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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9284 OF 2022

1. Sunita w/o Dinesh Gaikwad,
Age : 39 years,
Occupation : Household,
R/o Samtanagar, Mukhed,
Tq.Mukhed, Dist.Nanded.
2. Ashish s/o Dinesh Gaikwad,
Age : 28 years, Occupation : Nil,
R/o Samtanagar, Mukhed, Tq.Mukhed,
Dist.Nanded.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Chief Executive Officer,
Zilla Parishad, Nanded.

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Shri Sambhuraje V. Deshmukh, Advocate for the Petitioners.
Shri S.G. Karlekar, AGP for Respondent 1.
Shri S.B. Pulkundwar, Advocate for Respondent 2.

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**CORAM : RAVINDRA V. GHUGE, J.,
Y.G. KHOBRAGADE, J. AND
S.G. CHAPALGAONKAR, J.**

**Reserved on : 06th July, 2023.
Pronounced on : 27th July, 2023.**

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. This petition was heard by the Division Bench on 07.12.2022. After considering the extensive submissions of the learned Advocates for the respective sides, the following order was passed:-

“1. The petitioners have put forth a case seeking compassionate appointment. Petitioner No.1 is the widow of the employee of respondent No.2/Zilla Parishad, namely, Dinesh Gaikwad. Petitioner No.2 is the son of the deceased born on 21.02.1994 and who is 28 years and 10 months as on date. The deceased passed away on 05.08.2017, in harness. The deceased and petitioner No.1 had a third child born on 18.09.2003.

2. The State of Maharashtra issued the Government Resolution dated 28.03.2001 in relation to the eligibility for compassionate appointment. Clause E of the said Government Resolution reads as under :-

“(इ) दिनांक ३१ डिसेंबर २००१ नंतर तिसरे अपत्य झालेल्या कर्मचाऱ्यांच्या कुटुंबीयास अनुकंपा तत्वावरील नियुक्तीसाठी पात्र समजले जाणार नाही.”

Translated version of the said clause is, “Family members of a deceased employee, who had more than two children and the excess child was born after 31.12.2001, would not be eligible for compassionate appointment.”

3. Two judgments have been cited before us. Both are delivered by the Division Bench of this Court.

4. The judgment cited by the petitioner is dated 03.07.2019 delivered in Writ Petition No.7742/2014 (Civil Appellate Jurisdiction, Mumbai) filed by **Kashabai Sheshrao Wagh vs. The Zilla Parishad, Nashik and others**. In this matter, the petitioner was the second wife of the deceased

employee. The first wife of the said employee, who passed away, had two children from her marriage with the employee. Thereafter, the employee married Kashabai, which is the second marriage. A child was born to Kashabai, out of her marriage with the deceased employee. This Court, therefore, considered that the petitioner (Kashabai) had only one child out of her marriage with the deceased employee and hence, she was eligible to seek compassionate appointment, though the deceased employee, factually had three children out of which, first two children were born out of his marriage with the first wife, now deceased.

5. *The learned advocate for the petitioners has laid heavy stress on paragraphs 6 and 7 of the judgment in Kashabai (supra), which read thus:-*

- “6. *The conditions in the policy decisions for grant of appointment on compassionate basis contains an embargo to the applicant being disentitled on the fact of the deceased government servant having 3 children.*
7. *Notwithstanding there being no prayer to quash the said condition as unconstitutional, we declare the same to be unconstitutional. For the reason in a given set of facts, as in the instant case, the Petitioner who has only one child would suffer the brunt of public employment being denied on the reasoning that her deceased husband was blessed with two children from the previous marriage. The intention behind the policy is to control the exploding population and not to prohibit remarriages. The Petitioner was the second wife of the deceased employee of Zilla Parishad and as far as she was concerned, she bore only one child.”*

6. *The learned AGP and the learned*

advocate representing the Zilla Parishad place reliance on the judgment delivered by another Division Bench of this Court, dated 08.03.2022 in Writ Petition No.6819/2021 (Civil Appellate Jurisdiction, Mumbai) filed by **Bhagyashree Pradip Chopade vs. MIDC and others**. The learned counsel concede that the view taken by the earlier Division Bench in **Kashabai (supra)** was not cited before the Division Bench, which dealt with the case of **Bhagyashree (supra)**. The learned Division Bench in **Bhagyashree (supra)** observed in paragraphs 5 to 10 as under:-

