

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH AT PUNE
INTERLOCUTORY APPLICATION NO. 66 OF 2021 (WZ)
IN
ORIGINAL APPLICATION NO. 64 OF 2019 (WZ)

Ekta Housing Pvt. Ltd.

...Applicant in IA No. 66/2021

In the matter of:

Tanaji B. Gambhire

...Original Applicant

Versus

Union of India & Ors.

...Respondents

COMPILATION OF JUDGMENTS ON THE ISSUE OF LIMITATION

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(BEFORE DR A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.)

L.C. HANUMANTHAPPA (SINCE DEAD) a
REPRESENTED BY HIS LEGAL
REPRESENTATIVES . . . Appellant;

Versus

H.B. SHIVAKUMAR . . . Respondent. b
Civil Appeal No. 6595 of 2015[†], decided on August 26, 2015

A. Civil Procedure Code, 1908 — Or. 6 R. 17 — Amendment in plaint — Further relief added by way of amendment — If barred by limitation on date of grant of amendment — Determination of — Doctrine of relation back i.e. relating back the amendment to the date when the suit was originally filed — Applicability of — Governing principles as to, summarised c

— Appellant filing a suit on 9-3-1990 for permanent injunction against respondent-defendant — In appeal against dismissal of said suit, High Court vide judgment dated 28-3-2002 remanding the matter to trial court after allowing amendment in plaint regarding addition of further relief as to declaration of title to suit property — Said amendment was granted subject to plea of limitation that could be raised by defendant in its additional written statement d

— In original written statement filed on 16-5-1990 defendant had clearly denied plaintiff's title to suit property — Thus, in view thereof, held, right to sue for declaration of title first arose on 16-5-1990 — In this way, period of limitation of 3 yrs for filing suit for declaration of title, as provided under Art. 58, Limitation Act, 1963, continued from 16-5-1990 till 15-5-1993 — Hence, relief as to declaration of title added by amendment in 2002, was barred by limitation — Suit rightly dismissed by High Court on ground of limitation e

— As regards applicability of doctrine of relation back to present amendment, held, said doctrine is not applicable to present case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there were no special or extraordinary circumstances in instant case warranting application of doctrine of relation back whereby a legal right that had accrued (on ground of limitation) in favour of defendant should be taken away f

— Doctrines and Maxims — Relation back — Applicability of, in case of amendment in pleadings — Limitation Act, 1963 — Ss. 3, 5 and Art. 58 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Specific Relief Act, 1963, Ss. 34 and 35 g

[†] Arising out of SLP (C) No. 15513 of 2015. From the Judgment and Order dated 5-3-2015 of the High Court of Karnataka at Bangalore in RFA No. 796 of 2009 h

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B. Limitation Act, 1963 — Art. 58 — Suit for declaration or amendment of pleadings to incorporate relief of declaration — Commencement of limitation period — Change in statutory language as contained in Art. 120 of 1908 Act which provided that limitation would commence when “right to sue accrues” while Art. 58 vide 1963 Act providing therefor when “right to sue first accrues” — Incorporation of word “first” — Impact of, reiterated

— Held, while enacting Art. 58 of the 1963 Act, the legislature has designedly made a departure from the language of Art. 120 of the 1908 Act — The word “first” has been used between the words “sue” and “accrued” — This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues — To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued

— Limitation Act, 1908 — Art. 120 — Property Law — Ownership and Title — Right to sue for declaration of title — When arose — Denial of title in written statement by defendant — Contract and Specific Relief — Specific Relief Act, 1963, Ss. 34 and 35

Dismissing the appeal, the Supreme Court
Held :

All amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Thus, amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not? Thus courts will, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. There may be an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration is outweighed by the special circumstances of the case, for example, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded. That however, is not true in the present case. (Paras 15, 19 and 20)

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will

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begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Para 13)

In the present case, first, in the original written statement itself, which is dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. (Para 29)

Article 58 of the Limitation Act, 1963 would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. There can be no doubt that the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff's title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. Thus, the present amendment of the plaint is indeed time-barred. As regards the applicability of doctrine of relation back to the present amendment, the said doctrine would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, there is no infirmity in the impugned judgment of the High Court. (Paras 29 and 14)

Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484; *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363; *Charan Das v. Amir Khan*, (1919-20) 47 IA 255 : (1921) 13 LW 49; *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357; *K. Raheja Constructions Ltd. v. Alliance Ministries*, 1995 Supp (3) SCC 17; *Vishwambhar v. Laxminarayan*, (2001) 6 SCC 163; *Siddalingamma v. Mamtha Shenoy*, (2001) 8 SCC 561; *Sampath Kumar v. Ayyakannu*, (2002) 7 SCC 559; *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander*, (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777; *Prithi Pal Singh v. Amrik Singh*, (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473, explained and applied

H.B. Shivakumar v. L.C. Hanumanthappa, 2015 SCC OnLine Kar 3860, affirmed

Kisandas Rupchand v. Rachappa Vithoba Shilwant, ILR (1909) 33 Bom 644, held, approved

L.C. Hanumanthappa v. H.B. Shivakumar, RFA No. 415 of 1999, decided on 28-3-2002 (KAR), approved

Bolo v. Koklan, (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338; *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30; *Gobinda Narayan Singh v. Sham Lal Singh*, (1930-31) 58 IA 125 : (1931) 33 LW 707; *Rukhmabai v. Lala Laxminarayan*, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bakshish Singh v. Prithipal Singh*, 1995 Supp (3) SCC 577, cited

Prithi Pal Singh v. Amrik Singh, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, held, affirmed

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Advocates who appeared in this case :

P. Vishwanatha Shetty, Senior Advocate (S.K. Kulkarni, M. Gireesh Kumar, Mahesh Thakur and Ankur S. Kulkarni, Advocates) for the Appellants;

a Dr Aditya Sondhi, Senior Advocate (Chandan S. Rao, Vikas Mehta and Ms Anushree Menon, Advocates) for the Respondent.

Chronological list of cases cited

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1. 2015 SCC OnLine Kar 3860, *H.B. Shivakumar v. L.C. Hanumanthappa* 338b-c, 347g
2. (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473, *Prithi Pal Singh v. Amrik Singh* 347a
3. (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484, *Khatri Hotels (P) Ltd. v. Union of India* 339a, 347e
- b 4. (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777, *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander* 346b-c
5. 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504, *Prithi Pal Singh v. Amrik Singh* 347c
6. (2002) 7 SCC 559, *Sampath Kumar v. Ayyakannu* 344e-f
7. RFA No. 415 of 1999, decided on 28-3-2002 (KAR), *L.C. Hanumanthappa v. H.B. Shivakumar* 336g, 338e, 338f-g, 347d-e
- c 8. (2001) 8 SCC 561, *Siddalingamma v. Mamtha Shenoy* 344c-d, 345e-f
9. (2001) 6 SCC 163, *Vishwambhar v. Laxminarayan* 342e-f, 346g-h
10. 1995 Supp (3) SCC 577, *Bakshish Singh v. Prithipal Singh* 347b
11. 1995 Supp (3) SCC 17, *K. Raheja Constructions Ltd. v. Alliance Ministries* 342c
12. AIR 1960 SC 335 : (1960) 2 SCR 253, *Rukhmabai v. Lala Laxminarayan* 340a-b
13. 1957 SCR 595 : AIR 1957 SC 363, *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* 341b-c, 342b-c, 344e
- d 14. 1957 SCR 438 : AIR 1957 SC 357, *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.* 341d, 341g, 344e
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- e 17. (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338, *Bolo v. Koklan* 339g-h
18. (1919-20) 47 IA 255 : (1921) 13 LW 49, *Charan Das v. Amir Khan* 341c
19. ILR (1909) 33 Bom 644, *Kisandas Rupchand v. Rachappa Vithoba Shilwant* 340f

The Judgment of the Court was delivered by

ROHINTON FALI NARIMAN, J.— Leave granted.

f 2. The present case arises out of cross-suits filed by the parties. On 9-3-1990, one L.C. Hanumanthappa filed a suit against one H.B. Shivakumar for permanent injunction restraining the defendants, his servants and agents from disturbing the peaceful possession and enjoyment of the suit schedule property. In this suit, namely, OS No. 1386 of 1990 filed before the City Civil Court, Bangalore, the plaintiff averred that he is the absolute owner, and in lawful possession and enjoyment of the suit property. He also averred in the said suit that the schedule property is clearly distinguishable and could be identified without difficulty. According to the plaintiff, the cause of action arose when the defendant tried to trespass on the schedule property two days before the suit was filed.

g 3. Within a few days from the filing of this suit, the defendant in the first suit filed a suit being suit number OS No. 1650 of 1990 in the City Civil Court at Bangalore against one L.C. Ramaiah and the said Shri Hanumanthappa stating that the defendants had attempted to trespass into the suit schedule property about 15 days prior to the suit being filed, and asked

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for a permanent injunction against the said defendants restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property. The plaintiff also claimed to be the owner in possession of the suit schedule property. a

4. In the written statement to OS No. 1386 of 1990 dated 16-5-1990, the defendant not only referred to his own suit which had by then already been filed, but specifically stated as follows:

“4. The boundaries furnished by the plaintiff to old Survey Site No. 13, in the plaint schedule is totally false and that has nothing to do with the boundaries mentioned in his document. b

5. The plaintiff has failed to establish any relationship between old Site No. 13 and Corporation No. 12/2, as claimed by him in the plaint.

6. The allegations that at the time of the purchase of the schedule property by the plaintiff, western boundary was a building site bearing No. 14 and however subsequently the said portion left for building site has been converted as road and is being used as such since several years are false and further it is false to state that the east of the schedule property bearing Building Site No. 12 is situate and the same was belonging to one H. Venkataramanappa and however, the said site has been sold by him and now the said property is owned by one Sri Ahmadullah Khan and he has constructed a building thereon, as alleged in Para 2 of the plaint. c
d

7. The plaintiff has purposefully distorted the boundary of his old Site No. 13 to bring substantially the boundaries of Site No. 15, old 3, CTS No. 1157 (city survey) which exclusively belongs to the defendant.

* * *

13. The suit for injunction is not maintainable in that, he has failed to establish title with possession over old Site No. 13, and that is not establishing any connection between old Site No. 13, and new Site No. 12/2, alleged to be assigned by Bangalore City Corporation on about 6-6-1989.” e

5. It can thus be seen that on 16-5-1990 itself the plaintiff in OS No. 1386 of 1990 was put on notice that his suit for injunction was not maintainable as he had failed to establish title over the suit schedule property. f

6. Both the suits were tried together, and by a judgment dated 10-3-1999, the Court of Additional City Civil Judge at Bangalore decreed OS No. 1650 of 1990 and dismissed OS No. 1386 of 1990. In the first appeals filed against the said judgment, the High Court of Karnataka by its judgment dated 28-3-2002¹ allowed RFA No. 415 of 1999, and dismissed RFA No. 456 of 1999, and remanded the matter back to the trial court for fresh consideration. g
 The High Court while remanding the matter observed as follows:

“10. The trial court had also appointed the Commissioner. The Commissioner after inspecting the properties has given his report. The Commissioner has also been examined as PW 2. From looking into the pleadings and the evidence adduced by the parties, it is crystal clear that h

¹ *L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

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a the dispute is in respect of the identity of two properties and to declare
right and title over the properties. The respondent in this case has not
disputed the sale deed which stands in the name of the appellant. Since
the defendant is disputing existence of the suit schedule property, the
present application is filed for declaration of his title. The respondent has
resisted the application, contending that the relief sought for by the
appellant is barred by limitation and that relief sought by way of
b limitation. However, such a plea can be raised by the respondents by
filing additional written statement. Considering the fact that the dispute
in respect of an immovable property and question of identification of two
properties have been involved, as the defendant is also not disputing the
sale deed of the appellant, this Court to allow the application filed by the
appellant for amendment of plaint seeking additional evidence.

c *11.* Accordingly, RFA No. 415 of 1999 is allowed. The judgment and
decree passed in OS No. 1386 of 1990, is set aside. The matter is
remanded to the trial court to hold fresh enquiry after giving reasonable
opportunities to both the parties. The defendant is entitled to file an
additional written statement and also entitled to raise the question of
limitation. The trial court shall dispose of the suit within six (6) months
d from today in accordance with law. The judgment and decree passed in
OS No. 1650 of 1990, which is the subject-matter of RFA No. 415 of
1999 is concerned, there is no need for this Court to disturb the decree of
injunction and that the decree that may be passed in OS No. 1386 of
1990 by the trial court will have a bearing on the judgment and decree in
OS No. 1650 of 1990. In the event of the appellant succeeding in OS No.
e 1386 of 1990, the judgment and decree passed in OS No. 1650 of 1990 in
favour of Shivakumar for bare injunction will be unenforceable against
the appellant Hanumanthappa. However, it is made clear till the disposal
of OS No. 1386 of 1990, the respondent-plaintiff Shivakumar in OS No.
1650 of 1990 is hereby directed to maintain status quo. If such an order
is not passed, the respondent-plaintiff Shivakumar may proceed with the
construction and if he is allowed to construct and in the event the
appellant succeeds in OS No. 1386 of 1990, then it will lead to
multiplicity of proceedings. Therefore, it is necessary to direct the
respondents to maintain status quo.”

7. On 1-4-2002, the plaintiff in OS No. 1386 of 1990 then sought to
amend the plaint in terms of the said judgment by adding Para 5-A to the
plaint in which the plaintiff stated:

g “5-A. The plaintiff submits that the defendant has no manner of right,
title and interest in the plaint schedule property. The defendant has
denied the title of the plaintiff in respect of the suit schedule property.
Hence, it is just and essential to declare that the plaintiff is absolute
owner in possession of the schedule property. If the declaration as sought
is not granted, the plaintiff who is the absolute owner from 5-5-1956 and
enjoying the property as absolute owner thereof, will be put in great loss
h and prejudice. On the other hand no hardship or prejudice will be caused
to the defendant if the declaration as sought is granted.”

8. A decree for declaration of title to the suit schedule property was then added as a prayer to the amended plaint. On 1-8-2002, the defendant filed an additional written statement in which the defendant stated that the said plea based on a new cause of action, namely, declaration of title, was time-barred. a

9. After remand, by its judgment and decree dated 16-4-2009, the City Civil Court at Bangalore decreed the suit OS No. 1386 of 1990. It turned down the plea of limitation by stating that since in the original written statement the defendant had admitted the title of plaintiff Hanumanthappa, and only in the written statement dated 1-8-2002 was title denied for the first time after the amendment of the plaint was moved, the relief of declaration claimed by the plaintiff would be within the period of limitation. b

10. In RFA No. 796 of 2009, by the impugned judgment dated 5-3-2015², the High Court reversed the said judgment on limitation stating that the original written statement filed on 16-5-1990 had clearly stated that the plaintiff did not have the necessary title to the suit schedule property, and as the amendment of the plaint was moved long after three years from 16-5-1990, it was clear that it was time-barred. OS No. 1386 of 1990 was thus dismissed on limitation alone. The High Court also turned down the plea with reference to Section 22 of the Limitation Act, 1963 stating that on the facts of the present case limitation could not be extended because the wrong in the present case was not a continuing wrong. c d

11. The learned counsel for the appellant has argued that once an amendment to the plaint is allowed, it necessarily relates back to the date on which the plaint was originally filed, and since the amendment was allowed in the present case by the judgment dated 28-3-2002¹, the said amendment related back to 9-3-1990 when the suit was originally filed. He further argued that the suit was based on title, and the title of the plaintiff was admitted in Para 2 of the original written statement, as was held by the trial court in its judgment dated 16-4-2009. He, therefore, submitted that the impugned judgment ought to be set aside. However, he did not press the plea of continuing wrong on the facts of the present case. e

12. The learned counsel for the respondent, on the other hand, argued that the plaintiff's title was clearly denied in the original written statement and three years having elapsed from the said date, the amendment was obviously time-barred. Further, the judgment dated 28-3-2002¹ itself made it clear that the amendment was allowed subject to the plea of limitation being raised. He further argued that the amendment made introduced a completely new cause of action based on fresh facts and therefore any amendment made could not possibly relate back as such amendment would be clearly time-barred. f g

13. We have heard the learned counsel for the parties. It is not disputed that Article 58 of the Limitation Act would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already

2 *H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

1 *L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

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a existing relief for grant of permanent injunction. In *Khatri Hotels (P) Ltd. v. Union of India*³, this Court while construing Article 58 of the Limitation Act held as follows: (SCC pp. 138-39, paras 25-30)

“25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under:

‘THE SCHEDULE

PERIOD OF LIMITATION

[See Sections 2(j) and 3]

First Division—Suits

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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* * *

PART III — Suits Relating to Declarations

* * *

58. To obtain any other declaration. Three years When the right to sue first accrues.’

d 26. Article 120 of the Schedule to the Limitation Act, 1908 (for short ‘the 1908 Act’) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
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* * *

120. Suit for which no period of limitation is provided elsewhere in this Schedule. Six years When the right to sue accrues.’

e 27. The differences which are discernible from the language of the above reproduced two articles are:

f (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years, and

g (ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan*⁴ and it was held: (IA p. 331)

‘There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and

h 3 (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

4 (1929-30) 57 IA 325 : AIR 1930 PC 270 : (1930) 32 LW 338

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unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

The same view was reiterated in *Annamalai Chettiar v. A.M.K.C.T. Muthukaruppan Chettiar*⁵ and *Gobinda Narayan Singh v. Sham Lal Singh*⁶. a

29. In *Rukhmabai v. Lala Laxminarayan*⁷, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (AIR p. 349, para 33)

‘33. ... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.’ b

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.” c

14. Given this statement of the law, it is clear that the present amendment of the plaint is indeed time-barred in that the right to sue for declaration of title first arose on 16-5-1990 when in the very first written statement the defendant had pleaded, in Para 13 in particular, that the suit for injunction simpliciter is not maintainable in that the plaintiff had failed to establish title with possession over the suit property. The only question that remains to be answered is in relation to the doctrine of relation back insofar as it applies to amendments made under Order 6 Rule 17 of the Code of Civil Procedure. d

15. As early as in the year 1909, the Bombay High Court in *Kisandas Rupchand v. Rachappa Vithoba Shilwant*⁸, held as follows: (ILR p. 655) e

“... All amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would f

5 ILR (1930) 8 Rang 645 : (1930-31) 58 IA 1 : (1931) 33 LW 30

6 (1930-31) 58 IA 125 : (1931) 33 LW 707 g

7 AIR 1960 SC 335 : (1960) 2 SCR 253

8 ILR (1909) 33 Bom 644 h

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a cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the amendment be allowed without injustice to the other side, or can it not?"

b 16. This statement of the law was expressly approved by a three-Judge Bench of this Court in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*⁹ SCR pp. 603-04.

c 17. Twenty years later, the Privy Council in *Charan Das v. Amir Khan*¹⁰, stated the law as follows: (IA p. 262)

c "... That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases ... where such considerations are outweighed by the special circumstances of the case...."

d 18. This statement of the law was cited with approval in *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*¹¹ SCR pp. 450-51.

e 19. The facts in the aforesaid case were that the plaintiffs had, on the basis of the material facts stated in the plaint, claimed damages on the basis of the tort of conversion. It had been held by the courts below that on the pleading and on the evidence such claim must fail. At the stage of arguments in the Supreme Court, the plaintiff applied to the Supreme Court for amendment of the plaint by raising an alternative plea on the same set of facts, namely, a claim for damages for breach of contract for non-delivery of the goods. The respondents in that case resisted the said plea for amendment, stating that a suit based on this new cause of action would be barred by limitation. This Court, while allowing the said amendment, stated that no change needs to be made in the material facts pleaded before the court all of which were there in support of the amended prayer. In any case, the prayer in the plaint as it originally stood was itself general and merely claimed damages. Thus, all the allegations which were necessary for sustaining a claim of damages for breach of contract were already there in the plaint. The only thing that was lacking was the allegation that the plaintiffs were in the alternative entitled to claim damages for breach of contract. In the facts of the said case, this Court held: (*L.J. Leach case*¹¹, SCR p. 450 : AIR p. 362, para 16)

g "16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken

h 9 1957 SCR 595 : AIR 1957 SC 363

10 (1919-20) 47 IA 255 : (1921) 13 LW 49

11 1957 SCR 438 : AIR 1957 SC 357

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into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.”

20. It is clear that this case belonged to an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration was outweighed by the special circumstances of the case, namely, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded.

21. Similar is the case with *Pirgonda Hongonda Patil*⁹. Here again it was held that the amendment did not really introduce a new fact at all, nor did the defendant have to meet a new claim set up for the first time after the expiry of the period of limitation.

22. In *K. Raheja Constructions Ltd. v. Alliance Ministries*¹², this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract. In turning down such amendment on the ground that it was time-barred, this Court held: (SCC pp. 18-19, para 4)

“4. It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent.”

23. Similarly, in *Vishwambhar v. Laxminarayan*¹³, in a suit originally filed for recovery of possession, an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that certain sale deeds be set aside. This was repelled by this Court as follows: (SCC pp. 168-69, paras 9-10)

“9. On a fair reading of the plaint, it is clear that the main fulcrum on which the case of the plaintiffs was balanced was that the alienations made by their mother-guardian Laxmibai were void and therefore, liable to be ignored since they were not supported by legal necessity and without permission of the competent court. On that basis, the claim was made that the alienations did not affect the interest of the plaintiffs in the suit property. The prayers in the plaint were inter alia to set aside the sale deeds dated 14-11-1967 and 24-10-1974, recover possession of the

⁹ *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363

¹² 1995 Supp (3) SCC 17

¹³ (2001) 6 SCC 163

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a properties sold from the respective purchasers, partition of the properties
carving out separate possession of the share from the suit properties of
the plaintiffs and deliver the same to them. As noted earlier, the trial
court as well as the first appellate court accepted the case of the plaintiffs
that the alienations in dispute were not supported by legal necessity. They
also held that no prior permission of the court was taken for the said
alienations. The question is, in such circumstances, are the alienations
void or voidable? In Section 8(2) of the Hindu Minority and
b Guardianship Act, 1956, it is laid down, inter alia, that the natural
guardian shall not, without previous permission of the court, transfer by
sale any part of the immovable property of the minor. In sub-section (3)
of the said section, it is specifically provided that any disposal of
immovable property by a natural guardian, in contravention of
c sub-section (2) is voidable at the instance of the minor or any person
claiming under him. There is, therefore, little scope for doubt that the
alienations made by Laxmibai which are under challenge in the suit were
voidable at the instance of the plaintiffs and the plaintiffs were required
to get the alienations set aside if they wanted to avoid the transfers and
regain the properties from the purchasers. As noted earlier in the plaint as
it stood before the amendment the prayer for setting aside the sale deeds
was not there, such a prayer appears to have been introduced by
d amendment during hearing of the suit and the trial court considered the
amended prayer and decided the suit on that basis. If in law the plaintiffs
were required to have the sale deeds set aside before making any claim in
respect of the properties sold, then a suit without such a prayer was of no
avail to the plaintiffs. In all probability, realising this difficulty the
plaintiffs filed the application for amendment of the plaint seeking to
e introduce the prayer for setting aside the sale deeds. Unfortunately, the
realisation came too late. Concededly, Plaintiff 2 Digamber attained
majority on 5-8-1975 and Vishwambhar, Plaintiff 1 attained majority on
20-7-1978. Though the suit was filed on 30-11-1980 the prayer seeking
setting aside of the sale deeds was made in December 1985. Article 60 of
the Limitation Act prescribes a period of three years for setting aside a
f transfer of property made by the guardian of a ward, by the ward who has
attained majority and the period is to be computed from the date when
the ward attains majority. Since the limitation started running from the
dates when the plaintiffs attained majority the prescribed period had
elapsed by the date of presentation of the plaint so far as Digamber is
concerned. Therefore, the trial court rightly dismissed the suit filed by
g Digamber. The judgment of the trial court dismissing the suit was not
challenged by him. Even assuming that as the suit filed by one of the
plaintiffs was within time the entire suit could not be dismissed on the
ground of limitation, in the absence of challenge against the dismissal of
the suit filed by Digamber the first appellate court could not have
interfered with that part of the decision of the trial court. Regarding the
h suit filed by Vishwambhar, it was filed within the prescribed period of
limitation but without the prayer for setting aside the sale deeds. Since
the claim for recovery of possession of the properties alienated could not

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have been made without setting aside the sale deeds the suit as initially filed was not maintainable. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed. In the circumstances, the amendment of the plaint could not come to the rescue of the plaintiff.

10. From the averments of the plaint, it cannot be said that all the necessary averments for setting aside the sale deeds executed by Laxmibai were contained in the plaint and adding specific prayer for setting aside the sale deeds was a mere formality. As noted earlier, the basis of the suit as it stood before the amendment of the plaint was that the sale transactions made by Laxmibai as guardian of the minors were ab initio void and, therefore, liable to be ignored. By introducing the prayer for setting aside the sale deeds the basis of the suit was changed to one seeking setting aside the alienations of the property by the guardian. In such circumstance, the suit for setting aside the transfers could be taken to have been filed on the date the amendment of the plaint was allowed and not earlier than that.”

24. In *Siddalingamma v. Mamtha Shenoy*¹⁴, this Court held while allowing an amendment of the plaint in a case of bona fide requirement of the landlord that the doctrine of relation back would apply to all amendments made under Order 6 Rule 17 of the Code of Civil Procedure, which generally governs amendment of pleadings, unless the court gives reasons to exclude the applicability of such doctrine in a given case. No question of limitation was argued on the facts in that case which would therefore be in the category of cases which would follow the line of judgments which state that costs can usually compensate for an amendment that is made belatedly but within the period of limitation, it not being an exceptional case such as those contained in the two judgments *L.J. Leach & Co. Ltd.*¹¹ and *Pirgonda Hongonda Patil*⁹ cited above.

25. In *Sampath Kumar v. Ayyakannu*¹⁵, this Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. This Court held: (SCC pp. 562-64, paras 7 & 9-11)

“7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new

14 (2001) 8 SCC 561

11 *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*, 1957 SCR 438 : AIR 1957 SC 357

9 *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*, 1957 SCR 595 : AIR 1957 SC 363

15 (2002) 7 SCC 559

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suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

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9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

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10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma v. Mamtha Shenoy*¹⁴.)

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11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new

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relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”

26. It is clear that on the facts in the above case the amendment was allowed subject to the plea of limitation which could be taken up by the defendant when the trial in the case proceeds.

27. In *Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit v. Ramesh Chander*¹⁶, this Court considered a suit which was originally filed for declaration of ownership of land and for permanent injunction. The suit had been filed on 11-2-1991. An amendment application was moved under Order 6 Rule 17 of the Code of Civil Procedure on 16-12-2002 for inclusion of the relief of specific performance of contract. This Court in no uncertain terms refused the midstream change made in the suit, and held: (SCC pp. 602-03, paras 24-25 & 32)

“24. In the present case, the factual situation is totally different and the appellants have not filed any suit for specific performance against the first respondent within the period of limitation. In this context, the provision of Article 54 of the Limitation Act is very relevant. The period of limitation prescribed in Article 54 for filing a suit for specific performance is three years from the date fixed for the performance, or if no such date is fixed, when the plaintiff has notice that performance is refused.

25. Here admittedly, no date has been fixed for performance in the agreement for sale entered between the parties in 1976. But definitely by its notice dated 3-2-1991, the first respondent has clearly made its intentions clear about refusing the performance of the agreement and cancelled the agreement.

* * *

32. Even though the prayer for amendment to include the relief of specific performance was made about 11 years after the filing of the suit, and the same was allowed after 12 years of the filing of the suit, such an amendment in the facts of the case cannot relate back to the date of filing of the original plaint, in view of the clear bar under Article 54 of the Limitation Act. Here in this case, the inclusion of the plea of specific performance by way of amendment virtually alters the character of the suit, and its pecuniary jurisdiction had gone up and the plaint had to be transferred to a different court. This Court held in *Vishwambhar v. Laxminarayan*¹³, if as a result of allowing the amendment, the basis of the suit is changed, such amendment even though allowed, cannot relate

16 (2010) 14 SCC 596 : (2012) 1 SCC (Civ) 777

13 (2001) 6 SCC 163

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back to the date of filing the suit to cure the defect of limitation (SCC at pp. 168-69, para 9). Those principles are applicable to the present case.”

a **28.** In *Prithi Pal Singh v. Amrik Singh*¹⁷, this Court was concerned with a suit claiming pre-emption under the Punjab Pre-emption Act, 1913. An amendment was sought to the plaint claiming that the plaintiff was entitled to relief as a co-sharer of the suit property. This Court after considering some of its earlier judgments held: (SCC p. 583, para 11)

b “11. In our opinion, there is no merit in the submissions of the learned counsel. A reading of the order¹⁸ passed by this Court shows that the application for amendment filed by Respondent 2 was allowed without any rider/condition. Therefore, it is reasonable to presume that this Court was of the view that the amendment in the plaint would relate back to the date of filing the suit. That apart, the learned Single Judge¹⁹ has independently considered the issue of limitation and rightly concluded that the amended suit was not barred by time.”

c **29.** Applying the law thus laid down by this Court to the facts of this case, two things become clear. First, in the original written statement itself dated 16-5-1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff’s title to the suit property. A reading of an isolated paragraph in the written statement, namely, Para 2 by the trial court on the

d facts of this case has been correctly commented upon adversely by the High Court in the judgment under appeal. The original written statement read as a whole unmistakably indicates that the defendant had not accepted the plaintiff’s title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28-3-2002¹ had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation. There

e can be no doubt that on an application of *Khatri Hotels (P) Ltd.*³, the right to sue for declaration of title first arose on the facts of the present case on 16-5-1990 when the original written statement clearly denied the plaintiff’s title. By 16-5-1993 therefore a suit based on declaration of title would have become time-barred. It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the

f amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment² of the High Court. The present appeal is accordingly dismissed.

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17 (2013) 9 SCC 576 : (2013) 4 SCC (Civ) 473

18 *Bakshish Singh v. Prithipal Singh*, 1995 Supp (3) SCC 577

19 *Prithi Pal Singh v. Amrik Singh*, 2008 SCC OnLine P&H 267 : (2008) 3 RCR (Civ) 504

h 1 *L.C. Hanumanthappa v. H.B. Shivakumar*, RFA No. 415 of 1999, decided on 28-3-2002 (KAR)

3 *Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

2 *H.B. Shivakumar v. L.C. Hanumanthappa*, 2015 SCC OnLine Kar 3860

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(BEFORE G.S. SINGHVI AND H.L. DATTU, JJ.)

KHATRI HOTELS PRIVATE LIMITED
AND ANOTHER

.. Appellants;

Versus

UNION OF INDIA AND ANOTHER

.. Respondents.

Civil Appeal No. 7773 of 2011[†], decided on September 9, 2011

A. Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Cause of action — When right to sue first accrues — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Suit filed in year 2000 for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority (DDA) from interfering with plaintiffs' possession of suit land — In written statement filed in 1990 defendants averred that suit land belonged to Gaon Sabha and with urbanisation of the village, by notification issued under S. 507 of DMC Act, same automatically vested in Central Government and by another notification issued in 1974 under S. 22(1) of DDA Act, Central Government transferred the entire land including the suit land to DDA — Held, plaintiffs' right, if any, over the suit land stood violated with issue of notification under S. 507 of DMC Act and in any case, notification under S. 22(1) of DDA Act or at least on receipt of written statement filed by DDA in 1990 — Cause of action thus deemed to have accrued in December 1990 and therefore, suit filed in 2000 was barred by time — Municipalities — Delhi Municipal Corporation Act, 1957 (66 of 1957) — S. 507(a) — Delhi Development Act, 1957 (61 of 1957) — S. 22(1) — Delhi Land Reforms Act, 1954 (8 of 1954) — S. 150(3) — Specific Relief Act, 1963 — Ss. 38, 41, 34, 5 and 6 — Limitation — Limitation Act, 1908, Art. 120 (Paras 30 and 31)

B. Limitation Act, 1963 — Art. 58 and S. 5 — Suit for declaration and permanent injunction for restraining interference with possession of immovable property — Art. 58 of 1963 Act vis-à-vis Art. 120 of 1908 Act — Relative scope — Cause of action — “When right to sue first accrues” — “First accrues” — Meaning — Successive violation of right will not give rise to fresh cause of action — Limitation Act, 1908, Art. 120

Held:

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued. (Para 30)

[†] Arising out of SLP (C) No. 22126 of 2009. From the Judgment and Order dated 21-8-2009 of the High Court of Delhi at New Delhi in RFA No. 123 of 2009

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Rukhmabai v. Lala Laxminarayan, AIR 1960 SC 335 : (1960) 2 SCR 253; *Bolo v. Koklan*, (1929-30) 57 IA 325 : AIR 1930 PC 270; *Annamalai Chettiar v. Muthukaruppan Chettiar*, ILR (1930) 8 Rang 645, approved

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Gobinda Narayan Singh v. Sham Lal Singh, (1930-31) 58 IA 125, relied on

C. Specific Relief Act, 1963 — Ss. 34, 38(3) and 41(i) — Suit for declaration and permanent injunction — Conduct of plaintiff — Abuse of process of court — Plaintiff not approaching court with clean hands — Suit filed to secure judicial approval of illegal occupation of public land — Suit filed by appellant-plaintiffs for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with plaintiffs' possession of suit land — Defendants' plea that plaintiffs had no right, title and interest in suit land as it belonged to Gram Sabha and on urbanisation of the village, it automatically stood vested in Central Government under S. 150(3) of Delhi Land Reforms Act and later Central Government by notification transferred it to DDA under S. 22(1) of Delhi Development Act — Plaintiffs' claim that suit land not part of Gram Sabha but formed part of land purchased by them not substantiated by documents adduced by them i.e. site plan, demarcation report and aks shijra — Trial court found that under garb of suit plaintiffs purported to challenge government notification without specifically challenging the same as entries made in revenue records were made pursuant to the notification — Plaintiffs unauthorisedly occupied suit land and raised construction thereon despite interim injunction issued by High Court and without obtaining permission from competent authority — Plaintiffs had not approached court with clean hands — Held, trial court rightly declined to grant permanent injunction and High Court rightly refused to interfere therewith — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Paras 32 to 39)

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Rajinder Kakkar v. DDA, (1994) 54 DLT 484; *Lal Chand v. MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del); *Union of India v. Sher Singh*, (1997) 3 SCC 555, referred to

Khatri Hotels (P) Ltd. v. Union of India, (2009) 163 DLT 226, affirmed

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D. Constitution of India — Art. 136 — Costs — Abuse of process of court — Exemplary/Punitive costs — Appellant-plaintiffs' suit for permanent injunction restraining Delhi Municipal Corporation and Delhi Development Authority from interfering with possession of suit land — Appellants found to have encroached on public land and also abused process of court in order to retain possession — Held, appellants must be saddled with cost, quantified at Rs 5 lakhs — Out of this Rs 2.5 lakhs to be deposited with Supreme Court Legal Services Committee within two months and balance amount of Rs 2.5 lakhs to be deposited with Delhi State Legal Services Committee within two months — In case of failure to deposit the same, Secretaries of the two Committees shall be entitled to recover the same as arrears of land revenue — Civil Procedure Code, 1908 — Ss. 35-B and 35 — Government Grants, Largesse, Public Premises and Property — Illegal/Unauthorised occupation of public premises (Para 41)

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E. Civil Suit — Witnesses — Plaintiff though cited as witness not stepping into witness box — Adverse inference from, drawn — Evidence Act, 1872, S. 114 Ill. (g) and S. 106 (Para 35)

Appeal dismissed with costs

R-D/48586/CV

Advocates who appeared in this case :

Harin P. Raval, Additional Solicitor General, Mukul Rohatgi, Amarendra Sharan, Senior Advocates (Sushil Kr. Jain, Ashish Aggarwal, Ms Anuradha Jain, M.C. Dhingra, Ashwani Kumar, Ms Iti Sharma, Ms Indra Sawhney, Naresh Kaushik, Ms Sushma Suri, Harsh N. Parekh and Anando Mukherjee, Advocates) for the appearing parties.

Chronological list of cases cited

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1. (2009) 163 DLT 226, <i>Khatri Hotels (P) Ltd. v. Union of India</i>	128d-e
2. RFA No. 651 of 2003 order dated 24-11-2008 (Del), <i>Lal Chand v. MCD</i>	134a, 142b, 145a
3. (1997) 3 SCC 555, <i>Union of India v. Sher Singh</i>	135a-b
4. (1994) 54 DLT 484, <i>Rajinder Kakkar v. DDA</i>	132g-h, 137a, 145c-d
5. AIR 1960 SC 335 : (1960) 2 SCR 253, <i>Rukhmabai v. Lala Laxminarayan</i>	137e, 139c-d, 139d
6. (1930-31) 58 IA 125, <i>Gobinda Narayan Singh v. Sham Lal Singh</i>	139c-d
7. ILR (1930) 8 Rang 645, <i>Annamalai Chettiar v. Muthukaruppan Chettiar</i>	139c-d
8. (1929-30) 57 IA 325 : AIR 1930 PC 270, <i>Bolo v. Koklan</i>	139b-c

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Leave granted. This is an appeal for setting aside the judgment dated 21-8-2009¹ of the learned Single Judge of the Delhi High Court whereby he dismissed the appeal preferred by the appellants against the judgment and decree passed by the Additional District Judge No. 13 (Central), Delhi (hereinafter described as “the trial court”) in a suit for declaration of title, mandatory and permanent injunction filed by them.

2. The suit land belonged to the Gaon Sabha of Village Kishangarh and formed part of the revenue estate of that village. By Notification dated 28-5-1966 issued under Section 507(a) of the Delhi Municipal Corporation Act, 1957 (for short “the DMC Act”), Municipal Corporation of Delhi (for short “the Corporation”), with the previous approval of the Central Government, declared that the localities mentioned in the schedule forming part of the rural areas shall cease to be the rural areas. The area of Village Kishangarh (Mehrauli) was shown at Serial No. 37 under the heading “South Zone, Delhi”. As a consequence of this and by virtue of Section 150(3) of the Delhi Land Reforms Act, 1954 (for short “the Land Reforms Act”), the suit land stood automatically vested in the Central Government. After eight years, the same was transferred by the Central Government to the Delhi Development Authority (for short “DDA”) vide Notification dated 20-8-1974 issued under Section 22(1) of the Delhi Development Act, 1957 (for short “the DD Act”) for the purpose of development and maintenance as green.

¹ *Khatri Hotels (P) Ltd. v. Union of India*, (2009) 163 DLT 226

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3. The relevant portions of that notification are extracted below:

“MINISTRY OF WORKS & HOUSING

a New Delhi, 20-8-1974

S.O. 2190 — Whereas the terms and conditions upon which nazul lands specified in the schedule annexed below will be taken over by the Delhi Development Authority have been agreed upon between the Central Government and the Authority.

b Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 22 of the Delhi Development Act, 1957 (61 of 1957), the Central Government hereby places with immediate effect, the lands which had vested in the Central Government on the urbanisation of the villages specified in the said schedule at the disposal of the Delhi Development Authority for the purpose of development and maintenance of the said lands as green and for taking such steps as may be required to serve the said purpose, subject to the condition that the Delhi Development Authority shall not make, or cause, or permit to be made any constructions on the said lands and shall when required by the Central Government so to do, replace the said lands or any portion thereof as may be so required, at the disposal of the Central Government.

SCHEDULE

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<i>Sl. No.</i>	<i>Name of the village</i>
17.	Mehrauli (Kishangarh)

(F. No. 13021/370-II)
S. Chaudhary
Joint Secretary”

e 4. Appellant 2, Lal Chand and his three brothers, namely, S/Shri Ran Singh, Dhannu and Surat Singh, who claim to have purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 total measuring 4 bighas 4 biswas from Om Prakash and Mahinder Pal (sons of Parma Nand), Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 15-10-1963 encroached upon the suit land, raised construction and started a restaurant under the name and style “Sahara Restaurant”. With a view to secure judicial approval of the illegal occupation of the suit land, Appellant 2 Lal Chand filed Suit No. 2576 of 1990 in the Delhi High Court for grant of permanent injunction against the Corporation and DDA by asserting that he is the co-owner of House No. 80, Ward No. 9, Kishangarh, Mehrauli, which forms part of Khasra No. 1674 and was purchased vide registered sale deed dated 10-10-1963; that the suit premises comprise of 3 rooms and one hall surrounded by a boundary wall; that the entire superstructure is in existence for last over 15 years; that he has been residing in the suit premises and is paying property tax since 1968-1969; that the suit land has not been acquired; that the officials of the Corporation and DDA came to the suit premises along with the Tahsildar on 10-8-1990 without serving any notice and threatened to demolish the superstructure on the ground that the same is unauthorised. According to Appellant 2, when he questioned the jurisdiction of the Corporation and DDA to take action for

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demolition of the structures, the officials went away with the threat that they will come again with the police force and demolish the same.

5. Para 10 of the plaint and Prayer (a), which have a bearing on the decision of this appeal are reproduced below: a

“10. That the cause of action accrued in favour of the plaintiff against the defendants on 10-8-1990 when the officials of the defendants came to the suit premises and threatened to demolish the same. The cause of action is continuing till the threat of the defendants to demolish the suit property persists.” b

“Prayer

(a) That a decree of permanent injunction be granted in favour of the plaintiff and against the defendants restraining the defendants, their officers, servants, representatives and agents from dispossessing and interfering in the possession of the plaintiff, and from demolishing or sealing, any part of existing structure at House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi more particularly shown red in the plan annexed to the plaint.” c

6. In the written statement filed on behalf of DDA, it was averred that the suit land belonged to the Gaon Sabha and with the urbanisation of rural areas of Kishangarh, the same automatically vested in the Central Government. It was further averred that vide Notification dated 20-8-1974, the Central Government had transferred the suit land to DDA and the plaintiff has no right, title or interest in the same. The relevant portions of the written statement are extracted below: d

“Preliminary objections

1. That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government and the Central Government later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed. e f

Parawise reply on merits

1. That the contents of Para 1 are wrong and denied. It is denied that the plaintiff is a co-owner of the premises commonly known as House No. 80, Ward No. 9, Kishangarh, Mehrauli, New Delhi forming part of Khasra No. 1674. It is further denied that the plaintiff purchased the suit property vide sale deed dated 10-10-1963. It is submitted that as per the sale deed dated 10-10-1965 supplied by the plaintiff, the suit land forms a part of Khasra No. 1674 of Village Mehrauli. The sale deed is in respect of Khasra Nos. 2728/1674/2(3-3) and 2728/1674/3(1-1) of Village Mehrauli. Both these khasras are a part of the Gram Sabha land. On the urbanisation of Village Mehrauli (Kishangarh), all the Gram Sabha land vested in the Central Government and later on the Central g h

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a Government transferred this Gram Sabha land at the disposal of DDA for maintenance as green development vide Notification No. S.O. 2190 dated 20-8-1974. In this view of the matter, the plaintiff has no right or title in the land. It is further submitted that, recently the plaintiff has unauthorisedly occupied this land and constructed a boundary wall on it with 3 temporary rooms. It is submitted that the plaintiff has not annexed any site plan to the plaint, as alleged by him.

b 2. That the contents of Para 2 are wrong and hence denied. It is submitted that the construction of the suit land is recent and unauthorised. It is denied that the superstructure over the suit land has been in existence for the last 15 years. It is further denied that the tin shed and 2 rooms over the land were constructed sometime in the year 1959-1960.

* * *

c 4. That the contents of Para 4 are again wrong and therefore denied. It is submitted that the suit land belongs to DDA. It is further submitted that previously, the land formed a part of Khasra Nos. 2728/1674/2 and 2728/1674/3, which was a part of the Gram Sabha land. At the time of urbanisation of Village Mehrauli, the Gram Sabha land vested in the Central Government and later, the Central Government transferred this Gram Sabha land at the disposal of DDA vide Notification No. S.O. 2190 dated 20-8-1974. It is submitted that there is no requirement of any acquisition proceedings in respect of this land, the land being at the disposal of defendant DDA. In this view of the matter it is submitted that, no notification for acquisition need be issued. It is further submitted that as the land does not belong to the plaintiff, he is not entitled to be given any compensation whatsoever.”

e 7. On 20-8-1990, the High Court granted interim injunction, which was confirmed vide order dated 14-7-1998. Thereafter, the suit was transferred to the District Judge, Delhi, who assigned the same to the Civil Judge, Delhi for disposal. After considering the pleadings of the parties, the Civil Judge framed the following issues:

f “1. Whether the plaintiff is co-owner of House No. 80, Kishangarh, Mehrauli (part of Khasra No. 1674) as alleged in Para 1 of the plaint? OPP.

2. Whether the plaintiff is in occupation of the suit premises for the last 15 years as alleged? OPP.

g 3. Whether the plaintiff has any legal right to file the present suit? OPP.

4. Whether the suit is barred under Sections 477/478 of the DMC Act? OPD.

5. Whether the suit is bad for misjoinder of parties? OPD.

6. Whether this Court has jurisdiction to entertain and try the present suit? OPD.

h 7. Whether the plaintiff is entitled for the relief claimed? OPP.

8. Relief.”

8. Appellant 2 did not appear in the witness box. Instead, one of his sons, namely, Vinod Kumar Khatri gave evidence as PW 2 in the capacity of the power of attorney. Two other witnesses examined in favour of the suit were Prem Prakash (PW 1) from the office of Kanungo and Shri Kulwant Singh (PW 3), Assistant Zonal Inspector. On behalf of DDA, Prem Chand (Tahsildar) was examined as DW 1, Constable Prabhu Singh of Police Station Vasant Kunj was examined as DW 2 and Khem Chand (Patwari) as DW 3.

9. After considering the pleadings of the parties and evidence produced by them, the learned Civil Judge dismissed the suit vide judgment dated 3-3-2003 by observing that the plaintiff has failed to prove that he and his brothers were owners of the suit land. The learned Civil Judge also held that the plaintiff was not entitled to relief of injunction because the suit filed for determination of title of the disputed land was pending adjudication. The findings recorded by the learned Civil Judge on Issues 3, 6 and 7 read as under:

“Issues 3, 6 and 7

12. All these issues being connected together are discussed together. PW 1 has proved the khasra girdawari but it may be mentioned that khasra girdawari is not the document of title. Even these khasra girdawaris are for the years 1957-1959, which are prior to the urbanisation of Village Kishangarh and the same also shows that the land is shamlat land. DW 1 deposed that Village Kishangarh was urbanised vide notification, Ext. DW-1/2 and land was placed at the disposal of DDA vide notification, Ext. DW-1/1. Nothing material has come out of the cross-examination of DW 1. DW 3 is another Patwari from Halka Mehrauli who also deposed that as per khasra paimaish it is the document of title that the land belongs to the Gaon Sabha and the same has been transferred to DDA. He proved the certified copy of record as Ext. DW-3/1 which also shows that the land belongs to the Gaon Sabha and has been placed at the disposal of DDA. PW 2, who is the attorney of the plaintiff himself has admitted that in the correction of revenue record they have also filed suit in the Hon’ble High Court of Delhi. Thus, there is admission on the part of the plaintiff himself that at present in the revenue record the plaintiff or his predecessor-in-interest have no right or title and the land belongs to the Gaon Sabha which has been transferred to DDA. Nothing material has come out of the cross-examination of DW 3 and merely because the user of the land has been shown as gair mumkin pahar and gair mumkin abadi does not make much difference as the main controversy is regarding the ownership that the land belongs to the Gaon Sabha and as such the plaintiff has failed to prove his right or title over the same. There is also a judgment of the Hon’ble High Court in *Rajinder Kakkar v. DDA*². It is also for Village Kishangarh in the revenue estate of Mehrauli. In that judgment also the Hon’ble High Court has held that whole of Village Kishangarh was urbanised and after

a urbanisation as per Section 150 of the DLR Act the land of whole of the Gaon Sabha ceases to be the rural area and the land belongings to the Gaon Sabha in Village Kishangarh vested with the Central Government and the Central Government vide Notification dated 20-8-1974 placed the same at the disposal of DDA. In this authoritative pronouncement also the Hon'ble High Court held that the petitioners have no right or title over the land and it was further held that:

b 'Time has now come where the society and the law abiding citizens are being held to ransom by persons who have no respect for the law. The wheels of justice grind slowly and the violators of law are seeking to the advantage of the laws delays. That is why they insist on the letter of the law being complied with by the respondents while at the same time showing their complete contempt for the laws themselves. Should there not be a change in the judicial approach or thinking when dealing with such problems which have increased in recent years viz. large-scale encroachment on public land and unauthorised construction thereon, most of which could not have taken place without such encroachers getting blessing or tacit approval from the powers that be including the municipal or the local employees. Should the courts give protection to violators of the law? c
d The answer in our opinion must be in the negative. Time has come when the courts have to be satisfied, before they interfere with the action taken or proposed to be taken by the governmental authorities qua removal of encroachment or sealing or demolishing unauthorised construction specially when such construction like the present, is commercial in nature.'

e 13. In the present case also the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute, therefore, the plaintiff is mere encroacher upon the government land. It seems that under the garb of the present suit the plaintiffs are indirectly challenging the notification by which Village Kishangarh was urbanised or land was placed at the disposal of DDA. But it may be mentioned that this Court has no jurisdiction to try cases challenging government notification to place the land at the disposal of DDA. f

g 14. Furthermore, the plaintiff has already filed suit in the Hon'ble High Court challenging the entries in the revenue records and therefore there is an admission on the part of the plaintiffs themselves that at present the land is not shown in their ownership. Question of suffering an irreparable loss or injury does not arise as the plaintiffs are already pursuing legal remedy available to them by challenging the revenue record. It is well-settled principle of law that no injunction can be granted against a true owner. In the present case as the plaintiffs are mere encroachers upon DDA land as on today's date, therefore, they are not h entitled for any relief as prayed by them. As such, all these issues are decided against the plaintiff and in favour of the defendant."

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10. RFA No. 651 of 2003 filed by Appellant 2 was disposed of by the Division Bench of the High Court vide order dated 24-11-2008³, the operative portion of which reads as under:

“In that view of the matter, we are of the opinion that no interference is called for as far as the impugned judgment and decree is concerned, save and except to record that nothing stated in the impugned judgment and decree dated 3-3-2003 pertaining to the issues of title would be construed as binding between the parties; needless to state that the title dispute would be adjudicated in the suit filed by the appellant by the learned Judge who is seized of the suit as per evidence before the learned Judge and law applicable.”

11. In the meanwhile, Surat Singh, one of the brothers of Appellant 2, filed another suit for injunction against the Corporation and DDA. He claimed that he is the co-owner of land measuring 1200 sq yd forming part of Khasra No. 1674, Village Kishangarh. He pleaded that the premises were surrounded by a boundary wall and till January 1991 the same were being used for tethering cattle by one Ved Prakash. He alleged that on 29-2-1992, the officials of the defendants came to the suit land with large police force and illegally demolished a number of premises including the boundary wall of his property and on the next date i.e. 1-3-1992, the officials of the defendants again came and threatened to take forcible possession of the property.

12. The suit of Shri Shri Surat Singh was dismissed by the Civil Judge vide judgment dated 1-5-2004 with the findings that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural area of the village the same automatically vested in the Central Government and that the plaintiff encroached the same. The appeal filed by Surat Singh was dismissed by the Additional District Judge, Delhi vide judgment dated 5-8-2004. The lower appellate court held that as per khatoni paimaish, Ext. DW-1/2, the suit land was a wasteland being gair mumkin pahar and the same belonged to the Gaon Sabha and that after vesting of the land in it, the Central Government had transferred the same to DDA. Para 6 of that judgment is reproduced below:

“6. The appellant claims himself the co-owner of the land, forming part of Khasra No. 1674, Village Kishangarh on the basis of the sale deed dated 10-10-1963. A photocopy of the sale deed was placed on the record by the appellant through which the appellant along with the others claims to have purchased 4 bighas and 4 biswas of land bearing Khasra Nos. 2728/167/4 and 2728/167/3. As per the scheme of the Delhi Land Reforms Act, 1954 (for short ‘the DLR Act’) on coming into force of the DLR Act the proprietor of the agricultural land seized to exist. If any land was the part of the holding of a proprietor, he became the bhumidar of it, if it was the part of the holding of some other person, such as a tenant or sub-tenant, etc. he became either a bhumidar or an asami

3 *Lal Chand v. MCD*, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

a whereupon the rights of the proprietor in that land ceased. The land which was not holding of either of the proprietor or any other person vested in the Gaon Sabha. A perusal of khatoni paimaish, Ext. DW-1/2 would show that the suit land was a wasteland, that is, gair mumkin pahar.

b In *Union of India v. Sher Singh*⁴, it was held by the Hon'ble Supreme Court of India that except the land which for the time being comprised the holding or a grove, whether cultivable or otherwise, vests in the Gaon Sabha from the date of commencement of the Act. The onus was on the appellant to show that the suit land was a part of the holding or a grove and the predecessors of the appellant had become a 'bhumidar' in respect of the suit land on coming into force of the DLR Act. A Notification dated 3-6-1977 was issued by the Government under Section 507 of the DMC Act whereby, the area of Kishangarh in the revenue estate of Mehrauli was urbanised, consequently in accordance with the provisions of Section 150(3) of the DLR Act, the land which had vested in the Gaon Sabha came to vest in the Central Government on urbanisation of the village. The Central Government, vide Notification under Section 22(1) of the DD Act dated 20-8-1974 (Ext. DW-1/1), had placed the entire land which had vested in the Central Government, on the urbanisation of the village specified in the schedule, at the disposal of DDA for the purpose of development and maintenance of the said land. Therefore, all land, including the suit land which had vested in the Gaon Sabha, came to vest in the Central Government and was ultimately placed at the disposal of DDA."

e 13. During the pendency of the aforementioned two suits, Appellant 1 which is said to have been incorporated under the Companies Act, 1956 in 1994-1995 with Harbir Singh Khatri, another son of Lal Chand as its Managing Director and Appellant 2 Lal Chand filed third suit being Suit No. 313 of 2000 (renumbered as Suit No. 473 of 2004) for grant of a declaration that the entries made in the revenue records in respect of land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Mehrauli, Village Mehrauli, Kishangarh, Tehsil Mehrauli are wrong and illegal. The appellants further prayed for grant of a decree of mandatory injunction directing the respondents to correct the revenue record and enter their names in the columns of ownership and possession. Another prayer made by the appellants was for restraining the respondents, their servants and agents from demolishing the superstructures and sealing or interfering with their possession of the suit property or running of the restaurant.

g 14. In the written statement filed on behalf of DDA, several objections were taken to the maintainability of the suit including the following:

(i) The plaintiffs have not challenged Notification dated 20-8-1974 vide which the Central Government transferred the suit land to DDA.

h (ii) The suit was barred by limitation because the same has been filed after 16 years of the accrual of cause of action.

4 (1997) 3 SCC 555 : (1997) 2 CLT 58

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(iii) The suit is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908.

(iv) The plaintiffs not only made encroachment on the suit land, but also abused the process of the court by filing different suits. a

15. On merits, it was pleaded that the suit land belonged to the Gaon Sabha and with the urbanisation of Village Kishangarh, the same automatically vested in the Central Government. It was further pleaded that the appellants do not have any right, title or interest in the suit land and they do not have the locus to question the revenue entries. Another plea raised on behalf of DDA was that the suit was barred by limitation. b

16. On the pleadings of the parties, the trial court framed the following issues:

“1. Whether Plaintiff 2 along with his brother is the owner and in possession of suit land?

2. Whether the suit land is a government land as alleged in Para 1 of the preliminary objections? If so, whether the suit is liable to be dismissed on this ground? c

3. Whether the suit is within limitation?

4. Whether the suit is barred under Order 2 Rule 2 CPC?

5. Whether the plaintiffs have not come to the court with clean hands and are not entitled to the equitable relief of injunction as stated in Para 6 of the preliminary objections? d

6. Whether the suit land is a government land and was placed at the disposal of DDA under Section 22(1) of the DD Act vide Notification dated 20-8-1974?

