BEFORE THE JOINT COMMISSIONER (APPEAL) ZONE 8 DGST DEPARTMENT NEW DELHI

Neetika International
GREATER KAILASH
NEW DELHI
GSTIN NO. 66778885554

APPELLATE ORDER UNDER SECTION 107(1) READ WITH SECTION 107(4) OF THE DGST ACT.

DIN NO. 2233114455 27.5.25

PRESENT FOR THE APPELLANT: ADV M R NARENDER KUMAR KHANNA

The appellant is aggrieved with the an order dated 30.11.24 passed by the Proper Officer Zone 5 creating a demand of Rs 35,46,000/- towards tax and rs 14,55,446/- towards interest. The demand has been created on account of suppliers having been found non existent and the appellant was not able to satisfy the proper officer regarding the claim of his input tax credit as he failed to discharge the burden cast upon him under section 155 of the DGST Act. Nothing was brought on record to even remotely satisfy the proper officer that the goods In question ever came to the business premises of the appellant and the same were physically received. The appellant was to prove this beyond a reasonable doubt as held in E Com Coffee Gill judgment of the Supreme Court that was confronted to the appellant. The appellant kept harping that there is a tax invoice, payments have been made by bank and goods have been traded further discharging the tax liabilities. The fact is that hardly any cash payment of tax was made by the appellant and the entire consideration for supplying the goods was set off against the ineligible input tax credit as per alleged purchases made by the appellant.

The appellant has deposited a sum of Rs 354600/- as a mandatory pre-deposit towards filing of appeal. The appellant has also stated that there is no other admitted tax liability.

The appellant was called for personal hearing,

Mr Narender Kumar Khanna Advocate appeared on 9.3.25 on the date of hearing. The counsel was questioned about late filing of appeal behind the statutory limitation of 3 months as per section 107 and even above the condonable period of one months. The appeal is beyond the period of four months within which it must have been filed and entertained. However, the appeal is filed on 20.4.25 which is 20 days late beyond the period of four months allowed. Hence, the counsel was questioned at the outset before entertaining the appeal as to how this appeal can be entertained which is hopelessly time barred and why this appeal be not dismissed in limnie time as time barred?

The counsel has stated that she has filed condonation application for this delay with an affidavit from the appellant that he could not file the appeal due to family reasons (his son was getting married and he has annexed the wedding card to that effect). The appellant stated that he had deposited the 10 percent well in time but could not pursue the matter due to family engagements. The counsel has buttressed her arguments on this line and has prayed that the delay in filing the appeal be condoned and appeal heard on merits, especially when the appellant has deposited mandatory pre-deposit 10 percent of tax.

When further questioned whether section 107 gives me powers to condone the delay, she relied upon section 5 of the Limitation Act and vehemently argued that the applicability of section 5 has not been expressly excluded and hence the provisions of section 5 of the Limitation Act shall be applicable to special statute like GST to justify relief. When further questioned whether the maximum condonation period of one months cannot be interpreted to expressly exclude the provisions of Limitation Act, the counsel stated that the answer has to be emphatic NO as the special statute provisions have to expressly

exclude by way of written law on the issue of exclusion of the Limitation Act and its applicability to a particular section. Further the counsel stated that appeal right is not a matter of procedure but a statutory right and should not be taken away light heartedly as a meritorious matter may be dismissed at the threshold and the taxpayer subjected to huge tax liabilities.

The ld Counsel has quoted judgment of Collector v Qatiji, N Balasubramaniam v UOI and many other judgments on the issue of condonation of delay and on the principle that technical considerations should not destroy the statutory right of the appellant to file the appeal against illegal orders that may be passed by the lower authorities. She further argued at length the judgment of the SC in Mukri Gopalan case and strongly prayed that the appeal of the appellant which is just late buy 20 days should not be thrown at the threshold and should be heard on merits as the orders of the lower authorities are absolutely illegal and without authority of law.

Taking me through the various judgements more particularly the judgment of the SC in Quatiji case the counsel has vehemently pressed his argument that such technical considerations of limitation should not kill the meritorious matter at hand and that law of limitation should be construed liberally. He has even offered cost to compensate the revenue to be heard on merit. Many more judgments of various High Courts have been quoted wherein delay has been condoned beyond the maximum period permissible in terms of Section 107 of the DGST Act. The counsel has further argued that the serious intent of the appellant can also be seen that 10 percent of the pre-deposit money was deposited through electronic cash ledger well before filing of the appeal.

I have heard the counsel at length. In my view all the judgments quoted are distinguishable. First two judgments were on sufficiency one reasons for delay and were not dealing directly with the issue involved i.e. **“Whether the statutory authority can condone the delay beyond the maximum period allowed in the special statute like GST”?** The judgment of the Supreme Court in Mukri Gopalan case was dealing with interplay of section 5 read with section 29(2) of the Limitation Act when the Courts were dealing such matters.

I have heard the counsel at great length. The merits of the case cannot be gone through at this stage of entertainment of the appeal and hence I am unable to place reliance on the merits of the matter i.e. alleged fraudulent claim of input tax credit as alleged by the proper officer. But in my considered opinion the law of limitation should not come in the way of hearing the matter of merits and deciding the same. The judgements of the Supreme Court quoted have tremendous merit in the same.

In view of the above, in my view the contentions raised by the learned counsel, deserve serious consideration. And taking the lenient view I condone the delay of 20 days in filing the appeal subject to the appellant deposing a cost of Rs 25,000/- within a period of 7 days failing which this order shall be deemed to have been withdrawn and appeal dismissed as time barred.

The appellant to show compliance of same, I reject the intentions put forward any the counsel for the appellant and dismiss the appeal as time barred as I do not have the power under Section 107 of the DGST Act to condone the delay beyond the maximum period of one month. Subject to showing compliance of this order of deposit of cost the appellant to come up for hearing on merits on 10.6.25 with all the evidence he has to support his claims for input tax credit.

Appeal dismissed.

OFFICE OF THE COMMISSIONER, STATE GST, DGST DEPARTMENT, NEW DELHI

ORDER UNDER SECTION 112(3) OF THE DGST ACT, 2017 - IN RE: ORDER OF THE JINT COMMISSIONER (APPEALS) ZONE 8, IN THE MATTER OF NEETIKA INTERNATIONAL,
GREATER KAILSH, SOUTH DELHI, NEW DELHI

Whereas while going through the appellate orders passed by the appellate authority Zone 8, I have come across an order passed by the Joint Commissioner in the case of Neetika International, South Delhi, New Delhi (copy enclosed). In this order the Joint Commissioner has condoned the delay in fling the appeal by 20 days beyond the statutory limitation of 3 months as provided in Section 107(1) of the DGST Act read with Section 107(4) of the DGST Act, where the appellate authority is empowered to condone the delay by a further one month if the appellant shows sufficient cause for filing the delayed appeal.

In this matter I have observed that the Appellate Authority has not only condoned the delay beyond maximum period of 4 months, including one month discretionary power given to the appellate authority, but he has condoned the delay accepting the cost offered by the appellant and has asked the appellant to deposit a cost of Rs 25000/- which the appellant has deposited. The Joint Commissioner (Appeals) have accepted the ratio of the Judgments that are given in totally different contextual framework and in my view are not relevant for the determination of question In terms of Section 107(4) of the DGST Act.

I have gone through the provisions of Section 107(1) read with Section 107(4) of the DGST Act and have also discussed the same with the law department and have come to the conclusion that the Joint Commissioner has erred in allowing the condonation of the delay and his order dated 10th May 2025 suffers from illegality on the face of it and the order is not proper. Such an order is against the statutory provisions as mentioned herein above. The appeal should not have been entertained beyond the maximum condonable period of one month. Further the Joint Commissioner has not been empowered to impose or accept cost as a bargain for giving relief. Here also the power of the Joint Commissioner has been illegally exercise and is not proper.

In view of the above I direct the Assistant Commissioner, Zone 8, Delhi GST Department to move the Hon'ble Appellate Tribunal, Delhi Bench, New Delhi praying for determination of the following questions an advance copy of the application be served on the appellant Neetika International to help them file cross objections, if any, in terms of section 112(5) of the Act≥

(1) Whether the order passed by the Joint Commissioner(Appeals) Zone 8 condoning the delay in terms of section 107(4) beyond the permissible period of one month is valid and does not suffer from any illegality?

(2). Whether the Joint Commissioner (Appeals Zone 8 had the power to accept, impost and collect cost as a bargain plea for condoning the delay beyond the maximum period allowed?

digitally signed
S K Kamra
Commissioner, State GST, Delhi

9.6.2025

BEFORE THE GOODS AND SERVICE TAX TRIBUNAL, DELHI BENCH, NEW DELHI

IN THE MATTER OF : COMMISSIONER, STATE TAXES, DGST, DELHI

VERSUS

NEETIKA INTERNATIONAL
SOUTH EXTENSION
GREATER KAILASH
NEW DELHI.

Application under section 112(3) read with Section 112(4) of the DGST Act 2017 for adjudication of the points raised by the Hon'ble Commissioner, State Taxes, DGST in terms of his order dated 9th June 2025.

Hon'ble President and his companion Members,

Respectfully showeth:

1. The Hon'ble Commissioner in terms of his powers under Section 112(3) of the DGST Act 2017 had examined the order passed by the Joint Commissioner (Appeals) Zone 8, State GST, DGST Department new Delhi dated 10th May 2025 in the matter of the above party wherein he had entertained the appeal of the party by condoning the delay of 20 days which is over and above the period prescribed in sections 107(1) read with Section 107(4) of the DGST Act. He had further relied upon some judgments to give relief and has further accepted the prayer of the appellant to offer cost of 25000/- to compensate the revenue as a condition for entertaining the appeal which is delayed beyond the maximum period of 4 months allowed in terms of above provisions. After examining the above order the Commissioner has passed the following order:

"OFFICE OF THE COMMISSIONER, STATE GST, DGST DEPARTMENT, NEW DELHI

ORDER UNDER SECTION 112(3) OF THE DGST ACT, 2017 - IN RE: ORDER OF THE JINT COMMISSIONER (APPEALS) ZONE 8, IN THE MATTER OF NEETIKA INTERNATIONAL,
GREATER KAILSH, SOUTH DELHI, NEW DELHI

Whereas while going through the appellate orders passed by the appellate authority Zone 8, I have come across an order passed by the Joint Commissioner in the case of Neetika International, South Delhi, New Delhi (copy enclosed). In this order the Joint Commissioner has condoned the delay in fling the appeal by 20 days beyond the statutory limitation of 3

months as provided in Section 107(1) of the DGST Act read with Section 107(4) of the DGST Act, where the appellate authority is empowered to condone the delay by a further one month if the appellant shows sufficient cause for filing the delayed appeal.

In this matter I have observed that the Appellate Authority has not only condoned the delay beyond maximum period of 4 months, including one month discretionary power given to the appellate authority, but he has condoned the delay accepting the cost offered by the appellant and has asked the appellant to deposit a cost of Rs 25000/- which the appellant has deposited. The Joint Commissioner (Appeals) have accepted the ratio of the Judgments that are given in totally different contextual framework and in my view are not relevant for the determination of question In terms of Section 107(4) of the DGST Act.

A copy of the order passed by the Joint Commissioner (Appeal) is annexed as Annexure 1 to this application for the ready reference of this Hon'ble Tribunal.

I have gone through the provisions of Section 107(1) read with Section 107(4) of the DGST Act and have also discussed the same with the law department and have come to the conclusion that the Joint Commissioner has erred in allowing the condonation of the delay and his order dated 10th May 2025 suffers from illegality on the face of it and the order is not proper. Such an order is against the statutory provisions as mentioned herein above. The appeal should not have been entertained beyond the maximum condonable period of one month. Further the Joint Commissioner has not been empowered to impose or accept cost as a bargain for giving relief. Here also the power of the Joint Commissioner has been illegally exercise and is not proper.

In view of the above I direct the Assistant Commissioner, Zone 8, Delhi GST Department to move the Hon'ble Appellate Tribunal, Delhi Bench, New Delhi praying for determination of the following questions an advance copy of the application be served on the appellant Neetika International to help them file cross objections, if any, in terms of section 112(5) of the Act≥

(1) Whether the order passed by the Joint Commissioner(Appeals) Zone 8 condoning the delay in terms of section 107(4) beyond the permissible period of one month is valid and does not suffer from any illegality?

(2). Whether the Joint Commissioner (Appeals Zone 8 had the power to accept, impost and collect cost as a bargain plea for condoning the delay beyond the maximum period allowed?

digitally signed
S K Kamra
Commissioner, State GST, Delhi

9.6.2025"

Now, therefore, in terms of above order, I Sushil Kumar, Assistant Commissioner, Zone 8 am filing this application in terms of section 112(1) read with Section 112(30 of the DGST Act before this Hon'ble GST Tribunal to decide the above questions in terms of law given in the DGST Act.

The moot question before this Hon'ble Tribunal that requires considered adjudication is whether the Joint Commissioner was empowers under the provisions of the Act to give relief as her has given and subject to such conditions as he has imposed?

It is submitted that the judgments quoted in the appellate order are not relevant to the question involved. And for this purpose the applicant relies upon the following judgments:

(1). Patel Brothers v State of Assam, AIR 2017 SC 383
(2). CCE, HONGO INDIA PRIVATE LIMITED AND ANR
(3). ASSISTNAT COMMISSIONER, KAKINADA V GLAXO SMITH KLINE CONSUMER HEALTH
CARE LIMITED-AIR 2020 SUPREME COURT 2819
(4)R. Gowrishankar v. Commissioner of Service Tax (Appeal)- I., 2016 SCC OnLine Mad 6023, decided on 13-06-2016]

More judgments may be given in our written submissions that shall be filed much before the date of hearing with a copy to the appellant.

In view of the above it is prayed that:

1). That this Hon'ble Tribunal may adjudicate the above two questions in terms of provisions of the DGST Act and give its ruling thereon;

2). That application may be taken as an appeal before this Honb;ble Tribunal and may be disposed of accordingly.

3). Such other order as this Hon;ble Tribunal may deem fit and proper may also be passed in favour of the applicant.

It is prayed accordingly.

ASSISTANT COMM (ZONE 8)
STATE GST DEPARTMENT,

DELHI

VERIFICATION

Verified that the contents of the above application are true to the best of my knowledge and belief and nothing material has been concealed therefrom. The application has been drafted and approved by the Commissioner, State GST, Delhi GST Department on whose instructions this application is being filed before this Hon;ble Tribunal.

APPLICANT

DATE WISE SEQUENCE OF EVENTS

S. NO.	DATE	EVENT	REMARKS
1	30-11-2024	**Assessment Order by Ld. P. O. denying ITC**	
2	28-02-2025		Expiry of 3 months
3	28-02-2025		Last date of filing appeal as per section 107(1)
4	25-02-2025	Payment of 10%	Payment of 10% Pre-Deposit of Disputed Amount of Tax as per section 107(6)(b)
5	31-03-2025		Expiry of extended 1 month
6	31-03-2025		Last date of filing appeal as per section 107(4)
7	20-04-2025		Actual date of filing of appeal
8	20 days		Days by which Appeal is late after extended period
9	10-05-2025	**Date of Order by the Joint Commissioner with cost condoning the delay in filing appeal**	
10	17-05-2025		Last Date for depositing cost as per Appeal Order (within 7 days)
11	15-05-2025		Actual Date of depositing cost
12	10-06-2025		Date of hearing as per Appeal Order
13	19-05-2025	**Date of Order by Commissioner under section 112(3)**	
14			Date of Filing Appeal by Asstt. Commissioner before the Tribunal

BACKGROUND OF THE CASE

ASSESSMENT FRAMED BY THE PROPER OFFICER

That the Respondent herein was assessed by the Proper Officer of **Zone 5 DGST Department** on **November 30, 2024** by virtue whereof demand was created herein as under:

a) **₹35,46,000/-** towards tax

b) **₹14,55,446/-** towards interest

The allegations raised in the assessment order being

- availment of ITC arising from inward supplies from non-existent suppliers
- failure to establish receipt of goods as laid in the case of E-Com Coffee Gill case
- paying high proportion of output tax liability through availment of ITC
- low payment of tax in cash

key point to be remembered herein is

date of passing the order by Ld. P. O. was 30.11.2024

APPEAL PROCEEDINGS BEFORE THE FIRST APPELLATE AUTHORITY

JOINT COMMISSIONER (APPEALS), ZONE 8, DGST DEPARTMENT,

NEW DELHI.

1. That order creating demand of Rs. 35,46,000 towards tax, was passed by Ld. P. O. on **30.11.2024.**

2. **Depositing of 10% Pre-Deposit:**

   a) That the Respondent herein had deposited 10% of the disputed amount being Rs. 3,54,600 as a mandatory pre-deposit as stipulated in section 107(6)(b).

   b) Which was deposited on 25.02.2025 by appropriating the balance available in online Electronic Cash Ledger as on GST Portal by filing DRC-03 to that effect. Mentioning therein that said amount is being deposited towards appeal to be filed being aggrieved by the order of the Ld. P. O. and the same being 10% of disputed tax amount. Copy whereof enclosed herewith for your ready perusal.

   c) That the said amount had been deposited within the period as stipulated in section 107(1).

3. **Filing of Appeal:**

   a. That the Respondent herein being aggrieved by **order of Ld. P. O. dated 30.11.2024** proceeded to **file an appeal** before the Joint Commissioner (Appeals) Zone 8, DGST Department, New Delhi **on 20.04.2025**.

   b. Appeal filed on 20.04.2025 which being late by 20 days beyond the extended period of presenting appeal as stipulated in section 107(1) read with section 107(4) of DGST and CGST Act which again being 31.03.2025.

key point to be remembered herein is

date of passing the order by Ld. P. O. was 30.11.2024

10% of the Pre-Condition amount was deposited on 25.02.2025.

Appeal filed on 20.04.2025,

Appeal was filed late by 20 days

as per time limit stipulated in section 107(4) of DGST Act which being 31.03.2025.

Disposal of Application for Condonation of Delay:

That the FAA proceeded **to accept the application for condonation of delay** in filing of appeal **subject to cost of Rs. 25,000** to be paid **within 7 days from** the date of such order which being 10.05.2025.

That the Appellant paid said cost of Rs. 25,000 on 25.02.2025 by filing DRC-03 to that effect. Copy whereof enclosed.

Order by The Commissioner under section 112

That The Commissioner, DGST Department passed an order under section 112 stating the Ld. First A. A. had erred in accepting application of condonation at cost and direction to Asstt. Commissioner, Zone 8, del was issued to move an application before the Hon'ble **Tribunal for determination of following questions:**

1. Whether the order passed by the Joint Commissioner(Appeals) Zone 8 condoning the delay in terms of section 107(4) beyond the permissible period of one month is valid and does not suffer from any illegality?
2. Whether the Joint Commissioner (Appeals Zone 8 had the power to accept, impost and collect cost as a bargain plea for condoning the delay beyond the maximum period allowed?

Application under section 112(3) read with section 112(4) of DGST Act before the Hon'ble Tribunal for adjudication of above questions.

Conclusion

10% of the Pre-Condition amount was deposited on 25.02.2025 by filing DRC-03 before the time limit stipulated in section 107(1) of DGST Act which being 28.02.2025.

SUBMISSIONS

That the points raised by the Hon'ble Commissioner, DGST Department, Delhi being herein as under:

That the Respondent hereto has a meritorious case and is in possession of all the corroborate evidences to establish that there had been inward supplies of goods, goods have been actually received, payment thereto had been made, consequently satisfying condition as laid in E-Com Coffee Gill case. Therefore, ITC arising therefrom is available as per section 16(1) read with section 16(2) and section 17 of DGST Act and CGST Act, 2017.

That, consequent outward supplies had been made and output tax liability arising therefrom had been duly discharged by making payment thereof by furnishing GSTR -3B utilising legitimate credits of taxes available in Electronic Credit Ledger as on the GST Portal as per the provision of section 41 read with section 49 and 59 and balance if any by cash.

That the said matter is pending before the FAA and therefore, is not being discussed herein as the same does not constitute part of the moot questions put forward before the Hon'ble Tribunal.

Question No. 1

Whether the order passed by the Joint Commissioner (Appeals) Zone 8 condoning the delay in terms of section 107(4) beyond the permissible period of one month is valid and does not suffer from any illegality?

That in regard to the above said point raised by the department, it is submitted herein as under:

1. **Filing of Appeal:**

   a. That the Respondent herein being aggrieved by **order of Ld. P. O. dated 30.11.2024** proceeded to **file an appeal** before the Joint Commissioner (Appeals) Zone 8, DGST Department, New Delhi **on 20.04.2025**.

   b. Herein, following sequence of events becomes pertinent.

S. NO.	DATE	EVENT	REMARKS
1	30-11-2024	**Assessment Order by Ld. P. O. denying ITC**	
2	28-02-2025		Expiry of 3 months
3	28-02-2025		Last date of filing appeal as per section 107(1)
4	25-02-2025	Payment of 10%	Payment of 10% Pre-Deposit of Disputed Amount of Tax as per section 107(6)(b)
5	31-03-2025		Expiry of extended 1 month
6	31-03-2025		Last date of filing appeal as per section 107(4)
7	20-04-2025		Actual date of filing of appeal
8	20 days		Days by which Appeal is late after extended period
9	10-05-2025	**Date of Order by the Joint Commissioner with cost condoning the delay in filing appeal**	

10	17-05-2025		Last Date for depositing cost as per Appeal Order (within 7 days)
11	15-05-2025		Actual Date of depositing cost
12	10-06-2025		Date of hearing as per Appeal Order
13	19-05-2025	**Date of Order by Commissioner under section 112(3)**	
14			Date of Filing Appeal by Asstt. Commissioner before the Tribunal

c. Appeal was to be filed by 28.02.2025 as per section 107(1) of DGST and CGST Act being 3 months from the date of communication of the order by The Ld. P. O. which being 30.11.2024

d. Extension of 1 month till 31.03.2025 was further available as per section 107(4) of DGST and CGST Act.

e. Appeal filed on 20.04.2025 which being late by 20 days beyond the extended period of presenting appeal as stipulated in section 107(1) read with section 107(4) of DGST and CGST Act which again being 31.03.2025.

key point to be remembered herein is

date of passing the order by Ld. P. O. was 30.11.2024

That 10% of the disputed tax, being **mandatory pre-condition amount** was as per section 107(6)(b) of CGST Act, 2017 was deposited on 25.02.2025 by filing

DRC-03 before the time limit stipulated in section 107(1) of DGST Act which being 28.02.2025 i.e. within 3 months of passing order by the Ld. P. O.

That by virtue of filing such DRC-03, the Respondent **communicated to the department that he intends to file appeal** being aggrieved by the orders of Ld. A. A. the said intention has been mentioned in the **DRC-03 as on GST Portal** and therefore, constitutes parts of material available on record with the department. However, copy whereof enclosed. Perusal whereof affirms the said assertions.

That DRC-03 reflects in the remark column

"Amount of Rs. 3,54,600 is being deposited in pursuance to appeal to be filed being aggrieved by the order passed by the Ld. P. O. dated 30.11.2024 bearing reference no. 123456. Being 10% of the disputed amount of tax Rs. 35,46,000 being in compliance to section 107(6)(b)."

Appeal filed on 20.04.2025 which being after the extended time limit stipulated in section 107(4) of DGST Act which being 31.03.2025.

Appeal was late by 20 days.

Disposal of Application for Condonation of Delay:

That it is pertinent to mention herein that the Ld. FAA by virtue of acceptance of application of condonation of delay had not given any relief of any kind except of granting an opportunity of being heard which is essential in light of principle of natural justice as laid in numerous supreme court judgements and also as per Article 21 of The Constitution of India which provides that a person cannot be adjudged without being heard.

Disposal of Application for Condonation of Delay:

An application for condonation of delay of filing appeal was filed before the Ld. A. A. who proceeded to accept the same by passing the **order to that effect dated 10.05.2025.**

- That section 5 of The Limitation Act was applicable for condonation of delay on sufficient cause herein being marriage of son.
- That section 107 does not expressly exclude application of section 4 to 24 (inclusive) of The Limitation Act as required by section 29(2) of The Limitation Act.
- That mandatory Pre-Deposit had been made within the stipulated time.
- These cases emphasize that **technical considerations** should **not override justice**, and that appeals should not be dismissed **without a fair hearing**.
- **Right to appeal is fundamental** and should **not be denied based on technicalities**.
- The **Mukri Gopalan case** was related to court proceedings, whereas **this case concerns a statutory tax authority** bound by the DGST Act.
- **The delay was condoned**, but with a condition:

- The appellant **must deposit ₹25,000/- as a cost within 7 days**.
- **Failure to pay** this amount will **automatically result in the dismissal** of the appeal as time-barred.

