

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONE, BENCH PUNE**  
**MEMORANDUM OF APPLICATION**  
**UNDER SECTION 14, 15, 18, 20 & 23 OF NGT ACT, 2010**  
**r/w RULE NO. 24 OF NGT (P&P) RULES, 2011**  
**INTERIM APPLICATION NO. 16 OF 2023**  
**IN**  
**ORIGINAL APPLICATION NO. 107/2022 (WZ)**

**In the matter between:**

Mr. Irba Mashnaji Konapure & Anr.

... Applicants

Versus

Union of India & Ors.

... Respondents

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(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. Dabholkar*, (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 meddlesome 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.

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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

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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*<sup>1</sup> and an earlier decision of its own in *Kishore Chander Ratilal v. State of Gujarat*<sup>2</sup>, 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*<sup>3</sup>, 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*<sup>4</sup> 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*<sup>5</sup>), 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*<sup>6</sup>. 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*<sup>7</sup>. 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.

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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*<sup>8</sup>, 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*<sup>9</sup>, 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*<sup>10</sup>, 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 Yardley’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*<sup>11</sup> and *Maurice v. London County Council*<sup>12</sup>. 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.*<sup>13</sup>, 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*<sup>14</sup>, 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*<sup>15</sup>, 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*<sup>16</sup>.

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*<sup>17</sup>. 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*<sup>18</sup>:

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*<sup>19</sup>, 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*<sup>20</sup>, 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*<sup>21</sup>; *Gregory v. Camden London Borough Council*<sup>22</sup>; *R v. London O. S. ex parte Westminster Corporation*<sup>23</sup>; *Regina v. Cardiff Jusuces ex parte Cardiff Corporation*<sup>24</sup>.

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*<sup>25</sup>; *Calcutta Gas Co. v. State of W. B.*<sup>26</sup>; *Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa*<sup>27</sup>; *Gadde Venkateswara Rao v. Government of A. P.*<sup>28</sup>; *State of Orissa v. Rajasaheb Chandanmall*<sup>29</sup>; *Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.*<sup>30</sup>).

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,

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| 20. (1832) 37 RR 594; (1832) 3 B & Ad 938; 110 ER 345. | 26. 1962 Supp 3 SCR 1; AIR 1962 SC 1044.   |
| 21. (1964) 2 All ER 492.                               | 27. (1967) 1 SCA 413.                      |
| 22. (1966) 1 WLR 899.                                  | 28. AIR 1966 SC 828; (1966) 2 SCR 172.     |
| 23. (1951) 2 KB 508.                                   | 29. (1973) 3 SCC 739.                      |
| 24. (1962) 2 QB 436.                                   | 30. (1973) 2 SCC 696; 1973 SCC (Cri) 1002. |
| 25. 1952 SCR 28; AIR 1952 SC 12.                       |  |

said Justice Frankfurter in *Coleman v. Miller*<sup>31</sup>

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.<sup>32</sup> “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 affect<sup>33</sup> 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.<sup>34</sup> Again the “adverse affect” requisite for “standing to sue” must be an “illegal effect”.<sup>35</sup> 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.<sup>36</sup>

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.



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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.<sup>37</sup> 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*<sup>38</sup>, 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.

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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

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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.

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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*<sup>1</sup> 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.

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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*<sup>2</sup>, 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*<sup>3</sup>, 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*<sup>5</sup>, *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*<sup>6</sup>, 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*<sup>10</sup>, 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*<sup>11</sup> and close with the last pronouncement in *V. B. Badami v. State of Mysore*<sup>12</sup>. 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*<sup>11</sup> and *Govind Dattatray Kelkar v. Chief Controller of Imports and Exports*<sup>13</sup> on the one hand and *S. G. Jaisinghani v. Union of India*<sup>2</sup>, *Bishan Sarup Gupta v. Union of India*<sup>3</sup>, *Union of India v. Bishan Sarup Gupta*<sup>3</sup> and *A. K. Subraman v. Union of India*<sup>14</sup> 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

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| 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.

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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*<sup>1</sup>; *Inamati Mallappa Basappa v. Desai Basavaraj Ayyappa*<sup>2</sup>; *A. Sreenivasan v. Election Tribunal*<sup>3</sup> and *Adi Pherooshah Gandhi v. H. M. Seervai, Advocate-General of Maharashtra, Bombay*<sup>4</sup>.

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

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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*<sup>5</sup> referred to by this Court in *Bar Council of Maharashtra v. M. V. Dabholkar*<sup>6</sup> and *J. A. Desai v. Roshan Kumar*<sup>7</sup>.

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

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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*<sup>8</sup> 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* case<sup>8</sup>. 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



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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.

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(2013) 4 Supreme Court Cases 465

(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<sup>†</sup>, decided on November 8, 2012

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

c

— 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

d

— 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

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— 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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<sup>†</sup> 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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(2013) 4 SCC

**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

**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**

d

e

**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**

f

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

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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*

a

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

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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)  
*Sudha Devi v. M.P. Narayanan*, (1988) 3 SCC 366; *Range Forest Officer v. S.T. Hadimani*, (2002) 3 SCC 25 : 2002 SCC (L&S) 367; *Bareilly Electricity Supply Co. Ltd. v. Workmen*, (1971) 2 SCC 617; *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 3 SCC 333; *Ramesh Kumar v. Kesho Ram*, 1992 Supp (2) SCC 623, *relied on*
- 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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	64. AIR 1951 SC 41, <i>Charanjit Lal Chowdhury v. Union of India</i>	477b

The Judgment of the Court was delivered by

**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*<sup>1</sup>, filed by Respondent 5, challenging the caste certificate of the appellant.

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 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 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).

