



SAGA LEGAL

COMMUNIQUE

OCTOBER 2022



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COURTS THIS MONTH

- The Supreme Court in the case of *Aishat Shifa vs. State of Karnataka (W.P. No. 2880/2022)* has delivered split verdict on the Hijab Ban Row wherein Justice Hemant Guptadis missed the Petitions filed by Muslim girl students stating that comparisons with students of Sikh faith carrying Kirpan, cannot be made the basis of wearing hijab/headscarf by the believers of Islamic faith and insisted that they are required to follow the discipline of the school in the matter of uniform. While, Justice Sudhanshu Dhulia set aside the judgement passed by the Karnataka High Court, that amounted to a prohibition on the headscarf in educational institutions and ruled that wearing of hijab is a matter of choice and there shall be no restriction on the same anywhere in the schools and colleges of the state. The matter has been referred to the Chief Justice of India for constitution of an appropriate bench to consider the contentious issue.
- The Supreme Court of India in the case of *State of West Bengal vs. Anindya Sundar Das & Ors. (Civil Appeal No. 6706 & 6707 of 2022)* has stated that a Writ of Quo Warranto can only be issued where an appointment has not been made in accordance with the law. In the present matter, the Bench comprising of Justice D.Y. Chandrachud and Justice Hima Kohli dismissed the appeals challenging the order of the Calcutta High Court which had set aside the decision taken by the State to re-appoint Banerjee as Vice-Chancellor of the Calcutta University. The Court clarified that a writ of quo warranto can be issued when (i) A person holding public office lacks eligibility criteria prescribed for such appointment; and (ii) The appointment is made contrary to the statutory provisions or rules.
- In the case of *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr. (Criminal Appeal No. 1497 of 2022)* the Supreme Court has held that no offence for dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881 shall be made out if, the cheque is presented for the full amount without endorsing the part-payment made by the borrower after the issuance of the cheque. The bench comprising of Justice D.Y. Chandrachud and Justice Hima Kohli while affirming the judgement of the Gujarat High Court which approved the acquittal of an accused summarized that, “...When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted...”
- The Supreme Court in the case of *Peoples Union For Civil Liberties vs. Union Of India (MA 901/2021 In*



W.P.(Crl.) No. 199/2013) noted that the law enforcement agencies are continuing to book people under Section 66A of the Information Technology Act, 2000 (“**the Act**”), which was struck down by the Supreme Court and was held unconstitutional by the Court in 2015 in the Shreya Singhal Case. Upon which, the bench comprising of the Chief Justice of India U.U. Lalit, Justice S. Ravindra Bhat and Justice Ajay Rastogi issued a slew of directions to the Director Generals of Police and Home Secretaries of all States to ensure that reference to Section 66A is removed from all pending cases and directed the officers of all the States not to register any Complaint with respect to the violation of Section 66A. The Court further held that *“It needs no reiteration that Section 66A of the Act has been found by this Court in Shreya Singhal (supra) to be violative of the Constitution of India and as such no citizen can be prosecuted for alleged violation of offence under Section 66A of the Act.”* *“...Whenever any publication, whether Government, Semi Government or Private, about the Act is made and Section 66A is quoted, the readers must adequately be informed about the fact that the provisions of Section 66A of the Act have already been found by this Court to 5 be violative of the Constitution of India.”*

- The Supreme Court in the matter of *New Noble Educational Society vs. Chief Commissioner of Income Tax 1 and Anr. (Civil Appeal No. 3795 Of*

2014) ruled that any society, fund, trust or institution claiming to have been set up for the "charitable purpose of education" should be "solely" concerned with education to claim exemption under Section 10 (23C) of the Income Tax Act, 1961 (“**IT Act**”). The bench presided by the Chief Justice of India Uday Umesh Lalit and comprising of Justice S. Ravindra Bhat and Justice P.S. Narasimha overruled the previous judgments, declaring that the word “solely” must be given a literal interpretation since the intent of the legislature is clear that tax exemptions should be granted to only those institutions which impart formal scholastic learning, as defined by the IT Act. The Court opined that “In a knowledge based, information driven society, true wealth is education – and access to it. Every social order accommodates, and even cherishes, charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce...”

