A.F.R.

Chief Justice's Court

Civil Misc. Writ Petition No. 20841 of 2009
Neena Chaturvedi vs. Public Service Commission, Uttar Pradesh.

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Counsel for the petitioner: Mr. N.L. Pandey, Advocate.

Counsel for the respondent: Mr. M.A. Qadeer, Sr. Adv., with Mr. Iqbal Ahmad Siddiqui, Adv.

Hon'ble Ferdino I. Rebello,CJ
Hon'ble Dilip Gupta,J
Hon'ble Sanjay Misra,J

(Delivered by Hon'ble F.I. Rebello,C.J.)

The petitioner pursuant to an advertisement, which had invited applications for the post of Lecturer in Government Intermediate College, which were to be received in the office of the Commission till 20th February, 2009 either by speed post or by hand, sent his application by speed post on 17th February, 2009, which was received in the office of the Commission on 21th February, 2009. The petitioner had prayed for a mandamus to direct the Commission to accept the application form and allow the petitioner to participate in the process of selection. In that petition, by order dated 28.05.2009, the present reference.

2. A learned Single Judge of this Court, in this case, reported as **Neena Chaturvedi vs. U.P. Public Service Commission, Allahabad** [2009 (3) ESC 2082 (All)] has been pleased to refer the matter for consideration by a larger Bench. Some of the relevant paragraphs read as

under:-

> **"49.** Although I am conscious about the legal proposition that a little difference in the facts or additional facts may make a lot of difference in presidential (precedental) value of a decision but having regard to the facts and circumstances of the case, I am of the considered opinion, that in such cases **the moving factor or decessive factor is not prescription of one mode or several modes by the addressee to send the articles to him rather it is express or implied authorisation by the addressee to send the articles to him by post, ultimately decides the issue and makes the post office an agent of the addressee.** It is immaterial that the addressee has provided any other or more alternative modes to the sender including through post-office to send the articles to the addressee. In my opinion, prescription of such other alternative mode for sending the articles to addressee would not change the legal position stated herein before. However, in cases where **addressee does not prescribe any modes for sending the articles to him and merely time for receipt of the articles is fixed/prescribed and sender chooses by his own to send the articles to the addressee through registered post, in that eventuality alone the post office would continue to act as agent of the sender and not of addressee and for any delay in transit the addressee would not be responsible for simple reason that in such situation it can not be held that addressee has**

expressly or impliedly authorised or requested the senders to send the articles through registered post.

50. In view of aforesaid discussion, in my opinion, the decisions rendered by Division Benches of this Court in *Ram Autar Singh v. Public Service Commission, U.P., Allahabad and others,* 1987 UPLBEC 316 (by Hon'ble Mr. Justice B.N. Misra and Hon'ble Mr. Justice A.P. Misra), in *Anupam v. Public Service Commission, U.P. Allahabad and another,* W.P. No. 57508 of 2005 decided on 4.10.2005 (by Hon'ble Mr. Justice Amitava Lala and Hon'ble Mr. Justice Prakash Krishna), in *Adil Khan v. State of U.P. and others,* W.P. No. 23152 of 2006 decided on 5.5.2006 (by Hon'ble Mr. Justice S.R. Alam and Hon'ble Mr. Justice Sudhir Agarwal) require re-consideration by Larger Bench/Full Bench comprising of at least three or more than three judges of this Court in the light of decisions rendered by Hon'ble Apex Court in *M/s. Ogale Glass Works Ltd.* case (supra), *Jagdish Mill's* case (supra), *Indore Malwa United Mill's* case (supra), *Unit Trust of India v. Ravinder Kumar Shukla's* case (supra) and in *Bhikha Lal's* case (supra) decided by Full Bench of this Court in context of questions formulated by me in preceding part of this Judgement.

51. Since the postal service constituted under the provisions of Indian Post Office Act 1898 is entrusted public service and stood test of time, therefore, having regard to the facts that the questions involved in the case have wide impact upon the large

> public interest touching the fundamental rights of the candidates under Articles 16 and 21 of the Constitution of India, an authoritative decision is required to be rendered by Full Bench of this Court comprising of at least three or more than three judges so that the matter may be set at rest for all the times to come in future. **The Hon'ble the Chief Justice is requested to constitute a Full Bench** of this Court comprising of at least three or more than three judges for deciding the questions formulated by me in preceding part of this judgment as early as possible.**"**

3. Though the precise question has not been formulated, considering paragraphs 49, 50 and 51 and the reliance placed on the Full Bench judgment of **Bhikha Lal and others v. Munna Lal,** 1974 A.L.J.470 (FB) and **Commissioner of Income Tax, Bombay v. M/s Ogale Glass Works Ltd.** AIR 1954 SC 429, and the question referred for consideration by the learned Judge in answering the issue before him and which reads as under:-

> "Whether in given facts and circumstances of the case, the post office is agent of the addressee (Commission) or sender and as to whether the petitioner can be made to suffer on account of default of the post office in delivering the application form of the petitioner to the Commission after last date of receipt of application form which was sent by the petitioner within prescribed time?"

4. The learned Judge whilst answering the issue apart from other reasons was pleased to observe as under:-

> (i) I am of the considered opinion, that in such cases **the moving factor or decessive factor is not prescription of one mode or several modes by the addressee to send the articles to him rather it is express or implied authorisation by the addressee to send the articles to him by post, ultimately decides the issue and makes the post office an agent of the addressee.** It is immaterial that the addressee has provided any other or more alternative modes to the sender including through post-office to send the articles to the addressee. In my opinion, prescription of such other alternative mode for sending the articles to addressee would not change the legal position stated herein before.
>
> (ii). In cases where **addressee does not prescribe any modes for sending the articles to him and merely time for receipt of the articles is fixed/prescribed and sender chooses by his own to send the articles to the addressee through registered post, in that eventuality alone the post office would continue to act as agent of the sender and not of addressee and for any delay in transit the addressee would not be responsible for simple reason that in such situation it can not be held that addressee has expressly or impliedly authorised or requested the senders to send the articles through registered post.**"

5. The question that can be formulated for consideration would be "*when applications are invited, one through post office and the other by any other means or only through post, does the post office become the agent of the addressee, because there is express or implied authorisation by the addressee to send the articles by post.*"