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 22-9-2009<sup>1</sup>, 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 20-11-2009<sup>2</sup>, granted a stay with respect to the operation of the aforementioned impugned judgment<sup>1</sup>. Vide order dated 6-1-2012<sup>3</sup>, 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 judgment<sup>1</sup> 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*<sup>4</sup>, *Saghir Ahmad v. State of U.P.*<sup>5</sup>, *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.*<sup>6</sup>, *Rajendra Singh v. State of M.P.*<sup>7</sup> and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar*<sup>8</sup>.]

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*<sup>9</sup> and *State of Rajasthan v. Union of India*<sup>10</sup>.)

11. In *Anand Sharadchandra Oka v. University of Mumbai*<sup>11</sup>, 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.*<sup>12</sup>, 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*<sup>13</sup>, *Sunil Batra (2) v. Delhi Admn.*<sup>14</sup>, *Nilima Priyadarshini v. State of Bihar*<sup>15</sup>, *Simranjit Singh Mann v. Union of India*<sup>16</sup>, *Karamjeet Singh v. Union of India*<sup>17</sup> and *Kishore Samrite v. State of U.P.*<sup>18</sup>]

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*<sup>19</sup>, *Dalip Singh v. State of U.P.*<sup>20</sup>, e *State of Uttaranchal v. Balwant Singh Chauhal*<sup>21</sup> and *Amar Singh v. Union of India*<sup>22</sup>.)

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*<sup>23</sup>, *Dattaraj Nathuji Thaware v. State of Maharashtra*<sup>24</sup> and *Neetu v. State of Punjab*<sup>25</sup>.)

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*<sup>26</sup>, 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*<sup>27</sup>, 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.*<sup>28</sup>, 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*<sup>29</sup>, 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*<sup>30</sup> 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*<sup>31</sup>.)

22. In *Vinoy Kumar v. State of U.P.*<sup>32</sup>, 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*<sup>33</sup> 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*<sup>34</sup>, *Meenglas Tea Estate v. Workmen*<sup>35</sup>, *Kesoram Cotton Mills Ltd. v. Gangadhar*<sup>36</sup>, *New India Assurance Co. Ltd. v. Nusli Neville Wadia*<sup>37</sup>, *Rachpal Singh v. Gurmit Kaur*<sup>38</sup>, *Biecco Lawrie Ltd. v. State of W.B.*<sup>39</sup> and *State of U.P. v. Saroj Kumar Sinha*<sup>40</sup>.)

25. In *Lakshman Exports Ltd. v. CCE*<sup>41</sup>, 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*<sup>37</sup>, 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*<sup>42</sup>, 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*<sup>43</sup> and *Channabasappa Basappa Happali v. State of Mysore*<sup>44</sup>.) In *Transmission Corpn. of A.P. Ltd. v. Sri Rama Krishna Rice Mill*<sup>45</sup>, 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*<sup>46</sup> 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*<sup>47</sup> and *Range Forest Officer v. S.T. Hadimani*<sup>48</sup>)

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*<sup>49</sup>, 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.”

d **33.** In *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*<sup>50</sup>, 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.

e **34.** In *Ramesh Kumar v. Kesho Ram*<sup>51</sup>, 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)

f “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.*<sup>52</sup>, 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*<sup>53</sup>, 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

<sup>52</sup> (2006) 6 SCC 94

<sup>53</sup> (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 to be false, the parent/guardian/the candidate should be prosecuted for  
e 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 holding that the certificate obtained was false, on its cancellation and  
f 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.

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38. The 2000 Act and the 2003 Rules are based on the directions issued by this Court in *Madhuri Patil*<sup>53</sup> as the same have been incorporated therein.

39. The correctness of the said judgment in *Madhuri Patil*<sup>53</sup> was doubted, and the matter was referred to and decided by a larger Bench of this Court in *Dayaram v. Sudhir Batham*<sup>54</sup>, 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*<sup>54</sup>, 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*<sup>53</sup> 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*<sup>53</sup> provides for verification only to avoid false and bogus claims.” c  
d  
(emphasis added)

Thus, it is evident from the aforesaid judgment in *Dayaram*<sup>54</sup>, that the purpose of issuing directions in *Madhuri Patil*<sup>53</sup> 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  
g

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 11-5-2012<sup>55</sup>, 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 11-5-2012<sup>55</sup>, 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 29-10-2012<sup>56</sup> 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

<sup>55</sup> *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.”

<sup>56</sup> *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 Tadvi and by way of an application prayed for personal presence of Mr Supdu Musa Tadvi. The Scrutiny Committee finding contradictions in the two statements of Mr Supdu Musa Tadvi, issued notice to him requesting his personal presence on 17-3-2012. However, Mr Supdu Musa Tadvi never appeared before the committee.” b

**44.** The affidavit of Mr Supdu Musa Tadvi 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 29-10-2012<sup>56</sup>. 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

<sup>56</sup> *Ayaubkhan Noorkhan Pathan v. State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC) e

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h

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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.*<sup>57</sup>, *Narayan Govind Gavate v. State of Maharashtra*<sup>58</sup>, *Karewva v. Hussensab Khansaheb Wajantri*<sup>59</sup>, *Engg. Kamgar Union v. Electro Steels Castings Ltd.*<sup>60</sup>, *Mohd. Shahabuddin v. State of Bihar*<sup>61</sup>, *Punjab SEB v. Ashwani Kumar*<sup>62</sup>, *M. Chandra v. M. Thangamuthu*<sup>63</sup> and *R. Ramachandran Nair v. State of Kerala (Vigilance Deptt.)*<sup>64</sup>.]

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.

e

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

f **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

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*Ex parte* SIDEBOTHAM. *In re* SIDEBOTHAM.

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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.*

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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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In re  
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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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2022 SCC OnLine SC 1469

In the Supreme Court of India  
(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

Civil Appeal Nos. 2407-2412 of 2021  
State of Uttar Pradesh and Others ... Appellant(s);  
*Versus*  
Uday Education and Welfare Trust and Others ... Respondent(s).