Deposit of cost by the Respondent

That the Appellant paid said cost of Rs. 25,000 on 25.02.2025 by filing DRC-03 to that effect. Copy whereof enclosed.

It needs to be appreciated that the Ld. The First Appellate Authority had passed speaking order pertinent to application for condonation of delay in fling of appeal. He considered the submissions of the Respondent and all the legal issues involved. This being in confirmation to the powers and responsibilities conferred upon him as an Appellate Authority.

He clearly understood the distinction between an Adjudicating Authority and Appellate Authority. He discharged his duty to give fundamental right of being heard before he is adjudged which being in light of principle of natural justice.

Order by The Commissioner under section 112

That The Commissioner, DGST Department passed an order under section 112 stating the Ld. First A. A. had erred in accepting application of condonation at cost

APPLICABILITY OF LIMITATION ACT TO DGST ACT

That to appreciate the applicability of Limitation Act, 1963, it is pertinent to have a perusal of section 107(1) read with section 107(4) of DGST Act. The relevant extract whereof is being reproduced herein as under for ready perusal:

Section 107. Appeals to Appellate Authority.

(1) Any **person aggrieved** by any decision **or order** passed under this Act or The State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act **by an Adjudicating authority may appeal to such Appellate Authority** as may be prescribed **within three months from the date on which the said decision or order is communicated to such person.** [See Rule 108]

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

Now moot question herein is whether section 5 read with section 29(2) of Limitation Act, 1963 were applicable to section 107 of DGST Act ?

CGST Act 2017 Section 107(4)

That from the perusal of the above said section it is evident that said section

- Allows the Appellate Authority to condone delay
- beyond the period of 3 months
- if presented within a further period of one month
- if the appellant establishes "sufficient cause."

This **matches the spirit of Section 5** of the Limitation Act — which allows a discretion to Appellate Authority to condone delay of filing appeal after prescribed period if sufficient cause is established.

Such language becomes pertinent to be compared with the language of

Section 5 of the Limitation Act, 1963

5. Extension of prescribed period in certain cases.—

Any appeal

or any application

may be admitted after the prescribed period,

if the appellant or the applicant satisfies the court that he had

sufficient cause

for not preferring the appeal or making the application within such period.

Explanation.—The fact that the **appellant** or the applicant was **misled by any** order, practice or judgment of the High Court in **ascertaining or computing the prescribed period may be sufficient cause** within the meaning of this section.

But however, the applicability of section 5 of Limitation Act to section 107 of DGST Act cannot be considered in isolation to section 29(2) of Limitation Act.

The issue will have to be resolved with reference to the language used in Sections 29(2) of the Limitation Act, 1963 and Section 107(4) of DGST Act.

Section 29(2) provides that :

29. Savings.—

(2)Where any **special or local law prescribes** for any suit, appeal or application

a **period of limitation different** from the period prescribed by the Schedule,

the provisions of section 3 shall apply

as if such period were the period prescribed by the Schedule

and

for the **purpose of determining any period of limitation** prescribed for any suit, appeal or application by any special or local law,

the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

On an analysis of the section 29(2), it is clear that the provisions of Section 4 to 24 will apply when :

(1) there is a **special** or local **law which prescribes a different period of limitation** for any suit, appeal or application; and

(ii) the **special** or local law **does not expressly exclude** those Sections.

There is no dispute that **the DGST Act is a 'Special law'** and that **Section 107 thereof provides for a period of limitation** different from the prescribed under the Limitation Act.

Question arising then is: **Is such exclusion expressed in Section 107 of the DGST Act?**

That the perusal of the language of **section 107(4) as above, it is clearly evident that no specific exclusions of Limitation Act** had been made therein. The section does **not include any restraining** or constraining **language such as "not thereafter", "no longer thereafter", etc**. indicating explicitly that there is no intent of the special law to enhance the extended period in any circumstances, meaning thereby that the Limitation Act would stand excluded therefrom.

It needs to be appreciated that GST is a special enactment so a special care to ensure specific exclusion of Limitation Act using specific words were specially required leaving no room for any ambiguity or confusion. But however, no such words forms part of such sections.

That it is further pertinent to mention that missing of something in special enactments cannot be implicit. As it requires interpretation of what missing of words could mean. It would result in a biased interpretation by the revenue as well as the tax payer. In such a situation of confusion or ambiguity in the revenue of act can never be adjudged in favour of the revenue. As it is also the duty of the revenue to provide an enactment free from such situations and circumstances.

It is further pertinent to appreciate that law should be read in the manner it is written and no new meaning could be given by insertion of words missing therein.

That there are various landmark decisions of supreme court in this regard

LANDMARK DECISIONS OF SUPREME COURT:

- Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323] and Shyam Kishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678] (xxxiv)

The court **cannot add words to a statute or read words which are not there in it.** Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission

In Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors. reported in 2010 CIJ 273 SC (1),

it is held that, "6. It is now well settled that a provision of a **statute should have to be read as it is**, in a natural manner, plain and straight, **without adding, substituting or omitting any words**.

SPECIFIC EXCLUSIONS BEING A SPECIFIC CONDITION OF THE SECTION 29(2) OF LIMITATION ACT:

Union Of India vs Popular Construction Co on 5 October, 2001 S.C.

Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act because "mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5".'

Comparison of section 107(4) of DGST Act and section 34(3) of Arbitration Act

Section 107(4) of DGST Act

4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

It has no inclusion of special and restraining words.

The proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996:

"Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months,
it may entertain the application **within a further period of thirty days**,
but not thereafter."

but not thereafter **is**

- **specific word used by special enactment for specific purpose of excluding Section 5** of the Limitation Act
- **No Condonation Power Beyond This** – even if there's "sufficient cause."

CONCLUSION

So, from the perusal of the language as used in

proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 there is specific exclusion

therefore, limitation act is not applicable.

Section 107(4) of DGST Act, No specific exclusion so, limitation act applies.

SINCE SECTION 107(4) OF DGST ACT, HAS NO SPECIFIC EXCLUSION TO LIMITATION ACT, SO SECTION 29(2) READ WITH SECTION 3 AND SECTION 5 OF LIMITATION ACT BECOMES APPLICABLE TO SECTION 107(4) OF DGST ACT

Opportunity of being Heard:

That Respondent, **by virtue of condonation of delay in filing Appeal** before the Appellate Authority:

had not received any relief

But just received an opportunity of being heard

It need to be understood that

Nobody can be condemned unheard which being against the fundamental principle of natural justice

and

Fundamental Right under

Article 14 (Right to Equality)

and

Article 21 (Right to Life and Personal Liberty)

That large number of judgments by the Supreme Court has held

A. **Mona Panwar vs High Court Of Judicat.At Allahabd.& Ors on 2 February, 2011**
B. **Swadeshi Cotton Mills Vs Union of India, MANU/SC/0048/1981: AIR 1981 SC 818: 1981 (1) SCC 664: 1981 (2) SCR 533**
C. **Testa Setalvad And Another V. State Of Gujarat And Others**
D. **Bidhannagar (Salt Lake) Welfare Association Vs Central Valuation Board & Ors., MANU/SC/2553/2007: AIR 2007 SC 2276: 2007 (6) SCC 668.**

- **Held:** No man shall be condemned unheard. It is one of the fundamental principles of administrative law and judicial procedure that **no decision shall be given against a party without giving him/her a reasonable hearing.**
- Nobody shall be the **judge of his own cause**

Article 265 in Constitution of India

The revenue cannot be allowed to enrich itself by forcefully recovering the amount becoming due as illegitimate demand which being against the article 265 of constitution of India which being reproduced herein as under:

Article 265

Taxes not to be imposed save by authority of law

No tax shall be levied or collected except by authority of law

This means that all taxes must be imposed by a valid law and that no tax can be levied or collected without the authority of law.

Right to Access to Justice:

That **absolute limitation** of Section 107 has impact of restricting access to justice being against Fundamental Right under **Article 14** (**Right to Equality)** and **Article 21 (Right to Life and Personal Liberty**).

SC in Anita Kushwaha v. Pushap Sudan (2016)

Held:

Access to Justice is a Fundamental Right under Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty).

Article 21 of the Indian Constitution guarantees

right to seek judicial remedies for grievances

arbitrary deprivation of liberty,

access to justice

- **Right to Fair Trial:**

Which includes

right to legal representation,

the right to be heard,

and the right to present evidence in one's defense.

Automotive Tyre Manufacturers Association Vs The Designated Authority & Ors., MANU/SC/0022/2011: 2011 (2) SCC 258: 2011 (1) SCR 198.

Fair Hearing: Before issuing adverse order **(property, rights, material deprivation),** the affected party must be given a fair hearing. Applies to both administrative and quasi-judicial actions.

Shiv Prasad Sharma VS State Of Rajasthan - Rajasthan (2002) - Supreme Court (2017).

- **Reasonable Opportunity of Being Heard** refers to the right to be adequately informed of the case against them and to present their defense. Fundamental to of natural justice and administrative and judicial proceedings.
- No one should be condemned unheard

Geeta Patel VS State of Rajasthan - Rajasthan (2014) / Sudesh Kumar VS State Of Haryana - Supreme Court (2005).

Opportunity to Present a Case: The individual must be given a reasonable opportunity under of the Constitution

to present their arguments, evidence, and witnesses in their defense.

Right to cross-examine witnesses

Krishna Mohan Medical College And Hospital Vs Union Of India - Supreme Court (2017).

Personal Hearing: Affected party be given a personal hearing to present their case.

CONCLUSION

That providing of such an opportunity of being heard by condonation of delay in filing of appeal was

not only the right of the Respondent

but

also duty of the F.A.A.

Mukri Gopalan vs Cheppilat Puthanpurayila boobacker on 12 July, 1995 AIR 2272, 1995 SCC (5) 5

Persona Designata vs. Judicial Function

The Court ruled that the appellate authority

i. were not a **persona designata** (a specially appointed individual), having **limited powers** meaning thereby have **greater powers** in making fair decisions, rather than being bound by rigid timelines

ii. But function **like courts** and are empowered to apply legal principles.

iii. A **persona designata** is a specially **appointed individual** with **limited decision-making powers**. However, in this case, the Supreme Court clarified that appellate authorities **function as courts**, giving them **wider legal authority**.

LIBERAL APPROACH CASES

State of West Bengal vs Administrator, Howrah Municipality & ... on 14 December, 1971

- **HELD:** Affirmed that **delays should not be viewed as deliberate unless proven mala fide**.
- Established that **even reasonable negligence should not lead to outright dismissal of claims**.
- Further that procedural technicalities should not override the fundamental principle of ensuring access to justice

Procedural Rigidity vs. Substantial Justice: Reconciling Legal Principles

A. Rules of Limitation Must Serve the Ends of Justice

Limitation statutes **do not exist to destroy rights**—they exist **to prevent indefinite uncertainty in litigation**. As recognized in **Manoharan v. Sivarajan (2014 SC)**:

- **The judiciary's role is to adjudicate disputes and ensure fairness, not dismiss cases due to procedural lapses.**
- **Strict limitation enforcement must be balanced with considerations of equity.**

This aligns with the Supreme Court's reasoning in **M.P. Steel Corporation v. Commissioner of Central Excise (2015 SC)**, where it was held that:

B. Supreme Court Rulings on Liberal Interpretation of Delay Condonation

The Supreme Court has consistently ruled in favor of **liberal condonation**, particularly in cases where procedural delays are due to **bona fide reasons**. Key precedents include:

2. Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575]

- Held that **"sufficient cause" should be liberally construed to avoid injustice**.

- Recognized that litigants **should not be foreclosed from seeking justice due to procedural lapses**.

N. Balakrishnan vs M. Krishnamurthy on 3 September, 1998 S.C.

Held

The **appeal is allowed** ensuring **equitable compensation for the respondent**.

liberal condonation in cases delays are due to **bona fide reasons**.

courts must **balance strict adherence to deadlines with the need for substantial justice**.

the **explanation provided for the delay is satisfactory and genuine**.

The **Supreme Court of India has repeatedly affirmed that limitation laws should be interpreted to advance justice** rather than deny rights due to **procedural technicalities**. The key jurisprudential principles applicable here include:

- **The length of delay is secondary; the acceptability of the explanation is primary.**
- **Courts should adopt a liberal approach unless delay is mala fide**

Courts must **exercise discretion in a manner that advances justice**, ensuring that **limitation statutes fulfill their intended function without becoming instruments of procedural injustice**.

Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors on 19 February, 1987

* **justice is not denied due to procedural technicalities**.

- **delay should be condoned liberally**

  The **length of delay is secondary**—the main factor is whether there is a **reasonable explanation**.

- **A litigant does not benefit from filing an appeal late**—delay is rarely intentional.
- **Rejecting condonation can unfairly prevent a meritorious claim from being heard**.

Emphasized that **justice should not be sacrificed for procedural rigidity**.

Ruled that **technical grounds cannot override substantive adjudication**.

Judicial Principles for Condonation

A. No Automatic Assumption of Bad Faith

- Courts must not **presume** delay is deliberate, negligent, or mala fide.
- The **burden is on the applicant** to provide a reasonable justification, but **every delay must not be viewed suspiciously**.

B. Justice Over Technicalities

- **The judiciary must prioritize substantive justice over strict timelines**.
- Courts must **weigh whether rejecting condonation would cause disproportionate injustice**.

Sufficient Cause for Condonation of delay

Some Landmark Judgments passed by Hon'ble Supreme Court wherein it had interpreted "Sufficient Cause" for Condonation of delay

1. **Krishna v. Chattappan (1889):**
    - two rules for interpreting sufficient cause were laid down:
        - The cause must be **beyond the control** of the invoking party,

          and

        - The parties **must not be** lacking bona fide or shown to be negligent or inactive.
2. **State (NCT of Delhi) v. Ahmed Jaan (2008):**
    - The Supreme Court held that the expression sufficient cause should be considered with **pragmatism in justice** oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.
3. **Ambrose & Ors v. Don Bosco (2020):**
    - The court held that sufficient cause is a **condition precedent** for exercise of discretion of condonation of delay
    - If the delay in question is not either properly or satisfactorily explained, the court of law cannot condone the delay on sympathetic ground alone
4. **K.B. Lal Vs. Gyanendra Pratap and Ors. (2024)**

The Supreme Court held that, the reason for giving the term sufficient cause a wide and comprehensive meaning is to ensure that deserving and meritorious cases are not **dismissed solely** on the ground of delay

Conclusion

- The **concept of sufficient cause** under the Limitation Act, 1963, ensures that **no one is adjudged unheard** due to procedural delays leading to inequitable enrichment to the opposite party.
- It enables courts to **balance the interests** of both parties while ensuring that justice is not denied on mere technicalities.
- However, parties seeking condonation of delay must provide **genuine, sufficient reasons** which must be beyond the control of the appellant supported by corroborated evidences. Courts to **determine sufficiency of cause** on the basis of equity guided by principles of fairness and justice.

COST ON CONDONATION OF DELAY

Supreme Court of India

N. Balakrishnan vs M. Krishnamurthy on 3 September, 1998

Balancing Equity: Considering Opposing Party's Interests

Courts must also recognize the interests of the **opposite party**, who may have **incurred litigation costs** due to delays. As a general rule:

- **Condoning delay should be accompanied by reasonable compensation to the affected party.**
- This principle was also upheld in **Union of India v. Tata Yodogawa Ltd. (1988 SC)**, where the Supreme Court **directed that costs be imposed when condonation is allowed.**

DETAILS OF VARIOUS HIGH COURTS DECISIONS (FAVOURABLE)

S. No.	HIGH COURTS	CASE NAME			CONCLUSION
1	ANDHRA PRADESH HIGH COURT	SHAIK ABDUL AZEEZ	VS	STATE OF ANDHRA PRADESH	GST APPELLATE AUTHORITY EMPOWERED TO CONDONE DELAY BEYOND FOUR MONTHS
2	CALCUTTA HIGH COURT	ARVIND GUPTA	VS	ASSISTANT COMMISSIONER OF REVENUE STATE TAXES	
3	CALCUTTA HIGH COURT	JHARNA SEAL	VS	THE ADDITIONAL COMMISSIONER, STATE TAXES, DIRECTORATE OF COMMERCIAL TAXES & SGST, SILIGURI CIRCLE & ORS	
4	CALCUTTA HIGH COURT	KAJAL DUTTA (2023)	VS		
5	CALCUTTA HIGH COURT	PARTHA_PRATIM_DASGUPTA	VS	THE_JOINT_COMMISSIONER_OF_STATE_TAX_ORS_ON_10_JUNE_2024	
6	CALCUTTA HIGH COURT	M/S. PHONEX TRADERS PRIVATE LIMITED	VS	JOINT COMMISSIONER OF STATE TAX & ORS.	
7	CALCUTTA HIGH COURT	SHRUTI IRON PRIVATE LIMITED	VS	ASSISTANT COMMISSIONER, STATE TAX, BALLY & SALKIA CHARGE & ORS. - 2024 (12) TMI783	
8	CALCUTTA HIGH COURT	S.K. CHAKRABORTY & SONS	VS		
9	HIMACHAL PRADESH HIGH COURT	SUNIL KUMAR VIJ	VS	UNION OF INDIA	
10	MADRAS HIGH COURT	GREAT HEIGHTS DEVELOPERS LLP	VS	ADDITIONAL COMMISSIONER	
11	MADRAS HIGH COURT	SATHYA FURNITURE	VS	ASSISTANT COMMISSIONER	

Shaik Abdul Azeez vs The State Of Ap on 9 January, 2024

HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
HON'BLE SRI JUSTICE HARINATH.N

WRIT PETITION NO.33509 of 2023

ORDER:

Heard Ms. Jyothi Ratna Anumolu, learned counsel for the petitioner and Sri S.A.V.Sai Kumar, learned Assistant Government Pleader for Commercial Tax-I for the respondents.

2. With the consent of learned counsels for the parties, the present writ petition is being decided finally at this stage.

3. The petitioner's GST registration was cancelled by order dated 13.03.2023 after show cause notice dated 14.01.2023. The petitioner filed appeal under Section 107 of Andhra Pradesh Goods and Services Tax Act, 2017 (for short 'APGST Act') which was rejected at the admission stage on the ground that it was barred by limitation and beyond the condonable statutory period.

4. The appeal was beyond the condonable period by 128 days. Under Section 107 of APGST Act, the appeal was to be filed within a period of limitation, in the present case, three months. The condonable period thereafter was one month. The appellate authority under the statutory provision has no power to condone the delay beyond the condonable statutory period. Consequently, the appeal was rejected.

5. Learned counsel for the petitioner submits that the cause of the delay in not preferring the appeal within the statutory period as also the condonable period was that the petitioner's health was not good and he was on bed rest. In this regard para Nos.4 & 7 of the affidavit have been referred.

6. The learned counsel for the petitioner has placed reliance in W.P.No.17349 of 2023 decided on 04.08.2023, in which a Coordinate Bench of this Court, after finding that the sufficient cause was shown to condone the delay in filing the appeal, remitted the matter to the appellate authority, by imposing the condition for payment of Rs.20,000/-.

7. Learned Government Pleader for Commercial Tax submits that considering the judgment of the coordinate Bench, the present matter may also be decided finally.

8. We have considered the submissions advanced.

9. In para-4 of the affidavit it is deposed that the petitioner had undergone surgery and was unable to look after his business. In para-7 of the affidavit it is submitted that the order of cancellation of registration was not communicated to the petitioner physically and on account of the petitioner's health condition, the petitioner could also not be aware of the impugned order.

10. In Ex.P3 annexed FORM GST APL-01 para-17 also it is mentioned that 'reasons for delay - Health is not well... took bed rest'.

11. The cause as shown in the affidavit is sufficient.

12. Though the impugned order in view of Section 107 of APGST Act does not suffer from any illegality, as the appellate authority cannot condone the delay beyond statutory condonable period but considering that there was sufficient cause for not preferring appeal in time, the interest of justice requires condonation of the delay. The appeal is a valuable statutory right. In exercise of writ jurisdiction to do complete justice and provide opportunity of hearing on merits of the appeal, we condone the delay by imposing costs of Rs.20,000/-. The appellate authority shall consider and decide the appeal on merits in accordance with law, expeditiously. The Costs shall be deposited in two (02) weeks from the date of receipt of copy of this order before the appellate authority.

13. The Writ Petition is allowed in the aforesaid terms.

14. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand dismissed.

_____ RAVI NATH TILHARI, J _____ HARINATH.N, J Date: 09.01.2024 AG HON'BLE SRI JUSTICE RAVI NATH TILHARI & HONOURABLE SRI JUSTICE HARINATH.N WRIT PETITION NO.33509 of 2023 Date: 09.01.2024 AG

04.01.2024
Item No.35
gd

WPA/2904/2023
ARVIND GUPTA
VS
ASSISTANT COMMISSIONER OF REVENUE
STATE TAXES, COOCH BEHAR CHARGE & ORS.

Mr. Boudhayan Bhattacharyya,
Ms. Stuti Bansal,
Ms. Rinki Saha
..for the Petitioner.

Mr. Pretom Das,
Mr. Dilip Kumar Agarwal
..for the State.

Mr. Ratan Banik,
Mr. Biswaraj Agarwal
..for the Respondent Nos.5 and 7.

Affidavit of service filed in court today is taken on record.

The petitioner has challenged the order of the Senior Joint Commissioner of Revenue, Jalpaiguri Circle, being the appellate authority, dated October 30, 2023 whereby the appellate authority rejected the appeal on the ground of delay upon holding that there is no scope under the provisions of WBGST Act, 2017 read with the corresponding Chapter and Section of the CGST Act, 2017 for condoning the delay in submitting the appeal beyond four months.

It is not in dispute that the appeal was presented beyond the time limit stipulated in the relevant statute.

It appears from the annexure to FORM GST APL-01 that the petitioner has specifically stated the period of delay and the reasons for filing the appeal petition beyond the statutory period of limitation.

The petitioner has cited the following reasons for delay:

> "1. The appellant is suffering from carcinoma maxilla.
>
> 2. During the month of July, 2023 he went to Apollo Hospital, Delhi for his treatment (Prescription enclosed).
>
> 3. He has to frequently visit Doctors at Delhi for his precarious health condition"

It further appears from the said annexure that the prescriptions in support of the medical treatment of the petitioner was also enclosed.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the grounds for rejection of the appeal on the ground that the appellate authority lacks power to condone the delay cannot be sustained in view of the judgment and order dated December 01, 2023 passed by the Hon'ble Division Bench in MAT 81 of 2022 heard analogously with MAT 82 of 2022 in the case of S.K. Chakraborty & Sons v. Union of India & Ors.

Heard Mr. Agarwal, learned advocate appearing for the State and Mr. Banik, learned advocate representing the respondent nos.5 and 7 on such submission.

The Hon'ble Division Bench in S.K. Chakraborty & Sons (supra) held thus:

"16. The Co-ordinate Bench in Kajal Dutta (supra) has construed the provisions of Section 107 (1) and (4) of the Act of 2017 and held that, the statute does not state that beyond the prescribed period of limitation the appellate authority cannot exercise jurisdiction.

17. It is in the interest of the nation that litigations come to an end as expeditiously as possible. To achieve such purpose, legislature has enacted the Act of 1963 and prescribed various period of limitation beyond which, the right to approach an authority for redressal of the grievances remain suspended. Apart from the general law of Limitation as prescribed in the Act of 1963, special statutes prescribe period of limitation for specific scenarios and mandates completion of proceedings within the time period specified. Prescription of a period of limitation by a special statute may or may not exclude the applicability of the Act of 1963. In the context of the issue that has fallen for consideration herein the provision of the Act of 1963 particularly Section 29 (2) thereof should be considered.

18. Section 29 (2) of the Act of 1963, has provided for situations where special or local law prescribes a period of limitation different from the period prescribed by the Act of 1963. It has provided that the provisions of Section 3 shall apply as if such period were the period prescribed by the schedule to the Act of 1963, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 both inclusive shall apply only insofar as and to the extent to which they are not expressly excluded by the special or the local law.

19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act of 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by

the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/noticee. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 nonapplicable. In absence of specific exclusion of the Section 5 of the Act of 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 in its entirety has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29 (2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority.

21. The issue that has been framed is answered in the affirmative, in favour of the appellant and against the revenue."

The Hon'ble Division Bench held that Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly.

The Hon'ble Division Bench further observed that since the provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. It follows therefrom that the appellate authority is left with the discretion to allow an appeal to be presented within a period of one month after expiry of the period of limitation stipulated from the date of communication of the order upon sufficient cause being shown. Since the

applicability of the 1963 Act has not been expressly or impliedly excluded, the appellate authority has the power to condone delay in preferring the appeal beyond the limitation specified in Section 107 of the said Act in view of the decision in S.K. Chakraborty (supra).

