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# JUDGEMENTOPEDIA

(Learning Judgements For A Living)

1

Whether the penalty imposed under Section 27(b) of the Competition Act, 2002 be calculated based on the total turnover of the infringing company or the relevant turnover derived from the product or service involved in the anti-competitive conduct?

2

Did ONGC's actions undermine the 'Time is the essence of the contract' clause?

3

Whether the High Court erred in admitting a second writ petition without disclosing prior dismissal, and if the Residents' Assembly has a right to representation in Governing Board committees?

4

Whether the appointment criteria in Consumer Protection Rules, 2020 breach Article 14 and Supreme Court's directions?

5

Court denied bail citing continued harassment "soon before the death"



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- 1 Excel Crop Care Limited Vs. Competition Commission Of India And Another  
[Civil Appeal No. 2480 Of 2014]
- 2 Welspun Specialty Solutions Limited and Ors.  
Vs. Oil and Natural Gas Corporation Ltd. and Ors.  
[MANU/SC/1059/2021]
- 3 The Auroville Foundation Vs. Natasha Storey  
[3 S.C.R. 469 : 2025 INSC 348]
- 4 The Secretary Ministry of Consumer Affairs Vs. Dr. Mahindra Bhaskar Limaye & Ors.  
[(2023) 4 S.C.R. 289]
- 5 Vinay Vs. State Govt. of NCT of Delhi  
[BAIL APPLN. 4627/2024]





# **Whether the penalty imposed under Section 27(b) of the Competition Act, 2002 be calculated based on the total turnover of the infringing company or the relevant turnover derived from the product or service involved in the anti-competitive conduct?**

**CONTEXT:** The Food Corporation of India (FCI) lodged a complaint with the Competition Commission of India (CCI) in February 2011, alleging an anti-competitive agreement among M/s. Excel Crop Care Limited, M/s. United Phosphorous Limited (UPL), M/s. Sandhya Organics Chemicals (P) Ltd concerning tenders for Aluminium Phosphide Tablets (APT) between 2007 and 2009. The CCI's investigation revealed that these companies, primarily the three appellants, had engaged in practices such as quoting identical prices and boycotting tenders, suggesting a cartel. The CCI concluded that this behaviour violated Section 3 of the Competition Act, 2002, and imposed penalties based on 9% of the average total turnover of the appellants. The Competition Appellate Tribunal (COMPAT) upheld the finding of anti-competitive conduct but modified the penalty calculation for multi-product companies, limiting it to the 'relevant turnover' derived from the sale of Aluminium Phosphide Tablets (APT). This led to appeals by both the appellant companies and the CCI to the Supreme Court.

① The Supreme Court dismissed both the appeals of the appellant companies and the appeals filed by the Competition Commission of India.

② The Court affirmed the findings of the COMPAT regarding the applicability of Section 3 to the 2009 tender, the CCI's jurisdiction to investigate the 2011 tender, and the existence of anti-competitive practices by the appellants.

③ Crucially, the Supreme Court upheld the COMPAT's interpretation that the penalty under Section 27(b) of the Act should be based on the 'relevant turnover' of the product in question i.e. Aluminium Phosphide Tablets (APT) and not the total turnover of the company, especially for multi-product entities.

**EXCEL CROP CARE  
LIMITED VS  
COMPETITION  
COMMISSION OF INDIA  
AND ANOTHER  
[CIVIL APPEAL NO.  
2480 OF 2014]**

**SECTIONS 3, 27(b) OF  
THE COMPETITION  
ACT, 2002**

# **Did ONGC's actions undermine the 'Time is the essence of the contract' clause?**

**CONTEXT:** ONGC issued orders to Remi Metals for steel pipes, where the purchase orders specified a delivery period and stated that time was of the essence. The contracts also contained a Failure and Termination Clause providing for liquidated damages for delays. Despite granting delivery extensions and waiving damages initially, ONGC later deducted liquidated damages, leading to arbitration. The Tribunal favored Remi, but the High Court reversed this, ruling ONGC was not required to prove actual loss before recovering liquidated damages.

1 The Supreme Court set aside the order of the High Court of Uttarakhand and the order of the District Court, thereby upholding the award of the Arbitral Tribunal.

2 The Supreme Court reasoned that the Arbitral Tribunal's interpretation of the contractual clauses, considering the extension procedure and the initial waiver of liquidated damages, provided a plausible view that time was not the essence of the contract.

3 The Court further held that the Arbitral Tribunal's decision to impose damages based on actual loss was sustainable, particularly in light of the initial waiver of liquidated damages and the absence of clear contractual language allowing for their reimposition.

**WELSPUN SPECIALTY  
SOLUTIONS LIMITED  
AND ORS. VS. OIL AND  
NATURAL GAS  
CORPORATION LTD.  
AND ORS.**  
**[MANU/SC/1059/2021]**

**SECTIONS 34, 37 OF  
THE ARBITRATION AND  
CONCILIATION ACT,  
1996 (PRE-2015  
AMENDMENT)**

**SECTION 55, 74 OF THE  
INDIAN CONTRACT  
ACT, 1872**



# Whether the High Court erred in admitting a second writ petition without disclosing prior dismissal, and if the Residents' Assembly has a right to representation in Governing Board committees?

**CONTEXT:** The respondent, Natasha Storey, filed a writ petition before the High Court of Judicature at Madras challenging an office order related to the reconstitution of the Auroville Town Development Council (ATDC) and seeking a direction for the appointment of members nominated by the Residents' Assembly through its working Council to the ATDC. This was her second petition seeking substantially the same relief after her first petition on the same issue was dismissed. She did not disclose the dismissal of the earlier petition in her subsequent filing. The Auroville Foundation raised preliminary objections regarding the maintainability of the second petition and the suppression of material facts. However, the High Court entertained the petition and subsequently allowed it, setting aside the Foundation's notification. The Foundation then appealed to the Supreme Court.