7. Relief.” e

17. On a comprehensive analysis of the pleadings and evidence of the parties, the trial court held that the plaintiffs (the appellants herein) have succeeded in showing that Appellant 2 and his brothers had purchased land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3, but they could not prove that the land on which Appellant 1 was running “Sahara Restaurant” is a part of those khasra numbers or that they were otherwise in lawful possession of the suit land. The trial court then held that the suit was barred by time because cause of action had accrued 16 years ago when the suit land was transferred to DDA. The trial court also held that the appellants had not approached the court with clean hands inasmuch as they suppressed material facts relating to the vesting of the suit land in the Central Government and transfer thereof to DDA and the documents like aks shijra, site plan and demarcation report, as also the facts relating to the acquisition of an area of 1512 sq yd forming part of Khasra No. 2728/1674/3 and receipt of compensation at the rate of Rs 50 per square yard. The trial court returned affirmative finding on Issue 4 and held that the suit was barred by the provisions of Order 2 Rule 2 CPC. f

18. The appeal preferred by the appellants was dismissed by the learned Single Judge of the High Court, who relied upon the judgment of the g

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a Division Bench in *Rajinder Kakkar v. DDA*² and held that with the issuance of notification under Section 507, Gaon Sabha land of Kishangarh automatically vested in the Central Government and transfer thereof to DDA was valid. The learned Single Judge also agreed with the trial court that the suit was barred by limitation and that the appellants had not approached the Court with clean hands.

b 19. Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellants extensively referred to the evidence produced by the parties to show that the land in question was shamlat thok and argued that such land does not vest in the Gaon Sabha. The learned Senior Counsel further argued that the notification issued under Section 507 of the DMC Act and the provision contained in Section 150(3) of the Land Reforms Act have no bearing on the appellants' case because the suit land did not belong to the Gaon Sabha and the trial court and the High Court committed serious error
c by recording a finding that the suit land automatically vested in the Central Government and that the same was validly transferred to DDA.

d 20. Shri Rohatgi pointed out that the suit land was owned by Smt Kasturi, widow of Jhuman Singh and Rattan Lal, son of Trikha Ram, who sold it to S/Shri Parma Nand, Tej Nath, Tej Prakash, Gokal Chand and Ram Dhan by registered sale deed dated 7-10-1959 and legal heirs of Parma Nand and other vendees sold the same to Appellant 2 and his brothers vide sale deed dated 10-10-1963. The learned Senior Counsel assailed the concurrent finding recorded by the trial court and the High Court on the issue of limitation and submitted that the suit filed in the year 2000 was within time because the cause of action accrued to the appellants for the first time in 1998 when they came to know about the entries made in the revenue records in favour of DDA. In support of this argument, Shri Rohatgi relied upon the
e judgment of this Court in *Rukhmabai v. Lala Laxminarayan*⁵.

f 21. Shri Harin P. Raval, learned Additional Solicitor General and Shri Amarendra Sharan, learned Senior Counsel appearing for DDA argued that the concurrent finding recorded by the trial court and the High Court that land on which the appellants were running a restaurant does not form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 is a pure finding of fact based on correct analysis of the pleadings of the parties and evidence produced by them and the same does not call for interference under Article 136 of the Constitution. Shri Sharan submitted that the suit filed by the appellants for declaration of title and injunction was rightly dismissed by the trial court because they had not produced any evidence to prove that the suit land forms part of land purchased by Appellant 2 and his brothers.

g 22. Shri Sharan then argued that the suit filed in the year 2000 was barred by limitation because the cause of action had accrued to the appellants on 10-8-1990 when the officials of the Corporation and DDA are said to have visited the suit premises and threatened to demolish the superstructure and, in any case, the cause of action accrued to them in December 1990 when the

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² (1994) 54 DLT 484

⁵ AIR 1960 SC 335 : (1960) 2 SCR 253

written statement was filed on behalf of DDA with a categorical assertion that with the urbanisation of the rural areas of Village Kishangarh, the suit land automatically vested in the Central Government, which transferred it to DDA vide Notification dated 20-8-1974. The learned Senior Counsel lastly submitted that the appellants are not entitled to any relief because they had not approached the Court with clean hands and suppressed material facts and documents. a

23. We shall first consider the question whether the suit filed by the appellants on 14-2-2000 was within limitation and the contrary concurrent finding recorded by the trial court and the High Court is legally unsustainable. b

24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule. c

25. Article 58 of the Schedule to the 1963 Act, which has a bearing on the decision of this appeal, reads as under: d

“THE SCHEDULE

PERIOD OF LIMITATION

[See Sections 2(j) and 3] e

First Division—Suits

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
*	*	*
PART III—Suits Relating To Declarations		
*	*	*
58. To obtain any other declaration.	Three years	When the right to sue first accrues.”

26. Article 120 of the Schedule to the Limitation Act, 1908 (for short “the 1908 Act”) which was interpreted in the judgment relied upon by Shri Rohatgi reads as under: f

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
*	*	*
120. Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues.”

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27. The differences which are discernible from the language of the above reproduced two articles are:

a (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

b **28.** Article 120 of the 1908 Act was interpreted by the Judicial Committee in *Bolo v. Koklan*⁶ and it was held: (IA p. 331)

“There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

c The same view was reiterated in *Annamalai Chettiar v. Muthukaruppan Chettiar*⁷ and *Gobinda Narayan Singh v. Sham Lal Singh*⁸.

29. In *Rukhmabai v. Lala Laxminarayan*⁵, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (*Rukhmabai case*⁵, AIR p. 349, para 33)

d “33. ... The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.”

e **30.** While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

f **31.** In the light of the above, it is to be seen as to when the right to sue first accrued to the appellants. They have not controverted the fact that in the written statement filed on behalf of DDA in Suit No. 2576 of 1990, *Lal Chand v. MCD*, it was clearly averred that the suit land belonged to the Gaon Sabha and with the urbanisation of the rural areas of Village

6 (1929-30) 57 IA 325 : AIR 1930 PC 270

h 7 ILR (1930) 8 Rang 645

8 (1930-31) 58 IA 125

5 AIR 1960 SC 335 : (1960) 2 SCR 253

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Kishangarh vide Notification dated 28-5-1966 issued under Section 507 of the DMC Act, the same automatically vested in the Central Government and that vide Notification dated 20-8-1974 issued under Section 22(1) of the DD Act, the Central Government transferred the suit land to DDA for development and maintaining as green. This shows that the right, if any, of the appellants over the suit land stood violated with the issue of notification under Section 507 of the DMC Act and, in any case, with the issue of notification under Section 22(1) of the DD Act. Even if the appellants were to plead ignorance about the two notifications, it is impossible to believe that they did not know about the violation of their so-called right over the suit land despite the receipt of copy of the written statement filed on behalf of DDA in December 1990. Therefore, the cause of action will be deemed to have accrued to the appellants in December 1990 and the suit filed on 14-2-2000 was clearly barred by time.

32. The issue deserves to be considered from another angle. Although, para 19 of Suit No. 303 of 2000 was cleverly drafted to convey an impression that the right to sue accrued to the appellants in November/December 1998 when they learnt about the wrong recording of entries in khasra girdawaris/revenue records, but if the averments contained in that paragraph are read in conjunction with the pleadings of the earlier suits, falsity of the appellants' claim that the cause of action accrued to them in November/December 1998 is established beyond any doubt. In the first suit filed by him, Appellant 2 Lal Chand had pleaded that the cause of action accrued on 10-8-1990 when the officials of the respondents came to the suit premises and threatened to demolish the same. In the second suit filed by Surat Singh (brother of Appellant 2 Lal Chand), it was claimed that the cause of action accrued on 29-2-1992 when the officials of the respondents demolished the boundary wall of the property on the ground that the same was the Gaon Sabha land. The appellants have not explained stark contradictions in the averments contained in three suits on the issue of cause of action and in the absence of cogent explanation, it must be held that the statement contained in para 19 of Suit No. 313 of 2000 was per se false and, as a matter of fact, the cause of action had first accrued to the appellants on 10-8-1990 when their so-called right over the suit land was unequivocally threatened by the respondents. Therefore, the suit filed by the appellants on 14-2-2000 was clearly beyond the period of limitation of 3 years prescribed under Article 58 of the 1963 Act and was barred by time.

33. While considering the question whether the suit was barred by time, the trial court noticed the averments contained in paras 9 and 10 of the plaint that during the course of preparation of the trial of Suit No. 2576 of 1990, *Lal Chand v. MCD*, the appellants applied for a copy of khasra girdawaris of the suit land and they were shocked to learn that the revenue records have been incorrectly maintained and they were neither shown as owners/bhumidhar nor in possession of the suit land, referred to the pleadings of the suit filed by Appellant 2 Lal Chand in 1990 and observed:

“Therefore, as per the pleadings the cause of action accrued when according to the plaintiff he applied for the copies of the khasra numbers

a which was in November-December 1998 during the course of trial in the earlier suit. This claim of the plaintiff, however, does not appear to be factually correct. It is evident from the judgment dated 3-3-2003 that the detailed written statement had been filed by DDA before the learned Civil Judge when the suit filed by Lal Chand, Plaintiff 2 on 18-8-1990 wherein DDA had specifically pleaded that the land form part of Khasra Nos. 2728/1674/2 and 2728/1674/3 situated in the revenue estate of Village Kishangarh, Tehsil Mehrauli, New Delhi and the urbanisation of Village Mehrauli, all the Gaon Sabha land vested in the Central Government, but later on transferred this land at the disposal of the defendant DDA for development and maintenance as green, vide Notification dated 20-8-1974 and the plaintiff has no right, title or interest over the suit land. It was further pleaded that the plaintiff had wrongly and unauthorisedly occupied the land and constructed the boundary wall along with three temporary rooms which construction was unauthorised and it was denied that the suit property existed for the last 16 years. It is further evident from the said judgment that after the plaintiff filed the replication continuing the aforesaid, issues were framed by the learned Civil Judge on 11-3-1997. *This being so, it is unbelievable that the date of knowledge by the plaintiff was of November-December 1998. Rather the plaintiffs were fully aware of the land being at the disposal of DDA from the proceeding in Suit No. 211/02 of 1990 when DDA filed its written statement when the limitation started to run more so as Plaintiff 2 had also filed replication continuing the aforesaid and therefore as per the provisions of the Limitation Act, Article 58 of the Schedule, challenge to the same should have been made within the period of limitation which is within 3 years from the date of knowledge and limitation which has started running, it is not extended by the plaintiff by obtaining certified copy or by giving notice to the defendants.* This suit which has been filed only on 11-2-2000 is clearly not within the period of limitation of 3 years from the date when DDA filed its written statement in Suit No. 211/02 of 1990 and Plaintiff 2 is first assumed to have acquired knowledge and in attempt to cover up this delay the plaintiff is trying to falsely create the cause of action in November-December 1998 attributing the advantage as during the trial when he applied for the copies of the revenue record despite the fact that the period of limitation started to run when the written statement was filed by DDA to which Plaintiff 2 filed replication pursuant to which the issue framed was, whether the plaintiff has any legal rights to file the present suit. This being the case, I hereby hold that the present suit is clearly beyond the period of limitation and I decide Issue 3 against the plaintiff.”
(emphasis supplied)

34. The High Court agreed with the trial court and held that the suit was barred by time. The reasons assigned by the High Court for coming to this conclusion are contained in paras 38 to 45, which are extracted below:

h “38. First suit filed by Lal Chand (Appellant 2 in the present proceedings), being Suit No. 2576 of 1990, was suit for injunction

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simpliciter. That suit was dismissed by judgment/order dated 3-3-2001. As per findings given in that suit, the plaintiff was never the owner; the land was government land; the land vested in the Central Government after issuance of notification under Section 507 of the DMC Act and thereafter, the land was transferred to DDA. a

39. Against dismissal of that suit for injunction, an appeal bearing RFA No. 651 of 2003 was filed and this Court disposed of the appeal, vide order dated 24-11-2008³.

40. In that suit, it was alleged in the plaint that: b

‘It was sometime in March 1990 that the Tahsildar along with officers of DDA came to the site of the plaintiff with dispossession and demolition.’

41. Now after 10 years, the appellant being a co-owner, cannot seek relief against alleged threat of demolition or dispossession and the present suit is clearly barred by limitation. c

42. In that suit in written statement, a specific plea was taken by the answering respondent herein, that land in question by virtue of issuance of notification under Section 507 of the DMC Act, on urbanisation, came to be vested with the Union of India and thereafter, transferred to the answering respondent. Relevant preliminary objection taken therein to the written statement is as under: d

‘That the suit as filed is false, frivolous and not maintainable. The plaintiff has no legal right to file the present suit. The land forms a part of Khasra No. 1674 of Village Mehrauli. This land belongs to the Gram Sabha and on the urbanisation of Village Mehrauli, all the Gram Sabha land vested in the Central Government, which later transferred this land at the disposal of the defendant DDA vide Notification No. S.O. 2190 dated 20-8-1974. Therefore, it is clear that the plaintiff has no right, title or interest in the property. In this view of the matter, this suit may be dismissed.’ e

43. It is also contended that the second suit was filed by Surat Singh, one of the co-owners. That was again a suit for injunction, which was dismissed and against this, an appeal (RCA No. 29 of 2004) was preferred before the Additional District Judge on 5-8-2004 and the same was also dismissed. f

44. The appellate court, while dismissing the suit of Surat Singh, referred to the pleadings made in the plaint,

‘that on 29-2-1992, police officials along with the officials of DDA visited the site and proceeded to demolish inter alia the boundary wall of the disputed land. Clearly, therefore, the cause of action had matured and limitation, which necessarily commenced from the date of the demolition of the premises.’ g

45. That suit was filed in 1992 and surely, a subsequent suit by another co-owner, cannot be maintained after a lapse of 8 years.” h

³ Lal Chand v. MCD, RFA No. 651 of 2003 order dated 24-11-2008 (Del)

35. What is most surprising is that even though Appellant 2 Lal Chand was cited as the first witness in Suit No. 303 of 2000 (renumbered as 473 of 2004), he did not step into the witness box. This appears to be a part of calculated strategy. He knew that if he was to appear as a witness, it will not be possible for him to explain the apparent contradictions in the pleadings of the three suits on the issue of cause of action and falsity of the averments contained in para 19 in Suit No. 303 of 2000 will be exposed. This is an additional reason for holding that the trial court and the High Court did not commit any error by recording a conclusion that the suit was barred by limitation.

36. The next question which requires consideration is whether the finding recorded by the trial court on Issues 1 and 2 is legally correct and the High Court rightly declined to interfere with the same. The trial court adverted to the pleadings of the parties and evidence produced by them and observed:

“... The plaintiff has not placed on record any document nor has examined any witness to prove the location and boundaries of the said land. It is unbelievable that sale of the immovable properties could have taken place without identification of the property with regard to its location. As per existing practice all such transactions of immovable properties either bear the complete details of the boundaries to assist location of the property sold along with the site plan or is accompanied by aks shijra. However, in the present case this has not been done and the plaintiff has not adduced in evidence to prove boundary of the suit land. *Therefore, on the basis of the aforesaid, I hold that Plaintiff 2 had purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but he has not been able to prove the location of the said land comprising of Khasra Nos. 2728/1674/2 and 2728/1674/3. The plaintiff has further not been able to connect the land over which Plaintiff 1 is running Sahara Restaurant to the land comprised in Khasra Nos. 2728/1674/2 and 2728/1674/3 of which Plaintiff 2 and his brothers are stated to be the owners.*

That DDA has placed on record the complete area location plan, Ext. D2WI/4 to which there is no rebuttal. Only simply suggestion has been given to the witness of the defendant that the aforesaid plan is incorrect but the plaintiff has not placed on record any other alternative plan which according to him, is according to plan, therefore, in these circumstances I find no reason to discard the aforesaid documents which show that Sahara Restaurant has been constructed in front of Community Centre No. 1, Nursery School No. 2 and Group Housing Janta Flats 952 on the road and is shown to be away from abadi of Village Kishangarh, Mehrauli, New Delhi.

Annexure A of the award, Ext. PW-4/1 shows that Khasra No. 2728/1674 falls in old abadi of Village Kishangarh and in these circumstances it is not possible to believe that the aforesaid Khasra No. 2728/1674 would be located away from the main village abadi. There it appears that the plaintiff has deliberately tried to create confusion with

regard to Khasra No. 2728/1674 and as admitted, to show that the land on which Sahara Restaurant is constructed is bearing Khasra Nos. 2728/1674/2 and 2728/1674/3 which is not the case and apparently it was for this reason that he has deliberately not placed on record any site plan, aks shijra, demarcation report made in the plan document to prove the khasra numbers.

In view of the above I hereby hold that the plaintiff has proved that he has purchased the land falling in Khasra Nos. 2728/1674/2 and 2728/1674/3 but has not been able to prove that the land on which Plaintiff 1 is running Sahara Restaurant is comprised of Khasra Nos. 2728/1674/2 and 2728/1674/3 or that he is in legal possession of the suit land over which Sahara Restaurant is constructed.” (emphasis supplied)

37. The trial court then proceeded to observe:

“Vide my above findings with regard to Issue 1, I have already held that the plaintiff has not been able to prove that the land on which a large restaurant is made falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and that in fact Khasra Nos. 2728/1674/2 and 2728/1674/3 is a part of old abadi which is situated at a distance and away from the place where Sahara Restaurant is constructed. The Notification under Section 22(1) of the DD Act dated 20-8-1974 which is Ext. DWW1/2 is not disputed by both the parties. Firstly, the plaintiff has not produced any document in the form of demarcation report or aks shijra which show that the land on which Sahara Restaurant is situated falls in Khasra Nos. 2728/1674/2 and 2728/1674/3 and is the same land which has been purchased by Plaintiff 2. The sale deed so relied upon by the plaintiff is Ext. PW-3/4 does not show the boundaries and identification of the land initially sold by Rattan Singh and Kasturi Devi so purchased by Plaintiff 2 later vide Ext. PW-3/3. Secondly, no explanation is forthcoming with regard to the acquisition award/proceedings placed before this Court which are Ext. PW-4/1, showing that Khasra No. 1673 min(0-12) and Khasra No. 2728/1674/3 min plus 2(14-14) then the area of 1512 sq yd has been acquired with the rate of claim as Rs 50 per square yard and the compensation is awarded at Rs 1,55,600 in all which is in respect of acquisition of land of Ran Singh, Dhan Singh, Lal Chand, Suraj Singh, all sons of Mam Raj as shown in Sl. No. 66. ... Annexure A to the award Ext. PW-4/1 shows Khasra No. 2728/1674 to be falling in old village abadi and no explanation is forthcoming as to how the land on which Sahara Restaurant has been constructed is situated away from the abadi which according to Ext. D2W1/4 is constructed on the road in front of Group Housing Janta Flats 952, Nursery School No. 2 and Community Center No. 1. It is unbelievable that Khasra No. 2728/1674 which falls in old village abadi can be situated away from the said award. Fourthly, in the earlier suit filed by Plaintiff 2 in the year 1990 before the learned Civil Judge Plaintiff 2 had claimed that he is in possession of two rooms and tin shed which he is using for residential purpose and no explanation is forthcoming as to how this huge construction of a big restaurant was made which is being used by Plaintiff 1 for commercial purposes. It is

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a *evident from the order dated 24-11-2008 in Lal Chand v. MCD³ that the High Court was apprised of the earlier report of the Local Commissioner in Suit No. 211/02 of 1990 and the large-scale construction raised by the plaintiff over the said land despite the status quo order without the sanction of the municipal authority. Even otherwise no permission can be granted by DDA for any been (sic) uncontroverted by the plaintiff, has constructed restaurant by encroaching upon the government land meant for road. Under the garb of the present suit the plaintiffs are indirectly*
b *challenging notification by which Village Kishangarh was urbanised and the land was placed at the disposal of DDA without specifically challenging the same as the entries made in the revenue record are only pursuant to the said notification. Therefore, in view of the aforesaid, I hereby decide this Issue 2 against the plaintiff and in favour of the defendants.”* (emphasis supplied)

c **38.** Though, the High Court did not examine the issue in detail as was done by the trial court, the learned Single Judge did make a note of the two notifications, the judgment in *Rajinder Kakkar case*² and held that by virtue of Section 150(3) of the Land Reforms Act, the suit land automatically vested in the Central Government and the same was transferred to DDA under Section 22(1) of the DD Act. In our view, the conclusion recorded by the trial
d court that the appellants have failed to prove that the suit land formed part of Khasra Nos. 2728/1674/2 and 2728/1674/3 does not suffer from any error because they did not adduce any evidence to establish that the land on which restaurant was being run formed part of those khasra numbers.

e **39.** We also approve the findings and conclusions recorded by the trial court that the appellants had not approached the Court with clean hands inasmuch as they withheld aks shijra, site plan and the demarcation report and award, Ext. PW-4/1. Not only this, they raised illegal construction despite the injunction order passed by the High Court and that too without obtaining permission from the competent authority.

f **40.** In view of the above discussion, we do not consider it necessary to deal with the question whether the suit filed by the appellants was barred by Order 2 Rule 2 CPC.

g **41.** In the result, the appeal is dismissed. The appellants, who have not only made encroachment on the public land, but also abused the process of the court are saddled with cost, which is quantified at Rs 5 lakhs. Of this, Rs 2.5 lakhs be deposited with the Supreme Court Legal Services Committee within two months from today. The balance amount of Rs 2.5 lakhs be deposited with the Delhi State Legal Services Committee within the same period. If the appellants fail to deposit the cost, the Secretaries of the two Legal Services Committees shall be entitled to recover the same as arrears of land revenue.

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3 RFA No. 651 of 2003 order dated 24-11-2008 (Del)
2 *Rajinder Kakkar v. DDA*, (1994) 54 DLT 484

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(BEFORE T.S. THAKUR AND GYAN SUDHA MISRA, JJ.)

BOARD OF TRUSTEES OF PORT OF KANDLA .. Appellant; a

Versus

HARGOVIND JASRAJ AND ANOTHER .. Respondents.

Civil Appeal No. 153 of 2013[†], decided on January 9, 2013

A. Property Law — Transfer of Property Act, 1882 — Ss. 108(q), 111 and 116 — Lease whether stood validly terminated and if possession handed over to lessor consequent thereto — Determination and proof of — Admission of lessee b

— Failure of lessee to remit outstanding rent instalment amount culminated in termination of lease by lessor Port Trust (appellant) by preparing panchnama evidencing takeover of possession and forwarding copy thereof to lessee along with certificate showing possession having been taken by Assistant Estate Manager of Port Trust — Unequivocal and unconditional admission made by lessee in letter addressed to lessor that possession had been taken over by Port Trust — Lessee also asked for refund of amount paid toward instalments or otherwise, for return of leased land — Nothing to show that admission made by lessee was subsequently withdrawn — No cogent and convincing explanation given before court for making such admission — Held, with termination of lease, right to possession of suit land vested back in lessor by operation of law and possession of vacant land would follow — Unequivocal admission of lessee established dispossession of lessee pursuant to termination of lease deed in terms of panchnama — Fact that wild bushes were growing on the open land would be no reason to hold that panchnama was inconsequential or insufficient to establish that process of dispossession of lessee had been accomplished — Evidence Act, 1872 — Ss. 18 to 21 and 58 — Civil Procedure Code, 1908, Or. 12 R. 6 c
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B. Limitation Act, 1963 — Art. 58 — Suit to obtain a declaration that lease subsisted and purported termination thereof was invalid — Right to sue — Accrues upon first infringement or clear threat to infringement of right in respect of which declaration is being sought i.e. in present case, date of denial of subsistence of lease or date of claim or action on basis that lease stood terminated — Lease of land terminated w.e.f. 13-12-1978 and lessee dispossessed from leased land on 14-12-1978 — Suit for declaration that termination of lease was invalid and ineffective and therefore, lease still subsisting, filed in 1996 i.e. after lapse of 18 yrs — Reiterated, suit filed beyond period prescribed under Limitation Act, barred — Transfer of Property Act, 1882, Ss. 108(q), (b) and 111

C. Specific Relief Act, 1963 — S. 34 — Suit for declaration that termination of lease was invalid — Maintainability of — Held, for maintaining such suit, lessee need not be dispossessed from leased property as

[†] Arising out of SLP (C) No. 9196 of 2008. From the Judgment and Order dated 26-12-2007 of the High Court of Gujarat at Ahmedabad in Second Appeal No. 17 of 2007 with Civil Application No. 1791 of 2007

dispossession is different from termination of lease — Transfer of Property Act, 1882 — Ss. 108(q), (b) and 111 — Property Law — Ownership and Title — Holding of proprietary interest distinguished from possession

a

Held :

The right to sue in the present case first accrued to the lessee on 13-12-1978 when in terms of order dated 8-8-1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14-12-1978. For maintaining any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession is different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was dispossessed of the plot in question, such a dispossession having taken place on 14-12-1978, the lessee ought to have filed the suit within three years of 15-12-1978 so as to be within the time stipulated under Article 58 of the Limitation Act. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. (Para 25)

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State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287; *Daya Singh v. Gurdev Singh*, (2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379; *Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484, *relied on*

d

Bolo v. Koklan, (1929-30) 57 IA 325 : AIR 1930 PC 270; *C. Mohammad Yunus v. Syed Unnissa*, AIR 1961 SC 808, *cited*

D. Specific Relief Act, 1963 — Ss. 34 and 38 — Declaratory suit — Necessity of declaration of even allegedly invalid action of opposite party — Extent of discretion available to court to grant declaration that was being sought — Expiry of limitation period and other factors — Relevance

— Even if action of opposite party is (allegedly) invalid (in this case action terminating lease), person affected thereby cannot ignore it unless and until he files suit and court declares such action to be invalid — Filing of suit for declaration that termination of lease was invalid, hence was essential for lessee in order to get rid of order of termination of lease as lessee's right to remain in possession of leased property would depend upon whether lease was subsisting or stood terminated — However, grant of declaratory relief is discretionary for court — When plaintiff's suit seeking such declaration was barred by limitation, plaintiff's claim that termination of lease, being illegal and non est, could be ignored and decree for permanent injunction restraining defendant lessor from interfering with his possession could be passed by court, cannot be sustained, more so when it was found that possession had already been taken over by lessor pursuant to termination of lease — Administrative Law — Administrative Action —

f

g

Administrative or Executive Function — Administrative Orders/Decisions/ Executive Instructions/Orders/Circulars — Validity of — Claim of invalidity — Need for judicial adjudication — Transfer of Property Act, 1882, Ss. 108(q), (b) and 111

It was argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs (lessees) could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the appellant-lessor (Port Trust) from interfering with their possession could be passed by the court competent to do so.

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Held :

The termination of the lease deed was by an order which the plaintiffs needed to have got rid of by having the same set aside, or declared invalid for whatever reasons it might have been permissible to do so. No order bears a label of it being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. Filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated.

(Paras 27 and 31)

Smith v. East Elloe Rural District Council, 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL); *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363; *Pune Municipal Corpn. v. State of Maharashtra*, (2007) 5 SCC 211; *R. Thiruvirkolam v. Presiding Officer*, (1997) 1 SCC 9 : 1997 SCC (L&S) 65; *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth*, (1996) 1 SCC 435; *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443, *relied on* *Wade and Forsyth: Administrative Law*, 7th Edn., 1994; H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352, *cited*

However, grant of declaratory relief under the Specific Relief Act is discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction. Merely because the suit is within time is no reason for the court to grant a declaration.

(Para 31)

It is not, therefore, possible to fall back upon the possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when while dealing with the question of possession it has been held that possession also was taken over pursuant to the order of termination of the lease in question.

(Para 31)

Port of Kandla v. Hargovind Jasraj, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj), *reversed*

Appeal allowed

R-D/51310/CV

Advocates who appeared in this case :

Pravin H. Parekh, Senior Advocate [Nitin Thakral, Rajat Nair, Ms Ritika Sethi and Vishal Prasad (for M/s Parekh & Co.), Advocates] for the Appellant;
 Huzefa Ahmadi, Ejaz Maqbool, Mrigank Prabhakar, Anas Tanwir, Ms Aishwarya Bhati, Dr Prikhshayat Singh, Ms Sanjoli Mittal and Karmendra Singh, Advocates, for the Respondents.

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

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| 2. (2011) 3 SCC 363, <i>Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group</i> | 193f | |
| 3. (2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379, <i>Daya Singh v. Gurdev Singh</i> | 191e | |
| 4. (2007) 5 SCC 211, <i>Pune Municipal Corpn. v. State of Maharashtra</i> | 194a-b | |
| 5. Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj), <i>Port of Kandla v. Hargovind Jasraj (reversed)</i> | 185b-c, 187c-d | h |
| 6. (1997) 3 SCC 443, <i>Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.</i> | 194g | |

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	8. (1996) 1 SCC 435, <i>State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth</i>	194g
a	9. (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287, <i>State of Punjab v. Gurdev Singh</i>	191c-d, 194e
	10. AIR 1961 SC 808, <i>C. Mohammad Yunus v. Syed Unnissa</i>	192b, 192c
	11. 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL), <i>Smith v. East Elloe Rural District Council</i>	193d, 193e
	12. (1929-30) 57 IA 325 : AIR 1930 PC 270. <i>Bolo v. Koklan</i>	192a

b The Judgment of the Court was delivered by

T.S. THAKUR, J.— Leave granted. This appeal arises out of a judgment and order dated 26-12-2007¹ passed by the High Court of Gujarat at Ahmedabad whereby Civil Second Appeal No. 17 of 2007 filed by the appellant has been dismissed and the judgment and decree passed by the courts below affirmed.

c 2. The facts giving rise to the filing of this appeal may be summarised as under: a parcel of land admeasuring 1891.64 sq m situated in Sector 30, Gandhidham in the State of Gujarat was granted in favour of Smt Pushpa Pramod Shah, Respondent 2 in this appeal on a long-term lease basis. A formal lease deed was also executed and registered in favour of the lessee stipulating the terms and conditions on which the lessee was to hold the land demised in her favour. The respondent lessee it appears committed default in the payment of the lease rent stipulated in the lease deed with the result that the appellant lessor issued notices dated 12-12-1975 and 17-7-1976 calling upon the lessee to pay the outstanding amount with interest and stating that the lease of the plot in question shall stand determined under Clause 4 thereof and possession of the demised premises taken over by the appellant Port Trust in case the needful is not done.

e 3. In response to the notices aforementioned the lessee by communication dated 18-11-1976 requested the appellant Port Trust to permit her to resell the plots for a symbolic consideration and to obtain the refund of the instalment amount already paid to the Port Trust. The letter sought to justify the default in the payment of arrears on the ground of an untimely demise of her husband, resulting in cancellation of expansion programme including any further acquisition of land by the lessee.

f 4. Failure of the lessee to remit the outstanding instalment amount culminated in the termination of the lease by the appellant Port Trust in terms of an order dated 8-8-1977 w.e.f. 13-12-1978. A panchnama prepared on 14-12-1978 evidenced the takeover of possession of the plot in question by the appellant Port Trust, copy whereof was forwarded even to the lessee along with a certificate that the possession had been taken over by the Assistant Estate Manager of the appellant Port Trust under his letter dated 20-12-1978.

g 5. On receipt of the letter aforementioned, the lessee by her letter dated 22-2-1979 requested the appellant Port Trust to refund the amount and in case a refund could not be made, to return the possession of the plot to her.

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¹ *Port of Kandla v. Hargovind Jasraj*, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj)

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One year and four months after the issue of the said letter the lessee Respondent 2 herein filed Civil Suit No. 152 of 1980 in the Court of Civil Judge, Gandhidham, in which she prayed for a decree for permanent injunction restraining the defendants, its officers and servants from interfering with her peaceful possession over the plot in question. The immediate provocation for the filing of the said suit was provided by the appellant Port Trust proposing to re-auction the plot in question. The plaintiff's case in the suit was that she was in actual physical possession of the plot which rendered the proposed auction thereof unreasonable. An interim application was also filed in the said suit in which the court granted an ex parte order of injunction that was subsequently vacated by a detailed order passed on 5-9-1980 holding that the plaintiff was not entitled to the relief of injunction. It is common ground that Suit No. 152 of 1980 was eventually dismissed on 18-1-1985 for non-prosecution.

6. Almost six years after the dismissal of the first suit, another Suit No. 126 of 1991 was filed, this time by Respondent 1, Hargovind Jasraj against Respondent 2 Smt Pushpa Pramod Shah for a permanent prohibitory injunction restraining Defendant 2 lessee of the plot, her agents, servants and representatives from interfering with the plaintiff's possession over the plot in dispute. According to the averments made in the said suit the lessee had not been carrying on any business activities in Gandhidham nor was she using the plot in question and that she was finding it difficult to look after and administer the plot after the death of her husband. She had, therefore, sold the plot to the plaintiff-Respondent 1 in this appeal in terms of a registered document. It was further alleged that the cause of action to file the suit accrued a few days before the filing of the suit when the defendant-lessee had through her representative asked the plaintiff to vacate the suit plot which demand was in breach of the sale agreement between the parties. Apprehending dispossession from the plot in question Respondent 1-plaintiff sought a decree for injunction against Respondent 2. The appellant Port Trust, it is noteworthy, was not impleaded as a party to the suit which too was dismissed for non-prosecution on 15-3-2002.

7. Five years later and pending disposal of the second suit mentioned above, a third suit being Suit No. 77 of 1996 was filed by Respondent 1 this time asking for a declaration and permanent injunction in which the plaintiff for the first time questioned the termination of the lease by the appellant Port Trust. A declaration that the said lease was still subsisting with an injunction restraining the defendant-appellant in this appeal and its employees from acting in any manner injurious to the title and the possession of the plaintiff over the disputed land was prayed for. The plaintiff's case in this suit was that he had purchased the plot in question from Smt Pushpa Pramod Shah in the year 1991 in terms of a transfer deed registered with the Sub-Registrar concerned at Gandhidham and that he had based on the said transfer asked for transfer of the lease rights which request had been declined by the appellant Port Trust in the year 1994. It was further alleged that he had come to know about the purported cancellation of the lease in favour of Smt

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Pushpa Pramod Shah and the purported takeover of the possession of the plot from her which was according to him both fraudulent and invalid in the eye of the law.

a **8.** The suit was contested by the appellant Port Trust on several grounds giving rise to as many as seven issues framed by the trial court for determination. The suit was eventually decreed by the said court, aggrieved whereof the appellant Port Trust filed an appeal before the first appellate court which partly allowed the said appeal by its judgment and order dated 16-11-2006. The appellate court affirmed the decree passed by the courts below insofar as the trial court had declared that the lease deed in question had not been validly terminated by the lessor and the same continued to be subsisting but allowed the appeal setting aside that part of the judgment passed by the trial court whereby the trial court had directed the appellant Port Trust to transfer the lease rights in favour of the plaintiff-Respondent 1 in this appeal.

b **9.** The appellant Port Trust appealed to the High Court against the above judgment and decree which has been dismissed¹ by the High Court in terms of the order impugned before us holding that no substantial question of law arose in the light of the concurrent findings of fact recorded by the courts below. The High Court found that since the earlier suits had not been decided on merits, no final adjudication had taken place in the same so as to attract the doctrine of *res judicata* to the issues raised in the third suit out of which the present proceedings arise.

c **10.** Appearing for the appellant Mr Pravin H. Parekh, learned Senior Counsel, strenuously argued that the courts below had fallen in serious error in holding that the termination of the lease by the appellant Port Trust was invalid or that the lease continued to be valid and subsisting. The question whether the Senior Estate Manager was competent to terminate the lease and enter upon the suit property was not, argued Mr Parekh, joined as an issue by the courts below and could not be made a basis for holding the termination to be unauthorised or invalid.

d **11.** Alternatively, Mr Parekh submitted that the termination order had been passed as early as in the year 1977 whereas the suit in question was filed in the year 1996 after a lapse of nearly 18 years. The possession of the plot was also taken over on 14-12-1978 which fact was acknowledged unequivocally by the lessee in her letter dated 22-2-1979. That being so, any suit aimed at challenging the validity of the termination or assailing validity of the process by which the possession was taken over from the lessee should have been filed within a period of six months from the date the cause of action accrued to the lessee in terms of Section 120 of the Major Port Trust Act. At any rate, such a suit could be filed, at best within three years from the date the cause of action accrued to the lessee. Neither the lessee nor her

e ¹ *Port of Kandla v. Hargovind Jasraj*, Civil Second Appeal No. 17 of 2007, order dated 26-12-2007 (Guj)

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transferee who came on the scene long after the termination order had been passed and the possession taken over could question the validity of the termination of the lease or demand protection of their possession in the light of a clear and unequivocal admission made by the lessee in her letter dated 22-2-1979 that the possession of the plot in question stood taken over from her. The courts below have, in that view, committed a mistake in holding that the suit was within time.

12. Mr Ahmadi, counsel appearing for the respondent, on the other hand, submitted that the courts below had recorded a concurrent finding of fact that the lessee continued to be in possession of the suit property even after the termination of the lease which finding of fact could not be assailed nor was there any legal impediment for the plaintiff transferee or the original lessee, who too was joined as a plaintiff in the year 1999, to seek protection of their possession. It was further argued by Mr Ahmadi that the admission made by the lessee in her letter dated 22-2-1979 was not unequivocal and stood explained by the attendant circumstances including the demise of her husband and resultant inability of the lessee to go ahead with the expansion programme or to pay remainder of the lease amount.

13. The trial court has, while dealing with the question of dispossession of the lessee from the disputed plot, recorded a rather ambivalent finding. This is evident from the following observations made by it in its judgment:

“... Further panchnama submitted along with Ext. 49 cannot be said to be panchnama of taking physical possession of the plot because the plot is open. Even at present it is open and there are bushes of Babool trees and as such it is difficult to hold anything about possession that of Pushpaben or K.P.T. It cannot be believed that by mere preparing panchnama the possession has been taken from the person who is in possession of the plot. The K.P.T. has not taken the possession vide Ext. 49 in the presence of Pushpaben. Under the said circumstances the plot is open and it is as it is....” (emphasis supplied)

14. It is manifest that there is no clear finding of fact regarding possession of the suit property having continued with the lessee, no matter the lease stood terminated and a panchnama evidencing takeover of the possession drawn and even communicated to her. The first appellate court in appeal filed against the above judgment and decree also did not record a specific finding that the possession of the plot had not been taken over by the Port Trust no matter the documents relied upon by it evidenced such takeover. The first appellate court instead held that the termination of the lease was not valid inasmuch as no notice regarding termination in terms of Sections 106 and 111(g) of the Transfer of Property Act, 1882 had been proved and served upon the lessee nor was it proved that the person who signed notice Ext. 47 and who took over possession in terms of panchnama enclosed with Ext. 49 had been authorised by the Kandla Port Trust, the lessor, to do so.

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15. The conclusions drawn by the first appellate court are summarised in para 59 of its judgment in the following words:

a “59. In view of what is stated in foregoing paragraphs of this judgment this Court comes to the following conclusions:

(1) The appellant-original defendant has failed to prove the service of notice terminating the lease as required under Sections 111(g) and 106 of the Transfer of Property Act upon the lessee i.e. Respondent 2-original Plaintiff 2.

b (2) The defendant/the present appellant failed to prove that the person who signed the notice Ext. 47 and the person who is alleged to have made re-entry on the suit plot and signed Ext. 49 and panchnama produced along with Ext. 49 were specifically authorised by Kandla Port Trust i.e. the lessor and the Chairman of Kandla Port Trust.

c (3) The lease dated 14-12-1966 is not legally and validly determined by the lessor hence, it is subsisting till date and alive, and the lessee Smt Pushpaben Shah i.e. Respondent 2 is entitled to hold and enjoy Suit Plot No. 30, Sector No. 8.”

d 16. In the second appeal filed by the appellant, the High Court was of the view that the matter was concluded by concurrent findings of fact regarding the validity of the termination of the lease and the authority of those who purported to have brought about such a termination. The question whether the possession of the suit plot was taken over did not engage the attention of the first appellate court or the High Court although the latter proceeded on the basis that the findings of fact recorded by the courts below were concurrent, without pointing out as to what those findings were and how the same put the issue regarding takeover of the possession from the lessee beyond the pale of any challenge. Suffice it to say that the respondents are not correct in urging that the dispossession of the lessee pursuant to the termination of the lease was not proved as a fact. None of the courts below has recorded a clear finding on this aspect even though the trial court has in its judgment briefly touched that issue but declined to record an affirmative finding in the matter.

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f 17. That apart, a careful reading of the passage extracted above from the order passed by the trial court shows that the trial court was labouring under the impression as though possession of the vacant piece of land cannot be taken over by the lessor unless some overt act of actual occupation of the plot is established. The fact that wild bushes were growing on the plot was, in our opinion, no reason to hold that the panchnama prepared by the Port Trust Authorities evidencing the takeover of the plot was inconsequential or insufficient to establish that the process of dispossession of the lessee had been accomplished. We need to remember that with the termination of the lease, the title to the suit property vested in the lessor, ipso jure. That being so, possession of a vacant property would follow title and also vest in the lessor. Even so, the panchnama drawn up at site recorded the factum of actual takeover of the possession from the lessee, whereafter the possession too legally vested in the lessor, growth of wild bushes and grass notwithstanding.
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h We need not delve any further on this aspect for we are of the view that there

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could be no better evidence to prove that the lessee had been dispossessed from the plot in question than her own admission contained in her communication dated 22-2-1979 addressed to the Senior Estate Manager of the appellant Trust. a

18. The letter dated 22-2-1979 of Respondent 2 lessee may at this stage be extracted in extenso:

“Dear Sir,

I am in receipt of your Letter No. ES/LL/723/63/9180 dated 20-12-1978 informing that the Assistant Estate Manager has taken over Plot No. 30, Sector 8. Please note, you have not informed me to be present at 4 p.m. on 14-12-1978 at the site of the aforesaid plot and your Letter No. ES/LL/723/63/6248 dated 8-8-1977 said to have been sent to me has not yet been received and hence you do not have the authority to re-enter the plot. b

As you have taken the possession of the plot, you are now requested to kindly refund all the amounts forthwith otherwise you may return back the possession of plot to me. If I do not hear anything from you within seven days from the date of receipt of this letter, appropriate legal proceedings will be adopted against you, holding you entirely responsible for the cost of consequences thereof. c

Yours faithfully, d
sd/-

P.P. Shah
(Smt Pushpa P. Shah)”
(emphasis supplied)

The genuineness of the above document was not disputed by the learned counsel for the respondents. All that was argued was that the admission regarding the dispossession of the lessee had been made in circumstances that (a) cannot constitute an admission, and (b) absolve the lessee, the maker, of its binding effect. The husband of the lessee having passed away, the letter in question was written in a state of shock and distress and any admission made therein could not, argued Mr Ahmadi and Ms Bhati, be treated as an admission in the true sense. We regret our inability to accept that submission. e f

19. The question is: whether possession had indeed been taken over from the lessee pursuant to the termination of the lease? The answer to that question is squarely provided by the letter in which the lessee makes an unequivocal and unconditional admission that possession had indeed been taken over by the appellant Port Trust. What is significant is that the lessee had asked for refund of the amount paid by her towards instalments and in case such a refund was not possible to return the plot to her. We do not think that such an unequivocal admission as is contained in the letter can be wished away or ignored in a suit where the question is: whether the lessee had indeed been dispossessed pursuant to the termination of the lease? There is no worthwhile explanation or any other reason that can possibly spell a withdrawal of the admission or constitute an explanation cogent enough to carry conviction with the court. We have in that view no hesitation in holding g h

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that dispossession of the lessee had taken place pursuant to the termination of the lease deed in terms of panchnama dated 14-12-1978.

a **20.** The next question then is: whether the suit for declaration to the effect that the termination of the lease was invalid and that the lease continued to subsist could be filed more than 17 years after the termination had taken place?

b **21.** A suit for declaration not covered by Article 58 of the Schedule to the Limitation Act, 1963 must be filed within 3 years from the date when the right to sue first arises. Article 58 applicable to such suits reads as under:

	<i>"Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
58.	To obtain any other declaration.	Three years	When the right to sue first accrues."

c **22.** The expression "right to sue" has not been defined. But the same has on numerous occasions fallen for interpretation before the courts. In *State of Punjab v. Gurdev Singh*², the expression was explained as under: (SCC p. 5, para 6)

d "6. ... The words 'right to sue' ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted...."

e **23.** Similarly in *Daya Singh v. Gurdev Singh*³ the position was restated as follows: (SCC pp. 198-99, paras 13-16)

f "13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

g **14.** In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision

h ² (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287 : (1992) 1 LLJ 283
³ (2010) 2 SCC 194 : (2010) 1 SCC (Civ) 379

of the Privy Council in *Bolo v. Koklan*⁴. In this decision Their Lordships of the Privy Council observed as follows: (IA p. 331)

‘... There can be no “right to sue” until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

15. A similar view was reiterated in *C. Mohammad Yunus v. Syed Unnissa*⁵ in which this Court observed: (AIR p. 810, para 7)

‘7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.’

In *C. Mohammad Yunus*⁵, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16. ... Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants....”

24. References may be made to the decisions of this Court in *Khatri Hotels (P) Ltd. v. Union of India*⁶ wherein this Court observed: (SCC p. 139, para 30)

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. *To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.*” (emphasis supplied)

25. The right to sue in the present case first accrued to the lessee on 13-12-1978 when in terms of order dated 8-8-1977 the lease in favour of the lessee was terminated. A suit for declaration that the termination of the lease was invalid hence ineffective for any reason including the reason that the person on whose orders the same was terminated had no authority to do so, could have been instituted by the lessee on 14-12-1978. For any such suit it was not necessary that the lessee was dispossessed from the leased property as dispossession was different from termination of the lease. But even assuming that the right to sue did not fully accrue till the date the lessee was

4 (1929-30) 57 IA 325 : AIR 1930 PC 270

5 AIR 1961 SC 808

6 (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484

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a dispossessed of the plot in question, such a dispossession having taken place on 14-12-1978, the lessee ought to have filed the suit within three years of 15-12-1978 so as to be within the time stipulated under Article 58 extracted above. The suit in the instant case was, however, instituted in the year 1996 i.e. after nearly eighteen years later and was, therefore, clearly barred by limitation. The courts below fell in error in holding that the suit was within time and decreeing the same in whole or in part.

b **26.** Mr Ahmadi next argued that the termination of the lease being illegal and non est in law, the respondent-plaintiffs could ignore the same, and so long as they or any one of them remained in possession, a decree for injunction restraining the Port Trust from interfering with their possession could be passed by the court competent to do so. We are not impressed by that submission.

c **27.** The termination of the lease deed was by an order which the plaintiffs ought to get rid of by having the same set aside, or declared invalid for whatever reasons, it may be permissible to do so. No order bears a label of its being valid or invalid on its forehead. Anyone affected by any such order ought to seek redress against the same within the period permissible for doing so. We may in this regard refer to the following oft-quoted passage in *Smith v. East Elloe Rural District Council*⁷. The following are the observations regarding the necessity of recourse to the Court for getting the
d invalidity of an order established:

e “... An order, even if not made in good faith, is still an act capable of legal consequences. *It bears no brand of invalidity on its forehead.* Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.’ (*Smith case*⁷, AC pp. 769-70) (emphasis supplied)

f This must be equally true even where the brand of invalidity is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects.”*

28. The above case was approved by this Court in *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*⁸, wherein this Court observed: (SCC pp. 369-70, para 19)

g “19. Thus, from the above it emerges that even if the order/ notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground

h ⁷ 1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855 (HL)

* **Ed.:** Wade and Forsyth in *Administrative Law*, 7th Edn., 1994.

⁸ (2011) 3 SCC 363

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of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.”

29. To the same effect is the decision of this Court in *Pune Municipal Corpn. v. State of Maharashtra*⁹ wherein this Court discussed the need for determination of invalidity of an order for public purposes: (SCC pp. 225-26, paras 36 & 38-39)

“36. It is well settled that no order can be ignored altogether unless a finding is recorded that it was illegal, void or not in consonance with law. As Prof. Wade states:

“The principle must be equally true even where the “brand of invalidity” is plainly visible: for there also the order can effectively be resisted in law only by obtaining the decision of the court’[†].

He further states:

“The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff’s lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the “void” order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another.’^{††}

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38. A similar question came up for consideration before this Court in *State of Punjab v. Gurdev Singh*². ...

39. Setting aside the decree passed by all the courts and referring to several cases, this Court held that if the party aggrieved by invalidity of the order intends to approach the court for declaration that the order against him was inoperative, he must come before the court within the period prescribed by limitation. ‘*If the statutory time of limitation expires, the court cannot give the declaration sought for.*’”

(emphasis supplied)

30. Reference may also be made to the decisions of this Court in *R. Thiruvirkolam v. Presiding Officer*¹⁰, *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth*¹¹ and *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*¹², where this Court has held that an order will

9 (2007) 5 SCC 211

† H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352

†† H.W.R. Wade, *Administrative Law* (6th Edn., Clarendon Press, Oxford 1988) 352-53

2 (1991) 4 SCC 1 : 1991 SCC (L&S) 1082 : (1991) 17 ATC 287

10 (1997) 1 SCC 9 : 1997 SCC (L&S) 65

11 (1996) 1 SCC 435

12 (1997) 3 SCC 443

remain effective and lead to legal consequences unless the same is declared to be invalid by a competent court.

- a* **31.** It is true that in some of the above cases, this Court was dealing with proceedings arising under Article 226 of the Constitution, exercise of powers whereunder is discretionary but then grant of declaratory relief under the Specific Relief Act is also discretionary in nature. A civil court can and may in appropriate cases refuse a declaratory decree for good and valid reasons which dissuade the court from exercising its discretionary jurisdiction.
- b* Merely because the suit is within time is no reason for the court to grant a declaration. Suffice it to say that filing of a suit for declaration was in the circumstances essential for the plaintiffs. That is precisely why the plaintiffs brought a suit no matter beyond the period of limitation prescribed for the purpose. Such a suit was neither unnecessary nor a futility for the plaintiff's right to remain in possession depended upon whether the lease was subsisting or stood terminated. It is not, therefore, possible to fall back upon the possessory rights claimed by the plaintiffs over the leased area to bring the suit within time especially when we have, while dealing with the question of possession, held that possession also was taken over pursuant to the order of termination of the lease in question.
- d* **32.** In the light of what we have said above, we consider it unnecessary to examine the question whether the suit in question was barred by Section 120 of the Major Port Trusts Act which stipulates a much shorter period of limitation of six months. We also consider it unnecessary to examine whether the suit filed by the original plaintiff transferee of the lessee was barred by the principle of constructive res judicata or Order 2 Rule 2 of the Code of Civil Procedure, 1908 in view of the fact that the first suit filed by the lessee
- e* in the year 1980 for permanent prohibitory injunction could and ought to have raised the question of validity of the termination of the lease as the termination of the lease had by that time taken place. So also the question whether the transferee, who had not been recognised by the Port Trust, could institute a suit against the Port Trust so as to challenge the termination of the lease in favour of his vendor also need not be examined. All that we need to
- f* mention is that the addition of the lessee as a co-plaintiff in the suit also came as late as in the year 1999 when the original plaintiff transferee of the lease appears to have realised that it is difficult to assert his rights against the Port Trust on the basis of a transfer which was effected without the permission of the lessor Port Trust.
- g* **33.** In the result, we allow this appeal, set aside the impugned judgment and decree passed by the courts below and dismiss the suit filed by the respondents but in the circumstances without any order as to costs.

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- 29.** In this instant case, the charge of conspiracy has not been proved to bring home the charge of conspiracy within the ambit of Section 120-B IPC.
- a* It is also settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or misrepresentation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent intention, the question of committing offence under Section 420 IPC does not arise.
- 30.** The High Court without adverting to the above important questions of law involved in this case and examining them in the proper perspective disposed of the revisions in a summary manner and hence the impugned orders passed by the High Court and the learned Magistrate warrant interference.
- c* **31.** It is a well-established principle that the matter which has been adjudicated and settled by the Tribunal need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable.
- 32.** For the aforesaid discussions and reasons adduced, the questions of law formulated above are answered accordingly and the appeals stand allowed.
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(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND S.H. KAPADIA, JJ.)

e UNION OF INDIA AND OTHERS . . . Appellants;
Versus
WEST COAST PAPER MILLS LTD. AND ANOTHER . . . Respondents.