In view of the aforesaid settled position of law, this court is of the considered view that it was well within the power of the appellate authority to consider the prayer of the petitioner for condonation of delay. The impugned order passed by the appellate authority that there is no scope to condone the delay beyond four months suffers from infirmity.

Having answered such issue in favour of the petitioner, this court has to consider whether the petitioner has made out sufficient cause for presenting the appeal beyond the statutory period of limitation.

After going through the reasons for the delay as evident from the annexure to FORM GST APL-01, this court is of the considered view that the petitioner was prevented by sufficient cause for not preferring the appeal within the statutory period.

This court, therefore, holds that the appellate authority failed to exercise its jurisdiction in the case on hand.

In view thereof, the delay in presenting the appeal before the appellate authority is condoned. The appeal is restored to the file of the appellate authority.

The appellate authority, being the 3rd respondent in the writ petition, is directed to consider the appeal on merit and decide the same in accordance with law upon giving an opportunity of hearing to the petitioner.

With the above observations and directions, WPA 2904 of 2023 stands allowed.

There shall be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)

01.10.2024
Court No.2
Sl. No.21
KB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A 2159 of 2024

Jharna Seal
-versus
The Additional Commissioner, State Taxes,
Directorate of Commercial Taxes & SGST,
Siliguri Circle & Ors.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Mr. Rajib Parik
Mr. Swarup Das
Mr. Ved Rai
...For the Petitioner.

Mr. Pretom Das
Ms. Rima Sarkar.
...For the State.

1. Affidavit-of-service filed in Court today is taken on record.

2. The petitioner intends to prefer an appeal before the appellate forum but is delayed in doing so. Prayer has been made to condone the delay and permit her to file the appeal before the appellate forum.

3. The petitioner relies upon an order dated 11th September, 2024 passed by a coordinate Bench of this Court in ***W.P.A. 18799 of 2024*** (***Surekha Shah Vs. Deputy Commissioner of Revenue, State Tax, College Street and Sealdah Charge and Others***) and the judgment dated ***1st December, 2023*** passed by the

Hon'ble Division Bench in ***MAT 81 of 2022*** with ***IA No. CAN 2 of 2022*** with ***MAT 82 of 2022*** with ***CAN IA No. CAN 2 of 2022*** (***S. K. Chakraborty & Sons Vs. Union of India & Ors.***).

4. Learned advocate representing the respondents submits that the order passed by the Hon'ble Division Bench in the matter of S. K. Chakraborty & Sons (supra) has been stayed by the Hon'ble Supreme Court.

5. According to Section 107(1) of the WBGST Act, 2017, any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

6. According to Section 107(4) of the Act the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

7. The Hon'ble Division Bench in S. K. Chakraborty & Sons (supra) considered the above issue and held that the provision of Section 5 of the Limitation Act, 1963 has not been expressly or impliedly excluded by Section 107 of the Act of 2017 and by virtue of

Section 29(2) of the Limitation Act, Section 5 of the Limitation Act stands attracted.

8. The Court clearly held that the prescribed period under the Act of 2017 is not final and in given facts and circumstances of a case, the period for filing the appeal can be extended by the appellate authority.

9. The Court passed order requesting the appellate authority to consider and decide the application for condonation of delay filed by the appellant on merits.

10. The effect of the order of stay passed by a superior forum has been laid down in ***Pijush Kanti Chowdhury vs State*** reported in ***2007 3 CHN 178*** wherein the Court held that unless a decision is set aside it remains as a binding precedent although it may not be binding on the parties to the proceeding where the superior Court passed interim order of stay. Stay order in a case pending before the appellate Court does not amount to any declaration of law. It is only binding on the parties to the said proceeding.

11. As long as the order of the Hon'ble Division Bench of this Court is not set aside by the superior forum, the order passed by the Division Bench does not get wiped away and the appellate authority would be bound to act in accordance with the same.

12. Accordingly, the order of stay passed by the Hon'ble Supreme Court will not stand in the way of the appellate authority to decide the matter on merits.

13. In the event the petitioner approaches the appellate authority within 7th October, 2024, the said authority shall consider the application filed by the petitioner for condoning the delay on merits.

14. If the appellate authority is of the opinion that the delay may be condoned, then necessary order may be passed by the said authority and the appeal be heard and disposed of on merits.

15. The writ petition stands disposed of.

16. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(Amrita Sinha, J.)

Kajal Dutta vs Assistant Commissioner Of State Tax on 20 January, 2023

Author: T.S. Sivagnanam

Bench: T. S. Sivagnanam, Hiranmay Bhattacharyya

Item No.2.

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON: 20.01.2023

DELIVERED ON: 20.01.2023

CORAM:

THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

M.A.T. No.1924 of 2022
with
I.A. No.CAN 1 of 2022

Kajal Dutta.
Vs.
Assistant Commissioner of State Tax, Suri Charge & Ors.

Appearance:-
Mr. Sumit Ghosh,
Mr. Souradeep Majumdar ... for the appellant.

Mr. T. M. Siddique,
Mr. Debasish Ghosh,
Mr. Nilotpal Chatterjee
Mr. V. Kothari ... for the State.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra-Court appeal filed by the writ petitioner is directed against the order dated 18th

November, 2022 passed by the learned Single Bench in W.P.A. No.22764 of 2022. In the said writ petition, the appellant had challenged the correctness of the order passed by the Senior Joint Commissioner of Commercial Taxes, Durgapur Circle dated 17th August, 2022, who is the appellate authority under the provisions of the GST Act, 2017 read with the GST Rules. The appeal had been dismissed on the ground of limitation. The learned Single Bench declined to interfere with the said order and challenging the correctness of the order passed in the writ petition, the appellant had filed the present appeal.

2. On perusal of the affidavit filed in support of the writ petition as well as the documents annexed to the stay application, we find that the appellant could not present the appeal on account of illness for which a doctor's certificate has also been enclosed.

3. The correctness of the stand taken by the appellant that he was sick and unable to take steps to file the appeal within the period of limitation is not disputed by the revenue. However, the appellate authority was of the opinion that the period of one month beyond the statutory period of limitation is available to the said authority, which expired on 30th June, 2022 and the appeal was presented only on 17th August, 2022 and therefore, the appeal is barred by the law of limitation. It is true that in terms of Section 107(1) read with Section 107(4) of the G.S.T. Act, the time limit for preferring the appeal beyond the period of three months is 30 days, which is a grace period. However, the statute does not state that beyond the said date, the appellate authority cannot exercise jurisdiction. It is not a case that deliberately the appellant had presented the appeal beyond the condonable period. Therefore, while exercising jurisdiction under Article 226 of the Constitution this Court can examine the factual circumstances and grant appropriate relief as the appellate remedy is a very valuable remedy since the appellate authority can re-appreciate the factual position. Thus, for such reason, we are inclined to exercise discretion.

4. In the result, the appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ petition is allowed and the order passed by the appellate authority dated 17th August, 2022 is set aside and the delay in filing the appeal before the appellate authority is condoned and the appellate authority is directed to consider and decide the appeal on merits in accordance with law after affording opportunity of personal hearing to the authorised representative of the appellant.

5. We make it clear that this order shall not be treated as a precedent and has been passed considering the peculiar facts and circumstances of the case.

6. The learned Advocate appearing for the appellant submitted that garnishee proceedings have been initiated by the authorities by way of attachment of the appellant's bank account.

7. When the appeal was presented, the mandatory pre-deposit of 10% of the disputed tax has been complied with by the appellant. If that be so, no coercive action should be taken against the appellant till the appeal is heard and disposed of. In terms of the above direction, the appellant is granted liberty to file an appropriate interim application in the appeal petition and the appellate authority shall consider the same and pass appropriate orders for the purpose of lifting the

garnishee order and the bank attachment. The appellant shall file the application in the statutory appeal not later than 10th February, 2023.

8. There shall be no order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J) I agree, (HIRANMAY BHATTACHARYYA, J.) NAREN/PALLAB(AR.C)

Partha Pratim Dasgupta vs The Joint Commissioner Of State Tax & Ors on 10 June, 2024

M/L 20
10.06.2024
sb
Ct 5

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

WPA 12584 of 2024

Partha Pratim Dasgupta
Versus
The Joint Commissioner of State Tax & Ors.

Mr. Avra Mazumder
Ms. Pampa Sen
Mr. Suman Bhowmik
Ms. Alisha Das
Mr. Samrat Das
Ms. Elina Dey
... For the petitioner.

Mr. Anirban Ray
Mr. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Debraj Sahu
... For the respondents.

1. Affidavit of service filed in Court today is taken on record.

2. The present writ petition has been filed, inter alia, questioning the purported rejection of the appeal under Section 107 of the West Bengal Goods and Service Tax Act, 2017 (hereinafter referred to as the said Act) vide form GST-APL 02 dated 28th March, 2024.

3. Mr. Mazumder, learned advocate representing the petitioner submits that being aggrieved by the order dated 4th October, 2023 passed under Section 73(9) of the said Act, the petitioner had filed an appeal on 27 th February, 2024 as would appear from Form GST APL 01.

4. By drawing attention of this Court to page 35 of the writ petition it is submitted that the aforesaid appeal was filed along with 10% pre deposit of the disputed amount of tax. A system generated provisional acknowledgement form as proof of submission of appeal was also issued. Since, the said appeal was filed beyond the time prescribed the same was accompanied by an application for condonation of delay. According to the petitioner, there was a delay of 55 days in filing the appeal.

5. Subsequently, on 14th March, 2024 the petitioner had received a notice as to why the appeal should not be rejected due to the delay as the same was filed beyond one month of the prescribed period as provided for under Section 107(1) read with Section 107(4) of the said Act.

6. Mr. Mazumder by drawing attention of this Court to the order impugned submits that the Appellate Authority by ignoring the explanation given by the petitioner and by placing reliance on the proviso to sub-section (4) of Section 107 of the said Act had returned a clear finding that there is no power vested with the Appellate Authority to allow the appeal beyond one month after the time prescribed for filing the appeal. According to the petitioner, the petitioner has not only a statutory right to prefer an appeal but also has a right to seek condonation of delay in preferring an appeal. It would be apparent and clear from the above order that the Appellate Authority had failed to exercise jurisdiction vested in it while rejecting the appeal solely on the ground that it does not have the competence to condone the delay beyond one month of the time prescribed.

7. Mr. Siddiqui, learned advocate enters appearance on behalf of the respondents and opposes the petition. He, however, submits that since, the statute provides for the period for which delay can be condoned, there is no irregularity on the part of the Appellate Authority in refusing to condone the delay beyond the period of one month from the time prescribed.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly in this case, it would appear that the appeal had been dismissed solely on the ground that the same had been filed beyond one month of the time prescribed for filing the appeal. The appeal therefor, was obviously barred by limitation. However, at the same time, the aforesaid could not prevent the petitioner from maintaining an application for condonation of delay by invoking the provisions of Section 5 of the Limitation Act, 1963. The issue whether the Appellate Authority is competent to condone the delay beyond one month from the prescribed period for filing of an appeal has already been conclusively decided by the Hon'ble Division Bench of this Court in the case of S. K. Chakraborty & Sons Vs. Union of India reported in 2023 SCC Online Calcutta 4759.

9. Having regard to the aforesaid I am of the view that the Appellate Authority ought to have taken note of the explanation given in the application for condonation of delay under Section 5 of the Limitation Act, 1963.

10. Having regard to the aforesaid, while setting aside the order of rejection of appeal dated 28 th March, 2024 as appearing in Form GST APL 02 and taking note of the fact that no fruitful purpose will be served by remanding the aforesaid matter on the issue of condonation of delay to the Appellate Authority and also considering the explanation given by the petitioner, I am of the view that the petitioner has been able to sufficiently explain the delay in filing the appeal belatedly. In view thereof, I restore the aforesaid appeal to its original file and number and direct the Appellate Authority to hear out the same in accordance with law on merit within a period of two months from the date of communication of this order.

11. Since no affidavit-in-opposition has been called for, the allegation made in the writ petition are deemed not to have been admitted by the respondents.

12. With the above observations and directions, the writ petition is disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)

30
ss

12.02.2025

WPA 30663 of 2024

M/s. Phonex Traders Private Limited
Vs.
Joint Commissioner of State Tax & Ors.

Mr. Vinay Shraff
Mr. Dev Agarwal
Ms. P. Paul
Mr. H. Gadodia
Ms. D. Dey
Mr. R. Parasrampuria

... ... for the petitioner

Mr. A. Ray
Md. T.M. Siddiqui
Mr. N. Chatterjee
Mr. T. Chakraborty
Mr. S. Sanyal

... ... for the State

The present writ petition has been filed, inter alia, challenging the order dated 19th September, 2024 passed by the appellate authority under Section 107 of the Central/West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the "said Act"), whereby the petitioner's appeal had been rejected on the ground that the same was barred by limitation. The facts are not in dispute. In connection with a proceeding initiated under Section 73 of the said Act, for the tax period July, 2017 to March, 2018 an order under Section 73(9) of the said Act was passed on 11th December, 2021. Although, the petitioner preferred an appeal from the aforesaid order and simultaneously, with the filing of the appeal, had also made pre-deposit of Rs.5,85,290/- as is required for

maintaining the appeal under the provisions of Section 107(6) of the said Act, there had been delay in filing of the appeal. In such circumstance, the petitioner had also filed an application on 1st July, 2024 explaining the delay in preferring the appeal. According to the petitioner, the appellate authority without appropriately taking note of the grounds for condonation of delay had rejected the appeal, inter alia, on the ground that the appellate authority is competent only to condone the delay provided the appeal is filed within the period of one month beyond the time prescribed. He submits that the aforesaid order is perverse. In light of the facts presented in this case, this Court may be pleased to restore the appeal by condoning the delay.

Mr. Siddiqui, learned advocate enters appearance on behalf of the State-respondents.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Admittedly, in this case the petitioner filed an appeal challenging the order passed under Section 73(9) of the said Act. Simultaneously, with the filing of the appeal, the petitioner had also made a pre-deposit as is required for maintaining the appeal. As such there is no lack of bona fide on the part of the petitioner in preferring the appeal. It appears that the petitioner had also made a prayer for condonation of delay, inter alia, claiming that by reasons of lack of proper knowledge of the GST portal

there had been delay in filing the appeal. There appears to be a delay of 117 days in filing the appeal.

Taking into consideration that the petitioner has explained in details that the individual responsible for the matter, Mr. Bimal Kumar Mondal left the organization on 30th November, 2023 creating a temporary oversight gap and the file was passed on to Mr. SM Firoz Anwar, HOD, Accounts who faced significant health issue, of his father and had to attend to his ailing father in his village frequently resulting in his prolonged absence from the office for more than four months and as there is no lack of bona fide on the part of the petitioner and one does not stand to gain by filing a belated appeal, I am of the view that in the instant case, the appellate authority ought to have appropriately considered the application for condonation of delay filed by the petitioner.

The appellate authority, however, appears to have rejected the appeal on the ground of limitation by, inter alia, holding that the delay can only be condoned provided the same is filed within the period of one month of the time prescribed. The aforesaid observation made by the appellate authority runs counter to the observation made by the Hon'ble Division Bench of this Court in the case of **S. K. Chakaraborty & Sons v. Union of India & Ors.**, reported in **2023 SCC Online Cal 4759**.

The aforesaid would demonstrate that the appellate authority had failed to exercise the jurisdiction vested in

it. Having regard to the above and taking note of the explanations privided by the petitioner while setting aside the order dated 19th September, 2024, I condone the delay in preferring the appeal.

Accordingly, I direct the appellate authority to hear and dispose of the appeal, on merit, upon giving an opportunity of hearing to the petitioner, within a period of 12 weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)

02
BS

04.12.2024

WPA 26637 of 2024

Shruti Iron Private Limited
Vs.
Assistant Commissioner, State Tax, Bally & Salkia Charge & Ors.

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mrs. Suman Sahani

... ... for the petitioner

Mr. Anirban Roy
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal

... ... for the State

1. The facts in a nutshell are that the petitioner received a notice in GST ADT-01 from Respondent No. 1 for an audit of its accounts for the period from July 01, 2017 to March 31, 2018, under Section 65 of the GST Act. In response, the petitioner submitted all the required documents. However, the final audit report dated August 26, 2022, directed the petitioner to deposit disputed tax amounts, which the petitioner disagreed with.

2. Following the disagreement, a show-cause notice in GST DRC-01 dated May 3, 2023, was issued, demanding payment of tax, interest and penalties amounting to significant sums under various heads, citing alleged violations under Section 16(2)(c) and Section 73 of the Act.

3. The petitioner entrusted the matter to its advocate, who, due to a mix-up, failed to respond to the show-cause notice. Consequently, an ex-parte adjudication order was passed on October 16, 2023, confirming the tax demands and issuing a summary order in GST DRC-07.

4. The petitioner filed an appeal on March 19, 2024, but exceeded the statutory period under Section 107 of the Act by 30 days due to the serious illness of its director, Mr. Praveen Kumar Agarwal, who handles financial and tax matters. Despite providing detailed explanations and supporting documents for the delay, the appellate authority rejected the appeal on June 28, 2024, on the grounds of limitation.

5. The petitioner contends that the unsigned show-cause notice, summary order and adjudication order are void and unenforceable. Furthermore, the proceedings under Section 73 of the Act for the financial year 2017-18 are barred by limitation, as the statutory period for initiating and concluding such proceedings had expired before the issuance of the notice.

6. The petitioner also claims that the tax demands are substantively erroneous, as it had paid all due taxes and claimed input tax credit (ITC) in accordance with the law. The petitioner further highlights that the

liabilities of suppliers cannot legally be transferred to purchasers.

7. The petitioner highlights that it had submitted a detailed reply to the pre-show cause notice issued in Form GST DRC-01A, refuting the allegations. However, Respondent No. 1 did not take any recovery action against the defaulting suppliers, which is a statutory prerequisite for demanding disputed ITC from the recipient, and also failed to consider the submissions before issuing the impugned show-cause notice.

8. Aggrieved by the orders and the procedural irregularities, the petitioner has approached this Hon'ble Court under Article 226 of the Constitution, seeking relief against the actions and proceedings initiated by Respondent Nos. 1 and 2.

9. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition as statutory provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, particularly in light of judicial precedents supporting such relief.

10. In **S. K. Chakraborty & Sons Vs. Union of India** reported in ***[2024] 159 taxman.com 259 (Calcutta)***, the Hon'ble Division Bench comprising Justice

Debangsu Basak and Justice Md. Shabbar Rashidi held that: -

"19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/notice. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the Section 5 of the Act 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 it its entirely has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority".

11. In light of the procedural irregularities and the arbitrary nature of the actions, this court finds the

petitioner's case to be meritorious. Accordingly, the writ petition is allowed, and the appellate order dated June 28, 2024 is quashed. The Appellate Authority is requested to consider and decide the application for condonation of delay filled by the petitioner on merits. If, the explanations advance for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal, hear and dispose the appeal on merit.

12. All pending applications are accordingly disposed of.

13. There shall be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)

Sunil Kumar Vij vs Union Of India And Others on 13 December, 2022

Bench: Tarlok Singh Chauhan, Virender Singh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.8478 of 2022.

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Date of decision: 13.12.2022.

Sunil Kumar Vij .....Petitioner.

Versus

Union of India and others .....Respondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?1

For the Petitioner : Mr. Goverdhan Lal Sharma &

Ms. Rashmi Bhardwaj, Advocates.

For the Respondents : Mr. Balram Sharma, Deputy

Solicitor General of India, for respondent No.1.

Mr. Vijay Kumar Arora,

Advocate, for respondent
Nos. 2 to 4.

Tarlok Singh Chauhan, Judge (Oral)

The instant petition has been filed for grant of the following substantive reliefs:-

> "i) Issue a writ in the nature of certiorari for quashing of order dated 29.08.2022 issued by the respondent No.2 where in respondent No.2 has rejected the appeal in original No. 34/ADC/A/GST/CHD/2022-23 on the ground of one Whether the reporters of the local papers may be allowed to see the Judgment?Yes day's delay as the impugned order has been passed in gross violation of the principles of natural .

justice by not deciding the appeal on merit.

AND/OR

ii) For issuance of writ in the nature of mandamus/certiorari directing the respondents to stay the operation of order dated 28.07.2020 Annexure P passed by Respondent No. during pendency of writ petition and direct the respondent No. 3 & 4 to revoke the cancellation of CGST Registration in the interest of law and justice."

2. The petitioner is a dealer registered under the GST and was served with a show cause notice dated 14.07.2020 for cancellation of the registration. Respondent No.4 thereafter suo motu cancelled GST registration vide order dated 28.07.2020 on the ground that the petitioner had not filled up up-to-date returns along with payment of tax. Respondent No.3 rejected the application for revocation of the GST registration vide order dated 25.10.2021 and the appeal filed against the same was dismissed by respondent No.2 only on account of its being barred by one day.

3. We really wonder why and how respondent No.2 could have taken such a hyper technical and pedantic view of the matter to hold that even the delay of one day would be fatal to the maintainability of the appeal.

.

4. It is not in dispute that respondent No.2 was not vested with an authority to condone the delay and if at all required any precedent on the issue, then we may conveniently refer to the following orders passed by various High Courts:-

> 1. M/s G.G. Agencies Girijeshwar Rice Mill vs. The State of Karnataka & Ors. (Writ Petition No. 15344 of 2022, decided on 18.08.2022).

2. Vinod Kumar Vs. Commissioner Uttarakhand State GST & Ors.: 2022 (7) TMI 128-Uttarakhand High Court (Special Appeal No. 123 of 2022).

3. TVL. Suguna Cutpiece Centre vs. The Appellate Deputy Commissioner (ST) (GST), The Assistant Commissioner (Circle), Salem Bazaar: 2022 (2) TMI 933-Madras High Court.

4. M/s Trans India Carco Carriers Vs. The Assistant Commissioner (Circle) W.P. Nos. 18537 of 2022 and etc.- Madras High Court.

5. Civil Writ Petition No. 14521/2022 titled Poonamchand Saran vs. Union of India and others along with connected matter, decided on 29.09.2022.

5. It cannot be disputed that the petitioner would not be able to continue with his business in absence of GST registration and thus would be deprived of his livelihood which amounts to violation of his right to life and liberty as .

enshrined under Article 21 of the Constitution of India.

6. In this background, the order dated 29.08.2022 is set aside. The delay in filing of appeal before respondent No.2 stands condoned and respondent No.2 shall now decide the appeal on its merits. The parties are left to bear their own costs.r

7. With the aforesaid observations, the writ petition is disposed of.

8. Pending application, if any, also stands disposed of.

(Tarlok Singh Chauhan) Judge (Virender Singh) Judge 13th December, 2022.

(krt)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.02.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.1324 of 2024
and W.M.P.No.1358 of 2024

Great Heights Developers LLP
Represented by its Partner
Sunil Pitaliya
No.42, 4th Floor, Sindur Plaza
Montieh Road, Egmore, Chennai 600 008. ... Petitioner

-vs-

1.Additional Commissioner
Office of the Commissioner
Of CGST & Central Excise,
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

2.Commissioner of GST
Appeal – I,
GST Bhawan, Main Building 2nd Floor,
No.26/1, Mahatma Gandhi Road,
Chennai 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent passed in Order In Original No.44/2023 CH.N (ADC) (GST) dated 14.08.2023 and quash the same insofar as imposition of penalty U/s.73(9) read with Section 73(7) of the CGST/SGST Acts, 2017 for Rs.30,98,857/- and interest under Section 50(1).

For Petitioner : Mr.N.Murali

For Respondents : Mr.Rajinish Pathiyil, Sr. SC

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ORDER

The petitioner challenges order in original dated 14.08.2023 insofar as the imposition of penalty and interest under Section 73(9) and Section 73(7) of the Central Goods and Services Tax Act, 2017

(the CGST Act) are concerned. The petitioner states that pursuant to the show cause notice, the impugned assessment order was issued on 14.08.2023. Such order was received by the petitioner on 16.08.2023. Accordingly, the appeal should have been filed within 90 days thereof. It is further stated that the appeal could not be filed in time both on account of the petitioner being diagnosed with septic shock and on account of the consequential difficulties in following up with the consultant. As a result, it is stated that the time limits for filing an appeal with an application to condone delay expired on 16.12.2023.

2. Under Section 107 of the CGST Act, the Appellate Authority does not have the power to condone delay beyond 120 days. In this case, the period of further delay is only 24 days and the petitioner has provided cogent reasons to explain such delay. It is pertinent to note that the petitioner has paid the entire tax liability and the proposed appeal is limited to penalty and interest.