- “5. Government Resolution dated March 28, 2001 (hereafter "relevant GR") ordains that compassionate appointment cannot be claimed by a dependent of an employee dying-in-harness, who is otherwise qualified, if such employee has more than two children. In the present case, the deceased employee had 4 (four) children during his lifetime; but since his second and third daughters were twins, they were counted as 1 (one) child. Based on the terms of the relevant GR, the petitioner's application was rejected.
6. In order to wriggle out of the rigours of the relevant GR, two contentions have been raised by Mr. Udane, learned advocate appearing for the petitioner. First is that the petitioner's brother, Atharva, has been given in adoption and, therefore, he cannot be counted as part of the family of the deceased employee. Secondly, the relevant GR being applicable only to employees of the State Government, its terms ipso facto are not applicable to the employees of MIDC; therefore, an illegality was committed in refusing the petitioner's prayer for compassionate appointment based on

such GR.

7. *We find both the contentions of Mr. Udane to be without substance.*
8. *The plea of adoption has been raised by the petitioner to paint the picture that the family of the deceased employee comprises of his widow and 3 (three) daughters of whom the last 2 (two) are twins. However, nothing turns on such adoption even if it were in accordance with the extant provisions of law. The underlying object of the relevant GR is to ensure that the employees who are bound thereby, namely the Government employees, do not have more than 2 (two) children. If in case a third child is born to a Government employee, such an employee would not be entitled to certain benefits which includes an appointment on compassionate ground if such a situation were to arise. As is well-known, compassionate appointment being an exception to the rule of equal opportunity in the matter of public employment, it is well within the powers of the employer to attach reasonable conditions on the fulfillment whereof such benefit of compassionate appointment can be availed of. The condition that the relevant GR brought about being in the nature of a policy decision, which has led to rejection of the petitioner's application, is neither unreasonable nor violates any right of an employee. That apart, the disqualification for having an appointment on compassionate ground having occurred once the son, Atharva, was born to the deceased employee and the petitioner's mother, it is absolutely irrelevant for the purpose of the present*

case whether Atharva was given in adoption lawfully or whether giving Atharva in adoption could make the terms of the relevant GR inapplicable. We are of the view that the Government policy embodied in the relevant GR cannot be read in such a manner that it gives scheming parties the chance to defeat it by taking recourse to adoption. Suffice it to record, the contingency on the occurrence whereof appointment on compassionate ground could be refused having set in with the birth of Atharva, we see no reason to hold the impugned rejection to be arbitrary or illegal.

9. Turning to the second contention, we have learnt from Ms. Gadre, learned advocate for the respondents that MIDC has no independent scheme or policy for appointment of dependents of employees dying-in-harness on compassionate ground and it is the policy of the Government, applicable to its employees, that is followed by MIDC. If Mr. Udane's submission were to be accepted that the relevant GR applies only to the employees of the State Government and not to employees of MIDC and, consequently, would also not apply to the petitioner, by applying the same logic it has to be held that the scheme or policy for compassionate appointment of the State Government does not apply to MIDC and, thus, MIDC is under no obligation to make appointment on compassionate ground. In such a case, the petitioner would have no semblance of a right to claim appointment on compassionate ground on the death of her father in view of the settled law that there can be no such

appointment without a scheme/policy. Hence, this contention advanced by Mr. Udane is a self-defeating one and cannot be accepted; accordingly, it is overruled.