Civil Appeals Nos. 1061-62 of 1998[†], decided on February 5, 2004

- f* **A. Limitation Act, 1963 — S. 3 — Starting point of limitation — Railway Rates Tribunal holding the revised rate of freight to be unreasonable — Special leave granted but ultimately appeal dismissed — In such circumstances, notwithstanding the finality of the Tribunal's decision in terms of S. 46-A, Railways Act, 1890, the starting point of limitation for filing a suit to recover the excess amount of freight paid, held, was the date of the Supreme Court's order and not the date of the Tribunal's judgment — Doctrine of merger and the principle that an appeal is in continuation of suit, taken into consideration — Stay of judgment appealed against**
- g* **inconsequential once Supreme Court grants special leave — P.K. Kutty Anuja Raja case, (1996) 2 SCC 496, held, not good law — Constitution of India — Art. 136 — Grant/Dismissal of SLP — Grant of SLP — Effect — Civil Procedure Code, 1908, Ss. 96 and 100 — Railways Act, 1890, S. 46-A — Administrative Law — Administrative bodies — Administrative Tribunal — Merger of decision of, in appellate order**

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[†] From the Judgment and Order dated 26-2-1996 of the Karnataka High Court in RFAs Nos. 1450-51 of 1986

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B. Constitution of India — Art. 136 — Generally — Nature and scope of jurisdiction under Art. 136 — Once special leave is granted and the appeal is admitted, held, the correctness or otherwise of the impugned judgment is in jeopardy — In such an appeal the Supreme Court, held, is entitled to go into both questions of fact as well as law a

C. Constitution of India — Art. 136 — Questions of fact — Supreme Court's power to go into

D. Limitation Act, 1963 — S. 3 — Manner of interpretation of — Notwithstanding the rigours of S. 3, held, it should be construed in a broad-based and liberal manner — Interpretation of Statutes — Basic rules — Liberal interpretation — Applicability b

E. Limitation Act, 1963 — Ss. 14 and 15 — Applicability — Railway Rates Tribunal declaring the enhanced rate of freight to be illegal — Freight-payer company filing a writ petition seeking refund of the excess freight charged from it — High Court relegating the Company to the remedy of suit — Company filing a suit accordingly — In such circumstances the courts below rightly held the plaintiff Company to be entitled to benefits of Ss. 14 & 15 c

F. Limitation Act, 1963 — Art. 113 or Art. 58 — Suit for recovery of excess amount of freight on the basis of Railway Rates Tribunal's judgment declaring that the amount of freight charged from the plaintiff was illegal — Such suit whether governed by Art. 113 or Art. 58 d

The respondent herein used to transport its goods by rail. The rate of freight was revised w.e.f. 1-12-1964. At the instance of the respondent, the Railway Rates Tribunal, by a judgment dated 18-4-1966, declared the revised rates as unreasonable. The Supreme Court while granting special leave to the Railways to appeal, refused to grant stay and passed a limited interim order. Ultimately, it dismissed the special leave petition. On 5-1-1972, the respondent filed a writ petition which was dismissed on the ground of availability of the remedy of suit. The respondent then filed two suits on 12-12-1973 and 18-4-1974 for refund of the excess amount collected by the defendant Railways for the period 24-6-1963 to 1-2-1964 and 1-2-1964 to 18-4-1966 with interest accrued thereupon. Under the provisions of the Railways Act as then existing, the Tribunal was entitled only to make a declaration to the effect that the freight charged was unreasonable or excessive. It did not have any jurisdiction to execute its own order. Before the trial court, the defendant Railways contended that since despite the pendency of SLP no stay had been granted by the Supreme Court, the suits filed beyond the three years' limitation period under Article 58, Limitation Act, 1963 from the date of the Tribunal's judgment, i.e., 18-4-1966, were time-barred. However, taking the view that the plaintiff-respondent was entitled to benefit of Sections 14 and 15 of the Limitation Act, the trial court held that the suits were within limitation. The High Court affirmed that view. The Union of India then filed the instant appeal, which came up before a Division Bench. Doubting the correctness of the decision in *P.K. Kutty Anuja Raja case*, (1996) 2 SCC 496, the Division Bench referred the matter to the present three-Judge Bench. Before the present Bench the appellant reiterated the plea of limitation. It added that since in terms of Section 46-A of the Railways Act, the judgment of the Tribunal was final, the starting period of limitation for filing the suit would be three years from the date of the Tribunal's judgment. On the other hand, the respondent-plaintiff submitted e
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a that having regard to the fact situation of the present case, Article 113 and not Article 58 of the Limitation Act was applicable. That in view of grant of special leave and passing of the interim order by the Supreme Court, the judgment of the Tribunal was in jeopardy and had not attained finality. The respondent-plaintiff added that applying the doctrine of merger, the period of limitation would begin to run from the date of passing the appellate decree and not from the date of passing of the original decree.

b Overruling *P.K. Kutty case*, and directing the matter to be placed before an appropriate Bench for disposal of the appeals on merits, the three-Judge Bench
Held :

Although by reason of Section 46-A of the Railways Act the judgment of the Tribunal might be final but by reason thereof the jurisdiction of the Supreme Court to exercise its power under Article 136 was not and could not have been excluded. (Para 13)

c Once special leave is granted under Article 136 and the appeal is admitted, the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy. (Para 14)

d Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the court of appeal. (Para 15)

e The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by the Supreme Court. The respondent herein filed a writ petition which was not entertained on the ground of availability of the remedy of suit. The respondents were, thus, also entitled to get the period during which the writ petition was pending, excluded for computing the period of limitation. Therefore, the civil suit was filed within the limitation period. (Para 16)

The trial Judge as also the High Court have recorded a concurrent opinion that the respondents were entitled to the benefit of Sections 14 and 15 of the Limitation Act, 1963. There is no reason to take a different view. (Para 18)

f As regards the applicability of Article 58 or 113, the present case was not one where the respondent sought a declaration of its rights. The declaration sought for by it as regards unreasonableness in the levy of freight was granted by the Tribunal. (Para 20)

g Moreover, the distinction between Article 58 and Article 113 is apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose. The fact that the suit was not filed by the plaintiff-respondent claiming existence of any legal right in itself is not disputed. The suit for recovery of money was based on the declaration made by the Tribunal to the effect that the amount of freight charged by the appellant was unreasonable. Therefore, a cause of action arose only when its right was finally determined by the Supreme Court and not prior thereto. The Supreme

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Court not only granted special leave but also considered the decision of the Tribunal on merit. (Paras 21 and 22)

Despite the rigours of Section 3 of the Limitation Act, 1963, the provisions thereof are required to be construed in a broad-based and liberal manner. (Para 26) a

In *P.K. Kutty case*, (1996) 2 SCC 496 and *Mohinder Singh Jagdev case*, (1996) 6 SCC 229 no argument was advanced as regards the applicability of doctrine of merger. The ratio laid down by the Constitution Benches of the Supreme Court had also not been brought to the Court's notice. In the said cases, the Supreme Court failed to take into consideration that once an appeal is filed before the Supreme Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once the Supreme Court grants special leave and decides to hear the matter on merit. (Paras 40 and 41) b

Even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, it is held that the decision of the Constitution Bench in *S.S. Rathore*, (1989) 4 SCC 582 was to be followed in the instant case. (Para 42) c

Therefore, it is held that *P.K. Kutty* does not lay down the law correctly and is overruled accordingly. (Para 44) d

P.K. Kutty Anuja Raja v. State of Kerala, (1996) 2 SCC 496, overruled

S.S. Rathore v. State of M.P., (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913;

Kunhayammed v. State of Kerala, (2000) 6 SCC 359, followed

Secy., Ministry of Works & Housing v. Mohinder Singh Jagdev, (1996) 6 SCC 229, overruled on this point and also distinguished on facts e

Juscurn Boid v. Pirthichand Lal, (1918-19) 46 IA 52 : AIR 1918 PC 151, limited

Maqbul Ahmad v. Onkar Pratap Narain Singh, AIR 1935 PC 85 : 62 IA 16, distinguished

Madan Gopal Rungta v. Secy. to the Govt. of Orissa, AIR 1962 SC 1513 : 1962 Supp (3)

SCR 906; *Collector of Customs v. East India Commercial Co. Ltd.*, AIR 1963 SC 1124 :

(1963) 2 SCR 563; *Somnath Sahu v. State of Orissa*, (1969) 3 SCC 384; *Mohd.*

Quaramuddin v. State of A.P., (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27

ATC 814; *Raja Mechanical Co. (P) Ltd. v. CCE*, (2002) 4 AD (Del) 621; *STO v.* f

Kanhaiya Lal Makund Lal Saraf, AIR 1959 SC 135, referred to

Sita Ram Goel v. Municipal Board, Kanpur, AIR 1958 SC 1036 : 1959 SCR 1148; *State of*

U.P. v. Mohd. Nooh, AIR 1958 SC 86 : 1958 SCR 595, held, not good law

Corpus Juris Secundum, Vol. 57, pp. 1067-68, referred to

Suggested Case Finder Search Text (inter alia) :

limitation near (start* or commence*) g

H-M/AETZ/29613/C

Advocates who appeared in this case :

P.P. Malhotra, Senior Advocate (S.A. Madoo, S. Wasim A. Qadri, S.N. Terdal and Arvind Kr. Sharma, Advocates, with him) for the Appellants;

Harish N. Salve and Kailash Vasdev, Senior Advocates (Prateek Kumar, Ms Gayatri Goswami and Ms V.D. Khanna, Advocates, with them) for the Respondents. h

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| a | 1. (2002) 4 AD (Del) 621, <i>Raja Mechanical Co. (P) Ltd. v. CCE</i> 756a |
| | 2. (2000) 6 SCC 359, <i>Kunhayammed v. State of Kerala</i> 753d-e, 755a-b, 757b |
| | 3. (1996) 6 SCC 229, <i>Secy., Ministry of Works & Housing v. Mohinder Singh Jagdev</i> 753b, 758e-f, 759a, 759c-d |
| | 4. (1996) 2 SCC 496, <i>P.K. Kutty Anuja Raja v. State of Kerala</i> 751d-e, 753b, 757g-h, 758a-b, 759a, 759d |
| | 5. (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27 ATC 814, <i>Mohd. Quaramuddin v. State of A.P.</i> 757b |
| b | 6. (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913, <i>S.S. Rathore v. State of M.P.</i> 756e-f, 757b, 759c-d |
| | 7. (1969) 3 SCC 384, <i>Somnath Sahu v. State of Orissa</i> 756f |
| | 8. AIR 1963 SC 1124 : (1963) 2 SCR 563, <i>Collector of Customs v. East India Commercial Co. Ltd.</i> 756f |
| c | 9. AIR 1962 SC 1513 : 1962 Supp (3) SCR 906, <i>Madan Gopal Rungta v. Secy. to the Govt. of Orissa</i> 756e-f |
| | 10. AIR 1959 SC 135, <i>STO v. Kanhaiya Lal Makund Lal Saraf</i> 757h, 758c-d |
| | 11. AIR 1958 SC 1036 : 1959 SCR 1148, <i>Sita Ram Goel v. Municipal Board, Kanpur</i> 756a-b |
| | 12. AIR 1958 SC 86 : 1958 SCR 595, <i>State of U.P. v. Mohd. Nooh</i> 756d, 756e-f, 756f-g |
| | 13. AIR 1935 PC 85 : 62 IA 16, <i>Maqbul Ahmad v. Onkar Pratap Narain Singh</i> 753b, 757d-e |
| d | 14. (1918-19) 46 IA 52 : AIR 1918 PC 151, <i>Juscurn Boid v. Pirthichand Lal</i> 753b, 757b-c |

The Judgment of the Court was delivered by

S.B. SINHA, J.— Doubting the correctness of a two-Judge Bench decision of this Court in *P.K. Kutty Anuja Raja v. State of Kerala*¹ a Division Bench of this Court has referred the matter to a three-Judge Bench.

e **2.** The factual matrix required to be taken note of is as under:

The respondents herein were transporting their goods through the branch line to the appellants from Alnavar to Dandeli wherefor the common rate fixed in respect of all commodities on the basis of weight was being levied as freight. However, a revision was made in the rate of freight w.e.f. 1-2-1964.

f **3.** Aggrieved thereby and dissatisfied therewith, the respondents herein filed a complaint petition before the Railway Rates Tribunal (hereinafter referred to as “the Tribunal”) challenging the same as unjust, unreasonable and discriminatory as the standard telescopic class rates on three times of inflated distance were adopted for levy of freight on goods traffic. The Tribunal by a judgment dated 18-4-1966 declared the said levy as unreasonable whereagainst the appellants herein filed an application for grant of special leave before this Court.

g **4.** While granting special leave, this Court also passed a limited interim order which is in the following terms:

h “The Railways may charge the usual rates without inflation of the distance, and the respondent will give a bank guarantee to the satisfaction of the Registrar of this Court for rupees two lakhs to be renewed each

1 (1996) 2 SCC 496 : JT (1996) 2 SC 167

year until the disposal of the appeal. One month's time allowed for furnishing the bank guarantee. The stay petition is dismissed subject to the above." a

5. Eventually, however, the said special leave petition was dismissed by this Court on 14-10-1970[†].

6. A writ petition was filed by the respondent herein on 5-1-1972 which was marked as WP No. 210 of 1972, and the same was disposed of by the High Court on 29-10-1973 observing:

"All these matters, in my opinion, cannot be properly adjudicated upon in a writ petition filed under Article 226 of the Constitution. If so advised the petitioner could avail of the ordinary remedy of filing a suit for appropriate relief. If such a suit is filed, it will be open to the respondents to raise all available contentions in defence just as it is open to the petitioner to raise all available contentions in support of its claim. Having considered all relevant aspects, I am of the opinion, that this is a case where I should decline to exercise my discretion under Article 226 of the Constitution. b

Subject to the aforesaid observations, this writ petition is dismissed." c

7. Two suits thereafter were filed by the respondents on 12-12-1973 and 18-4-1974 which were renumbered later on as OSs Nos. 38 and 39 of 1982. d

8. A contention that the said suits were barred by limitation was raised by the appellants herein stating that the cause of action for filing the same arose immediately after the judgment was passed by "the Tribunal" on 18-4-1966 and, thus, in terms of Article 58 of the Limitation Act, 1963, they were required to be filed within a period of three years from the said date, as despite the fact that the special leave petition was preferred thereagainst, no stay had been granted by this Court and, thus, the period, during which the matter was pending before this Court, would not be excluded in computing the period of limitation. Having regard to the plea raised by the plaintiff-respondent in the aforementioned suits as regards the applicability of Sections 14 and 15 of the Limitation Act, 1963, the trial court held that the suits had been filed within the stipulated period. The High Court in appeal also affirmed the said view. e

9. Mr P.P. Malhotra, learned Senior Counsel appearing on behalf of the appellant, at the outset drew our attention to the fact that the Union of India has already complied with the direction of "the Tribunal" by refunding the excess freight charged from the respondent for the period 18-4-1966 to 25-9-1966. The learned counsel, however, would contend that the suit for refund of excess amount of the freight for the disputed periods (a) 24-6-1963 to 1-2-1964, and (b) 1-2-1964 to 18-4-1966 was barred by limitation in terms of Article 58 of the Limitation Act, 1963, as the cause of action for filing the suit had arisen on the date on which such declaration was made by "the Tribunal". f

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[†] *Union of India v. West Coast Paper Mills Ltd.*, (1970) 3 SCC 606 h

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10. Mr Malhotra would further contend that in absence of an order staying the operation of the judgment, it became enforceable and, thus, the plaintiff-respondent was required to file the suit within the period of limitation specified therefor. Furthermore, the learned counsel would urge that in terms of Section 46-A of the Indian Railways Act, the judgment of the Tribunal being final, the starting period of limitation for filing the suit would be three years from the said date. Strong reliance in this behalf has been placed on *Juscurn Boid v. Pirthichand Lal*², *P.K. Kutty*¹, *Maqbul Ahmad v. Onkar Pratap Narain Singh*³ and *Secy., Ministry of Works & Housing v. Mohinder Singh Jagdev*⁴.

11. Mr Harish N. Salve, learned Senior Counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the fact situation obtaining in this case Article 113 of the Limitation Act shall apply and not Article 58 thereof. The learned counsel would urge that as admittedly this Court granted special leave to appeal in favour of the appellants and passed a limited interim order, the judgment of the Tribunal was in jeopardy and, thus, cannot be said to have attained finality. Furthermore, the learned counsel would submit that when the doctrine of merger applies, the period of limitation would begin to run from the date of passing the appellate decree and not from the date of passing of the original decree. In support of the said contention, reliance has been placed on a decision of this Court in *Kunhayammed v. State of Kerala*⁵.

12. The plaintiff in this case has filed a suit for refund of the excess amount collected by the defendant Railways for the period 24-6-1963 to 1-2-1964 and 1-2-1964 to 18-4-1966 with interest accrued thereupon. It is not in dispute that in terms of the provisions of the Indian Railways Act, as thence existing “the Tribunal” was only entitled to make a declaration to the effect that the freight charged was unreasonable or excessive. It did not have any jurisdiction to execute its own order.

13. It may be true that by reason of Section 46-A of the Indian Railways Act the judgment of the Tribunal was final but by reason thereof the jurisdiction of this Court to exercise its power under Article 136 of the Constitution of India was not and could not have been excluded.

14. Article 136 of the Constitution of India confers a special power upon this Court in terms whereof an appeal shall lie against any order passed by a court or tribunal. Once a special leave is granted and the appeal is admitted, the correctness or otherwise of the judgment of the Tribunal becomes wide open. In such an appeal, the court is entitled to go into both questions of fact as well as law. In such an event the correctness of the judgment is in jeopardy.

² (1918-19) 46 IA 52 : AIR 1918 PC 151

³ AIR 1935 PC 85 : 62 IA 16

⁴ (1996) 6 SCC 229

⁵ (2000) 6 SCC 359

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15. Even in relation to a civil dispute, an appeal is considered to be a continuation of the suit and a decree becomes executable only when the same is finally disposed of by the court of appeal. a

16. The starting point of limitation for filing a suit for the purpose of recovery of the excess amount of freight illegally realised would, thus, begin from the date of the order passed by this Court. It is also not in dispute that the respondent herein filed a writ petition which was not entertained on the ground stated hereinbefore. The respondents were, thus, also entitled to get the period during which the writ petition was pending, excluded for computing the period of limitation. In that view of the matter, the civil suit was filed within the prescribed period of limitation. b

17. The trial Judge as also the High Court have recorded a concurrent opinion that the respondents were entitled to the benefits of Sections 14 and 15 of the Limitation Act, 1963. We have no reason to take a different view. c

18. It is beyond any cavil that in the event the respondent was held to have been prosecuting its remedy bona fide before an appropriate forum, it would be entitled to get the period in question excluded from computation of the period of limitation. c

19. Articles 58 and 113 of the Limitation Act read thus:

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>	
58.	To obtain any other declaration. *	Three years *	When the right to sue first accrues. *	d
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.	e

20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when “the right to sue first accrues”, in terms of Article 113 thereof, the period of limitation would be counted from the date “when the right to sue accrues”. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose. f
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22. The fact that the suit was not filed by the plaintiff-respondent claiming existence of any legal right in itself is not disputed. The suit for recovery of money was based on the declaration made by “the Tribunal” to the effect that the amount of freight charged by the appellant was h

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a unreasonable. It will bear repetition to state that a plaintiff filed a suit for refund and a cause of action therefor arose only when its right was finally determined by this Court and not prior thereto. This Court not only granted special leave but also considered the decision of the Tribunal on merit.

23. In *Kunhayammed*⁵ this Court held: (SCC p. 370, para 12)

b “12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.”

d It was further observed: (SCC p. 383, paras 41-42)

e “41. Once a special leave petition has been granted, the doors for the exercise of appellate jurisdiction of this Court have been let open. The order impugned before the Supreme Court becomes an order appealed against. Any order passed thereafter would be an appellate order and would attract the applicability of doctrine of merger. It would not make a difference whether the order is one of reversal or of modification or of dismissal affirming the order appealed against. It would also not make any difference if the order is a speaking or non-speaking one. Whenever this Court has felt inclined to apply its mind to the merits of the order put in issue before it though it may be inclined to affirm the same, it is customary with this Court to grant leave to appeal and thereafter dismiss the appeal itself (and not merely the petition for special leave) though at times the orders granting leave to appeal and dismissing the appeal are contained in the same order and at times the orders are quite brief. Nevertheless, the order shows the exercise of appellate jurisdiction and therein the merits of the order impugned having been subjected to judicial scrutiny of this Court.

g 42. ‘To merge’ means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve

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a loss of identity and individuality. (See *Corpus Juris Secundum*, Vol. 57, pp. 1067-68.)”

[See also *Raja Mechanical Co. (P) Ltd. v. CCE*⁶.]

24. The question as regards applicability of merger with reference to the provisions for departmental appeal and revision had first been considered by this Court in *Sita Ram Goel v. Municipal Board, Kanpur*⁷ stating: (AIR p. 1040, para 19)

“19. The initial difficulty in the way of the appellant, however, is that departmental enquiries even though they culminate in decisions on appeals or revision cannot be equated with proceedings before the regular courts of law.”

25. However, the said view was later on not accepted to be correct.

26. Despite the rigours of Section 3 of the Limitation Act, 1963, the provisions thereof are required to be construed in a broad-based and liberal manner. We need not refer to the decisions of this Court in the matter of condoning delay in filing appeal or application in exercise of its power under Section 5 of the Limitation Act.

27. In *State of U.P. v. Mohd. Nooh*⁸ Vivian Bose, J. held that justice should be done in a common-sense point of view stating: (AIR pp. 95-96, para 17)

“17. I see no reason why any narrow or ultra-technical restrictions should be placed on them. Justice should, in my opinion, be administered in our courts in a common-sense liberal way and be broad-based on human values rather than on narrow and restricted considerations hedged round with hair-splitting technicalities.”

28. However, in that case also a distinction was sought to be made between a judgment of a “court” and “tribunal”.

29. In *S.S. Rathore v. State of M.P.*⁹ noticing the earlier Constitution Benches’ decisions of this Court in *Mohd. Nooh*⁸, *Madan Gopal Rungta v. Secy. to the Govt. of Orissa*¹⁰, *Collector of Customs v. East India Commercial Co. Ltd.*¹¹ as well as the three-Judge Bench of this Court in *Somnath Sahu v. State of Orissa*¹² this Court observed: (SCC p. 589, para 14)

“14. The distinction adopted in *Mohd. Nooh case*⁸ between a court and a tribunal being the appellate or the revisional authority is one without any legal justification. Powers of adjudication ordinarily vested in courts are being exercised under the law by tribunals and other constituted authorities. In fact, in respect of many disputes the

6 (2002) 4 AD (Del) 621

7 AIR 1958 SC 1036 : 1959 SCR 1148

8 AIR 1958 SC 86 : 1958 SCR 595

9 (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913

10 AIR 1962 SC 1513 : 1962 Supp (3) SCR 906

11 AIR 1963 SC 1124 : (1963) 2 SCR 563

12 (1969) 3 SCC 384

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a jurisdiction of the court is now barred and there is a vesting of jurisdiction in tribunals and authorities. That being the position, we see no justification for the distinction between courts and tribunals in regard to the principle of merger. On the authority of the precedents indicated, it must be held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the appellant's appeal was dismissed on 31-8-1966."

b **30.** *Rathore case*⁹ was followed in *Mohd. Quaramuddin v. State of A.P.*¹³ and noticed in *Kunhayammed*⁵.

31. We may now, keeping in view the law laid down by this Court, as noticed hereinbefore, consider the decisions relied upon by Mr Malhotra.

c **32.** In *Juscurn Boid*² the question which arose for consideration was as to in a suit for recovery of the purchase money paid for sale of a *patni taluk* under Bengal Regulation 8 of 1819, which had been set aside, what would be the date when cause of action therefor can be said to have arisen?

d **33.** In that case several suits were filed. The sale was reversed in its entirety in the first suit. Stay was not granted in the other suits. In the peculiar fact situation obtaining therein it was held that under the Indian law and procedure when an original decree is not questioned by presentation of an appeal nor is its operation interrupted, where the decree on appeal is one of dismissal, the running of the period of limitation did not stop.

e **34.** In *Maqbul Ahmad*³ the question which arose for consideration was as to whether subsequent to the passing of a preliminary decree in the mortgage suit, an application to obtain execution under the preliminary decree can be dismissed. In that case a preliminary mortgage decree was obtained on 7-5-1917 which was amended in some respects on 22-5-1917. Some of the mortgagors who were interested in different villages comprised in the mortgage, appealed to the High Court against the preliminary decree. Two such appeals were filed. One appeal succeeded while the other failed. The decrees of the High Court disposing of those appeals were made on 7-6-1920 whereafter the decree-holder proceeded to seek execution under the preliminary decree. In the aforementioned situation, it was held: (AIR p. 87)

f "It is impossible to say, apart from any other objection, that the application to obtain execution under the preliminary decree was an application for the same relief as the application to the Court for a final mortgage decree for sale in the suit. That being so, it is not permissible, on the basis of Section 14 in computing the period of limitation prescribed, to exclude that particular period."

g **35.** The question which falls for consideration in this case did not arise therein.

36. Before we advert to *P.K. Kutty*¹ we may notice another decision of this Court in *STO v. Kanhaiya Lal Makund Lal Saraf*¹⁴. In that case an order

h ¹³ (1994) 5 SCC 118 : 1994 SCC (L&S) 1039 : (1994) 27 ATC 814
¹⁴ AIR 1959 SC 135

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of assessment was in question which came up before this Court. The question which arose for consideration therein was as to whether Section 72 of the Indian Contract Act had any application. This Court held that cause of action for filing the suit for recovery would arise from the date when such payment of tax made under a mistake of law became known to the party. a

37. In *P.K. Kutty*¹ an order of assessment under the Agricultural Income Tax was set aside by the High Court by a judgment dated 1-1-1968. A civil suit was filed in the year 1974. The suit was held to be barred by limitation. A contention was raised therein that the appellant had discovered the mistake on 5-10-1971 when the Court dismissed the appeal filed by the State against the order passed by the High Court dated 1-1-1968. This Court negated the said plea stating: (SCC p. 497, para 3) b

“3. ... We are unable to agree with the learned counsel. It is not in dispute that at his behest the assessment was quashed by the High Court in the aforesaid OP on 1-1-1968. Thereby the limitation started running from that date. Once the limitation starts running, it runs its full course until the running of the limitation is interdicted by an order of the Court.” c

38. Distinguishing *Kanhaiya Lal*¹⁴, it was observed: (SCC pp. 497-98, para 5)

“5. ... We do not have that fact situation in this case. The appellant is a party to the proceedings and at his instance the assessment of agricultural income tax was quashed as referred to hereinbefore and having had the assessment quashed the cause of action had arisen to him to lay the suit for refund unless it is refunded by the State. The knowledge of the mistake of law cannot be countenanced for extended time till the appeal was disposed of unless, as stated earlier, the operation of the judgment of the High Court in the previous proceedings were stayed by this Court.” d e

39. In *Mohinder Singh Jagdev*⁴ also this Court held: (SCC p. 232, para 7)

“7. The crucial question is whether the suit is barred by limitation? Section 3 of the Limitation Act, 1963 (for short, ‘the Act’) postulates that the limitation can be pleaded. If any proceedings have been laid after the expiry of the period of limitation, the court is bound to take note thereof and grant appropriate relief and has to dismiss the suit, if it is barred by limitation. In this case, the relief in the plaint, as stated earlier, is one of declaration. The declaration is clearly governed by Article 58 of the Schedule to the Act which envisages that to obtain ‘any other’ declaration the limitation of three years begins to run from the period when the right to sue ‘first accrues’. The right to sue had first accrued to the respondent on 10-9-1957 when the respondent’s services came to be terminated. Once limitation starts running, until its running of limitation has been stopped by an order of the competent civil court or any other competent authority, it cannot stop. On expiry of three years from the date of dismissal of the respondent from service, the respondent had lost his right to sue for the above declaration.” f g h

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40. Unfortunately in *P.K. Kutty*¹ and *Mohinder Singh Jagdev*⁴ no argument was advanced as regards the applicability of doctrine of merger.
a The ratio laid down by the Constitution Benches of this Court had also not been brought to the Court's notice.

41. In the aforementioned cases, this Court failed to take into consideration that once an appeal is filed before this Court and the same is entertained, the judgment of the High Court or the Tribunal is in jeopardy. The subject-matter of the lis unless determined by the last court, cannot be said to have attained finality. Grant of stay of operation of the judgment may not be of much relevance once this Court grants special leave and decides to hear the matter on merit.
b

42. It has not been and could not be contended that even under the ordinary civil law the judgment of the appellate court alone can be put to execution. Having regard to the doctrine of merger as also the principle that an appeal is in continuation of suit, we are of the opinion that the decision of the Constitution Bench in *S.S. Rathore*⁹ was to be followed in the instant case.
c

43. The facts obtaining in *Mohinder Singh Jagdev*⁴ being totally different, the same cannot be said to have any application in the facts obtaining in the present case.
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44. We, therefore, are of the opinion that *P.K. Kutty*¹ does not lay down the law correctly and is overruled accordingly.

45. The matter may now be placed before an appropriate Bench for disposal of the appeals on merits.

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(2004) 2 Supreme Court Cases 759

(BEFORE V.N. KHARE, C.J. AND S.B. SINHA AND G.P. MATHUR, JJ.)

RAM PHAL KUNDU . . . Appellant;

Versus

f KAMAL SHARMA . . . Respondent.

Civil Appeal No. 4262 of 2003[†], decided on January 23, 2004

A. Election — Nomination — Two candidates claiming to have been set up by the same political party — Whether candidature of one of them was validly rescinded and the other candidate was substituted by the party and as such nomination of the other candidate was rightly accepted — Held, must be determined strictly in accordance with paras 13 and 13-A of Election Symbols (Reservation and Allotment) Order, 1968 — Any extrinsic evidence (oral or documentary) adduced subsequent to the last date of filing nomination papers, held, cannot be accepted, except where it is pleaded that signature of the authorised person in Form B showing rescission and substitution had been obtained under threat or by fraud — Election
g

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[†] From the Judgment and Order dated 8-5-2003 of the Punjab and Haryana High Court in EP No. 15 of 2000 : (2003) 3 Recent Civil Rulings 478

notices were issued in due compliance with the requirements of Rule 4 of Central Board of Direct Taxes (Regulation of Transaction of Business) Rules, 1964, we do not find it necessary to consider the provisions of this Act for the purpose of these appeals.

9. The appeals are accordingly allowed and the judgment and orders appealed from are set aside. The High Court will now proceed to dispose of the writ petitions in accordance with law on the other grounds raised therein. The appellants will be entitled to their costs in this Court — one hearing fee.

(1975) 4 Supreme Court Cases 22

(Before Y. V. Chandrachud, R. S. Sarkaria and A. C. Gupta, JJ.)

THE COMMISSIONER OF SALES TAX,

U. P., LUCKNOW

Appellant ;

Versus

M/s. PARSON TOOLS AND PLANTS, KANPUR .. Respondent.

Civil Appeals Nos. 1458-1459 of 1970[†], decided on February 27, 1975

Sales Tax — Revision — Limitation — Whether on terms or in principle Section 14(2) of the Limitation Act, 1963, can be invoked for excluding the time bona fide spent in prosecuting an application under Rule 68(6) of the U. P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, from computation of the period of limitation for filing a revision under the Act — U. P. Sales Tax Act, 1948 — Section 10(3-B) — Limitation Act, 1963, Section 14(2) — Scope of — Nature of proceedings under Sales Tax Act — Authorities under Sales Tax Act if ‘Courts’

The respondents were absent when the appeals against the assessment orders came for hearing. They were therefore dismissed under Rule 68(5). Against that the respondent on the same day filed applications under Rule 68(6) for setting aside the dismissal. During the pendency of these applications, Rule 68(5) was declared ultra vires by the High Court. So the applications under Rule 68(6) were dismissed outright. The respondent's revision petitions before the revisional authority were time-barred, but applying Sections 5 and 14 of the Limitation Act, the time spent in pursuing the application under Rule 68(6) was excluded. The High Court upheld the applicability of Section 14(2). Hence the appeal by the department.

Held :

Section 14(2) of the Limitation Act will apply only if :

- (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) the prior proceedings had been prosecuted with due diligence and in good faith ;
- (3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature ;
- (4) both the proceedings are proceedings in a Court. (Para 6)

Now proceedings under the Sales Tax Act could be deemed as civil proceedings. But the authorities, irrespective of whether they exercise original, appellate or revisional jurisdiction under the Sales Tax Act are not ‘Courts’ within

[†]Appeal by Special Leave from the Judgment and Order, dated January 1, 1970 of Allahabad High Court in S. T. R. No. 344 and S. T. R. No. 347 of 1967 [(1971) 27 STC 73].

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the contemplation of Section 14(2) of the Limitation Act. They are merely administrative tribunals and “not courts”. Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals. (Paras 7 & 9)

Jagannath Prasad v. State of U. P., (1963) 2 SCR 850 : AIR 1963 SC 416 : 14 STC 536 and
Smt. Ujjam Bai v. State of U. P., (1963) 1 SCR 778 : AIR 1962 SC 1621, *followed*.

Even on grounds of justice, equity and good conscience Section 14(2) is not applicable because definite indications are available in the scheme and language of the Sales Tax Act excluding such application in principle or by analogy. (Paras 10 to 15)

As regards Section 10(3B) of the Act three features may be noted: The first is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. The second is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The third is that the revising authority has no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. So the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales Tax Act. (Paras 12 & 13)

Hence the provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales Tax Act, cannot be imported into it by analogy. An enactment being the will of the Legislature, the paramount rule of interpretation of legislative intent will apply. (Para 15)

If the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act. (Para 22)

Therefore the object, the scheme and language of Section 10 of the Sales Tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either in terms, or in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales Tax Act. (Para 24)

Ramdutt Ramkissen Dass v. F. D. Sasson & Co., AIR 1929 PC 103 : 56 IA 128 : 115 IC 713,
distinguished.

Purshottam Dass Hassaram v Impex (I) Ltd., AIR 1954 Bom 309, *approved*.

C. S. T. v. Parson Tools & Plants, (1971) 27 STC 73, *reversed*.

Interpretation of Statutes — Legislative intent — Rule of literal interpretation — Taxing statutes — Applicability to

Held :

If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of Legislature, the primary function of a court of law being jus dicere and not jus dare. (Para 16)

The will of the Legislature is the supreme law of the land, and demands perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the Judges; always for the purpose of giving effect to the will of the Legislature; or in other words, to the will of the law. (Para 15)

Therefore, where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute. (Para 23)

Prem Nath L. Ganesh v. Prem Nath L. Ram Nath, AIR 1963 Punj 62, *approved*.

Pearl Berg v. Varty, (1972) 2 All ER 6, *relied on*.

Appeals allowed

M/2421/ST

Advocates who appeared in this case:

M. D. Karkhanis, Senior Advocate (*O. P. Rana*, Advocate, with him), for the Appellant;

Nemo, for the Respondent.

The Judgment of the Court was delivered by

SARKARIA, J.—The common question of law for determination in these appeals by special leave is: Whether Section 14(2) of the Limitation Act, in terms, or, in principle, can be invoked for excluding the time spent in prosecuting an application under Rule 68(6) of the U. P. Sales Tax Rules for setting aside the order of dismissal of appeal in default, under the U. P. Sales Tax Act, 1948 (for short, the Sales-tax Act) from computation of the period of limitation for filing a revision under that Act?

2. It arises out of these circumstances:

2A. The respondent, M/s. Parson Tools and Plants (hereinafter referred to as the assessee) carries on business at Kanpur. The Sales-tax Officer assessed tax for the assessment years, 1958-1959 and 1959-60, on the assessee by two separate orders. The assessee filed appeals against those orders before the appellate authority. On May 10, 1963, when the appeals came up for hearing, the assessee was absent. The appeals were, therefore, dismissed in default by virtue of Rule 68(5) of the U. P. Sales-tax Rules. Sub-rule (6) of Rule 68 provided for setting aside such dismissal and re-admission of the appeal. On the same day (May 10, 1963), the assessee made two applications in accordance with sub-rule (6) for setting aside the dismissal. During the pendency of those applications, sub-rule (5) of Rule 68 was declared ultra vires the rule-making authority by Manchanda, J. of the High Court who further held that the appellate-authority could not dismiss an appeal in default but was bound to decide it on merits even though the appellant be absent. When these applications under Rule 68(6) came up for hearing, on October 20, 1964, the appellate authority dismissed them outright in view of the ruling of Manchanda, J. Against the order of dismissal of his appeals, the assessee on December 16, 1964 filed two revision petitions under Section 10 of the Sales-tax Act, before the revisional authority [Judge (Revisions) Sales-tax]. These revision petitions having been filed more than 18 months after the dismissal of the appeals, — which was the maximum period of limitation prescribed by sub-section (3) of Section 10 — were prima facie time-barred. They were however, accompanied by two applications in which the assessee prayed for exclusion of the time spent by him in prosecuting the abortive proceedings under Rule 68(6) for setting aside the dismissal of his appeals. The revisional authority found that the assessee had been pursuing his remedy under Rule 68(6) with

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due diligence and in good faith. It therefore excluded the time spent in those proceedings from computation of limitation by applying Section 14, Limitation Act and in consequence, held that the revision petitions were within time. On the motion of the Commissioner of Sales-tax, the revisional authority made two references under Section 11(1) of the Sales-tax Act to the High Court for answering the following question of law :

Whether under the circumstances of the case, Section 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration applications remained pending as being prosecuted bona fide.

3. The references were heard by a Full Bench of three learned Judges, each of whom wrote a separate judgment. Dwivedi, J. with whom Singh, J. agreed after reframing the question held

that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default can be excluded from computing the period of limitation for filing the revision by the application of the principle underlying Section 14(2), Limitation Act.

4. Hari Swarup, J. was of the opinion :

The Judge (Revisions) Sales-tax while hearing the revisions under Section 10 of the U. P. Sales Tax Act does not act as a Court but only as a revenue tribunal and hence the provisions of the Indian Limitation Act cannot apply to proceedings before him. If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act will apply to proceedings before him. The learned Judge was further of the view that the principle of Section 14(2) also, could not be invoked to extend the time beyond the maximum fixed by the Legislature in sub-section (3B) of Section 10 of the Sales-tax Act.

5. Sub-section (2) of Section 14, Limitation Act, runs thus :

In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another **civil proceeding**, whether in a Court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. (emphasis added)

6. It will be seen that this sub-section will apply only if :

- (1) both the prior and subsequent proceedings are civil proceedings prosecuted by the same party ;
- (2) the prior proceedings had been prosecuted with due diligence and in good faith ;
- (3) the failure of the prior proceedings was due to a defect of jurisdiction or other cause of a like nature ;
- (4) both the proceedings are proceedings in a Court.

7. Mr. Karkhanis, learned Counsel appearing for the appellant does not dispute the view taken by the High Court that the proceedings in question under the Sales-tax Act could be deemed as civil proceedings. Learned Counsel, however, contends that the authorities, irrespective of whether they exercise original, appellate or revisional jurisdiction under the Sales-tax Act are not 'Courts' within the contemplation of Section 14(2) of the Limitation Act. It is pointed out that this question stands concluded by this Court's decision in *Jagannath Prasad v. State of U. P.*¹

1. (1963) 2 SCR 850 : AIR 1963 SC 416 : 14 STC 536.

8. Mr. Karkhanis is right that this matter is no longer *res integra*. In *Shrimati Ujjam Bai v. State of U. P.*² Hidayatullah, J. (as he then was) speaking for the Court, observed :

The taxing authorities are instrumentalities of the State. They are not a part of the Legislature, nor are they a part of the Judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of "State" in Article 12.

9. The above observations were quoted with approval by this Court in *Jagannath Prasad's case* (supra), and it was held that a Sales-tax Officer under U. P. Sales-tax Act, 1948 was not a *Court* within the meaning of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in *Jagannath Prasad's case*, it seems, was not brought to the notice of the High Court. In view of these pronouncements of this Court, there is no room for argument that the appellate authority and the Judge (Revisions) Sales-tax exercising jurisdiction under the Sales-tax Act, are "courts". They are merely administrative tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals.

10. Further question that remains is : Is the general *principle* underlying Section 14(2) applicable on grounds of justice, equity and good conscience for excluding the time spent in prosecuting the abortive applications under Rule 68(6) before the appellate authority, for computing limitation for the purpose of revision applications. Mr. Karkhanis maintains that the answer to this question, also, must be in the negative because definite indications are available in the scheme and language of the Sales-tax Act, which exclude the application of Section 14(2), Limitation Act, even in principle or by analogy. Learned Counsel further submits that the *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass v. F. D. Sasson & Co.*³ relied upon by the majority judgment of the High Court is not applicable for computing limitation prescribed under the Sales-tax Act. Reference in this connection has been made to *Purshottam Dass Hassaram v. Impex (India) Ltd.*⁴, wherein a Division Bench of the Bombay High Court explained the rule of decision in *Ramdutt's case* (supra) and found it to be inapplicable for the purpose of computing limitation for applications under the Arbitration Act, 1940.

11. The material part of Section 10 runs thus :

(3)(i) The Revising Authority . . . may, for the purpose of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion call for and examine, either on its own motion or on the application of the Commissioner of Sales-tax or the person aggrieved, the record of such order and pass such order as it may think fit.

* * * * *

(3A)

2. (1963) 1 SCR 778 : AIR 1962 SC 1621.

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3. AIR 1929 PC 103; 56 IA 128; 115 IC

4. AIR 1954 Bom 309.

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- (3B) The application under sub-section (3) shall be made within one year from the date of service of the order complained of, but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months.

12. Three features of the scheme of the above provision are noteworthy. The *first* is that no limitation has been prescribed for the suo motu exercise of its jurisdiction by the revising authority. The *second* is that the period of one year prescribed as limitation for filing an application for revision by the aggrieved party is unusually long. The *third* is that the revising authority has no discretion to extend this period *beyond* a further period of six months, even on sufficient cause shown. As rightly pointed out in the minority judgment of the High Court, pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation for filing a revision application, but Section 10(3-B) of the Sales-tax Act gives no jurisdiction to the revising authority to extend the limitation, even in such a case, for a further period of more than six months.

13. The three stark features of the scheme and language of the above provision, unmistakably show that the Legislature has deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section (3-B) of Section 10 of the Sales-tax Act. Delay in disposal of revenue matters adversely affects the steady inflow of revenues and the financial stability of the State. Section 10 is therefore designed to ensure speedy and final determination of fiscal matters within a reasonably certain time-schedule.

14. It cannot be said that by excluding the unrestricted application of the principles of Sections 5 and 14 of the Limitation Act, the Legislature has made the provisions of Section 10 unduly oppressive. In most cases, the discretion to extend limitation, on sufficient cause being shown for a further period of six months only, given by sub-section (3-B) would be enough to afford relief. Cases are no doubt conceivable where an aggrieved party, despite sufficient cause, is unable to make an application for revision within this maximum period of 18 months. Such harsh cases would be rare. Even in such exceptional cases of extreme hardship, the revising authority may, on its own motion, entertain revision and grant relief.

15. Be that as it may, from the scheme and language of Section 10, the intention of the Legislature to exclude the unrestricted application of the principles of Sections 5 and 10 of the Limitation Act is manifestly clear. These provisions of the Limitation Act which the Legislature did not, after due application of mind, incorporate in the Sales-tax Act, cannot be imported into it by analogy. An enactment being the will of the Legislature, the paramount rule of interpretation, which overrides all others, is that a statute is to be expounded "according to the intent of them that made it". "The will of the Legislature is the supreme law of the land,

and demands perfect obedience”⁵. “Judicial power is never exercised”, said Marshall, C.J. of the United States, “for the purpose of giving effect to the will of the Judges ; always for the purpose of giving effect to the will of the Legislature ; or in other words, to the will of the law”.

16. If the Legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so “would be entrenching upon the preserves of Legislature”⁶, the primary function of a court of law being *jus dicere* and not *jus dare*.

17. In the light of what has been said above, we are of the opinion that the High Court was in error in importing whole hog the principle of Section 14(2) of the Limitation Act into Section 10(3-B) of the Sales-tax Act.

18. The *ratio* of the Privy Council decision in *Ramdutt Ramkissen Dass v. F. D. Sasson & Co.* (supra) relied upon by the High Court is not on speaking terms with the clear language of Section 10(3-B) of the Sales-tax Act. That decision was rendered long before the passage of the Indian Arbitration Act, 1940. It lost its efficacy after the enactment of the Arbitration Act which contained a specific provision in regard to exclusion of time from computation of limitation.

19. The case in point is *Purshottam Dass Hussaram v. Impex (India) Ltd.* (supra). In this Bombay case, the question was, whether the suit was barred by limitation. It was not disputed that Article 115 of the Limitation Act governed the limitation and if no other factor was to be taken into consideration, the suit was filed beyond time. But what was relied upon by the plaintiff for the purpose of saving limitation was the fact that there were certain infructuous arbitration proceedings and if the time taken in prosecuting those proceedings was excluded under Section 14, the suit would be within limitation. It was held that if Section 14 were to be construed strictly, the plaintiff would not be entitled to exclude the period in question.

20. On the authority of *Ramdutt Ramkissen's case* (supra), it was then contended that the time taken in arbitration proceedings should be excluded *on the analogy* of Section 14. This contention was also negatived on the ground that since the decision of the Privy Council, the Legislature had in Section 37(5) of the Arbitration Act, 1940, provided as to what extent the provisions of the Limitation Act would be applicable to the proceedings before the arbitrator. Section 37(5) was as follows :

Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to

5. See *Maxwell on Interpretation of Statutes*, 11th Edn , pp. 1, 2 and 251.

6. At p. 65 in *Prem Nath L. Ganesh v. Prem Nath L. Ram Nath*, AIR 1963 Punj 62, *Per Tek Chand, J.*

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have effect with respect to the difference referred, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Indian Limitation Act, 1908, for the commencement of the proceedings (including arbitration) with respect to the difference referred.

The reasons advanced, the observations made and the rule enunciated by Chagla, C.J., who spoke for the Bench in that case, are apposite and may be extracted with advantage :

... we have now a statutory provision for exclusion of time taken up in arbitration proceedings when a suit is filed, and the question arises of computing the period of limitation with regard to that suit, and the time that has got to be excluded is only that time which is taken up as provided in Section 37(5). There must be an order of the Court setting aside an award or there must be an order of the Court declaring that the arbitration agreement shall cease to have effect, and the period between the commencement of the arbitration and the date of this order is the period that has got to be excluded.

It is therefore no longer open to the Court to rely on Section 14, Limitation Act as applying by analogy to arbitration proceedings. If the Legislature intended that Section 14 should apply and that all the time taken up in arbitration proceedings should be excluded, then there was no reason to enact Section 37(5). The very fact that Section 37(5) has been enacted clearly shows that the whole period referred to in Section 14, Limitation Act is not to be excluded but the limited period indicated in Section 37(5).

* * * * *
It may seem rather curious — and it may also in certain cases result in hardship — as to why the Legislature should not have excluded all time taken up in good faith before an arbitrator just as the time taken up in prosecuting a suit or an appeal in good faith is excluded. But obviously the Legislature did not intend that parties should waste time in infructuous proceedings before arbitrators. The Legislature has clearly indicated that limitation having once begun to run, no time could be excluded merely because parties chose to go before an arbitrator without getting an award or without coming to Court to get the necessary order indicated in Section 37(5).

21. What the learned Chief Justice said about the inapplicability of Section 14, Limitation Act, in the context of Section 37(5) of the Arbitration Act, holds good with added force with reference to Section 10(3-B) of the Sales-tax Act.

22. Thus the principle that emerges is that if the Legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

23. We have said enough and we may say it again that where the Legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver ; more so if the statute is a taxing statute. We will

close the discussion by recalling what Lord Hailsham⁷ has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment.

24. For all the reasons aforesaid, we are of the opinion that the object, the scheme and language of Section 10 of the Sales-tax Act do not permit the invocation of Section 14(2) of the Limitation Act, either in terms, or in principle, for excluding the time spent in prosecuting proceedings for setting aside the dismissal of appeals in default, from computation of the period of limitation prescribed for filing a revision under the Sales-tax Act. Accordingly, we answer the question referred, in the negative.

25. In the result, we set aside the judgment of the High Court and accept these appeals. Since the appeals have been heard ex-parte, there will be no order as to costs.

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(Before A. N. Ray, C.J. and K. K. Mathew and V. R. Krishna Iyer, JJ.)

THE STATE OF TAMIL NADU Appellant ;

Versus

THE CEMENT DISTRIBUTORS (P) LTD.
AND OTHERS Respondents.

Civil Appeal No. 231 of 1970†, decided on March 14, 1975

Sales Tax — Central Sales Tax Act, 1956 — Section 3 — Whether on facts the movement of goods from one State to another was pursuant to any contract of sale

The respondent is a company in Calcutta distributing cement as agent of S. T. C. and acting under the instructions of the Regional Cement Officer, S. T. C., Calcutta. In the disputed transaction an authorisation note was issued with the respondent as supplier by the Regional Cement Officer in Calcutta in favour of Executive Engineer, Howrah Division Construction Board, Calcutta. The name of the factory to supply cement was Dalmiapuram Factory in Tamil Nadu. Delivery was ex-Calcutta jetty docks. So the question was whether the contract of sale itself with the Executive Engineer occasioned movement of goods.

Held :

It is settled that if the movement of goods from one State to another is the result of a covenant or an incident of the contract of sale then the sale is an inter-State sale. (Para 7)

7. At p. 11, *Pearl Berg v. Varty*, (1972) 2 All ER 6.

†From the Judgment and Order, dated August 16, 1968 of the Madras High Court in Writ Petition No. 1394 of 1967.

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a by the detenu to one authority must be placed before all the authorities and all such authorities also should consider and pass orders on those representations, though really not made to any one of them.

27. The impugned judgment and order, therefore, cannot be sustained, which is set aside accordingly.

b 28. However, ordinarily, we would have remitted the matter back to the High Court for consideration on other questions raised in the writ petition by the respondent herein but as the period of detention has long expired, we do not intend to do so. We, therefore, do not wish to express any opinion on the validity or otherwise of the order of detention.

29. This appeal is disposed of with the aforementioned observations. No costs.

c

(2004) 2 Supreme Court Cases 579

(BEFORE S. RAJENDRA BABU, P. VENKATARAMA REDDI
AND H.K. SEMA, JJ.)

N.C. DHOONDIAL . . . Petitioner;

d

Versus

UNION OF INDIA AND OTHERS . . . Respondents.

Writ Petition (C) No. 42 of 2001[†] with TPs (C) Nos. 180, 261, 283, 293, 850 & 877 of 2001 and SLPs (C) Nos. 8220, 11182, 11186 & 14392 of 2001, decided on December 11, 2003

e A. Limitation — Generally — Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations

f B. Protection of Human Rights Act, 1993 — S. 36(2) — Period of limitation of one year prescribed under, for taking up enquiry — Enquiry taken up by National Human Rights Commission (NHRC) after long lapse of such period (nearly 4½ years after the alleged act) — Held, not justified — Bar contained in S. 36(2), held, is a jurisdictional bar — There is no provision in the Act to extend the said period of limitation — Even considering Regn. 8(1)(a) of the procedural Regulations framed by NHRC which implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year, held, there were no extraordinary circumstances in the instant case justifying interference by the Commission after the expiry of one year — National Human Rights Commission (Procedure) Regulations, 1994, Regn. 8(1)(a)

g

Held :

Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. (Para 15)

S.S. Gadgil v. Lal & Co., AIR 1965 SC 171, *relied on*

h

[†] Under Article 32 of the Constitution of India

Section 36(2) of the Act places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. (Para 15) a

There is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(a) implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. The petition filed by the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4½ years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2). b

(Paras 17 and 18) c

C. Protection of Human Rights Act, 1993 — S. 36(2) — Period of limitation of one year prescribed under, for taking up the enquiry — National Human Rights Commission (NHRC) enquiring into the matter after 4½ years of the alleged act of illegal detention by invoking “continuing wrong” theory — Propriety of — Held, Commission erred in holding that every violation of human right is a continuing wrong until and unless due reparation is made — Where the complainant was alleged to have been illegally detained by CBI officials from 25-3-1994 to 3-4-1994 but he was produced before the Special Judge on 3-4-1994 and remanded to police custody in accordance with law, held, the alleged act of illegal detention ceased on 3-4-1994 — Theory of continuing wrong and recurring cause of action could not be invoked in such a case — One-year period for taking up the enquiry came to an end by 3-4-1995 — Hence, complaint filed before NHRC on 19-8-1998 was barred by limitation — Commission exceeded its jurisdiction in entertaining the same (Para 17) d

D. Protection of Human Rights Act, 1993 — Ss. 12, 13, 14 and 36 — Jurisdiction and powers of National Human Rights Commission — Scope of — Held, Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations — Though it has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it, but it should act within the parameters prescribed by the Act and the confines of jurisdiction vested in it — Thus, view expressed by the Commission that mere lapse of period of limitation prescribed under S. 36(2) would not be sufficient to render the violation of human rights immune from the remedy of redressal of the grievance, held, could not be endorsed — Even if the Commission is unable to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies (Para 14) e

E. Protection of Human Rights Act, 1993 — S. 36(2) — Bar of limitation period under — Applicability — Held, bar not applicable where National f

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N.C. DHOUNDIAL v. UOI

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Human Rights Commission proceeds to investigate and inquire into the violation of human rights pursuant to the directions of the Supreme Court under Art. 32 of the Constitution — Constitution of India, Art. 32 — Generally — Overriding power under

Held :

In a case where the National Human Rights Commission (NHRC) proceeds to investigate and inquire into the violation of human rights pursuant to the directions of the Supreme Court under Article 32 of the Constitution, the bar contained in Section 36(2) will not apply because in such an event, NHRC does not function under the provisions of the Act but as an “expert body” aiding the Supreme Court in the discharge of its constitutional power under Article 32.

(Para 19)

Paramjit Kaur v. State of Punjab, (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *followed*

F. Protection of Human Rights Act, 1993 — Ss. 13 & 17 — Review — Power of National Human Rights Commission (NHRC) in respect of — Where the order of NHRC was liable to be set aside on the ground that NHRC entertained the complaint after a long lapse of time prescribed under S. 36(2) of the Act, held, there was no need to go into the issues relating to the exercise of power of review by NHRC

(Para 20)

G. Interpretation of Statutes — Internal aids — Marginal note/heading — Held, can be relied upon to clear doubt or ambiguity in the interpretation of the provision and to discern the legislative intent

(Para 15)

Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee, (1996) 5 SCC 71; *Bhinka v. Charan Singh*, AIR 1959 SC 960 : 1959 Cri LJ 1223, *relied on*

H. Protection of Human Rights Act, 1993 — Ss. 18(1) and 36(2) — Constitution of India — Art. 14 — Direction by National Human Rights Commission for initiation of disciplinary action against the writ petitioner herein (CBI official) in respect of the alleged act, despite the complaint being barred by limitation — On facts, said direction which had an undoubted effect on the service career of the writ petitioner, held, violative of Art. 14

(Para 18)

W-M/AZ/29436/CR

Advocates who appeared in this case :

R.N. Trivedi, Additional Solicitor General, Rajeev Dhavan and N.N. Goswami, Senior Advocates (Rishi Malhotra, Prem Malhotra, Ms Sunita Sharma, Shree Prakash Sinha, Nikhil Nayyar, Anil Shrivastav, Rajeev Sharma, A.D.N. Rao, P. Parameswaran, Ms Indu Goswami, Sanjay R. Hegde, Ms Sushma Suri, Ramesh Babu, M.R. and G. Prakash, Advocates, with them) for the appearing parties;
Petitioner in person in WP (C) No. 42 of 2001;
Respondent in person in WP (C) No. 42 of 2003.

Chronological list of cases cited

on page(s)

- (1999) 2 SCC 131 : 1999 SCC (Cri) 109, *Paramjit Kaur v. State of Punjab* 589c-d
- (1996) 5 SCC 71, *Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee* 587g
- AIR 1965 SC 171, *S.S. Gadgil v. Lal & Co.* 587e-f
- AIR 1959 SC 960 : 1959 Cri LJ 1223, *Bhinka v. Charan Singh* 587g-h

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The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J.— A search was conducted by the officials of CBI on 25-3-1994 at the residential house of Shri Ashok Kumar Sinha, an officer of the Telecom Department (hereinafter referred to as “the complainant”) at Ranchi. This was followed by searches of the houses of his close relations and contractors at Patna and Ranchi. In between he was admitted to hospital on two occasions. On discharge from CCI Hospital at Ranchi on 3-4-1994, the petitioner was arrested “with a view to interrogate him in custody” and produced before the Court of Special Judge, CBI, Ranchi with a prayer to remand him to police custody for ten days. The Special Judge remanded him to judicial custody for a fortnight with a direction to the Jail Superintendent to get him medically examined and to submit the report. On receipt of the report of the Jail Superintendent, he was remanded to police custody for seven days and there was a further order to release him on provisional bail for one month from 13-4-1994. The court also directed that he should be admitted in CCI Hospital and interrogated there. The provisional bail was confirmed later on subject to certain conditions. The CBI, after obtaining sanction, filed a charge-sheet on 18-8-1998 under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act for the possession of assets disproportionate to the known sources of income.

2. A day thereafter i.e. on 19-8-1998, the National Human Rights Commission (for short “NHRC”) received a complaint from Mr A.K. Sinha alleging illegal detention from 25-3-1994 to 3-4-1994. He also alleged harassment and torture by the CBI officials including Mr N.C. Dhoundial, SP, CBI [petitioner in WP (C) No. 42 of 2001]. He alleged that a false case was registered against him for extraneous reasons on account of the antagonistic attitude of the SP, Mr Dhoundial, towards him. The complainant alleged that the action of CBI in causing his unlawful detention during the period 25-3-1994 to 3-4-1994 and the harsh treatment meted out to him aggravated his disease of cancer (which was detected later) and a major surgery had to be performed at Tata Memorial Cancer Hospital, Bombay to save his life. Seven officers of CBI were named in the complaint who, according to the complainant, were directly or indirectly responsible for his illegal detention. NHRC took cognizance of the complaint and called for a report from the Director, CBI. On consideration of the report, the learned member of NHRC found that there was no substance in the complaint and that no action was called for. The learned member observed that there was no truth in the allegation of harassment and denial of proper medical attention. It was also observed that the complainant never complained to the court that he was being ill-treated by the CBI officers. The learned member further observed that “there was considerable force in the stand taken by CBI that this complaint has been filed only to demoralize the CBI officers who are zealously investigating”. Proceedings to this effect were drawn up on 6-11-1998. The complainant then filed a petition on 21-9-1999 pointing out certain facts which according to him missed the attention of NHRC while taking the decision recorded on 6-11-1998. The petitioner prayed for

reopening the case and to take a fresh decision after giving him adequate opportunity to present his case.

- a 3. The learned Chairman of NHRC, by his proceeding dated 10-3-2000 treated the petition filed by Shri A.K. Sinha as review petition and having found a prima facie case of illegal detention of the complainant by the CBI officials during the period 25-3-1994 to 3-4-1994, thought it fit to recall the findings recorded in the proceeding dated 6-11-1998 and to further proceed with the enquiry in the matter. Accordingly, show-cause notices were issued
- b to four CBI officials, namely, Shri N.C. Dhoundial, Shri Narayan Jha, Shri P.K. Panigrahi and Shri B.N. Singh as to why appropriate recommendation should not be made to the competent authority for initiating disciplinary action and such other action as may be found expedient. On receipt of replies from the officials concerned of CBI, the learned Chairman, by his proceeding dated 12-6-2000, rejected the version of the CBI officials, overruled the
- c objections raised by them on points of law and held that the complainant was in de facto custody of the said officials without authority of law during the period 25-3-1994 to 3-4-1994 resulting in the violation of his human rights. The Commission directed the Director, CBI to initiate appropriate disciplinary action for the misconduct of the four officials arising out of the illegal detention of the complainant Shri A.K. Sinha. It was made clear that
- d the direction would not in any manner affect the prosecution of Shri Sinha for the offences under the Prevention of Corruption Act. It may be noted that before recording its findings and giving directions as above, the Commission did not afford personal hearing or the opportunity to adduce evidence to the writ petitioner and other officials.
- e 4. Questioning the said order of NHRC, Shri P.K. Panigrahi, the then Inspector, CBI filed a writ petition, CWJC No. 2454 of 2000 under Article 226 in the Patna High Court (Ranchi Bench). The learned Judge dismissed the writ petition by an order dated 14-8-2000. The learned Judge observed that all the contentions raised by the writ petitioner were considered by NHRC and he found no reason to interfere with the impugned order. However, the learned Judge made it clear that the order in question was in the
- f nature of recommendation and disciplinary proceedings as and when initiated have to be disposed of independently on the basis of the evidence brought on record. Against this order in the writ petition Shri Panigrahi filed an appeal, LPA No. 309 of 2000 (R). By a speaking order dated 22-1-2001, the Division Bench admitted the appeal as the appeal raised important and debatable questions. Legal questions arising in the appeal were broadly indicated by the
- g Division Bench. While ordering notice to NHRC, status quo with respect to the appellant was directed to be maintained. Questioning this interim order passed pending the LPA, the complainant Shri A.K. Sinha filed SLP (C) No. 14392 of 2001. NHRC filed SLP (C) No. 8220 of 2001 against the same interim order.
- h 5. Subsequent to the admission of LPA, two other CBI officials Shri Bishwanath Singh, the then SI, CBI and Shri N. Jha, the then Deputy SP, CBI also filed writ petitions under Article 226 of the Constitution. The learned

Single Judge, following the interim order passed in LPA, granted an order of status quo in regard to those writ petitioners also. It was further ordered that the writ applications shall be heard after the disposal of LPA. Assailing this order, the complainant A.K. Sinha filed SLPs (C) Nos. 11182 and 11186 of 2001. While so, Shri N.C. Dhoundial, the then SP, CBI, Ranchi had directly filed Writ Petition (C) No. 42 of 2001 under Article 32 in this Court questioning NHRC's order dated 12-6-2000. This Court directed issuance of notice on 15-1-2001. Thereafter, a bunch of transfer petitions, three by A.K. Sinha and three by NHRC came to be filed in this Court with a prayer to transfer the LPA and writ petitions to the file of this Court and to hear the same along with WP (C) No. 42 of 2001 filed by N.C. Dhoundial. The ground of transfer is that similar issues are involved for adjudication in the LPA/writ petitions pending in the High Court and the writ petition pending in this Court.

