



## Columns

## The Supreme Court fortnightly: 15 important judgments from January 1 to 15, 2024

*In this fortnightly series, we capture 15 important judgments delivered by the Supreme Court of India.*



15 Judgements, January 1-15, 2024



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In this fortnightly series, *Bar & Bench* brings you 15 important judgments and orders passed by the Supreme Court of India.

Below are our picks for the first two weeks of January 2024.

### 1. [Supreme Court directs High Courts to form committees to implement Second National Judicial Pay Commission recommendations](#)

Case Title: ***All India Judges Association v. Union of India***

In this case, a three-judge bench of Chief Justice of India **DY Chandrachud**, and Justices **JB Pardiwala** and **Manoj Misra** directed all High Courts in the country to set up committees that would be responsible for implementing the recommendations of the Second National Judicial Pay Commission with respect to salaries and service conditions of members of district judiciary and for dealing with grievances of judicial officers.

The Court underscored that it is essential that judges are able to lead a life with financial dignity to ensure judicial independence. It also said that it would be

wholly inappropriate to equate judicial service with the service of other officers of the State.

It, therefore, ordered that a committee called the 'Committee for Service Conditions of the District Judiciary' shall be formed by every High Court in the country.

## 2. **Bilkis Bano gangrape: Supreme Court quashes Gujarat government's decision to allow premature release of convicts**

Case Title: ***Bilkis Yakub Rasool v. Union of India and Others***

A division bench of Justices **BV Nagarathna** and **Ujjal Bhuyan** quashed the Gujarat government's decision to allow the premature release of eleven men convicted in the Bilkis Bano gangrape case.

The Court held that the convicts who were set free by the State have to report back to the jail authorities within two weeks.

It said that the Gujarat government was not empowered to pass the remission order since the appropriate government entitled to pass orders of remission was the government of the State where the trial had taken place, which in this case was Maharashtra and not Gujarat.

The Court in its judgment also strongly came down upon one of the convicts, Radhyesham, for playing fraud upon the Court by suppressing material facts and getting a favourable order from the top court in May 2022, which had eventually led to the release of all the eleven convicts.

The Court said that the May 2022 judgment was obtained by fraud and therefore, not good in law.

## 3. **Facts sourced from accused who is not in "formal" police custody admissible as evidence: Supreme Court**

Case Title: ***Perumal Raja v. State Rep by Inspector of Police***

In this case, a division bench of Justices **Sanjiv Khanna** and **SVN Bhatti** ruled that facts sourced from a statement made by an accused is admissible as evidence during trial even if such accused is not in the "formal" custody of the police.

The Court stressed that the pre-requisite of police custody under Section 27 of the Evidence Act should be read pragmatically, rather than formalistically or euphemistically.

In doing so, the division bench appeared to disagree with a recent three-judge bench decision in *Rajesh & Anr. v. State of Madhya Pradesh*, wherein it was held that formal police custody is necessary to make facts obtained from confessions by an accused admissible.

However, the two-judge bench in the present case reasoned that there was a Constitution Bench decision in *State of U.P. v. Deoman Upadhyaya* reported in 1961 which supported the view that "formal" police custody was not necessary.

#### 4. **Supreme Court lays down rules for summoning government officials; asks courts not to humiliate them**

Case Title: ***State of Uttar Pradesh v. Association of Retired judges***

A three-judge bench of Chief Justice of India (CJI) **DY Chandrachud**, Justices **JB Pardiwala** and **Manoj Misra** issued a Standard Operating Procedure (SOP) to be followed by courts while summoning government officials and cautioned courts against humiliating such officials or making unnecessary comments on their attire.

The Court said that the SOP must be followed by all High Courts and emphasised that courts must steer clear from arbitrarily summoning officials.

The top court acknowledged that the personal appearance of officials may be required for evidence in summary proceedings. However, the Court added that such officials may not be summoned if any issues cropping up can be sorted by way of affidavits from the officials.

The Court also directed that an official cannot be summoned only because his or her view is different from the view of the court.

However, the Court clarified that the personal presence of officials may be required if there is suppression of facts.

