

(2010) 02 AHC CK 0172

Allahabad High Court (Lucknow Bench)

Case No: None

State of U.P. and Others

APPELLANT

Vs

Pratap Pharmaceuticals and
Others

RESPONDENT

Date of Decision: Feb. 10, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 80, 96
- Constitution of India, 1950 - Article 229, 299
- Contract Act, 1872 - Section 25, 70
- Evidence Act, 1872 - Section 114
- Limitation Act, 1963 - Section 19, 2, 3
- Partnership Act, 1932 - Section 69
- Penal Code, 1860 (IPC) - Section 120B, 409, 418, 420, 467
- Prevention of Corruption Act, 1988 - Section 13, 7
- Uttar Pradesh Trade Tax Act, 1948 - Section 15

Hon'ble Judges: Sunil Ambwani, J; Dilip Gupta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This First Appeal u/s 96 of the CPC arises out of judgment and decree dated 20.12.2006 in Original Suit No. 111 of 2001 filed by M/s. Pratap Pharmaceuticals, a partnership firm through its partner Dr. Virendra Pratap, decreeing the suit for Rs. 28,21,560/- as the balance amount payable with interest of Rs. 46,73,759.78P and future interest at the rate of 25.5% for supply of Ayurvedic Medicines and interest at the rate of 25.12 % monthly compoundable for supply of medicines against defendant Nos. 5 and 6. The Civil Judge, Senior Division, Lucknow further directed that the entire amount be paid within three months failing which the plaintiff will be entitled to execute the decree.

2. According to the plaint allegations, the plaintiff is a partnership firm dealing with Ayurvedic Medicines under the name and style of M/s. Pratap Pharmaceuticals, with its office and factory located at 19/772 Indira Nagar, Ring Road, Lucknow. The firm is registered as a Small Scale Industry with the Directorate of Industries. It is engaged in the business of supply of Ayurvedic Medicines to the defendants, at different destinations since 1990, as directed from time to time and was receiving payments regularly upto the year 1993. In due course of business, the plaintiff's firm received orders from the defendants for supply and delivery of Ayurvedic Medicines to Kshetriya Ayurvedic Ecam Unani Karyalaya, Allahabad - defendant No. 4; Kshetriya Ayurvedic Ecam Unani Adhikari, Ghaziabad - defendant No. 5 and Rajkiya Ayurvedic College, Nirmanshala, Pilibhit - defendant No. 6. The plaintiff executed the orders and supplied the medicines to the respective Colleges/Nirmanshalas under its various bills. The medicines were dispatched through road transport. The list of the orders along with the bills and the amount due to be paid along with interest is given in detail in para 4 of the plaint. The details in respect of the bills of the year 1993-94 given in para 4 of the plaint would show that the plaintiff claimed an amount of Rs. 2,01,180/- each in respect of bill Nos. PP/9/93-94 and PP/10/93-94 dated 10.8.1993 towards order Nos. 904 and 906 of the year 1993-94 for the medicines supplied to Kshetriya Ayurvedic Ecam Unani Karyalaya, Allahabad - defendant No. 4; and an amount of Rs. 3,84,742.19 towards interest @ 21.84 % monthly compoundable on each of the two bills. The plaintiff claimed an equal amount of Rs. 2,01,600/- towards each of six bills No. PP/7/94, PP/8/94 - all dated 29.9.1993, PP/9/04 dated 29.9.1993, PP/1/94, PP/2/94 and PP/3/94 - all dated 28.3.1994 for the orders given on 28.3.1994 in respect of first three bills and for the orders given on 26.3.1994 in respect of remaining three bills along with further amount of Rs. 3,25,322.95 each as interest @ 21.84 % monthly compoundable for the supply made to Kshetriya Ayurvedic Ecam Unani Adhikari, Ghaziabad - defendant No. 5. In the same paragraph No. 4, the plaintiff gave details of six bills of the same amount of Rs. 2,01,600/- towards each of six bills No. PP/4/94, PP/5/94, PP/6/04 - all dated 28.3.1994, PP/10/94, PP/11/94, and PP/12/94 - all dated 29.3.1994 for the orders given on 26.3.1994 in respect of first three bills and for the orders given on 28.3.1994 in respect of remaining three bills. The plaintiff also claimed Rs. 3,25,322.95 on each bill towards interest @ 21.84% monthly compoundable for the supply made to Rajkiya Ayurvedic College Nirmanshala, Pilibhit - defendant No. 6. The plaintiff-firm thus claimed a total amount of Rs. 74,94,919.78 calculated upto 9.11.1998 including interest.

3. The total amount of bills for the medicines supplied is Rs. 28,21,560/-. The interest of Rs. 46,73,359.78p was claimed at the rate given in "The Interest On Delayed Payment to Small Scale & Ancillary Industrial Undertaking Act 1993" after giving a grace period of two months, from the date of the bill till the date of filing of the suit i.e. 9.11.1998.

4. It is stated in para 7 of the plaint that the goods supplied by the plaintiff were duly received at the destination in good condition and were consumed by the defendants without any complaint whatsoever. The defendants refused to make payment and referred to some radiogram/fax message dated 26.3.1994 by which as per defendants" information the payments were stopped by the order of the State Government in view of investigation initiated by the Central Bureau of Investigation. Some directions were also issued on 13.11.1995 superintending the earlier radiogram in which it has been directed by the Government to make payments to the firms who had been supplying goods regularly but this fact was deliberately concealed by the defendants from the plaintiff. A legal notice dated 19.7.1998 u/s 80 CPC was sent by the plaintiff demanding the defendant to pay the unpaid outstanding bills along with interest detailed in the preceding paragraph of the plaint. The said notice was received by the defendant on 22.07.1998. In para 14 (a) and 14 (b) of the plaint, the plaintiff had quoted the provisions of "Act of 1993" for providing rate of interest computed at one and half time the Prime Lending Rate of State Bank of India, which is compoundable monthly. In para 15 of the plaint, the plaintiff stated that the cause of action accrued to the plaintiff's firm within the jurisdiction of Lucknow at the Office of the Director, U.P. Ayurvedic Ecam Unani Services, 9th Floor Indira Bhawan, Ashok Marg, Lucknow - defendant No. 3 on 10.8.1993 26.3.1994 and 28.3.1994 when the orders for medicines had been placed by the defendant and were accepted and executed by the plaintiff and also the radiogram dated 26.3.1994 issued by the Government for not making payment and also when plaintiff came to know that the payments were made to some other companies who had obtained orders from the court, and also came to know that the Ban imposed by the Government was rescinded vide Government Order dated 13.11.1995, and lastly when despite of notice u/s 80 C.P.C. dated 19.7.1998 received by the defendant on 22.7.1998, the defendant failed to comply with the terms of the said notice.

5. An application under Order 1 Rule 10 and under Order 6 Rule 17 read with Section 151 CPC was filed to correct the description of defendants and for representing the State of Uttar Pradesh through Principal Secretary, Finance, Civil Secretariat, Uttar Pradesh, Lucknow and also to describe defendant Nos. 4, 5 and 6. After para 14, paragraph Nos. 14 (a) and 14 (b) relating to claim of interest were also sought to be added. The amendment application was allowed by the trial court.

6. The written statements were filed by Kshetriya Ayurvedic & Unani Adhikari, Allahabad - defendant No. 4; Kshetriya Ayurvedic & Unani Adhikari, Ghaziabad - defendant No. 5 and Rajkiya Ayurvedic College Nirmanshala, Pilibhit - defendant No.