6. The SLPs, TPs and the writ petition have been grouped together and posted for final disposal. That is how these eleven matters are before us.

7. Before proceeding further, it is necessary to make a brief reference to the stand taken by the officials of CBI on the factual aspects relating to the alleged detention between 25-3-1994 to 3-4-1994 and the findings recorded by NHRC on this disputed issue.

8. The factual account given by the CBI officials is as follows:

After the search on 25-3-1994 the complainant was asked to accompany the DSP, CBI to the SP's Office at Ranchi. During interrogation, the complainant disclosed that he kept certain papers, passbooks and keys of lockers in a briefcase handed over to one Ranjan Pandey, a contractor of his department at Patna. He volunteered to accompany the CBI officials to Patna with a view to assist them in the investigation. Accordingly, Shri N. Jha, Shri Panigrahi and Shri B.N. Singh together with the complainant started on the journey to Patna in the evening. After reaching the outskirts of Ranchi, Shri Sinha complained of chest pain and wanted to be examined at a private nursing home named by him. Accordingly, he was taken to that hospital but the doctor concerned was not available. Hence, on the request of the complainant, he was taken to Central Coalfield Hospital at Ranchi and was admitted in the hospital. The CBI officials left the hospital after his family members came to the hospital to attend on him. On the morning of 26-3-1994, he was discharged from the hospital after certain tests including ECG were conducted. The complainant then expressed his preparedness to go to Patna by air. He bought his own ticket and accompanied the CBI officers to Patna. On search of the house of Shri Ranjan Pandey at Patna, the briefcase could not be found. However, certain papers were seized from his residence. Then the houses of the two close relatives of the complainant were searched till late night that day on the basis of the information furnished by him. On completion of the searches, the CBI officers stayed in the Coal India Guest House at Patna. The petitioner volunteered to stay with them that night on the ostensible ground that he felt embarrassed to stay with his relatives in

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- the aftermath of the raids. On 27-3-1994, the flight to Ranchi was cancelled and there was some uncertainty in the time schedule of the trains bound for Ranchi on account of Holi festival the next day. Hence, the officials along with the complainant took a bus from Patna on the night of March 27th and reached Ranchi in the early morning hours of March 28th. The complainant was requested to attend the CBI office at Ranchi at 8.30 a.m. Accordingly, he came to the CBI office and in the course of questioning he disclosed that one more briefcase with important documents was kept with another contractor.
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9. The CBI officials denied having kept the police personnel in the hospital either on 25-3-1994 or on the second occasion. They relied on the entries in the case diary in support of their contention that he was not arrested till 3-4-1994. Regarding the steps taken by them for providing medical attendance to the complainant on the first day i.e. 25-3-1994, the stand of CBI officials has been that it was done on humanitarian considerations, but not because he was in their custody.
10. The Commission was not prepared to accept the version of the CBI officials. The relevant comment made by the learned Chairman of NHRC to discredit their version is extracted hereunder:
- “The Commission has given its anxious consideration but it is not inclined to accept the above explanation because it is unreal to expect that a wrongdoer will make a record of his wrong actions. Absence of such record in the case diaries prepared by a noticee cannot be relied on to disprove the otherwise established fact of the illegal detention of Shri A.K. Sinha during the aforesaid period. Had Shri Sinha not been in actual custody of the CBI officers, there was no occasion for them to have provided him the medical aid and attention and to keep him under constant surveillance. More so, as per the officers’ own showing, they were accompanying the petitioner from Ranchi to Patna and back for the purpose of making recoveries of certain incriminatory articles. The

Commission, therefore, finds no substance in this objection of the noticee officers and rejects the same.”

11. Thus the initiative taken by the CBI officers in joining him in the hospital when he complained of chest pain and the factum of the complainant accompanying the CBI officials to Patna and coming back with them were relied upon by the Commission to come to the conclusion that the complainant was in the actual custody of CBI officers. The Commission also observed that the complainant was under constant surveillance. Though it is not elaborated, the Commission probably meant that he was being watched while he was in hospital. a
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12. It is to be noted that the Commission did not afford personal hearing to the officials who were put on notice nor was any opportunity of adducing evidence afforded. The complaint was decided on the basis of averments in the review petition and the replies submitted by the officials concerned. The plea of the officials was tested broadly on the basis of probabilities and a conclusion was reached that the officials concerned were guilty of human rights’ violation. c

13. The three legal objections raised by the CBI officials were overruled by the Commission. Firstly, it was held that by virtue of Section 13 of the Protection of Human Rights Act, 1993, the power of review conferred on the civil court was available to the Commission. As the earlier order was not a decision on merits but merely an order abstaining from further enquiry, the Commission felt that there was no bar to reconsider the entire issue in the interest of justice. The second objection based on Regulation 8(1)(b) of the NHRC (Procedure) Regulations which bars complaints with regard to matters that are “sub judice” was rejected with the observation that the question of violation of human rights as a result of alleged unauthorized detention of the complainant was not sub judice. The other important objection that the Commission is debarred from enquiring into the matter after the expiry of one year from the date on which the alleged illegal detention took place as per the mandate of Section 36(2) was answered by the Commission in the following words: d
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“The violation of human rights is a continuing wrong unless due reparation is made. It gives rise to recurring cause of action till redressal of the grievance. The Protection of Human Rights Act, 1993 has been enacted with the object of providing better protection of human rights and it cannot be assumed that the mere lapse of a certain period would be sufficient to render the violation immune from the remedy of redressal of the grievance.” f
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14. We cannot endorse the view of the Commission. The Commission which is a “unique expert body” is, no doubt, entrusted with a very important function of protecting human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are h

N.C. DHOUNDIAL v. UOI (*Venkatarama Reddi, J.*)

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- defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act. The Commission is one of the fora which can redress the grievances arising out of the violations of human rights. Even if it is not in a position to take up the enquiry and to afford redressal on account of certain statutory fetters or handicaps, the aggrieved persons are not without other remedies. The assumption underlying the observation in the concluding passage extracted above proceeds on an incorrect premise that the person wronged by violation of human rights would be left without remedy if the Commission does not take up the matter.

- 15.** Now let us look at Section 36 of the Protection of Human Rights Act, which reads thus:

“36. *Matters not subject to jurisdiction of the Commission.*—(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other commission duly constituted under any law for the time being in force.

- (2) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.”

- Section 36(2) of the Act thus places an embargo against the Commission enquiring into any matter after expiry of one year from the date of the alleged act violative of human rights. The caption or the marginal heading to the section indicates that it is a jurisdictional bar. Periods of limitation, though basically procedural in nature, can also operate as fetters on jurisdiction in certain situations. If an authority is needed for this proposition the observations of this Court in *S.S. Gadgil v. Lal & Co.*¹ may be recalled. Construing Section 34 of the Income Tax Act, 1922 the Court observed thus: (AIR p. 176, para 10)

- “10. Again the period prescribed by Section 34 for assessment is not a period of limitation. The section in terms imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income.”

- The language employed in the marginal heading is another indicator that it is a jurisdictional limitation. It is a settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent (vide *Uttam Das Chela Sunder Das v. Shiromani Gurdwara Parbandhak Committee*² and *Bhinka v. Charan Singh*³).

- 16.** In fact, Section 36(2) does not mince the words and the language used is clear and categorical. The marginal note to the section is being

¹ AIR 1965 SC 171
² (1996) 5 SCC 71
³ AIR 1959 SC 960 : 1959 Cri LJ 1223

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(2004) 2 SCC

referred to only to consider whether the bar created by Section 36(2) has a bearing on the power or jurisdiction of the Commission.

17. The bar under Section 36(2) is sought to be got over by the Commission by invoking the theory of continuing wrong and the recurring cause of action. According to the Commission, every violation of human right is a continuing wrong until and unless due reparation is made. We find it difficult to accept this proposition propounded by the Commission. The short answer to this viewpoint is that such a view, if accepted, makes Section 36(2) practically a dead letter. Moreover, going by the language employed in Section 36(2), we do not think that the concept of continuing wrong could at all be pressed into service in the instant case. The time-limit prescribed is referable to the alleged “act” constituting the violation of human rights. In a case like illegal detention, the offensive act must be deemed to have been committed when a person is placed under detention and it continues so long as the affected person remains under illegal detention. The commission of offensive act is complete at a particular point of time and it does not continue to be so even after the unauthorized detention ends. It is not in dispute that the complainant was produced before the Special Judge on 3-4-1994 and remand was obtained in accordance with the procedure prescribed by law. The alleged act of unauthorized detention which gives rise to violation of human rights ceased on 3-4-1994 and it does not perpetuate thereafter. It is not the effect of illegal detention which is contemplated by Section 36(2) but it is the illegal act itself. It would be a contradiction in terms to say that the arrest or detention beyond 3-4-1994 was in accordance with law and at the same time the arrest/detention continued to be wrongful. It cannot, therefore, be brought under the category of continuing wrong which is analogous to the expression “continuing offence” in the field of criminal law. It cannot be said that the alleged wrongful act of detention repeats itself everyday even after the complainant was produced before the Magistrate and remand was obtained in accordance with law. Beyond 3-4-1994, there was no breach of obligation imposed by law either by means of positive or passive conduct of the alleged wrongdoers. To characterize it as a continuing wrong is, therefore, inappropriate. One-year period for taking up the enquiry into the complaint, therefore, comes to an end by 3-4-1995. Just as in the case of Section 473 CrPC, there is no provision in the Act to extend the period of limitation of one year. However, in the procedural Regulations framed by the Commission certain amount of discretion is reserved to the Commission. Regulation 8(1)(a) *inter alia* lays down that “ordinarily” a complaint in regard to events which happened more than one year before the making of the complaint is not entertainable.

18. Irrespective of the validity of the prefacing expression “ordinarily”, let us examine the issue from the point of view of the regulation itself. The regulation implies that if extraordinary circumstances exist, the complaint can be enquired into even after the expiry of one year. Are there any extraordinary circumstances made out in this case? We find none in the impugned order of the Commission. As already noticed, the petition filed by

a the complainant was received by the Commission a day after the charge-sheet was filed though it bears an earlier date. For nearly 4½ years the complainant kept quiet. The explanation given in the complaint for this long silence was that he was under the impression that by reporting the matter to NHRC he might be antagonizing the CBI officials, but, after realizing that they were not acting fairly and objectively and they continued to harass him, he thought of filing the petition before NHRC. The Commission, on its part, did not advert to this explanation which is really no explanation at all, nor did it advert to any extraordinary circumstances justifying interference after a long lapse of time prescribed by Section 36(2). The Commission, thus, tried to clutch at the jurisdiction by invoking the theory of continuing wrong which, as we held earlier, cannot be invoked at all. In this view of the matter, the direction given by the Commission to the Director of CBI, which has an undoubted effect on the service career of the writ petitioner, is violative of Article 14 of the Constitution.

c **19.** Before concluding our discussion on this aspect, we would like to clarify in reiteration of what was said by this Court in *Paramjit Kaur v. State of Punjab*⁴ that in a case where NHRC proceeds to investigate and inquire into the violation of human rights pursuant to the directions of this Court under Article 32 of the Constitution, the bar contained in Section 36(2) will not apply because in such an event, NHRC does not function under the provisions of the Act but as an “expert body” aiding the Supreme Court in the discharge of its constitutional power under Article 32.

d **20.** The question whether Section 13 of the Act empowers the Commission to exercise the power of review conferred on the civil court and if so, whether the conditions for the exercise of such power are satisfied, has been debated before us. In any case, whether the Commission has the power to reopen the closed complaint and enquire into the same in the absence of new material coming to light has also been debated. These questions need to be gone into in view of our conclusion that the Commission exceeded its jurisdiction in taking up the enquiry in the face of the bar created by Section 36(2).

e **21.** In the result, the order of NHRC dated 12-6-2000 is quashed and Writ Petition (Civil) No. 42 of 2001 stands allowed. SLPs Nos. 8220, 11182, 11186 and 14392 of 2001 filed against the interim orders granted by the High Court are dismissed. All the transfer petitions are also dismissed with an observation that the High Court of Jharkhand may dispose of the related writ petitions/LPA pending on its file with expedition in the light of this judgment. No costs.

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4 (1999) 2 SCC 131 : 1999 SCC (Cri) 109

2017 SCC OnLine NGT 1098

In the National Green Tribunal
Western Zone Bench, Pune
(BEFORE U.D. SALVI, J.M. AND RANJAN CHATTERJEE, E.M.)

In the matter of:

Graminee Environment Development Foundation, through its
Chairman, Mrs. Geeta Bhadrassen Wadhai, (Geeta Xiver), age 45
years, Occupation - Farmer, R/at Post: Dighi, Nanvali, Taluka
Shriwardhan, District: Raigad. (Pin 402402) ... Applicant;

Versus

1. Balaji Infrastructure Ltd. C/o Mr. Vijay Govardhandas Kalantri,
New Excelsior Building, 6th Floor, A.K. Nayak Marg, Fort.
Mumbai
2. Maharashtra Maritime Board, having its office at Indian
Mercantile Chambers 3rd Floor, Ramjibhai Kamani Marg, Ballard
Estate, Mumbai-400038
3. The Maharashtra Coastal Zone Management Authority, through
its Secretary, Environment Department, 15th Floor, Room No.
217, New Administrative Building, Mantralaya, Mumbai 400032
4. Maharashtra State Bio-Diversity Board Jaiv-Vividha Bhavan,
Civil Lines, Nagpur, Maharashtra-440001
5. The Collector, Raigad, (also holding charge as Chairperson)
District Coastal Zone Management Committee (DCZMA), District
Collectorate office, Alibag, (Raigad) (Pin-402201)
6. The Sub-Divisional Officer/Tahasildar of Shrivardhan, Tahasildar
Office Shrivardhan, Taluka Shrivardhan, District - Raigad, (Pin-
402201)
7. Maharashtra Pollution Control Board through Member Secretary,
Kalpataru Point, 3 and 4th Floor, Sion Matunga Scheme Road
No. 8, Opp. Cine Planet Cinema, Near Sion Circle, Sion (East),
Mumbai-40022 ... Respondents.

Original Application No. 179 of 2016(WZ) M.A. No. 171/2017

Decided on May 18, 2017

Counsel for Appellant(s):

Mr. Asim Sarode Adv.

Counsel for Respondent(s):

Mr. Sake Mone, for Respondent No. 1.

Mr. Tushar Bhosale i/b Legasis Partners for Respondent No. 2.

Mr. Manasi Josh Adv. a/w Mr. Naresh P. Pawar SDO for Respondent Nos. 3, 7.

Mr. Shashank Vakil for Respondent No. 4.

JUDGMENT

1. Heard. Perused Record.

2. Graminee Environment Development Foundation, through its Chairman Mrs. Geeta Wadhai, has filed this Application principally for the relief of restitution of land Gut Nos. 85, 86, 87, 88 and 89 of village Nanavali, Taluka Shrivardhan, District Raigad

upon removal of illegally dumped rocks, soil bauxite.

3. According to the Applicant, she is the owner of land bearing Gut Nos. 75/B and 76 of village Nanavali, wherein she has her residence being house Nos. 166 and 88. Her property lies adjacent to the property of Respondent No. 1 Balaji Infrastructure Ltd. The Applicant accuses Respondent No. 1 of illegally dumping soil and rocks in the land adjacent to her property particularly, land Gut Nos. 85 to 89 in a bid to reclaim land and thereby causing damage to marine life and bio-diversity. The Applicant submits that, the damage caused to marine life and bio-diversity requires to be undone by restitution of the said land upon removal of dumped materials from the said land.

4. In response to the Notice before admission, Respondent No. 1 - Balaji Infrastructure Ltd. filed reply dated 10th February, 2017 as well as additional affidavit dated 2nd May, 2017.

5. Respondents appeared through their respective counsel.

6. Learned Counsel appearing on behalf of Respondent No. 1 opposes the Application on two (2) counts: (i) being hit by the principle of Res-judicata and (ii) limitation. He submits that the Applicant had raised a civil dispute before this Tribunal with an Application filed under Ss. 14, 15, 16 and 17 read with S. 18 of the National Green Tribunal Act, 2010 in Application No. 63 of 2014 (Pg. No. 109 of the compilation) and the same was disposed off with the Judgment and Order dated 13th November, 2014 (Pg. 148-172 of the compilation). He added that the Applicant filed Regular Civil Suit No. 4 of 2009 (pg. 3 of the compilation) in respect of the property in question in the Court of Civil Judge, Junior Division, Shirvardhan and was dismissed vide order dated 2nd December, 2010, passed below Exh. 1 in RCS No. 9 of 2009 upon taking into consideration the order passed by the Hon'ble High Court of Bombay in PIL No. 42 of 2009 vide Judgment dated 9th July, 2009. He submits that, the present Application is hit by limitation prescribed under Section 15(3) of the NGT Act, 2010, particularly, for the reason that cause of action for the Application firstly arose in the year 2008, when the alleged activity started and not upon receiving response to the RTI Application query in respect of the project as contended by the Applicant.

7. Learned Counsel appearing on behalf of Respondent No. 1 - Balaji Infrastructure Ltd. holding Company of Dighi Port Ltd. submitted that it has been incorporated for the purpose of developing Dighi Port in pursuance to Environment Clearance (EC) dated 30th September, 2005, granted to the project for construction of Dighi Port. He further submits that EC dated 30th September, 2005 permits the Project Proponent (PP) Dighi Port Ltd. to utilize its area for storage, warehouses and deployment of handling equipment, and land in question used for dumping rocks and bauxite within Dighi Port area on rear side of the house of Applicant.

8. In order to set factual contents of the Application in order, the Applicant was allowed to amend the Application, and accordingly amended memo of the Application has been placed on record for our consideration.

9. Learned Counsel appearing on behalf of the Applicant placed before us the Panchnama dated 9th January, 2017 of the site inspection conducted by the Tehsildar, Shirvardhan recording the fact of dumping of rocks at the land in question.

10. Adverting to the grievances regarding restitution of environment, the controversy before us begs a question as to when 'first cause of action' arose for claiming the relief of restitution.

11. Section 15(3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for 'sufficient cause' if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant

avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure 'I' to the Application (Pg. 81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd., and Balaji Infrastructure Ltd.

12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as 'cause of action' but the actual act or its consequence constitutes 'cause of action' in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd. and its holding Company Balaji Infrastructure Ltd. in the said land.

13. A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No. 1 encroached upon 3 km. of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No. 1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7 - Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd. on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No. 1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No. 4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd. came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd. was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.

14. It is also not specifically mentioned in the Application as to what exact damage was caused as a result of dumping of rocks etc., giving rise to adverse impact on environment at the said Gut Nos. 85 to 89 of village Nanavali, and thereby to actionable grievance, particularly, when the EC dated 30th September, 2005 and corrigendum dated 26th December, 2005 (Pg. 311) thereto permits Dighi Port Ltd. to carry out reclamation within the area, which includes the said Gut Numbers vide Notification dated 26th January, 2007 (Pg. 316 to 319) and the map (Pg. 320) filed by Respondent No. 1 showing these survey numbers falling within the area of Dighi Port Ltd. The present Application filed on 30.7.2016, therefore, in our opinion, has been filed much beyond the period of limitation of five (5) years from the date on which 'first cause of action' arose as foresaid.

15. The Application is, therefore, squarely barred by limitation as prescribed under Section 15(3) of the NGT Act, 2010. The Application therefore fails. Hence, dismissed. Original Application No. 179 of 2016 stands disposed off accordingly. M.A. No. 171/2017 moved therein for interim stay no longer survives with disposal of the Main Application. Hence stands disposed off.

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MANU/GT/0006/2017

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

Application No. 33/2016 (M.A. Nos. 317/2016, 322/2016 and 355/2016)

Decided On: 13.01.2017

Appellants: **Jai Javan Jai Kisan and Ors.**
Vs.

Respondent: **Vidarbha Cricket Association and Ors.**

Hon'ble Judges/Coram:

U.D. Salvi, J. (Member (J)) and Ranjan Chatterjee, Member (E)

Counsels:

For Appellant/Petitioner/Plaintiff: Asim Sarode, Adv.

For Respondents/Defendant: N. Subramaniam, Sr. Adv. and Saket Mone, Adv.

JUDGMENT

1. Plea of non-maintainability of the present petition is made by Respondent No. 1 in M.A. No. 322/2016. Broadly, plea is made on three grounds; (1) Limitation as prescribed under National Green Tribunal Act, 2010, (2) Locus-standie and (3) Issue raised falling beyond jurisdiction of the Tribunal as conferred upon it by virtue of the provisions of National Green Tribunal Act, 2010.

2. At the outset, we may clarify that we are examining the present Application from the environmental point of view and the considerations under Town Planning Act have little role to play unless such considerations resonate the environmental aspects.

3. Applicant No. 1 Jai Jawan Jai Kisan claims to be an organization which works for the association of cricket players. Other two Applicants, residents of Nagpur, claim themselves to be RTI and social activists working on various issues, being especially engaged in battle against corruption and doing positive socio-agricultural work.

4. The Applicants are seeking the following reliefs:

"A. The Respondent No. 1 VCA may kindly be hold responsible for violation of provision in EIA Notification 2006 as they have not taken EC and consent to operate from the MPCB and using the stadium for commercial gain. Other Respondents neglected the environment violation being committed by the Respondent No. 1 hence Respondents No. 2 to 11 may be hold responsible for contravening their legal obligations and exemplary fine may be imposed on them. For not following 'Precautionary Principal', 'Polluters Pay Principal' may kindly be used against the Respondent No. 1 VCA and others by imposing heavy fine.

B. All Matches from the filing of this Petition should be stalled. Use of the VCA stadium, Jamtha, Nagpur should be stopped immediately by issuing closure orders.

C. Environmental damages and revenue losses as deemed fit may kindly be

imposed on the Respondent No. 1 VCA and other Respondents.

D. The concerned authorities be directed to demolish the VCA's illegal cricket stadium and be prosecuted.

G. Considering the socio-environment purpose of filing the present Environment Interest Litigation (EIL) all the Respondents may kindly be directed to pay cost of Rs. 1 lakhs as litigation expenses to the Applicant."

5 . Grievance in the present Application, according to the applicants, arises upon construction of Vidarbha Cricket Association's (VCA) Cricket stadium having total built up area 16,951.576 sq. mtr., at Jamtha, Nagpur, without obtaining Environmental Clearance (EC) or consent to operate and thereby injuring the environment. Perusal of the Application reveals that the injury to the environment is perceived from the facts: that there is insufficient effluent treatment plant, parking spaces, plantation of trees and failure to hand over open spaces and public utility lands to the concerned authority. In substance the Applicant are seeking demolition of VCA stadium raised without obtaining EC or consent to operate, which they believe to be the root cause of environmental ills and demolition of which would restore the environment. It is, therefore, an Application for restoration of environment under Section 15 of the National Green Tribunal Act, 2010.

6 . Section 18(2) of the National Green Tribunal Act, 2010 gives the categories of persons who can initiate action for grant of relief or compensation or settlement of dispute in following terms:

"Section 18(2): Application or appeal to Tribunal:

(1) ----

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by -

(a) the person, who has sustained the injury, or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased or

(d) any agent duly authorized by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organization, or

(f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29) of 1986) or any

other law for the time being in force.

(3) ----"

7 . Pertinently, any person aggrieved including any Representative-body or organizations can initiate Application under Section 14 and 15 of National Green Tribunal Act, 2010. Being residents of Nagpur and social activists working for society in general, the Applicants could be said to have been aggrieved by the injury to the environment caused due to raising of the said stadium. As individuals, they have every right to enjoy clean environment. Any infraction of such right entitles them to initiate proceedings under provisions of National Green Tribunal Act, 2010. Objection raised to maintainability of the present Application on the ground of locus, therefore, do not appeal to us much.

8 . The Applicants have narrated the facts leading to the institution of the present Application. All these facts provide a view of what cause of action in the present case is. The Applicants plead that illegalities pertaining V.C.A. stadium at Jamtha commenced since the year 2004 and the stadium started functioning and organizing various big cricket tournaments from the year 2008. Thus, the material existence which possibly could have injured the environment was since the year 2008. Para 13 and 24 quoted herein below reveal what the Applicants have to state about the dimensions of the said stadium.:

"13. The VCA in its letter Application for consent dated 23/10/2008 to the Regional Officer, MPCB have mentioned in their first para that they are operating the stadium from May 2008. In their third para they have mentioned that "We have constructed the state of art modern stadium with stadium built up area 11,552 sq. mtrs. and activity area of 19,400 sq. mt. we have also constructed club having built up area of 2773 sq. mtr.". According to this letter the total built up area is 33,725 sq. mt. The said letter dated 23/10/2008 written by CA to Regional Officer, MPCB, Nagpur is annexed as Annexure C.

24. The VCA's total area is 1 lakh 28 thousand, 2 hundred sq. mt. of which stadium structure measures at 51,854 sq. mts and club house at 5057.34 sq.mt. According to EIA Notification, 2006 EC is mandatory for such huge constructions. The Competent authorities are also supposed to take over 15% of total area of 1,28,200 as open space and public utility land from VCA and keep in its possession for facilitating services to public. VCA is supposed to pay charges for layout and building plan sanction. NIT can earn revenue of over Rs. 50 crore from all these three processes. As nothing of these above mentioned things are happening it is great revenue loss for the State."

9. Respondent No. 2 MPCB has however, in its reply dated 29th September 2016 has revealed that the total built up area of the V.C.A. stadium is 19,951.576 sq. mtrs which includes built up area of the stadium, club-house Restaurant, swimming pool building and STP. According to Applicants the present structure has built up area exceeding 20,000 sq. mtrs. and as such requires Environment Clearance. From the facts disclosed before us by the Respondent No. 2 MPCB, this claim is debatable.

10. Keeping aside this debate, we further look for what the cause of action in the present case would be for seeking restoration of the injured or damaged environment. It is the case of the Applicants that the Applicants started making RTI inquiries regarding various illegalities relating to VCA stadium from the year 2013

and onwards and after having gathered information from the MPCB that the VCA Stadium has no environmental clearance from the State, the Applicants decided to approach National Green Tribunal and therefore, the present case is well within the limitation.

11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.

12. Section 15 of the National Green Tribunal Act which deals with the Application for restitution/restoration of the environment reads as under:

"Section 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 the Schedule 1 (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 addition to the relief paid or payable under the Public Liability Insurance Act, 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."

13. The present Application which ought to have been filed within a period 5 year from the date on which the cause of action for restoration first arose i.e. in the year 2008 has been filed on 11th April 2016. The Application is thus found to be beyond

the prescribed period under section 15 of the National Green Tribunal Act, 2010 and therefore, cannot be entertained, it being time barred.

14. The present Application therefore deserves to be rejected. The M.A. No. 322/2016 is allowed. Original Application No. 33/2016 is rejected and as such Misc. Applications therein M.A. No. 317/2016 and M.A. 355/2016 no longer survive and stand disposed of accordingly.

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2017 SCC OnLine NGT 1581

In the National Green Tribunal[±]
(BEFORE U.D. SALVI, J.M. AND BIKRAM SINGH SAJWAN, E.M.)

Surendra Waman Dhavale and Others ... Appellants;

Versus

Secretary, Ministry of Environment and Forest and Others ...
Respondents.

Application No. 95/2014(WZ)
Decided on September 22, 2017

Advocates who appeared in this case:

Counsel for Applicants

Ms. Dipti R. Khule, Advs. & Mr. Aditya Pratap, Adv.

Counsel for Respondent No. 1:

Mr. D.M. Gupte, Adv. Mrs. Supriya Dangare and Swayamprabha and Mr. Suraj Wagwai, Advs.

Counsel for Respondent No. 7:

Ms. Sarika Kuru Kurudwadikar, Adv. i/by S.J. Law Associates,

Counsel for Respondent No. 16:

Shirin Merchant, Adv.

Counsel for Respondent No. 18

Mr. R.B. Mahabal, Adv.

ORDER/JUDGMENT

1. The issue of limitation has been raised by the Respondent No. 18 PNP Maritime Services Private Ltd. for questioning the maintainability of the present Application.

2. The Applicants have filed this Application on 6th September 2014 for the following reliefs:

- (A) *That since the impugned construction is fundamentally illegal, hence the additional 4 jetties, godowns, office block, boundary walls etc. which have been made in violation of the Environment Clearance accorded on 6th October, 2003 be ordered to be demolished.*
- (B) *That all construction which has been done beyond the scope of Environment Clearance of 6th October, 2003, be dismantled completely and the land be restored to its original state.*
- (C) *That the railway line which has been constructed without Environment Clearance be dismantled completely and the reclamation done in this respect be undone.*
- (D) *That after the construction is removed, the entire place be planted with mangroves.*
- (E) *That pursuant to Polluter-Pays Principle, the Project Proponent be asked to compensate for the damage to environment and that a heavy cost be imposed on the PNP and Dharamtar Infrastructure Pvt. Ltd. for having indulged in such enormous damage.*
- (F) *That interim orders be issued by this Hon'ble Tribunal to halt the operations of the port, which causes immeasurable pollution of coal dust every day and that almost the entire port is fundamentally illegal.*

(G) *Any other order which this Hon'ble Tribunal may deem fit to pass considering the facts and circumstances of this case.*

3. Essentially, therefore, the present Application moved by the local residents of village Pimpal Bhat, Shahbaj and Ambepur (described as Ambe in the Application) respectively all of Tal. Alibaug, District Raigad is for restitution of the environment damaged by the construction of jetties in Dharamtar creek at village Shahbaj, Tal. Alibag, District Raigad. Section 15 of the National Green Tribunal Act, 2010 is quoted herein below for ready reference:

Section 15 of NGT Act: *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 the Schedule 1 (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) ———

(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) ———

(5) ———

4. According to the Applicants, the 'cause of action' for the present Application arose when the facts concerning the transgression of laws were noticed and thereupon the notice dated 25th September 2013 was issued to Respondent No. 17-Dharmtar Infrastructure Ltd. and Respondent No. 18-PNP Maritime Services Pvt. Ltd. Learned counsel appearing on behalf of the Applicants submits that the issue of limitation is mixed question of law and the facts and it will have to be determined on case to case basis and in the given facts and circumstances the cause of action for filing the present Application arose when the Applicant came to know about the illegal construction carried out by Respondent No. 18 and the violation of the environmental clearance conditions.

5. Learned counsel appearing on behalf of Applicants quoted 'Discovery Rule' as endorsed by Hon'ble Supreme Court in *Dr. V.N. Shrikhande's case* reported in (2011) 1 SCC 53 : A.I.R. 2011 SC 212 : *Dr. V.N. Shrikhande v. Mrs. Anita Sena Fernandes*. She submitted that the said Rule can be applied in cases of environmental damage.

6. Learned counsel appearing on behalf of Respondent No. 18 conceded that the limitation is mixed question of law and facts. However, he submitted that the facts can be gathered from the material on record produced both by the Applicants as well as Respondents, including Respondent No. 18 PNP Maritime Services Pvt. Ltd. He therefore, invited our attention to the Google imagery produced by the Applicants at Annexure A-1 to A-8 and A-10 to the Application in compilation-II as well as photographs annexed to the affidavit dated 16th December 2015 of the Respondent No. 18 at pages 646 to 657. He submitted that the environmental clearance was granted on 6th October 2003 and the construction of the jetties in question was commenced in February 2004 and almost completed in 2006, except the installation of

tower-crane on one of the jetties, openly at a place visible and accessible to the public at large. He submitted that the facts could be ascertained from the Google imagery of the construction site which was also accessible to the Applicants at all times. He further submitted that the Applicants referred to several violations of Law, giving rise to separate causes of action for each of the violations both in the notice dated 25th September 2013 and the application and, therefore, clubbing of the causes of action, in the present Application amounts to misjoinder of causes of action in violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rules, 2011.

7. Countering these submissions, the learned counsel appearing on behalf of the Applicants submitted that they are not seeking plural remedies but they are seeking a remedy of restitution of environment which can be achieved by demolition of the jetties in question though the cause of action for such relief arose as aforesaid she submits that the violations of law quoted in the Application cumulatively translated into environmental damage necessitating the relief of its restitution as prayed for and therefore, there is no violation of Rule 14 of National Green Tribunal (Practice & Procedure) Rule 2011.

8. Perusal of the notice dated 25th September 2013 reveals that the cause for present action before us is "massive construction", which in the words of the Applicant No. 1 Surendra Waman Dhavale is as follows:

"4-A. That a massive construction of a port at Dharamtar Creek, alongwith large port-related ancillary constructions, such as warehousing, open-storage of coal, setting up of cranes, conveyors, rail siding etc. took place. This construction was done by committing several infractions of laws."

9. It is evident from the Google imagery photographs produced both by the Applicants and Respondent No. 18 that the activity of the construction of the jetties was complete in the year 2005 and the destruction of mangroves was perceptible to the public at large from such Google imagery or otherwise. It is also seen from the Inspection Report, dated 1st February 2006 of the MoEF at Annexure A-11 to the Application that the construction of jetty was complete and only construction of storage sheds was going on. Construction activity evidently was not concealed and it was known to the public at large, particularly to the local residents, one of them being the Applicant No. 2-Darshan Atmaram Juikar resident of Shahbaj.

10. In *Dr. V.N. Shrikhande's case* the Hon'ble Apex Court while dealing with the issue of Limitation in a case of medical negligence held:

"In case of Medical Negligence "Cause of action" does not accrue until the patient learns of injury/harm or in the exercise of reasonable care and diligence could have discovered the act constituting negligence".

11. In this case, the Hon'ble Apex Court made distinction between patent effect of negligence and the latent effect of negligence and proceeded to apply the 'Discovery Rule' evolved by the Court in *United States* in case of *"Morgan v. Grace Hospital Inc., 149 W.Va. 783 : 144 S.E. 2d 156"*

12. Here we are dealing with the case of patent event of massive construction perceptible to the public at large. Nothing was concealed as regards the construction in question. In such circumstance, the Ratio *Decidendi* arrived at in the case of *Dr. V.N. Shrikhande* is not applicable in the present case, more particularly for the reason that there was pre-existing jetty and nowhere the applicants have described or given the details of latent effects of harm/injury caused to the environment due to the construction in question which became patent in or about September 2013 the time when the notice dated 25th September 2013 was issued. It is the case of the Applicants that there has been massive cutting of mangroves in the year 2003 by Google imagery Communication 'A-8' for the purpose of construction of jetties. The first cause of action, therefore, in any case arose long back in the year 2003. Even by

liberal estimation, the work of construction could be said to have been evident on its completion in the year 2006 vide Inspection Report dated 1st February 2006. In such situation, the Application which is filed on 6th September, 2014, in our view is grossly time barred.

13. Hence the O.A. No. 95/2014 stands dismissed with no order as to costs.

† Western Zone Bench, Pune

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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH AT PUNE
INTERLOCUTORY APPLICATION NO. 66 OF 2021 (WZ)
IN
ORIGINAL APPLICATION NO. 64 OF 2019 (WZ)

Ekta Housing Pvt. Ltd.

...Applicant in IA No. 66/2021

In the matter of:

Tanaji B. Gambhire

...Original Applicant

Versus

Union of India & Ors.

...Respondents

COMPILATION OF JUDGMENTS ON THE ISSUE OF “LOCUS STANDI” AND
“PERSON AGGRIEVED”

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2.	<i>Bar Council of Maharashtra v. M. V. Dabholkar & Ors. –</i> (1975) 2 SCC 702	17 – 36
3.	<i>Thammanna v. K. Veera Reddy and Ors. –</i> (1980) 4 SCC 62	37 – 46
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JASBHAI MOTIBHAI DESAI v. ROSHAN KUMAR

671

(1976) 1 Supreme Court Cases 671

(Before A. N. Ray, C.J. and M. H. Beg, R. S. Sarkaria and
P. N. Shinghal, JJ.)

JASBHAI MOTIBHAI DESAI Appellant :
Versus
ROSHAN KUMAR, HAJI BASHIR AHMED
AND OTHERS Respondents.

Civil Appeal No. 2035 of 1971†, decided on December 19, 1975

Constitution of India — Article 226 — Writ of certiorari — Standing — Requirement of person being an ‘aggrieved person’ explained — Narrow or wide construction to be placed — Scope for reliance on practice in English courts in matters of issue of writs explained — Strangers when can petition, stated — Rival in trade if can petition against illegal grant of licence on ground of usurpation of jurisdiction or lack of jurisdiction on the part of an administrative tribunal or body — Prejudicial effect to his commercial interest if put him in the category of an “aggrieved person” entitling him to a writ of certiorari as a matter of right even though no legal right or legal interest vested in him has been infringed — Failure of such person to object when opportunity was afforded to the public at large if material — Bombay Cinemas Regulation Act, 1953 and Rules — Constitution of India, Article 19(1)(g)

Respondents Nos. 1 and 2 intending to construct a cinema theatre applied for a no-objection certificate under Rule 3 of the Bombay Cinema Rules, 1954 to the D. M. The D. M. notified the matter and invited objections from the public. Several persons objected but no objection was lodged by the appellant who owned the only cinema in that area. The D. M. after completing all the formalities concluded against the grant of certificate. The State Government however did not agree with his recommendation and directed the grant of certificate which was done on November 27, 1970. On December 16, 1970 the appellant filed a writ petition in the High Court under Articles 226/227 of the Constitution praying for the issuance of a writ of certiorari, mandamus, or any other appropriate writ or order directing the respondents to treat the no-objection certificate granted to respondents Nos. 1 and 2 as illegal, void and ineffectual. The main ground was abdication of discretionary power by the D. M. so that his action on the dictates of the State Government suffered from lack of jurisdiction. The D. M. in reply raised a preliminary objection that the appellant had no locus standi to file the writ petition. The High Court though in agreement with the petitioner on merits, dismissed the petition for lack of locus standi. Hence the appeal.

Held :

(a) Article 226 has been couched in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix, “nature of” superadded, indicates that the general principles grown over the years in the English courts, can, shorn of technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by the Supreme Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice. (Para 11)

Though the jurisdiction under Article 226 in general, and certiorari in particular, is discretionary, in a country like India where writ petitions are instituted in the

†Appeal by Special Leave from the Judgment and Order dated November 11, 1971 of the Gujarat High Court in S. P. A. No. 1584 of 1970.

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High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. (Para 49)

Dwarkanath v. I. T. O., (1965) 3 SCR 536 : AIR 1966 SC 81 : 57 ITR 349, *relied on*.

According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. (Para 12)

The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". (Para 13)

Queen v. Justices of Surrey, (1870) 5 QB 466; *R. v. Taunton St. Mary*, (1815) 3 M & S 465 : 105 ER 685; *King v. Groom ex parte*, (1901) 2 KB 157 : 17 TLR 433; *King v. Richmond Confirming Authority, ex parte Howitt*, (1921) 1 KB 248 : 37 TLR 62; *R. v. Thames Magistrate's Court ex parte Greenbaum*, (1957) 55 LGR 129, 135, 136; *R. v. Manchester Legal Aid Committee*, (1952) 2 QBD 413; *R. v. Liverpool Corpn., ex parte Liverpool Taxi Fleet Operators' Asscn.*, (1972) 2 QB 299; *A. G. of Gambia v. N'Jie*, 1961 AC 617; *Maurice v. London County Council*, (1964) 2 QB 362, 378; *R. v. Paddington Valuation Officer, ex parte Peachy Property Corpn. Ltd.*, (1966) 1 QB 880; *Bar Council of Maharashtra v. M. V. Dabhalkar*, (1975) 2 SCC 702; *R. v. Butt ex parte Brooke*, (1921-22) 38 TLR 537; *R. v. Brighton Borough Justices ex parte Jarvis*, (1954) 1 WLR 203; *Buxton v. Minister of Housing and Local Government*, (1961) 1 QB 278; *In re Sidebotham*, (1880) 14 Ch D 458, 465; *Ex parte Stott*, (1916) 1 KB 7 : 32 TLR 84; *King v. Middlesex Justices*, (1832) 32 RR 594 : 110 ER 345; *R. v. Bradford-on-Avon Urban Distt. Council ex parte Boulton*, (1964) 2 All ER 492; *Gregory v. Camden London Borough Council*, (1966) 1 WLR 899; *R. v. Lendon O. S. ex parte Westminster Corpn.*, (1951) 2 KB 508 and *R. v. Cardiff Justices ex parte Cardiff Corpn.*, (1962) 2 QB 436, *considered*.

In India, in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should **ordinarily** be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. So as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (Para 34)

The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. This position is not inconsistent with the principles enunciated in the English cases already referred to. In the United States of America, also, the law on the point is substantially the same. (Paras 35 and 36)

State of Orissa v. Madan Gopal Rungta, 1952 SCR 28 : AIR 1952 SC 12; *Calcutta Gas Co. v. State of W. B.*, 1962 Supp 3 SCR 1 : AIR 1962 SC 1044; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa*, (1967) 1 SCA 413; *Gadde Venkatesu ara Rao v. Government of A. P.*, AIR 1966 SC 828 : (1966) 2 SCR 172; *State of Orissa v. Rajasaheb Chandanmall*, (1973) 3 SCC 739 and *Dr. Satyanarayana Sinha v. S. Lal & Co.*, (1973) 2 SCC 696 : 1973 SCC (Cri) 1002, *relied on*.



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Coleman v. Miller, (1939) 307 US 433; *Chapman v. Sheridan-Wyoming Coal Co.*, 338 US 621; *American Jurisprudence*, Vol. 2, Ss. 575, p. 334, *Joint Anti Fascist Refugee Committee v. McGarth*, 341 US 123; *United States Cane Sugar Refiners' Assn. v. McNutt*, 138 F 2nd 116: 158 ALR 849; *United States v. Storer Broadcasting Co.*, 351 US 192 and *Kansas City Power & Light Co. v. McKay*, 350 US 884, referred to.

Therefore in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddling interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. The High Court should do well to reject the applications of such busybodies at the threshold. (Para 37)

The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concrete zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved". (Para 38)

To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the cases, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure, designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals? (Para 39)

Moreover, the court should not interfere at the instance of a stranger unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. (Para 50)

(b) In the present case the Bombay Cinemas Regulation Act, 1953* and the Rules are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction. The appellant did not have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellant did not avail of this option. Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. The appellant was not a "person aggrieved" within the contemplation of Section 8A. He does not even fall within the scope of "aggrieved person" in Section 8B. So, the appellant

* See Editor's Note on p. 675.

has no standing to complain of injury, actual or potential, to any statutory right or interest. (Paras 40, 41 and 42)

Queen v. Justices of Surrey, (1870) 5 QB 466, distinguished.

Moreover none of the appellant's rights or interests, recognised by the general law has been infringed as a result of the grant of no-objection certificate to the respondents. In substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *damnum sine injuria*. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large. (Paras 45 and 47)

In sum, the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a "person aggrieved" and has no *locus standi* to challenge the grant of the no-objection certificate. (Para 48)

Even assuming that the appellant is a 'stranger', and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at this instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of respondents under Article 19(1)(g). (Para 50)

Nagar Rice & Flour Mills v. N. T. Gowda, (1970) 1 SCC 575, followed.

State of Gujarat v. Krishna Cinema, (1970) 2 SCC 744 and *Kishor e Chander Ratilal v. State of Gujarat*, Spl. Civil Application No. 912 of 1970, decided by Gujarat High Court on November 25/27, 1970, referred to.

Appeal dismissed

M/2823/C

Advocates who appeared in this case :

V. M. Tarkunde, Senior Advocate (*Mrs. S. Gopalakrishnan*, Advocate, with him), for the Appellant;

Vimal Dave and Miss Kailash Mehta, Advocates, for Respondents Nos. 1-2.

G. A. Shah, M. N. Shroff and Girish Chandra, Advocates, for Respondents Nos. 3-4.

The Judgment of the Court was delivered by

SARKARIA, J.—Whether the proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is entitled to invoke the certiorari jurisdiction *ex debito justitiae* to get a 'No-Objection Certificate', granted under Rule 6 of the Bombay Cinema Rules, 1954 (for short, the Rules) by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction, is the principal question that falls to be determined in this appeal by special leave.

2. The circumstances giving rise to this appeal are as follows :

2A. Respondents Nos. 1 and 2 are owners of a site, bearing Survey No. 98 in the town of Mohmadabad. They made an application under Rule 3 of the Rules to the District Magistrate, Kaira, for the grant

of a certificate that there was no objection to the location of a cinema theatre at this site. The District Magistrate then notified in the prescribed form, the substance of the application by publication in newspapers, inviting objections to the grant of a no-objection certificate. In response thereto several persons lodged objections, but the appellants who are the proprietors of a cinema house, situated on Station Road, Mohamadabad, were not among those objectors. Some of the objections were that a Muslim graveyard, a durgah, a compost depot, a school and public latrines were situated in the vicinity of the proposed site.

3. The District Magistrate (respondent No. 3 herein) invited the opinions of the Chairman of Nagar Panchayat, Executive Engineer, Roads and Buildings, and the District Superintendent of Police. These three authorities opined that they had no objection to the grant of the certificate applied for. The District Magistrate visited the site on July 27, 1970. Thereafter he submitted a report to the State Government (respondent No. 4) that the proposed site was not fit for the location of a cinema house. He recommended that the 'no-objection certificate' should be refused. The State Government did not agree with the recommendation of the District Magistrate and directed the latter to grant the certificate. Accordingly, the District Magistrate granted the 'no-objection certificate' on November 27, 1970 to respondents Nos. 1 and 2.

4. On December 16, 1970, the appellants filed a writ petition in the High Court under Articles 226/227 of the Constitution praying for the issuance of a writ of certiorari, mandamus, or any other appropriate writ or order directing the respondents to treat the no-objection certificate granted to respondents Nos. 1 and 2 as illegal, void and ineffectual. They further asked for an injunction restraining respondents Nos. 1 and 2 from utilising the certificate for the purpose of building a cinema theatre.

5. The main grounds of challenge were: that the impugned certificate had been issued by the District Magistrate, not in the exercise of his own discretion, with due regard to the principles indicated in the Bombay Cinematograph Act, 1918* (for short, the Act) and the Rules, but mechanically at the dictates of the State Government; that Rules 5 and 6, according to an earlier judgment of the High Court being ultra vires and void, the Government had no power to grant or refuse the no-objection certificate; that such power belonged to the District Magistrate who was the licensing authority, and had to be exercised by him objectively, in a quasi-judicial manner in accordance with the statutory principles; since it was not so exercised, the grant of the certificate in question suffers from lack of jurisdiction.

6. In the affidavit filed in reply, by the District Magistrate (on behalf of respondents Nos. 3 and 4) a preliminary objection was taken that the appellants had no locus standi to file the writ petition because

*Ed. : The applicable law would however seem to be the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act No. 11 of 1953) which repealed *vide* Section 11, the Bombay Cinematograph Act, 1918 and was made applicable to the State of Gujarat *vide* Section 1(2) as substituted by Gujarat Act 40 of 1961, Section 2(i). The Bombay Cinema Rules, 1954 have also been framed under this Act of 1953. Also Sections 8, 8A and 8B referred to in paras 42 and 43 are those of the Act of 1953.

their rights were not in any manner affected by the grant of the 'no objection certificate'. It was stated that the deponent had reported the case and submitted the records to the State Government under Rule 5, recommending that on account of the location of a graveyard, a church, a temple, a mosque and a school near the proposed site, the no-objection certificate be refused. It was admitted that on receipt of the order of the State Government he granted the no-objection certificate to respondents Nos. 1 and 2 in compliance with the Government's directive.

7. The High Court, purporting to rely on this Court's decision in *State of Gujarat v. Krishna Cinema*¹ and an earlier decision of its own in *Kishore Chander Ratilal v. State of Gujarat*², held that Rule 5(2) in its entirety, and the words "the previous permission of the Government obtained under Rule 5" in Rule 6 being ultra vires and invalid, have to be ignored as *non est*, with the result that the District Magistrate had to come to his own conclusion on relevant considerations and objective norms whether a no-objection certificate should be granted or refused; that under the Act the District Magistrate — and not the Government — is the licensing authority, and he was bound to exercise this power, which is an integral part of the process of licensing, in a quasi-judicial manner; that since the District Magistrate exercised this power not on his own in accordance with objective principles, but solely at the dictates of the Government, his act in granting the no-objection certificate suffers from a patent lack of jurisdiction.

8. The High Court, however, dismissed the writ petition on the ground that no right vested in the appellant had been infringed, or prejudiced or adversely affected as a direct consequence of the order impugned by him, and as such, he was not an 'aggrieved person' having a locus standi in the matter.

9. Mr. Sen appearing for the appellant, assails the finding of the High Court in regard to the locus standi of the appellant to maintain the writ petition. The burden of his arguments is that apart from a right in common with the general public to object to the grant before the District Magistrate, the appellant was a rival in the same trade and, as such, had a particular interest to see that permission was not granted to another, in contravention of law, to start the same business; consequently, the illegal grant of the no-objection certificate had prejudicially affected the commercial interest of the appellant who stood in the category of an 'aggrieved person' entitled to a writ of certiorari *ex debito justitiae*. It is submitted that so far as certiorari is concerned, the concept of 'aggrieved person' is very wide and is not confined to a person who is grieved by an invasion of a legal right vested in him. Anyone — says Mr. Sen — who is personally interested and genuinely grieved by an act of usurpation of jurisdiction or lack of jurisdiction on the part of an administrative tribunal or body, would fall within the category of an 'aggrieved person', even if such usurpation or lack of jurisdiction had not resulted in infringement of a legal right or legal interest vested in him; nor would such a person be denied locus standi for the purpose of certiorari merely because

1. (1971) 2 SCR 110; (1970) 2 SCC 744.

2. Special Civil Application No. 912 of

1970, decided by Gujarat High Court on November 25/27, 1970.

he had not lodged any objection or joined the proceedings before the tribunal (District Magistrate, in the present case). In these premises, it is maintained, the High Court was not justified in denying the remedy of certiorari to the appellant. Counsel has cited a number of decisions, mostly of English courts, in support of his contentions.

10. Article 226 of the Constitution empowers the High Court to issue to any person or authority, including the Government, within its territorial jurisdiction, directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights and for any other purpose.

11. As explained by this Court in *Dwarkanath v. I. T. O., Kanpur*³, the founding fathers of the Constitution have designedly couched the article in comprehensive phraseology to enable the High Court to reach injustice wherever it is found. In a sense, the scope and nature of the power conferred by the article is wider than that exercised by the writ courts in England. However, the adoption of the nomenclature of English writs, with the prefix “nature of” superadded, indicates that the general principles grown over the years in the English courts, can, shorn of technical procedural restrictions, and adapted to the special conditions of this vast country, in so far as they do not conflict with any provision of the Constitution, or the law declared by this Court, be usefully considered in directing the exercise of this discretionary jurisdiction in accordance with well-recognised rules of practice.

12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an “aggrieved person” and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a “stranger”, the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

13. This takes us to the further question: Who is an “aggrieved person” and what are the qualifications requisite for such a status? The expression “aggrieved person” denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner’s interest, and the nature and extent of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression “aggrieved person”. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or ‘standing’ to invoke certiorari jurisdiction.

14. We will first take up that line of cases in which an “aggrieved person” has been held to be one who has a more particular or peculiar

3. (1965) 3 SCR 536 : AIR 1966 SC 81 : 57 ITR 349.

interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line is *Queen v. Justices of Surrey*⁴ decided as far back as 1870. There, on the application by the highway board the justices made certificates that certain portions of three roads were unnecessary. As a result, it was ordered that the roads should cease to be repaired by the parishes.

15. E, an inhabitant of one of the parishes, and living in the neighbourhood of the roads, obtained a rule for a certiorari to bring up the orders and certificates for the purpose of quashing them on the ground that they were void by reason of the notices not having been affixed at the places required by law. On the point of locus standi (following an earlier decision *Rex v. Taunton St. Mary*⁵), the Court held that though a certiorari is not a writ of course, yet as the applicant had by reason of his local situation a peculiar grievance of his own, and was not merely applying as one of the public, he was entitled to the writ *ex debito justitiae*.

16. It is to be noted that in this case E was living in the neighbourhood of the roads which were to be abandoned as a result of the certificates issued by the justices. He would have suffered special inconvenience by the abandonment. Thus E had shown a particular grievance of his own beyond some inconvenience suffered by the general public. He had a right to object to the grant of the certificate. Non-publication of the notice at all the places in accordance with law, had seriously prejudiced him in the exercise of that legal right.

17. The ratio of the decision in *Queen v. Justices of Surrey* (supra) was followed in *King v. Groom ex parte*⁶. There, the parties were rivals in the liquor trade. The applicants (brewers) had persistently objected to the jurisdiction of the justices to grant the license to one J. K. White in a particular month. It was held that the applicants had a sufficient interest in the matter to enable them to invoke certiorari jurisdiction.

18. A distinguishing feature of this case was that unlike the appellants in the present case who did not, despite public notice, raise any objection before the District Magistrate to the grant of the no-objection certificate, the brewers were persistently raising objections in proceedings before the justices at every stage. The law gave them a right to object and to see that the licensing was done in accordance with law. They were seriously prejudiced in the exercise of that right by the act of usurpation of jurisdiction on the part of the justices.

19. The rule in *Groom's case* (supra) was followed in *King v. Richmond Confirming Authority, ex parte Howitt*⁷. There also, the applicant for a certiorari was a rival in the liquor trade. It is significant that in coming to the conclusion that the applicant was a 'person aggrieved', Earl of Reading, C.J. laid stress on the fact that he had appeared and

4. (1870) 5 QB 466.

5. (1815) 3 M & S 465; 105 ER 685.

6. (1901) 2 KB 157; 70 LJKB 636; 17

TLR 433.

7. (1921) 1 KB 248; 90 LJKB 413. 37

TLR 62.

objected before the justices and joined issue with them, though unsuccessfully, "in the sense that they said they had jurisdiction when he said they had not".

20. In *R. v. Thames Magistrate's Court ex parte Greenbaum*⁸, there were two traders in Goulston St., Stepney. One of them was Gritzman who held a licence to trade on pitch No. 4 for 5 days in the week and pitch No. 8 for the other two days. The other was Greenbaum, who held a licence to sell on pitch No. 8 for two days of the week and pitch No. 10 for the other days of the week. A much better pitch, pitch No. 2, in Goulston St. became vacant. Thereupon, both Gritzman and Greenbaum applied for the grant of a licence, each wanted to give up his own existing licence and get a new licence for pitch No. 2. The Borough Council considered and decided in favour of Greenbaum and refused Gritzman who was left with his pitches Nos. 4 and 8.

21. Gritzman appealed to the magistrate. He could not appeal against the grant of a licence to Greenbaum, but only against the refusal to grant a licence to himself. Before the magistrate, the Borough Council opposed him. The magistrate held that the Council were wrong to refuse the licence of pitch No. 2 to Gritzman. The Council thereupon made out a licence for Gritzman for pitch No. 2 and wrote to Greenbaum saying that his licence had been wrongly issued. Greenbaum made an application for certiorari to court. The court held that the magistrate had no jurisdiction to hear the appeal. An objection was taken that Greenbaum had no locus standi. Rejecting the contention, Lord Denning observed :

'I should have thought that in this case Greenbaum was certainly a person aggrieved, and not a stranger. He was affected by the magistrate's orders because the magistrate ordered another person to be put on his pitch. It is a proper case for the intervention of the court by means of certiorari.

22. It is to be noted that the Council had duly allotted pitch No. 2 to Greenbaum in the exercise of their administrative power. The Magistrate's order pursuant to which the Council cancelled the allotment and reallocated that pitch to Gritzman, was without jurisdiction. By this illegal cancellation and reallocation Greenbaum's interest to trade on pitch No. 2, which had been duly licensed out to him, was directly and prejudicially affected by the impugned action.

23. *R. v. Manchester Legal Aid Committee*⁹, is another case belonging to this group. It was held that the applicants therein were "persons aggrieved" because they were grieved by the failure of the Legal Aid Committee to give them prior notice and hearing to which they were entitled under Regulation 15(2). Thus it could be said that they had suffered a legal wrong.

24. In *Regina v. Liverpool Corporation ex parte Liverpool Taxi Fleet Operators' Association*¹⁰, the City Council in exercise of its powers under the Town Police Clauses Act, 1847, limited the number of licenses

8. (1957) 55 LGR 129, 135, 136 extracted in Yaldley's book of *English Administrative Law*, 2nd Edn. at p. 228.