6. Sri M.A. Qadeer, learned Senior Counsel, appearing for the U.P. Public Service Commission has raised a preliminary objection that considering the judgment in **Ram Autar Singh v. Public Service Commission, U.P., Allahabad and others,** 1987 U.P.L.B.E.C., 316, unreported judgments in **Anupam v. Public Service Commission, U.P. passed in Writ Petition No. 57508 of 2005 decided on 4.10.2005,** in **Smt. Pooja Singh v. Public Service Commission & others passed in Writ Petition No. 67808 of 2006 decided on 13.12.2006,** in **Adil Khan v. State of U.P. & others passed in Writ Petition No. 23152 of 2006 decided on 5.5.2006,** the issue which has been referred by the learned Single Judge for consideration to a Larger Bench stands concluded and, therefore, he submits that considering the law declared by the judgement of a Bench of five Judges of this Court in **Rama Pratap Singh and others v. State of U.P. and others,** A.C.J. 1995 page 200 and the Supreme Court in **Bharat Petroleum Corpn. Ltd. v. Mumbai Shramik Sangha and others** (2001) 4 S.C.C. 448, **Pradip Chandra Parija and others v. Pramod Chandra Patnaik and others** (2002) 1

S.C.C. 1 **and Central Board of Dawoodi Bohra Community and another v. State of Maharashtra and another** AIR 2005 Supreme Court 752, and **Official Liquidator v. Dayanand and others** (2008) 10 SCC 1, the learned Single Judge could not have directly referred the matter to the Full Bench even if he held a different view. Only if the learned Single Judge had come to a conclusion that there were two conflicting views of learned Single Judges, then only a reference could have been made for referring the matter to a Bench of two Judges or at the highest, if there had been two conflicting judgments of two Division Benches, the matter could have been referred to the learned Chief Justice for constitution of a larger Bench. Judicial discipline requires that a learned Single Judge is bound by the judgment of a Larger Bench.

7. On the other hand, Mr. N.L. Pandey, learned counsel appearing on behalf of the petitioner submits that the learned Single Judge was right in referring the matter to a Larger Bench considering the Full Bench judgment in the case of **Bhikha Lal and others v. Munna Lal** 1974 A.L.J. 470 (FB) and the judgment of the Supreme Court in **Commissioner of Income Tax, Bombay v. M/s Ogale Glass Works Ltd.** AIR 1954 SC 429 and other judgments referred to.

It is further submitted that what is binding on a learned Judge is the *ratio decidendi* of the judgment. Considering the Full Bench judgment in **Bhikha Lal** (supra), **M/s. Ogala Glass Works Ltd.** (supra), and **Commissioner of Income Tax, Bihar & Orissa v. M/s Patney and**

Company, AIR 1959 SC 1070, the learned Single Judge was well within his jurisdiction to have referred the matter to the learned Chief Justice for constituting a Larger Bench.

8. Learned Counsel has placed reliance on the judgments in the case of **Dalbir Singh and others v. State of Punjab,** (1979) 3 S.C.C. 745.

Our attention has been drawn to Paragraph 22 of the said judgement, which reads as under:-

> "**22.** With greatest respect, the majority decision in **Rajendra Prasad** case (supra) does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less 'law declared' within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:
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> (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;
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> (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
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> (iii) judgment based on the combined effect of (i) and (ii) above.
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> For the purposes of the parties themselves and their

> privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi. It is not every thing said by a Judge when giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of **Qualcast (Wolverhampton) Ltd.** v. **Havnes LR 1959 AC 743** it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts on an earlier case appear to be identical to those of the case before the Court, the Judge is not bound to draw the same inference as drawn in the earlier case."

Learned counsel further draws our attention to paragarph 59 of the judgment in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and others,** (2003) 2 S.C.C. 111, which is as under:-

> "**59.** A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi v. Union of India,* AIR 2002 Del 458 (FB), *Delhi Admn. (NCT of Delhi) v. Manohar Lal,* (2002) 7 SCC 222, *Haryana Financial Corpn. v. Jagdamba Oil Mills,* (2002) 3 SCC 496 and *Nalini Mahajan (Dr) v. Director of Income Tax (Investigation),* (2002) 257 ITR 123 (Del)].

9. We have heard learned counsel. Let us first address to the issue of *ratio decidendi* and *per incuriam.*

10. How can the *ratio decidendi* be ascertained from a decision has been very clearly dealt with in **Krishna Kumar Vs. Union of India, AIR 1990 SC 1782.** The observations made by Hon'ble Apex Court in para 18 and 19 of the decision are as under:-

> *"18. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain "propositions wider than the case itself required." This was what Lord Selborne said in Caledonian Railway Co. v. Walker's Trustees (1882 (7) AC 259) and Lord*

Halsbury in Quinn v. Leathem (1901) AC495 (502). Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.

19. In other words, ***the enunciation of the reason or principle upon which a question before a Court has been decided is alone as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge - made, and a minor premise consisting of the material facts of the case under immediate consideration.*** *If it is not clear, it is not the duty of the Court to spell it out with difficulty in order to be bound by it. In the words of Halsbury, 4th Edn., Vol. 26, para 573:*

"The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with

> *difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgement and treat them as if they gave the ratio decidendi of the case. If more reason than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."*

11. On the issue of per incuriam, we may refer to the judgment of the Supreme Court in **Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court** (1990) 3 S.C.C. 682. More specially paragraph 40, to point out as to when a judgment can be said to be *per incuriam,* which is as under:-

> "**40.** We now deal with the question of *per incuriam* by reason of allegedly not following the Constitution Bench decisions. The Latin expression *per incuriam* means through inadvertence. A decision can be said generally to be given *per incuriam* when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In *Bengal Immunity Company Ltd. v. State of Bihar,* AIR 1955 SC 66, it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is

free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords and *Re Dawson's Settlement Lloyds Bank Ltd. v. Dawson,* (1966) 1 WLR 1456, on July 26, 1966 Lord Gardiner, L.C. Made the following statement on behalf of himself and the Lords of Appeal in Ordinary:

> "Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
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> In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law."

12. A judgment, therefore, can be said to be *per incuriam* if through inadvertence a Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court or through inadvertence did not consider a relevant statutory provision or rule or was oblivious of the relevant provisions of law, so that in such cases some part of the decision or some step in the reasoning on what it is based is found on that account to be demonstratively wrong. [see **A.R. Antuley v. R.S. Nayak and another,** AIR 1988 SC 1531, **Punjab Land Development and Reclamation Corporation Ltd. (supra)].**

13. Once the *ratio decidendi* is ascertained, the learned Judge is bound to follow the judgments of larger Benches. The issue of *per incuriam* would only arise if from the ratio of judgments of larger Benches it is found that those Benches did not consider the principles as set out in paragraphs 11and 12 of this judgment.