6. The defendants admitted the existence of the firm. In para 2 of the written statement of Kshetriya Ayurvedic & Unani Adhikari, Allahabad - defendant No. 4, it was denied that any order for supply of medicines in the alleged year was placed and in para 4 it was stated that all supplies were fictitious and forged, with the collusion and connivance with the then Director of Ayurvedic and Unani Services, Dr.

Shiv Raj Singh, and as a matter of fact, no supply was ever made to the answering defendant on the alleged dates and no amount was due from answering defendant. The plaintiff was put to strict proof of the allegations made in the plaint. In para 6, 17 and 18 it was denied that no material or medicine was supplied to answering defendant and only the paper transactions were made between the plaintiff and the then Director Dr. Shiv Raj Singh. Defendant Nos. 5 and 6 also have filed separate and similar written statements denying that any orders were placed and any medicines were supplied by the plaintiff, and that the supplies were fictitious and forged and has been done with the collusion and connivance by then Director Dr. Shiv Raj Singh.

7. The plaintiff filed replication and referred to the documents filed with the list of documents and Form 3-D and reiterated that supplies were made in accordance with the bills and interest in accordance with 1993 Act.

8. The trial court framed the following issues:

1. Whether the plaintiff is entitled to receive Rs. 28,21,560 from the defendants as stated in the plaint?

2. Whether the plaintiff is entitled to receive interest @21.84 % detailed in para 12 and 14 of the plaint, compoundable on monthly basis?

3. Whether the plaintiff is entitled to receive interest from defendant No. 4 @ 25.5 % and from defendant Nos. 5 and 6 @25.12 % during the pendency of the suit and in future as given in para 14 (a) and (b) of the plaint and in accordance with amended laws?

4. Whether the plaintiff is entitled to get any relief and damages?

5. Whether the suit is barred by Section 69 of the Indian Partnership Act and its effect?

6. Whether the plaintiff was given orders for supply in accordance with prescribed procedure as stated in para 18 of the written statements and its effect?

7. Whether the plaintiff is entitled to receive any amount and interest from the defendants?

8. Whether the suit of the plaintiff is barred by limitation as stated in para 21 of the written statements?

9. Whether the suit is barred by Section 80 of CPC?

9. The parties led documentary evidence which included the orders received from each of the defendant Nos. 4, 5 & 6; the bills sent by the plaintiff and Sales Tax Forms. The plaintiff examined Dr. Virendra Pratap, the partner of the plaintiff's firm to prove the documents. The defendants examined Dr. Kamlesh Verma, DW-1; Dr. Umesh Chandra Tripathi, DW-2; Jai Ram Yadav, DW-3; and Dr. R.S. Yadav, DW-4 and

filed Government Order dated 8.1.1992, letter of CBI dated 14.12.2000, radiogram dated 26.3.1994 issued by the Chief Secretary of the State Government to all the District Magistrates, the letter of the Treasury Officer, Haridwar to the Principal, Rishikul on 4.4.1994 and other documents including Government Order dated 16.3.2005, authority letter dated 24.2.1994, seizer memo C 142/2, C-143/46, carbon copies of the letters C-108, C-109 Ga (145/1) and Ga 145/6, FIR and charge sheet filed by the CBI against Dr. Shiv Raj Singh and the documents of which reference may be made in discussing the evidence led by the parties.

10. The trial court held on issue No. 1 that the supply orders filed in original were proved by the plaintiff by production of Form 3-D of the Sales Tax Act. These documents (Form-3D) were signed by Dr. Kamlesh Verma (DW-1) and Dr. Umesh Chandra Tripathi (DW-2) - Regional Ayurvedic Officers. They accepted paper Nos. C-37/25 and C-37/26 and C-37/42. The paper No. C-37/24 is the proof of sample taken for verifying the quality of medicines and paper No. C-37/26 and C-37/41 is the report of Laboratory in which medicines supplied were found to be conforming to the standard.

11. The trial court found from the statement of Dr. R.S. Yadav, DW-4 that he had admitted the report of the Government Analyst from which the supply of medicines was to be established.

12. The submission of the counsel for defendants that the supplies have not been proved by producing any bilty (goods transport receipt) was rejected by the trial court. The trial court was satisfied that the production of Form-3D of the Sales Tax Act would confirm supply of medicines. The trial court did not accept the submission that there was collusion between Dr. Shiv Raj Singh and the firm. It recorded a finding that the collusion was not proved by leading any evidence. The trial court did not accept the submission that paper No. C-47 to C-53 purportedly issued by the Regional Officer do not record any date of receipt and do not bear the stamps, and in some of the documents there was no confirmation of receipts of medicines. It also did not accept the submission that supplies were claimed to have been made after the radiogram of the Chief Secretary dated 26.3.1994 by which supplies were stopped with immediate effect on the ground that the Government had stopped the payment, and not supplies. It also did not accept the submission of the counsel for the defendants that no demand was made for the price of medicines supplied by the plaintiff from 26.3.1994 to 19.7.1998 and accepted the submission of the plaintiff that since there was ban on payment after 26.3.1994, effective upto 30.11.1995, the demand was not made and was finally made by giving notice u/s 80 CPC.

13. On issue No. 5, the trial court held that the partnership firm M/s. Pratap Pharmaceuticals is a registered partnership firm engaged in the business of manufacture and supply of Ayurvedic drugs with Dr. Virendra and Smt. Geeta as its partners. The firm is a small scale industry registered with the Directorate of Industries for which certificates C-98/3 and C-98/4 have been filed, and thus the suit

not barred by Section 69 of the Partnership Act.

14. On issue No. 6 relating to receipt of job orders in accordance with the prescribed procedure was held to be proved by the defendants. The defendants submitted that there was no agreement for supplying the medicines under Article 299 of the Constitution of India. The defendant Nos. 4, 5 & 6 were not authorized to place the order for an amount over and above Rs. One lac. They had exceeded their authorization. The department had imposed a ban on 26.3.1994 for purchase of medicines. It was not within authority of defendant No. 3 to relax the condition of ban. In the absence of contract, it was alleged by the defendants that the contract was void. The trial court distinguished the judgments reported in [Mulamchand Vs. State of Madhya Pradesh](#), and [State of West Bengal Vs. B.K. Mondal and Sons](#), and held that Section 70 of the Indian Contract is not applicable. It observed that at many times the Government Officers entered into contracts in public interest and some time the contracts are oral but that so long as the contract are in the interest of the State and are in public interest, the contract cannot be held to be void. The trial court further held that that even if there was no contract complying with the terms of Article 299 of the Constitution, if the medicines have been supplied in accordance with past practice without inviting any tenter, in pursuance of work order, and that the goods were received and stored in the office of the Regional Offices, there will be an implied contract between the parties.

15. The trial court did not agree with the submissions made on behalf of the defendants that there should be execution of formal documents for contract where the State Government is one of the parties and that the Government Order dated 26.3.1994 was only applicable to payments and not for supplying the medicines which were made in the course of medicines and not by way of charity. The trial court has also invoked the principles of promissory estoppel and relied upon [Food Corporation of India and Others Vs. Babulal Agrawal](#), and Moti Lal Padampatra Sugar Mills Ltd. v. State of U.P. and Delhi Cloth & General Mills Ltd., v. Union of India in holding that the contract will be enforceable even if there was no formal contract entered between the private parties and the State Government. The issue was decided in favour of the plaintiff.

