

SUPREME COURT OF INDIA

Union Public Service Commission

Vs.

Jawahar Santhkumar

C.A.No.4626 of 2009

(R.Banumathi,J., A.S.Bopanna and Hrishikesh Roy,JJ.,)

15.11.2019

JUDGMENT

R.Banumathi,J.,

1. These appeals arise out of the impugned judgment dated 17.04.2008 passed by the High Court of Madras in Writ Petition No.33696 of 2007 in and by which the High Court set aside the order of the Tribunal and directed the appellants and Union of India (DoPT) to convene a Selection Committee Meeting for reviewing the promotions made to the Indian Administrative Service (IAS) for the year 2004 and promote the first respondent herein to the IAS from the date when his juniors were promoted with all the consequential benefits.

2. Brief facts which led to filing of these appeals are as under:-

A meeting of the Selection Committee for promotion to the IAS of Tamil Nadu Cadre for the year 2004 was held on 18.12.2004 against three vacancies as determined by the Central Government. The name of the first respondent was considered by the said Committee along with the names of respondent Nos.4 and 5. The position in the Eligibility List (EL), Selection List (SL) and the overall relative assessment (ORA) as assigned by the Selection Committee in respect of the first respondent vis-a-vis that of the officers included in the Select List are as under:-

Year	Respondent No.1's Position	Name & Position of Selected Officers			
		Name	EL	ORA	SL
SL 2004					
Vacancy: 03	In EL: S.No.04	TK Ponnusamy*	01	Very Good	01
Size of SL: 03	ORA: Good	N Mathivanan	02	Very Good	02
Zone of Consideration: 09	In SL: Not included	Smt. R. Vasuki	03	Very Good	03
		*Included provisionally subject to clearance in Criminal Proceedings pending against him and grant of Integrity Certificate by the State Government.			

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against him and grant of Integrity Certificate by the State Government.

The first respondent was duly considered for promotion in the year 2004 and assessed as “Good” for that year. However, on the basis of overall relative assessment, the first respondent’s name could not be included in the Select List of 2004 due to lower grading and also due to the statutory limit on the size of the Select List. Respondent Nos.4 and 5 who were included in the Select List have been appointed by the Government of India by Notification dated 29.04.2005.

3. Aggrieved by his non-appointment to the IAS, the first respondent filed OA No.749 of 2006 before the Central Administrative Tribunal (CAT), Madras Bench. The said application was dismissed by the Tribunal vide order dated 31.08.2007 holding that the first respondent’s name was included by the State Government in the list of officers eligible for consideration for the year 2004 and accordingly, the Selection Committee considered the first respondent’s ACRs and made a relative assessment of all the officers under consideration. The Tribunal pointed out that the Selection Committee makes its own assessment on the basis of entries made in the various columns and after discussion within the Committee, finally arrives at a classification “Outstanding”, “Very Good”, “Good” and “Unfit” to be assigned to an officer. Finding no irregularity by the Selection Committee in making the relative assessment, the Tribunal dismissed the application filed by the first respondent. The first respondent then filed review application in RA No.27 of 2007 in OA No.749 of 2006 seeking review of the Tribunal’s order dated 31.08.2007 and the said review petition came to be dismissed by the Tribunal vide order dated 03.10.2007.

