BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE, AT PUNE

ORIGINAL APPLICATION NO. 102/2019

The Colva Civic and Consumer Forum ... **APPLICANT**

Versus

State of Goa & others ... **RESPONDENTS**

Compilation of Documents

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Place: Pune

Date: - 26/10/2021 **ADVOCATE FOR THE RESPONDENT NO-3**

the said Meeting got postponed to 30/10/2018. Accordingly all respondents were intimated for the next meeting date (i.e. 30/10/2018) in advance.

The proceedings of each case in the Meeting held on 30/10/2018 are as follows:-

- **Proceeding in Hotel Silver Sands**

The Complainant Mrs Judith Almeida remained present in person. The Respondent remained present along with his advocate. The Complainant reiterates her stand in the complaint filed before the Hon'ble Court. The Complainant submitted that the structure in issue is Ground +2 with a mezzanine floor along with swimming pool which is claimed to be illegal.

The Respondent submitted a compilation of documents relied upon to support the case. The Respondent relied on the Inspection Report prepared by Engineer Mr Mahendra S. Kakule; Sale Deeds of 1984,1985; Survey Plan of 24/2, 24/3, 24/11 and 24/12 of Colva Village, Conversion Sanad for Sy No. 24/3(part); Construction Licence of 1978; the structural plan obtained from the Town Planner, Town and Country Planning Department; Balance Sheet and P/L/Account of Bencomar Hotels of the year 1989-90; Notice for personal hearing dated 01/09/2016; Notice for personal hearing dated 5/10/2018; Letter from Village Panchayat of Sernabatim Colva.

The Respondent further clarifies that Sy. No. 24/2, 24/3 24/11 and 12 belongs to Hotel Silver Sands and that the total area of the property is 4825 sq mts. The Inquiry Committee in its Report has erred to conclude demolition of the structures M, N, O, P, Q, in Sy No. 23/2 of Colva Village.

The Authority differed from the findings of the Inquiry Committee on the grounds that the structures were wrongly identification. The Authority accepted the objection raised by the Respondent with regards to the wrong identification of the survey numbers. As such, the Authority amends the notice to the structures in Survey Nos. 24/2, 24/3, 24/11, 24/12 of Colva Village as mentioned by the Respondent. The Authority noted that there is a structure shown on the DSLR survey plan of the property bearing Survey Number 24/12, and 24/3 of Colva Village. The Authority noted that the Respondent has produced an illegible plan bearing No. DJ/1930/5406/80 dated 22/08/1980 issued by Town Planner, Town and Country Planning Department; however the plan does not mention any survey number, and does not show the swimming pool. The Respondent has failed to produce any subsequent approvals with regards to the extensions /alteration of the structures as shown in DSLR Plan.

The Respondent has produced conversion Sanad of only one property bearing survey no.24/3(part) but has failed to produce Conversion Sanad of 24/2, 24/11, 24/12 of Colva Village. The Respondent has produced Sale Deed executed in the year 1981, 1984 and 1985.

The Authority while considering the Sale Deed executed in the year 1981, noted that the Sale Deed mentions of House No 115 but the Respondent has failed to establish in which survey no this house is situated. Further, there was no plan attached to the Deed of Sale. With regards to the Sale Deed executed in the year 1984 and 1985, which pertains to survey no 24/12; has a residential house standing therein; but the Deed does not specify the area or dimensions of the House No. 429, and the plans for extensions if any (Before or after 1991)".

In view of the above observations, the Authority came to conclusion that the Respondent has undertaken large extensions without any valid permission in Survey Nos. 24/2, 24/3, 24/11 and 24/12. The old structures existing in Sy No. 24/3 and 24/12 as shown in the survey plan are no longer in its original condition. As per the mapping carried out by the DSLR in 2006; new constructions have come up in the Survey Nos. 24/2, 24/3, 24/11 and 24/12 of Colva Village. The Authority resolved that the Respondent has failed to establish/justify existence of the structures in Survey No. 24/2 and 24/11 of Colva Village and the existence of the renovated structures in Survey No. 24/3 and 24/12 of Colva Village, as prior to 1991 with the help of document/record. Hence the Authority resolved to pass demolition order against all the structures existing in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village, and direct HOTEL SILVER SANDS to stop all the commercial activity being carried out in Survey No. 24/2, 24/3, 24/11 and 24/12 of Colva Village with immediate effect".

Accordingly the Demolition order passed in 05/12/2018.

The Authority decided in its 187th GCZMA meeting held on 30/10/2018; to issue directions to M/s Silver Sands to demolish the structures erected in the property bearing Survey No. 53/2, Colva, Salcete-Goa.

The affected party approached Hon'ble High Court of Bombay at Goa to challenge the said demolition order bearing WP No. 171 of 2019. However, the Hon'ble High Court of Bombay passed order dated 05/04/2019 stating, *"Ad-interim relief, already operating to continue till the next date. However, it will be open to the GCZMA to take action for stoppage of commercial activities, if any, being conducted in the said premises".*

The Office of the GCZMA received an email dated 07-08 /04/2019 from the Complainant interalia seeking for immediate implementation of the Hon'ble High Court order bearing WP No. 171 of 2019 dated 05/04/2019. The Office of the GCZMA issued directions to Hotel Silver Sands bearing letter no GCZMA/SMWP/02/06/39 dated 08/04/2019 directing them to stop all commercial activities and to comply with the High Court direction in Order dated 05/04/2019.

That the GCZMA is in receipt of the reply dated 11/04/2019 to our directions dated 05/04/2019. The affected party claims that, "*.....the commercial activity mentioned in the order of the Hon'ble High Court refers to the activity of lodging and boarding in the Hotel*, presently *there are 66 no of people residing, there are also booking done and payments advanced to the Hotel till 01st May 2019. Therefore if any running hotel has to be stopped the same has to be done in phased manner and can never be done with immediate effect.....*".

Subsequently, the affected party filed another application dated 12/04/2019 giving their compliance and have further stated that, "*we have stopped commercial activities under protest until the W.P 171/2019 is decided by the Hon'ble "High Court of Bombay at Goa or our letter dated 11/04/2019 is considered*".

Now, the affected party on 16/04/2019 filed another application seeking relief by stating that, "*.....they have already taken booking for a period till 31st June as check out date, that they have taken booking from various National and International Travel agents and charters." The affected party further seeks time to stop commercial operations in a phase wise manner. On humanitarian grounds and no coercive action may be taken till 31st June. The affected party further submits that no fresh bookings will be accepted.*

Decision of 197th Meeting: The Authority noted that it has already passed the demolition order in the present matter after detailed hearing. It has ordered immediate stoppage of commercial activities and thus the present application cannot be accepted. Further the applicant is directed abide by the orders of GCZMA immediately.

During 210th Meeting, Complainant Mrs Judith Almeida was present for the hearing. Respondent was absent.

The Complainant stated that there is no reason to re hear the Respondent as the Authority had already heard him and given a decision

the Authority noted that the Respondent was not present for the hearing. The Authority decided to give him an opportunity for another hearing. The next date of personal hearing before the Authority is scheduled on 24/08/2019 (11.00am) onwards.

The said matter was placed on 211th GCZMA meeting held on 24/08/2019 wherein the Authority took note of the submissions made by the party. Accordingly the Authority decided to grant additional time to the Complainant. Matter is adjourned to give fresh opportunity to the Complainant.

The said matter was placed on 215th GCZMA Complainant Judith Almeida was present. Advocate appeared on behalf of Respondent and stated that he filed review on ground of procedural review and submitted synopsis. Respondent stated that as per the order passed by the Authority in said Meeting the members present for Meeting are not designated persons as per the Notification and also there is no powers to delegate powers to other official. advocate produced 2 reports of surveyor dated 02/03/2019, 3/8/2019 to show that the structure falls in the survey no. 24/2, 9, 11, 12 of Colva village are prior 1991.The issue of Resjudicata was raised on 24/08/2019.

Complainant placed written arguments before the Authority. Complainant stated that conversion sanad of survey no. 24/2, 11 and 12 has not produced by the Respondent. She further stated that the issue of quorum was dismissed by Hon'ble Supreme Court. complainant prayed to dismiss the review application and further stated that report of Alwyn is illegal, and tailor made and should not be considered.

Matter was taken up for deliberation before the Authority on the application of review filed by the Respondent on 28/01/2019. The said proceedings have been re-opened on the basis of the opinion given by the Ld. Adv. General of the State of Goa to hear the parties & thereafter to arrive at a conclusion as to whether 'Review' is permissible or not. The Respondent has based his entire review application on two factors i.e. the quorum as required under the Notification dt.26/10/2016 of the MoEF &CC had not in effect met with & that there were representatives of the Authority which is not permissible as a delegator cannot sub-delegate his powers & to this argument/submission the Respondent has relied upon three authorities of the Courts of record. On this count, the Authority was of the opinion that this issue was already agitated upon in the Hon'ble High Court as well as before the Apex Court to which the courts have not conceded to the plea of the Appellant & hence the reliefs sought for were rejected.

The second contention was on the aspect of procedural review which of course can be granted provided that the Authority has skipped off vital document or has lapsed from following due process to arrive at a decision. In the matter of Sayed Muzaffar Ali V/s. Municipal Corporation of Delhi reported on 1995 Supp(4) SCC 426 it has held that demolition of any illegal structure should be the last resort until & unless all attempts/means for regularization of unauthorized/illegal construction are explored & only than such a step can be taken. In the current case the scope for regularization is out of question as the Environment Protection Act as well as the CRZ Notification of 1991 or 2011 does not provide for protection to commercial establishments nor that it provides to give any scope for ex-post facto approvals. The silver lining of this judgement of Syed Muzaffar Ali V/s. MCD & the judgement in W.P. No.702/18 of our very own High Court is that by having a harmonious reading between the two all steps/means should be exhausted before demolishing any alleged illegal construction. For this purpose the Authority was required to follow all such procedural steps/needs to arrive at a decision.

In the backdrop of the decision taken by this Authority in it's 187th Meeting one major procedural lapse that has been conducted is on the aspect of ground truthing of the structures viz-a viz the documents produced by the Respondent. Non mention of the survey number on the approved plans of the Town & Country Planning Department & that too of the year 1980 could have very well been ascertained through the DLC/DSLR. As per the 2011 CRZ Notification reports of the DLC headed by the Collector are significant which has not been obtained by the Authority & it has blindly on premises and surmises concluded that since survey number isn't mentioned in the approved plans, the legality of the structure in question is doubtful without ascertaining if the plans produced by the Respondent are in conformity to the structures on loco & that too by doing ground truthing through the DLC who would have engaged the services of DSLR.

The Authority was thus of the opinion that this is a fit case of procedural lapse/review & it was of the view that the report of the DLC is essential to check whether the structures existing on loco are in conformity with the approved plan of the Town & Country Planning Department which bears No.DJ/1930/5406/80 dt.22/08/1980 by taking on board the local body into consideration as well & upon obtaining the report to hear the parties afresh by issuing notices thereof.

The Authority during 225th meeting held on 04/06/2020 after hearing the arguments decided to call upon the parties afresh to hear arguments on the aspect of procedural review and as to how and in what manner the review would lie or not before the

Authority to revisit it's decision taken in the 187th Meeting held on 30/10/2018. The said matter is fixed for hearing on 03/07/2020 at 10.30 a.m. onwards.

During 227th GCZMA meeting held on 17/09/2020 the matter was palced for personal hearing to the parties whereinthe Complainant submitted that the Authority has carried out an intense study before passing of the directions in its 187th Meeting held on 30/10/2018. These directions have been assailed by the Hon'ble NGT as well as by the Hon'ble Supreme Court of India and hence the principle of Res Judicata is applicable is what the Complainant stated. The question of review would not arise on the premise that ground thruthing wasn't being done in the past because the Authority itself had done this exercise way back in 2006. The plans than prepared could have been put to use by the Authority without going for a fresh exercise in the garb of review. She stated that the exercise carried out by the Authority is bereft of any provision of law & hence the same ought to stopped forthwith as there won't be end to litigation if such a stance is allowed by the Authority. She hence prayed that the directions given through the 187th Meeting held on 30/10/18 be maintained & the offending structure be demolished.

Responding to these arguments the Counsel appearing for the Respondent submitted that in the first place the Authority was required to issue a show cause notice upon him before passing any directions which was never done & hence on this count itself the Authority has lapsed in following the procedure. He stated that apart from the notice of personal hearing he hasn't received any other notice in the nature of show cause. As regards the issue of review whether it is tenable or not, the Respondent stated that the Authority in its 215th Meeting held on 22/10/19 has already allowed the application for review & hence the question of re-agitating on this aspect time & again would not arise. He submitted that all what was required to be ascertained is as to whether the various documents which has been relied upon by the Respondent which bears the stamp of approval of different statutory authorities & only because the survey number was not indicated on these approvals the Authority had come to the conclusion that the offending structures were illegal. Further to that the Respondent stated that the report of the ISLR Salcete who has done the ground truthing clearly spells out that the structure as shown in the approved plans which are prior to 1991 are in-sync with the present position on loco & that there is no deviation. He hence prayed that the decision taken in the 187th Meeting of the Authority be re-visited & the directions passed therein be rescinded. The Authority heard the matter and decided to keep matter for order.

During 238th GCZMA meeting The Complainant present. Ld Adv for the Respondent present. Both parties filed the written argument. Heard the matter.

The Authority kept the matter for orders.

In the 248th Meeting held on 11/02/2021 the draft copy the order is placed in the Meeting for consideration and for approval of the Authority.

PROCEEDINGS

Background: The present matter is interalia Suo Moto cognizance of Hon'ble High Court of Bombay atGoa, Panaji about the illegalities/constructions in CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of Suo Moto Writ Petition No.02/2006 had directed all Panchayats /Municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along with an affidavit.

Pursuant to the decision taken by the Authority in its 187th GCZMA meeting held on 30/10/2018; directions were issued by GCZMA to Hotel Silver Sands to demolish all structures vide order bearing No. GCZMA/SMWP/02/06/1657 dated 05/12/2018. the affected party approached Hon'ble High Court of Bombay at Goa to challenge the said demolition order bearing WP No. 171of 2019.

The Respondent has also filed a review Application on 28/01/2019 and subsequent reminder dated 29/07/2019 to review the order dated 05/12/2018 passed by GCZMA. The said matter was placed during 210th GCZMA meeting held on 07/08/2019 wherein the Respondent was absent. Authority decided to take up the matter in its next Meeting.

The said matter was placed on 211th GCZMA meeting held on 24/08/2019 wherein the Authority took note of the submissions made by the party. Accordingly the Authority decided to grant additional time to the Complainant. Matter is adjourned to give fresh opportunity to the Complainant.

The said matter was placed on 215th GCZMA meeting held on 22/10/2019. Matter was taken up for deliberation before the Authority on the application of review filed by the Respondent on 28/01/2019. The said proceedings have been re-opened on the basis of the opinion given by the Ld. Adv. General of the State of Goa to hear the parties & thereafter to arrive at a conclusion as to whether 'Review' is permissible or not. The Respondent has based his entire review application on two factors i.e. the quorum as required under the Notification dt.26/10/2016 of the MoEF &CC had not in effect met with & that there were representatives of the Authority which is not permissible as a delegator cannot sub-delegate his powers & to this argument/submission the Respondent has relied upon three authorities of the Courts of record. On this count the Authority was of the opinion that this issue was already agitated upon in the Hon'ble High Court as well as before the Apex Court to which the courts have not conceded to the plea of the Appellant & hence the reliefs sought for were rejected. The second contention was on the aspect of procedural review which of course can be granted provided that the Authority has skipped off vital document or has lapsed from following due process to arrive at a decision. In the matter of Sayed Muzaffar Ali V/s. Municipal

Corporation of Delhi reported on 1995 Supp(4) SCC 426 it has held that demolition of any illegal structure should be the last resort until & unless all attempts/means for regularization of unauthorized/illegal construction are explored & only then such a step can be taken. In the current case the scope for regularization is out of question as the Environment Protection Act as well as the CRZ Notification of 1991 or 2011 does not provide for protection to commercial establishments nor that it provides to give any scope for ex-post facto approvals. The silver lining of this judgement of Syed Muzaffar Ali V/s. MCD & the judgement in W.P. No.702/18 of our very own High Court is that by having a harmonious reading between the two all steps/means should be exhausted before demolishing any alleged illegal construction. For this purpose the Authority was required to follow all such procedural steps/needs to arrive at a decision.

In the backdrop of the decision taken by this Authority in it's 187th Meeting one major procedural lapse that has been conducted is on the aspect of ground truthing of the structures viz-a viz the documents produced by the Respondent. Non mention of the survey number on the approved plans of the Town & Country Planning Department & that too of the year 1980 could have very well been ascertained through the DLC/DSLR. As per the 2011 CRZ Notification reports of the DLC headed by the Collector are significant which has not been obtained by the Authority & it has blindly on premises and surmises concluded that since survey number isn't mentioned in the approved plans the legality of the structure in question is doubtful without ascertaining if the plans produced by the Respondent are in conformity to the structures on loco & that too by doing ground truthing through the DLC who would have engaged the services of DSLR.

The Authority was thus of the opinion that this is a fit case of procedural lapse/review & it was of the view that the report of the DLC is essential to check whether the structures existing on loco are in conformity with the approved plan of the Town & Country Planning Department which bears No.DJ/1930/5406/80 dt.22/08/1980 by taking on board the local body into consideration as well & upon obtaining the report to hear the parties afresh by issuing notices thereof.

The Authority during 225th meeting held on 04/06/2020 after hearing the arguments decided to call upon the parties afresh to hear arguments on the aspect of procedural review and as to how and in what manner the review would lie or not before the Authority to revisit it's decision taken in the 187th Meeting held on 30/10/2018. The said matter is fixed for hearing on 03/07/2020 at 10.30 a.m. onwards.

The Complainant submitted that the Authority has carried out an intense study before passing of the directions in its 187th Meeting held on 30/10/2018. These directions have been assailed by the Hon'ble NGT as well as by the Hon'ble supreme court of India and hence the principle of Res Judicata is applicable is what the Complainant stated. The question of review would not arise on the premise that ground thruthing wasn't being done in the past because the Authority itself had done this exercise way back in 2006. The plans then prepared could have been put to use by the Authority without going for a fresh exercise in the garb of review. She stated that the exercise carried out by the Authority is bereft of any provision of law & hence the same ought to stopped forthwith

as there won't be end to litigation if such a stance is allowed by the Authority. She hence prayed that the directions given through the 187th Meeting held on 30/10/18 be maintained & the offending structure be demolished.

Responding to these arguments the Counsel appearing for the Respondent submitted that in the first place the Authority was required to issue a show cause notice upon him before passing any directions which was never done & hence on this count itself the Authority has lapsed in following the procedure. He stated that apart from the notice of personal hearing he hasn't received any other notice in the nature of show cause. As regards the issue of review whether it is tenable or not, the Respondent stated that the Authority in its 215th Meeting held on 22/10/19 has already allowed the application for review & hence the question of re-agitating on this aspect time & again would not arise. He submitted that all what was required to be ascertained is as to whether the various documents which has been relied upon by the Respondent which bears the stamp of approval of different statutory authorities & only because the survey number was not indicated on these approvals the Authority had come to the conclusion that the offending structures were illegal. Further to that the Respondent stated that the report of the ISLR Salcete who has done the ground thruthing clearly spells out that the structure as shown in the approved plans which are prior to 1991 are in-sync with the present position on loco & that there is no deviation. He hence prayed that the decision taken in the 187th Meeting of the Authority be re-visited & the directions passed therein be rescinded.

The Authority deliberated on the issues concerning the offending structure & two of the Expert Members namely Mr. Savio Correia and Mr. Flaviano Miranda abstained from proceedings.

Mr. Mahesh Patil Expert Member stated it is part of procedural aspect whether to allow the case to be heard and investigated. Further stated that the Hotel Silver Sand existed much before enactment of CRZ regulations and has some base of existence however if there are extensions/expansions to the originally approved/sanctioned plan, then the Authority to take appropriate action.

Decision:

It was brought to the notice of the members that the current proceedings were unique in as much as unlike other cases the Respondent possessed the requisite permissions & approvals to construct the commercial structure way back in the year 1978, 1980 & 1984 even the final occupancy has been given to him in the mid of 1980's. This by itself was conclusive proof of evidence to establish the fact that the alleged offending structure was an authorized structure existing much prior to the CRZ Notification of 1991. The deliberations held in the 187th Meeting was cantered towards the fact that the survey number was not finding a mention on the said approvals. Ispo-facto the Authority could have affirmed this fact by conducting an inspection as is otherwise done in other cases. Although this would not be a procedure that is mandatorily required to be followed, the primordial concern is as to whether the Authority had lapsed in any manner whilst performing its functions. Rule 4(3-a) of the Environment Protection Rules 1986 inter-alia reads as "The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction & shall be given an opportunity of not less than 15 days from the date of service of a notice to file with an

officer designated in this behalf the objections, if any, to the issue of the proposed direction". From the records available in the file which were also perused by the members, no such show cause notice has been issued pin-pointing as to against which structures the Authority intends to take action. There is only a notice of personal hearing issued from time to time which culminated into passing of the final decision in the 187th Meeting. This was one of the fatal flaw in the proceedings. The Respondent has way back in the year 1981 purchased the property from the erstwhile owner namely Vinod Gosalia which clearly mentions the construction Hotel Silver Sands on page 56 of the said sale deed. Thereafter the Respondent has also purchased some other properties in the year 1984 so as to facilitate the construction of the Hotel in a proper manner. The structures so reflecting on the survey plan and the one which is existing on date would obviously be different because the old structures have been demolished to pave way for construction of the hotel and from the mid of 1970's till the CRZ Notification 1991 came into being there was no fresh survey conducted so as to get the hotel structure reflecting in the survey plan. The voluminous documentary evidence more specifically the approved plans having the stamp of approval from the various departments much prior to 19/2/1991 is substantial proof to indicate that the offending structure was existing much before the CRZ norms could come into force. The ground truthing report when superimposed on these approved plans indicate that some structures have been constructed which are not having the approvals of the Authority nor by any other approving/licensing body. These are identified in green colour by the officials of the Inspector of Survey and Land Records, Salcete should nevertheless be demolished. The decision taken by the Authority in it's 187th Meeting is partly rescinded to the extent that the additional structures constructed by the Respondent which are not part of the approved plans which are identified by the ISLR Salcete through the ground truthing report be demolished and not the entire structure as a whole.

The proceedings stands disposed off.

Member Secretary
(GCZMA)

Chairman
(GCZMA)

****

GOA COASTAL ZONE MANAGEMENT AUTHORITY

C/o Department of Environment and Climate Change (Govt. of Goa)
4th Floor, Dempo Towers
Patto, Panaji Goa 403001
Email: goacoastal zone@gmail.com

Ref. No. GCZMA /SMWP/02/06/ 913 **Date: /09/2021**
17

NOTICE OF PERSONAL HEARING BEFORE THE GCZMA

Sub: Personal hearing before the Goa Coastal Zone Management Authority

Ref: 1) Suo Moto Writ Petition no.02/2006.
(2) Minutes of 187th GCZMA meeting held on 30/10/2018.
(3) Order dated 05/12/2018 bearing no GCZMA/SMWP /02 /06/1657 issued by GCZMA.
(4) Review Application dated 28/01/2019 and subsequent reminder dated 29/07/2019.

WHEREAS, the present matter is interalia arising out of Suo Moto cognizance of Hon'ble High Court of Bombay at Goa, Panaji about the illegalities/constructions in CRZ area. The Hon'ble High Court of Bombay at Goa vide Order dated 26/09/2007 passed in the matter of Suo Moto Writ petition no.02/2006 had directed all Panchayats /Municipalities to submit action taken report with regard to constructions in NDZ/CRZ area as per terms mentioned therein along with an affidavit.

AND WHEREAS, pursuant to the decision taken by the Authority in its 187th GCZMA meeting held on 30/1012018; directions were issued by GCZMA to Hotel Silver Sands to demolish all structures vide order bearing No. GCZMA/SMWP/02/06/ 1 657 dated 05/12/2018.

AND WHEREAS, the affected party approached Hon'ble High Court of Bombay at Goa to challenge the said demolition order bearing WP No.171 of 2019.

AND WHEREAS, the Respondent has also filed a review Application on 28/01/2019 and subsequent reminder dated 29/07/2019 to review the order dated 05/12/2018 passed.

AND WHEREAS, in this regard, the GCZMA has now decided to call the parties for personal hearing on **21/ 09/2021 at 3:30 p.m.** onwards.

NOW THEREFORE, you are hereby required to remain present for the personal hearing or depute your duly authorized representative with all the documents, approved site plan, before the Authority, at the 4th Floor, Dempo Towers, Patto Panaji Goa

TAKE NOTE THAT, incase of failure on your part to attend the said personal hearing it will be presumed that you have nothing to say in the matter and the authority will proceed further with future course of action as per law.

NOW THEREFORE, you are hereby required to remain present for the personal hearing or depute your duly authorized representative with all the documents, approved site plans and other related documents if any in support of your case/ structure before the Authority, 4th floor, Dempo Towers, Panaji-Goa on the scheduled date, failing which the Authority shall proceed exparte in the matter.

17/09/2021

(Dasharath Redkar)
Member Secretary (GCZMA)

To,

1. **Hotel Silver Sands, Colva Beach, Colva, Salcete Goa.**
2. **Colva Civic & Consumer Forum, C/o Mrs Judith Almeida, Hno.257/1, Ward 3, Bagdem, Colva, Salcete-Goa.**

Hotel
Silver Sands
BEACH-RESORT

Date – 18.10.2021

18/10/2021

To
The Member Secretary
Goa Coastal Zone Management Authority
Goa

O/o M... Secretary
Goa Coastal Zone Management Authority
C/o Department of Environment & Climate C...
Dempo Tower 4th Floor
Patto Plaza Panjim Goa - 403001

Subject – Compliance of order passed under the 253rd Meeting of the GCZMA held on 04/03/2021

That, under the decision taken by the authority in its 253rd meeting held on 04/03/2021, the undersigned was directed to

> *The additional structured constructed by the respondent which are not part of the approved plans which are identified by the ISLR Salcete through the ground truthing report be demolished and not the entire structure as a whole.*
> *The proceedings stands disposed off.*

The undersigned hereby submits that the undersigned has complied with the decision passed by the authority in its 253rd meeting and removed the unauthorised structures as identified by the ISLR Salcete.

Thanks and Regards,

Authorised Signatory
Hotel Silver Sands
Colva
Goa

(2018) 11 Supreme Court Cases 734 : 2017 SCC OnLine SC 1165

In the Supreme Court of India

(BEFORE MADAN B. LOKUR AND DEEPAK GUPTA, JJ.)

TECHI TAGI TARA . . Appellant;

Versus

RAJENDRA SINGH BHANDARI AND OTHERS . . Respondents.