3. Therefore, the Appellate Authority is directed to receive and dispose of the appeal on merits if the appeal is received within a maximum period of ***ten days*** from the date of receipt of a copy of this order.

4. W.P.No.1324 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.1358 of 2024 is closed.

01.02.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

1.Additional Commissioner
Office of the Commissioner
Of CGST & Central Excise,
Chennai North Commissionerate
No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

2.Commissioner of GST
Appeal – I,
GST Bhawan, Main Building 2nd Floor,

No.26/1, Mahatma Gandhi Road,
Chennai 600 034.

SENTHILKUMAR RAMAMOORTHY,J

rna

W.P.No.1324 of 2024
and W.M.P.No.1358 of 2024

01.02.2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.04.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.10598 of 2023 and
WMP.Nos.10547 & 10549 of 2023

M/s.Sathya Furnitures,
Represented by Gurunathan Sankar,
Proprietor,
111/4, Cuddalore main road,
North extension, Salem-636003. ... Petitioner

Vs

The Assistant Commissioner (ST) (FAC),
Salem bazaar circle,
Salem. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records on the files of the respondent in Order No.33BJKPS9135A/Z8/GST/AC dated 11.08.22 and quash the same as being without jurisdiction, violative of principles of natural justice and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Mrs.E.Ranganayaki
Additional Government Pleader

O R D E R

Mrs.Ranganayaki, learned Additional Government Pleader accepts notice for the respondent and is armed with instructions to enable a disposal of the matter at this juncture.

2.The petitioner has approached this Court belatedly seeing as the impugned order is dated 11.08.2022. To be noted that the impugned order has been passed under the provisions of Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act') and an appeal ought to have been filed under Section 107 within a period of 120 days (90 + an extended period of 30 days) within which condonation may have been sought. No condonation is available thereafter. Admittedly, and as on date the delay is one week shy of four months.

3.In such cases, it calls upon the Court to examine whether there was any justification available for having approach this Court belatedly and only then consider intervening. In the present case, the petitioner has, at paragraph 15 in the affidavit filed in support of the writ petition has stated as follows:

> *'15.I state that the delay in not filing the appeal under the Act or the delay in approaching the Honourable Court was neither willful nor wanton. I state that after receipt of the order, I had met the respondent and explained that the delay in filing the return for March 2019 was due to the mistake of the accountant only and not my mistake. It was also pointed out that due to the mistake of the accountant only and not my mistake. It was also pointed out that*

due to the mistake of the accountant my registration certificate was also cancelled by the then officer who had issued the show cause notice dated 19.3.20. I had also explained that I was not aware of the service of the subsequent notices dated 19.10.20 and 7.4.21 due to the mistake of the accountant. I also brought to the notice of the respondent the letter I had submitted to the predecessor officer but the respondent refused to accept the letter for the reason that I had no proof of submission of the letter. I state that the respondent did not accept or reject my request for passing revised order. It was in the aforesaid circumstances, I did not file appeal within the prescribed period and also the delay in approaching the Honourable Court.'

4.That apart, incidentally, though being a point on merits, this has not weighed with the Court in intervening in the matter, the very validity of Section 16(4) of the Act in terms of which the respondent has reversed input tax credit has been challenged and is pending consideration in WP.No.8154 of 2022 and other cases, though not at the instance of the petitioner.

5.Seeing as the petitioner is a small trader, and an explanation of some nature has been set out in the affidavit. I am of the view that the petitioner may be permitted to approach the appellate authority before whom all conditions for entertaining the appeal such as pre-deposit would be applicable. If appeal is filed within a period of one week from today, it shall be entertained without reference to limitation but ensuring compliance with all other requirements including pre-deposit.

6.With this, this writ petition is dismissed with liberty. No costs. Connected miscellaneous petitions are closed.

05.04.2023

vs
Index : Yes / No
Speaking Order
Neutral Citation : Yes / No

To

The Assistant Commissioner (ST) (FAC),
Salem bazaar circle,
Salem.

Dr.ANITA SUMANTH, J.

VS

W.P.No.10598 of 2023 and
WMP.Nos.10547 & 10549 of 2023

05.04.2023

SC - Joint Commissioner v. S.K. Chakraborty and Sons [SLP (CIVIL) Diary No(s). 20272 of 2024]

SC stays High Court's decision which allowed condonation of delay in filing appeal under GST beyond prescribed period

That from the perusal of the above said order passed by the Hon'ble Supreme Court, it is evident that the court has accepted the SLP of the department and has directed to fix the case after the summer vacations on day to day basis considering the seriousness of issue involved therein.

So, in light of this it is humbly prayed before the Hon'ble Tribunal, since this matter has now become subjudice and under the consideration of Hon'ble Supreme Court so, the orders of this Hon'ble Tribunal may be kept in abeyance thereof.

STAY OF DEMAND

Further, proceedings of recovery of demand may be ordered to have been stayed till the disposal of the petition by this Hon'ble Tribunal as it is again brought to be kind notice that the Respondent hereto had deposited 10% of the disputed tax in compliance to section 107(6)(b).

01.10.2024
Court No.2
Sl. No.21
KB

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

W.P.A 2159 of 2024

Jharna Seal
-versus
The Additional Commissioner, State Taxes,
Directorate of Commercial Taxes & SGST,
Siliguri Circle & Ors.

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Mr. Rajib Parik
Mr. Swarup Das
Mr. Ved Rai
...For the Petitioner.

Mr. Pretom Das
Ms. Rima Sarkar.
...For the State.

1. Affidavit-of-service filed in Court today is taken on record.

2. The petitioner intends to prefer an appeal before the appellate forum but is delayed in doing so. Prayer has been made to condone the delay and permit her to file the appeal before the appellate forum.

3. The petitioner relies upon an order dated 11th September, 2024 passed by a coordinate Bench of this Court in ***W.P.A. 18799 of 2024*** (***Surekha Shah Vs. Deputy Commissioner of Revenue, State Tax, College Street and Sealdah Charge and Others***) and the judgment dated ***1st December, 2023*** passed by the

Hon'ble Division Bench in ***MAT 81 of 2022*** with ***IA No. CAN 2 of 2022*** with ***MAT 82 of 2022*** with ***CAN IA No. CAN 2 of 2022*** (***S. K. Chakraborty & Sons Vs. Union of India & Ors.***).

4. Learned advocate representing the respondents submits that the order passed by the Hon'ble Division Bench in the matter of S. K. Chakraborty & Sons (supra) has been stayed by the Hon'ble Supreme Court.

5. According to Section 107(1) of the WBGST Act, 2017, any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

6. According to Section 107(4) of the Act the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

7. The Hon'ble Division Bench in S. K. Chakraborty & Sons (supra) considered the above issue and held that the provision of Section 5 of the Limitation Act, 1963 has not been expressly or impliedly excluded by Section 107 of the Act of 2017 and by virtue of

Section 29(2) of the Limitation Act, Section 5 of the Limitation Act stands attracted.

8. The Court clearly held that the prescribed period under the Act of 2017 is not final and in given facts and circumstances of a case, the period for filing the appeal can be extended by the appellate authority.

9. The Court passed order requesting the appellate authority to consider and decide the application for condonation of delay filed by the appellant on merits.

10. The effect of the order of stay passed by a superior forum has been laid down in ***Pijush Kanti Chowdhury vs State*** reported in ***2007 3 CHN 178*** wherein the Court held that unless a decision is set aside it remains as a binding precedent although it may not be binding on the parties to the proceeding where the superior Court passed interim order of stay. Stay order in a case pending before the appellate Court does not amount to any declaration of law. It is only binding on the parties to the said proceeding.

11. As long as the order of the Hon'ble Division Bench of this Court is not set aside by the superior forum, the order passed by the Division Bench does not get wiped away and the appellate authority would be bound to act in accordance with the same.

12. Accordingly, the order of stay passed by the Hon'ble Supreme Court will not stand in the way of the appellate authority to decide the matter on merits.

13. In the event the petitioner approaches the appellate authority within 7th October, 2024, the said authority shall consider the application filed by the petitioner for condoning the delay on merits.

14. If the appellate authority is of the opinion that the delay may be condoned, then necessary order may be passed by the said authority and the appeal be heard and disposed of on merits.

15. The writ petition stands disposed of.

16. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance of usual legal formalities.

(Amrita Sinha, J.)

ITEM NO.4 COURT NO.14 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 20272/2024

(Arising out of impugned final judgment and order dated 01-12-2023 in MAT No. 82/2022 passed by the High Court Of Calcutta Circuit Bench At Jalpaiguri)

THE JOINT COMMISSIONER & ORS. Petitioner(s)

VERSUS

S.K. CHAKRABORTY AND SONS. & ANR. Respondent(s)

(IA No.187499/2024-CONDONATION OF DELAY IN FILING and IA No.187501/2024-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 30-08-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Ms. Madhumita Bhattacharjee, AOR
Ms. Debarati Sadhu, Adv.
Ms. Srija Choudhury, Adv.
Mr. Anant, Adv.
Ms. Sajal, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. Delay in refiling condoned.

2. Issue notice on the application seeking condonation of delay in filing as well as on the Special Leave Petition.

3. In the meantime, operation of the impugned order shall remain stayed.

4. Post along with Diary No. 28069 of 2024.

(KAPIL TANDON) (NIDHI WASON)
COURT MASTER (SH) COURT MASTER (NSH)

DETAILS OF SUPREME COURTS DECISIONS UNDER CONSTITUTION OF INDIA

S. No.	COURT	CASE NAME	CASE ISSUE	DECISION	PARA NO.
1	SUPREME COURT	A. Mona Panwar vs High Court Of Judicat.At Allahabd.& Ors on 2 February, 2011	NO MAN SHALL BE CONDEMNED UNHEARD	Held: No man shall be condemned unheard. It is one of the fundamental principles of administrative law and judicial procedure that no decision shall be given against a party without giving him/her a reasonable hearing. • Nobody shall be the judge of his own cause	
2	SUPREME COURT	B. Swadeshi Cotton Mills Vs Union of India, MANU/SC/0048/1981: AIR 1981 SC 818: 1981 (1) SCC 664: 1981 (2) SCR 533			
3	SUPREME COURT	C. Testa Setalvad And Another V. State Of Gujarat And Others			
4	SUPREME COURT	Bidhannagar (Salt Lake) Welfare Association Vs Central Valuation Board & Ors., MANU/SC/2553/2007: AIR 2007 SC 2276: 2007 (6) SCC 668.			
5	SUPREME COURT	Anita Kushwaha v. Pushap Sudan (2016)	RIGHT TO ACCESS TO JUSTICE	Access to Justice is a Fundamental Right under Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty).	
6	SUPREME COURT	Automotive Tyre Manufacturers Association Vs The Designated Authority & Ors., MANU/SC/0022/2011: 2011 (2) SCC 258: 2011 (1) SCR 198.	FAIR HEARING	Before issuing adverse order (property, rights, material deprivation), the affected party must be given a fair hearing. Applies to both administrative and quasi-judicial actions.	
7	SUPREME COURT	Shiv Prasad Sharma VS State Of Rajasthan - Rajasthan (2002) - Supreme Court (2017).	REASONABLE OPPORTUNITY OF BEING HEARD	• Reasonable Opportunity of Being Heard refers to the right to be adequately informed of the case against them and to present their defense. Fundamental to of natural justice and administrative and judicial proceedings. • No one should be condemned unheard	
8	SUPREME COURT	Geeta Patel VS State of Rajasthan - Rajasthan (2014) Sudesh Kumar VS State Of Haryana - Supreme Court (2005).	OPPORTUNITY TO PRESENT A CASE	Opportunity to Present a Case: The individual must be given a reasonable opportunity under of the Constitution to present their arguments, evidence, and witnesses in their defense. Right to cross-examine witnesses	
9	SUPREME COURT	Krishna Mohan Medical College And Hospital Vs Union Of India - Supreme Court (2017).	PERSONAL HEARING	Personal Hearing: Affected party be given a personal hearing to present their case.	20

Mona Panwar vs High Court Of Judicat.At Allahabd.& Ors on 2 February, 2011

Author: J.M. Panchal

Bench: H.L. Gokhale, J.M. Panchal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPEAL NO.298 OF 2011
(Arising out of S.L.P. (Crl.) 9803 of 2009)

Smt. Mona Panwar ..,. Appellant

Versus

The Hon'ble High Court of Judicature
At Allahabad through its Registrar
and others ...
Respondents

JUDGMENT

J.M. Panchal, J.

Leave granted.

2. The present appeal is filed by the appellant, who is member of judicial service of the State of Uttar Pradesh, for expunging the remarks made by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 21606 of 2009 while setting aside order dated August 1, 2009, passed by the appellant in case No. nil of 2009 titled as Shabnam vs. Irshad registering the application filed by the respondent No. 3 under Section 156(3) of the Code of Criminal Procedure ("Code" for short) as complaint and directing the Registry to present the file before the appellant on August 9, 2009 for recording the statement of the complainant, i.e., of Shabnam under Section 200 of the Code.

3. The facts giving rise to the present appeal are as under:

The respondent No. 3 is wife of one Mustqeem and resides at Village Sayyed Mazra, District Saharanpur with her husband and in-laws. It may be stated that the accused is her father-in-law. According to the respondent No. 3 her father-in-law had bad eye on her since her marriage. The case of the respondent No. 3 was that in the intervening night of June 18/19, 2009 at about 3 O'clock she was all alone in her room as her husband had gone out and she was sleeping but the doors of the room were kept open due to heat. The allegation made by the respondent No. 3 is that Irshad, i.e., her father-in-law came inside her room, caught hold of her with bad intention, scratched her breasts, forcibly pushed cloth in her mouth and forcibly committed rape on her. The case of the respondent No. 3 was that though she offered resistance, Irshad did not pay any heed and committed rape on her. The allegation made by her was that because of the incident she became unconscious and in the morning she narrated the whole incident to her mother-in-law Bindi, but she advised her not to disclose the incident to anyone as it was a matter of reputation of the family. According to respondent No. 3 she telephoned her mother, who arrived at her in-laws' place along with Muneer, her brother-in-law, on a motor cycle but Irshad in the meanwhile had fled away from the village. The case projected by the respondent No. 3 was that as her condition was deteriorating, she was got medically examined in District hospital by her mother and thereafter she had gone to the Police Station, Nakur, but the police had refused to register her FIR. It was claimed by the respondent No. 3 that under the circumstances she had moved an application before the Senior Superintendent of Police, Saharanpur but he had also not taken any action and, therefore, she had filed an application under Section 156(3) of the Code before the learned Judicial Magistrate II, Court No. 14, Saharanpur mentioning therein as to how the incident of rape with her had taken place and praying the learned Magistrate to direct the Officer-in-charge of Police Station, Nakur, to register her complaint and investigate the case against the accused under Section 156 (3) of the Code.

4. On receipt of the application the appellant called for report from the concerned police station. As per the report received no case was registered regarding the incident narrated by the respondent No. 3. The respondent No. 3 had filed her own affidavit in support of the case pleaded in the application filed before the appellant and produced a carbon copy of the application sent by her to the Senior Superintendent of Police, Saharanpur with its postal registration as well as photocopy of medical certificate. The learned Magistrate perused the averments made by the respondent No. 3 in her application as well as documents annexed to the said application. The appellant was of the view that the respondent No. 3 was acquainted with the facts and circumstances of the case and was also familiar with the accused and knew the witnesses too. The appellant was of the view that the respondent No. 3 would be able to produce all the evidence herself.

The appellant referred to the principles of law laid down by the Allahabad High Court in Gulab Chand vs. State of U.P. 2002 Cr.L.J. 2907, Ram Babu Gupta vs. State of U.P. 2001 (43) ACC 50, Chandrika Singh vs. State of U.P. 2007 (50) ACC 777 and Sukhwasi S/o Hulasi vs. State of U.P. 2007

(59) ACC 739 and after taking into consideration the principles laid down in the above referred to decisions the appellant was of the view that this was not a fit case to be referred to the police for investigation under Section 156(3) of the Code and, therefore, directed that the application submitted by the respondent under Section 156(3) of the Code be registered as complaint and further ordered the Registry to present the file before her on August 28, 2009 for recording the statement of the respondent No. 3 i.e. the original complainant under Section 200 of the Code.

5. Feeling aggrieved, the respondent No. 3 invoked jurisdiction of the High Court under Section 482 of the Code by filing Criminal Misc. Application No. 21606 of 2009 and prayed the High Court to quash the order dated August 1, 2009, passed by the appellant and to direct the police to register her F.I.R. filed against Irshad and to investigate the same as provided under Section 156(3) of the Code.

6. The learned Single Judge of the High Court, who heard the matter, was of the view that the appellant had done the gravest injustice to the respondent No.

3. According to the learned Single Judge though the appellant is a lady Magistrate yet she could not think about the outcome of ravishing the chastity of daughter-in-law by her father-in-law and the nature of crime committed by the accused. After going through the order dated August 1, 2009, passed by the appellant, the learned Single Judge expressed the view that the order indicated total non- application of mind by the appellant. The learned Single Judge noticed that the incident had occurred inside the room in early hours of June 19, 2009 and there was no mention of any witness in application filed by the respondent but in the order passed by the appellant it was noted that the victim was in the knowledge of all the facts and that the witnesses were also known to her, which indicated non- application of mind by the appellant. The learned Single Judge while setting aside the order dated August 1, 2009, passed by the appellant, observed that the order was a blemish on justice meted out to a married lady who was ravished by her own father- in-law. The learned Single Judge expressed the view that the appellant had passed the order ignoring all judicial disciplines and had not at all applied her judicial mind and had only referred to some of the judgments of the Allahabad High Court, which were contrary to the opinion expressed by the Apex Court rendered in many decisions. After observing that a judicial order should be passed by applying judicial mind, the learned Single Judge severely criticized the conduct of the appellant and recorded his serious displeasure against the appellant for passing such type of illegal orders. The learned Single Judge further warned the appellant for future and cautioned the appellant to be careful in passing the judicial orders. The learned Single Judge observed that the appellant should have thought that the rape not only causes physical injury to the victim but also leaves scars on the mind of the victim for the whole life and implant the victim with such ignominy which is worse than her death. The learned Single Judge expressed the view that he was inclined to refer the matter to the Administrative Committee for taking action against the appellant but refrained from doing so because the appellant is a young officer and has a long career to go. The learned Single Judge by his judgment dated September 9, 2009 set aside the order dated August 1, 2009, passed by the appellant, and directed the appellant to decide the application of the respondent No. 3 within the ambit of her power under Section 156(3) of the Code and also directed her to pass order for registration of FIR against the erring police officers, who had refused to register the FIR of the respondent No. 3. The learned Single Judge directed the Registry of the High Court to send a copy of his judgment to the appellant

for her future guidance and also to the Senior Superintendent of Police, Saharanpur. As noted above, the disparaging remarks made by the learned Single Judge while setting aside the order passed by the appellant has given rise to the present appeal.

7. This Court has heard the learned counsel for the appellant as well as the learned counsel for the State Government and the learned counsel representing the High Court of Judicature at Allahabad. The record shows that the Respondent No.3 i.e. the original complainant is duly served in the matter but she has neither appeared through a lawyer or in person nor has filed any reply in the matter. This Court has also considered the documents forming part of the present appeal.

8. On receipt of notice issued by this Court, Mr. Anand Kumar, Deputy Superintendant of Police, Saharanpur, U.P. has filed reply affidavit mentioning inter alia that as per the office record maintained at the Police Station, Nakur or in the officer of the Senior Superintendant of Police, Saharanpur does not disclose receipt of any complaint from the Respondent No. 3. It is mentioned in the reply that when the impugned judgment dated September 10, 2009 passed by the learned Single Judge of High Court was brought to the notice of the authorities concerned a first information report was lodged at the Police Station, Nakur being FIR 36/2009 against accused Irshad and offence punishable under Section 376 IPC was registered. The reply proceeds to state that the Investigating Officer had recorded the statement of the Respondent No. 3 as well as that of her mother and the statement of her brother-in-law. But the mother and the brother-in-law had mentioned that they were not eye-witnesses to the incident. The reply mentions that inquiries made by Investigating Officer with the neighbourers of the accused indicated that Respondent No. 3 was a divorcee and was residing at her parents house from the date of divorce. As per the reply of Deputy Superintendant of Police almost all neighbourers had unanimously informed the Investigating Officer that the Respondent No. 3 was not seen at her husband's house on 17th, 18th and 19th June, 2009 and thus the incident referred to by Respondent No. 3 in her complaint was found to be a concocted story. The reply further mentions that the Investigating Officer had recorded the statement of doctor who had medically examined the Respondent No. 3 and the doctor had categorically stated that medical examination of the Respondent No. 3 did not confirm allegation of rape made by her. What is relevant to notice is that in the reply it is stated that on completion of investigation the Investigating Officer had closed the investigation and submitted the final report as contemplated by Section 169 of the Code on December 18, 2009.

9. Section 156(1) of the Code authorizes the police to investigate into a cognizable offence without requiring any sanction from a judicial authority. However, sub-section (3) of Section 156 of the Code provides that any Magistrate empowered under Section 190 of the Code may order such an investigation as mentioned in sub-section (1) of the said Section. Section 190 of the Code deals with cognizance of offences by Magistrates and inter alia provides that any Magistrate of the first class may take cognizance of an offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of such facts and (c) upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed. Neither Section 154 nor Section 156 of the Code contemplates any application to be made to the police under Section 156(3) of the Code. What is provided in Section 156(1) of the Code is that any officer in charge of a police station may, without the order of a Magistrate, investigate any

cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquiry into or try under the provisions of Chapter XIII. However, this Court finds that in the present case it was alleged by the respondent No. 3 that she had filed complaint before police but according to her, the police officer in charge of the police station had refused to register her complaint and, therefore, she had made application to the Senior Superintendent of Police as required by Section 154(3) of the Code, but of no avail. Therefore, the respondent No. 3 had approached the appellant, who was then discharging duties as Judicial Magistrate II, Court No. 14, Saharanpur. When the complaint was presented before the appellant, the appellant had mainly two options available to her. One was to pass an order as contemplated by Section 156(3) of the Code and second one was to direct examination of the complainant upon oath and the witnesses present, if any, as mentioned in Section 200 and proceed further with the matter as provided by Section 202 of the Code. An order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge sheet under Section 173 of the Code. A Magistrate can under Section 190 of the Code before taking cognizance ask for investigation by the police under Section 156(3) of the Code. The Magistrate can also issue warrant for production, before taking cognizance. If after cognizance has been taken and the Magistrate wants any investigation, it will be under Section 202 of the Code. The phrase "taking cognizance of" means cognizance of offence and not of the offender. Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1)(b) of the Code, he must have not only applied his mind to the contents of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that Section. However, when the Magistrate had applied his mind only for ordering an investigation under Section 156(3) of the Code or issued a warrant for the purposes of investigation, he cannot be said to have taken cognizance of an offence. Taking cognizance is a different thing from initiation of the proceedings. One of the objects of examination of complainant and his witnesses as mentioned in Section 200 of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further.