9. (1952) 2 QBD 413.

10. (1972) 2 QB 299.

to be issued for hackney carriages to 300. The Council gave an undertaking to the associations representing the 300 existing licence holders not to increase the number of such licence holders above 300 for a certain period. The Council, disregarding this undertaking, resolved to increase the number. An association representing the existing licence holders moved the Queens' Bench for leave to apply for orders of prohibition, mandamus and certiorari. The Division Bench refused. In the Court of Appeal, allowing the association's appeal, Lord Denning, M. R. observed at pp. 308, 309 :

The taxicab owners' association come to this Court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a "person aggrieved" and that includes any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a **genuine grievance** because something has been done or may be done which affects him: See *Attorney-General of the Gambia v. N'Jie*¹¹ and *Maurice v. London County Council*¹². The taxicab owners' association here have certainly a locus standi to apply for relief.

25. It may be noted that in this case, the whole question turned on the effect in law of the undertaking, and whether the applicants had been treated fairly.

26. Emphasising the "very special circumstances" of the case, the court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported, by implication, in favour of the applicants. Viewed from this standpoint, the applicants had an interest recognised in law, which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the corporation.

27. In *Regina v. Paddington Valuation Officer, ex parte Peachy Property Corporation Ltd.*¹³, ratepayers were held to have the locus standi to apply for certiorari, notwithstanding the fact that it could not be said that the actual burdens to be borne by the applicants fell more heavily on them than on other members of the local community.

28. In *Bar Council of Maharashtra v. M. V. Dabholkar*¹⁴, a Bench of seven learned Judges of this Court considered the question whether the Bar Council of a State was a 'person aggrieved' to maintain an appeal under Section 38 of the Advocates' Act, 1961. Answering the question in the affirmative, this Court, speaking through Ray, C.J., indicated how the expression "person aggrieved" is to be interpreted in the context of a statute, thus : [p. 711, para 28]

The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The

11. 1961 AC 617.

12. (1964) 2 QB 362, 378.

13. (1966) 1 QB 880.

14. (1975) 2 SCC 702.

restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates' Act is comparable to the role of a guardian in professional ethics. The words "person aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests.

29. In *Rex v. Butt ex parte Brooke*¹⁵, a person who was merely a resident of the town, was held entitled to apply for certiorari. Similar is the decision in *Regina v. Brighton Borough Justices ex parte Jarvis*¹⁶.

30. Typical of the cases in which a strict construction was put on the expression "person aggrieved", is *Burton v. Minister of Housing and Local Government*¹⁷. There, an appeal by a company against the refusal of the local planning authority of permission to develop land owned by the company by digging chalk, was allowed by the minister. Owners of adjacent property applied to the High Court under Section 31(1) of the Town and Country Planning Act, 1959 to quash the decision of the minister on the ground that the proposed operations by the company would injure their land, and that they were 'persons aggrieved' by the action of the minister. It was held that the expression 'person aggrieved' in a statute meant a person who had suffered a legal grievance; anyone given the right under Section 37 of the Act of 1959 to have his representation considered by the minister was a person aggrieved, thus Section 31 applied, if those rights were infringed; but the applicants had no right under the statute, and no legal rights had been infringed and therefore they were not entitled to challenge the minister's decision. Salmon, J. quoted with approval these observations of James, L.J. in *In Re Sidebotham*¹⁸:

The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.

31. *Ex parte Stott*¹⁹, is another illustration of a person who had no legal grievance, nor had he sufficient interest in the matter. A licensing authority under the Cinematograph Act, 1901, granted to a theatre proprietor a licence for the exhibition of cinematograph films at his theatre. The license was subject to the condition that the licensee should not exhibit any film if he had notice that the licensing authority objected to it. A firm who had acquired the sole right of exhibition of a certain film in the district in which the theatre was situated entered into an agreement with the licensee for the exhibition of the film at his theatre. The licensing authority having given notice to the licensee that it objected to the exhibition of the film, the firm applied for a writ of certiorari to bring up the notice to be quashed on the ground that the condition attached to the licence was unreasonable and void, and that they were aggrieved

15. (1921-22) 38 TLR 537.

16. (1954) 1 WLR 203.

17. (1961) 1 QB 278.

18. (1880) 14 Ch D 458, 465; 42 LT 783;
28 WR 715.

19. (1916) 1 KB 7; 85 LJKB 502; 32 TLR
84.

by the notice as being destructive of their property. It was held that whether the condition was unreasonable or not, the applicants were not persons who were aggrieved by the notice and had no locus standi to maintain the application.

32. Similarly, in *King v. Middlesex Justices*²⁰, it was held that the words "person who shall think himself aggrieved" appearing in the statute governing the grant of licenses to innkeepers mean a person *immediately aggrieved* as by refusal of a licence to himself, and not one who is consequently aggrieved, and that though the justices had granted a licence to a party to open a public house not before licensed, within a very short distance of a licensed public house, the occupier of the latter house could not appeal against such grant.

33. Other instances of a restricted interpretation of the expression "person aggrieved" are furnished by *R. v. Bradford-on-Avon Urban District Council ex parte Boulton*²¹; *Gregory v. Camden London Borough Council*²²; *R v. London O. S. ex parte Westminster Corporation*²³; *Regina v. Cardiff Jusuces ex parte Cardiff Corporation*²⁴.

34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (see *State of Orissa v. Madan Gopal Rungta*²⁵; *Calcutta Gas Co. v. State of W. B.*²⁶; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa*²⁷; *Gadde Venkateswara Rao v. Government of A. P.*²⁸; *State of Orissa v. Rajasaheb Chandanmall*²⁹; *Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.*³⁰).

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. In the United States of America, also, the law on the point is substantially the same.

No matter how seriously infringement of the Constitution may be called into question,

20. (1832) 37 RR 594; (1832) 3 B & Ad 938; 110 ER 345.
21. (1964) 2 All ER 492.
22. (1966) 1 WLR 899.
23. (1951) 2 KB 508.
24. (1962) 2 QB 436.
25. 1952 SCR 28; AIR 1952 SC 12.

26. 1962 Supp 3 SCR 1; AIR 1962 SC 1044.
27. (1967) 1 SCA 413.
28. AIR 1966 SC 828; (1966) 2 SCR 172.
29. (1973) 3 SCC 739.
30. (1973) 2 SCC 696; 1973 SCC (Cri) 1002.

said Justice Frankfurter in *Coleman v. Miller*³¹

this is not the tribunal for its challenge except by those who have some specialised interest of their own to vindicate apart from a political concern which belongs to all. To have a “standing to sue”, which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a *legal wrong*. Courts can intervene only where legal rights are invaded.³² “Legal wrong” requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect³³ on the interest or right of a person has been held to be insufficient to give him the “standing to sue” for judicial review of administrative action.³⁴ Again the “adverse affect” requisite for “standing to sue” must be an “illegal effect”.³⁵ Thus, in the undermentioned cases, it was held that injury resulting from lawful competition not being a legal wrong, cannot furnish a “standing to sue” for judicial relief.³⁶

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) ‘person aggrieved’; (ii) ‘stranger’; (iii) busybody or meddling interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of ‘persons aggrieved’. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be “persons aggrieved”.

39. To distinguish such applicants from ‘strangers’, among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the

31 (1939) 307 US 133.

32 *Chapman v. Sheridan Wyoming Coal Co.*, 338 US 621.

33. *American Jurisprudence*, Vol. 2d ss 575, p. 334; *Joint Anti Fascist Refugee Committee v. McGarth*, 341 US 123.

34. *United States Cane Sugar Refiners’ Assn. v. McNutt*, 138 F 2nd 116: 158 ALR 849.

35. *United States v. Storer Broadcasting Co.*, 351 US 192.

36. *Kansas City Power & Light Co. v. McKay*, 350 US 884.



circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person

against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?

40. Now let us apply these tests to the case in hand. The Act and the Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

41. Did the appellant have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury? The answer in the circumstances of the case must necessarily be in the negative.

42. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellant did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the no-objection certificate before the District Magistrate or the Government. Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a license, or revoking or suspending any licence under Section 8. Obviously, the appellant was not a "person aggrieved" within the contemplation of Section 8A.

43. Section 8B of the Act provides that the State Government may either of its own motion, or upon an application made by "an aggrieved person", call for and examine the record of any order made by a licensing authority under this Act, and pass such order thereon as it thinks just and

proper. Assuming that the scope of the words “aggrieved person” in Section 8B is wider than the ambit of the same words as used in Section 8A, then also, the appellant cannot, in the circumstances of this case, be regarded as a “person aggrieved” having the requisite legal capacity to invoke certiorari jurisdiction.

44. The Act and the Rules recognise a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc. located within a distance of 200 yards of the site on which a cinema house is proposed to be constructed. The appellant does not fall within the category of such persons having a special interest in the locality. It is not his case that his cinema house is situated anywhere near the site in question, or that he has any peculiar interest in his personal, fiduciary or representative capacity in any school, temple etc. situated in the vicinity of the said site. It cannot therefore be said that the appellant is “a person aggrieved” on account of his having a particular and substantial interest of his own in the subject-matter of the litigation, beyond the general interest of the public. Moreover the appellant could not be said to have been, *in fact*, grieved. As already noticed, he, despite adequate opportunity, never lodged any objection with the District Magistrate, nor went in revision before the State Government. Thus the present case is not in line with the decisions which are within the ratio of *Queen v. Justices of Surrey* (*supra*).

45. Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider whether any of his rights or interests, recognised by the *general law* has been infringed as a result of the grant of no-objection certificate to the respondents? Here, again, the answer must be in the negative.

46. In paragraph 7 of the writ petition, he has stated his cause of action, thus :

The petitioner submits that . . . he owns a cinema theatre in Mohmadabad which has about a small population of 15,000 persons as stated above and there is no scope for more than one cinema theatre in the town. He has, therefore, a commercial interest in seeing to it that other persons are not granted a no-objection certificate in violation of law.

47. Thus, in substance, the appellant’s stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law.³⁷ The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

37. *Salmond on Jurisprudence*, 12th Edn. by Fitzgerald, p. 357, para 85.

48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a 'person aggrieved' and has no locus standi to challenge the grant of the no-objection certificate.

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's monopoly of cinema business in the town; and above all, it will in effect, seriously injure the fundamental rights of respondents Nos. 1 and 2, which they have under Article 19(1)(g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions imposed by law'.

51. The instant case falls well-nigh within the ratio of this Court's decision in *Nagar Rice and Flour Mills v. N. T. Gowda*³⁸, wherein it was held that a ricemill owner has no locus standi to challenge under Article 226, the setting up of a new ricemill by another — even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 — because no right vested in such an applicant is infringed.

52. For all the foregoing reasons, we are of opinion that the appellant had no locus standi to invoke this special jurisdiction under Article 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative, and on that ground, without entering upon the merits of the case, dismiss this appeal with costs.

38. (1970) 3 SCR 846; (1970) 1 SCC 575.

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feel that the High Court was in error in giving a cryptic finding that the expenditure in question was incurred wholly and exclusively for the purpose of the business. This finding has been arrived at without considering the facts mentioned by us above and is not borne out from the facts and circumstances proved in this case. Nevertheless we uphold the order of the High Court on reasons different from those given by the High Court.

29. We would, however, like to make it clear that we have held that the compensation paid to the outgoing agents in the peculiar facts of the present case amounts to capital expenditure. But we should not be understood as laying down a general rule that in all cases where compensation is paid to the managing agents whose agency is terminated it would amount to capital expenditure. We have already pointed out the various tests to be applied which are by no means exhaustive, nor are they of universal application. Each case has to be examined in the light of the circumstances of that case:

30. The appeal accordingly fails and is dismissed with costs.

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(Before A. N. Ray, C.J. and H. R. Khanna, K. K. Mathew, M. H. Beg, V. R. Krishna Iyer, A. C. Gupta and S. Murtaza Fazal Ali, JJ.)

BAR COUNCIL OF MAHARASHTRA .. Appellant,
Versus
M. V. DABHOLKAR AND OTHERS .. Respondents.

Civil Appeals Nos. 1461-1468 of 1974†, decided on August 13, 1975

Advocates Act, 1961 — Section 38 (as amended by Act 60 of 1973) — Appeal to Supreme Court by any “person aggrieved” — Whether can include Bar Council of a State — State Bar Council which started the disciplinary proceedings suo motu not appearing before the Bar Council of India to defend its verdict — Effect of — Whether there was a “lis” between the State Bar Council and the delinquent advocate

Words and Phrases — “Person aggrieved” — Meaning of

Held :

Per Ray, C.J. and Khanna, Mathew, Gupta and Fazal Ali, JJ.

(a) The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. (Para 24)

The Bar Council has a very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its disciplinary committee. The initiation of the proceeding before the disciplinary committee is by

†From the Judgment and Order dated April 14, 1974 of the Disciplinary Committee of the Bar Council of India, New Delhi, D. C. Appeals Nos. 15 to 19, 21, 22 and 25 of 1973 respectively.

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the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct refer the case for disposal to its disciplinary committee. (Para 24)

The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary proceedings before the disciplinary committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another disciplinary committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to disciplinary committee, the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics. (Para 31)

Adi Pherozshah Gandhi v. H. M. Seervai, Advocate-General of Maharashtra, Bombay, (1970) 2 SCC 484, referred to.

(b) The words "person aggrieved" are found in several statutes and the meaning will have to be ascertained with reference to the purpose and the provisions of the statute. It may vary according to the context of the statute. (Para 28)

Per Beg, J. (concurring)

There was actually a "lis" between the Bar Council and the allegedly delinquent advocates who were hauled up before its disciplinary committee, on complaints sent by the executive committee of the State Bar Council, for what were said to be acts of professional misconduct. (Para 34)

Neither Section 37 nor Section 38 of the Act mentions the State Bar Council as a separate entity. Nevertheless, if it can have the locus standi and rights of a "person aggrieved" affected by the results of such proceedings it necessarily follows that it is in the position of a party to a "lis" or a dispute between itself and the allegedly delinquent advocate towards the decision of which the proceedings are directed. (Para 38)

The term "lis" is not confined to litigation by means of a suit in a court of law nor is a suit necessary to constitute lis. "Lis implies the conception of an issue joined between two parties. The decision of a lis . . . is the decision of that issue." (Para 39)

Butler v. Mountgarret, 7 HLC 633, 641; 11 ER 252 and B. Johnson & Co. (Builders) v. Minister of Health, (1947) 2 All ER 395, 399, relied on.

If the State Bar Council, acting through its executive committee has found a prima facie case to be sent and tried by its disciplinary committee, it performs the functions of a prosecuting agency. It does so in the discharge of its duty to safeguard "the rights, privileges and interests" of advocates as a whole on

its roll which are affected by the misconduct of an advocate. There are, therefore, triable issues between it and the individual advocate accused of misconduct. The State Bar Council, therefore, in its executive capacity, acts as the prosecutor through its executive committee, and if that Bar Council dissatisfied with a decision of its disciplinary committee can appeal against it, it follows as a logical corollary that it is a party to a "lis". That it is a "person aggrieved", within the meaning of that expression as used in Sections 37 and 38 of the Act, necessarily implies that. (Para 40)

The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council: an executive capacity, in which it acts as the prosecutor through its executive committee, and a quasi-judicial function, which it performs through its disciplinary committee. (Para 41)

The statutory right of the State Bar Council to appeal to the Supreme Court under Section 38 is not affected by the mere fact that it did not put in appearance before the Bar Council of India. (Para 42)

Per Krishna Iyer, J. (concurring)

The key to the meaning of the expression "person aggrieved" lies in plain English plus the social feel of the statute and the public commitment of the legal profession, the regulation of which has been achieved by the Advocates Act, 1961 wherein the above words occur. A spacious construction, functionally informed by the social conscience and the salutary purpose of the enactment must illumine the judicial effort. So viewed, the ample import and breadth of meaning of the words "person aggrieved" will embrace the State Bar Council. (Paras 44 and 49)

The social canvas must be spread wide when making out the profile of a statute like the Advocates Act for the good reason that the Bar has a share in being the sentinel on the qui vive when the legal dykes of right and justice are breached by authoritarianism or citizen wrongdoing. (Para 53)

A case of professional misconduct is not a lis in the British sense nor a case and controversy in the American meaning. It is a public investigation about misconduct by one belonging to a public profession where every member of the Bar with a reputation to lose has a stake and everyone concerned with the justice administration is interested. The Bar Council here is involved in public interest litigation where a section or whole of the community is involved. (Para 54)

Adi Pherozshah Gandhi v. H. M. Seervai, Advocate General of Maharashtra, Bombay, (1970) 2 SCC 484; *Bhataraju Nageshwara Rao v. Hon'ble Judges of the Madras High Court*, (1955) 1 SCR 1055, 1064; AIR 1955 SC 223; 10 ELR 216; *Baker v. Carr*, (1962) 369 US 186 and *Attorney-General of the Gambia v. Pierra Sarr N.'jie*, 1961 AC 617, referred to.

Case remanded to Division Bench
for decision on merits

M/2577/C

Advocates who appeared in this case:

- V. S. Desai*, Senior Advocate (*Vimal Dave* and *Miss Kailash Mehta*, Advocates of M/s. Mehta Dave & Co. Advocates, with him), for the Appellant (in all the Appeals);
- M. V. Dabholkar*, Advocate (in Person), as the Respondent in (C. A. No. 1461 of 1974);
- Z. F. Bootwala* and *Mrs. Urmila Sirur*, Advocates, for the Respondents (In C. As. Nos. 1462-64 of 1974);
- V. N. Ganpule* and *V. H. Dixit*, Advocates (in Person), as the Respondents (In C. A. No. 1465 of 1974);
- K. G. Mandalia*, Advocate (in Person), as the Respondent (In C. A. No. 1466 of 1974);
- Mrs. E. Udayarathnam* and *A. K. Doshi*, Advocates (in Person), as Respondents (In C. A. No. 1467 of 1974);
- D. K. Raisinghani*, Advocate (in Person), as the Respondent (In C. A. No. 1468 of 1974);
- K. K. Sinha* and *S. K. Sinha*, Advocates, for the Bar Council of Bihar State;
- D. V. Patel*, Senior Advocate (*Mrs. K. Hingorani*, Advocate, with him), for the Bar Council of India.

BAR COUNCIL OF MAHARASHTRA v. M. V. DABHOLKAR (*Ray, C. J.*) 705

The Judgments of the Court were delivered by

RAY, C.J. (*for himself and Khanna, Mathew, Gupta and Fazal Ali, JJ.*)—These appeals were placed before this Bench for consideration of the question whether the Bar Council of a State is “a person aggrieved” to maintain an appeal under Section 38 of the Advocates Act, 1961 hereinafter called the Act.

2. The Bar Council of Maharashtra on August 8, 1964 considered a complaint received from the High Court against the respondents and resolved that the complaint received from the High Court against the respondents be referred to the disciplinary committee. Another resolution was passed by the Bar Council of Maharashtra on the same day whereby Messrs Hotchand Advani, R. W. Adik and S. C. Chagla were elected as members of the disciplinary committee to enquire into the complaints.

3. The aforesaid disciplinary committee met on March 19, 1965 and heard the advocates for the Bar Council of the State of Maharashtra. After considering the papers placed before the committee, it directed the Registrar to issue notices under Section 35(2) of the Act to the “parties concerned including the Advocate-General”. The committee also expressed the opinion that “there is a prima facie case of professional misconduct”.

4. The Bar Council of Maharashtra on May 18, 1965 issued notices under Section 35 of the Act to the respondents. The notice was described as a suo motu inquiry against the respondents. The notice proceeded with the recital that it came to the notice of the Bar Council of Maharashtra that the respondents stood at the entrance of the court house at the Presidency Magistrate’s Court, Esplanade, Fort Bombay and solicited work and generally behaved at that place in an undignified manner and the said acts amounted to professional and/or other misconduct and the Bar Council constituted disciplinary committee and the inquiry was entrusted to the committee consisting of Messrs H. G. Advani, R. W. Adik and S. C. Chagla.

5. The said disciplinary committee heard evidence upto August 31, 1968. On June 14, 1969, the Bar Council of Maharashtra passed a resolution requesting the aforesaid disciplinary committee to proceed with the inquiry which was pending before them prior to March 31, 1969.

6. The disciplinary committee of the Bar Council of Maharashtra on June 27, 1973 found the respondents guilty of conduct which seriously lowered the reputation of the Bar in the eyes of the public. The disciplinary committee directed that the respondents would stand suspended from practising as advocates for a period of three years. The suspension orders were to be operative from August 1, 1973.

7. The respondents preferred appeals before the Bar Council of India. In these appeals, the respondents impleaded the Bar Council of Maharashtra as respondents. The disciplinary committee of the Bar Council of India on April 14, 1974 allowed the appeals and set aside the orders of the disciplinary committee of the Bar Council of Maharashtra. While

setting aside the orders of the disciplinary committee of the Bar Council of Maharashtra, the disciplinary committee of the Bar Council of India stated as follows :

The Bar Council of Maharashtra has not appeared even though they started the proceedings suo motu and we do not pass any orders as to costs and we direct each party will bear their costs. However, we have gone through the evidence ourselves and also the same has been placed in detail by the appellants. All that we can say is that we expected the Bar Council of Maharashtra to be represented in the appeal because proceedings were started suo motu.

8. These statements of the disciplinary committee of the Bar Council of India indicate that the Bar Council of Maharashtra should have appeared before the disciplinary committee of the Bar Council of India.

9. The scheme of the Advocates Act in short is as follows.

10. There are State Bar Councils. There is Bar Council of India. Every Bar Council is a body corporate.

11. The functions of a State Bar Council are inter alia to entertain and determine cases of misconduct against advocates on its roll and to safeguard the rights, privileges and interests of advocates on its roll.

12. The functions of the Bar Council of India are inter alia to lay down standards of professional conduct and etiquette, to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of State Bar Councils, to safeguard the rights, privileges and interests of advocates and to exercise general supervision and control over State Bar Councils.

13. Disciplinary committees are constituted by each Bar Council. A Bar Council is required to constitute one or more disciplinary committees each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to Section 3(2) of the Act and are not members of the Council, and the seniormost advocate amongst the members of a disciplinary committee shall be its Chairman.

14. When the executive committees of a State Bar Council and of the Bar Council of India and an enrolment committee of a State Bar Council and the legal education committee of the Bar Council of India are to consist of members elected by the Council from amongst its members, it is noticeable that the disciplinary committees of Bar Council of State as well as of Bar Council of India shall consist of three persons of whom two shall be elected by the Council from amongst its members and the other shall be a person co-opted by the Council from advocates who are not otherwise members of the Council.

15. Chapter V of the Act relates to the Conduct of Advocates. Chapter V contains Sections 35 to 44. Section 35 states that where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or

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other misconduct, it shall refer the case for disposal to its disciplinary committee. The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct that inquiry to be made by another disciplinary committee of the State Bar Council. The disciplinary committee of a State Bar Council shall fix a date for the hearing of the case and shall cause a notice to be given to the advocate concerned and to the Advocate-General of the State. The disciplinary committee of the State Bar Council may make any of the following orders namely, (a) dismiss the complaint, or where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed, (b) reprimand the advocate, (c) suspend the advocate for such period as it may deem fit, (d) remove the name of the advocate from the State roll of advocates.

16. Section 36 speaks of disciplinary powers of the Bar Council of India and provides that where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate whose name is not entered on any State roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee of the Bar Council of India may either of its own motion or on a report by any State Bar Council or on an application made to it by any person interested, withdraw for inquiry before itself any proceeding for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

17. Section 37 speaks of appeal to the Bar Council of India. This section states that any person aggrieved by an order of the disciplinary committee of a State Bar Council or the Advocate-General of the State may, within sixty days of the date of communication of the order, prefer an appeal to the Bar Council of India.

18. Section 38 provides for appeal to the Supreme Court. Section 38 states that any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 or the Attorney-General of India or the Advocate-General of the State, as the case may be, may prefer an appeal to the Supreme Court.

19. Section 49 of the Act provides that the Bar Council of India may make rules for discharging its functions under the Act and in particular such rules may prescribe inter alia the standards of professional conduct and etiquette to be observed by advocates. The Bar Council of India in exercise of the rule-making power under Section 49(c) of the Act on July 10 and 11, 1954 approved the rules of standards of professional conduct and etiquette. The standards of professional conduct and etiquette are described in five sections. The first section deals with duty of advocates to the Court. The second section speaks of duty of advocates to the clients. The third section consists of rules regarding duty of advocates to opponent. The fourth section prescribes duties of advocates to colleagues. The fifth section lays down restrictions on advocates on other employments.

20. The present appeals touch on Rule 36 of the Rules of the Bar Council of India. Rule 36 is in the fourth section under the heading "duty to colleagues". Rule 36 speaks that

an advocate shall not solicit work or advertise either directly or indirectly, whether by circular, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned.

21. The question for consideration is the meaning of the words "any person aggrieved by an order made by the disciplinary committee of the Bar Council of India" occurring in Section 38 of the Act. It is noticeable that in Section 37, the Advocate-General of the State and in Section 38, the Attorney-General or the Advocate-General of the State, as the case may be, have been given specific rights of appeal. These rights were introduced into the Act by amendments made in the year 1974 by Amending Act 60 of 1973.

22. In *Adi Pherozshah Gandhi v. H. M. Seervai, Advocate-General of Maharashtra, Bombay*¹ the question which fell for consideration was whether the appeal filed by the Advocate-General of Maharashtra before the Bar Council of India was competent. The majority view was that the Advocate-General of the State was not competent to file an appeal to the Bar Council of India. In the *Adi Pherozshah Gandhi case* (supra), the disciplinary committee of the State Bar Council was satisfied that there was no reason to hold Adi Pherozshah Gandhi guilty of professional misconduct or other misconduct. The Advocate-General of Maharashtra filed an appeal before the Bar Council of India. The appellant objected to the locus standi of Advocate-General before the Bar Council of India. That objection was overruled and the appeal filed by the Advocate-General was accepted by the disciplinary committee of the Bar Council of India. The disciplinary committee of the Bar Council of India held the advocate, Adi Pherozshah Gandhi guilty of misconduct and suspended him from practice for one year. The advocate preferred an appeal under Section 38 of the Act to this Court. In view of majority decision, the appeal filed by Adi Pherozshah Gandhi was accepted by this Court on the ground that the Advocate-General of Maharashtra was incompetent to file an appeal. It is in this background that amendments have been introduced into Sections 37 and 38 of the Act conferring right of appeal on the Advocate-General of State and the Attorney-General of India under Sections 37 and 38 respectively.

23. The respondents contended on the ruling of this Court in *Adi Pherozshah Gandhi's case* (supra) that the Bar Council of the State is not a person aggrieved to maintain an appeal against a decision of its disciplinary committee for these reasons. First, the Bar Council of a State is not an aggrieved person because Bar Council has not suffered any legal grievance, and the decision of the Bar Council of India has not deprived the Bar Council of a State of anything. Second, the allegation that order of the disciplinary committee of the Bar Council of India is wrongfully made does not by itself give any grievance to the Bar Council

1. (1971) 1 SCR 863; (1970) 2 SCC 484.

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of a State. The person must be aggrieved by the order and not by the consequences which ensue. Third, it is not the duty of the State Bar Council to attempt to set right any alleged error of the disciplinary committee of the Bar Council of India. The reason is that no such duty has been imposed or cast by law on the Bar Council of a State. Fourth, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. Fifth, the Bar Council of a State is subordinate to Bar Council of India and is, therefore, not competent to appeal against any order of the superior body. Finally, an appeal could have been filed by the Advocate General or the Attorney-General of India who have the right to appeal but they have chosen not to do so.

24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The disciplinary committees are constituted by the Bar Council. The Bar Council is not the same body as its disciplinary committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. The Bar Council has a very important part to play, first, in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its disciplinary committee. The initiation of the proceeding before the disciplinary committee is by the Bar Council of a State. A most significant feature is that no litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.

25. In finding out the meaning of the words "person aggrieved by an order made by the disciplinary committee of the Bar Council of India", two features are to be kept in the forefront. First, there is no lis in proceedings before the disciplinary committee. When the disciplinary committee exercises the power to reprimand the advocate, or suspend the advocate from practice or remove the name of the advocate, the committee does not decide a suit between the parties. The Bar Council in placing a matter before the disciplinary committee does not act as

prosecutor in a criminal case. A complainant who prefers a complaint against an advocate is not like a plaintiff in a civil suit. The complaint is examined by the Bar Council in order to find out whether there is any reason to believe that any advocate has been guilty of misconduct. The Bar Council may act on its own initiative on information which has come to its notice in the course of its duties. Second, there is no party to the disciplinary proceedings. It is because the Bar Council, the Attorney-General, the Advocate-General, as the case may be, all act in protecting the interests of advocates, the interests of the public. In so acting there is no conflict between the advocate and any other person. The reason is that it is professional conduct, professional etiquette, professional ethics, professional morality, which are to be upheld, transgression of which results in reprimanding the advocate or suspending him from practice or removing his name from the roll.

26. With regard to the conduct of the advocates, the State Bar Council plays an important part, vis-a-vis the disciplinary committee constituted by the State Bar Council. First, under Section 35(1A) of the Act the State Bar Council may either of its own motion or on an application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of the State Bar Council. This indicates the watch that the State Bar Council has to keep. Its task does not cease on placing a matter before the disciplinary committee. This provision shows on one hand the abiding interest of the State Bar Council in the matter and on the other the duty of guarding the professional ethics with which it is entrusted. Second, under Section 36(2) of the Act, a State Bar Council may make a report to the Bar Council of India to withdraw before the disciplinary committee of the Bar Council of India any proceeding for disciplinary action against any advocate pending before the disciplinary committee of a State Bar Council. These provisions indicate that after the State Bar Council has placed the matter before its disciplinary committee, the Bar Council continues its check on the proceedings. These courses of action are procedural. These steps do not give the State Bar Council any power to deal with the decisions of the disciplinary committee. The reason why the State Bar Council is empowered under the Act to withdraw proceedings from one disciplinary committee and give it to another or to have the disciplinary proceedings withdrawn from the State for determination by the disciplinary committee of the Bar Council of India is that the State Bar Council is all the time interested in the task of preserving the profession against impurities in the standards of conduct. The Bar Council is the collective representative of the lawyers, the public, in regard to the observance of professional ethics by persons belonging to the noble profession.

27. The words "person aggrieved" are found in several statutes. The meaning of the words "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. Sometimes, it is said that the words "person aggrieved" correspond to the requirement of locus standi which arises in relation to judicial remedies.

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28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words "persons aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. The test is whether the words "person aggrieved" include "a person who has a genuine grievance because an order has been made which prejudicially affects his interests". It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette.

29. The pre-eminent question is : what are the interests of the Bar Council? The interests of the Bar Council are the maintenance of standards of professional conduct and etiquette. The Bar Council has no personal or pecuniary interest. The Bar Council has the statutory duty and interest to see that the rules laid down by the Bar Council of India in relation to professional conduct and etiquette are upheld and not violated. The Bar Council acts as the sentinel of professional code of conduct and is vitally interested in the rights and privileges of the advocates as well as the purity and dignity of the profession.

30. The interest of the Bar Council is to uphold standards of professional conduct and etiquette in the profession, which is founded upon integrity and mutual trust. The Bar Council acts as the custodian of the high traditions of the noble profession. The grievance of the Bar Council is to be looked at purely from the point of view of standards of professional conduct and etiquette. If any decision of the disciplinary committee of the Bar Council of India is according to the State Bar Council such as will lower the standards and imperil the high traditions and values in the profession, the State Bar Council is an aggrieved person to safeguard the interests of the public, the interests of the profession and the interests of the Bar.

31. The Bar Council is "a person aggrieved" for these reasons. First, the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. In disciplinary

proceedings before the disciplinary committee there is no lis and there are no parties. Therefore, the word "person" will embrace the Bar Council which represents the Bar of the State. Second, the Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Third, the function of the Bar Council in entertaining complaints against advocates is when the Bar Council has reasonable belief that there is a prima facie case of misconduct that a disciplinary committee is entrusted with such inquiry. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another disciplinary committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. Fourth, a decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council initiates proceedings by referring cases of misconduct to disciplinary committee, the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the advocates maintain the proper standards and etiquette of the profession. Fifth, the Bar Council is vitally concerned with the decision in the context of the functions of the Bar Council. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

32. For these reasons we hold that the Bar Council is an aggrieved person to maintain an appeal under the Act.

33. The appeals will now be heard on merits by a Division Bench.

BEG, J. (*concurring*)—I not only concur with the conclusion reached by My Lord the Chief Justice and the reasons given to support it, but I think that we can and should hold that there was actually a "lis" between the Bar Council and the allegedly delinquent advocates who were hauled up before its disciplinary committee, on complaints sent by the executive committee of the State Bar Council, for what were said to be acts of professional misconduct.

35. The learned Chief Justice has very clearly and succinctly set out the reasons why a State Bar Council is a "person aggrieved" entitled to appeal against orders in disciplinary proceedings against members of the Bar of the State. It represents the Bar of the State. It is the "keeper of the conscience" and the guardian of the interests of members of the Bar. It acts "as the protector of the purity and dignity of the profession". Its functions in relation to disciplinary proceedings, is to entertain complaints against advocates, and, when there is a prima facie case of misconduct, to initiate proceedings by sending the complaint to its disciplinary committee. It has an interest in seeing that correct decisions are given upon matters involving allegations of misconduct against members of the Bar of the State. My learned brother Krishna Iyer has indicated the wide range and the social significance and dimensions of this interest.

36. A State Bar Council is composed primarily of members elected from amongst Advocates of a State. Its statutory functions are given in Section 6 of the Advocates Act, 1961 (hereinafter referred to as 'the Act'). Amongst these, we are especially concerned here with clauses (c) and (d) of Section 6(1) of the Act, which read as follows :

- (c) to entertain and determine cases of misconduct against advocates on its roll ;
- (d) to safeguard the rights, privileges and interests of advocates on its roll ;

37. Under Section 9 of the Act, the State Bar Council constitutes its disciplinary committee consisting of

three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified

Under Section 10 it elects an executive committee of five members and an enrolment committee of three members. Thus, the State Bar Council operates through its committees. Each committee has distinct and separable functions. Each could, therefore, be said to have a "persona" and an identity of its own which is distinguishable from that of the Bar Council as a whole. Each committee, no doubt, acts for the Bar Council, but its members are likely to be different although this is not necessarily so. In any case, when the State Bar Council has sent a case to its disciplinary committee, under Section 35 of the Act, that committee proceeds as an independent and impartial authority which tries a complaint and either dismisses it or directs proceedings to be filed, or, upon finding an advocate guilty, punishes him by either reprimanding him, suspending him from practice for a specified period, or orders removal of his name from its roll of advocates. Indeed, Section 42(1) of the Act gives the disciplinary committee the powers of a civil court under the Civil Procedure Code ; and, Section 42(2) enacts that its proceedings shall be "deemed" to be judicial proceedings for the purposes mentioned there.

38. At the trial of a complaint opportunities to be heard must be given to the Advocate General and to the advocate who is tried by it. This has to be done because there are disputes and conflicting interests and points of view on which the disciplinary committee has to give its decisions. The Advocate General can appear either personally or through an advocate representing him. He presumably represents public interest as well as the interests of the legal profession of which he is the formal head in the State. It is true that there is no provision in Section 35 of the Act for impleading the State Bar Council which, on its executive side, initiates the proceedings by sending the case to its disciplinary committee. But, if the Bar Council has a separable interest, as a guardian of the rights and privileges of the members of the Bar, specifically mentioned by Section 6(1)(d) of the Act, there is no reason why a right to represent this interest before its own disciplinary committee as well as before the Bar Council of India, on an appeal under Section 37 of the Act, or, on the further appeal to this Court under Section 38 of the Act, should be denied to it. Neither Section 37 nor Section 38 of the Act mention the State Bar Council as a separate entity. Nevertheless, if, as we are

holding, it can have the locus standi and rights of a “person aggrieved”, affected by the results of such proceedings, I see no reason why we should not say that it is in the position of a party to a “lis” or a dispute between itself and the allegedly delinquent advocate towards the decision of which the proceedings are directed.

39. The term “lis” is not confined to litigation by means of a suit in a court of law. In *Butler v. Mountgarret*², it was held that a “suit is not necessary to constitute lis”. It was pointed out there that “a family controversy capable of being litigated is a lis mota”. In *B. Johnson & Co. (Builders) v. Minister of Health*³, Lord Greene, M. R. said :

Lis implies the conception of an issue joined between two parties. The decision of a lis . . . is the decision of that issue.

40. If the State Bar Council, acting through its executive committee, has found a prima facie case to be sent and tried by its disciplinary committee, it performs the functions of a prosecuting agency. It does so in the discharge of its duty to safeguard “the rights, privileges and interests” of advocates as a whole on its roll which are affected by the misconduct of an advocate. There are, therefore, triable issues between it and the individual advocate accused of misconduct. It seems to me that we could and should, therefore, hold that the State Bar Council, in its executive capacity acts as the prosecutor through its executive committee. There is no incongruity in its disciplinary committee, representing its judicial wing, functioning as an impartial judge whose decisions are binding upon the State Bar Council. If we are holding that a Bar Council, dissatisfied with a decision of its disciplinary committee, can appeal against it, we have to, I think, as its logical corollary, also hold that it is a party to a “lis”. Our opinion that it is a “person aggrieved”, within the meaning of that expression as used in Sections 37 and 38 of the Act, necessarily implies that

41. The point of view stated above rests upon the distinction between the two different capacities of the State Bar Council : an executive capacity, in which it acts as the prosecutor through its executive committee, and a quasi-judicial function, which it performs through its disciplinary committee. If we can make this distinction, as I think we can, there is no merger between the prosecutor and the judge here. If one may illustrate from another sphere, when the State itself acts through its executive agencies to prosecute and then through its judicial wing to decide a case, there is no breach of a rule of natural justice. The prosecutor and the judge could not be said to have the same personality or approach just because both of them represent different aspects or functions of the same State.

42. For the reasons given above, I do not see any objection to a participation of a State Bar Council in its executive capacity, in a disciplinary proceeding, against an advocate on its roll, either at the initial or the appellate stages. Before it can become a “person aggrieved” by an order against which it could appeal, there must have been a “lis” or a

2. 7 HLC 633, 641 : 11 ER 252.

3. (1947) 2 All ER 395, 399.

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dispute to be decided which gives rise to the order complained of. To such a "lis" the State Bar Council, in its executive capacity, must be deemed to be a party. Apparently, its interests are presumed to be sufficiently represented by the Advocate General. Hence, it was not considered necessary to provide for its separate representation by a notice to be given by its disciplinary committee as is provided for in the case of the Advocate General. But, there seems to me to be no legal obstacle in the way of its separate representation, if it so desires, even before its own disciplinary committee. It certainly has notice of every complaint whenever it sends it to its disciplinary committee. Its right to appeal, in any event, as a "person aggrieved", seems squarely covered by the provisions of Sections 37 and 38 of the Act. It may be mentioned here that the respondents themselves treated the Bar Council as a party interested in a "lis", so that it could become a "person aggrieved" by the setting aside of the orders against respondents, when they impleaded the State Bar Council as a respondent in their appeals to the Bar Council of India. Its statutory right to appeal to this Court under Section 38 is not affected by the mere fact that it did not put in appearance before the Bar Council of India.

KRISHNA IYER, J. (*concurring*)—My concurrence in the opinion which has been handed down by the learned Chief Justice is ordinarily dissuasive of a separate long note, save when a fresh perspective is to be presented or new frontiers are to be drawn by doing so. Partially, my supplementary has this apology.

44. The two-day long arguments in this case have been devoted to a construction of two simple words in common use forming the expression 'person aggrieved'. Precedential erudition and traditional approaches notwithstanding, the key to the meaning of the expression in question lies in plain English plus the social feel of the statute and the public commitment of the legal profession, the regulation of which has been achieved by the Advocates Act, 1961 (for short, the Act) wherein the above words occur. Legal scholarship, to be fruitful, must focus on the lifestyle of the law without getting lost in mere logomachy.

45. The short question is as to whether the State Bar Council is a 'person aggrieved' within the meaning of Section 38 so that it has locus standi to appeal to this Court against a decision of the disciplinary tribunal of the Bar Council of India which, it claims, is embarrassingly erroneous and, if left unchallenged, may frustrate the high obligation of maintaining standards of probity and purity and canons of correct professional conduct among the members of the Bar on its rolls.

46. I skip the facts as they have been set out in the judgment of the learned Chief Justice, except to state that a number of advocates, who are ranged as respondents, had been found guilty by the disciplinary tribunal of the State Bar Council of unseemly soliciting but, on appeal, the disciplinary body of the National Bar Council exonerated them on certain view of 'professional conduct' which disturbed the State Bar Council and even

the All-India Bar Council, with the result that the former came up to this Court in appeal and the latter actively supported this stand.

47. The hackneyed phrase, 'person aggrieved', is not merely of frequent occurrence in statutes and in the writ jurisdiction but has come up for judicial consideration in Anglo-American and Indian courts in a variety of situations and legislative settings. Notwithstanding the slippery semantics of such legalese, the Indian legislative draftsmen have continued to use them, out of linguistic allegiance to the British art and Indian judges have frequently sought interpretative light from English authorities of ancient vintage. These 'borrowed' drafting and interpretative exercises are sometimes inept when time and country change and the context and text of the statute vary. I stress this aspect since much of the time of the courts in India is consumed by massive, and sometimes mechanical, reliance on exotic constructions and default in evolving legislative simplicity and avoiding interpretative complexity. At a time when our courts are on trial for delayed disposals and mystifying processes, this desideratum becomes all the more urgent. Otherwise, why should decoding a single expression — 'person aggrieved' — take two days of learned length?

48. Even in England, so well-known a parliamentary draftsman as Francis Bennion has recently pleaded in the *Manchester Guardian* against incomprehensible law forgetting

that it is fundamentally important in a free society that the law should be readily ascertainable and reasonably clear, and that otherwise it is oppressive and deprives the citizen of one of his basic rights.

It is also needlessly expensive and wasteful. Reed Dickerson, the famous American draftsman, said: 'It cost the Government and the public many millions of dollars annually'. The Renton Committee, in England, has reported on drafting reform but it is unfortunate that India is unaware of this problem and in a post-Independence Statute like the Advocates Act legislators should still get entangled in these drafting mystiques and judges forced to play a linguistic game when the country has an illiterate laity as consumers of law and the rule of law is basic to our constitutional order.

49. Back to the issue. Is the State Bar Council a 'person aggrieved'? No narrow, pedantic, technical or centenarian construction can be blindly applied. On the other hand, a spacious construction, functionally informed by the social conscience and the salutary purpose of the enactment must illumine the judicial effort. So viewed, the ample import and breadth of meaning of the words 'person aggrieved' will embrace the State Bar Council, for reasons which I shall presently set out.

50. Each statute has a personality and a message. Judicial interpretation is not bloodless and sterile exercise in spinning subtle webs, sometimes cobwebs, out of words and phrases otherwise simple, but to unfold the scheme of the legislation insightfully, sense its social setting and read the plain intentment. This living approach can do justice to law. We are here concerned with a legislative outfit for a national Bar, organising and prescribing its statutory autonomy, elective structure, public functions, internal regulation and ultimate appeal to the Supreme Court where canons

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of good conduct have been allegedly breached by delinquent lawyers. This conspectus will show what a vibrant and responsible role the Bar Council has to play at the State and national levels and any interpretation which will detract from this supervisory status of the Bar Council will be incongruous with the founding creed of the institution. The paramount concern of the Bar Councils is the lawyer, the public and professional responsibility. Anything that hurts the health of this system is a social trauma, a legal grievance, a special injury, for them. After all, 'lawyer-power' lasts not through peak incomes of a few and security of statutory monopoly, but by the high comport and ethics of the many, screening and weeding deviants and delinquents.

51. Let us get a glimpse of the great expectations about the legal profession in society. Long ago, De Toqueville trenchantly remarked that the profession of law

is the only aristocratic element which can be amalgamated without violence with natural elements of democracy I cannot believe that a Republic could subsist if the influence of lawyers in public business did not increase in proportion to the power of the people.

He rightly stressed that 'lawyers belong to the people by birth and interest, to the aristocracy by habit and taste'. Thus the profession is the connecting link between the community and the administration, given an enlightened, goal-oriented group outgrowing its elitist mores. Indeed today lawyers are recruited also from the lower brackets. India has a huge number of law men who can be a force. What Prof. Brabanti observed about the Pakistan Bar has some, only some though, relevance to India, and I quote :

The sheer size of the legal community, strongly organised into Bar Associations and closely allied with equally strong courts has not only been a major source for the diffusion and regeneration of norms generally, but by weight of numbers has enabled the courts to remain strong and has prevented the rise of administrative lawlessness. There is a curious anomaly here. The legal community, while often antagonistic to government and constraining executive action, is nevertheless closely identified normatively and culturally with the bureaucratic elite. This identification curiously coupled with healthy antagonism actually enhances the strength of the legal community. It derives popular support from its ostensible opposition to Government, and at the same time elicits bureaucratic support in the community at large. It has a network of relationships in rural areas and the cities In short, the legal community is a force to be reckoned with. It has challenged the Executive during and after martial law, it has defied efforts to restrict court jurisdiction, it has compelled justiciability of fundamental rights, it has forced abrogation of several restrictive enactments. Is this law as an impediment to political development? Is this misallocation of scarce resources in the system? Is this unproductive use of non-productive man-power? On the contrary, it seems to us that this is the very genius of political development.

Michael Hager, after quoting Prof. Brabanti, comments (in his article in the *American Bar Association Journal*, January 1972, Vol. 58, on 'The Role of Lawyers in Developing Countries'):

The legal profession has a unique opportunity to effect change from within the political elite, to exert pressure from without and to win over the general public to development policies. And as Mihaly and Nelson observed with respect to legal education, 'law graduates usually fan out not only into legal practice but also into responsible positions in business, government and politics'.

52. The Bar is not a private guild, like that of 'barbers, butchers and candlestick-makers' but, by bold contrast, a public institution committed to public justice and *pro bono publico* service. The grant of a monopoly licence to practice law is based on three assumptions: (1) There is a socially useful function for the lawyer to perform, (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself not more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice (*'The Practice of Law is a Public Utility' — 'The Lawyer, The Public and Professional Responsibility'* by F. Raymond Marks *et al* — Chicago American Bar Foundation, 1972, p. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is cast on these bodies in the national hope that the members of this monopoly will serve society and keep to canons of ethics befitting an honourable order. If pathological cases of member misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar Council, is more concerned with and sensitive to this potential disrepute the few black sheep bring about? The official heads of the Bar, i. e. the Attorney General and the Advocates-General too are distressed if a lawyer 'stoops to conquer' by resort to soliciting, touting and other corrupt practices.

53. I may now refer to *Adi Pherozshah Gandhi v. H. M. Seervai* (supra) where divergent opinions were delivered but all concurred in treating the Bar Council as an 'aggrieved person'. The earlier decision in *Bhataraju* strikes a note in consonance with this view. No hesitancy inhibits me from hazarding the opinion that the social canvas must be spread wide when making out the profile of a statute like the Advocates Act for the good reason that the Bar has a share in being the sentinel on the *qui vive* when the legal dykes of right and justice are breached by authoritarianism or citizen wrong-doing. Nor do I conceal my half-horror at any professional tribunal glossing over 'snatching briefs' and 'dragging clients' — provided they are proved — as less than gross misconduct. If the salt lose their savour, wherewith shall they be salted? However, I hasten to make it plain, to avoid prejudice to the parties, that I totally desist from pronouncing on the merits of the evidence in this case.

54. One more point. A case of professional misconduct is not a *lis* in the British sense nor a *case and controversy* in the American meaning. It is a public investigation about misconduct by one belonging to a public profession where every member of the Bar with a reputation to lose has a stake and everyone concerned with the justice administration is interested. Traditionally used to the adversary system, we search for individual persons aggrieved. But a new class of litigation — public interest litigation — where a section or whole of the community is involved (such as consumers' organisations or N.A.A.C.P. — National Association for Advancement of Coloured People — in America), emerges.

4. *Bhataraju Nageshwara Rao v. Hon'ble Judges of the Madras High Court*, (1955) 1 SCR 1055, 1064 : AIR 1955 SC 223 : 10 ELR 216.

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In a developing country like ours, this pattern of public-oriented litigation better fulfils the rule of law if it is to run close to the rule of life. The Bar Council clearly comes within this category of organisations when a lawyer is involved.

55. I derive support for this philosophy of approach from academic and judicial opinion in England and America. A question arose whether a railroad company — B.A.R. (Bangor and Aroostook Railroad) — could bring an action against the stockholders for having drained B.A.R. improperly. Although an academic critic took the view that the District Court was incorrect in its view that B.A.R. was the 'sole beneficiary', he went on to state that the public's interest in the financial health of B.A.R. provided a separate interest in bringing the action. The learned author wrote :

It would seem to be incontestable that the public has a very real interest in railroads. Railroads have been found vital to a healthy national economy; any such factor must, *a priori*, be deemed a potent component of the public welfare. As such, it is evident that a financially healthy railroad is of concern not only to its stockholders, but to the public as well Finding that the management of a railroad has obligations running to the public as well as fiduciary duties owing to the corporation's stockholders, the Court concluded that, of these two responsibilities, the public interest is paramount. "It must be remembered," the Court cautioned, "that railways are public corporations organized for public purposes They all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders."

[Review by James F. Simon of *Bangor & Aroostook R. R. v. Bangor Punta Operations, Inc (Bangor & Aroostook)*, 482 F 2d 865 (1st Cir, 1973), cert. granted. 94 S Ct 863 (1974) *Columbia Law Review* Vol. 74 No. 3, April 1974 — p. 528 at pp. 531-532.]

56. Similarly, the American Supreme Court relaxed from the restrictive attitude towards 'standing' in public actions in *Baker v. Carr*⁵, *vide Maryland Law Review*, Vol. XXXIII 1973, p. 506 :

In *Baker*, voters challenged the failure of the Tennessee Legislature to reapportion itself since 1901; the plaintiffs lived in counties which had become under-represented under the old law. The Supreme Court held that these voters had the requisite standing to challenge the inaction of the Legislature. The Court expanded the notion of direct injury to include mere 'debasing' of a vote, rather than the total deprivation which had previously been required.

57. American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of 'locus standi', such a course could not have been justified (*see* p. 807 — *New York University Law Review*, Vol. 46, 1971). In fact, citizen organisations have recently been campaigning for using legal actions for protection of community interest, broadening the scope of 'standing' in legal proceedings (*see* p. 403 — *Boston University Law Review*, Vol. 51, 1971).

58. In the well-known case of *Attorney-General of the Gambia v. Pierra Sarr N. Jie*⁶, Lord Denning observed about the Attorney-General's

5. (1962) 369 US 186.

6. 1961 AC 617.

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standing thus :

. . . the words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests. Has the Attorney-General a sufficient interest for this purpose? Their Lordships think that he has. The Attorney General in a colony represents the Crown as the guardian of the public interest. It is his duty to bring before the judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action.

Ray, J. (as he then was) crystallised this ration in *Adi Pherozshah Gandhi case* (supra) thus :

The Judicial Committee construed the words 'person aggrieved' to include the Attorney General of Gambia as representing the public interest. (p. 927) [SCC p. 528, para 20]

The profession touches the public on the one hand and the courts on the other. On no other basis could the presence of the Advocate General be explained. (p. 928) [SCC p. 529, para 23]

59. Although not strictly confined to 'standing' with reference to suits, jurists have thrown some light on this subject. Professor S. A. de Smith has observed :

All developed legal systems have had to face the problem of adjusting conflicts between two aspects of the public interest — the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome inter-loper to invoke the jurisdiction of the courts in matters that do not concern him (Quoted in 'Standing and Justiciability' by V. S. Deshpande — Journal of the Indian Law Institute — April-June, 1971 — Vol. 13, No. 2, p. 174.)

Professor H.W.R. Wade has observed :

In other words, *certiorari* is not confined by a narrow conception of *locus standi*. It contains an element of the *actio popularis*. This is because it looks beyond the personal rights of the applicant; it is designed to keep the machinery of justice in proper working order by preventing inferior tribunals and public authorities from abusing their powers. (*Standing and Justiciability* — *ibid.*, p. 175.)

The possible apprehension that widening legal standing with a public connotation may unloose a flood of litigation which may overwhelm the judges is misplaced because public resort to court to suppress public mischief is a tribute to the justice system. In this very case, to grant an exclusionary windfall on the respondents is to cripple the Bar Council in its search for justice and insistence on standards.

60. I have been long on a short point, but brevity, where there is something to speak, is not the soul of wit but a sign of something different.

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without number before this Court for the principles enunciated therein. These decisions, therefore, affect subsequent decisions of this Court as well as the High Courts. And some of the principles enunciated in these three cases stand in sharp contrast to other decisions of this Court and in fact this Court itself felt it necessary to warn that it may become necessary to reconcile these conflicting decisions. In this connection reference may be made to *N. K. Chauhan v. State of Gujarat*¹⁰, where this Court after referring to two sets of decisions charting two different courses, observed as under: (SCC p. 325, para 33)

After all, we live in a judicial system where earlier curial wisdom, unless competently overruled, binds the court. The decisions cited before us start with the leading case in *Merwyn Coutinho v. Collector of Customs, Bombay*¹¹ and close with the last pronouncement in *V. B. Badami v. State of Mysore*¹². This time span has seen dicta go zigzag but we see no difficulty in tracing a common thread of reasoning. However, there are divergencies in the ratiocination between *Merwyn Coutinho*¹¹ and *Govind Dattatray Kelkar v. Chief Controller of Imports and Exports*¹³ on the one hand and *S. G. Jaisinghani v. Union of India*², *Bishan Sarup Gupta v. Union of India*³, *Union of India v. Bishan Sarup Gupta*³ and *A. K. Subraman v. Union of India*¹⁴ on the other, especially on the rota system and the year being regarded as a unit, that this Court may one day have to harmonize the discordance unless government wakes up to the need for properly drafting its service rules so as to eliminate litigative waste of its servants' energies.

73. It is not for a moment suggested and I say so with utmost respect that the aforementioned three decisions are incorrect. In the light of the materials now placed especially the files which were withheld from the court and the committee the only view that I express is that enough compelling and necessary material has been placed on record making out a strong case for reconsideration of these decisions. Accordingly, in my view the present two petitions deserve to be placed before a larger Bench to be constituted by the Hon'ble Chief Justice of India.

ORDER OF THE COURT

74. In view of the majority opinion the writ petitions are dismissed with no order as to costs.

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(BEFORE R. S. SARKARIA AND P. S. KAILASAM, JJ.)

THAMMANNA .. Appellant ;
Versus
K. VEERA REDDY AND OTHERS .. Respondents.