Civil Appeals No. 1359 of 2017[±] with Nos. 526, 1360, 1561, 2481, 4917, 4936, 5735, 8377-78, 9498, 10471, 10472-73 of 2017, decided on September 22, 2017

A. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14, 15 and 2(m) — Jurisdiction of NGT — Exercise of — Requisites for — Substantial question relating to environment which must arise in dispute i.e. it should not be academic question — Further held, there must also be claimant raising that dispute which is capable of settlement by NGT by grant of some relief which could be in nature of compensation or restitution of property/environment or any other incidental or ancillary relief connected therewith**

— Thus held, appointment/nomination of Chairperson/Members of SPCBs cannot be classified as substantial question relating to environment nor can their appointment be termed as dispute since dispute would be assertion of right/interest/claim met by contrary claims on other side — Appointments/Nominations of Chairperson/Members are not "disputes" as such for purposes of the Act — They could be disputes for constitutional court to resolve through writ of quo warranto but certainly not for NGT to venture into — Besides, no relief as postulated under S. 15 can be granted to claimant, assuming that substantial question relating to environment does arise and dispute exist — Impugned judgment directing State Government to reconsider appointments of persons appointed to SPCBs since they lacked necessary expertise or qualifications to be Chairperson/Members of such high-powered and specialised statutory bodies unsustainable and liable to be set aside — It would have been more appropriate for NGT to relegate claimant to constitutional court for relief prayed — Words and Phrases — "Dispute" — Meaning

(Paras 1, 17 to 23)

Prabhakar v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149, *relied on*

Rajendra Singh Bhandari v. *State of Uttarakhand*, 2016 SCC OnLine NGT 456, *reversed*

Black's Law Dictionary, 5th Edn., p. 424, *cited*

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B. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14, 15 and 2(m) — Jurisdiction of NGT — Scope — Issue of guidelines by NGT for appointment of Chairperson and Members of SPCBs — Unsustainability**

— Held, it is beyond jurisdiction of NGT and even Supreme Court to lay down specific rules and guidelines for recruitment of Chairperson and Members of SPCBs — However, considering principles of sustainable development, public trust and intergenerational equity, there should be considerable deliberation before appointment is made — Further held, State Government does not have unlimited discretion or power to appoint anyone of its choice and besides express restrictions in statute or Constitution, there could be implied restrictions and authority cannot in breach of such implied restrictions, exercise its discretionary power — State Government directed to frame appropriate rules for appointment of such persons who would add lustre and value to SPCB

(Paras 24 and 25)

State of Punjab v. *Salil Sabhlok*, (2013) 5 SCC 1 : (2013) 2 SCC (L&S) 1; *Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88; *Ram Ashray Yadav, In re*, (2000) 4 SCC 309 :

2000 SCC (L&S) 670, *relied on*

C. **Environment Law — Regulatory Framework, Bodies and Judicial Intervention — Central Groundwater Board — Appointment/Nomination to SPCBs — Necessity of making appointments with due application of mind considering their duties, functions and responsibilities, emphasised — Lackadaisical and casual approach of State Government — Strongly deprecated**

— Held, one of the principal attributes of good governance is establishment of viable institutions comprising professionally competent persons and strengthening of such institutions so that duties and responsibilities conferred on them are performed with dedication and sincerity in public interest — Further held, this is applicable not only to administrative bodies but statutory authorities as well, and more so, since statutory authorities are creation of law made by competent legislature, representing will of people — State Government directed to frame appropriate guidelines or recruitment rules within stipulated time considering institutional requirements of SPCBs, law laid down by statute/Court, reports of experts committees to ensure appointment of suitable professionals and experts — Liberty granted to public-spirited individuals to move appropriate High Court for issuance of writ of quo warranto if any person who does not meet statutory or constitutional requirements is appointed or continuing as such — Constitution of India — Arts. 48-A, 51-A(g) and 21 — Water (Prevention and Control of Pollution) Act, 1974 — S. 4(2) — Air (Prevention and Control of Pollution) Act, 1981, S. 5(2)

(Paras 2, 3, 4 and 35)

Binay Kumar Sinha v. *State of Jharkhand*, 2002 SCC OnLine Jhar 111 : (2002) 3 BLJR 2223, *considered*

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Research Foundation for Science v. *Union of India*, (2005) 10 SCC 510; *State of U.P.* v. *Jeet S. Bisht*, (2007) 6 SCC 586, *referred to*

Research Foundation for Science v. *Union of India*, (2005) 10 SCC 510, *cited*

D. **Constitution of India — Arts. 48-A, 51-A(g) and 21 — Natural law as well as constitutional obligation to protect and preserve environment — Fundamental duty to protect and improve natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures, emphasised**

(Para 3)

E. **Environment Law — Regulatory Framework, Bodies and Judicial Intervention — Generally — Judicial Intervention — Non-compliance by State in setting up and implementation of proper regulatory mechanism in the State as per statutory framework**

— Fact that (i) No rules were framed by State of Uttarakhand under the Water Act and the Air Act even though the State was formed several years ago; (ii) It had adopted rules framed by State of U.P. notified in 1984 without even considering possibility of somewhat different conditions prevailing in the State; (iii) Convening only 15 meetings of SPCBs over a period of 12 yrs when it was supposed to convene meeting once every three months, and (iv) Despite direction by Supreme Court to frame rules laying down essential qualifications and experience for appointment of Members/Chairperson of SPCB failing to frame rules noted and nonchalance exhibited, strongly deprecated

— Constitution of India, Arts. 48-A, 51-A(g) and 21

(Paras 12 and 13)

Uttaranchal EP & PC Board v. *C.V.S. Negi*, SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), *referred to*

P-D/59426/S

Advocates who appeared in this case :

P.S. Narasimha, Additional Solicitor General, A. Mariarputham, Advocate General, Ranji Thomas, Subramonium Prasad and Jaideep Gupta, Senior Advocates [V.N. Raghupathy, Nishant Ramakantrao, Katneshwarkar, Ms Deepa Kulkarni, Amit Agarwal, Sanjay Kr. Visen, M.R. Shamshad, Tushar Mehta, Dhruv Pali, Himanshu Pal, Ms Aruna Mathur, Avneesh Arputham, Ms Anuradha Arputham, Amit Arora, Ms Simran Jeet (for M/s Arputham Aruna

and Co.), Guntur Prabhakar, Ms Prerna Singh, Ms Rachana Srivastava, Ms Monika, Sukrit R. Kapoor, S.S. Shamshery, Amit Sharma, Ankit Raj, Vaibhav Prakash, Ms Ruchi Kohli, R. Rakesh Sharma, K.V. Vijayakumar, Abhishek, P.S. Narasimha, P. Venkat Reddy, Prashant Kr. Tyagi (for M/s Venkat Palwai Law Associates), Sapam Biswajit Meitei, Naresh Kr. Gaur and Ashok Kr. Singh, Advocates] for the Appellant;

A.N.S. Nadkarni, Additional Solicitor General, D.K. Singh, Additional Advocate General (Vivek Gupta, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, M. Shoeb Alam, Ms Fauzi Shakil, Ujjwal Singh, Mojahid Karim Khan, Atul Jha, Sandeep Jha, Dharmendra Kr. Sinha, Ms Ruchira Gupta, Shishir Deshpande, Ms Mona Singh, Arjun Garg, Ranjan Mukherjee, P.V. Yogeswaran, M.K. Enatoli Sema, Edward Belho, Amit Kr. Singh, K. Luikang Michael, Z.H. Isaac Haiding, Som Raj Choudhary, Raja Chatterjee, Chanchal Kr. Ganguli, Piyush Sachdev, Ms Runa Bhuyan, Shubham Bhalla, Ritesh Khatri, Gaurang Kanth, Chandan Kumar, Ms Eshita Baruah, K.V. Jagdishvaran, Ms G. Indira, V.G. Pragasam, S. Prabu Ramasubramanian, Manu Sundaram, Ms Hemantika Wahi, Ms Jasal Wahi, Ms Mamta Singh, Ms Shodhika Sharma, Ms Puja Singh, D.K. Singh, Anuvrat Sharma, Komal Mundhra and Saurabh Agrawal, Advocates) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2016 SCC OnLine NGT 456, *Rajendra Singh Bhandari* v. *State of Uttarakhand* **(reversed)** 73

2. (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149, *Prabhakar* v. *Deptt. of Sericulture* 74

3. (2013) 5 SCC 1 : (2013) 2 SCC (L&S) 1, *State of Punjab* v. *Salil Sabhlok* 751*d*, 75

4. SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), *Uttaranchal EP & PC Board* v. *C.V.S. Negi* 74

5. (2007) 6 SCC 586, *State of U.P.* v. *Jeet S. Bisht* 75

6. (2005) 10 SCC 510, *Research Foundation for Science* v. *Union of India* 743*d-e*, 744*e-f*, 744*g*, 745*e* 75

7. 2002 SCC OnLine Jhar 111 : (2002) 3 BLJR 2223, *Binay Kumar Sinha* v. *State of Jharkhand* 741*a*

8. (2000) 4 SCC 309 : 2000 SCC (L&S) 670, *Ram Ashray Yadav, In re* 75

9. (1985) 4 SCC 417 : 1986 SCC (L&S) 88, *Ashok Kumar Yadav* v. *State of Haryana* 75

The Judgment of the Court was delivered by

MADAN B. LOKUR, J.— This batch of appeals is directed against the judgment and order dated 24-8-2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short "the NGT") in *Rajendra Singh Bhandari* v. *State of Uttarakhand*[1]. On a reading of the judgment and order passed by the NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short "SPCBs") did not have, according to the NGT, the necessary expertise or qualifications to be members or Chairpersons of such high-powered and specialised statutory bodies and therefore did not deserve their appointment or nomination. While we fully commiserate with the NGT and share the pain and anguish, we are of the view that the Tribunal has, at law, exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well-meaning they might be. Therefore, we set aside the decision of the NGT, but note that a large number of disconcerting facts have been brought out in the judgment which need serious consideration by those in authority, particularly the State Governments that make appointments or nominations to the SPCBs. Such appointments should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs.

2. Why is it important to be more than careful in making such appointments? There can be no doubt that the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the State Governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catchwords, but are concepts of great importance in environmental jurisprudence. Perhaps appreciating and anticipating this, Article 48-A was introduced in the Constitution and this Article reads as follows:

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> "**48-A.** ***Protection and improvement of environment and safeguarding of forests and wildlife***.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

3. Similarly, Article 51-A(*g*) of the Constitution indicates the fundamental duties of every citizen of the country, one of them being to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.[2] It is quite clear that apart from the natural law obligation to protect and preserve the environment, there is also a constitutional obligation to do so. Unfortunately, despite this, our society has been witness over the last few decades, to repeated onslaughts against the environment, sometimes in the name of development and sometimes because our society just does not seem to care. In this context we may also mention Article 21 of the Constitution which has been given a very wide amplitude by several decisions of this Court, including on issues concerning the environment. The judgment of the NGT draws attention to some of these aspects but essentially points to the "who-cares" attitude adopted by several State Governments. It is this attitude that compelled a public-spirited environmentally conscious individual to challenge the composition of the SPCB in the State of Uttarakhand and consequently the necessity of being extra careful in making appointments to the SPCB.

4. One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such

institutions so that the duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. This is applicable not only to administrative bodies but more so to statutory authorities — more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people.

5. State Pollution Control Boards (or SPCBs) constituted under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981[3] fall in this category but many of them possess only a few or sometimes none of the above attributes of good governance and again a few or none of them are adequately empowered. This is a serious problem haunting the SPCBs for at least two decades (if not more).

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6. The composition of the SPCB is provided for in Section 4(2) of the Water Act and this reads as follows [Section 5(2) of the Air Act is similar]:

"**4. (2)** A State Board shall consist of the following members, namely—

(*a*) a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government:

Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;

(*b*) such number of officials, not exceeding five, to be nominated by the State Government to represent that Government;

(*c*) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(*d*) such number of non-officials, not exceeding three, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

(*e*) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

(*f*) a full-time Member-Secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government."

7. One of the earliest communications on our record encouraging professionalism in the SPCBs with a view to empowering them is a letter of 26-9-1997 addressed by the Secretary in the Ministry of Environment and Forest (MoEF) of the Government of India to the Chief Secretary of every State highlighting the importance of the SPCBs, the fact that their activities are science and technology based and the necessity of taking relevant factors into consideration while making appointments to the SPCBs. The letter reads as follows:

"Secretary
Ministry of Environment and Forests
Government of India

26-9-1997

D.O. No. PS/Secy (E&F)/CPCB/97

Dear

The State Pollution Control Boards/Pollution Control Committees in Union Territories

have been assigned an important role for prevention and control of pollution from different sources. In recent years, additional responsibilities have been assigned to them for enforcement of various statutes. Hence, these organisations need to be suitably strengthened so that they can cope up with the tasks. In fact, the Hon'ble Supreme Court has also had

occasion to observe on the unsatisfactory performance of State Boards in discharging their functions.

The activities of the Pollution Control Boards/Pollution Control Committees are essentially science and technology based. The Chairman and Member-Secretaries are the key functionaries of the Boards/Committees who are expected to have requisite professional knowledge and experience for providing effective leadership to their organisations. Under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 the specific requirements for appointment to these posts have been laid down.

However, in some State Boards/Committees, the appointments to these posts are made without due consideration to such requirements as envisaged under the Acts. Also, another major problem being faced by these organisations is on account of frequent changes of Chairmen and Member-Secretaries. I request you to kindly ensure that appropriate persons are appointed for these key positions and they are not frequently changed. Where the incumbents do not have the prescribed criteria they should be replaced.

It is requested that this issue may kindly receive your personal attention on a top priority basis.

With regards

Yours sincerely,
sd/-
(Vishwanath Anand)"

8. More importantly and perhaps keeping the diverse nature of activities of the SPCBs in mind, a conference was held in Coimbatore on 29-1-2001 and 30-1-2001 of the Ministers of Environment and Forests of the State Governments. The conference recommended, inter alia, the induction of academicians, professionals, experts and technologists for the effective functioning of the SPCBs. As a follow-up to the recommendations, a letter was addressed by the Secretary in the MoEF to the Chief Secretary of every State on 3-7-2001. This letter reads as follows:

"P.V. Jayakrishnan
Secretary
D.O. No. PS/Secy (E&F)/CPCB/2001

3-7-2001

Dear

In the National Conference of Ministries of Environment and Forests held at Coimbatore on 29-1-2001, 30-1-2001, several important recommendations were made regarding effective functioning of the State Pollution Control Boards/Committees.

These include the following:

(*i*) Induction of academicians, legal professionals, health experts and technologists as members of the Boards/Committees.

(*ii*) Appointment of multi-disciplinary staff.

(*iii*) Ban on recruitment shall be relaxed for the posts of scientists and engineers in the Pollution Control Boards/Committees.

(*iv*) Training of personnel, for which programme shall be drawn up by the Central Pollution Control Board.

(*v*) Streamlining of consent/authorisation procedures.

(*vi*) Inventorisation of polluting sources and pollution load.

(*vii*) Formulation of annual action plans.

(*viii*) Publication of annual State Environment Report.

(*ix*) Strengthening and upgrading of water and air quality monitoring and laboratory facilities.

We had taken up the matter with the respective State Pollution Control Boards/Committees. Since most of the action points require intervention of the State Governments, I request you kindly to take necessary action for implementation of the recommendations.

I look forward to your response at the earliest.

With regards.

Yours sincerely,
sd/-
(P.V. Jayakrishnan)

To Chief Secretaries of all States/UTs"

9. These communications seem to have had little or no impact at least in one instance as is evident from a reading of a decision of the Jharkhand High Court dated 15-5-2002 in *Binay Kumar Sinha* v. *State of Jharkhand*[4] concerning the Chairperson of the SPCB of that State. The High Court was compelled to make the following scathing and unfortunate observations: (SCC OnLine Jhar paras 3-4)

"*3.* On 4-4-2002, when the Chairman appeared before us and we started talking to him in order to elicit his views and opinion on the aforesaid questions, what we found has been aptly and clearly recorded in our order of that day. The extracts read thus:

'Shri Thakur Bal Mukund Nath Shahdeo, Chairman, State Pollution Control Board has appeared before us today in person. During the course of our conversation with him, we found (to our total horror, surprise, dismay and amazement) that he does not know anything at all about any aspect relating to pollution, or the control of pollution. In course of our extensive conversation with him, we found that the only academic qualification that he boasts of is "matriculation". He has no other academic or technical qualification whatsoever. When, by referring to Section 5(2)(*a*) of the Air (Prevention and Control of Pollution) Act, 1981, we asked him whether he has any special knowledge or any practical experience in respect of any matter relating to the environmental pollution, his answer was in the negative. We must record that during the course of our conversation with Shri Shahdeo, we were constantly helped and assisted by Mr Poddar, learned Additional

Advocate General. We actually impressed upon Mr Poddar the need of assisting Shri Shahdeo in answering our questions. Mr Poddar very kindly lent his helping hand to us. What emerged was that Mr Shahdeo has neither any general or special knowledge, nor any academic qualification, nor any experience whatsoever that may have anything to do with any matter or any aspect relating to the pollution, air pollution, water pollution, noise

pollution, or any other pollution of any kind. What to speak of his—having special knowledge or practical experience, he has neither any knowledge, general or special, nor any experience, practical or otherwise with respect to any matters relating to environmental pollution. We repeatedly asked him to inform us about one single such fact by which he could lay his claim to hold this office. He failed to inform us of even a single fact which could qualify him to hold this office. His only claim was that he is a politico-social worker. We asked him also as to how he came to be appointed on this post. He says that he made an application to Mrs Neelam Nath, Secretary, Forests, we asked him whether such an application was invited from him. He says that the application was invited from him. We asked him whether invitation was extended to him personally by Mrs Neelam Nath or did it appear in any advertisement. He says that he, on his own, gave such an application and that it was neither invited personally from him nor through any advertisement. Prima facie, it appears to us that a person who does not have the requisite qualification, experience, or knowledge has been appointed on the post of Chairman, Pollution Control Board. Before we proceed any further, we would like Mr Poddar, learned AAG to produce before us the original records of the Government relating to the appointment of Mr Shahdeo.

4. It was from this point onwards that a case arose within a case. Both the issues started being dealt with simultaneously by us, namely, the issue relating to Sundera Mineral & Chemical Industry and the propriety, legality and validity of the appointment of Mr Shahdeo."

A little later in the judgment it was held: (SCC OnLine Jhar para 42)

"*42*. Looked at from the aforesaid legal perspective and in view of our clear findings that Shri Shahdeo did not possess the qualifications required of the Chairman, State Pollution Control Board, we have no hesitation, but to hold that it would be a violation of the law to allow him to continue as the Chairman of the State Board. We accordingly order and declare that the appointment of Shri Shahdeo as Chairman, State Board, was not legal and valid and hence improperly made and therefore, on these grounds we order and direct that he cannot continue to function as such. By issuance of a writ of quo warranto, therefore, the appointment of Shri Shahdeo as Chairman, State Board, is quashed and set aside. Shri Shahdeo shall forthwith and with immediate effect cease to hold the office of Chairman, State Board. The post of Chairman, State Board is hereby declared to be vacant, and with immediate effect."

10. Notwithstanding the above decision, communications and orders, the State Governments continued to display disinterest in the matter of professional

appointments to the SPCBs. This led to another communication from the MoEF on 16-8-2005 (which still did not have the desired effect) and this communication reads as follows:

"Supreme Court Matter
Most Immediate
By Speed Post

No. 23-8/2004-HSMD (Vol.II)
Government of India
Ministry of Environment and Forests
(Supreme Court Monitoring Committee)
Room No. 927, Paryavaran Bhawan
C.G.O. Complex, Lodhi Road
New Delhi 110003 108
Dated 16-8-2005

To,

The Chief Secretaries of all States/UTs

(As per the list enclosed)

Sub: *Constitution of the State Pollution Control Board/Pollution Control Committees (SPCBs/PCCs) — regarding*

Dear Sir,

The Supreme Court by its order dated 14-10-2003 in Writ Petition (Civil) No. 657 of 1995 set up a Monitoring Committee to ensure time-bound implementation of various directions given in the said order.[5] The Committee has been visiting several States to monitor the status of implementation of these directions.

During its interaction with various Pollution Control officials, the Supreme Court Monitoring Committee (SCMC) has noticed that the State Pollution Control Boards (SPCBs), Pollution Control Committees (PCCs) of UTs were not constituted in accordance with the provisions given in the Water Act, 1994 and the Air Act, 1981.

Chairperson of the Board:

3. The statutory provisions require that Chairpersons appointed shall be persons having "special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matter aforesaid".

4. The SCMC has found that in the several cases, the Chief Secretaries, Environment Secretaries, politicians, MLAs, literary persons and non-technical persons have been appointed as Chairperson of SPCBs/PCCs.

5. The M.G.K. Menon Committee had recommended in its report that "The Chairman of the Pollution Control Boards and Committees should be individuals with a sense of vision and a feeling for the future. They must have an understanding of the complexity of modern science and technology

since they will be dealing with highly technical issue. They must have an understanding of law. The Chairperson would have to be fully involved in the task of environment construction and planning. Appointment of the Chairperson of the Board should be on full-time basis.

Member-Secretary of the Board:

6. Similarly, in respect of the post of Member-Secretary the statutory provisions (Water Act) require that he be full-time, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

7. In relation to appointment of Member-Secretaries, the Menon Committee has recommended that: "The incumbent should possess a postgraduate degree in science, engineering or technology, and have adequate experience of working in the area of environment protection".

8. The SCMC has found that in several States, persons from IFS or from the PWD especially from the PHE departments, are either being appointed or deputed to the post of Member-Secretary without the necessary statutory qualifications.

Members:

9. No effort is being made to appoint persons with adequate scientific, technical or legal background or from the environmental field as members of the Board. Board members are increasingly being appointed for political purposes. This is leading to ineffective and inefficient functioning of SPCBs/PCCs.

10. Though the Boards are to function as statutory bodies under the Air Act, 1981, no specialists in air pollution (as required by the Air Act, 1981) are being appointed as

members. This is a serious lacuna in constitution of the Boards.

11. During its visits to various States to monitor implementation of the order dated 14-10-2003[5], the SCMC has observed that the order of the Supreme Court being efficiently carried out in States that have competent Chairperson or Member-Secretaries. In other States, due to lack of proper attention at the highest level, implementation is found to be tardy and without much progress.

12. The SCMC discussed these issues at its meeting held on 28-3-2005 and came to the firm conclusion that only technically qualified professionals should be appointed to the critical positions of Chairperson, Member-Secretary and Members of the Pollution Control Boards so that their functioning can be strengthened as required in terms of para 41.1 of the Supreme Court's order dated 14-10-2003[5].

13. The Committee is also of the view that recommendations of the M.G.K. Menon Committee be fully respected and the Chairperson should be appointed on full-time basis. Without the officers it is not possible for any Board to function effectively in view of the numerous laws and statutes that demand efficient and effective actions from State Pollution Control Boards.

14. We draw your kind attention to several reports on strengthening of State Pollution Control Boards. These include:

(*1*) The Bhattacharya Committee, 1984

(*2*) The Belliappa Committee, 1990

(*3*) The ASCI Study, 1994

(*4*) Study of the Sub-Group, 1994

15. All these studies were considered during the Evaluation Study on "Function of the Pollution Control Board" prepared by the Programme Evaluation Organisation of the Planning Commission.

16. The Planning Commission report concluded: "Considering the interesting technicalities involved in the functions to be performed by these Boards, it is essential that technical persons possessing scientific knowledge about matters relating to pollution and pollution control hold the upper hand".

17. The Conference of Ministers of Environment that took place in Coimbatore also reiterated at the highest political level, the decision that the SPCBs should be headed and staffed by technically competent professionals (and not by journalists or politicians or administrative officers).

18. The composition of the Boards is therefore under the scrutiny of the SCMC and no further appointment of Chairpersons or Member-Secretaries should be carried out which do not meet the norms given in the statute and elucidated by the Menon Committee.

19. In view of the above, you are requested to inform this Monitoring Committee regarding the qualifications of the Chairperson, Member-Secretary and Members of the Pollution Control Board, Pollution Control Committee in your State/Union Territory. Based on the information, the Committee will examine whether the persons nominated to these positions meet the statutory norms and the requirements as indicated in the M.G.K. Menon Committee Report and the order of the Supreme Court dated 14-10-2003[5] and further necessary action will be taken in the matter.

20. This matter may kindly be given the highest consideration and a reply in this regard may be provided to the undersigned within 4 weeks so that the same will be considered in the next SCMC meeting. It will be highly appreciated, if a copy of the

information may also be sent through email.

Yours faithfully
sd/-
(Dr G. Thyagarajan)
Chairman,
Supreme Court Monitoring Committee
Telefax: 011-24361410
Email: drgarajan @yahoo.co.in"

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11. There are a few other communications on the same subject but it is not necessary to detail their contents. All that need be said is that the Central Government, time and again, requested the State Governments to appoint persons who could add value and stature to the SPCBs by their very presence and then utilise their expertise in preserving and protecting the environment, including air and water.

12. As far as the State of Uttarakhand is concerned, it has come on record that no rules (let alone recruitment rules) have been framed by the State under the Water Act and the Air Act even though the State was formed several years ago. Rules framed by the State of Uttar Pradesh notified in 1984 have been adopted by Uttarakhand but there has apparently been no fresh application of mind to these Rules or even consideration of the possibly somewhat different conditions in Uttarakhand. There seems to be a mechanical and bodily lifting of the Uttar Pradesh Rules. Apart from the above, it has also come on record that meetings of the SPCB are required to be held once in three months but as far as the State of Uttarakhand is concerned, only 15 meetings were held during the period from 2001 (when the Board was constituted) over the next 12 years. There is therefore nonchalance shown by Uttarakhand to the rule-making power and the provisions of Section 8 of the Water Act and Section 10 of the Air Act[6] relating to holding meetings of the SPCB.

13. To make matter worse, despite this Court passing an order on 8-1-2008 [in IA No. 4 of 2007 in SLP (Civil) No. 6023 of 2006] directing the State of Uttarakhand and the SPCB to consider the desirability of making rules laying down essential qualifications and experience and other relevant factors for

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appointment of members in the SPCB[7], we are told that unfortunately, such rules have not been made and the impugned order under appeal indicates that the matter has remained under consideration of the State Government since 2006.

14. Keeping all these facts and the recalcitrance of the State Governments in mind, the NGT examined the expertise and qualifications of members of the SPCB of almost all States and prima facie found that about ten States and one Union Territory had members in the SPCB who lacked the qualifications suggested by the Central Government.

15. At this stage, it must be mentioned that apart from the Central Government, there are several authorities that have applied their mind to the issue of appointment of members of the SPCBs. These include Expert Committees such as the Bhattacharya Committee of 1984, the Belliappa Committee of 1990, the Administrative Staff College of India Study of 1994 and a committee chaired by Prof. M.G.K. Menon. Notwithstanding this, the response of the State Governments in appointing professionals and experts to the

SPCBs has been remarkably casual. It is this *chalta hai* attitude that led the NGT to direct the State Governments to consider examining the appointment of the Chairperson and members in the SPCBs and determining whether their appointment deserves continuation or cancellation. Thereafter the NGT gave several guidelines that ought to be followed in making appointments to the SPCBs.

16. The objection of the appellants is to: (*i*) the exercise of jurisdiction by the NGT in directing the State Governments to reconsider the appointment of the Chairperson and members of the SPCBs; and (*ii*) laying down guidelines for appointment of the Chairperson and members of the SPCBs.

17. As regard the first grievance, it is contended that the appointment or removal of members of the SPCBs does not lie within the statutory jurisdiction of the NGT. Our attention has been drawn to some provisions of the National

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Green Tribunal Act, 2010 (for short "the Act"). The jurisdiction of the NGT is circumscribed by Section 14 of the Act which reads as follows:

> "**14. *Tribunal to settle disputes***.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:
>
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

This provision cannot be read in isolation but must be read in conjunction with Section 15 of the Act which relates to relief, compensation and restitution as being broadly the directions that can be issued by the NGT. Section 15 of the Act reads as follows:

> "**15. *Relief, compensation and restitution***.—(1) The Tribunal may, by an order, provide—
>
> (*a*) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance);
>
> (*b*) for restitution of property damaged;
>
> (*c*) for restitution of the environment for such area or areas,
>
> as the Tribunal may think fit.
>
> (2) The relief and compensation and restitution of property and environment referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).
>
> (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:
>
> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
>
> (4) The Tribunal may, having regard to the damage to public health, property and

environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief

to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

18. Finally, it is important to refer to Section 2(*m*) of the Act which reads:

"**2. (m)** "**substantial question relating to environment**" shall include an instance where—

(*i*) there is a direct violation of a specific statutory environmental obligation by a person by which—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(*ii*) the environmental consequences relate to a specific activity or a point source of pollution;"

19. On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute — it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or restitution of the environment and any other incidental or ancillary relief connected therewith.