14. We may also refer to the following paragraph in the judgment in the case of **Official Liquidator v. Dayanand and others,** (2008) 10 SCC 1, which is as under:-

> "**78.** There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court

have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In *Mahadeolal Kanodia v. Administrator General of W.B.* AIR 1960 SC 936, this Court observed: (AIR p. 941, para 19)

> *"19...* If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. *If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."*

15. Let us first find the ratio of the judgment in **Bhikha Lal (supra)**

applying the test laid down in **Dalbir Singh (supra)** and **Krishna Kumar (supra)**.

16. The judgement in **Bhikha Lal (supra)** had been considered by the learned Division Bench of this Court in the case of **Ram Autar Singh v. Public Service Commission. U.P., Allahabad and others,** 1987 U.P.L.B.E.C. 316. We may gainfully refer to paragraphs 6 & 7 of the said judgment, which reads as follows:-

> "**6.** Learned counsel appearing for the petitioner has urged that as there was no negligence or default on the part of the petitioner, there can be no justification for rejection of his application merely because it reached the Commission after expiry of the last date. As despatch of application forms by post was recognised by the Commission as one mode of delivery of application forms from the candidates to the Commission, the postal authorities became the agents of the Commission and delivery to the postal authorities would amount to receipt by the Commission. In support of this contention reliance is placed on a Full Bench decision of this Court reported in 1974, Allahabad Law Journal, 470. The facts of the case before the Full Bench are clearly distinguishable from the facts of the present case. That was a case of remission of rent by the tenant to his landlords. The amount of rent due to be paid by the tenant to the landlords was a petty sum of Rs. 35/- and after discussing several cases of the Supreme

Court and of the courts in England and keeping in view the peculiar facts and circumstances of the case, the Full Bench finally came to the conclusion, on the facts and in the circumstances of the case, the tenant respondent could not be said to have committed a default under Section 3 (1) (a) of the Act in respect of the payment of Rs. 35/- which he sent to the plaintiffs-landlords by a money order well within time but which had reached the landlords after the expiry of thirty days.

7. On careful consideration we are of the opinion that the principles enunciated in respect of landlord and tenant in the aforesaid Full Bench decision do not have any application to the facts of the present case. In our view the facts and circumstances of the present case do not warrant application of the law of contract. We have already stated that in the present case the Commission had clearly notified that the closing date for receipt of applications completed in all respects was 14-7-1986 and that applications received beyond that date were not to be accepted. Therefore, even if we were to hold that the advertisement was to be construed as an offer, as the term is understood in the law of contract, the said offer was clearly notified to lapse owing to the passing of time. Acceptance cannot be said to have been completed on mere despatch. It would have been complete only if it had reached the offer or before the offer had lapsed on expiry of the time prescribed." (emphasis supplied)

In **Bhikha Lal (supra),** the question for consideration was

whether the tenant, who after having sent a money order for the rent due to the landlord well within time but which reached the landlord after expiry of 30 days, could be said to be a defaulter. The learned Full Bench was in that context considering the issue as to whether the postal authorities can be said to be the agent of the landlord.

After analysing various judgments referred to therein, the principle deducible which can be noted is that where a creditor had authorized explicitly or impliedly payment by money order, through the post office and the debtor does dispatch the money order, the post office becomes the agent of the addressee (landlord). The Court observed "As far as the question under consideration before us is concerned, it strikes me that there is no material difference or distinction between a payment by cheque and a transaction where payment is made by a money order."

Thereafter, after considering the law, the Court held "if there is an express or implied request by the landlord for payment of the amount claimed as arrears of rent, through a money order, the payment to the post office is payment to the payee unless by subsequent action under Section 44 of the Post Office Act the remitter cancels the money order. Various judgements were considered. As to what would be express or implied request, the Court held that two principles emerge, which we may further reproduce as under:-

> "**22.** From an analysis of these decisions two principles emerge : The first is that if the creditor and the debtor reside at two different places served by

postal system, from the very fact that the creditor makes a demand through the post, an authority to the debtor to meet his obligation through the post is implied. This principle, to my mind is the foundation of the decision in *Norman v. Rickets* which as already stated above, has met the approval of the Supreme Court. From the facts of the case, as reported it does not appear that there was any evidence showing that in any earlier transaction the debtor had met her obligations to her creditor by post. The only two circumstances present before the Court were : firstly that the creditor and the debtor resided at two different places in England and, secondly, that the creditor had made the demand for payment by means of a letter sent through the post. Thus, it appears to me that the Court in this case inferred an implied authority to the debtor to send the cheque by post merely because a demand had been made by post. This principle to my mind is based on sound logic. If a trader sends me a reminder of an outstanding bill through a messenger, in the absence of any intention expressed to the contrary, I believe I would be justified in assuming that the trader, by implication has authorised me to send the amount outstanding through that messenger. Extending this principle, if a creditor who resides in a different town, makes a demand from his debtor by means of a letter despatched through the post he impliedly invites the debtor to meet his obligations through the post. In this connection it may be borne in mind that “the government exercises a governmental power for the public benefit in the establishment and operation of the

postal money order system and is not engaged in commercial translations, notwithstanding it may have some aspects of commercial banking". (Corpus Juris Secundum, Vol. 72, page 298) and further that the State has a monopoly in post offices as a consequence of which the debtor has no choice as between competing postal organizations.

23. Another principle that emerges from the two Supreme Court decisions cited above is that if the debtor and the creditor reside in two different places, served by post offices and payments have to be by cheques, then in the absence of anything to the contrary, an implied agreement can be culled out authorising the debtor to despatch the cheques through the post office which will be treated as the creditor's agent. This has come to be recognized as payment "according to the course of business usage in general". This principle can be extended to the case of payments made through money orders. If the creditor and the debtor reside at two different places so that the debtor cannot reasonably be expected to make cash payments personally or through a messenger, then in the absence of a stipulation to the contrary it may be assumed that the debtor is impliedly authorized to pay his debt through money orders. In such cases deposit of the cash at a postal money order office will be treated as payment to an agent of the creditor made in accordance with "the ordinary usages of man-kind" to borrow the words used by Lord Herschell in *Henthorn v. fraser,* (1892) 2 Ch. D. 27.

The Court also held that what was material was that the Commission had specified a date for receipt of applications and as such acceptance could not be said to have been completed on mere dispatch but would be completed if it had reached by the time specified. This is the ratio of that judgment.