With

Civil Appeal Nos. 3144-3146 of 2022  
Civil Appeal Nos. 3132-3134 of 2022  
Civil Appeal Nos. 3135-3137 of 2022  
Civil Appeal No. 3138 of 2022  
Civil Appeal Nos. 4061-4062 of 2022  
Civil Appeal No. 3141 of 2022  
Civil Appeal Nos. 2547-2548 of 2020  
Civil Appeal Nos. 3142-3143 of 2022  
Civil Appeal Nos. 3147-3149 of 2022

Civil Appeal Nos. 2407-2412 of 2021, Civil Appeal Nos. 3144-3146 of 2022, Civil Appeal Nos. 3132-3134 of 2022, Civil Appeal Nos. 3135-3137 of 2022, Civil Appeal No. 3138 of 2022, Civil Appeal Nos. 4061-4062 of 2022, Civil Appeal No. 3141 of 2022, Civil Appeal Nos. 2547-2548 of 2020, Civil Appeal Nos. 3142-3143 of 2022 and Civil Appeal Nos. 3147-3149 of 2022

Decided on October 21, 2022

The Judgment of the Court was delivered by

B.R. GAVAI, J.:— A For the reasons stated in the applications for impleadment/intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18<sup>th</sup> February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as “the learned NGT”) in Original Application Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1<sup>st</sup> March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as “WBIs”) and also setting aside all the provisional licenses given in pursuance thereof.

3. The appeals also challenge the orders dated 18<sup>th</sup> March 2020, 2<sup>nd</sup> December 2020, and 21<sup>st</sup> December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.

4. Civil Appeal Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1<sup>st</sup> March 2019, issued by the State of Uttar Pradesh.

#### FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as “CEC”) appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of

WBIs. We will refer to them extensively in the subsequent paragraphs.

7. In pursuance of the order passed by this Court dated 5<sup>th</sup> October 2015 in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumalpad v. Union of India*), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11<sup>th</sup> November 2016.

8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4<sup>th</sup> May 2018, considered the matter about the grant of licenses to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

10. In the meeting of the SLC, held on 7<sup>th</sup> September 2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

11. In pursuance of the aforesaid decision, E-lottery was held on 12<sup>th</sup> December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12<sup>th</sup> December 2018 and 31<sup>st</sup> December 2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licenses were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1<sup>st</sup> March 2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licenses to the newly selected WBIs.

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28<sup>th</sup> March 2019, the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

13. Being aggrieved by the notice dated 1<sup>st</sup> March 2019 issued by the State Government, Original Application Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the learned NGT.

14. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3<sup>rd</sup> August 2019. Vide order dated 6<sup>th</sup> August 2019 passed in Original Application nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1<sup>st</sup> March 2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in the case of *T.N. Godavarman v. Union of India*. Vide order dated 1<sup>st</sup> October 2019, the learned NGT directed the status quo to be maintained.

15. The State of Uttar Pradesh filed an Interlocutory Application No. 732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6<sup>th</sup>

August 2019 and the order dated 1<sup>st</sup> October 2019. Vide order dated 18<sup>th</sup> December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18<sup>th</sup> February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1<sup>st</sup> March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given.

16. Being aggrieved thereby, Civil Appeal (Diary) No. 12004 of 2020 was filed before this Court. Vide order dated 26<sup>th</sup> October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18<sup>th</sup> March 2020, 2<sup>nd</sup> December 2020, and 21<sup>st</sup> December 2020, the learned NGT rejected the Review Applications.

17. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the Original Applications as well as in the Review Petitions.

#### SUBMISSIONS

18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsels, Ms. Purna Singh, and Mr. Rudraksh Gupta, learned counsels appearing on behalf of the appellants, who were granted provisional licenses. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsels appearing on behalf of the respondent No. 1.

19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

20. It is submitted that even the MOEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18<sup>th</sup> May 2007 and 5<sup>th</sup> October 2015 passed in Writ Petition (Civil) No. 202 of 1995 (*T.N. Godavarman Thirumulpad v. Union of India*). It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18<sup>th</sup> December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licenses. He submits that the order impugned is totally in breach of the

principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licenses for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licenses granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms. Prerna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not *bonafide* litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No. 1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Civil Procedure Code, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12<sup>th</sup> December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15<sup>th</sup> March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12<sup>th</sup> October 2006. He submits that an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18<sup>th</sup> April 2007, accepted by this Court vide its order dated 18<sup>th</sup> May 2007, would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic meters per year. Learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and, therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4<sup>th</sup> May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7<sup>th</sup> September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11<sup>th</sup> September 2019 and 20<sup>th</sup> April 2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure-I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20<sup>th</sup> July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31<sup>st</sup> October 2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11<sup>th</sup> September 2018. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh notification has been issued on 7<sup>th</sup> January 2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of *Common Cause v. Union of India*<sup>1</sup>, *Mantri Techzone Private Limited v. Forward Foundation*<sup>2</sup>, *Municipal Corporation of Greater Mumbai v. Ankita Sinha*<sup>3</sup> and *Pragnesh Shah v. Dr. Arun Kumar*

*Sharma*<sup>4</sup>.

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of *Ankita Sinha* (supra), submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic meters in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80000 people. Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

#### EARLIER ORDERS OF THIS COURT

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in the case of *T.N. Godavarman* (supra) passed an order on 12<sup>th</sup> December 1996. The relevant part thereof is as under:

- "6. Each State Government should within two months, file a report regarding -
- (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
  - (ii) the licenced and actual capacity of these mills for stock and sawing;
  - (iii) their proximity to the nearest forest;
  - (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

- (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
- (ii) The number of existing saw mills which can safely be sustained in the State;
- (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located."

