IN THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

IA NO. 477 OF 2025

IN

APPEAL NO. 39 OF 2025

IN THE MATTER OF:

M/S P.C. Gupta & Company …Appellant

-Versus-

State Level Environment Impact Assessment Authority, U.P. …Respondent

INDEX NDOH- 15.10.2025

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Date:14.10.2025
Place: New Delhi

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REPLY ON BEHALF OF THE APPELLANT TO THE IA NO. 477 OF 2025 DATED 14.07.2025, APPLICATION SEEKING IMPLEADMENT ON BEHALF OF APPLICANT "AMIR HASANAIN".

1. That this Hon'ble Tribunal is presently seized of the above-mentioned Appeal No. 39 of 2025 which was preferred under Section 16 (g) and 16 (i) of the National Green Tribunal Act, 2010 against the decision of the State Level Environment Impact Assessment Authority, Uttar Pradesh (Respondent herein) to cancel the Environmental Clearance dated 17.03.2021 granted by SEIAA to the Appellant for mining sand/morrum in River Yamuna at Gata No. 621 Ma, 622 Ma, in Village- Mandawar-4, Tehsil- Kairana, District- Shamli, Uttar Pradesh. This Hon'ble Tribunal was pleased to issue Notice on 29.05.2025 and granted liberty to the Respondent to file its response.
2. That, thereafter an Interlocutory Application being I.A. No. 477 of 2025 dated 14.07.2025 seeking impleadment in the present Appeal was filed by one "Amir Hasanain" who ***is neither aggrieved by the decision of the Respondent SEIAA nor a necessary or proper party for the present lis***. Further the Applicant in the said IA has erroneously made several submissions which are in fact false or not tenable in the eyes of laws and has also reproduced some vital facts and documents which are private in nature, without disclosing the source of the information, thus violating not only the privacy of the Appellant herein but also

smacks of a larger conspiracy of vested interests wo are obviously a proxy for competition.

3. That this Hon'ble Tribunal vide Order dated 18.09.2025 has given the liberty to all the parties in the present Appeal to file a response to the IA No. 477/2025 and the present reply on behalf of the Appellant is being filed in furtherance of the liberty given vide Order dated 18.09.2025 by this Hon'ble Tribunal.
4. That at the outset, the Appellant in the present Appeal denies and disputes all contentions, claims, allegations and stipulations contained in the captioned Application which is contrary to and/or inconsistent with what is stated herein. Save as otherwise admitted herein, the contents of the said Application are false and untrue. Nothing contained in the said Application

   shall be construed as an admission on the part of the Appellant for want of specific traverse or otherwise, and unless expressly admitted herein.
5. That before responding to the para-wise submission on merits, the Appellant seeks liberty to submit preliminary objections and submissions, which in his opinion are essential for a holistic adjudication of the case.

PRELIMINARY OBJECTIONS:

ESSENCE OF SECTION 16 OF THE NGT ACT, 2010

6. That Section 16 of the NGT Act, 2010 is an exclusive section in itself which provides for ten circumstances/or cause of Action against which the Appellate jurisdiction of the NGT may be set in action. Further the remedy of Section 16 is also available to the person who is aggrieved by the ten causes/circumstances mentioned in the Section 16 itself.
7. That the present Appeal is filed under Section 16 (g) and 16 (i) which read as follows:

   "16. ***Tribunal to have Appellate jurisdiction****- Any person aggrieved by-*

   ....

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

....

(i)an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

In view of the facts and circumstances of the present Appeal neither the Applicant in the present IA can be said to be the aggrieved person who can be impleaded as Appellant in the present Appeal in terms of the Section 16 of the NGT Act, 2010 nor the Applicant in the IA is a necessary party to get him impleaded as Party Respondent in the present Appeal, because under Section 16 of NGT, Act 2010 the grievance can only be against the Directions/Orders of some Government Authority only. Therefore, the Appellant was diligent enough only to make the Ld. SEIAA as Party Respondent because the grievance is against the Order of Ld. SEIAA only and against the reasons given for the cancellation. No other party is necessary but the SEIAA who is the competent authority against which the Appellant herein is aggrieved.

APPLICANT IS NOT THE NECESSARY OR PROPER PARTY IN THE PRESENT APPEAL

8. That as per the Principles of Natural Justice the Right to defend in a proceeding is available only to a necessary party (the party who in the opinion of the Court is necessary and without whom any effective order cannot be passed) or a proper party (the party whose presence while not essential, would enable the court to effectively adjudicate all matters in dispute). That in the humble submissions of the Appellant, the Applicant herein is neither a necessary party for the present *lis* nor a proper party without whom the present Appeal cannot be Adjudicated. A true copy of judgement in *Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited & Ors. (2010) 7 SCC 417 (on the concept of necessary and proper party)* is marked and annexed as **ANNEXURE A/1.**

9. That the Appellant herein has a legal as well as Statutory Right to proceed against the Ld. SEIAA to restore his Environment Clearance which was cancelled illegally only on the basis of not replying to the Show Cause Notices which was never received by the Appellant herein. A true copy of judgement in *Poonam vs. State of Uttar Pradesh & Ors. (2016) 2 SCC 779)* is marked and annexed as **ANNEXURE A/2.**

10. Therefore, the Applicant herein has no *locus standii* to intervene in the present Appeal No. 39 of 2025, as it is between the Appellant and the Respondent SEIAA, U.P concerning the legality of the Order dated 07.03.2025 passed by SEIAA cancelling the Environmental Clearance. The intervenor is neither an affected party, nor a statutory authority nor a person aggrieved by the order under challenge. His alleged concern and the complaint against the Appellant do not confer upon him the legal right to be impleaded in the said Appeal. According to Section 18 of the National Green Tribunal Act, 2010 only parties having direct and substantial interest, who have sustained the injury, or the

person aggrieved in the impugned order may be impleaded. A true copy of judgement in *Ayaaubkhan Noorkhn Pathan v. State of Maharashtra, (2013) 4 SCC 465*, *Jasbhai Motibhai Desai v. Roshan Kumar, (1976) 1 SCC 671)* is marked and annexed as **ANNEXURE A/3 (Colly).**

11. That the Hon'ble Supreme Court in State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr. C.A. No. 2407-2412 of 2021, has categorically observed as follows: -

".....

99. We find that before a litigant is permitted to knock the doors of justice and seek order which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interest of the Farmers; the credentials and bonafides of the Applicants must be tested…We would therefore, only request the LD. 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.

....."

This is a fit case to apply the above-mentioned observations. A true copy of judgment in *State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr. C.A.No. 2407-2412 of 2021* is marked and annexed as **ANNEXURE A/4.**

12. Further, the Ld. NCLT, Chennai Bench in IA No. 641 of 2023 in Company Appeal (AT) (CH) (INS.) No. 166 of 2022 has also observed

"....

82. This Tribunal bearing in mind the vital fact that the `Appellant / Plaintiff', is a `master of his own Litigation', and he / it, cannot be compelled to `Implead', the `Parties', against whom, he / it, has no

grievance and fact of the matter is the `Parties', cannot thrust on an `unwilling Appellant / Plaintiff', to `array', the `Intervenors', to be `Impleaded' as `Respondents', as a matter of `Right', the clear cut position in `Law' is that, it is the prerogative of the `Tribunal' / an `Appellate Tribunal', to add the `Parties', as `Necessary Parties', and keeping in mind another fact that persons would not be `Impleaded', just because, they would be affected by an `Order' of the `Appellate Tribunal', incidentally, and considering the `attendant facts and circumstances of the case', in a holistic and conspectus manner', comes to a consequent conclusion that the `Petitioners' / `Intervenors', are not `Necessary Parties', to the instant Comp. App (AT) (CH) (INS.) No. 170 of 2023, and even without their presence, the `Appellate Tribunal', can determine the `Controversies', between the `Parties', in a complete and a comprehensive manner.

..."

Thus, the same principle may also be applied in the present Appeal and the present IA for impleadment may be rejected in limine. A true copy of judgment *in IA No. 641 of 2023 in Company Appeal (AT) (CH) (INS.) No. 166 of 2022* is marked and annexed as **ANNEXURE A/5.**

FALSE SUBMISSIONS BY THE APPLICANT IN HIS APPLICATION

13. That the first Show Cause Notice was issued to the Appellant on 25.11.2024 *(Annexure A/10, Pg 67-68 of Appeal)*, whereas the Applicant (Amir Hasanain) made a complaint to the Member Secretary/Chairman SEAC only on 21.12.2024 i.e., after the issuance of the first Show Cause Notice. Further, the Appellant at the cost of reiteration also wants to submit the correct chronological order of dates for the perusal of this Hon'ble Tribunal: -

- **15.11.2024-** In the 854th Meeting of SEIAA the Hon'ble Tribunal's Order dated 14.08.2024 in Original Application No. 528/2024 "Farukh Chouhan Vs. SEIAA & Ors." was perused and in view of the observations of Joint Committee regarding non-compliance of the Environmental Clearance conditions as mentioned in the Order, it was decided by SEIAA to issue show cause notice to the project proponent. *(Annexure A/9, Pg 63-66 of Appeal)*
- **25.11.2024**- First Show Cause Notice was issued to the Appellant in furtherance of the 854th meeting of SEIAA but on an address different from the correspondence address. *(Annexure A/10, Pg 67-68 of Appeal)*
- **21.12.2024**- Complaint letter was sent by Amir Hasanain (Applicant herein) to SEAC for cancellation of EC. *(Annexure A/11, Pg 69 of Appeal)*
- **24.12.2024-** SEAC-1, in its 903rd meeting, considered the issues ***raised in the complaint letter dated 21.10.2024*** by Amir Hasanain and decided to send the copy of complaint letter along with annexure to UPPCB to provide factual report on the issues raised in the complaint letter. *(Annexure A/12, Pg 70-74 of Appeal)*
- **06.01.2025**- On non-receipt of reply to the Show Cause Notice dated 25.11.2024 the Ld. SEIAA in its 865th meeting decided to further grant seven days to respond to the Show Cause Notice dated 25.11.2024. *(Annexure A/13, Pg 75-77 of Appeal)*
- **23.01.2025-** Applicant herein filed the two IAs being No. 54/2025 and 55/2025 in OA No. 528/2024, "Farukh Chouhan vs SEIAA & Ors.", containing almost similar contents as the present IAs. Further it is pertinent to mention here that the Applicant was not formally impleaded as a party in the OA No. 528 of 2024.

- **29.01.2025-** SEIAA, in its 870th meeting, agreed with the recommendation of the SEAC-1, to send the complaint letter dated 21.10.2024 of Shri Amir Hasanain to UPPCB to provide the factual report on the issues raised in the complaint letter. *(Annexure A/15, Pg 83-85 of Appeal)*
- **06.02.2025-** SEIAA in its 871st meeting decided to cancel the Environment Clearance dated 17.03.2021 granted to the Appellant due to non-receipt of the reply to the Show Cause Notices. *(Annexure A/16, Pg 86-88 of Appeal)*
- **07.03.2025-** Formally the decision of the SEIAA taken in its 871st meeting was communicated to the Appellant herein. *(Annexure A/1, Pg 29 of Appeal)*
- ***07.03.2025-*** On the same day another letter was sent to UPPCB requesting to submit a factual report on the contents of the Complaint letter of the Amir Hasanain in furtherance of observation of SEIAA in 870th meeting. *(Annexure A/2, Pg 30-32 of Appeal)*

Thus, it is humbly submitted that only the factual report on the Complaint Letter of Applicant was directed to be submitted to the Ld. SEIAA and the decision to cancel the EC of the Appellant was independent of any Complaint and was only issued because of non-receipt of the reply to the Show Cause Notices. Therefore, the Applicant is making false submissions only to waste the precious time of this Hon'ble Tribunal. So, only on this ground alone his Application may not be allowed and dismissed with a heavy cost.

14. That the Interlocutory Application seeks to re visit the issues already raised in the Original Application No. 528 of 2024 in the case titled "Farukkh Chouhan vs. SEIAA, UP & Ors." which was disposed of vide Order dated 07.05.2025.

15. That the Interlocutory Application contains a detailed narration of the alleged violations and factual assertions drawn from the Joint Committee Report, which has no relevance today as the proceedings under the Original Application No. 528 of 2024 has come to a close and no issues survives there. The Applicant has annexed the documents that are either part of record of the Original Application or were before SEIAA, U.P. while passing the impugned order. Further the Applicant has not placed any new or independent material on record necessitating its impleadment.

16. That the Applicant places his reliance on the Joint Committee Report dated 06.08.2024 filed in the Original Application No. 528 of 2024 which was prepared in compliance of this Hon'ble Tribunal's Order dated 13.05.2024 to which objections has also been filed by the Appellant herein and in any case does not survive for consideration at this stage. The observations of the Joint Committee Report were recommendatory in nature and were not final findings of the case, therefore the Applicant cannot seek to elevate Joint Committee Report dated 06.08.2024 as a final and conclusive evidence in the present Appellate jurisdiction.

17. That the notices dated 28.02.2023 and 07.12.2024 by the District Magistrate, Shamli, pertain to the royalty dues and compliance under the mining lease conditions. Both the notices are issued under the U.P. Minor Minerals (Concession) Rules, 2021 and have no bearing on the validity of the Environment Clearance (EC) or the issues under the said Appeal. Further, the Appellant has duly responded to the said notices issued by the Mining Department and no coercive proceedings have been initiated against the Appellant for the same. What is not clear is how such notices which are one to one correspondence between contesting parties, has reached the present Applicant and under what circumstance such documents have been leaked by

the authorities. This fact itself is ground to dismiss this Application with huge costs and this Hon'ble Tribunal may Order accordingly.

18. That the complaint made by the Applicant is a private representation addressed to the SEIAA, U.P. and it does not confer any procedural or substantive right to intervene in the proceedings.

19. That it is also pertinent to mention here that the Applicant has also annexed a number of documents which are related to the Appellant without disclosing the fact that how he has obtained these documents. That alone itself raises a serious doubt on the locus of the Applicant and he certainly does not qualify to be an aggrieved person under Section 18 of the NGT Act, 2010. Further, the Applicant resides in another district namely Bijnor in Uttar Pradesh and has no relevance to the present case and is into an aggrieved person as understood by the NGT Act, 2010.

PARA WISE REPLY:

20. That the contents of para 1 are denied as false and without any merit. The Appellant herein has no knowledge about the representation sent by the Applicant to the concerned authorities for cancellation of mining leases, further, the Applicant has not annexed any such document to prove the same. It is also pertinent to mention here that the Applicant herein is trying to make out a case for him by submitting false facts before this Hon'ble Tribunal. The Applicant has previously filed two similar IA. No. 54 of 2025 and 55 of 2025 in the OA No. 528 of 2024 titled "Farukh Chouhan vs. SEIAA, U.P." on 23.01.2025 and the said IAs were neither argued nor allowed by this Hon'ble Tribunal, thus it is a blatant lie to say that the Applicant is the party in OA No. 528 of 2024, which in any case has been disposed of and it does not survive today. That it is also humbly submitted that the issue in Appeal and OA No. 528 of 2024 have no connection with each other. In the present Appeal, Appellant has challenged the Order dated 07.03.2025 for cancellation of EC before this Hon'ble Tribunal

under Section 16 of the NGT, Act, 2010 which is the Statutory remedy available under the Act to the Appellant herein.

21. That the contents of para 2 to the extent it is related to the cause of action for filing the present Appeal are accepted and rest of the contents are denied as false and without any merit. The Hon'ble Supreme Court in catena of judgements has deprecated the practice of making decisions only on the basis of findings of the Joint Committee Report such as *"Grasim Industries Limited vs. The State of Madhya Pradesh and Another 2024 INSC 926"*. Further, the Appellant herein has filed his objections to the Joint Committee Report in OA No. 528 of 2024 but before some decision was made on the findings of Joint Committee after considering the Objections, the OA was disposed of due to the cancellation of EC pending the adjudication of the OA. A true copy of judgement in *"Grasim Industries Limited vs. The State of Madhya Pradesh and Another 2024 INSC 926"* is marked and annexed as **ANNEXURE A/6.**

22. That the contents of para 3 are a matter of record of OA No. 528 of 2024 and thus merit no response. Further, the said OA No. 528 of 2024 has already been disposed of by Order dated 07.05.2025 and the Applicant by again placing reliance on pleadings of disposed of OA is wasting the precious time of this Hon'ble Tribunal without submitting any independent cause of action for preferring the present IA.

23. That the contents of para 4 are a matter of record of OA No. 528 of 2024 and thus merit no response. However, it is important to submit here that the Appellant has filed his objections to the Joint Committee Report in OA No. 528 of 2024 but before some decision was made on the findings of Joint Committee after considering the objections, the OA was disposed of due to the cancellation of EC pending the adjudication of the OA.

24. That the contents of para 5 are a matter of record of OA No. 528 of 2024 and thus merit no response. The Hon'ble Tribunal has stayed the operation of

mining in the said area vide Order dated 27.01.2025(*Annexure A/14, Pg 78-82 of the Appeal)* with a liberty to the Appellant herein to file its objections to the Joint Committee Report. The Appellant has filed his objections to the Joint Committee Report in OA No. 528 of 2024 but before some decision was made on the findings of Joint Committee after considering the objections, the OA was disposed of due to the cancellation of EC pending the adjudication of the OA.

25. That the contents of para 6 are denied as false and without any merit. It is humbly submitted that this Hon'ble Tribunal in its Order dated 07.05.2025 passed in OA No. 528 of 2024 has categorically recorded the submissions of the Counsels for UPPCB regarding the imposition of Environmental Compensation and issuance of Recovery Certificate (RC) for the recovery of the same. Thus, in view of these facts, filing of an Interlocutory Application in a statutory Appeal containing the same facts which has already been looked upon by this Hon'ble Tribunal is nothing but a wastage of precious time of this Hon'ble Tribunal and is only aimed to prolonging the case at hand, for extraneous reasons.

26. That the contents of para 7 to the extent which are a matter of record merit no response. It is humbly submitted that this Hon'ble Tribunal was already apprised of these notices by the State Counsel and after recording their submissions the OA No. 528 of 2024 was disposed of vide order dated 07.05.2025. Further, both the notices are issued under the U.P. Minor Minerals (Concession) Rules, 2021 and have no bearing on the validity of the Environment Clearance (EC) or the issues under the said Appeal. Further, the Appellant has duly responded to the said notices issued by the Mining Department and no coercive proceedings have been initiated against the Appellant for the same. What is not clear is how such notices which are one to one correspondence between contesting parties, has reached the present Applicant and under what circumstance such documents have been leaked by

the authorities. This fact itself is ground to dismiss this Application with huge costs and this Hon'ble Tribunal may Order accordingly.

27. That the contents of para 8 are denied as false and without any merit. It is a blatant lie to say that upon taking cognizance of the Complaint letter dated 21.12.2024 the EC was cancelled vide Order dated 07.03.2025. Further, it raises a doubt on credentials of the Applicant herein because Complaint dated 21.12.2024 was filed by the Applicant with a prayer to quash the EC because of non-receipt of response to the Show cause Notice dated 25.11.2024. This raises two pertinent questions first how the Applicant was in knowledge of the Show Cause Notice dated 25.11.2024 because it is not a public document and second why the Applicant is concerned of the proceedings between the SEIAA and the Appellant which are inter se between two parties. No RTI Application has been submitted herein. This is clearly something more than meets the eye and this Hon'ble Tribunal may exercise its diligence in accordance with *Uday Education and Welfare Trust & Anr. (C.A. No. 2407-2412 of 2021)* as provided in the SC judgment dated 21.10.2022 Further the contents of para 7 to 13 may be read as an Additional Response to the contents of para 8.

28. That the contents of para 9 are denied as false and without any merit. The Applicant has distorted the contents of the Order dated 07.05.2025 *(Annexure A/18, Pg 98-100 of Appeal)* passed by this Hon'ble Tribunal in OA No. 528 of 2024. This Hon'ble Tribunal has only recorded the submissions of the respective Counsels without recording any observations about the Appellant herein or any adjudication in this regard. Thus, the distortion of the contents of Order of this Hon'ble Tribunal is within the category of perjury.

29. That the contents of para 10 to the extent which are a matter of record merit no response. It is humbly submitted that this Hon'ble Tribunal was already apprised of these notices by the State Counsel and after recording their submissions the OA No. 528 of 2024 was disposed of vide order dated

07.05.2025. Further, both the notices are issued under the U.P. Minor Minerals (Concession) Rules, 2021 and have no bearing on the validity of the Environment Clearance (EC) or the issues under the said Appeal. Further, the Appellant has duly responded to the said notices issued by the Mining Department and no coercive proceedings have been initiated against the Appellant for the same. What is surprising however is how such documents have travelled to the present Applicant which are privileged communications between the Appellant and the competent authorities. Clearly, the credentials of the Applicant have to be examined by this Hon'ble Tribunal.

30. That the contents of para 11 are denied as false and without any merit. As submitted above, the Applicant was not a party in the OA No. 528 of 2024 and it is for him to answer some relevant questions regarding how he has obtained documents which are private in nature, his locus, why he is an aggrieved person among others.

31. That the contents of para 12 merit no response.

32. That the contents of para 13 are denied as false and without any merit. The above-mentioned submissions may be read as a response to the contents of this Para.

33. That the contents of Prayer clause are objected and it is humbly submitted that in view of the contents of this reply the present IA may be disposed of with cost.

Date:14.10.2025
Place: New Delhi

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IN THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. NO. OF 2025

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APPEAL NO 39 OF 2025

IN THE MATTER OF:

M/S P.C. Gupta & Company ...Appellant

-Versus-

State Level Environment Impact Assessment

Authority Uttar Pradesh & Ors .....Respondent (s)

AFFIDAVIT

I, Prem Chand Gupta S/o Shri Chiranji Lal Gupta aged about 67 R/o D-2, 2116, Vasant Kunj, New Delhi-110070, do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Reply are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Reply are true and correct to the best of my knowledge.

NOTARY GOVT. OF INDIA Name-Joginder Singh Area - Gurugram Regd. No.- 16763

For PC GUPTA & CO.

Proprietor

DEPONENT

VERIFICATION:

Verified at New Delhi on this.....day of....., 2025 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

ATTESTED
JOGINDER SINGH
ADVOCATE & NOTARY
DISTT. GURUGRAM (HR.)
M. 9810778999

13 OCT 2025

For PC GUPTA & CO.

Proprietor

DEPONENT

ANNEXURE A/1

(2010) 7 Supreme Court Cases 417

(BEFORE R.V. RAVEENDRAN AND K.S. RADHAKRISHNAN, JJ.)

MUMBAI INTERNATIONAL AIRPORT PRIVATE LIMITED . . Appellant;

Versus

REGENCY CONVENTION CENTRE AND HOTELS PRIVATE LIMITED AND OTHERS . . Respondents.

Civil Appeal No. 4900 of 2010†, decided on July 6, 2010

A. **Civil Procedure Code, 1908 — Or. 1 R. 10(2) — Discretion of court to add parties — Nature and scope of, and mode of exercise — Or. 1 R. 10(2), held, is an exception to general rule in regard to impleadment of parties that plaintiff may choose defendants and he cannot be compelled to sue a person against whom he seeks no relief**

— Discretion of court to add a person as party, held, is limited to persons found to be necessary party or proper party — Moreover, such discretion is judicial discretion and has to be exercised according to reason and fair play and not according to whims and caprice — Expressions "necessary party" and "proper party" explained

— Further held, mere likelihood of a third party to secure a right/interest in suit property in case of dismissal of specific performance suit does not make such party a necessary or proper party to that suit — Hence, application of such party for impleadment therein as additional defendant, rightly dismissed by High Court — Infrastructure Laws — Aircraft and Airports — Airports Authority of India Act, 1994 — Ss. 12 and 12-A — Scope of assignment under S. 12 — Specific Relief Act, 1963 — S. 10 — Suit for specific performance — Necessary and proper parties to

B. **Property Law — Ownership and Title — Mere expectation as to or likelihood of conveyance of title, however well-founded, does not create any interest in the property — Transfer of Property Act, 1882, S. 5**

Acting under Section 12-A of the Airports Authority of India Act, 1994 (the Act), the Airport Authority of India (AAI), by an agreement, handed over the Mumbai Airport to the appellant for operation, maintenance, development and expansion into a world class airport. Pursuant thereto, AAI leased the Mumbai Airport to the appellant. The lease deed, while demising all the land and assets thereon, carved out a parcel of land measuring 31,000 sq m. That parcel was the subject-matter of a suit for specific performance filed before the High Court by the respondent herein against AAI, and the said Court had, by an interim order, prohibited any transfer thereof without leave of the Court. The lease deed added that the said parcel might become part of the demised premises subject to the Court verdict.

The appellant filed an application seeking impleadment as an additional defendant in the said suit. The plea raised therein was that in view of the appellant's object to make the Airport a world class airport, the appellant's

† Arising out of SLP (C) No. 2085 of 2009. From the Judgment and Order dated 25-8-2008 of the High Court of Judicature of Bombay in Appeal No. 273 of 2008 in Chamber Summons No. 170 of 2008 in Suit No. 6864 of 1999

interest was likely to be directly affected if any relief was granted to the plaintiff i.e. the respondent herein. The said application was resisted by both, the plaintiff and AAI. A Single Judge of the High Court dismissed that application. That decision was upheld by a Division Bench on the ground that the appellant was not a necessary party in that suit. The present appeal was then preferred thereagainst by special leave.

The question before the Supreme Court was whether the appellant was a necessary or proper party to the suit in question.

Dismissing the appeal, the Supreme Court

Held :

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But that general rule is subject to the provisions of Order 1 Rule 10(2) CPC by which the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. (Paras 13 to 15)

A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance. (Para 15)

Kasturi v. *Iyyamperumal*, (2005) 6 SCC 733, *followed*

Sumtibai v. *Paras Finance Co.*, (2007) 10 SCC 82, *explained*

Ramesh Hirachand Kundanmal v. *Municipal Corpn. of Greater Bombay*, (1992) 2 SCC 524; *Anil Kumar Singh* v. *Shivnath Mishra*, (1995) 3 SCC 147, *referred to*

Rule 10(2) CPC is not about the *right* of a non-party to be impleaded as a party, but about the *judicial discretion* of the court to strike out or add parties at any stage of a proceeding. In exercising its judicial discretion under the said rule, the court will of course act according to reason and fair play and not according to whims and caprice. (Para 22)

Ramji Dayawala & Sons (P) Ltd. v. *Invest Import*, (1981) 1 SCC 80, *followed*

R. v. *Wilkes*, (1770) 4 Burr 2527 : 98 ER 327 : (1558-1774) All ER Rep 570, *cited*

The court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party. (Para 25)

On the facts of the present case, it is held that the appellant is neither a necessary party nor a proper party. The appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The respondent-plaintiff in the suit has not sought any relief against the appellant.

The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute. (Para 27)

Sumtibai v. *Paras Finance Co.*, (2007) 10 SCC 82, *distinguished on facts*

The contention of the appellant that in view of Section 12-A of the Act when AAI granted a lease of the premises of an airport, to carry out any of its functions enumerated in Section 12 thereof, the appellant lessee should be deemed to have stepped into the shoes of AAI in respect of the airport premises, has no basis. What was assigned were the functions of operation, management and development agreement *with reference to the area that had been demised.* Obviously the appellant as lessee of the Airport cannot step into the shoes of AAI for performance of any functions with reference to an area which had not been demised or leased to it. (Para 28)

The fact that if AAI succeeded in the suit, the suit land might also be leased to the appellant is not sufficient to hold that the appellant has any right, interest or a semblance of right or interest in the suit property. When the appellant is neither claiming any right or remedy against the respondent and when the respondent is not claiming any right or remedy against the appellant, in a suit for specific performance by the respondent against AAI, the appellant cannot be a party. The allegations that the land was crucial for a premier airport or in public interest, are not relevant to the issue. (Para 29)

C. **Civil Procedure Code, 1908 — Or. 1 R. 10(2) — Discretion of court to strike out or add parties — Mode of exercise of — Specific illustrations given (Para 24)**

H-D/46440/CV

Advocates who appeared in this case :

Dr. A.M. Singhvi and Harish N. Salve, Senior Advocates [Amar Dave, Ashish Jha and Ms Meenakshi Chatterjee (for M/s "Coac"), Advocates] for the Appellant;

Mukul Rohatgi, Senior Advocate [S.V. Mehta, Bhargava V. Desai, Rahul Gupta, Nikhil Sharma, E.C. Agrawala, Mahesh Agarwal, Rishi Agrawala, Gaurav Goel, Praveen Jain, Mukesh Kumar and Ms Padma Priya (for M/s M.V. Kini & Associates), Advocates] for the Respondents.