It is therefore clear that the Full Bench was not considering an issue of an invitation to apply but a case where a money order was sent through post and in those circumstances held that there was an implied or express agreement to send the money through post and in such cases, the postal authorities can be said to be the agent of the landlord (addressee). It is in that context the Court held that in such circumstances, the tenant cannot be said to be a defaulter.

17. In **Ram Autar Singh (supra),** the question for consideration before the Court was rejection of the petitioner's application to appear at the competitive examination for recruitment to the post of Munsif on the ground that the application was received beyond the last date fixed by the Commission. The judgment in **Bhikha Lal (supra)** was considered and distinguished on the ground that the principle enunciated in respect of the landlord and tenant in the Full Bench decision, does not have any application to the facts of the case. The learned Bench proceeded to hold considering that closing date for the receipt of application completed in all respects was 14.7.1986 and that the applications received beyond that date were not to be accepted. “Therefore, even if we were to hold that

the advertisement was to be construed as an offer, as the term is understood in the law of contract, the said offer was clearly notified to lapse owing to the passing of time. Acceptance cannot be said to have been completed on mere despatch. It would have been complete only if it had reached the offer or before the offer had lapsed on expiry of the time prescribed."

18. In the case of **Pramod Kumar Singh v. State of U.P. and another,** [(2006) 1 UPLBEC 152], the judgement considered **Ogale Glass Works Ltd., (supra), Indore Malwa United Mills Ltd. v. The Commissioner of Income-tax (Central) Bombay,** AIR 1966 S.C., 1466, **Unit Trust of India v. Ravinder Kumar Shukla and others,** (2005) 7 S.C.C. 428.

In **Pramod Kumar Singh (supra),** the issue again was non receipt of the application by the Commission sent through post where post was one of the methods for applying. After considering various judgments of this Court and the Supreme Court, the Court observed as under:-

> "9. Therefore, what we get from the above analysis? We get the answer that either in the law or in the contract or in the advertisement or in the necessary document if mode is prescribed, such mode will be *the guiding principle in determining the issue as regards service.* If the mode is one, one has no other alternative but to follow the same. If the mode is more than one then the alternative mode can be

> exercised. If one chooses to apply adopting one mode and failed to exercise other mode, the responsibility lies with the sender not with the addressee because the post office is the agent only in respect of one mode. In the instant case fault might have been committed by the post office be it agent of either of the parties or be it a public service mechanism. But so far as the Commission is concerned, it is not at fault whenever more than one mode is prescribed in the advertisement. Frankly speaking we are very much sympathetic to the candidate, who lost the opportunity of making application, but we are sorry to say that we can not render any equitable justice in favour of the petitioner against the Commission in such circumstances."

19. **Anupam (supra)** was again a case of non acceptance of the application by the Public Service Commission as it had reached beyond the prescribed period. There were two modes for making applications. The Court observed as under:-

> "...When two modes are prescribed by the Commission and one mode is availed, the same is the risk and responsibility of the sender himself. Writ C cannot evaluate amount of risk and responsibility to compensate the petitioner. If the petitioner is entitled any compensation in accordance with law from the post office, he can seek advise for the same but Commission can not be held responsible by extending time for availing the postal mode only.

> ….Therefore, what we get from the above analysis? We get the answer that either in the law or in the contract in the advertisement or in the necessary document if mode is prescribed, such mode will be the guiding principle in determining the issue as regards service. If the mode is one, one has no other alternative but to follow the same. If the mode is more than one then the alternative mode can be exercised. If one chooses to apply adopting one mode and failed to exercise other mode, the responsibility lies with the sender not with the addressee because the post office is the agent only in respect of one mode. In the instant case, fault might have been committed by the post office be it agent of either of the parties or be it a public service mechanism. But so far as the Commission is concerned, it is not at fault whenever more than one mode is prescribed in the advertisement."

20. The law thereafter was revisited in the case of **Adil Khan (supra).**

In **Adil Khan (supra)**, the issue again was similar, i.e. non receipt of application sent through post. There was more than one mode for submission of forms. The learned Division Bench applied the ratio in **Ram Autar Singh (supra)** and agreed with the view taken in **Anupam (supra).** Reference was made to the judgment in **Akhilesh Chandra Maurya vs. State of U.P**.- Writ Petition No. 7892 of 2005 decided on 10.4.2006, where it was held that postal department is an agent of the Commission and in case the form is received beyond time due to postal delay, the same cannot be rejected. The Bench also considered **Shashi**

Bhushan Kumar vs. Higher Education Service- Writ Petition No. 40351 of 2000, decided on 12.9.2000, where the view had been taken that when the advertisement prescribed no other mode except agency of post office for entertaining application forms of the prospective candidates, the post office becomes the agent of the addressee. This judgment was distinguished on the basis of only one mode and not more than one mode as in the present case.

Paragraphs 6 to 9 of the aforesaid judgment are as under:-

> **"6.** As per the ratio of AIR 1980 SC 431, *Union of India v. Mohd. Nazim,* a post office accepts responsibility of the sender when it accepts postal articles to send to the addressee. It is a public service. It can neither be treated as agent like common carrier nor it enter upon any contract by the acceptance of postal article either with the sender or addressee. However, in a recent judgment dated 19th September, 2005 in Appeal (Civil) No. 1691 of 2005, *Unit Trust of India v. Ravinder Kumar Shukla, etc. etc.,* the Supreme Court held that in the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is not contract or request, either expressly or impliedly, the post office would continue to act as an agent of the drawer. In that case the loss is of the drawer. If two situations are seen side by side, the question or responsibility will be understandable. In the instant case, request is there on the part of the addressee. Therefore, the addressee is responsible provide post

office alone has been made agent for the purpose of receiving application as per the request. There the shoe pinches. When two modes are prescribed by the Commission and one mode is availed, the same is the risk and responsibility of the sender himself. Writ Court can not evaluate amount of risk and responsibility to compensate the petitioner. If the petitioner is entitled for any compensation in accordance with law from the post office, he can seek advise for the same but the Commission can not be held responsible by extending time for availing the postal mode only. It has argued that if someone is stationed in a far away place and is not able to come to file such application personally, second mode cannot help such candidate. We can understand the agony but in such case we can not compel the Commission for accepting application because post office is agent only in respect of service through it. Moreover, according to us, question is not the distance, but non-availability of other mode. Commission is to discharge public duty to all. It can not find out individual difficulty to meet the same. Otherwise it will become never ending process. Two very important Supreme Court judgments have been referred herein. First one is reported in AIR 1996 SC 1466 (V 56 C 288), *The Indore Malwa United Mills Ltd. v. The Commissioner of Income-tax (Central) Bombay.* This is in respect of Income Tax Act but even therein the Supreme Court categorically held as follows:-

"If by an agreement, express or implied, by the

creditor, the debtor is authorised to pay the debt by a cheque and *to send the cheque to the creditor by post, the post office is the agent of the creditor to receive the cheque* and the creditor receives payment as soon as the cheque is *posted to him."* (Emphasis supplied)

Therefore, the mode of sending the cheque was only by post."