10. From the order dated August 1, 2009, passed by the appellant, it is evident that the appellant had called for report from the concerned police station and considered the said report wherein it was inter alia mentioned that no case was registered on the basis of the application made by the respondent No. 3. The respondent No. 3 at the time of filing complaint before the appellant had filed her own affidavit, carbon copy of the application sent by her to the Senior Superintendent of Police, Saharanpur with its postal registration and photocopy of the medical certificate. Under the circumstances the appellant had exercised judicial discretion available to a Magistrate and directed

that the application, which was submitted by the respondent No. 3 under Section 156(3) of the Code, be registered as complaint and directed the Registry to present the said complaint before her on August 28, 2009 for recording the statement of the respondent No.3 under Section 200 of the Code. The judicial discretion exercised by the appellant was in consonance with the scheme postulated by the Code. There is no material on the record to indicate that the judicial discretion exercised by the appellant was either arbitrary or perverse. There was no occasion for the learned Single Judge of High Court to substitute the judicial discretion exercised by the appellant merely because another view is possible. The appellant was the responsible judicial officer on the spot and after assessing the material placed before him he had exercised the judicial discretion. In such circumstances this Court is of the opinion that the High Court had no occasion to interfere with the discretion exercised judiciously in terms of the provisions of Code. Normally, an order under Section 200 of the Code for examination of the complainant and his witnesses would not be passed because it consumes the valuable time of the Magistrate being vested in inquiring into the matter which primarily is the duty of the police to investigate. However, the practice which has developed over the years is that examination of the complainant and his witnesses under Section 200 of the Code would be directed by the Magistrate only when a case is found to be serious one and not as a matter of routine course. If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Code will not be conducive to justice, he will be justified in adopting the course suggested in Section 200 of the Code. Here, in this case the respondent No. 3 had averred in the application submitted before the appellant that the Officer-in-charge of the Nakur Police Station had refused to register her complaint against her father-in-law regarding alleged rape committed on her and that no action was taken by the Senior Superintendent of Police though necessary facts were brought to his notice. Under the circumstances, the judicial discretion exercised by the appellant, to proceed under Section 200 of the Code in the light of principles of law laid down by the Allahabad High Court in various reported decisions could not have been faulted with nor the appellant could have been subjected to severe criticism as was done by the learned Single Judge. There was no occasion for the learned Single Judge to observe that the appellant, a Judicial Magistrate, had done the gravest injustice to the victim or that though the appellant is a lady Magistrate, yet she did not think about the outcome of ravishing the chastity of daughter-in-law by her father-in-law or the seriousness of the crime committed by the accused and the reason assigned by the learned Magistrate in not directing the police to register the FIR indicated total non-application of mind by the appellant and that the order dated August 1, 2009, passed by the appellant, was a blemish on the justice system. The learned Single Judge was not justified in concluding that the appellant as Judicial Magistrate had passed the order dated August 1, 2009 ignoring all judicial disciplines or that the appellant had not at all applied her judicial mind and had only referred to some of the judgments of the Allahabad High Court, which were contrary to the opinion of the Apex Court rendered in many decisions. There was no reason for the learned Single Judge of the High Court to record his serious displeasure against the order of the appellant which was challenged before him as an illegal order nor the learned Single Judge was justified in severely criticizing the conduct of the appellant as Judicial Magistrate because the application submitted by the respondent N. 3 was ordered to be registered as a complaint and was not dismissed.

11. This Court has laid down in several reported decisions that higher courts should observe restraint and disparaging remarks normally should not be made against the learned members of the lower judiciary. In Ishwari Prasad Mishra vs. Mohd. Isa (1963) 3 SCR 722, a Three Judge Bench of this Court has emphasized the need to adopt utmost judicial restraint against using strong language and imputation of motive against the lower judiciary by noticing that in such matters the concerned Judge has no remedy in law to vindicate his position. The law laid down by this Court in the matter of expunction of remarks where a subordinate Judge has been subjected to disparaging and undeserved remarks by the superior Court, is well settled by this Court in the matter of `K' a Judicial Officer Vs. Registrar General, High Court of Andhra Pradesh 2001 (3) SCC 54. In the said decision this Court has succinctly outlined the guidelines in this regard in paragraph 15 of the said Judgment as under:

> ".....The existence of power in higher echelons of judiciary to make observations even extending to criticism incorporated in judicial orders cannot be denied. However, the High Courts have to remember that criticisms and observations touching a subordinate judicial officer incorporated in judicial pronouncements have their own mischievous infirmities. Firstly, the judicial officer is condemned unheard which is violative of principles of natural justice. A member of subordinate judiciary himself dispensing justice should not be denied this minimal natural justice so as to shield against being condemned unheard.
>
> Secondly, the harm caused by such criticism or observation may be incapable of being undone. Such criticism of the judicial officer contained in a judgment, reportable or not, is a pronouncement in the open and therefore becomes public. Thirdly, human nature being what it is such criticism of a judicial officer contained in the judgment of a higher court gives the litigating party a sense of victory not only over his opponent but also over the Judge who had decided the case against him. This is subversive of judicial authority of the deciding Judge.
>
> Fourthly, seeking expunging of the observations by a judicial officer by filing an appeal or petition of his own reduces him to the status of a litigant arrayed as a party before the High Court or Supreme Court- a situation not very happy from the point of view of the functioning of the judicial system. And last but not the least, the possibility of a single or casual aberration of an otherwise honest, upright and righteous Judge being caught unawares in the net of adverse observations cannot be ruled out. Such an incident would have a seriously demoralizing effect not only on him but also on his colleagues. If all this is avoidable why should it not be avoided?"

However, this Court has further provided that the parameters outlined hereinbefore must not be understood as meaning that any conduct of a subordinate judicial office unbecoming of him and demanding a rebuff should be simply overlooked. This Court has outlined an alternate safer and advisable course of action in such a situation, that is of separately drawing up proceedings, inviting the attention of the Hon'ble Chief Justice to the facts describing the conduct of the subordinate Judge concerned by sending a confidential letter or note to the Chief Justice. The actions so taken

would all be on the administrative side with the subordinate Judge concerned having an opportunity of clarifying his position and he would be provided the safeguard of not being condemned unheard, and if the decision be adverse to him, it being on the administrative side, he would have some remedy available to him under the law.

Again, in K.P. Tiwari vs. State of M.P. 1994 Supp.

> (1) SCC 540, this Court had to remind all concerned that using intemperate language and castigating strictures on the members of lower judiciary diminishes the image of judiciary in the eyes of public and, therefore, the higher courts should refrain from passing disparaging remarks against the members of the lower judiciary. The record would show that the appellant had discharged her judicial duties to the best of her capacity. To err is human. It is often said that a Judge, who has not committed an error, is yet to be born. This dictum applies to all the learned Judges at all levels from the lowest to the highest. The difference in views of the higher and the lower courts is purely a result of a difference in approach and perception. But merely because there is difference in views, it does not necessarily establish that the lower courts are necessarily wrong and the higher courts are always right. Therefore, this Court in several reported decision has emphasized the need to adopt utmost judicial restraint against making the disparaging remarks so far as members of lower judiciary are concerned.

12. On the facts and in the circumstances of the case, this Court is of the opinion that the disparaging remarks referred to above, made by the learned Single Judge of the Allahabad High Court, were not justified at all and, therefore, the appeal will have to be accepted.

13. For the foregoing reasons, the appeal succeeds. The disparaging remarks made by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Misc. Application No. 21606 of 2009, decided on September 9, 2009, while setting aside order dated August 1, 2009, passed by the appellant in case No. nil of 2009 titled as Shabnam vs. Irshad directing that the application submitted by the respondent No. 3 be registered as complaint and ordering the Registry to present the same before her for recording statement of the respondent No. 3 under Section 200 of the Code, are hereby set aside and quashed. In this Appeal prayer is to expunge remarks made by the learned Single Judge of High Court against the Appellant. The other directions are not subject matter of challenge in the appeal, therefore, those directions are not interfered with.

14. The appeal accordingly stands disposed of.

.....J. [J.M. Panchal] .....J. [H.L. Gokhale] New Delhi;

February 02, 2011.

Swadeshi Cotton Mills vs Union Of India on 13 January, 1981

Equivalent citations: 1981 AIR 818, 1981 SCR (2) 533

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, Ranjit Singh Sarkaria, D.A. Desai

PETITIONER:
SWADESHI COTTON MILLS

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT13/01/1981

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SARKARIA, RANJIT SINGH
DESAI, D.A.

CITATION:
1981 AIR 818 1981 SCR (2) 533
1981 SCC (1) 664 1981 SCALE (1)90
CITATOR INFO :
RF 1985 SC 520 (35)
F 1985 SC1416 (100)
RF 1986 SC 555 (6)
RF 1986 SC1173 (24)
RF 1986 SC1571 (44)
D 1987 SC1802 (29)
RF 1988 SC 686 (12)
RF 1988 SC 782 (8,9)
F 1990 SC1402 (23)
RF 1992 SC 1 (133)

ACT:
Industries (Development and Regulation) Act, 1951, (65 of 1951) Ss. 18A(1)(b), 18AA(1)(a)-Taking over of an industrial undertaking-Opportunity of being heard-Whether and when to be given-Denial of opportunity-Whether vitiates order-Opinion of take-over by Government-Whether liable to judicial scrutiny.

Administrative Law-Doctrine of Natural Justice-What is-When applicable-Pre-decisional and post-decisional hearing-When arises.

HEADNOTE:

The Industries (Development and Regulation) Act, 1951 empowers the Union of India in the public interest to take under its control the industries specified in the First Schedule to the Act. Item 23 of the First Schedule relates to textiles of various categories.

Section 15 authorises the Central Government to make or cause to be made a full and complete investigation into the circumstances of the case if the Central Government is of the opinion that (a) in respect of any scheduled industry or industrial undertaking or undertakings (i) there has been, or is likely to be, a substantial fall in the volume of production for which, having regard to the economic conditions prevailing, there is no justification; or (ii) there has been, or is likely to be, a marked deterioration in the quality of any article... which could have been or can be avoided; or (iii) there has been or is likely to be a rise in the price of any article..... for which there is no justification; or (iv) it is necessary to take any such action for the purpose of conserving any resources of national importance; or (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. After the investigation is made under section 15, section 16(1) empowers the Central Government if action is desirable, to issue appropriate directions, and section 16(2) provides for the issue of interim directions by the Central Government pending investigation under section 15.

Chapter III-A consisting of Sections 18A, 18-AA, 18-B, 18-C, 18-D, 18-E and 18-F deal with "direct management or control of Industrial Undertakings by Central Government in certain cases". Sec. 18-A empowers the Central Government by notified order, to authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of the whole, or any part of the undertaking such functions of control as may be specified in the order, if the Central Government is of opinion that:

(a) an industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or (b) an industrial undertaking in respect of which an investigation has been made under
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section 15 is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Section 18AA(5) stipulates that the provisions of Sections 18-B to 18 E shall be applicable to the industrial undertaking in respect of which an order has been made under section 18-AA even as they apply to an industrial undertaking taken over under Section 18-A. Section 18-F

empowers the Central Government to cancel the order made under section 18-A if it appears that the purpose of the order has been fulfilled or it is not necessary that the order should remain in force.

The appellant M/s. Swadeshi Cotton Mills was taken over by the Government of India by a notification dated April 13, 1978 in exercise of the powers conferred on it under clause (a) of sub-section (1) of section 18AA of the Industries (Development and Regulation) Act, 1951 on the ground that the company had by creation of encumbrances on the assets of its industrial undertakings, brought about a situation which had affected and is likely to further affect the production of articles manufactured or produced by it and that immediate action is necessary to prevent such a situation.

The Government authorised the National Textile Corporation Limited to take over the management, subject to the conditions that the authorised person shall comply with all the directions issued from time to time by the Central Government and that the authorised person shall hold office for a period of five years.

The appellant Mills challenged the aforesaid order in a writ petition in the High Court. The case was heard by a Full Bench of five Judges to consider the question whether in construing section 18AA of the Industries Development and Regulation Act, 1951, compliance with the principle of audi alteram partem is to be implied and whether hearing is to be given to the parties who would be affected by the order to be passed prior to the passing of the order or whether hearing can be given after the order is passed and whether the order passed under the said Section is vitiated by not giving of such hearing and whether such vice can be cured.

The Bench by a majority answered the three questions as follows:-

(a) Section 18AA(1)(a)(b) excludes the giving of prior hearing to the party who would be affected by order thereunder.

(b) Section 18-F expressly provides for a post-decisional hearing to the owner of the industrial undertaking, the management of which is taken over under section 18AA to have the order made under section 18AA cancelled on any relevant ground.

(c) As the taking over of management under section 18A is not vitiated by the failure to grant prior hearing the question of any such vice being cured by a grant of a subsequent hearing does not arise.

The minority, however, held that in compliance with the principles of natural justice, prior hearing to the owner of the undertaking was required to be given before the passing of an order under section 18AA, that the second question did not arise as the denial of a prior hearing would not cure the vice by the

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grant of subsequent hearing, but it would be open to the

Court to moderate the relief in such a way that the order is kept alive to the extent necessary until the making of the fresh order to subserve public interest and to make appropriate directions.

After the decision on the reference the case was reheard on merits by a Full Bench of three Judges and the writ petition was allowed in part. The challenge to the validity of the order being rejected but insofar as the impugned order seeking to take over the corporate entity of the company, the corporate entity of the subsidiary and its assets, the petition was allowed and the respondents, the Union of India and the authorised person were directed to release from its control and custody and/or deliver possession of any assets or property of the company which were not referable to the industrial undertakings.

Appeals to this Court were filed on behalf of the Company as well as by the Union of India and the National Textile Corporation.

Two propositions were propounded on behalf of the company that: (a) Whether it was necessary to observe the rules of natural justice before issuing a notified order under section 18AA(1)(a) and further whether section 18-F impliedly excludes rules of natural justice relating to prior hearing; and it was contended (1) the mere use of the word 'immediate' in sub-clause (a) of section 18AA does not show a legislative intent to exclude the application of audi alteram partem rule altogether. (2) The word 'immediate' in clause (a) has been used in contra distinction to 'investigate'. It only means that under section 18AA action can be taken without prior investigation under section 15. The use of the word 'immediate' in section 18AA(1)(a) only dispenses with investigation under section 15 and not with the principle of audi alteram partem altogether and this is indicated by the marginal note of section 18A and para 3 of the Statement of Objects and Reasons of the Amendment Bill which inserted section 18AA in 1971. (3) The word 'immediate' occurs only in clause (a) and not in clause (b) of section 18AA(1). It would be odd if intention to exclude this principle of natural justice is spelt out in one clause of the sub-section when the other clause does not exclude it. (4) Section 18-F does not exclude a pre-decisional hearing. The so-called post-decisional hearing contemplated by section 18-F cannot be and is not intended to be a substitute for a pre-decisional hearing. (5) Section 18F incorporates only a facet, albeit qualified, of section 21 of the General Clauses Act. The language of the Section implicity prohibits an enquiry into circumstances that led to the passing of the order of take-over and under it the aggrieved person is not entitled to show that on merits the order was void ab initio. (6) 'Immediacy' does not exclude a duty to act fairly because even an emergent situation can co-exist with the canons of natural justice. The only effect of urgency on the application of the principle of fair

hearing would be that the width, form and duration of the hearing would be tailored to the situation and reduced to the reasonable minimum so that it does not delay and defeat the purpose of the contemplated action. (7) Where the civil consequences of the administrative action are grave and its effect is highly prejudicial to the rights and interests of the person affected and there is nothing in the language and scheme of the statute which unequivocally excludes a fair pre-decisional hearing and the post-decisional hearing provided therein is not a real remedial hearing equitable to a full right of appeal the Court should be loath to infer a legislative intent to exclude even a minimal fair hearing at the
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pre-decisional stage merely on ground of urgency. (8) The Central Government appointed four Government Officials including one from the office of the Textile Commissioner to study the affairs of the Company and to make recommendation. This Official Group submitted its report on February 16, 1978. The evidence on the basis of which the impugned order was passed was not disclosed to the appellant company till May 1978, only after it had filed the writ petition in the High Court. If there was anything adverse to the appellants in the survey report there was time enough about six weeks between the submission of the Survey Report and the passing of the impugned order for giving a short, reasonable opportunity to the appellants to explain the adverse findings against them. If there was immediacy situational modifications could be made to meet the requirement of fairness, by reducing the period of notice; that even the manner and form of such notice could be simplified to eliminate delay, that telephonic notice or short opportunity for furnishing their explanation to the Company might have satisfied the requirements of natural justice. Such an opportunity of hearing could have been given after the passing of a conditional tentative order and before its enforcement under section 18AA. For the interregnum suitable interim action such as freezing the assets of the Company or restraining the Company from creating further encumbrances, could be taken under section 16.

On behalf of the Union of India and the Authorised Officer it was contended that (1) the presumption in favour of audi alteram partem rule stands impliedly displaced by the language scheme, setting and the purpose of the provision in section 18AA. (2) Section 18AA on its plain terms deals with situations where immediate preventive action is required. The paramount concern is to avoid serious problems which may be caused by fall in production. The purpose of an order under section 18AA is not to condemn the owner but to protect the scheduled industry. The issue under section 18AA is not solely between the Government and the management of the industrial undertaking. The object of taking action under this Section is to protect other outside

interests of the community at large and the workers. (3) The rule of natural justice to give a hearing has been incorporated in section 18-F which gives an opportunity of a post-decisional hearing to the owner of the undertaking who if he feels aggrieved can on his application be heard, to show that even the original order under section 18AA was passed on invalid grounds and should be cancelled or rescinded. (4) On a true construction of section 18AA read with section 18-F the requirements of natural justice and fair play can be read into the statute only insofar as conformance to such canons can reasonably and realistically be required of it by the provision for a remedial hearing at a subsequent stage. (5) Under section 18-F the Central Government exercises curial functions and that Section confers on the aggrieved owner a right to apply to the Government to cancel the order of take-over. This section casts an obligation on the Central Government to deal with and dispose of an application filed thereunder with reasonable expedition.

Allowing the appeal by the Company,

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HELD: (Sarkaria & Desai, JJ. per Chinnappa Reddy, J. dissenting.)

In the facts and circumstances of the instant case, there has been a noncompliance with the implied requirement of the audi alteram partem rule of

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natural justice at the pre-decisional stage. The impugned order could be struck down as invalid on that score alone. But in view of the commitment / concession that a hearing would be afforded to the Company, the case is remitted to the Central Government to give a full, fair and effective hearing.

[587G-H, 588C]

1. The phrase 'natural justice' is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Rules of natural justice are not embodied rules. Hence not possible to make an exhaustive catalogue of such rules. Two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind as pre-eminently necessary to ensure that the law is applied impartially objectively and fairly. These twin principles are (i) audi alteram partem and (ii) nemo judex in re sua. Audi alteram partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Its reach should not be narrowed and its applicability circumscribed.[554C-G]

2. The rules of natural justice can operate only in areas not covered by any law validly made. If a statutory provision either specifically or by inevitable implication

excludes the application of the rules of natural justice then the Court cannot ignore the mandate of the Legislature. Whether or not the application of the principles of natural justice in a given case has been excluded in the exercise of statutory power depends upon the language and basic scheme of the provision conferring the power, the nature of the power the purpose for which it is conferred and the effect of that power. [556A-B]

3. The maxim audi alteram partem has many facets. Two of them are (a) notice of the case to be met, and (b) opportunity to explain. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, convenience and justice are often not on speaking terms. Difficulties, however, arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors such as urgency where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Section 133 of the Code of Criminal Procedure empowers the magistrates specified therein to make an exparte conditional order in emergent cases for removal of dangerous public nuisances. Action under section 17 Land Acquisition Act furnishes another such instance. Similarly action on grounds of public safety public health may justify disregard of the rule of prior hearing. [556C-H]

4. Cases where owing to the compulsion of the fact situation or the necessity of taking speedy action no pre-decisional hearing is given but the action, is followed soon by a full post-decisional hearing to the person affected do not in reality constitute an exception to the audi alteram partem rule. To call such cases as exception is a misnomer because they do not exclude fair play in action but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing. [560H-561A]

5. The general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not in terms exclude this rule
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of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. [561G]

6. If the statute conferring the power is silent with regard to the giving of pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature and no full review or appeal on merits against that decision is provided courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal

hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless viewed pragmatically it would paralyse the administrative process or frustrate the need for utmost promptitude. [561H]

7(i). A comparison of the provisions of Section 18A(1)(b) and Section 18AA(1)(c), bring out two main points of distinction: First, action under Section 18A(1)(b) can be taken only after an investigation had been made under Section 15; while under Section 18AA(1)(a) or (b) action can be taken without such investigation. The language, scheme and setting of Section 18AA read in the light of the Objects and Reasons for enacting this provision make this position clear beyond doubt. Second, before taking action under Section 18A(1)(b), the Central Government has to form an opinion on the basis of the investigation conducted under section 15, in regard to the existence of the objective fact, namely: that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest; while under section 18A(1)(a) the Government has to satisfy itself that the persons incharge of the undertaking have brought about a situation likely to cause fall in production, by committing any of the three kinds of acts specified in that provision. This shows that the preliminary objective fact attributable to the persons in charge of the management or affairs of the undertaking, on the basis of which action may be taken under section 18(A)(1)(b), is of far wider amplitude than the circumstance, the existence of which is a sine qua non for taking action under section 18AA(1). The phrase "highly detrimental to the scheduled industry or public interest" in section 18-A is capable of being construed to cover a large variety of acts or things which may be considered wrong with the manner of running the industry by the management. In contrast with it, action under section 18AA(1)(a) can be taken only if the Central Government is satisfied with regard to the existence of the twin conditions specifically mentioned therein, on the basis of evidence in its possession. [569D-H]

7(ii). An analysis of section 18AA(1)(a), indicates that as a necessary preliminary to the exercise of the power thereunder, the Central Government must be satisfied "from documentary or other evidence in its possession" in regard to the co-existence of two circumstances: (i) that the persons in charge of the industrial undertaking have by committing any of these acts, namely, reckless investments, or creation of incumbrances on the assets of industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of the article manufactured or produced in the industrial undertaking, and (ii) that immediate action is necessary to prevent such a situation.

[570B-D]

8. It cannot be laid down as a general proposition that

whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard
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to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, the existence of the circumstances from which the inference constituting the opinion, as the sine qua non for action, are to be drawn, must be demonstrable, and the existence of such "circumstances", if questioned, must be proved at least prima facie. [571 E-G]

9. From a plain reading of section 18AA, it is clear that it does not expressly in unmistakable and unequivocal terms exclude the application of the audi alteram partem rule at the pre-decisional stage. [574B]

In the instant case, so far as Kanpur Unit is concerned, it was lying closed for more than three months before the passing of the impugned order. There was no 'immediacy' in relation to that unit, which could absolve the Government from the obligation of complying fully with audi alteram partem rule at the pre-decisional or pre-takeover stage. [583A]

Keshav Mills Co. Ltd. v. Union of India, [1973] 3 S.C.R. 22; Kamla Prasad Khetan v. Union of India, [1957] S.C.R. 1052; Maneka Gandhi v. Union of India, [1978] 2 S.C.R. 621; Sukhdev Singh & Ors. v. Bhagatram Sardar Singh, [1975] 3 S.C.R. 619; A. K. Kraipak v. Union of India, [1970] 1 S.C.R. 457; Ridge v. Baldwin, [1964] A.C. 40; 196; Heatley v. Tasmanian Racing & Gaming Commission, 14 Australian Law Reports 519; Nawabkhan Abbaskhan v. State of Gujarat, [1974] 3 S.C.R. 427; State of Orissa v. Dr. Bina Pani Dei, [1962] 2 S.C.R. 625; Ambalal M. Shah v. Hathi Singh Manufacturing Co. Ltd. [1962] 3 S.C.R. 171; and S. L. Kapoor v. Jagmohan & Ors., [1981] 1 S.C.R. 746, referred to.

(Per Chinnappa Reddy, J. dissenting)

The principles of natural justice are not attracted to the situations contemplated by section 18AA of Industries (Development and Regulation) Act.

1. Natural justice like Ultra Vires and Public Policy is a branch of the public law and is a formidable weapon which can be wielded to secure justice to the citizen. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change. The time has come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interests. [590A-B]

2. Our constitution as befits the Constitution of a Socialist Secular Democratic Republic, recognises the

paramountcy of the public weal over the private interest. Natural justice, ultra vires, public policy, or any other rule of interpretation must, therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society. [590C]

3(i). The principles of natural justice have taken deep root in the judicial conscience of our people. They are now considered so fundamental as to be implicit in every decision making function, judicial, quasi-judicial or administra-

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tive. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. Where the conflict is between the public interest and the private interest the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak, where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, preemptive action may be a strategic necessity. Even in cases of preemptive action, if the statute so provides or if the Courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice.

[590A-C; 591F-G]

3(ii). Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation.

[592B]

4. The absence of the expression 'immediate action' in section 18AA(1)(b) does not make any difference. Section 18AA(1)(a) refers to a situation where immediate preventive action may avert a disaster, whereas section 18AA contemplates a situation where the disaster has occurred and action is necessary to restore normalcy. Restoration of production where production has stopped in a key industry or industrial undertaking is as important and urgent in the public interest as prevention of a situation where production may be affected. Immediate action is, therefore, as necessary in the situation contemplated by section 18AA(1)(b) as in the situation contemplated by section 18AA(1)(a).