① The Supreme Court allowed the appeal, set aside the High Court's judgment, and dismissed the writ petition with Rs. 50,000/- costs on the respondent.

② It held that the doctrine of "clean hands and non-suppression of material facts" applies to all judicial proceedings, including Article 226 of the Indian Constitution. The respondent's failure to disclose the earlier dismissal amounted to suppression and abuse of process, justifying dismissal.

③ The Court further held that neither the Auroville Foundation Act, 1988 nor its Rules grant the Residents' Assembly or individuals any right to be part of committees formed by the Governing Board, which holds exclusive management authority under Section 16(1) and Rule 5.

④ The Assembly has only advisory functions. Citing precedents, the Court reaffirmed that those who suppress facts are not entitled to relief.

**THE AUROVILLE  
FOUNDATION V.  
NATASHA STOREY**  
**[3 S.C.R. 469 : 2025  
INSC 348]**

**SECTIONS 11(3), 16(1),  
17, 19 OF THE  
AUROVILLE  
FOUNDATION ACT,  
1988**

**RULE 5 OF THE  
AUROVILLE  
FOUNDATION RULES,  
1997**



# Whether the appointment criteria in Consumer Protection Rules, 2020 breach Article 14 and Supreme Court's directions?

**CONTEXT:** The Ministry of Consumer Affairs, Union of India, and the State of Maharashtra filed appeals challenging a common judgment of the High Court of Judicature at Bombay, Nagpur Bench, which declared Rule 3(2)(b), Rule 4(2)(c), and Rule 6(9) of the Consumer Protection Rules, 2020 as arbitrary, unreasonable, and violative of Article 14 of the Constitution of India. The High Court's decision arose from a Public Interest Litigation and a Writ Petition that challenged these rules as being unconstitutional and contrary to the principles established by the Supreme Court in State of Uttar Pradesh and Others Vs. All Uttar Pradesh Consumer Protection Bar Association; (2017) 1 SCC 444 (UPCPBA) and Madras Bar Association Vs. Union of India and Another; (2021) 7 SCC 369. The petitioners before the High Court argued that the rules conferred uncontrolled discretion on the selection committee, lacked transparency in the selection process, and prescribed excessively long periods of experience for non-judicial members.

1 The Supreme Court dismissed the appeals and upheld the High Court's ruling that Rules 3(2)(b), 4(2)(c), and 6(9) of the Consumer Protection Rules, 2020 are unconstitutional and violate Article 14. The Court directed the Central and State Governments to amend:

- Rule 6(9): Introduce a selection process based on a written test (two papers of 100 marks each) and a viva voce (50 marks), following the Model Rules, 2017. The test should cover GK, current affairs, Constitution, consumer laws, essay writing, and case studies. Minimum qualifying marks: 50% per paper.

- Rules 3(2)(b) & 4(2)(c): Reduce the required experience to 10 years (from 20 and 15 years) for appointment as President and Members of State and District Commissions.

2 Pending these amendments, under Article 142, the Court allowed candidates with a bachelor's degree and 10 years of relevant experience to be eligible, subject to the new selection procedure.

**THE SECRETARY**  
**MINISTRY OF**  
**CONSUMER AFFAIRS**  
**VS. DR. MAHINDRA**  
**BHASKAR LIMAYE &**  
**ORS.**  
**[(2023) 4 S.C.R. 289]**

**SECTIONS 29, 43 OF**  
**THE CONSUMER**  
**PROTECTION ACT,**  
**2019**



# Court denied bail citing continued harassment “soon before the death”

**CONTEXT:** The accused/applicant, Vinay, was arrested on 26.05.2023 in connection with FIR No. 79/2023 registered at PS Jaffarpur Kalan, based on a complaint filed by Mr. Suresh Kumar, the father of the deceased, Raveena. The complaint alleged that Raveena was harassed for dowry by Vinay, his parents, and his sister after their marriage on 22.02.2023. It was claimed that Vinay expressed dissatisfaction with the match and the dowry amount of ₹7,00,000/-, resulting in Raveena returning to her parental home around mid-March 2023. On 27.04.2023, Raveena was found hanging at her parental home. Vinay applied for regular bail, arguing that Section 304B of the Indian Penal Code, 1860 was not applicable as the death occurred at the parental home, and no harassment had taken place "soon before her death". The complainant’s counsel opposed this, citing continued harassment through phone communication, particularly a 584-second call on 23.04.2023, and the filing of judicial separation by Vinay on 19.04.2023, which allegedly triggered the suicide.

1 The bail application of the accused/applicant, Vinay, was dismissed. The Court reasoned that the place of death (parental home vs. matrimonial home) does not negate a case of dowry death under Section 304B of IPC, as the existence and continuance of matrimony are key.

2 The Court also held that the expression "soon before her death" in Section 304B of IPC is a relative term indicating continuity of time, not merely length of time, and must be considered within the specific factual matrix of each case.

3 The Court found that despite the deceased residing at her parental home from 15.03.2023 until her death on 27.04.2023, the alleged initial dowry harassment, coupled with continued communication culminating in a lengthy phone call on 23.04.2023, could constitute harassment "soon before death".

VINAY vs STATE  
GOVT. OF NCT OF  
DELHI  
[BAIL APPLN.  
4627/2024]

**SECTIONS 304B,  
498A, 306 OF THE  
INDIAN PENAL CODE  
(IPC)**