7. In AIR 1954 SC 429 (Vol. 41, C.N. 104), *Commr. of Income tax, Bombay South, Bombay v. Messrs Ogale Glass Works., Ogale Wadi,* the Supreme Court held again in a case of Income Tax Act and Contract Act about sending cheques by post, as under:-

"There can be no doubt *that as between the sender and the addressee it is the request of the addressee that the cheque be sent by post* that makes the post office the agent of the addressee. After such request the addressee cannot be heard to say that the post office was not his agent and, therefore, the loss of the cheque in transit must fall on the sender on the specious plea that the sender having the very limited right to reclaim the cheque under the Post Office Act, 1898, the Post Office was his agent, when in fact there was no such reclamation." (Emphasis Supplied)"

"8. Again in this case we find that a request was made by the addressee to the sender to send the cheque by post and for the same he could not avoid the responsibility. Sometimes in the cases between

landlord and tenant we find notice is required to be served by post in accordance with law and if not served following such prescription, such notice can not be construed as a valid notice."

"**9.** Therefore, what we get from the above analysis? We get the answer that either in the law or in the contract or in the advertisement or in the necessary document if mode is prescribed, such mode will be *the guiding principle in determining the issue as regards service.* If the mode is one, one has no other alternative but to follow the same. If the mode is more than one then the alternative mode can be exercised. If one chooses to apply adopting one mode and failed to exercise other mode, the responsibility lies with the sender not with the addressee because the post office is the agent only in respect of one mode. In the instant case fault might have been committed by the post office be it agent of either of the parties or be it a public service mechanism. But so far as the Commission is concerned, it is not at fault whenever more than one mode is prescribed in the advertisement. Frankly speaking we are very much sympathetic to the candidate, who lost the opportunity of making application, but we are sorry to say that we can not render any equitable justice in favour of the petitioner against the Commission in such circumstances."

21. In **Adil Khan (supra), Ram Autar Singh (supra), M/s Ogale Glass Works Ltd. (supra), Sri Jagdish Mills Ltd. v. The Commissioner of Income Tax, Bombay North, Kutch and**

Saurashtra AIR 1959 SC 1160, **Indore Malwa United Mills (supra)** were considered and the view taken in **Ram Autar Singh (supra)** and **Anupam (supra)** was approved.

22. The learned Judge in his judgment has proceeded to distinguish **Ram Avtar Singh** (supra), **Smt. Pooja Singh** (supra), **Anupam** (supra) and **Adil Khan** (supra). Once the learned Judge found that the judgments which he had considered and distinguished or found as *per incuriam,* had been considered and distinguished by larger Benches even in the opinion of the learned Judge wrongly, then the judgments cannot be said to be per incuriam. The judgments were not rendered in ignorance of the judgments of the Supreme Court or of this Court. It is nobody's case that the judgments of the Division Bench of this Court had been passed in ignorance of any provision of law, which had to be considered for the purpose of considering the issue. The doctrine of *per incuriam,* therefore, was not applicable. In these circumstances, the learned Judge considering the binding precedents, ought not to have proceeded to direct a reference.

23. Apart from that, the learned Benches, which had taken the view that in the case where there was more than one mode of receiving application, then in that case, the post office would not be an agent of the addressee and had also relied upon the judgments of the Orissa High Court in **Dr. Annada Prasad Pattnaik Vs. State of Orissa and others**, reported in AIR 1989 ORISSA 130, a Full Bench of Madras High Court

in **R. Vinothkumar v. The Secretary, Selection Committee, Sabarmathi Hostel, Kilpauk Medical College Hostel Campus, Kilpauk, Madras & Others,** reported in 1995-1-L.W. 351 and the judgment of Andhra Pradesh High Court in **V. Ramesh V. Convenor, EAMCET-1995, Jawaharlal Nehru Technological University, Hyderabad,** reported in AIR 1997 ANDHRA PRADESH 79.

24. Let us now consider the ratio of the Supreme Court Judgments which were considered by the learned Single Judge in **Ogale Glass Works Ltd. (supra).** A finding was recorded that considering the usage in general the parties must have intended that the cheques should be sent by post which is the usual and normal agency for transmission of such articles. Apart from that it was observed that implication of an agreement arising from such business usage the assessee expressly requested the Government to "remit" the amount of the bills by cheques. This clearly amounted in effect to an express request by the assessee to send the cheques by post.

Then after considering English Law, the Supreme Court was pleased to observe as under:-

> "There can be no doubt that as between the sender and the addressee it is the request of the addressee that the cheque be sent by post that makes the post office the agent of the addressee.
>
> After such request the addressee cannot be heard to say that the post office was not his agent and, therefore, the loss of the cheque in transit must

fall on the sender...”

Secondly, the Court observed as under:-

> “...Apart from this principle of agency there is another principle which makes the delivery of the cheque to the post office at the request of the addressee a delivery to him and that is that by posting the cheque in pursuance of the request of the creditor the debtor performs his obligation in the manner prescribed and sanctioned by the creditor and thereby discharges the contract by such performance. (See Section 50 of the Indian Contract Act and illustration (d) thereto)”

The matter was again considered in **M/s Patney and Con. (supra)** wherein it was observed by the Supreme Court that if it is shown that the creditor authorized the debtor either expressly or impliedly to send a cheque by post the property in the cheque passes to the creditor as soon as it is posted. Therefore the post office is an agent of the person to whom the cheque is posted if there be an express or impliedly authority to send it by post. But in the absence of such request the post office cannot be constituted as the agent of the creditor.

In **Shri Jagadish Mills Ltd. (supra)** the Supreme Court once again observed that where, however, on the facts and circumstances of the case an implied request by the creditor to send the cheque by post can be spelt out, the Post Office would be constituted the agent of the addressee for the purposes of receiving such payment.