10. *Having considered the materials that have been furnished by way of additional compilation by Ms. Gadre, we are of the considered opinion that the petitioner while seeking compassionate appointment tried to deceive MIDC and its officers. Any attempt on the part of an aspirant for public employment, which is deceitful, has to be sternly dealt with. This is a fit and proper case where the writ petition ought to be dismissed with exemplary costs. However, considering the submission of Mr. Udane that the petitioner has disabled siblings, we refrain from imposing costs.”*

7. *The learned advocate for the petitioners contends, in the light of **Kashabai (supra)**, that this Court has declared Clause E as unconstitutional.*

8. *The learned AGP points out from the same paragraph 7 in **Kashabai (supra)** that the said judgment has to be restricted to the peculiar facts of the case and further stresses on the observation “The intention behind the policy is to control the exploding population and not to prohibit remarriages. The petitioner was the second wife of the deceased employee of Zilla Parishad and as far as she was concerned, she bore only one child.” He, therefore, submits that though Clause E is held to be unconstitutional, notwithstanding that specific reasons for declaring it to be ultra vires are not set out, he contends that such conclusion has to be restricted to the facts in the case of **Kashabai (supra)**. He then refers to **Bhagyashree (supra)** to contend that the said judgment makes things clear that it is an employee who should not have more than two children after 31.12.2001, whether or not,*

he may have any number of wives, as the compassionate appointment is available only to the eligible survivor of the family of the employee dying in harness. Clause E clearly indicates that the compassionate appointment is possible only if the employee dies in harness.

9. Be that as it may, we do find that the view taken in **Kashabai (supra)** was not brought to the notice of the learned Division Bench in **Bhagyashree (supra)**. At the same time, the facts in **Kashabai (supra)** are somewhat different from the facts appearing in **Bhagyashree (supra)**. However, we find that the learned advocate for the petitioners as well as the learned AGP and the learned advocate for the Zilla Parishad, are right in submitting that if clause E of the Government Resolution dated 28.03.2001 is considered, it pertains to the family of the deceased employee dying in harness. His family comprising of more than two children, after the cut off date, would not be entitled for compassionate appointment. However, the issue is as to whether, clause E can be said to have been declared unconstitutional for all purposes and in its entirety. As per the learned advocate for the petitioners, that once such clause is declared unconstitutional, it does not exist in the eyes of law.

10. In view of the above, we deem it appropriate to refer this matter to the Honourable The Chief Justice of the Bombay High Court under Chapter-I Rule-8 of The Bombay High Court Appellate Side Rules, 1960, requesting for referring the matter to a Bench of larger strength keeping in view the divergent views taken by two Division Benches in **Kashabai (supra)** and **Bhagyashree (supra)**.

11. We direct the learned Registrar (Judicial) of this Court to place this matter before the learned Registrar General of the Bombay High Court in order to be placed before the Honourable The Chief Justice for appropriate orders.”

2. The issue referred to our Full Bench is ‘whether, clause E can be said to have been declared unconstitutional for all purposes and in it’s entirety’.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

3. The learned Advocate for the Petitioners contended that clause E of the Government Resolution dated 28.03.2001 was rightly held as being unconstitutional, by the Division Bench in ***Kashabai (supra)***. Once such a conclusion is drawn, the said clause loses it’s efficacy and cannot be pressed into service. Since this declaration was not brought to the notice of the Division Bench in ***Bhagyashree (supra)***, the view taken in the latter judgment will have to be treated as being *per incuriam*. He further submits that the State of Maharashtra introduced “The Maharashtra Civil Services (Declaration of Small Family) Rules, 2005” (for short, “the Rules of 2005”). In view of the proviso below Rule 3 of the Rules of 2005, Petitioner no.2 cannot be disqualified for appointment on compassionate basis as the said Rules were introduced on 28.03.2005 and therefore, that date becomes the cut off date. After this cut off date, the number of

children of the Petitioner no.1, have not grown.

4. He further submits that the husband of Petitioner No.1 was in service with Respondent No.2, as a teacher in the Zilla Parishad School. Petitioner No.2 is her son. Her husband died on 05.08.2017, while being in service. Petitioner No.1 and her deceased husband, have three children and the youngest was born on 18.09.2003. After the demise of her husband, she filed an application on 14.12.2017, seeking compassionate appointment for herself. By application dated 22.03.2019, she sought compassionate appointment in favour of Petitioner No.2. By the impugned communication dated 04.03.2020, her claim was rejected by Respondent No.2 only for the reason that the youngest child was born on 18.09.2003 and clause E of the Government Resolution dated 28.03.2001 creates a prohibition. On the one hand, clause E stood quashed in ***Kashabai (supra)*** and on the other hand, the cut off date prescribed under the Rules of 2005 is 28.03.2005. As such, with clause E having been set aside, the Petitioner cannot be said to be ineligible as her third child was born on 18.09.2003 which is prior to the cut off date as per the proviso below Rule 3.

