

JUSTICE IN ABSENTIA

THE ORDERS passed by the Supreme Court through Justices Thakkar and Ray in *P.K. Mohla v. Union of India*¹ ought to serve as precedent for future orders of this nature. In this matter three captains and one major of the armed forces had filed writ petitions² in 1978. About a decade later, the matter came up for disposal before the court. Notwithstanding the expressed inability of the petitioners' counsel to assist the court since he could not contact them despite his efforts, the court said:

Whether or not the problem still survives cannot be posited with any degree of certainty. It would, therefore, be but proper to protect the petitioners whilst disposing of these matters in case any issue raised in these petitions still survives notwithstanding the passage of such long time. We therefore dispose of these writ petitions with no order with liberty to the petitioners to approach the appropriate forum in case any grievance still survives.³

The order assumes importance in the wake of usual practice of applying a formula "dismissed as withdrawn" in such situations. The current practice of disposing of matters has hardened against re-opening matters in the interests of justice even when non-speaking orders have been passed. To this extent the rule in *Daryao v. State of Uttar Pradesh*⁴ has become almost a dead letter. Under the rule a petition "dismissed in limine without a speaking order...cannot be treated as creating a bar of *res judicata*."⁵ The courts have been treating a non-speaking order as raising a bar analogous to *res judicata*. Sometimes an order passed without any application of mind has been hardened into *res judicata* due to lack of vigilance on the part of the counsel or obduracy on the part of the judge.

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1 J.T. (Judgements Today) 1987(2) S.C. 729.

2. W.P. Nos. 2969, 3127, 29 of 1978.

3. *Supra* note 1 at 730.

4. A.I.R. 1961 S.C. 1457.

5. *Id.* at 1466.

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