Civil Appeal No. 1950 (NCE) of 1979†, decided on July 23, 1980

- | | |
|--------------------------------------------------------------------------|--------------------------------------------------------------|
| 10. (1977) 1 SCR 1037, 1053; (1977) 1 SCC 308, 325; 1977 SCC (L & S) 127 | 12. (1976) 1 SCR 815; (1976) 2 SCC 901; 1976 SCC (L & S) 353 |
| 11. (1966) 3 SCR 600; AIR 1967 SC 52; (1967) 1 SCJ 574 | 13. (1967) 2 SCR 29; AIR 1967 SC 839; (1967) 1 LLJ 691 |
| | 14. (1975) 2 SCR 979; (1975) 1 SCC 319; 1975 SCC (L & S) 36 |

†From the Judgment and Order dated April 24, 1979 of the Andhra Pradesh High Court in Election Petition No. 8 of 1978

Election — Appeal to Supreme Court — Locus standi — Conditions precedent for maintaining appeal under Section 116-C, R. P. Act — ‘Person aggrieved’, who is — Person defeated in election, joined as respondent in election petition by the petitioner, but not participating in the proceedings, held, not a ‘person aggrieved’ — Where election-petitioner fails to file appeal against dismissal of his petition by the High Court, such a person has no standing to appeal — Principle that election is a representative action operates within the limited sphere of Sections 109 to 116, R. P. Act, which are regarding withdrawal of election petitions and do not apply to appeals — Representation of the People Act, 1951 (43 of 1951), Sections 116-A, 109 to 116

In an election-petition filed by respondent 7, a defeated candidate, challenging the election of respondent 1, all candidates who had filed their nominations, including the appellant, were joined as respondents. The petition was contested by respondent 1 only. The appellant neither filed any written statement, nor led any evidence, nor cross-examined the witnesses produced by respondent 1 or the election-petitioner, nor participated even in the arguments. The High Court dismissed the petition and the appellant filed an appeal to Supreme Court. A preliminary objection was raised by respondent 1 in the appeal that the appellant had no locus standi to maintain the appeal since he was not a person aggrieved or a party adversely affected by the judgment of the High Court. Allowing the preliminary objection and dismissing the appeal with costs the Supreme Court

Held :

Barring the exceptional provision in Section 116-A, R. P. Act, which marks a departure from CPC, 1908, Section 116-C is substantially analogous to Section 96(1) of the Code and the court may legitimately look for guidance to Section 96(1) and other provisions of the Code and also the general principles which govern the right of appeal thereunder. As a general proposition, therefore, it may safely be stated that before a person is entitled to maintain an appeal under Section 116-C, all the conditions mentioned below, must be satisfied :

- (i) that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election-petition;
- (ii) that the person seeking to appeal has been a party in the election petition; and
- (iii) that he is a “person aggrieved”, that is a party who has been *adversely affected* by the determination. (Para 14)

Bar Council of Maharashtra v. M. V. Dabholkar, (1975) 2 SCC 702 : (1976) 1 SCR 306; *J. N. Desai v. Roshan Kumar*, (1976) 1 SCC 671, 681 : AIR 1976 SC 578, 584 and *Re Sidebotham*, (1880) 14 Ch D 458, *relied on*

In the present case these three conditions, particularly (1) and (3) have not been fulfilled. Although the meaning of the expression “person aggrieved” may vary according to the context of the statute and the facts of the case, nevertheless, normally, “a ‘person aggrieved’ must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something”. In the present case, however, the appellant cannot be said to be aggrieved or

prejudicially affected by the decision of the High Court, dismissing the election petition. It was not obligatory for the election-petitioner to join the appellant as a respondent. The appellant was not a necessary party to be impleaded as there were no allegations or claims in the petition which would attract Section 82 of the R. P. Act. The question of Section 86 (4) of the Act coming into play also never arose as the petitioner had already impleaded the appellant as one of the respondents in the election-petition. Even so the appellant did not join the controversy. He neither joined issue with the contesting respondent 1, nor did he do anything tangible to show that he had made a common cause with the election-petitioner against respondent 1. (Paras 15 to 17 and 27)

It is also not possible to accept the wide argument that since an election petition is in the nature of a representative action on behalf of the whole body of electors in the constituency, on neglect or failure of the election-petitioner to file an appeal against the order of dismissal of his election petition, any other elector, particularly who is a respondent in the election petition, can, in view of Sections 109/110 of the Act, be substituted for him for the purpose of filing and continuing the appeal. (Paras 18, 20, 22 and 26)

Bijayananda Patnaik v. Satrughna Sahu, (1964) 2 SCR 538, 545: AIR 1963 SC 1566: 24 ELR 219, *relied on*

In the instant case, the appellant or any other elector did not make any application or complaint at the trial of the election petition in the High Court that the election-petitioner has abandoned the prosecution of the petition or withdrawn from it and that the applicant be substituted for the election-petitioner to continue the proceedings under Section 110(3)(c) of the Act. In fact the appellant took no interest in the controversy. Thus conditions 1 and 3, the satisfaction of which is necessary to give locus standi, to a person to file an appeal under Section 116-C, have not been fulfilled. The appellant cannot be said to be a 'person aggrieved' by the decision of the High Court. (Para 27)

K. Kamaraja Nadar v. Kunju Thevar, 1959 SCR 583: AIR 1958 SC 687: 14 ELR 270; *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa*, 1959 SCR 611: AIR 1958 SC 698: 14 ELR 296; *A. Sreenivasan v. Election Tribunal*, (1955-56) 11 ELR 278 (Mad HC) and *Adi Pherozshah Gandhi v. H. M. Seervai*, (1970) 2 SCC 484: (1971) 1 SCR 863, *referred to* R/4925/C

Advocates who appeared in this case:

Govindan Nair, Senior Advocate (*A. Subba Rao*, Advocate, with him), for the Appellant;
P. P. Rai, Senior Advocate (*T. Ramashandran*, *K. Ramkumar* and *Venkataramani*, Advocates, with him), for Respondent 1.

The Judgment of the Court was delivered by

Kailasam, J.—This appeal by Shri Thammanna is directed against a judgment, dated April 24, 1979 of the High Court of Andhra Pradesh, whereby the election petition filed by Shri V. Krishna Reddy, respondent 7 herein, against the returned candidate, Shri K. Veera Reddy (respondent 1 herein) was dismissed. The material facts are these:

2. In the elections held for the Andhra Pradesh Legislative Assembly in February 1978 respondents 1 to 4, 6, 7 and the appellant filed their nominations for Amarchinta Assembly Constituency. Polling took place on February 25, 1978, and Shri K. Veera Reddy, respondent 1, was declared elected on February 27, 1978. He secured 34,727 votes while his nearest rival, respondent 2, got 29,419 votes. The appellant obtained 822 votes only.

3. Shri V. Krishna Reddy, (respondent 7 herein), being a voter for 198 Amarchinta Assembly Constituency in Mahabunagar District filed an election petition in the High Court to get the election of the first respondent declared void on the ground that on the date of filing the nomination paper as well as on the date of the election, this respondent had subsisting contracts with the Government of Andhra Pradesh and, as such, he was under Section 9-A of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') disqualified to be chosen to fill the seat. All the candidates who had filed their nominations, were joined in the election petition as respondents. The appellant was impleaded as original respondent 5. The election petition was contested by respondent 1, (K. Veera Reddy), only. The appellant (i. e. original respondent 5) did not file any written statement. He did not lead any evidence, nor did he cross-examine the witnesses produced by respondent 1 or the election-petitioner. He did not participate even in the arguments.

4. A preliminary objection has been raised by the learned counsel for respondent 1. It is submitted that Shri Thammanna is not competent to maintain this appeal, because he does not fulfil the character of a "person aggrieved" by the judgment of the High Court. It is emphasised that it was not necessary for the election petitioner to join Shri Thammanna as a respondent because no relief was claimed against him; that he was impleaded as respondent 5 only as a matter of form; that he did not participate in the proceedings before the High Court; nor joined issue with respondent 1. It is pointed out that according to the judgment of the High Court, the contest was only between the election-petitioner and respondent 1, while the original respondents 2 to 7, including Thammanna, were proceeded against *ex parte*. In short, the objection is that since the appellant could not be said to be a party *adversely affected* by the judgment of the High Court, he has no *locus standi* to prefer this appeal.

5. In reply, Shri Govindan Nair, learned counsel for the appellant submits that Shri Thammanna was not a mere *pro forma* respondent but was a person who was entitled to apply and join as a party under Section 86(4) of the Act within fourteen days from the date of commencement of the trial and subject to any order as to security for costs. Such a person is entitled under the law by virtue of his status as a party-respondent to file an appeal against the decision of the High Court, if he feels aggrieved by the same. The very fact that the original respondent 5, has filed this appeal shows that he is a person aggrieved by the decision of the High Court, dismissing the election petition. It is maintained that the mere fact that the appellant did not file any written statement or participate actively in proceedings before the High Court, or that the election-petitioner has not joined him as a co-appellant, is not sufficient to deny him the status of a "person aggrieved". It is argued that in an election petition, the petitioner is not the *dominus litis*, but acts as a representative of the whole body of electors in the constituency, that is why an election-petitioner cannot at his sweet will abandon the election petition or withdraw from it without complying with the procedure prescribed, and if he does so, in view of Sections 109 and 110 of the Act, the court can allow another voter or respondent to continue the petition. According to the counsel, since an appeal is only a rehearing of the original petition any party to the original proceedings who feels aggrieved, is entitled, in accordance with the principle underlying Sections 108 and 109 of the Act, to file an appeal; even if the original election-petitioner neglects or abstains from doing so.

6. Shri Nair further submits that the High Court has wrongly stated that the appellant (being original respondent 5) was also proceeded against *ex parte*; that, in fact, the appellant was present in the High Court on most of the dates of hearing, although he remained quiescent.

7. In the alternative, it is submitted that if it is assumed that the appellant was proceeded against *ex parte* in the High Court, the final determination in the impugned judgment will be deemed to be in the nature of an *ex parte* decree against him. In that view of the matters also, according to the learned counsel, the appellant has the necessary locus to maintain this appeal, against that *ex parte* determination. In support of his contentions, Shri Nair has referred to *K. Kamaraja Nadar v. Kunju Thevar*¹; *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa*²; *A. Sreenivasan v. Election Tribunal*³ and *Adi Pheroazshah Gandhi v. H. M. Seervai, Advocate-General of Maharashtra, Bombay*⁴.

8. Before dealing with the contentions advanced on this preliminary point, let us have a look at the relevant provisions of the Act and the Code of Civil Procedure. Section 87(1) of the Act lays down that every election petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. In other words, the provisions of the Code of Civil Procedure apply to the trial of an election petition only where there is no express provision in the Act and there is no inconsistency with the Act. Section 98 indicates the categories of orders which the High Court may make at the conclusion of the trial of an election petition. Such an order may be an order:

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

9. Section 99 requires that the High Court shall at the time of making an order under Section 98, in the case where any charge of corrupt practice having been committed at the election is proved, make a further order naming the person or persons guilty of the corrupt practice and also for paying costs.

Section 116-A runs thus:

Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under Section 96 or Section 99.

10. Sub-section (2) prescribes a period of thirty days' limitation within which such an appeal is to be preferred.

11. In the context, Section 116-C may also be seen. It reads as follows:

Subject to the provisions of this Act and of the rules, if any, made

1. 1959 SCR 583; AIR 1958 SC 687: 14 ELR 270
2. 1959 SCR 611; AIR 1958 SC 698: 14 ELR 296
3. (1955-56) 11 ELR 278 (Mad HC)
4. (1971) 1 SCR 863; (1970) 2 SCC 484: AIR 1971 SC 385

thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the court) shall, so far as may be, apply in relation to such appeal.

12. It may be seen that although Section 116-A confers a right of appeal from an “order” made under Section 96 or 99, and Section 116-C from “any final order” passed by the High Court in proceedings in an election petition, neither of these two sections mentions or catalogues the person or persons who have a right of appeal against such orders. Barring the exceptional provision in Section 116-A, which marks a departure from the Code of Civil Procedure, Section 116-C is substantially analogous to Section 96(1) of the Code of Civil Procedure, 1898, which provides :

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised. . . .

Just as the term “decree” in Section 96(1) of the Code means an adjudication which “conclusively determines all or any of the matters in controversy in the suit”, the expression “any final order” as used in Section 116-C of the Act contemplates a conclusive determination of all or any of the matters in controversy in the election petition between the parties.

13. Clauses (a), (b) and (c) of Section 98 illustrate such “final orders” which have been made appealable under Section 116-C of the Act. In the instant case, the order sought to be impeached in this appeal is of the category mentioned in clause (a) of Section 98 of the Act. Section 98 also does not specifically mention as to who can appeal against the final orders mentioned therein.

14. Section 116-C of the Act makes the Code of Civil Procedure applicable to the hearing and determination of appeals filed under the Act. Since the substance and principle embodied in Section 96(1) of the Code is not inconsistent with anything in the Act, we may legitimately look for guidance to Section 96 (1) and other provisions of the Code and also the general principles which govern the right of appeal thereunder. This being the position, the basic conditions and postulates which govern the right of appeal under Section 96(1) of the Code will apply to an appeal under Section 116-C of the Act, also. As a general proposition, therefore, it may safely be stated that before a person is entitled to maintain an appeal under Section 116-C, all the conditions mentioned below, must be satisfied :

- (1) that the subject-matter of the appeal is a conclusive determination by the High Court of the rights with regard to all or any of the matters in controversy, between the parties in the election petition,
- (2) that the person seeking to appeal has been a party in the election petition, and
- (3) that he is a “person aggrieved”, that is a party who has been *adversely affected* by the determination.

In the present case, these conditions, particularly Nos. (1) and (3), have not

been fulfilled. Before the High Court the appellant did not, at any stage join the contest. He did not file any written statement or affidavit. He did not engage any counsel. He did not cross-examine the witnesses produced by the election-petitioner and the contesting respondent 1. He did not appear in the witness-box. He did not address any arguments. In short, he did nothing tangible to participate in the proceedings before the High Court.

15. It was not obligatory for the election-petitioner to join the appellant as a respondent. There were no allegations or claims in the election petition which would attract Section 82 of the Act. From that point of view, the appellant was not a necessary party to be impleaded. Of course, if the appellant had made an application within the time prescribed, in compliance with Section 86(4) of the Act, the court would have been bound to join him as a respondent. But the question of Section 86(4) coming into play never arose as the election-petitioner had already impleaded the appellant as respondent 5 in the election petition. Even so, Respondent 5 did not join the controversy. He neither joined issue with the contesting respondent 1, nor did he do anything tangible to show that he had made a common cause with the election-petitioner against respondent 1. In fact, the only parties between whom the matters in controversy were at issue, were the election-petitioner and respondent 1. The other respondents, including the appellant, did not participate or side with either contestant in that controversy.

16. Although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something". As per James, L. J., in *Re Sidebotham*⁵ referred to by this Court in *Bar Council of Maharashtra v. M. V. Dabholkar*⁶ and *J. A. Desai v. Roshan Kumar*⁷.

17. In the face of the stark facts of the case, detailed above, it is not possible to say that the appellant was aggrieved or prejudicially affected by the decision of the High Court, dismissing the election petition.

18. We are further unable to accept the wide argument, that since an election petition is in the nature of a representative action on behalf of the whole body of electors in the constituency, on neglect or failure of the election-petitioner to file an appeal against the order of dismissal of his election petition, any other elector, particularly who is a respondent in the election petition, can, in view of Sections 109/110 of the Act, be substituted for him for the purpose of filing and continuing the appeal. It is true that an election petition once filed cannot be abandoned or withdrawn by the petitioner at his sweet will. Section 109 provides:

(1) An election petition may be withdrawn only by leave of the High Court.

(2) Where an application for withdrawal is made under subsection (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the official Gazette.

5. (1980) 14 Ch D 458

6. (1975) 2 SCC 702 : (1976) 1 SCR 306

7. AIR 1976 SC 578, 584 : (1976) 1 SCC 671, 681

19. Section 110 provides the procedure for withdrawal of an election petition. Its sub-section (2) mandates that “no application for withdrawal shall be granted if, in the opinion of the High Court, such application has been induced by any bargain or consideration which ought not to be allowed”. Sub-section (3) lays down that if the application for withdrawal is granted, the petitioner shall be ordered to pay the whole or part of the costs incurred by the respondent. It further requires that notice of withdrawal shall be published in the official Gazette. Clause (c) of sub-section (3) is material. It provides that any person who might himself have been a petitioner, may *within fourteen days of such publication*, apply to be substituted as petitioner in place of the party withdrawing, and on compliance with the conditions as to security, shall be entitled to be substituted and continue the proceedings upon such terms as the High Court may deem fit. Section 111 provides for report of the withdrawal by the High Court to the Election Commission. Section 112(1) provides for abatement of election petition on death of the sole petitioner. Sub-section (2) requires the fact of abatement to be published. Sub-section (3) entitles any person who might himself have been a petitioner to apply and be substituted in place of the deceased to continue the proceeding upon such terms as the High Court may think fit. Section 116 makes a similar provision on the death of a respondent.

19a. As pointed out in *Bijayananda Patnaik v. Satrugna Sahu*⁸ the principle behind these provisions is that

an election petition is not a matter in which the only persons interested are candidates who strove against each other at the elections. The public of the constituency also is substantially interested in it, as an election is an essential part of the democratic process. That is why provision is made in election law circumscribing the right of the parties thereto to withdraw. Another reason for such provision is that the citizens at large have an interest in seeing and they are justified in insisting that all elections are fair and free and not vitiated by corrupt or illegal practices. That is why provision is made for substituting any elector who might have filed the petition in order to preserve the purity of elections.

20. But it is equally clear from the language, setting and scheme of the provisions in Sections 109 to 116, that they do not, either in terms, or, in principle, apply to appeals or the procedure to be followed at the appellate stage before the Supreme Court.

21. Firstly, these provisions are to be found in Chapter IV, under the main caption “*Withdrawal and Abatement of Election Petitions*”. Then, the provisions of these sections, also, repeatedly refer to the withdrawal or abatement of ‘election petitions’ and also to procedure in respect thereof *before the ‘High Court’*. The provisions relating to appeals in Sections 116-A, 116-B and 116-C, have been included separately, in Chapter ‘IV-A’, captioned “*Appeals*”.

22. Secondly, Section 116-C, as already noticed, enjoins upon the Supreme Court to hear and determine every appeal under this Act in accordance with the provisions of the Code of Civil Procedure and the Rules of the Court. No doubt, this is “subject to the provisions of the Act and the rules if any, made thereunder”. But this clause only means that the provisions of the Code and the Rules of the Court in hearing an appeal to

8. (1964) 2 SCR 538, 545: AIR 1963 SC 1566: 24 ELR 219

this Court will apply except to the extent their application has been excluded, expressly or by necessary implication by any provision of the Act. There is no provision in Chapter IV-A of the Act, analogous to Sections 109 to 116 of the Act, which curtails, restricts or fetters an appellant's right to withdraw an appeal. Nor is there any such provision in the Code or the Rules of this Court which does so. If the intention of the legislature was that the provisions of Sections 109 to 116 which apply to the withdrawal of election petitions, should also govern the withdrawal of appeals, there was no difficulty in inserting similar provisions in Section 116-C or elsewhere in Chapter IV-A.

23. In this view we are fortified by the decision of this Court in *Bijayananda Patnaik* case⁸. In that case the provisions of Sections 116-A, 109 to 116 of the Act, as they stood before the amendment of 1966, came up for consideration. The facts were that one S filed an election petition against the appellant B who had been declared elected to the State Legislative Assembly. On the appellant B's application, the Tribunal dismissed the petition under Section 90(3), for non-compliance with the provisions of Section 82 of the Act. S went in appeal under Section 116-A to the High Court. Subsequently, S applied for withdrawal of the appeal but the High Court refused to permit withdrawal, holding that it had to be guided by the principles of Sections 109 and 110 of the Act in considering the application for withdrawal.

24. In appeal by special leave, this Court held that S had an absolute right to withdraw the appeal and the High Court was bound to grant him permission to do so. In this connection, the observations made by Wanchoo, J. (as he then was) speaking for the court, at page 547 of the Report, are apposite and may be extracted :

When sub-section (2) says that the powers, jurisdiction and authority of the High Court is subject to the provisions of the Act, it means that the provision must be an express provision in the Act or such as arises by necessary implication from an express provision There is however, no express provision in Chapter IV-A dealing with appeals, which deals with the question of withdrawal of appeals under that Chapter. Nor do we think that Sections 109 and 110 necessarily imply that an appeal also cannot be withdrawn as a matter of right, unless the procedure laid down in those sections is followed. One reason for this view may at once be stated. The losing party is not bound to file an appeal and if he does not, nobody else has the right to do so. The object apparently is that the election petition filed should, if any voter so desires, be heard and decided. The sections dealing with substitution on death of the petitioner lead to that view : see Sections 112-115. There is no such provision for appeals. It seems to us that if Parliament intended that the provisions of Sections 109 and 110 which deal with withdrawal of election petitions before a tribunal shall also apply to withdrawal of appeals before the High Court under Chapter IV-A an express provision could have been easily made to that effect in Section 116-A by adding a suitable provision in the section that the provisions of Sections 109 and 110 would apply to withdrawal of appeals before the High Court as they apply to withdrawal of election petitions before the tribunal. In the absence of such a provision in Chapter IV-A, we do not think that the High Court was right in importing the principles of Sections 109 and 110 in the matter of withdrawal of appeals before the High Court. So far therefore as the question of withdrawal of



appeals before the High Court under Chapter IV-A is concerned, it seems to us that the High Court has the same powers, jurisdiction and authority in the matter of withdrawal as it would have in the matter of withdrawal of an appeal from an original decree passed by a civil court within the local limits of its civil appellate jurisdiction without any limitation on such powers because of Sections 109 and 110. The High Court thus has the same powers, jurisdiction and authority and has to follow the same procedure in the matter of withdrawal of appeals under Section 116-A as in the matter of an appeal from an original decree before it, and there is no warrant for importing any limitation in the matter on the analogy of Sections 109 and 110 of the Act, which expressly deal only with election petitions and not with appeals under Section 116-A.

25. On the above reasoning, it was further held that the provisions regarding withdrawal applicable to ordinary civil appeals before the High Court are applicable, also, to appeals under Section 116-A. Under Order XXIII, Rule 1(1) of the Code of Civil Procedure, an appellant has the right to withdraw his appeal unconditionally; and if he is to make such application, the High Court has to grant it.

26. If an appellant, who is an aggrieved person under Section 116-C of the Act, has got a right to withdraw or abandon his appeal unconditionally, a fortiori, he has every right not to file an appeal against the dismissal of his election petition, much less has any other respondent who never joined the contest in the election petition, a right to file an appeal if the aggrieved party does not do so. In other words, the principle that an election petition is a representative action on behalf of the whole body of electors in the constituency, has a very limited application to the extent it has been incorporated in Sections 109 to 116 of the Act, and its application cannot be extended to appeals under the Act.

27. In the instant case, the appellant or any other elector did not make any application or complaint at the trial of the election petition in the High Court. That the election-petitioner has abandoned the prosecution of the petition or withdrawn from it and that the applicant be substituted for the election-petitioner to continue the proceedings under Section 110(3)(c) of the Act. It will bear repetition that the appellant took no interest, whatever, in the controversy in the election petition which was confined only to the election-petitioner and respondent 1. Conditions 1 and 3, the satisfaction of which is necessary to give locus standi to a person to file an appeal under Section 116-C, have not been fulfilled in the instant case. The appellant cannot, by any reckoning, be said to be a 'person aggrieved' by the decision of the High Court, dismissing the election petition.

28. We, therefore, allow this preliminary objection, and on that ground, dismiss this appeal with costs.

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(BEFORE N. L. UNTWALIA AND R. S. PATHAK, JJ.)

DELHI CLOTH AND GENERAL MILLS CO. LTD. .. Appellant;

Versus

STATE OF RAJASTHAN AND OTHERS .. Respondents.

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20. For the reasons aforesaid, we do not find any merit in these appeals which are accordingly dismissed.

a

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(BEFORE DR B.S. CHAUHAN AND J.S. KHEHAR, JJ.)

AYAAUBKHAN NOORKHAN PATHAN .. Appellant;

Versus

b STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Civil Appeal No. 7728 of 2012[†], decided on November 8, 2012

c A. SCs, STs, OBCs and Minorities — Caste/Tribe certificate — Validated upon verification by Scrutiny Committee and caste verification certificate granted — Locus standi to challenge verification certificate granted/proceedings of Scrutiny Committee — General category person, when may challenge — Burden of proof to be discharged by challenger when caste certificate issued/verified in regular course upon due compliance with applicable procedure thus raising presumption under S. 114 III. (e), Evidence Act, 1872

d — Caste certificate dt. 19-10-1989 issued under ordinary circumstances in regular course found to be valid upon due verification by certificate dt. 23-5-2000 issued by Scrutiny Committee — Allegations of misrepresentation and fraud — Complainant, belonging to general category, purporting to espouse cause of STs in public interest — Locus standi/Bona fides of, and tenability of challenge

e — Held, circumstances of issuance/verification of caste certificate granted to appellant give rise to presumption under S. 114 III. (e), Evidence Act, 1872 — Very strong material/evidence is required to rebut such presumption — Once complainant challenged caste certificate under garb of acting as a public-spirited person espousing cause of STs deprived of their right of being considered for appointment, he should have acted seriously and adduced cogent material before Scrutiny Committee to rebut abovesaid presumption so as to show that its decision was improbable or factually incorrect — R-5 complainant completely failed to adduce any such material

f — However, as High Court had directed the same and Supreme Court had also vacated stay thereof, in view of seriousness of the allegations, Scrutiny Committee directed to dispose of applications filed by appellant and to dispose of challenge to appellant's caste certificate while ensuring that appellant is given a fair opportunity to cross-examine witnesses — As complainant had not been pursuing the matter in a bona fide manner, nor raised any public interest, rather abused process of court only to harass appellant, held, he is restrained from intervening in the matter any further, and also from remaining a party to it — Costs of Rs 1 lakh also imposed on him, to be recovered as arrears of land revenue — Maxims — *Omnia rite esse acta praesumuntur* — Maharashtra Scheduled Castes, Scheduled

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h [†] From the Judgment and Order dated 22-9-2009 of the High Court of Judicature of Bombay, Bench at Aurangabad in WP No. 3129 of 2009

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Tribes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (23 of 2001) — Constitution of India — Arts. 226 and 136 — Evidence Act, 1872, S. 114 Ill. (e) a

B. SCs, STs, OBCs and Minorities — Caste/Tribe certificate — Locus standi/Standing to challenge — Writ petition for review/recall of caste certificate, filed by general category complainant under garb of serving the cause of Scheduled Tribe candidates — Locus standi — Under ordinary circumstances, a third person, having no concern with the case, reiterated, cannot claim to have any locus standi to raise any grievance whatsoever — However, if actual persons aggrieved are unable to approach the court, because of ignorance, illiteracy, inarticulation or poverty, and a person, who has no personal agenda approaches court, then court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, if it requires consideration, may proceed suo motu — However, present case was not such a case as R-5 complainant lacked bona fides, did not raise any public interest and abused process of court only to harass appellant, hence, restrained from intervening in the matter any further, from remaining a party to it, and also held liable to pay exemplary costs — Abuse of process of court b

C. Constitution of India — Arts. 226, 32 and 136 — Maintainability — Locus standi/Standing — Person aggrieved — Who is — “Person aggrieved” must be one whose right or interest has been adversely affected or jeopardised — Hence, person who raises a grievance, must show how he has suffered legal injury — Existence of a legal right is a condition precedent for invoking writ jurisdiction — Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others — Words and Phrases — “Legal right”, “Person aggrieved”, meanings of c

D. Constitution of India — Arts. 226 and 32 — Public interest litigation/ PIL — Locus standi/Standing — Scope — Action purportedly in general interest of public — To be examined to ensure that there is in fact, genuine public interest involved — PIL, reiterated, is not permissible so far as service matters are concerned d

A caste certificate was issued by the competent authority to the appellant on 19-10-1989 after following due procedure. The Vigilance Cell attached to the Scrutiny Committee, upon conducting vigilance enquiry vide order dated 29-12-1998, found that the appellant did in fact belong to Bhil Tadvi (Scheduled Tribe) and thus, the said certificate was verified. The Scrutiny Committee on the basis of the said report and also other documents filed by the appellant in support of his case, issued a validity certificate dated 23-5-2000 to the appellant. After 9 years, R-5 filed a complaint dated 9-1-2009 before the Scrutiny Committee for the purpose of recalling the said validity certificate on the ground that the appellant had obtained employment by way of misrepresentation, and that he did not actually belong to the Scheduled Tribes category. The Scrutiny Committee rejected the said complaint vide order dated 13-3-2009. Aggrieved, Respondent 5 challenged the order dated 13-3-2009, by filing a writ petition. The High Court by the impugned order set aside the order dated 13-3-2009, and remitted the matter to the Scrutiny Committee directing it to hear all the parties concerned in e

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a accordance with law, as regards the allegations made by Respondent 5 in the complaint. Though a stay of the impugned order was directed by the Supreme Court for some time, ultimately the Scrutiny Committee was directed to examine the matter as directed by the High Court. In pursuance of the said order issued by the High Court, the Scrutiny Committee examined the case of the parties. However, with respect to this the appellant raised the grievance that the evidence of a large number of persons had been recorded by the Scrutiny Committee behind his back, and that he had not been given an opportunity to cross-examine the witnesses that were examined by the other side and therefore, he was unable to lead a proper defence. The appellant filed an application dated 28-2-2012 for the purpose of recalling three witnesses so that he could cross-examine them. The appellant also filed another application on the same day seeking a period of 30 days' time to file his reply as is required within the provisions of Rule 12(8) of the 2003 Rules, and also another application for the purpose of calling of records from the office of the Tahsildar, to ascertain the genuineness of the certificate impugned. None of the said applications had been decided.

c The appellant was thus before the Supreme Court by special leave.

Directing the Scrutiny Committee to expeditiously determine the validity of the appellant's claim to Scheduled Tribe status strictly in compliance with principles of natural justice, and disposing of the appeal as below, the Supreme Court

d *Held :*

e A stranger cannot be permitted to meddle in any proceeding unless he satisfies the authority/court that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from *legal injury* can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the writ petitioner that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement on the basis of which writ jurisdiction is resorted to. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to *enforce a legal right*. In fact, the *existence of such right, is the foundation of the exercise of the said jurisdiction by the Court*. The *legal right that can be enforced* must ordinarily be the right of the writ petitioner himself, who complains of infraction of such right and approaches the Court for relief as regards the same. Even as regards the filing of a habeas corpus petition, the expression "next friend" means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Paras 9 and 13)

g A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury, a "person aggrieved" must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. Hence, a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

h (Paras 10 and 17)

State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12; *Saghir Ahmad v. State of U.P.*, AIR 1954 SC 728; *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.*, AIR 1962 SC

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1044; *Rajendra Singh v. State of M.P.*, (1996) 5 SCC 460; *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar*, (2009) 2 SCC 784; *Shanti Kumar R. Canji v. Home Insurance Co. of New York*, (1974) 2 SCC 387; *State of Rajasthan v. Union of India*, (1977) 3 SCC 592; *Anand Sharadchandra Oka v. University of Mumbai*, (2008) 5 SCC 217; *A. Subash Babu v. State of A.P.*, (2011) 7 SCC 616 : (2011) 3 SCC (Civ) 851 : (2011) 3 SCC (Cri) 267; *Charanjit Lal Chowdhury v. Union of India*, AIR 1951 SC 41; *Sunil Batra (2) v. Delhi Admn.*, (1980) 3 SCC 488 : 1980 SCC (Cri) 777; *Nilima Priyadarshini v. State of Bihar*, 1987 Supp SCC 732 : 1988 SCC (Cri) 138; *Simranjit Singh Mann v. Union of India*, (1992) 4 SCC 653 : 1993 SCC (Cri) 22; *Karamjeet Singh v. Union of India*, (1992) 4 SCC 666 : 1993 SCC (Cri) 17; *Kishore Samrite v. State of U.P.*, (2013) 2 SCC 398, *relied on*

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b

The Supreme Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. Whenever any public interest is invoked, the Court must examine the case to ensure that there is in fact, genuine public interest involved. The Court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. Even as regards the filing of a public interest litigation, it has been consistently held that such a course of action is not permissible so far as service matters are concerned. (Paras 14 and 15)

c

P.S.R. Sadhanantham v. Arunachalam, (1980) 3 SCC 141 : 1980 SCC (Cri) 649; *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *State of Uttaranchal v. Balwant Singh Chauhal*, (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807; *Amar Singh v. Union of India*, (2011) 7 SCC 69 : (2011) 3 SCC (Civ) 560; *Duryodhan Sahu v. Jitendra Kumar Mishra*, (1998) 7 SCC 273 : 1998 SCC (L&S) 1802; *Dattaraj Nathuji Thaware v. State of Maharashtra*, (2005) 1 SCC 590; *Neetu v. State of Punjab*, (2007) 10 SCC 614; *Ghulam Qadir v. Special Tribunal*, (2002) 1 SCC 33, *relied on*

d

Under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in exceptional circumstances if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect. (Para 23)

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Ravi Yashwant Bhoir v. District Collector, Raigad, (2012) 4 SCC 407; *K. Manjusree v. State of A.P.*, (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841; *Balbir Kaur v. U.P. Secondary Education Services Selection Board*, (2008) 12 SCC 1 : (2009) 1 SCC (L&S) 106; *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*, (2008) 9 SCC 54 : (2008) 2 SCC (L&S) 802; *Vinoy Kumar v. State of U.P.*, (2001) 4 SCC 734 : 2001 SCC (Cri) 806; *Manohar Joshi v. State of Maharashtra*, (2012) 3 SCC 619, *relied on*

g

The Scrutiny Committee in ordinary circumstances examined the matter and after investigation through its Vigilance Cell and considering all the documentary evidence on record and after being satisfied, granted the caste verification certificate dated 23-5-2000. Caste certificates issued by holding a proper enquiry, in accordance with the duly prescribed procedure, would not require any further verification by the Scrutiny Committee. Section 114 Illustration (e) of the Evidence Act, 1872 provides for the court to pronounce that the decision taken

h

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- a by the Scrutiny Committee has been done in regular course and the caste certificate has been issued after due verification. Very strong material/evidence is required to rebut this presumption. Respondent 5 could not adduce any such material. Once Respondent 5, for the reasons best known to him, had challenged the caste certificate under the garb of acting as a public-spirited person espousing the cause of legitimate persons who had been deprived of their right of being considered for appointment, Respondent 5 was bound to have acted seriously and brought the material before the Scrutiny Committee to show that the earlier decision was improbable or factually incorrect. It has been held that presumption
- b is based on legal maxim *omnia rite esse acta praesumuntur* i.e. all acts are presumed to have rightly and regularly been done. Such a presumption can be rebutted by adducing appropriate evidence. Mere statement made in the written statement/petition is not enough to rebut the presumption. The onus of rebuttal lies upon the person who alleges that the act had not been regularly performed or the procedure required under the law had not been followed. (Paras 39 and 45)
- c The conduct of Respondent 5, who has been pursuing the said matter from one court to another is found to be reprehensible, and without any sense of responsibility whatsoever, as he could not submit any satisfactory response to the directions issued by the Supreme Court. In view of the above, there is doubt as regards his bona fides. He has, therefore, disentitled himself from appearing either before the Supreme Court, or any other court, or committee, so far as the instant case is concerned. (Paras 43 and 44)
- d Considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter as directed by the High Court, and the only grievance of the appellant is that there has been non-compliance with the principles of natural justice, and the fact that the applications filed by him, were not decided, it is directed that before the submission of any report by the Scrutiny Committee, the appellant's application for recalling certain witnesses for cross-examination must be disposed of, and the appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the Committee. It is further directed that the Scrutiny Committee must pass appropriate orders in accordance with law thereafter. (Paras 46 to 48)
- f *Gopal Narain v. State of U.P.*, AIR 1964 SC 370; *Narayan Govind Gavate v. State of Maharashtra*, (1977) 1 SCC 133 : 1977 SCC (Cri) 49; *Karewva v. Hussensab Khansaheb Wajantri*, (2002) 10 SCC 315; *Engg. Kamgar Union v. Electro Steels Castings Ltd.*, (2004) 6 SCC 36 : 2004 SCC (L&S) 782; *Mohd. Shahabuddin v. State of Bihar*, (2010) 4 SCC 653 : (2010) 2 SCC (Cri) 904; *Punjab SEB v. Ashwani Kumar*, (2010) 7 SCC 569 : (2010) 3 SCC (Civ) 147; *M. Chandra v. M. Thangamuthu*, (2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907; *R. Ramachandran Nair v. State of Kerala (Vigilance Deptt.)*, (2011) 4 SCC 395 : (2011) 2 SCC (Cri) 251 : (2011) 2 SCC (L&S) 691; *Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259, followed
- g *Dayaram v. Sudhir Batham*, (2012) 1 SCC 333 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109, clarified and followed
- h *Sandeep Manoharrao Waysal v. State of Maharashtra*, (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205; *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 20-11-2009 (SC); *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 6-1-2012 (SC); *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC), referred to

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E. SCs, STs, OBCs and Minorities — Caste/Tribe Certificate — Challenge to status of holder of — Scrutiny Committee — Compliance with principles of natural justice during hearing — Appellant denied opportunity to cross-examine witnesses/to recall witnesses for cross-examination — Necessity to give opportunity to cross-examine witnesses — Administrative Law — Natural Justice — Audi Alteram Partem — Right to hearing — Right of cross-examination a

Held :

The right of cross-examination is an integral part of the principles of natural justice. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. So also when the validity of a duly granted caste certificate is challenged. The government servant concerned/certificate holder can do so only when he is told what the charges against him are. He can, therefore, do so by cross-examining the witnesses produced against him. The object of supplying statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the certificate holder, he will not be able to conduct an effective and useful cross-examination. Not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice. b

(Paras 26 and 28)

State of M.P. v. Chintaman Sadashiva Waishampayan, AIR 1961 SC 1623; *Union of India v. T.R. Varma*, AIR 1957 SC 882; *Meenglas Tea Estate v. Workmen*, AIR 1963 SC 1719; *Kesoram Cotton Mills Ltd. v. Gangadhar*, AIR 1964 SC 708; *New India Assurance Co. Ltd. v. Nusli Neville Wadia*, (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850; *Rachpal Singh v. Gurmit Kaur*, (2009) 15 SCC 88 : (2009) 5 SCC (Civ) 549; *Biecco Lawrie Ltd. v. State of W.B.*, (2009) 10 SCC 32 : (2009) 2 SCC (L&S) 729; *State of U.P. v. Saroj Kumar Sinha*, (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675; *Lakshman Exports Ltd. v. CCE*, (2005) 10 SCC 634; *K.L. Tripathi v. SBI*, (1984) 1 SCC 43 : 1984 SCC (L&S) 62; *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill*, (2006) 3 SCC 74 : 2006 SCC (L&S) 467; *Rajiv Arora v. Union of India*, (2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977; *Union of India v. P.K. Roy*, AIR 1968 SC 850; *Channabasappa Basappa Happali v. State of Mysore*, (1971) 1 SCC 1, *relied on* c

Ayaubkhan Noorkhan Pathan v. State of Maharashtra, SLP (C) No. 29472 of 2009, order dated 11-5-2012 (SC), *referred to* d

F. Evidence Act, 1872 — Ss. 3, 59, 60, 61, 62, 63, 64 & 65 and Ss. 137, 139 & 145 — Affidavit — Evidentiary value of — Affidavit is not “evidence” within the meaning of S. 3 — Need for cross-examination of deponent for reliance upon affidavit — Civil Procedure Code, 1908 — Or. 19 R. 1 and Or. 18 Rr. 4 & 5 e

Held :

An affidavit is not “evidence” within the meaning of Section 3 of the Evidence Act, 1872, and the same can be used as “evidence” only if, for sufficient reasons, the court passes an order under Order 19 CPC. Thus, the filing f

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- of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such a view stands fully affirmed, particularly in view of the amended provisions of Order 18 Rules 4 and 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice.
- a
- b (Paras 31 and 36)
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- c *Standard Chartered Bank v. Andhra Bank Financial Services Ltd.*, (2006) 6 SCC 94, *referred to*

B-D/51060/CVL

Advocates who appeared in this case :

- A.V. Savant, Senior Advocate (Sudhanshu S. Choudhari, Mahesh Deshmukh and Ms Rajshri Dubey, Advocates) for the Appellant;
Anant Bhushan Kanade, Senior Advocate (Kailash Pandey, Dharam Bir Raj Vohra, Shankar Chillarge, Ms Asha Gopalan Nair, Aniruddha P. Mayee, Charudatta M. and M/s Lawyer's Knit & Co., Advocates) for the Respondents.
- d

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The Judgment of the Court was delivered by

d **DR B.S. CHAUHAN, J.**— This appeal has been preferred against the impugned judgment and order dated 22-9-2009, passed by the High Court of Bombay (Aurangabad Bench) in *Sandeep Manoharrao Waysal v. State of Maharashtra*¹, filed by Respondent 5, challenging the caste certificate of the appellant.

e 2. The facts and circumstances giving rise to this appeal are as follows: the competent authority in the present case, issued a caste certificate dated 19-10-1989, after following due procedure, in favour of the appellant stating that he does in fact, belong to Bhil Tadvi (Scheduled Tribes). On the basis of the said certificate, the appellant was appointed as Senior Clerk in Municipal Corporation of Aurangabad (hereinafter referred to as “the Corporation”) on 6-2-1990, against the vacancy reserved for persons under the Scheduled Tribes category. The Corporation referred the caste certificate of the appellant f for the purpose of verification, to the Caste Certificate Scrutiny Committee (hereinafter referred to as “the Scrutiny Committee”). The Vigilance Cell attached to the Scrutiny Committee, upon conducting vigilance enquiry vide order dated 29-12-1998, found that the appellant did in fact belong to Bhil Tadvi (Scheduled Tribes) and thus, the said certificate was verified. The Scrutiny Committee on the basis of the said report and also other documents g filed by the appellant in support of his case, issued a validity certificate dated 23-5-2000 to the appellant belonging to Bhil Tadvi (Scheduled Tribes).

h 3. After the lapse of a period of 9 years, Respondent 5 filed complaint dated 9-1-2009, through an advocate before the Scrutiny Committee, for the purpose of recalling the said validity certificate on the ground that the appellant had obtained employment by way of misrepresentation, and that he does not actually belong to the Scheduled Tribes category. In fact, the

1 (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205

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appellant professed the religion of Islam and therefore, could not be a Scheduled Tribe. The Scrutiny Committee rejected the said application vide order dated 13-3-2009, observing that it had no power to recall or to review a caste validity certificate, as there is no statutory provision that provides for the same. a

4. Aggrieved, Respondent 5 challenged the order dated 13-3-2009, by filing Writ Petition No. 3129 of 2009 before the High Court of Bombay (Aurangabad Bench), praying for quashing of the order dated 13-3-2009, and directing the Scrutiny Committee to hold de novo enquiry, with respect to the appellant's caste certificate. The appellant contested the said petition, denying all the allegations made by Respondent 5. Vide its impugned judgment and order dated 22-9-2009¹, the High Court disposed of the said writ petition without going into the merits of the case. However, while doing so, the High Court set aside the order dated 13-3-2009, and remitted the matter to the Scrutiny Committee, directing it to hear all the parties concerned in accordance with law, as regards the allegations made by Respondent 5 in the complaint. It further directed the Committee to decide the said matter within a period of 6 months. Hence, this present appeal. b

5. Before proceeding further, it may also be pertinent to refer to certain subsequent developments: during the pendency of this appeal, this Court vide order dated 20-11-2009², granted a stay with respect to the operation of the aforementioned impugned judgment¹. Vide order dated 6-1-2012³, the said interim order was modified, to the extent that the Scrutiny Committee would re-examine the case on merit, without being influenced by earlier proceedings before it, and by giving adequate opportunity to the parties to lead evidence in support of their respective cases after which, the Scrutiny Committee would submit its report to this Court within a period of 3 months. c

6. Shri A.V. Savant, learned Senior Counsel, appearing for the appellant has submitted that Respondent 5 does not belong to any reserved category, in fact, he belongs to the general category and hence, he has no right or locus standi to challenge the appellant's certificate. Thus, the High Court committed an error by directing the Scrutiny Committee to entertain the complaint filed by Respondent 5. It has further been submitted that, despite the directions given by this Court, the Scrutiny Committee failed to ensure compliance with the principles of natural justice, as the appellant was denied the opportunity to cross-examine witnesses, and no order was passed with d

1 *Sandeep Manoharrao Waysal v. State of Maharashtra*, (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205

2 *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 20-11-2009 (SC), wherein it was directed: e

“Exemption allowed. Issue notice. Until further orders, there shall be stay of the impugned order.”

3 *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 6-1-2012 (SC), wherein it was directed: f

“The interim order passed by this Court stands modified to the extent that the Scrutiny Committee may re-examine the case on merits without being influenced by the earlier report giving opportunity to the parties to lead evidence in support of their respective case. The report of the Committee shall reach this Court within three months. List thereafter.” g

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a respect to his application for recalling such witnesses for the purpose of cross-examination, which has no doubt, resulted in the grave miscarriage of justice. The affidavit filed by the Scrutiny Committee did not clarify, or make any specific statement with respect to whether or not the appellant was permitted to cross-examine witnesses. It further did not clarify whether the application dated 28-2-2012 filed by the appellant to recall witnesses for the purpose of cross-examination, has been disposed of. Moreover, the procedure
b adopted by the Scrutiny Committee is in contravention of the statutory requirements, as have been specified under the Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (Maharashtra Act 23 of 2001) (hereinafter referred to as “the 2001 Act”) and the 2003 Rules
c which are framed under the 2001 Act and therefore, all proceedings hereby stand vitiated. The appellant placed reliance upon several documents which are all very old and, therefore, their authenticity should not have been doubted. The earlier report submitted by the Vigilance Cell dated 29-12-1998 clearly stated that the traits and characteristics of the appellant’s family
d Respondent 5 is therefore completely mala fide and is intended, solely to harass the appellant, and the High Court committed grave error in not deciding the issue related to the locus standi of Respondent 5 in relation to him filing a complaint in the first place, as the said issue was specifically raised by the appellant. Therefore, the present appeal deserves to be allowed.

e 7. Per contra, Shri Shankar Chillarge, learned counsel appearing for the Scrutiny Committee, has made elaborate submissions, in support of the impugned judgment and subsequent proceedings. Mr Udaya Kumar Sagar and Ms Bina Madhavan, learned counsel appearing for Respondent 5, have also supported the impugned judgment¹ of the High Court and has further submitted that even though Respondent 5, does not belong to the Scheduled Tribes category, he most certainly could file a complaint against the
f appellant, at such a belated stage, as the appellant had obtained employment in 1989, by way of misrepresentation and fraud. Respondent 5, being a public-spirited person has espoused the cause of the real persons who have been deprived of their right to be considered for the said post occupied by the appellant. Respondent 5 has also filed affidavits of relevant persons before the Scrutiny Committee, to prove his allegations. Thus, the present appeal lacks merit and is liable to be dismissed.

g 8. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

Person aggrieved

h 9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or

1 Sandeep Manoharrao Waysal v. State of Maharashtra, (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205

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suffers from *legal injury* can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide *State of Orissa v. Madan Gopal Rungta*⁴, *Saghir Ahmad v. State of U.P.*⁵, *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.*⁶, *Rajendra Singh v. State of M.P.*⁷ and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar*⁸.]

10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji v. Home Insurance Co. of New York*⁹ and *State of Rajasthan v. Union of India*¹⁰.)

11. In *Anand Sharadchandra Oka v. University of Mumbai*¹¹, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In *A. Subash Babu v. State of A.P.*¹², this Court held: (SCC pp. 628-29, para 25)

“25. ... The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse,

4 AIR 1952 SC 12

5 AIR 1954 SC 728

6 AIR 1962 SC 1044

7 (1996) 5 SCC 460 : AIR 1996 SC 2736

8 (2009) 2 SCC 784

9 (1974) 2 SCC 387 : AIR 1974 SC 1719

10 (1977) 3 SCC 592 : AIR 1977 SC 1361

11 (2008) 5 SCC 217 : AIR 2008 SC 1289

12 (2011) 7 SCC 616 : (2011) 3 SCC (Civ) 851 : (2011) 3 SCC (Cri) 267 : AIR 2011 SC 3031

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a variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

b **13.** This Court, even as regards the filing of a habeas corpus petition, has explained that the expression "next friend" means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. [Vide *Charanjit Lal Chowdhury v. Union of India*¹³, *Sunil Batra (2) v. Delhi Admn.*¹⁴, *Nilima Priyadarshini v. State of Bihar*¹⁵, *Simranjit Singh Mann v. Union of India*¹⁶, *Karamjeet Singh v. Union of India*¹⁷ and *Kishore Samrite v. State of U.P.*¹⁸]

c **14.** This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest d involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide *P.S.R. Sadhanantham v. Arunachalam*¹⁹, *Dalip Singh v. State of U.P.*²⁰, e *State of Uttaranchal v. Balwant Singh Chauhal*²¹ and *Amar Singh v. Union of India*²².)

f **15.** Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide *Duryodhan Sahu v. Jitendra Kumar Mishra*²³, *Dattaraj Nathuji Thaware v. State of Maharashtra*²⁴ and *Neetu v. State of Punjab*²⁵.)

13 AIR 1951 SC 41

14 (1980) 3 SCC 488 : 1980 SCC (Cri) 777 : AIR 1980 SC 1579

15 1987 Supp SCC 732 : 1988 SCC (Cri) 138 : AIR 1987 SC 2021

16 (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280

g 17 (1992) 4 SCC 666 : 1993 SCC (Cri) 17 : AIR 1993 SC 284

18 (2013) 2 SCC 398

19 (1980) 3 SCC 141 : 1980 SCC (Cri) 649 : AIR 1980 SC 856

20 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324

21 (2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807

22 (2011) 7 SCC 69 : (2011) 3 SCC (Civ) 560

h 23 (1998) 7 SCC 273 : 1998 SCC (L&S) 1802 : AIR 1999 SC 114

24 (2005) 1 SCC 590 : AIR 2005 SC 540

25 (2007) 10 SCC 614 : AIR 2007 SC 758

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16. In *Ghulam Qadir v. Special Tribunal*²⁶, this Court considered a similar issue and observed as under: (SCC p. 54, para 38)

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. *The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. ... In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.*”
(emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

Locus standi of Respondent 5

18. As Respondent 5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribe candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether Respondent 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever.

19. This Court in *Ravi Yashwant Bhoir v. District Collector, Raigad*²⁷, held as under: (SCC pp. 434-35, paras 58-60)

“58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.

59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to

26 (2002) 1 SCC 33

27 (2012) 4 SCC 407

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a hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.

b 60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party.”

c 20. A similar view has been reiterated by this Court in *K. Manjusree v. State of A.P.*²⁸, wherein it was held that the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court on the
d grounds of delay and non-maintainability alone.

e 21. In *Balbir Kaur v. U.P. Secondary Education Services Selection Board*²⁹, it has been held that a violation of the equality clauses enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in *Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar*³⁰ held: (SCC p. 74, para 45)

f “45. We must now deal with the question of locus standi. A special leave petition ordinarily would not have been entertained at the instance of the appellant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. 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
g to the broader aspects of the matter although 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

h 28 (2008) 3 SCC 512 : (2008) 1 SCC (L&S) 841
29 (2008) 12 SCC 1 : (2009) 1 SCC (L&S) 106
30 (2008) 9 SCC 54 : (2008) 2 SCC (L&S) 802

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society, in our opinion, this Court will not shirk its responsibilities from doing so.”

(See also *Manohar Joshi v. State of Maharashtra*³¹.)

22. In *Vinoy Kumar v. State of U.P.*³², this Court held: (SCC p. 736, para 2)

“2. ... Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.”

23. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect.

Cross-examination is one part of the principles of natural justice

24. A Constitution Bench of this Court in *State of M.P. v. Chintaman Sadashiva Waishampayan*³³ held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also *Union of India v. T.R. Varma*³⁴, *Meenglas Tea Estate v. Workmen*³⁵, *Kesoram Cotton Mills Ltd. v. Gangadhar*³⁶, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*³⁷, *Rachpal Singh v. Gurmit Kaur*³⁸, *Biecco Lawrie Ltd. v. State of W.B.*³⁹ and *State of U.P. v. Saroj Kumar Sinha*⁴⁰.)

25. In *Lakshman Exports Ltd. v. CCE*⁴¹, this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e.

31 (2012) 3 SCC 619

32 (2001) 4 SCC 734 : 2001 SCC (Cri) 806 : AIR 2001 SC 1739

33 AIR 1961 SC 1623

34 AIR 1957 SC 882

35 AIR 1963 SC 1719

36 AIR 1964 SC 708

37 (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850 : AIR 2008 SC 876

38 (2009) 15 SCC 88 : (2009) 5 SCC (Civ) 549 : AIR 2009 SC 2448

39 (2009) 10 SCC 32 : (2009) 2 SCC (L&S) 729 : AIR 2010 SC 142

40 (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675 : AIR 2010 SC 3131

41 (2005) 10 SCC 634

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a permission with respect to the cross-examination of a witness. In the said case, the assessee had specifically asked to be allowed to cross-examine the representatives of the firms concerned, to establish that the goods in question had been accounted for in their books of accounts, and that excise duty had been paid. The Court held that such a request could not be turned down, as the denial of the right to cross-examine, would amount to a denial of the right to be heard i.e. audi alteram partem.

b 26. In *New India Assurance Co. Ltd. v. Nusli Neville Wadia*³⁷, this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows: (SCC p. 295, para 45)

c “45. If some facts are to be proved by the landlord, indisputably the occupant should get an opportunity to cross-examine. The witness who intends to prove the said fact has the *right to cross-examine* the witness. This may not be provided by under the statute, but it being a part of the principles of natural justice should be held to be indefeasible right.”
(emphasis added)

In view of the above, we are of the considered opinion that the right of cross-examination is an integral part of the principles of natural justice.

d 27. In *K.L. Tripathi v. SBI*⁴², this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India v. P.K. Roy*⁴³ and *Channabasappa Basappa Happali v. State of Mysore*⁴⁴.) In *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill*⁴⁵, this Court held: (SCC p. 80, para 9)

e “9. In order to establish that the cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilised for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross-examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant an opportunity to cross-examine any official.”

37 (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850

42 (1984) 1 SCC 43 : 1984 SCC (L&S) 62 : AIR 1984 SC 273

h 43 AIR 1968 SC 850

44 (1971) 1 SCC 1 : AIR 1972 SC 32

45 (2006) 3 SCC 74 : 2006 SCC (L&S) 467 : AIR 2006 SC 1445

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. *He can, therefore, do so by cross-examining the witnesses produced against him.* The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora v. Union of India*⁴⁶ this Court held: (SCC p. 310, paras 13-14)

“13. ... Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. ...”

14. The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review.”

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

Affidavit—Whether “evidence” within the meaning of Section 3 of the Evidence Act, 1872

31. It is a settled legal proposition that an affidavit is not “evidence” within the meaning of Section 3 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”). Affidavits are, therefore, not included within the purview of the definition of “evidence” as has been given in Section 3 of the Evidence Act, and the same can be used as “evidence” only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). Thus, the filing of an affidavit of one’s own statement, in one’s own favour, cannot be

46 (2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977 : AIR 2009 SC 1100

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a regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. (Vide *Sudha Devi v. M.P. Narayanan*⁴⁷ and *Range Forest Officer v. S.T. Hadimani*⁴⁸)

b **32.** While examining a case under the provisions of the Industrial Disputes Act, 1947, this Court, in *Bareilly Electricity Supply Co. Ltd. v. Workmen*⁴⁹, considered the application of Order 19 Rules 1 and 2 CPC, and observed as under: (SCC p. 629, para 14)

c “14. ... But the application of principles of natural justice does not imply that what is not evidence, can be acted upon. On the other hand, what it means is that no material can be relied upon to establish a contested fact which are not spoken to by the persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a court or a tribunal, the questions that naturally arise are: is it a genuine document, what are its contents and are the statements contained therein true? ... If a letter or other document is produced to establish some fact which is relevant to the inquiry, the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with the principles of natural justice as also according to the procedure under Order 19 of the Code and the Evidence Act, both of which incorporate the general principles.”

e **33.** In *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*⁵⁰, this Court considered a case under the Companies Act, and observed (at SCC p. 373, para 63) that, “it is generally unsatisfactory to record a finding involving grave consequences [with respect] to a person, on the basis of affidavits and documents [alone,] without asking that person to submit to cross-examination.” However, the conduct of the parties may be an important factor with regard to determining whether they showed their willingness to get the said issue determined on the basis of affidavits, correspondence and other documents, on the basis of which proper and necessary inferences can safely and legitimately be drawn.

f **34.** In *Ramesh Kumar v. Kesho Ram*⁵¹, this Court considered the scope of application of the provisions of Order 19 Rules 1 and 2 CPC in a rent control matter, observing as under: (SCC p. 628, para 9)

g “9. ... The court may also treat any affidavit filed in support of the pleadings itself as one under the said provision and call upon the opposite side to traverse it. The court, if it finds that having regard to the

47 (1988) 3 SCC 366 : AIR 1988 SC 1381

48 (2002) 3 SCC 25 : 2002 SCC (L&S) 367 : AIR 2002 SC 1147

h 49 (1971) 2 SCC 617 : AIR 1972 SC 330

50 (1981) 3 SCC 333 : AIR 1981 SC 1298

51 1992 Supp (2) SCC 623 : AIR 1992 SC 700

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nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure.”

35. In *Standard Chartered Bank v. Andhra Bank Financial Services Ltd.*⁵², this Court while dealing with a case under the provisions of the Companies Act, 1956, while considering complex issues regarding the markets, exchanges and securities, and the procedure to be followed by special tribunals, held as under: (SCC pp. 121-22, para 48)

“48. While it may be true that the Special Court has been given a certain amount of latitude in the matter of procedure, it surely cannot fly away from established legal principles while deciding the cases before it. As to what inference arises from a document, is always a matter of evidence unless the document is self-explanatory. ... In the absence of any such explanation, it was not open to the Special Court to come up with its own explanations and decide the fate of the suit on the basis of its inference based on such assumed explanations.”

36. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order 18 Rules 4 and 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules, etc. as framed by the aforementioned authorities.