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

1. (2007) 10 SCC 82, *Sumtibai* v. *Paras Finance Co.* 423*e-f*, 424*b-c*, 424*g*, 424*h*, 426*g-h*, 426*h*
2. (2005) 6 SCC 733, *Kasturi* v. *Iyyamperumal* 423*f-g*, 424*b-c*, 424*d-e*, 424*f-g*, 424*g*, 426*g-h*, 427*a*
3. (1995) 3 SCC 147, *Anil Kumar Singh* v. *Shivnath Mishra* 425*b*
4. (1992) 2 SCC 524, *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay* 425*a-b*
5. (1981) 1 SCC 80, *Ramji Dayawala & Sons (P) Ltd.* v. *Invest Import* 425*d-e*
6. (1770) 4 Burr 2527 : 98 ER 327 : (1558-1774) All ER Rep 570, *R.* v. *Wilkes* 425*d-e*

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. Heard the learned counsel.

2. The Airport Authority of India (the second respondent herein, "AAI", for short) was established under the Airports Authority of India Act, 1994 ("the Act", for short) to be responsible for the development, operation and maintenance of airports in India. The Government of India took a policy decision to amend the Act by Amendment Act 43 of 2003 enabling AAI to lease the airport premises to private operators with prior approval of the Central Government and assign its functions to its lessees except air traffic services and watch and ward.

3. In pursuance of the policy of the Government in this behalf, AAI decided to entrust the work of modernisation and upgradation of the Mumbai Airport to a private operator, to serve the sharply increasing volume of passengers and for better utilisation of the Airport. AAI initiated a competitive bidding process in that behalf. In the information memorandum that was issued to the prospective bidders it was represented that the entire airport premises will be included in the transaction including all encroached land but excluding only the following areas: (*i*) New ATC tower; (*ii*) AAI staff colony; (*iii*) Hotel Leela Venture; and (*iv*) All retail fuel outlets outside the airport operational boundary.

4. Pursuant to the competitive bidding process, the Chhatrapati Shivaji International Airport, Mumbai was handed over to the appellant for operation, maintenance, development and expansion into a world class airport under an agreement dated 4-4-2006. In pursuance of it, AAI entered into a lease deed dated 26-4-2006 leasing the Mumbai Airport to the appellant on "as is where is" basis for a period of 30 years. The subject-matter of the lease was described as "all the land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in Schedule I hereto, other than (*i*) any lands (along with any buildings, constructions or immovable assets, if any, thereon) granted to any third party under any existing lease(s), constituting the Airport on the date hereof; and (*ii*) any and all of the carved out assets".

5. Schedule I to the lease deed, instead of giving a detailed description of the demised property, referred to the map demarcating the demised premises annexed to the lease deed by way of description of the demised premises. The map annexed as Schedule I was the "plan showing the demised premises, indicating carved out assets and lands vested with IAF and Navy". The carved out assets were:

(*1*) new ATC tower;

(*2*) & (*2-A*) the NAD staff colony of AAI;

(*3*) land leased to Hotel Leela Venture;

(*4*) all retail fuel outlets which were outside the airport operational boundary; and

(*5*) convention centre.

The map also contains a note below the list of carved out assets, reading as under:

> "A: The parcel of land measuring 31,000 sq m is currently not made a part of the lease deed but may become part of the demised premises subject to the court verdict."

6. According to the appellant the said parcel measuring 31,000 sq m was also part of the Airport that was to be handed over by AAI to the appellant but it could not be included in view of a pending case (Suit No. 6846 of 1999 on the file of the Bombay High Court) filed by the first respondent wherein the High Court had made an interim order dated 2-5-2001, relevant portion of which is extracted below:

> "The defendant Airport Authority should also separately demarcate an area of 31,000 sq m for which the plaintiff is making a claim in this suit. After the land is so demarcated, a copy of the plan would be handed over to the plaintiff through their advocate. The learned counsel further states that *the land admeasuring 31,000 sq m, which would be separately demarcated will not be alienated, sold and transferred and no third-party interest in that land would be created by the defendant Airport Authority without seeking leave of this Court*. He further states that Defendant 1 would use the 31,000 sq m of land only for its own purpose as far as possible without raising any permanent construction on that land, and if it becomes necessary for Defendant 1 to raise any permanent construction on that land, the work of construction would not be started without giving two weeks' notice to the plaintiff, after the building plan is finally sanctioned by the Planning Authority." (emphasis supplied)

7. In pursuance of the lease of the Airport in its favour, the appellant claims to have undertaken several developmental activities to make it a world class airport. The appellant alleges that it was expecting that the litigation initiated by the first respondent would end and it would be able to get the said 31,000 sq m land also as it was in dire need of land for developing the Airport. According to the appellant, the Mumbai Airport is surrounded by developed (constructed) areas with very limited opportunities to acquire any land and the site constraints limit the possibilities for development and therefore it was necessary to make optimum use of the existing land in the Airport for the purpose of modernisation and upgradation; and therefore, the disputed land which was lying idle, was required for modernisation. It therefore filed an application seeking impleadment as an additional defendant in the pending suit filed by the first respondent against AAI, contending that its interest was likely to be directly affected if any relief is granted to the first respondent-plaintiff in the suit.

8. The appellant alleged that the information memorandum proposing to privatise the management did not exclude the area which was the subject-matter of the suit; and that the suit plot could not however be leased to the appellant in view of the interim order in the pending suit of the first

respondent. The appellant therefore claimed that it had, or would have, an interest in the suit land; and at all events, it was interested in acquiring it by lease depending upon the decision in the suit and therefore it was a necessary party and in any event a proper party.

9. The said application was resisted by the first respondent inter alia on the ground that the appellant did not have any interest in the suit property and therefore the appellant was neither a necessary party nor a proper party to the suit. It was also contended that AAI itself being a substantial shareholder, having 26% share in the appellant Company, would protect the interest of the appellant by contesting the suit and therefore the appellant was not a necessary party. AAI has also filed a response to the appellant's application for impleadment raising two contentions: (*i*) any impleadment at that stage of the suit would delay the recording of evidence and final hearing thereby seriously affecting the interests of AAI; and (*ii*) the suit plot measuring 31,000 sq m was not leased to the appellant.

10. A learned Single Judge dismissed the appellant's application by an order dated 1-4-2008. The learned Single Judge was of the view that as the appellant was yet to acquire any interest in the suit land and as the pending suit by the first respondent was for specific performance of an agreement which was a distinct earlier transaction between the first respondent and AAI to which the appellant was not a party, and as the first respondent was not a party to the arrangement between AAI and the appellant, the Court cannot permit impleadment of the appellant with reference to some future right which may accrue in future, after the decision in the suit.

11. The appeal filed by the appellant was also dismissed by a Division Bench by an order dated 25-8-2008. The Division Bench held that the appellant did not make out that he was a necessary party and the application merely disclosed that he was only claiming to be a proper party; that the appellant's claim was not based on a present demise but a future expectation based on *spes successionis*; and that therefore, the impleadment of the appellant either as a necessary party or proper party or formal party was not warranted.

12. The said order is challenged in this appeal by special leave. The question for consideration is whether the appellant is a necessary or proper party to the suit for specific performance filed by the first respondent.

13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper or necessary parties. The said sub-rule is extracted below:

> "10. (2) *Court may strike out or add parties.*—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be

struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (*a*) any person who ought to have been joined as plaintiff or defendant, but not added; or (*b*) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

16. The learned counsel for the appellants relied upon the following observations of a two-Judge Bench of this Court in *Sumtibai* v. *Paras Finance Co.*[1] to contend that a person need not have any subsisting right or interest in the suit property for being impleaded as a defendant, and that even a person who is likely to acquire an interest therein in future, in appropriate cases, is entitled to be impleaded as a party: (SCC pp. 85 & 87, paras 9 & 14)

> "*9.* Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi* v. *Iyyamperumal*[2]. He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance *if he has no semblance of title in the property in dispute*. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However,

1 (2007) 10 SCC 82
2 (2005) 6 SCC 733

the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute. ...

* * *

14. ... it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by *A* against *B*, a third party *C* can never be impleaded in that suit. ... if *C* can show a fair semblance of title or interest he can certainly file an application for impleadment." (emphasis in original)

17. The learned counsel for the first respondent on the other hand submitted that the decision in *Sumtibai*[1] is not good law in view of an earlier decision of a three-Judge Bench decision of this Court in *Kasturi* v. *Iyyamperumal*[2].

18. In *Kasturi*[2] this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

19. Referring to suits for specific performance, this Court in *Kasturi*[2], held that the following persons are to be considered as necessary parties: (*i*) the parties to the contract which is sought to be enforced or their legal representatives; (*ii*) a transferee of the property which is the subject-matter of the contract. This Court also explained that a person who has a direct interest in the subject-matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant vendor will not be a necessary party.

20. The first respondent contended that *Kasturi*[2] held that a person claiming a title adverse to the title of defendant vendor, could not be impleaded, but the effect of *Sumtibai*[1] would be that such a person could be impleaded; and that therefore, the decision in *Sumtibai*[1] is contrary to the larger Bench decision in *Kasturi*[2].

21. On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1. This is made clear in *Sumtibai*[1] itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and

that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay*[3] and *Anil Kumar Singh* v. *Shivnath Mishra*[4] also explain in what circumstances persons may be added as parties.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the *right* of a non-party to be impleaded as a party, but about the *judicial discretion* of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

23. This Court in *Ramji Dayawala & Sons (P) Ltd.* v. *Invest Import*[5] reiterated in SCC p. 96, para 20 the classic definition of "discretion" by Lord Mansfield in *R.* v. *Wilkes*[6] (ER p. 334) that "discretion"

> "when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague, and fanciful; but legal and regular."

24. We may now give some illustrations regarding exercise of discretion under the said sub-rule.

24.1 If a plaintiff makes an application for impleading a person as a defendant on the ground that he is a necessary party, the court may implead him having regard to the provisions of Rules 9 and 10(2) of Order 1. If the claim against such a person is barred by limitation, it may refuse to add him as a party and even dismiss the suit for non-joinder of a necessary party.

24.2 If the owner of a tenanted property enters into an agreement for sale of such property without physical possession, in a suit for specific performance by the purchaser, the tenant would not be a necessary party. But if the suit for specific performance is filed with an additional prayer for delivery of physical possession from the tenant in possession, then the tenant will be a necessary party insofar as the prayer for actual possession.

3 (1992) 2 SCC 524
4 (1995) 3 SCC 147
5 (1981) 1 SCC 80
6 (1770) 4 Burr 2527 : 98 ER 327 : (1558-1774) All ER Rep 570

24.3 If a person makes an application for being impleaded contending that he is a necessary party, and if the court finds that he is a necessary party, it can implead him. If the plaintiff opposes such impleadment, then instead of impleading such a party, who is found to be a necessary party, the court may proceed to dismiss the suit by holding that the applicant was a necessary party and in his absence the plaintiff was not entitled to any relief in the suit.

24.4 If an application is made by a plaintiff for impleading someone as a proper party, subject to limitation, bona fides, etc., the court will normally implead him, if he is found to be a proper party. On the other hand, if a non-party makes an application seeking impleadment as a proper party and the court finds him to be a proper party, the court may direct his addition as a defendant; but if the court finds that his addition will alter the nature of the suit or introduce a new cause of action, it may dismiss the application even if he is found to be a proper party, if it does not want to widen the scope of the specific performance suit; or the court may direct such applicant to be impleaded as a proper party, either unconditionally or subject to terms. For example, if *D* claiming to be a co-owner of a suit property, enters into an agreement for sale of his share in favour of *P* representing that he is the co-owner with half-share, and *P* files a suit for specific performance of the said agreement of sale in respect of the undivided half-share, the court may permit the other co-owner who contends that *D* has only one-fourth share, to be impleaded as an additional defendant as a proper party, and may examine the issue whether the plaintiff is entitled to specific performance of the agreement in respect of half a share or only one-fourth share; alternatively the court may refuse to implead the other co-owner and leave open the question in regard to the extent of share of the defendant vendor to be decided in an independent proceeding by the other co-owner, or the plaintiff; alternatively the court may implead him but subject to the term that the dispute, if any, between the impleaded co-owner and the original defendant in regard to the extent of the share will not be the subject-matter of the suit for specific performance, and that it will decide in the suit only the issues relating to specific performance, that is, whether the defendant executed the agreement/contract and whether such contract should be specifically enforced.

25. In other words, the court has the discretion to either to allow or reject an application of a person claiming to be a proper party, depending upon the facts and circumstances and no person has a right to insist that he should be impleaded as a party, merely because he is a proper party.

26. If the principles relating to impleadment are kept in view, then the purported divergence in the two decisions will be found to be non-existent. The observations in *Kasturi*[2] and *Sumtibai*[1] are with reference to the facts and circumstances of the respective cases. In *Kasturi*[2] this Court held that in suits for specific performance, only the parties to the contract or any legal representative of a party to the contract, or a transferee from a party to the contract are necessary parties. In *Sumtibai*[1] this Court held that a person having semblance of a title can be considered as a proper party. *Sumtibai*[1] did

not lay down any proposition that anyone claiming to have any semblance of title is a necessary party. Nor did *Kasturi*[2] lay down that no one, other than the parties to the contract and their legal representatives/transferees, can be impleaded even as a proper party.

27. On a careful examination of the facts of this case, we find that the appellant is neither a necessary party nor a proper party. As noticed above, the appellant is neither a purchaser nor the lessee of the suit property and has no right, title or interest therein. The first respondent-plaintiff in the suit has not sought any relief against the appellant. The presence of the appellant is not necessary for passing an effective decree in the suit for specific performance. Nor is its presence necessary for complete and effective adjudication of the matters in issue in the suit for specific performance filed by the first respondent-plaintiff against AAI. A person who expects to get a lease from the defendant in a suit for specific performance in the event of the suit being dismissed, cannot be said to be a person having some semblance of title in the property in dispute.

28. The learned counsel for the appellants contended that in view of Section 12-A of the Act when AAI granted a lease of the premises of an airport, to carry out any of its functions enumerated in Section 12 of the said Act, the lessee who has been so assigned any function of AAI, shall have the powers of AAI, necessary for the performance of such functions in terms of the lease. The learned counsel for the appellant submitted that in view of this provision, it should be deemed that the appellant has stepped into the shoes of AAI so far as the Airport premises are concerned. This contention has no merit. The appellant as lessee may certainly have the powers of AAI necessary for performance of the functions that have been assigned to them. What has been assigned are the functions of operation, management and development agreement *with reference to the area that has been demised*. Obviously the appellant as lessee of the Airport cannot step into the shoes of AAI for performance of any functions with reference to an area which has not been demised or leased to it.

29. The learned counsel for the appellant contended that Mumbai Airport being one of the premier airports in India with a very high and ever increasing passenger traffic, needs to modernise and develop every inch of the airport land; that the suit land was a part of the airport land and that but for the pendency of the first respondent's suit within an interim order, AAI would have included the suit land also in the lease in its favour. It was submitted that therefore a note was made in the lease that the land measuring 31,000 sq m was not being made a part of the lease but may become part of the demised premises subject to the court verdict. This does not in any way help the appellant to claim a right to be impleaded. If the interim order in the suit filed by the first respondent came in the way of granting the lease of the suit land, it is clear that the suit land was not leased to the appellant. The fact that if AAI succeeded in the suit, the suit land may also be leased to the appellant is not sufficient to hold that the appellant has any right, interest or a semblance

of right or interest in the suit property. When the appellant is neither claiming any right or remedy against the first respondent and when the first respondent is not claiming any right or remedy against the appellant, in a suit for specific performance by the first respondent against AAI, the appellant cannot be a party. The allegations that the land is crucial for a premier airport or in public interest, are not relevant to the issue.

30. In the result, the appeal is dismissed.

(2010) 7 Supreme Court Cases 428

(BEFORE D.K. JAIN AND T.S. THAKUR, JJ.)

K.K. RAMACHANDRAN MASTER . . Appellant;

Versus

M.V. SREYAMAKUMAR AND OTHERS . . Respondents.

Civil Appeal No. 638 of 2007†, decided on July 6, 2010

A. **Election — Election petition — Material facts and full particulars — Presence of material facts and sufficient particulars but absence of *full* particulars — Effect — Rectification of deficiency in particulars — Permissibility — Allegations of various corrupt practices — Reiterated, petition that does not disclose material facts can be dismissed on ground that it does not disclose cause of action — However, dismissal on ground of deficiency or non-disclosure of particulars of corrupt practice may be justified only if election petitioner does not, despite an opportunity given by the court, provide particulars and thereby cure the defect — Held, averments made in election petition sufficiently disclose cause of action — Averments set out material facts and gave sufficient particulars that would justify grant of opportunity to appellant election petitioner to prove his allegations — So long as material facts are stated, absence of particulars, if any, cannot justify dismissal of petition — Deficiency in particulars could and ought to have been rectified by directing petitioner to disclose and provide the same with a view to preventing any miscarriage of justice on account of non-disclosure of same — Hence election petition restored and remanded for decision afresh — Representation of the People Act, 1951 — Ss. 123(4), (5) & (6) and S. 83 — Conduct of Elections Rules, 1961, Rr. 86 and 90 (Paras 6 to 11 and 16 to 36)**

Samant N. Balkrishna v. *George Fernandez*, (1969) 3 SCC 238; *Raj Narain* v. *Indira Nehru Gandhi*, (1972) 3 SCC 850; *H.D. Revanna* v. *G. Puttaswamy Gowda*, (1999) 2 SCC 217; *V.S. Achuthanandan* v. *P.J. Francis*, (1999) 3 SCC 737; *Mahendra Pal* v. *Ram Dass Malanger*, (2000) 1 SCC 261; *Sardar Harcharan Singh Brar* v. *Sukh Darshan Singh*, (2004) 11 SCC 196; *Umesh Challiyill* v. *K.P. Rajendran*, (2008) 11 SCC 740, *relied on*

B. **Election — Election petition — Material facts and full particulars — Distinction between material facts and particulars — Material facts are primary and basic facts which must be pleaded by plaintiff, while particulars are details in support of such material facts — Particulars ensure conduct of fair trial so that opposite party is not taken by surprise (Para 12)**

† From the Judgment and Order dated 3-1-2007 of the High Court of Kerala at Ernakulam in Election Petition No. 8 of 2006

ANNEXURE A/2

(2016) 2 Supreme Court Cases 779 : (2016) 2 Supreme Court Cases (Civ) 297 : 2015 SCC OnLine SC 1077

In the Supreme Court of India

(BEFORE DIPAK MISRA AND R. BANUMATHI, JJ.)

POONAM . . Appellant;

Versus

STATE OF UTTAR PRADESH AND OTHERS . . Respondents.

Civil Appeal No. 6774 of 2015[†], decided on October 29, 2015

A. **Constitution of India — Art. 226 — Locus standi/Standing — Necessary party — Test to determine — Right to intervene in proceedings initiated by/against another — When available — Whether order sought by a person in a proceeding would result in curtailment of any independent right of any third person viz. writ petitioner, seeking impleadment — No order can be passed behind the back of a person adversely affecting him — Necessity of impleading necessary party is based on principles of natural justice — Principles applicable to writ proceedings also**

— In appeal against cancellation of allotment of fair price shop by original allottee, writ petitioner's prayer for her impleadment as necessary party in the said appeal based on fortuitous circumstance of subsequent allotment thereof in her favour in place of original allottee, cannot be allowed — Writ petitioner had no independent right in the proceedings as she had obtained allotment of shop because of vacancy which had occurred due to cancellation of allotment although her allotment was under visually impaired quota — On the other hand, original allottee was entitled to prosecute his cause of action to restore his independent legal right of allotment — Thus subsequent allottee (writ petitioner) was neither necessary nor proper party and had no right or locus to be impleaded in the said appeal and/or challenge order passed in favour of original allottee — Civil Procedure Code, 1908 — Or. 1 R. 9 — Administrative Law — Natural Justice — Audi Alteram Partem — Right to Hearing — Generally — Meaning, Nature, Scope and Applicability — To be determined having regard to effect and impact of the order and person who claims to be affected — "Entitled to defend" — Meaning — Practice and Procedure — Parties — Necessary party

B. **Property Law — Easements Act, 1882 — S. 52 — Licence — Privity of contract — Cancellation of licence successfully challenged by licensee and cancellation set aside — Locus standi to challenge setting aside of cancellation, held, extends only to licensor and not to a third party (who had subsequently been allotted the licence on its cancellation) — Position**

contrasted with when property rights are acquired — Contract and Specific Relief — Contractual Obligations and Rights — Privity and Third Parties' Obligations and Rights — Generally — Difference between having contractual right and property right — Exigibility/Enforceability against third persons — Specific Relief Act, 1963, S. 38(2) or S. 38(3)

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In the village in question two fair price shops were in existence. One was allotted to *A* and the other one to *B*, (R-5) with licence to run fair price shops. On the basis of complaint made against *A*, the Sub-Divisional Magistrate ordered an inquiry and after obtaining report, suspended his licence, called for his explanation and thereafter, attached the shop to the shop run by *B*. On the basis of the report placed before the Deputy District Magistrate, which reflected improper distribution of essential commodities in violation of instructions, the competent authority by order dated 23-7-2008 cancelled the allotment and licence of *A*. An appeal was preferred by *A* before the Commissioner against the order of cancellation. In the appeal, the present appellant got herself impleaded on the ground that she had been allotted the shop under visually handicapped quota (as per Government's Letter Circular dated 12-8-2008) after cancellation of the allotment and licence granted to *A*. The appellate authority, after hearing *A* and the impleaded party, by its order dated 2-3-2012 allowed the appeal, restored the allotment and cancelled the allotment of the subsequent allottee.

The present appellant filed a writ petition before the High Court, which relying upon *Sri Pal Jatav*, 2008 SCC OnLine All 1101, dismissed the writ petition on the ground that she had no right to continue the litigation being a subsequent allottee, for she had no independent right.

It was contended on behalf of the appellant that the High Court erred in treating the allotment of the appellant in respect of the fair price shop as a stop-gap arrangement and that as she had entered into the shoes of the original allottee her allotment was subject to attainment of finality of cancellation order totally remaining oblivious to the fact that she was appointed as a dealer under visually handicapped quota. It is further urged by her that her rights being independent in nature, she has a right to assail the appellate order and the High Court could not have dismissed the writ petition without adverting to the merits of the case.

In the present appeal, the Supreme Court was not required to enter into the issue whether cancellation was justified or not or the order passed by the appellate authority allowing the appeal was defensible in the facts and circumstances of the case, for the High Court has expressed its disinclination to enter into the said arena at the instance of the present appellant on the foundation that she was an allottee after the cancellation of the allotment who was the licensee to run the fair price

shop of the fifth respondent. The question before the Supreme Court was whether the appellant could be regarded as a person who was a necessary party to the lis in such a situation and was entitled under law to advance the argument that the order passed by the appellate forum being legally unsustainable, the writ court was obliged to adjudicate the controversy on merits.

Answering in the negative, dismissing the appeal, the Supreme Court

Held :

The basic principle behind the doctrine of natural justice is that no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind the proviso to Order 1 Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned, is bound to make the selected candidates parties. In the context of the

concept of a tribunal being a necessary party, the Supreme Court in *Jogendrasinhji Vijaysinghji*, (2015) 9 SCC 1 ruled that a tribunal or authority would only become a necessary party which is entitled in law to defend the order. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice. The principle of audi alteram partem has its own sanctity but the said principle of natural justice is not always put in straitjacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail. Natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party becomes significant.

(Paras 16 to 18 and 21)

Jogendrasinhji Vijaysinghji v. *State of Gujarat*, (2015) 9 SCC 1 : (2015) 4 SCC (Civ) 275; *South Central Railway* v. *A.V.R. Siddhantti*, (1974) 4 SCC 335 : 1974 SCC (L&S) 290; *State of H.P.* v. *Kailash Chand Mahajan*, 1992 Supp (2) SCC 351 : 1992 SCC (L&S) 874 : (1992) 21 ATC 528; *Sadananda Halo* v. *Momtaz Ali Sheikh*, (2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9, *relied on*

South Central Railway v. *A.V.R. Siddhanti*, 1971 SCC OnLine AP 152 : AIR 1972 AP 252; *B. Gopalaiah* v. *State of A.P.*, 1967 SCC OnLine AP 39 : AIR 1969 AP 204; *J.S. Sachdev* v. *RBI*, 1973 SCC OnLine Del 139 : ILR (1973) 2 Del 392; *Mohan Chandra Joshi* v. *Union of India*, CW No. 550 of 1970, decided on 25-3-1971 (Del), *held, approved*

A. Janardhana v. *Union of India*, (1983) 3 SCC 601 : 1983 SCC (L&S) 467; *All India SC & ST Employees' Assn.* v. *A. Arthur Jeen*, (2001) 6 SCC 380 : (2007) 2

SCC (L&S) 362; *Canara Bank* v. *Debasis Das*, (2003) 4 SCC 557 : 2003 SCC (L&S) 507, *considered*

Hari Vishnu Kamath v. *Ahmad Ishaque*, AIR 1955 SC 233; *Savitri Devi* v. *District Judge, Gorakhpur*, (1999) 2 SCC 577; *State of Kerala* v. *Rafia Rahim*, 1978 SCC OnLine Ker 38 : AIR 1978 Ker 176; *Padmraj Samarendra* v. *State of Bihar*, 1978 SCC OnLine Pat 64 : AIR 1979 Pat 266, *cited*

It is true that in service jurisprudence, if a non-selected candidate challenges the selection, he is under legal obligation to implead the selected candidates as they are necessary parties. But it cannot be laid down as a proposition of law that in every case when a termination is challenged, the affected person has to be made a party. What is significant is when one challenges a provision as ultra vires the persons who are likely to be affected, some of them should be made parties in a representative capacity.

(Paras 34 and 38)

Vijay Kumar Kaul v. *Union of India*, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491; *J.S. Sachdev* v. *RBI*, 1973 SCC OnLine Del 139 : ILR (1973) 2 Del 392; *State of H.P.* v. *Kailash Chand Mahajan*, 1992 Supp (2) SCC 351 : 1992 SCC (L&S) 874 : (1992) 21 ATC 528; *Prabodh Verma* v. *State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704; *Tridip Kumar Dingal* v. *State of W.B.*, (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119; *Ishwar Singh* v. *Kuldip Singh*, 1995 Supp (1) SCC 179 : 1995 SCC (L&S) 373 : (1995) 29 ATC 144; *State of Assam* v. *Union of India*, (2010) 10 SCC 408 : (2010) 4 SCC (Civ) 187 : (2010) 2 SCC (L&S) 812; *Public Service Commission* v. *Mamta Bisht*, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208, *relied on*

Indu Shekhar Singh v. *State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916; *Public Service Commission* v. *Mamta Bisht*, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208; *Gulabchand Chhotalal Parikh* v. *State of Gujarat*, AIR 1965 SC 1153; *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*, (1974) 2 SCC 706; *Sarguja Transport Service* v. *STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19; *State of Kerala* v. *Rafia Rahim*, 1978 SCC OnLine Ker 38 : AIR 1978 Ker 176; *Padmraj Samarendra* v. *State of Bihar*, 1978 SCC OnLine Pat 64 : AIR 1979 Pat 266; *U.P. Madhyamik Shikshak Sangh* v. *State of U.P.*, 1978 SCC OnLine All 942 :

1979 All LJ 178; *Union of India* v. *Hajera Khatun*, 2003 SCC OnLine Gau 516 : (2004) 1 Gau LR 493, *cited*

However, the instant case relates to allotment of fair price shops. The shop in question had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is the respondent, assailed his cancellation and

ultimately succeeded in appeal. The effect of the appellate order has to be that the original allottee remains an allottee and his licence continues. The appeal was preferred challenging the cancellation of allotment and the order of licence. It is not a situation where the appeal had been treated to have been rendered infructuous on the basis of any subsequent event, such as, the shop in question has been demarcated for any reserved category. In that event, such subsequent fact would have been brought to the notice of the appellate authority and in that event, possibly no relief could have been granted by the appellate authority to the appellant except removing the stigma. The stand of the State is that initially the shop was attached to the other licensee and thereafter on the basis of the resolution passed by the Gram Sabha, it was allotted to the present appellant though it was mentioned that it had been granted under the visually impaired quota. But the character of the shop remained the same.

(Paras 49 and 10)

Udit Narain Singh Malpaharia v. *Board of Revenue*, AIR 1963 SC 786, *relied on*

The fact that the appellant herein was allowed to put her stand in the appeal does not alter the legal position that she was neither a necessary nor a proper party. The appellate authority erroneously permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries, who could have challenged the same in appeal. They have maintained silence in that regard. But that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.

(Para 49)

The question to be posed in determining if she is a necessary party is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an independent legal right. But it is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position. His right gets revived and that revival of the right cannot be assailed by the third party.

(Para 53)

This concept will stand in contradistinction to a case where the land after having vested under any statute in the State has been distributed and possession handed over to different landless persons. It is because of such allotment and delivery of possession in their favour, that is required under the statute that rights are created in favour of such allottees and, therefore, they are necessary parties. The subtle distinction has to be understood. It does not relate to a post or position which one

holds in a fortuitous circumstance. It has nothing to do with a vacancy. The

land of which possession is given and the landless persons who have received the pattas and have remained in possession, they have a right to retain their possession. It will be an anarchical situation, if they are not impleaded as parties, whereas in a case which relates to a post or position or a vacancy, if he or she who holds the post because of the vacancy having arisen is allowed to be treated as a necessary party or allowed to assail the order, whereby the earlier post holder or allottee succeeds, it will only usher in the reverse situation — an anarchy in law.