4. Aggrieved by the dismissal of his application, the first respondent filed writ petition in WP No.33696 of 2007. The High Court held that the Tribunal by its order dated 26.06.2002 directed for fixation of the first respondent’s seniority in the cadre of District Revenue Officer; but the seniority of the first respondent was not refixed within a reasonable time by the State Government and the first respondent’s seniority was refixed vide G.O.Ms. No.924 dated 05.09.2005 with a long and unexplained delay of 39 months which is unfair and thus, has caused much prejudice to the first respondent since in the meantime his juniors namely respondent Nos. 4 and 5 were promoted to the IAS. The High Court also held that as per Regulation 5(5), the classification of an individual by the Selection Committee is very crucial and for the year 2003, the overall assessment of the first respondent had been adjudged as “Very Good” by the Committee; whereas the overall assessment of the first respondent pertaining to Select List of 2004 was just “Good” and there was no reason whatsoever as to why suddenly the first respondent has been downgraded in his overall rating. The High Court also pointed out that for another person by name Shri T.K. Ponnusamy who was rated “Unfit” in 2003, was rated as “Very Good” in 2004 and there is no reason for such sudden hike in the classification/overall rating of Shri T.K. Ponnusamy. The High Court held that when T.K. Ponnusamy against whom criminal case was pending, was preferred over the first respondent for inclusion in the Select List, the same cannot be appreciated. The High Court set aside the order of the Tribunal by holding that the Selection Committee and the Tribunal failed to assess all the aspects of the case in their proper perspective and directed the appellant and respondent Nos.2 and 3 to

convene a Selection Committee Meeting for reviewing the promotions made to the IAS for the year 2004 and promote the first respondent to the IAS from the date when his juniors were promoted with all the consequential benefits.

5. Being aggrieved, Union Public Service Commission (UPSC) and the Government of Tamil Nadu have preferred these appeals. When the appeals were taken up for hearing, it was brought to the notice of this Court that the first respondent has been dismissed from the service vide G.O.Ms. No.1125 dated 26.11.2011 on the allegation of possession of disproportionate assets and also on the ground of his involvement in a criminal case in Crime No.37 of 2008 registered against him by the Vigilance and Anti-Corruption Unit, Trichy.

6. Mr. S. Satyam Reddy, the learned Senior counsel appearing for the first respondent submitted that the first respondent has challenged the order of dismissal from service dated 26.11.2011 by filing a writ petition in WP No.28724 of 2011. It was stated that the High Court has quashed the said dismissal order dated 26.11.2011 and the matter has been remanded back to the authorities for consideration afresh. Since the above G.O.Ms. No.1125 dated 26.11.2011 is a subsequent event, we have considered the present appeals independently on its own merit.

7. Assailing the impugned judgment, Ms. Binu Tamta, learned counsel appearing for the appellant-UPSC submitted that the High Court erred in holding that had the first respondent's seniority been fixed within reasonable time, the first respondent would have been promoted to the IAS. It was further submitted that the mere fact that the first respondent was eligible and there was no case pending against him does not ipso facto imply that his name should have been included in the Select List. The learned counsel further submitted that the selection from the State Civil Service Officers to IAS is strictly on the basis of merit, ability and suitability of the candidates and seniority is considered only where merit, ability and suitability are approximately equal. Placing reliance upon *UPSC v. K. Rajaiah and others*¹, the learned counsel for the appellant submitted that the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs and the High Court could not have faulted the classification of the first respondent for the year 2004 as "Good". The learned counsel further submitted that inclusion of Shri T.K. Ponnusamy against whom criminal case was pending in the Select List in terms of Regulation 5(5), was only provisional and the same could not have been faulted by the High Court.

8. Reiterating the above submissions, Mr. Yogesh Kanna, learned counsel appearing for the State of Tamil Nadu contended that the High Court was not right in holding that the authorities concerned acted with prejudicial attitude and that an illegality was perpetuated on the first respondent.

9. The learned Senior counsel for the first respondent submitted that when the State Administrative Tribunal by its order dated 26.06.2002 restored the seniority of the first respondent making him senior to respondent Nos.4 and 5, the State Government