20. The appointment of the Chairperson and members of the SPCBs cannot be classified in any circumstance as a substantial question relating to the environment. At best it could be a substantial question relating to their appointment. Moreover, their appointment is not a dispute as one would normally understand it. In *Prabhakar* v. *Deptt. of Sericulture*[8] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)

"*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:

' "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'

35. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:

'*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary

claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.' "

21. As far as we are concerned, in the context of the Act, a dispute would be the

assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form and it appears to us that the appointments that we are concerned with are not "disputes" as such or even disputes for the purposes of the Act — they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for the NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which the NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like the NGT. While we appreciate the anxiety of the NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling the NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed.

22. Additionally, no relief as postulated by Section 15 of the Act could be granted to a claimant, assuming that a substantial question relating to the environment does arise and that a dispute does exist.

23. It appears to us that the NGT realised its limitations in this regard and therefore issued a direction to the State Governments to reconsider the appointments already been made, but the seminal issue is really whether the NGT could at all have entertained a claim of the nature that was raised. For reasons given above, the answer must be in the negative and it would have been more appropriate for the NGT to have required the claimant to approach a constitutional court for the relief prayed for in the original application. To this extent therefore, the direction given by the NGT must be set aside as being without jurisdiction. However, we have been told that some States have implemented the order of the NGT and removed some members while others have approached this Court and obtained an interim stay order. Those officials who were removed pursuant to the order of the NGT (including the appellant Techi Tagi Tara) have an independent cause of action and we leave it open to them to challenge their removal in appropriate and independent proceedings. This is an issue between the removed official and the State Government — the removal is not a public interest issue and we cannot reverse the situation.

24. On the second grievance relating to the issue of guidelines by the NGT, the meat of the matter concerns the appointment of officials who are experts in their field and are otherwise professional. This is for each State Government to consider and decide what is the right thing to do under the circumstances — Should an unqualified or inexperienced person be appointed or should the

SPCB be a representative but expert body? The Water Act and the Air Act as well as the Constitution give ample guidance in this regard. We have already adverted to the provisions of the Constitution including Article 48-A, Article 51-A(*g*) and Article 21 of the Constitution. So, the entire scheme of the various provisions of the Constitution adverted to above, including the principles that have been accepted and adopted internationally as well as by this Court such as the principles of sustainable development, public trust and intergenerational equity are a clear indication that in matters relating to the protection and preservation of the environment (through the appointment of officials to the SPCBs) the Central Government as well as the State Governments have to walk the extra mile. Unfortunately, many of the State Governments have not even taken the first step in that direction — hence the present problem.

25. While it is beyond the jurisdiction of the NGT and also beyond our jurisdiction to lay

down specific rules and guidelines for recruitment of the Chairperson and members of the SPCBs, we are of opinion that there should be considerable deliberation before an appointment is made and only the best should be appointed to the SPCB. It is necessary in this regard for the Executive to consider and frame appropriate rules for the appointment of such persons who would add lustre and value to the SPCB. In this connection we refer to *State of Punjab* v. *Salil Sabhlok*[9] in which it was observed with reference to appointments to the Public Service Commission that besides express restrictions in a statute or the Constitution, there can be implied restrictions in a statute or the Constitution and the statutory or constitutional authority cannot, in breach of such implied restrictions, exercise its discretionary power. In our opinion this would be equally applicable to an appointment to a statutory body such as the SPCB — the State Government does not have unlimited discretion or power to appoint anybody that it chooses to do.

26. It was also held in *Salil Sabhlok*[9] that the deliberative process and institutional requirements are of considerable importance in respect of any appointment that is made. In this context, the imperative of good governance was highlighted and with regard to framing rules or issuing guidelines, it was held as follows: (SCC p. 63, para 136)

> "*136*. In the light of the various decisions of this Court adverted to above, the administrative and constitutional imperative can be met only if the Government frames guidelines or parameters for the appointment of the Chairperson and Members of the Punjab Public Service Commission. That it has failed to do so does not preclude this Court or any superior court from giving a direction to the State Government to conduct the necessary exercise within a specified period. Only because it is left to the State Legislature to consider the desirability or otherwise of specifying the qualifications or experience for the appointment of a person to the position of Chairperson or Member of the Punjab Public Service Commission, does not imply that this Court cannot direct the executive to frame guidelines and set the parameters. This Court can certainly issue appropriate directions in

this regard, and in the light of the experience gained over the last several decades coupled with the views expressed by the Law Commission, the Second Administrative Reform Commission and the views expressed by this Court from time to time, it is imperative for good governance and better administration to issue directions to the executive to frame appropriate guidelines and parameters based on the indicators mentioned by this Court. These guidelines can and should be binding on the State of Punjab till the State Legislature exercises its power."

27. In *Ashok Kumar Yadav* v. *State of Haryana*[10] this Court observed that (at SCC p. 456, para 30) competent, honest, independent persons of outstanding ability and high reputation who command the confidence of people and who would not allow themselves to be deflected by any extraneous consideration from discharging their duties should be appointed to the Public Service Commissions. Similarly, in *Ram Ashray Yadav, In re*[11] it was held that (at SCC p. 321, para 34) the credibility of an institution is founded upon the faith of the common man in its proper functioning. The faith would be eroded and confidence destroyed if it appears that the officials act subjectively and not objectively or that their actions are suspect. In our opinion, these conclusions of this Court would equally apply to professional and expert statutory bodies such as the Central Pollution Control Board and the State Pollution Control Boards.

28. Additionally, various committees have given sufficient guidelines for the appointment of the Chairperson and members of the SPCBs. The *Bhattacharya Committee* (1984) proposed that the structural organisation of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts,

training cell and research and development. The Committee, inter alia, called for (*a*) discouraging the flow of deputationists to the Boards, (*b*) upgrading regional laboratories, (*c*) providing each Board with at least one mobile laboratory, (*d*) creating a Centralised training institute, (*e*) providing, on priority, funds to establish air control activity, and (*f*) bestowing the power to make posts at least up to the rank of environmental engineers/scientists with the Boards.[12]

29. Similarly, the *Belliappa Committee* (1990) recommended (*a*) introducing elaborate monitoring, reporting and organisational systems at the national level along with four regional centres and one training cell in each Board, (*b*) effecting suitable changes in the Board's recruitment policy to enable them induct persons with suitable academic qualifications, and (*c*) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.

30. The *Administrative Staff College of India* (1994) recommended, inter alia, that (*a*) the SPCBs be reoriented for implementing the instrument mix of

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legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes, (*b*) an Annual Environmental Quality Report be prepared by every SPCB for the State concerned, (*c*) an inventory of discharges and effluents disaggregated to the district level be prepared, (*d*) a research cell be formed in each SPCB and a network be established with the proposed clean technology centre, and (*f*) model environmental impact assessments be prepared for major categories of industries.

31. Finally, the *Menon Committee*[13] made recommendations that are a part of the communication of 16-8-2005 referred to above. It was also recommended that (*a*) in general, State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff, (*b*) the statutory independence and functional autonomy given to the SPCBs should be protected and the Boards should be kept free from political interference. The Boards should be enabled to make independent decisions in this regard, and (*c*) the Chairperson of the SPCB should be a full-time appointee for a period of five years and the Member-Secretary of the SPCB should also be appointed for a period of five years.

32. All these suggestions and recommendations are more than enough for making expert and professional appointments to the SPCBs being geared towards establishing a professional body with multifarious tasks intended to preserve and protect the environment and consisting of experts. Any contrary view or compromise in the appointments would render the exercise undertaken by all these committees completely irrelevant and redundant. Surely, it cannot be said that the committees were not constituted for the purpose of putting their recommendations in the dustbin.

33. Unfortunately, notwithstanding all these suggestions, recommendations and guidelines the SPCBs continue to be manned by persons who do not necessarily have the necessary expertise or professional experience to address the issues for which the SPCBs were established by law. The Tata Institute of Social Sciences in a report published quite recently in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" had this to say about some of the appointments to the SPCBs:

> "An analysis of data collected from State Pollution Control Boards, however, gives a contrasting picture. It has been observed that time and again across State Governments have not been able to choose a qualified, impartial, and politically neutral person of high-standing to this crucial regulatory post. The recent appointments of Chairpersons of various State Pollution Control Boards like Karnataka (*A*, a senior BJP leader), Himachal Pradesh (*B*, a Congress Party leader and former MLA), Uttar Pradesh

(*C* appointed on the recommendation of SP leader *X*), Arunachal Pradesh (*D*, a sitting NCP Party MLA), Manipur Pollution Control Board (*E*, a sitting

MLA), Maharashtra Pollution Control Board (*F*, a former bureaucrat) are in blatant violation of the Apex Court guidelines. The Apex Court has recommended that the appointees should be qualified in the field of environment or should have special knowledge of the subject. It is unfortunate that in a democratic set-up, key enterprises and boards are headed by bureaucrats for over a decade. In this connection, it is very important for State Governments to understand that filling a key regulatory post with the primary intention to reward an ex-official through his or her appointment upon retirement, to a position for which he or she may not possess the essential overall qualifications, does not do justice to the people of their own States and also staffs working in the State Pollution Control Boards. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board. It has also been argued by various environmental groups that if the Government is unable to find a competent person, then it should advertise the post, as has been done recently by States like Odisha. However, the State Governments have been defending their decision to appoint bureaucrats to the post of Chairperson as they believe that the vast experience of IAS officers in handling responsibilities would be easy. Another major challenge has been appointing people without having any knowledge in this field. For example, the appointment of *G* with maximum qualification of Class X as Chairperson of the State Pollution Control Board of Sikkim was clear violation of the Water (Prevention and Control of Pollution) Act, 1974."[14]

34. The concern really is not one of a lack of professional expertise — there is plenty of it available in the country — but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't-care-less attitude, the environment and public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environment degradation and issues of pollution. Since the NGT was faced with this situation, we can appreciate its frustration at the scant regard for the law by some State Governments, but it is still necessary in such situations to exercise restraint as cautioned in *State of U.P.* v. *Jeet S. Bisht*[15].

35. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the judgment and order of the NGT, to direct the Executive in all the States to frame appropriate guidelines or recruitment rules

within six months, considering the institutional requirements of the SPCBs and the law laid down by statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the

SPCBs. We make it clear that it is left open to public-spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.

36. The appeals are disposed of in light of the above discussion.

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† Arising from the impugned final Order in *Rajendra Singh Bhandari* v. *State of Uttarakhand*, 2016 SCC OnLine NGT 456 (National Green Tribunal, Principal Bench, New Delhi, Original Application No. 318 of 2013, dt. 24-8-2016)

[1] *Rajendra Singh Bhandari* v. *State of Uttarakhand*, 2016 SCC OnLine NGT 456

[2] "**51-A. *Fundamental duties***.—It shall be the duty of every citizen of India—

(*a*) to (*f*) * * *

(*g*) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;

(*h*) to (*k*) * * *"

[3] Henceforth "the Water Act" and "the Air Act".

[4] *Binay Kumar Sinha* v. *State of Jharkhand*, 2002 SCC OnLine Jhar 111 : (2002) 3 BLJR 2223

[5] *Research Foundation for Science* v. *Union of India*, (2005) 10 SCC 510

[6] Section 8 of the Water Act:

"**8. *Meetings of Board***.—A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose."

Section 10 of the Air Act:

"**10. *Meetings of Board***.—(1) For the purposes of this Act, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

Provided that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

(2) Copies of the minutes of the meetings under sub-section (1) shall be forwarded to the Central Board and to the State Government concerned."

[7] *Uttaranchal EP & PC Board* v. *C.V.S. Negi*, SLP (C) No. 6023 of 2006, order dated 8-1-2008 (SC), wherein it was directed:

"IA No. 4 of 2007 be treated as an original petition to be listed along with SLP (C) No. 6023 of 2006. The learned counsel for the State of Uttaranchal and Uttarakhand Environment Protection and Pollution Control Board shall find out the desirability of having rules governing the essential qualifications and experience and such relevant factors for the appointment of various officials in the Board. They shall also indicate their stand as regards certain NOCs stated to have been issued to pharmaceutical manufacturers. Call after eight weeks."

IA No. 4 of 2007 was converted to WP (Civil) No. 85 of 2008 which was listed along with SLP (Civil) No. 6023 of 2006.

[8] *Prabhakar* v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149

[9] *State of Punjab* v. *Salil Sabhlok*, (2013) 5 SCC 1 : (2013) 2 SCC (L&S) 1

[10] *Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88

[11] *Ram Ashray Yadav, In re*, (2000) 4 SCC 309 : 2000 SCC (L&S) 670

[12] Final Report prepared by the Maharashtra Pollution Control Board in 2005 on Institutional Capacity Building highlights the recommendations made by the Bhattacharya Committee, the Belliappa Committee and the ASCI Study.

[13] *Menon Committee* constituted pursuant to an order passed by this Court on 14-10-2003 in *Research Foundation for Science* v. *Union of India*, (2005) 10 SCC 510.

[14] The names have been deliberately left out by us.

[15] *State of U.P.* v. *Jeet S. Bisht*, (2007) 6 SCC 586

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2019
Dec. 18

2-Judge Bench

(BEFORE MOHAN M. SHANTANAGOUDAR AND KRISHNA MURARI, JJ.)

P. SINGARAVELAN AND OTHERS .. Appellants;

Versus

DISTRICT COLLECTOR, TIRUPPUR AND DT AND OTHERS .. Respondents.

Civil Appeals Nos. 9533-537 of 2019† with Nos. 9538-546 of 2019‡, 9547-549 of 2019††, 9551-559 of 2019†‡, 9560-561 of 2019‡†, decided on December 18, 2019

A. **Service Law — Pay — Pay fixation — Claim to grant of Selection Grade and Special Grade Scales of pay in bracket of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162 dt. 13-4-1998 — Applicability of relevant State Rules of 1998**

— Para 4 of G.O. stating that for posts with no promotional avenues, Selection Grade Scales as indicated in Sch. II would be applicable — Undisputed that appellant drivers in various departments of State Government were entitled to revised Ordinary Grade pay scales as per Sch. I and since they had no promotional avenues, Selection Grade and Special Grade pay scales under Sch. II would be applicable on completing stipulated years of service — Held, on perusing series of revisions made to pay scales applicable to drivers working with State Government, applicable pay scales would be as per Sl. No. 6 of Sch. II to 1998 Rules i.e. Rs 4000-6000 and Rs 4300-6000 respectively and not Rs 5000-8000 and Rs 5500-9000 as specified in Sl. No. 8 — High Court erred in directing fixation of pay scales in terms of Sl. No. 8 — State Government directed to fix pay scales accordingly — T.N. Revised Scales of Pay Rules, 1998, Schs. I & II Sl. Nos. 6 and 8 (Paras 20, 21 and 28 to 30)

Director of Sericulture Deptt. v. *K. Kumar*, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241, *affirmed in law*

K. Mani v. *State of T.N.*, 2013 SCC OnLine Mad 4089, *approved*

Y. Sathiya Baghavan v. *State of T.N.*, WP No. 2363 of 2013, decided on 5-1-2015 (Mad); *State of T.N.* v. *Y. Sathiya Baghavan*, 2017 SCC OnLine Mad 24787, *partly reversed*

T.N. Govt. Deptt. Drivers' Central Assn. v. *State of T.N.*, WP No. 34800 of 2006, order dated 6-8-2007 (Mad), *referred to*

B. **Constitution of India — Arts. 141 and 136 — Effect of grant/dismissal of SLP — Dismissal of SLP in limine — Claim to grant of Selection Grade and Special Grade Scales of pay in bracket of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162 dt. 13-4-1998 by appellant drivers working with State Government based on various High Court judgments and orders against which SLPs had been dismissed in limine — Untenability**

† Arising out of SLPs (C) Nos. 5395-99 of 2016. Arising from the common Final Judgment and Order in *Director of Sericulture Deptt.* v. *K. Kumar*, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241 (Madras High Court, WAs Nos. 2073, 1605, 30359, 33869 and 291 of 2013, dt. 8-7-2015)

‡ Arising out of SLPs (C) Nos. 5605-13 of 2016

†† Arising out of SLPs (C) Nos. 5391-93 of 2016

†‡ Arising out of SLPs (C) Nos. 5367-75 of 2016

‡† Arising out of Diary No. 42301 of 2017

— Reiterated that dismissal of SLP against order or judgment of lower forum by a non-speaking order is not affirmation of same and does not constitute declaration of law under Art. 141 or attract doctrine of merger — On facts held, there was no pronouncement of Supreme Court constituting law as to interpretation of GOMs No. 162 — Hence, open to Supreme Court to decide instant appeals, uninfluenced by orders of Supreme Court dismissing SLPs against grant of relief to drivers placed similarly as appellants — T.N. Revised Scales of Pay Rules, 1998, Schs. I & II Sl. Nos. 6 and 8 (Paras 6 and 7)

Kunhayammed v. *State of Kerala*, (2000) 6 SCC 359; *Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*, (2019) 4 SCC 376, *applied*

State of T.N. v. *D. Duraikannu*, 2012 SCC OnLine SC 1210; *State of T.N.* v. *V. Mariappan*, 2015 SCC OnLine SC 1847; *Forest Ex. Officer* v. *M. Balakrishnan*, 2013 SCC OnLine SC 1435; *State of T.N.* v. *M.A. Abdul Samad*, 2013 SCC OnLine SC 1436; *State of T.N.* v. *M.A. Abdul Samad*, 2017 SCC OnLine SC 1939, *held, do not declare any law*

State of T.N. v. *D. Duraikannu*, Writ Appeal No. 67 of 2012, decided on 18-1-2012 (Mad); *V. Mariappan* v. *State of T.N.*, 2008 SCC OnLine Mad 1382; *State of T.N.* v. *V. Mariappan*, Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad); *State of T.N.* v. *M.A. Abdul Samad*, Writ Appeal No. 526 of 2013, decided on 26-3-2013 (Mad), *held, not good law*

C. **Service Law — Pay — Pay fixation — Claim to grant of Selection Grade and Special Grade Scales of pay in bracket of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162 dt. 13-4-1998 on grounds of parity by appellant drivers of State Government — Appellants found not entitled to Selection Grade and Special Grade pay scales as claimed — Hence held, appellants cannot claim such relief on grounds of parity — It is well settled that person cannot invoke Art. 14 of the Constitution to claim benefit on grounds of parity if he is not entitled to such benefit**

— Art. 14 of the Constitution embodies concept of positive equality alone and not negative equality i.e. it cannot be relied upon to perpetuate illegality or irregularity — Said principle extends to judicial orders as well — Thus, jurisdiction of higher court cannot be invoked on basis of wrong order passed by lower forum (Paras 22 and 23)

Basawaraj v. *LAO*, (2013) 14 SCC 81; *State of Odisha* v. *Anup Kumar Senapati*, (2019) 19 SCC 626 : 2019 SCC OnLine SC 1207, *relied on*

Chandigarh Admn. v. *Jagjit Singh*, (1995) 1 SCC 745; *Anand Buttons Ltd.* v. *State of Haryana*, (2005) 9 SCC 164; *K.K. Bhalla* v. *State of M.P.*, (2006) 3 SCC 581; *Fuljit Kaur* v. *State of Punjab*, (2010) 11 SCC 455, *cited*

D. **Precedents — High Courts — High Court by impugned judgment differing from view taken by coordinate Benches — Held, once it was found by High Court that it was in disagreement with holding of coordinate Bench, it should not have proceeded to decide matter by itself, and in interest of judicial discipline should have instead referred matter to larger Bench for its consideration**

— However, in interest of expeditious disposal of matter instead of remanding matter to High Court for consideration afresh, Supreme Court

proceeding to decide it on merit — Courts, Tribunals and Judiciary — Judicial Process — Judicial discipline, accountability and comity (Para 18)

Appeals dismissed P-D/63485/CL

Advocates who appeared in this case :

Vijay Narayan, Advocate General, Balaji Srinivasan, Additional Advocate General, Basava Prabhu S. Patil and K.N. Basha, Senior Advocates (Garima Jain, C. Vigneswaran, T.R.B. Sivakumar, M. Ravi, Joseph Aristotle, Ms Priya Aristotle, Ms Sneha, Chinmay Deshpande, B. Karunakaran, Nikhil Swami, Ms A. Jaswanthi, Ms Purbitaa Mitra, K.V. Vijayakumar, S. Gowthaman, Vinodh Kanna B., Lenin Rajasehar, M. Yogesh Kanna, S. Raja Rajeshwaran, B. Balaji, A. Lakshminarayanan, Gautam Narayan, Ms Asmita Singh and Adithya Nair, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2019) 19 SCC 626 : 2019 SCC OnLine SC 1207, *State of Odisha* v. *Anup Kumar Senapati* 145*b-c*
2. (2019) 4 SCC 376, *Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.* 138*g-h*
3. 2017 SCC OnLine Mad 24787, *State of T.N.* v. *Y. Sathiya Baghavan* **(partly reversed)** 145*e-f*, 146*b*
4. 2017 SCC OnLine SC 1939, *State of T.N.* v. *M.A. Abdul Samad* 137*b-c*
5. 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241, *Director of Sericulture Deptt.* v. *K. Kumar* 136*a-b*, 136*c-d*, 142*a-b*, 142*d*, 145*d-e*
6. 2015 SCC OnLine SC 1847, *State of T.N.* v. *V. Mariappan* 136*f-g*, 136*g*, 137*a*, 137*c*
7. WP No. 2363 of 2013, decided on 5-1-2015 (Mad), *Y. Sathiya Baghavan* v. *State of T.N.* **(partly reversed)** 145*e-f*, 146*a*
8. (2013) 14 SCC 81, *Basawaraj* v. *LAO* 144*f*
9. 2013 SCC OnLine Mad 4089, *K. Mani* v. *State of T.N.* 142*a-b*
10. 2013 SCC OnLine SC 1436, *State of T.N.* v. *M.A. Abdul Samad* 137*b-c*
11. 2013 SCC OnLine SC 1435, *Forest Ex. Officer* v. *M. Balakrishnan* 137*b-c*
12. Writ Appeal No. 526 of 2013, decided on 26-3-2013 (Mad), *State of T.N.* v. *M.A. Abdul Samad* **(held, not good law)** 137*b-c*
13. 2012 SCC OnLine SC 1210, *State of T.N.* v. *D. Duraikannu* 136*f*
14. Writ Appeal No. 67 of 2012, decided on 18-1-2012 (Mad), *State of T.N.* v. *D. Duraikannu* **(held, not good law)** 136*f*
15. (2010) 11 SCC 455, *Fuljit Kaur* v. *State of Punjab* 145*b*
16. Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad), *State of T.N.* v. *V. Mariappan* **(held, not good law)** 136*f-g*, 141*g-h*, 142*b-c*, 142*d-e*, 142*e-f*, 143*a*, 143*a-b*, 143*b-c*, 143*c*, 143*d*
17. 2008 SCC OnLine Mad 1382, *V. Mariappan* v. *State of T.N.* **(held, not good law)** 141*g*, 142*b-c*, 142*d-e*, 142*e-f*
18. WP No. 34800 of 2006, order dated 6-8-2007 (Mad), *T.N. Govt. Deptt. Drivers' Central Assn.* v. *State of T.N.* 141*c-d*
19. (2006) 3 SCC 581, *K.K. Bhalla* v. *State of M.P.* 145*b*
20. (2005) 9 SCC 164, *Anand Buttons Ltd.* v. *State of Haryana* 145*b*
21. (2000) 6 SCC 359, *Kunhayammed* v. *State of Kerala* 137*e-f*
22. (1995) 1 SCC 745, *Chandigarh Admn.* v. *Jagjit Singh* 145*b*

The Judgment of the Court was delivered by

M.M. SHANTANAGOUDAR, J.—

Civil Appeals arising out of SLPs (C) Nos. 5395-99, 5605-13, 5391-93 and 5367-75 of 2016

1. Leave granted. These appeals have been filed against the common final judgment and order dated 8-7-2015[1] passed by the High Court of Judicature at Madras allowing writ appeals filed by the respondents herein, being State authorities, and dismissing writ petitions filed by the appellants herein, being drivers in various departments of the Government of Tamil Nadu, with respect to the Selection Grade and Special Grade scales of pay applicable to them.

2. The appellants, in a nutshell, are claiming the grant of Selection Grade and Special Grade scales of pay in the bracket of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162, Finance (Pay Cell) Department dated 13-4-1998 (for short "GOMs No. 162"), which has been granted to around 3000 similarly placed employees. The appellants place reliance on various decisions rendered by this Court and the High Court of Madras in several writ petitions and appeals granting similar pay scales to the petitioners therein. Thus, it is argued that the impugned judgment[1] of the High Court has erroneously differed from the consistent view taken in these decisions.

3. On the other hand, the respondents argue in favour of the impugned judgment, claiming that the initial grant of the claimed pay scale to some drivers (out of which the entire cluster of litigations arose) was merely on account of an error on the part of officials in some government departments. Thus, it is submitted that the applicable scales of pay are Rs 4000-6000 and Rs 4300-6000 respectively for the Selection Grade and Special Grade.

4. It has come to our attention that several Benches of this Court have dismissed SLPs against decisions of the High Court fixing pay scales of the drivers concerned therein at Rs 5000-8000 for the Selection Grade and Rs 5500-9000 for the Special Grade in terms of GOMs No. 162. We deem it fit to refer to the orders passed by this Court in this respect:

WA No. 67 of 2012[2]	SLP (C) CC No. 14715 of 2012	Dismissed on 10-9-2012[3]
WA No. 383 of 2009[4]	SLP (C) No. 35969 of 2009	Dismissed on 25-2-2015[5]
WA No. 391 of 2009	SLP (C) No. 6522 of 2010	Dismissed on 25-2-2015[5]
WAs Nos. 382 to 388 of 2009	SLPs (C) Nos. 6523-530 of 2010	Dismissed on 25-2-2015[5]
WP No. 462 of 2012 WP No. 24912 of 2010	SLP (C) No. 22491 of 2012	Dismissed on 25-2-2015[5]

1 *Director of Sericulture Deptt.* v. *K. Kumar*, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241
2 *State of T.N.* v. *D. Duraikannu*, Writ Appeal No. 67 of 2012, decided on 18-1-2012 (Mad)
3 *State of T.N.* v. *D. Duraikannu*, 2012 SCC OnLine SC 1210
4 *State of T.N.* v. *V. Mariappan*, Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)
5 *State of T.N.* v. *V. Mariappan*, 2015 SCC OnLine SC 1847

WAs Nos. 383-91 of 2009		
WP No. 29119 of 2012	SLP (C) No. 33037 of 2013	Dismissed on 25-2-2015[5]
WAs Nos. 791 and 792 of 2013 WPs Nos. 2929 and 2930 of 2012	SLP (C) No. 33588 of 2013	Dismissed on 25-2-2015[5]
WAs Nos. 130, 131, 132 of 2011	SLPs (C) CC Nos. 12886-888 of 2013	Dismissed on 19-7-2013[6]
WA No. 2243 of 2012	SLP (C) CC No. 6602 of 2013	Dismissed on 27-9-2013
WA No. 526 of 2013[7]	SLP (C) CC No. 14007 of 2013	Dismissed on 21-8-2013[8]
WA No. 24899 of 2014	SLP (C) No. 34265 of 2014	Dismissed on 6-2-2017[9]

5. Be that as it may, it must be noted that all the above orders of this Court were passed at the stage of admission itself. Even the order dated 25-2-2015[5], passed by a three-Judge Bench of this Court while dealing with a batch of appeals having SLP (C) No. 35969 of 2009 as the lead matter, stated as follows:

> "UPON hearing the counsel the Court made the following
>
> ORDER
>
> Dismissed."