(Para 50)

Ram Swarup v. *S.N. Maira*, (1999) 1 SCC 738; *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay*, (1992) 2 SCC 524; *Razia Begum* v. *Anwar Begum*, AIR 1958 SC 886; *Quinn* v. *Leathem*, 1901 AC 495 : (1900-03) All ER Rep 1 (HL); *Union of India* v. *Dhanwanti Devi*, (1996) 6 SCC 44, *relied on*

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R-D/55827/CV

Advocates who appeared in this case:

Dushyant Parashar (Advocate-on-Record), Advocate, for the

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Vikrant Yadav and Gaurav Dhingra, Advocates, for the Respondents.

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The Judgment of the Court was delivered by

DIPAK MISRA, J.— The appellant invoked the jurisdiction of the High Court of Judicature at Allahabad under Article 226 of the Constitution praying, inter alia, for issue of writ of certiorari for quashment of the order dated 2-3-2012 passed by Respondent 2, Commissioner, Azamgarh Division, Azamgarh in Appeal No. 85/109/153/334/M of 2008-2012 and further seeking a writ of mandamus against the respondents not to interfere in the peaceful functioning of fair price shop in Gram Sabha Ardauna, Tehsil Sadar, District Mau.

2. The facts that formed the bedrock of the writ petition are that a fair price shop being Shop No. 2 was run by the fifth respondent in Gram Sabha Ardauna, Tehsil Sadar, Block Ratanpura, District Mau, which was allotted to him by allotment order dated 11-5-2001 and while he was continuing, on various complaints being made against him pertaining to non-distribution of essential commodities, Sub-Divisional Magistrate, Sadar, District Mau ordered an enquiry and after obtaining the report, suspended his licence and called for an explanation from him vide order dated 30-5-2008. As the factual matrix would depict vide order dated 3-6-2008 the shop of Respondent 5 was attached to another shop being run by one Bhupendra Singh and Respondent 5 handed over the charge of the shop on 19-7-2008. On the said date the final enquiry report was placed before the Deputy District Magistrate, Sadar, District Mau and the report reflected that there was improper distribution of essential commodities in violation of instructions and accordingly the competent authority by its order dated 23-7-2008 cancelled the allotment of Respondent 5.

3. Being dissatisfied with the order of cancellation, the fifth respondent preferred an appeal before the Commissioner, Azamgarh

assailing the order dated 23-7-2008, along with an application for stay of the cancellation of allotment, but the appellate authority declined to pass any interim protective order. Eventually, the appeal preferred by the appellant was allowed. May it be stated that the appellant herein had got herself impleaded in the appeal on the

ground that she had been allotted Shop No. 2 after cancellation of the allotment along with the licence granted in favour of the original allottee, the appellant therein.

4. The appellate authority after hearing the appellant and the impleaded party and upon perusal of the file, opined that the entire proceeding against the original allottee was initiated on the basis of the oral statements pertaining to the allegations made by some BPL card-holders that the shopkeeper had told them that their cards had been cancelled; and there was no enquiry and investigation by the Deputy District Magistrate of the official documents as regards the cancellation of original ration cards of BPL card-holders; that the allottee was not provided the copy of the investigation report and hence, he was deprived of opportunity to submit his clarification and on the whole, there were serious procedural lapses; and that on a careful scrutiny of a number of aspects, it was perceptible that the investigation carried out by the Block Development Officer was absolutely faulty. Being of this view, the appellate authority by order dated 2-3-2012, allowed the appeal of the appellant, restored the allotment and cancelled the allotment of the subsequent allottee.

5. Aggrieved by the aforesaid order, the appellant herein who was the subsequent allottee in respect of Shop No. 2 preferred CMWP No. 16390 of 2012 before the High Court which by the impugned order dated 3-4-2012[1] relied upon an earlier judgment in *Sri Pal Jatav* v. *State of U.P.*[2] and dismissed the writ petition on the ground that she had no right to continue the litigation being a subsequent allottee, for she had no independent right.

6. Calling in question the legal defensibility of the order passed by the writ court, it is submitted by Mr Dushyant Parashar, learned counsel for the appellant that the approach of the High Court is absolutely erroneous inasmuch as it had treated the allotment of the appellant in respect of the fair price shop as a stop-gap arrangement and she had entered into the shoes of the original allottee and, therefore, her allotment was subject to attainment of finality of cancellation order totally remaining oblivious to the fact that she was appointed as a

dealer under visually handicapped quota. It is further urged by him that her rights being independent in nature, she has a right to assail the appellate order and the High Court could not have dismissed the writ petition without adverting to the merits of the case.

7. Mr Vikrant Yadav, learned counsel appearing for the State, per contra, would contend that in Village Ardauna, two fair price shops were in existence and one was allotted to Mr Bhupinder Singh and the other one to Mr Arvind Kumar, the fifth respondent herein and on the basis of the complaint made by the Gram Sabha, the Sub-Divisional Magistrate had attached the shop of Respondent 5 to the shop of Bhupinder Singh, after suspending his licence on 3-6-2008 and eventually, an order of cancellation was passed; and when the order of cancellation was set aside in appeal, the original allottee is entitled to get back his allotment in respect of Shop No. 2 and hence, the appellant

has no legal right to assail the order passed by the appellate authority. The learned counsel for the State would further submit that Shop No. 2 having become available and there being no order that the said shop is declared as the shop reserved for any kind of quota, either vertical or horizontal, the present appellant cannot assert any independent right in respect of the said shop.

8. At the very outset, we must unequivocally state that we are not required to enter into the issue whether cancellation was justified or not or the order passed by the appellate authority allowing the appeal is defensible in the facts and circumstances of the case, for the High Court has expressed its disinclination to enter into the said arena at the instance of the present appellant on the foundation that she was an allottee after the cancellation of the allotment who was the licensee to run the fair price shop of the fifth respondent. The learned counsel for the appellant has also rightly not advanced any argument in that regard except emphasising on the facet that as the appellant had an independent right on her own the High Court was under the lawful obligation to address itself with regard to legal substantiality of the order passed by the appellate authority on the touchstone of exercise of writ jurisdiction, however restricted it may be. To bolster the said submission, immense emphasis is placed on the nature of the allotment made in favour of the appellant.

9. Be it noted, before the appellate authority, the appellant had got herself impleaded after coming to know that the fifth respondent had preferred an appeal challenging the order of cancellation, and the

appellate authority had considered the submissions of the original allottee as well as the present appellant. The thrust of the matter is whether the appellant can be regarded as a person who is a necessary party to the lis in such a situation and is entitled under law to advance the argument that the order passed by the appellate forum being legally unsustainable, the writ court was obliged to adjudicate the controversy on merits.

10. It is an admitted position that Village Ardauna had initially two shops. Shop No. 2 was allotted in favour of the fifth respondent and he was granted licence to run the fair price shop. On the basis of certain complaints being received, the competent authority after an enquiry had cancelled the licence. The appellate authority after ascribing certain reasons has overturned the said order. The effect of the said order has to be that the original allottee remains an allottee and his licence continues. The appeal was preferred challenging the cancellation of allotment and the order of licence. It is not a situation where the appeal had been treated to have been rendered infructuous on the basis of any subsequent event, such as, the shop in question has been demarcated for any reserved category. In that event, such subsequent fact would have been brought to the notice of the appellate authority and in that event, possibly no relief could have been granted by the appellate authority to the appellant except removing the stigma. The stand of the State is that initially Shop No. 2 was attached to the other licensee and thereafter on the basis of the resolution passed by the Gram Sabha, it was allotted to the present appellant though it was mentioned that it had been granted under the visually impaired quota. But the character of the shop remained the same.

11. At this juncture, it is obligatory on our part to refer to the Letter/Circular dated 1-2-2009 issued by the Chief Secretary, which refers to the Government Order dated 17-8-2002 in respect of Scheduled Castes, Scheduled Tribes and Other Backward Classes. Thereafter, there is reference to certain horizontal reservation which refers to the ladies of certain reserved categories, family members of the army who had expired in the reserved category concerned, ex-army personnel, freedom fighters of the reserved categories concerned and their wives and the handicapped persons of the category concerned. After so stating, the circular proceeds to mention as under:

"In this regard I was direction to say that for the allotment of FPS

shop in the rural and urban area, according to the above arrangement horizontal reservation is also approved, under which there is arrangement to give 2% reservation to the candidate of handicapped persons. In view of the problem of the blind persons after appropriate consideration, the administration has decided that the blind handicapped be granted 1% reservation under horizontal reservation. In this manner now to the handicapped person, in place of 2% shall be approved 3% reservation and in this manner 1% increased reservation shall be approved only for the handicapped of blind persons. In this manner in Para 3 of the Government Order sub -para Gh adding Para 3(*d*), the handicapped person shall be granted 1% reservation.

In this manner horizontal reservation shall be 36% in place of 35% which is under the total reservation category of 50%."

12. After issue of the said circular, a further Letter dated 12-8-2008 was issued which mentioned the subject granting priority to the blind handicapped for completing the backlog in the vacant fair price shops under the public distribution system in rural and urban area. It is relevant to produce certain paragraphs of the said circular:

"1. Through Government Order No. 2715/29-6-02-162-Sa/01 dated 17-8-2012 for the allotment of FPS shop for the implementation of reservation has been issued guidelines and for the reservation of FPS shop also applied the horizontal arrangement. Under the above arrangement there is the provision to grant 2% reservation to the handicapped. In the above horizontal there was no clear arrangement for blind handicapped persons. Vide Government Order No. 311/29.06.08-162SA/01T.C. dated 1-2-2008 amending the above government order granted one per cent horizontal reservation to handicapped blind person.

2. It came in the notice of the administration that in regard to the reservation of blind handicapped persons vide government order they are not getting the representation. It is pertinent to mention here that in the entire districts of the State have been given the direction on the administration level to complete the quota of reservation. *The administration after appropriate consideration has taken decision till then backlog cannot completed for the present reservation of the blind, since then the blind person should be granted first priority in the allotment of the shop, in consideration they are fulfilling the prescribed condition issued by the Government for the allotment of the shop*. In case that resident of Gram Sabha, who is entitled, the blind do not

apply then the resident of Gram Sabha block development area concerned, other blind person shall be entitled to apply. *In the allotment of FPS shop under Public Distribution System on the basis of total shop the reservation should be assessed. Up to the completion of blind handicapped should not furnish the shop from any category, under the Public Distribution System in regard to FPS shop time to time issued government order should be treated amended up to this limit*."

(emphasis supplied)

13. Though the narration of facts is reflective of a different contour of controversy i.e. allotment and grant of licence for a fair price shop, the seminal issue, as noted hereinabove, would hinge on the answer to the question pertaining to right to assail the order passed in appeal. The appellant was not impleaded as a party in the appeal but she herself got impleaded. Assuming the appellate authority would have decided the appeal in favour of the original allottee in her absence, could the present appellant, a subsequent allottee in respect of the same shop, have been allowed in law to make a grievance by invoking the jurisdiction of any statutory forum or for that matter the High Court under Article 227 of the Constitution. In essence, whether she is a necessary party to the litigation and entitled to contest the legal vulnerability of the order of cancellation or in any manner advance the plea that her allotment would not be affected despite the factum that the order of cancellation of the earlier allottee has been quashed. To appreciate the said issue we will dwell upon certain authorities though they may pertain to different jurisprudence.

14. First, it is necessary to understand about the concept of necessary and proper party. A four-Judge Bench in *Udit Narain Singh Malpaharia* v. *Board of Revenue*[3] has observed thus : (AIR p. 788, para 7)

> "*7*. … it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding."

15. In *Vijay Kumar Kaul* v. *Union of India*[4], the Court referred to the said decision and has opined thus : (SCC pp. 619-20, paras 36-38)

> "*36*. Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are

senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.

37. In this context we may refer with profit to the decision in *Indu Shekhar Singh* v. *State of U.P.*[5] wherein it has been held thus : (SCC p. 151, para 56)

'*56*. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.'

38. In *Public Service Commission* v. *Mamta Bisht*[6] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus : (SCC pp. 207-08, paras 9-10)

'*9*. … in *Udit Narain Singh Malpaharia* v. *Board of Revenue*[3], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called "CPC") provides that non-joinder of necessary party be fatal. Undoubtedly, the provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh* v. *State of Gujarat*[7], *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*[8] and *Sarguja Transport Service* v. *STAT*[9].)

10. In *Prabodh Verma* v. *State of U.P.*[10] and *Tridip Kumar Dingal* v. *State of W.B.*[11], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.'"

16. At this juncture, it is necessary to state that in *Udit Narain*[3] question arose whether a tribunal is a necessary party. Recently a two-

Judge Bench in *Jogendrasinhji Vijaysinghji* v. *State of Gujarat*[12] referred to *Hari Vishnu Kamath* v. *Ahmad Ishaque*[13] and adverted to the concept of a tribunal being a necessary party and in that context ruled that : (*Jogendrasinhji case*[12], SCC p. 33, para 43)

"*43*. … In *Hari Vishnu Kamath*[13], the larger Bench was dealing with a case that arose from the Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In *Udit Narain Singh*[3], the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In *Savitri Devi*[14], the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case have to be understood in proper perspective. The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite a few examples : the tribunals constituted under the Administrative Tribunals Act, 1985, the Customs, Excise and Service Tax Appellate Tribunal, the Income Tax Appellate Tribunal, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different than pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to

implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties."

The principle that has been culled out in the said case is that a tribunal or authority would only become a necessary party which is entitled in law to defend the order.

17. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice. The principle of audi alteram partem has its own sanctity but the said principle of natural justice is not always put in a straitjacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail.

18. We may first clarify that as a proposition of law it is not in dispute that natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected; and that is where the concept of necessary party becomes significant. In *South Central Railway* v. *A.V.R. Siddhantti*[15] the Court was dealing with an issue whether the private respondent therein had approached the High Court under Article 226 of the Constitution for issue of a writ of mandamus directing the General Manager, South Central Railway and the Secretary, Railway Board to fix the inter se seniority as per the original proceedings dated 16-10-1952 of the Railway Board and to further direct them not to give effect to the subsequent proceedings dated 2-11-1957 and 13-1-1961 of the Board issued by way of "modification" and "clarification" of its earlier proceedings of 1952. The High Court accepted[16] the contentions of the private respondent and struck down the impugned proceedings. A contention was canvassed before this Court that the writ petitioners had not impleaded about 120 employees who were likely to be affected by the decision and, therefore, there being non-impleadment despite they being necessary parties, it was fatal to the decision. Rejecting the said submission the Court held : (*A.V.R. Siddhantti case*[15], SCC pp. 341-42, para 15)

"*15*. As regards the second objection, it is to be noted that the decisions of the Railway Board impugned in the writ petition contain administrative rules of general application, regulating absorption in

permanent departments, fixation of seniority, pay, etc. of the employees of the erstwhile Grain Shop Departments. The respondent -petitioners are impeaching the validity of those policy decisions on the ground of their being violative of Articles 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servant is assailed. In such proceedings the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. In the present case, the relief is claimed only against the Railway which has been impleaded through its representative. No list or order fixing seniority of the petitioners vis-à-vis particular individuals, pursuant to the impugned decisions, is being challenged. The employees who were likely to be affected as a result of the re-adjustment of the petitioner's seniority in accordance with the principles laid down in the Board's decision of 16-10-1952, were, at the most, proper parties and not necessary parties, and their non-joinder could not be fatal to the writ petition."

The Court further agreed with the principle stated in *B. Gopalaiah* v. *State of A.P.*[17], *J.S. Sachdev* v. *RBI*[18] and *Mohan Chandra Joshi* v. *Union of India*[19].

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19. In this context reference to the authority in *State of H.P.* v. *Kailash Chand Mahajan*[20] would be appropriate. In the said case a contention was raised that non-impleadment of the necessary party was fatal to the writ petition. In support of the said stand reliance was placed upon two decisions of two different High Courts; one, *State of Kerala* v. *Rafia Rahim*[21] and the other in *Padmraj Samarendra* v. *State of Bihar*[22]. The Court distinguished both the decisions by holding thus : (*Kailash Chand case*[20], SCC p. 399, para 103)

"*103*. The contention of Mr Shanti Bhushan that the failure to implead Chauhan will be fatal to the writ petition does not seem to be correct. He relies on *State of Kerala* v. *Rafia Rahim*[21]. That case related to admission to medical college whereby invalidating the selection vitally affected those who had been selected already. Equally, the case *Padmraj Samarendra* v. *State of Bihar*[22] has no application. This was a case where the plea was founded in Article 14

and arbitrary selection. The selectees were vitally affected. The plea that the decision of the court in the absence of Chauhan would be violative of principle of natural justice as any adverse decision would affect him is not correct."

The Court placed reliance on *A. Janardhana* v. *Union of India*[23] and ultimately did not accept the submission that the writ petition was not maintainable because of non-impleadment of the necessary party.

20. In this context the authority in *Sadananda Halo* v. *Momtaz Ali Sheikh*[24] is quite pertinent. The Division Bench referred to the decision in *All India SC & ST Employees' Assn.* v. *A. Arthur Jeen*[25] wherein this Court had addressed the necessity of joining the necessary candidates as parties. The Court referred to the principle of natural justice as enunciated in *Canara Bank* v. *Debasis Das*[26]. We may profitably reproduce the same : (*Sadananda Halo case*[24], SCC pp. 647-48, para 63)

"*63*. … 'Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the

rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.' (*Debasis Das case*[26], SCC pp. 560*h*-561*a*)"

And again : (*Sadananda Halo case*[24], p. 648, para 63)

"*63*. … 'Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be

performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. *The old distinction between a judicial act and an administrative act has withered away*. The adherence to principles of natural justice as recognised by all civilised States is of supreme importance…' (*Debasis Das case*[26], SCC p. 561*e-f*)"

(emphasis in original)

21. We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind the proviso to Order 1 Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.

22. In *J.S. Yadav* v. *State of U.P.*[27] in para 31 it has been held thus : (SCC p. 583)

"*31*. No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice. The principles enshrined in the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail. In service jurisprudence if an unsuccessful candidate challenges the selection process, he is bound to implead at least some of the successful candidates in representative capacity. In case the services of a person are terminated and another person is appointed at his place, in order to get relief, the person appointed at his place is the necessary party for the reason that even if the petitioner-plaintiff succeeds, it may not be possible for the Court to issue direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner-

plaintiff. (Vide *Prabodh Verma* v. *State of U.P.*[10], *Ishwar Singh* v. *Kuldip*

Singh[28], *Tridip Kumar Dingal* v. *State of W.B.*[11], *State of Assam* v. *Union of India*[29] and *Public Service Commission* v. *Mamta Bisht*[6].) More so, the public exchequer cannot be burdened with the liability to pay the salary of two persons against one sanctioned post."

23. To appreciate the said decision in *J.S. Yadav case*[27] in a real perspective, it is absolutely necessary to state the facts under which the decision was rendered and such a statement of law was made. The issue that arose before this Court related to an order passed by the High Court of Allahabad by which it had dismissed the writ petition filed by the appellant challenging the Notification dated 28-5-2008 by which on the date of constitution of the Uttar Pradesh State Human Rights Commission, the appellant was declared to cease to hold the office as a Member of the said Commission. This Court noted the facts which were relevant and germane for the disposal of the appeal in para 2. The appellant therein was appointed as a Member of the Commission on 29-6-2006 for a period of five years. Certain provisions of the Protection of Human Rights Act, 1993 stood amended vide the Protection of Human Rights (Amendment) Act, 2006 which came into force on 23-11-2006. After completion of the tenure by the Chairperson of the Commission and other Members in October 2007, the appellant remained the lone working member of the Commission. The State Government issued the Notification on 28-5-2008 to the effect that the appellant had ceased to hold the office as a Member of the Commission. The said notification was challenged on the ground that he had been appointed for a tenure of five years and that period could not be curtailed. The appellant had not impleaded any of the Members who had been appointed as Members on 6-6-2008. Various contentions were raised on behalf of the appellant and the said submissions were resisted by the State on two counts, namely, that the appellant had not impleaded the newly appointed Members as parties and further he had suffered the disability by virtue of the operation of the amended law.

24. This Court referred to the provision contained in unamended Section 21(2) of the Act and the amended Section 21(2) of the Act. Prior to the amendment, the qualification prescribed for Member was "a person who is, or has been, a District Judge in that State" and after the amendment the qualification of the Member was changed to the extent "he is or has been a Judge of a High Court or District Judge in the State with a minimum of 7 years' experience as a District Judge". The Court referred to Article 236(a) of the Constitution and Section 3(17) of the General Clauses Act, 1897. Be it stated, the contention was advanced that a person who has gained experience as an Additional District Judge, he would be entitled for consideration as

his experience is equivalent to that of a District Judge. Repelling the said submission, the Court held : (*J.S. Yadav case*[27], SCC p. 578, paras 12 & 14)

> "*12*. The aforesaid submission seems to be very attractive but has no substance for the reason that a cadre generally denotes a strength of a service or a part of service sanctioned as a separate unit. It also includes sanctioned strength with reference to grades in a particular service. Cadre may also include temporary, supernumerary and shadow posts created in different grades. The expressions 'cadre', 'posts' and 'service' cannot be equated with each other. (See *Union of India* v. *Pushpa Rani*[30] and *State of Karnataka* v. *K. Govindappa*[31].) There is no prohibition in law to have two or more separate grades in the same cadre based on an intelligent differential. Admittedly, the post of District Judge and Additional District Judge in the State of U.P. is neither interchangeable nor intertransferable. The aforesaid Rules merely provide for an integrated cadre for the aforesaid posts. Thus, the submission is liable to be rejected being preposterous.
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> * * *
>
> *14*. In such a fact situation, we do not see any cogent reason to take a view contrary to the same for the reason that in case the legislature in its wisdom has prescribed a minimum experience of seven years as a District Judge knowing fully well the existing statutory and constitutional provisions, it does not require to be interpreted ignoring the legislative intent. We cannot proceed with an assumption that the legislature had committed any mistake enacting the said provision. Clear statutory provision in such a case is required to be literally construed by considering the legislative policy. Thus, no fault can be found with the impugned judgment and order[32] of the High Court on this count."

25. After so stating, the Court noted the fact that the 2006 Amendment was not under challenge. However, it noted that the issue agitated by the appellant was that the legislature never intended to apply the amended provisions with retrospective effect and, therefore, he could not be discontinued from the post, for his rights stood protected by the provisions of Section 6 of the General Clauses Act. The Court referred to the authorities in *State of Punjab* v. *Bhajan Kaur*[33], *Sangam Spinners* v. *Regl. Provident Fund Commr.*[34] and *Railway Board*

v. *C.R. Rangadhamaiah*[35] and held as follows : (*J.S. Yadav case*[27], SCC p. 583, para 29)

> "*29*. … Thus, from the above, it is evident that accrued rights cannot be taken away by repealing the statutory provisions arbitrarily. More so, the repealing law must provide for taking away such rights, expressly or by necessary implication."

26. Thereafter, the Court proceeded to lay down as follows : (*J.S. Yadav case*[27], SCC p. 583, para 30)

> "*30*. There is no specific word in the 2006 Amendment Act to suggest its retrospective applicability. Rather the positive provisions of Section 1 suggest to the contrary as it reads:
>
> '**1. *Short title and commencement***.—(1) * * *
>
> (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.'
>
> Undoubtedly, the amended provisions came into force on 23-11-2006 vide S.O. 2002(E), dated 23-11-2006, published in the Gazette of India, Extra Pt. II, Section 3(*ii*) dated 23-11-2006. In fact, the date 23-11-2006 is the pointer and puts the matter beyond doubt. Thus, in view of the above, we do not have any hesitation to declare that the Notification dated 28-5-2008 is patently illegal."

27. After so stating, in para 32 of the judgment, the Court held thus : (*J.S. Yadav case*[27], SCC p. 584, para 32)

> "*32*. The appellant did not implead any person who had been appointed in his place as a Member of the Commission. More so, he made it clear before the High Court that his cause would be vindicated if the Court made a declaration that he had illegally been dislodged/restrained to continue as a Member of the Commission. In view of the above, he cannot be entitled to any other relief except the declaration in his favour which had been made hereinabove that the impugned Notification dated 28-5-2008 is illegal."

28. On a keen understanding of the aforesaid authority, two aspects are clear. First, it had noted the fact what was pleaded before the High Court that the selected Members were not arrayed as parties. Thereafter, it had proceeded to deal with the distinction between a District Judge and an Additional District Judge, that is, for the purpose of meeting the qualification under the amended Act. Thereafter, as is manifest, it proceeded to analyse the retrospective applicability of the

amended provision and opined that the provision is not retrospectively applicable and, therefore, notification is bad in law. Para 31 of the decision in *J.S. Yadav case*[27] proceeded to state that unless necessary parties are arrayed, no relief can be granted. Irrefragably, there can be no cavil over the said proposition of law. Thereafter, the Division Bench proceeded to state that in case the services of a person are terminated and another person is appointed in his place, in order to get the relief, the person appointed at his place is the necessary party for the reason that even if the petitioner succeeds, it may not be possible for the Court to issue a direction to accommodate the petitioner without removing the person who filled up the post manned by the petitioner. To arrive at the said conclusion, five authorities have been relied upon. We shall discuss at length the said decisions.

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29. We shall deal with the authorities in seriatim. A three-Judge Bench decision in *Prabodh Verma* v. *State of U.P.*[10] requires to be addressed. The facts in the said case deserved to be stated. In the said case the principal question that arose for determination before this Court was the constitutional validity of two Uttar Pradesh Ordinances, namely, (*1*) the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance 10 of 1978), and (*2*) the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance 22 of 1978). The High Court on certain reasons had struck[36] down the Ordinance. Be it noted, the writ petition was filed by the Uttar Pradesh Madhyamik Shikshak Sangh. Apart from the question of validity, the subsidiary question that arose before this Court is whether the termination of the services of the appellants and the petitioner before this Court as secondary school teachers and intermediate college lecturers following upon the High Court judgment is valid and, if not, the relief to which they are entitled. After narrating the facts, the Court observed that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. We think it appropriate to reproduce the statement of facts as reproduced in the judgment : (*Prabodh Verma case*[10], SCC pp. 273-74, para 28)

> "*28*. … The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its officers concerned. Those who were vitally

concerned, namely, the reserve pool teachers, were not made parties — not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by

some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties."

30. Thereafter the Court proceeded to summarise its conclusion and the relevant conclusion for the present purpose is reproduced below : (*Prabodh Verma case*[10], SCC pp. 288-89, para 50)

"*50*. (*1*) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(*2*) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 — *U.P. Madhyamik Shikshak Sangh* v. *State of U.P.*[36] — without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

31. On a studied perusal of the aforesaid judgment in *Prabodh Verma case*[10], it is crystal clear that this Court had opined that when the constitutional validity of a provision is challenged and there are

beneficiaries of the said provision, some of them in a representative capacity have to be made parties failing which the writ court would not be justified in hearing a writ petition in the absence of the selected candidates when they are already appointed on the basis of the provision which was under assail before the writ court.

32. In *Ishwar Singh* v. *Kuldip Singh*[28], a two-Judge Bench was dealing with the situation where the selection and consequent appointments were challenged by unsuccessful candidates before the High Court primarily on the ground that the interviews held for the said selection were a sham affair. The High Court had quashed the selection and the appointments on the foundation that the interviews held were neither fair nor proper thereby vitiating the selection. This Court dislodged the order of the High Court on a singular count which is to the following effect : (SCC p. 180, para 4)

> "*4*. It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the writ petition in the absence of the selected candidates especially when they had already been appointed."

The decision in the aforesaid case is graphically clear that the selection was under challenge but the selectees were not made parties. There can be no shadow of doubt that they were necessary parties and, therefore, this Court expressed the view, which we have reproduced hereinabove.

33. In *Tridip Kumar Dingal* v. *State of W.B.*[11] an appeal was preferred by the appellants being aggrieved and dissatisfied with the judgment and order passed by the High Court of Calcutta.

33.1. The facts giving rise to the appeal by special leave before this Court were that the State of West Bengal in the Department of Health and Family Welfare taking note of the acute shortage and non-availability of adequate number of Medical Technologists, took an initiative to fill up the requisite number of vacancies by taking up the matter with Employment Exchange. A memorandum was issued by the

Assistant Director of Health Services (Administration) to the Director of Employment Exchange for sponsoring the names of candidates for the post of Medical Technologists. Eventually, on the basis of the marks obtained in the oral interview, a list was prepared. The candidates who could not get entry into the select list challenged the same before the West Bengal Administrative Tribunal. The Tribunal granted liberty to the authorities to make appointments of the candidates selected and empanelled subject to the result in the original application. The matter at various times travelled to the High Court, which directed for disposal of the original application. Eventually, the Tribunal directed for preparation of the fresh merit list on the basis of marks obtained in the written examination and oral interview excluding those who were already in service. The Tribunal also observed that the Committee had fixed 40% as pass marks in the oral interview and the said standard should be applied on the total marks as pass marks and appointment should be given from the fresh panel so prepared in order of merit subject to reservation and filling up of vacant posts.