37. The instant case is required to be examined in the light of the aforesaid legal propositions. This Court examined this matter in detail in *Madhuri Patil v. Commr., Tribal Development*⁵³, and upon realising that spurious tribes and persons not belonging to the Scheduled Tribes category, were snatching away the reservation benefits that have been made available to genuine tribals, and that they were being wrongly deprived of their rights on the basis of false caste certificates, and that further, at a subsequent stage such unscrupulous persons, after getting admission/employment, were adopting dilatory tactics, the Court issued a large number of directions to investigate such cases of false claims. The directions inter alia included: (SCC pp. 255-57, para 13)

“5. Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims.

...

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be ‘not genuine’ or

⁵² (2006) 6 SCC 94

⁵³ (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259

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a 'doubtful' or spurious or falsely or wrongly claimed, the Director concerned should issue show-cause notice supplying a copy of the report of the vigilance officer to the candidate by a registered post with acknowledgment due or through the head of the educational institution concerned in which the candidate is studying or employed. ... After giving such opportunity either in person or through counsel, the Committee may make such inquiry as it deems expedient and consider
b the claims vis-à-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in
c para 6 be followed.

* * *

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the Caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order cancelling the
d certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/guardian and the applicant.

* * *

14. In case, the certificate obtained or social status claimed is found
e to be false, the parent/guardian/the candidate should be prosecuted for making false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the State or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the Scrutiny Committee
f holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the educational institution concerned or the appointing authority by registered post with acknowledgment due with a request to cancel the admission or the appointment. The Principal, etc. of the educational institution responsible for making the admission or the appointing
g authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate from further study or continue in office in a post."

The Court further issued directions to all the States to give effect to the aforesaid directions, in order to ensure that the constitutional objectives that were intended for the benefit and the advancement of persons genuinely
h belonging to the Scheduled Castes and Scheduled Tribes category are not defeated by such unscrupulous persons.

38. The 2000 Act and the 2003 Rules are based on the directions issued by this Court in *Madhuri Patil*⁵³ as the same have been incorporated therein.

39. The correctness of the said judgment in *Madhuri Patil*⁵³ was doubted, and the matter was referred to and decided by a larger Bench of this Court in *Dayaram v. Sudhir Batham*⁵⁴, wherein, while deciding the various issues involved, including the competence of this Court to legislate in this regard, it was held as under: (*Dayaram case*⁵⁴, SCC pp. 353-54, paras 35-36) a

“35. The Scrutiny Committee is not an adjudicating authority like a court or tribunal, but an administrative body which verifies the facts, investigates into a specific claim (of caste status) and ascertains whether the caste/tribal status claimed is correct or not. ... b

36. Having regard to the scheme for verification formulated by this Court in *Madhuri Patil*⁵³ the Scrutiny Committees carry out verification of caste certificates issued without prior enquiry, as for example, the caste certificates issued by Tahsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self-affidavits about caste. *If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil*⁵³ provides for verification only to avoid false and bogus claims.” (emphasis added) c
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Thus, it is evident from the aforesaid judgment in *Dayaram*⁵⁴, that the purpose of issuing directions in *Madhuri Patil*⁵³ was only to examine those cases where caste certificates had been issued without conducting any prior enquiry, on the basis of self-affidavits regarding one’s caste alone, and that the said directions were not at all applicable, where a legislation governing or regulating the grant of caste certificates exists, and where caste certificates are issued after due and proper enquiry. The caste certificates issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the Scrutiny Committee. e

40. In pursuance of the said order issued by the High Court, the Scrutiny Committee examined the case of the parties. However, with respect to this the appellant raised the grievance that the evidence of a large number of persons had been recorded by the Scrutiny Committee behind his back, and that he had not been given an opportunity to cross-examine the witnesses that were examined by the other side and therefore, he was unable to lead a proper defence. The appellant filed an application dated 28-2-2012 for the purpose of recalling three witnesses, namely, Sikandar Gulab Tadvi, Bhagchand Ganpatsing Pardeshi and Bahadursing Mukhtarsing Patil, so that he may cross-examine them. The appellant also filed another application on the same day seeking a period of 30 days’ time to file his reply as is required f
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53 *Madhuri Patil v. Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259 h

54 (2012) 1 SCC 333 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109

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a within the provisions of Rule 12(8) of the 2003 Rules, and also another application for the purpose of calling of records from the office of the Tahsildar, to ascertain the genuineness of the certificate impugned. None of the said applications have been decided till now.

b **41.** In view thereof, this Court vide order dated 11-5-2012⁵⁵, directed the learned counsel appearing for the Scrutiny Committee to produce the original record of the matter and to file an affidavit with respect to whether the appellant had been given an opportunity to cross-examine the witnesses that were examined by the other side, and also with respect to whether the other applications filed by the appellant, were decided upon.

c **42.** In pursuance of the said order dated 11-5-2012⁵⁵, the original record was produced. However, the learned counsel remained unable to point out from the original record, any proceeding or event, by way of which it could be ascertained that the appellant was in fact given an opportunity to cross-examine the witnesses, or to show that all the said witnesses were examined in the presence of the appellant. Further, he was also unable to satisfy this Court with respect to the circumstances under which the applications filed by the appellant on 28-2-2012, including the one to recall witnesses and permit him to cross-examine them, have been kept pending without passing any order in relation to either one of them.

d **43.** In order to determine the genuineness and sincerity of Respondent 5, this Court on 29-10-2012⁵⁶ adjourned the matter until 5-11-2012, directing Respondent 5 to act as under:

e “Meanwhile, Respondent 5 may file the affidavit as on what date he appeared before the Scrutiny Committee and what was the material produced by him and as to whether on that the petitioner had a notice of his appearance before the Scrutiny Committee and whether the Committee has allowed the petitioner to cross-examine Respondent 5.”

f **43.1.** In response to the said order, Respondent 5 filed an affidavit in Court on 5-11-2012. The contents of the affidavit reveal that Respondent 5 claims that his *occupation* is that of a *social worker*. The allegations against the appellant stating that he obtained the said caste certificate fraudulently

⁵⁵ *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 11-5-2012 (SC), wherein it was directed:

g “The learned counsel for Respondent 2 Committee undertakes to produce the original record and file the affidavit as to whether the present petitioner was permitted to cross-examine the witnesses examined by the other side and had an opportunity to lead evidence. List the matter in the first week of July, 2012. In the meanwhile, further consequential proceedings are stayed.”

⁵⁶ *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC), wherein it was directed:

h “Leave granted. List on 5-11-2012 for further hearing as part-heard. Meanwhile, Respondent 5 may file the affidavit as on what date he appeared before the Scrutiny Committee and what was the material produced by him and as to whether on that date the petitioner had a notice of his appearance before the Scrutiny Committee and whether the Committee has allowed the petitioner to cross-examine Respondent 5. Parties may also file written submissions, if so advised, in the meanwhile.”

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have been repeated. Respondent 5 has not mentioned in the affidavit, the date on which he appeared before the Scrutiny Committee, nor has he responded to the query raised with respect to whether he had produced any evidence to support his allegations, or whether the appellant was allowed to cross-examine any of the witnesses, or if in fact, he simply examined all of them himself. a

43.2. The relevant part of the abovementioned affidavit has been reproduced hereunder:

“That it is submitted that on 28-2-2012 Respondent 5 submitted copy of the affidavit of Mr Supdu Musa Tadvī and by way of an application prayed for personal presence of Mr Supdu Musa Tadvī. The Scrutiny Committee finding contradictions in the two statements of Mr Supdu Musa Tadvī, issued notice to him requesting his personal presence on 17-3-2012. However, Mr Supdu Musa Tadvī never appeared before the committee.” b

44. The affidavit of Mr Supdu Musa Tadvī referred to hereinabove cannot be relied upon, as the said deponent never appeared before the Scrutiny Committee. The conduct of Respondent 5, who has been pursuing the said matter from one court to another, is found to be reprehensible, and without any sense of responsibility whatsoever, as he could not submit any satisfactory response to the directions issued by this Court on 29-10-2012⁵⁶. In view of the above, we are highly doubtful as regards his bona fides. He has, therefore, disentitled himself from appearing either before this Court, or any other court, or committee, so far as the instant case is concerned. c

45. The Scrutiny Committee in ordinary circumstances examined the matter and after investigation through its Vigilance Cell and considering all the documentary evidence on record and after being satisfied, granted the caste verification certificate in 2000. Section 114 Illustration (e) of the Evidence Act provided for the court to pronounce that the decision taken by the Scrutiny Committee has been done in regular course and the caste certificate has been issued after due verification. Very strong material/evidence is required to rebut the presumption. In fact, Respondent 5 has no legal peg for a justifiable claim to hang upon. Once Respondent 5, for the reasons best known to him, had challenged caste certificate under the garb of acting as a public-spirited person espousing the cause of legitimate persons who had been deprived of their right of being considered for appointment, Respondent 5 must have acted seriously and brought the material before the Scrutiny Committee to show that the earlier decision was improbable or factually incorrect. Such a view stands fortified by a catena of decisions rendered by this Court where it has been held that presumption is based on legal maxim *omnia rite esse acta praesumuntur* i.e. all acts are presumed to have rightly and regularly been done. Such a presumption can be rebutted by adducing appropriate evidence. Mere statement made in the written statement/petition is not enough to rebut the presumption. The onus of d

⁵⁶ *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC) e

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a rebuttal lies upon the person who alleges that the act had not been regularly performed or the procedure required under the law had not been followed. [Vide *Gopal Narain v. State of U.P.*⁵⁷, *Narayan Govind Gavate v. State of Maharashtra*⁵⁸, *Karewva v. Hussensab Khansaheb Wajantri*⁵⁹, *Engg. Kamgar Union v. Electro Steels Castings Ltd.*⁶⁰, *Mohd. Shahabuddin v. State of Bihar*⁶¹, *Punjab SEB v. Ashwani Kumar*⁶², *M. Chandra v. M. Thangamuthu*⁶³ and *R. Ramachandran Nair v. State of Kerala (Vigilance Deptt.)*⁶⁴.]

b **46.** In view of the above discussion and considering the seriousness of the allegations, as the Scrutiny Committee has already conducted an inquiry in relation to this matter, and the only grievance of the appellant is that there has been non-compliance with the principles of natural justice, and the fact that the applications filed by him were not decided upon, we direct that before the submission of any report by the Scrutiny Committee, his application for calling the witnesses for cross-examination must be disposed of, and the appellant must be given a fair opportunity to cross-examine the witnesses, who have been examined before the Committee. We further direct the Scrutiny Committee to pass appropriate orders in accordance with the law thereafter. In case the Scrutiny Committee has already taken a decision, the same being violative of the principles of natural justice, would stand vitiated.

c **47.** The appeal is disposed of accordingly, however, considering the fact that Respondent 5 has not been pursuing the matter in a bona fide manner, and has not raised any public interest, rather he abused the process of court only to harass the appellant, Respondent 5 is restrained from intervening in the matter any further, and also from remaining a party to it, and he is also liable to pay costs to the tune of rupees one lakh, within a period of 4 weeks to the District Collector, Aurangabad.

d **48.** The District Collector, Aurangabad, would deposit the said amount in the account of the Supreme Court Legal Services Committee. In the event that the costs imposed are not deposited by Respondent 5 within the period stipulated, we request the District Collector, Aurangabad, to recover the same as arrears of land revenue and deposit the same accordingly. A copy of the judgment be sent by the Registry of this Court to the District Collector, Aurangabad (Maharashtra) for compliance.

g 57 AIR 1964 SC 370

58 (1977) 1 SCC 133 : 1977 SCC (Cri) 49 : AIR 1977 SC 183

59 (2002) 10 SCC 315 : AIR 2002 SC 504

60 (2004) 6 SCC 36 : 2004 SCC (L&S) 782

61 (2010) 4 SCC 653 : (2010) 2 SCC (Cri) 904

h 62 (2010) 7 SCC 569 : (2010) 3 SCC (Civ) 147

63 (2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907 : AIR 2011 SC 146

64 (2011) 4 SCC 395 : (2011) 2 SCC (Cri) 251 : (2011) 2 SCC (L&S) 691

C. A.

Ex parte SIDEBOTHAM. *In re* SIDEBOTHAM.

1879

C. J. B.

Aug. 4, 5,
Dec. 15.

Appeal—Locus Standi—"Person aggrieved"—Refusal of Court to act on Report by Comptroller in Bankruptcy of Misfeasance of Trustee—Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 20, 57, 71—Bankruptcy Rules, 1870, r. 251.

C. A.

1880

May 13, 14.

When the Court has refused to act on a report by the Comptroller in Bankruptcy that the trustee in a bankruptcy has been guilty of a misfeasance, neglect, or omission, by which the estate has sustained a loss which the trustee ought to make good, neither the bankrupt nor any of the creditors is entitled to appeal from the refusal.

The Comptroller alone is entitled to appeal.

Ex parte Ditton (1) explained.

If the trustee has been guilty of a misfeasance, either the bankrupt or any of the creditors is entitled to make an application of his own to the Court under sect. 20, and, if the person so applying is dissatisfied with the order made, he has a right to appeal from it.

NATHAN SIDEBOTHAM and *James Marsh*, who carried on business in partnership at *Ashton-under-Lyne* as the *Barnfield Ironworks Company*, were adjudicated bankrupts in the *Ashton* County Court on the 21st of November, 1873. The proceedings were afterwards transferred to the *Manchester* County Court.

On the 6th of March, 1879, the Comptroller in Bankruptcy made a report to the Court, in which he stated that complaint had been made to him by several creditors of the bankrupts that the trustee in the bankruptcy had not faithfully performed his duties, and had not duly observed the requirements imposed on him by the statute, rules, and otherwise; that the trustee and other persons had been examined on oath; that the Comptroller had inquired into the matters complained of, and had required the trustee to answer certain requisitions; and that he had called upon the trustee to make good an alleged loss to the bankrupts' estate, and the trustee had failed to comply with such requisitions, but had tendered an explanation of the manner in which he had dealt with the estate, contending that he had realized the full value thereof. The report further stated that the Comptroller was of opinion that the explanations and contentions of the trustee were not

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satisfactory. And the Comptroller reported to the Court that the trustee had (*inter alia*) failed to comply with a requisition to credit the estate with a sum of £1253, being the loss which, in the opinion of the Comptroller, the estate of the bankrupts had sustained by the misfeasance, neglect, or omission of the trustee.

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The debts of the bankrupts amounted to about £2200; the trustee had realized assets to the extent of about £1200.

Upon this report the Comptroller applied to the County Court to enforce the requisitions with which the trustee had not complied. The Judge refused to make any order in relation to the sum of £1253 mentioned in the report. The Comptroller did not appeal from this refusal, but the bankrupt *Sidebotham*, who had not obtained an order of discharge, appealed to the Chief Judge.

The appeal came on for hearing on the 4th and 5th of August, 1879.

E. Cooper Willis, for the Appellant:—

The bankrupt is a "person aggrieved" by the order within the meaning of sect. 71, and has a right to appeal from it. If the trustee had accounted for the £1253, the estate could have paid 20s. in the pound.

S. Taylor, for the trustee:—

The Appellant, being an undischarged bankrupt, has no *locus standi* to appeal: *Ex parte Sheffield* (1). Whether the Comptroller himself could or could not appeal, at any rate no one else but a creditor could do so: *Ex parte Ditton* (2).

BACON, C.J., ordered that the trustee should forthwith call a meeting of the creditors for the purpose of considering the report of the Comptroller, and the several matters arising therein, and of passing such resolutions in relation thereto as the meeting might think fit, including the question of the removal of the trustee and committee of inspection and the appointment of an additional or new trustee and committee, and for taking such steps (if any) in reference to the matters aforesaid as might be resolved upon.

(1) 10 Ch. D. 434.

(2) 11 Ch. D. 56.

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C. A. And the further consideration of the appeal was ordered to stand over.

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A meeting of the creditors was accordingly held on the 14th of November, 1879, when (*inter alia*) a resolution was passed by a majority in value of the creditors present, that the meeting, having considered the report of the Comptroller, was of opinion that the conclusions arrived at by him were perfectly justifiable upon the facts of the case, and desired to express their entire satisfaction with that report, and required the trustee to submit to the report, and to bring in and pay to the creditors of the estate the money therein required to be paid by him. Resolutions were also passed by a majority in number and value of the creditors present removing the trustee and the committee of inspection, but they were not passed by the proper majority of three-fourths in value.

The appeal came on again for hearing on the 15th of December, 1879.

E. Cooper Willis, for the Appellant.

Winslow, Q.C., and *S. Taylor*, for the trustee.

Abrahams, for the Comptroller.

BACON, C.J. :—

What can I do with this appeal? I sent it back on the last occasion to have a meeting of the creditors held, because I did not think that the bankrupt had any *locus standi* to appeal. I desired that the opinion of the creditors should be taken at a meeting. That meeting has been held, and resolutions have been passed agreeing with the report of the Comptroller; and that is all. I had hoped that the views of the creditors would have led them to take other steps, and to make themselves parties to the appeal. My intention was that the creditors, if they thought it right that proceedings should be taken, should appeal themselves. It is a matter which concerns them, and not the bankrupts. It would be a most pernicious course if I were to permit a bankrupt to come after a period of six years, after all these transactions, to ransack

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them, and take his chance of persuading the Court that what had been done had been done wrongly. The proper tribunal to entertain the Comptroller's report was the County Court Judge. The Comptroller went to him, and his judgment was clear and express. He declined to make the order suggested by the Comptroller's report. The meeting has taken place, and the creditors allow the matter to remain just where it was, simply supporting in so many words the statements of the Comptroller. There is no plaintiff, no appellant, no one to whom I can listen to-day. The Comptroller himself is not before me.

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Abrahams:—I appear for the Comptroller, who thinks he has no *locus standi* to appeal.

BACON, C.J.:—Perhaps not, but as an officer of the Court I should listen to anything he might have to say. I have no parties properly litigant before me. The creditors have omitted to take advantage of the opportunity which I gave them of personally undertaking the appeal. The trustee has a right to have some one to look to other than the bankrupt, in the event of the appeal falling through. The County Court Judge has expressed a clear opinion; he had the Comptroller's report before him, and the evidence recited in his order, which he fully considered, and he held judicially that there was no pretence for saying that there had been any misfeasance, neglect, or omission on the part of the trustee. That is his judgment, and I have nothing before me to lead me to alter it. I have no one before me at whose instance the appeal can be prosecuted. The bankrupt has no *locus standi*, and none of the creditors have troubled themselves to prosecute it. It was right that the Comptroller should make these inquiries; they were, in my opinion, of the greatest importance. But I can only dismiss the appeal.

From this decision the bankrupt *Sidebotham* appealed. The appeal was heard on the 13th of May, 1880.

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Ambrose, Q.C., and *E. Cooper Willis*, for the Appellant:—

The Appellant is a "person aggrieved" by the refusal of the Court to act on the Comptroller's report. If the trustee had been

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ordered to pay the £1253 the estate would have paid a dividend of more than 10s. in the pound, and then, under sect. 48, the Appellant would have been entitled to his discharge. Indeed, the order which the Chief Judge made in the first instance implied that the bankrupt had a *locus standi* to appeal, for otherwise the appeal ought to have been dismissed at once. If he is not entitled to appeal as a "person aggrieved" under the general words of sect. 71, he has under sect. 20 a special right to apply to the Court in such a case as this (1).

[JAMES, L.J.:—If a dividend of 10s. in the pound might have been paid, except through the negligence or fraud of the trustee,

(1) Sect. '20 provides that "The bankrupt, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just."

Sect. 55 provides that "The trustee having had his quarterly statement of accounts audited by the committee of inspection, shall, within the prescribed time, forward the certified statement in the prescribed form to an officer to be called the Comptroller in bankruptcy, and if he fail to do so he shall be deemed guilty of a contempt of Court to be punishable accordingly."

Sect. 56: "Every trustee of a bankrupt shall from time to time, as may be prescribed, and not less than once in every year during the bankruptcy, transmit to the Comptroller a statement shewing the proceedings in such bankruptcy up to the date of the statement containing the prescribed particulars, and made out in the prescribed form; and any trustee failing to transmit accounts in compliance with this section shall be deemed guilty of a contempt of Court, and be punishable accordingly."

Sect. 57: "The Comptroller shall

examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect, or omission. If the trustee fail to comply with such requisition of the Comptroller, the Comptroller may report the same to the Court; and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just."

Rule 251: "The Comptroller shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules, or otherwise, relative to the performance of his duties, or in the event of any complaint being made to the Comptroller by any creditor in regard thereto, he shall inquire into the same, and, if not satisfied with the explanation given, he shall report thereon to the Court, which, after hearing the trustee, may remove him from his office, or otherwise make such order in the matter as the justice of the case may require."

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the bankrupt has, under sect. 48, the same right to his discharge as if it had been paid.

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BRAMWELL, L.J. :—But in the absence of the report of the Comptroller the bankrupt would have to prove the negligence or fraud of the trustee.]

It is the interest of the bankrupt that his estate should pay as large a dividend as possible. There are some debts from which he is not released by the order of discharge: sect. 49.

Winslow, Q.C., and *S. Taylor*, for the trustee :—

Under the old bankruptcy law an uncertificated bankrupt could not petition that his assignees might be ordered to account, without alleging that his estate would produce a surplus: *Ex parte Ryley* (1). The present *Bankruptcy Act* has not altered this rule. Section 20 refers to the case of a bankrupt who is personally aggrieved by an act of the trustee; it does not apply to the present proceeding. An undischarged bankrupt has no property in the possible surplus of his estate: *Ex parte Sheffield* (2). The dismissal of the present appeal would not prevent the bankrupt from shewing, on an application for his discharge, that the failure to pay 10s. in the pound had been caused by the fault of the trustee. If the bankrupt has a right to appeal he must have been equally entitled to be heard in the first instance upon the application of the Comptroller to the County Court. The Comptroller's application was made under sect. 57. That section gives a right to the Comptroller to apply to the Court, but it gives no right to the bankrupt. If the Comptroller had not reported to the Court that the trustee had failed to comply with his requisitions, surely no one else could have done so.

[JAMES, L.J. :—In *Ex parte Ellis* (3), an adjudication of bankruptcy having been made upon the execution of a bill of sale by the bankrupt as an act of bankruptcy, we held that the grantee of the bill of sale was entitled to appeal from the adjudication, because if the bill of sale was an act of bankruptcy his title to the

(1) 4 Dea. & Ch. 50.

(2) 10 Ch. D. 434.

(3) 2 Ch. D. 797.

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C. A. property was destroyed. In the present case you say the bankrupt is seeking to appeal when he has not been a litigant.]

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In rule 251 creditors are mentioned, but the bankrupt is not.

[JAMES, L.J., referred to *Ex parte Learoyd* (1).]

Suppose the Comptroller is satisfied with the decision of the Judge, why should the undischarged bankrupt or any one else have a right to interfere?

[BRAMWELL, L.J.:—Either the Comptroller can appeal or he cannot. If he cannot, can any one else? If he can, is it conceivable that the Legislature should have intended to give the right of appealing to any one else?]

Ambrose, in reply:—

Ex parte Ryley (2) has no application.

[JAMES, L.J.:—The real question is whether a man who did not choose to make an application of his own to the County Court can become an appellant from the refusal of an application made by the Comptroller.]

Ex parte Ditton (3) shews that a creditor could appeal from such a refusal; and in *Ex parte Walter* (4) it was held that a creditor who had not been previously heard on the question of the registration of liquidation resolutions was entitled to appeal from the order which had been made.

The ground of the decision in *Ex parte Sheffield* (5) was that the bankrupt was not entitled, by assigning the surplus of his estate by way of security, to embarrass the administration of the estate by giving a stranger the right to interfere. The object of giving the power to the Comptroller was to prevent a multitude of applications, but, if the Comptroller declines to proceed, why should not any of the persons who are interested take up the matter?

JAMES, L.J.:—We must take time to consider our judgment. It is a very important question what limits are to be imposed on the term “person aggrieved” in sect. 71.

(1) 10 Ch. D. 3.

(2) 4 Dea. & Ch. 50.

(3) 11 Ch. D. 56.

(4) 2 Ch. D. 326.

(5) 10 Ch. D. 434.

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May 14. JAMES, L.J.:—

Since this case was argued yesterday we have had an opportunity of considering it, and we have arrived at the conclusion that the preliminary objection must prevail as it did before the Chief Judge. When one comes to consider the sections of the Act which provide for the audit of the trustee's accounts and for what the Comptroller is to do, it seems clear that a proceeding taken under it by the Comptroller does not raise anything like a *litis contestatio*. Neither the trustee nor the Comptroller stands in the position of a litigant. The Comptroller is to make a representation to the Court, and if he does so, and the trustee does not give a satisfactory explanation, whatever the Court does upon that it really does *ex mero motu*. It is not a lawsuit either in form or in substance between the Comptroller and the trustee. The trustee, of course, would be entitled to appeal from the order of the Court if he thought it unjust. But, the Judge having come to a conclusion, rightly or wrongly, that he ought not to make any order on the Comptroller's report, there ought not to be any appeal from his decision. There is nothing to form the ground of an appeal. It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something. In *Ex parte Ellis* (1) we held that where an adjudication of bankruptcy had been made, founded upon the execution of a bill of sale as an act of bankruptcy, the holder of the bill of sale was a "person aggrieved" by the adjudication, and was entitled to appeal from it because it affected his property. And in *Ex parte Walter* (2) we held that a creditor who had not been heard before the Registrar on the question of the registration of liquidation resolutions was entitled to appeal from the Registrar's order, because the question of the registration or non-registration of such resolution is one which

(1) 2 Ch. D. 797.

(2) 2 Ch. D. 326.

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C. A. affects the interests of all the creditors. In the present case no one is prejudiced by the refusal of the Court to act on the Comptroller's report, except in so far as he has lost any benefit which he might have obtained if an order had been made; there is nothing to embarrass him in any proceedings which he may wish to take against the trustee. If there has been any misfeasance on the part of the trustee, the bankrupt or any creditor has a right under sect. 20 to apply to the Court, not because the Comptroller has made a report to the Court, but because he is entitled to make his own case against the trustee. And that is really the course which ought to have been taken in the present case, and then the person who made the application would have been in the position of a litigant and would have had the right of appealing from any order which the Court might have made. In the present case, I am of opinion that the Appellant has suffered no grievance, he has hardly sustained even a *damnum*; if he has it is *damnum absque injuriâ*.

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BAGGALLAY, L.J. :—

I entirely agree.

BRAMWELL, L.J. :—

I also agree. Upon an examination of sect. 57 it seems to me that the report of the Comptroller is a matter between him and the trustee; there is no decision or judgment or finding of the Court upon the report. I cannot see that any other person would have a right to attend the proceedings. Supposing that the Comptroller has a right to appeal from the refusal of the Judge to act upon his report, and he does not think fit to do so, is there to be an appeal by the bankrupt or by any of the creditors? Is the Comptroller to be satisfied, and yet is the bankrupt or any creditor to be entitled to appeal? I do not say that such a state of things is impossible, but certainly the general rule is that an appeal must be by the party who has endeavoured to maintain the contrary of that which has taken place. It is not so much that there is a disability on the part of the bankrupt to appeal, as that no one but the Comptroller is entitled to appeal. I come to this con-

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clusion the more readily because under sect. 20 there can be a *litis contestatio* raised between the bankrupt and the trustee.

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JAMES, L.J.:—

I wish to add that in *Ex parte Ditton* (1) the question whether a creditor was entitled to appeal was not really argued. We stopped Mr. *Winslow*, who appeared for the trustee, on that point, and we only heard him on the question whether the Appellant should be allowed a further opportunity of proving his alleged debt. All that we decided was that a person who alleged himself to be a creditor, but who had not tendered any proof of debt, could not appeal.

Solicitors for Appellant: *Le Riche & Son*, agents for *James Gardner, Manchester*.

Solicitors for Trustee: *Phelps, Sidgwick, & Biddle*, agents for *Sale, Seddon, & Co., Manchester*.

—
Ex parte RANBY. *In re* RANBY.

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Court of Bankruptcy—Jurisdiction—Charges of Trustee—Taxation—Composition under sect. 28 of Bankruptcy Act, 1869—Bankruptcy Rules, 1870, rr. 108, 278. June 3, 10.

The creditors of a liquidating debtor resolved on a liquidation by arrangement, and appointed a trustee and a committee of inspection, and they resolved that the remuneration of the trustee should be such as the committee of inspection should from time to time determine. Afterwards the creditors authorized the trustee to accept an offer made by the debtor, under sect. 28 of the *Bankruptcy Act, 1869*, to pay a composition, he also paying the costs, charges, and expenses of the solicitors, receiver, and trustee in relation to the settlement of his affairs and of the scheme of arrangement. The arrangement was approved by the Court:—

Held, that after the confirmation of this scheme the Court had jurisdiction to tax the trustee's charges, notwithstanding that his account had been audited and approved by the committee of inspection subsequently to the confirmation of the composition arrangement.

THIS was an appeal from a decision of Mr. Registrar *Hazlitt*, acting as Chief Judge in Bankruptcy.

(1) 11 Ch. D. 56.

MANU/GT/0032/2013

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 54/2012

Decided On: 22.03.2013

Appellants: **Rana Sengupta**
Vs.

Respondent: **Union of India, State of West Bengal, M/s. Rashmi Metaliks
Limited and West Bengal Pollution Control Board**

Hon'ble Judges/Coram:

*V.R. Kingaonkar, J. (Member (J)), U.D. Salvi, J. (Member (J)), P.S. Rao, Member (E),
Ranjan Chatterjee, Member (E) and Bikram Singh Sajwan, Member (E)*

Counsels:

For Appellant/Petitioner/Plaintiff: Mr. M.P. Jha, Advocate

*For Respondents/Defendant: Mr. Vikramjeet, Advocate for Respondent No. 1, Mr.
Bikas Kar Gupta, Advocate for Respondent No. 2, Mr. Pawan Upadhyay, Advocate for
Respondent No. 3 and Mr. Amit Agrawal, Advocate Along with Ms. Asha Nayar Basu,
Advocate for Respondent No. 4*

JUDGMENT

1. This Appeal is filed by one Rana Sen Gupta, who claims to be a public spirited citizen-working for welfare of people, particularly for those whose concerns might otherwise would remain un-represented. He challenges the order of Environmental Clearance (EC) granted by the Respondent No. 1 (MoEF) vide communication dated 01.06.2012 in favour of Respondent No. 3 (M/s. Rashmi Metaliks Ltd.). The EC is granted for expansion of existing Steel Plant by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 MTPA pellets with Producer Gas Plant by the Respondent No. 3 (M/s. Rashmi Metaliks Ltd.,) referred to hereinafter as "Project Proponent". Admittedly, the Project Proponent was granted EC dated 12.06.2008 for its project of Steel Plant of 5 lakh T.P.A. capacity. The Project Proponent desired to manufacture steel billets etc. within the limit of 5 lakh TPA. So, the Project Proponent submitted a proposal to the W.B. Pollution Control Board (Respondent No. 4). The Respondent No. 4(W.P.C.B) granted consent to establish the project on 02.02.2009. Thereafter, the Project Proponent sought further consent of Respondent No. 4 to establish and operate a manufacturing plant of TMT Rods upto 9600 tons per month. The Respondent No. 4 granted consent to establish the said unit on 18.05.2009 and also granted consent on 15.7.2010 to operate the unit. So also, the Respondent No. 4 granted consent dtd. 23.12.2010 to manufacture of pellets as sought by the Project Proponent, to the extent of 15,500 tons per month.

2. Undisputedly, the Project Proponent again desired to manufacture Ductile Iron Pipes to the extent of 2 lakh T.P.A. The Project Proponent accordingly applied for necessary permission. The Respondent No. 4 (WB PCB) granted necessary permission to install Ductile Iron Pipe production unit vide permission letter dated 09.10.2009. The Respondent No. 4 granted consent to establish the project of Ductile Iron Pipe as per the proposal of the Project Proponent vide communication dated 11.11.2009.

Subsequently, the Respondent No. 4 granted consent to operate the said production unit on 12.01.2011. Thus, the Project Proponent was manufacturing 1,86,000 Tonnes of pellets, 1,15,200 Tonnes of TMT Rods along with 1,41,996 Tonnes of Ductile Iron Pipes. Comprehensively considered, the total production capacity of all those products comes to 4,43,196 TPA. Obviously, it was below the permissible limit of 5,00,000 T.P.A. which was permissible in accordance with the EC that was originally granted by the Respondent No. 1 (MoEF) on 12.06.2008.

3 . The Project Proponent desired to expand the industrial activity by adding 15,00,000 T.P.A. Beneficiation cum Pellet Plant with producer Gas Plant. The expansion could not be done without further EC of the Respondent No. 1. Therefore, the Project Proponent submitted a fresh proposal to the Respondent No. 1 for grant of EC to the proposed expansion. The proposal was considered by the Respondent No. 1. TOR was issued by the Respondent No. 1 on the basis of Environmental Impact Appraisal/Assessment (EIA). It was followed by public hearing held under Chairmanship of Additional District Magistrate, Paschim Medinipur (W.B.) on 11.11.2011. A representative of the Project Proponent narrated the draft proposal and described the project details. The Respondent No. 1 considered the viability of the project after the public hearing, appraisal was done and thereafter the EC was granted to the Project Proponent vide the impugned communication dated 01.06.2012 for expansion of capacity to an additional 1.5 Million T.P.A. Beneficiation cum Pellet Plant. Feeling aggrieved, the Appellant has preferred the Appeal.

4 . The Appellant has come out with a case that the Project Proponent concealed information regarding the Ductile Iron Pipe Plant that was being operated prior to the proposed expansion. The Respondent No. 1 (MoEF) failed to consider that the Project Proponent had omitted to include the pre-existing Ductile Iron Pipe Plant in the EIA Report which was presented before granting the impugned EC. The MoEF also failed to consider the fact that the Project Proponent did not submit Environmental Impact Assessment (EIA) report, taking into account the impact of pre-existing Ductile Iron Pipe Plant, and therefore, the proposal for the expansion of project in question, was improper. The information furnished by the Project Proponent was misleading and incorrect. The Appellant further alleges that the proposal should have been rejected in view of deliberate concealment by the Project Proponent of the information pertaining to existence of the previous Ductile Iron Pipe Plant. He seeks to rely upon Para 8(vi) of the Notification issued by the MoEF on 14.09.2006. Though, challenge of the EC granted to the earlier Ductile Iron Pipe Plant had failed due to dismissal of Appeal No. 32/2011 filed by the Appellant, yet comprehensive impact on environment ought to have been considered and particularly element of concealment of information by the Project Proponent ought to have been considered as substantial reason to reject the proposal. The enhanced emission of carbon-di-oxide due to the proposed expansion of the industrial activity would cause irreparable damage to the eco-system and the environment of adjoining area and adversely affect the health of public. But these aspects are overlooked by the Respondent No. 1. The previous EC granted by the SEIAA to the Project Proponent also was illegal and improper. The Appellant further states that the Project Proponent has not provided for adequate green belt as per the conditions enumerated in the EC granted in the past and, therefore, the proposed expansion of the project should not have been allowed by the Respondent No. 1.

5 . By filing separate counter affidavits, the Respondents resisted the Appeal. They submitted that the grant of EC for manufacturing project of 2 lakh T.P.A. capacity on 09.10.2009 cannot be challenged by the Appellant. They submitted that dismissal of

Appeal No. 32/2011 filed by the Appellant has now sealed the issue regarding grant of said EC for the Ductile Iron Pipe Plant. They submitted that now the Appellant is trying to mix-up the issue pertaining to the earlier EC with that of the impugned EC for expansion of the project. They further submitted that there was no concealment of any fact by the Project Proponent. They submitted that the expansion of the industrial activity falls within the project/activity item 3(a) of the Schedule appended to the MoEF Notification dated 14.09.2006 and as such the assessment/appraisal was done as required under the relevant regulations. They further submitted that the expansion of the project is legal and proper. They denied truth into the allegation that the conditions of the previous EC were violated by the Project Proponent. Consequently, they sought dismissal of the Appeal.

6. In addition, the Project Proponent alleges that the Appellant has no locus-standi to file the present Appeal. It is alleged that the Appellant cannot be treated as "aggrieved person". It is also submitted that the Appellant is unconcerned with the environmental impact of the project in question. It is pointed out that the Appellant is inhabitant of Dhakuria, Kolkata whereas the project is situated at village Gokulpur (District Paschim Medinipur). According to the Project Proponent, the Appellant is a busybody and has filed the Appeal without there being any element of so called public interest or alleged concern for environmental damage or public welfare. On these premises, the Project Proponent and other respondents sought dismissal of the Appeal.

7. We have heard Learned Counsel for the parties in extenso. We have carefully gone through the record.

8. Mr. M.P. Jha, Learned Counsel for the Appellant argued that the impugned grant of Environmental Clearance is bad in law for the reason that the Project Proponent concealed the fact that a Ductile Iron Pipe Plant was already being operated in the same premises. He argued that the Project Proponent obtained EC from the SEIAA of W.B. for expansion of the industrial activity, in the context of the Ductile Iron Pipe Plant (DIPP) which, in fact, could not have been granted because such project falls within category 'A' of Schedule appended to the Notification of MoEF issued on 14.09.2006. According to him, Para 8 (vi) of the Said Notification provides for cancellation of the previous EC or rejection of the proposed EC where there is deliberate concealment and / or false submission or misleading information. The Application of the Project Proponent was, therefore, liable for rejection. He argued that the environmental impact ought to be comprehensively considered having regard to pre-existing industrial projects which were already made operational in the same area. He would submit, therefore, that the impugned grant of EC is invalid and is liable to be quashed.

9. Mr. Pawan Upadhyay, Learned Counsel for the Respondent No. 3 (Project Proponent) submitted that there is no concealment of any important information while seeking the EC for the expansion of the industrial activity by adding 1.5 million T.P.A. Beneficiation cum Pellet Plant including production of 1.2 million T.P.A. Pellets with Producer Gas Plant. He contended that there was no additional load, in any manner, on the environment because the expanded project was not likely to produce any obnoxious substance in as much as the quantity of effluent discharge was "NIL". He argued further that the Appellant purposefully attempted to mix-up the issue pertaining to grant of EC for setting up steel plant of 5 lakh TPA and the subsequent permission for expansion of the industrial activity by installation of Ductile Iron Pipe Plant for manufacturing 2 lakh TPA Ductile Iron Pipe Plant. He contended that the

installation of Ductile Iron Pipe Plant falls in category 'B' under the project/activity 3(a) of Schedule of the Environment Clearance Regulations, 2006 and therefore, necessary clearance was sought from the SEIAA of W.B. He pointed out that the said EC is not the issue involved in the present appeal. For, it is no more res-integra in view of dismissal of previous Appeal No. 32/2011 by this Tribunal. He contended that the grounds shown in the Memorandum of Appeal are carved out only with a view to raise some kind of challenge to the EC granted for expansion of the project notwithstanding the fact that the Appellant failed to raise any such issue during the course of public consultation process. It is argued that the Appellant has absolutely no concern with the environmental issues nor is he affected by the grant of EC in question. It is argued further that the Appellant cannot be termed as "aggrieved person" and as such has no locus-standi to prefer appeal under Section 16 of the National Green Tribunal Act, 2010 (for short, NGT Act). It is argued that the appeal is unfounded, filed with ulterior motive and deserves dismissal with exemplary costs.

10. Learned Counsel, Mr. Vikramjeet, Mr. Bikas Kar Gupta and Mr. Amit Agrawal appearing for Respondents No. 1, 3 and 4, respectively, adopted similar stance in keeping with the contentions of Mr. Pawan Upadhyay. They submitted that the Appellant is a busybody and has unnecessarily filed such a baseless litigation. So they too sought dismissal of the Appeal.

11. Having heard Learned Counsel for the parties, in our opinion, the following points arise for the purpose of deciding the appeal. They are:-

(i). Whether the Appellant is "aggrieved person" and has locus-standi to prefer the appeal?

(ii). Whether the Project Proponent concealed any material information or furnished false or misleading information deliberately, during the course of screening, scoping or appraisal of the expansion project which ought to have been considered as a reason for rejection of the application for EC to expand the project or cancellation of prior EC already granted for installation of Ductile Iron Pipe Plant?

(III). Whether the impugned grant of EC for expansion of the steel plant by adding 1.5 million TPA Beneficiation cum Pellet Plant and the Gas Plant is otherwise illegal as it would add more pollution burden and tantamounts to unsustainable development?

Re: Point No. (i)

12. So far as locus-standi of the Appellant is concerned, it would be appropriate to examine what he has pleaded in the Memorandum of Appeal. He alleged that although he has no personal interest in the matter, yet because he is working for the welfare of the people, particularly for those whose concern might have otherwise remained unrepresented, he is aggrieved. Secondly, he states that he has been raising the issue of noncompliance of environmental norms by the Project Proponent and had filed earlier Appeal No. 32/2011 with a view to stall installation of Ductile Iron Pipe Plant Project. He says that he is a public spirited citizen with working experience in steel and iron industry and has full knowledge of the impact of these industries on ecology, environment and human lives. These are the reasons given by him to demonstrate that he is competent to file the appeal.

Section 16 of the NGT Act, 2010 provides appellate jurisdiction to the Tribunal. The

opening words of Section 16 go to show that "any person aggrieved" by order made granting EC can prefer appeal under Section 16(h) of the NGT Act, 2010. The expression "person aggrieved by" imply some or other reason which might have aggravated the person to undertake the legal remedy. Such a person must demonstrate that he is directly or indirectly concerned with the adverse environmental impact which is likely to be caused due to granting of EC by the competent authority. The Appellant, admittedly, resides at Babu Bagan, Dhakuria area of Kolkata. The main project and expansion area of the subsequent project is situated at Shyamraipur (District Paschim Medinipur). It is not the case of the Appellant that he has any property in the adjoining area of village Shyamraipur. It is not his case that he is personally adversely affected due to the installation of the expansion project in question. He vaguely states that he is a public spirited citizen with experience of working with steel and iron industries and has full knowledge of the impact of these industries on ecology, environment and human lives. He vaguely proclaims that he is working for the welfare of the people and particularly who have remained unrepresented.

13. We do not find any tangible material which would plausibly show that the Appellant has credentials as expert in the field of steel and iron industries and we are at a loss to know in what manner he is working for the welfare of unrepresented members of the public. It is not his case that he represents any NGO. His self-proclaimed status as "public spirited citizen" is of no much avail. There is absolutely no record to show that he participated in the public consultation process and raised any issue regarding the environment or socio-economic adverse impact on account of establishment of the proposed project. The only reason that he has unsuccessfully preferred Appeal No. 32/2011 against granting of earlier EC for production of Ductile Iron Pipe Plant is of no much significance and is irrelevant. Moreover, that appeal came to be dismissed and there is no finding of this Tribunal that the Appellant is to be treated as "an aggrieved person". Considering forgoing discussion, we have come to the conclusion that the Appellant has no locus-standi to prefer the present appeal. He cannot be treated as an aggrieved person and the appeal filed by him cannot be entertained. This answers the point no. 1.

Re: Point No. (ii)

14. Now, it is to be borne in mind that the Project Proponent (R-3) was, admittedly, granted Environmental Clearance vide communication dated 12.06.2008 for installation and of operation of the steel plant for 5 lakh million TPA, MBF-SMS. The proposal for setting up of such steel plant was approved by the MoEF. The total land to be utilized for setting up of the steel plant is 188 acres. What appears from the record is that the Project Proponent did not fully utilize the production capacity of 5 lakh TPA when the plant was made operational at the initial stage. The Project Proponent expanded the industrial activity after submitting application dated 17.06.2009 to the Department of Environment, Government of W.B., Kolkata. The appraisal was done by the State Level Expert Appraisal Committee (SEAC). Thereafter, recommendation was made to the State Environmental Impact Assessment Authority (SEIAA). The SEIAA accorded Environmental Clearance to the expansion of the project in accordance with the MoEF Notification dated 14.09.2006. Copy of the communication dated 09.10.2009 (Annex-R-1) filed with affidavit of the Respondent No. 2 reveals that the Project Proponent categorically stated that the Environmental Clearance was needed for installation of Ductile Iron Pipe Plant for manufacturing of Ductile Iron Pipes to the extent of 2 lakh TPA at the existing unit (Kharagpur). Obviously, the expansion was within limit of the production capacity (5

lakh TPA) for which Environmental Clearance was accorded by the MoEF in 2008.

15. The contention of the Appellant that such expansion of the project activity ought to have been brought to the notice of the MoEF when the further expansion was sought vide communication dated 19.11.2011 and dated 12.03.2012 is untenable. Such omission cannot be treated as deliberate concealment of any material information which would necessarily entail cancellation of the prior Environmental Clearance granted to the Project Proponent or rejection of the subsequent application for expansion of the project in question. The Appellant seeks to rely on Regulation 8 (vi) of the Environmental Clearance Regulations, 2006. The relevant regulation may be re-produced for ready reference as shown below:-

8.

(i). xxx

(ii). xxx

(iii). xxx

(iv). xxx

(v). xxx

(vi) "Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of nature justice.

Perusal of the above regulation goes to show that such drastic action will be called for only when it is noticed that there is deliberate concealment or submission of false or misleading information to the MoEF in the process of screening, scoping or appraisal or decision of an application. We do not find any such concealment made by the Project Proponent when the expansion of the project in question was sought. The earlier Environmental Clearance for installation of Ductile Iron Pipe Plant, approved by the competent authority of Department of Environment, W.B. was within approved capacity of 5 lakh TPA. That approved project was also to be established in the same campus of 188 acres. The Appellant could not pinpoint as to how it was necessary for the Project Proponent to give details of such earlier Environmental Clearance accorded after the Environmental Clearance dated 12.06.2008. There is no provision under the regulation which makes it incumbent on the Project Proponent to give details of the earlier approved expansions sought within the permitted limit of the project which was initially granted by the MoEF.

16. Another limb of the argument advanced by the Learned Counsel for the Appellant is that the production of the Ductile Iron Pipes vide the second expansion approved by the SEIAA on 09.10.2009 cannot be legal and proper. The Learned Counsel for the Appellant submits that the project for production of Ductile Iron Pipes falls in the category of Item 5(k) of the Schedule 2 appended to the Environmental Clearance

Notification, 2006. He argued that such activity of Ductile Iron Pipes production commences with induction of furnace and also involves installation of magnesium convener belt, zinc coating machines, cement curing system so on and so forth. We do not agree. On consideration of schedule appended to the Environmental Clearance Regulation 2006, it is amply clear that the said project falls in category B of item 3(a). It is difficult to say that it falls in the category of any other item shown under the Schedule appended to the Environmental Clearance Regulation, 2006. Needless to say that the Project Proponent did not conceal any material information nor gave any false information while seeking the Environmental Clearance for expansion of the project in question vide the application dated 19.11.2011 and communication dated 12.03.2012 submitted to the MoEF. This answers point no. (ii).

Re: Point No. (iii)

17. Coming to the third point involved in this Appeal, it is worthy to note that main argument of the Learned Counsel for the Appellant, Mr. M.P. Jha is that the Environmental Clearance granted on 01.06.2012 is bad in law in as much as it was granted without application of mind. He argued that the Project Proponent expanded the industrial activities during the period between the first Environmental Clearance granted in 2008 and the impugned Environmental Clearance granted on 01.06.2012 in piecemeal manner with a view to avoid the necessity of cumulative environmental appraisal. He argued that holistic environmental appraisal could not be done by the MoEF due to piecemeal expansion of the project by the Project Proponent. Chief bone of his contention is that comprehensive environmental impact was not considered by the MoEF while granting the Environmental Clearance dated 01.06.2012. He pointed out that the EIA report does not indicate the impact of expansion of the industrial activity due to installation of Ductile Iron Pipe Plant prior to the impugned order dated 01.06.2012. It is on this basis that Mr. M.P. Jha urged to quash the impugned order of granting the Environmental Clearance.

18. As stated earlier, Environmental Clearance granted by the State Environmental Authority vide communication dated 09.10.2009 was challenged by the Appellant vide Appeal no. 32/2011. This Tribunal dismissed the said appeal. The obvious fall out of dismissal of the said appeal (Appeal No. 32/2011) is that the previous order dated 09.10.2009 cannot be now challenged and has become final. The Appeal Memo and rejoinder filed by the Appellant go to show that the Appellant has attempted to resurrect life into bygone litigation in respect of the Environmental Clearance order dated 09.10.2009. The allegation of the Appellant is that the said order dated 09.10.2009 is nullity, is without any merit and hence must be rejected. The Appellant cannot be allowed to challenge that order on the basis of so called newly invented fallacious grounds.

19. We cannot assume that the MoEF did not consider comprehensive environmental impact of the expansion project. The purpose of expansion of the project is amply clear from the application of the Appellant as well as the discussion which took place in the EAC meeting. The Project Proponent sought expansion of steel plant (05. Million TPA MBF-SMS) by adding 1.5 million TPA Beneficiation cum Pellet Plant to produce 1.2 million TPA pellets with producer Gas Plant. The additional industrial activity was to be carried out in the same land consisting of 188 acres. The steel plants unit is listed at serial no. 3(a) under Category 'A' of the Schedule of the MoEF Notification dated 14.09.2006. The impugned EC is granted by the MoEF subject to outcome of Writ Petition no. 1587(W) of 2011 which is pending before the Hon'ble High Court of Kolkata. Needless to say the MoEF considered various aspects including

the fact that no additional land was required, as well as Iron ore, coal, bentonite and limestone are the raw materials which would be used. It was also taken into account that such material would be transported by the Railways. The Railway Yard exists inside the complex of the industrial unit. The MoEF also considered the fact that dust generated during operation of the industrial activity will be controlled by installation of ESP and Bag Filters. The comprehensive consideration of the relevant aspects by the MoEF is manifested from the discussion which preceded the impugned EC.

20. We have gone through the reply filed by the Respondent No. 1 (MoEF). The Respondent No. 1 supports the impugned order. According to the MoEF, the Terms of Reference (TOR) includes the cumulative impact on the environment which may occur within the radius of 10 k.m. as well as the additional impact due to operation of the proposed expansion project. It is stated further that the EIA report and the Environment Management Plan (EMP) had been duly considered. It is further stated that the EIA report considers the installation of Ductile Iron Pipe production Plant. It need not be reiterated that the Ductile Iron Pipe production Plant was within the limit of 5 lakh TPA capacity for which the first Environmental Clearance was granted in 2008.

21. It appears from the record that the Appellant initiated the proceedings for the permission of the MoEF for the expansion of its project by addition 15 lakh TPA Beneficiation cum Pellet Plant with producer Gas Plant beyond the earlier Environmental Clearance granted for production capacity to the extent of 5 lakh TPA. It appears that the Public Hearing was convened on 11.11.2011 under the Chairmanship of Additional District Magistrate, Paschim Medinipur, (W.B.). The meeting was co-chaired by the Dr. Dipanjana Maulik, Environmental Engineer of WB Pollution Control Board. The meeting was attended by the villagers. The Appellant was not present in the said meeting, although, notice of the meeting was duly published. The local villagers have not raised any objection to the establishment of the industrial unit, particularly, the impugned expansion of the industrial activity as sought by the Project Proponent.

22. There cannot be two opinions about proposition that Section 20 of the National Green Tribunal Act, 2010 mandates the Tribunal, while passing any order or decision, to apply the principles of sustainable development, the precautionary principle and the polluters pay principle. In the context of the project in question, there is hardly any material to show that it would cause excessive emission from the plant which may cause pollution beyond tolerable degree. The concept of "sustainable development" implies development which would not severally degrade the environment. That does not mean absence of environmental impact but means a minimal impact which can be endured / tolerated by human beings. It also means that environment will not be degraded to such a degree that future generation will be deprived of a clean and healthy environment to a reasonable degree. It is common knowledge that everything is changing in this world. So also the environment. In "Lafarge Umiyam Mining Private Limited vs. Union of India" MANU/SC/0735/2011 : (2011) 7 SCC 338 the Apex Court observed:-

75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapable requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognized by the concept of

"sustainable development". It is equally well settled by the decision of this Court in *Narmada Bachao Andolan v. Union of India* that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of a due diligence exercise). In such cases, the margin of appreciation doctrine would apply.

76. Making these choices necessitates decision, not only about how risks should be regulated, how much protection is enough, and whether ends served by environmental protection could be pursued more effectively by diverting resources to other uses. Since the nature and degree of environmental risk posed by different activities varies, the implementation of environmental rights and duties requires proper decision-making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.

23. It is necessary to strike a balance between development and environment protection to facilitate economic growth as well to secure adequate adherence to the cause of environment. We mean to say, there cannot be any lop sided approach in environment related matters.

24. We have gone through the short affidavit filed by the Appellant on 19.03.2013. The affidavit does not give any new dimension to the issues under consideration. The Appellant, however, referred to certain allegations extracted from the pleadings in Writ Petition No. 1587(W) of 2011. That Writ Petition is filed by Sk. Sajad Ali, son of Oyahed. We are not directly concerned with the pleadings put forth in that Writ Petition filed by some other party. The Kolkata High Court has not granted any interim relief in that matter. We do not think that pleadings in that Writ Petition have any direct bearing on the issues raised in the present appeal.

25. We have perused copy of the minutes of proceedings of Public Hearing dated 11.11.2011. On perusal of the minutes of the proceedings, it is amply clear that members of the village locality had participated in the course of Public Hearing. It further appears that video recording of the Public Hearing was conducted and the text of the proceeding was made available in public domain. What appears from the record of the Public Hearing is that most of the issues raised by the villagers pertain to construction of metal road, provision for job opportunities and construction of a cement concrete bridge or improvement of road transport. It was also urged that the Project Proponent shall provide a children park. The authorized officer of the Project Proponent, namely, Shri S. Patwari assured that the existing road would be converted into a metal road. He also assured that the local school's improvement work would be undertaken. He also assured that the local skilled job seekers may submit their applications to the Personnel Department of Factory Management for consideration. One cannot be oblivious of the fact that the area is affected by left wing extremists. Availability of employment is likely to partly help proper management of the left wing extremist activities. It appears that one, Shri Pradeep Behra is the only villager who requested to ensure proper emission control measures. The response of Shri S. Patwari was that the emission problem would not increase due to proposed expansion. It is explicit that the villagers were made aware of the nature of the

proposed expansion and there was proper public consultation. The proceedings were signed by the seventy seven (77) villagers who attended the meeting. As pointed out before, the Appellant did not attend that meeting. The Appellant has not demonstrated as to how the expansion of the industrial unit is likely to substantially add pollution in the area. There cannot be duality of opinion that the expansion of the project will add some burden on the pollution in the area. Yet there is no tangible material to show that the pollution level will become intolerable on account of the expansion of the project. We mean to say, the Appellant has not placed on record any scientific data in support of the contention that the pollution level will be excessively increased due to the expansion of the industrial activities.

26. Considering totality of the foregoing discussion, we have no hesitation in holding that the Appellant failed to prove that the proposed expansion of the project is detrimental to the cause of environment. We hold that expansion of the industrial activity as approved by the MoEF is within the permissible limits of sustainable development. This answers the point no. (iii). The net result of the findings recorded on the points no. (i) to (iii) is that the Appeal is destitute of merits. Therefore, it fails. We have noticed that the Appellant indulged in the litigation without proper cause, though he is not an aggrieved party as such. It is high time to discourage such practice of fuelling the litigation without any substantial reason. Hence the Appeal is dismissed with direction that the Appellant shall deposit a cost of Rs. 15,000/- into the Legal Aid Fund of National Green Tribunal Bar Association. The Appeal is accordingly disposed of as dismissed. In case the cost is not deposited by the Appellant within a period of four (4) weeks, the Registrar to take proper action for recovery of the said amount as provided under Order XXI R 30 of the C.P. Code or any other provision envisaged under Order XXI or the provisions of the National Green Tribunal Act, 2010.

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Civil Appeal Nos. 4763-4764 of 2013

Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.

2019 SCC OnLine SC 221

In the Supreme Court of India

(BEFORE R.F. NARIMAN AND NAVIN SINHA, JJ.)

Civil Appeal Nos. 4763-4764 of 2013

Tamil Nadu Pollution Control Board Appellant(s);

v.

Sterlite Industries (I) Ltd. and Others Respondent(s).

With

Civil Appeal Nos. 8773-8774 of 2013

Civil Appeal Nos. 9542-9543 of 2013

Civil Appeal No. 5782 of 2014

Civil Appeal Nos. 1552-1554 of 2019

Civil Appeal No. 23 of 2019

Civil Appeal No. 1582 of 2019

Decided on February 18, 2019

The Judgment of the Court was delivered by

R.F. NARIMAN, J.:— The present appeals arise out of orders that have been passed by the National Green Tribunal [**“NGT”**] dated 31.05.2013, 08.08.2013, and 15.12.2018. The brief facts necessary to appreciate the controversy raised in the present case are as follows.