16. On issue Nos. 8 and 9 relating to limitation, the trial court rejected the objections taken by the defendant that the suit on the allegation in the plaint is barred by law of limitation. A suit for demand of payment for the supply of goods can be filed within a period of three years from the date when the goods were supplied. The plaintiff did not give the dates, on which the supplies were received, nor any certificate in proof of the supplies were produced. It was held that certificates given by the plaintiff for receiving the supplies have been filed in evidence and DW-2 and DW-3 have accepted that correspondence was made by the plaintiff and also admitted their liability of payment. Since there was ban for disbursement of payment vide radiogram dated 26.3.1994 issued by the Principal Secretary, no steps

were taken. The ban was lifted on 13.11.1995, after which the defendant raised the question of non-availability of funds and thereafter the suit was filed on 9.11.1998, after giving notice u/s 80 CPC. The trial court thereafter relied upon para 11 and 12 of [State of Madhya Pradesh Vs. Sardarmal](#), in which it was held that even if the claim is barred by time, the plea of limitation should not be taken by the State Government which is responsible to discharge its duties to make the bonafide payment. Issue No. 9 relating to issuance of notice u/s 80 was also decided in favour of the plaintiff. The court did not accept the submission that on the change of description of parties, fresh notices were required to be given and held that the plea was wholly technical in nature. It was thereafter held that notice u/s 80 CPC was duly served upon the defendant.

17. On the question of payment of interest, the trial court held that defendant did not contest the issue as it was alleged by it, that there was no contract between the parties and the supplies were not proved nor the dates of supplies were given. The court held that the plaintiff is a small scale industry and that the payment of interest for the delayed payment to such industry under the 1993 Act are applicable. The 1993 Act provides for fixing liability of purchaser, and also provides for compound interest five percent more than the lending rate, notified by the Reserve Bank of India. The claim of rate of interest was found to be made in terms of 1993 Act and thus the suit was decreed for both the amount claimed towards supply of medicines, as well as interest detailed above.

18. We have heard Sri Pramod Kumar, learned Standing Counsel for the appellants. S/Sri Brijesh Kumar Saxena and Pankaj Srivastava, Advocates, appeared for the respondents.

19. Sri Pramod Kumar, learned standing counsel submits that a large scale fraud was played by Dr. Shiv Raj Singh, the then Director, U.P. Ayurvedic Evam Unani Services, Lucknow in purchase of Ayurvedic medicines in the State, in the relevant period. Fictitious orders were placed; bills produced and payments were made without there being any supply or budget for making payments. The matter was enquired into by the CBI on a reference made by High Court, and that directions were issued by State Government not to make any payment. The prescribed procedure for supply of medicines were not followed and that in fact no supplies were ever made by the plaintiff's firm. He submits that there was no contract between the parties in terms of Article 229 of the Constitution. The medicines were not to be supplied without inviting tender. The defendant Nos. 4, 5 and 6 were not authorized to purchase medicines. The Director was also not authorized to approve purchases beyond the amount of Rs. one lac. The actual delivery of medicines was not proved. The plaintiff did not produce goods transport receipts and the details of supply which he claims to have actually made to the Regional Offices Kshetriya Ayurvedic Evam Unani Karyalaya, Allahabad; Kshetriya Ayurvedic Evam Unani Adhikari, Ghaziabad and Rajkiya Ayurvedic College, Nirmanshala, Pilibhit.

20. It is submitted that the State of U.P. was not impleaded as defendant of the suit as it was filed, and thus the suit is not maintainable. The State of U.P. was impleaded only on 24.1.2003 by an impleadment application, which could not be allowed by the trial court after such a long time. He would further submit that even if the allegations in the plaint are taken to be correct, the bills were raised for the alleged supply between 29.9.1993 to 29.3.1994 and that each of the consignment has to be treated separate for the purpose of counting the period of limitation of three years under Article 14 in Schedule II of the Limitation Act, 1963. The ban on payment could not have been relaxed for the purpose of calculation of limitation. The suit was filed on 9.11.1998 after giving notice dated 19.7.1998, which is alleged to have been served on the defendant on 22.7.1998. There was no acknowledgement by defendants to have renewed the limitation beyond the period of three years when, according to the plaintiff, the payment had fallen due. Learned standing would further submit that there was no such admission or promissory estoppel applicable by any conduct of the defendants, as alleged by the plaintiff.

21. It is submitted by the learned standing counsel appearing for the State defendants-appellants that the trial court misread the statements of Dr, Kamesh Verma - DW-1, Officiating Regional Ayurvedic Evam Unani Officer, Ghaziabad; Dr. Umesh Chandra Tripathi - DW-2, Officiating Regional Ayurvedic Evam Unani Officer, Allahabad and Sri Jai Ram Yadav, Principal & Superintendent, Lalithar Government Ayurvedic College, Pilibhit in finding that the defendants have admitted the receipts of supply of medicines. DW-1 Dr. Kamlesh Verma stated that he is Officiating as Regional Ayurvedic Evam Unani Officer, Ghaziabad since 30.8.1995. Prior to his posting at Ghaziabad he was posted at Dehradun. The facts alleged do not relate to his period. He has examined the documents and found that the plaintiff had entered into some correspondence. From the records, he came to know that payment was to be made by his office. He had written letter to the Director but no further steps were taken. He had also come to know that the firm is under the investigation conducted by CBI. In the cross-examination, the witness stated that at the time when he had filed the written statement he had not perused the records as they were with CBI for investigation. The medicines were not supplied during the period of his posting.

22. A similar statement was given by Dr. Umesh Chandra Tripathi - DW-2. He also stated that he had joined at Allahabad in June 1999 after his posting in District Pratapgarh. The facts alleged do not relate to his period. He has examined the documents and found that some correspondence was made for payment, and on coming to know from the record, he had written a letter to the Director for payment but no steps were taken. The firm was under investigation conducted by CBI. In the cross examination he stated that he had not perused the records when the written statement was filed by him, as the records were with CBI and that supply of medicines were not made during the period of his posting.

23. Sri Jai Ram Yadav - DW-3 stated that he had joined as Principal & Superintendent of Government Ayurvedic College, Pilibhit on 26.7.1998, after his posting in Handia, District Allahabad. The facts alleged did not relate to period of his posting. He had examined the documents and found that some correspondence was made for payment and on coming to know from the record, he had written a letter to the Director for payment but no steps were taken. The firm was under CBI investigation. In the cross examination he also stated that he had not perused the records when the written statement was filed by him as the records were with CBI and that supply of medicines were not made during his period.

24. Dr. R.S. Yadav - DW-4 filed an affidavit, to be treated as his evidence. He stated that he was Director of Ayurvedic Evam Unani Services, Uttar Pradesh and is in service in the Department for 35 years. The then Director Sri Shiv Raj Singh had issued orders for supply of medicines in the year 1993-94 beyond the budget of the Department. As soon as the Finance Department of the Government came to know of the fact, a radiogram was issued on 26.3.1994 to stop the payment from the Department. Even then late Dr. Shiv Raj Singh continued to get supplies of medicines in March 1994. He was posted as Principal of Rishikul College, Haridwar. At that time the payment of salary to the employees of the College was also stopped on 26.3.1994, and it was only after a communication was issued on 26.4.1994, that the employees were paid their salary and allowances. Dr Shiv Raj Singh did not adhere with the financial conditions and other conditions for purchase of medicines and had allotted the budget to his subordinate officers for issuing orders for supply in large quantities. Under the financial rules, it was necessary to invite tenders for purchase of over and above Rs. 5,000/- The Head of the Department also did not have authority to give orders for purchase of medicines beyond Rs. One lack without taking approval of the State Government. Dr. Shiv Raj Singh issue orders for lacs of rupees. He had also not followed the standards prescribed for hospital. He was found to be *prima facie* guilty of violating the financial rules and in colluding with the plaintiff. The orders were not placed in accordance with established procedure in the Department. The financial and departmental rules were not followed and no demands were raised by the Regional Officers before placing various orders. The CBI had found many firms including the plaintiff's firm, *prima facie* guilty in Ayurvedic Scam and had submitted a report to black-list the firms. The report has been filed as paper No. Ga/94/3 to 94/24. The plaintiff did not make any claim for payment prior to 24.1.2003. He never made any complaint nor gave any request letter. A notice u/s 80 CPC had been given for the first time on 25.1.2003 after period of 10 years and much beyond the period of limitation. There was no agreement on record for payment of interest and that the entire transaction was fraudulent. The then Director had accepted the medicines without raising demand. These medicines were not required and were useless and are still lying in the Regional Offices for which request has been made to the State Government to give necessary directions, and enquiry is pending against the officers.