[596 F-G]

5. The marginal note refers to the power to take over without investigation but there is no sufficient reason to suppose that the word immediate is used only to contra-distinguish it from the investigation contemplated by section 15 of the Act, though of course a consequence of immediate action under section 18AA may be to dispense with the enquiry under section 15. In fact, facts which come to

light during the course of an investigation under section 15 may form the basis of action under section 18AA(1)(a). Where in the course of an investigation under section 15 it is discovered that the management have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking or by diversion of funds brought about a situation which is likely to affect the production of the articles manufactured or produced in the industrial undertaking, if the Government is satisfied that immediate action is necessary to prevent such a situation, there is no reason why the Central Government may not straightaway take action under section 18AA(1)(a) without waiting for completion of investigation under section 15. [597A-B]

6. Where there is a provision in the statute itself for revocation of the order by the very authority making the decision, it appears to be unnecessary to insist upon a pre-decisional observance of natural justice. [598A]

7. The likelihood of production being jeopardized or the stoppage of production in a key industrial undertaking is a matter of grave concern affecting the public interest. Parliament has taken so serious a view of the matter that it has authorised the Central Government to take over the management of the industrial undertaking if immediate action may prevent jeopardy to production or restore production where it has already stopped. The necessity for immediate
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action by the Central Government contemplated by Parliament is definitely indicative of the exclusion of natural justice. It is not as if the owner of the industrial undertaking is left with no remedy. He may move the Central Government under section 18-F to cancel the order made under section 18AA. [598C-D]

8. Neither section 18-F of the Industries (Development and Regulation) Act nor section 21 of the General Clauses Act by itself excludes natural justice. The exclusion of natural justice where such exclusion is not express has to be implied by reference to the subject, the statute and the statutory situation. Where an express provision in the statute itself provides for a post decisional hearing the other provisions of the Statute will have to be read in the light of such provision and the provision for post-decisional hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms of the statute. That a post-decisional hearing may also be had by the terms of section 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. [599 A-C]

Ridge v. Baldwin, 1964 A.C. p. 40; Annie G. Phillip v. Commissioner of Internal Revenue, 75 L.E.d. 1289; John H. Fahey v. Paul Mallonee, 91 L.E.d. 2030; Margarita Fuentes v. Robert L. Shevin, Attorney General of Florida, 32 L.E.d. 2d 556 and Lawrence Mitchell v. W. T. Grant Co., 40 L.E.d. 2d 406, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1629, 1857 & 2087 of 1979.

From the Judgment and Order dated 1-5-1979 of the Delhi High Court in Civil Writ No. 408 of 1978.

F. S. Nariman, S. D. Parekh, A. D. Mehta, Lalit Bhasin, Vinay Bhasin and Vineet Kumar for the Appellants in C.A. No. 1629 and for R. 1 in C.A. No. 2087/79.

V. N. Tarkunde, S. Ganesh, K. Vasudev and T.V.S.N. Chari for the Appellants in CA 1857/79.

Soli J. Sorabjee, Solicitor General and Girish Chandra for Appellants in CA 2087 and for Respondent (UOI) in CA 1629/79.

Soli J. Sorabjee, Solicitor General, S. Ganesh Vasdev and T.V.S.N. Chari for Respondent No. 2 in CA 1629.

T. V. S. N. Chari for Respondent No. 4 in CA 2087 Suresh Parik and S. Swarup for Respondent No. 3 in CA 2087.

F. S. Nariman, B. P. Maheshwari and Suresh Sethi for Respondent-Swadeshi Cotton Mills Co. Ltd. in CA No. 1857 and 2087/79.

C. M. Chopra for Intervenor.

The Judgment of R. S. Sarkaria and D. A. Desai, JJ. was delivered by Sarkaria, J. O. Chinnappa Reddy, J. gave a dissenting Opinion.

SARKARIA,J. These appeals arise out of a judgment, dated May 1, 1979, of the High Court of Delhi, in the following circumstances:

> Appellant No. 1 in Civil Appeal 1629 of 1979 is Swadeshi Cotton Mills Co. Ltd. (hereinafter referred to as the Company). It was incorporated as a private company with an authorised capital of Rs. 30 lakhs in 1921 by the Horseman family by converting their partnership business into a Private Joint Stock Company. Its capital was raised in 1923 to Rs. 32 lakhs and thereafter in 1945 to Rs. 52.50 lakhs by issue of bonus shares. In 1946, the Jaipuria family acquired substantial holding in the Company. Jaipuria family is the present management. By issue of further bonus shares in 1946, the capital of the Company was increased to Rs. 122.50 lakhs. In 1948, the paid-up capital of the Company was raised to Rs. 210 lakhs by the issue of further bonus shares. The subscribed and issued capital consisting mainly of the bonus shares has since remained constant at Rs. 210 lakhs.

In the year 1946, the Company had only one undertaking, a Textile Unit at Kanpur, known as "The Swadeshi Cotton Mills, Kanpur". Between 1956 and 1973, the Company set up and/or acquired five further Textile Units in Pondicherry, Naini, Udaipur, Maunath Bhanjan and Rae Bareilly. Each of these six Units or undertakings of the Company was separately registered in accordance with the provisions of Section 10 of the Industries (Development and Regulation) Act, 1951 (hereinafter called the IDR Act).

In addition to these six industrial undertakings, the Company (it is claimed) had other distinct businesses and assets. It holds inter alia 97 per cent shares in the subsidiary, Swadeshi Mining and Manufacturing Company Ltd., which owns two sugar Mills. The Company claims, it has substantial income from other businesses and activities including investments in its subsidiary and in other shares and securities which include substantial holding of 10,00,000 Equity Shares of Rs. 10/- each in Swadeshi Polytex Ltd., representing 30 per cent of the total equity capital value of Swadeshi Polytex Ltd., the intrinsic value whereof exceeds Rs. 5 crores.

The Company made considerable progress during the years 1957 to 1973. The reserves and surplus of the Company increased from Rs. 2.3 crores in 1957 to Rs. 4.3 crores in 1973-74, but declined to Rs. 2.8 crores in 1976-77. The fixed assets of the Company increased from 5.8 crores in 1957 to 19 crores in 1973-74, but declined to Rs. 18 crores, registering a marginal decrease of Rs. 1 crore in 1976-77.

The Company maintained separate books of accounts for each of its six industrial undertakings. From and after April 1973, the Company maintained separate sets of books of accounts of the businesses and assets other than of the said six industrial undertakings. Annual accounts of the six industrial undertakings were first prepared separately in seven sets which were separately audited. The consolidated annual accounts of the Company were then prepared from such annual accounts at the registered office of the Company at Kanpur, and after audit, were placed before the shareholders of the Company. The Company made over-all profits up to the year 1969 and even thereafter up to 1975. The Balance Sheet showed that the Company suffered a loss of Rs. 86.23 lakhs after providing depreciation of Rs. 93.93 lakhs and gratuity of Rs. 48.79 lakhs, though the trading results showed a gross profit of Rs. 56.49 lakhs. During the year ending March 31, 1976, the Company again suffered a loss of Rs. 294.82 lakhs after providing for depreciation. The last Balance Sheet and Profit & Loss Account adopted by the shareholders and published by the Company relates to the year ending March 31, 1977. It shows that the Company suffered a loss of Rs. 200.34 Lakhs after taking into account depreciation of Rs. 73.27 lakhs which was not provided in accounts.

Between 1975 and 1978, the Company created the under- noted encumbrances on the fixed assets:

Unit	As on 31-3-75	As on 31-3-76	As on 31-3-77	As on 31-3-78	Remarks
	(in lakhs)		(in lakhs)		

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(i) Pondi-chery	2.40	Nil	Nil	Nil	On fixed assets of of Pondi-cherry Unit.
(ii) Maun-ath Bhanjan	11.40	5.71	Nil	Nil	On fixed assets of Unit.
(iii)Udaipur	2.76	Nil	Nil	Nil	On fixed assets of Udaipur Unit.
(iv) Kanpur (ICICI)	13.44	9.75	5.95	2.00	On fixed asset of Kanpur Unit.
(v) Kanpur	Nil	150.00	150.00	150.00	On fixed assets of Kanpur, Maunath Bhanjan & Pondi-cherry Units for wages and Bank Dues

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vi)Company 67.53 68.45 59.44 59.44 On diesel generating sets of Kanpur, Naini, Pondi-

cherry, Maunath Bhanjan and Rae Bareilly Units.

(vii)Udaipur Nil 25.00 25.00 25.00 On fixed assets of Udaipur Unit for gratuity fund.

(viii)Naini	Nil	Nil	70.00	70.00	On fixed assets of Naini for

					gratuity.
(ix)	Kanpur, Rae Bareilly & Naini	106.20	75.31	50.67	15.97 On new machinery of Kanpur, Rae Bareilly & Naini Units under de-ferred payment credit.

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The borrowings of the Kanpur, Pondicherry, Naini, Udaipur, Maunath Bhanjan and Rae Bareilly Units of the Company as on March 31, 1978 against current assets were Rs. 256.78, 183.92, 271.05, 70.72, 47.98 and 55.82 lakhs respectively. All the encumbrances on fixed assets (except the encumbrances of Rs. 70 lakhs on the fixed assets of Naini Unit for gratuity funding to get the benefit of Section 44A of the Income-tax Act) were created prior to March 31, 1976.

In the accounting year 1976-77, only one new encumbrance was created by the Company on its fixed assets. The following are statistics of production in each of the six units of the Company during the years 1975-76, 1976-77 and 1977-78:

Name of the Unit	1975-76	1976-77	1977-78
	(figures in lakhs)		

Naini	66.13 kgs.	65.76 kgs.	72.35 kgs.
Udaipur	18.51 kgs.	18.50 kgs.	18.60 kgs.
Maunath Bhanjan	15.59 kgs.	16.63 kgs.	18.49 kgs.
Rae Bareilly	12.09 kgs.	13.58 kgs.	14.00 kgs.

Pondicherry 170.52 Mtrs 178.77 Mtrs 176.54 Mtrs Kanpur 318.75 Mtrs 472.12 Mtrs 238.22 Mtrs

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On April 13, 1978, the Government of India in exercise of its power under clause (a) of sub-section (1) of Section 18AA of the IDR Act, passed an order (hereinafter referred to as the impugned order) which reads as follows:

"SO 265(E)/18AA/IDRA/78-Whereas the Central Government is satisfied from the documentary and other evidence in its possession, that the persons in charge of the industrial undertakings namely,

(i) M/s. Swadeshi Cotton Mills, Kanpur,

(ii) M/s. Swadeshi Cotton Mills, Pondicherry,

(iii)M/s. Swadeshi Cotton Mills, Naini,

(iv) M/s. Swadeshi Cotton Mills, Maunath Bhanjan,

(v) M/s. Udaipur Cotton Mills, Udaipur, and

(vi) Rae Bareilly Textile Mills, Rae Bareilly of M/s. Swadeshi Cotton Mills Company Ltd., Kanpur (hereinafter referred to as the said industrial under takings), have, by creation of encumbrances on the assets of the said industrial undertakings, brought about a situation which has affected and is likely to further affect the production of articles manufactured or produced in the said industrial undertakings and that immediate action is necessary to prevent such a situation;

Now, therefore, in exercise of power conferred by clause (a) of sub-section (1) of Section 18AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby authorises the National Textile Corporation Limited (hereinafter referred to as the Authorised person) to take over the management of the whole of the said industrial undertakings, subject to the following terms and conditions, namely:-

(i) The authorised person shall comply with all the directions issued from time to time by the Central Government;

(ii) the authorised person shall hold office for a period of five years from the date of publication of this order in the Official Gazette;

(iii)the Central Government may terminate the appointment of the authorised person earlier if it considers necessary to do so.

This order shall have effect for a period of five years commencing from the date of its publication in the Official Gazette.

Sd/- R. Ramakrishna Joint Secretary to the Govt. of India (Seal)."

On April 19, 1978, three petitioners, namely, the Company through its Joint Secretary, Shri Bhim Singh Gupta, its Managing Director, Dr. Rajaram Jaipuria, and its subsidiary company, named Swadeshi Mining and Manufacturing Company, through its Directors and Shareholders filed a writ

petition under Article 226 of the Constitution in the Delhi High Court against the Union of India and the National Textile Corporation to challenge the validity of the aforesaid Government Order dated April 13, 1978. The writ petition was further supplemented by subsequent affidavits and rejoinders.

The Union of India and the National Textile Corporation Ltd., who has been authorised to assume management of the undertakings concerned were impleaded, as respondents. The writ petition first came up for hearing before a Division Bench who by its order dated August 11, 1978, requested the Chief Justice to refer it to a larger Bench. The case was then heard by a three Judge Bench who by their order dated October 12, 1978, requested the Hon'ble the Chief Justice to constitute a still larger Bench to consider the question whether a prior hearing is necessary to be given to the persons affected before the order under Section 18AA is passed. Ultimately, the reference came up for consideration before a Full Bench of five Judges to consider the question, which was reframed by the Bench as under:

> "Whether in construing Section 18AA of the Industries (Development and Regulation) Act, 1951, as a pure question of law compliance with the principle of audi alteram partem is to be implied. If so,
>
> (a) whether such hearing is to be given to the parties who would be affected by the order to be passed under the said Section prior to the passing of the order; or
>
> (b) whether such hearing is to be given after the passing of the order; and
>
> (c) if prior hearing is to be normally given and the order passed under the said Section is vitiated by not giving of such hearing whether such vice can be cured by the grant of a subsequent hearing."

The Bench by a majority (consisting of Deshpande, C.J.,R. Sacher and M. L. Jain, JJ.) answered this three fold question as follows:

> "(1) Section 18AA(1) (a) (b) excludes the giving of prior hearing to the party who would be affected by order thereunder.
>
> (2) Section 18F expressly provides for a post-

decisional hearing to the owner of the industrial undertaking, the management of which is taken over under Section 18AA to have the order made under Section 18AA cancelled on any relevant ground.

(3) As the taking over of management under Section 18AA is not vitiated by the failure to grant prior hearing, the question of any such vice being cured by a grant of a subsequent hearing does not arise." H. L. Anand and N. N. Goswamy, JJ, however dissented. In the opinion of the minority, in compliance with the principles of natural justice, a prior hearing to the owner of the undertaking was required to be given before passing an order under Section 18AA, that the second question did

not arise as the denial of a prior hearing would not cure the vice by the grant of subsequent hearing, but it would be open to the Court to moderate the relief in such a way that the order is kept alive to the extent necessary until the making of the fresh order to subserve public interest, and to make appropriate directions to ensure that the subsequent hearing would be a full and complete review of the circumstances of the take-over and for the preservation and maintenance of the property during the interregnum.

After the decision of the reference, the case was reheard on merits by a Bench of three learned Judges (consisting of Deshpande, C.J., Anand and M. L. Jain, JJ.) who by their judgment, dated May 1, 1979, disposed of the writ-petition. The operative part of the judgment reads as under:

> "In the result, the writ-petition succeeds in part, the challenge to the validity of the impugned order fails and to that extent the petition is dismissed. The petition succeeds in so far as it seeks to protect from the impugned order the corporate entity of the company, the corporate entity of the subsidiary and its assets, the holding of the company in Polytex and the assets and property of the company which are not referable to any of the industrial undertakings. The respondents are hereby restrained from in any manner interfering with the corporate entity, the assets and property which are outside the impugned order. The respondents would release from its control and custody and/or deliver possession of any assets or property of the company, which are not referable to the industrial undertakings in terms of the observations made in paras 46 and 47 of the judgment, within a period of three months from today (May 1, 1979). In the peculiar circumstances the parties would bear their respective costs."

On the application of the Company, the Delhi High Court certified under Article 133 of the Constitution that the case was fit for appeal to this Court. Subsequently, on July 12,1979, a similar certificate was granted by the High Court to the Union of India and the National Textile Corporation Ltd. Consequently, the Company, the Union of India and the National Textile Corporation have filed Civil Appeals 1629, 2087 and 1857 of 1979, respectively, in this Court. All the three appeals will be disposed of by this judgment.

The primary, two-fold proposition posed and propounded by Shri F. S. Nariman, learned counsel for the appellant- Company in Civil Appeal 1629 of 1979, is as follows:

> (a) Whether it is necessary to observe the rules of natural justice before issuing, a notified order under Section 18AA, or enforcing a decision under Section 18AA, or
>
> (b) Whether the provisions of Section 18AA and/or Section 18F impliedly exclude rules of natural justice relating to prior hearing.

There were other contentions also which were canvassed by the learned counsel for the parties at considerable length. But for reasons mentioned in the final part of this judgment, we do not think it necessary, for the disposal of these appeals to deal with the same.

Thus, the first point for consideration is whether, as a matter of law, it is necessary, in accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its take-over under Section 18AA.

Shri Nariman contends that there is nothing in the language, scheme or object of the provisions in Section 18AA and/or Section 18F which expressly or by inevitable implication, excludes the application of the principles of natural justice or the giving a pre-decisional hearing, adapted to the situation, to the owner of the undertaking. It is submitted that mere use of the word "immediate" in sub-clause (a) of Section 18AA (1) does not show a legislative intent to exclude the application of audi alterm partem rule, altogether. It is maintained that according to the decision of this Court in Keshav Mills Company Ltd. v. Union of India, even after a full investigation has been made under Section of the I.D.R. Act, the Government has to observe the rules of natural justice and fairplay, which in the facts of a particular case, may include the giving of an opportunity to the affected owner to explain the adverse findings against him in the investigation report. In support of his contention, that the use of the word "immediate" in Section 18AA(1)(a) does not exclude natural justice, learned counsel has advanced these reasons:

> (i) The word "immediate" in clause (a) has been used in contra distinction to 'investigation'. It only means that under Section 18AA action can be taken without prior investigation under Section 15, if there is evidence in the possession of the Government, that the assets of the Company owning the undertaking are being frittered away by doing any of the three things mentioned in clause (a); or, the undertaking has remained closed for a period of not less than three months and the condition of plant and machinery is such that it is possible to restart the undertaking. This construction, that the use of the word "immediate" in Section 18AA(1)(a) only dispenses with investigation under Section 15 and not with the principle of audi alterm partem altogether, is indicated by the marginal heading of Section 18AA and para 3 of the Statement of Objects and Reasons of the Amendment Bill which inserted Section 18AA, in 1971.
>
> (ii) The word 'immediate' occurs only in clause (a) and not in clause (b) of Section 18AA(1). It would be odd if intention to exclude this principle of natural justice is spelt out in one clause of the sub-section, when its other clause does not exclude it.
>
> (iii) Section 18F does not exclude a pre-decisional hearing. This section was there, when in Keshav Mills' case, (ibid), it was held by this Court, that even at the post-

investigation stage, before passing an order under Section 18A, the Government must proceed fairly in accordance with the rules of natural justice. The so-called post-decisional hearing contemplated by Section 18F cannot be-and is not intended to be-a substitute for a pre-decisional hearing. Section 18F, in terms, deals with the power of Central Government to cancel an order of take-over under two conditions, namely: First when "the purpose of an order under Section 18A has been fulfilled, or, second when "for any other reason it is not necessary that the order should remain in force". "Any other reason" has reference to post-

"take-

over" circumstances only, and does not cover a reason relatable to pre-takeover circumstances. An order of cancellation under Section 18F is intended to be prospective. This is clear from the plain meaning of the expressions "remain in force", "necessary" etc. used in the Section.

Section 18 incorporates only a facet, albeit qualified, of Section 21 of the General Clauses Act, (Kamla Prasad Khetan v. Union of India, referred to.) Therefore, the illusory right given by Section 18F to the aggrieved owner of the undertaking, to make an application for cancellation of the order, is not a full right of appeal on merits. The language of the Section impliedly prohibits an enquiry into circumstances that led to the passing of the order of "take- over", and under it, the aggrieved person is not entitled to show that on merits, the order was void ab initio.

As held by a Bench (consisting of Bhagwati and Vakil JJ.) of the Gujarat High Court, in Dosabhai Ratanshah Keravale v. State of Gujarat, a power to rescind or cancel an order, analogous to that under Section 21, General Clauses Act, has to be construed as a power of prospective cancellation, and not of retroactive obliteration. It is only the existence of a full right of appeal on the merits or the existence of a provision which unequivocally confers a power to reconsider, cancel and obliterate completely the original order, just as in appeal, which may be construed to exclude natural justice or a pre-decisional hearing in an emergent situation. (Reference on this point has been made to Wade's Administrative Law, 4th Edition, PP.464 to 468.)

(iv) 'Immediacy' does not exclude a duty to act fairly, because, even an emergent situation can co-exist with the canons of natural justice. The only effect of urgency on the application of the principle of fair-hearing would be that the width, form and duration of the hearing would be tailored to the situation and reduced to the reasonable minimum so that it does not delay and defeat the purpose of the contemplated action.

(v) Where the civil consequences of the administrative action- as in the instant case-are grave and its effect is highly prejudicial to the rights and interests of the person affected and there is nothing in the language and scheme of the statute which unequivocally excludes a fair pre-

decisional hearing, and the post-decisional hearing provided therein is not a real remedial hearing equitable to a full right of appeal, the Court should be loath to infer a legislative intent to exclude even a minimal fair hearing at the pre-decisional stage merely on ground of urgency. (Reference in this connection has been made to Wade's Administrative Law, ibid, page 468 bottom.) Applying the proposition propounded by him to the facts of the instant case, Shri Nariman submits that there was ample time at the disposal of the Government to give a reasonably short notice to the Company to present its case. In this connection, it is pointed out that according to para 3 of the further affidavit

filed by Shri Daulat Ram on behalf of the Union of India and other respondents, the Central Government had in its possession two documents, namely: (a) copy of the Survey Report on M/s. Swadeshi Cotton Mills Company Ltd., covering the period from May to September, 1977 prepared by the office of the Textile Commissioner, and (b) Annual Report (dated September 30, 1977) of the Company for the year ending March 31, 1971. In addition, the third circumstance mentioned in the affidavit of Shri Daulat Ram is, that by an order dated January 28, 1978, the Central Government appointed four Government Officials, including one from the office of the Textile Commissioner, to study the affairs of the Company and to make recommendation. This Official Group submitted its report on February 16, 1978. It is submitted that this evidence on the basis of which the impugned order was passed, was not disclosed to the appellant Company till May 1978, only after it had filed the writ petition in the High Court to challenge the impugned order. It is emphasised that if the Survey Report was assumed to contain something adverse to the appellants, there was time enough-about six weeks between the submission of the Survey Report and the passing of the impugned order for giving a short, reasonable opportunity to the appellants to explain the adverse findings against them. It is urged that even if there was immediacy, situational modifications could be made to meet the requirement of fairness, by reducing the period of notice; that even the manner and form of such notice could be simplified to eliminate delay, that telephonic notice or short opportunity for furnishing their explanation to the Company might have satisfied the requirements of natural justice. Such an opportunity of hearing could have been given after the passing of a conditional tentative order and before its enforcement under Section 18AA. For the interregnum suitable interim action such as freezing the assets of the Company or restraining the Company from creating further encumbrances, etc. could be taken under Section 16.

Reference in this connection has been made to Keshav Mills case (ibid); Mohinder Singh Gill v. Election Commissioner of India; Maneka Gandhi v. Union of India Sukhdev Singh & Ors. v. Bhagatram Sardar Singh; A. K. Kraipak v. Union of India; Ridge v. Baldwin; Heatley v. Tasmanian Racing & Gaming Commission; Commissioner of Police v. Tanos; Secretary of State for Education & Science v. Metropolitan Borough of Tameside; Wiseman v. Borneman; Nawabkhan Abbaskhan v. State of Gujarat and State of Orissa v. Dr. Bina Pani Dei.

As against this, Shri Soli Sorabji, learned Solicitor- General appearing on behalf of respondent 1, contends that the presumption in favour of audi alteram partem rule stands impliedly displaced by the language, scheme, setting, and the purpose of the provision in Section 18AA. It is maintained that Section 18AA, on its plain terms, deals with situations where immediate preventive action is required. The paramount concern is to avoid serious problems which may be caused by fall in production. The purpose of an order under Section 18AA is not to condemn the owner but to protect the scheduled industry. The issue under Section 18AA is not solely between the Government and the management of the industrial under taking. The object of taking action under this Section is to protect other outside interests of the community at large and the workers. On these premises, it is urged, the context, the subject-matter and the legislative history of Section 18AA negative the necessity of giving a prior hearing; that Section 18AA does not contemplate any interval between the making of an order thereunder and its enforcement, because it is designed to meet an emergent situation by immediate preventive action. Shri Sorabji submits that this rule of natural justice in a modified form has been incorporated in Section 18F which gives an opportunity of a post-decisional

hearing to the owner of the undertaking who, if he feels aggrieved, can, on his application, be heard to show that even the original order under Section 18AA was passed on invalid grounds and should be cancelled or rescinded. Thus, Shri Sorabji does not go to the length of contending that the principles of natural justice have been fully displaced or completely excluded by Section 18AA. On the contrary, his stand is that on a true construction of Section 18AA read with Section 18F, the requirements of natural justice and fair-play can be read into the statute only "in so far as conformance to such canons can reasonably and realistically be required of it", by the provision for a remedial hearing at a subsequent stage.