deliberately delayed issuance of the order fixing the seniority of the first respondent and the first respondent's seniority was fixed by G.O.Ms. No.924 dated 05.09.2005 but in the meanwhile, respondent Nos.4 and 5 were promoted to the IAS pursuant to the Select List of 2004 by the same order G.O.Ms. No.924 dated 05.09.2005. It was submitted that the long and unexplained delay of 39 months in re-fixing the seniority of the first respondent is unfair and the same caused serious prejudice to the first respondent. The learned Senior counsel further submitted that Regulation 5(2) stipulates that the Selection Committee shall consider the cases of Members of the State Civil Services in the order of seniority and the High Court has rightly held that the seniority would influence the process of selection. It was further submitted that no reasons have been assigned by the Selection Committee for down-grading the first respondent from "Very Good" to "Good". The learned Senior counsel submitted that a person with tainted antecedents (Shri T.K. Ponnusamy) had been rated as "Very Good"; whereas on earlier occasion, he was found "Unfit", and there were no valid reasons for down-grading the first respondent from "Very Good" to "Good". The High Court, therefore, rightly held that the findings of the Selection Committee are vitiated on account of non-application of mind and rightly issued the directions to the appellants to convene a Selection Committee Meeting for reviewing the promotions made to the IAS for the year 2004.

10. We have considered the submissions of both sides and carefully perused the impugned judgment and other materials on record. The point falling for consideration is whether the High Court was right in holding that the Selection Committee did not follow the uniform standards in classifying individual officers which has a direct bearing on their selection to the IAS. Yet another point falling for consideration is whether the High Court was right in directing the appellant to convene a Review Selection Committee Meeting and promote the first respondent to the IAS from the date his juniors were promoted with all consequential benefits.

11. All India Services Act, 1951 has been enacted for the purpose of regulating the recruitment and conditions of service of persons belonging to the Indian Administrative Services. Under Section 3 of the said Act, the Central Government has framed the IAS (Appointment by Promotion) Regulations, 1955 (Promotion Regulations). In accordance with the provisions of the said Promotion Regulations, the Selection Committee, presided over by the Chairman/Member of the UPSC makes selection of the State Civil Service Officers for promotion to the Indian Administrative Service. In Regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is to be made for a particular recruitment year for promotion to the Indian Administrative Service of the State Cadre is determined by the Government of India (DoPT) in consultation with the State Government concerned. Thereafter, the State Government forwards a proposal to the Commission along with seniority list, eligibility list (three times the number of vacancies) of the State Service Officers, integrity certificates, details regarding disciplinary proceedings and details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers. When the Selection Committee meet for selection for the recruitment year, the above documents are placed before the Selection Committee in accordance with the provisions of Regulation 5(4) of the Promotion Regulations. The

Committee duly classifies the eligible State Civil Service Officers included in the zone of consideration as “Outstanding”, “Very Good”, “Good” or “Unfit”, as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(5) of the Promotion Regulations, the Selection Committee prepares a list by including the required number of names firstly from the officers finally classified as “Outstanding”, then from amongst those similarly classified as “Very Good” and thereafter, from amongst those officers classified as “Good”. The relevant part of the Regulations 5(4) and 5(5) reads as under:-

“5(4). The Selection Committee shall classify the eligible officers as ‘Outstanding’, ‘Very Good’, ‘Good’ and ‘Unfit’ as the case may be on an overall relative assessment of their service records.

5(5). The List shall be prepared by including the required number of names first from amongst the officers finally classified as ‘Outstanding’ then from amongst those similarly classified as ‘Very Good’ and thereafter from amongst those similarly classified as ‘Good’ and the order of names inter-se within each category shall be in the order of their seniority in the State Civil Service.”

12. While assessing the suitability of the officers for promotion, the Selection Committee, as per the uniform and consistent practice followed in the matter of induction to the All India Services, examines the service records of each of the eligible officers, with special reference to the performance of the officers during the last five years (preceding the year for which the Select List is being prepared), deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing/accepting authority in the ACRs for different years and then after detailed mutual deliberation and discussion, finally arrives at a classification to be assigned to each officer.

