक आहे.बालमजूरांची मालकांच्या तावडीतून/छळातून मुक्तता करण्याच्या उद्देशाने, शासन निर्णय क्रमांकः सीएलए-२००६/(२९९)/काम-७अ,दि.२५.४.२००६ अन्वये प्रत्येक जिल्हयात, संबंधीत जिल्हादंडाधिकाऱ्यांच्या नियंत्रणाखाली कृतीदल गठीत करण्यांत आले आहे.

तथापि, बाल कामगार (प्रतिबंध व निर्मूलन) अधिनियम १९८६ कायद्यान्वये १४ वर्ष पूर्ण न केलेल्या बालकास सदर अधिनियमाच्या परिशिष्ट अ आणि ब मध्ये नमूद केलेल्या धोकादायक उद्योग आणि प्रक्रियांमध्ये कामावर ठेवण्यास प्रतिबंध करण्यांत आलेला आहे. तसेच इतर अधोकादायक उद्योगांमध्ये बालकामगारांच्या कामाच्या शर्तीचे नियमनांबाबत तरतूद करण्यांत आली आहे. त्याअनुषंगाने दि.२५.४.२००६ च्या शासन निर्णयात सुधारणा करण्याची बाब शासनांच्या विचाराधीन होती.

शासन निर्णय :-

महाराष्ट्र राज्यातून बाल मजूरीचे समूळ उच्चाटन करुन बालमजूरांना शिक्षणाच्या मूळ प्रवाहात समाविष्ठ करण्याच्या उद्देशाने, गठीत करण्यांत आलेल्या कृतीदलाबाबतचा शासन निर्णय क्रमांक : सीएलए-२००६/ (२९९)/ काम-७अ, दि.२५.४.२००६ रद्द करुन आता शासनाने खालीलप्रमाणे निर्णय घेतला आहे.

२. धोकादायक उद्योग आणि प्रक्रियातील बालमजूरीचे निर्मूलन करण्यांसाठी या शासन निर्णयातील परिच्छेद क्रमांक ३ मध्ये कृतीदल गठीत करण्याबाबतचे सविस्तर विश्लेषण करण्यांत येत आहे. तथापि, अधोकादायक उद्योग व प्रक्रियातील बाल मजूरीचे नियमन करणे आवश्यक आहे. याबाबतची कार्यवाही कामगार आयुक्त कार्यालयांकडून खालीलप्रमाणे करण्यांत येईल.

अ) कुठल्याही बाल कामगाराच्या कामाचा विस्तार सहा तासापेक्षा जास्त असता कामा नये.

ब) तीन तास काम केल्यानंतर एक तासाची विश्रांती देण्यांत यावी .

क) कुठल्याही बाल कामगारास संध्याकाळी ७.०० ते सकाळी ८.०० वाजेपर्यंत कामावर ठेवण्यांत येऊ नये.

ड) कुठल्याही बाल कामगारास अतिकालिक काम देण्यांत येऊ नये.

इ) प्रत्येक बाल कामगारास भरपगारी साप्ताहिक सुट्टी देण्यांत यावी.

ई) कामावर ठेवलेल्या प्रत्येक बालकास किमान वेतन अधिनियमातील तरतूदीप्रमाणे किमान वेतन मिळाले पाहिले. त्यासाठी किमान वेतन अधिनियमाची काटेकोरपणे अंमलबजावणी करण्यांत यावी. तसेच बाल

... अंमलबजावणी करण्यात यावी.

उ) प्रत्येक मालकाने कामावर ठेवलेल्या बाल कामगाराच्या आरोग्याबाबत तसेच शिक्षणाबाबत संपूर्ण काळजी घ्यावी.

ऊ) बाल कामगार (प्रतिबंध आणि नियमन) अधिनियम १९८६ मधील तरतूदी, महाराष्ट्र बाल कामगार (प्रतिबंध आणि नियमन) नियम १९९७ मधील तरतूदी तसेच मा.सर्वोच्च न्यायालयाने याचिका क्र.४६५/१९८६ मध्ये दिलेल्या निर्देशांची काटेकोरपणे अंमलबजावणी करण्यांत यावी.