Shri Sorabji further submits that since Section 18F does not specify any period of time within which the aggrieved party can seek the relief thereunder, the opportunity of full, effective and post-decisional hearing has to be given within a reasonable time. It is stressed that under Section 18F, the Central Government exercises curial functions, and that Section confers on the aggrieved owner a right to apply to the Government to cancel the order of take-over. On a true construction this Section casts an obligation on the Central Government to deal with and dispose of an application filed thereunder with reasonable expedition. Shri Sorabji further concedes that on the well- settled principle of implied and ancillary powers, the right of hearing afforded by Section 18F carries with it the right to have inspection and copies of all the relevant books, documents, papers etc. and the Section obligates the Central Government to take all steps which are necessary for the effective hearing and disposal of an application under Section 18F.

Shri Sorabji has in connection with his arguments cited these authorities: Mohinder Singh Gill v. Chief Election Commissioner (ibid); In re. K. (An Infant), Official Solicitor v. K. & Anr.; Collymore v. Attorney General; Union of India v. Col. J. N. Sinha; Judicial Review, 3rd Edn. by De Smith; Queen v. Davey; Gaiman v. National Association for Internal Revenue; John H. N. Fahey v. Paul Millionee; Schwartz's Administrative Law'; Madhav Hayawadanrao Hoskot v. Maharashtra; Vijay Kumar Mundhra v. Union of India; Joseph Kuruvilla Vellukumel v.

Reserve Bank of India; Corporation of Calcutta v. Calcutta Tramways and Furnell v. Whapgarei High School.

Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of "natural justice" and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal or constituted thereunder.

Well then what is "natural justice" ? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self- evident and unarguable truth. In course of time, judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not

possible to make an exhaustive catalogue of such rules.

But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of man kind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are :(i) audi alteram partem and (ii) nemo judex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach a decision without a full hearing. In Maneka Gandhi's case, Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi- judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in Dr. Bina Pani Dei's case (ibid); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Bina Pani Dei's case, was further rubbed out to a vanishing point in A. K. Kraipak v. Union of India (ibid), thus:

> "If the purpose of these rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries..... Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

In A. K. Kraipak's case, the Court also quoted with approval the observations of Lord Parker from the Queens Bench decision in In re H. K. (An Infant) (ibid), which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi- judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the state or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

In the language of V.R. Krishna Iyer, J. (vide Mohinder Singh Gill's case, ibid.):

> "Subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play. Its essence is good conscience in a given situation; nothing more-but nothing less."

The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (Per Hegde, J. in A. K. Kraipak, ibid). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the Court cannot ignore the mandate of the Legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (See Union of India v. Col. J. N. Sinha, ibid.) The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is "a duty lying upon every one who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice"-as Lord Atkin felicitously put it- "are often not on speaking terms".

The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule ? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word 'immediate' in Section 18AA(1). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the magistrates specified therein to make an exparte conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety public health may justify disregard of the rule of prior hearing.

Be that as it may, the fact remains that there is no consensus of judicial opinion on whether more urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In Durayappah v. Fernando. Lord Upjohn observed that "while urgency may rightly limit such opportunity timeously perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

These observations of Lord Upjohn in Durayappah's case were quoted with approval by this Court in Mohinder Singh Gill's case. It is therefore, proposed to notice the same here.

In Mohinder Singh Gill's case, the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of respondent, violence broke out and the Returning Officer was forced to postpone declaration of result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election Commission contended that a prior hearing has, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V. R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso:

> "Once we understand the soul of the rule as fairplay in action - and it is so - we must hold that it extends to both the fields. After all, administrative power in democratic set-up is not allergic to fairness in action and discretionary, executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, in convenience and expense, if 'natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more - but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case."

After referring to several decisions, including the observations of Lord Upjohn in Durayappah v. Fernando, the Court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected:

> "It is untenable heresy, in our view, to lock law the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self- evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from benignant,

albeit inconvenient obligation. The procedural pre-condition or fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness."

"We may not be taken to....say that situational modifications to notice and hearing are altogether impermissible..... the glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs. doctors remedies to suit the patient promotes not freezes Life's processes, if we may mix metaphors."....

The Court further emphasised the necessity of striking pragmatic balance between competing requirements of acting urgently and fairly, thus:-

"Should the cardinal principle of "hearing' as condition for decision-making be martyred for the cause of administrative, immediacy? We think not. The full panoply may not be there but a manageable minimum may make-do."

"In Wiseman v. Borneman there was a hint of the competitive claims of hurry and hearing. Lord Reid said: 'Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him (emphasis added). We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances."

The Court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the audi alteram partem rule:

"Lord Denning M.R., in Manward v. Boreman, summarised the observations of the Law Lords in this form. No doctrinaire approach is desirable but the Court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear 'nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abate-

ment, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards

that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded an opportunity of hearing the parties, and revoke the earlier directions..... All that we need emphasize is that the content of natural justice is a dependent variable, not an easy casualty."

"Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence." (emphasis added) In Maneka Gandhi, it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

The High Court of Australia in Commissioner of Police v. Tanos, ibid, held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In Heatley v. Tasmanian Racing & Gaming Commission, ibid, the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the Commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the Commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the Commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the Commission and show why the proposed long term order be not made.

As pointed out in Mohinder Singh Gill v. Chief Election Commissioner and in Maneka Gandhi v. Union of India ibid, such cases where owing to the compulsion of the fact situation or the necessity of taking speedy action, no pre- decisional hearing is given but the action is followed soon by a full post decisional hearing to the person affected, do not, in reality, constitute an 'exception' to the audi alteram partem rule. To call such cases an 'exception' is a misnomer because they do not exclude 'fair-play in action', but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

"The necessity for speed", writes Paul Jackson, "may justify immediate action, it will, however, normally allow for a hearing at a later stage. The possibility of such a hearing-and the adequacy of any later remedy should the initial action prove to have been unjustified-are considerations to be borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however the need to act swiftly may modify or limit what natural justice requires. it must not be thought 'that because rough, swift or imperfect justice only is available that there

> ought to be no justice' Pratt v. Wanganui Education Board."

Prof. de Smith the renowned author of 'Judicial Review' (3nd Edn.) has at page 170, expressed his views on this aspect of the subject, thus:

> "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto ? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

In short, the general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to con-

strue such a statute as excluding the duty of affording even a minimal hearing, shown of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need or utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagvati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

Keeping the general principles stated above, let us now examine the scheme content, object and legislative history of the relevant provisions of the I.D.R. Act.

The I.D.R. Act (Act 65 of 1951) came into force on May 8,1952 The Statement of Objects and Reasons published in the Gazette of India, dated March 26, 1949, says that its object is to provide the Central Government with the means of implementing their industrial policy which was announced in their Resolution, dated April 6, 1948, and approved by the Central Legislature. The Act brings under Central Control the development and regulation of a number of important industries specified in its First Schedule, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. The requirement

with regard to registration, issue or revocation of licences of these specific industrial undertakings has been provided in Chapter II of the Act. Section 3(d) defines an 'industrial undertaking' to mean "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government": Clause (f) of the same section defines "owner" in relation to an undertaking.

Section 15 gives power to the Central Government to cause investigation to be made into a scheduled industry or industrial undertaking. The Section reads as follows:

> "where the Central Government is of the opinion that-
>
> (a) in respect of any scheduled industry or industrial undertaking or undertakings-
>
> (i) there has been, or is likely to be a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be; for which having regard to the economic conditions prevailing, there is no justification, or
>
> (ii) there has been, or is likely to be, a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or
>
> (iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or
>
> (iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be; or
>
> (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose."

Section 16 empowers the Central Government to issue appropriate directions to the industrial undertaking concerned on completion of investigation under Section 15. Such directions may be for all or any of the following purposes:

> "(a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;

(b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary, to stimulate the development of the industry to which the undertaking or undertakings relates or relate;

(c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;

(d) controlling the prices, or regulating the distribution of any article or class of articles which have been the subject matter of investigation."

Sub-section (2) enables the Central Government to issue such directions to the industrial undertakings pending investigation.

In the course, of the working of I.D.R. Act, certain practical difficulties came to light. One of them was that "Government cannot take over the management of any industrial undertaking, even in a situation calling for emergent action without first issuing directions to it and waiting to see whether or not they are obeyed." In order to remove such difficulties, the Amending Act 26 of 1953 inserted Chapter IIIA containing Sections 18A to 18F in the I.D.R. Act. Section 18A confers power on the Central Government to assume management or control of an industrial undertaking in certain cases. The material part of the Section reads as under:

"(1) If the Central Government is of opinion that

(a) an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made under Section 15 (whether or not any directions have been issued to the undertaking in pursuance of Section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest;

the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (1) shall have effect for such period not exceeding five years as may be specified in the order." Section 18B specifies the effect of notified order under Section 18A Sub-section (1) of the section reads thus:

"On the issue of a notified order under Section 18A authorising the taking over of the management of an industrial undertaking-

(a) all persons in charge of the management including, persons holding office as managers or directors of the industrial undertaking immediately before the issue of

the notified order, shall be deemed to have vacated their offices as such;

(b) any contract of management between the industrial undertaking and any managing agent, or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;

(c) the managing agent, if any, appointed under Section 18A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913 (7 of 1913), and the memorandum and articles of association of the industrial undertaking, and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Central Government;

(d) the person or body of persons authorised under Section 18A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking, shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and

(e) the persons, if any, authorised under Section 18A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of industrial undertaking duly constituted under the Indian Companies Act, 1913 (7 of 1913), and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source."

Section 18D provides that a person whose office is lost under clause (a) or whose contract of management is terminated under clause (b) of Section 18B shall have no right to compensation for such loss or termination. Section 18F is material. It reads thus:

"If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under Section 18A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be of the industrial undertaking shall vest in the owner of the undertaking."

By the Constitution Fourth Amendment Act 1955, Chapter IIIA of the I.D.R. Act was included as Item 19 in the Ninth Schedule of the Constitution.

Before we may come to Section 18AA, we may notice here the legislative policy with regard to Cotton Textile Industry, as adumbrated in the Cotton Textile Companies Management of Undertakings and Liquidation or Reconstruction Act, 1967 (Act XXIX of 1967). The Statement of Objects and Reasons for enacting this statute, inter alia, says:

> "The cotton textile industry provides one of the basic necessities of life and affords gainful employment to millions of people. Over the last few years, this vital industry has been passing through difficult times. Some mills have already to close down and the continuing economic operation of many others is beset with many difficulties. These difficulties have been aggravated in many cases by the heavy burden of past debts. The taking over the management of the mills for a limited time and then restoring them to original owners has not remedied the situation. Steps are therefore, necessary to bring about a degree of rationalisation of the financial and managerial structure of such units with a view to their rehabilitation, so that production and employment may not suffer."

Textile Industry is also among the industries, included in the First Schedule to the I.D.R. Act.

The Amendment Act 72 of 1971 inserted Section 18AA in the original I.D.R. Act. The material part of the Statement of Objects and Reasons for introducing this Bill of 1971 published in the Gazette of India Extraordinary, is as follows:

> "The industries included in the First Schedule .. not only substantially contribute to the Gross National produce of the country, but also afford gainful employment to millions of people. For diverse reasons a number of industrial undertakings engaged in these industries have had to close down and the continuing economic operation of many others is beset with serious difficulties affecting industrial production and employment. . . During the period of take over Government has to invest public funds in such undertakings and it must be able to do so with a measure of confidence about the continued efficient management of the undertaking at the end of the period of take over. In order to ensure that at the end of the period of take over by Government, the industrial undertaking is not returned to the same hands which were responsible for its earlier misfortune, it has been provided in the Bill that in relation to an undertaking taken over by them, Government will have the power to move for (i) the sale of the undertaking at a reserve price or higher (Government purchasing it at the reserve price if no offer at or above the reserve price is received), action being taken simultaneously for the winding up of the company owning the industrial undertaking; or (ii) the reconstruction of the company owning the industrial undertaking with a view to giving the Government a controlling interest in it. . . . With a view to ensuring speedy action by Government, it has been provided in the Bill that if the Government has evidence to the effect that the assets of the company owning the industrial undertaking are being frittered away or the undertaking has been closed for a period not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of

> the company owning the industrial undertaking and the condition of the plant and machinery installed in the undertaking is such that it is possible to restart the undertaking and such restarting-is in the public interest, Government may take over the management without an investigation."

(emphasis added).

With the aforesaid Objects in view, Section 18AA was inserted by the Amendment Act No. 72 of 1971. The marginal heading of the Section is to the effect: "Power to take over industrial undertakings without investigation under certain circumstances". This marginal heading, it will be seen, accords with the Objects and Reasons extracted above. Section 18AA runs as under:

> "Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking that-
>
> (a) the persons incharge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or
>
> (b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to re-start the undertaking and such re-

starting is necessary in the interests of the general public, it may, by a notified order, authorise any person (hereinafter referred to as the 'authorised person') to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) The provisions of sub-section (2) of Section 18A shall, as far as may be, apply to a notified order made under sub-section (1) as they apply to a notified order made under sub-section (1) of Section 18A. (3) Nothing contained in sub-section (1) and sub- section (2) shall apply to an industrial undertaking owned by a company which is being wound up by or under the supervision of the Court.

(4) Where any notified order has been made under sub-section (1), the person or body of persons having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any court or any contract, instrument or otherwise, shall notwithstanding anything contained in such order, contract, instrument or other arrangement, forthwith make over the charge of management or control, as the case may be, of the industrial

undertaking to the authorised person.

(5) The provisions of Section 18-B to 18-E (bot inclusive) shall, as far as may be, apply to, or in relation to the industrial undertaking in respect of which a notified order has been made under sub-section (1), as they apply to an industrial undertaking in relation to which a notified order has been issued under Section 18-A."

A comparison of the provisions of Section 18A(1)(b) and Section 18AA(1)(a) would bring out two main points of distinction: First, action under Section 18A (1)(b) can be taken only after an investigation had been made under Section 15: while under Section 18AA(1)(a) or (b) action can be taken without such investigation. The language, scheme and setting of Section 18AA read in the light of the objects and Reasons for enacting this provision make this position clear beyond doubt. Second, before taking action under Section 18A(1) (b), the Central Government has to form an opinion on the basis of the investigation conducted under Section 15, in regard to the existence of the objective fact, namely: that the industrial undertaking is being managed in a manner highly detrimental to the Scheduled industry concerned or to public interest; while under Section 18AA(1) (a) the Government has to satisfy itself that the persons incharge of the undertaking have brought about a situation likely to cause fall in production, by committing any of the three kinds of acts specified in that provision. This shows that the preliminary objective fact attributable to the persons in charge of the management or affairs of the undertaking, on the basis of which action may be taken under Section 18A(1) (b), is of far wider amplitude than the circumstances, the existence of which is a sine qua non for taking action under Section 18AA(1). The phrase "highly detrimental to the scheduled industry or public interest" in Section 18A is capable of being construed to over a large variety of acts or things which may be considered wrong with the manner of running the industry by the management. In contrast with it, action under Section 18AA(1) (a) can be taken only if the Central Gov-

ernment is satisfied with regard to the existence of the twin conditions specifically mentioned therein, on the basis of evidence in its possession.

From an analysis of Section 18AA(1) (a), it will be clear that as a necessary preliminary to the exercise of the power thereunder, the Central Government must be satisfied "from documentary or other evidence in its possession" in regard to the co-existence of two circumstances:

> (i) that the persons in charge of the industrial undertaking have by committing any of these acts, namely, reckless investments, or creation of incumbrances on the assets of industrial undertaking, or by diversion of funds, brought about a situation, which is likely to affect the production of the article manufactured or produced in the industrial undertaking, and
>
> (ii) that immediate action is necessary to prevent such a situation.

Speaking for the High Court (majority), the learned Chief Justice (Deshpande, C.J.) has observed that only with regard to the fulfilment of condition (i) the satisfaction of the Government is required

to be objectively reached on the basis of relevant evidence in its possession; while with regard to condition (ii), that is, the need for immediate action, it is purely subjective, and therefore, the satisfaction of the Government with regard to the immediacy of the situation is outside the scope of judicial review.

Shri Sorabji has in his arguments, forcefully supported this opinion of the High Court. He maintains that the satisfaction of the Government with regard to the existence of the immediacy is not justiciable. Reliance has been placed on the following passage in the judgment of Channell, J. in Queen v. Davey & Ors.:

> "The general principle of law is that an order affecting his liberty or property cannot be made against any one without giving him an opportunity of being heard; the result is that, if general words used in a statute empowering the making of such an order as this, it must be made on notice to the party affected. There are, however, exceptions to this rule, which arise where it can be seen on the words of the statute that it was intended that the order should be made on an ex parte application, and the case in which it is easiest to see the propriety of the exception is where, looking at the scope and object of the legislation, it was clearly intended that the parties putting the law in force should act promptly. Such a case is an order for the destruction of unsound meat, which clearly may be made ex parte, because it is desirable in the interest of the public health that it should be acted upon at once. The case of removing an infectious person, likely to spread abroad the infection, to an infectious hospital is obviously of the same character."

According to the learned Solicitor-General, the power conferred on the Central Government is in the nature of an emergency power, that the necessity for taking immediate action is writ large in Section 18AA(1) (a)-the provision being a legislative response to deal with an economically emergent situation fraught with national repercussions. The object of the exercise of this power is not to punish anyone but to take immediate preventive action in the public interest.

On the other hand, Shri Nariman submits that the High Court was clearly in error in holding that the satisfaction of the Central Government with regard to the necessity of taking immediate action was not open to judicial review at all. It is emphasised that the very language of the provision shows that the necessity for taking immediate action is a question of fact, which should be apparent from the relevant evidence in the possession of the Government.

We find merit in this contention. It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but as was pointed out by this Court in Bariam Chemicals (ibid), the existence of circumstances from which the inferences constituting the opinion, as the sine qua non for action are to be drawn, must be demonstrable, and the existence of such "circumstances", if questioned, must

be proved at least prima facie.

Section 18AA(1)(a), in terms, requires that the satisfaction of the Government in regard to the existence of the circumstances or conditions precedent set out above, including the necessity of taking immediate action, must be based on evidence in the possession of the Government. If the satisfaction of the Government in regard to the existence of any of the conditions, (i) and (ii), is based on no evidence, or on irrelevant evidence or on an extraneous consideration, it will vitiate the order of 'take-over', and the Court will be justified in quashing such an illegal order on judicial review in appropriate proceedings. Even where the statute conferring the discretionary power does not, in terms, regulate or hedge around the formation of the opinion by the statutory authority in regard to the existence of preliminary jurisdictional facts with express checks, the authority has to form that opinion reasonably like a reasonable person.

While spelling out by a construction of Section 18AA(1)(a) the proposition that the opinion or satisfaction of the Government in regard to the necessity of taking immediate action could not be the subject of judicial review, the High Court (majority) relied on the analogy of Section 17 of the Land Acquisition Act, under which, according to them, the Government's opinion in regard to the existence of the urgency is not justiciable. This analogy holds good only upto a point. Just as under Section 18AA of the I.D.R. Act, in case of a genuine 'immediacy' or imperative necessity of taking immediate action to prevent fall in production and consequent risk of imminent injury paramount public interest, an order of 'take-over' can be passed without prior, time-consuming investigation under Section 15 of the Act, under Section 17(1) and (4) of the Land Acquisition Act, also, the preliminary inquiry under Section 5A can be dispensed with in case of an urgency. It is true that the grounds on which the Government's opinion as to the existence of the urgency can be challenged are not unlimited, and the power conferred on the Government under Section 17(4) of that Act has been formulated in subjective term; nevertheless, in cases, where an issue is raised, that the Government's opinion as to urgency has been formed in a manifestly arbitrary or perverse fashion without regard to patent, actual and undeniable facts, or that such opinion has been arrived at on the basis of irrelevant considerations or no material at all, or on materials so tenuous, flimsy, slender or dubious that no reasonable man could reasonably reach that conclusion, the Court is entitled to examine the validity of the formation of that opinion by the Government in the context and to the extent of that issue.

In Narayan Govind Gavate v. State of Maharashtra & Ors. this Court held that while exercising the power under Section 17(4) of the Land Acquisition Act, the mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5A of the Act which has to be considered. If the circumstances on the basis of which the Government formed its opinion with regard to the existence of the urgency and the other conditions precedent, recited in the notification, are deficient or defective, the Court may look beyond it. At that stage, Section 106, Evidence Act can be invoked by the party assailing the notification and if the Government or the authority concerned does not disclose such facts or circumstances especially within its knowledge, without even disclosing a sufficient reason for their abstention from disclosure, they have to take the

consequences which flow from the non-production of the best evidence which could be produced on behalf of the State if its stand was correct.

Again, in Dora Phalauli v. State of Punjab & Ors., this Court held that where the purported order does not recite the satisfaction of the Government with regard to the existence of urgency, nor the fact of the land being waste or arable land, the order was liable to be struck down and the mere direction, therein, to the Collector to take action on ground of urgency was not a legal and complete fulfilment of the requirement of the law.

Recently, in State of Punjab v. Gurdial Singh, V. R. Krishna Iyer, J., speaking for the Court, made these apposite observations:

> "It is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and preemptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act."

From these decisions, it is abundantly clear that even under Section 17 of the Land Acquisition Act, the satisfaction or opinion of Government/authority in regard to the urgency of taking action thereunder, is not altogether immune from judicial scrutiny.

For the reasons already stated, it is not possible to subscribe to the proposition propounded by the High Court that the satisfaction of the Central Government in regard to condition (ii), i.e. the exis-

tence of 'immediacy', though subjective, is not open to judicial review at all.

From a plain reading of Section 18AA, it is clear that it does not expressly in unmistakable and unequivocal terms exclude the application of the audi alteram partem rule at the pre-decisional stage. The question, therefore, is narrowed down to the issue, whether the phrase "that immediate action is necessary" excludes absolutely, by inevitable implication, the application of this cardinal canon of fairplay in all cases where Section 18AA(1)(a) may be invoked. In our opinion, for reasons that follow, the, answer to this question must be in the negative.

Firstly, as rightly pointed out by Shri Nariman, the expression "immediate action" in the said phrase, is to be construed in the light of the marginal heading of the Section, its context and the Objects and Reason for enacting this provision. Thus construed, the expression only means "without prior investigation" under Section 15. Dispensing with the requirement of such prior investigation does not necessarily indicate an intention to exclude the application of the fundamental principles of natural justice or the duty to act fairly by affording to the owner of the undertaking likely to be affected, at the pre-decisional stage, wherever practicable, a short-measure fair hearing adjusted, attuned and tailored to the exigency of the situation.

At this stage, it is necessary to examine two decisions of this Court, viz., Ambalal M. Shah v. Hathi Singh Manufacturing Co Ltd.; and Keshav Mills Co. Ltd. v. Union of India (ibid), because according to the High Court (as per Deshpande, C.J., who wrote the leading opinion) these two decisions-which are binding on the High Court-conclusively show that:-

> "The only prior hearing consisted of the investigation under Section 15 read with Rule 5 before action under Section 18A is taken. The very object of Section 18AA is to enable action to be taken thereunder without being preceded by the investigation under Section 15. On the authority of the two Supreme Court decisions in Ambalal M. Shah and Keshav Mills that the only hearing prior to action under Section 18A was the investigation under Section 15, it would follow that action under Section 18AA is to be taken without the investigation under Section 15 and, therefore, without a prior hearing."

Shri Nariman maintains that the High Court has not correctly construed these decisions. According to the learned counsel, the corollary deduced by the High Court, viz., that exclusion of the investigation under Section 15 includes exclusion of the audi alteram partem rule at the pre-takeover stage, is just the contrary of what was laid down by this Court in Keshav Mills in which Ambalal's case was also noticed. Indeed, Shri Nariman strongly relies on this decision in support of his argument that if the application of this rule of natural justice at the pre- decisional stage is not excluded even where a full investigation has been made, there is stronger reason to hold that it is to be observed in a case where there has been no investigation at all.