In **The Indore Malwa United Mills Ltd. (supra)** the Supreme Court reiterated that if by an agreement, express or implied, by the creditor, the debtor is authorized to pay the debt by a cheque and to send the cheque to the creditor by post, the post office is the agent of the creditor to receive the cheque and the creditor receives payment as soon as the cheque is posted to him.

The Supreme Court examined all the earlier judgments referred to in **Unit Trust of India vs. Ravinder Kumar Shukla and others,** (2005) 7 S.C.C. 428. A finding was recorded that there was no proof of any contract or request by payees for sending the amount by post nor any proof of a practice from which such request could be implied. In such circumstances, the Court observed that, thus the law is that in the absence of any contract or request from the payee, mere posting would not amount to payment. In cases where there is no contract or request, either express or implied, the post office would continue to act as the agent of the drawer. In that case the loss is of the drawer.

In all the judgments except in the case of **Ravinder Kumar Shukla (supra),** a finding was recorded that either there was an express or implied agreement between the parties to send the cheque by post.

25. The principle, therefore, from these judgments is clear that as between the sendor (debtor) and the creditor (addressee), if the creditor agrees, expressly or impliedly that the cheques should be sent by post, then in that event on the debtor sending the cheques by post, the post

office becomes the agent of the creditor. Similarly when offers are invited generally through advertisement or otherwise to reach the offeror, then on acceptance of the offer communicated through post, the post office becomes the agent of the offeror on the day the acceptance is posted.

26. It is true that the judgments of co-ordinate Benches of other High Courts, at the highest, are persuasive and not binding precedents. However, the learned Judge ought to have noted that once the larger Benches of this Court had considered those judgments and placed reliance on the ratio decidendi, the learned Judge ought to have, as a matter of judicial propriety, followed the view taken by the larger Benches of this Court, even if he had reservation on the law laid down.

27. We may note that the High Court of Orissa in **Dr. Annada Prasad Pattnaik** (supra) had taken the view that where delivery can be made in a mode at the option of the sender, the agency through which delivery is made acts as the agent of the sender whereas if delivery is made by way of despatch in the mode stipulated or prescribed by the addressee, the agency through which the article is despatched acts as the agent of the addressee.

28. The judgment of the Full Bench of the Madras High Court in **R. Vinothkumar** (supra) noted that the decision of the Supreme Court had not answered the issue of construction of a clause stipulating a

condition, the non-fulfilment of which has the effect of denying an applicant the benefit of consideration of his application. The Court noted that the receipt of the application within the stipulated time being a condition for the very exercise of power by the competent Selection Authority, there is neither any scope for such Authority, even if it so desires, to exercise the power in respect of such an application belatedly received nor could this Court compel the exercise of power by such Authority notwithstanding the non-fulfilment of the condition precedent for its exercise. The Court further noted that the normal expectation of the applicant that his application may reach the Authority in time or the actual lapse in the postal services resulting in the belated delivery of the envelope containing the application cannot be used as lever against the Selection Authorities. The Full Bench after considering the law and the judgments of the Supreme Court proceeded to hold that as per the principle evolved in the *Common Denominator decisions* of the Supreme Court, as reflected in the decision of the Division Bench of Orissa High Court, such post office must have to be construed to have been constituted as the agent of the sender/applicant and not the agent of the addressee/Directorate. Only if the post office is being constituted as the agent of the addressee, the receipt of application by such agent, long prior to the last date of receipt of applications would tantamount to the receipt of application by the Principal/addressee/Directorate.

29. The Andhra Pradesh High Court in **V. Ramesh** (supra) relied on

the judgment of the Madras High Court in **R. Vinothkumar** (supra) and agreed with the view taken by the majority and the judgment of Janarthanam, J. We may only note that in the case before the Andhra Pradesh High Court, it was the department, which had used the agency of the post office to send a communication to the addressee to appear for the examination, which he did not receive in time.

30. The law on the acceptance of application through post, when it is one of the modes for applying as set out in the case of **Ram Avtar Singh** (supra) and its ratio that for acceptance to be completed, it must reach within the time stipulated, is being followed in the State for the last over 23 years and is being reiterated from time to time. In these circumstances, in our opinion, the learned Judge totally misdirected himself in law, firstly, in distinguishing the judgments and secondly, in not following them and referring the matter to a larger Bench.

31. That being the position, considering the law declared by the Supreme Court in **Bharat Petroleum Corpn. Ltd. (supra), Pradip Chandra Parija (supra)** and **Central Board of Dawoodi Bohra Community (supra),** the learned Single Judge could not have made the reference, which we hold, is not maintainable.

32. Having said so, to re-state the law, we may revisit the issue. In the instant case, the applicant applied to a body which has invited applications by a cut-of-date. Even if the post office was an agent, all that the agent agrees to do is to deliver the letter or parcel within the

reasonable period of time as noted by the Division Bench in the case of **Pramod Kumar Singh (supra).**

33. Apart from that insofar as the entire process of recruitment is concerned, may be in the office of respondent or any other body, which invites applications, if view is accepted that the post office becomes the agent of the addressee, the very process of recruitment itself would be frustrated. A contract between the sender and the post office cannot bind the addressee. Even otherwise accepting a proposition that the post office becomes the agent of the body which invited the applications would lead to manifest inconvenience and absurdity. For how long would such body have to wait for receipt of applications sent by post to conduct the interview, or hold the examination and what happens in cases where the application is lost through transit. Therefore when applications are to be received by a particular cut off date assuming that there is an offer and acceptance, receipt of the application by that cut off date only would make the acceptance complete.

34. Let us consider some statutory provisions. Section 4 of the Indian Post Office Act, 1898 sets out that whenever within India, posts or postal communications are established by the Central Government, the Central Government shall have the exclusive privilege of conveying by post, from one place to another, all letters except for which is set out thereunder.

By virtue of Section 6, the Government shall not incur any

liability by reason of the loss, misdelivery or delay of, or damage to, any postal article in course of transmission by post except in so far as such liability may in express terms be undertaken by the Central Government as provided in the Act.

Under The General Clauses Act, 1897, in Section 27 it is provided where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post (emphasis supplied).

Similar in so far as The Uttar Pradesh General Clauses Act, 1904 is concerned, Section 27 is identical except for the words "Central Government Act", the expression used is the "Uttar Pradesh Act" which authorizes or requires any document to be served by post the expression used is 'in the ordinary course of post'.

Section 114 of The India Evidence Act, 1872 *illustration (f)* reads as under:-

> "(f) That the common course of business has been followed in particular cases."