13. While doing so, the Selection Committee determines the overall grading recorded in the Confidential Reports (CRs) to ensure that the overall grading in the CRs is not inconsistent with the grading/remarks under various specific parameters or attributes. The Selection Committee takes into account orders regarding appreciation for the meritorious works done by the officers concerned and also keeps in view the orders awarding penalties or any adverse remarks duly communicated to the officer, which, even after due consideration of his representation are not expunged. The UPSC after taking into consideration the records received from the State Government under Regulation 6 and the observation of the Central Government received under Regulation 6A of the Promotion Regulations, takes a final decision on the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the Promotion Regulations. The selection of the State Civil Service Officers for promotion to IAS is made in a fair and objective manner on the basis of relevant records and following the relevant Rules and Regulations. The above procedure is uniformly followed for all the States/Cadres in the matter of induction to All India Services.

14. Insofar as the present case, the first respondent’s name was included by the State

Government in the list of officers eligible for consideration for the year 2004. Accordingly, the Selection Committee also considered the ACRs and made a relative assessment to all the officers under consideration. The name of the first respondent could not be included in the Select List of the year 2004 as the overall grading given to him by the Selection Committee was lower and there were only three vacancies. Since the name of the first respondent could not be included in the Select List for promotion to the IAS Cadre in the year 2004, the first respondent was not considered for promotion.

15. Contention of the first respondent is that though Shri T.K. Ponnusamy was having criminal case, his name was included in the Select List and when the person having criminal case was included in the Select List, the name of the first respondent ought to have been included. The High Court also held that Shri T.K. Ponnusamy who was classified as “Unfit” for the Select List 2003 has been adjudged as “Very Good” for the Select List 2004 and the sudden hike in the classification/overall rating of Mr. T.K. Ponnusamy has been remained unanswered throughout.

16. Of course, Shri T.K. Ponnusamy was having a criminal case; but as noted above, he was included provisionally in the Select List 2004 subject to his clearance in the criminal case pending against him and grant of integrity certificate by the State Government and such an officer who is included in the zone of consideration has to be considered even if disciplinary proceedings are pending against him. We find substance in the contention of the appellant-UPSC that the Selection Committee acted strictly in accordance with the Regulations which are statutory in nature and the selection of respondent Nos.2 and 3 does not, therefore, suffer from any violation of statutory rules.

17. Selection from the State Civil Service to IAS is strictly on the basis of merit, ability and suitability of the officers. In *M.V. Thimmaiah and others v. Union Public Service Commission and others*², it was held as under:-

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an Appellate Authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion

36. Therefore, in view of a catena of cases, courts normally do not sit as a court of appeal to assess ACRs and much less the Tribunal can be given this power to constitute an independent Selection Committee over the statutory Selection Committee. The guidelines have already been given by the Commission as to how ACRs to be assessed and how the marking has to be made. These guidelines take care of the proper scrutiny and not only by the Selection Committee but also the views of the State Government are obtained and ultimately the Commission after

scrutiny prepares the final list which is sent to the Central Government for appointment. There also it is not binding on the Central Government to appoint all the persons as recommended and the Central Government can withhold the appointment of some persons so mentioned in the select list for reasons recorded. This assessment cannot be made subject of court's or Tribunal's scrutiny unless actuated by mala fide.

37 The Selection Committee normally abides by the assessment made by the reporting officer and the reviewing authority. But the Selection Committee is not powerless. After reviewing the candidates' performance, the Selection Committee can certainly make its own assessment. The guidelines which have been issued by the Commission also enable the Selection Committee to assess the remarks made by the reporting officer or the reviewing officer and after taking into consideration various factors like the meritorious work done or any punishment or adverse remarks made or subsequently expunged on representation can review the assessment about the candidates. Such review of the assessment is fully within the competence of the Selection Committee ”

18. As pointed out earlier, the first respondent has been ordered to be promoted to the cadre of DRO by the order of the State Tribunal dated 26.06.2002. But the first respondent's seniority was refixed on 05.09.2005 vide G.O.Ms. No.924. Of course, the first respondent's seniority was refixed by the State Government subsequent to the Selection Committee Meeting for 2004. The High Court held that had the first respondent's seniority been fixed within reasonable time as per the direction of the Tribunal, the first respondent's classification/overall rating would have been correctly assessed by the Selection Committee. The High Court further held that when a candidate of doubtful integrity was considered, definitely, the first respondent would have also been considered and promoted to the IAS and only because of the delayed action of the State Government or improper action of the Selection Committee, the prospect of the genuine candidate should not be put at stake. With those findings, the High Court took the view that the first respondent has been victimised for the simple reason that he has approached the legal forum for redressal of his genuine grievances.