- In the matter of *Manoj Kumar Tiwari vs. Manish Sisodia & Ors. (Criminal Appeal No. 1790 and 1791 Of 2022)* the Supreme Court has held that a minister or public employee or any person protected by Section 199(2) of the Code of Criminal procedure, 1973 (“**Cr.P.C.**”) can submit a private complaint alleging defamation and is



not required to follow the specific procedure as outlined under Section 199(2) and Section 199(4) of Cr.P.C. The Bench comprising of Justice S. Abdul Nazeer and Justice V. Ramasubramanian noted that *“It is true that under sub-section (3) of Section 237, the Court is empowered to direct the public servant (other than the President, Vice-President or the Governor of a State or the Administrator of a Union Territory) to show cause why he should not pay compensation to a person accused of committing the offence of defamation, in cases where the Court not only discharges or acquits the accused, but is also of the opinion that there was no reasonable cause for making the accusation against him...”*

- The Supreme Court in the case of, *State of Manipur and Ors. vs. Buyamayum Abdul Hanan @ Anand and Anr. (Criminal Appeal No(S). 1819 Of 2022)* has held that the supply of illegible/blurred copies of documents relied by detaining authority amounts to violation of the Fundamental Right of the detainee guaranteed under Article 22(5) of the Indian Constitution. The bench comprising of Justice Ajay Rastogi and Justice C.T. Ravikumar has set aside the detention order passed by the High Court of Manipur under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 holding it as illegal. The Court observed that *“...the right of personal liberty and individual freedom which is probably the most*

cherished is not, in any manner, arbitrarily to be taken away from him even temporarily without following the procedure prescribed by law and once the detenu was able to satisfy while assailing the order of detention before the High Court in exercise of jurisdiction Article 226 of the Constitution holding that the grounds of detention did not satisfy the rigours of proof as a foundational effect which has enabled him in making effective representation in assailing the order of detention in view of the protection provided under Article 22(5) of the Constitution, the same renders the order of detention illegal and we find no error being committed by the High Court in setting aside the order of preventive detention under the impugned judgment.”

- The Supreme Court in the case of *S. Ramachandra Rao vs. S. Nagabhushana Rao & Ors. (Civil Appeal Nos. 7691 - 7694 Of 2022)* has observed that the doctrine of res judicata is attracted not only in separate subsequent proceedings but also at subsequent stages of the same proceedings. The bench comprising of Justice Dinesh Maheshwari and Justice Aniruddha Bose dealt with the series of petitions challenging the order passed by the High Court of Andhra Pradesh. The court observed that *“...a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding*



decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata.”

- The Supreme Court in the matter of *M/S Bhattacharjee Mahasya & Anr. vs. The State Of West Bengal & Anr. (Criminal Appeal No.1800 Of 2022)* has specified that, in order to prove food adulteration under the Prevention of Food Adulteration Act, 1954, the public analyst has to examine if the change in quality was due to natural causes. In the present case, the bench comprising of Justice S. Abdul Nazeer and Justice V. Ramasubramanian reversed the conviction of a sweet shop owner for allegedly selling paneer with adulteration on the ground that there was no whisper in the complaint about whether not prescribing to standards or composition could be attributable to causes that were natural. The court opined that *“...a petty shop owner has been prosecuted by making much ado about nothing. Hence, the appeal is allowed and the impugned order of the High Court confirming the order of the Sessions Court and the order of the Magistrate are set aside. There shall be no order as to costs.”*
- The High Court of Delhi in the case of *Naina Rana vs. State (Govt. Of Nct Of Delhi) And Other Connected Matters (Bail Appln. 2346 of 2022)* observed that the freedom of choice in marriage in accordance with law is an intrinsic part under Article 21 of the Indian Constitution and directed that the police

should act expeditiously in cases of couples legally marrying out of their own free will and volition. A Single-Judge bench of Justice Anoop Kumar Mendiratta, while rejecting the bail application to the family members of the wife who had allegedly abducted the couple and beaten the husband held that, *“It is unfortunate that in this case necessary steps for ensuring the safety and security of the victims/complainant were not initiated by the SHO, Police Station Rajouri Garden on the complaint of victims, taking it in a routine course while they were expected to act with promptitude. The conduct of the concerned police officials in this regard is depreciable and needs to be looked into and necessary action taken. Any such lapse cannot be accepted on behalf of the police.”*