ए) यासंदर्भात शासनाने वेळोवेळी काढलेल्या तसेच यापुढे काढण्यांत येणाऱ्या परिपत्रके, शासन निर्णय, ज्ञापन इत्यादींचीदेखिल अंमलबजावणी करण्यांत यावी.

३. धोकादायक उद्योग आणि प्रक्रियातील १४ वर्षाखालील बालमजूरांची मालकाच्या छळातून त्वरीत मुक्तता करुन, त्यांचा प्राथमिक ताबा घेण्यात यावा याकरितां, शासनाच्या संबंधीत सर्व विभागाच्या खालील अधिकाऱ्यांचे जिल्हानिहाय, जिल्हादंडाधिकाऱ्यांच्या थेट नियंत्रणाखाली कृती दल गठित करण्यांत येत आहे.या कृती दलात खालीलप्रमाणे विविध विभागांचा समन्वये करण्यांत येत आहे.

१. जिल्हादंडाधिकारी	-कृती दल प्रमुख,
२. जिल्हा पोलीस अधिक्षक	-सदस्य
३. मुख्य कार्यकारी अधिकारी, जि.प.	-सदस्य
४. जिल्हा महिला व बालविकास अधिकारी	-सदस्य
५. जिल्हा शिक्षण अधिकारी (प्राथमिक),जि.प.	-सदस्य
६. जिल्हा आरोग्य अधिकारी,जि.प.	-सदस्य
७. निवासी उपजिल्हाधिकारी	-सदस्य
८. महानगर पालिका आयुक्त	-सदस्य
९. जिल्हा समादेशक, होमगार्डस्	-सदस्य
१०. विभागातील कार्यरत बालकामगारांशी निगडीत,इच्छुक स्वयंसेवी संस्था.	-सदस्य
११. जिल्हयातील उप/सहाय्यक कामगार आयुक्त	-सदस्य सचिव

ज्या जिल्हयांमध्ये महानगर पालिका अस्तित्वात नाहीत अशा ठिकाणी महानगरपालिका आयुक्त यांच्या ऐवजी संबंधित नगरपालिकांचे मुख्य अधिकारी यांचा सदस्य म्हणून समावेश करण्यात यावा. तसेच ज्या जिल्हयांमध्ये सहाय्यक/उप कामगार आयुक्त हे पद अस्तित्वात नाही अशा ठिकाणी सदस्य सचिव म्हणून सरकारी कामगार अधिकारी यांची नियुक्ती करण्यात यावी.

जिल्हादंडाधिकाऱ्यांनी कृतीदल सतत कार्यरत राहील व कृतीदलाची बैठक महिन्यातून किमान एकदा होईल हयाची दक्षता घ्यावी व आपला मासिक अहवाल विभागीय आयुक्त, प्रधान सचिव (महसूल), सचिव (मदत व पुनर्वसन), व प्रधान सचिव (कामगार) यांना पाठवावा.

४. धोकादायक उद्योगातील बाल कामगारांच्या मुक्ततेसाठी परिशिष्ट अ मध्ये नमूद केल्याप्रमाणे कार्यपध्दती (Protocol) तयार करण्यांत आली असून त्याअंतर्गत विविध विभागांसाठी खालीलप्रमाणे जबाबदारी निश्चित करण्यांत आली आहे.

अ) पोलिस विभाग:संबंधीत पोलिस स्टेशनच्या सहाय्यक पोलिस आयुक्त/जिल्हा पोलीस अधिक्षक यांनी

१. कृती दलास धाडीकरितां मागणीनुसार तातडीने पुरेसा पोलिस बंदोबस्त उपलब्ध करुन द्यावा.
२. कृती दलाच्या धाडीत प्रत्यक्ष सहभागी व्हावे.
३. कृती दलाने मुक्त केलेल्या १४ वर्षाखालील बालमजूरांचा ताबा घ्यावा.

... त्वरित कारवाई करुन भारतीय दंड संहितेच्या कलम ३३९, ३७०, ३७४ व ३४ अंतर्गत गुन्हा दाखल करावा व पुढील कारवाई करावी.