6. It is evident that all the above orders were non-speaking orders, inasmuch as they were confined to a mere refusal to grant special leave to appeal to the petitioners therein. At this juncture, it is useful to recall that it is well-settled that the dismissal of an SLP against an order or judgment of a lower forum is not an affirmation of the same. If such an order of this Court is non-speaking, it does not constitute a declaration of law under Article 141 of the Constitution, or attract the doctrine of merger. The following discussion on this proposition in *Kunhayammed* v. *State of Kerala*[10], is relevant in this regard: (SCC pp. 383-84, para 44)

> "(*i*) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law.
>
> (*ii*) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is up to the disposal of prayer for special leave to file an appeal. The second stage commences if and when

5 *State of T.N.* v. *V. Mariappan*, 2015 SCC OnLine SC 1847
6 *Forest Ex. Officer* v. *M. Balakrishnan*, 2013 SCC OnLine SC 1435
7 *State of T.N.* v. *M.A. Abdul Samad*, Writ Appeal No. 526 of 2013, decided on 26-3-2013 (Mad)
8 *State of T.N.* v. *M.A. Abdul Samad*, 2013 SCC OnLine SC 1436
9 *State of T.N.* v. *M.A. Abdul Samad*, 2017 SCC OnLine SC 1939
10 (2000) 6 SCC 359

the leave to appeal is granted and the special leave petition is converted into an appeal.

(*iii*) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(*iv*) *An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.*

(*v*) If the order refusing leave to appeal is a speaking order i.e. gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(*vi*) Once leave to appeal has been granted and appellate jurisdiction of the Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(*vii*) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of the High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Order 47 Rule 1 CPC." (emphasis supplied)

This view has also been adopted in a plethora of decisions of this Court, including the recent decision in *Khoday Distilleries Ltd.* v. *Sri Mahadeshwara Sahakara Sakkare Karkhane Ltd.*[11]

11 (2019) 4 SCC 376

7. Applying these observations to the present case, it is clear that there has been no pronouncement by this Court constituting the law of the land as to the interpretation of GOMs No. 162. In such a situation, it is open for us to proceed to decide the instant appeals uninfluenced by the prior orders of this Court dismissing SLPs against the grant of relief to drivers placed similarly as the appellants herein.

8. It is evident that the entire controversy in this case hinges on the interpretation of GOMs No. 162. Vide this Order, the Tamil Nadu Revised Scales of Pay Rules, 1998 (for short "the 1998 Rules") were notified, revising 25 standard pay scales on a pay scale-to-pay scale basis for the State Government employees and teachers. While Schedule I to the 1998 Rules indicated the revised pay scales, Schedule II specified the Selection Grade and Special Grade pay scales applicable for each revised Ordinary Grade. Further, it was stated in Para 4 of the G.O. that for posts with no promotional avenues, the Selection Grade and Special Grade scales as indicated in Schedule II would be applicable.

9. It is not in dispute that drivers in various departments of the Government of Tamil Nadu were entitled to revised Ordinary Grade pay scales as per Schedule I. Further, since they did not have any promotional avenues, Selection Grade and Special Grade pay scales under Schedule II would become applicable as and when they completed 10 and 20 years of service respectively. The dispute here lies with respect to the entries under Schedules I and II applicable to the post of drivers. It is the submission of the respondents that prior to the revision of pay scales under the 1998 Rules, drivers were entitled to the pay scale of Rs 975-1660 as determined by G.O. No. 818, Finance, dated 9-9-1989. Accordingly, the corresponding revised Ordinary Grade pay scale under Schedule I of the 1998 Rules would be as per Entry No. XX below:

SCHEDULE — I

LIST OF PAY SCALES

Group	*Existing Scale*	*Revised Scale*
(1)	*(2)*	*(3)*
	Rs	*Rs*
I	5500-200-6500	17,400-500-21,900
II	5100-150-5700	16,400-450-20,000
III	4500-150-5700	15,000-400-18,600
IV	4100-125-4850-150-5300	14,300-400-18,300
V	3950-125-4700-150-5000	12,750-375-16,500
VI	3700-125-4700-150-5000	12,000-375-16,500
VII	3000-100-3500-125-4500	10,000-325-15,200
VIII	2500-75-2800-100-4200	9100-275-14,050
IX	2200-75-2800-100-4000	8000-275-13,500
X	2000-60-2300-75-3200-100-3500	6500-200-11,100
XI	2000-60-2300-75-3200	6500-200-10,500
XII	1820-60-2300-75-3200	5900-200-9900
XIII	1640-60-2600-75-2900	5500-175-9000

XIV	1600-50-2300-60-2660	5300-150-8300
XV	1400-40-1600-50-2300-60-2600	5000-150-8000
XVI	1350-30-1440-40-1800-50-2200	4500-125-7000
XVII	1320-30-1560-40-2040	4300-100-6000
XVIII	1200-30-1560-40-2040	4000-100-6000
XIX	1100-25-1150-30-1660	3625-85-4900
XX	***975-25-1150-30-1660***	***3200-85-4900***
XXI	950-20-1150-25-1500	3050-75-3950-80-4590
XXII	825-15-900-20-1200	2750-70-3800-75-4400
XXIII	800-15-1010-20-1150	2650-65-3300-70-4000
XXIV	775-12-835-15-1030	2610-60-3150-65-3540
XXV	750-12-870-15-945	2550-55-2660-60-3200

(emphasis supplied)

10. Relying on this, the respondents submit that the drivers are entitled to a revised Ordinary Grade pay scale of Rs 3200-4900 only. As regards the Selection Grade and Special Grade pay scales applicable, the respondents claim that the appellants are entitled to pay scales of Rs 4000-6000 and Rs 4300-6000 respectively as per Serial No. 6 of Schedule II, which is corresponding to Entry No. XX of Schedule I. On the other hand, the appellants claim that they are entitled to the revised Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively as per Serial No. 8 of Schedule II.

11. It would be useful to refer to Schedule II in this regard:

SCHEDULE — II

REVISED SELECTION GRADE AND SPECIAL GRADE SCALE OF PAY

Sl. Nos. (1)	*Ordinary Grade (2)*	*Selection Grade (3)*	*Special Grade (4)*
	Rs	*Rs*	*Rs*
1	2550-55-2660-60-3200	2650-65-3300-70-4000	2750-70-3800-75-4400
2	2610-60-3150-65-3540	2750-70-3800-75-4400	3050-75-3950-80-4590
3	2650-65-3300-70-4000	3050-75-3950-80-4590	3200-85-4900
4	2750-70-3800-75-4400	3050-75-3950-80-4590	3200-85-4900
5	3050-75-3950-80-4590	4000-100-6000	4300-100-6000
6	***3200-85-4900***	***4000-100-6000***	***4300-100-6000***
7	3625-85-4900	4300-100-6000	4500-125-7000
8	***4000-100-6000***	***5000-150-8000***	***5500-175-9000***
9	4300-100-6000	5000-150-8000	5500-175-9000
10	4500-125-7000	5300-150-8300	5900-200-9900
11	5000-150-8000	5500-175-9000	6500-200-10,500
12	5300-150-8300	6500-200-10,500	8000-275-13,500
13	5500-175-9000	6500-200-10,500	8000-275-13,500
14	5900-200-9900	8000-275-13,500	9100-275-14,050
15	6500-200-10,500	8000-275-13,500	9100-275-14,050
16	6500-200-11,100	9100-275-14,050	10,000-325-15,200

17	8000-275-13,500	9100-275-14,050	10,000-325-15,200
18	9100-275-14,050	10,000-325-15,200	12,000-375-16,500

(emphasis supplied)

12. Indeed, the genesis of the entire dispute lies in the fixation of Selection and Special Grade pay scales of certain drivers by certain local departments as per Serial No. 8 of Schedule II. Pursuant to this, the Joint Secretary to the Government, Finance Department, issued Letter No. 96900/PC/98-2 dated 31-12-1998 to all Secretaries to the Government and Heads of Department, on the basis that such fixations were erroneous and needed to be reviewed, with a direction to effect recoveries wherever excess payments had been made.

13. In 2006, the Secretary, Personnel and Administrative Reforms (E) Department rejected the representation of the Tamil Nadu Government Department Drivers' Central Association seeking fixation of Selection Grade and Special Grade pay scales at Rs 5000-8000 and Rs 5500-9000 respectively, vide the proceedings in Letter No. 13921/K/2005-1 dated 25-4-2006. This was challenged by the Drivers' Association before the High Court in WP No. 34800 of 2006, which was allowed[12] on the ground that the said proceedings did not refer to GOMs No. 162. The Association was directed to make a fresh representation before the Finance Department, to be decided in accordance with GOMs No. 162.

14. Such representation, however, was also rejected by the Finance Department vide Letter No. 63685/CMPC/2006-1, dated 1-10-2007, which states as follows:

> "3. Therefore, the drivers are entitled for the Selection Grade/Special Grade scales of pay as ordered in Schedule II of GOMs No. 162, Finance (PC) Department, dated 13-4-1998, based on the ordinary grade scale of pay granted to the posts of drivers. As such all categories on a par with drivers in the Ordinary Grade of Rs 3200-4900 are entitled for the Selection Grade of Rs 4000-6000 and Special Grade of Rs 4300-6000 respectively. The above Government Order has been issued based on the recommendations of the Official Committee, 1998 and the drivers are not denied the benefits ordered in the Government Order cited. Hence, your request has no merit to consider as requested."

15. A batch of writ petitions challenging the above order was subsequently filed before the High Court. These writ petitions were allowed by the High Court vide judgment dated 30-9-2008 in *V. Mariappan* v. *State of T.N.*[13] and connected matters thereto, with a direction for the fixation of pay scales in accordance with GOMs No. 162. This was affirmed by the Division Bench of the High Court vide judgment dated 1-9-2009 in *State of T.N.* v. *V. Mariappan*[4].

12 *T.N. Govt. Deptt. Drivers' Central Assn.* v. *State of T.N.*, WP No. 34800 of 2006, order dated 6-8-2007 (Mad)

13 2008 SCC OnLine Mad 1382

4 Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)

16. Subsequently, several other writ petitions were filed by other similarly situated drivers seeking the benefit of the same higher pay scale. These petitions were also allowed on the basis of the previous decisions discussed above, with the notable exceptions of the judgment dated 18-11-2013 passed by the Single Judge of the High Court in *K. Mani* v. *State of T.N.*[14] and matters connected thereto, and the impugned judgment[1] herein.

17. Concluding that the drivers were not entitled to the higher claimed pay scales, these two judgments differed from the consistent view taken in the preceding judgments and orders based on a scrutiny of GOMs No. 162 and the prior history of pay scales payable to the drivers. They justified differing from the decisions of the Division Benches of the High Court on the premise that there was no specific direction by the learned Single Judge in *V. Mariappan* v. *State of T.N.*[13], or the Division Bench in *State of T.N.* v. *V. Mariappan*[4], granting the Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively. With respect to subsequent writ petitions granting these higher pay scales, it was noted that they had been disposed of at the admission stage itself (in some cases even without notice to the Government) and could thus be disregarded.

18. Given this departure in the impugned judgment[1] from the consistent view taken by prior coordinate Benches of the High Court, it is necessary to ascertain whether the High Court should have instead referred the matter to a larger Bench for consideration. This merits a closer reading of the decisions of the Single Judge in *V. Mariappan* v. *State of T.N.*[13] and of the Division Bench in *State of T.N.* v. *V. Mariappan*[4]. As discussed above, the principal issue before the courts in these decisions was the validity of the Order dated 1-10-2007 passed by the Finance Department rejecting the claim of the Drivers' Association for Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively.

18.1. The Single Judge in *V. Mariappan* v. *State of T.N.*[13] and the Division Bench in *State of T.N.* v. *V. Mariappan*[4] both set aside the Order dated 1-10-2007 based on the fact that the claimed higher pay scales had already been granted and were still being received by certain other drivers in several government departments, as per GOMs No. 162. Further, and more importantly, it was held that the letter dated 31-12-1998 wherein such higher pay scale fixations were deemed to be erroneous, would not have the effect of reducing the entitlement of drivers, as such a letter could not act as a substitute for modification of the G.O. itself. Thus, even though the Court did not give any express direction to grant the higher pay scales as per Serial No. 8 of Schedule II to the 1998 Rules, we find that the same was implicit in the Court's directions for fixing the pay scales in terms of GOMs No. 162. In other words, it cannot

14 2013 SCC OnLine Mad 4089
1 *Director of Sericulture Deptt.* v. *K. Kumar*, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241
13 2008 SCC OnLine Mad 1382
4 Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)

be said that the High Court in *State of T.N.* v. *V. Mariappan*[4] did not affirm the drivers' claim that they were entitled to the higher Selection and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively.

18.2. However, in the impugned judgment, the High Court only focused on the fact that the conclusion reached by the coordinate Bench in *State of T.N.* v. *V. Mariappan*[4] was for appropriate fixation of pay scales under GOMs No. 162 only, and there was *no specific direction* for grant of the Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively. On this basis, the High Court proceeded to determine the question of pay scale entitlement and took a view diametrically opposite to that of the coordinate Bench in *State of T.N.* v. *V. Mariappan*[4], finding that the appellant drivers were only entitled to the Selection Grade and Special Grade pay scales of Rs 4000-6000 and Rs 4300-6000 respectively. In our considered opinion, such an approach is based on a narrow reading of the decision of the coordinate Bench in *State of T.N.* v. *V. Mariappan*[4], as it fails to appreciate the implicit direction in this order to grant the higher pay scales to the drivers, as mentioned supra. Thus, it appears that the High Court differed from the view taken previously by a coordinate Bench based on a misreading of the same. In such a situation, once it was found by the High Court that it was in disagreement with the holding of its coordinate Bench in *State of T.N.* v. *V. Mariappan*[4], it should not have proceeded to decide the matter by itself, and in the interest of judicial discipline, should instead have referred the matter to a larger Bench for its consideration.

19. Be that as it may, in the interest of expeditious disposal of the matter, we do not deem it fit to remand the matter to the High Court for fresh consideration at this stage. Thus, we shall proceed to decide it on merits accordingly.

20. In our considered opinion, apart from claiming parity with similarly placed individuals, the appellants have been unable to justify how and why they are entitled to the Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 as specified in Serial No. 8 of Schedule II to the 1998 Rules, in terms of GOMs No. 162. On the other hand, on perusing the series of revisions made to the pay scales applicable to drivers employed with the State Government, we find that the applicable pay scales for the Selection Grade and Special Grade would be as per Serial No. 6 of Schedule II to the 1998 Rules i.e. Rs 4000-6000 and Rs 4300-6000 respectively.

20.1. As the High Court has also noted in the impugned judgment, the pay scales of the appellants can be traced back to GOMs No. 666, Finance dated 27-6-1989, by which the State Government issued the Tamil Nadu Revised Scales of Pay Rules, 1989, implementing the recommendations of the Vth Tamil Nadu Pay Commission. Under these Rules, the original and revised pay scales of 30 common categories of posts were specified. The scale of pay for drivers was mentioned at Serial No. 11 in the first part of the Schedule to these Rules, having been revised from Rs 610-1075 to Rs 950-1500.

4 Writ Appeal No. 383 of 2009, decided on 1-9-2009 (Mad)

20.2. The next revision came through GOMs No. 818, Finance, dated 9-9-1989, whereby drivers' pay scale was increased to Rs 975-1660. Later, under GOMs No. 304, Finance dated 28-3-1990, Special Grade and Selection Grade scales of pay were introduced for persons who had completed 10 years and 20 years of service respectively. For the post of drivers carrying the Ordinary Grade pay scale of Rs 975-1660, the Selection and Special Grade brackets were set as Rs 1200-2040 and Rs 1320-2040 respectively.

20.3. Finally, when the 1998 Rules were introduced through GOMs No. 162, the post-wise determination of pay scales was replaced by a pay scale-to-pay scale basis determination. As already seen in Schedule I to the said Rules, the pay scale of Rs 975-1660 applicable to drivers was revised to Rs 3200-4900. For this, the corresponding Selection and Special Grades specified in Schedule II were Rs 4000-6000 and Rs 4300-6000 respectively.

21. Against this backdrop, we find substance in the submission of the respondents that the appellants are not lawfully entitled to the claimed Selection Grade and Special Grade pay scales of Rs 5000-8000 and Rs 5500-9000 respectively in terms of GOMs No. 162.

22. The only question to be settled, therefore, is whether the appellants are entitled to claim parity with the drivers who have so far been granted benefits vide the orders of the High Court and this Court, as mentioned supra in para 4.

23. In this respect, we find that the High Court in the impugned judgment was correct in concluding that the appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found that they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial fora as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. In this respect, it would be fruitful to refer to the following passage from the decision of this Court in *Basawaraj* v. *LAO*[15]: (SCC p. 85, para 8)

> "*8.* It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed

15 (2013) 14 SCC 81

in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide *Chandigarh Admn.* v. *Jagjit Singh*[16], *Anand Buttons Ltd.* v. *State of Haryana*[17], *K.K. Bhalla* v. *State of M.P.*[18] and *Fuljit Kaur* v. *State of Punjab*[19].)"

This proposition was also recently affirmed by a three-Judge Bench of this Court in *State of Odisha* v. *Anup Kumar Senapati*[20].

24. Thus, it is evident that the appellants cannot claim the Selection Grade and Special Grade scales of pay of Rs 5000-8000 and Rs 5500-9000 respectively, solely on the strength of earlier decisions of the High Court, without showing how they, themselves, are entitled to such benefit in the first place. In such a situation, we are of the considered view that the appellants can only be granted the benefit of the Selection Grade and Special Grade scales of pay to which they are lawfully entitled in terms of GOMs No. 162 i.e. Rs 4000-6000 and Rs 4300-6000 respectively.

25. Therefore, in view of the foregoing discussion, we find no reason to interfere with the impugned judgment[1]. The instant appeals are hereby dismissed, and the impugned judgment is confirmed.

Civil appeals arising out of SLPs [Diary No. 42301 of 2017]

26. Delay condoned. Leave granted. These appeals have been filed by the State of Tamil Nadu, represented by its Principal Secretary, Finance (Pay Cell) Department against the judgment and order dated 5-1-2015 of the High Court of Madras in *Y. Sathiya Baghavan* v. *State of T.N.*[21], and the final judgment and order dated 11-9-2017[22] dismissing Review Application No. 153 of 2016 against the same, with respect to the pay scale entitlements of certain drivers employed by the High Court of Madras in terms of GOMs No. 162.

27. These appeals arise out of virtually the same factual background as those disposed of above. WP No. 2363 of 2013 was filed by the drivers concerned employed with the High Court of Madras, seeking quashing of Para 5 of Letter No. 63305/Pay Cell/2010-1 dated 8-11-2010 issued by the State Government, on which basis the Government had denied them the benefit of Selection and Special Grade pay scales as per Serial No. 8 of Schedule II of

16 (1995) 1 SCC 745
17 (2005) 9 SCC 164
18 (2006) 3 SCC 581
19 (2010) 11 SCC 455
20 (2019) 19 SCC 626 : 2019 SCC OnLine SC 1207
1 *Director of Sericulture Deptt.* v. *K. Kumar*, 2015 SCC OnLine Mad 4746 : (2015) 4 CTC 241
21 WP No. 2363 of 2013, decided on 5-1-2015 (Mad)
22 *State of T.N.* v. *Y. Sathiya Baghavan*, 2017 SCC OnLine Mad 24787

the 1998 Rules under GOMs No. 162. The petitioners therein also sought a direction to the State Government for appropriate fixation of pay scales in the above terms.

28. The Division Bench allowed[21] the writ petition on the ground that the drivers were not entitled to any promotional avenues, and hence were entitled to the full benefits of the appropriate pay scale under Schedule II to the 1998 Rules. It was further found that the drivers were entitled to benefits under Serial No. 8 of the said Schedule, looking to the disposal of similar matters by the High Court and this Court. The review application filed against the same also came to be dismissed[22] by the High Court.

29. As discussed supra, it has not been disputed before us that the drivers concerned were not entitled to any promotional avenues. Thus, it is evident that the High Court rightly concluded that the drivers were entitled to the full benefits of the appropriate pay scale under Schedule II to the 1998 Rules. However, in light of our foregoing finding that persons employed in the post of drivers in various departments in the Government of Tamil Nadu are only entitled to Ordinary, Selection and Special Grade pay scales in terms of Serial No. 6 of Schedule II to the 1998 Rules i.e. at Rs 3200-4900, Rs 4000-6000 and Rs 4300-6000 respectively, we have no hesitation to hold that the High Court erred in directing fixation of such pay scales to drivers employed at the High Court in terms of Serial No. 8 of Schedule II, fixing Selection Grade and Special Grade scales of pay of Rs 5000-8000 and Rs 5500-9000 respectively.

30. The appeals are therefore allowed partly, to the extent that the State Government is directed to fix the pay scale benefits available to the respondents in the instant appeals in terms of Serial No. 6 of Schedule II to the 1998 Rules under GOMs No. 162.

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21 *Y. Sathiya Baghavan* v. *State of T.N.*, WP No. 2363 of 2013, decided on 5-1-2015 (Mad)
22 *State of T.N.* v. *Y. Sathiya Baghavan*, 2017 SCC OnLine Mad 24787

(2005) 13 Supreme Court Cases 777 : 2006 Supreme Court Cases (L&S) 1635 : 2005 SCC OnLine SC 565

(BEFORE N. SANTOSH HEGDE, B.P. SINGH AND S.B. SINHA, JJ.)

KAPRA MAZDOOR EKTA UNION . . Appellant;

Versus

BIRLA COTTON SPINNING AND WEAVING MILLS LTD. AND ANOTHER . . Respondents.

Civil Appeal No. 3475 of 2003[†], decided on March 16, 2005

A. **Labour Law — Industrial Disputes Act, 1947 — Ss. 11(3), 7 and 7-A — Review or recall, power of, if any — Held, the provisions of ID Act, 1947 do not grant any power of review, either expressly or by necessary**

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implication — Review on merits and procedural review — Power of Labour Court/Industrial Tribunal to review its earlier award — Inherent power, if any — Scope of procedural review — Ground that certain matters that ought to have been considered by the forum concerned, and were not duly considered, if ground for procedural review — Held, review on merits is permissible only in case forum in question is vested with power of review by statute, expressly or by necessary implication — There exists no inherent power for the same — However, procedural review belongs to a different category, power for which is inherent — In case of procedural review, party seeking the same does not have to prove any of the grounds necessary to warrant review on merits, such as error apparent on face of record — Rather, it has to be established that the procedure followed by forum concerned suffered from such illegality that it vitiated the proceeding and invalidated the order made therein — In such cases, the matter has to be reheard in accordance with law and without going into merit of order impugned — Illustrations given of, when procedural review is warranted — Further held, ID Act, 1947 does not contain any provision granting power of review, expressly or by necessary implication — Hence, and since on facts review sought was not a procedural review, but review on merits (on ground that some issues which ought to have been considered by Tribunal were not duly considered), held, it was impermissible — In any case, even on merits, Tribunal concerned had in fact considered the issue and recorded a finding on the issue, in respect of non-consideration of which, review had been sought — Review — Power of — Civil Procedure Code, 1908 — Or. 47 R. 1

B. **Labour Law — Review — Power of — Court or quasi-judicial authority — Held, not an inherent power — Must be conferred by law expressly or by necessary implication — Procedural review is different, power to do so is inherent — Then matter has to be reheard as per procedure without going into the merits**

Dismissing the appeal, the Supreme Court

Held :

Where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The power of review is not an inherent power and must be conferred by law either expressly or by necessary implication.

(Paras 17 and 19)

Procedural review, however, belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so ascertains whether it has committed a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up

for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case, the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify

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a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. Again to illustrate, once it is established that the party concerned was prevented from appearing at the hearing due to sufficient cause, it follows that the matter must be reheard and decided again.

(Paras 17 and 19)

Grindlays Bank Ltd. v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420 : 1981 SCC (L&S) 309, *clarified* and *relied on*

Kuntesh Gupta (Dr.) v. *Hindu Kanya Mahavidyalaya*, (1987) 4 SCC 525 : 1987 SCC (L&S) 491 : (1987) 5 ATC 86; *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844 : AIR 1970 SC 1273, *relied on*

Satnam Verma v. *Union of India*, 1984 Supp SCC 712 : 1985 SCC (L&S) 362, *referred to*

The facts of the instant case are quite different. The recall of the award of the Tribunal was sought not on the ground that in passing the award the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act concerned (the ID Act, 1947) conferring the power of review on the Tribunal either expressly or by necessary implication.

(Para 20)

Also, the Tribunal that recalled the earlier order, passed in terms of the settlement, proceeded on a factually incorrect assumption that the earlier Tribunal did not consider the question whether the settlement was just and fair and protected the interest of the workmen. The High Court has found that the earlier Tribunal while making the award in terms of the settlement had in clear terms recorded its satisfaction in para 25 of its order [set out in paras 9 and 10 herein] that the settlement was fair and just. No fault can be found with this conclusion of the High Court. Lastly, the submission that the settlement did not resolve the disputes which were subject-matter of reference made to the Tribunal proceeds on a misreading of the settlement and has no force.

(Paras 24 and 25)

C. **Labour Law — Industrial Disputes Act, 1947 — Ss. 7-A & 7, 11, 17-A and 17 — Tribunal/Labour Court seized of dispute referred to it — Point in time till which it subsists — Application for recall of award — Jurisdiction in respect of — Held, the Tribunal retains jurisdiction over the matter till award given by it becomes enforceable, that is, till the expiry of 30 days from the date of publication of award in gazette under S. 17 — Up to said date Tribunal/Labour Court has power to entertain an application in connection with the dispute, and jurisdiction of Tribunal/Labour Court has to be seen on date of application and not the date on which it passed the order**

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Till the award becomes enforceable the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and up to that date it has the power to entertain applications in connection with such dispute. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the order. Under Section 17-A(1) of the Act an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17 of the Act. Thus the award made on 12-6-1987 and published in the Gazette on 10-8-1987 would have become enforceable with effect from 9-9-1987. However, the application for recalling the award was made on 7-9-1987 i.e. 2 days before the award would have become enforceable in terms of Section 17-A(1) of the Act. The High Court rightly took the view that since the application for recall of the order was made before the award had become enforceable, the Tribunal had not become functus officio and had jurisdiction to entertain the application for recall.

(Paras 15 and 16)

Grindlays Bank Ltd. v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420 : 1981 SCC (L&S) 309; *J.K. Synthetics Ltd.* v. *CCE*, (1996) 6 SCC 92; *M.P. Electricity Board* v. *Hariram*, (2004) 8 SCC 246 : 2004 SCC (L&S) 1092, *followed*

D. **Labour Law — Industrial Disputes Act, 1947 — S. 18(3) — Settlement under — Binding effect — Conditions for — "Settlement arrived at in the course of conciliation proceedings under this Act" — Binding effect of — On facts, it having been shown beyond doubt that settlement in question was arrived at in course of conciliation proceedings, with assistance and concurrence of Conciliation Officer, its binding effect could not be questioned**

(Para 22)

Bata Shoe Co. (P) Ltd. v. *D.N. Ganguly*, (1961) 3 SCR 308 : AIR 1961 SC 1158; *Workmen* v. *Delhi Cloth and General Mills Ltd.*, (1969) 3 SCC 302; *State of Bihar* v. *D.N. Ganguly*, 1959 SCR 1191 : AIR 1958 SC 1018; *Sirsilk Ltd.* v. *Govt. of A.P.*, (1964) 2 SCR 448 : AIR 1964 SC 160; *Praga Tools Ltd.* v. *Mazdoor Sabha*, (1975) 1 LLJ 218 (AP), *referred to*

D-M/AFLZ/31555/SL

Advocates who appeared in this case:

Vijay K. Jain, Advocate, for the Appellant;

L. Nageswara Rao, Senior Advocate (S. Sukumaran, O.P. Khaitan, A.T. Patra and K. Rajeev, Advocates, with him) for the Respondents.