19. The learned Senior counsel for the first respondent has reiterated the findings of the High Court and submitted that the High Court rightly observed that non-fixation of seniority as directed by the Tribunal within a reasonable time has prejudicially affected the case of the first respondent in getting his promotion. The learned Senior counsel submitted that as per Regulation 5(2), for inclusion in the Select List, the Committee shall consider the cases of members of State Civil Service in the order of seniority and only because of delay in refixation of the seniority, name of the first respondent could not be included in the Select List.

20. We find no merit in the above contention of the first respondent that his seniority would have enabled his name to be included in the Select List. As discussed earlier, gradation is made by the Selection Committee on the merits based on the relative assessment. Seniority would become relevant only when the merit of the candidates is

equal. Observing that the seniority is considered only where merit, ability and suitability are approximately equal, in *R.S. Dass v. Union of India and others*³, the Supreme Court held as under:-

“18. The amended provisions of Regulation 5 have curtailed and restricted the role of seniority in the process of selection as it has given primacy to merit. Now the Committee is required to categorise the eligible Officers in four different categories, namely “Outstanding”, “Very Good”, “Good” and “Unfit” on overall relative assessment of their service records. After categorisation is made the Committee has to arrange the names of officers in the Select List in accordance with the procedure laid down in Regulation 5(5). In arranging the names in the Select List the Committee has to follow the inter se seniority of officers within each category. If there are five officers who fall within the “Outstanding” category their names shall be arranged in the order having regard to their inter se seniority in the State Civil Service. The same principle is followed in arranging the list from amongst the officers falling in the category of “Very Good” and “Good”. Similarly if a junior officer’s name finds place in the category of “Outstanding”, he would be placed higher in the list in preference to a senior officer included in the “Very Good” or “Good” category. In this process a junior officer if categorised “Outstanding” or “Very Good” would supersede his seniors. This cannot be helped. Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. Where promotion is made on the basis of seniority, the senior has preferential right to promotion against his juniors but where promotion is made on merit alone, senior officer has no legal right to promotion and if juniors to him are selected for promotion on merit the senior officer is not legally superseded. When merit is the criteria for the selection amongst the members of the service, no officer has legal right to be selected for promotion, except that he has only right to be considered along with others. In *Gurdayal Singh Fiji v. State of Punjab* (1981) 4 SCC 419 this Court held that a member of State Civil Service has no legal right to promotion, instead he has only right to be considered along with others.

But assuming that appellants/petitioners stood superseded by the reason that junior officers to them were included in the Select List, no reasons were necessary to be recorded in view of the amended statutory provisions.”

21. Re: Contention regarding down-grading and non-recording of reasons:- From the UPSC File No.F.6/18/2003-AIS, dated 24.12.2003, pertaining to the Select List of 2003, the ‘overall relative assessment’ of the first respondent had been adjudged as “Very Good” by the Committee. But, as per UPSC File No.F.6/18/2004-AIS dated 18.12.2004 pertaining to the Select List of 2004, the ‘overall relative assessment’ of the first respondent has been adjudged just as “Good”. The High Court held that there was no reason recorded as to why suddenly the first respondent has been down-graded in his classification/overall rating. The High Court has also pointed out that Shri T.K. Ponnusamy who was classified as “Unfit” for the Select List of 2003, has been adjudged “Very Good” for the Select List of 2004

which shows that the Selection Committee was not following uniform standard in classifying/overall rating of the assessment of the individual which has a direct bearing on their selection to the IAS.