५. मुक्त केलेल्या बालमजूरांना काळजीपूर्वक सन्मानाने वागवावे व त्यांना सुरक्षितरित्या बालगृहात महिला व बालविकास विभागाच्या अधिकाऱ्यांकडे सुपूर्द करावे.

६. कलम ३२ अंतर्गत बाल कल्याण समितीसमोर बालमजूरांची बाजू कृतीदलाच्या मदतीने मांडावी. बाल कल्याण समितीच्या निर्णयानुसार बालमजूर परराज्यातील असल्यास जापू मार्फत त्यांची सुरक्षित रवानगी त्यांचे पालकांकडे करावी.

ब) कामगार आयुक्त कार्यालयाचे अधिकारी :

१. त्यांचे संबंधीत कार्यक्षेत्रात बालमजूर कार्यरत असण्याची शक्यता असणाऱ्या विभागांवर सातत्याने सर्वेक्षणे करावीत.

२. १४ वर्षाखालील बालमजूर कार्यरत असल्याचे आढळताच/ज्ञात होताच, बालकामगारांची संख्या जास्त असल्यास जिल्हादंडाधिकारी व पोलिस अधिकारी यांचेशी समन्वय साधून २४ तासाचे आंत कृतीदलाची धाड आयोजित करावी. बालमजूरांची संख्या कमी असल्यास सहकाऱ्यांच्या आणि पोलिसांच्या मदतीने त्याच दिवशी कारवाई करुन बालमजूरांची मुक्तता करावी.

३. कृतीदलाचा कायमस्वरुपी सदस्य सचिव या नात्याने प्रत्येक धाडसत्राचे नियोजन करावे. धाडीत पुरेसे अधिकारी, दुकाने निरीक्षक उपस्थित ठेवावेत. १४ वर्षाखालील बालमजूरांची मुक्तता करण्यात सक्रिय सहभागी असावे. असे बालमजूर ठेवणाऱ्या मालकांविरुध्द बाल कामगार अधिनियम १९८६ चे कलम ३ लागू असल्यास त्या अंतर्गत कारवाई करावी. उक्त अधिनियमाचे कलम ३ लागू नसल्यास कलम ७,८,९,११,१२ आणि १३ अंतर्गत कारवाई करावी.

४. मुक्त केलेल्या बालमंजूरांचा सोबतच्या विहीत परिशिष्ट व मध्ये नमूद केलेला संपूर्ण तपशील बालमजूरांकडून आपुलकीने माहिती मिळवून भरावा व त्या तक्त्याची एक प्रत पोलिस विभागास द्यावी. बालमजूर आढळलेल्या मालकाविरुध्द पोलिसांकडे औपचारिकतेचा भाग व कर्तव्य म्हणून (कृती दलाच्या वतीने) रितसर तक्रार/जबाब नोंदवावा.

५. बालमजूरांकडून माहिती मिळविताना मालकाने सदर बालमजूर कामावर ठेवण्याकरितां बालमजूरांच्या पालकास कोणत्याही प्रकारे आर्थिक सहाय्य, कर्ज, उचल इ. स्वरुपात रक्कम अदा केली आहे का, याबाबतदेखील माहिती घ्यावी आणि अशा उक्त स्वरुपात रक्कम अदा करण्यात आलेली असल्यास, त्यांना वेठबिगार कामगार म्हणून घोषित करण्याबाबत त्वरीत थेट अहवाल जिल्हाधिकारी यांना पुढील कारवाईप्रित्यर्थ सादर करावा व त्याची प्रत कामगार आयुक्तांमार्फत शासनास पाठवावी.

६. धाडीत मुक्त केलेल्या बालकांना बालगृहात पाठवेपर्यंत त्यांची योग्य ती काळजी घ्यावी, जसे की, त्यांना वेळेवर जेवण मिळेल, पाणी मिळेल यासंदर्भातील व्यवस्थेवर नियंत्रण ठेवावे.