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4. 1984 Supp SCC 712 : 1985 SCC (L&S) 362, *Satnam Verma* v. *Union of India* 784*f-g*, 786*b*
5. 1980 Supp SCC 420 : 1981 SCC (L&S) 309, *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* 784*f-g*, 785*g-h*, 786*a-b*, 786*e*, 786*f*, 786*g*, 787*g-h*

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7. (1971) 3 SCC 844 : AIR 1970 SC 1273, *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* 786*d*, 787*b*

8. (1969) 3 SCC 302, *Workmen* v. *Delhi Cloth and General Mills Ltd.* 788*g-h*

9. (1964) 2 SCR 448 : AIR 1964 SC 160, *Sirsilk Ltd.* v. *Govt. of A.P.* 783*c-d*

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10. (1961) 3 SCR 308 : AIR 1961 SC 1158, *Bata Shoe Co. (P) Ltd.* v. *D.N. Ganguly* 788*f*

11. 1959 SCR 1191 : AIR 1958 SC 1018, *State of Bihar* v. *D.N. Ganguly* 783*c-d*

The Judgment of the Court was delivered by

B.P. SINGH, J.— The appellant Kapra Mazdoor Ekta Union has preferred this appeal by special leave which is directed against the judgment and order of the High Court of Delhi at New Delhi in Civil Writ Petition No. 2084 of 1990 dated 31-8-2001 whereby the writ petition preferred by the respondent Management of M/s Birla Cotton Spinning and Weaving Mills Limited was allowed and the order dated 19-2-1990 passed by the Presiding Officer, Industrial Tribunal II, Delhi was quashed. By the said order the Industrial Tribunal had in effect recalled its award of 12-6-1987 and framed an additional issue to be tried by the Tribunal. The High Court held that the award dated 12-6-1987 had effectively terminated the industrial dispute referred to the Tribunal by the appropriate Government on 13-12-1982.

2. With a view to appreciate the submissions urged before us, it would be necessary to notice the factual background in which these questions have arisen.

3. The appellant Union is one of the eight unions representing the workers employed in the respondent Company. In the year 1982 on account of closure of some looms of the Weaving Section of the Mill disputes arose between the workmen and the Management of the respondent Company. The appropriate Government in exercise of its powers conferred by Sections 10(1)(*d*) and 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") referred the said disputes to the Industrial Tribunal, Delhi vide notification dated 13-12-1982. The reference was in the following terms:

> "*1*. Whether the action of the Management in refusing duties to a large number of workers is illegal and/or unjustified, and if so, what directions are necessary in this regard?
>
> *2*. Whether the Management is justified in closing down a large number of looms

in the Mill and if not to what relief the affected workers are entitled to and what further directions are necessary in this respect?"

4. While the reference was pending before the Industrial Tribunal, a settlement is purported to have been arrived at between the respondent Management and its workmen. According to the Management this settlement was reached in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer, namely, the Deputy Labour Commissioner-cum-Conciliation Officer, Delhi, M. Basai. It is the case of the respondent Management that after reference of the dispute further disputes arose between the Management and the workmen and a notice of strike was served on the Management and some more demands were raised. The notice of strike was served on 14-2-1983 and the Management on 4-4-1983 gave notice under Section 25-FFA of the Industrial Disputes Act for closing the undertaking relating to the Weaving Mill on account of labour trouble

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resulting in huge financial losses. It is the case of the respondent Management that in these circumstances conciliation proceedings commenced and after great and sustained efforts, a settlement was arrived at between the Management and its workmen in the course of conciliation proceedings. The settlement has been reduced to writing, and it is not disputed that the same has been signed by representatives of the Management as well as the representatives of two workers' unions as also by the Deputy Labour Commissioner-cum-Conciliation Officer, M. Basai.

5. In view of the settlement reached between the parties, an application was moved before the Industrial Tribunal which was seized of the disputes, which were the subject-matter of the reference made on 13-12-1982, with a prayer that in view of the settlement reached between the parties the Industrial Tribunal may be pleased to give its award in terms of the conciliation settlement dated 17-5-1983. One of the terms of the settlement was to the effect that both the parties will present a petition before the Industrial Tribunal, Delhi with a request to accept the terms of the settlement as fair and reasonable and to give its award in terms of the settlement in the disputes pending before it pursuant to the reference made on 13-12-1982.

6. The application made by the Management for passing an award in terms of the settlement dated 17-5-1983 was opposed by the appellant Union on various grounds. It was submitted by the appellant Union that only two of the unions had signed the settlement who represented a very insignificant number of workmen. The settlement was a private settlement and the workers who were not members of those two unions were not bound by the settlement. It was further submitted that in May 1983, when the settlement is said to have been arrived at, no conciliation proceedings were pending before the Conciliation Officer and, therefore, the Conciliation Officer had no power or justification to record such a settlement, particularly during the pendency of the earlier reference. It was also the case of the appellant Union that the settlement did not settle the disputes which had been referred to the Tribunal for adjudication. The settlement was unfair and unjust to the workmen and, therefore, not acceptable to the appellant Union.

7. The appellant Union filed a writ petition before the High Court of Delhi at New Delhi contending that the settlement dated 17-5-1983 was not a conciliation settlement binding upon all the workmen. The writ petition was dismissed by the High Court by its order dated 3-1-1986. The matter was brought before this Court in Special Leave Petition (Civil) No. 1526 of 1985 which was also dismissed by this Court on 5-8-1986 with the following observations:

"We have heard learned counsel for the parties. We do not see any reason why we should entertain this special leave petition at this stage. It is conceded that the settlement between the employer and certain trade unions has been filed before the Industrial Tribunal to which a reference of this dispute was made and a settlement was filed before the Tribunal three years ago. It is for the Industrial Tribunal to dispose of the question

whether the settlement is valid and binding between the employer and the workmen. It is only after the Industrial Tribunal has disposed of the matter that this Court may look into it. While we dismiss the special leave petition, we may observe that the Industrial Tribunal should dispose of the question as to the validity and binding nature of the settlement as expeditiously as possible. Having regard to the lapse of time which has taken place we trust that the Industrial Tribunal will be able to adjudicate on the matter within three months from today."

8. In the light of the order of this Court the Industrial Tribunal heard the parties and passed an award on 12-6-1987. The award is a detailed reasoned award. The Tribunal took note of the background in which the disputes had arisen and the reference made to it. It rejected the argument of the appellant Union that once a reference is made, the Labour Department of the appropriate Government becomes functus officio in the matter. After considering the decisions of this Court in *State of Bihar* v. *D.N. Ganguly*[1], *Sirsilk Ltd.* v. *Govt. of A.P.*[2] and *Praga Tools Ltd.* v. *Mazdoor Sabha*[3] it concluded that merely because a dispute had been referred to the Industrial Tribunal for adjudication, it did not prevent the Conciliation Officer from playing his role when other disputes arose between the parties and the industrial peace was disturbed. It noticed the fact that in the instant case a notice of strike was given on 14 -2-1983 and a notice of closure of a part of the undertaking on 4-4-1983. The workers were disturbed and the atmosphere was surcharged. In this background if the Conciliation Officer intervened in an attempt to bring about a settlement, it cannot be contended that he had no jurisdiction to do so. In fact the Labour Department was not only justified but legally competent and compelled to set the conciliation proceedings in motion so as to restore industrial peace.

9. Having found that the settlement was brought about in the course of conciliation proceedings, the Tribunal considered the terms of settlement and recorded the following conclusion:

"I have carefully gone through the terms of the settlement. These are not only well bargained but quite detailed and very sound in the circumstances obtaining. Its various items made provision for meeting all the relevant problems of relief and rehabilitation of the affected workers because of the closure of Weaving Section of the Mill and envisages an expert technical body for deciding on the possibility and extent of the revival of weaving work in the Mill, under the time-bound schedule. I find the settlement fair and just."

10. The Tribunal, therefore, concluded that the settlement of 17-5-1983 was a settlement reached between the workmen and the Management in the course of conciliation proceedings and hence binding on all the workers of

the respondent Company. It proceeded to decide the reference declaring that the disputes stood settled as between the parties by a valid and binding settlement dated 17-5-1983 and thus the reference had been rendered redundant. There was no dispute surviving and no purpose was left in making the terms of a valid and binding settlement of 1983 as a part of the award, as all the agreed terms stood executed and implemented. The order of the Industrial Tribunal making the award is of 12-6-1987. The said award was duly published by the appropriate Government in the gazette on 10-8-1987.

11. On 7-9-1987 the appellant Union filed an application before the Industrial Tribunal to the effect that the only question which had been argued before the Tribunal was in relation to the power and jurisdiction of the Conciliation Officer to record settlement between the parties during the pendency of the disputes. The question as to whether the settlement was fair and just, and should be accepted by the Tribunal, was not argued since that required evidence. It was, therefore, understood that the said question would be decided later on, in case the Tribunal held that the Conciliation Officer had jurisdiction to record the settlement. Under some misconception the Tribunal had determined the terms of the settlement to be fair and just and had passed an award on 12-6-1987. It was, therefore, prayed that the appellant Union be given an opportunity to establish that the settlement was neither just nor fair. For this purpose the award may be recalled and the appellant Union be given an opportunity to establish that the settlement is unjust and unfair, adversely affecting a large number of workmen. It was prayed that the award may be recalled which was in fact an ex parte award, and the question of fairness of the settlement be decided after providing an opportunity to the parties to produce evidence.

12. This application filed by the appellant Union was strongly opposed by the respondent Management, but the successor Presiding Officer of Industrial Tribunal II, Delhi allowed the application. It observed that a perusal of the order dated 12-6-1987 showed that the then Tribunal did not make a single observation as to whether the settlement dated 17-5-1983 was just and fair. No issue was framed nor any evidence was recorded on that point. No argument was advanced and no finding was given by his learned predecessor on this point. Relying upon the judgments of this Court in *Satnam Verma* v. *Union of India*[4] and *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5] it was held that where the Tribunal proceeds to make an award without notice to a party, the award is a nullity and, therefore, the Tribunal has not only the power but also the duty to set aside such an ex parte award. It was held that in the instant case no arguments were advanced and no finding was given as to whether the settlement was just and fair. In view of its finding that the Tribunal has power to review its award even if the same is published in the gazette, the Tribunal proceeded to exercise its power to review its earlier order dated 12-6-1987. It further framed an additional issue which is as follows:

> "Whether the settlement dated 17-5-1983 is just and fair and if so, is it not binding on the parties?"

It further directed that only arguments shall be heard since there was no need to record evidence on this point. Accordingly by its order of 19-2-1990 the Industrial Tribunal decided to review its earlier order and framed an additional issue as to whether the settlement was just and fair.

13. The respondent Management herein preferred a writ petition before the High Court of Delhi at New Delhi and sought quashing of the order dated 19-2-1990 passed by Industrial Tribunal II, Delhi, and for declaration that the award dated 12-6-1987 earlier made by the Tribunal effectively terminated the reference pending before it. The High Court by its impugned judgment and order allowed the writ petition and granted the reliefs prayed for. The judgment and order of the High Court has been impugned before us in this appeal.

14. The core question which arises for consideration is whether the Industrial Tribunal was justified in recalling the earlier award made on 12-6-1987 and in framing an additional issue for adjudication by the Tribunal. According to the appellant the recall of the order was fully justified in the facts of the case, while the respondents contend to the contrary. Two issues arise for our consideration while considering the legality and propriety of the order of the Tribunal in recalling its earlier award. Firstly, whether the Tribunal had jurisdiction to recall its earlier order which amounted virtually to a review of its earlier order; and secondly, whether the Tribunal had no jurisdiction to entertain the application for recall as it had become functus officio. The High Court answered the first question in favour of the respondent Management and the second in favour of the appellant.

15. We shall first take up the second question namely whether the Tribunal was functus officio having earlier made an award which was published by the appropriate Government. It is not in dispute that the award was made on 12-6-1987 and was published in the gazette on 10-8-1987. The application for recall was made on 7-9-1987. Under sub-section (1) of Section 17-A of the Act an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17 of the Act. Thus the award would have become enforceable with effect from 9-9-1987. However, the application for recalling the award was made on 7-9-1987 i.e. 2 days before the award would have become enforceable in terms of sub-section (1) of Section 17-A of the Act. The High Court rightly took the view that since the application for recall of the order was made before the award had become enforceable, the Tribunal had not become functus officio and had jurisdiction to entertain the application for recall. This view also finds support from the judgment of this Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5]. This Court after noticing the provisions of sub-section (3) of Section 20 of the Act which provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes

enforceable under Section 17-A, held that till the award becomes enforceable the Tribunal retains jurisdiction over the dispute referred to it for adjudication, and up to that date it has the power to entertain the application in connection with such dispute. The jurisdiction of the Tribunal had to be seen on the date of the application made to it and not the date on which it passed the impugned order. The judgment in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5] has been reiterated by this Court in *Satnam Verma* v. *Union of India*[4], *J.K. Synthetics Ltd.* v. *CCE*[6] and *M.P. Electricity Board* v. *Hariram*[7].

16. In the instant case as well we find that as on 7-9-1987 the award had not become enforceable, therefore, on that date the Tribunal had jurisdiction over the disputes referred to it for adjudication. Consequently it had the power to entertain an application in connection with such dispute. The order of recall passed by the Tribunal on 19-2-1990, therefore, cannot be assailed on the ground that the Tribunal had become functus officio.

17. The question still remains whether the Tribunal had jurisdiction to recall its earlier award dated 12-6-1987. The High Court was of the view that in the absence of an express provision in the Act conferring upon the Tribunal the power of review the Tribunal could not review its earlier award. The High Court has relied upon the judgments of this Court in *Kuntesh Gupta (Dr.)* v. *Hindu Kanya Mahavidyalaya*[8] and *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*[9] wherein this Court has clearly held that the power of review is not an inherent power and must be conferred by law either expressly or by necessary implication. The appellant sought to get over this legal hurdle by relying upon the judgment of this Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5]. In that case the Tribunal made an ex parte award. The respondents applied for setting aside the ex parte award on the ground that they were prevented by sufficient cause from appearing when the reference was called on for hearing. The Tribunal set aside the ex parte award on being satisfied that there was sufficient cause within the meaning of Order 9 Rule 13 of the Code of Civil Procedure and accordingly set aside the ex parte award. That order was upheld by the High Court and thereafter in appeal by this Court.

18. It was, therefore, submitted before us, relying upon *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5] that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5] clearly highlighted this distinction when it observed: (SCC p. 425, para 13)

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> "Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely (*1*) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (*2*) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Patel Narshi Thakershi case*[9] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal."

19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (*sic* ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a

case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[5] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again.

20. The facts of the instant case are quite different. The recall of the award of the Tribunal was sought not on the ground that in passing the award

the Tribunal had committed any procedural illegality or mistake of the nature which vitiated the proceeding itself and consequently the award, but on the ground that some matters which ought to have been considered by the Tribunal were not duly considered. Apparently the recall or review sought was not a procedural review, but a review on merits. Such a review was not permissible in the absence of a provision in the Act conferring the power of review on the Tribunal either expressly or by necessary implication.

21. Learned counsel for the appellant then sought to argue that there was no conciliation proceeding in progress when the alleged settlement is said to have been reached on 17-5-1983. The submission ignores the findings of fact recorded by the Tribunal in its order dated 12-6-1987 that while the reference was pending before the Tribunal certain events took place which compelled the Deputy Labour Commissioner-cum-Conciliation Officer to intervene. As noticed earlier, a notice of strike was served on the Management on 14-2-1983 by one of the unions. On the other hand the Management gave notice on 4-4-1983 under Section 25-FFFA of the Act for closing part of the undertaking related to the Weaving Section. These facts leave no manner of doubt that there was labour unrest coupled with the fear of strike and closure. The settlement itself recites the fact that there were a series of bipartite and tripartite meetings between the representatives of the Management and the unions in view of the labour unrest and threat of closing down the operation of the Weaving Department. Meetings were also held in the office of the Chief Labour Commissioner with a view to resolve the dispute and a meeting was thereafter held on 17-5-1983 in the office of Shri K. Saran, Joint Chief Labour Commissioner (Central) where the representatives of the Management and the unions participated along with the officers of the Labour Department which ultimately resulted in a settlement. All these facts establish beyond doubt that there was labour unrest and the Conciliation Officer intervened in the matter and made attempts to bring about a settlement. The submission, therefore, that no conciliation proceeding was in progress when the settlement was arrived at, must be rejected.

22. Learned counsel for the appellant then submitted that the settlement was not

arrived at with the assistance and concurrence of the Conciliation Officer. It was submitted, relying upon the decision of this Court in *Bata Shoe Co. (P) Ltd.* v. *D.N. Ganguly*[10] that a settlement which is made binding under Section 18(3) of the Act on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the Conciliation Officer. Such a settlement brought about while conciliation proceedings are pending, are made binding on all parties under Section 18 of the Act. Reliance was placed on the judgment of this Court in *Workmen* v. *Delhi Cloth and General Mills Ltd.*[11]

23. Learned counsel for the respondents did not dispute the legal position as it emerges from these two judgments. It was submitted that the facts of this case clearly establish that the Conciliation Officer intervened when there was

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considerable labour unrest and brought the parties to the negotiating table. Several meetings were held, some of them in the chambers of higher officials of the Labour Department, and ultimately a settlement was worked out. This is quite apparent from the fact that the terms of settlement have also been signed by the Conciliation Officer, apart from the representatives of the Management and representatives of the two workers' unions. We entertain no doubt that the settlement was brought about in the course of conciliation proceedings with the assistance and concurrence of the Conciliation Officer.

24. It was also urged before us by the learned counsel for the appellant that the Tribunal ought to have considered, while passing an award on 12-6-1987, that the settlement was just and fair and protected the interest of the workmen. The recall of the order was sought on the ground that this aspect of the matter has not been considered when an award was made in terms of the settlement. This was precisely the ground on which the Tribunal entertained the application for recall and allowed it by order dated 19-2-1990. The Tribunal in our view proceeded on a factually incorrect assumption. The High Court has found that the Tribunal while making an award in terms of the settlement has in clear terms recorded its satisfaction in para 25 of its order (which we have quoted earlier in the judgment) that the settlement was fair and just. We entirely agree with the High Court.

25. It was lastly submitted that the settlement did not resolve the disputes which were subject-matter of reference made to the Tribunal. The submission again proceeds on a misreading of the settlement. It is no doubt true that the disputes referred to the Tribunal mainly arose on account of the Management closing down a large number of looms which necessitated a curtailment of the workforce on account of which the Management refused to give work to a large number of workers. We find that clause 3.2 of the settlement in terms deals with the dispute relating to the Weaving Department and other allied departments. This submission, therefore, has no force.

26. In the result we find no merit in this appeal and the same is accordingly dismissed, but with no order as to costs.

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† From the Judgment and Order dated 31-8-2001 of the Delhi High Court in CWP No. 2084 of 1990 : (2001) 94 DLT 888

[1] 1959 SCR 1191 : AIR 1958 SC 1018

[2] (1964) 2 SCR 448 : AIR 1964 SC 160

[3] (1975) 1 LLJ 218 (AP)

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[4] 1984 Supp SCC 712 : 1985 SCC (L&S) 362

[5] 1980 Supp SCC 420 : 1981 SCC (L&S) 309

[6] (1996) 6 SCC 92

[7] (2004) 8 SCC 246 : 2004 SCC (L&S) 1092 : JT (2004) 8 SC 98

[8] (1987) 4 SCC 525 : 1987 SCC (L&S) 491 : (1987) 5 ATC 86

[9] (1971) 3 SCC 844 : AIR 1970 SC 1273

[10] (1961) 3 SCR 308 : AIR 1961 SC 1158

[11] (1969) 3 SCC 302

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In the Supreme Court of India

(BEFORE A.K. SIKRI AND ASHOK BHUSHAN, JJ.)

SREI INFRASTRUCTURE FINANCE LIMITED . . Appellant;

Versus

TUFF DRILLING PRIVATE LIMITED . . Respondent.

Civil Appeal No. 15036 of 2017[†], decided on September 20, 2017

A. **Arbitration and Conciliation Act, 1996 — S. 25(a) and S. 23 — Arbitral Tribunal after terminating proceedings under S. 25(a) for non-filing of claim by claimant, has jurisdiction to consider application for recall of order of termination of proceedings on sufficient reasons being shown by claimant**

— Even after expiry of time contemplated under S. 23(1), Tribunal not obliged to terminate proceedings under S. 25(a) — Instead it has to ask claimant to show cause for default in submission of claim within time stipulated under S. 23(1) or on his own before passing of order under S. 25(a) and if claimant shows sufficient cause, it can accept statement of claim or grant further time to file claim — Even if Tribunal terminates proceedings, but claimant shows sufficient cause thereafter and same is acceptable it can recall its earlier order of termination of proceedings — Principle underlying Or. 9 R. 13 CPC applicable — Civil Procedure Code, 1908, Or. 9 R. 13

B. **Arbitration and Conciliation Act, 1996 — S. 33(2)(c) — Not attracted where proceedings terminated by Tribunal for default of submission of claim statement by claimant**

C. **Arbitration and Conciliation Act, 1996 — Object — Power exercised by Arbitral Tribunal is quasi-judicial in nature**

D. **Arbitration and Conciliation Act, 1996 — S. 19 — Though Arbitral Tribunal not bound by rules of procedure contained in CPC and Evidence Act, but it is not incapacitated in drawing sustenance from those rules**

The respondent filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 for referring the dispute to arbitrator on the strength of contract entered with the appellant. During pendency of the application, an arbitrator was appointed with the consent of the parties and the application under Section 11 was dismissed as not pressed. One-man Arbitral Tribunal entered into reference and called for the first sitting of the Arbitral Tribunal on 27-8-2011. Both the parties appeared on 27-8-2011, on which date the Arbitral Tribunal had directed the respondent to file the statement of claim. Subsequently, 19th November was fixed on which date the claimant was absent. The Arbitral Tribunal directed for filing statement of claim by 9th December but on that date the claim could not be filed by the respondent and by the order dated 12-12-2011, the Tribunal terminated the claim under Section 25(*a*). The claimant filed an application dated 20-1-2012

praying for recall of the order dated 12-12-2011 with further prayer to condone the delay in filing the statement of claim by granting necessary extension of time. In the application, reasons for non-filing of the statement of the claim and for non-appearance of the claimant on 19-11-2011 and 12-12-2011 were stated in detail. The appellant questioned the maintainability of the application dated 20-1-2012 on the ground that the Arbitral Tribunal had become functus officio in view of termination of the proceedings under Section 25(*a*), hence, it cannot recall its order terminating the proceedings. The Arbitral Tribunal heard both the parties and by an order dated 26-4-2012 accepted the preliminary objections of the appellant holding that in view of order terminating the proceedings, the Tribunal cannot pass an order recommencing the arbitration proceedings. The application of the respondent claimant was thus rejected. The High Court set aside the order of the Arbitral Tribunal and remitted the matter back to it to decide the application dated 20-1-2012 filed by the respondent on merits.

Dismissing the appeal, the Supreme Court

Held :

Section 25 of the Arbitration and Conciliation Act contemplates that "where without showing sufficient cause—the claimant fails to communicate his statement of claim" within the time as envisaged by Section 23, the Arbitral Tribunal has to terminate the proceedings. This section thus contemplates a situation where arbitration proceeding has not been started. Under Section 23(1), the claimant is to state the facts supporting his claim within the period of time agreed upon by the parties or determined by the Arbitral Tribunal. The question of termination of proceedings thus arises only after the time agreed upon between the parties or determined by the Arbitral Tribunal comes to an end. When the time as contemplated under Section 23(1) expires and no sufficient cause is shown by the claimant the Arbitral Tribunal shall terminate the proceedings. The question of showing sufficient cause will arise only when the claimant is asked to show cause as to why he failed to submit his claim within the time as envisaged under Section 23(1) or the claimant, on his own, before the order is passed under Section 25(*a*) to terminate the proceedings comes before the Arbitral Tribunal showing sufficient cause for not being able to submit his claim within the time. In both the circumstances the Arbitral Tribunal shall take a call on terminating the proceedings. In the event, the claimant shows a sufficient cause, the Arbitral Tribunal can accept the statement of claim even after expiry of the time as envisaged under Section 23(1) or grant further time to the claimant to file a claim. Thus, on sufficient cause being shown by a claimant even though time has expired under Section 23(1), it is not obligatory for the Arbitral Tribunal to terminate the proceedings. The conjunction of the wordings "where without showing sufficient cause" and "the claimant fails to communicate his statement of claim", would indicate that it is a duty of the Arbitral Tribunal to inform the claimant that he has failed to communicate his claim on the date fixed for that and requires him to show cause why the arbitral proceedings should not be terminated? Opportunity to

show sufficient cause for his failure to communicate his claim statement can only be given after he has actually failed to do so.

(Para 20)

When the Arbitral Tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, there is no impediment in the power of the Arbitral Tribunal to accept the show cause and permit the claimant to file the claim. The scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23(1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the Arbitral Tribunal by accepting the show-cause and there is no lack of the jurisdiction in the Arbitral Tribunal to recall the earlier order on sufficient cause being shown.

(Para 21)

The situation as contemplated under Sections 32(2)(*a*) and 32(2)(*b*) are not attracted in the facts of this case. Whether termination of proceedings in the present case can be treated to be covered by Section 32(2)(*c*) is the question to be considered. On the termination of proceedings under Sections 32 (2) and 33(1), Section 33(3) further contemplates termination of the mandate of the Arbitral Tribunal, whereas the aforesaid words are missing in Section 25. Non-use of such phrase in Section 25(*a*) has to be treated with a purpose and object which can only be that if the claimant shows sufficient cause, the proceedings can be recommenced. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated under Section 25(*a*) and proceeds further. The words "unnecessary" or "impossible" as used in clause (*c*) of Section 32(2), cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The words "unnecessary" or "impossible" has been used in different contexts than to one of default as contemplated under Section 25(*a*).

(Para 22)

SBP & Co. v. *Patel Engg. Ltd.*, (2005) 8 SCC 618; *Lalitkumar V. Sanghavi* v. *Dharamdas V. Sanghavi*, (2014) 7 SCC 255 : (2014) 3 SCC (Civ) 688, *referred to*

The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The Arbitral Tribunals in the statute of 1996 are no different, they decide the lis between the parties, follow rules and procedure conforming to the principles of natural justice; the adjudication has finality subject to remedy provided

under the 1996 Act. Main objective for introducing the legislation was to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration. Arbitration is a quasi-judicial proceeding, equitable in nature or character which differs from a litigation in a court. The power and functions of the Arbitral Tribunal are statutorily regulated. The Tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The Tribunal may be a statutory tribunal or tribunal constituted

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under the provisions of the Constitution of India. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the Arbitral Tribunal, there is no such distinction between the statutory tribunal constituted under the statutory provisions or Constitution insofar as the power of procedural review is concerned.