41. Vide subsequent order dated 4<sup>th</sup> March 1997<sup>5</sup>, this Court directed thus:

"6. All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks."

42. Vide order dated 9<sup>th</sup> May 2002, this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29<sup>th</sup> October 2002<sup>6</sup>, this Court further directed thus:

"44. No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central

Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

44. Vide order dated 1<sup>st</sup> September 2006, this Court allowed licenses to be issued to the closed sawmills, Veneer and Plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic meters vide report dated 3<sup>rd</sup> April 2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic meters. CEC further reduced the same to 43.70 lakh cubic meters. However, it added 2.00 lakh cubic meters per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic meters.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18<sup>th</sup> May 2007:

"The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.

It has also assessed the units into four categories.

We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC. Licences may be given by the State Level Committees.

If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration."

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

50. Vide order dated 29<sup>th</sup> February 2008, this court considered the issue regarding the manufacturing of Medium Density Fiber board (MDF) and Particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order:

"The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF/Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants."

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010.

However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30<sup>th</sup> April 2010, when this Court passed the following order:

“(II) after meeting the requirement of the licensed wood based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs. 9 lakhs per press in respect of the veneer units and compliance of the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the above said amount should be kept in a designated interest bearing bank account and should be utilized only after the scheme in this regard is approved by this Hon'ble Court;”

53. It could thus be seen that this Court permitted granting of additional licenses if additional timber was found to be available.

54. The CEC in its meeting held on 26<sup>th</sup> May 2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for Vertical Band Saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills upto 10 Horse Power from 540 to 270 cubic meters per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic meters of timber became available for licenses from 3,549 such VBS units. In view of this position between 2010 and 2015, licenses came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5<sup>th</sup> October 2015 with regard to WBIs, when this Court passed the following order:

**“CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:**

We have heard Shri Harish Salve, learned *amicus curiae*, Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned senior counsel and other learned senior counsel/counselors. Accordingly, we pass the following orders:

- (i) The State Level Committees for Wood-Based Industries (“SLCs”) are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries;
- (ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change (“MoEFCC”) and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank will immediately be constituted;
- (iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;
- (iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any

reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

We also permit the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)“

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

#### MOEFCC GUIDELINES

57. In accordance with the directions issued by this Court vide order dated 5<sup>th</sup> October 2015, the MOEFCC issued 2016 Guidelines on 11<sup>th</sup> November 2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorized to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

“The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

The timber requirement of a plywood unit may be taken as ‘nil’ on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce upto 10 plywood pieces of 8’ × 4’ size per hour whereas a 8 × 4 × 15 capacity press can produce upto 15 plywood pieces of 8’ × 4’ size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and

thereafter equivalent number or presses of  $8 \times 4 \times 10$  capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a  $8 \times 4 \times 10$  capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17<sup>th</sup> May 2017. Vide Notification dated 11<sup>th</sup> September 2017, the MOEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4<sup>th</sup> May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7<sup>th</sup> September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26<sup>th</sup> May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1<sup>st</sup> March 2019, the State Government issued a Notice with regard to grant of provisional licenses to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1<sup>st</sup> March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

#### CONSIDERATIONS

63. The learned NGT while passing the impugned order has set aside the notice of the State of Uttar Pradesh on the following grounds:

- (1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;
- (2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;
- (3) that it is the stand of the State of Uttar Pradesh that the total potential

availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

- (4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;
- (5) that the standard error percentage adopted by the FSI is not correct and is much higher;
- (6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;
- (7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licenses to be issued to the closed sawmills vide order dated 1<sup>st</sup> September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18<sup>th</sup> May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30<sup>th</sup> April 2010, this Court permitted additional licenses to be granted if additional timber was available. Accordingly, licenses were granted between 2010 and 2015. Vide subsequent order dated 5<sup>th</sup> October 2015, this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by the MOEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17<sup>th</sup> May 2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

"In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.

The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area."

66. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic meters of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire

gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

"The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately."

67. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. District-wise production was estimated before concluding that 77,74,521 cubic meters of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to paragraph 5.4 of the said report, which reads thus:

"5.4 Estimates of Annual Potential Production of Wood from TOF (Rural)

Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species. *The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.* The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

$$\text{Yield} = 2\text{GS}/\text{R}$$

Where GS : Growing Stock

R : rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The Agro-Climatic Zone wise yield has been given in Annexure-11."

[emphasis supplied]

68. The standard error was also determined by applying the appropriate scientific method.

69. The FSI, hence, considered various aspects before concluding and submitting its 101 page report.

70. It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.

71. However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.

72. The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist

D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.

73. It will be relevant to refer to the conclusion of the said paper, which is as follows:

#### "5. Conclusion

TOF play a significant role in the socioeconomic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country. Through expansion of TOF, particularly in agro-forestry

and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

74. It could thus be seen that the FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

75. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

76. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7<sup>th</sup> January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31<sup>st</sup> December 2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

77. It is to be noted that the prohibited trees also include trees like Mango, Jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19<sup>th</sup> April 2007, which included 17.77 lakh cubic meters of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18<sup>th</sup> May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28<sup>th</sup> March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3<sup>rd</sup> August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18<sup>th</sup> December 2019, another detailed affidavit was filed on behalf of the State Government on 21<sup>st</sup> January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs. 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

79. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

80. It is relevant to note that MOEFCC, in pursuance of the directions issued by the

learned NGT had filed its opinion on 18<sup>th</sup> December 2019. It will be relevant to refer to paragraph 8 of the said opinion.