#### 5. **No regulatory failure by SEBI in Adani-Hindenburg row, reliance on unverified press reports cannot stand: Supreme Court**

Case Title: ***Vishal Tiwari v. Union of India and Others***

In this case, a three-judge bench of Chief Justice of India (CJI) **DY Chandrachud**, Justices **JB Pardiwala** and **Manoj Misra** refused to issue any directions or interfere with the jurisdiction of the Securities and Exchange Board of India (SEBI) in a batch of petitions seeking a probe by an alternative agency into allegations of fraud against Adani Group of companies in the *Hindenburg Research* report.

The Court said that the scope of power of the Supreme Court to enter into the regulatory domain of SEBI in framing delegated legislation is limited and that the scope of judicial review is only to see whether any fundamental right has been violated.

The Court said that in the present case, there was no regulatory failure by SEBI and the market regulator cannot be expected to carry on its functions based on press reports though such reports can act as inputs for SEBI.

#### 6. **Supreme Court imposes ₹25 lakh costs on litigant for initiating criminal proceedings in civil dispute**

Case Title: ***Dinesh Gupta v. State of Uttar Pradesh and Others***

In this case, a division bench of Justices **Vikram Nath** and **Rajesh Bindal** imposed costs of ₹25 lakhs on a litigant for initiating criminal proceedings in a dispute of a civil nature.

The Court made it clear that unscrupulous litigants who burden the justice system should not be allowed to get away scot-free.

The observations came in a judgment quashing criminal proceedings in a cheating and forgery case. The same arose out of a dispute over a share-pledge agreement and loan disbursement.

The Allahabad High Court had refused to quash the FIR and summons to the appellants before the Supreme Court.

The top court was very critical of the litigation initiated, including the fact that despite the parties being Delhi-based, the complainant filed the first information report at Noida (Uttar Pradesh).

#### 7. NGT not required to apply strict yardsticks of Code of Civil Procedure: Supreme Court

Case Title: ***Nabendu Kumar Bandopadhyay v. Additional Chief Secretary and Others***

In this case, a division bench of Justices **Abhay S Oka** and **Ujjal Bhuyan** expressed displeasure on the approach of the National Green Tribunal (NGT) in summarily dismissing an application without holding any inquiry.

The Court was of the view that when a citizen approaches the NGT with a grievance, a different approach by the NGT is contemplated and it is not required to strictly apply the yardsticks provided under the Code of Civil Procedure of 1908 (CPC).

Therefore, it remitted the case back to the NGT for holding a fresh inquiry in accordance with the law on the application filed by the appellant.

#### 8. Supreme Court slams NGT for stalling Shimla Development Plan 2041

Case Title: ***State of Himachal Pradesh and Others v. Yogendra Mohan Sengupta and Another***

In this case, a division bench of Justices **BR Gavai** and **Aravind Kumar** criticised the National Green Tribunal (NGT) for stalling the implementation of the draft Development Plan 2041 for Shimla by passing stringent directions even as the Himachal Pradesh High Court was seized of the matter.

The Court stated that the tribunal had not acted in consonance with the principles of judicial propriety. It was hearing the Himachal Pradesh government's appeals against NGT orders that had banned all kinds of construction activities in the ecologically sensitive areas of Shimla.

The Himachal Pradesh government and its instrumentalities were allowed to proceed with the implementation of the development plan as published in June 2023.

#### 9. "Right to clean air not for people of Delhi alone": Supreme Court on NGT's suggestion to divert trucks entering NCR

Case Title: ***Container Corporation of India Ltd vs Ajay Khara and Others***

In this case, a division bench of Justices **Abhay S Oka** and **Pankaj Mithal** berated the National Green Tribunal (NGT) for suggesting that trucks heading to an Inland Container Depot (ICD) at Delhi's Tughlakabad be diverted to ICDs outside the National Capital Region (NCR).

The Court said that the right to clean air is not the entitlement of people living in Delhi alone and a suggestion to divert trucks to other ICDs was unjustified and unwarranted.