We may also reproduce Section 4 of the Indian Contract Act,

which reads as under:-

> "**4. Communication when complete.** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
>
> The communication of an acceptance is complete,--
>
> as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;
>
> as against the acceptor, when it comes to the knowledge of the proposer.
>
> The communication of a revocation is complete,--
>
> as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;
>
> as against the person to whom it is made, when it comes to him knowledge."

Thus considering that the post office has an exclusive privilege, letters sent through post office in cases covered by the General Clauses Act and the U.P. Act, the delivery is effected when the letter would be delivered in the ordinary course of post and considering Section 4 of the Indian Contract Act as against the acceptor, when it comes to the knowledge of the proposer.

35. We may now consider the Postal Rule in English Law as stated in

HALSBURY'S Laws of England, Fourth Edition Reissue, which states as under:-

> "In modern times, contracts negotiated at a distance tended to be made by correspondence exchanged through the post administered by the Post Office. Except as stated below, all communications with respect to the formation of a contract which are sent through the medium of the Post Office have the legal effects previously outlined. However, where such a communication is sent through the medium of the Post Office, there is said to be a general rule that a properly-addressed postal acceptance is complete when the letter of acceptance is posted….
>
> The following consequences are said to follow from this 'postal rule' : (1) a postal revocation of an offer only takes effect on receipt, provided that the revocation is communicated, so that an acceptance posted at any time before that receipt prevails ; (2) a postal acceptance takes effect on posting even though accidentally lost or delayed in the post ; and (3) a postal acceptance of an offer relating to title of goods takes effect in priority to another contract affecting the same subject-matter but made after posting of the first acceptance."

In para 677, it is set out as under:-

> "It is presumed that, unless the offeror exclusively prescribes some different mode of acceptance, an offer made through the post may be

accepted by post. Furthermore, even where an offer is not made by post, if the circumstances are such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance, the offer may be accepted by a letter sent through the post. Such posted acceptances prima facie take effect on posting..."

This rule has been described as under:-

"Various unconvincing reasons for the postal rule have been judicially suggested. First, it has been argued that, if the rule did not exist, no contract could ever be completed by post because neither party should be bound until he knew the other had received his communication. Secondly, it has been explained on the basis that the Post Office is the common agent of both parties ; but, of course, the Post Office is only the agent to carry not to receive, the communications. Thirdly, it has been said that English law favours the offeree because it is the offeror who 'trusts the post'. Fourthly, by way of explanation it has been argued that the offeror must be considered as making the offer all the time his offer is in the post, and therefore the agreement is complete as soon as the acceptance is posted. In truth, the rule is an arbitrary one, being little better than the possible alternatives ; and it is, perhaps, linked with the Post Office practice that a posted letter cannot be retrieved."

36. In CHITTY ON CONTRACTS Thirtieth Edition, Volume I, the posting rule which is discussed under the heading under Sub-Chapter of "THE ACCEPTANCE", CHITTY describes Acceptance as under:-

> "An acceptance is a final and unqualified expression of assent to the terms of an offer. The objective test of agreement applies to an acceptance no less than to an offer. On this test, a mere acknowledgement of an offer would not be an acceptance; nor would a person to whom an offer to sell goods had been made accept it merely by replying that it was his "intention to place an order" or by asking for an invoice…

The posting rule has been described as under:-

> "An acceptance sent by post could take effect when it is actually communicated to the offeror, when it arrives at his address, when it would in the ordinary course of post have reached him, or when it is posted. Each of these solutions could cause inconvenience or injustice to one of the parties, especially when the acceptance is lost or delayed in the post. In English law, what is usually regarded as the general rule is that a postal acceptance takes effect when the letter of acceptance is posted...

It is then observed as under:-

> "The posting rule applies only if it is reasonable to use the post. This will normally be the case if the offer itself is made by post. It may be reasonably to use the post even though the offer was made orally if immediate acceptance was not contemplated and the parties lived at a distance...
>
> The posting rule can be excluded by the terms of the offer. The posting rule is essentially one of convenience. The English authorities support its application in three situations namely, Posted acceptance preceded by uncommunicated withdrawal; Acceptance lost or delayed in the post; Priorities; Misdirected letter of acceptance."

The law thus emanates from an offer made. Generally speaking, an agreement is reached when an offer made by one of the parties (the offeror) is accepted by the other (the offeree or acceptor). Such an agreement may, however, lack contractual force because it is incomplete, because its terms are not sufficiently certain, because its operation is subject to a condition which fails to occur because it was made without any intention to create legal relations. An agreement may also lack contractual force on the ground of want of consideration.

The learned author then notes, that there is, however, a distinction between an offer and invitation to treat when the parties negotiate with a view to making a contract, many preliminary communications may pass between them before a definite offer is made. One party may simply ask, or respond to, a request for information, or he may invite the other to

make an offer. A communication by which a party is invited to make an offer is commonly called an invitation to treat. It is distinguishable from an offer primarily on the ground that it is not made with the intention that it is to become binding as soon as the person to whom it is addressed simply communicates his assent to its terms. A statement is clearly not an offer if it expressly provides that the person who makes it is not to be bound merely by the other party's notification of assent but only when he himself has signed the document in which the statement is contained.

Advertisements intended to lead to the making of bilateral contracts are not often held to be offers. Thus a newspaper advertisement that goods are for sale is not generally an offer; an advertisement that a scholarship examination will be held is not an offer to a candidate.

37. In this respect, we may consider the judgment in **Rooke v. Dawson [1895] 1 Ch. 480.**

In that case, the CHITTY, J. held as under:

> "In that case the defendants sent out a circular as follows: "We are instructed to offer to the wholesale trade for sale by tender the stock in trade of" A., amounting to so and so, "and which will be sold at a discount in one lot. Payment to be made in cash." It was held that this did not amount to a contract or promise to sell to the person who made the highest tender. The judgment of the Court was that this was, to use Mr. Justice *Willes'* words (1): "A mere

> proclamation that the defendants are ready to chaffer for the sale of the goods, and to receive offers for the purchase of them." Applying the principles of that case to the present, is there a contract ? In my opinion there is nothing more than a proclamation that an examination for a scholarship will be held, and there is no announcement that the scholarship will be awarded to the scholar who obtains the highest number of marks. Consequently by coming in and submitting to the examination the Plaintiff did not do that which resulted in a contract."

This therefore would be an authority for the proposition that a newspaper advertisement inviting applications for scholarship, is not an offer.