७. ज्या मालकांविरुध्द बालकामगार अधिनियम १९८६ चे कलम ३ अंतर्गत कारवाई करण्यांत आली अशांकडून सर्वोच्च न्यायालयांच्या याचिका क्र.४६५/१९८६ तील निवाडयानुसार रु.वीस हजार फक्त (रु.२०,०००/-) बालकल्याण फंडाकरितां वसुल करावेत.

८. ज्या मालकांकडे १४ वर्षाखालील बाल कामगार आढळले असतील अशांविरुध्द, लागू असल्यास,

अ) मुंबई दुकाने व आस्थापना अधिनियमाचे अंतर्गत,

ब) किमान वेतन अधिनियमाचे अंतर्गत,

क) मोटार परिवहन कामगार अधिनियमाचे अंतर्गत,

them abusing the complainant ... therefore, no offence is made out under the provisions of section 7(1)(3) and 3(1)(10) of the Act. She further submits that, since the applicant No.7 is no more, the complainant has only made specific allegations against the applicant No.7 only. Therefore, she submits that contention of the investigation in the said crime would be abuse of process of law, therefore, the said F.I.R. deserves to be quashed.

11. The learned A.P.P. submits that the applicants are named in the F.I.R. However, the learned A.P.P. fairly conceded that no more specific allegations are made against the present applicant Nos.1 to 6.

12. After hearing the learned counsel for the applicants and learned A.P.P., I am of the considered view that even the contents of the F.I.R. are taken as it is, no offence is made out under sections 7(1)(3) and 3(1)(10) of the Act. In my considered view, any further investigation in pursuant to the F.I.R. No.62/99 would be abuse of process of law. Moreover, the applicants, who are the employees of the Maharashtra State Electricity Board, were discharging their duties and therefore, in my considered view, when no specific allegations are made against them that they have abused the complainant, saying something about the caste of complainant, the F.I.R. is required to be quashed.

13. In the result, the application succeeds. The application is allowed in terms of prayer clause C of the application and disposed of.

Application allowed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY (AURANGABAD BENCH)

N. V. DABHOLKAR & N. D. DESHPANDE, JJ.

Rameshkumar s/o. Dwarkadas Mundada
Vs.
State of Maharashtra & Ors.

Criminal Writ Petition No.656/2008
6th February, 2009.

Shri. C. R. DESHPANDE, Adv. for Petitioner.
Shri. N. N. JADHAV, A.P.P. for all Respondents.

(A) Child Labour (Prohibition and Regulation) Act (1986), Ss.2(ii), 3, 14 - Engagement of children in certain employment - Prohibition of engagement - "Child" - A person who has completed 14 years of age, would not be a "Child" for the purpose of Ss.3 and 14 of the Act. (Para 3)

(B) Child Labour (Prohibition and Regulation) Act (1986), S.2(ii) - Maharashtra Government Resolution No.CLA/2006/(299) KAMA-74 dated 25-4-2006 issued by the Government through Industries, Energy and Workers Department, Para 3(B)(8) - Validity of Clause 8 of Para 3(B) of Resolution dt.25-4-2006 - Challenge to - Held, for the purpose of implementing the provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of 'child' from a different enactment - Therefore, Clause 8 of Para 3(B) of Government Resolution dt.25-4-2006 which relies upon definition of the child as contained in Juvenile Justice Act for the purpose of implementing the provisions of Child Labour Act is required to be struck down, since it is ultravires to the extent it borrows definition of "Child" from a different legislation.

For the purpose of implementing the

provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of the child from a different Enactment. The children to be taken care of under Child Labour Act, are different than the children to be protected by Juvenile Justice Act. The children contemplated to be protected by Child Labour Act are not in conflict with law, but their employers are acting in breach of law and to that extent protection is granted to children who have not completed age of 14 years. The Juvenile Justice Act takes care of a juvenile or child, defined as a person not having completed Eighteenth year of age; who is in conflict with law or who is alleged to have committed some offence.

Therefore, Clause 8 of Para 3(B) of Government Resolution dated 25-4-2006 which relies upon definition of the child as contained in Juvenile Justice Act for the purpose of implementing the provisions of Child Labour Act is required to be struck down, since it is ultra-vires to the extent it borrows definition of "child" from a different legislation. If the word "child" is defined in a particular way by Child Labour Act, while implementing the provisions of the Act, same definition ought to be followed.