2. The respondent, Sterlite Industries (India) Ltd./Vedanta Ltd., was operating a copper smelter plant at the State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) Industrial Complex at Thoothukudi, Tamil Nadu. On 01.08.1994, the respondent received a No-Objection Certificate [**“NOC”**] from the Tamil Nadu Pollution Control Board [**“TNPCB”**] for the production of blister copper and sulphuric acid. The environmental clearance to the project by the Ministry of Environment, Forest, and Climate Change [**“MoEF”**] followed on 16.01.1995. On 17.05.1995, the State MoEF also granted environmental clearance to the respondent. The TNPCB granted its consent under the Air (Prevention and Control of Pollution) Act, 1981 [**“Air Act”**] and Water (Prevention and Control of Pollution) Act, 1974 [**“Water Act”**] on 22.05.1995. After obtaining the requisite permissions, the consent to operate the plant was issued on 14.10.1996 by the TNPCB. Production commenced on 01.01.1997. However, the environmental clearances that were granted were challenged before the Madras High Court in Writ Petition Nos. 15501-15503/1996, 5769/1997, and 16961/1998. On 20.05.1999, the TNPCB granted its consent for production of two more products, namely, phosphoric acid and hydrofluorosilicic acid. On 21.09.2004, a Supreme Court Monitoring Committee was constituted to verify the compliance status of hazardous waste management. It recommended to the MoEF that the environmental clearance for the proposed expansion should not be granted, and if granted, should be revoked. On 19.04.2005, the TNPCB issued consent to operate, subject to fulfillment of various conditions for the expanded capacity. Meanwhile, the Madras High Court, on 28.09.2010, allowed the various writ petitions that had been filed and quashed the environmental clearances granted to the respondent and directed the TNPCB to close down the plant.

3. Meanwhile, on 23.03.2013, the residents of nearby areas started complaining of irritation, throat infection, severe cough, breathing problem, nausea etc. due to emissions from Sterlite Industries. Reports were obtained after inspection of the premises by the TNPCB. Based on these reports, the TNPCB issued a show-cause notice dated 24.03.2013 and directed closure of the unit under Section 31A of the Air Act on 29.03.2013. This order was stayed by the NGT on 31.05.2013, allowing the respondent to commence production subject to certain conditions. Against this, the TNPCB filed Civil Appeal Nos. 4763-4764 of 2013, which will be disposed of by the judgment delivered in this case. Finally, on 08.08.2013, the NGT set aside the TNPCB order dated 29.03.2013, against which, Civil Appeal Nos. 8773-8774 of 2013 were filed, which again will be disposed of by this judgment. It is important to note that the appellants herein raised the issue of maintainability of the respondent's appeal before the NGT, stating that an appeal should have been filed first before the appellate authority under the Air Act/the National Green Tribunal Act, 2010 ["**NGT Act**"]. This ground of maintainability was decided against the appellants by the impugned order dated 08.08.2013.

4. Owing to various interim orders passed by the NGT, the respondent continued to operate its plant. On 13.04.2016, the TNPCB granted consent to operate the plant for one year subject to certain conditions. Post inspection of the unit of the respondent in March 2017, the TNPCB issued a show-cause notice dated 14.03.2017 for violations under the Air Act and the Water Act which, apparently, was not pursued. On 06.09.2017, an inspection report by the TNPCB was made, and an order passed on 07.09.2017, granting renewal of consent to operate only till 31.03.2018 subject to various conditions. Meanwhile, a protest had been organized in March 2018 by some persons against the proposed expansion sought by the respondent. The respondent, therefore, had to file Writ Petition No. 7313 of 2018 before the Madurai Bench of the Madras High Court for police protection. This Writ Petition was disposed of by an order dated 04.04.2018 with a direction to consider the respondent's application. On 09.04.2018, the TNPCB refused renewal of consent to operate to the respondent's unit based on non-compliance with certain conditions that were laid down under the Air Act and the Water Act. On 12.04.2018, the respondent filed Appeal Nos. 36-37 of 2018 before the appellate authority under Section 28 of the Water Act. In these appeals, various orders were passed, until, on 06.06.2018, the following order was passed:

"APPLICATIONS 28 & 29/2018, APPLICATIONS 30 & 31/2018 AND APPEALS 36 & 37/2018:

Heard.

In view of the Government Order passed by the Government of Tamilnadu in G.O. Ms. No: 72, Environment & Forests (EC-3) Department Dated: 28.5.2018, directing the Tamilnadu Pollution Control Board to close the plant permanently, we feel it is not appropriate to hear the Appeals and decide the issue at this juncture.

Hence the Appeals and applications are adjourned to 10.7.2018."

5. On 10.07.2018, the matter was further adjourned as follows:

"APPLICATIONS 28 & 29/2018, APPLICATIONS 30 & 31/2018 AND APPEALS 36 & 37/2018:

In view of the remarks made in the adjudication proceedings on 6.6.2018 and as the position is same now, the Appeals and Applications are adjourned to 21.8.2018."

6. Finally, on 18.12.2018, i.e., three days after the impugned order was passed by the NGT on 15.12.2018, an order passed by the appellate authority was as follows:

"APPLICATIONS 28, 29, 30 & 31/2018 AND APPEALS 36 & 37/2018:

Ms. Janani, counsel for the appellant and Mr. V. Vasanthakumar, counsel for the

respondent-Board are present. None is present on behalf of the 1st, 2nd and 3rd interveners.

Counsel for the appellant seeks permission to withdraw the Appeals. She has also filed a memo to that effect.

In view of the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 15.12.2018 in Appeal No. 87 of 2018 setting aside the impugned order dated 9.4.2018 which is subject matter of these appeals pending before this Appellate Authority, the Appeals have become infructuous and hence they are closed."

7. On 12.04.2018, an order was passed by the TNPCB under Section 33A of the Water Act and Section 31A of the Air Act directing that the respondent's unit shall not resume production without obtaining prior approval/renewal or consent from the TNPCB. This was followed by two orders, both dated 23.05.2018, again issued under the same Sections, this time to close down the respondent's unit and disconnect power supply to it. Finally, on 28.05.2018, an order was issued by the Government of Tamil Nadu under Section 18(1)(b) of the Water Act stating:

"It is brought to the notice of the Government that Tamil Nadu Pollution Control Board did not renew the Consent to Operate to M/s. Vedanta Limited, Copper Smelter Plant, SIPCOT Industrial Complex, Thoothukudi District in its order dated 9.4.2018. Subsequently, on 23.5.2018, Tamil Nadu Pollution Control Board has also issued directions for closure and disconnection of power supply to the Unit. The power supply has been disconnected on 24.5.2018.

2. Under Article 48-A of the Constitution,

"the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

3. Under sections, 18(1)(b) of the Water Act, 1974 in the larger public interest, the Government endorse the closure direction of the Tamil Nadu Pollution Control Board and also direct the Tamil Nadu Pollution Control Board to seal the unit and close the plant permanently."

8. On the same date, the TNPCB issued a letter to the District Collector, *inter alia*, directing him to seal the respondent's unit. These six orders became the subject matter of a composite Appeal No. 87 of 2018 under Section 16 of the NGT Act.

9. A writ petition was filed by the respondent before the Madurai Bench of the Madras High Court on 18.06.2018 so that the respondent could access its unit to maintain its plant. This was dismissed as withdrawn on 09.07.2018.

10. The appellants then took up a plea of maintainability of the composite appeal. As this was not being disposed of by the NGT, this Court, by its order dated 17.08.2018, directed the NGT to render its final findings, both on maintainability as well as on merits. On 20.08.2018, the NGT constituted a Committee to go into the material produced by the parties to the Civil Appeal and to visit the site. This Committee was ultimately headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board ["CPCB"] and another a representative of the MoEF. Aggrieved by this order, the appellants knocked on the doors of this Court. This Court disposed of this appeal on 10.09.2018, by stating:

"By our order dated 17.08.2018, we had made it clear that the NGT may continue to hear the matter both on merits as well as on maintainability and finally decide the matter on both counts.

Since our order is not referred to in the order dated 20.08.2018 passed by the NGT, we need only to state that once the Committee's report is given to the Tribunal, it will proceed to decide the matter in accordance with our order dated

17.08.2018.

xxx xxx xxx"

11. A review petition that was filed against this order was dismissed.

12. The Committee constituted by the NGT then inspected the site on various dates in September/October, 2018, and heard all concerned parties as well as intervenors. It then came out with a detailed Enquiry Report dated 20.11.2018, in which it concluded as follows:

"On the basis of the site visit, public hearing and after hearing the appellant Company, State of Tamil Nadu, Tamil Nadu Pollution Control Board, and the intervenors and, upon consideration of the issues raised, the Committee is of the opinion:

1. The impugned orders cannot be sustained as it is against the principles of natural justice. No notice or opportunity of hearing was given to the appellant.
2. The grounds mentioned in the impugned orders are not that grievous to justify permanent closure of the factory.
3. Other issues raised also does not justify the closure of the factory even if the appellant was found to be violating the conditions/norms/directions.
4. In the event the Hon'ble Tribunal is of the opinion that the factory should commence production, the committee is of the opinion that the following directions may be issued.
 - a) As per condition No. 44 of the Consent Order dated 19-04-2005, the appellant should be directed to monitor ground water quality including heavy metals such as Arsenic, Cadmium, Silver, Copper, Fluoride, etc. in and around the factory premises and nearby villages once a month and such report should be furnished to the TNPCB.
 - b) The sampling of the above should be taken in the presence of an official from TNPCB.
 - c) In addition to the above, the sampling of effluent/emission and solid waste should also be done by a monitoring group to be constituted by TNPCB comprising a representative of the District Collector, an official of TNPCB, NGOs and academicians as per condition no. 43 of Consent Order dated 19-04-2005.
 - d) Both the reports should be sent by TNPCB to CPCB for analysis. Recommendations made by CPCB should be followed.
 - e) Copper slag dumped at all the eleven sites including the Uppar River should be removed. If copper slag has been used for landfill purposes, then the excess amount of the slag over and above the level of ground would be removed and thereafter the landfill should be compacted with one feet of soil, so that the copper slag is not blown away by the strong winds.
 - f) The dead stock of copper slag lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of copper slag is maintained in the ratio of 1:1 and that the Company at best, can retain 10 days generation of copper slag in its dump yard.
 - g) The dead stock of gypsum lying in the dump yard inside the factory premises which has solidified should be removed in a time bound manner. Thereafter, the bottom of the dump yard and the side walls should be covered with HDPE liner. Further, the Company should ensure that the generation and disposal of gypsum is maintained in the ratio of 1:1 and

- that the Company at best, can retain 10 days generation of gypsum in its dump yard.
- h) The Company before disposing copper slag, gypsum (or) any other waste product will seek previous permission from the TNPCB.
 - i) Application of the Company for obtaining valid authorization for disposal of hazardous waste under Hazardous & Other Wastes (Management, & Transboundary Movement) Rules, 2016 should be disposed of by the TNPCB in a time bound manner.
 - j) Even though there is no requirement of analyzing the air samples through an accredited laboratory nonetheless a direction should be issued to the appellant that they will conduct a periodical survey for ambient air quality/noise level/stack emission through accredited laboratories of MoEF&CC/NABL and furnish such report to the TNPCB.
 - k) The appellant company should be directed that they shall develop a green belt of 25 metres width around the battery limits of its factory by planting native and high foliage tree and also in and around the factory.
 - l) The State of Tamil Nadu/TNPCB should collect data from their primary health centres and Govt. Hospitals to monitor the various ailments that are being complaint of by the inhabitants living in and around the factory premises.
 - m) The State Government should specify the module to the appellant for conducting the proper and designed health monitoring study.
 - n) The direction no. (iii) on "Source Apportionment Study" and direction no. (ix) on "conducting a study on health hazards" passed by the NGT in its judgment dated 8/8/2013 in Appeal 58 of 2013 should be carried out by the Tamil Nadu State Government and TNPCB. Such reports should be furnished to NGT in a time-bound manner.
 - o) The appellant should be directed to start the construction of gypsum pond immediately and complete the same in a time bound manner as per the conditions laid down in the guidelines given by CPCB in October, 2014.
 - p) The appellant shall undertake a fresh detailed hydrogeological study for determining aquifer vulnerability and migration of leachate from the existing phosphogypsum pond through a reputed organization approved by the TNPCB as per condition No. 15 of the Consent Order dated 19/04/2005.
 - q) Direction should be given to the TNPCB as well as to the appellant to take independent ground water samples from the same points for the purpose of finding out groundwater pollution if any. Such reports should then be compared by the CPCB. Recommendations made by CPCB should be followed.
 - r) Directions/regulation may be framed for import of high grade copper ore.
 - s) Irrespective of the norms, stack height in any case be increased in order to remove the ambiguity and the grievance of inhabitants of the people of the Tuticorin with regard to emission of SO₂.
 - t) Till such time, the stack height is not increased, the production of copper as well as sulphuric acid should be restricted/reduced to match the existing stack height.
 - u) The transportation of copper ore concentrate from the port to the factory premises should be done in a closed conveyance or through a pipe conveyor system.
 - v) Self-monitoring mechanism needs to be prepared by the appellant for the periodic monitoring of Ambient Air Quality/Stack emissions/Fugitive

emissions/ground water quality/surface water quality/soil quality/slag analysis through third party and report shall be furnished to the concerned regulatory agencies.

- w) All the monitoring data, compliance reports of CTE/CTO/EC and environmental statement shall be uploaded on the website of the Company.
- x) TNPCB should be directed to commission "Regional Environmental Impact Assessment Study" in and around Tuticorin District by engaging a reputed national agency.
- y) CPCB recommendations as contained in the order of NGT, dated 20.08.2018 to be complied with."

13. Both the respondent as well as the appellants made their detailed comments on the Committee's report. The NGT then heard final arguments and dictated the impugned order on 15.12.2018, in which it substantially accepted the Committee's recommendations. In doing so, it set aside the six impugned orders in the composite appeal. One major bone of contention of both the State of Tamil Nadu as well as the TNPCB in this case is that the appeal before the NGT is not maintainable and hence, the order dated 15.12.2018 is without jurisdiction.

14. As a postscript to this order, the TNPCB looked into the matter again, and issued yet another rejection letter dated 22.01.2019, by which the respondent's application seeking renewal of consent to operate was rejected, stating that the conditions of various previous consents over the last 20 years had not been followed.

15. We have heard wide-ranging arguments from learned counsel appearing on behalf of all the parties as well as the intervenors, on maintainability as well as on merits. Since we will be deciding this case on maintainability alone, we have not ventured to state anything on the merits of the case.

16. Shri C.S. Vaidyanathan, learned Senior Advocate appearing on behalf of the TNPCB, showed us various provisions of the Water Act, Air Act, and the NGT Act and argued that the six impugned orders before the NGT were orders which could not have been corrected by the NGT. Insofar as the first order dated 09.04.2018 was concerned, an appeal was pending before the appellate authority, as a result of which, the NGT, when it set aside the said order, could not have done so. Similarly, the orders dated 12.04.2018, 23.05.2018, and 28.05.2018, made under Section 33A of the Water Act and Section 31A of the Air Act, were composite orders issued. As orders under Section 31A of the Air Act were not appealable to the NGT either under the Air Act or under Section 16 of the NGT Act, the Tribunal acted without jurisdiction in interfering with these orders. Further, the order dated 28.05.2018, issued by the Government of Tamil Nadu under Section 18 of the Water Act, was certainly not an appealable order under either the Water Act or the NGT Act, and could only have been corrected in judicial review in a writ petition filed under Article 226 of the Constitution of India or in a suit before a Civil Court. According to him, therefore, the setting aside of such an order was also completely without jurisdiction. Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the State of Tamil Nadu, added to these submissions. He cited some of our judgments as well as statutes and judgments of the English Courts to show that once an appeal is available to an appellate authority, after which an appeal lies to the NGT, a party cannot leapfrog directly to the NGT. Apart from this, the learned Senior Advocate also argued, based on the scheme of the Water Act, Air Act, and NGT Act, that all the appeals filed before the NGT were incompetent. Shri Guru Krishnakumar, learned Senior Advocate appearing on behalf of the TNPCB, also went on to criticize the order passed by the NGT dated 08.08.2013 on maintainability. According to him, no doctrine of necessity could be imported if an appellate tribunal was not constituted, as a result of which an appeal could not be argued before the appellate authority. Consequently, a leapfrog appeal would not be maintainable before

the NGT. According to the learned Senior Advocate, this order also had to be set aside for the reason that even assuming that the appellate authority was not constituted on the date on which an appeal could have been preferred to it, the NGT, being a second appellate tribunal, would not have jurisdiction, and that either a suit or a writ petition under Article 226 would have to be filed against the original order.

17. As against these arguments, Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the respondents in all three appeals, sought to sustain the order of the NGT in these three appeals. The learned Senior Advocate painstakingly took us through all the orders that were impugned before the NGT, together with the relevant provisions of the Air Act, the Water Act, and the NGT Act. According to the learned Senior Advocate, so far as the order dated 09.04.2018 is concerned, thanks to a government affidavit filed, the appeal before the appellate authority had become infructuous, as a result of which, a direct appeal to the NGT would obviously become maintainable. Insofar as the combined orders under Sections 33A and 31A of the Water Act and the Air Act, respectively, are concerned, according to him, an express appeal is provided to the NGT against orders passed under Section 33A of the Water Act, and even if there is no appeal provided under Section 31A of the Air Act, yet, as four out of five items in these orders dealt with the Water Act, the order could be stated to be substantially an order under the Water Act, and therefore, appealable as such. He added that, in any case, such orders could be corrected under Section 14 of the NGT Act to avoid piecemeal litigation. Further, in any case, according to the learned Senior Advocate, a direction made under Section 31A of the Air Act is undoubtedly equivalent to an order made under Section 31 of the Air Act, and therefore, would be expressly appealable under Section 16 of the NGT Act. Another without prejudice argument was made, that assuming all other arguments failed, these matters are only procedural, and therefore, appeals must necessarily land up before the expert tribunal which is so constituted as an expert tribunal to deal with all matters relating to the environment. For this, he referred to and relied strongly upon Sections 14, 15, 29, and 33 of the NGT Act. Insofar as the attack made upon the order dated 28.05.2018 of the Government of Tamil Nadu under Section 18 of the Water Act is concerned, Shri Sundaram argued that on a proper construction of Section 18 read with the other provisions of the Water Act, only a general order, dealing with general matters, could be passed under the said Section, and not an order to shut down one particular industry. Since the Section 18 order purports to deal with only one particular industry, it is *non est* and liable to be ignored. An alternate argument made is that even though the order states that it is made under Section 18, it can otherwise be traced to Section 29 of the Water Act as an order made in revision, and would, therefore, be appealable as such. The learned Senior Advocate then argued that, in any case, this is an order by which a direction has been made by the State Government to the TNPCB and, therefore, does not directly affect his client. He also argued that when this order was challenged before the NGT, the defence of the Government and the TNPCB would be that this is an order which, though binding on the TNPCB, would also impact the respondent. This being the case, the NGT could always go into whether such a defence is a valid defence, and could, therefore, decide the matter. He also went on to state that the NGT is an expert body constituted specifically under a special Act, which is far better equipped than the High Court under Article 226 exercising its powers in the writ jurisdiction, and therefore, all matters dealing with the environment should necessarily be decided by the NGT alone. He also relied upon our judgment in *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 [*"L. Chandra Kumar"*], in which it has been made clear that Tribunals can exercise powers of judicial review and that, therefore, being the equivalent of a High Court, the NGT could, in exercise of its powers of judicial review, have interfered with the State Government's orders passed under Section 18 of the Water Act.

18. Having heard learned counsel for all parties, it is important first to advert to the provisions of the three Acts in question.

19. The relevant Sections of the Water Act are as follows:

"18. Powers to give directions.—(1) In the performance of its functions under this Act—

- (a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and
- (b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

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"25. Restrictions on new outlets and new discharges.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

- (a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may—

- (a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being—
 - (i) in cases referred to in clauses (a) and (b) of sub-section (1) of Section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;
 - (ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and
 - (iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid:

or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Sections 27 and 30,—

(a) the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression “new discharge” means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

“26. Provision regarding existing discharge of sewage or trade effluent.—Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land, the provisions of Section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.”

“27. Refusal or withdrawal of consent by State Board.—(1) A State Board shall not grant its consent under sub-section (4) of Section 25 for the establishment of any industry, operation or process, or treatment and disposal system or extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent.

(2) A State Board may from time to time review—

- (a) any condition imposed under Section 25 or Section 26 and may serve on the person to whom a consent under Section 25 or Section 26 is granted a notice making any reasonable variation of or revoking any such condition;
- (b) the refusal of any consent referred to in sub-section (1) of Section 25 or Section 26 or the grant of such consent without any condition, and may make such orders as it deems fit.

(3) Any condition imposed under Section 25 or Section 26 shall be subject to any variation made under subsection (2) and shall continue in force until revoked under that sub-section."

"28. Appeals.—(1) Any person aggrieved by an order made by the State Board under Section 25, Section 26 or Section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute:

Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under subsection (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then,—

- (a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;
- (b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable."

"29. Revision.—(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under Section 25, Section 26 or Section 27 for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it may think fit:

Provided that the State Government shall not pass any order under this sub-section without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter.

(2) The State Government shall not revise any order made under Section 25, Section 26 or Section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority."

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"33A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the

Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

"33B. Appeal to National Green Tribunal.—Any person aggrieved by,—

- (a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or
- (b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010; or
- (c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010,

may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

20. The relevant Sections of the Air Act are as follows:

"21. Restrictions on use of certain industrial plants.—(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant such person shall make the application under this subsection within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent:

Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after

such expiry if the conditions subject to which such consent has been granted are not fulfilled:

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

- (i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;
- (iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;
- (iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises;
- (v.) such other conditions as the State Board may specify in this behalf; and
- (vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:

Provided further that—

- (a) after the installation of any control equipment in accordance with the specifications under clause (i), or
 - (b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or
 - (c) after the erection or re-erection of any chimney under clause (iv),
- no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the prior approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of the opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally."

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"31. Appeals.—(1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as

the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under subsection (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under subsection (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible."

"31A. Power to give directions.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act and to any directions that the Central Government may give in this behalf a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

"31B. Appeal to National Green Tribunal.—Any person aggrieved by an order or decision of the Appellate Authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

21. The relevant Sections of the NGT Act are as follows:

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

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(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;

xxx xxx xxx"

"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."

“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 the 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.”

“16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain

safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days."

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"29. Bar of jurisdiction.—(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

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"33. Act to have overriding effect.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

22. It is important now to advert to both the orders dated 08.08.2013 and 15.12.2018, insofar as they deal with the maintainability of the appeals before them.

23. By the judgment of the NGT dated 08.08.2013, the NGT disposed of the plea on maintainability as follows:

"62. Another aspect that would support the view that we are taking is the doctrine of necessity. Wherever in the facts and circumstances of the case, it is absolutely inevitable for a person to exercise another right available to it under the statute and where it is unable to exercise the preliminary right of appeal because of non-existence or non-proper constitution of the appellate authority and for its effective and efficacious exercise of right, it becomes necessary for the appellant-company to invoke another remedy, then the same would be permitted unless it was so specifically barred by law governing the subject and the rights of the parties. It was upon the appellant-company, particularly keeping in view the emergent situation created by issuance of the order dated 29th March, 2013, to avail of its right to appeal without any undue delay and as was rightly done by it within two days of the passing of the order. The unit of the appellant-company had been directed to be shut down and the appellant-company obviously could not have taken recourse to the remedy under Section 31 of the Air Act as the authority itself was not properly constituted and was not functional. Besides the aid of the doctrine

of necessity, the appellant-company has also placed its reliance on Section 31B of the Air Act. An appeal against the order passed by the appellate authority in exercise of its powers under Section 31 of the Air Act lies to the NGT in terms of Section 31B of the Air Act. In other words, the appellate order passed by the proper authority under Section 31 of the Air Act is appealable to the NGT in terms of Section 31B. Thus, the NGT is the appellate authority of the appellate authority constituted under Section 31 of the Air Act by the State Government. The appellant-company has itself given up its right of first appeal before the appellate authority in view of the peculiar facts and circumstances of the case. The respondents have placed reliance upon the judgment of the Supreme Court in *Manohar Lal v. Union of India*, (2010) 11 SCC 557 where the Court had taken the view that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. Firstly this judgment on facts and law has no application to the present case. Secondly, the non-constitution of the authority itself would bring the present case outside the application of the judgment of the Supreme Court in the case of *Manohar Lal* (supra).

63. We are unable to contribute ourselves to the contention raised that a direction passed under Section 31A of the Air Act is not covered under the expression 'order' used in Section 31 of the Air Act. Any direction essentially would contain an element of order as it requires and calls upon the parties to comply with the same. 'Direction' itself means an order; an instruction how to proceed, like the judge's direction to the jury, while 'Order' is defined as a command, direction or instruction. This is how the *Black's Law Dictionary*, 9th Edition, refers to these two expressions. In other words, they can be used as synonyms. They are not conflicting terms and one can be read into the other. Thus, we find no substance in this contention raised on behalf of the respondents.

64. An appellate authority, which is constituted under the statute, is completely distinct and different from an administrative authority constituted otherwise even to deal with adjudicatory proceedings. In the case of an appellate authority, it must satisfy the existence *de facto* and must function *de jure*, in accordance with law. If the appellate authority itself was not in conformity with the notification, it cannot be said that it could function in accordance with law without constitution of the three Member appellate authority. The cumulative effect of this discussion is that the objection in regard to maintainability is without any substance and is liable to be rejected. In view of this finding, it is not necessary for us to examine whether this could be treated as a petition under Section 14 of the National Green Tribunal Act (for short 'the NGT Act') even if it was not maintainable in view of the objection taken by the respondent in regard to maintainability of the present appeal."

24. Insofar as the judgment dated 15.12.2018 is concerned, the NGT, on maintainability, held as follows:

"**44.** It is undisputed that this Tribunal is an Appellate Authority as far as orders of closure under the Air Act and the Water Act are concerned. The impugned orders dated 12.04.2018, 23.05.2018 and 28.05.2018 are such orders. Mere fact that an appeal against the order declining renewal of Consent to Operate is provided for and was filed cannot be in the facts and circumstances of the present case, be a bar to exercise of powers of the Appellate Authority by this Tribunal. As already noted, the Appellate Authority has declined to proceed with the matter. The grounds in the impugned orders dated 09.04.2018, 12.04.2018, 23.05.2018 and 28.05.2018 are identical. If the appeals are held to be not maintainable, the appellant will be without any remedy against the order of closure. Order of the Appellate Authority is

also appealable before this Tribunal under Section 16(f) of the NGT Act, 2010. We, thus, do not find any merit in this case in the objections of the respondent.

45. Mere fact that the State of Tamil Nadu also endorsed the order of the TNPCB and that order of the State is not appealable to this Tribunal, does not deviate from the legal position that order of TNPCB is appealable to this Tribunal. Moreover, order of the State of Tamil Nadu is not a policy matter but mere endorsement of order of the TNPCB.

46. The judgments relied upon by the respondents are distinguishable. Unlike *Educanti Kistamma v. Deokar's Distillery* [(2003) 5 SCC 669], this is not a case where the first order has not been challenged. Challenge before us is to the first order as well as subsequent orders. Basis for all the orders is common.

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48. The order of the Government of Tamil Nadu issued under Section 18(1)(b) of the Water Act also cannot be said to be an independent order but relied on and endorsing the views of the TNPCB which is under challenge and that are not sufficient for ordering closure or refusal to grant even consent. If there are no other materials for the Government of Tamil Nadu to arrive at conclusion of closure on the ground of irreversible pollution being caused to the environment allowing the unit to function, then it cannot be said to be a policy decision to close down the industry permanently and if any order was passed based on the order by the Pollution Control Board, without independent application of mind and arbitrarily, then that can also be incidentally considered by the Tribunal for the purpose of deciding the question of legality of that order. So, under the present circumstances, it is not a case of this Tribunal entertaining the appeals where there is inherent lack of jurisdiction to entertain the same.

49. In the present proceedings, as already noted, the Appellate Authority having declined to proceed with the matter and the order of closure being appealable before this Tribunal, there is no ground to reject the appeal on the ground of maintainability so as to deprive the appellant any judicial remedy in the matter."

(I) RE: ORDER DATED 09.04.2018

25. This order is an order which rejected renewal of consent to operate, and therefore, is traceable to Section 27 of the Water Act and Section 21 of the Air Act. There is no doubt whatsoever that an appeal against an order made under Section 27 of the Water Act is appealable to the appellate authority under Section 28 of the said Act. Under Section 33B(a) of the said Act, if a person is aggrieved by an order or decision of the appellate authority under Section 28, it is then appealable to the NGT. This is made clear also by Section 16(a) of the NGT Act. Equally, an order refusing consent under Section 21 of the Air Act is appealable to the appellate authority under Section 31 of the Air Act, and thereafter, from the said appellate authority's order, to the NGT, under Section 31B of the Air Act and Section 16(f) of the NGT Act.

26. As has been stated hereinabove, it is clear that an appeal to the appellate authority under the Air Act and the Water Act was, in fact, preferred, being Appeal Nos. 36-37 of 2018. While these appeals were pending before the appellate authority, the composite Appeal No. 87 of 2018 was filed on 22.06.2018 before the NGT *inter alia* against the order of refusal of consent to operate dated 09.04.2018. Shri Sundaram, however, argued before us that the order dated 06.06.2018 made by the appellate authority, which we have set out hereinabove, makes it clear that the appeals could not be heard since the State Government had passed an order dated 28.05.2018 directing the TNPCB to close down the plant permanently. What is missed by Shri Sundaram is the fact that the said order expressly states that the appeals could not be decided at this juncture and were hence adjourned to 10.07.2018. The said appeals on 10.07.2018 were further adjourned, and it is only on 18.12.2018 that they were finally

withdrawn as being infructuous in view of the fact that the NGT had passed its order on 15.12.2018 in which it had set aside the order dated 09.04.2018.

27. What becomes clear from the above narration of facts is the fact that while an appeal was still pending before the appellate authority, the NGT took up a matter directly against the original order dated 09.04.2018 which was challenged before the appellate authority even before the appellate authority could decide the same. However, Shri Sundaram referred to Section 28(4) of the Air Act and Section 31(4) of the Water Act to argue that appeals to the appellate authority must be decided expeditiously, and if they were not so decided, an appeal would lie to the NGT against a decision by the appellate authority not to decide the matter before it expeditiously. This argument must also be negated as, in point of fact, no appeal was preferred from any orders of the appellate authority adjourning the proceedings. As we have seen, an appeal was directly filed from the order of the TNPCB dated 09.04.2018.

28. At this point, it is important to advert to a few judgments of this Court. In *Kundur Rudrappa v. Mysore Revenue Appellate Tribunal*, (1975) 2 SCC 411, this Court, while dealing with Section 64 of the Motor Vehicles Act, 1939, stated:

"4. The point that arises for consideration is whether any appeal lay under Section 64 of the Act to the State Transport Appellate Tribunal against the issue of a permit in pursuance of an earlier resolution of the Regional Transport Authority granting the permit. It is only necessary to read Section 64(1)(a) which is material for the purpose of this appeal:

"64. (1)(a) Any person aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him

...

may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final."

We are not required to consider the other clauses of Section 64(1) which are admittedly not relevant. Section 64 has to be read with Rule 178 of the Rules which prescribes the procedure for appeal to the various authorities.

5. Appeal is a creature of the statute. There is no dispute that Section 64 of the Act is the only section creating rights of appeal against the grant of permit and other matters with which we are not concerned here. There is no appeal provided for under Section 64 against an order issuing a permit in pursuance of the order granting the permit. Issuance of the permit is only a ministerial act necessarily following the grant of the permit. The appeals before the State Transport Appellate Tribunal and the further appeal to the Mysore Revenue Appellate Tribunal are, therefore, not competent under Section 64 of the Act and both the tribunals had no jurisdiction to entertain the appeals and to interfere with the order of the Regional Transport Authority granting the permit which had already been affirmed in appeal by the State Transport Appellate Tribunal and further in second appeal by the Mysore Revenue Appellate Tribunal. There was, therefore, a clear error of jurisdiction on the part of both the Tribunals in interfering with the grant of the permit to the appellant. The High Court was, therefore, not right in dismissing the writ application of the appellant which ought to have been allowed."

(emphasis supplied)

29. Similarly, in a concurring judgment of Sinha, J., in *Cellular Operators Association of India v. Union of India*, (2003) 3 SCC 186, the learned Judge observed:

"**27.** TDSAT was required to exercise its jurisdiction in terms of Section 14-A of the Act. TDSAT itself is an expert body and its jurisdiction is wide having regard to

sub-section (7) of Section 14-A thereof. Its jurisdiction extends to examining the legality, propriety or correctness of a direction/order or decision of the authority in terms of sub-section (2) of Section 14 as also the dispute made in an application under subsection (1) thereof. The approach of the learned TDSAT, being on the premise that its jurisdiction is limited or akin to the power of judicial review is, therefore, wholly unsustainable. The extent of jurisdiction of a court or a tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by Parliament in the amending Act of 2000. TDSAT, thus, failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law."

(emphasis supplied)

30. In *B. Himmatlal Agrawal v. Competition Commission of India*, Civil Appeal No. 5029/2018 [decided on 18.05.2018], this Court, while dealing with Section 53B of the Competition Act, 2002 held:

"**7.** The aforesaid provision, thus, confers a right upon any of the aggrieved parties mentioned therein to prefer an appeal to the Appellate Tribunal. This statutory provision does not impose any condition of pre-deposit for entertaining the appeal. Therefore, right to file the appeal and have the said appeal decided on merits, if it is filed within the period of limitation, is conferred by the statute and that cannot be taken away by imposing the condition of deposit of an amount leading to dismissal of the main appeal itself if the said condition is not satisfied. Position would have been different if the provision of appeal itself contained a condition of pre-deposit of certain amount. That is not so. Subsection (3) of Section 53B specifically cast a duty upon the Appellate Tribunal to pass order on appeal, as it thinks fit i.e. either confirming, modifying or setting aside the direction, decision or order appealed against. It is to be done after giving an opportunity of hearing to the parties to the appeal. It, thus, clearly implies that appeal has to be decided on merits. The Appellate Tribunal, which is the creature of a statute, has to act within the domain prescribed by the law/statutory provision. This provision nowhere stipulates that the Appellate Tribunal can direct the appellant to deposit a certain amount as a condition precedent for hearing the appeal. In fact, that was not even done in the instant case. It is stated at the cost of repetition that the condition of deposit of 10% of the penalty was imposed insofar as stay of penalty order passed by the CCI is concerned. Therefore, at the most, stay could have been vacated. The Appellate Tribunal, thus, had no jurisdiction to dismiss the appeal itself."

(emphasis supplied)

31. In *Raja Soap Factory v. S.P. Shantharaj*, (1965) 2 SCR 800, the plaintiffs instituted an action in the nature of passing off against the defendants in the High Court of Mysore, stating that they are exclusive owners of a particular trade mark. This Court found that exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. Holding that the said High Court does not exercise any original jurisdiction, this Court held:

"The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction: it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under Section 105 of the Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute of under its constitution with that jurisdiction was incompetent to entertain a passing off action.

But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and

it is competent to entertain all actions as a Court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a court means the extent of the authority of a court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, e.g. the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance."

(at page 802)

32. In *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.*, (1997) 4 SCC 452, Section 129-D of the Customs Act, 1962 was referred to, under which, the Board of Excise and Customs may direct a Collector to apply to the Appellate Tribunal for determination of points which arise out of an order or decision. In repelling an argument that even without such direction, the Union of India may file an appeal directly, this Court held:

"**10.** The aforesaid provisions of the Act leave no room for doubt that they represent a complete scheme or code for challenging the orders passed by the Collector (Customs) in exercise of his statutory powers. So far as departmental authorities themselves are concerned including the Collector of Customs no direct right of appeal is conferred on the Collector to prefer appeal against his own order before the CEGAT. However there is sufficient safeguard made available to the Revenue by the Act for placing in challenge erroneous orders of adjudication as passed by the Collector of Customs by moving the Central Board of Excise and Customs under Section 129-D(1) for a direction to the Collector to apply to the CEGAT for determination of such point arising out of the decision or order as may be specified by the Board of Revenue in this connection....."

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"**12.** But even if it is so, the statutory procedure laid down by Parliament in its wisdom for enabling the challenge to the adjudication order of the Collector of Customs by way of appeals or revisions as per the aforesaid relevant statutory provisions, to which we have made a mention, has got to be followed in such an eventuality. Bypassing the said statutory procedure a direct frog leap to CEGAT is contra-indicated by the statutory scheme of the Act. If such direct appeals are permitted the very scheme of Section 129-D(1) would get stultified. It must, therefore, be held that direct appeal filed by the Union of India through Industries Ministry to CEGAT under Section 129-A(1) was clearly incompetent. It may be added that the Union of India could have used the mode set out in Section 129-D, but it did not do so."

33. In *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557, one of the questions involved, under sub-paragraph 2(a) of the judgment, was as follows:

"**2.** In these appeals, three substantial questions of law for consideration of this Court are involved. They are, namely:

(a) As to whether the State Government, a revisional authority under the statute, could take upon itself the task of a lower statutory authority?

xxx xxx xxx"

34. After reviewing a number of cases, this Court then concluded:

"**23.** Therefore, the law on the question can be summarised to the effect that no higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor can the superior authority mortgage its wisdom and direct the statutory authority to act in a particular manner. If the

appellate or revisional authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.”

35. In *Arcot Textile Mills Ltd. v. Regional Provident Fund Commissioner*, (2013) 16 SCC 1, appeals lay to the Tribunal constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, under Section 7-I of the Act. Whereas appeals lay against orders passed under Section 7-A of the Act, which provided for determination of monies due from employers, no appeal lay against orders made under Section 7-Q of the said Act, which spoke of interest payable by the employer. This Court held:

“**20.** On a scrutiny of Section 7-I, we notice that the language is clear and unambiguous and it does not provide for an appeal against the determination made under Section 7-Q. It is well settled in law that right of appeal is a creature of statute, for the right of appeal inheres in no one and, therefore, for maintainability of an appeal there must be authority of law. This being the position a provision providing for appeal should neither be construed too strictly nor too liberally, for if given either of these extreme interpretations, it is bound to adversely affect the legislative object as well as hamper the proceedings before the appropriate forum. Needless to say, a right of appeal cannot be assumed to exist unless expressly provided for by the statute and a remedy of appeal must be legitimately traceable to the statutory provisions. If the express words employed in a provision do not provide an appeal from a particular order, the court is bound to follow the express words. To put it otherwise, an appeal for its maintainability must have the clear authority of law and that explains why the right of appeal is described as a creature of statute. (See *Ganga Bai v. Vijay Kumar* [(1974) 2 SCC 393], *Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad* [(1999) 4 SCC 468], *State of Haryana v. Maruti Udyog Ltd.* [(2000) 7 SCC 348], *Super Cassettes Industries Ltd. v. State of U.P.* [(2009) 10 SCC 531 : (2009) 4 SCC (Civ) 280], *Raj Kumar Shivhare v. Directorate of Enforcement* [(2010) 4 SCC 772 : (2010) 3 SCC (Civ) 712], *Competition Commission of India v. SAIL* [(2010) 10 SCC 744].)”

36. In paragraph 21, this Court further went on to hold that in case an order under Section 7-A speaks of delay in payment as well as interest, a composite order passed would be amenable to appeal under Section 7-I, as interest is only parasitic on the principal sum due under Section 7-A. However, if an independent order is passed under Section 7-Q for interest alone, the same was held to be not appealable.

37. From the above authorities, it is clear that an appeal is a creature of statute and an appellate tribunal has to act strictly within the domain prescribed by statute. It is obvious that an appeal would lie from an order or decision of the appellate authority under Section 28 of the Water Act to the NGT only under Section 33B(a) of the Water Act read with Section 16(a) of the NGT Act. Similarly, an appeal would lie from an order or decision of the appellate authority under Section 31 of the Air Act to the NGT only under Section 31B of the Air Act read with Section 16(f) of the NGT Act. Obviously, since no order or decision had been made by the appellate authority under either the Water Act or the Air Act, any direct appeal against an original order to the NGT would be incompetent. NGT's jurisdiction being strictly circumscribed by Section 33B of the Water Act, read with Section 31B of the Air Act, read with Section 16(a) and (f) of the NGT Act, would make it clear that it is only orders or decisions of the appellate authority that are appealable, and not original orders. On the facts of the present case, it is clear that an appeal was pending before the appellate authority when the NGT set aside the original order dated 09.04.2018. This being the case, the NGT's order being clearly outside its statutory powers conferred by the Water Act, the Air Act, and the NGT Act, would be an order passed without jurisdiction.

38. In fact, in the United Kingdom, there are several Acts under which a leapfrog appeal is permitted if a point of law of general public importance is involved. Thus, the Administration of Justice Act, 1969 states that such a leapfrog appeal directly to the Supreme Court may be filed on grant of certificate by the Trial Judge in the following terms:

“12. Grant of certificate by trial judge.

(1) Where on the application of any of the parties to any proceedings to which this section applies the judge is satisfied—

- (a) that the relevant conditions are fulfilled in relation to his decision in those proceedings or that the conditions in subsection (3A) (“the alternative conditions”) are satisfied in relation to those proceedings, and
- (b) that a sufficient case for an appeal to the Supreme Court under this Part of this Act has been made out to justify an application for leave to bring such an appeal, ...
- (c)

the judge, subject to the following provisions of this Part of this Act, may grant a certificate to that effect.

(2) This section applies to any civil proceedings in the High Court which are either—

- (a) proceedings before a single judge of the High Court (including a person acting as such a judge under section 3 of the Judicature Act 1925), or
- (b)
- (c) proceedings before a Divisional Court.

(3) Subject to any Order in Council made under the following provisions of this section, for the purposes of this section the relevant conditions, in relation to a decision of the judge in any proceedings, are that a point of law of general public importance is involved in that decision and that that point of law either—

- (a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or
- (b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.

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39. To similar effect are sections of the Tribunals, Courts and Enforcement Act, 2007, and the Employment Tribunals Act, 1996. Such appeals in the U.K. are referred to as “leapfrog appeals” [see *S Franses Ltd. v. The Cavendish Hotel (London) Ltd.*, [2018] UKSC 62 (at paragraph 7)].

40. It is, therefore, clear that no such provisions, as are contained in the U.K. Acts, being present in any of the Acts that we are concerned with, such leapfrog appeals to the NGT would necessarily be without jurisdiction.

(II) RE: ORDERS PASSED UNDER SECTION 33A OF THE WATER ACT AND SECTION 31A OF THE AIR ACT

41. We have referred to the orders dated 12.04.2018, 23.05.2018, and 28.05.2018 passed by the TNPCB under Sections 33A and 31A of the Water Act and Air Act respectively. At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued under Section 33A of the Water Act are appealable to the NGT,

directions issued under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders. Shri Sundaram's argument that these orders being substantially relatable to the Water Act would, therefore, not hold, as such orders are composite orders made both under the Water Act and the Air Act. Equally disingenuous is the reference to Section 14 of the NGT Act which only refers to the original jurisdiction of the NGT and not to its appellate jurisdiction. Also, to state generally that the subject matter of environment lies with the NGT, is an argument of despair that must be dismissed for the reason that as held by us hereinabove, an appeal being a creature of statute, a statute either confers a right of appeal or it does not. In the present case, we have seen that so far as directions issued under Section 31A of the Air Act are concerned, there is no right of appeal conferred by the Air Act read with the NGT Act. The ingenious argument made by Shri Sundaram that, in any case, a "direction" under Section 31A of the Air Act is nothing but an "order", and would, therefore, be appealable as such under Section 31B of the Air Act read with Section 16(f) of the NGT Act would drive a coach-and-four through the statutory scheme that has just been adverted to. We have seen how all the appellate proceedings to the NGT, whether under the Air Act, the Water Act, or the NGT Act have been brought into force on the same date. Whereas the identical power to give directions by the Board under the Water Act is appealable to the NGT, the same power to give directions by the Board under the Air Act is not so appealable. The absence of any mention of Section 31A in Section 31B of the Air Act, given the statutory scheme as aforesaid, makes it clear that even this argument must be rejected. Also, "directions" that are issued under Section 31A of the Air Act are of a different quality from "orders" referred to in Section 31 of the same Act. Directions are issued in the exercise of powers and performance of functions under the Act and are not quasi-judicial in nature, whereas orders that are appealed against under Section 31 are quasi-judicial orders made, *inter alia*, under Section 21 of the Air Act. For this reason also, we cannot accept the aforesaid argument of Shri Sundaram. However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity *qua* any single industry is made, and therefore, such directions are appealable as orders under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable. Hence, reference made to *P. Ramanatha Aiyer's Law Lexicon* and *Black's Law Dictionary*, which state that in certain circumstances, orders are also directions and vice versa, would not apply to the present case, given the express statutory scheme. In this connection, Shri Sundaram cited *Kanhiya Lal Omar v. R.K. Trivedi*, (1985) 4 SCC 628, and relied upon paragraph 17, where this Court held, referring to Article 324(1) of the Constitution of India, that a "direction" may be equated with a specific or a general order. The context of Article 324 being wholly different, it is obvious that this authority also has no application, given the statutory scheme in the present case.

42. Shri Sundaram then cited *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth*, (1984) 4 SCC 27. In this judgment, the High Court had struck down Regulation 104 of the Maharashtra Secondary and Higher Secondary Boards Regulations, 1977, by which, no reevaluation

of an answer book given in an examination can be undertaken. In setting aside the High Court judgment, this Court stated that the process of re-evaluation of answer papers is extremely time consuming, would involve several thousand man-hours, and is bound to throw the entire system out of gear. Further, it is in public interest that the results of public examinations, when published, should have some finality attached to them [see paragraph 27]. It is in this context that this Court held:

“29. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.”

43. To bodily lift the aforesaid sentence and apply it to the fact situation here would be a huge leap which we are not prepared to make. Further, given the statutory scheme as aforesaid, it is not possible for us to provide an appeal where there is none in the guise of making an appellate system workable in practice.

44. Shri Sundaram then relied upon this Court's judgments in *Galada Power & Telecommunication Ltd. v. United India Insurance Co. Ltd.*, (2016) 14 SCC 161 and *Allokam Peddabbayya v. Allahabad Bank*, (2017) 8 SCC 272 for the proposition that the right of appeal is a statutory right, and like all other statutory rights, it can be waived, unless its waiver is detrimental to public interest. The question in these appeals is not whether an appellant may waive a statutory right of appeal. The question is whether the NGT, which is only invested with the jurisdiction of entertaining an appeal from an order of an appellate authority, is jurisdictionally capable of entertaining an appeal directly from the original authority. It is clear, as has been held by us, that the NGT possesses no such jurisdiction.

45. One further argument was made that these matters are only procedural, and therefore, substantially, an appeal to the NGT would be maintainable. It is well settled that the right to appeal is not a procedural matter but a substantive one. In *Garikapati Veeraya v. N. Subbiah Choudhury*, 1957 SCR 488, this Court held:

“From the decisions cited above the following principles clearly emerge:

- (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.
- (ii) The right of appeal is not a mere matter of procedure but is a substantive right.
- (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
- (iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at *the* date of the filing of the appeal.
- (v.) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

(at pp. 514-515)

46. This argument must, therefore, be rejected.

(III) RE: ORDER PASSED UNDER SECTION 18 OF THE WATER ACT

47. So far as the order dated 28.05.2018 is concerned, this order is expressly stated to be made under Section 18 of the Water Act. There is no doubt whatsoever that such an order is not appealable to the NGT either under the Water Act or under

the NGT Act. However, Shri Sundaram has argued that Section 18 is referable to orders generally made, and falls under Chapter IV of the Water Act, which deals with powers and functions of Boards, as opposed to the Sections that follow in Chapter V, which deals with prevention and control of water pollution, which orders are made against individuals and individual industries. On the assumption that Shri Sundaram is correct in this argument, it is clear that such order can only be set aside in a suit by a Civil Court, or under Article 226 of the Constitution of India by a High Court. It is not possible to agree with the argument of Shri Sundaram that such orders can be ignored, being *non est*. It is settled that an administrative order, when made, does not bear the brand of invalidity on its forehead, as has been held in *Smith v. East Elloe Rural District Council*, [1956] 1 All E.R. 855 (at page 871), which has been followed by this Court in *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1 (at page 6); *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443 (at page 455); *Pune Municipal Corpn. v. State of Maharashtra*, (2007) 5 SCC 211 (at page 225); *Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, (2011) 3 SCC 363 (at page 369); and *Kandla Port v. Hargovind Jasraj*, (2013) 3 SCC 182 (at page 193). Therefore, this order can only be set aside either in a suit, or by the High Court in the exercise of judicial review. Faced with this, Shri Sundaram then argued that though the said order states that it is traceable to Section 18 of the Water Act, it can, in fact, be traced to Section 29 of the same Act. Section 29 deals with the revisional power, in which the State Government is to pass a quasi-judicial order after hearing both the State Board and the person who is affected. Quite obviously, this order is not a quasi-judicial order as the State Government has not found it necessary to hear either the State Board, or any person affected by such order. Further, such order does not purport to be an order which either affirms or sets aside any order made under Sections 25, 26, or 27 of the Water Act. This argument of despair, therefore, must also be rejected.

48. Shri Sundaram then argued that this Court in *L. Chandra Kumar* (supra) made it clear that Tribunals that are set up, generally have the power of judicial review, save and except a challenge to the vires of the legislation under which such Tribunals are themselves set up. For this, he relied strongly upon paragraphs 90 and 93 of the judgment in *L. Chandra Kumar* (supra). It is important to notice that *L. Chandra Kumar* (supra) pertained to a Tribunal that was set up under Article 323A of the Constitution of India. Under Article 323A(2)(d), the Administrative Tribunal so set up would be able to exercise the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution. This would mean that the Administrative Tribunal so set up could exercise the jurisdiction of all High Courts when it came to the matters specified in Article 323A. This is further made clear by a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985, which read as follows:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to—

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
- (b) all service matters concerning—
 - (i) a member of any All-India Service; or
 - (ii) a person not being a member of an All-India Service or a person referred

to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union Territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this subsection in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

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“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.— On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority under the Industrial

Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or matters concerning such recruitment or such service matters.”

49. Article 323B of the Constitution of India also provides for Tribunals for certain other matters which are specified by sub-clause (2) thereof. Suffice it to say that the NGT is not a Tribunal set up either under Article 323A or Article 323B of the Constitution, but is a statutory Tribunal set up under the NGT Act. That such a Tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act (supra). Thus, a conjoint reading of Section 14 and Section 29 of the NGT Act must be contrasted with a conjoint reading of Section 14 and Section 28 of the Administrative Tribunals Act, 1985.

50. It is in the context of Article 323A and the Administrative Tribunals Act, 1985 that this Court in *L. Chandra Kumar* (supra) has observed in paragraph 93 as follows:

“**93.** Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

51. In *Bharat Sanchar Nigam Limited v. Telecom Regulatory Authority of India*, (2014) 3 SCC 222 [“BSNL”], this Court had to construe the appellate power that is contained in Section 14 of the Telecom Regulatory Authority of India Act, 1997, by which, the TDSAT was conferred with the power to hear and dispose of appeals against any direction, decision, or order of the TRAI. In this context, after distinguishing the judgment in *L. Chandra Kumar* (supra), this Court held:

“**108.** Before the 2000 Amendment, the applications were required to be filed under Section 15 which also contained detailed procedure for deciding the same. While sub-section (2) of Section 15 used the word “orders”, sub-sections (3) and (4) thereof used the word “decision”. In terms of sub-section (5), the orders and directions of TRAI were treated as binding on the service providers, Government and all other persons concerned. Section 18 provided for an appeal against any decision or order of TRAI. Such an appeal could be filed before the High Court. The Amendment made in 2000 is intended to vest the original jurisdiction of TRAI in TDSAT and the same is achieved by Section 14(a). The appellate jurisdiction

exercisable by the High Court is also vested in TDSAT by virtue of Section 14(b) but this does not include decision made by TRAI. Section 14-N provides for transfer to all appeals pending before the High Court to TDSAT and in terms of clause (b) of sub-section (2), TDSAT was required to proceed to deal with the appeal from the stage which was reached before such transfer or from any earlier stage or de novo as considered appropriate by it. Since the High Court while hearing appeal did not have the power of judicial review of subordinate legislation, the transferee adjudicatory forum i.e. TDSAT cannot exercise that power under Section 14(b)."

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"**114.** From the above-extracted portion of the order it is evident that the Bench, which decided the matter, felt that the view taken by TDSAT would encourage rampant violation of the orders without any penal consequence and the entire scheme of the TRAI Act would become unworkable. The word "directions" used in Section 29 of the TRAI Act was interpreted to include orders and regulations in the context of the factual matrix of that case and the apprehension of the Court that Section 29 would otherwise become unworkable, but the same cannot be read as laying down a proposition of law that the words "direction", "decision" or "order" used in Section 14(b) would include regulations framed under Section 36, which are in the nature of subordinate legislation."

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"**123.** In *Union of India v. Madras Bar Assn.* [(2010) 11 SCC 1] and *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.* [(2012) 10 SCC 353 : (2012) 4 SCC (Civ) 1229 : (2013) 1 SCC (Cri) 35 : (2013) 1 SCC (L&S) 56 : (2012) 10 Scale 285], this Court applied the principles laid down in *L. Chandra Kumar case* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and reiterated the importance of tribunals created for resolution of disputes but these judgments too have no bearing on the decision of the question formulated before us.

124. In the result, the question framed by the Court is answered in the following terms: in exercise of the power vested in it under Section 14(b) of the TRAI Act, TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by TRAI under Section 36 of the TRAI Act."

52. In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(b) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in **Re: Special Reference**, (1965) 1 SCR 413, made in the following words:

"We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a Court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the

cognizance of the particular court [*Halsbury's Laws of England*, vol. 9, p. 349]".

(at page 499)

53. For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* (supra), we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17.07.2014 in *Wilfred v. Ministry of Environment and Forests* must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected.

54. Shri Sundaram then argued that, in any case, this order is an order made by the State Government against the TNPCB, and is therefore, a direction to the TNPCB and not a direction to his client. If this were so, and the order had no effect on his client, there would have been no necessity to file an appeal before the NGT against such order. We have seen, however, that this order has been challenged on merits by the respondent before the NGT. To then say that this order which is challenged would be defended on certain grounds, as a result of which, the NGT then gets vested with the jurisdiction to decide the same, is again to put the cart before the horse. It is clear that no appeal is provided against orders made under Section 18 of the Water Act, and the attempt to bring the NGT in by the backdoor, as it were, would, therefore, have to be rejected. Also, to argue that as against a writ court acting under Article 226 of the Constitution of India, the NGT is an expert body set up only to deal with environmental matters, again does not answer the specific issue before this Court. As we have held earlier, an appeal being a creature of statute, an order passed under Section 18 of the Water Act is either appealable or it is not. If it is not, no general argument as to the NGT being an expert body set up to hear environmental matters can be of any help.

55. Equally, so far as the order dated 08.08.2013 is concerned, we have seen how the NGT stated that the doctrine of necessity would take over if an appellate authority under the Act is not properly constituted so that no appeal can then be effectively preferred. This, again, is an argument that cannot be countenanced. If an appellate authority is either not yet constituted, or not properly constituted, a leapfrog appeal to the NGT cannot be countenanced. As has been held by us *supra*, the NGT is only conferred appellate jurisdiction from an order passed in exercise of first appeal. Where there is no such order, the NGT has no jurisdiction.

56. In conclusion, we are cognizant of the fact that the respondent's plant has been shut down since 09.04.2018. Since we have set aside the impugned judgments of the NGT on the ground of maintainability, the order dated 22.01.2019 passed by the TNPCB, being a consequential order, is also set aside. The respondents are relegated to the position that the six orders impugned before the NGT, dealt with by the impugned judgment dated 15.12.2018, and the order dated 29.03.2013, dealt with by the final judgment dated 08.08.2013, are alive and operative. Given the fact that we are setting aside the NGT judgments involved in these appeals on the ground of maintainability, we state that it will be open for the respondents to file a writ petition in the High Court against all the aforesaid orders. If such writ petition is filed, it will be open for the respondent to apply for interim reliefs considering that their plant has been shut down since 09.04.2018. Also, since their plant has been so shut down for a long period, and they are exporting a product which is an important import substitute, the respondent may apply to the Chief Justice of the High Court for expeditious hearing of the writ petition, which will be disposed of on merits notwithstanding the availability of an alternative remedy in the case of challenge to the 09.04.2018 order

of the TNPCB. The appeals are disposed of accordingly.

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