The observations came in a case concerning pollution caused by heavy-duty diesel trailer trucks in and around Delhi. The case arose after a former executive at the Central Warehousing Corporation approached the NGT raising a grievance against the pollution caused due to the trucks coming to ICD at Tughlakabad.

The NGT had called for the formulation of an action plan to divert such vehicles to Dadri (in Uttar Pradesh) Rewari and Ballabhgarh (both in Haryana), or Khatuawas (in Rajasthan), leading to the appeals before the apex court.

10. **Supreme Court objects to Rajasthan High Court directing State DISCOM to buy power at rates harmful to consumers**

Case Title: ***Jaipur Vidyut Vitran Nigam Limited and Others v. MB Power Madhya Pradesh Private Limited and Others***

In this case, a division bench of Justices **BR Gavai** and **Prashant Kumar Mishra** objected to the Rajasthan High Court directing a State-run electricity distribution company (DISCOM) to purchase 200MW of power from a private company in a deal that would have increased tariffs for consumers.

The Court made it clear that a writ of mandamus could not have been issued by the High Court to a State instrumentality to its detriment.

The top court added that the interests of both consumers and DISCOMs have to be balanced in such cases.

However, it stressed that *"it will not be permissible to take a lopsided view only to protect the interest of the generators ignoring the consumers' interest and public interest."*

11. **Suit cannot be decreed merely on defendant's failure to file written statement if plaintiff's case not proved: Supreme Court**

Case Title: ***Asma Latif and Another v. Shabbir Ahmed and Others***

In this case, a three-judge bench of Justices **BR Gavai**, **Dipankar Datta** and **Aravind Kumar** held that a Court cannot pronounce judgment in a suit merely on the default of the defendant to file a written statement if the plaintiff does not prove his case.

The Court observed that the failure on the part of the defendant to file the written statement within the time permitted by the court would not be enough to pronounce the judgment against the defendant when it is incumbent upon the plaintiff to prove the case by adducing evidence.



It explained that Order 8 Rule 10 of the Code of Civil Procedure, 1908 provided two alternatives – either to pronounce judgment against the defendant defaulting to file the written statement or to pass such other order as deemed fit. The first alternative (passing judgment) is not always mandatory.

The top court observed that the above rule is permissive, granting two options to the court, and if in every case a judgment is pronounced against a person in response to non-submission of the written statement then it would render the second part of Rule 10 otiose.

12. **Buyer not complying with timeline for payment cannot seek specific performance of agreement to sell: Supreme Court**

Case Title: *Alagammal and Others v. Ganesan and Another*

In this case, a division bench of Justices **Vikram Nath** and **Ahsanuddin Amanullah** held that when a contract stipulates a specific time frame within which the consideration needs to be paid by the buyer to execute the 'agreement of sale' by the seller, then the buyer must strictly adhere to such condition. Otherwise, the buyer can not avail of the remedy of specific performance of the sale deed.

The Court observed that within six months, there existed an onus to pay the entire balance of consideration by the buyer. However, in this case, the buyers had not even offered to pay the remaining amount before the expiry of the six months. The obvious import would be that the respondents (buyers) had not complied with their obligation under the agreement, the Court opined.

The Court rejected the buyers' contention that the time indicated for the completion of the transaction by execution of the sale deed had been relaxed. The Court further noted that there had been no willingness shown by them to pay the remaining amount or get the sale deed ascribed on the necessary stamp paper.

13. **Appellate Court should give benefit of doubt to accused if view different from Trial Court's view is possible: Supreme Court**

Case Title: *Jitendra Kumar Mishra @ Jittu v. State of Madhya Pradesh*

In this case, a division bench of Justices **Abhay S Oka** and **Pankaj Mithal** observed that an appellate court should give the benefit of doubt to the accused persons if the evidence indicates the prosecution has failed to prove guilt beyond reasonable doubt and if a view different from the one expressed by the courts below can be taken.

The Court was hearing the appeals filed by four persons who were convicted to life imprisonment for murder by a fast-track court in Jabalpur. The High Court affirmed the conviction and sentence. While the appeal was pending, one of the appellants passed away.