33.2. The decision of the Tribunal was challenged before the High Court and the High Court opined that the question of retaining those candidates who had been appointed must be considered afresh by the Tribunal since the Tribunal had not assigned any reason as to why they should be permitted to be continued in service. The High Court had expressed the view that no sympathy should have been shown to the candidates when the Tribunal itself had expressed the opinion that the selection process was vitiated. Various other reasons were also ascribed by the High Court. After remit, the Tribunal considering the rivalised submissions and taking an overall view of the matter found that the selection process was bona fide and in accordance with law and, therefore, it requires to be approved. The Tribunal further held that appointments which had already been made by the authorities in respect of 190 candidates who had gained experience of more than three years of work of investigation entrusted to them should not be disturbed. A direction was issued to the State authorities to offer appointments to successful candidates in the waiting list subject to the availability of vacancies following medical examination and police verification.

33.3. The said judgment was challenged before the High Court which set aside the order of the Tribunal and directed a fresh panel of Medical Technologists to be prepared by the State Government on the basis of the

qualifying marks obtained both in the written test as well as in the oral interview. Certain directions were given by the High Court including the one if those candidates who had already been appointed did not find place in the panel, consequential orders would be made by the State Government but those who were in the panel were accommodated if by reason of existing vacancies, they should be accommodated. The said order became the subject-matter of special leave petition which was dismissed as withdrawn. As the order of the High Court was not implemented, a contempt petition was filed. An unconditional apology was offered on behalf of the contemnors stating that they were ready and willing to carry out the directions. At that juncture, the High Court passed an interim order to the extent that the Court was not inclined to issue any direction for removal/termination of services of 66 persons who were working since three to four years. The Court also directed the State to report to the Court as regards the exact number of vacancies which were available for the appointment of the panel to be prepared and to inform whether nine vacancies which had become defunct could be revived. When the matter was placed again on the next date, the High Court noted that a panel of 586 candidates had been prepared on the basis of 40% marks obtained by the candidates both in the written test as well as in the oral interview. It also observed that 66 persons who had been appointed could be accommodated by granting liberty to the State Government in the manner it thought best without disturbing their seniority or continuity of service. It further directed that remaining vacancies should be filled up on the basis of seniority position from the panel of 586 candidates. With the aforesaid directions, the contempt petition was disposed of and the said order was assailed before this Court.

33.4. After hearing the learned counsel for the parties, this Court came to hold that the contention on behalf of the State Government that written examination was held for shortlisting the candidates and was in the nature of elimination test had no doubt substance, for the said authorities, regard being had to the large number of applicants seeking appointment and small number of vacancies, had no other option but to screen candidates by holding a written examination more so, when there were no rules in that regard. This Court further opined that it was an administrative decision and such a plea was raised by the State in the first round of litigation before the Tribunal which had held the action of the State authorities to be wrong and the High Court upheld it and the State did not challenge the order before this Court and, therefore, in the second round the High Court did not commit any error of law in directing the authorities to prepare merit list on the basis of marks obtained by the candidates in written examination as also in oral interview. It was further held that in such a situation it was not

open to the State authorities to reiterate and reagitate the same ground on the same occasion. A contention was raised on behalf of the appellant that there cannot be more than 15% marks at the oral interview, which was not accepted by this Court at that stage, for such a direction was issued as early as in 2000 and the appellants were applicants before the Tribunal and the petitioners before the High Court had accepted the said decision and did not challenge the legality thereof by approaching this Court.

33.5. Thereafter, the Court proceeded to deal with the 66 candidates. In that context it ruled as follows : (*Tridip Kumar case*[11], SCC p. 780, para 41)

> "*41*. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. *In any case, some of them ought to have been arrayed as respondents in a 'representative capacity'. That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside*."
>
> (emphasis supplied)

34. We have referred to the said authority in a comprehensive manner to understand the ratio. It is quite simple. If a non-selected candidate challenges the selection, he is under legal obligation to implead the selected candidates as they are necessary parties and there can be no two opinions as regards such a proposition of law.

35. In *State of Assam* v. *Union of India*[29] the State of Assam, being aggrieved by the decision[37] rendered in the writ appeal and the dismissal of the review application filed by it, had approached this Court. The factual matrix as was presented before the Court was that the Union of India had introduced "Family Welfare Scheme" under its Family Planning Programme and under the said Scheme, there was a provision for appointment of Voluntary Female Attendants on a monthly

honorarium of Rs 50 per month from the inception of the Scheme which was subsequently increased to Rs 100 per month w.e.f. February 2001. As the factual narration would show, a writ petition was filed claiming benefit from the respondents of the pay of Rs 900 per month, the minimum of the pay scale payable to the Voluntary Female Attendants. A prayer was also made for regularisation. A direction was given by the High Court that it was for the State Government to consider the prayers in accordance with law. A similar writ was filed by another female attendant wherein the Union of India and the State of Assam were arrayed as respondents and the High Court disposed of the writ petition relying on the earlier judgment. The Union of India being aggrieved preferred a writ appeal in which it did not implead the State of Assam as a party to those proceedings. The contention of the Union of India was that the voluntary female attendants were not their employees and, therefore, the Single Judge was not correct in issuing direction to the Union of India for payment of minimum pay scale. It was urged that the State of Assam had issued appointment letters to the said female attendants. There was no mention in those appointment letters that they were appointed under the Centrally sponsored scheme. A prayer was made to discharge them

of their liability of any payment of wages to the private respondents appointed by the State Government. The Division Bench accepted the stand of the Union of India and held that the appointment letters had nothing to link them with the Centrally sponsored scheme of voluntary workers at fixed honorarium. On the basis of the aforesaid analysis, the Division Bench observed that the Union of India had no responsibility of making the payment on the minimum of the pay scale to the voluntary female attendants, and fixed the liability on the State of Assam.

36. Being aggrieved, the State of Assam had preferred the appeal by special leave. The two-Judge Bench referred to the decision in *Udit Narain*[3] and opined thus : (*State of Assam case*[29], SCC pp. 412 & 414, paras 15-16 & 23)

> "*15*. In aid of his submission, the learned Senior Counsel has placed reliance on the law laid down by this Court in *Udit Narain Singh Malpaharia* v. *Board of Revenue*[3], wherein it was held that in proceedings for a writ of certiorari, it is not only the tribunal or authority whose order is sought to be quashed but also the parties in whose favour the said order is issued, are necessary parties and that it is in the discretion of the court to add or implead proper parties for

completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or on application filed at the instance of such proper party.

16. We respectfully agree with the observations made by this Court in *Udit Narain case*[3] and adopt the same. We may add that the law is now well settled that a necessary party is one without whom, no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

* * *

23. We are also unable to comprehend any possible reasons for the Union of India to omit the State of Assam from the array of parties in the writ appeals filed before the Division Bench of the High Court. The fact remains that they were not made parties to the proceedings. The High Court, in our view, while allowing the appeals filed by the Union of India and shifting the liability of payment of salary/wages to the Voluntary Female Attendants on the State of Assam, should have taken a little more care and caution to find out whether the State of Assam is arrayed as a party to the proceedings and whether they are served with the notice of the appeals and in spite of service, whether they have remained absent. This is the least that is expected from the Court. Without making this small verification, the Division Bench of the High Court has fixed huge recurring financial liability on the State Government. In our opinion, in matters of this nature, even by mistake of the party, the proper parties were not arrayed in the proceedings, it is the duty of the Court to see that the parties are properly

impleaded. It is well-settled principle consistent with natural justice that if some persons are likely to be affected on account of setting aside a decision enuring to their benefit, the Court should not embark upon the consideration and the correctness of such decision in the absence of such persons."

The proposition of law stated hereinabove has to be understood in proper perspective. There were two prayers in the writ petition. One was for payment of salary, the other was for regularisation. Ultimately, the Division Bench absolved the Union of India from liability of payment and fastened it on the State. The State was not arrayed as a party to the lis. That was an accepted fact. Needless to emphasise the State of

Assam was a necessary party and more so when the Union of India was taking the stand that it was the State of Assam which had to bear the liability. The State of Assam was entitled to resist the stand and stance put forth by the Union of India in law.

37. In *Public Service Commission* v. *Mamta Bisht*[6] it was held by a two-Judge Bench that the first respondent therein wanted her selection against a reserved category vacancy and, therefore, the last selected candidate in that category was a necessary party and without impleading her the writ petition could not have been entertained by the High Court, for if a person challenges a selection process, successful candidates or at least some of them are to be arrayed as parties they being necessary parties. To appreciate the controversy, we must reproduce two paragraphs from the said authority : (SCC pp. 207-08, paras 9-10)

> "*9*. In case Respondent 1 wanted her selection against the reserved category vacancy, the last selected candidate in that category was a necessary party and without impleading her, the writ petition could not have been entertained by the High Court in view of the law laid down by nearly a Constitution Bench of this Court in *Udit Narain Singh Malpaharia* v. *Board of Revenue*[3], wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, the proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party would be fatal. Undoubtedly, the provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh* v. *State of Gujarat*[7], *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*[8] and *Sarguja Transport Service* v. *STAT*[9].)

> *10*. In *Prabodh Verma* v. *State of U.P.*[10] and *Tridip Kumar Dingal* v. *State of W.B.*[11], it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."

The said decision, as we understand, clearly spells out that in the absence of a necessary party, no adjudication can take place and, in fact, the non-joinder would be fatal to the case.

38. The aforesaid decisions do not lay down as a proposition of law that in every case when a termination is challenged, the affected person has to be made a party. What has been stated is when one challenges a provision as ultra vires the persons who are likely to be affected, some of them should be made parties in a representative capacity. That has been the consistent view of this Court in service jurisprudence. Some other decisions which have been relied upon, are directly connected with regard to the selection and selectees. On a perusal of the analysis made in *J.S. Yadav*[27], we are disposed to think that the Court has applied the principle pertaining to the constitutional validity by equating it with the interpretation of a provision, whether it is retrospective or prospective. That apart, the Court, as is evident from para 32 of the judgment, has noted that the prayer made by the appellant only related to the declaratory relief. The said decision has to be understood in the context. A ratio of a decision has to be understood in its own context, regard being had to the factual exposition. If there has been advertence to precedents, the same has to be seen to understand and appreciate the true ratio. The ratiocination in the said decision is basically founded on the interpretation of the statutory provision and the relief claimed. The Court has been guided by the fact that when the interpretation as regards the provision whether it is retrospective or prospective, the selected members are necessary parties.

39. In this regard, we may refer to the rule stated by Lord Halsbury in *Quinn* v. *Leathem*[38] : (AC p. 506)

> "… every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found."

40. A three-Judge Bench in *Union of India* v. *Dhanwanti Devi*[39] while discussing about the precedent under Article 141 of the Constitution, held that : (SCC pp. 51-52, paras 9-10)

> "9. Before adverting to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the

objection raised by Shri Vaidyanathan that *Hari Krishan Khosla case*[40] is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is per se per incuriam. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates—(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be

regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents."

41. From the aforesaid, it is clear as day that what has been stated in para 31 in *J.S. Yadav*[27] does not even follow from the authorities referred to therein. We have analysed the principle of when and in what circumstances, a decision becomes a binding precedent. We have also discussed the facts at length keeping in view the declaratory relief made in the writ petition preferred before the High Court. The context in which the observations have been made have to be kept in mind. Regard being had to the factual scenario in entirety and further taking note of the fact that the Court was basically concerned with the retrospective and prospective applicability of the provision, we are disposed to think that it is not a binding precedent for the proposition that in a case of termination or removal or dismissal, the person appointed in the place of a terminated, removed or dismissed employee would be a necessary party. That is how the said authority has to be understood, and we so understand.

42. It has been held in *Debasis Das*[26], the principles of natural justice are to be determined in the context and it must depend to a great extent on the facts and circumstances of that case. In this context, the decision in *Kailash Chand Mahajan*[20] becomes extremely apposite. May it be noted, we have already referred to the said judgment but a detailed analysis is necessary to understand the present controversy. In the said case, the first respondent, after his retirement, was appointed as a Member of the Himachal Pradesh State Electricity Board and thereafter as the Chairman of the said Board. He was granted extensions from time to time. The last extension was issued on 12-6-1989 for a period of three years i.e. 25-7-1992. After the General Elections to the Legislative Assembly which was held in January 1990, the Government issued a Notification on 6-3-1990 by which the earlier notification was superseded and the appointment of the said respondent as Chairman was extended from 25-7-1989 to 6-3-1990. Another notification was issued on the same date directing that one R.S. Chauhan shall function as the Chairman of the Board. The first respondent preferred a writ petition assailing the validity of the notification by which his period was curtailed and prayed for certiorari

to quash the same. When the writ petition was pending, a notification was issued terminating the appointment of the writ petitioner. The High Court had passed a direction that no appointment to the post of Chairman could be made till further orders of the Court. That order was passed on 30-3-1990. At the time of conclusion of the hearing, the learned Advocate General after obtaining instructions filed an undertaking to the effect that the Notification dated 6-3-1990 curtailing the period of the writ petitioner would be withdrawn. Accepting the undertaking, the writ petition was disposed of. On 11-6-1990, the Government withdrew both the Notifications i.e. 6-3-1990 and 30-3-1990. On 11-6-1990, a show-cause notice was issued to Kailash Chand Mahajan and eventually he was suspended and R.S. Chauhan, a Member of the Board was allowed to function as the Chairman. The issuance of the show-cause notice and

the order of suspension were challenged in a writ petition. Various arguments were advanced from both sides and the High Court eventually quashed the notifications issued by the State. Be it noted, a contention was raised before the High Court that R.S. Chauhan having been appointed as the Chairman, he ought to have been impleaded as a party which was rejected by the High Court.

43. This Court, dwelling upon various facets, posed the question whether the failure to implead R.S. Chauhan would be fatal to the writ petition. Addressing the said issue, as stated earlier, this Court distinguished the decision of *Rafia Rahim*[21] and *Padmraj*[22] and thereafter proceeded to state thus : (*Kailash Chand Mahajan case*[20], SCC pp. 399-400, paras 104-05)

> "*104*. On the contrary, we think we should approach the matter from this point of view viz. to render an effective decision whether the presence of Chauhan is necessary? We will in this connection refer to *A. Janardhana* v. *Union of India*[23] where it is held as under : (SCC p. 626, para 36)
>
> > '*36*. … Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the Ministry concerned and not against any individual nor any seniority is claimed by any one individual against another particular individual and, therefore, even if technically the direct recruits were not before the court, the petition is not likely to fail on that ground.'

105. What was the first respondent seeking in the writ petition? *He was questioning the validity of the Ordinance and the Act whereby he had been deprived of his further continuance. What is the relief he could have asked for against Chauhan? None*. The first point is Chauhan came to be appointed consequent to the suspension of the first respondent which suspension had come to be stayed by the High Court on 12-6-1990. Then, again, as pointed out by the High Court it was 'till further orders'. Therefore, we hold, the failure to implead Chauhan does not affect the maintainability of the writ petition."

(emphasis supplied)

44. The said decision in *Kailash Chand Mahajan case*[20], we are inclined to think is a binding precedent for the purpose of understanding the concept of necessary party. The Court has relied on the pronouncement in *A. Janardhana*[23]. What has been really laid down is that R.S. Chauhan was not entitled in law to contest the lis as Kailash Chand, the aggrieved party, was challenging the ordinance as he had faced the curtailment of period of his tenure.

45. In this context, we may refer to certain other authorities where there has been an expansion of the concept of necessary party. The Constitution

Bench in *U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*[41] has laid down that in a land acquisition proceeding, the local authority is a necessary party in the proceedings before the Reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard. That apart, it has also been stated that in the event of enhancement of the amount of compensation by the Reference Court, if the Government does not file an appeal, the local authority can file an appeal against the award in the High Court after obtaining leave of the Court. That apart, the Court also opined that in an appeal by the person having an interest in the land seeking enhancement of the amount of compensation awarded by the Reference Court, the local authorities should be impleaded as a party and is entitled to be served notice of the said appeal and that could apply to appeal in the High Court as well as in the Supreme Court.

46. In *DDA* v. *Bhola Nath Sharma*[42], the question arose whether the

Delhi Development Authority, at whose instance land of the respondent and others had been acquired, could be treated as a "person interested" within the meaning of Section 3(*b*) of the Land Acquisition Act, 1894 and it was entitled to an opportunity to participate in the proceedings held before the Land Acquisition Collector and the Reference Court for determining the compensation. The two-Judge Bench referred to *U.P. Awas Evam Vikas Parishad*[41] and relied upon a passage from *Union of India* v. *Bhola Nath Sharma*[43] and eventually allowed the appeal and set aside the impugned judgment of the High Court as well as that of the Reference Court and remitted the matter to the Reference Court to decide the reference afresh after giving opportunity of hearing to the parties which shall necessarily include opportunity to adduce evidence for the purpose of determining the amount of compensation.

47. We have referred to the aforesaid decisions with the purpose that the company or the authority has been treated as a necessary party on the foundation that it meets the criterion provided in the definition clause and that apart ultimately it has to pay the compensation. Therefore, it has a right in law to participate in the proceedings pertaining to determination of the amount of compensation. Factual score, needless to say, stands on a different footing.

48. A few examples can be given so that the position can be easily appreciated. There are provisions in some legislations pertaining to Gram Panchayat or Panchayat Samiti where on certain grounds the competent authority has been conferred the power to remove the elected Sarpanch or the Chairman, as the case may be on certain counts. Against the order of the Collector, an appeal lies and eventually either a revision or a writ lies to the High Court. After his removal, someone by way of indirect election from amongst the members of the Panchayats or the Panchayat Samiti is elected as the Sarpanch or the Chairman. The removed Sarpanch assails his order of removal as he is

aggrieved by the manner, method and the reasons for removal. In his eventual success, he has to hold the post of the Sarpanch, if the tenure is there. The question, thus, arises whether the person who has been elected in the meantime from amongst the members of the Panchayat Samiti or Sabha is a necessary party. The answer has to be a categorical "No", for he cannot oppose the order of removal assailed by the affected Sarpanch nor can he defend his election because he has come into being because of a vacancy, arising due to different situation.

49. In the instant case, Shop No. 2 had become vacant. The appellant was allotted the shop, may be in the handicapped quota but such allotment is the resultant factor of the said shop falling vacant. The original allottee, that is, the respondent, assailed his cancellation and ultimately succeeded in appeal. We are not concerned with the fact that the appellant herein was allowed to put her stand in the appeal. She was neither a necessary nor a proper party. The appellate authority permitted her to participate but that neither changes the situation nor does it confer any legal status on her. She would have continued to hold the shop had the original allottee lost the appeal. She cannot assail the said order in a writ petition because she is not a necessary party. It is the State or its functionaries who could have challenged the same in appeal. They have maintained sphinx like silence in that regard. Be that as it may, that would not confer any locus on the subsequent allottee to challenge the order passed in favour of the former allottee. She is a third party to the lis in this context.

50. The decisions which we have referred to hereinbefore directly pertain to the concept of necessary party. The case of *Kailash Chand Mahajan*[20] makes it absolutely clear. We have explained the authority in *J.S. Yadav*[27] and opined that it has to rest on its own facts keeping in view the declaratory relief made therein, and further what has been stated therein cannot be regarded as a binding precedent for the proposition that in a case of removal or dismissal or termination, a subsequently appointed employee is a necessary party. The said principle shall apply on all fours to a fair price shop owner whose licence is cancelled. We may hasten to add, this concept will stand in contradistinction to a case where the land after having vested under any statute in the State has been distributed and possession handed over to different landless persons. It is because of such allotment and delivery of possession in their favour, that is required under the statute, rights are created in favour of such allottees and, therefore, they are necessary parties as has been held in *Ram Swarup* v. *S.N. Maira*[44]. The subtle distinction has to be understood. It does not relate to a post or position which one holds in a fortuitous circumstance. It has nothing to do with a vacancy. The land of which possession is given and the landless persons who have received the pattas and have remained in possession, they have a right to retain their possession. It will be an anarchical situation, if they are not impleaded as parties, whereas in a case which relates to a post or position

or a vacancy, if he or she who holds the post because of the vacancy having arisen is allowed to be treated as a necessary party or allowed to assail the order, whereby the earlier post holder or allottee succeeds, it will only usher in the reverse situation — an anarchy in law.

51. In this context, reference to the judgment in *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay*[45] would be fruitful. The two-Judge Bench was dealing with the concept of dominus litis which relates to the plaintiff. The Court analysed the provision contained in Order 1 Rule 10 and various sub-rules. The subject-matter in the case pertained to a dispute between the petitioner and Respondent 1 which centred on the demolition and unauthorised construction by the competent authority under the Bombay Municipal Act. Respondent 2 was the lessee in possession of the service station. The Municipal Corporation had not issued any notice to the said respondent. It was contended before the Court that Respondent 2 was instrumental in the initiation of the proceeding by the Municipal Corporation against him. The Court addressed to the issue whether the said respondent is a necessary or proper party. In the said case, the appellant had instituted a case against the third respondent for declaration that she was the lawfully married wife of the third respondent who had entered context and admitted the claim. An application for impleadment was sought by Respondents 1 and 2 on the ground that they were respectively the wife and son of the third respondent and they were interested in denying the appellant's status as wife and the children as the legitimate children of the third respondent. The trial court had allowed the application and the said order was confirmed by the High Court in its revisional jurisdiction.

52. This Court referred to the authority in *Razia Begum* v. *Anwar Begum*[46] and came to hold that there is a clear distinction between suits relating to property and those suits in which the subject-matter of litigation is a declaration as regards status or legal character. The Court observed that in the former category, the rule of personal interest is distinguished from the commercial interest which is required to be shown before a person may be added as a party and accordingly held : (*Ramesh Hirachand case*[45], SCC p. 531, para 14)

> "*14*. … The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the

answer i.e. he can say that the litigation may lead to a result which will affect him legally, that is, by curtailing his legal rights."

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And again : (SCC p. 531, para 14)

"*14*. … It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in *Amon* v. *Raphael Tuck & Sons Ltd.*[47], wherein after quoting the observations of Wynn-Parry, J. in *Dollfus Mieg et Compagnie SA* v. *Bank of England*[48], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject-matter of the action if those rights could be established, Devlin, J. has stated : (*Amon case*[47], QB p. 371)

'… the test is "May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights?"'"

Eventually, the Court unsettled the order passed by the trial court as well as by the High Court.

53. We have referred to the said decision in *Ramesh Hirachand case*[45] in extenso as there is emphasis on curtailment of legal right. The question to be posed is whether there is curtailment or extinction of a legal right of the appellant. The writ petitioner before the High Court was trying to establish her right in an independent manner, that is, she has an independent legal right. It is extremely difficult to hold that she has an independent legal right. It was the first allottee who could have continued in law, if his licence would not have been cancelled. He was entitled in law to prosecute his cause of action and restore his legal right. Restoration of the legal right is pivotal and the prime mover. The eclipse being over, he has to come back to the same position. His right gets revived and that revival of the right cannot be dented by the third party.

54. In view of the aforesaid premises, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed. There shall be no order as to costs.

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† Arising out of SLP (C) No. 16650 of 2012. Arising from the Judgment and Order in *Poonam* v. *State of U.P*, 2012 SCC OnLine All 4203 (Allahabad High Court, Writ C No. 16390 of 2012, dt.

3-4-2012) **[Affirmed]**

[1] *Poonam* v. *State of U.P.*, 2012 SCC OnLine All 4203

[2] *Sri Pal Jatav* v. *State of U.P.*, 2008 SCC OnLine All 1101 : (2009) 74 ALR 61 : (2008) 1 ADJ 718

[3] *Udit Narain Singh Malpaharia* v. *Board of Revenue*, AIR 1963 SC 786

[4] *Vijay Kumar Kaul* v. *Union of India*, (2012) 7 SCC 610 : (2012) 2 SCC (L&S) 491

[5] *Indu Shekhar Singh* v. *State of U.P.*, (2006) 8 SCC 129 : 2006 SCC (L&S) 1916

[6] *Public Service Commission* v. *Mamta Bisht*, (2010) 12 SCC 204 : (2011) 1 SCC (L&S) 208

[7] *Gulabchand Chhotalal Parikh* v. *State of Gujarat*, AIR 1965 SC 1153

[8] *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot*, (1974) 2 SCC 706

[9] *Sarguja Transport Service* v. *STAT*, (1987) 1 SCC 5 : 1987 SCC (Cri) 19

[10] *Prabodh Verma* v. *State of U.P.*, (1984) 4 SCC 251 : 1984 SCC (L&S) 704

[11] *Tridip Kumar Dingal* v. *State of W.B.*, (2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119

[12] *Jogendrasinhji Vijaysinghji* v. *State of Gujarat*, (2015) 9 SCC 1 : (2015) 4 SCC (Civ) 275

[13] *Hari Vishnu Kamath* v. *Ahmad Ishaque*, AIR 1955 SC 233

[14] *Savitri Devi* v. *District Judge, Gorakhpur*, (1999) 2 SCC 577

[15] *South Central Railway* v. *A.V.R. Siddhantti*, (1974) 4 SCC 335 : 1974 SCC (L&S) 290

[16] *South Central Railway* v. *A.V.R. Siddhanti*, 1971 SCC OnLine AP 152 : AIR 1972 AP 252

[17] *B. Gopalaiah* v. *State of A.P.*, 1967 SCC OnLine AP 39 : AIR 1969 AP 204

[18] *J.S. Sachdev* v. *RBI*, 1973 SCC OnLine Del 139 : ILR (1973) 2 Del 392

[19] *Mohan Chandra Joshi* v. *Union of India*, CW No. 550 of 1970, decided on 25-3-1971 (Del)

[20] *State of H.P.* v. *Kailash Chand Mahajan*, 1992 Supp (2) SCC 351 : 1992 SCC (L&S) 874 : (1992) 21 ATC 528

[21] *State of Kerala* v. *Rafia Rahim*, 1978 SCC OnLine Ker 38 : AIR 1978 Ker 176

[22] *Padmraj Samarendra* v. *State of Bihar*, 1978 SCC OnLine Pat 64 : AIR 1979 Pat 266

[23] *A. Janardhana* v. *Union of India*, (1983) 3 SCC 601 : 1983 SCC (L&S) 467

[24] *Sadananda Halo* v. *Momtaz Ali Sheikh*, (2008) 4 SCC 619 : (2008) 2 SCC (L&S) 9

[25] *All India SC & ST Employees' Assn.* v. *A. Arthur Jeen*, (2001) 6 SCC 380 : (2007) 2 SCC (L&S) 362

[26] *Canara Bank* v. *Debasis Das*, (2003) 4 SCC 557 : 2003 SCC (L&S) 507

[27] *J.S. Yadav* v. *State of U.P.*, (2011) 6 SCC 570 : (2011) 2 SCC (L&S) 140

[28] *Ishwar Singh* v. *Kuldip Singh*, 1995 Supp (1) SCC 179 : 1995 SCC (L&S) 373 : (1995) 29 ATC 144

[29] *State of Assam* v. *Union of India*, (2010) 10 SCC 408 : (2010) 4 SCC (Civ) 187 : (2010) 2 SCC (L&S) 812

[30] *Union of India* v. *Pushpa Rani*, (2008) 9 SCC 242 : (2008) 2 SCC (L&S) 851

[31] *State of Karnataka* v. *K. Govindappa*, (2009) 1 SCC 1 : (2009) 1 SCC (L&S) 64

[32] *J.S. Yadav* v. *State of U.P.*, 2009 SCC OnLine All 426 : (2009) 4 All LJ 485

[33] *State of Punjab* v. *Bhajan Kaur*, (2008) 12 SCC 112 : (2009) 1 SCC (Cri) 328

[34] *Sangam Spinners* v. *Regl. Provident Fund Commr.*, (2008) 1 SCC 391 : (2008) 1 SCC (L&S) 192

[35] *Railway Board* v. *C.R. Rangadhamaiah*, (1997) 6 SCC 623 : 1997 SCC (L&S) 1527

[36] *U.P. Madhyamik Shikshak Sangh* v. *State of U.P.*, 1978 SCC OnLine All 942 : 1979 All LJ 178

[37] *Union of India* v. *Hajera Khatun*, 2003 SCC OnLine Gau 516 : (2004) 1 Gau LR 493

[38] *Quinn* v. *Leathem*, 1901 AC 495 : (1900-03) All ER Rep 1 (HL)

[39] *Union of India* v. *Dhanwanti Devi*, (1996) 6 SCC 44

[40] *Union of India* v. *Hari Krishan Khosla*, 1993 Supp (2) SCC 149

[41] *U.P. Awas Evam Vikas Parishad* v. *Gyan Devi*, (1995) 2 SCC 326

[42] *DDA* v. *Bhola Nath Sharma*, (2011) 2 SCC 54 : (2011) 1 SCC (Civ) 344

[43] *Union of India* v. *Bhola Nath Sharma*, SLP (C) No. … (CC No. 1608 of 1999), order dated 12-4-1999 (SC)

[44] *Ram Swarup* v. *S.N. Maira*, (1999) 1 SCC 738

[45] *Ramesh Hirachand Kundanmal* v. *Municipal Corpn. of Greater Bombay*, (1992) 2 SCC 524

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[46] *Razia Begum* v. *Anwar Begum*, AIR 1958 SC 886

[47] *Amon* v. *Raphael Tuck & Sons Ltd.*, (1956) 1 QB 357 : (1956) 2 WLR 372 : (1954) 1 All ER 273

[48] *Dollfus Mieg et Compagnie SA* v. *Bank of England*, (1950) 2 All ER 605 at p. 611

20. For the reasons aforesaid, we do not find any merit in these appeals which are accordingly dismissed.

(2013) 4 Supreme Court Cases 465

(BEFORE DR B.S. CHAUHAN AND J.S. KHEHAR, JJ.)