- The High Court of Punjab and Haryana in the matter of *JMD Heritage Lawns Private Limited vs. Mr. Ankit Chawla Proprietor Sadda Pind Restaurant (CRM-19475 of 2015)* has stated that under Section 246(4) of the Code of Criminal Procedure, 1973 (“Cr.P.C.”) the accused has a choice to check the veracity of pre-charge evidence adduced by the complainant by cross-examining prosecution witnesses after framing of charges. However, the Division bench comprising of Justice Sureshwar Thakur and Justice N.S. Shekhawat clarified that *“...statutory privilege is conferred only upon the accused, and in case it is waived or abandoned, resultantly the complainant*



cannot draw any benefit from such waiver or abandonment. Contrarily, the complainant is yet required to be adducing post charge evidence to support the charge(s) drawn against the accused.” “The preliminary evidence becomes the foundation, only for the drawings of charge(s), but does not become foundation for either any verdict of acquittal or a conviction being made, unless the veracity of the pre-charge evidence is tested through cross examinations...”

- The High Court of Delhi in the case of *Nayab & Anr. vs. State (CRL.A. 297 of 2009)* has opined that a casually written judgement and casually appreciated evidence is a casualty to justice. A Single-Judge bench comprising of Justice Swarana Kanta Sharma heard an Appeal challenging the order of the Trial Court which had convicted two women for concealing a girl kidnapped by the accused in their home. The Court observed that *“...it is worthwhile to mention that this is not a case of concealing the whereabouts, but of rather revealing the whereabouts of the victim. The appreciation of evidence is crucial to do justice. A judgement is the nectar explaining every aspect of the facts & circumstances and the reason to reach a decision.” “...the prosecution has failed to prove the existence of the essential ingredients required to secure conviction under Section 368 of IPC beyond reasonable doubt. There are serious and material contradictions between the testimony of the victim and testimonies of victims parents, with*

regard to the concealment of the whereabouts of the victim, which cannot be overlooked.”

- The High Court of Kerala in the case of *State Information Commission vs. C.V. Rajendran and Ors. (Review Petition No. 991 of 2014)* has clarified that the provision under Section 18 of the Right to Information Act, 2005 (“RTI Act”) for illegal denial of information does not empower the State Commission to direct the Public Information Officer to furnish such information to the requester. A Division bench comprising of Justice Anil K. Narendran and Justice P. G. Ajithkumar observed that *“...a requester, who was denied information, cannot approach the State Information Commission invoking the provisions under Section 18 of the Act for getting the information. If to get information, his remedy is only to file an appeal as provided under Section 19 of the Act. The requester can certainly file a complaint under Section 18 of the Act, but on such a complaint the State Information Commission has no power to direct the Public Information Officer to furnish information. The State Information Commission while considering a complaint under Section 18 has power to order a penalty as provided under Section 20 of the Act alone.”*
- In the case of *Mr. Sanjay Chadha Trading as M/S Eveready Tools Emporium vs. Union of India & Ors. (LPA. No. 388 of 2022)*, the High Court of Delhi has observed that apart from



the primary function of identifying the source of goods and services, a trademark has a secondary function as well, which is to preserve the investments made by a proprietor of a trademark in publicity and building up its reputation. A Division Bench comprising of Justice Vibhu Bakhru and Justice Amit Mahajan heard an Appeal challenging the decision of the Intellectual Property Appellate Board (“IPAB”) which had cancelled the registration pursuant to a Petition filed by the Eveready Industries India Limited. The Court affirming the order passed by the IPAB observed that *“...the word ‘Eve-ready’ is a coined word formed by joining the two words ‘Ever’ and ‘Ready’. This is not a generic word. It is difficult to believe that the appellant had discovered the said word as a matter of coincidence without being aware of the use of the said trademark in respect of dry cell batteries and flashlights.”*

- In the matter of *Sorin Group Italia S.R.L. vs. Neeraj Garg (CS(COMM) 92 of 2020 and I.A. 2712 of 2020)* the High Court of Delhi has stated that while exercising its powers under Section 45 of the Arbitration and Conciliation Act, 1996 (“A&C Act”) the Court can conduct a preliminary inquiry to decide whether the dispute in question is arbitrable and falls within the scope of the agreement. A Single Judge bench comprising of Justice Amit Bansal opined that *“...I have no doubt in my mind that the dispute raised in the present suit with regard to recovery of*

monies towards the unpaid invoices raised by Sorin on the defendant, falls under the „excepted matters“ and is therefore, not arbitrable as per the arbitration clause in the Agreement entered into between the parties. Further, the present suit is maintainable before this Court in terms of proviso to Clause 15.2(b) of the Agreement. Therefore, I do not find any merit in the present application and the same is dismissed.”