22. Power to classify the candidates is the function of the Selection Committee. In the process of selection under Regulations 5(4) and 5(5) of the Promotion Regulations, the Selection Committee is not required to record reasons by assigning overall relative assessment in respect of the eligible officers or for selecting a junior officer, having higher merit, in preference to that of a senior officer. In *R.S. Dass v. Union of India and others(Supra)* the Supreme Court held that when any senior officer is superseded, the amended Regulation 5(5) does not require the Committee to record reasons for the supersession and that the amended Regulations do not require the Selection Committee to record reasons for the supersession of the officers of the State Civil Service.

23. After referring to *R.S. Dass*, in *K. Rajaiah*, the Supreme Court held as under:-

“9. We cannot also endorse the view taken by the High Court that consistent with the principle of fair play, the Selection Committee ought to have recorded reasons while giving a lesser grading to the first respondent. The High Court relied on the decision of this Court in *National Institute of Mental Health & Neuro Sciences v. Dr. K. Kalyana Raman* 1992 Supp (2) SCC 481. Far from supporting the view taken by the High Court, the said decision laid down the proposition that the function of the Selection Committee being administrative in nature, it is under no obligation to record the reasons for its decision when there is no rule or regulation obligating the Selection Committee to record the reasons. This Court then observed: (SCC p. 485, para 7)

“Even the principles of natural justice do not require an administrative authority or a Selection Committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. This principle has been stated by this Court in *R.S. Dass v. Union of India* 1986 Supp SCC 617 (SCC at p. 633)....”

That being the legal position, the Court should not have faulted the so-called down gradation of the first respondent for one of the years. Legally speaking, the term “downgradation” is an inappropriate expression. The power to classify as “outstanding”, “very good”, “good” and “unfit” is vested with the Selection Committee. That is a function incidental to the selection process. The classification given by the State Government authorities in the ACRs is not binding on the Committee. No doubt, the Committee is by and large guided by the classification adopted by the State Government but, for good reasons, the Selection Committee can evolve its own classification which may be at variance with the gradation given in the ACRs. That is what has been done in the instant case in respect of the year 1993-94. Such classification is within the prerogative of the Selection Committee and no reasons need be recorded, though it is desirable that in a case of gradation at variance with that of the State Government, it would be desirable to record

reasons. But having regard to the nature of the function and the power confided to the Selection Committee under Regulation 5(4), it is not a legal requirement that reasons should be recorded for classifying an officer at variance with the State Government's decision." [Underlining added]

24. The ratio of the above decision squarely applies to the case in hand. When the Selection Committee has given its own classification, the court cannot sit in appeal over the assessment made by the Committee of experts. In *Union Public Service Commission v. M. Sathiya Priya and others*⁴, the Supreme Court held as under:-

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.” [Underlining added]

25. In the present case, we find that neither the decision of the Selection Committee nor the decision-making process suffers from any arbitrariness. Since there was down-grading of the first respondent for the assessment year 2004, the first respondent was not included in the Select List. On overall assessment of service records, the name of the first respondent was not included in the Select List due to the statutory limit of its size and as officers with higher grading in the Select List were available as per the provisions of Regulation 5(5) of the Regulations. The High Court was not right in holding that the Selection Committee has miserably failed to assess all the aspects of the case in their proper perspective and that the promotions made to the IAS for the vacancies of the year 2004 is vitiated and the same is to be reviewed. The impugned judgment of the High Court cannot be sustained and is liable to be set aside.

26. In the result, the impugned judgment dated 17.04.2008 passed by the High Court of Madras in Writ Petition No.33696 of 2007 is set aside and these appeals are allowed. Insofar as the challenge by the first respondent to G.O. Ms. No.1125 dated 26.11.2011, the

same shall be considered on its own merits without being influenced by any of the views expressed in this judgment.

Judgment Referred.

¹(2005) 10 SCC 0015

²(2008) 2 SCC 0119

³(1986) Supp. SCC 0617

⁴(2018) 15 SCC 0796