5. We are not required to consider the submissions of the Petitioners as regards the merits of the claim of Petitioner No.1 in seeking compassionate employment in favour of her son under the 2005 Rules. This aspect is to be considered by the Division Bench. We are only required to deal with the issue as framed by the Division Bench in paragraph 9 of the order dated 07.12.2022, which reads as under:-

“Whether, clause E can be said to have been declared unconstitutional for all purposes and in its entirety.”

6. According to the learned Advocate for the Petitioners, once the said clause is declared unconstitutional in ***Kashabai (supra)***, it would not exist in the eyes of law. Since this view was not brought to the notice of this Court when it decided ***Bhagyashree (supra)***, the latter order needs to be declared ‘*per incuriam*’.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

7. The learned AGP Shri S.G. Karlekar has urged us to consider the following aspects:-

(a) Clause E of the Government Resolution dated 28.03.2001 was not challenged in ***Kashabai (supra)***.

(b) No grounds were raised/ formulated in the memo of the petition in the case of ***Kashabai (supra)***.

(c) There were no foundational pleadings assailing clause E, even indirectly.

(d) The order in ***Kashabai (supra)*** does not indicate as to whether, any of the litigating sides in ***Kashabai (supra)*** had canvassed submissions across the Bar to urge that clause E is unconstitutional.

(e) The order in ***Kashabai (supra)*** declaring clause E to be unconstitutional, suffers the principle of ‘*sub silentio*’.

(f) The view expressed by this Court in ***Bhagyashree (supra)*** is supported with reasons, is an appropriate view and the view expressed in ***Kashabai (supra)***, be held to be restricted to the facts of that case.

ANALYSIS OF THE SUBMISSIONS

8. We find that the submissions of the learned AGP Shri Karlekar are well placed. The order in ***Kashabai (supra)***, more particularly in paragraph 7 reproduced above, clearly

indicates that there was no prayer to declare the said condition (clause E) as unconstitutional. However, it is trite that if the parties address the Court on the constitutional validity of any particular clause or if the submissions of the litigating parties strike at the root of a particular clause, the Court may grant an opportunity of hearing to the litigating parties so as to support their respective submissions in favour of and against the validity of a particular clause of the Government Resolution. Ideally, the Court would permit the parties to amend the pleadings and add to the grounds/prayers. In our view, even if this is not so done, the minimum that would be required is that the parties must be granted an opportunity of addressing the Court and the conclusions of the Court must be supported with reasons.

9. In *Kamleshkumar Ishwardas Patel vs. Union of India and others*, 1994 (2) Mh.L.J. 1669, Full Bench, it was held that when the High Court is confronted with two contrary decisions of the Supreme Court emanating from Benches of co-equal strength, the High Court is not necessarily bound to follow the decision which is later in point of time, but must follow the one which, in its view, is better or more accurate in the light of

the provisions of law. It was noted in paragraphs 14 and 15 as under:-

“14. It has been pointed out by one of us, while speaking for a **Special Bench of the Calcutta High Court in Bholanath v. Madanmohan** on the question as to the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder :-

"..... When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was recommended by our ancient Jurists - "Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate" - in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts - "Prayoge Hi Virodha Syat". But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would

bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P. B. Mukharji, J. (as his Lordship then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in Pramatha Nath v. Chief Justice, took a similar view, S. P. Mitra, J. (as his Lordship then was) also took such a view in the Division Bench decision of this Court in Sovachand Mulchand v. Collector, Central Excise, AIR 168 Cal 174 at p. 186, para 56. To the same effect is the decision of a Division Bench of the Mysore High Court in New Krishna Bhavan v. Commercial-Tax Officer, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in Vasant v. Dikkaya. A Full Bench of the Allahabad High Court in U.P. State Road Transport Corpn. V. Trade Transport Tribunal has also ruled to that effect. The view appears to be that in case of conflicting decisions by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new."