"8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

81. The learned NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

82. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4<sup>th</sup> May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7<sup>th</sup> September 2018 did a volte-face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7<sup>th</sup> September 2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic meters. Adding the timber available in the forest area of 2,57,273 cubic meters, the total quantity of availability of timber was 80,31,795 cubic meters. It is to be noted that the SLC had taken note of the letter dated 29<sup>th</sup> August 2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by Veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this court in the case of *Tata Cellular v. Union of India*<sup>2</sup>, which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [[1991] 1 A.C. 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

84. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as "NIL" is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5<sup>th</sup> October 2015. In any case, the raw material for plywood industries is 'Veneer' and the raw material for veneer is 'timber'. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

#### CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

89. A body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P.". The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the

plywood manufacturers against the process of issuing new licenses to the WBIs by the State Government.

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300-350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

91. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs. 3000 crore was likely to be attracted in the State; employment opportunities to over 80000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasized that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match, paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

94. As already discussed herein above, the majority of TOF is from two species, i.e. Poplar and Eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to

take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. As already discussed herein above, the State had emphasized many advantages of granting new licenses to WBIs. It was also emphasized that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and *bonafides* of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of *Ankita Sinha* (supra) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take *suo motu* cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers;

the credentials and *bonafides* of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the *bonafides* and credentials of such litigants.

100. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

- (a) In the case of *Samatha v. State of A.P.*<sup>8</sup>, a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P. v. Ganesh Wood Products*<sup>9</sup> observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.
- (b) In the case of *Essar Oil Ltd. v. Halar Utkarsh Samit*<sup>10</sup>, this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of *Indian Council for Enviro-Legal Action v. Union of India*<sup>11</sup> were quoted as under:

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there

should not be development at the cost of environment."

- (c) In the case of *Maharashtra Land Development Corporation v. State of Maharashtra*<sup>12</sup> reference was made to *Glanrock Estate Private Limited v. State of Tamil Nadu*<sup>13</sup> wherein it was observed as under:

"27. .... Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995), it has been held that 'intergenerational equity' is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'polluter pays principle' flow from the core value in Article 21.

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle."

- (d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulpad v. Union of India*<sup>14</sup> wherein this Court enunciated the definition of "forest" in the following words:

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof..."

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7<sup>th</sup> January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

103. In the result, the appeals are allowed. The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Application Nos. 313, 335 and 396 of 2019 as well as in the Review Applications are quashed and set aside.

104. Pending applications, if any, shall stand disposed of. No costs.

<sup>1</sup> (2017) 9 SCC 499

<sup>2</sup> (2019) 18 SCC 494

<sup>3</sup> 2021 SCC OnLine SC 897

<sup>4</sup> 2022 SCC OnLine SC 79

<sup>5</sup> (1997) 3 SCC 312

<sup>6</sup> (2008) 16 SCC 337

<sup>7</sup> (1994) 6 SCC 651

<sup>8</sup> AIR 1997 SC 3297 : (1997) 8 SCC 191

<sup>9</sup> (1995) 6 SCC 363

<sup>10</sup> (2004) 2 SCC 392

<sup>11</sup> (1996) 5 SCC 281

<sup>12</sup> (2011) 15 SCC 616

<sup>13</sup> (2010) 10 SCC 96

<sup>14</sup> (1997) 2 SCC 267 : AIR 1997 SC 1228

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2022 SCC OnLine SC 120

In the Supreme Court of India  
(BEFORE D.Y. CHANDRACHUD AND BELA M. TRIVEDI, JJ.)

Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others ...  
Appellants;  
Versus

State of Gujarat and Others ... Respondents.  
Civil Appeal No. 1046 of 2019  
Decided on January 21, 2022

The Judgment of the Court was delivered by

D.Y. CHANDRACHUD, J.:— Admit.

2. This appeal under Section 22 of the National Green Tribunal Act 2010<sup>1</sup> arises from a judgment and order of the Principal Bench of the National Green Tribunal<sup>2</sup> dated 28 September 2018, by which it dismissed OA No 81 of 2014 (WZ).

3. OA No 81 of 2014 (WZ), instituted under Sections 14 and 15 of the NGT Act, was pending before the NGT for nearly four years since July 2014. It had been filed by the appellants, who are environmental organisations and individuals directly affected by the degradation of the environment in the area in question. The OA pertained to the issue of the dumping of unsegregated and untreated Municipal Solid Waste<sup>3</sup> at an open landfill site admeasuring 188 hectares at Survey No 111/A, Block No 177, Khajod Village, Taluka Choryasi in the district of Surat, which is surrounded by thirty-five villages. The landfill site had been set up by the fourth respondent, Surat Municipal Corporation<sup>4</sup>, which had started dumping 850 Metric Tonnes of waste per day on 24 January 2003. The extent of dumping increased to 1600 Metric Tonnes of waste per day by 16 January 2014. It was alleged, *inter alia*, that the dumping of waste in the open area without prior treatment was in violation of the Municipal Solid Waste (Handling and Management) Rules 2000 and Bio Medical Waste (Management and Handling) Rules 1998. Further, while SMC had been issued multiple warnings during site visits and inspections, the situation did not improve. It was alleged that the waste disposal led to an irreversible contamination of local water bodies and ground water, caused severe air pollution due to the burning of waste, damaged the ecology of the nearby villages and was affecting the health of the citizens and livestock in the vicinity. The appellants sought directions, *inter alia*, for : (i) restraining the dumping of MSW at the landfill site; (ii) restoration of the environment in the surrounding areas; (iii) restitution of the landfill site to its original condition; (iv) compensation to all those affected in the nearby villages upon determination of damages by a committee set up to assess the landfill site; and (v) implementation of the Solid Waste Management Rules 2016<sup>5</sup>.