(Paras 14, 13 and 26)

Nahar Industrial Enterprises Ltd. v. *Hong Kong and Shanghai Banking Corpn.*, (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481; *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420 : 1981 SCC (L&S) 309; *Kapra Mazdoor Ekta Union* v. *Birla Cotton Spg. and Wvg. Mills Ltd.*, (2005) 13 SCC 777 : 2006 SCC (L&S) 1635, *relied on*

ICICI LTD. v. *Grapco Industries Ltd.*, (1999) 4 SCC 710; *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844, *cited*

In Section 19 the words "Arbitral Tribunal shall not be bound" are the words of amplitude and not of a restriction. These words do not prohibit the Arbitral Tribunal from drawing sustenance from the fundamental principles underlying the Civil Procedure Code or the Evidence Act but the Tribunal is not bound to observe the provisions of Code with all of its rigour. Thus principles underlying Order 9 Rule 9 can very well be invoked by the arbitrator. There is nothing on record to indicate that parties have agreed to the contrary.

(Paras 17, 26 and 27)

It must, therefore, be held that the Arbitral Tribunal after termination of proceedings under Section 25 (*a*) on sufficient cause being shown can recall the order and recommence the proceedings.

(Para 33)

Senbo Engg. Ltd. v. *State of Bihar*, 2003 SCC OnLine Pat 1189 : AIR 2004 Pat 33; *Awasthi Construction Co.* v. *State (NCT of Delhi)*, 2012 SCC OnLine Del 5443 : (2013) 1 Arb LR 70; *BHEL* v. *Jyothi Turbopower Services (P) Ltd.*, 2016 SCC OnLine Mad 4029 : (2017) 1 Arb LR 289; *ATV Projects India Ltd.* v. *Indian Oil Corpn. Ltd.*, 2013 SCC OnLine Del 1669 : (2013) 200 DLT 553, *approved*

P.M.A. Shukkoor v. *Muthoot Vehicle & Asset Finance Ltd.*, 2010 SCC OnLine Ker 4742 : (2010) 4 Arb LR 121, *overruled*

Grindlays Bank Ltd. v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420 : 1981 SCC (L&S) 309; *Anil Sood* v. *Labour Court*, (2001) 10 SCC 534 : (2009) 1 SCC (L&S) 494, *cited*

In the present case, the Arbitral Tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(*a*). The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant dated 20-1-2012 praying for recall of the order dated 12-12-2011 and to grant extension for filing the statement of claim.

(Para 34)

Tuff Drilling (P) Ltd. v. *Srei Infrastructure (P) Ltd.*, 2015 SCC OnLine Cal 10453, *affirmed*

Srei Infrastructure Finance Ltd. v. *Tuff Drilling (P) Ltd.*, SLP (C) No. 16636 of 2015, order dated 7-7-2015 (SC); *Srei Infrastructure Finance Ltd.* v. *Tuff Drilling (P) Ltd.*, SLP (C) No. 16636 of 2015, order dated 29-8-2017 (SC), *referred to*

It is, therefore, not necessary to consider the questions whether the order passed by the Arbitral Tribunal under Section 25(*a*) terminating the proceeding is amenable to jurisdiction of the High Court under Article 227 of the Constitution and whether the order passed under Section 25(*a*) terminating the proceeding is an

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award under the 1996 Act so as to be amenable to the remedy under Section 34 of the Act?

(Paras 12.2 and 12.3)
R-D/59165/SV

Advocates who appeared in this case :

Jayant Bhushan, Senior Advocate (Shantanu Ghosh, Raghunath Ghosh, S.K. Verma, Advocates) for the Appellant;

Rakesh Dwivedi (Amicus Curiae), Senior Advocate (Ms Sansriti Pathak, Advocate) for the Respondent.

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16. (1971) 3 SCC 844, *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* 48

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.— Leave granted.

2. This appeal has been filed against the judgment dated 13-2-2015[1] of the Calcutta High Court by which the High Court in exercise of jurisdiction under Article 227 of the Constitution of India has set aside the order passed by the Arbitral Tribunal by which the Arbitral Tribunal had refused to recall its order dated 12-12-2011 terminating the arbitration proceedings on account of non-filing of the claim by the claimant.

3. The undisputed facts of the case are: the respondent filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") for referring the dispute to arbitrator on the strength of contract entered with the appellant. During pendency of the application under Section 11 with consent of the parties, Shri Baskar Sen, Senior Advocate, Bar-at-Law was appointed as arbitrator. The application under Section 11 of the 1996 Act was thus dismissed as not pressed. One-man Arbitral Tribunal entered into reference and called for the first sitting of the Arbitral Tribunal on 27-8-2011. Both the parties appeared on 27-8-2011, on which date the Arbitral Tribunal had directed the respondent to file the statement of claim.

4. Subsequently, 19th November was fixed on which date the claimant was absent. The Arbitral Tribunal directed for filing statement of claim by 9th December. On 9th December, the claim could not be filed by the respondent and by the order dated 12-12-2011, the Tribunal terminated the claim under Section 25(*a*) by making the following observations:

> "… It appears that the claimant is not interested to proceed with the reference. No cause has been shown as to why they have not filed their statement of claim in spite of repeated opportunities being given to them. In view of Section 25(*a*) of the Arbitration and Conciliation Act, 1996 the arbitrator, therefore, has no alternative but to terminate the proceedings.
>
> The arbitration proceedings in respect of the dispute in which Tuff Drilling (P) Ltd. is the claimant which arose out of the agreement dated 21-1-2008 pertaining to 1500 HP diesel electric rig is thus terminated…."

5. The claimant filed an application dated 20-1-2012 praying for recall of the order dated 12-12-2011 with further prayer to condone the delay in filing the statement of claim by granting necessary extension of time. In the application, reasons for non-filing of the

statement of the claim and for non-appearance of the claimant on 19-11-2011 and 12-12-2011 were stated in detail. The application filed by the claimant was objected by the appellant. The appellant questioned the maintainability of the application dated 20-1-2012 on the ground that the Arbitral Tribunal has become functus officio in view of termination of the proceedings under Section 25(*a*), hence, the Arbitral Tribunal cannot recall its order terminating the proceedings. The Arbitral Tribunal heard both the parties and by an order dated 26-4-2012 accepted the preliminary objections of the appellant holding that in view of order terminating the proceedings, it cannot pass an order recommencing the arbitration proceedings. The application of the respondent claimant was thus rejected.

6. Aggrieved by the order of the Arbitral Tribunal dated 26-4-2012, the claimant approached the Calcutta High Court in its revisionary jurisdiction by filing CO No. 3190 of 2012. The appellant before the High Court objected to the maintainability of the application under Article 227 of the Constitution. It was further contended before the High Court that after terminating the

proceedings, the Arbitral Tribunal had become functus officio and had no power to recall the order dated 12-12-2011. The High Court after considering the submissions of parties came to the conclusion that the Arbitral Tribunal enjoys the power to recall its own order relying on the Patna High Court judgment in *Senbo Engg. Ltd.* v. *State of Bihar*[2]. The High Court also overruled the objections of the appellant that application under Article 227 by the claimant challenging the order dated 12-12-2011 was not maintainable. The High Court after entertaining the application under Article 227 held that the Arbitral Tribunal has power to recall its own order. The High Court set aside the order of the Arbitral Tribunal and remitted the matter back to the Arbitral Tribunal to decide the application dated 20-1-2012 filed by the respondent on merits. The appellant aggrieved by the judgment[1] of the Calcutta High Court has come up in this appeal.

7. This Court on 7-7-2015, issued[3] notice and in the meantime stayed the operation of the order passed by the Calcutta High Court. Although, the respondent was served but none appeared on behalf of the respondent. While hearing the matter on 29-8-2017, this Court noticed[4] that question of law raised in this case is important one and since no one has appeared on behalf of the respondent, this Court requested Shri Rakesh Dwivedi, Senior Advocate, to assist the Court in deciding the issue.

8. We have heard Shri Jayant Bhushan, learned Senior Counsel, assisted by Shri Santanu Ghosh, learned counsel for the appellant. Shri Rakesh Dwivedi, learned Senior Counsel assisted by Ms Sansriti Pathak, learned counsel, has been heard as Amicus Curiae.

9. The learned counsel for the appellant submits that the Arbitral Tribunal had terminated the proceedings on 12-12-2011 due to non-filing of claim by the claimant in spite of opportunities having been granted to it. The Arbitral

Tribunal had become functus officio and had no jurisdiction to recall the order dated 12-12-2011 on the application filed by the respondent claimant to recall the said order. It is further contended that against the order dated 12-12-2011, terminating the proceeding application under Article 227 of the Constitution of India was not maintainable. The learned counsel for the appellant has relied on the judgment of this Court in *Lalitkumar V. Sanghavi* v. *Dharamdas V. Sanghavi*[5] in support of the submissions that writ petition was not maintainable against the order of the Arbitral Tribunal. It is further submitted by the appellant that remedy, if any available to the claimant, was to file an application under Section 34 of the 1996 Act for setting aside the order dated 12-12-2011.

10. Shri Rakesh Dwivedi, learned Amicus Curiae, submits that the termination of proceedings under Section 25(*a*) and termination of proceedings under Section 32(2) are two different eventualities. When the proceedings are terminated under Section 32(2), the mandate of the Arbitral Tribunal also terminates whereas no such consequence can be read in termination of proceedings under Section 25(*a*). Under Section 25(*a*), proceedings are terminated on default of the claimant to file the statement of claim. Section 32(2) would not apply to case falling under Section 25(*a*) of the 1996 Act. The Arbitration Act, 1996 does not provide for remedy against the order under Section 25(*a*). He contends that the remedy under Section 34 is not available against such an order unless the order under Section 25(*a*) is also treated as an award. The learned Amicus Curiae submits that there seems to be legislative gap with respect to Sections 25(*a*) and 32(2)(*c*). He submits that it is more appropriate that the order under Section 25(*a*) be treated as an award so as to make it amenable under Section 34. On the submissions that whether the Arbitral Tribunal can exercise the power akin to principle underlying under Order 9 Rule 13 CPC, the learned Amicus Curiae submits that the Arbitral Tribunal can recall an order passed under Section 25(*a*) on the principles underlying Order 9 Rule 13 CPC. The learned Amicus Curiae in support of the above submissions has also referred to the judgments of the Patna High Court[2], the Delhi High Court[6,7], the Madras High Court[8] and the Bombay High Court, which shall be referred to while considering the submissions in detail.

11. Referring to this Court's judgment in *SBP & Co.* v. *Patel Engg. Ltd.*[9] it is submitted that the said case has no applicability when Sections 34 and 37 of the 1996 Act are not applicable. It was pointed out by the learned

Amicus Curiae that *Lalitkumar*[5] was a case where proceedings were terminated under Section 32(2)(*c*). The learned Amicus Curiae has lastly submitted that legislative gap as is apparent in context of provisions of Sections 25(*a*), 32 and 34 need to be stitched up in light of the object of the legislation.

12. We have considered the submissions of the learned counsel for the appellant and the learned Amicus Curiae and have perused the record. From the submissions, the following issues arise for consideration in this civil appeal:

12.1. (*i*) Whether the Arbitral Tribunal which has terminated the proceeding under Section 25(*a*) due to non-filing of claim by the claimant has jurisdiction to consider the application for recall of the order terminating the proceedings on sufficient cause being shown by the claimant?

12.2. (*ii*) Whether the order passed by the Arbitral Tribunal under Section 25(*a*) terminating the proceeding is amenable to jurisdiction of the High Court under Article 227 of the Constitution of India?

12.3. (*iii*) Whether the order passed under Section 25(*a*) terminating the proceeding is an award under the 1996 Act so as to be amenable to the remedy under Section 34 of the Act?

13. The law of arbitration was earlier governed by the Arbitration Act, 1940. The Law Commission of India and several other organisations expressed opinion that the 1940 Act needs extensive amendments to make it more responsive to contemporary requirements. In the wake of rise in commercial litigation, both at domestic and international level, a need was felt for a comprehensive law to deal with the subject. The United Nations Organisation on International Trade Law (UNCITRAL) adopted a Model Law on International Commercial Arbitration in the year 1985. Taking into consideration domestic arbitration as well as international commercial arbitration, Parliament enacted the Arbitration and Conciliation Act, 1996. Main objective for introducing the legislation was to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the

specific arbitration. In Section 2 of the Act, the Arbitral Tribunal has been defined to mean a sole arbitrator or a panel of arbitrators. The Arbitral Tribunal was entrusted with various statutory functions and obligations by the enactment.

14. Arbitration is a quasi-judicial proceeding, equitable in nature or character which differs from a litigation in a court. The power and functions of the Arbitral Tribunal are statutorily regulated. The Tribunals are special arbitration with institutional mechanism brought into existence by or under statute to decide dispute arising with reference to that particular statute or to determine controversy referred to it. The Tribunal may be a statutory tribunal or tribunal constituted under the provisions of the Constitution of India. Section 9 of the Civil Procedure Code vests into the civil court, jurisdiction to entertain and determine any civil dispute. The constitution of tribunals has been with intent and purpose to take out different categories of litigation into the special tribunal for speedy and effective determination of disputes in the interest of the society. Whenever, by a legislative enactment jurisdiction exercised by

ordinary civil court is transferred or entrusted to tribunals such tribunals are entrusted with statutory power. The Arbitral Tribunals in the statute of 1996 are no different, they decide the lis between the parties, follow rules and procedure conforming to the principles of natural justice; the adjudication has finality subject to remedy provided under the 1996 Act. Section 8 of the 1996 Act obliges a judicial authority in a matter which is a subject of an agreement to refer the parties to arbitration. The reference to the Arbitral Tribunal thus can be made by judicial authority or an arbitrator can be appointed in accordance with the arbitration agreement under Section 11 of the 1996 Act.

15. After noticing the objective of the enactment, we now revert to issues which have arisen in these appeals.

Issue (i)

16. Chapter V of the Act deals with the conduct of arbitral proceedings. Section 18 provides that:

> "**18.** ***Equal treatment of parties***.—The parties shall be treated with equality and each party shall be given a full opportunity to present his case."

Section 18 contains the principle of natural justice to give full opportunity to parties to present their case.

17. Section 19 of the Act provides for determination of rules of procedure. Sub-section (1) of Section 19 provides that the Arbitral Tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Evidence Act, 1872. The words "Arbitral Tribunal shall not be bound" are the words of amplitude and not of a restriction. These words do not prohibit the Arbitral Tribunal from drawing sustenance from the fundamental principles underlying the Civil Procedure Code or the Evidence Act but the Tribunal is not bound to observe the provisions of Code with all of its rigour. As per sub-section (2) of Section 19, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting its proceedings.

18. Section 23 deals with claim and defence. Section 24 deals with hearing and written proceedings. Section 25 deals with default of a party which provision is up for interpretation in this case and is as follows:

> "**25.** ***Default of a party***.—Unless, otherwise agreed by the parties, where, without showing sufficient cause—
>
> (*a*) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall terminate the proceedings;
>
> (*b*) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of Section 23, the Arbitral Tribunal shall continue the proceedings

without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited;

(*c*) a party fails to appear at an oral hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make the arbitral award on the evidence before it."

19. Chapter VI deals with making of arbitral award and termination of proceedings. Section 32 deals with termination of proceedings which is quoted as below:

"**32.** ***Termination of proceedings***.—(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2).

(2) The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings where—

(*a*) the claimant withdraws his claim, unless the respondent objects to the order and the Arbitral Tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(*b*) the parties agree on the termination of the proceedings, or

(*c*) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to Section 33 and sub-section (4) of Section 34, the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings."

20. In the present case, proceedings were terminated vide order dated 12-12-2011 under Section 25(*a*). After termination of proceedings, application to recall the said order was filed by the claimant on 20-1-2012, which was rejected by the Arbitral Tribunal on the ground that it has no jurisdiction to recommence the arbitration proceedings. Section 25 contemplates a situation that when the claimant fails to communicate his statement of claim within the time as envisaged by Section 23, the Arbitral Tribunal has to terminate the proceedings. This section thus contemplates a situation where arbitration proceeding has not been started. The most important words contained in Section 25 are "where without showing sufficient cause—the claimant fails to communicate his statement of claim". Under Section 23(1), the claimant is to state the facts supporting his claim within the period of time agreed upon by the parties or determined by the Arbitral Tribunal. The question of termination of proceedings thus arises only after the time agreed upon between the parties or determined by the Arbitral Tribunal comes to an end. When the time as contemplated under Section 23(1) expires and no sufficient cause is shown by the claimant the Arbitral Tribunal shall terminate the proceedings. The question of showing sufficient cause will arise only when the claimant is asked to show cause as to why he failed to submit his claim within the time as envisaged under Section 23(1) or the claimant, on his own, before the order is passed under Section 25(*a*) to terminate the proceedings comes before the Arbitral Tribunal showing sufficient cause for not being able to submit his claim within the time. In both the circumstances i.e. when a show-cause notice is issued to the claimant as observed above or

the claimant of his own shows cause for non-filing the claim within the time the Arbitral Tribunal shall take a call on terminating the proceedings. It is easy to comprehend that in

the event, the claimant shows a sufficient cause, the Arbitral Tribunal can accept the statement of claim even after expiry of the time as envisaged under Section 23(1) or grant further time to the claimant to file a claim. Thus, on sufficient cause being shown by a claimant even though time has expired under Section 23(1), it is not obligatory for the Arbitral Tribunal to terminate the proceedings. The conjunction of the wordings "where without showing sufficient cause" and "the claimant fails to communicate his statement of claim", would indicate that it is a duty of the Arbitral Tribunal to inform the claimant that he has failed to communicate his claim on the date fixed for that and requires him to show cause why the arbitral proceedings should not be terminated? Opportunity to show sufficient cause for his failure to communicate his claim statement can only be given after he has actually failed to do so. Whether in a case where the claimant failed to file a statement of claim and has failed also to show cause before an order of termination of proceedings is passed, the claimant is entitled to show cause subsequent to the termination, is the question which has fallen for consideration.

21. When the Arbitral Tribunal without sufficient cause being shown by the claimant to file the claim statement can terminate the proceedings, subsequent to termination of proceedings, if the sufficient cause is shown, we see no impediment in the power of the Arbitral Tribunal to accept the show cause and permit the claimant to file the claim. The scheme of Section 25 of the Act clearly indicates that on sufficient cause being shown, the statement of claim can be permitted to be filed even after the time as fixed by Section 23 (1) has expired. Thus, even after passing the order of terminating the proceedings, if sufficient cause is shown, the claims of statement can be accepted by the Arbitral Tribunal by accepting the show-cause and there is no lack of the jurisdiction in the Arbitral Tribunal to recall the earlier order on sufficient cause being shown.

22. Section 32 contains a heading "Termination of Proceedings". Sub-section (1) provides that the arbitral proceedings shall be terminated by the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2). Sub-section (2) enumerates the circumstances when the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. The situation as contemplated under Sections 32(2)(*a*) and 32(2)(*b*) are not attracted in the facts of this case. Whether termination of proceedings in the present case can be treated to be covered by Section 32(2)(*c*) is the question to be considered. Clause (*c*) contemplates two grounds for termination i.e. (*i*) the Arbitral Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary, or (*ii*) impossible. The eventuality as contemplated under Section 32 shall arise only when the claim is not terminated under Section 25(*a*) and proceeds further. The words "unnecessary" or "impossible" as used in clause (*c*) of Section 32(2), cannot be said to be covering a situation where proceedings are terminated in default of the claimant. The words "unnecessary" or "impossible" has been used in different contexts than to one of default

as contemplated under Section 25(*a*). Sub-section (3) of Section 32 further provides that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings subject to Section 33 and sub-section (4) of Section 34. Section 33 is the power of the Arbitral Tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature or to give an interpretation of a specific point or part of the award. Section 34(4) reserves the power of the court to adjourn the proceedings in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award. On the termination of proceedings under Sections 32(2) and 33(1), Section 33(3) further contemplates termination of the mandate of the Arbitral Tribunal, whereas the aforesaid words are

missing in Section 25. When the legislature has used the phrase "the mandate of the Arbitral Tribunal shall terminate" in Section 32(3), non-use of such phrase in Section 25 (*a*) has to be treated with a purpose and object. The purpose and object can only be that if the claimant shows sufficient cause, the proceedings can be recommenced.

23. The learned Amicus Curiae has referred to the judgment of this Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[10]. In that case, this Court was considering the power of Industrial Tribunal to set aside its ex parte award on being satisfied that there was sufficient cause. The Court also noticed that there was no specific express provision in the Act or the Rules giving the Tribunal jurisdiction to do so. In para 6, the following was held: (SCC p. 423)

> "*6*. We are of the opinion that the Tribunal had the power to pass the impugned order if it thought fit in the interest of justice. It is true that there is no express provision in the Act or the rules framed thereunder giving the Tribunal jurisdiction to do so. But it is a well-known rule of statutory construction that a Tribunal or body should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In a case of this nature, we are of the view that the Tribunal should be considered as invested with such incidental or ancillary powers unless there is any indication in the statute to the contrary. We do not find any such statutory prohibition. On the other hand, there are indications to the contrary."

24. It is true that power of review has to be expressly conferred by a statute. This Court in para 13 has also stated that the word "review" is used in two distinct senses. This Court further held that when a review is sought due to a procedural defect, such power inheres in every tribunal. In para 13, the following was observed: (SCC p. 425)

> "*13*. … The expression "review" is used in the two distinct senses, namely, (*1*) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a

misapprehension by it, and (*2*) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in *Patel Narshi Thakershi case*[11] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected *ex debito justitiae* to prevent the abuse of its process, and such power inheres in every court or Tribunal."

25. In *Kapra Mazdoor Ekta Union* v. *Birla Cotton Spg. and Wvg. Mills Ltd.*[12], this Court again held that a quasi-judicial authority is vested with the power to invoke procedural review. In para 19 of the judgment, the following was laid down: (SCC p. 787)

> "*19*. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party

seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire

proceeding. In *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*[10] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

26. There cannot be a dispute that the power exercised by the Arbitral Tribunal is quasi-judicial. In view of the provisions of the 1996 Act, which confers various statutory powers and obligations on the Arbitral Tribunal, we do not find any such distinction between the statutory tribunal constituted under the statutory provisions or Constitution insofar as the power of procedural review is concerned. We have already noticed that Section 19 provides that the Arbitral Tribunal shall not be bound by the rules of procedure as contained in the Civil Procedure Code. Section 19 cannot be read to mean that the Arbitral Tribunal is incapacitated in drawing sustenance from any provisions of the Code of Civil Procedure. This was clearly laid down in *Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.*[13]. In para 98(*n*), the following was stated: (SCC p. 693)

"(*n*) It is not bound by the procedure laid down under the Code. It may however be noticed in this regard that just because the Tribunal is not bound by the Code, it does not mean that it would not have jurisdiction to exercise powers of a court as contained in the Code. "Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice." (See *ICICI LTD.* v. *Grapco Industries Ltd.*[14])

27. We thus are of the view that principles underlying Order 9 Rule 9 can very well be invoked by the arbitrator. There is nothing on record to indicate that parties have agreed to the contrary. The issue, which has arisen for consideration has engaged attention of different High Courts from time to time. The Patna High Court in *Senbo Engg. Ltd.* v. *State of Bihar*[2], had occasion to consider the order terminating the proceedings under Section 25 (*a*). The Patna High Court after considering the provision has held that the Arbitral Tribunal has power to review on sufficient cause being shown. In para 32, the following has been laid down: (SCC OnLine Pat)

"*32*. I find the submissions of Mr Chatterjee well founded. Mr Chatterjee has relied upon the provisions of the Act itself (that is to say, the internal aids to interpretation) in support of the point that on sufficient cause being shown, the Arbitral Tribunal has full authority and power to recall an order under Section 25(*a*) of the Act. I think that one would arrive at the same conclusion on the basis of some external aids to interpretation."

28. Referring to the judgment of this Court in *Grindlays Bank Ltd.*[10] and *Anil Sood* v. *Labour Court*[15], the Patna High Court further laid down in para 39 as given below: (*Senbo Engg. case*[2], SCC OnLine Pat)

> "*39*. The two Supreme Court decisions under the Industrial Disputes Act are also a pointer in the direction that the Arbitral Tribunal must be held to have the power of procedural review and the authority to recall, on sufficient cause being shown, an order terminating the proceeding under Section 25(*a*) of the Act. The second question too is, thus, answered in the affirmative and in favour of the petitioner."

29. The Delhi High Court in *Awasthi Construction Co.* v. *State (NCT of Delhi)*[6] has elaborately considered this issue. In paras 17 and 18, the following has been held: (SCC OnLine Del)

> "*17*. We may in this regard also notice that the legislature, in Section 25, has not provided for termination of proceedings automatically on default by a party but has vested the discretion in the Arbitral Tribunal to, on sufficient cause being shown condone such default. We are of the view that no distinction ought to be drawn between showing such sufficient cause before the proceedings are terminated and after the proceedings are terminated. If the Arbitral Tribunal is empowered to condone default on sufficient cause being shown, it matters not when the same is shown. It may well-nigh be possible that the sufficient cause itself is such which prevented the party concerned from showing it before the proceedings terminated. It would be a pedantic reading of the provision to hold that the Arbitral Tribunal in such cases also stands denuded. Once the legislature has vested the Arbitral Tribunal with such power, an order of termination cannot be allowed to come in the way of exercise thereof.
>
> *18*. There is another reason for us to hold so. The emphasis of the Arbitration Act is to provide an alternative dispute resolution mechanism. The provisions of the Act ought to be interpreted in a manner that would make such adjudication effective and not in a manner that would make arbitration proceedings cumbersome. A view that the Arbitral Tribunal is precluded, even where sufficient cause exists, from reviving the arbitral proceedings and the only remedy available to a party is a writ petition and which remedy is available only in the High Court often situated at a distance from the place where the parties are located, would be a deterrent to arbitration. It is also worth mentioning that Section 19(2) of the Act permits the parties to agree on the procedure to be followed by the Arbitral Tribunal. The parties may, while so laying down the procedure, provide for the remedy of review/revival of arbitral proceedings and which agreement

would be binding on the Arbitral Tribunal. If the Arbitral Tribunal in such a situation would be empowered to, on sufficient cause being shown, revive the arbitral proceedings, we see no reason to, in the absence of such an agreement hold the Arbitral Tribunal to be not empowered to do so. If it were to be held that such power of review/recall is not available to an Arbitral Tribunal, the Arbitral Tribunal would not be competent to set aside an order under Section 25(*b*) also, compelling the respondent against whom proceedings have been continued, to file a writ petition, making the continuation of proceedings before the Arbitral Tribunal a useless exercise."

30. The Delhi High Court again reiterated the same principle in *ATV Projects India Ltd.* v. *Indian Oil Corpn. Ltd.*[7]

31. The Madras High Court in *BHEL* v. *Jyothi Turbopower Services (P) Ltd.*[8] again took the view that after terminating the proceedings under Section 25(*a*), the Arbitral Tribunal can recall the said order on sufficient cause being shown and the Arbitral Tribunal does not

become functus officio after passing an order under Section 25(*a*). The Madras High Court has agreed with the view expressed by the Division Bench of the Delhi High Court[6, 7] as noticed above.

32. A contrary view has also been expressed by certain High Courts. The Kerala High Court in *P.M.A. Shukkoor* v. *Muthoot Vehicle & Asset Finance Ltd.*[16], held that the power to set aside an ex parte award vests in the court, and the arbitrator does not have any concurrent power to set aside an ex parte award.

33. We endorse the views of the Patna High Court[2], the Delhi High Court[6, 7] and the Madras High Court[8] as noted above, insofar as they have held that the Arbitral Tribunal after termination of proceedings under Section 25(*a*) on sufficient cause being shown can recall the order and recommence the proceedings.