25. In para 11 of the affidavit Dr.R.S. Yadav - DW-4 has stated that the medicines were supplied in such large quantities that there was no space in the Regional Offices for storing them and they had to be stored in rented premises for which the State Government is still bearing the cost. The Regional Officers had also colluded in the fraud and had accepted medicines for which there was no use and there was no space for storage. Some of the officers had issued Form 3-D of the U.P. Sales Tax, for which steps have been taken against them for investigation and departmental enquiry. The copy of letter is paper No. Ga 108/1. It was also stated by him that the plaintiff has not filed original partnership deed raising a doubt whether the name of his wife has been added in the deed subsequently. The defendants never admitted that the plaintiff had claimed any payment within three years of March 1994. The suit filed after a period of four years is barred by limitation.

26. Dr. Virendra Pratap - PW-1, the partner of the plaintiff's firm proved the signature on the verification clause and the registration certificate of the firm as a Small Scale Industry by the District Industrial Centre. He deposed that the firm is supplying Ayurvedic Medicines to the Regional Ayurvedic Ecam Unani Officer at Ghazaibad, Allahabad and Pilibhit and Government Ayurvedic Laboratory at Haridwar since 1990. The firm supplies medicines by transport on the orders given by the Director. He proved the orders, bills and Form 3-D of the Sales Tax and justified filing of photostat copy, as the documents were in possession of S.P., CBI and proved the letter by which he had asked copies of the letter. He also stated that he had supplied medicines with standard quality and had delivered them at the specified places. The copy of the notice sent by his Advocate Pankaj Sarivastava, postal receipt and acknowledgement were also proved by him. He stated that if the bills are not paid within 30 days, he would be entitled for 18 % interest. The bills were received and that inspite of expiry of two months and notice u/s 80 CPC, the payment was not given. He had paid the court fee by taking loan and was entitled to get interest @ 21.84 compoundable monthly.

27. In the cross examination, Dr. Virendra Pratap stated that he had supplied medicines at four places. He used to get orders from the Directorate, and was not in a position to state whether any other firms had also got such orders. His bills were held up because of negligence in the Department. He denied that supplies were made on forged orders, and submitted that medicines supplied from 1990 to 1993 were according to the demand.

28. In his cross examination dated 27.10.2004, Dr. Virendra Pratap stated that he had no knowledge that any registration has to be obtained before supplying the medicines. The orders were placed by the defendants. He did not visit the Directorate. He used to meet Drug Inspector and Senior Drug Inspector, now designated as Assistant Drug Controller. If necessary, he used to meet the Director, who was the Licencing Authority, after taking appointment. He could not give reply as to how he procured the orders and who had given him the orders for supplying

the medicines. He does not know the process of supply adopted in giving the orders, and was not aware as to how every demand was sent by the Regional Office for giving him orders. Dr. Virendra Pratap also could not give the dates on which he had supplied the medicines, and stated that he had supplied the medicines through transport but could not remember whether he had filed the transport receipts. He was asked to examine the record and stated he has not filed the goods receipts. In his cross examination dated 27.10.2004, Dr. Virendra Pratap stated that he did not remember on which he had made the supplies and admitted that there is no agreement for supply and there was also no agreement for the interest before sending the bills. He further admitted that he had not sent any letter to the defendants prior to 13.11.1995, and did not remember whether he had sent any letter or notice or had filed any such correspondence in this regard. The supply order dated 10.8.1993 was given, with certain conditions for which there was no agreement. He stated that he has received some letter regarding imposition of certain conditions but did not remember as to when the letter was given or whether it was filed. He also did not remember the amount for which the medicines were supplied and stated that total supply was made to the tune of Rs. 28,21,560/- He also did not remember whether there was any tender given for supply of medicines and stated he had not submitted any quotation. He stated that he had no knowledge that for supply of medicines upto Rs. 5,000/-, a quotation was to be given and for supply over and above Rs. 5,000/- tender has to be invited by the department.

29. On 10.1.2005, Dr. Virendra Pratap, continuing with his cross examination stated that the Director Ayurvedic had been given authority by the State Government to supply medicines at four centres. He had no knowledge that any order was issued by the Director to stop payment. The payment for bill dated 15.2.1991 was received by him and was wrongly filed by him in the court. He had filed original Form 3-D as document C-37/17 and C-37/18 and had obtained exemption from the Trade Tax after filing copy in the Trade Tax Department.

30. The witness PW-1 had admitted that he had not filed the original partnership deed and denied that his firm did not have the authority to manufacture the medicines, which were supplied by him. He did not find it necessary to file the production register. The witness admitted that in the year 1993-94, Ayurvedic Scam was investigated by the CBI and that his firm was also directed to be black listed. He pleaded ignorance to the fact that the Director did not have power to give orders for more than Rs. one lac or that the Director had given any such order, which was beyond his authority and was not binding on the Government.

31. The defendants filed documents along with an affidavit which were taken on record. These documents included the authority letter dated 8.1.1992 issued by the Joint Director, Government of U.P. authorizing the Head of the Office to give orders upto 20,000/- at a time and Head of the Department to give order at a time upto Rs.

One lac. In case for orders beyond Rs. 20,000/- the Head of the Office was required to obtain permission from the Head of the Department and for the order beyond Rs. One lac, the Head of the Department was required to obtain permission from the Administrative Department of the State Government.

32. In the year 1993-94, the Ayurvedic scam surfaced in the State of U.P. The firms supplying the medicines on the orders placed by Dr. Shiv Raj Singh, the then Director Ayurved & Unani Services, U.P., filed writ petitions in the High Court for a direction to the State Government to pay the amount for which they had supplied the medicines worth Rs. 33 lacs. The High Court dismissed the writ petition and directed the CBI to investigate the matter. A case No. 434/95 dated 3.11.1995 under Sections 409, 418, 420, 467, 471, 120-B IPC and 7/13 of the Prevention of Corruption Act, 1988 was registered at PS Hazaratganj, Lucknow. The Superintendent of Police, CBI Lucknow, submitted a report to the Chief Secretary, Government of U.P. on 14.12.2000, disclosing the result of the investigation as follows:

SELF CONTAINED NOTE

The CBI had taken up investigation of the "Ayurved Scam" cases in compliance of the orders of the Hon'ble Allahabad High Court dated 10.07.96. A case No. 434/95 dated 3.11.95 u/s 409, 418, 420, 467, 471, 120-B IPC and 7/13 PC Act, 1988 was registered at PS Hazaratganj on the basis of a complaint by Sri Yasvardhan Sinha, Deputy Secretary, Department of Medical Education, Government of UP and taken over by the CBI for the investigation and registered as RC 32 (A)/96-LKO.