- The High Court of Karnataka in the case of *National Insurance Co Limited vs. Alwin Lobo (M.F.A.NO. 8449 of 2015)* has ruled that the Appellate Court can invoke Order XLI Rule 33 of the Code of Civil Procedure, 1908 (“CPC”) in order to enhance compensation from the Insurance company, if injustice is caused to the victim or deceased due to compensation awarded by the Claims Tribunal in motor accident case. A Single Judge bench of Justice H.P. Sandesh while setting aside the order passed by the Tribunal, held that *“...The Tribunal lost sight of awarding compensation towards loss of amenities and only an amount of Rs.10,000/- is awarded under the said head. When the claimant had suffered head injury and suffered permanent disability at 65%, it is appropriate to enhance the same to Rs.1,00,000/- as against Rs.10,000/- awarded by the Tribunal.”*
- The High Court of Kerala in the case of *Mathew Joseph vs. The Registrar of*



Co-operative Societies & Ors. (W.A. No. 1473 of 2022) has clarified that, when a charge memo issued to a delinquent employee is set aside by a competent forum, the suspension order dependent on it also ceases to have force of law. The Division bench comprising of Justice A. K. Jayasankaran Nambiar and Justice Mohammed Nias C. P. stated that “...we reject the argument of the learned counsel on behalf of the

Society that the suspension order passed at the first instance survives even after the charge memo simultaneously issued stands invalidated. A suspension order cannot exist independent of a charge memo, whether issued simultaneously or within a reasonable time thereafter. On the charge memo being set aside by a competent forum, the suspension order that is dependent on it also ceases to have force in law...”



NOTIFICATIONS / AMENDMENTS INSIGHTS

- Vide Circular no. 20 of 2022 and F. no. 225/49/2021/ITA-II dated 26.10.2022, the Central Board of Direct Taxes (“**CBDT**”) has issued Extension of the due date for furnishing return of income for the Assessment Year 2022-23. As per the said circular, CBDT, in exercise of its powers under Section 119 of the Income-tax Act, 1961 (“**the Act**”), extends the due date of furnishing of Return of Income under Section 139(1) of the Act for the Assessment Year 2022-23, which was 31.10.2022 in the case of assesses referred in clause (a) of Explanation 2 to section 139(1) of the Act, to 07.11.2022.
- Vide Notification No. 115 of 2022 and F. No. 500/SWF5/S10(23FE)/FT&TR-II(Pt.2) dated 14.10.2022, the Central Board of Direct Taxes (“**CBDT**”) in exercise of powers conferred by sub-clause (vi) of clause (b) of the Explanation 1 to clause (23FE) of section 10 of the Income-tax Act, 1961 has specified the sovereign wealth fund, namely, Norges Bank on Account of the Government Pension Fund Global (PAN: AACCN1454E), as the specified person for the purposes of the said clause in respect of the investment made by it in India on or after the date of publication of the said notification in the Official Gazette but on or before 31.03.2024 subject to the fulfilment of certain conditions.
- Vide Circular no. SEBI / HO / MIRSD / DoP / P / CIR / 2022 / 143 dated 27.10.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued clarification in the Block Mechanism in Demat account of clients undertaking the sale transactions. In the said circular, SEBI has clarified that the block mechanism shall not be applicable to clients having arrangements with custodians registered with SEBI for clearing and settlement of trades. Apart from that, all other provisions as per the SEBI circular dated 18.08.2022 and 16.07.2021 shall continue to remain in force.
- Vide Circular no. SEBI / HO / MIRSD / MIRSD-PoD-1 / P / CIR / 2022 / 137 dated 06.10.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued clarification in Execution of ‘Demat Debit and Pledge Instruction’ (“**DDPI**”) for transfer of securities towards deliveries/settlement obligations and pledging/ re-pledging of securities. As per the said circular, SEBI has amended Para 3 of the circular no. SEBI/HO/MIRSD/DoP/P/CIR/2022/44 dated 04.04.2022. Accordingly, the circular shall be applicable from 18.11.2022.
- Vide Circular no. SEBI / HO / DDHS / RACPOD1 / CIR / P / 2022 / 136 dated 03.10.2022, the Securities and Exchange Board of India, 1992, (“**SEBI**”) has issued extension of timeline for entering the details of the existing outstanding non-convertible securities in the ‘Security and Covenant Monitoring’ system hosted by Depositories. Accordingly, it