34. In the present case, the Arbitral Tribunal has rejected the application of the claimant by order dated 26-4-2012 taking the view that after an order is passed by it terminating the proceedings, it cannot pass the order recommencing the arbitration proceedings. In view of the above discussions, we are of the view that the Arbitral Tribunal committed an error in holding that it has no jurisdiction to recall an order terminating the proceedings under Section 25(*a*). The Arbitral Tribunal having not considered the cause shown by the claimant in its application, it is in the ends of justice that the Arbitral Tribunal be asked to consider the application filed by the claimant

dated 20-1-2012 praying for recall of the order dated 12-12-2011 and to grant extension for filing the statement of claim.

35. Coming to Issues (ii) and (iii), in view of what we have said regarding Issue (i) that the Arbitral Tribunal has jurisdiction to consider an application for recall of order terminating the proceedings under Section 25(*a*), it is not necessary for us to enter into Issues (ii) and (iii) for purposes of this case. For deciding the present civil appeal, our answer to Issue (i) is sufficient to dispose of the matter.

36. In result, the appeal is dismissed. The interim order dated 7-7-2015[3], granting stay on the operation of order dated 13-2-2015[1] passed by the High Court stands discharged and the Arbitral Tribunal shall now proceed to decide the application of the respondent claimant dated 20-1-2012 expeditiously. The parties shall bear their own costs.

37. We place on record our appreciation for the valuable assistance rendered by Mr Rakesh Dwivedi, Senior Advocate appearing as Amicus Curiae.

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† Arising out of SLP (C) No. 16636 of 2015. Arising from the Final Judgment and Order in *Tuff Drilling (P) Ltd.* v. *Srei Infrastructure (P) Ltd.*, 2015 SCC OnLine Cal 10453 (Calcutta High Court, CO No. 3190 of 2012, dt. 13-2-2015)

[1] *Tuff Drilling (P) Ltd.* v. *Srei Infrastructure (P) Ltd.*, 2015 SCC OnLine Cal 10453

[2] *Senbo Engg. Ltd.* v. *State of Bihar*, 2003 SCC OnLine Pat 1189 : AIR 2004 Pat 33

[3] *Srei Infrastructure Finance Ltd.* v. *Tuff Drilling (P) Ltd.*, SLP (C) No. 16636 of 2015, order dated 7-7-2015 (SC), wherein it was directed:

"Issue notice, returnable in four weeks. In the meantime, the operation of interim order dated 13-2-2015 [*Tuff Drilling (P) Ltd.* v. *Srei Infrastructure (P) Ltd.*, 2015 SCC OnLine Cal 10453] passed by the High Court shall remain stayed."

[4] *Srei Infrastructure Finance Ltd.* v. *Tuff Drilling (P) Ltd.*, SLP (C) No. 16636 of 2015, order dated 29-8-2017 (SC), wherein it was directed:

"Nobody has appeared on behalf of the respondent in spite of service of notice. The question of law which is raised in this special leave petition is an important one. In view thereof, we have requested Mr Rakesh Dwivedi, learned Senior Counsel, who is present in the Court for his assistance to decide this case. He will be assisted by Ms Sansriti Pathak, Advocate. The Registry is directed to supply a copy of the special leave petition to Mr Rakesh Dwivedi, learned Senior Counsel forthwith. List on 5-9-2017."

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[5] *Lalitkumar V. Sanghavi* v. *Dharamdas V. Sanghavi*, (2014) 7 SCC 255 : (2014) 3 SCC (Civ) 688

[6] *Awasthi Construction Co.* v. *State (NCT of Delhi)*, 2012 SCC OnLine Del 5443 : (2013) 1 Arb LR 70

[7] *ATV Projects India Ltd.* v. *Indian Oil Corpn. Ltd.*, 2013 SCC OnLine Del 1669 : (2013) 200 DLT 553

[8] *BHEL* v. *Jyothi Turbopower Services (P) Ltd.*, 2016 SCC OnLine Mad 4029 : (2017) 1 Arb LR 289

[9] *SBP & Co.* v. *Patel Engg. Ltd.*, (2005) 8 SCC 618

[10] *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal*, 1980 Supp SCC 420 : 1981 SCC (L&S) 309

[11] *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844

[12] *Kapra Mazdoor Ekta Union* v. *Birla Cotton Spg. and Wvg. Mills Ltd.*, (2005) 13 SCC 777 : 2006 SCC (L&S) 1635

[13] *Nahar Industrial Enterprises Ltd.* v. *Hong Kong and Shanghai Banking Corpn.*, (2009) 8 SCC 646 : (2009) 3 SCC (Civ) 481

[14] *ICICI LTD.* v. *Grapco Industries Ltd.*, (1999) 4 SCC 710

[15] *Anil Sood* v. *Labour Court*, (2001) 10 SCC 534 : (2009) 1 SCC (L&S) 494

[16] *P.M.A. Shukkoor* v. *Muthoot Vehicle & Asset Finance Ltd.*, 2010 SCC OnLine Ker 4742 : (2010) 4 Arb LR 121

2010 SCC OnLine Bom 720 : (2010) 4 Mah LJ 844 : (2010) 4 Bom CR 144 : (2010) 4 AIR Bom R (NOC 354) 99

In the High Court of Bombay
Public Interest Litigation : Considerations
(O.O.C.J.)
(Bombay)

(BEFORE FERDINO I. REBELLO AND J.H. BHATIA, JJ.)

Chetan Kamble and another … Petitioners;

Versus

State of Maharashtra and others … Respondents.

P.I.L. No. 47 of 2008
Decided on May 7, 2010

(a) Public Interest Litigation — Merely because against the petitioner No. 1 there were and/or are some criminal cases by itself can be no reason for High Court not to entertain the petition if in law otherwise the petition raises questions which can be considered in a P.I.L.

(Para 13)

(b) Procedural Review — Power of — When may be invoked.

The procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are

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some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. Such party has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from an illegality that vitiated the proceeding and invalidated the order made therein, inasmuch one of the parties concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which such party could not attend for no fault of theirs. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be re-called and reviewed not because it is found to be erroneous, but because it as passed in a proceeding which stands vitiated by an error of procedure or mistake which goes to the root of the matter and invalidates the entire proceeding. Procedural review has to be by parties to the original proceedings which filed the procedural review claim through 'G' were not parties to the proceedings. They would have no locus standi to file the procedural review. There were proceedings between them and the 'G' for enforcement of the agreement. They, therefore, could not have complained that no notice was given to them. They therefore, had no locus to maintain the review. Further petition has been admitted by High Court. In view of this, on this ground itself the impugned order of the minister in procedural review is liable to be set aside and the original order passed in review restored.

(Paras 16 to 18)

(c) Public Interest Litigation — Land vested in State Government held by a quasi-judicial authority as not public land and the State Authorities taken no steps to challenge the order, affecting public revenue — PIL filed by public spirited citizen to bring these facts to the notice of the Court — Locus cannot be denied.

(Para 13)

(d) Public Interest Litigation — Public revenue involved — Stand taken by the State inconsistent with earlier affidavits filed in earlier pending proceedings leads to suspicion — High Court as the sentinel of justice cannot remain a mute spectator — Must exercise its extraordinary jurisdiction so that quasi-judicial authorities act within jurisdiction.

(Para 13)

For Petitioners : *Uday Warunjikar with Manoj Shirsat, Nitesh Bhutekar, Rahul More, Nitin Patil and Paravartak Pathak*

For Respondent No. 1 : *V.A. Thorat, Senior Counsel with D.A. Nalawade, Government Pleader*

For Respondent No. 2 : *Ravi Kadam, Advocate General with Ms. Geeta Shastri, AGP*

For Respondent No. 3 : *Aspi Chinoy, Senior Counsel* instructed by *Chitnis Vaithy and Co.*

For Respondent Nos. 4 to 13 : *D.D. Madon, Senior Counsel with Y.R. Shah*

List of cases referred:

1. *M.K. Agarwal* v. *Union of India*, AIR 1994 Delhi 242 (Para 1

2. *Common Cause* v. *Commissioner of Municipal Corporation of Delhi*, (1991) 3 DL 118 (Para 1

3. *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967 SC I (Para 1

4. *Budhan Choudhary* v. *State of Bihar*, AIR 1955 SC 191 (Para 1

5. *Parbhani Transport Co-operative Society Ltd.* v. *Regional Transport Authority, Aurangabad*, 1960 NLJ (SC) 563 : AIR 1960 SC 801 (Para 1

6. *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504 (Para 1

7. *Indian Banks' Association, Bombay* v. *Devkala Consultancy Service*, (2004) 11 SCC 1 (Para 1

8. *Guruvaryoor Devaswom Managing Committee* v. *C.K. Rajan*, (2003) 7 SCC 546 (Para 1

9. *Raju Ramsing Vasave* v. *Mahesh Deorao Bhivapurkar*, 2009 (1) Mh.L.J. (S.C) 1 : (2008) 9 SCC 54 (Para 1

10. *Grindlays Bank Ltd.* v. *Central Government Industrial Tribunal*, 1980 Supp SCC 420 : AIR 1981 SC 606 (Para 1

11. *Kapra Mazdoor Ekta Union* v. *Management of Birla Cotton Spinning and Weaving Mills Ltd.*, (2005) 13 SCC 777 : AIR 2005 SC 1783 (Para 1

The Judgment of the Court was delivered by

FERDINO I. REBELLO, J.:— Rule. Respondents waive service. They have already filed their replies. With consent of the parties heard forthwith.

2. On March, 13, 2008 this Court passed an order that Writ Petition No. 1657 of 2006 be tagged with the P.I.L. On April 3, 2008 direction was given that copies of the petition be given to the Counsel appearing for the petitioner in P.I.L. On 10th July, 2008 an order was passed to produce original records. Further direction was given on 2nd September, 2008 once again in respect of the connected matter. However, arguments have been advanced only in respect of the P.I.L. Petition. That Petition is in respect of property bearing Old S. No. 98 now C.T.S. 229. Respondent Nos. 4 to 13 claim title to that ‘and. They shall be referred to as the Gonsalves Family. Respondent No. 1 now claims title through them.

3. The relevant facts. The land originally was included in Survey No. 98 admeasuring 10 Acres 36 Gunthas and belonged to Khot under grant made to them under a Deed of 1819 with the East India Company. An enquiry was conducted under the Salsette Estate (Land Revenue Exemption Abolition) Act, 1951 hereinafter referred to as the “Act” as to whether the lands originally given to ex-Khot of Kurla had been appropriated prior to the passing of the Act. Survey No. 98 was also included in the subject-matter. When the enquiry had started an area of 5 Acres 16 Gunthas out of Survey No. 98 were under acquisition and the enquiry was restricted to an area of 5 Acre 20 Gunthas out of the said survey number. By order dated 25th November, 1953 this land admeasuring 5 Acres 20 Gunthas out of Survey No. 98 was declared as Government land. Against that order Civil Suit was filed being Civil Suit No. 921 of 1954 by the Khot which ended in a Consent decree.

4. A fresh enquiry was ordered for the whole of Bombay Suburban District under section 126 of the Maharashtra Land Revenue Code in and around the year 1962. The land bearing Old Survey No. 98 of village Sahar was given two independent city Survey numbers (i) C.T.S. No. 229 for the lands which have

been declared as Government land and (ii) the balance other land was shown as part of C.T.S. No. 145 and shown as Airport land. We need not refer to this C.T.S. No. though ultimately it appears that a portion of the land was not acquired. The orders of the Survey Officer were upheld in the Appeals preferred. Against which a Revision was preferred on behalf of the Gonsalves Family. By S. Kapoor as the Constituted Attorney of Smt. Kolati D'Souza and 6 others.

5. The Minister for Revenue in Revision Application in RTS No. 2692/CR/201/L-6 by order dated 10th October, 1995 allowed the Revision preferred by Mrs. Colette D'Souza and six others who are respondent Nos. 4 to 13 in P.I.L. No. 47 of 2008.

By the order passed in Revision, the Minister for Revenue set aside the order of the Revenue Authorities, who had rejected the claim of the Revision Applicants that their names be included in the revenue records. The Revision has been preferred against the order of the Additional Collector dated 19th December, 1989 passed in Appeal and confirmed by the Additional Commissioner, Konkan Division by order dated 30th August, 1991. The stand of the State had been that in the City Survey enquiry it had been held

that the State Government is the holder and that the portion of the land now bearing C.T.S. No. 229 had vested in the State Government. Reference was also made to the consent decree passed by this Court in Suit No. 921 of 1954 filed by the Trustees of the will of late A.H. Wadia against the State Government. That suit was settled in terms of the consent terms dated 2nd May, 1963. By the consent terms it was reiterated that the subject land stood appropriated to the State Government under the Salsette Estates (Land Revenue Exemption Abolition Act) 1951. That decree subsists till date and has not been set aside by any other Competent Court. However, the Gonsalves family has filed a suit being C.S. No. 698 of 1971 against an order arising from subsequent proceedings under the Land Revenue Code claiming the subject land as theirs. The Gonsalves family admittedly were not parties to the consent decree in Suit No. 921 of 1954. The consent decree merely affirms the finding of the Authorities in favour of the Government under the Act. The learned Minister proceeded on the footing that the Applicants before him had proved that they were legally in possession of the land since the Deed of Exchange. Further it was observed that though the revision applicants had not produced a copy of the Deed of Exchange of 1894 signed between their predecessors in title and Wadia. The Deed was accepted by the representative of Shri Wadia before the Lower Court and the statement recorded before the Lower Court would clearly indicate existence of the Deed of Exchange of 1894. The then Revenue Minister, the Minister proceeded to hold that the possession of the land was proved beyond doubt and whether the possession is authorised or he is an encroacher is to be decided on the basis of evidence. The Minister further proceeded to hold that as the land was in possession of Shri Gonsalves before the consent terms and as such holding an enquiry under the provisions of Salsette Inam Abolition Act, 1951 did not arise and the land which vested in the Government is other than C.T.S. No. 299. Learned Minister based on this possession based on title by the Deed of Exchange allowed the Revision.

6. At this stage we may also make reference to L.C. Suit No. 698 of 1971 as we have directed those records to be produced considering the P.I.L. Petition

and the controversy before us. In that suit the prayer sought is that the Gonsalves family are the full and absolute owners of the suit land and entitled to exclusive possession and that the orders passed in the Survey Enquiry are bad in law, illegal, null and void, that the consent decree dated 11th October, 1963 in Suit No. 921 of 1954 is not binding on the Plaintiffs and for a permanent injunction. Temporary injunction was also prayed for. There is nothing on record to indicate whether any injunction was granted. The Gonsalves Family in the suit did not claim their right to the land based on the Deed of Exchange of 1894 for their title to the suit land but the plea was of adverse possession against Wadias who are Defendant Nos. 2 to 6 in that suit. The State has filed its written statement in the suit. The stand of the State is that the entire land was comprised in Survey No. 98 as per the extract from the record of rights.

The State specifically denied that Gonsalves family were cultivating the land and was using it for grazing of cattle or for any other agricultural purposes. It is mentioned that out of Survey No. 98 which admeasures 10 Acre 30 Gunthas, about 6 Acres were notified for acquisition for Santacruz Aerodrome. Finally out of 6 Acres only an area of 1 Acre 16 Gunthas was acquired. It was also set out that enquiry officer recorded a finding that the applicants were encroachers on the suit land. It is not necessary to refer to the other averments.

7. Against this order a Review was preferred by the Revenue Authorities which came up for hearing before the Minister for Revenue, (other than the one who had passed the earlier order in Revision). The parties were the Director, Anjali Real Estate Private Ltd., by the Constituted Attorney of Gonsalves family. After referring to the various orders passed,

it is noted that the notices were issued to Smt. D'Souza and others. As per the request the hearing on 3rd September, 1997 was adjourned and fixed on 13th September, 1997. It was again fixed on 29th September, 1997. As nobody remained present for the Gonsalves family and Anjali Real Estates decision was taken to proceed ex parte. It is also mentioned that when the matter was pending, the Gonsalves family were desirous of compromising the matter with the Government and by an application a proposal was made to give the land on lease to the Gonsalves family which the Government did not agree to. The Minister proceeded to hold that the order passed by the Additional Commissioner was legal. There was no entry of Smt. Koleti D'Souza or her relatives in the revenue records and ir these circumstances set aside the earlier order with a further direction to confiscate the land bearing Survey No. 229 and directed entry be made to that effect in the revenue records.

8. Writ Petition No. 1657 of 2006 has been filed against that order by Esteem Properties and Another.

The State has filed a reply through Avinash Hajare, Deputy Secretary, Revenue and Forests Department. Reference is made to the order passed by the S.D.O., where a finding had been recorded that the Gonsalves family had been unable to prove that they had acquired any title whatsoever insofar as Survey No. 98 of village Sahar and that the Deed of Exchange was non-existent. These findings had been upheld. The petition was filed by the petitioners based on Agreement dated 22nd February, 1996 between the petitioners and respondent Nos. 6 to 15. The Government stand is that the same is not binding on the Government. There are now slum dwellers on the suit land and neither the

petitioners nor their predecessors are in possession of the suit land which belongs to the State Government. Rule was issued in the Petition on 22nd September, 2006. The parties were directed to maintain status quo. Liberty was granted in the event there was any change of circumstances.

9. During the pendency of the Petition, Notice of Motion No. 333 of 2007 was taken out before this Court. A Bench presided over by the then Chief Justice recorded that Counsel appearing for the petitioners seeks to withdraw the Motion with liberty to make representation before the Competent Authority.

10. Subsequent to the withdrawal of the Motion an application was moved by Esteem Properties Private Limited before the Minister for Revenue. Gonsalves family were not the applicants in the said application. Except for the agreement to sell with the Gonsalves family, Esteem Properties Private Limited had no other right to the property. The learned Minister proceeded to hold that the Power of Attorney given to Shri Kapoor has been cancelled by the Gonsalves family and a suit had been filed before this Court and this Court (Writ Petition) had granted status quo and this had not been taken into consideration by the Minister. The order, therefore, it was submitted, is against the principles of natural justice. It was noted that under section 258 it was necessary to give a hearing. It is not necessary to go into this aspect as the earlier order of the Minister shows that notices were sent. It was noted that Shri Gonsalves or the Power of Attorney of Gonsalves had agreed that the land was of the Government and had required to be given on lease. The Minister then proceeded to hold that the High Court had sent the matter to the Government for decision and as opportunity had not been given to the original Revenue Applicants, reviewed the earlier order. Whilst reviewing the order set aside the earlier order. P.I.L. has been filed against the said order.

11. In Suit No. 921 of 1954 which was filed by the Wadias against the State Government the prayer was for declaration that the Salsette Estates (Land Revenue Exemption Arbitration) Act, was in contravention of Articles 19 and 31 of the Constitution of India. It is in this suit, that the consent terms were filed wherein the subject-matter was amongst the land vested in the State Government. The land was described as Survey

No. 98(1) of village Sahar.

12. The following questions arise in the P.I.L., which require to be determined:—

1. Whether the petitioners have locus standi to maintain this petition?
2. Whether a person who was not a party to the revisional proceedings without succeeding to the property from the original applicant merely based on an agreement to sell could have maintained the second Review Application (Procedural Review)?
3. Whether it was open to the Minister in exercise of review (substantial review) moved at the instance of the State Government when there was a consent decree holding that the land has vested in the Government and further as the title to the land, being the subject matter of a civil suit by persons claiming to be the owners (Gonsalves family) other than on the Deed of Exchange could have passed an order, decreeing the land to be entered in the revenue records in

favour of such owners and against the Government without the consent decree of 1953 being set aside in the suit which was pending.

13. We shall first deal with the preliminary objection r used in the P.I.L. that the petitioners do not have locus standi to maintain this Pe? ition:

The objection raised on behalf of the contesting respondents to the locus of the petitioner No. 1 is that there are various orders passed against him by the Aurangabad Police and several criminal cases, during the period from 1994 to 2005. The petitioner has described himself as the President of Bhimshakti Vichar Manch and as an activist, who takes necessary steps for exposing acts of corruption including the allotment of gas agencies and kerosens agencies scam of 2002 when he had filed a Writ Petition before this Court. The petitioner No. 2, it is contended, is a social worker and an office bearer of an organisation Pradnya Prabhodhini which is in the field of Education, Sports, Cultural and social activities and connected with Pradnya Vidya Niketan School and was the Vice President of the Khadi Gram Udyog Board for the period of three years between 1997-2000.

In our opinion, merely because against the petitioner No. 1 there were and/or are some criminal cases by itself can be no reason for this Court not to entertain the petition if in law otherwise the petition raises questions which can be considered in a P.I.L. The challenge no doubt is to a quasi-judicial order, but the larger question is, when a quasi-judicial authority, holds land which has vested in the State Government as not public land and the State Authorities take no steps to challenge an order which would result in affecting the public revenue, can locus be denied to public spirited citizens who bring these facts to the notice of this Court. Can such an order be allowed to stand, if it otherwise be illegal and cannot this Court in the exercise of its extra ordinary jurisdiction of superintendence interfere with the same.

We may also point out that we are surprised at the reply filed by respondent Nos. 1 and 2 by Shri Ramakant Asmar, Joint Secretary, Revenue and Forest Department in the petition, considering the earlier stand of the Government in the suit filed by the Gonsalves family and also the reply filed in Writ Petition No. 1657 of 2006 challenging the order of the Minister passed in review. In our opinion, the affidavit which seeks to support the subsequent order ignoring the earlier affidavits filed by the State in earlier pending proceedings, by itself would be sufficient for this Court to invoke the PIL jurisdiction, if not in its supervisory jurisdiction irrespective of any other issue. This is to ensure that public officers discharging public functions whether administrative or as quasi-judicial capacity discharge their functions and exercise their jurisdiction in a manner which is fair, transparent and to uphold the rule of law. When public revenue is

involved inconsistent stand of the State itself leads to 'suspicion'. This Court as the Sentinel of Justice in such matters cannot remain a mute spectator and must exercise its extra ordinary jurisdiction, so that quasi-judicial authorities act within jurisdiction.

14. In support of the contention that review would not lie against the quasi-judicial order learned Counsel have placed reliance on he judgment of the learned Division Bench of the Delhi High Court in *M.K. Agarwal* v. *Union of India*, AIR 1994 Delhi 242. The issue for consideration before

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the Delhi High Court was arising from a petition by the petitioner there, that the fundamental rights and those of citizens of India arising from Articles 14, 19(1)(a) and 21 would be affected, if not destroyed, if foreign newspapers and journalists were allowed to publish their respective newspapers and journals in India. One of the prayers was restraining the Registrar of newspapers and Registrar of Trade Marks from registering any foreign newspaper with a title which was the same as that of publication of the petitioner. The petition there was filed by a Chartered Accountant and Advocate. The Court held that it will not be open to the Court to grant relief against the orders of the quasi-judicial authority which orders are subject to review and Appeal. While disposing of the matter the learned Bench relied on the earlier judgment in the case of *Common Cause* v. *The Commissioner of Municipal Corporation of Delhi*, (1991) 3 DL 118. The judgment in *Common Cause* (supra) was a judgment of a learned Single Judge. The petition was filed as a PIL against a notice issued to various property owners for enhancing rateable value of their property. The Court noted that such property owners could file objections to the proposed rateable value against which revision was available. As the persons affected had legal remedy the petitioners could have no right to file a petition on their behalf. While so holding the Court further observed that in another petition, the Court had taken a view that judicial and quasi-judicial orders should not be challenged by way of public interest litigation. We may examine some other judgments and the issue as to whether in matters where there is remedy available against an order impugned, PIL could be maintained. Further whether such orders can be said to be orders violative of fundamental rights of the petitioners so approaching the Court. In *Naresh Shridhar Mirajkar* v. *State of Maharashtra*, AIR 1967 SC 1 on the aspect of fundamental rights the majority opinion was expressed by Gajendragadkar, C.J. Dealing with whether Article 19(1) would be attracted, the Court held that it was based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). Reference was placed in the judgment in *Budhan Choudhary* v. *State of Bihar*, AIR 1955 SC 191. One of the questions raised there was whether the judicial decision itself could be said to contravene Article 14. The Court there observed that the judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. The Court observed that this may best be said to assume that a judicial decision may conceivably contravene Article 14. After so saying it was noted that the learned

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Judge who delivered the judgment took the precaution of adding that the discretion of judicial officers is not arbitrary and the law provides for revision by superior Courts of orders passed by the Subordinate Courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals. Reference was then made to the judgment in *Parbhani Transport Co-operative Society Ltd.* v. *Regional Transport Authority, Aurangabad*, 1960 NLJ (SC) 563 : AIR 1960 SC 801 where the Supreme Court had taken the view that where the authority was acting as a quad-judicial body and if it has made any mistake in its decision there are appropriate remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Article 14. The Court itself noted that a larger question as to whether the orders passed by quasi-judicial tribunals can be said to affect Article 14, does not appear to have been fully argued. In that case the Court was considering a pe?ition under Article 32 of the Constitution of India. In the minority judgment Hidayatullah, J., was of the view that the Court is satisfied that a fundamental right has been trampled upon it is not only its duty to act to correct it but also its obligation to do so.

15. Coming to the era where this Court started exercising jurisdiction by way of public interest litigation, we may refer to the judgment in *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504. The Supreme Court there observed that:

> "At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the Court."

In *Indian Banks' Association, Bombay* v. *Devkala Consultancy Service*, (2004) 11 SCC 1 a petition was filed by a forum of Chartered Accountants. It was contended by the petitioners that on account of the action on the part of the Banks as also Reserve Bank of India citizen.; had to pay higher amount of tax as also higher amount of interest for no fault on their part and recovery had been made without any authority of law. The Court answering the issue observed that while entertaining Public Interest Litigation this Court in exercise of the jurisdiction under Article 32 of the Constitution and the High Court under Article 226 thereof are entitled to entertain a petition moved by person having knowledge in the subject matter of the lis and, thus, having an interest therein as contradistinguished from a busybody, ir the welfare of the people. The rule of locus has been relaxed by the Courts for such purpose with a view to enable a citizen of India to approach the Courts to vindicate legal injury or legal wrong caused to a section of the people by way of violation of any statutory or constitutional right. The Court then considering the judgment in *Guruvaryoor Devaswom Managing Committee* v. *C.K. Rajan*, (2003) 7 SCC 546 quoted amongst others the following paragraph:—

> "44. The people of India have turned to Courts more and more for justice whenever there has been a legitimate grievance against the State's statutory authorities and other public organisations. People come to Courts as the final resort, to protect their rights and to secure probity in public life."

In *Raju Ramsing Vasave* v. *Mahesh Deorao Bhivapurkar*, 2009 (1) Mh.L.J. (S.C) 1 : (2008) 9 SCC 54 the issues pertained to grant of a caste

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certificate to a person belonging to a Scheduled Caste or Tribe. The question before the Court was whether after the certificate had been validated, could it be reopened even after the orders are passed by the High Court earlier. Considering the locus in such a case the Court observed:—

> "This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the Court to make a detailed enquiry with regard to the broader aspects of the matter though it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the Court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so."

The Court then proceeded to observe that the petition could have been dismissed on the ground that the appellant has no locus standi, but the Court did not do so because as a constitutional Court the Court felt that it was duty of Court to lay down the law correctly so that similar mistakes are not committed in future. Then the Court observed as under:—

> "Apart from the general power of the superior Courts vested in it under Article 226 or Article 32 of the Constitution of India, this Court is bestowed with a greater responsibility by the makers of the Constitution in terms of Articles 141 and 142 of the Constitution."