38. The various judgments which have been considered would indicate that the postal rule normally applies when there is a case of offer and acceptance. The judgments of our Supreme Court are in a set of cases of an agreement between the debtor and the creditor that the cheque should be sent by post. It is in these circumstances that courts in India applied the postal rule, whereby the Post Office becomes an agent for the addressee (creditor) in those circumstances.

39. If applications are invited by addressee for an interview or recruitment from eligible members from the general public, by advertisement either expressly by one mode or more, one of which is post office, when an applicant chooses to send his application through post, though the letter is posted in time but delivered late after last date

of receipt, the question that arises for consideration is:-

> "On an offer being made by advertisement, and an acceptance is sent by post, when does the acceptance become complete, on the date of receipt of the acceptance in the post office or its receipt by the addressee"

On an advertisement being issued by the offeror inviting applications through post and the sender (applicant) sends application through post (acceptance) but the same does not reach by the date mentioned in the advertisement, will the postal rule apply? The offeror in such cases, apart from inviting applications also lays down as one of its terms, that applications have to be received by a particular date. The offer therefore made if any, is receipt of the application through the post by a particular date.

The postal rule however applies, the moment an acceptance is posted through post, then the post office becomes the agent of the addressee (offeror). An advertisement inviting applications for examination or recruitment is merely an invitation to offer and not an offer itself. The person who sends his application by post or by any other mode assuming it is based on an offer, must send the acceptance by the particular date, in terms of offer. If it does not reach by that date, there can be no acceptance and the postal rule would not apply.

40. In **Household Fire Insurance v. Grant (1879) 4 Ex D 216**, the Court considering the rule held that as a rule, a contract formed by

correspondence through the post is complete as soon as the letter accepting an offer is put into the post, and is not put to an end, in the event of the letter never being delivered. After considering the rule, the court noted “that the implication of a complete, final and absolutely binding contract being formed, as soon as the acceptance of an offer is posted, may in some cases lead to inconvenience and hardship. But such there must be at times in every view of the law. It is impossible in transactions which pass between parties at a distance, and have to be carried on through the medium of correspondence, to adjust conflicting rights between innocent parties, so as to make the consequences of mistake on the part of a mutual agent fall equally upon the shoulders of both.” The Court then held “at the same time I am not prepared to admit that the implication in question will lead to any great or general inconvenience or hardship. An offerer, if he chooses, may always make the formation of the contract which he proposes dependent upon the actual communication to himself of the acceptance”.

41. In **Holwell Securities Ltd. v. Hughes,** [1974] 1 All ER 161, the Court of appeal held, that the rule that an acceptance of an offer could be effected, so as to constitute a binding contract, merely by posting a letter of acceptance, did not apply when the express terms of the offer stipulated that the acceptance had to reach the offeror. Thus the postal rule does not apply in cases when the express terms of the offer specify that the acceptance must reach the offeror. In the same judgement

LAWTON LJ. held that it also does not operate if its application would produce manifest inconvenience and absurdity, quoting opinion set out in Cheshire and Fifoot's Law of Contract.

In **Holwell Securities Ltd. (supra)**, the issue was 'acceptance by post'. The question was whether mere acceptance of an offer constituted binding contract by posting a letter of acceptance. The Court of appeal speaking through Lawton, J. observed as under "Does the rule apply in all cases where one party makes an offer which both he and the person with whom he was dealing must have expected the post to be used as a means of accepting it? In my judgment, it does not. First, it does not apply when the express terms of the offer specify that the acceptance must reach the offeror. The public nowadays are familiar with this exception to the general rule through their handling of football pool coupons. Secondly, it probably does not operate if its application would produce manifest inconvenience and absurdity". This was based on the opinion set out in Cheshire and Fifoot's Law of Contract.

The court then observed that such an interpretation would be subject to inconvenience and absurdity and then observed "In my judgment, the factors of inconvenience and absurdity are but illustrations of a wider principle, namely, that the rule does not apply if, having regard to all the circumstances, including the nature of the subject-matter under consideration, the negotiating parties cannot have intended that there should be a binding agreement until the party accepting an offer or

exercising an option had in fact communicated the acceptance or exercise to the other

42. That the English Postal rule will apply in India, has been accepted by the Supreme Court in **M/s Ogale Glass Works Ltd. (supra)** where the Court rejecting the argument that English principles would not apply observed “It is, however, not necessary to pursue this line of reasoning any further for the principles underlying the English decision are clearly consonant with the provisions of the Indian Law”.

43. If the postal rule is made applicable in matters of inviting applications to appear for an examination or for an interview, and applications are to be sent by post, even if one application does not reach in time on account of postal delay to scrap the examination or hold special examination in such cases would produce manifest inconvenience and absurdity.

44. In ANSON'S LAW OF CONTRACT edited by A.G. Guest, 26th Edition, the postal rules has been explained as where the terms of the offer expressly or impliedly indicate that it is to be accepted, not by the performance of some act or forbearance, but by a return promise given by the offeree, the general rule is clear: acceptance must be communicated before it can take effect. But in certain exceptional cases the law, for reasons, of convenience, is prepared to hold that the offeror is bound though the acceptance has not reached him. This is so where it is reasonable for the offeree to notify his acceptance by post or telegram.

Learned author notes that logic of this rule may be questioned and various attempts have been made to justify this rule analytically. After considering various lines of reasons, the author observes that the better explanation would seem to be that the rule is based, not on logic, but on commercial convenience. If hardship is caused, as it obviously may be, by the delay or loss of a letter of acceptance, some rule is necessary, and the rule at which the Courts have arrived is probably as satisfactory as any other would be. It is always open to the offeror to protect himself by requiring actual notification of the acceptance, and the nature of the offer or the circumstances in which it was made may indicate that notification is required.

45. Even in respect of an agency the same is based on the principle, that the Principal is bound by the acts of the agent. Rule of agency in a case of merely inviting offers normally would not apply if a date for receipt of the acceptance is set out. Therefore, in such cases, if at all the law of agency applies it would be between the sender and the post office by virtue of the fact that the sender delivers the letters or articles to the post office. The post office is bound as an agent of the sender to deliver it to the addressee.

46. In our opinion, therefore, though as earlier pointed out the reference itself is not maintainable,t we have clarified the law so as to avoid multiplicity of proceedings.

47. The reference is answered in the negative.

48. Reference is answered accordingly.

Date:13th August, 2010
RK/

(Ferdino I. Rebello,CJ)

(Dilip Gupta,J)

(Sanjay Misra,J)