2. The allegation in this case was the Government of UP had been defrauded to the tune of Rs. 33 crores by Dr. Shiv Raj Singh, the then Director, Ayurved and Unani Services, UP and Ors.. The modus operandi adopted was that Dr. Shiv Raj Singh issued bogus budgetary grant letters under his signature to various RAUOs and on the basis of these allotment letters, in connivance with supplier firms, the RAUOs purchased supplies of medicines at exorbitant rates. The main beneficiary of this whole scam was Dr. Shiv Raj Singh and a few other private suppliers who were close to Dr. Shiv Raj Singh

3. As regards the role of the officials of the Directorate of Ayurved, Finance Department, Government of UP and RAUOs and Treasury Officials, the CBI has been submitting reports to the government of UP from time to time. On the basis of these reports 71 RUOs/officials have been prosecuted after obtaining sanction for prosecution. Sanction for prosecution in respect of 6 RAUOs is pending. Besides 119 officials of Ayurved Department and 141 officials of the Treasury have been recommended for RDA (Regular Department Action) inadequacies in the functioning of the O/O Accountant General notice during the investigation have been pointed to the CAG, Government of India through a self contained.

4. The investigation in respect of 554 supplier firms that had made supply to the various district of UP has now been completed. It has been revealed during

investigation that a virtual parallel directorate was being run from the residence of Durgesh Saxena at Mal Road Lucknow. As already mentioned, Durgesh Saxena was the key ally of Dr. Shiv Raj Singh in this whole scam. Properties for various supplier firms, which had mushroomed during this period to take advantage of the situation, used to gather at the residence of Durgesh Saxena and bogus allotment letters and supply orders were made available to them for a consideration and these were then used by the supplier firms, in connivance with RAUOs, to make supplies to the various districts. The RAUOs have already been charge sheeted for their roles in allowing and abetting supplies. As regards, the supplier firms, it has been found that they were given supply orders without their having participated in any tender/quotations as required as per rules. It has also been found that a large number of these firms were neither registered with Trade Tax Authorities nor did they have previous experience of dealing Ayurvedic medicines. It has also found that on a number occasions payments were made to them by the RAUOs prior to their having effected the supplies. The bills that were raised by the firms against the suppliers did not mention the full description of the medicines/material being supplied including number, date of manufacture etc. Wherever such evidence has been found to be sufficient to prosecute the firms they have been prosecuted and a report submitted in the competent court. However, in a vast majority of the case, the evidence collected has not been enough to launch prosecution against the firms, primarily due to the fact that the concerned RAUOs by acknowledging the receipt of the medicines/suppliers have effectively shielded the suppliers from any criminal liability. However, the investigation has revealed the unethical practice indulged in by the firm as mentioned above, in the light of the same it is recommended that the firm whose registered name and other relevant details are mentioned at Annexure-A be banned from doing any business with any government agency.

5. It has also been revealed that a number of firm at Annexure-B have transacted business worth more than Rs. 1 lac in the year 1993-94 and should have been liable for paying Sales Tax but have not done so. It will also be seen that in a number of cases, the firm have charged the Sales Tax from the Govt. Treasury but have not deposited the amount, in full or in part with the Sales Tax authorities. Such firms should also liable to be dealt with u/s 15 of the U.P. Trade Tax Act, 1948

6. Some firms at Annexure-C have supplied medicines which have been found during analysis by the Drug Inspector, Government of U.P. in the below standard. Action under Drug Act is warranted against these firms for which the Drug Inspector are competent.

7. This self contained Note is being sent for information and necessary action thereto.

(K.D. Jadhav)

Supdt. of Police CBI ACB

Lucknow

33. By a letter dated 13.12.2004 filed on record, the Director Ayurvedic Exam Unani Services, U.P. Lucknow informed the Secretary, Medical Education, Anubag-2, U.P. Government, Lucknow, that many cases have been filed by the firms in different courts claiming payment of medicines supplied by them. In many such cases Form 3-D have been issued. It was reiterated that the CBI has completed the investigation in which various officers of the Department were found to be involved in the scam and the firms have been directed to be black listed. The firms to whom the payments were made in connivance with the officers, will require necessary action from the police. For those firms, who have filed cases in various Civil Courts/High Court, necessary steps have to be taken. The Director requested the State Government for the guidance.

34. In the matter of M/s. Pratap Pharmaceuticals, the Director Ayurvedic Exam Unani Service, U.P. Lucknow wrote a letter dated 13.12.2004 to the Secretary, Medical Education, Anubag-2, U.P. Government, Lucknow that the then Principal Secretary, Sri Rizvi has placed a ban on payments to be made to the firm on 26.3.1994. Late Dr. Shiv Raj Singh inspite of the ban continued to give orders for supply of medicines in the year 1993-94 beyond the budget allotted to him. An enquiry was also pending with Vigilance Department for supplies made in the year 1991-92, 1992-93. Late Dr. Shiv Raj Singh had issued orders to M/s. Pratap Pharmaceuticals for the supplies to be made to the Government Ayurvedic College, Pilibhit; Regional Ayurvedic Exam Unani Officers, Ghaziabad and Allahabad in the year 1993-94 for Rs. 28,21,560/-, which was more than his authority, and was against financial rules. The Director has given the details of the order in which, except the orders Nos. 904 and 906 dated 10.8.1993, the remaining 12 orders were issued on or after 26.3.1994 when the Principal Secretary, Finance Department had issued a ban on making payments. The Director further reiterated that the concerned records and receipt/dispatch register of the year 1993-94 are not available in the Directorate. Sri P.K. Jha, I.A.S has lodged an FIR in Hazratganj Police Station for the loss of these registers. The Government orders for establishing the stores at Pilibhit, Allahabad and Ghaziabad were also not available. The Director, observed in this letter that all the manufactured medicines relating to the orders, were purchased and sent from Lucknow to Pilibhit upto 29.3.1994. It was not possible to manufacture and supply such large quantities of medicines within such short span of time. He has also reiterated that the Additional Government Advocate is not taking sufficient interest and is not doing pairavi in the suit filed by the M/s. Pratap Pharmaceuticals pending in the Court of Civil Judge, Lucknow.

35. In this Appeal we are required to consider the following questions:

1. Whether there was a concluded contract between the State Government and the plaintiff respondent firm under Article 299(1) of the Constitution of India for supply of medicines?