"The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab & Haryana High Court in Indo-Swiss Time Ltd. v. Umarao took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in Govinda Naik v. West Patent

Press Co., the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at p. 95) and in fact the same has been referred to with approval by Sandhwalia, C.J. in the Full Bench decision in Indo-Swiss Time (supra)."

"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared - Dharmashastra Virodhe Tu Yuktayukta Vidhe Smrita - that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhwalia, C.J. in Indo-Swiss Time (supra, at p. 220) and the learned Jurist has observed that "judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgment."

"It appears that the Full Bench decision of the Madras High Court in R. Rama Subbunarayalu v. Rengammal, would also support this view where it has been observed (at p. 452) that "where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one". According to the Nagpur High

Court also, as would appear from its Full Bench decision in D. D. Bilimoria v. Central Bank of India, AIR 1943 Nag. 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."

"Needless to say that it would be highly embarrassing for the High Court to declare one out of the two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task, however uncomfortable, has got to be performed."

"We are inclined to think that a five-Judge Bench of the Supreme Court in Atma Ram v. State of Punjab, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength, perhaps the better course would have been to constitute a larger Bench, it has, however, been observed that for otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task "of preferring one view to another".

".... We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated herein before, and as has also been indicated by the Supreme Court in *Atma Ram (supra)*, the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."

The law as enunciated in that Special Bench decision, as quoted hereinabove, has our unqualified concurrence.

15. Our attention has been drawn by Mrs. Ranjana Desai to the Full Bench decision of the Allahabad High Court in *Ganga Saran v. Civil Judge* where also a similar view has been taken by the three Judge Bench (at p. 118). With respect, this can be the only reasonable solution and the only way out, when we are confronted with contrary decisions of the Supreme Court emanating from co-equal Benches. Both being binding on us by reason of their authority, we cannot but have the unpleasant task of choosing that one which appears to have better authority of reasons. During the preparation of this judgment our attention has also been drawn to the Division Bench of this High Court in ***Manasing Surajsingh (1968) 70 Bom LR 654 at 669*** where Tarkunde, J., speaking for the Bench, has also taken the same view after referring to, with approval, the following observations in *Salmond on Jurisprudence*,

12th Edition Page 153 :-

"Where authorities of equal standing are irreconcilably in conflict, a lower court has the same freedom to pick and choose between them as the schizophrenic court itself. The lower court may refuse to follow the later decision on the ground that it was arrived at per incuriam, or it may follow such decision on the ground that it is the latest authority. Which of these two courses the court adopts depends, or should depend, upon its own view of what the law ought to be."

It may also be noted that the same view was taken by one of us (Bhattacharjee, C.J.) in Gopal Chandra Kalay v. State (1981 Lab IC 422) and in Union of India v. Ashok (AIR 1983 Sikkim 19) and also by a learned single Judge of this Court in Special Land Acquisition Officer v. Municipal Corporation. We may, however, note that the Full Bench of the Allahabad High Court in Ganga Saran (supra) has failed to notice an earlier Full Bench decision of that Court itself in U.P. State Road Transport Corporation (AIR All 1) which laid down a contrary proposition."

10. In *Jaydeo s/o Mahadeo Parate vs. The State of Maharashtra and others*, 2006 (2) Mh.L.J. 497, the Division Bench of this Court followed *Kamleshkumar (supra)*.