Reversing the concurrent findings of guilt entered by the trial court and the High Court against three persons in a 2007 murder case, the top court observed,

*"We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons."*

14. **Insurance policy effective from date of issuance, not from date of proposal or date of issuance of receipt: Supreme Court**

Case Title: **Reliance Life Insurance Company Limited v. Jaya Wadhwani**

In this case, a division bench of Justices **Vikram Nath** and **Rajesh Bindal** held that the insurance policy issuance date would be the relevant date for all purposes.

The issue before the Court was what would be the date from which the policy becomes effective; whether it would be the date on which the policy is issued or the date of the commencement mentioned in the policy, or if it would be the date of the issuance of the deposit receipt or cover note.

*"We do not find any such issue of backdating but the date of issuance of the policy would be the relevant date for all the purposes and not the date of proposal or the date of issuance of the receipt,"* the Court observed while rejecting the view taken by the consumer forums that the date of issuance of the initial deposit receipt of premium is the date of commencement of the policy.

15. **When detenu receives grounds of detention in language known to him, no need for oral information again: Supreme Court**

Case Title: **Sarfaraz Alam v. Union of India and Others**

In this case, a division bench of Justices **MM Sundresh** and **Aravind Kumar** observed that if a detenu receives the grounds of detention in a language known to him and the same contains a clear statement about his right to make representation, there is no need for informing him of the same verbally again.

The Court said that under Article 22(5) of the Constitution of India, 1950, a detenu must necessarily be informed of the grounds of detention (along with relevant documents) as soon as may be in a language that he understands, as well as informed of his right to make a representation questioning the detention order.

It was remarked that the two rights accruing to detenues under Article 22(5) are mutually reinforcing. The objective underlying the same is to extend knowledge to a detenu so that he may file a representation questioning the detention order, if he wishes to.

## Other important orders and court observations

1. **Muzaffarnagar Muslim child slapping case: UP government did not do what it was expected to do, says Supreme Court**

**Case Title: *Tushar Gandhi v. State of Uttar Pradesh and Others***

In this case, a division bench of Justices **Abhay S Oka** and **Ujjal Bhuyan** remarked that the Uttar Pradesh authorities did not act as expected after a Muslim child was slapped by his classmates at Muzaffarnagar, allegedly at the behest of his class teacher.

The Court was told by the counsel for the State government that the child had now been admitted by his parents to a new school that was far away, which was against norms in the Right to Education Act.

The counsel for the family informed that the family was left with no alternative as there were no good schools near their house.

*"All this happens because State does not do what it was expected to do after this offence. The State should be very concerned about the manner in which this incident has happened. Therefore, we have raised other issues also regarding implementation of the Act,"* Justice Oka observed, in response.

**2. Supreme Court quashes Himachal Pradesh High Court order removing Sanjay Kundu IPS as DGP****Case Title: *Sanjay Kundu v. Registrar General, High Court of Himachal Pradesh***

In this case, a three-judge bench of Chief Justice of India **DY Chandrachud**, Justices **JB Pardiwala** and **Manoj Misra** restored senior Indian Police Service (IPS) officer Sanjay Kundu to the post of the Director General of Police, Himachal Pradesh.

The Court quashed a Himachal Pradesh High Court order directing that he be removed from the post of DGP. Pursuant to that, the State government had removed him as DGP and posted him as the Principal Secretary of Ayush.

**3. Supreme Court takes suo motu cognizance of sacking of six women judges by Madhya Pradesh government****Case Title: *In Re: Termination of Civil Judge, Class-II (JR. Division) Madhya Pradesh State Judicial Service***

In this case, a division bench of Justices **BV Nagarathna** and **Sanjay Karol** took *suo motu* cognizance of the termination of six women judges by the Madhya Pradesh government.

The Court appointed Advocate Gaurav Agarwal as *amicus curiae* to assist the Court in the matter and issued notice to Madhya Pradesh High Court returnable on February 2.

**4. Supreme Court seeks Centre's reply on plea against exclusion of CJI in selection of Election Commissioners, no stay****Case Title: *Dr Jaya Thakur and Others v. Union of India and Another***

In this case, a division bench of Justices **Sanjiv Khanna** and **Dipankar Datta** issued notice to the Central government and the Election Commission of India



(ECI) on a petition challenging the recently-enacted law to govern the appointment and service conditions of the Chief Election Commissioner (CEC) and other Election Commissioners.