2. Whether the Director, Ayurvedic Evam Unani Services exceeded his authority in giving orders on an amount of Rs. 28,21,560/-, after the ban was imposed by the Principal Secretary, Finance on 26.3.1994?
3. Whether the supply of medicines in terms of the orders issued by the Director, Ayurvedic Evam Unani Services, Government of U.P. would fall u/s 70 of Indian Contract Act?
4. Whether the suit filed after giving notice u/s 80 C.P.C. Dated 9.11.1998 for payments for the supplies made upto 29.3.1994 was barred by the limitation prescribed under Article 14, Part-II in the suits relating to contract in the Schedule Appended to the Limitation Act?
5. Whether the plaintiff is entitled to get the reliefs claimed in the suit for the alleged supply of medicines?
36. A perusal of documentary evidence shows that order Nos. 904 and 906 dated 10.8.1993 of Rs. 2,01,180/- each were signed by Dr. Shiv Raj Singh, Director, Ayurvedic Evam Unani Services, U.P., Lucknow. Both these orders relate to 300 sets of three medicines viz., (i) Coughenine Syp; (ii) Zicure Syp; (iii) Utrine Cure Syp to be supplied to Kshetriya Ayurvedic Evam Unani Karyalaya, Allahabad. The orders Nos. 4309, 4311 and 4313 were all given on same date i.e. on 28.03.1994 and order Nos. 4199, 4201 and 4203 were all given on same date i.e. 26.3.1994, for a sum of Rs. 2,01,600/- each for supply of the same medicines viz., (i) Coughenine Syp; (ii) Zicure Syp; (iii) Utrine Cure Syp of 300 sets at Kshetriya Ayurvedic Evam Unani Adhikari, Ghaziabadeach and were signed by Dr. Shiv Raj Singh, Director, Ayurvedic Evam Unani Services, U.P., Lucknow. Similarly, order Nos. 4205, 4207, 4209 were all dated 26.3.1994, and order Nos. 4315, 4317 and 4319 were all dated 28.3.1994 for Rs. 2,01,600/- each for supply of same medicines at Rajkiya Ayurvedic College, Nirmanshala, Pilibhit. All these orders were also signed by the same officer viz., Dr. Shiv Raj Singh, Director, Ayurvedic Evam Unani Services, Government of U.P. The bills of all the orders to supply medicines at Allahabad are dated 29.9.1993. The bills for supply of orders to Ghaziabad are dated 29.9.1993 (for order Nos. 4309 and 4311) and 28.3.1994 (for order Nos. 4313, 4199, 4201 and 4203). In respect of orders for Rajkiya Ayurvedic College Nirmanshala, Pilibhit, the first three bills are dated 28.3.1994 (for order Nos. 4205, 4207 and 4209) and for remaining three orders (order Nos. 4315, 4317 and 4319), the bills are dated 29.3.1994. The details of the bills are given in paragraph 4 of the plaint. The documents, would show that all the orders were signed by Dr. Shiv Raj Singh. All the bills are for the same medicines and for same number of sets, and that out of 14 bills, two bills are for Rs. 2,01,180/- each and remaining 12 bills are for Rs. 2,01,600/- each for same amount. There is no proof for receipt of the medicines at any of the three places at Alahabad, Ghaziabad and Pilibhit. The transport receipts were not filed in evidence.

37. Dr. Virendra Pratap, PW-1, the partner of the plaintiff firm, in his deposition dated 8.8.2002 and in his cross-examination dated 27.10.2004 stated that he does not know as to how he procured the orders. He stated that so far as he remembers, these orders must have been given to him by the Director. He did not remember the method of procurement and supply of medicines, and thereafter stated that he knows the procedure but does not know when the Regional Offices had sent the demand and when the Director had issued orders for supply. He stated that he does not know when he had supplied these medicines. He stated that the supplies were made through transport but does not remember whether the transport receipts have been filed. He was required to look into the documents, and stated that he has not filed the transport receipts.

38. In the notice dated 19.7.1998 given by the plaintiff's firm u/s 80 of the CPC through Sri Pankaj Srivastava, Advocate, the procedure and method of procuring the orders, and details of supply have not been given. In para 5 of the notice, it is stated that the firm has already paid the sales tax on the above bills, and the amount has been deposited from his client's own pocket. In para 7 it is stated that the goods supplied by the firm were duly received by the respective college/destinations. The date of receipts, however, is not given. These dates are also not given in the plaint. In para 10 it is stated that on all the occasions the payments were refused with reference to radiogram/fax message dated 26.3.1994. In para 11 it is stated that certain directions were issued by the Government through Government Order dated 13.11.1995 superseding the earlier radiogram, in which it has been directed by the Government to make payments to the firms who had been supplying goods regularly and it is alleged that this fact was deliberately concealed by the defendant-appellant. In para 14 of the notice, details are given regarding cause of action as follows:

That the cause of action accrued to my client on 10.08.93, 26.03.94 and 28.03.94 when the order of above mentioned medicine as mentioned in para 3 and 4 had been placed by you which was executed by my client later vide bills and dates mentioned in para 4 or this notice. Thirdly when the radiogram No. 771/PFS/VIP/94 dated 26.03.94 was issued by the government for not making payment. Fourthly when my client came to know that the payments were made to other companies who had obtained orders from the court and also came know to know that the Ban imposed by the government have been rescinded vide G.O. No. Sa-S-3-3543/Dus-95-50/6/94 dated 13th November 1995.

39. It is significant to note that after raising 14 bills from 29.9.1993 to 29.3.1994, there was no demand for payment of the bills. The notice u/s 80 CPC dated 19.7.2008 does not give details of any letters written for payment. The notice simply mentions about a Radiogram dated 26.3.1994 by which payments were stopped, and thereafter Government Order dated 13.11.1995 by which payments were directed to be made. The last batch of medicines are alleged to be supplied on

29.3.1994; the notice u/s 80 CPC was sent on 19.07.1998, the plaint of the suit was verified on 9.11.1998 and the suit was filed on 9.11.1998.

40. The suit was filed in deficiency of court fee of Rs. 5,62,434.80. The deficiency was made good in full on 3.3.2001, on which the Civil Judge (Senior Division), directed the plaint to be registered on the same day on 3.3.2001, numbering the suit as Original Suit No. 111 of 2001.

41. The limitation for filing the suit for the price of goods sold and delivered, where no fixed period of credit is agreed upon, is provided in Item No. 14, of Part-II of the Schedule, under Sections 2(j) and 3 of Limitation Act, 1963, as three years from the date of delivery of goods. Even if we take the last of the bills dated 29.3.1994 raised by the plaintiff's firm by which the medicines were supplied for all the 14 orders, the limitation for filing of the suit for price of the goods, was upto 28.3.1997. There was no demand made by the plaintiff prior to the notice dated 19.7.1998 u/s Section 80 CPC. The suit was filed with deficiency in the payment of court fees, which was made good only on 3.3.2001. The suit was thus clearly beyond the period of limitation prescribed for price of goods. The trial court fell into patent error in finding that the limitation would start running from the date when the State Government by Government Order dated 13.11.1995 directed that all pending bills may be paid. The period of limitation, in the case of price of goods delivered, starts running from the date of delivery of goods and not from the date when the defendants decide to make payment of such bills, which were earlier stopped.

42. We further find that the Radiogram dated 26.3.1994 by which the Principal Secretary, Finance Department had stopped the payment and the Government Order dated 13.11.1995 was not in respect of or relate to the supplies made by the plaintiff. These orders were issued by the State Government in general for exorbitant and excessive withdrawals made by some Regional/District Ayurvedic & Unani Officers on the basis of fraudulent budget allotment order and that the payments were directed to be made by the Government Order dated 13.11.1995 clarifying that Radiogram and Government Orders were issued with reference to the scam in the Ayurvedic Directorate. The Finance Department did not intend to stop the payments of such medicines, which were supplied regularly. In order to avoid unnecessary litigation, the payments were required to be made for all such supplies in which medicines were regularly supplied in the year 1993-94 and that if budget was required for making payment, the proposals were to be forwarded to the State Government. These orders may have included the payment of those medicines which were regularly supplied. It did not relate to nor were issued in respect of the bills raised by the plaintiff's firm for which no demands were made by the plaintiff's firm. The Government Order could not have arrested the limitation or could have given or extended the limitation for filing the suit. The suit was clearly beyond the period of limitation, and was liable to be dismissed.

43. As observed above, the suit was filed on 9.11.1998 with the court fee of Rs. 100/-. The court fee of Rs. 35,000/- was paid on 2.9.2000; Rs. 50,000/- on 9.2.2001 and remaining court fee amount was paid on 3.3.2001 when the suit was registered. No notices were issued to defendants, nor any specific orders were passed allowing or condoning the delay in filing the remaining court fees. The suit, therefore, will be treated to have been filed on 3.3.2001 much beyond the period of limitation prescribed under the Act.