16. Bearing these principles in mind, in our opinion, this would be a fit case where this Court exercise its extra ordinary jurisdiction. The land pursuant to decisions of various quasi-judicial authorities had earlier been held to be Government land. Esteem Properties Private Limited which filed the procedural review claim through Gonsalves family and subsequent to the decision by the Minister in the procedural review have entered into a sale deed and now claim title in the land, when that issue was in issue also before this Court in the suit filed by the Gonsalves Family itself. The reply of the State before this Court in this petition contrary to the stand in the suit and the companion petition. In the other two proceedings the State has challenged the right claimed by the Gonsalves family. This by itself warrants, that the Court should exercise its extra ordinary jurisdiction. In our opinion under these circumstances if this Court declines to entertain the petition on the specious plea that the petitioners have no locus standi on the ground, what is being challenged is a quasi-judicial order, it would amount to abdication of our constitutional duty to see that the Courts and Tribunals exercise their jurisdiction according to law. In our opinion the matter involves public revenue. The fact that large considerations have been paid by Esteem Properties Private Limited to the Gonsalves family and other parties who were claiming right in the property for settlement of the dispute itself will give the value of the property and loss to public revenue if the matter is not examined. The public revenue cannot be allowed to suffer, if the action of the quasi-judicial authorities disclose error apparent on the face of the record or exercise of

jurisdiction in excess or want of jurisdiction. We, therefore, decline to accept the contention that the petition be dismissed on that ground.

17. At the outset we accept that a remedy by way of procedural review would lie if the matter was heard without an opportunity to the respondents. The law was considered by the Supreme Court in *Grindlays Bank Ltd.* v. *Central Government Industrial Tribunal*, 1980 Supp SCC 420 : AIR 1981 SC 606 and thereafter reiterated in several judgments including in *Kapra Mazdoor Ekta Union* v. *Management of Birla Cotton Spinning and Weaving Mills Ltd.*, (2005) 13 SCC 777 : AIR 2005 SC 1783. The Court observed that the procedural review belongs to a different category. In such a review, the Court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi-judicial authority without notice to the opposite party or under a

mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. Such party has to establish that the procedure followed by the Court or the quasi-judicial authority suffered from an illegality that vitiated the proceeding and invalidated the order made therein, inasmuch one of the parties concerned was not heard for no fault of his, or?hat the matter was heard and decided on a date other than the one fixed for hearing of the matter which such party could not attend for no fault of theirs. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be re-called and reviewed not because it is found to be erroneous, but because it is passed in a proceeding which stands vitiated by an error of procedure or mistake which goes to the root of the matter and invalidates the entire proceeding. A procedural review would, therefore, lie before the Minister. The question whether the present respondent No. 2 could have maintained the Review would be examined independently.

18. Was the Review Application maintainable at the instance of Esteem Properties Private Limited and another? Review under section 258 lies at the instance of a party interested. The substantive review was not preferred by Esteem Properties. What they preferred is the procedural review. The order states that notices were served on the Gonsalves family. Whether in fact they were served, the material before us does not show whether the observations in the order are correct. The only persons who can complain of no notice are the persons who were parties to the proceedings. Gonsalves family did not move the authority for procedural review. More importantly the orc?er was the subject matter of a pending Writ Petition. Order dated 17th March, 1998 was the subject matter of a petition filed not by the Gonsalves family, but *by* Esteem Properties Private Limited and another in the year 2006. The Motion taken out being Notice of Motion No. 333 of 2007 which was withdrawn to make representation before the Competent Authority was allowed by order of this Court dated 17th August,

2007. That would not mean that if otherwise there was no locus an order of the Court would give locus to such a party to maintain a review petition. The Review Application was made thereafter again by Esteem Properties Private Limited and not by Gonsalves family. The matter was pending and status quo had been ordered. Even the power of procedural review has to be exercised within reasonable time. When the petitioner filed the petition before this Court if they were entitled they could have moved the application for review. That was not done. Instead they challenged the order by petition before this Court by invoking its extra-ordinary jurisdiction. An application was thereafter moved only on 17th August, 2007. The petition itself was filed on 22nd June, 2006. Ordinary time of filing Review is within 90 days from the date of the order. In the instant case the petitioners cannot contend that they had no knowledge. The issue of petitioners having knowledge would not arise as they were not parties and question of giving notice to them consequently would not arise. Procedural review has to be by parties to the original proceedings. Esteem Properties were not parties to the proceedings. They would have no locus standi to file the procedural review. In our opinion, therefore, this was not a case where the Minister could have exercised his review jurisdiction on two counts (i) that there was a delay and (ii) that the Esteem Properties Ltd., had no title to the land on the date the application for review was made and they were not parties to the proceedings. There were proceedings between them and the Gonsalves family for enforcement of the agreement. They, therefore, could not have complained that no notice was given to them.

They therefore, had no locus to maintain the review. Further this Court was seized of the matter and had admitted the petition. In our opinion, on this ground itself the impugned order is liable to be set aside and the original order passed in review restored.

19. The issue also raises a larger question as to whether the Authorities under the Maharashtra Land Revenue Code when the issue of title is in issue before the Civil Court could have by-passed those proceedings and proceeded to pass an order in favour of the Gonsalves family. The first order of the Minister was passed on 11th October, 1995 allowing the Revision Application preferred by the Gonsalves family. That order was totally perverse on two counts. The Gonsalves family had filed a suit bearing L.C. Suit No. 698 of 1971 which was pending before this Court wherein they have claimed a prayer to declare them as owners. This was because the Revenue Authorities had held that they had no title to the land and they were encroachers upon the land. In the suit the claim to the land was that they were in open possession, for more than 60 years, and had acquired absolute title by adverse possession. They did not claim right to the land based on the Deed of Exchange which as rightly pointed out by the Revenue Authorities was never produced. The mere statement on the part of the Wadia Trust that there was a deed of exchange in the absence of documents produced, could not have been accepted when the Gonsalves family themselves had not relied upon the said Deed of Exchange in their suit. The land was earlier of the Khot. The Gonsalves family, therefore, had to establish their title by adverse possession. Secondly, the Wadias in the consent terms filed in the suit filed by them had admitted the right of the State to that land under the Salsette Abolition Act. This was only application of the authority under Salsette Act. Once an order

had been passed under the Salsette Act, the Revenue Authority examining jurisdiction under the Land Revenue Code could not hold that order could not have been passed.

Material has come by way of affidavit in the companion petition that the land is in occupation of slum dwellers. In our opinion considering these aspects the original order dated 17th March, 1998 passed in the review preferred by the State against the order passed in Revision was correctly passed. The question, therefore, of recalling the order and upholding the earlier order in revision was really arbitrary and per se illegal. In our opinion, the issue being in issue before the Competent Civil Court at the instance of the Gonsalves family, the Revisional Authority ought to have declined to exercise jurisdiction.

20. Consequently, in our opinion, the impugned order dated 10th December, 2007 which is the subject matter of the PIL will have to be set aside and the order dated 17th March, 1998 is restored subject to the outcome in the suit. It will be open to all the parties to agitate their grievance in the suit which is pending.

21. Rule made absolute in Public Interest Litigation No. 47 of 2008. In the circumstances of the case each party to bear their own costs.

Order accordingly.

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Writ - C No. - 2810 of 2004

State of U.P. v. Haushala Prasad

2019 SCC OnLine All 4493 : (2019) 137 ALR 401 : (2020) 146 RD 486

In the High Court of Allahabad

(BEFORE YASHWANT VARMA, J.)

State of U.P. thru Collector Allahabad ..... Petitioner;

v.

Haushala Prasad ..... Respondent.

Writ - C No. - 2810 of 2004

Decided on July 16, 2019

Advocates who appeared in this case :

Counsel for Petitioner:- S.C.

Counsel for Respondent:- Durga Prasad, D. Tiwari, M.N. Singh, S.C., V.K. Singh

The Order of the Court was delivered by

YASHWANT VARMA, J.:— Heard Sri. Sanjay Goswami, the learned Additional Chief Standing Counsel, for the petitioner and Sri. M.N. Singh who has appeared for the contesting respondent. The Court notes that an application for impleadment had been made on behalf of one Rama Shankar Singh who is stated to be the vendee in a sale deed dated 03 February 1983 executed by the respondent here. When the matter has been taken up, none has appeared to press that application. The application for impleadment is consequently rejected. The Court notes that even otherwise no prejudice as such stands caused to the applicant since as would appear from the subsequent paragraphs of this decision both the Prescribed Authority as well as the Appellate Authority have recognised the bona fides underlying the sale transaction in question and on the basis thereof had upheld the exclusion of the area comprised in the sale deed dated 03 February 1983 while computing the land held by the respondent in excess of the ceiling limit.

2. The State has petitioned this Court challenging the orders dated 21 December 2000 passed by the Prescribed Authority as affirmed by the Additional Commissioner in appeal in terms of its judgment dated 29 July 2002. Additionally, challenge is laid to the order of 18 October 2002 in terms of which the Additional Commissioner, purportedly exercising powers of review, has recalled his earlier judgment of 29 July 2002 and also brought to a closure all proceedings which had been initiated against the respondent tenure holder under the U.P. Imposition of Ceiling on Land Holdings Act 1960. Sri. Goswami, the learned Additional Chief Standing Counsel has, however, in the course of his submissions stated that the challenge in the instant petition stands confined to the order of 18 October 2002 passed on the review petition as preferred by the respondent. It is in the above backdrop that the petition was set down for hearing. The facts in brief which may be noticed and would be relevant for disposal of the present writ petition are as follows.

3. The respondent tenure holder was put to notice in terms of Section 10(2) of the Act on 12 March 1993 by the State with respect to a proposed adjudication being undertaken in respect of surplus land held by him. Pursuant to that notice the respondent tenure holder submitted a reply which was ultimately considered on merits and the surplus land computed by the Prescribed Authority by an order of 21 December 2000. While passing that order the Prescribed Authority upheld the bona

fides of the transaction as embodied in the sale deed of 03 February 1983 and consequently proceeded to grant benefit of Section 5(6) of the Act to the tenure holder. Dealing with the nature of the land, the Prescribed Authority referring to the revenue records of 1378 and 1399 Faslis proceeded to record that the land was irrigated and its soil was capable of bearing two crops. On the strength of these findings it proceeded to compute the land which was liable to be recognised as being held by the landholder in excess of the ceiling limit prescribed. This decision of the Prescribed Authority was assailed by the landholder as well as the State. Both the appeals were dismissed by the Additional Commissioner on 29 July 2002. The landholder however appears to have filed an application for review of this order on 02 August 2002. It is not disputed before this Court that the application was purportedly filed under Section 151 CPC. This application has been allowed by the Appellate Authority in terms of its order of 18 October 2002. Ruling on the question of whether a power to review vested in it, the Appellate Authority takes resort to Section 151 CPC to hold that a quasi-judicial authority must be recognised to have an inherent power to review and correct errors apparent on the face of the record. The Appellate Authority in terms of the order impugned has ultimately proceeded to hold that the majority of the land holding of the respondent was liable to be viewed as unirrigated and had only borne a single crop. It has, on the basis of these findings, come to hold that the proceedings initiated against the landholder were liable to be dropped. The Appellate Authority in terms of the operative directions framed has brought the proceedings initiated under the Act to a close.

4. Assailing this order Sri. Goswami, the learned Additional Chief Standing Counsel, contends that the theory of inherent power as recognised to be available with the Appellate Authority is a view which is clearly untenable. According to Sri. Goswami, the power to review must be found to be statutorily conferred expressly or by necessary implication. According to him in the absence of a statutory conferment of such power, a quasi-judicial authority cannot be recognised to have the power to review its earlier decision. According to Sri. Goswami the power which was exercised by the Appellate Authority in the facts of this case also does not meet the tests as judicially recognised and which must inform the exercise of power under Order XLVII Rule 1 CPC. Sri. Goswami in support of his submissions has placed reliance upon the judgment rendered by three learned Judges of the Supreme Court in *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji*. He has also drawn the attention of the Court to a decision rendered by a learned Judge of this Court in *U.P. Steels Limited* v. *State of Uttar Pradesh* arising out of proceedings emanating from the Act wherein it was held that no power of review can be recognised to inhere in authorities under the Act.

5. Countering these submissions Sri. M.N. Singh, learned counsel appearing for the contesting respondent, contends that from the material which has been taken into consideration by the Appellate Authority and as encapsulated in the impugned order, it is evident that its earlier decision of 29 July 2002 suffered from errors apparent on the face of the record. According to Sri. Singh the power to correct and rectify an error which is ex facie evident, must be recognised as an inherent power vesting in every judicial or quasi-judicial authority. Sri. Singh learned counsel has placed reliance upon the decision rendered in *Ram Autar* v. *The State of U.P.* to submit that the authorities under the Act were recognised to have an inherent power to rectify mistakes apparent on the face of the record. Sri. Singh submits that the recordal of facts by the Appellate Authority clearly shows and establishes that the majority of the plots of the landholder were unirrigated and had produced only one crop. He submits that in light of the facts that existed on the record, the Appellate Authority was clearly justified in recalling and reviewing its earlier judgment of 29 July 2002 and bring the proceedings initiated against the landholder to a closure. It is these rival submissions, which consequently

fall for determination.

6. At the very outset let it be noted that although learned counsel for the respondent would contend that Ram Autar is an authority for the proposition that every quasi-judicial authority has an inherent power to review, that may not be a correct reading of that decision. The learned Judge in Ram Autar has held thus:—

> "15. True, when there is no specific statutory provision for reviewing an order by an authority contemplated under the Act, the authority has no power to review its order. At this place I think it proper to mention that no Court or Tribunal is debarred from exercising inherent jurisdiction apart from statutory jurisdiction to correct any error committed by itself. The aforesaid power for correcting error by the Court itself is based on the maxim that no party should suffer because of the fault of the Court or Tribunal. Taking the aforesaid view into consideration I think it proper to emphasize that every Court and Tribunal has inherent jurisdiction to rectify its mistake. The question in what circumstance the Court or Tribunal shall rectify its mistake will depend upon the nature of the mistake committed by the Court and whether that mistake cannot be termed as clerical mistake or mistake apparent on the face of the record."
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> (emphasis supplied)

7. As is evident from the observations made in that decision, the learned Judge essentially sought to hold that the power of rectification must be recognised to stand invested in every quasi-judicial authority. This is evident from the opening part of paragraph 15 itself where the learned Judge recognises the settled principle that the power to review must be statutorily conferred. That there is an inherent distinction between the power to "rectify" and the power of "review" is an issue, which is no longer res integra. Ram Autar can thus only be recognised as an authority for the proposition that the power to rectify must be recognised as being inherently inhering in a quasi-judicial authority. In any case and is evident from a reading of the subsequent decision of this Court in U.P. Steels Limited, it has been clearly held that in the absence of a specific provision conferring power of review upon the authorities under the Act, it cannot be recognised as an inherent power Dealing with this aspect the learned Judge in U.P. Steels Limited observed thus:—

> "8. The aforesaid order passed by this Court has become final as validity of the said order was not challenged before the Supreme Court. The authorities below after the aforesaid order was passed by this Court, decided the case in the light of the observations made and findings recorded by this Court and re-determined the ceiling area of the petitioner. The petitioner also filed an application giving its choice as provided under Section 12 A of the Act. The calculation made by the authorities below were also verified and certified by the counsel of the petitioner. Therefore, after the order dated 23.10.1980, passed by the Prescribed Authority declaring 46 bighas 14 biswas 5-1/3 biswansi of land as surplus, the petitioner had no right to file an appeal. However, the appeal was filed which was also dismissed. Thereafter, the review application was also filed, which also met the same fate and was dismissed by order dated 10.2.1984. The appellate authority in its aforesaid order observed as under:
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> > "There were no calculations in the appellate's judgment. List has been given and it had been checked by the counsel of the appellant who had conceded that it was correct.
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> > It is urged now by him that there could be a mistake and certain plots in respect of which declaration under Section 143 had been granted, were not excluded. He had to concede that declaration was not in record in respect of some of the plots which he claimed to be covered by that declaration and that it is not traceable. His contention is that he should be allowed 234-14-15 bighas of land it is not necessary

to show declaration under Section 143. That, in my opinion, is not correct and in any case review is not rehearing of appeal. If the counsel had conceded certain point and there could have been mistake, review will not be maintainable. Judgment shows no clerical or arithmetical error and if there is some mistake for which we have to go through the record again, it will not be a ground for review.

As it is, in my opinion, review is not maintainable and there is no clerical error which is apparent on the record.

The application is without any force.

9. Under the Act, there is no provision of filing a review application. Section 13A of the Act simply provides for an application for rectification of clerical mistake. In the present case, learned counsel for the petitioner conceded before the appellate authority that there was no mistake in the calculation, thus, the appellate authority was right in holding that the review was legally not maintainable."

(emphasis supplied)

8. The controversy in any case does not survive in light of the decision rendered by the Supreme Court in Patel Narshi Thakershi where in unambiguous terms it was held that the power to review could never be recognised as being an inherent power. Their Lordships held that the power to review must be conferred by law either specifically or by necessary implication. These observations as they appear in paragraph-4 of the decision are extracted herein below:—

"4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. it must be remembered that Mr. Mankodi was functioning as delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order. The question whether the Government's order is correct or valid in law does not arise for consideration in these proceedings so long as that order is not set aside or declared void by a competent authority. Hence the same cannot be ignored. The Subordinate Tribunals have to carry out that order. For this reason alone the order of Mr. Mankodi was liable to be set aside."

(emphasis supplied)

9. In light of the decision of the Supreme Court which is relied upon by Sri. Goswami, it is manifest that the legal principle of the power of review necessarily being found to be statutorily conferred or flowing by necessary implication from statute, is beyond the realm of doubt.

10. Before proceeding further and dealing with the challenge to the impugned order on merits, it would be apposite to pause and reflect briefly on the power of review as well as to spell out the clear and well understood distinction between a "merit review" and "procedural review". Review, as is well settled, is a power conferred to rectify a patent or glaring error of fact or law apparent on the face of the record. If a judgment or order has come to be rendered on an erroneous assumption, in ignorance of an essential fact or piece of evidence and its perpetuation would result in a miscarriage of justice, the Courts and quasi-judicial authorities would be bound to correct and rectify that decision or order. The mistake or error must be established to be glaring, patent, substantial and of a compelling character. The mistake must be found to be one that goes to the very root and foundation of the judgment or order sought to be reviewed.

11. At the same time, a petition for review is not a remedy of re-hearing or

reconsideration of issues which stand finally settled by the judgment or order. Though curative, it is not intended to be a remedy for fresh consideration or a re-assessment of the case on merits. It must, by its very inherent character coupled with the need to accord finality to an adjudicatory process, be confined to the issue of whether the decision rendered suffers from an unmistakable, conspicuous or patent error. As has been repeatedly stated, the jurisdiction of review is not intended to be an occasion to substitute a view already taken. An elaborate and lucid exposition on the scope of review is found in the decision of the Supreme Court in *Lily Thomas* v. *Union of India* where it was held:—

> 52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi* v. *Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagarajv. State of Karnataka [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] held: (SCC pp. 619-20, para 19)
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> "19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury* v. *Sukhraj Rai* [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae* v. *Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181] that an order made by the Court was final and could not be altered:
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> > "… nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in…. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.'
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> Basis for exercise of the power was stated in the same decision as under:
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> "It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame,

the party has not been heard and an order has been inadvertently made as if the party had been heard.'

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, "for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

53. This Court in *Northern India Caterers (India) Ltd.* v. *Lt. Governor of Delhi* [(1980) 2 SCC 167 : 1980 SCC (Tax) 222 : (1980) 2 SCC 167 : AIR 1980 SC 674] considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order XL Rule 1 of the Supreme Court Rules and held: (SCC pp. 171-72, para 8)

"8. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: *Sajjan Singh* v. *State of Rajasthan* [AIR 1965 SC 845 : (1965) 1 SCR 933, 948], SCR at p. 948. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: *Girdhari Lal Gupta* v. *D.H. Mehta* [(1971) 3 SCC 189 : 1971 SCC (Cri) 279 : (1971) 3 SCR 748, 760], SCR at p. 760. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: *O.N. Mohindroo* v. *Distt. Judge, Delhi* [(1971) 3 SCC 5 : (1971) 2 SCR 11, 27], SCR at p. 27. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order XL Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility': *Sow Chandra Kante* v. *Sk Habib* [(1975) 1 SCC 674 : 1975 SCC (Tax) 200 : 1975 SCC (L&S) 184 : 1975 SCC (Cri) 305 : (1975) 3 SCR 933]."

(emphasis supplied)

12. That then takes us to the concept of "procedural review" as judicially formulated. The power of "procedural review", as distinct from a "merit review", is the genre of review that has been judicially recognised to inhere in all quasi-judicial authorities. The power of procedural review is invoked where a judgment has been rendered ex parte, without notice or in the absence of a necessary party. It is a power inhering in all quasi-judicial authorities to recall a judgment or order that has come to be entered in the absence of parties. Explaining this concept the Supreme Court in *Kapra Mazdoor Ekta Union* v. *Birla Cotton Spg. Wvg. Mills Ltd.* held as under:

> "18. It was, therefore, submitted before us, relying upon *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* [1980 Supp SCC 420 : 1981 SCC (L&S) 309] that even in the absence of an express power of review, the Tribunal had the power to review its order if some illegality was pointed out. The submission must be rejected as misconceived. The submission does not take notice of the difference between a procedural review and a review on merits. This Court in *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* [1980 Supp SCC 420 : 1981 SCC (L&S) 309] clearly highlighted this distinction when it observed: (SCC p. 425, para 13)
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> > "Furthermore, different considerations arise on review. The expression "review' is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Patel Narshi Thakershi case[(1971) 3 SCC 844 : AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal."
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> 19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or

mistake which went to the root of the matter and invalidated the entire proceeding. In *Grindlays Bank Ltd.* v. *Central Govt. Industrial Tribunal* [1980 Supp SCC 420 : 1981 SCC (L&S) 309] it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be reheard and decided again."

(emphasis supplied)

13. It would thus be evident that a procedural review is not really concerned with the merits of the decision rendered. It is restricted to cases where an adjudication has come to be made without notice to a necessary party or where a party to the cause was prevented by sufficient cause from attending to the proceedings. Having noticed the basic principles which underlie the power of review, the Court proceeds to consider the validity of the impugned order.

14. It is manifest from a reading of the impugned order passed by the Appellate Authority in this case that it clearly does not fall in the genre of a procedural review. This is not a case where the order of 29 July 2002 came to be rendered without hearing the tenure holder or in violation of the principles of natural justice. The order impugned clearly embodies a "merit review" undertaken by the Appellate Authority. A merit review power must have sanction of statute specifically or by necessary implication. The Act undisputedly confers no such power on the Appellate Authority. It is thus evident that the impugned order suffers from a patent jurisdictional error.

15. That takes the Court to the last issue of whether the judgment of 29 July 2002 suffered from a glaring or manifest error meriting its reopening and review. At the outset the Court notes that the tenure holder does not appear to have urged or addressed any challenge to the findings that came to be recorded by the Prescribed Authority with respect to the nature of the land before the Appellate Authority. The order of 29 July 2002 carries no recital of such contentions being raised or urged. Although Sri. Singh learned counsel for the respondent submits that such a ground was taken in the memo of appeal, in the considered view of this Court, that would clearly not be determinative since it was imperative for the landholder to establish that the point was in fact actually urged, raised and pressed before the Appellate Authority. As this Court reads the order of 29 July 2002, it is more than evident that the objections with respect to the nature and character of the land does not appear to have been pressed. Even the review petition does not assert that such an assertion was in fact raised but due to inadvertence has either escaped the attention of the Appellate Authority or was not dealt with.

16. Notwithstanding the above, the Court ventures forth to deal with the findings on merits which have been recorded by the Appellate Authority in the impugned order in terms of which it proceeds to hold that the land was liable to be treated as unirrigated and capable of producing only one crop. In order to appreciate the question which arises, it would be relevant to refer to the provisions made in Section 4A of the Act which reads thus:—

"[4A. Determination of irrigated land. - The prescribed authority shall examine the relevant Khasras for the years 1378 Fasli, 1979 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary and thereupon if the prescribed authority is of opinion:—

firstly, (a) that, irrigation facility was available for any land in respect of any crop in any one of the aforesaid years; by (i) any canal included in Schedule No. 1 of irrigation rates notified in Notification No. 1579-W/XXIII-62-W-1946, dated March 31, 1953, as amended from time to time; or

(ii) any lift irrigation canal; or

(iii) any State tube-well or a private irrigation work; and

(b) that at least two crops were grown in such land in any one of the aforesaid years; or

secondly, that irrigation facility became available to any land by a State Irrigation Work coming into operation subsequent to the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops were grown in such land in any agricultural year between the date of such work coming into operation and the date of issue of notice under Section 10; or

thirdly, (a) that any land is situated within the effective command area of a lift irrigation canal or a State tube-well or a private irrigation work; and

(b) that the class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; then the Prescribed Authority shall determine such land to be irrigated land for the purposes of this Act."

17. As is evident from a reading of that provision the Prescribed Authority is enjoined to examine the Khasras for the years 1378, 1379 and 1380 Fasli along with other contemporaneous record in order to ascertain the character of the land. The provision then takes care of three independent scenarios in order to ascertain whether the land is liable to be treated as irrigated or otherwise. Firstly it deals with the class of land irrigated by a canal, lift irrigation canal or any State tube well together with an enquiry in respect of the character of the soil which must be found to be such on which at least two crops were grown. The second category of land which is considered is that which came to have access to irrigation facilities after the commencement of the 1972 Amendment to the statute and on which two crops were in fact grown in any agricultural year. The third category of irrigated land is that which is situate within the effective command area of a lift irrigation canal and the soil of which is "capable of" being utilised to grow at least two crops. The Prescribed Authority on an examination of the relevant records pertaining to 1378F had found that the land in question fell within the command area and its soil was capable of being utilised for the plantation of two crops in a year.

18. A careful examination of the findings recorded by the Appellate Authority, however, show that it has on an evaluation of the records for 1378 Fasli noted that a majority of the plots were unirrigated and that it was shown from the revenue record that only one crop had been sown. From a bare perusal of the findings which are returned, it is evident that the Appellate Authority has firstly not recorded any finding that the entire land holding of the respondent was unirrigated. Even if he had found that a majority of the plots were unirrigated, this would have necessarily entailed a further exercise of demarcating plots between the category of irrigated and unirrigated being undertaken. In any case the Appellate Authority does not record any finding that may dislodge the recordal of fact by the Prescribed Authority in his original order where he had held that the land did fall in the command area. The Appellate Authority has also not borne in mind that in terms of Section 4A it was incumbent upon the authorities concerned to also evaluate whether the land was in fact "capable of" being utilised for sowing two crops as distinct from whether two crops had in fact been sown. As is evident from the language employed and the highlighted part of Section 4A extracted above, land which is "capable of" bearing at least two crops is also a determinative factor of whether it should be characterized as irrigated or unirrigated. It is thus evident that the order of the Prescribed Authority as was affirmed by the Appellate Authority could not be said to be suffering from any palpable or apparent error on the face of the record which would have warranted the exercise of power of review. The Appellate Authority has clearly undertaken an exercise of a re-appreciation of the evidence which existed and sought to revise and revisit a final decision that had been made. This was clearly an exercise beyond jurisdiction and cannot be sustained

in law. In light of the above, this Court is of the considered view that the order of 18 October 2002 merits being set aside.

19. The petition is accordingly allowed. The impugned order dated 18 October 2002 is hereby quashed. Sri. M.N. Singh, learned counsel appearing for the tenure holder, in the end submitted that since proceedings had been brought to a close by virtue of the impugned order, the respondent was never dispossessed and therefore, he be permitted to invoke the provisions of Section 12 A of the Act before the State proceeds in the matter. Sri. Goswami learned Additional Chief Standing Counsel states that subject to verification of the aforesaid statement, the petitioner shall, as is duty bound, proceed in the matter in accordance with law.

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