However, the Court refused to grant a stay on the law.

5. **Supreme Court issues contempt notice to Magistrate for remanding accused to custody despite apex court's bail order**

Case Title: *Tusharbhaj Rajnikantbhaj Shah v. Shri Kamal Dayani and Others*

In this case, a division bench of Justices **BR Gavai** and **Sandeep Mehta** issued notice to an Additional Chief Judicial Magistrate (ACJM) and senior police officials on a contempt of court plea filed for allegedly flouting the top court's order granting interim anticipatory bail to an accused person.

The Court questioned the conduct of the ACJM who had remanded the accused to police custody, and warned that the alleged contemnors should be sent to jail.

6. **Right to establish minority educational institutes not meant to ghettoise minorities: Supreme Court in AMU case**

Case Title: *Aligarh Muslim University Through its Registrar Faizan Mustafa v Naresh Agarwal and Others*

In this case, a Constitution Bench of Chief Justice of India (CJI) **DY Chandrachud** and Justices **Sanjiv Khanna**, **Surya Kant**, **JB Pardiwala**, **Dipankar Datta**, **Manoj Misra** and **Satish Chandra Sharma** made it clear that the right of minorities to establish and administer educational institutes under Article 30 of the Constitution is not meant to ghettoise any religious community.

The Court noted that it is permissible for such institutes to admit students from other religious communities too.

7. **Supreme Court upholds acquittal of Union Minister Ajay Mishra Tani in murder case**

Case Title: *Rajeev Gupta vs Ajay Mishra alias Tani and Others*

In this case, a division bench of Justices **Bela M Trivedi** and **Pankaj Mithal** confirmed the acquittal of Union Home Minister of State **Ajay Mishra Tani** in a murder case.

The case dates back to the year 2000, when student leader Prabhat Gupta was shot dead near his house at Tikonja in the Lakhimpur Kheri district of Uttar Pradesh.

The Court stated that it was not inclined to interfere with the concurrent findings of the courts below to acquit Tani and dismissed the plea filed by the legal heir of the original complainant.

8. **Supreme Court examines whiskey bottles while hearing trademark infringement plea by Blenders Pride against London Pride**

Case Title: ***Pernod Ricard India Pvt Ltd and Another v. Karanveer Singh Chhabra***

In this case, a three-judge bench of Chief Justice of India (CJI) **DY Chandrachud** with Justices **JB Pardiwala** and **Manoj Misra** issued notice on a plea filed by Pernod Ricard India, which owns the *Blenders Pride* whisky brand, alleging trademark infringement by Indore-based company JK Enterprises that manufactures beverages under 'London Pride' mark.

The Court witnessed some interesting exchanges as Senior Advocate Mukul Rohatgi, who was appearing for Pernod Ricard, handed over some empty whiskey bottles of both companies to the bench and requested the bench to examine the packaging and labels on them.

9. **"Order sends wrong signals": Supreme Court on Calcutta High Court order asking adolescent girls to control sexual urges**

Case Title: ***In Re: Right to Privacy of Adolescent***

In this case, a division bench of Justices **Abhay S Oka** and **Ujjal Bhuyan** remarked that the Calcutta High Court order which called for adolescent girls to "control" their sexual urges sends wrong signals.

The Court also briefly raised concerns about the manner in which judges were invoking their inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) in making such observations.

10. **Supreme Court seeks Lok Sabha Secretariat's response to Mahua Moitra plea against expulsion; no interim relief yet**

Case Title: ***Mahua Moitra v. Lok Sabha Secretariat and Others***

In this case, a division bench of Justices **Sanjiv Khanna** and **Dipankar Datta** sought the response of the Lok Sabha Secretariat to a plea by Trinamool Congress party (TMC) leader Mahua Moitra challenging her expulsion from Lok Sabha.

The Court, however, refused to grant any interim relief to Moitra who was the MP from Krishnanagar constituency in West Bengal before her expulsion.

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