44. The counsel for plaintiff-respondent submitted that where demands are made by the defendant and that if a thing or a state of things is shown to exist, an inference of its continuity within a reasonably proximate time both forwards and backwards may sometimes be drawn. He has relied upon a decision of the Supreme Court in Ambika Prasad Thakur v. Ram Iqbal Rai AIR 1966 SC 605 in submitting that the presumption of future continuance is noticed in illustration (d) to Section 114 of the Evidence Act, and that in appropriate cases, an inference of the continuity of thing or state of things backwards has to be drawn for the purpose of counting limitation. If there is an honest claim made by a citizen, even if the suit is barred by limitation, the plea of limitation will not defeat such claim. He has also relied upon a decision of Madhya Pradesh High Court in State of Madhya Pradesh Vs. Sardarmal, in which it was held that even assuming that the suit filed against the State was barred by time due to one or other reason, yet plea of limitation is not meant for the State, which is expected to meet all just and honest claims of a citizen, even if they are barred by time. The respondents in that case was claiming entitlement to certain, scale of pay for services on the basis of his possessing the requisite qualification of a trained teacher.

45. The counsel for respondent further submits that the object of notice u/s 80 CPC as held in Raghunath Das Vs. Union of India (UOI) and Another, is to give to the concerned Governments and public Officer opportunity to reconsider the legal position and to make amends to settle the claim, if so advised, without litigation. The public money and time should not be wasted on unnecessary litigation and the Government and the public officers should be given a reasonable opportunity to examine the claim made against them, lest they should be drawn into avoidable litigation. He further relied upon a decision of Patna High Court in Bindeshwari Prasad Vs. District Board of Saran, in submitting that general principle of the interpretation of statutes of limitation should not be interpreted in derogation of the right to sue. The exceptions to the statutes must be construed liberally Even a statement which, if literally construed, does not amount to an acknowledgement may be held to be sufficient for the purpose of Section 19 of the Limitation Act, if it implies an admission of liability. An acknowledgement of liability, therefore, must be made before the expiry of the period of limitation for the suit or application.

46. The counsel for respondent has further relied upon Gharabharan Vs. Sri Radha Kishan and Others, in which it was held that a promise to pay, no doubt, is condition

precedent to the applicability of Section 25 of the Contract Act; whereafter setting off the cross entries against each other, the parties arrive at an agreed figure, and further agree to be bound by the new contract, a novation of contract takes place. The old contract is superseded by the new one, and a suit lies on the fresh contract independently of the old one. He has relied upon Debi Prasad Vs. Bhagwati Prasad and Another, in submitting that where contract is made by the parties and has been stated in so many words that due to paucity of budget they are unable to make payment, these acknowledgement are not only before the filing but also after filing of the suit, when debts were acknowledged, the period of limitation thus gets extended.

47. In order to appreciate the submissions of the counsel for the respondent-plaintiff that the plaintiff had made just claims, and that the Government Order dated 13.11.1995 for releasing the payment of regular contract of supply of medicines, it would be necessary to consider the documents by which Dr. Shiv Raj Singh had placed the orders for supply of medicines and for which payments have been claimed. A total number of one hundred and eleven writ petitions were filed both at Allahabad and Lucknow Bench on Civil and Criminal side relating to supply of medicines to the Directorate of Ayurvedic and Unani Services in the year 1993-94. Dr. Shiv Raj Singh was the principal accused in the cases. The allegations in the FIRs narrated in the judgment dated 16.10.1996 in leading writ petition No. 2025 of 1996 connected with other writ petition, shows that an Ayurvedic Scam involving Rs. 47 crores was investigated by C.B.I. Dr. Shiv Raj Singh had chequered career. He was subjected to disciplinary action on several occasions prior to the scam. The Government received complaints alleging gross irregularities in the Directorate of Ayurvedic & Unani Services in the year 1994 leading to a vigilance enquiry against him. Two Enquiry Commission were set up. One was headed by Sri V.B. Raju, the then Director General, Medical Education, and the other was a committee of which Sri Venkataramani was Chairman and Sri S.A.T. Rizvi, Principal Secretary Finance and Smt. Sunita Kandpal, Principal Secretary, Medical & Health were the members. By order dated 28.2.1995 the financial powers of Dr. Shiv Raj Singh were taken away, and he was prohibited from exercising any financial control. The Lucknow Bench of this Court on 10.7.1995 passed an interim order in writ petition No. 549 of 1995 allowing Dr. Shiv Raj Singh to perform all financial powers except making purchases and appointments. Dr. Shiv Raj Singh was shifted to the newly created post known as Director Ayurvedic & Unani (Pathyakram Mulyankan), on 6.9.1995. This order was also stayed on an application moved in pending writ petition No. 4353 of 1992. An FIR No. 954 of 1995 was lodged at P.S. Hazratganj against Dr. Shiv Raj Singh on 3.11.1995 under Sections 409, 418, 420, 467, 468, 471 and 120-B IPC by the Deputy Secretary Medical & Health and Family Welfare Department of the State Government alleging misappropriation of Rs. 35 crores against him. The arrest of Dr. Shiv Raj Singh was stayed in writ petition No. 3319 of 1995. An FIR was also lodged against some of the officers including Dr.

Ramesh Chandra Misra, Dr. Giri and others posted as Regional Officers.

48. The purchase orders given by Dr. Shiv Raj Singh, subject matter in the suit giving rise to this appeal had originated during the period when the enquiries were pending against him. Dr. Shiv Raj Singh serving as Director of Ayurvedic & Unani Services was not authorized to issue purchases orders for an amount of more than Rs. One lac.

49. Three writ petitions were filed by the suppliers of medicines in the Lucknow Bench alleging that their lawful payment was not released. The writ petition No. 1381 (M/B) of 1996 filed by M/s. Jain Ayurvedic v. Principal Secretary (Finance) and Ors.; writ petition No. 2450 (M/B) 1996 and writ petition No. 2499 of 1996 both by M/s. New India Pharmaceuticals. The writ petition No. 25076 of 1994 by Vivek Kumar; writ petition No. 25269 of 1994 by K.K. Singh and writ petition No. 2421 of 1995 by Rahtosh Mittal were filed by suppliers of medicines to different offices and hospitals. The details of writ petitions are given in the judgment dated 16.10.1996. In all these writ petitions, a counter affidavit was filed by the State Government stating that the matter is under investigation by CBI and that unless the actual supply is proved, the making of payments is not possible. All these writ petitions, connected with the bunch were dismissed at that stage by a common judgment dated 16.10.1996.

50. The CBI completed the enquiry and filed charge sheet. It was found that large numbers of grant letters were issued for purchase of medicines at exorbitant rates, and also large numbers of bogus grant letters were issued by Dr. Shiv Raj Singh at the residence of Durgesh Kumar Saxena, who played a key role in preparation and distribution of bogus allotment orders/grant letter. Durgesh Kumar Saxena also distributed allotment orders/grant letters to different DDOs, who use to visit his office/residence for obtaining undue pecuniary advantage from Regional Ayurvedic Officers. He also charge sheeted. The supplies were made by the firms without participating in any tender process or submitting any quotations. Large number of firms were not registered with Trade Tax Department and had no previous experience in supplying Ayurvedic medicines. The bills did not contain the details of batch number, date of manufacture etc..