Impugned Clause 8, therefore, is struck down as ultra vires Section 2(ii) of Child Labour Act and Government may substitute Clause 8 by appropriate Clause in harmony with the definition of "child" as contained in Section 2(ii) of Child Labour Act. (Paras 6, 7 and 8)

N. V. DABHOLKAR, J. :- Petitioner has approached this Court for the purpose of challenging Clause 3(B)(8) as contained in Government Resolution No.CLA/2006/(299)KAMA-74 dated 25-4-2006, issued by the Government through Industries, Energy and Workers Department. According to petitioner, the said Clause is in conflict with the law applicable and also violative of fundamental rights.

Reply is filed on behalf of respondents by Shri B... as Assistant Commissioner of Labour, Latur, which is taken on record and considered.

2. Rule. Rule made returnable forthwith by mutual consent.

- As is evident from the title of the Government Resolution.

> "बाल कामगार या अनिष्ट प्रथेतून महाराष्ट्र राज्य मुक्त करणे बाबत."

i.e. "to free the State from unhealthy practice of child workers". It is evident that these are the directions/guidelines issued by the Government for the purpose of seeking freedom to the child workers wherever they are so employed. We need not refer to all the details in the Resolution. The Clause under challenge reads thus :

> "८. धाडसत्रात किशोर न्याय (मुलांची देखरेख तथा संरक्षण) अधिनियम, २००० च्या कलम २(ट) नुसार ज्याने वयाची १८ वर्षे पूर्ण केलेली नाहीत तो बालक अशी बालकाची व्याख्या केलेली असल्याने, १४ वर्षापुढील किशोरवरयीन बालमजूर जर धाडसत्रात आढळले तर अशांना देखील मालकाचे तावडीतून मुक्त करून पोलिसांचे स्वाधिन करावे."

Freelance English translation of the same would be as under:

> "Because Juvenile Justice (Care and Protection of Children) Act, 2000 defines Juvenile or child by its Section 2(k) as an individual who has not completed age of 18 years, if child workers who have completed 14 years are found in the raid, those child workers also should be freed from the clutches of the employer and they should be handed over to the police authorities."

It appears that the directions/guidelines direct the authorities who are required to act upon those, to ensure freedom also to the child workers between the age group of 14 to 18 years.

3. The exception taken to the said

"An Act for prohibiting engagement of children in certain employment and to regulate the conditions of working of children in certain other employments."

The phrase "Child" is defined as under:

"2(ii) "Child" means a person who has not completed his 14th year of age."

Thus, it is evident that for the purpose of Enactment, which is enacted to prohibit the engagement of children in certain employment "child" is a person who has not completed age of 14 years. Obviously a person who has completed 14 years of age, would not be a "child" for the purposes of Sections 3 and 14 of the said Act.

4. Learned counsel for the petitioner has not disputed that the petitioner is engaged in the business of ice-cream i.e. he runs Ice-Cream Parlour. He is aggrieved because during the raids, his workers aged between 14 to 18 are also tried to be prohibited from being employed by him. Shri. C. R. Deshpande, Adv. for petitioner concedes that the business of the petitioner would fall in Item 15 of the Schedule to Child Labour (Prohibition and Regulation) Act 1986, which reads as under:

"15. Employment of children in dhabas (road-side eateries), restaurants, hotels, motels, tea-shops, resorts, saps or other recreational centres".

However, he challenges that the Government Resolution which is issued in order to give effect to the spirit of the Child Labour (Prohibition and Regulation) Act 1986 is tried to be implemented by borrowing the definition of "child" from a different Enactment i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000. The said Act in its Section 2(k) defines the "child" as under:

"2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;"

protection by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their rehabilitation keeping in view the developmental needs of the children.

5. The object and reason for which the two legislations are enacted are quite distinct. The Child Labour Act takes care of a child who has not completed age of 14th year of age by prohibiting their being employed in certain types of employments and provides for an action to secure freedom for such "child" from certain types of employments. The Juvenile Justice Act is aimed at helping the juvenile who are in conflict with law or who otherwise need care and protection. Even the child in need of care and protection is specifically defined in Clause (d) of Section 2 of the said Act.