AYAAUBKHAN NOORKHAN PATHAN .. Appellant;

Versus

STATE OF MAHARASHTRA AND OTHERS .. Respondents.

Civil Appeal No. 7728 of 2012†, 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 Ill. (e), Evidence Act, 1872**

— 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

— Held, circumstances of issuance/verification of caste certificate granted to appellant give rise to presumption under S. 114 Ill. (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

— 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

† 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

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)

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**

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. **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**

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

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.

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

Held :

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)

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.

(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

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*

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)

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 Chaufal*, (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*

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)

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*

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

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 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)

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)

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)

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; *Karewwa* 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*

Dayaram v. *Sudhir Batham*, (2012) 1 SCC 333 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109, *clarified* and *followed*

Sandeep Manoharrao Waysal v. *State of Maharashtra*, (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205; *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 20-11-2009 (SC); *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 6-1-2012 (SC); *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC), *referred to*

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**

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 is that, the certificate holder 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 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. (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*

Ayaaubkhan Noorkhan Pathan v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 11-5-2012 (SC), *referred to*

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**

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

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.

(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*

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 :

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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.

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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*[1], 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

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.

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[1], 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.

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[2], granted a stay with respect to the operation of the aforementioned impugned judgment[1]. Vide order dated 6-1-2012[3], 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.

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

1 *Sandeep Manoharrao Waysal* v. *State of Maharashtra*, (2010) 3 Bom CR 717 : (2010) 1 Mah LJ 205

2 *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 20-11-2009 (SC), wherein it was directed:

"Exemption allowed. Issue notice. Until further orders, there shall be stay of the impugned order."

3 *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 6-1-2012 (SC), wherein it was directed:

"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."

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 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 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 matched with those of Bhil Tadvi (Scheduled Tribes). The action of 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.

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[1] 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 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.

8. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

Person aggrieved

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

suffers from *legal injury* can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to *enforce a legal right*. In fact, the *existence of such right, is the foundation of the exercise of the said jurisdiction by the Court*. The *legal right that can be enforced* must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide *State of Orissa* v. *Madan Gopal Rungta*[4], *Saghir Ahmad* v. *State of U.P.*[5], *Calcutta Gas Co. (Proprietary) Ltd.* v. *State of W.B.*[6], *Rajendra Singh* v. *State of M.P.*[7] and *Tamilnad Mercantile Bank Shareholders Welfare Assn. (2)* v. *S.C. Sekar*[8].]

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide *Shanti Kumar R. Canji* v. *Home Insurance Co. of New York*[9] and *State of Rajasthan* v. *Union of India*[10].)

11. In *Anand Sharadchandra Oka* v. *University of Mumbai*[11], a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

12. In *A. Subash Babu* v. *State of A.P.*[12], this Court held: (SCC pp. 628-29, para 25)

> "*25.* … The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse,

4 AIR 1952 SC 12
5 AIR 1954 SC 728
6 AIR 1962 SC 1044
7 (1996) 5 SCC 460 : AIR 1996 SC 2736
8 (2009) 2 SCC 784
9 (1974) 2 SCC 387 : AIR 1974 SC 1719
10 (1977) 3 SCC 592 : AIR 1977 SC 1361
11 (2008) 5 SCC 217 : AIR 2008 SC 1289
12 (2011) 7 SCC 616 : (2011) 3 SCC (Civ) 851 : (2011) 3 SCC (Cri) 267 : AIR 2011 SC 3031

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."

13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression "next friend" means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. [Vide *Charanjit Lal Chowdhury* v. *Union of India*[13], *Sunil Batra (2)* v. *Delhi Admn.*[14], *Nilima Priyadarshini* v. *State of Bihar*[15], *Simranjit Singh Mann* v. *Union of India*[16], *Karamjeet Singh* v. *Union of India*[17] and *Kishore Samrite* v. *State of U.P.*[18]]

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 involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a visa". Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide *P.S.R. Sadhanantham* v. *Arunachalam*[19], *Dalip Singh* v. *State of U.P.*[20], *State of Uttaranchal* v. *Balwant Singh Chaufal*[21] and *Amar Singh* v. *Union of India*[22].)

15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide *Duryodhan Sahu* v. *Jitendra Kumar Mishra*[23], *Dattaraj Nathuji Thaware* v. *State of Maharashtra*[24] and *Neetu* v. *State of Punjab*[25].)

13 AIR 1951 SC 41
14 (1980) 3 SCC 488 : 1980 SCC (Cri) 777 : AIR 1980 SC 1579
15 1987 Supp SCC 732 : 1988 SCC (Cri) 138 : AIR 1987 SC 2021
16 (1992) 4 SCC 653 : 1993 SCC (Cri) 22 : AIR 1993 SC 280
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
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

16. In *Ghulam Qadir* v. *Special Tribunal*[26], this Court considered a similar issue and observed as under: (SCC p. 54, para 38)

> "*38.* There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. *The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change* with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. … In other words, if the person is found to be not *merely a stranger having no right* whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi." (emphasis added)

17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.

Locus standi of Respondent 5

18. As Respondent 5 does not belong to the Scheduled Tribes category, the garb adopted by him, of serving the cause of Scheduled Tribe candidates who might have been deprived of their legitimate right to be considered for the post, must be considered by this Court in order to determine whether Respondent 5, is in fact, in a legitimate position to lay any claim before any forum, whatsoever.

19. This Court in *Ravi Yashwant Bhoir* v. *District Collector, Raigad*[27], held as under: (SCC pp. 434-35, paras 58-60)

> "*58.* Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria.*
>
> *59.* The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to

26 (2002) 1 SCC 33
27 (2012) 4 SCC 407

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.

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."

20. A similar view has been reiterated by this Court in *K. Manjusree* v. *State of A.P.*[28], wherein it was held that the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court on the grounds of delay and non-maintainability alone.

21. In *Balbir Kaur* v. *U.P. Secondary Education Services Selection Board*[29], it has been held that a violation of the equality clauses enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons. While dealing with the similar issue, this Court in *Raju Ramsing Vasave* v. *Mahesh Deorao Bhivapurkar*[30] held: (SCC p. 74, para 45)

"*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 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

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

society, in our opinion, this Court will not shirk its responsibilities from doing so."

(See also *Manohar Joshi* v. *State of Maharashtra*[31].)

22. In *Vinoy Kumar* v. *State of U.P.*[32], this Court held: (SCC p. 736, para 2)

"*2.* … Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

23. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, inarticulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo motu, in such respect.

Cross-examination is one part of the principles of natural justice

24. A Constitution Bench of this Court in *State of M.P.* v. *Chintaman Sadashiva Waishampayan*[33] held that the rules of natural justice require that a party must be given the opportunity to adduce all relevant evidence upon which he relies, and further that, the evidence of the opposite party should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party. Not providing the said opportunity to cross-examine witnesses, would violate the principles of natural justice. (See also *Union of India* v. *T.R. Varma*[34], *Meenglas Tea Estate* v. *Workmen*[35], *Kesoram Cotton Mills Ltd.* v. *Gangadhar*[36], *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*[37], *Rachpal Singh* v. *Gurmit Kaur*[38], *Biecco Lawrie Ltd.* v. *State of W.B.*[39] and *State of U.P.* v. *Saroj Kumar Sinha*[40].)

25. In *Lakshman Exports Ltd.* v. *CCE*[41], this Court, while dealing with a case under the Central Excise Act, 1944, considered a similar issue i.e.

31 (2012) 3 SCC 619
32 (2001) 4 SCC 734 : 2001 SCC (Cri) 806 : AIR 2001 SC 1739
33 AIR 1961 SC 1623
34 AIR 1957 SC 882
35 AIR 1963 SC 1719
36 AIR 1964 SC 708
37 (2008) 3 SCC 279 : (2008) 1 SCC (Civ) 850 : AIR 2008 SC 876
38 (2009) 15 SCC 88 : (2009) 5 SCC (Civ) 549 : AIR 2009 SC 2448
39 (2009) 10 SCC 32 : (2009) 2 SCC (L&S) 729 : AIR 2010 SC 142
40 (2010) 2 SCC 772 : (2010) 1 SCC (L&S) 675 : AIR 2010 SC 3131
41 (2005) 10 SCC 634

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.

26. In *New India Assurance Co. Ltd.* v. *Nusli Neville Wadia*[37], this Court considered a case under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and held as follows: (SCC p. 295, para 45)

> "*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.

27. In *K.L. Tripathi* v. *SBI*[42], this Court held that, in order to sustain a complaint of the violation of the principles of natural justice on the ground of absence of opportunity of cross-examination, it must be established that some prejudice has been caused to the appellant by the procedure followed. A party, who does not want to controvert the veracity of the evidence on record, or of the testimony gathered behind his back, cannot expect to succeed in any subsequent grievance raised by him, stating that no opportunity of cross-examination was provided to him, specially when the same was not requested, and there was no dispute regarding the veracity of the statement. (See also *Union of India* v. *P.K. Roy*[43] and *Channabasappa Basappa Happali* v. *State of Mysore*[44].) In *Transmission Corpn. of A.P. Ltd.* v. *Sri Rama Krishna Rice Mill*[45], this Court held: (SCC p. 80, para 9)

> "*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
43 AIR 1968 SC 850
44 (1971) 1 SCC 1 : AIR 1972 SC 32
45 (2006) 3 SCC 74 : 2006 SCC (L&S) 467 : AIR 2006 SC 1445

28. The meaning of providing a reasonable opportunity to show cause against an action proposed to be taken by the Government, is that the government servant is afforded a reasonable opportunity to defend himself against the charges, on the basis of which an inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so only when he is told what the charges against him are. *He can, therefore, do so by cross-examining the witnesses produced against him.* The object of supplying statements is that, the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against him. Unless the said statements are provided to the government servant, he will not be able to conduct an effective and useful cross-examination.

29. In *Rajiv Arora* v. *Union of India*[46] this Court held: (SCC p. 310, paras 13-14)

> "*13.* … Effective cross-examination could have been done as regards the correctness or otherwise of the report, if the contents of them were proved. The principles analogous to the provisions of the Evidence Act as also the principles of natural justice demand that the maker of the report should be examined, save and except in cases where the facts are admitted or the witnesses are not available for cross-examination or similar situation. …
>
> *14.* The High Court in its impugned judgment proceeded to consider the issue on a technical plea, namely, no prejudice has been caused to the appellant by such non-examination. If the basic principles of law have not been complied with or there has been a gross violation of the principles of natural justice, the High Court should have exercised its jurisdiction of judicial review."

30. The aforesaid discussion makes it evident that, not only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has been decided in accordance with law, as cross-examination is an integral part and parcel of the principles of natural justice.

Affidavit—Whether "evidence" within the meaning of Section 3 of the Evidence Act, 1872

31. It is a settled legal proposition that an affidavit is not "evidence" within the meaning of Section 3 of the Evidence Act, 1872 (hereinafter referred to as "the Evidence Act"). Affidavits are, therefore, not included within the purview of the definition of "evidence" as has been given in Section 3 of the Evidence Act, and the same can be used as "evidence" only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Thus, the filing of an affidavit of one's own statement, in one's own favour, cannot be

46 (2008) 15 SCC 306 : (2009) 3 SCC (Cri) 977 : AIR 2009 SC 1100

regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. (Vide *Sudha Devi* v. *M.P. Narayanan*[47] and *Range Forest Officer* v. *S.T. Hadimani*[48])

32. While examining a case under the provisions of the Industrial Disputes Act, 1947, this Court, in *Bareilly Electricity Supply Co. Ltd.* v. *Workmen*[49], considered the application of Order 19 Rules 1 and 2 CPC, and observed as under: (SCC p. 629, para 14)

> "*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."

33. In *Needle Industries (India) Ltd.* v. *Needle Industries Newey (India) Holding Ltd.*[50], this Court considered a case under the Companies Act, and observed (at SCC p. 373, para 63) that, "it is generally unsatisfactory to record a finding involving grave consequences [with respect] to a person, on the basis of affidavits and documents [alone,] without asking that person to submit to cross-examination." However, the conduct of the parties may be an important factor with regard to determining whether they showed their willingness to get the said issue determined on the basis of affidavits, correspondence and other documents, on the basis of which proper and necessary inferences can safely and legitimately be drawn.

34. In *Ramesh Kumar* v. *Kesho Ram*[51], this Court considered the scope of application of the provisions of Order 19 Rules 1 and 2 CPC in a rent control matter, observing as under: (SCC p. 628, para 9)

> "*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
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

nature of the allegations, it is necessary to record oral evidence tested by oral cross-examination, may have recourse to that procedure."

35. In *Standard Chartered Bank* v. *Andhra Bank Financial Services Ltd.*[52], this Court while dealing with a case under the provisions of the Companies Act, 1956, while considering complex issues regarding the markets, exchanges and securities, and the procedure to be followed by special tribunals, held as under: (SCC pp. 121-22, para 48)

"*48.* While it may be true that the Special Court has been given a certain amount of latitude in the matter of procedure, it surely cannot fly away from established legal principles while deciding the cases before it. As to what inference arises from a document, is always a matter of evidence unless the document is self-explanatory. … In the absence of any such explanation, it was not open to the Special Court to come up with its own explanations and decide the fate of the suit on the basis of its inference based on such assumed explanations."

36. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order 18 Rules 4 and 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules, etc. as framed by the aforementioned authorities.

37. The instant case is required to be examined in the light of the aforesaid legal propositions. This Court examined this matter in detail in *Madhuri Patil* v. *Commr., Tribal Development*[53], and upon realising that spurious tribes and persons not belonging to the Scheduled Tribes category, were snatching away the reservation benefits that have been made available to genuine tribals, and that they were being wrongly deprived of their rights on the basis of false caste certificates, and that further, at a subsequent stage such unscrupulous persons, after getting admission/employment, were adopting dilatory tactics, the Court issued a large number of directions to investigate such cases of false claims. The directions inter alia included: (SCC pp. 255-57, para 13)

"***5.*** Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of Police Inspectors to investigate into the social status claims. …

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be 'not genuine' or

52 (2006) 6 SCC 94

53 (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259

'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 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 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 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 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 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 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 belonging to the Scheduled Castes and Scheduled Tribes category are not defeated by such unscrupulous persons.

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

39. The correctness of the said judgment in *Madhuri Patil*[53] was doubted, and the matter was referred to and decided by a larger Bench of this Court in *Dayaram* v. *Sudhir Batham*[54], wherein, while deciding the various issues involved, including the competence of this Court to legislate in this regard, it was held as under: (*Dayaram case*[54], SCC pp. 353-54, paras 35-36)

> "*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. …
>
> *36.* Having regard to the scheme for verification formulated by this Court in *Madhuri Patil*[53] the Scrutiny Committees carry out verification of caste certificates issued without prior enquiry, as for example, the caste certificates issued by Tahsildars or other officers of the departments of Revenue/Social Welfare/Tribal Welfare, without any enquiry or on the basis of self-affidavits about caste. *If there were to be a legislation governing or regulating grant of caste certificates, and if caste certificates are issued after due and proper inquiry, such caste certificates will not call for verification by the Scrutiny Committees. Madhuri Patil*[53] provides for verification only to avoid false and bogus claims." (emphasis added)

Thus, it is evident from the aforesaid judgment in *Dayaram*[54], that the purpose of issuing directions in *Madhuri Patil*[53] was only to examine those cases where caste certificates had been issued without conducting any prior enquiry, on the basis of self-affidavits regarding one's caste alone, and that the said directions were not at all applicable, where a legislation governing or regulating the grant of caste certificates exists, and where caste certificates are issued after due and proper enquiry. The caste certificates issued by holding proper enquiry, in accordance with duly prescribed procedure, would not require any further verification by the Scrutiny Committee.

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

53 *Madhuri Patil* v. *Commr., Tribal Development*, (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259

54 (2012) 1 SCC 333 : (2012) 1 SCC (Civ) 205 : (2012) 1 SCC (L&S) 109

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.

41. In view thereof, this Court vide order dated 11-5-2012[55], 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.

42. In pursuance of the said order dated 11-5-2012[55], 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.

43. In order to determine the genuineness and sincerity of Respondent 5, this Court on 29-10-2012[56] adjourned the matter until 5-11-2012, directing Respondent 5 to act as under:

> "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."

43.1. In response to the said order, Respondent 5 filed an affidavit in Court on 5-11-2012. The contents of the affidavit reveal that Respondent 5 claims that his *occupation* is that of a *social worker*. The allegations against the appellant stating that he obtained the said caste certificate fraudulently

55 *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 11-5-2012 (SC), wherein it was directed:

> "The learned counsel for Respondent 2 Committee undertakes to produce the original record and file the affidavit as to whether the present petitioner was permitted to cross-examine the witnesses examined by the other side and had an opportunity to lead evidence. List the matter in the first week of July, 2012. In the meanwhile, further consequential proceedings are stayed."

56 *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC), wherein it was directed:

> "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."

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.

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."

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[56]. 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.

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

56 *Ayaaubkhan Noorkhan Pathan* v. *State of Maharashtra*, SLP (C) No. 29472 of 2009, order dated 29-10-2012 (SC)

rebuttal lies upon the person who alleges that the act had not been regularly performed or the procedure required under the law had not been followed. [Vide *Gopal Narain* v. *State of U.P.*[57], *Narayan Govind Gavate* v. *State of Maharashtra*[58], *Karewwa* v. *Hussensab Khansaheb Wajantri*[59], *Engg. Kamgar Union* v. *Electro Steels Castings Ltd.*[60], *Mohd. Shahabuddin* v. *State of Bihar*[61], *Punjab SEB* v. *Ashwani Kumar*[62], *M. Chandra* v. *M. Thangamuthu*[63] and *R. Ramachandran Nair* v. *State of Kerala (Vigilance Deptt.)*[64].]

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.

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.

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.

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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
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

(1976) 1 Supreme Court Cases 671

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

JASBHAI MOTIBHAI DESAI .. .. Appellant :

Versus

ROSHAN KUMAR, HAJI BASHIR AHMED AND OTHERS .. .. .. Respondents.

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

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

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

Held :

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

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

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

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' Assn.*, (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. *London 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 Venkateswara 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.*

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.

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 *Kishore Chander Ratilal* v. *State of Gujarat*, Spl. Civil Application No. 912 of 1970, decided by Gujarat High Court on November 25/27, 1970, *referred to.*

Appeal dismissed M/2823/C

Advocates who appeared in this case:

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

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

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

The Judgment of the Court was delivered by

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

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

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

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

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

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

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

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

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

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

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

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

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

1. (1971) 2 SCR 110 : (1970) 2 SCC 744.
2. Special Civil Application No. 912 of 1970, decided by Gujarat High Court on November 25/27, 1970.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. (1870) 5 QB 466.
5. (1815) 3 M & S 465 : 105 ER 685.
6. (1901) 2 KB 157 : 70 LJKB 636 : 17 TLR 433.
7. (1921) 1 KB 248 : 90 LJKB 413 . 37 TLR 62.

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

20. In *R.* v. *Thames Magistrate's Court ex parte Greenbaum*[8], there were two traders in Goulston St., Stepney. One of them was Gritzman who held a license 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 reallotted that pitch to Gritzman, was without jurisdiction. By this illegal cancellation and reallotment Greenbaum's interest to trade on pitch No. 2, which had been duly licensed out to him, was directly and prejudicially affected by the impugned action.

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

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

8. (1957) 55 LGR 129, 135, 136 extracted in 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 license holders above 300 for a certain period. The Council, disregarding this undertaking, resolved to increase the number. An association representing the existing license holders moved the Queens' Bench for leave to apply for orders of prohibition, mandamus and certiorari. The Division Bench refused. In the Court of Appeal, allowing the association's appeal, Lord Denning, M. R. observed at pp. 308, 309 :

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

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

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

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

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

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

11. 1961 AC 617.
12. (1964) 2 QB 362, 378.
13. (1966) 1 QB 880.
14. (1975) 2 SCC 702.

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

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

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

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

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

15. (1921-22) 38 TLR 537.
16. (1954) 1 WLR 203.
17. (1961) 1 QB 278.
18. (1880) 14 Ch D 458, 465 : 42 LT 783 : 28 WR 715.
19. (1916) 1 KB 7 : 85 LJKB 502 : 32 TLR 84.

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

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

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

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

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

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

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

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

said Justice Frankfurter in *Coleman* v. *Miller*[31]

> this is not the tribunal for its challenge except by those who have some specialised interest of their own to vindicate apart from a political concern which belongs to all.

To have a "standing to sue", which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a *legal wrong*. Courts can intervene only where legal rights are invaded.[32] "Legal wrong" requires a judicially enforceable right and the touchstone to judiciability is injury to a legally protected right. A nominal or a highly speculative adverse affect[33] on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action.[34] Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect".[35] Thus, in the undermentioned cases, it was held that injury resulting from lawful competition not being a legal wrong, cannot furnish a "standing to sue" for judicial relief.[36]

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or 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. 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 433.
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' Assen.* v. *McNutt*, 138 F 2nd 116 : 158 ALR 849.
35. *United States* v. *Storer Broadcasting Co.*, 351 US 192.
36. *Kansas City Power & Light Co.* v. *McKay*, 350 US 884.

circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed ? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a person

against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something ?

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action ? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? Or is it a statute dealing with private rights of particular individuals ?

40. Now let us apply these tests to the case in hand. The Act and the Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

41. Did the appellant have a legal right under the statutory provisions or under the general law which has been subjected to or threatened with injury ? The answer in the circumstances of the case must necessarily be in the negative.

42. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. The appellant did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the no-objection certificate before the District Magistrate or the Government. Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of a licensing authority refusing to grant a license, or revoking or suspending any licence under Section 8. Obviously, the appellant was not a "person aggrieved" within the contemplation of Section 8A.

43. Section 8B of the Act provides that the State Government may either of its own motion, or upon an application made by "an aggrieved person", call for and examine the record of any order made by a licensing authority under this Act, and pass such order thereon as it thinks just and

proper. Assuming that the scope of the words "aggrieved person" in Section 8B is wider than the ambit of the same words as used in Section 8A, then also, the appellant cannot, in the circumstances of this case, be regarded as a "person aggrieved" having the requisite legal capacity to invoke certiorari jurisdiction.

44. The Act and the Rules recognise a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc. located within a distance of 200 yards of the site on which a cinema house is proposed to be constructed. The appellant does not fall within the category of such persons having a special interest in the locality. It is not his case that his cinema house is situated anywhere near the site in question, or that he has any peculiar interest in his personal, fiduciary or representative capacity in any school, temple etc. situated in the vicinity of the said site. It cannot therefore be said that the appellant is "a person aggrieved" on account of his having a particular and substantial interest of his own in the subject-matter of the litigation, beyond the general interest of the public. Moreover the appellant could not be said to have been, *in fact*, grieved. As already noticed, he, despite adequate opportunity, never lodged any objection with the District Magistrate, nor went in revision before the State Government. Thus the present case is not in line with the decisions which are within the ratio of *Queen* v. *Justices of Surrey* (supra).

45. Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider whether any of his rights or interests, recognised by the *general law* has been infringed as a result of the grant of no-objection certificate to the respondents? Here, again, the answer must be in the negative.

46. In paragraph 7 of the writ petition, he has stated his cause of action, thus :

> The petitioner submits that . . . he owns a cinema theatre in Mohmadabad which has about a small population of 15,000 persons as stated above and there is no scope for more than one cinema theatre in the town. He has, therefore, a commercial interest in seeing to it that other persons are not granted a no-objection certificate in violation of law.

47. Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law.[37] The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

37. *Salmond on Jurisprudence*, 12th Edn. by Fitzgerald, p. 357, para 85.

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

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset. of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

50. While a Procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality ; it will tend to perpetuate the appellant's monopoly of cinema business in the town ; and above all, it will in effect, seriously injure the fundamental rights of respondents Nos. 1 and 2, which they have under Article 19(1)(*g*) of the Constitution, to carry on trade or business subject to 'reasonable restrictions imposed by law'.

51. The instant case falls well-nigh within the ratio of this Court's decision in *Nagar Rice and Flour Mills* v. *N. T. Gowda*[38], wherein it was held that a ricemill owner has no locus standi to challenge under Article 226, the setting up of a new ricemill by another — even if such setting up be in contravention of Section 8(3)(*c*) of the Rice Milling Industry (Regulation) Act, 1958 — because no right vested in such an applicant is infringed.

52. For all the foregoing reasons, we are of opinion that the appellant had no locus standi to invoke this special jurisdiction under Article 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative, and on that ground, without entering upon the merits of the case, dismiss this appeal with costs.

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38. (1970) 3 SCR 846 : (1970) 1 SCC 575.

ANNEXURE A/4

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2407-2412 OF 2021

THE STATE OF UTTAR PRADESH & ORS. ETC. ETC. ...APPELLANT (S)

VERSUS

UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC. ...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

J U D G M E N T

B.R. GAVAI, J.

1. For the reasons stated in the applications for impleadment/intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18th 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 1st 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 18th March 2020, 2nd December 2020, and 21st 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 1st 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 5th October 2015 in Writ Petition (Civil) No.202 of 1995 (T.N. Godavarman Thirumalpad vs. 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 11th 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 4th 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 7th 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 12th December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12th December 2018 and 31st 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 1st 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 28th 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 1st 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 3rd August 2019. Vide order dated 6th 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 1st 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 vs. Union of India***. Vide order dated 1st 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 6th August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st 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 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st 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. Prerna 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 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No.202 of 1995 (***T.N. Godavarman Thirumulpad vs. 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 18th 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 Code of Civil Procedure, 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 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th 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

12th 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 18th April 2007, accepted by this Court vide its order dated 18th 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 4th 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 7th 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 11th September 2019 and 20th 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 20th July 2012, the State of Uttar Pradesh

had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31st 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 11th 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 7th 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 vs. Union of India and others***[1], ***Mantri Techzone Private Limited vs. Forword Foundation and others***[2], ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha and Others***[3] and ***Pragnesh Shah vs. Dr. Arun Kumar Sharma and others***[4].

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of ***Ankita Sinha and Others (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

[1] (2017) 9 SCC 499
[2] (2019) 18 SCC 494
[3] 2021 SCC OnLine SC 897
[4] 2022 SCC OnLine SC 79

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 12th 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 4th March 1997[5], 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 9th 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.

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[5] (1997) 3 SCC 312

43. Vide order dated 29th October 2002[6], 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 1st 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.

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[6] (2008) 16 SCC 337

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 3rd 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 18th 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 Iicences, 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 29th 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 30th 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 26th 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 5th 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/counsels. 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 5th October 2015, the MOEFCC issued 2016 Guidelines on 11th 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 (IPlRTI), 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 8x4x6, 8x4xl2, 8x4xl5, 4x4x7, 4x4x10. A 8x4xl0 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4xl5 capacity press can produce upto 15 plywood pieces of 8'x4' 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 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 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 17th May 2017. Vide Notification dated 11th 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 4th 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 7th 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 26th 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 1st 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 1st 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 1st September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18th May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30th 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 5th 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 17th 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:

Yield= 2GS/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 socio-economic 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 7th January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31st 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 19th 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 18th May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th 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 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st 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 18th 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 4th May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7th 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 7th 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 29th 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 vs. Union of India***[7], 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:

[7] (1994) 6 SCC 651

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 AC 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 5th 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 and Others (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 vs. State of A.P. and Ors.***[8], a three-Judge Bench of this Court after referring to the earlier judgment in the case of ***State of H.P. and others vs. Ganesh Wood Products and others***[9] 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

[8] *AIR 1997 SC 3297 = (1997) 8 SCC 191*
[9] (1995) 6 SCC 363

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. vs. Halar Utkarsh Samiti and others***[10], 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***

[10] (2004) 2 SCC 392

Action vs. Union of India and others[11] 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 and others vs. State of Maharashtra and another***[12] reference was made to ***Glanrock Estate Private Limited vs. State of Tamil Nadu***[13] 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*

[11] (1996) 5 SCC 281
[12] (2011) 15 SCC 616
[13] (2010) 10 SCC 96

> *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***

Thirumulkpad vs. Union of India and others[14] 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…"

[14] AIR 1997 SC 1228

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 7th 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.