is informed that in modification of the para 8(d) of the SEBI Circular dated 29.03.2022 for existing outstanding non-convertible securities, issuers shall ensure that they enter the details into the Distributed Ledger Technology system on or before 31.10.2022 and Debenture Trustees shall verify the same by 31.12.2022.

- Vide Notification Ref. no. RBI / 2022-23 / 134 of DOR.AML.REC.80/14.06.001/ 2022-23 dated 27.10.2022, the Reserve Bank of India (“RBI”) has issued the

Designation of ten individuals as ‘Terrorists’ under Section 35(1)(a) of the Unlawful Activities (Prevention) Act, 1967 (“**UAPA**”), and their listing in the Schedule IV of the UAPA. As per the said circular, *“Regulated Entities (“**REs**”) are advised to take note of the aforementioned Gazette notifications issued by MHA for necessary compliance. REs shall also take note of any future amendments to Schedule IV of the UAPA, 1967, for immediate necessary compliance.”*



DEALS THIS MONTH

- New-Delhi based beer manufacturer, Bira 91 launched in 2015 has acquired Uttar Pradesh-registered brewery company Kamakhya Beer & Bottling Private Limited, a subsidiary company of Chhattisgarh Distilleries Private Limited (“CDL”), in a share swap deal. Additionally, CDL is also investing Rs. 11.3 Crore in Bira 91, further increasing its stake in the popular beer maker. The acquisition will help Bira 91 to scale up its beer production capacity in order to gain further market share across the country.
 - Tiger Global-backed Edtech unicorn Vedantu has acquired a majority stake in a test preparation platform for boards and competitive exams for Eleventh and Twelfth grade students - Deeksha (Ace Creative Learning) founded in 1998 in a USD 40 million deal. The partnership will help to leverage Vedantu’s technology and integrate it into offline centres to create a scalable hybrid model which provides access to quality teaching even in remote Tier III and Tier IV towns at affordable cost.
 - Tiger Global-backed Industrial goods marketplace B2B e-commerce Moglix has acquired ADI Global Distribution’s India distribution business to strengthen its product portfolio across video surveillance, access control and fire control products for an undisclosed amount in an all-cash deal. With this acquisition, Noida-based Moglix founded in 2015 looks to further deepen its focus on industrial goods distribution and integrate all ADI India’s offerings, sales partnerships, on-ground assets and the workforce into its global supply chain ecosystem.
 - Noida-based internet giant Info Edge (India) has invested Rs. 135.4 crore (USD 17 million) in Edtech startup Coding Ninjas founded in 2016, becoming a majority shareholder in the startup by increasing its stake from 26% (Twenty-six percent) to 51% (Fifty-one percent). As a part of the all-cash deal, Info Edge will acquire 22,836 (Twenty-two thousand eight hundred thirty-six) Compulsorily Convertible Preference Shares (CCPS) and 27,089 (Twenty-seven thousand eighty-nine) equity shares via a mix of primary and secondary purchase of shares.
 - Edtech unicorn Physics Wallah has acquired two Edtech startups i.e. PrepOnline, an online learning platform for National Eligibility cum Entrance Test (“NEET”), and Altis Vortex, a publisher of exam preparation books for an undisclosed sum. The acquisition of PrepOnline will help Physics Wallah bolster its presence in the NEET category, as it looks at unique ways of delivering online content for exam aspirants, and enhance its teaching infrastructure. Altis Vortex will allow the edtech unicorn or private companies with a valuation of USD one billion or more to bolster its content vertical, as it looks to bring different book titles and study materials for its students.
- Children-focused robotics startup Miko founded in 2015 has acquired a 70%



(Seventy percent) stake in AI-enabled chess game startup Square Off in a stock and cash deal. With this acquisition, Miko plans to expand its product line beyond the AI robot

companions that it has developed. Together, the brands aim to generate more than USD 100 million in revenue in 2023.



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