4. The Western Zone Bench of the NGT issued notice on 8 August 2014. A series of orders emanated from the Western Zone Bench of the NGT in connection with the issues raised. It would suffice to note a few of those orders:

(i) On 20 March 2015, the NGT noted that "*prima facie* there is ring of truth in the averments made by the Applicants, to indicate that MSW plant, is being mismanaged" and that the burning of the untreated MSW was causing severe air pollution affecting the health of the residents of the nearby villages. Interim directions were issued to prevent this from taking place during the pendency of the OA;

(ii) On 22 December 2015, the NGT again reproached SMC for not preparing a

proper action plan and audit for the management of MSW in the district of Surat. However, on the appellant's issue of their participation in the management of the landfill site, the NGT noted that it would be decided during the final hearing;

- (iii) On 7 March 2016, the NGT directed the Commissioner of SMC to be present and to provide a statement on the following issues : (a) extent of waste collected, treated and disposed of in accordance with the mandate of the Municipal Solid Waste (Handling and Management) Rules 2000; (b) the officers who have failed to enforce the Rules and have failed to comply with the directions of the NGT; (c) the time schedule within which proper waste management will be done in the area in terms of the Rules; and (d) filing an undertaking that waste management shall be done in letter and spirit;
- (iv) On 16 May 2017, the NGT noted that in pursuance of its previous directions, SMC had filed an affidavit indicating, *inter alia*, the action plan which it proposed to execute for handling the problem of MSW within its jurisdiction. The NGT was informed that the issue pertaining to the closure of the Khajod dumping site was pending before the Standing Committee of SMC. Hence, the NGT directed the Standing Committee to take a decision and issue a work order for commencing the work of the closure of the open dumping site within a month. Moreover, SMC was directed to place on the record the details of the lands where the projects are to be commissioned;
- (v) On 19 September 2017, a statement was made on behalf of SMC that it is under an obligation to comply with the SWM Rules and that the site at Khajod is designated for a landfill, an MSW processing plant and a waste-to-energy plant of 100 TPD on a public-private partnership basis;
- (vi) Pursuant to the order of the NGT dated 19 September 2017, the appellants formulated certain action points for implementation of the SWM Rules. On 26 September 2017, an undertaking was filed on behalf of SMC by the Municipal Commissioner setting out the steps which would be taken for dealing with MSW, transportation, storage, and processing as well as on other related matters. The undertaking stipulated that there shall be no landfilling or dumping of unprocessed and unsegregated MSW after two years subject to "100% working of the Solid Waste Processing Plant" and certain other conditions;
- (vii) On 6 November 2017, an order was passed by the NGT setting out that it would be hearing SMC, *inter alia*, on the qualified nature of the undertaking which was furnished by it, having regard to the SWM Rules and on the proposed use of the Khajod landfill site despite its potential as a landfill site being concluded. The NGT also indicated that it would be hearing submissions on the commissioning of the waste-to-energy plant and the waste-to-compost plant within a given time frame;
- (viii) An order was passed by the NGT on 5 December 2017, dealing particularly with the issue of quantification of compensation to the farmers due to the damage caused by the burning of solid waste and ground water pollution;
- (ix) On 2 July 2018, the NGT issued directions stating that the submissions which were urged before it by SMC were unacceptable. The NGT declined to accept the contention that the waste-to-energy plant could only be completed by December 2019, and directed that it ought to be completed by March 2018; and
- (x) On 17 July 2018, the NGT noted that SMC's current action plan *prima facie* did not fulfill the requirements of Clause J of Schedule-I of the SWM Rules in relation to closure and rehabilitation of old dumping sites and legacy waste. Hence, it directed SMC to file an affidavit recording its compliance.

5. A considerable amount of judicial time and attention was entailed during the course of the hearings associated with the above orders. Earlier Benches of the NGT at

the Western Zone Bench had been monitoring the status of compliance with the SWM Rules. The NGT was seized with diverse aspects pertaining to the disposal of MSW by SMC, including the modalities which have to be followed while commissioning projects in the future for the conversion of waste to energy.

6. Rather surprisingly, when the proceedings came up on 28 September 2018 before the Principal Bench of the NGT, the OA was disposed of on the ground that in another OA - OA No 606 of 2018 - the NGT had constituted Apex, Regional and State Level Committees to monitor the implementation of the SWM Rules. The OA filed by the appellants was thus closed with liberty to represent the case and ventilate all grievances before the appropriate committee. For convenience of reference, the order passed by the NGT is extracted below:

"As this OA relates to implementation of Solid Waste Management Rules, 2016, we are of the considered opinion that it is covered by the order passed by the larger Bench of the Tribunal dated 20<sup>th</sup> August, 2018 in OA No 606 of 2018.

The Applicant would be at liberty to represent its case and ventilate all grievance before the Committee which shall look into it and finally decide the same.

Consequently, OA No 81 of 2014 stands disposed of. There shall be no order as to cost.

M.A. No. 1392 of 2018 and 1393 of 2018

These Applications do not survive for consideration as the main Application has been decided and are accordingly dismissed."

7. At this juncture, it is also important to elaborate on NGT's judgment and order dated 31 August 2018 in OA No 606 of 2018. Those proceedings arose from writ petitions filed before this Court in relation to the proper implementation of SWM Rules across the country, which were later transferred to the NGT. The NGT noted in its decision that though it had earlier issued directions for the implementation of the SWM Rules, they had not been complied with. Later, in a meeting organised by the Central Pollution Control Board with all the States and Union Territories, it was recommended that the NGT should form Apex, Regional and State Level Committees for the implementation of the SWM Rules and the directions issued by the NGT, and that these Committees should submit quarterly reports to the NGT. Thus, the NGT directed the following:

- (i) The Apex Monitoring Committee was set up for one year, till further orders. Its role was to interact with the relevant Ministries and the Regional Monitoring Committees, and it could formulate guidelines/directions which may be useful to the Regional Monitoring Committees and the States/Union Territories. It was to meet preferably every month, and also preferably meet the Regional Monitoring Committees once a month. It shall then submit its report to the NGT every quarter. Further, it was also directed that the Committee set up a website for dissemination of information, so as to enable public participation;
- (ii) The Regional Monitoring Committees were set up for one year, till further orders, for each zone - North, East, West, South and Central. They were to ensure effective implementation of the SWM Rules, and that mixing of biomedical waste with MSW does not take place and bio-medical waste is processed in accordance with the Bio-Medical Waste Management Rules 2016. The Committees were to preferably meet every week, and meet the Apex Monitoring Committee, have *inter se* interactions and meet the States when necessary. They were to submit their reports to the Apex Monitoring Committee twice a quarter, and also submit a report to the NGT after the first quarter. Much like the Apex Monitoring Committee, the Regional Monitoring Committees were also directed to set up websites; and
- (iii) The State Level Committees were set up for one year, till further orders, for

each State and Union Territory. They were to preferably meet with local bodies once every two weeks, and the local bodies were to furnish them reports twice a month. They were to decide on technical and policy issues in accordance with the SWM Rules and consistent with the directions of Apex and Regional Monitoring Committees. Further, they were to send their reports to the Regional Monitoring Committee on a monthly basis. It was also directed that public involvement may be encouraged and status of MSW be placed in the public domain.

8. The NGT directed that the Committees would be at liberty to issue directions for execution of the orders of the NGT to any authority.

9. Ms. Shilpa Chohan, learned Counsel appearing on behalf of the appellants, has submitted that relegating the appellants to a committee was wholly inappropriate having regard to the progress which had been achieved by the Western Zone Bench of the NGT in unravelling various aspects of the case. Moreover, it is urged that the jurisdiction to provide restitution and award compensation is entrusted to the NGT and hence, it was not appropriate or proper to dispose of the OA by relegating the decision to a committee.

10. On the other hand, Mr. Tejas Patel, learned Counsel appearing on behalf of SMC, submits that the appellants have produced absolutely no material on the basis of which a claim for compensation can be made. Moreover, it was urged that they have a remedy of ventilating their grievances before the appropriate committee.

11. The OA was filed by the appellants under Sections 14 and 15 of the NGT Act. Section 14<sup>e</sup> of the NGT Act vests the NGT with jurisdiction over all civil cases where a substantial question relating to the environment is involved, and such question arises out of the implementation of the enactments specified in Schedule I to the statute. Sub-Section (1) of Section 15 is in the following terms:

"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."

12. In *Mantri Techzone (P) Ltd. v. Forward Foundation*<sup>7</sup>, a three-Judge Bench of this Court outlined that Section 15(1)(c) of the NGT Act entrusts broad powers to the NGT. Speaking for the Court, Justice S Abdul Nazeer held:

"43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."

13. The OA filed by the appellants raised issues falling within the jurisdiction of the NGT under Section 14, since it relates to the implementation of the SWM Rules. The SWM Rules have been notified pursuant to the powers conferred by Sections 3, 6 and 25 of the Environment (Protection) Act 1986, which is Entry 5 in Schedule I of the NGT Act. None of the prayers sought by the appellants are of a nature that cannot be granted by the NGT in accordance with its powers under Section 15(1) of the NGT Act. The OA was being continuously heard by the Western Zone Bench of the NGT since August 2014, and it had already issued significant interim directions.

14. Hence, the issue before us is only whether the Principal Bench of the NGT correctly directed the appellants to now approach one of the Committees set up by it, rather than continue with the proceedings in the OA. To understand this, we must first consider the role of such committees which are set up by courts and tribunals alike.

15. It is first important to differentiate expert committees which are set by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before courts when decisions are taken solely based upon them. The precedents of this court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or *mala fide*<sup>8</sup>. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these expert committees does not substitute the adjudicatory role of the court or tribunal. The role of an expert committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.

16. Sections 14 and Section 15 entrust adjudicatory functions to the NGT. The NGT is a specialized body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In *Hanuman Laxman Aroskar v. Union of India*<sup>2</sup>, a two-Judge Bench of this Court noted that the NGT is an expert adjudicatory body on the environment. The Court held:

"133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment...

134. NGT is an expert adjudicatory body on the environment."

17. The NGT does not have a dearth of 'expertise' when it comes to the issues of environment.

18. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees. In *Sanghar Zuber Ismail v. Ministry of Environment, Forests and Climate Change*<sup>10</sup>, a three-Judge Bench of this Court noted that the NGT cannot refuse to hear a challenge to an Environmental Clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an expert committee. The Court held:

“8...the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.”

19. The NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative expert committee. An expert committee may be able to assist the NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by the NGT. This is not a delegable function. Thus, the order impugned in the appeal cannot be sustained. The consequence of the impugned order is to efface the meticulous exercise which was carried out by the earlier Benches. Valuable time has been lost in the meantime and crucial issues pertaining to the environment in the present case have been placed on the back-burner.

20. Hence, we are of the view that it would be appropriate to set aside the impugned order and to restore OA No 81 of 2014 (WZ) to the file of the NGT. We accordingly allow the appeal and set aside the impugned order dated 28 September 2018. OA No 81 of 2014 (WZ) is restored to the file of the NGT. The NGT shall commence with the hearing of the proceedings from the stage which was arrived at before the impugned order dated 28 September 2018 was passed. Unfortunately, more than three years have passed in the meantime, a delay which could have been avoided had the NGT proceeded to adjudicate upon the issues which were raised before it.

21. This Court has not expressed any opinion on the merits of the issues which are raised before the NGT. The NGT will take an appropriate view and issue appropriate directions in continuation of the directions which hold the field, after hearing the parties.

22. The Court was apprised that the impugned order was passed by the Principal Bench since the Western Zone Bench of the NGT was not functioning at the relevant time. Hence, OA No 81 of 2014 (WZ) may now be heard by the Bench which is assigned with the requisite jurisdiction to hear the subject matter of the OA.