Precedent Sub-Silentio

11. In *Municipal Corporation of Delhi vs. Gurnam Kaur*, 1989 (1) SCC 101, it was concluded by the Hon'ble

Supreme Court in paragraphs 11 and 12 as under:-

“11. *Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:*

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was

not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. *In Gerard v. Worth of Paris Ltd. (k)., [1936] 2 All E.R. 905 (C.A.), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the Court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. V. Bremith Ltd., [1941] 1 KB 675. the Court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. We went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."*

12. In ***Arnit Das vs. State of Bihar, 2000 (5) SCC 488***, it was held in paragraph 20 as under:-

“20. *A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not ratio decidendi. This is the rule of sub-silentio, in the technical sense when a particular point of law was not consciously determined. (See State of U.P. Vs. Synthetics & Chemicals Ltd. 1991 (4) SCC 138, para 41).”*

13. In ***State of U.P. and others vs. Jeet S. Bisht and another, 2007 (6) SCC 586***, the Honourable Supreme Court referred to Gurnam Kaur (supra) and concluded in paragraphs 18, 19 and 22 as under:-

“18. *No doubt in the aforesaid decision various direction have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed sub silentio . The meaning of a judgment sub silentio has been explained by this Court in Municipal Corporation of Delhi Vs. Gurnam Kaur (1989) 1 SCC 101 (vide paras 11 and 12) as follows :-*

.....

“19. *The principle of sub silentio has been thereafter followed by this Court in State of U.P. & Anr.*

Vs. Synthetics & Chemicals Ltd. & Anr. (1991) 4 SCC 139, Arnit Das Vs. State of Bihar (2000) 5 SCC 488, A-One Granites Vs. State of U.P. & Ors. (2001) 3 SCC 537, Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr. (2003) 7 SCC 197 and State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr. (2004) 11 SCC 26.”

“22. *In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh, 1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty, 2003 (7) SCC 197, this Court observed as follows:*

“..The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided.””

14. We are conscious of the task entrusted to this Full Bench and more so, when the issue is as regards whether the conclusion drawn by

the Division Bench in ***Kashabai*** (supra), could be restricted to the facts of the said case. It is often said that reasons are the heart and soul of a decision. If a decision is bereft of reasons, an attempt to supplant reasons cannot be countenanced.

15. It does not call for any debate that unless a conclusion in the facts and circumstances of that case, does not lay down a law, it would not be a precedent. It is only a decision with reasons, upon due appreciation of the pleadings and the law applicable, that can be said to have laid down a principle of law, amounting to be a precedent.

16. In ***Delhi Administration vs. Manohar Lal, 2002 (7) SCC 222***, the Honourable Supreme Court noted that a mere direction without laying down any principle of law, is not a precedent. In ***Divisional Controller, KSRTC vs. Mahadeva Shetty, 2003 (7) SCC 197***, the Honourable Supreme Court recorded that the decision delivered, is a decision ordinarily on the case (facts of the case) before the Court, while the principle underlying the decision would be binding as a precedent to cases with similar facts which come up subsequently for decision. The

scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.

17. As is held in ***Gurnam Kaur (supra)***, such pronouncements which are not part of the *ratio decidendi*, are classed as *obiter dicta* and are not authoritative. The view taken in ***Jamna Das vs. Delhi Administration in Writ Petition No.981-82 of 1984***, was held to be not binding on the Court as it was delivered without any arguments and without any exposition on the subject before the Court.

18. In ***State of U.P. vs. Synthetics and Chemicals Limited, 1991 (4) SCC 139***, the Honourable Supreme Court has concluded that a decision not expressed, nor accompanied by reasons and not proceeding on a conscious consideration of an issue, cannot be deemed to be a law declared to have a binding effect as is contemplated under Article 141 of the Constitution of India. That which has escaped in the judgment is not the *ratio decidendi*. This is the rule of *sub silentio*.

19. In view of the above, we are unable to accept the

contention of the Petitioner that the declaration in ***Kashabai (supra)*** would have a binding effect in perpetuity. The said conclusion would, at best, be restricted only to the facts of the said case. For the reasons recorded herein above, in the light of the law crystallized by the Honourable Supreme Court, the declaration in ***Kashabai (supra)*** that clause E of the Government Resolution dated 28.03.2001 is unconstitutional, shall not be deemed to have been so declared for other matters and would be restricted to the facts of the said case. We answer the issue addressed to us, accordingly.

(RAVINDRA V. GHUGE, J.)

(Y.G. KHOBRADE, J.)

(S.G. CHAPALGAONKAR, J.)

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