51. The Government Order dated 8.1.1992 (Paper No. C-94/1 to C-94/2) issued by the Joint Secretary, Industries Department of the State Government for increasing the limit of various Heads of Department and Head Offices for purchases provided for invitation of quotation for purchases over Rs. 5,000/- and tender for purchases over Rs. 50,000/-. This Government Order increased the powers of Office Head to make purchase from 10,000/- to Rs. 20,000/- at a time. The ceiling for the Head of the Department was maintained at Rs. One lac for direct purchase at a time. For the purchase of more than Rs. One lac, he was required to obtain permission from the Administrative Department of the State Government.

52. The aforesaid facts and circumstances brought on record of the suit clearly established that Dr. Shiv Raj Singh, had no authority to place orders of a value of more than Rs. One lacs at a time for supply of medicines, without obtaining permission from the State Government and without inviting tenders had placed all the orders. All the purchase orders were given by Dr. Shiv Raj Singh without following due process for purchase of medicines. The then Director vide his letter dated 13.12.1994 sent to the Secretary, Medical Education, Government of U.P. (paper No. C 109/1) has given details of the purchase of Ayurvedic Medicines in the year 1993-94 by Dr. Shiv Raj Singh in which year Ayurvedic Scam had taken place requesting for taking necessary action and guidance and for taking defence in the claim where the payments were made with the connivance of the officers of the Department, and for taking appropriate defence in the cases pending in the Civil Court/High Court. In this letter it was stated that various facts have not been stated in the written statement objecting the claims made by the firms including the plaintiff firm in which some of the Regional Officers had signed on Form 3-D of the Sales Tax.

53. The evidence led by the defendant-appellant established that the transactions for which payments were claimed by the plaintiff" firm were not bonafide transactions. Dr. Shiv Raj Singh, the then Director Ayurvedic & Unani Services had placed orders much beyond his authority, and the budget allocated without seeking sanction of the Government and following any process for inviting tender. The partner of the firm clearly admitted that orders were not placed after inviting tender, and that he was not aware of the process by which he had obtained orders for supply of medicines. The transaction therefore cannot be treated to be a bonafide transaction for the purpose of giving any benefit to the plaintiff-respondent firm including relaxation of the period of limitation.

54. The counsel for respondent-firm has relied upon Section 70 of the Contract to submit that the State Government is obliged to make payment for the deliveries which were not intended to be gratuitous. The issuance of Form 3-D, supply of medicines, and its storage had been admitted by the defendant-appellant, and thus they are bound to make compensation to the firm for the deliveries.

55. We do not find that the actual despatch and receipt of medicines was proved by the plaintiff-respondent firm. The dates of delivery of the medicines and the transport receipts were not produced. The signatures of some of the officers on Form 3-D for claiming benefit under the Sales Tax, and the reports of the Laboratories of the samples taken from the supplies, do not prove that the supplies were actually made by the firm and were received at the destination. Even otherwise, Section 70 of the Contract Act will not be applicable in the present case as the contract itself was invalid. The contract was beyond the authority of the Director, Ayurvedic & Unani Services, and was not in accordance with Article 299(1) of the Constitution of India. It was thus a void contract to which Section 70 of the Contract

Act is not applicable, and thus no decree for specific performance or even claim of breach of contract is maintainable. In [K.S. Satyanarayana Vs. V.R. Narayana Rao](#), the Supreme Court relying upon [Mulamchand Vs. State of Madhya Pradesh](#), held that where the contract was void, as it was entered into in contravention with the provisions of the Government of India Act, 1935, Section 70 of the Contract Act will not be attracted. In Mulamchand (Supra), it was held by the Supreme Court as follows:

In order words if the conditions imposed by Section 70 of the Indian Contract Act are satisfied then the provisions of that section can be invoked by the aggrieved party to the void contract. The first condition is that a person should lawfully do something for another person or deliver something for another person or deliver something to him; the second condition is that in doing the said thing or third condition is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered. The important point to notice is that in a case falling u/s 70 the person doing something for another or delivering something to another cannot sue for the specific performance of the contract, nor ask for damages for the breach of the contract, for the simple reason that there is no contract between him and the other person for whom he does something or to whom he delivers something. So where a claim for compensation is made by one person against another u/s 70 it is not on the basis of any subsisting contract between the parties but on a different kind of obligation. The juristic basis of the obligation in such a case is not founded upon any contract or tort but upon a third category of law, namely, quasi-contract or restitution.

56. In the present cases, Dr. Kamlesh Verma, DW-1; Dr. Umesh Chandra Tripathi, DW-2; and Jai Ram Yadav, DW-3; were not posted as Regional Officers at the time when the orders were placed and supplies were alleged to be received. They deposed only on the basis of the record and did not specifically state that the supplies were received. They only admitted some correspondence, but did not give details of such correspondence.

57. Dr. R.S. Yadav- DW-4, in his affidavit filed by way of evidence stated that at the relevant time he was posted as Principal of Rishikul College. Dr. Shiv Raj Singh had placed orders in large quantities beyond his authority and without availability of budget. He did not follow the prescribed procedure for placing the orders for supply of medicines. The plaintiff alleges to have supplied medicines after the ban was imposed by radiogram dated 26.3.1994, and thus the State is not liable to pay the amount. Dr. Shiv Raj Singh was required to obtain sanction for supply for an amount over and above Rs. One lac and that orders could not be placed without inviting tenders. In fact no demands were raised by the Regional Officer and there was no

necessity for these medicines. In para 11 of the affidavit, Dr. Yadav has stated that the medicines were sent in such large quantities, there was no place for storage and the Regional Offices had to take premises on rent for storage of the medicines. This statement was not made with reference to the supply made by the plaintiff's firm. It was a general statement with regard to orders placed in large quantities. Dr. R.S. Yadav did not make any statement with regard to receipt of supplies made by the plaintiff-respondent's firm in pursuance to the orders referred to in para 4 of the plaint, nor any question was asked to him in this regard in his cross examination on 9.2.1995. The finding recorded by the trial court that the medicines were supplied, and were received is therefore not based upon any evidence on record.

58. After careful assessment of the evidence, we find that there was no concluded contract between the State Government and the plaintiff-respondent's firm. The orders were placed by Dr. Shiv Raj Singh, a charged officer, against whom CBI had filed charge sheet in the Ayurvedic Scam without any demand from the Regional Officers and without following procedure prescribed for taking sanction from the State Government. He did not follow the prescribed process of inviting tenders before issuing orders. All the orders were signed by Dr. Shiv Raj Singh himself. In all these orders, only three medicines were required to be supplied in the same quantity and for the same amount to Allahabad, Ghaziabad and Pilibhit. Most of these supplies are alleged to be made after the ban was imposed. The alleged contract was invalid, and thus Section 70 of the Indian Contract Act is not attracted for compensating the plaintiff-respondent's firm.

59. We further find that the suit was barred by limitation. The prescribed period for filing the suit for the price of goods sold and delivered where no fixed period of credit is agreed upon, as provided in item No. 14 of Part-II of the Schedule under Sections 2(j) and 3 of the Limitation Act, 1963 is three years from the date of delivery of goods. There was no demand made by the plaintiff's firm before giving the notice u/s 80 of Code of Civil Procedure, nor there was any acknowledgement of any amount due. The plaintiff-respondent's firm, therefore, is not entitled to claim any relief for the alleged supply of medicines.

60. The First Appeal is allowed. The judgment and decree dated 20.12.2006 in Original Suit No. 111 of 2007 filed by M/s. Pratap Pharmaceuticals - plaintiff-respondent's firm is dismissed with costs. The appellant shall be entitled to costs of the Appeal including the court fee paid in this appeal, to be recovered from the respondent-plaintiff's firm.