23. The appeal is accordingly allowed in the above terms.

24. Pending applications, if any, stand disposed of.

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
Civil Appeal No. 1046/2019

Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others.

....Appellant(s)

*Versus*

State of Gujarat and Others.....Respondent(s)

Date : 21-01-2022 This appeal was called on for hearing today.

(BEFORE D.Y. CHANDRACHUD AND BELA M. TRIVEDI, JJ.)

For Appellant(s) Ms. Shilpa Chohan, Adv.

Mr. Ssawahiq Siddique, Adv.

Dr. Pratyush Nandan, Adv.

Mr. Rajesh Singh, AOR

For Respondent(s) Ms. Aastha Mehta, Adv.

Ms. Deepanwita Priyanka, Adv.

Ms. Ruchi Kohli, AOR  
Mr. Avijit Roy, AOR  
Mr. Tejas Patel, AOR  
Mr. Kaushal Pandya, Adv.

UPON hearing the counsel the Court made the following  
ORDER

25. Admit.
26. The appeal is allowed in terms of the signed order.
27. Pending applications, if any, stand disposed of.

<sup>1</sup> "NGT Act"

<sup>2</sup> "NGT"

<sup>3</sup> "MSW"

<sup>4</sup> "SMC"

<sup>5</sup> "SWM Rules"

<sup>6</sup> "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."

<sup>7</sup> (2019) 18 SCC 494

<sup>8</sup> *Basavaiah (Dr.) v. Dr. H.L. Ramesh*, (2010) 8 SCC 372 (in relation to appointment in an academic institution); *State of Kerala v. RDS Project Ltd.*, (2020) 9 SCC 108 (in relation to safety of a flyover project)

<sup>9</sup> (2019) 15 SCC 401

<sup>10</sup> 2021 SCC OnLine SC 669

2021 SCC OnLine SC 669

In the Supreme Court of India  
(BEFORE D.Y. CHANDRACHUD, M.R. SHAH AND HIMA KOHLI, JJ.)

Sanghar Zuber Ismail ... Appellant(s);  
*Versus*

Ministry of Environment, Forests and Climate Change and Another  
... Respondent(s).

Civil Appeal No 4543 of 2021  
Decided on August 31, 2021

The Order of the Court was delivered by

D.Y. CHANDRACHUD, J.:— Admit.

2. This appeal arises from a judgment of the National Green Tribunal dated 8 June 2021 at the Principal Bench, New Delhi.

3. The appeal before the NGT arose from the grant of an environmental clearance on 5 January 2021 in favour of the second respondent for the expansion of the capacity of its refinery situated in the petro-chemical complex at Vadinar, District Devbhumi Dwarka, Gujarat from 20 MMTPA to 46 MMTPA. The main challenge before the NGT, as recorded in paragraph 3 of the decision is that the expansion was likely to cause an adverse impact on the marine environment, both in terms of the mangroves and marine biology. The NGT noted that its attention been drawn to the EIA/EMP study prepared by CSIR-NEERI. Having extracted from the study, the NGT noted the submission of senior counsel for the second respondent that all the EC conditions would be duly complied with and due mitigation measures would be taken to ensure the safety of mangroves and marine environment.

4. Having recorded the statement of the second respondent, the NGT proceeded to observe that it did not find any ground to interfere with the grant of the EC. It, however, directed the project proponent to ensure that all necessary safeguards are adopted and EC conditions are duly complied with. A three member Committee was constituted in that regard.

5. The NGT was seized with a substantive appeal under the provisions of Section 16 of the National Green Tribunal Act 2010. Section 16(h) reads thus:

"16. Any person aggrieved by -

(a) to (g) xxx xxx xxx

(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."

6. The specific ground before the NGT was that the expansion of the refinery will cause serious hazards to both the marine biology and to mangroves. The NGT observed that the project was already in existence and there was no continuing grievance against its functioning insofar as environmental norms are concerned. This observation would not conclude the issue as to whether the *expansion* of the project would have a deleterious impact on the environment.

7. Having regard to the nature of its appellate power, the NGT has to apply its mind to the substantive grounds of challenge. The NGT has merely based its conclusion on the statement which has been made by the project proponent and has not conducted

an independent appraisal of the grounds of challenge.

8. As a matter of fact, Mr. Dhruv Mehta, learned senior counsel, who appears on behalf of the second respondent, states that the appellant had not produced a copy of the correct EIA before the NGT and an application has been filed on behalf of the second respondent for clarifying the position. Be that it may, the NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.

9. We accordingly allow the appeal and set aside the impugned order dated 8 June 2021. Appeal No 5/2021(WZ) is accordingly restored to the file of the NGT for disposal afresh. All the rights and contentions of the parties on the merits are kept open.

10. Pending application(s), if any, stand disposed of.

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
Civil Appeal No. 4543/2021

Sanghar Zuber Ismail.....Appellant(s)

v.

Ministry of Environment, Forests and Climate Change and Another.

....Respondent(s)

(With appln.(s) for IA No. 91013/2021-EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT)

Date : 31-08-2021 This appeal was called on for hearing today.

(BEFORE D.Y. CHANDRACHUD, M.R. SHAH AND HIMA KOHLI, JJ.)

For Appellant(s) Mr. Purvish Jitendra Malkan, Adv.

Ms. Dharita P Malkan, Adv.

Ms. Deepa Gorasia, Adv.

Mr. Alok Kumar, Adv.

Ms. Nandini Chhabra, Adv.

Ms. Bhavna Sarkar, Adv.

Ms. Khushboo Vinodray Malkan, AOR

For Respondent(s) Mr. Dhruv Mehta, Sr. Adv.

Mr. Somiran Sharma, AOR

UPON hearing the counsel the Court made the following

ORDER

11. Admit.

12. The appeal is allowed in terms of the signed reportable order.

13. Pending applications, if any, stand disposed of.