6. For the purpose of implementing the provisions of Child Labour Act, 1986, it is inappropriate to borrow the definition of the child from a different Enactment. The children to be taken care of under Child Labour Act, are different than the children to be protected by Juvenile Justice Act. The children contemplated to be protected by Child Labour Act are not in conflict with law, but their employers are acting in breach of law and to that extent protection is granted to children who have not completed age of 14 years. The Juvenile Justice Act takes care of a juvenile or child, defined as a person not having completed Eighteenth year of age; who is in conflict with law or who is alleged to have committed some offence.

7. Therefore, Clause 8 of Para 3(B) of Government Resolution dated 25-4-2006 which relies upon definition of the child as contained in Juvenile Justice Act for the purpose of implementing the provisions of Child Labour Act is required to be struck down, since it is ultra-vires to the extent it borrows definition of

"child" is defined in a particular way by Child Labour Act, while implementing the provisions of the Act, same definition ought to be followed.

8. Impugned Clause 8, therefore, is struck down as ultra vires Section 2(ii) of Child Labour Act and Government may substitute Clause 8 by appropriate Clause in harmony with the definition of "child" as contained in Section 2(ii) of Child Labour Act.

9. Rule made absolute accordingly. Writ Petition is disposed of.

Petition allowed.

2009 ALL MR (Cri) 1320

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
(NAGPUR BENCH)

R. C. CHAVAN, J.

Hemant s/o. Omkarnath Thakre
Vs.
State of Maharashtra

Criminal Appeal Nos.64, 66, 67, 72, 89 of 2007
3rd February, 2008.

Shri. S. P. DHARMADHIKARI, Sr. Adv. for Appellant in Criminal Appeal No.64 of 2007.
Ms. SANGEETA GAIKEE, Advocate for Appellants in Criminal Appeal No.66 of 2007 and Criminal Appeal No.89 of 2007.
Shri S. S. VODITEL, Advocate for Appellant in Criminal Appeal No.67 of 2007.
Shri S. P. GADLING, Advocate for Appellant in Criminal Appeal No.72 of 2007.
Shri S. S. DOIFODE, Additional Public Prosecutor for Respondent/State.

(A) Criminal P.C. (1973), Ss.154, 173 - Maharashtra Universities Act (1994), S.18(3)(e) - Scope of - Investigation - S.18(3)(e) does not restrict the powers of a Criminal Court to take cognizance upon a ... **Universities Act are first taken.**

Section 18(3)(e) does not restrict the powers of a Criminal Court to take cognizance upon a police report by prescribing that cognizance shall not be taken unless the steps contemplated by the Maharashtra Universities Act are first taken. Therefore, since the relevant provisions of the Maharashtra Universities Act and those under the Code of Criminal Procedure occupy different fields and control different aspects, there is no conflict and, therefore, no implied repeal. Consequently, there is no warrant for holding that the Controller of Examinations was not entitled to approach the police or police was not entitled to investigate or to file a report or that a Magistrate was not entitled to take cognizance on such a report.

When a special law prescribes a special procedure, it eclipses general provisions. However, it has to be noted that the Maharashtra Universities Act does not prescribe any special procedure for carrying out investigation into the complaints about offences concerning the University examinations or for enquiries or trials for offences arising therefrom. Section 18(3)(e) of the Act on which much emphasis has been laid, is only an enabling provision, which would enable the Controller of Examinations to initiate criminal proceedings. Therefore, since there is no special procedure prescribed for investigation or trial of offences relating to examinations and since the procedure prescribed is only in relation to conducting an internal enquiry for the purpose of enabling the University authorities to decide appropriate course of action, it cannot be said that the report could not have been made by the Controller of Examinations. 2007 ALL MR (Cri) 555 - Ref. to. (Para 26)

(B) Maharashtra Universities Act (1994); S.18(3)(e) - Criminal P.C. (1973), Ss.154, 173 - Charge of serious misconduct against public servant - When a department decides