.....J.
[B.R. GAVAI]

.....J.
[B.V. NAGARATHNA]

NEW DELHI;
OCTOBER 21, 2022

ANNEXURE A/5

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 641 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 166 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. Rajkumar Rupani
S/o. Vishin Das Rupani
Aged about 76 years
Having address of communication at:
H. No. 3, Nikhil Apartment, Plot No. 670,
Near Modi Dungari Police Station,
Adarsh Nagar, Jaipur,
Rajasthan – 302004
Having come down to Hyderabad
and temporarily Staying at Flat
No. 301, Sai Chandra Apts.,
Venkatagiri, Yousufguda,
Hyderabad – 500045 ….. **Petitioner / Proposed Respondent**

v

1) M/s. Anirudh Agro Farms Ltd.
Reg. Office at: 8-2-120/112/88 and 89,
Aparna Crest, 3rd Floor, Road No.2,
Banjara Hills, Hyderabad – 500034 ….. **1st Respondent / Appellant**

2) Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I

Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 **….. 2nd Respondent / RP**

3) Committee of Creditors
of M/s. Viceroy Hotels Limited
Through its Lead Lender
Asset Reconstruction Company
(India) Limited
Reg. Office at: The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400028 **….. 3rd Respondent / CoC**

Present:

For Petitioner / Proposed Respondent : Mr. Krishnan Venugopal, Senior Advocate
For Mr. Anirudh Krishnan, Advocate

For Respondent No.1 / Appellant : Mr. E. Om Prakash, Senior Advocate
For Ms. Deepika Murali, Advocate

For Respondent No.2 / RP : Mr. P.S. Raman, Senior Advocate
For Ms. Lakshana Viravalli, Advocate

For Respondent No.3 / Committee of Creditors : Mr. R. Sankaranarayanan, Senior Advocate
For Mr. P. Ravi Charan, Advocate

WITH

IA No. 645 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 166 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. A.V. Seshakumar Reddy,
S/o. A. Premkumar Reddy,
Aged about 58 years,
Having address of communication at:

H. No. 3, Mada Church Road,
Santhome, Chennai - 600028 ….. **Petitioner / Proposed Respondent**

v

1) M/s. Anirudh Agro Farms Ltd.
Reg. Office at: 8-2-120/112/88 and 89,
Aparna Crest, 3rd Floor, Road No.2,
Banjara Hills, Hyderabad – 500034 ….. **1st Respondent / Appellant**

2) Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 ….. **2nd Respondent/RP**

3) Committee of Creditors
of M/s. Viceroy Hotels Limited
Through its Lead Lender
Asset Reconstruction Company
(India) Limited
Reg. Office at: The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400028 …..**3rd Respondent/CoC**

Present:

For Petitioner / Proposed Respondent : Mr. Krishnan Venugopal, Senior Advocate
For Mr. Anirudh Krishnan, Advocate

For Respondent No.1 / Appellant : Mr. E. Om Prakash, Senior Advocate
For Ms. Deepika Murali, Advocate

For Respondent No.2 / RP : Mr. P.S. Raman, Senior Advocate
For Ms. Lakshana Viravalli, Advocate

For Respondent No.3 / Committee of Creditors : Mr. R. Sankaranarayanan, Senior Advocate
For Mr. P. Ravi Charan, Advocate

IA No. 643 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 170 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. Rajkumar Rupani
S/o. Vishin Das Rupani
Aged about 76 years
Having address of communication at:
H. No. 3, Nikhil Apartment, Plot No. 670,
Near Modi Dungari Police Station,
Adarsh Nagar, Jaipur,
Rajasthan – 302004
Having come down to Hyderabad
and temporarily Staying at Flat
No. 301, Sai Chandra Apts.,
Venkatagiri, Yousufguda,
Hyderabad – 500045 **….. Petitioner / Proposed Respondent**

v

Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 **….. Respondent / RP**

Present:

For Petitioner / Proposed Respondent	:	Mr. Krishnan Venugopal, Senior Advocate For Mr. Anirudh Krishnan, Advocate
For Respondent / RP	:	Mr. P.S. Raman, Senior Advocate For Ms. Lakshana Viravalli, Advocate

WITH

IA No. 646 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 170 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. A.V. Seshakumar Reddy,
S/o. A. Premkumar Reddy,
Aged about 58 years,
Having address of communication at:
H. No. 3, Mada Church Road,
Santhome, Chennai - 600028 **….. Petitioner / Proposed Respondent**

v

Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 **….. Respondent / RP**

Present:

For Petitioner / Proposed Respondent : Mr. Krishnan Venugopal, Senior Advocate
For Mr. Anirudh Krishnan, Advocate

For Respondent / RP : Mr. P.S. Raman, Senior Advocate
For Ms. Lakshana Viravalli, Advocate

IA No. 642 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 183 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. Rajkumar Rupani
S/o. Vishin Das Rupani
Aged about 76 years
Having address of communication at:
H. No. 3, Nikhil Apartment, Plot No. 670,
Near Modi Dungari Police Station,
Adarsh Nagar, Jaipur,
Rajasthan – 302004
Having come down to Hyderabad
and temporarily Staying at Flat
No. 301, Sai Chandra Apts.,
Venkatagiri, Yousufguda,
Hyderabad – 500045 ….. **Petitioner / Proposed Respondent**

v

1) M/s. Asset Reconstruction Company (India) Limited
Member of Committee of Creditors of M/s. Viceroy Hotels Limited
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400028 ….. **1st Respondent / Appellant**

2) Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 ….. **2nd Respondent / RP**

Present:

For Petitioner / Proposed Respondent	:	Mr. Krishnan Venugopal, Senior Advocate For Mr. Anirudh Krishnan, Advocate
For Respondent No.1 / Committee of Creditors	:	Mr. R. Sankaranarayanan, Senior Advocate For Mr. P. Ravi Charan, Advocate
For Respondent No.2 / RP	:	Mr. P.S. Raman, Senior Advocate For Ms. Lakshana Viravalli, Advocate

WITH

IA No. 644 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 183 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Mr. A.V. Seshakumar Reddy,
S/o. A. Premkumar Reddy,
Aged about 58 years,
Having address of communication at:
H. No. 3, Mada Church Road,
Santhome, Chennai - 600028 ..... **Petitioner / Proposed Respondent**

v

1) M/s. Asset Reconstruction Company (India) Limited
Member of Committee of Creditors of M/s. Viceroy Hotels Limited
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400028 ..... **1st Respondent / Appellant**

2) Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of Viceroy Hotels Ltd.

Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 ….. **2nd Respondent / RP**

Present:

For Petitioner / Proposed Respondent : Mr. Krishnan Venugopal, Senior Advocate
For Mr. Anirudh Krishnan, Advocate

For Respondent No.1 / Committee of Creditors : Mr. R. Sankaranarayanan, Senior Advocate
For Mr. P. Ravi Charan, Advocate

For Respondent No.2 / RP : Mr. P.S. Raman, Senior Advocate
For Ms. Lakshana Viravalli, Advocate

IA No. 600 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 170 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Vasavi Realty Private Limited
a Company incorporated under the Companies Act, having its Registered Office at #8-2-120/86/9/A/1,12,2 & amp;13, 1st Floor, Northend, Anilath Maja Housing Society, Road No.2, Banjara Hills, Hyderabad Telangana 500034 represented by its Chairman & Managing Director ….. **Petitioner/Intervenor**

v

Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.

Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 **…..Respondent/Appellant**

Present:

For Petitioner / Intervenor : Mr. T. Ravichandran, Advocate

For Respondent / Appellant : Mr. P.S. Raman, Senior Advocate
For Ms. Lakshana Viravalli, Advocate

WITH

IA No. 656 of 2023

in

Company Appeal (AT) (CH) (INS.) No. 183 of 2023

(Filed under Rule 31 r/w Rule 11 of the National Company Law Appellate Tribunal, Rules 2016, seeking Directions to Implead the Petitioner herein as Respondents in the present Appeal

In the matter of:

Vasavi Realty Private Limited
a Company incorporated under the
Companies Act, having its
Registered Office at
#8-2-120/86/9/A/1,12,2 & amp;13,
1st Floor, Northend, Anilath Maja
Housing Society, Road No.2,
Banjara Hills, Hyderabad
Telangana 500034 represented by
its Chairman & Managing Director **….. Petitioner/Intervenor**

v

1) M/s. Asset Reconstruction Company (India) Limited
The Ruby, 10th Floor,

29, Senapati Bapat Marg,
Dadar (West), Mumbai - 400028 ….. 1st **Respondent/Appellant**

2) Dr. Govindarajula Venkata Narasimha Rao
Resolution Professional of
Viceroy Hotels Ltd.
Having place of Office at
Plot No. 20, Sector-I
Survey No. 64, 4th Floor,
Huda Techno Enclave,
Hyderabad – 500081 ….. 2nd **Respondent / RP**

Present:

For Petitioner / Intervenor	:	Mr. T. Ravichandran, Advocate
For Respondent No.1 / Appellant	:	Mr. R. Sankaranarayanan, Senior Advocate For Mr. P. Ravi Charan, Advocate
For Respondent No.2 / RP	:	Mr. P.S. Raman, Senior Advocate For Ms. Lakshana Viravalli, Advocate

O R D E R
(Virtual Mode)

Justice M. Venugopal, Member (Judicial):

IA No. 641 and 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023 :

Petitioners' Submissions:

According to the Petitioners in IA No. 641 of 2023 and IA No. 645 of 2023 / Proposed Respondents in Comp. App (AT) (CH) (INS.) No. 166 of 2023, they are `Members' of the `Committee of Creditors' of the `Corporate Debtor', and that they had voted in favour of the `Resolution

Plan' of `CFM', and hence, `Aggrieved', in the instant `Appeal', filed against the `Rejection of the Resolution Plan', furnished by the `1st Respondent / Appellant'.

2. The Learned Senior Counsel for the Petitioners / Proposed Respondents, submits that in contrast to the `Resolution Plan of CFM', the Resolution Plan of `1st Respondent / Appellant / M/s. Anirudh Agro Farms Limited, is of much `Lower Value', and proposes a much longer implementation period, may be approved, and that the `Plan' of `CFM', was Rs.185 Crores plus `CIRP Costs' and the payment timeline was 90 days, from the `Date of Approval of Resolution Plan', but the `Plan' of `1st Respondent / Appellant / M/s. Anirudh Agro Farms Limited', was Rs.168.50/- Crores and the payment timeline, was within 675 days from `Approval' of the `Resolution Plan'.

3. According to the Petitioners, the `Approval' of a `Lower Resolution Plan', when another `Resolution Plan of Higher Value', was earlier approved, cannot be a sound `Commercial Decision', and the majority of `Committee of Creditors', in the whole proceedings, have `Approbated' and `Reprobated', to further their own interests.

4. The grievance of the Petitioners is that, despite being in `Minority', are now `Aggrieved' that a `Resolution Plan' of a `Lower Value', is sought to be approved, when another Resolution Plan, i.e. of `Higher

Value', and is prima facie more viable that was earlier `Approved' (by the very same `Committee of Creditors'), is now valid, in the light of `Order', dated 12.06.2023, in the matter of `M/s. Puissant Towers India Pvt. Ltd.' (vide Comp. App (AT) (CH) (INS.) No. 181 of 2022).

5. It is represented on behalf of the Petitioners, that the `Balance of Convenience', is in their favour and they have made out a `case', for getting themselves `impleaded in the main Appeal', with a view to bring to the notice of this `Tribunal', certain relevant facts and `Violations of Laws', by the `Committee of Creditors', `Resolution Professional' and `M/s. Anirudh Agro Farms Limited', and hence, they pray for `Leave', to `Implead' themselves, in the instant Comp. App (AT) (CH) (INS.) No. 166 of 2023 (Filed by 1st Respondent / Appellant), in the interest of ` `Justice' and `Equity'.

6. The Learned Counsel for the Petitioners, refers to the decision of the Hon'ble Supreme Court of India in Udit Narayan v. Additional Member Board of Revenue, A.I.R. 1963 SC 786, for the proposition that any decision taken in main `Company Appeals', without `Hearing' them, will be in `Violation of Natural Justice'.

7. The other contentions advanced on behalf of the Petitioners / Proposed Respondents is that, in an `in rem proceeding' of this nature, where there is a larger number of `Stakeholders', `interests of

Stakeholder', can be affected with any stage of the proceedings, giving them the standing, to assail or be represented in a `Proceeding', before the `Tribunal' or an `Appellate Tribunal'.

8. The Learned Counsel for the Petitioners, adverts to the decision in Arvind Bali v. Union of India (2021) SCC OnLine, NCLAT, 365 Paragraph 51, wherein this `Tribunal', had held that ``…. even at a belated stage of a `given proceeding' or at an `Appellate stage', a proper party can be arrayed as a `Respondent', etc.''

9. The Learned Counsel for the Petitioners, points out that an `Aggrieved Party', by its very definition is a necessary `Party'. Also that, the Petitioners `abstention' from `Voting', on the `SRA's or to `represent themselves, before the `Adjudicating Authority / Tribunal', is not relevant to their `Impleadment', in the instant Appeals (Comp. App (AT) (CH) (INS.) Nos. 166, 170 and 183 of 2023).

10. The Learned Counsel for the Petitioners, takes a stand, that since all the `Parties', before the `Adjudicating Authority / Tribunal', in the `Proceedings' (including the `Successful Resolution Applicant'), the `Resolution Professional' and the `Committee of Creditors', have preferred the `Appeals', before this `Tribunal', seeking to set aside the `impugned order', dated 09.06.2023, their `interests', are clearly aligned and there is no one to contest their submissions, on `Facts' or on `Law'.

11. The Learned Counsel for the Petitioners, emphatically points out that the `Order', approving `Resolution Plan', binds all the `Stakeholders', and the `Parties', whose interests are vitally affected by the `in rem orders', passed under the I & B Code, 2016, are given the right to approach not only the `Adjudicating Authority' / `Tribunal', and the `Appellate Tribunal', as per Sections 60(5) & 61 of the I & B Code, 2016.

12. The Learned Counsel for the Petitioners, relies on the decision of the Hon'ble Supreme Court of India, in Ebix Singapore (P) Ltd. v. Committee of Creditors of Educomp Solutions Limited and Anr. (2022) 2 SCC at Page 401 at Spl Pg: 502-503, 521-522 & 541, wherein, at Paragraphs 144, 170 & 221, it is observed as under:

> *144. ``The timeline for the submission of Resolution Plans can be extended by an RP with the approval of the CoC. The RFRP must require the resolution applicant to furnish a performance security in case their Resolution Plan is approved by the CoC under Regulation 36-B(4-A). The performance security shall stand forfeited if, after the approval of the Resolution Plan by the Adjudicating Authority, the Resolution Applicant fails to implement or contributes to the failure of implementation of the plan. Under the Regulation, a performance security is defined as "security of such nature, value, duration and source, as may be specified in the request for resolution plans with the approval of the Committee, having regard to the nature of resolution plan and business of the corporate debtor". Regulations 37 and 38 list down the mandatory contents of the Resolution Plan.*
>
> *170. The Insolvency and Bankruptcy Law Committee in its report dated February 2020[119] stated that the current practice of obtaining governmental approvals after the approval of the Resolution Plan has created an uncertainty about the implementation of the Resolution Plan. The committee suggested*

that this uncertainty can be mitigated if amendments are made to the IBC to provide that once the Resolution Plan is approved by the CoC, it will be shared with the governmental and regulatory authorities, for approvals that are necessary for running the business of the Corporate Debtor. If no objections are raised within forty-five days, it would be deemed that they have granted an approval. If objections are raised or conditional approvals are granted, the Resolution Applicant should attempt to clear the objections or meet the conditions before placing the Resolution Plan before the Adjudicating Authority. This Plan would thereafter be placed before the Adjudicating Authority for its approval. The Committee further suggested that this timeline of forty-five days should be excluded from calculating the timelines under Section 12 of the IBC. The relevant extract is reproduced below:

> *"14.8. To enable approvals or no-objections to be taken within the scheme of the Code, the Committee decided that amendments should be made to the Code such that once a resolution plan is approved by the CoC, it should be sent to all concerned government and regulatory authorities whose approvals are core to the continued running of the business of the corporate debtor, for their approvals or objections. If they do not raise their objections within forty-five days, they will be deemed to have no objections. This plan would then be placed before the Adjudicating Authority for its approval. If the government and regulatory agencies raise any objections or grant conditional approvals, the resolution applicant can attempt to clear the objections or meet the conditions for approval before placing the plan for the approval of the Adjudicating Authority, where this can be done within the time limit provided under Section 12. However, where this is not possible, the plan may still be placed before the Adjudicating Authority for its approval, and the successful resolution applicant should clear the objections or comply with the conditions for approval within a period of one year from the approval of the resolution plan.*
>
> *14.9. To ensure that this aligns with the time-line for resolution provided in the Code, the Committee recommended that the window of forty-five days given to government and regulatory agencies should be excluded from the computation of the time limit under Section 12 of the Code. Although some members of the Committee were of the view that this time-line should ideally run concurrently with the CIRP period, the Committee felt that this exclusion would be justified since it would streamline the process of gaining government approvals considerably, which would lead to more value maximising resolutions, offsetting*

value lost, if any, in this forty-five day period in which the corporate debtor will be run as a going concern."

(emphasis in original and supplied)

The aim to tighten timelines for receiving regulatory approvals through the provision of in-principle approvals, prior to the approval of the Adjudicating Authority, indicates that the statutory framework under the IBC has consistently attempted to avoid situations which may introduce unpredictability in the insolvency resolution process and has sought to make the process as linear as it can be. Further, the recommendations made in the Insolvency Law Committee Report of February 2020[119] discussed above indicate that the aim is to ensure that the Resolution Plan placed before the Adjudicating Authority should reach a certain finality, even in the context of governmental approvals. A conditionality which allows for further negotiations, modification or withdrawal, once the Resolution Plan is approved by the CoC would only derail the time-bound process envisaged under IBC.

221. The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12-A of the IBC and Regulation 30-A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of IBC.''

13. The Learned Counsel for the Petitioners, cites the decision in Indus Biotech (P) Ltd. v. Kotak India Venture (Offshore) Fund, reported in (2021) 6 SCC 436, wherein at Paragraph 26, it is observed as under:

> *26. `` The underlying principle, therefore, from all the above noted decisions is that the reference to the triggering of a petition under Section 7 of the IB Code to consider the same as a proceedings in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all the creditors of the corporate debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the Corporate Insolvency Resolution Process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process.''*

14. The Learned Counsel for the Petitioners, falls back upon the decision in Kalinga Allied Industries India Private Limited v. Committee of Creditors & Ors., reported in (2022) SCC OnLine NCLAT 1618 (vide Comp. App (AT) (INS.) No. 689 of 2021 – decided on 19.12.2022) wherein, at Paragraphs 5, 7 and 8, it is observed as under:

> *5. ``The main issue which arises in this Appeal is whether the CoC after having approved the Resolution Plan on 11.11.2019 can seek direction to consider the new Resolution Plan of a third party who was not a part of the CIRP Proceedings, and seek to withdraw their approval after more than two years of the approval of the first Resolution Plan.*
>
> *7. Learned Counsel for the first Respondent/CoC placed reliance on the Judgements of the Hon'ble Apex Court in 'K. Sashidhar' (Supra), 'Committee of Creditors of Essar Steel India Ltd.' (Supra), and 'Kalpraj Dharmashi & Anr.' (Supra), in support of his submission that Commercial Wisdom of CoC is nonjusticiable. The Hon'ble Supreme Court in a catena of Judgements has held that the jurisdiction of the Tribunal is limited as far as the Commercial*

Wisdom of the CoC is concerned unless and until there is any material irregularity or is against the provisions of Sections 30(2) of the Code. In the instant case, the question is not whether the Commercial Wisdom of the CoC is justiciable or not, the question here is whether the Adjudicating Authority can direct the CoC to consider the Resolution Plan of a person who was not a part of the CIRP and also whether the submitted Resolution Plan is binding as between the CoC and the SRA and in such a situation where once the Plan is submitted to the Adjudicating Authority, for approval, can it be withdrawn after two years have lapsed. At this juncture, we find it relevant to place reliance on the ratio of the Hon'ble Supreme Court in 'Ebix Singapore Pvt. Ltd.' Vs. 'Committee of Creditors of Educomp Solutions Ltd. & Anr.'[7] *, in which the Hon'ble Apex Court discussing modification and withdrawals by SRA has observed as follows:*

> *"243. This Court is cognizant that the extraordinary circumstance of the COVID-19 pandemic would have had a significant impact on the businesses of Corporate Debtors and upon successful Resolution Applicants whose Plans may not have been sanctioned by the Adjudicating Authority in time, for myriad reasons. But the legislative intent of the statute cannot be overridden by the Court to render outcomes that can have grave economic implications which will impact the viability of the IBC.*
>
> *244. The residual powers of the Adjudicating Authority under the IBC cannot be exercised to create procedural remedies which have substantive outcomes on the process of insolvency. The framework, as it stands, only enables withdrawals from the CIRP process by following the procedure detailed in Section 12A of the IBC and Regulation 30A of the CIRP Regulations and in the situations recognized in those provisions. Enabling withdrawals or modifications of the Resolution Plan at the behest of the successful Resolution Applicant, once it has been submitted to the Adjudicating Authority after due compliance with the procedural requirements and timelines, would create another tier of negotiations which will be wholly unregulated by the statute. Since the 330 days outer limit of the CIRP under Section 12(3) of the IBC, including judicial proceedings, can be extended only in exceptional circumstances, this open-ended process for further negotiations or a withdrawal, would have a deleterious impact on the Corporate Debtor, its creditors, and the economy at large as the liquidation value depletes with the passage of time. A failed negotiation for modification after submission, or a withdrawal after approval by the CoC and submission to the Adjudicating Authority, irrespective of the content of the terms*

envisaged by the Resolution Plan, when unregulated by statutory timelines could occur after a lapse of time, as is the case in the present three appeals before us. Permitting such a course of action would either result in a down-graded resolution amount of the Corporate Debtor and/or a delayed liquidation with depreciated assets which frustrates the core aim of the IBC.

245. If the legislature in its wisdom, were to recognize the concept of withdrawals or modifications to a Resolution Plan after it has been submitted to the Adjudicating Authority, it must specifically provide for a tether under the IBC and/or the Regulations. This tether must be coupled with directions on narrowly defined grounds on which such actions are permissible and procedural directions, which may include the timelines in which they can be proposed, voting requirements and threshold for approval by the CoC (as the case may be). They must also contemplate at which stage the Corporate Debtor may be sent into liquidation by the Adjudicating Authority or otherwise, in the event of a failed negotiation for modification and/or withdrawal. These are matters for legislative policy.

246. In the present framework, even if an impermissible understanding of equity is imported through the route of residual powers or the terms of the Resolution Plan are interpreted in a manner that enables the appellants' desired course of action, it is wholly unclear on whether a withdrawal of a CoC-approved Resolution Plan at a later stage of the process would result in the Adjudicating Authority directing mandatory liquidation of the Corporate Debtor. Pertinently, this direction has been otherwise provided in Section 33(1)(b) of the IBC when an Adjudicating Authority rejects a Resolution Plan under Section 31. In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A Resolution Applicant, after obtaining the financial information of the Corporate Debtor through the informational utilities and perusing the IM, is assumed to have analyzed the risks in the business of the Corporate Debtor and submitted a considered proposal. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulations. In the case of Kundan Care, since both, the Resolution Applicant and the CoC, have requested for modification of

the Resolution Plan because of the uncertainty over the PPA, cleared by the ruling of this Court in Gujarat Urja (supra), a one-time relief under Article 142 of the Constitution is provided with the conditions prescribed in Section K.2."

(Emphasis Supplied)

8. Though the main issue raised in 'Ebix Singapore Pvt. Ltd.' (Supra) is with respect to withdrawal/modification of a Resolution Plan by an SRA, the Hon'ble Supreme Court has clearly laid down that 'the NCLT is Residuary Jurisdiction [under Section 60(5)(c)] though vide, is nonetheless defined by the text of the Code. Specifically, the NCLT cannot do what the IBC consciously did not provide it the power to do'. Further, the Court observed that 'this Court must adopt an interpretation of the NCLT is Residuary Jurisdiction which concurs with the broader goals of the Code'. 'Ebix Singapore Pvt. Ltd.' (Supra) has observed that strict timelines have to be adhered to and that the Adjudicating Authority lacks the authority to allow the withdrawal/modification of the Resolution Plan by an SRA, as this would defeat the very objective of the statute. In the instant case, though it is not the SRA which is seeking withdrawal, the effect of the CoC seeking withdrawal of an already approved Resolution Plan would have identical repercussions with respect to 'timelines' as the same would have the effect of restarting the CIRP Process from the valuation stage when all the statutory timelines have long since been exhausted. The principle with respect to 'timelines' is applicable to the facts of this case. At the cost of repetition, it is crystal clear that any modification or a withdrawal (by SRA or otherwise) after approval by the CoC and submission to the Adjudicating Authority, 'irrespective of the content' of the terms envisaged by the Resolution Plan, would only lead to further delay and defeat the very scope and objective of the Code. The existing framework does not provide any scope for effecting any further modifications or withdrawals of the CoC approved Resolution Plan by the SRA or the Creditors. The Adjudicating Authority can interfere only if the Plan is against the provisions of the Code. Once the Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code. This Tribunal in 'Steel Strips Wheels Ltd.' Vs. 'Shri Avil Menezes Resolution Professional of AMW Autocomponent Ltd. & Ors.'[8] , placing reliance on 'Ebix Singapore Pvt. Ltd.' (Supra), observed that any consideration of a belated Plan would breach both the timelines as well as the finality of a Resolution Plan approved by the CoC on an earlier date. The contention of the Learned Counsel for the first Respondent that the Code provides for 'Maximisation of the Value of Assets' and therefore a higher value offered is to be considered, is untenable, as in the instant case, the maximum timeline permissible for completion of the said process has

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IA Nos. 641 & 645 of 2023 in CA (AT)(CH)(INS.) No.166 of 2023; IA Nos. 643 & 646 of 2023 in CA (AT)(CH)(INS.) No.170 of 2023; IA Nos.642 & 644 of 2023 in CA(AT)(CH)(INS.) No.183 of 2023; IA No.600 of 2023 in CA (AT)(CH)(INS.) No.170 of 2023 and IA No.656 of 2023 in CA(AT)(CH)(INS.) No.183 of 2023

lapsed and the CIRP has been ongoing since 11.05.2018 and more than four years have lapsed since then. The decisions relied upon by the Respondents in 'Siva Rama Krishna Prasad' (Supra) and in 'Gulabchand Jain' (Supra), are not applicable to the facts of this case as the issues raised in those cases is with respect to withdrawal of the approval by the CoC to the Resolution Plan, recommending Liquidation of the 'Corporate Debtor'. In this case, the CoC sought fresh consideration for another Plan after completion of all timelines. It is pertinent to mention that these Judgements are prior to the ratio laid down by the Hon'ble Apex Court in 'Ebix Singapore Pvt. Ltd.' (Supra). It is the case of the Intervenors that I.A. (IB) No. 815/2021 in C.P. IB No.-60(PB)/2018 is still pending Adjudication before the Adjudicating Authority and that the Appellant has no vested right for consideration of its Resolution Plan as they only continue to remain a prospective Resolution Applicant. At this juncture, it is significant to mention that the Order passed by this Tribunal in 'Kalinga Allied Industries India Pvt. Ltd.' (Supra), has set aside the Order of the Adjudicating Authority observing as follows:

> *"With the aforesaid, we are of the view that when the Application for approval of Resolution Plan is pending before the Adjudicating Authority at that time the Adjudicating Authority cannot entertain an Application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful Resolution Applicant. If a Resolution Plan is considered beyond the time-limit then it will make a Company Appeal (AT) (Ins.) No. 518 of 2020 never-ending process. Thus, impugned order is not sustainable in law as well as in fact. The impugned Order is hereby set aside."*

15. The Learned Counsel for the Petitioners, refers to the decision of the Hon'ble Supreme Court of India in Swiss Ribbons P Ltd. v Union of India, reported in (2019) 4 SCC at Page 17, wherein, at Paragraph 82, it is observed as under:

> *82. ``It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a*

committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.''

16. The Learned Counsel for the Petitioners, brings to the notice of this `Tribunal', the decision in A.V. Papayya Sastry v. Government of Andhra Pradesh (2007) 4 SCC 221, wherein at Paragraph 22, it is observed as under:

22. ``It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.''

17. The Learned Counsel for the Petitioners, refers to the `Order' dated 25.05.2023 of this `Tribunal', in IA No. 3961 of 2022 in Comp. App (AT) (INS.) No. 729 of 2020, between Union Bank of India (Erstwhile Corporate Bank) v. Dinkar T. Venkatasubramanian & Ors. – Full Bench), wherein, at Paragraph 20, it is observed as under:

20. ``The above judgments of the Hon'ble Supreme Court clearly lays down that there is a distinction between review and recall. The power to review is not conferred upon this Tribunal but power to recall its judgment is inherent in this Tribunal since inherent power of the Tribunal are preserved, powers which are inherent in the Tribunal as has been declared by Rule 11 of the NCLAT Rules, 2016. Power of recall is not power of the Tribunal to rehear the

case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court. We, for the purpose of answering the questions referred to us, need not further elaborate the circumstances where power of recall can be exercised.''

