

Order Sheet

Case No 02 of 2021
Dated: 24.07.2023

In the matter of:

Dr.Nividita Rao and othersPetitioner (s)

Versus

Maharishi Markandeshwar University, Kumarhatti, Distt.-Solan.

.....Respondent (s)

Present: For Petitioner: None
For Respondent Mr. Ajay, Singhal, Registrar

Sr. No.	Date	ORDER	Signature
1	24 07.2023	<p>The matter was fixed for pronouncement of order today. The application under Section 10 of HPPERCA Act 2010 was filed by the respondent University on the previous date of hearing. In this application the respondent University has submitted that the Hon'ble High Court has directed the Commission Vide order dated 24.05.2023 to hear the complaint afresh in accordance with law and follow the procedure contained under section 10 of HPPERCA Act and order 37 of CPC 1908 for hearing the matter afresh. The Ld Counsel for the respondent argued that as per order 37 CPC that plaint shall specifically mentioned that the same is filed under order 37 of CPC and the summon of the suit must be in the form no 4 in appendix B or in such other form as may from time to time be prescribed. The Ld Counsel further argued that if summary procedure is not followed then there is a need to follow procedure applicable for ordinary suit including framing of issues and evidence must be produced by the complainant to prove his case. Many judgements of Hon'ble Supreme Court and various High Courts have been submitted by the applicant/ respondent. He further argued that all these grounds were taken by the applicant before the Hon'ble High Court and keeping in view all these point the Hon'ble High Court has directed the Commission the complaint afresh in accordance of law. The Counsel for the petitioner did not file any</p>	





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अमृत महोत्सव

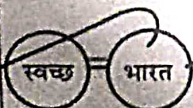
हिमाचल प्रदेश सरकार



reply to this application and argued that the judgement of the Hon'ble High Court of Himachal Pradesh is confined to the point's w.r.t. the non-completion of quorum at the time of pronouncement of order and has not gone into the merits of the case. He further argued that afresh means fresh hearing of the matter which does not mean to take fresh complaint or fresh reply and fresh evidences in the matter. He stated that the objection raised by the respondent University through application filed under section 10 of HPPERC Act is merely a technical ground. Moreover, the respondent University did not raise the objection at preliminary stage of the case and raising such procedural technical grounds now after completion of all the pleadings arguments and when the matter has been again remanded back on the ground of non-completion of quorum is not justified and such application is not maintainable. The Counsel for the petitioner further submitted that Commission is not purely a civil court and the complaint filed by the petitioner is not a suit. Even under section 10 of HPPERC Act nowhere word "suit" has been mentioned. Hence strict rule of CPC 1908 and Indian Evidence rule 1872 is not applicable on the Commission. He further argued that the judgements given by the respondent University is not at all applicable on the Commission/Tribunal and the respondent has no where stated what prejudice has been caused to them by not filing the plaint under the title (under order 37 of CPC 1908), where due opportunities for appearing before the Commission and for presenting their case has been granted to the respondent.

After hearing the arguments given by both the parties Commission hereby observes that under section 10 of HPPERC 2010. This Commission has been given the same power as are vested in Civil Courts under CPC 1908 for summoning and examining, production of documents, receiving evidence, requisitioning of any public record issuing Commission, reviewing and any other matter which may be prescribed and all disputes shall be decided summarily in accordance with provision of order 37 of CPC 1908.

However, The Constitution Bench Hon'ble Supreme Court in Union of India V/s Madras Bar Association



एक कदम स्वच्छता की ओर



(2010)11 SCC1, while stating the difference between courts and tribunal explained how far statutory procedure rules, in particular the CPC, Govern Proceeding of the Tribunals.

Relevant paragraphs of the judgement are extracted below:

"45 Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognized differences between courts and tribunals. They are:

- i. Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.
- ii. Courts are exclusively manned by judges. Tribunals can have an adjudicator as the sole member, or can have a combination of a judicial member and a technical member who is an "expert" in the field to which the tribunal relates. Some highly specialized fact-finding tribunals may have only technical members, but they are rare and are exceptions.
- iii. While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.

In view of the observation made by the Hon'ble Supreme Court it can be concluded that CPC is not strict sensu applicable to proceedings of the Commission. However, Commission may be guided by the provision of CPC.

The purpose of summary procedure is to avoid the unnecessary delay caused in ordinary suit. The respondent University has never raised such kind of objections at any time when the matter was adjudicated by the Commission and such objections needs to be taken at the earliest stage of the matter. Moreover, on perusal of previous Zimni orders of the Commission from 6.01.2022 to 26.04.2022 and 19.06.2023 to 21.07.2023, It is very much clear those due notices have been served to the respondents through email/by post and sufficient opportunities for hearing and presenting their case have been provided to them. In the entire application respondent has not mentioned that any prejudice or failure of justice has been done to them by not following the provisions of CPC, 1908 strictly and not following technical procedure.





अमृत महोत्सव

The Commission further observes that it has been wrongly alleged by the respondent that the Hon'ble High Court has decided the matter after considering all the grounds taken up by the respondent University in their reply to the writ petition. Adjudication of the Hon'ble High Court is confined to the non-completion of quorum at the time of passing of the order.

Keeping in view of the observations made herein above by the Commission The present application of the respondent is not maintainable and stands dismissed.

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(Major General Atul Kaushik)
Chairman

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(Sh. Lalit Kumar)
Member