18. The Learned Counsel for the Petitioners, relies on the decision of the Hon'ble Supreme of India, in Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue, A.I.R. 1963, SC 786, at Paragraphs 9 & 10, wherein, it is observed as under:

9. ``The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi- judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it. Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding

may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.''

19. The Learned Counsel for the Petitioners, seeks in aid of the decision of the Hon'ble Supreme Court of India, in Committee of Creditors Essar Steel Limited v. Satish Kumar Gupta & Ors., reported in (2020) 8 SCC at Page 531, at Spl. Pg.: 593, wherein, at Paragraph 73, it is observed as follows:

73. ``There is no doubt whatsoever that the ultimate discretion of what to pay and how much to pay each class or sub-class of creditors is with the Committee of Creditors, but, the decision of such Committee must reflect the fact that it has taken into account maximising the value of the assets of the corporate debtor and the fact that it has adequately balanced the interests of all stakeholders including operational creditors. This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid attention to these key features, it must then pass the resolution plan, other things being equal.''

20. The Learned Counsel for the Petitioners, refers to the `IBBI Order', dated 15.02.2023, in the matter of Anurag Kumar Sinha (Insolvency & Bankruptcy Board of India (Disciplinary Committee), wherein, at Paragraphs 2.1.6 and 2.1.9, it is observed as under:

> *2.1.6. ``It is noted that the resolution plan placed before the CoC for approval had timeline for submission of PBG which was at variance with the one contained in RFRP. Thus, it indicated that proper due diligence of resolution plan had not been undertaken by Mr. Anurag Kumar Sinha, as required under section 30(2)(f) and 30(3) of the Code read with Regulation 36B(4A) and 39(4) of CIRP Regulations.*
>
> *2.1.9. In view of the above, the Board held the prima facie view that Mr. Anurag Kumar Sinha has, inter alia violated Section 30(2)(f), 30(3), 208(2)(a), 208(2)(e) of Code read with Regulation 36B(4A), 39 (4) of the CIRP Regulations as well as Clause 3, 13 and 14 of Code of Conduct of IP Regulations.''*

21. The Learned Counsel for the Petitioners, adverts to the `Order' of the Hon'ble Supreme Court of India, dated 31.07.2023 (vide Civil Appeal No.4620 of 2023) in Union Bank of India v. Financial Creditors of M/s. Amtek Auto Limited & Ors., wherein, it is observed as under:

> *``We are in agreement with the view taken by the Five Judges Bench of the NCLAT and thus find no reason to interfere with the impugned judgment.*
>
> *Insofar as the endeavour of learned counsel for the appellant to urge on the facts of the case is concerned, that would be a matter to be considered, dependent on the fate when the matter is placed before the appropriate Bench, to be decided on merits.*
>
> *The Civil Appeal is dismissed.''*

22. The Learned Counsel for the Petitioners, cites the decision of the Hon'ble Supreme Court of India, in R. Rathinavel Chettiar & Anr. v. Sivaraman & Ors., reported in (1999) 4 SCC at Page 89 at Spl. Pg.: 93, wherein at Paragraphs 6 and 7, it is observed as under:

> *6. `` Order 23 Rule 1, quoted above, provides that a plaintiff can withdraw a suit or abandon a part of his claim unconditionally. It creates a right in favour of the plaintiff to withdraw the suit, at any time, after its institution. Once the suit is withdrawn or any part of the suit is abandoned against all or any of the defendants, unconditionally, the plaintiff cannot bring a fresh suit on the same cause of action unless leave of the Court is obtained as provided by Order 23 Rule 1(3)(b).*
>
> *7. In other words, a plaintiff cannot while unconditionally abandoning a suit or abandoning a part of his claim, reserve to himself the right to bring a fresh suit on the same cause of action. (See: Hulas Rai Baij Nath vs. K.P. Bass & Co.1)''*

23. The Learned Counsel for the Petitioners, relies on the decision of Hon'ble Supreme Court of India, in State of Uttar Pradesh & Ors. v. Babu Ram Upadhya, A.I.R.(1961) SC 751, wherein, at Paragraphs 22 and 23, it is observed as under:

> *22. ``The discussion yields the following results: (1) In India every person who is a member of a public service described in Art. 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein. (2) The power to dismiss a public servant at pleasure is outside the scope of Art. 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitations or qualifications mentioned in Art. 311 of the, Constitution. (4) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Art. 310, as qualified by Art. 311. (5) The Parliament or the Legislatures of States can*

make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Art. 310 of the Constitution read with Art. 311 thereof. (6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Art. 311 of the Constitution; but the said law would be subject to judicial review. (7) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits.

23. What then is the effect of the said propositions in their application to the provisions of the Police Act and the rules made thereunder? The Police Act of 1861 continues to be good law under the Constitution. Paragraph 477 of the Police Regulations shows that the rules in Chapter XXXII thereof have been framed under Section 7 of the Police Act. Presumably, they were also made by the Government in exercise of its power under Section 46(2) of the Police Act. Under para. 479(a) the Governor's power of punishment with reference to all officers is preserved; that is to say, this provision expressly saves the power of the Governor under Art. 310 of the Constitution. "Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation": see Maxwell "On the Interpretation of Statutes", 10th edn., pp. 50-51. The statutory rules cannot be described as, or equated with, administrative directions. If so, the Police Act and the rules made thereunder constitute a self-contained code providing for the appointment. of police officers and prescribing the procedure for their removal. It follows that where the appropriate authority takes disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which have conferred upon it the power to take the said action. If there is any violation of the said provisions, subject to the question which we will presently consider whether the rules are directory or mandatory, the public servant would have a right to challenge the decision of that authority.''

24. The Learned Counsel for the Petitioners, points out the Judgment of this `Tribunal', dated 12.06.2023, in Puissant Towers (India) Pvt. Ltd. v.

Neueon Towers Limited & Ors. (vide Comp. App (AT) (INS.) No. 181 of 2022), wherein, at Paragraph 11, it is observed as under:

> *11. ``Keeping in view, the clarification given by the Counsel for RBI that the `prior permission' is not required, this `Tribunal' is of the considered view that the Adjudicating Authority ought not to have rejected the Resolution Plan, more so, when the principal objective of the Code is that `revival of the Corporate Debtor and Resolution'. Liquidation ought to be the last resort, keeping in view the scope and spirit of the Code.''*

1st Respondent / Appellant's Contentions (in Comp. App (AT)(CH) (INS.) No. 166 of 2023:

25. According to the Learned Senior Counsel for the 1st Respondent / Appellant, that the `Order' of the `Adjudicating Authority / Tribunal', directing fresh issuance of Form – G for the second round of `Corporate Insolvency Resolution Process', had attained `Finality', and further, it is evident, learnt from the `Order', made in IA No. 650 of 2022, dated 25.07.2022, passed by the `Adjudicating Authority / Tribunal', that the `Successful Resolution Applicant', in the first round of `Corporate Insolvency Resolution Process', had unequivocally `withdrawn', its `Resolution Plan', and `Performance Bank Guarantee', since `rejection'. Moreover, nothing survives in the `1st Round of CIRP', and nearly two years have rolled by, from the date of passing of the Order of the `Adjudicating Authority / Tribunal', dated 01.09.2021.

26. The Learned Counsel for the 1st Respondent / Appellant, submits that a `Necessary Party', is one, without whom, `no Order', can be effectively passed. A `Proper Party', is one, whose presence is necessary, for a `complete and final determination of question(s)', concerned in the `given proceedings'.

27. To fortify the aforesaid contention, the Learned Counsel for the 1st Respondent / Appellant, refers to the decision of the Hon'ble Supreme Court of India in Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue & Anr., A.I.R. (1963) SC Page 786, wherein, at Paragraphs, 7, 9 & 10, it is observed as under:

> *7. ``To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.*
>
> *9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi- judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of certiorari, the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it. Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of*

a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.''

28. The Learned Counsel for the 1st Respondent / Appellant, cites the decision of the Hon'ble Supreme Court of India, in Kasturi v. Iyyamperumal & Ors., reported in (2005), 6 SCC Page 733 at Spl. Pg: 740, wherein, at Paragraph 13, it is observed as under:

13. ``From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.''

29. The Learned Counsel for the 1st Respondent / Appellant, cites the Judgment of this `Tribunal', dated 22.05.2020, in Comp. App (AT) (INS) No. 1417 of 2019, between, Union of India, Ministry of Corporate Affairs, New Delhi v. Oriental Bank of Commerce, wherein, at Paragraphs, 12, 14 to 16, it is observed as under:

12. ``It is axiomatic principle in law that if a third party is concerned with a dispute, that party is to be arrayed as a necessary or proper party to the adjudication of main issue centering around the dispute. Besides this, an opportunity of hearing is to be given to a third party to explain its stand. Suffice it for this Tribunal to make a pertinent mention that the rules of 'principles of Natural Justice' are to be adhered to by the Tribunal because of the latent and patent fact that the act of Tribunal/ Court/ Competent Authority shall cause no harm to any person.

14. A necessary party is a person who ought to have been arrayed as a party and in whose absence no effective order can be passed by a Court of Law/ Tribunal/ Appropriate Authority. A proper party is a party who although not a necessary party is a person whose presence will enable the Authority to effectively, efficaciously, comprehensively and adequately adjudicate upon all the controversies centering around a given case.

15. In fact, 'impleadment of parties' is only a matter of fact and not a matter of Law. Addition of parties / striking out parties of course, is a matter of discretion to be exercised by a Tribunal / Court based on sound judicial principles. The said discretion can be exercised either on the application of a Petitioner/ Respondent or suo-motu or on the application of a person who is not a party to any pending proceedings. However, the said discretion cannot be exercised in a cavalier and whimsical fashion.

16. Whether a party is a proper / necessary party for an effective and efficacious adjudication of the controversy involved in a given case, although it is for the concerned Tribunal / Court / Authority to subjectively consider the same based on facts and circumstances of a case, which float on the surface. In this regard, with an utmost care, caution and circumspection a finding has to be rendered by passing necessary orders in a objective and dispassionate manner for impleading a party to take part in the main arena of proceedings. Undoubtedly, a notice will have to be issued to the newly impleaded party and a just, fair and final order can only be passed after hearing the Objections/ Reply of the said party. In the instant case on hand, this Tribunal on going through the impugned order dated 22.11.2019 passed by the National Company Law Tribunal, New Delhi, Principal Bench in (IB)-939(PB)/2018, is of the considered opinion that the Appellant was not provided with an adequate opportunity of being heard in the subject matter in issue, except directions being issued in regard to the filing of affidavit on the issues therein and the filing of parawise reply. The time was sought for and one week's time was granted by the Tribunal. Because of the fact that the impugned order passed by the Tribunal wherein direction was issued in all cases of the 'Insolvency & Bankruptcy Code' and Company Petition, the Union of India,

Ministry of Corporate Affairs through Secretary be impleaded as a party respondent so that authentic record is made available by the officers of Ministry of Corporate Affairs for proper appreciation of the matter and this being applicable throughout the country to all the Benches of National Company Law Tribunal etc., such a wholesale, blanket and omnibus directions cannot be issued in single stroke, as opined by this Tribunal. Whether the Appellant through the Secretary, Ministry of Corporate Affairs be impleaded as a necessary Party / even as proforma Respondent before the Tribunal is to be determined only on a case to case basis when the need of a given case arises for rumination of issues, which comes up before the respective Tribunals and when an order like the impugned one is passed by the 'Tribunal' or 'Competent Authority' without hearing the party concerned, by not following the 'principles of Natural Justice' by not initially ordering notice and not taking into consideration of the objections of that party, certainly, it will result in serious miscarriage of justice, besides causing undue hardship.''

30. According to the 1st Respondent / Appellant, the Petitioners in IA No. 641 and 645 of 2023, only holds 0.03% and 0.05%, respectively of the `Voting Share', in the `Committee of Creditors'. As a matter of fact, 95.82% of the `Committee of Creditors', had voted in favour of the `1st Respondent / Appellant's Resolution Plan'.

31. Also that, the main `Appeal' assails the `Findings', rendered by the `Adjudicating Authority / Tribunal', on the `validity' of the `Appellant's Performance Bank Guarantee', in which, the `Resolution Professional', and the `Committee of Creditors', had already shown as `Necessary Parties'.

32. The Learned Counsel for the 1st Respondent / Appellant, takes a stand that the Petitioners', had abstained from `Voting', on the 1st

Respondent / Appellant's Resolution Plan and also abstained from taking part in any proceedings, before the `Adjudicating Authority / Tribunal', especially, in IA No.1343 of 2022.

33. That apart, the Petitioners, have not even endeavoured to satisfy the reasons for filing `Applications', at this stage of the proceedings. They have also not proved their `Locus', in preferring present `Interlocutory Applications'.

34. It is represented on behalf of the 1st Respondent / Appellant that the Petitioners, are precluded from raising any `Controversies' or `Disputes', at this stage, when they have failed to `Vote', against the `1st Respondent / Appellant's Resolution Plan'.

35. In this regard, the Learned Counsel for the 1st Respondent / Appellant, refers to the Judgment in HDFC v. Infrastructure Leasing & Financial Services Ltd. & Anr. (vide Comp. App (AT) No. 177 of 2022), wherein at Paragraphs 7 & 13, it is observed as under:

> *7. ``The Hon'ble Supreme Court had occasion to consider in the above case the question as to who are the necessary and proper parties in a Writ Petition filed under Article 226 of the Constitution. In the above context, the Hon'ble Supreme Court held that without making necessary parties to the writ proceeding, the Writ Petition would be incompetent. In Para 9 to 12 following has been laid down:*
>
> > *"9. The next question is whether the parties whose rights are directly affected are the necessary parties to a writ petition to quash the order of a tribunal. As we have seen, a tribunal or authority performs a judicial or quasi- judicial act after hearing parties. Its order affects the right or rights of one or the other of the parties before it. In a writ of*

certiorari the defeated party seeks for the quashing of the order issued by the tribunal in favour of the successful party. How can the High Court vacate the said order without the successful party being before it. Without the presence of the successful party the High Court cannot issue a substantial order affecting his right. Any order that may be issued behind the back of such a party can be ignored by the said party, with the result that the tribunal's order would be quashed but the right vested in that party by the wrong order of the tribunal would continue to be effective. Such a party, therefore, is a necessary party and a petition filed for the issue of a writ of certiorari without making him a party or without impleading him subsequently, if allowed by the court, would certainly be incompetent. A party whose interests are directly affected is, therefore, a necessary party.

10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.

11. The long established English practice, which the High Courts in our country have adopted all along, accepts the said distinction between the necessary and the proper party in a writ of certiorari. The English practice is recorded in Halsbury's Laws of England, Vol. 11, 3rd Edn. (Lord Simonds') thus in paragraph 136 :

> *"The notice of motion or summons must be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice of motion or summons must be served on the clerk or registrar of the court, the other parties to the proceedings, and (where any objection to the conduct of the judge is to be made) on the judge.....".*

In paragraph 140 it is stated :

> *"On the hearing of the summons or motion for an order of mandamus, prohibition or certiorari, counsel in support begins*

and has a right of reply. Any person who desires to be heard in opposition, and appears to the Court or judge to be a proper person to be heard, is to be heard not withstanding that he has not been served with the notice or summons, and will be liable to costs in the discretion of the Court or judge if the order should be made.....".

So too, the Rules made by the Patna High Court require that a party against whom relief is sought should be named in the petition. The relevant Rules read thus:

Rule 3. Application under Article 226 of the Constitution shall be registered as Miscellaneous judicial Cases or Criminal Miscellaneous Cases as the case may be.

Rule 4. Application shall, soon after it is registered, be posted for orders before a Division Bench as to issue of notice to the respondents. The Court may either direct notice to issue and pass such interim order as it may deem necessary or reject the application.

Rule 5. The notice of the application shall be served on all persons directly affected and on such other persons as the Court may direct.

Both the English rules and the rules framed by the Patna High Court lay down that persons who are directly affected or against whom relief is sought should be named in the petition, that is all necessary parties should be impleaded in the petition and notice served on them. In "The law of Extraordinary Legal Remedies" by Ferris, the procedure in the matter of impleading parties is clearly described at p.201 thus:

"Those parties whose action is to be reviewed and who are interested therein and affected thereby, and in whose possession the record of Such action remains, are not only proper, but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given, and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right of the relief sought. But in order that the court may do ample and complete justice, and render judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the

regularity of the proceedings of which a review is sought, should be made parties respondent."

This passage indicates that both the authority whose order is sought to be quashed and the persons who are interested in maintaining the regularity of the proceeding of which a review is sought should be added as parties in a writ proceeding. A division Bench of the Bombay High Court in Ahmedalli v. M. D. Lalkaka[3] laid down the procedure thus :

"I think we should lay down the rule of practice that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should also be necessary parties to the petition."

A Full Bench of the Nagpur High Court in Kanglu Baula v. Chief Executive Officer[4] held that though the elections to various electoral divisions were void the petition would have to be dismissed on the short ground that persons who were declared elected from the various constituencies were not joined as parties to the petition arid had not been given an opportunity to be heard before the order adverse to them was passed. The said decisions also support the view we have expressed.

12. To summarize: in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

13. The Appellant being member of the Creditors Committee and having participated in the meeting held on 17.02.2021, it cannot be said that in passing resolution for approving the highest bid any principles of natural justice have been violated. The Appellant is a dissenting Financial Creditor who has only 1.89% vote share. When resolution is passed by the Creditors Committee and approval is sought from the Adjudicating Authority, as per the Revised Resolution Framework approved by this Tribunal on 12.03.2020, it is

not necessary that all dissenting Financial Creditors should be impleaded to the application. Present is not a case where it can be said that any principles of natural justice have been violated since the Appellant has raised its objection in the meeting of the Creditors Committee and also voted against the resolution. The filing of the application for approval before the Adjudicating Authority was as per the steps provided in the Revised Resolution Framework. We, thus, are of the view that the order of the Adjudicating Authority dated 23.09.2022 cannot be set aside on the ground of violation of any principles of natural justice.''

36. The Learned Counsel for the 1st Respondent / Appellant, refers to the Judgment of this Tribunal dated 28.11.2022, in Vitol S.A. v. Mr. Abhishek Nagori & Ors. (vide Comp. App (AT) (INS.) 792 of 2020), wherein, at Paragraph 7, it is observed as under:

7. ``We do not find any illegality in the observation of the Learned Adjudicating Authority that there is no provision in the Code, with respect to impleadment of any Creditor apart from the Creditors who have triggered the CIRP. Needless to ad, the Appellant is at liberty to pursue other legal remedies, if so advised.''

37. The Learned Counsel for the 1st Respondent / Appellant, adverts to the `Order' of this `Tribunal', dated 12.08.2022, in IA No. 584 of 2022 in Comp. App (AT) (CH) (INS.) No. 269 of 2022, between Mr. Chinna Rao & Ors. v. V. Venkatasivakumar & Ors., wherein at Paragraphs 29 to 32, it is observed as under:

29. ``It must be borne in mind that there is no provision in the I & B Code, 2016, that enables the `Creditors' other than those who triggered the `Insolvency Resolution Process', to be impleaded as `Parties'. In law, the `Impleadment of Parties', is ultimately, within the ambit of exercise of discretion by a `Tribunal' / `Authority', as the case may be. More importantly, no person, can be added, unless he is a `necessary party'. A `necessary party' means that a person is very much necessary to the `Constitution' of `Suit' / an

`Appeal' in a given `Proceeding' before a `Court of Law' / `Tribunal' / `Authority'. In fact, whether a person has an enforceable legal right is to be looked into by a `Tribunal' in regard to the `impleadment of parties'. To array a person as a `prospective / proposed Respondent(s)' is not a `Substantive Right', but undoubtedly, it is one of the `procedure' and the `Tribunal' is to exercise its `judicial discretion', of course, in a subjective manner, diligently.

30. It cannot be gainsaid that, an `Individual' will not be added as a `Party', just because he will be affected by the `Tribunal' incidentally, when it passes an `Order' in a given `proceedings', before it.

31. An `Appellant / Plaintiff" in a given legal proceeding is the `dominus litis'. He cannot be coerced to include a person as `Party" against whom, he does not want to contest, unless it is a compulsion of Law. It must be borne in mind that a `necessary party' is one without whom no `Order' can be passed effectively, in a given case. A `proper party' is one in whose `absence' an effective `Order' can be made, but `whose presence is necessary', for a complete and final decision on the `questions', involved in a given `Proceeding'. Further, a mere interest of a `Party' in the fruits of a `litigation', cannot be a `yardstick' / `test' for his being impleaded as a `Party'.

32. Be that as it may, in the light of the aforesaid detailed discussions and in view of the fact that the main Comp. App (AT) (CH) (INS) No. 269 of 2022 is filed by the` erstwhile Liquidator, Mr. V. Venkatasivakumar' as an `Appellant' before this `Tribunal', and he being the `1st Respondent' in I.A. Nos. 584 and 585 of 2022, who assails the `impugned order' dated 01.07.2022 in IA/815/IB/2020 in CP/1307/IB/2018, in and by which, he was directed to hand over the charge to the newly appointed `Liquidator Mr. Hari Karthik', and also this `Tribunal' keeping in mind the entire conspectus of the attendant facts and circumstances of the present case in a holistic fashion, comes to an inevitable and inescapable conclusion that the `Applicants' in I.A. Nos. 584 and 585 of 2022 in Comp. App (AT) (CH) (INS) No. 269 of 2022 are not `necessary'/ `proper' parties, to be arrayed as `Respondents' in the main Comp. App. (AT) (CH) (INS) No. 269 of 2022 and even without their presence, this `Tribunal' can `dispose of" the main `Company Appeal', of course, on merits, based on the `available material on record'. Viewed in that perspective, the I.A. Nos. 584 and 585 of 2022 filed by the `Applicants' in Comp. App (AT) (CH) (INS) No. 269 of 2022 are devoid of merits.''

38. The Learned Counsel for the 1st Respondent / Appellant, points out the Judgment of this `Tribunal', dated 09.02.2023 in Comp. App (AT) (INS.) 653 of 2022, between Noble Marine Metals CO WLL v. Kotak Mahindra Bank Limited & 2 Ors., wherein, at Paragraphs 8 & 9, it is observed as under:

> *8. ``The law is thus well settled that Resolution Plan is approved by the CoC is binding between the CoC and SRA. The question to be considered in this Appeal is as to whether, there are any circumstances and conditions, where Resolution Plan can be sent back for carrying out any changes. In this context, we refer to the Judgement of the Hon'ble Supreme Court in "Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors." [2020 8 SCC 531]. The Hon'ble Supreme Court in the above judgement had occasion to consider the scope of judicial review of the Adjudicating Authority in the context of Resolution Plan approved by the CoC. In paragraph 73, following has been held:*
>
> > *"This being the case, judicial review of the Adjudicating Authority that the resolution plan as approved by the Committee of Creditors has met the requirements referred to in Section 30(2) would include judicial review that is mentioned in Section 30(2)(e), as the provisions of the Code are also provisions of law for the time being in force. Thus, while the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors, the limited judicial review available is to see that the Committee of Creditors has taken into account the fact that the corporate debtor needs to keep going as a going concern during the insolvency resolution process; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of. If the Adjudicating Authority finds, on a given set of facts, that the aforesaid parameters have not been kept in view, it may send a resolution plan back to the Committee of Creditors to re-submit such plan after satisfying the aforesaid parameters. The reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority only from this point of view, and once it is satisfied that the Committee of Creditors has paid*

attention to these key features, it must then pass the resolution plan, other things being equal."

9. Thus, in view of the Judgment of the Hon'ble Supreme Court laid down above, the Adjudicating Authority if finds on given set of facts that parameters under Section 30(2)(e) have not been kept in view, the Resolution Plan can be sent back to the CoC to review such plan after satisfying the parameters. The above is the only situation provided by Hon'ble Supreme Court where the plan can be sent back.''

39. On behalf of the Respondent Nos. 2 & 3, no `Counters', have been filed in Comp. App (AT) (CH) (INS.) No. 166 of 2023.

IA No. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 :

Petitioners' Pleas:

40. The Petitioners, have preferred IA No. 643 of 2023 and IA No. 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, seeking to `Implead', themselves, as one of the `Respondents', in the main `Company Appeal', based on the reason that they are in `minority', being `aggrieved', to the effect that a `Resolution Plan', of `Lower Value', is sought to be `approved', when another `Resolution Plan', being a `Higher Value', and `prima facie', a more `viable' one (that was earlier `approved', by the very same `Committee of Creditors'), is now `valid', in the light of this `Tribunal's Order', dated 12.06.2023 in M/s. Puissant

Towers India Pvt. Ltd. (vide Comp. App (AT) (CH) (INS.) No. 181 of 2022).

41. It is represented on behalf of the Petitioners, that they are the `Members' of the `Committee of Creditors', and that they had `voted', in favour of the `Resolution Plan' of `CFM', and hence, they are `Aggrieved', if the instant `Appeal', preferred against the `Rejection' of `Resolution Plan', submitted by `M/s. Anirudh Agro Farms Limited', is allowed.

IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023:

42. According to the Petitioner / Intervenor, it is a `Third Party', to the instant Comp. App (AT) (CH) (INS.) No. 170 of 2023, and after perusal of the `Orders', passed by the `Adjudicating Authority' / `Tribunal', in `Public Domain', addressed a Letter to the `Respondent / Resolution Professional' of `M/s. Viceroy Hotels Pvt. Ltd.', the 2nd Respondent bringing to its attention that they are ready to offer Rs.200 Crores to the `Financial Creditor', and requested the `Resolution Professional', to take the same on record.

43. It is represented on behalf of the Petitioner / Intervenor, that it had requested the `Resolution Professional', to let them, when they are likely to furnish the next `Form-G', this was followed by another Letter dated

19.06.2023, among other things, bringing it to the notice of the `Resolution Professional', for the earlier Letter, had not received any reply from him and they are ready to deposit Rs.20 Crores and requested them to let the `Petitioner know, as to when he is likely, to furnish the `Form G'.

44. The Learned Counsel for the Petitioner / Intervenor, submits that the `Petitioner', is an interested `Party', and hence, he has filed this IA No. 600 of 2023, seeking to `Implead', it in the main Comp. App (AT) (CH) (INS.) No. 170 of 2023, as one of the `Respondents', and pray this `Tribunal', to allow the said `Application', being a `Bona fide' one, in the interest of justice.

Counter of the Respondent / Resolution Professional / Appellant:

45. The Petitioner / Intervenor, has no `Locus' or `Authority' or any `Right', to file the instant IA No.600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023.

46. The Petitioner / Intervenor, has not filed an `Expression of Interest', to furnish a `Resolution Plan', at any point in time, till date. As a matter of fact, the `Petitioner / Intervenor', is not an `Aggrieved Person', and the `Intervention Application', is an `Ill Motivated' one.

Besides, it had not participated in the relevant process, prescribed pursuant to the provisions of the I & B Code, 2016.

47. According to the Respondent / Appellant, he being an `Officer of the Tribunal', is bound to prefer an `Appeal', under the direction of `Committee of Creditors', and sustain the `Approval' of `Resolution Plan'.

48. It is represented on behalf of the Respondent that the instant IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, is not a `Bona fide' one, and further, when it is an `Alien', with no `vested right', the `Application', preferred by the `Intervenor', is to be `dismissed', in the interest of justice.

49. In short, according to the Respondent / Appellant, an `Adjudicating Authority', cannot `entertain', an `Application', as there is no either a `Fundamental Right' or a `Vested Right', in the `Resolution Applicant', to have its `Resolution Plan' approved.

IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023:

Petitioners' Submissions:

50. The `Petitioners / Intervenors', have preferred IA No. 642 of 2023 and IA No. 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of

2023, as `Financial Creditors', and `Members' of the `Committee of Creditors' of `M/s. Viceroy Hotels Limited'.

51. According to the Petitioners / Intervenors, there are no `impediments', to the `Resolution Plan' of `CFM', with a view to favour the `Resolution Plan' of `M/s. Anirudh Agro Farms Limited', which provided for a lesser `Resolution Plan' Sum of Rs.168.5/- Crores for reasons, unknown to the `Petitioners', had decided to withdraw the Comp. App (AT) (CH) (INS.) No. 325 of 2021.

52. The Learned Counsel for the Petitioners / Intervenors, points out that the `1st Respondent / Appellant', has not `arrayed' any `Necessary Party', as a `Respondent', in the present `Appeal'. The `Petitioners', had `voted', in favour of the `Resolution Plan' of `CFM' and hence, will be `aggrieved', if the instant `Appeal', is allowed by this `Tribunal'.

53. The Learned Counsel for the Petitioners / Intervenors, therefore, pray for `allowing' of the IA No. 642 of 2023 and IA No. 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, in the interest of justice.

Reply / Counter of the 1st Respondent / Appellant:

54. According to the 1st Respondent / Appellant, the Petitioners in IA Nos. 642 and 644 of 2023, have failed to `disclose', that they have

preferred the Comp. App (AT) (CH) (INS.) No. 338 of 2021, being `Aggrieved', in respect of the `Order', dated 01.09.2021, passed by the `Adjudicating Authority' / `Tribunal', in IA No. 281 of 2019 and subsequently, withdrew the said `Appeal'. The Petitioners / Intervenors in IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, have no `Locus', to file the `Application'.

55. As a matter of fact, the `Adjudicating Authority', allowed IA No. 443 of 2022, on 14.06.2022, and directed the `Corporate Insolvency Resolution Process', be `restarted', by issuance of fresh `Form-G', for receiving the `Expressions of Interests', from `Prospective Resolution Applicants', with a direction to complete the `CIRP', within a period of 90 days.

56. It is brought to the fore, that the `Form-G' Notice dated 18.06.2022, was issued, inviting the `Expression of Interest', from the interested `Resolution Applicants', and 27 `EoIs', were received by the `Resolution Professional', from different `Entities', as on 04.07.2022, etc.

57. According to the 1st Respondent / Appellant, the `Petitioners / Intervenors', are not `entitled to get themselves impleaded as `Party' / `Respondents', in the instant Comp. App (AT) (CH) (INS.) No. 183 of 2023. Moreover, the `Resolution Plan' of `M/s. Anirudh Agro Farms Limited', was deliberated and got `Approved', by the `Committee of

Creditors', with a `majority' of 95.82% Voting Share' and `Letter of Intent', was issued on 10.11.2022. The `Minutes of Committee of Creditors', have not been challenged, by the `Petitioners / Intervenors', in IA Nos. 642 & 644 of 2023, at any stage and hence, the `Petitions for Impleadment', preferred by them, are to be `dismissed', by this `Tribunal', in the interest of justice.

IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023:

58. The Petitioner / Intervenor, has filed the instant IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, seeking issuance of direction, in ordering the 1st Respondent / Appellant, in the instant Application, to implead the `Petitioner' as a `Party / Respondent' in main Comp. App (AT) (CH) (INS.) No. 183 of 2023.

59. According to the Petitioner / Intervenor, it is a `Third Party', and after going through the `Orders', passed by the `Adjudicating Authority' / `Tribunal', in Public Domain, addressed a `Letter' to the Respondent / Resolution Professional (2nd Respondent), bringing to his attention that they are ready to offer Rs.200 Crores to the `Financial Creditor', and requested the `Resolution Professional', to take the same on record.

60. It is the version of the Petitioner / Intervenor, another Letter dated 19.06.2023, was addressed to the Resolution Professional's notice that they had not received any `Reply', and further they had to deposit Rs.20 Crores and

requested them to led the Petitioner know as to when he is likely to publish the Form-G.

61. The Learned Counsel for the Petitioner / Intervenor, therefore, prays for `allowing', the IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, preferred by the Petitioner / Intervenor, in the interest of justice.

Reply / Counter of the 1st Respondent / Appellant:

62. The Petitioner / Intervenor in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, has no `Locus', to file the instant `Application', being a `Third Party', and a total `Stranger', unconnected with the present `Appeal', preferred by the `1st Respondent'.

63. According to the 1st Respondent, the `Petitioner / Intervenor', never participated in the `Corporate Insolvency Resolution Process' of the `Corporate Debtor', and if it was keen, they would have participated either in 2019 or in 2022, when `Form-G', was reissued. Having slept over the matter, the `Petitioner / Intervenor', has filed IA No. 656 of 2023, only with a view, to `derail', the proceedings, before this `Tribunal'.

64. It is the version of the 1st Respondent / Appellant, that if the Petitioner is blowing hot and cold, to achieve its end, by any means possible. Also, there is no `Bona fide', on the part of the `Petitioner /

Intervenor', to prefer IA No.656 of 2023, in Comp. App (AT) (CH) (INS.) No. 183 of 2023, and hence, pray for `dismissal' of the said `Application', to secure the ends of justice.

Person Aggrieved:

65. At this juncture, this `Tribunal', aptly points out the decision of the Hon'ble Supreme Court of India, in Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay, 1970 (2) SCC, Page 484 at Spl Pg: 489, wherein, at Paragraphs 6 & 7, it is observed as follows:

> *6. ``The expression `person aggrieved' is not new, nor has it occurred for the first time in the Advocates Act. In fact it occurs in several Indian Acts and in British Statutes for more than a hundred years. In the latter a right of appeal to a `person aggrieved' is conferred in diverse contexts. It occurs in the Ale House Act, the Bankruptcy Acts, Copyright Act, Highway Act, Licensing Acts, Milk and Dairies (Amendment) Act, Rating and Valuation Act, Summary Jurisdiction Act, Union Committee Act, Local Acts, in certiorari proceedings and the Defence of Realm Regulations to mention only a few. The list of Indian Acts is equally long.*
>
> *7. As a result of the frequent use of this rather vague phrase, which practice, as Lord Parker pointed out in Ealing Corporation v. Jones[1], has not been avoided, in spite of the confusion it causes, selections from the observations of judges expounding the phrase in the context of these varied statutes were cited before us for our acceptance. The observations often conflict since they were made in different contexts and involved the special standing of the party claiming the right of appeal. Yet these definitions are not entirely without value for they disclose a certain unanimity on the essential features of this phrase, even in the diversity of the contexts. The font and origo of the discussion is the well-known definition of the phrase by James L.J. In Re Sidebotham Ex p. Sidebotham[2] . It was observed that the words `person aggrieved' in Section 71 of the Bankruptcy Act of 1869 meant: "*

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

Discussions:

IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023; IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023; IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023:

66. The Petitioners / Intervenors in IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023; IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023; IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023 (in these three `Appeals'), have come out with a stance that they are `Aggrieved Persons', to get themselves, `impleaded', as `Party / Respondents', in all the three `Appeals', because of the fact that being `Financial Creditors' and `Members' of the `Committee of Creditors' of the `Corporate Debtor' / `M/s. Viceroy Hotels Limited'.

67. According to the Petitioners / Intervenors, as `Financial Creditors' and `Members' of the `Committee of Creditors', they are necessarily to be `Impleaded', as one of the `Party / Respondents', in the respective three `Appeals', in lieu of the fact, that they have `voted', in favour of the

`Resolution Plan' of `CFM', and hence, they are to be termed as `Aggrieved Persons', considering the fact the `Resolution Plan' of M/s. Anirudh Agro Farms Limited', which is of much `Lower Value', and proposes a much longer implementation period, may be `Approved' and this is being apprehended by the `Petitioners'.

68. It is represented on behalf of the Petitioners that `Approval' of a `Lower Value Resolution Plan', when another `Resolution Plan of Higher Value', was earlier `Approved', cannot be a sound `Commercial Decision'.

69. In effect, the Petitioners / Intervenors pray that their IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023; IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023; IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, are to be `allowed', since the unreasonable decision of the `majority' of the `Committee of Creditors', have affected them, in a considerable manner.

70. The 1st Respondent / Appellant, takes a stance in IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, to the effect that the `Petitioners / Intervenors', only holds 0.03% and 0.05% of the `Voting Share', in the `Committee of Creditors', and with 95.82%, the `Committee of Creditors', had `voted', in favour of the `Appellant's Resolution Plan'.

71. It is projected on the side of the 1st Respondent / Appellant that the Petitioners / Intervenors, have abstained from participating in any of the proceedings, before the `Adjudicating Authority' / `Tribunal', in IA No. 1343 of 2022 and in reality, they have no `Locus', to prefer the instant IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, and indeed, the Petitioner in IA No. 645 of 2023, had unequivocally withdrew the Comp. App (AT) (CH) (INS.) No. 325 of 2021 and in the instant `Appeal', the `1st Respondent / Appellant', assails the `Findings' of the `Adjudicating Authority', in regard to the `validity' of the `Performance Bank Guarantee' of the `Appellant', in which, the `Resolution Professional', and the `Committee of Creditors', are `arrayed' as `Parties'. Therefore, the `1st Respondent / Appellant', in Comp. App (AT) (CH) (INS.) No. 166 of 2023, pray for the `dismissal' of the `IA Nos. 641 and 645 of 2023'.

72. To be noted, that there is no `Right', on anyone, to be joined as a `Party', in a given proceedings, before the `Competent Forum'. Further, a `Person', would not be `Impleaded', merely because, he will be affected by an `Order' of a `Tribunal' / a `Court of Law', in an incidental manner, in the considered opinion of this `Tribunal'.

73. It cannot be gainsaid that a `Person', having no direct `legal interest', in respect of an `Appeal', is not a `Necessary Party'. After all, an `Appellant' or a `Plaintiff', in an `Appeal' or `Original Suit'

proceedings, is the `Dominus Litis', and it cannot be forced to add `Persons', as `Parties', against, unless, it is the compulsion of `Law', when it does not want to fight.

74. No wonder, adding of a `Person / Party', in a given legal proceeding, is prerogative of a `Tribunal' / a `Court of Law'. A `Party / Person', cannot be thrust on an unwilling `Appellant / Plaintiff'.

75. Moreover, the presence of a Stranger, including the `Co-owner' and `Coparceners', are not `Necessary Parties', in as much as they are not concerned with the `Relief' or `Defence', raised as per decision in T.G. Rajamani Mudaliar (Died) By … v. T.G. Ekambara Mudaliar & Ors., AIR 2022, Mad 185.

76. In so far as the Respondent Nos. 2 & 3 are concerned in IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, there pleas are in conformity with the stand of the 1st Respondent / Appellant, and hence, they are not repeated by this `Tribunal'.

77. Be that as it may, on a careful consideration of respective contentions, advanced on either side, in IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, this `Tribunal', keeping in mind the `primordial fact' that the `Petitioners / Intervenors', having `abstained from participating in any proceedings', before the

`Adjudicating Authority' / `Tribunal', especially in IA No. 1343 of 2022 and added further, that the 1st Respondent / Appellant, in main Comp. App (AT) (CH) (INS.) No. 166 of 2023, as `arrayed', the `Resolution Professional', and the `Committee of Creditors', as `Necessary Parties', to the said `Appeal', in view of the settled legal position, that an `Appellant' / `Plaintiff', in a given proceedings, is the master of his own `Litigation', and he / it, cannot be compelled / coerced, to `Implead' a `Party', against whom, he has no grievance, comes to a consequent conclusion that the `Petitioners / Intervenors', cannot thrust an unwilling `Appellant', to `Implead', them as `Party / Respondents', in Comp. App (AT) (CH) (INS.) No. 166 of 2023, and even without their presence, the instant Comp. App (AT) (CH) (INS.) No. 166 of 2023, can be `Disposed of', by this `Tribunal', in an effective and efficacious manner. Viewed in that perspective, the `Petitioners / Intervenors', cannot be `arrayed' as `Prospective Respondents', in Comp. App (AT) (CH) (INS.) No. 166 of 2023, since, they are not `Necessary Parties', for resolving the `Controversies', centering around the main `Appeal'. Accordingly, the IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, are `devoid of merits', and it fails.

Conclusion:

In fine, the IA Nos. 641 & 645 of 2023 in Comp. App (AT) (CH) (INS.) No. 166 of 2023, are `Dismissed'. No costs.

IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 :

78. The Petitioners / Intervenors, in IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, pray for their `Impleadment', as `Party / Respondents', in main `Appeal', and according to them, a `Resolution Plan', of `Lower Value', is sought to be `Approved', when another `Resolution Plan', being of `Higher Value', prima facie is more a `viable' one and they are `Aggrieved', by the `Arbitrary' and `Unreasonable Decision', of the majority of the `Committee of Creditors'. Hence, they pray for their `Impleadment', as `Respondents', in the aforesaid IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023.

79. According to the Respondent / Appellant, the Petitioners in IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, are a `Motivated' one and in fact, the `Petitioners / Intervenors', must remember that the `Committee of Creditors' decision, is binding on them and that the IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH)

(INS.) No. 170 of 2023, are not per se `Maintainable', because of the fact that they have not assailed the decision of the `Committee of Creditors', to prefer an `Appeal' nor they have challenged the `Voting Results'.

80. It is the stand of the Respondent / Appellant, that only `Parties' materially and directly affected by an `Order' of the `Adjudicating Authority' / `Tribunal', can approach the `Appellate Tribunal', and by creating a `convoluted factual narration', as averred in the `Interlocutory Applications', the `Petitioners', cannot maintain the aforesaid IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, and hence, the `Respondent / Appellant', prays for the `dismissal' of the said `Interlocutory Applications'.

81. In the present case, admittedly, the `Petitioners / Intervenors', were not `Parties', to the original proceedings. The decision of the `Committee of Creditors', is voted with 83.81% and as such, the `Petitioners / Intervenors', are bound by the decision of the `Committee of Creditors'.

82. In the light of the foregoing discussions, this `Tribunal', bearing in mind the vital fact that the `Appellant / Plaintiff', is a `master of his own Litigation', and he / it, cannot be compelled to `Implead', the `Parties', against whom, he / it, has no grievance and fact of the matter is the `Parties', cannot thrust on an `unwilling Appellant / Plaintiff', to `array', the `Intervenors', to be `Impleaded' as `Respondents', as a matter of

`Right', the clear cut position in `Law' is that, it is the prerogative of the `Tribunal' / an `Appellate Tribunal', to add the `Parties', as `Necessary Parties', and keeping in mind another fact that persons would not be `Impleaded', just because, they would be affected by an `Order' of the `Appellate Tribunal', incidentally, and considering the `attendant facts and circumstances of the case', in a holistic and conspectus manner', comes to a consequent conclusion that the `Petitioners' / `Intervenors', are not `Necessary Parties', to the instant Comp. App (AT) (CH) (INS.) No. 170 of 2023, and even without their presence, the `Appellate Tribunal', can determine the `Controversies', between the `Parties', in a complete and a comprehensive manner.

83. Looking at from that angle, the `Petitioners / Intervenors', having `abstained from `Voting', on the `Appellant's Resolution Plan', and also, having `abstained from participating in any proceedings', before the `Adjudicating Authority' / `Tribunal', especially, in IA No.1343 of 2022, the IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, filed by the `Petitioners / Intervenors', are not `Maintainable' in `Law'. Accordingly, the IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, san merits and it fails.

Result:

In fine, the IA Nos. 643 and 646 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, are `Dismissed'. No costs.

IA Nos. 642 and 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023 :

84. The Petitioners / Intervenors, have preferred IA No. 642 / 2023 and IA No. 644 of 2023, in Comp. App (AT) (CH) (INS.) No. 183 of 2023, seeking to `Implead' themselves as `Party / Respondents', in main Comp. App (AT) (CH) (INS.) No. 183 of 2023.

85. According to the Petitioners / Intervenors, they are `Aggrieved Persons', because they are `Financial Creditors', and `Members' of the `Committee of Creditors' of `M/s. Viceroy Hotels Limited'. Further, they apprehend, in contrast to the `Resolution Plan' of `CFM', the `Resolution Plan' of `M/s. Anirudh Agro Farms Limited', which is of much `Lower Value', and proposes much longer implementation period, etc.

86. It is represented on behalf of the Petitioners / Intervenors that, if the `Leave' for `Impleadment' (sought for, by the `Petitioners'), in the instant `Appeal', are not granted, it would cause an `irreparable loss and harm', to them.

87. On behalf of the 1st Respondent / Appellant, it is represented that the Petitioners, have no `Locus Standi', to file IA No. 642 of 2023 and IA No. 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, and that the `Petitioners', are guilty of latches and delay, besides approaching this `Tribunal', with unclean hands, and they had not disclosed the fact of `withdrawal of the Offer', by `CFM ARC', after `dismissal of Application' of the `Resolution Plan' of `CFM ARC', by the `Adjudicating Authority' / `Tribunal'.

88. That apart, it is the version of the 1st Respondent / Appellant, the filing of Comp. App (AT) (CH) (INS.) No. 338 of 2021, before this `Tribunal', was not `disclosed', and in fact, the said `Appeal', was withdrawn.

89. Added further, it is the stand of the 1st Respondent / Appellant that for `issuance of Form-G', reasons were mentioned, about which, the Petitioners / Intervenors, were aware of the same and they had not assailed the subsequent developments or any of the actions of the `Committee of Creditors', and hence, estopped from contending otherwise. In short, the IA No. 642 of 2023 and IA No. 644 of 2023, filed by the `Petitioners / Intervenors', are `not maintainable', and they are to be `dismissed', by this `Tribunal'.

90. On a careful consideration of the contentions, advanced on respective sides, this `Tribunal', keeping in mind of an important fact that an `Appellant / Plaintiff', in a `given proceedings', before the `Competent Forum', is the master of his own Litigation, and that, the well settled principle is that, a `Party', cannot be thrust on an `unwilling Appellant / Plaintiff', and cannot be coerced to `Implead' a `Party', against whom, he has no `legal grievance', and also, bearing in mind another fact that just because the `Intervenors / Petitioners', would not be `impleaded', because they would be affected by an `Order' of a `Tribunal' / `Court', in an incidental manner, a `Person', having no direct legal interest in the result of an `Appeal', is not a `Necessary Party' in `Law', in the light of the fact that an `Appellant / Plaintiff', is the `Dominus Litis', he cannot be pushed to add `persons / parties', against when he does not want to fight and considering the facts and surrounding circumstances of the instant `Appeal', comes to a conclusion that the `Petitioners / Intervenors', in IA No. 642 of 2023 and IA No. 644 of 2023, are not `Necessary Parties', and even without their presence, the instant Comp. App (AT) (CH) (INS.) No. 183 of 2023, can be `Disposed of', as opined by this `Tribunal'.

91. Looking at from any angle, the IA No. 642 of 2023 and IA No. 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, filed by the `Petitioners / Intervenors', are `not Maintainable'. Accordingly, the IA

No. 642 of 2023 and IA No. 644 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023 fail.

Conclusion:

In fine, IA No. 642 of 2023 and IA No. 644 of 2023, in Comp. App (AT) (CH) (INS.) No. 183 of 2023, are `Dismissed'. No costs.

IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023:

92. The `Petitioners / Intervenors', in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, pray for their `Impleadment', as one of the `Respondents', in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and Comp. App (AT) (CH) (INS.) No. 183 of 2023, on the footing, that they are interested `Parties' and have expressed their intention to participate in the process, in a fresh `Form-G', and in fact, they had requested the `Resolution Professional', through `Letters', that they are ready to deposit Rs.20 Crores, and further, to let them know as to when the `Resolution Professional', is to publish the `Form-G'.

93. As a `Third Party', the `Petitioners / Intervenors', in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and in IA No.

656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, and also, as `Aggrieved Persons', since, they are ready to offer Rs.200 Crores, to the `Financial Creditor', and requested the `Resolution Professional', to take the same on record, they pray for `allowing' the IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, in furtherance of substantial cause of justice.

Petitioners / Intervenors Decisions:

94. The Learned Counsel for the Petitioners / Intervenors in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, cites the `Order' dated 16.03.2022 of the Hon'ble Supreme Court of India, in Civil Appeal Nos. 1682 – 1683 of 2022, between M.K. Rajagopalan v. R. Periasamy Palani Gounder & Anr., wherein, it is observed as under:

> *``It has been informed during the course of submissions that meeting of the Committee of Creditors (`CoC') pursuant to the impugned order of the National Company Law Appellate Tribunal (`NCLAT') had taken place on 03.03.2022 and further meeting is slated for 21.03.2022.*
>
> *In the totality of the circumstances, it is considered appropriate and hence provided that the meetings / proceedings of the CoC may continue but the entire process shall remain subject to the final orders to be passed in these appeals.''*

95. The Learned Counsel for the Petitioners / Intervenors, adverts to the Judgment of the Hon'ble Supreme Court of India, in M.K.

Rajagopalan v. R. Periasamy Palani Gounder & Anr., reported in (2023) SCC OnLine SC 574, wherein, the `Impugned Judgment and Order', dated 17.02.2022 of the `Appellate Tribunal', was not interfered with only in so far as the `Appellate Tribunal', had not `Approved', the `Resolution Plan' in question, etc.

Plea of Respondent / Appellant in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023:

96. The Learned Counsel for the `Respondent / Appellant', in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, contends that the `Petitioner / Intervenor', cannot prescribe itself to `intervene', because the Respondent / Appellant, is the `Dominus Litis', to `array', the `Parties', in the instant `Appeal'.

97. According to the Respondent / Appellant, the `Petitioners / Intervenors', having not participated in the `Resolution Process', it cannot even `Claim', any prejudice or it cannot `File an Appeal' or `Intervene', in any `Appeal' proceedings. Also that, the `Petitioner / Intervenor', had not participated in the `Resolution Process', as a `Prospective Resolution Applicant', and had not submitted any `Expression of Interest', in the prescribed timeline, as per `Regulation 36A of Corporate Insolvency Resolution Process Regulation'.

98. It is pointed out on behalf of the Respondent / Appellant that an `Unsuccessful Resolution Applicant', is not considered as a `Stakeholder', as per Section 31(1) of the I & B Code, 2016, in relation to the `Corporate Debtor'. Further, it is not even an `Aggrieved Person', and hence, IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023, is liable to be `Dismissed'.

Plea of 1st Respondent / Appellant in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023:

99. According to the 1st Respondent / Appellant, in IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, the `Petitioner / Intervenor', in the `Interlocutory Application', is a `Third Party', is a total Stranger and unconnected with the instant `Appeal', and further, it is illogical on the part of the `Petitioner', to point out that it is ready to Offer Rs.200 Crores and entertaining of such an `Application', will only be a mockery of the provisions of the `Code', more particularly, when the `Approvals', by the `Committee of Creditors', are on % basis.

100. Continuing further, the decision to approve the `Resolution Plan', projected by `M/s. Anirudh Agro Farms Private Limited', was accepted by a `majority' of over 95% of the total `voting share' of the `Committee of Creditors', of the `Corporate Debtor'. Also that, the `CoC', is meant to

ensure proper `Corporate Governance', and has followed the process in accordance with the provisions of the `Code'. Besides this, the `Intervenor / Petitioner', is not a `Necessary' or `Proper' Party for determining the `Controversies', centering around the main `Appeal'.

101. Therefore, the 1st Respondent / Appellant, prays for `dismissal' of the IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023.

Evaluation (in IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023):

102. Having given anxious considerations, in respect of the legal contentions advanced on both sides, this `Tribunal', keeping in mind that the `Petitioners', are `Third Parties' / `Strangers', and unconnected with the instant `Appeals' (CA (AT) (CH) (INS.) No. 170 of 2023 and in CA (AT) (CH) (INS.) No. 183 of 2023), are not entitled to project a `plea' that their IA Nos. 600 & 656 of 2023 in Comp. App (AT) (CH) (INS.) Nos. 170 & 183 of 2023, are to be `allowed', considering that the `Committee of Creditors', had `Approved', the `Resolution Plan' (filed by M/s. Anirudh Agro Farms Pvt. Ltd.), by a majority of 95% `Voting Share', and in any event, the `Petitioners', have no `vested' or any `fundamental right', to get themselves `Impleaded', as one of the `Respondents', in the main `Appeals', because of the latent and patent

fact, that they are not `Necessary Parties', by any means, whatsoever, in the earnest opinion of this `Tribunal'. Looking at from any angle, IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, preferred by the `Petitioners / Intervenors', are per se `not Maintainable', in the `eye of Law', and they fail.

Disposition:

In fine, the IA No. 600 of 2023 in Comp. App (AT) (CH) (INS.) No. 170 of 2023 and IA No. 656 of 2023 in Comp. App (AT) (CH) (INS.) No. 183 of 2023, are `Dismissed'. No costs.

[Justice M. Venugopal]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

11 / 08 / 2023

SR / TM

ANNEXURE A/6

2024 INSC 926

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1711-1712 OF 2021

GRASIM INDUSTRIES LIMITED ...APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH AND ANOTHER ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5158 OF 2021

J U D G M E N T

B.R. GAVAI, J.

CIVIL APPEAL NO(S). 1711-1712/2021

1. These appeals challenge the order dated 07.04.2021 passed by the National Green Tribunal (NGT), vide which the NGT has held that the appellant had committed a violation of the provisions of Environment Protection Act. The Court found that the appellant had failed to install the online flow meter in CS2 stacks to quantify the CS2 emissions. It also found that the acid produced which is a by-product of the process employed by the appellant was hazardous to the

environment. The NGT, therefore, on different counts imposed penalty of Rs.75,00,000/- each.

2. We have heard Shri Neeraj Kishan Kaul, learned senior counsel for the appellant and Shri Raghav Sharma, learned counsel appearing for Respondent No.1/State of Madhya Pradesh through Madhya Pradesh Pollution Control Board and Shri Rahul Pratap, learned counsel appearing for Respondent No.2.

3. Though, Shri Neeraj Kishan Kaul, learned Senior Counsel, submits that there is no violation as found by the learned NGT, we find that the present appeals deserve to be allowed on the following short ground.

4. After the NGT entertained the O.A. on the basis of the letter addressed by Respondent No.1, it initially directed the plant of the appellant to be examined by the State Pollution Control Board. After the receipt of the report of the State Pollution Control Board, the Court appointed a Joint Committee to give its report. The said Joint Committee made certain recommendations and the NGT passed the impugned order on the basis of the said recommendations.

5. The material placed on record would also reveal that the

appellant herein was not made a party to the proceedings before the learned NGT or before the Joint Committee. Though an application for impleadment was filed by the appellant, the same was rejected by the learned NGT.

6. It further appears that even the Joint Committee appointed by the NGT neither gave any notice to the appellant nor an opportunity was given of being heard. Though, this objection was specifically taken by the appellant, the NGT observed "We asked the learned Counsel whether the stand of the unit is that the violations found never existed or whether they existed but have been remedied. His answer is later. It is patent that there were violations".

7. It is thus clear that the procedure followed by the learned NGT was totally unknown to the settled principles of natural justice.

8. Neither was any notice given by the Joint Committee before giving an adverse report against the appellant nor the NGT permitted impleadment of the appellant as a party respondent. As a matter of fact, the NGT could not have proceeded further with the matter even at the initial stage

without impleading the appellant herein as a party respondent. The approach adopted by the NGT clearly smacks of condemning a person unheard. A reliance in this respect should be placed on the judgment of this Court in the case of ***Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others***[1].

9. Another glaring error that has been committed by the NGT is that it has based its decision only on the basis of the report of the Joint Committee. The NGT is a tribunal constituted under the National Green Tribunal Act of 2010. A tribunal is required to arrive at its decision by fully considering the facts and circumstances of the case before it. It cannot outsource an opinion and base its decision on such an opinion. A reliance in this respect should be placed on the judgment of this Court in ***Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v. State of Gujarat and Others***[2].

10. In that view of the matter, the impugned orders are not sustainable, the same are quashed and set aside and the matters are remitted back to the learned NGT for considering

[1] **(2022) 13 SCC 401 : 2021 INSC 624**
[2] **2022 SCC OnLine SC 120 : 2022 INSC 79**

the matters afresh.

11. Needless to state that if the NGT decides to proceed further on the basis of the complaint of Respondent No.1, it shall not do so unless the appellant herein is impleaded as a party respondent.

12. With these observations and directions, the appeals are allowed.

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

CIVIL APPEAL NO. 5158 OF 2021

1. The facts in the present case are almost similar or rather more glaring than the facts in Civil Appeal Nos. 1711-1712 of 2021. In the present appeals the complainant (Respondent No.2 herein) had not even mentioned the name of the present appellant. However, the learned National Green Tribunal (NGT) on the basis of the Report of the Joint Committee imposed penalty of Rs.82.2 Lacs and Rs.75.6 Lacs for violation of environment laws on two counts.

2. In the appeal arising out of the same common order we have found that the approach of the NGT in deciding the matter without impleading an affected party and passing its

decision on an outsourced opinion of the experts is not permissible on the ground of violation of principle of natural justice.

3. In that view of the matter, we are inclined to allow this appeal.

4. The impugned order is quashed and set aside and the matter is remitted back to the learned NGT for considering the matter afresh.

5. The appeal is accordingly allowed.

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

.....J.
(B.R. GAVAI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
NOVEMBER 27, 2024.

Gmail ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>

Service in P.C. Gupta Vs. SEIAA [Appeal No. 39 of 2025]

1 message

ELDF <eldflegal@gmail.com> Tue, Oct 14, 2025 at 12:45 PM
To: priyanka swami <advpriyankaswami@gmail.com>, lalit mohan <advocatelalitmohan@yahoo.com>, SVF Associates <svfassociates@gmail.com>
Cc: Shubham Upadhyay <Shubham@eldfindia.com>, Surya Gupta <surya@eldfindia.com>, Anukriti Bajpai <anukriti@eldfindia.com>

Dear Sir/Ma'am

Please find attached copy of the Reply in IA 477 of 2025 and IA 505 of 2025.

Thanks & Regards
--
Sameer Manher
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29, Presidential Estate LGF,
Nizamuddin East New Delhi – 110013
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Reply IA 477 of 2025.pdf

Reply IA 505 of 2025.pdf