We will first notice the case of Keshav Mills because that is a later decision in which Ambalal's case was referred to. In that case, the validity of an order passed by the Central Government under Section 18A was challenged. By that impugned order the Gujarat State Textile Corporation Ltd. (hereinafter referred to as the Corporation) was appointed as authorised controller of the Company for a period of five years. The Company was the owner of a cotton textile mill. Till 1965, the Company made flourishing business. After the year 1964-65, the Company fell on evil days and the textile mill of the Company was one of the 12 sick textile mills in Gujarat, which had to be closed down during 1966 and 1968. On May 31, 1969, the Central Government passed an order appointing a Committee for investigation into the affairs of the Company under Section 15 of the I.D.R. Act. After completing the inquiry, the Investigating Committee submitted its report to the Government who thereafter on November 24, 1970, passed the impugned order under Section 18A authorising the Corporation to take over the management of the Company for a period of five years. The Company challenged the order of 'take-over' by a writ-petition in the High Court of Delhi. The High Court dismissed the petition. The main contention of the Company before the High Court was that the Government was not competent to proceed under Section 18A against the Company without supplying before hand, a copy of the report of the Investigating Committee to the Company. It was further contended that the Government should also have given a hearing to the Company before finally deciding upon take- over under Section 18A. This contention was pressed on behalf of the Company in spite of the fact that an opportunity had been given by the Investigating Committee to the management and the employees of the Company for adducing evidence and for making representation before the completion of the investigation. On the contentions raised by the

Company and resisted by the respondent, in that case, the Court formulated the following questions:

> (1) Is it necessary to observe the rules of natural justice before enforcing a decision under Section 18A of the Act?
>
> (2) What are the rules of natural justice in such a case?
>
> (3)(a) In the present case, have the rules to be observed once during the investigation under Section 15 and then again, after the investigation is completed and action on the report of the Investigating Committee taken under Section 18A?
>
> (b) Was it necessary to furnish a copy of the Investigating Committee's Report before passing an order of take-over?

Mukherjea, J. speaking for the Court, answered these questions, thus:

> (1) "The first of these questions does not present any difficulty. It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying on administration decision. Even so, the question of natural justice does arise in this case. It is too late now to contend that the principles of natural justice need not apply to administrative order or proceedings;

in the language of Lord Denning M.R. in Regina v. Gaming Board, exparte Beniam "that heresy was scotched in Ridge v. Baldwin"

> (2) "The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-

stick in this manner. The concept of natural justice cannot be put into a straight jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in In re H.K. (an infant). It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin as insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. However, even the application of the concept of fairplay requires real flexibility. Everything will depend on the actual facts and circumstances of a case." (3) (a) "For answering that question we shall keep in mind .... and examine the nature and scope of the inquiry that had been carried out by the Investigating Committee set up by the Government, the scope and purpose of the Act and rules under which the Investigating Committee was supposed to act, the

matter that was being investigated by the Committee and finally the opportunity that was afforded to the appellants for presenting their case before the Investigating Committee."

(After noticing the object, purpose and content of the relevant provisions, the judgment proceeded):

> "In fact, it appears from a letter addressed by appellant No. 2 Navinchandra Chandulal Parikh on behalf of the Company to Shri H. K. Bansal, Deputy Secretary, Ministry of Foreign Trade and Supply on 12th September, 1970 that the appellants had come to know that the Government of India was in fact considering the question of appointing an authorised controller under Section 18A of the Act in respect of the appellants undertaking. In that letter a detailed account of the facts and circumstances under which the mill had to be closed down was given. There is also an account of the efforts made by the Company's Directors to restore the mill. There is no attempt to minimise the financial difficulties of the Company in that letter .... The letter specifically mentions the company's application to the Gujarat State Textile Corporation Ltd., for financial help... the Corporation ultimately failed to come to the succour of the Company. Parikh requested Government not to appoint an authorised controller and further prayed that the Government of India should ask the State Government and the Gujarat State Textile Corporation Ltd., to give a financial guarantee to the Company..."
>
> "Only a few days before this letter had been addressed, Parikh, it appears, had an interview with the Minister of Foreign Trade on 26th August, 1970, when the Minister gave him, as a special case, four weeks' time with effect from 26th August, 1970 to obtain the necessary financial guarantee from the State or the Gujarat State Textile Corporation without which the Company had expressed its inability to reopen and run the mill. In a letter of 22 September, 1970, Bansal informed Parikh in clear language that if the Company failed to obtain the necessary guarantee by 26 September 1970, Government was proceeding to take action under the Act. It is obvious, therefore, that the appellants were aware all long that as a result of the report of the Investigating Committee the Company's undertaking was going to be taken up by Government, Parikh had not only made written representations but had also seen the Minister of Foreign Trade and Supply. He had requested the Minister not to take over the undertaking and, on the contrary, to lend his good offices so that the Company could get financial support from the Gujarat State Textile Corporation or from the Gujarat State Government." (emphasis added) "All these circumstances leave in no manner of doubt that the Company had full opportunities to make all possible representations before the Government against the proposed take-over of its mill under Section 18A. In this connection, it is significant that even after the writ petition had been filed before the Delhi High Court the Government of India had given the appellants at their own request one month's time to obtain the necessary funds to commence the working of the mill. Even then, they failed to do so ....."

"There are at least five features of the case which make it impossible for us to give any weight to the appellants complaint that the rules of natural justice have not been observed. First on their own showing they were perfectly aware of the grounds on which Government had passed the order under Section 18A of the Act. Secondly, they are not in a position to deny (a) that the Company has sustained such heavy losses that its mill had to be closed down indefinitely, and (b) that there was not only loss of production of textiles but at least 1200 persons had been thrown out of employment. Thirdly, it is transparently clear from the affidavits that the Company was not in a position to raise the resources to recommence the working of the mill. Fourthly, the appellants were given a full hearing at the time of the investigation held by the Investigating Committee and were also given opportunities to adduce evidence. Finally, even after the Investigating Committee had submitted its report, the appellants were in constant communion with the Government and were in fact negotiating with Government for such help as might enable them to reopen the mill and to avoid a take-over of their undertaking by the Government. Having regard to these features it is impossible for us to accept the contention that the appellants did not get any reasonable opportunity to make out a case against the take-over of their undertaking or that the Government has not treated the appellants fairly. There is not the slightest justification in this case for the complaint that there has been any denial of natural justice."

"In our opinion, since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before Government they cannot be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report. They had made all the representations that they could possibly have made against the proposed take-over. By no stretch of imagination, can it be said that the order for take- over took them by surprise. In fact, Government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take-over. The blunt fact is that the appellants just did not have the necessary resources to do so. Insistence on formal hearing in such circumstances is nothing but insistence on empty formality." (emphasis added) (3) (b) "In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report.

Whether the report should be furnished or not must therefore, depend in every individual case on the merits of that case. We have no doubt that in the instant case, non-disclosure of the report of the

Investigating Committee has not caused any prejudice whatsoever to the appellants. (emphasis added) It will be seen from what has been extracted above that in Keshav Mills case, this Court did not lay it down as an invariable rule that where a full investigation after 'notice to the owner of the industrial undertaking has been held under Section 15, the owner is never entitled on grounds of natural justice, to a copy of the investigation report and to an opportunity of making a representation about the action that the Government proposes to take on the basis of that report. On the contrary, it was clearly said that this rule of natural justice will apply at that stage in cases "where unless the report-is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report." It was held that the application or non-application of this rule depends on the facts and circumstances of the particular case. In the facts of that case, it was found that the non-disclosure of the investigation report had not caused any prejudice whatever because the Company were "aware all along that as a result of the report of the Investigating Committee the Company's undertaking was going to be taken (over) by Government", and had full opportunities, to make all possible representations before the Government against the proposed take-over of the Mill.

Shri Sorabji submitted that the observations made by this Court in Keshav Mills case, to the effect, that in certain cases even at the post-investigation stage before making an order of take-over under Section 18A, it may be necessary to give another opportunity to the affected owner of the undertaking to make a representation, appear to be erroneous. The argument is that the Legislature has provided in Sections 15 and 18A of the Act and Rule 5 framed thereunder, its measure of this principle of natural justice and the stage at which it has to be observed. The High Court, therefore, was not right in engrafting any further application of the rule of natural justice at the post investigation stage. According to the learned Solicitor- General for the decision of the case, it was not necessary to go beyond the ratio of Shri Ambalal M. Shah & Anr. v. Hathi Singh Manufacturing Co. Ltd which was followed in Keshav Mills case.

In our opinion, the observations of this Court in Keshav Mills in regard to the application of this rule of natural justice at the post-investigation stage cannot be called obiter dicta. There is nothing in those observations, which can be said to be inconsistent with the ratio decidendi of Ambalal's case. The main ground on which the order of take-over under Section 18A was challenged in Ambalal's case was that on a proper construction of Section 18A, the Central Government had the right to make the order under that Section on the ground that the Company was being managed in a manner highly detrimental to public interest, only where the investigation made under Section 15 was initiated on the basis of the opinion as mentioned in Section 15(b), whereas in the present case (i.e. Ambalal's case), the investigation ordered by the Central Government was initiated on the formation of an opinion as mentioned in clause (a) (i) of Section 15. It was urged that in fact, the Committee appointed to investigate had not directed its investigation into the question whether the industrial undertaking was being managed in the manner mentioned above. The High Court came to the conclusion that on a correct construction of Section 18 A(1) (b) it was necessary before any order could be made thereunder that the investigation should have been initiated on the basis of the opinion mentioned in Section 15(b) of the Act. It also accepted the petitioner's contention that no investigation had, in fact, been held into the question whether the undertaking was being managed in a manner highly detrimental to public interest.

On appeal by special leave, this Court reversed the decision of the High Court, and held that the words used by the Legislature in Section 18A (1) (b) "in respect of which an investigation has been made under Section 15" could not be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest"; that Section 18A (1) (b) empowers the Central Government to authorise a person to take over the management of an industrial undertaking if the one condition of an investigation made under Section 15 had been fulfilled irrespective of on what opinion that investigation was initiated and the further condition is fulfilled that the Central Government was of opinion that such undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. In this Court, it was urged on behalf of the Company that absurd results would follow if the words "investigation has been made under Section 15" are held to include investigation based on any of the opinions mentioned in Section 15(a). Asked to mention what the absurd results would be, the counsel could only say that an order under Section 18A (1) (b) would be unfair and contrary to natural justice in such cases, as the owner of an industrial undertaking would have no notice that the quality of management was being investigated. The Court found no basis for this assumption because in its opinion, the management could not but be aware that investigation would be directed in regard to the quality of management, also. It is to be noted that the question of natural justice was casually and halfheartedly raised in a different context as a last resort. It was negatived because in the facts and circumstances of that case, the Company was fully aware that the quality of the management was also being inquired into and it had full opportunity to meet the allegations against it during investigation.

The second reason-which is more or less a facet of the first-for holding that the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the audi alteram partem rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it, may vary greatly in degree. The words "likely to affect production" used in Section 18AA (1) (a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future. Cases of extreme urgency where action under Section 18AA(1) (a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing.

The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question, (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

In the instant case, so far as Kanpur Unit is concerned, it was lying closed for more than three months before the passing of the impugned order. There was no `immediacy' in relation to that unit,

which could absolve the Government from the obligation of complying fully with the audi alteram partem rule at the pre-decisional or pre- takeover stage. As regards the other five units of the Company, the question whether on the basis of the evidential matter before the Government at the time of making the impugned order, any reasonable person could reasonably form an opinion about a likelihood of fall in production and the urgency of taking immediate action, will be discussed later. For the purpose of the question under consideration we shall assume that there was a likelihood of fall in production. Even so, the undisputed facts and figures of production of 2 or 3 years preceding the take-over, relating to these units, show that on the average, production in these units has remained fairly constant. Rather, in some of these units, an upward trend in production was discernible. Be that as it may, the likelihood of fall in production or adverse effect on production in these five units, could not, by any stretch of prognostication or feat of imagination, be said to be imminent, or so urgent that it could not permit the giving of even a minimal but real hearing to the Company before taking-over these units. There was an interval of about six weeks between the Official Group's Report, dated February 16, 1978 and the passing of the impugned order dated April 13, 1978. There was thus sufficient time available to the Government to serve a copy of that report on the appellant Company and to give them a short-measure opportunity to submit their reply and representation regarding the findings and recommendations of the Group Officers and the proposed action under Section 18AA(1).

The third reason for our forbearance to imply the exclusion of the audi alteram partem rule from the language of Section 18AA(1) (a) is, that although the power thereunder is of a drastic nature and the consequences of a take-over are far-reaching and its effect on the rights and interests of the owner of the undertaking is grave and deprivatory, yet the Act does not make any provision giving a full right of a remedial hearing equitable to a full right of appeal, at the post-decisional stage.

The High Court seems to be of the view that Section 18F gives a right of full post-decisional remedial hearing to the aggrieved party. Shri Soli Sorabji also elaborately supported that view of the High Court. In the alternative, the learned counsel has committed himself on behalf of his client, to the position, that the Central Government will if required, give the Company a full and fair hearing on merits, including an opportunity to show that the impugned order was not made on adequate or valid grounds.

Shri Nariman on the other hand contends-and we think rightly-that the so-called right of a post-decisional hearing available to the aggrieved owner of the undertaking under Section 18F is illusory as in its operation and effect the power of review, if any, conferred thereunder, is prospective, and not retro-active, being strictly restricted to and dependent upon the post-takeover circumstances.

By virtue of sub-section (2) of Section 18AA, the reference to Section 18A in Section 18F will be construed as a reference to Section 18AA, also. The power of cancellation under Section 18F can be exercised only on any of these grounds : (i) "that the purpose of the order made under Section 18A has been fulfilled", or (ii) "that for any other reason it is not necessary that the order should remain in force". These `grounds' and the language in which they are couched is clear enough to show that the cancellation contemplated thereunder cannot have the effect of annulling, rescinding or

obliterating the order of take-over with retro-active force; it can have only a prospective effect. Section 18F embodies a principle analogous to that in Section 21 of the General Clauses Act. The first `ground' in Section 18F for the exercise of the power, obviously does not cover a review of the merits or circumstances preceding and existing at the date of passing the order of `take-over' under Section 18AA(1). The words "for any other reason" if read in isolation, no doubt, appear to be of wide amplitude. But their ambit has been greatly cut down and circumscribed by the contextual phrase "no longer necessary that it should remain in force". Construed in this context, the expression "for any other reason" cannot include a ground that the very order of take-over was invalid or void ab initio. Thus, the post-decisional hearing available to the aggrieved owner of the undertaking is not an appropriate substitute for a fair- hearing at the pre-decisional stage. The Act does not provide any adequate remedial hearing or right of redress to the aggrieved party even where his under-taking has been arbitrarily taken-over on insufficient grounds. Rather, the plight of the aggrieved owner is accentuated by the provision in 18D which disentitles him and other persons whose officers are lost or whose contract of management is terminated as a result of the `take-over', from claiming any compensation whatever for such loss or termination.

Before we conclude the discussion on this point, we may notice one more argument that has been advanced on behalf of the respondents. It is argued that this was a case where a prior hearing to the Company could only be a useless formality because the impugned action has been taken on the basis of evidence, consisting of the Balance- sheet, account-books and other records of the Company itself, the correctness of which could not have been disputed by the Company. On these premises, it is submitted that non-observance of the rule of audi altrem partem would not prejudice the Company, and thus make no difference.

The contention does not appear to be well-founded. Firstly, this documentary evidence, at best, shows that the Company was in debt and the assets of some of its `units' had been hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production, which is one of the essential conditions in regard to which the Government must be satisfied before taking action under Section 18(1)(a). Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the Company should have been given an opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take-over and to represent why it be not taken.

In the renowned case, Ridge v. Baldwin & Ors. (ibid), it was contended before the House of Lords that since the appellant police officer had convicted himself out of his own mouth, a prior hearing to him by the Watch Committee could not have made any difference; that on the undeniable facts of that case, no reasonable body of men could have reinstated the appellant. This contention was rejected by the House of Lords for the reason that if the Watch Committee had given the police officer a prior hearing they would not have acted wrongly or unreasonably if they had in the exercise of their discretion decided to take a more lenient course than the one they had adopted.

A similar argument was advanced in S. L. Kapoor v. Jagmohan & Ors to which decision two of us (Sarkaria and Chinnappa Reddy, JJ.) were parties. In negativing this argument, this Court, inter

alia, quoted with approval the classic passage, reproduced below, from the judgment of Megarry, J. in John v. Rees & Ors.

> "As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to under- estimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

In General Medical Council v. Spackman, Lord Wright condemned the oft-adopted attitude by tribunals to refuse relief on the ground that a fair hearing could have made no difference to the result. Wade in his Administrative Law, 4th Edn., page 454, has pointed out that "in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly".

In Maxwell v. Department of Trade & Industry, Lawton L.J. expressed in the same strain that "doing what is right may still result in unfairness if it is done in the wrong way." This view is founded on the cordinal canon that justice must not only be done but also manifestly be seen to be done.

Observance of this fundamental principle is necessary if the courts and the tribunals and the administrative bodies are to command public confidence in the settlement of disputes or in taking quasi-judicial or administrative decisions affecting civil rights or legitimate interests of the citizens. The same proposition was propounded in R. V. Thames Magistrates' Court ex p. Polemis, by Lord Widgery C.J. at page 1375; and by the American Supreme Court in Margarita Fuentes et al., v. Tobert L. Shevin.

In concluding the discussion in regard to this aspect of the matter, we can do no better than reiterate what was said by one of us (Chinnappa Reddy, J.) in S. L. Kapoor v. Jagmohan (ibid) :

> "In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

We, therefore, over-rule this last contention. In sum, for all the reasons aforesaid, we are of the view that it is not reasonably possible to construe Section 18AA(1) as universally excluding, either expressly or by inevitable intendment, the application of the audi alteram partem rule of natural justice at the pre-takeover stage, regardless of the facts and circumstances of the particular case. In the circumstances of the instant case, in order to ensure fairplay in action it was imperative for the

Government to comply substantially with this fundamental rule of prior hearing before passing the impugned order. We therefore, accept the two-fold proposition posed and propounded by Shri Nariman.

The further question to be considered is : What is the effect of the non-observance of this fundamental principle of fairplay? Does the non-observance of the audi alteram partem rule, which in the quest of justice under the rule of law, has been considered universally and most spontaneously acceptable principle, render an administrative decision having civil consequences, void or voidable ? In England, the outfall from the watershed decision, Ridge v. Baldwin brought with it a rash of conflicting opinion on this point. The majority of the House of Lords in Ridge v. Baldwin held that the non-observance of this principle, had rendered the dismissal of the Chief Constable void. The rationale of the majority view is that where there is a duty to act fairly, just like the duty to act reasonably, it has to be enforced as an implied statutory requirement, so that failure to observe it means that the administrative act or decision was outside the statutory power, unjustified by law, and therefore ultra vires and void. (See Wade's Administrative Law, ibid, page 448). In India, this Court has consistently taken the view that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule, wherever it can be read as an implied requirement of the law, is null and void. (e.g. Maneka Gandhi's case, ibid, and S. L. Kapoor v. Jagmohan, ibid). In the facts and circumstances of the instant case, there has been a non-compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The impugned order therefore, could be struck down as invalid on that score alone. But we refrain from doing so, because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that under Section 18F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken-over, a "full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action of take-

over", within a reasonable time after the take-over. The learned Solicitor has assured the Court that such a hearing will be afforded to the appellant Company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.

In view of this commitment/or concession fairly made by the learned Solicitor-General, we refrain from quashing the impugned order, and allowing Civil Appeal 1629 of 1979 send the case back to the Central Government with the direction that it shall, within a reasonable time, preferably within three months from today, give a full, fair and effective hearing to the aggrieved owner of the undertaking, i.e., the Company, on all aspects of the matter, including those touching the validity and/or correctness of the impugned order and/or action of take-over and then after a review of all the relevant materials and circumstances including those obtaining on the date of the impugned order, shall take such fresh decision, and/or such remedial action as may be necessary, just, proper and in accordance with law.

In view of the above decision, no separate order is necessary in Civil Appeals 1857 and 2087 of 1979.

All the three appeals are disposed of accordingly with no order as to costs. Since the appeals have been disposed of on the first and foremost point canvassed before us, in the manner indicated above, it is not necessary to burden this judgment with a discussion of the other points argued by the counsel for the parties.

CHINNAPPA REDDY, J. I have the misfortune to be unable to agree with the erudite opinion of my learned brother Sarkaria on the question of the applicability of the principles of natural justice. I do so with diffidence and regret.

The first of the submissions of Shri F. S. Nariman, learned counsel for the appellant company was that there was a violation of the principles of natural justice. He submitted that the provisions of the Industries (Development and Regulation) Act did not rule out natural justice and that there were several occasions in the march of events that led to the passing of the order under Sec. 18AA when an opportunity could have been given to the Company and the principles of natural justice observed but the Government of India refrained from doing so. He urged that the immediate action contemplated by Sec. 18AA(1) (a) was not to be construed as negat-

ing natural justice but as intended merely to distinguish it from action under Sec. 18A which was to be taken only after investigation under Sec. 15. He drew inspiration for this argument from the marginal note to Section 18AA which is "power to take over industrial undertakings without investigation under certain circumstances". He also urged that Sec. 18F contemplated a post-decisional situation necessitating cancellation of the order of take-over but did not contemplate cancellation of the order of take-over on the ground that such order ought never to have been made. He urged that the scope of Sec. 18F was very narrow and did not entitle the party affected to a fair hearing. In any case he argued that the remedy such as it was provided by Sec. 18F was not an answer to the claim to pre-decisional natural justice. His submission was that natural justice was not to be excluded except by the clear and unmistakable language of the statute, though the "quantum" of natural justice to be afforded in an individual case might vary from case to case.

Shri Soli Sorabji, learned Solicitor General, while conceding that statutory silence on the question of natural justice should ordinarily lead to an implication by presumption that natural justice was to be observed, urged that the presumption might be displaced by necessary implication, as for instance where compliance with natural justice might be inconsistent with the demands of promptitude, and delayed action might lead to disaster. The presumption of implication of natural justice was very weak where action was of a remedial or preventive nature or where such action concerned property rights only. In appropriate situations post-decisional hearing might displace pre- decisional natural justice. The statute itself might well provide for a post-decisional hearing as a substitute for pre-decisional natural justice in situations requiring immediate action. Sec. 18-F of the Industries Development and Regulation Act expressly provided for such a post- decisional hearing and the urgency of the situation contemplated by Sec. 18AA necessarily excluded pre- decisional natural justice. There was no reason to belittle the scope of Sec. 18F, so, to exclude a fair post-decisional hearing at the instance of the party affected and consequently, to imply pre-decisional natural justice.

Both the learned counsel invited our attention to considerable case-law. I do not propose to discuss the case law as my brother Sarkaria has referred to all the cases in great detail. Before I consider the submissions of the learned counsel as to the applicability of the principles of natural justice, a few prefatory remarks, however, require to be made.

Natural justice, like Ultra Vires and Public Policy, is a branch of the Public Law and is a formidable weapon which can be wielded to secure justice to the citizen. It is productive of great good as well as much mischief. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change. In the context of modern welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interests. Our Constitution, as befits the Constitution of a Socialist Secular Democratic Republic, recognises the paramountcy of the public weal over the private interest. Natural justice, Ultra Vires, Public Policy, or any other rule of interpretation must therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society.

In Ridge v. Baldwin, it was thought by Lord Reid that natural justice had no easy application where questions of public interest and policy were more important than the rights of individual citizens. He observed :

> "If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternate schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the Courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down."

And, as pointed out by a contributor in 1972 Cambridge Law Journal at page 14 :

> "..... the safeguarding of existing rights can after all in some circumstances amount to little more than the fighting of a rear-guard action by the reactionary element in society seeking only to preserve its own vested position."

The United States Supreme Court has recognised the distinction between cases where only property rights are involved and cases where other civil and political rights are involved. In cases where only property rights are involved postponement of enquiry has been held not to be a denial of due process, vide : Annie G. Phillips v. Commissioner of Internal Revenue, John H. Fahey v. Paul Mallonee, Margarita Fuentes v. Robert L. Shevin, Attorney General of Florida, and Lawrence Mitchell v. W. F. Grant Co.

In the first case (75 L.Ed. 1289), Brandeis J observed:

> "Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. Delay in the judicial determination of property rights is not uncommon where it is essential that Governmental needs be immediately satisfied. For the protection of public health, a state may order the summary destruction of property by administrative authorities without antecedent notice or hearing. Because of the public necessity the property of citizens may be summarily seized in war time. And at any time, the United States may acquire property by eminent domain, without paying, or determining the amount of the compensation before the taking."

The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani, Kraipak, Mohinder Singh Gill, Maneka Gandhi etc. etc. They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision making function, call it judicial, quasi judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre- emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of preemptive action. if the statute so provides or if the Courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice, where there is suspicion of public mischief and only property rights and vested interests are involved.

In the light of these prefatory remarks, I will proceed to consider the relevant statutory provisions. The Industries (Development and Regulation) Act, 1951, was enacted pursuant to the power given to Parliament by Entry 52 of List I of the Seventh Schedule to the Constitution. As required by that Entry Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the Act. Item 23 of the First Schedule to the Act relates to Textiles of various categories, Sec. 3(d) defines "Industrial undertaking" to mean "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government". The expression undertaking is not, however, defined Sec. 3(f) defines "Owner", "in relation to an industrial undertaking" as "the

person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agents, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking". Sec. 3(j) provides that words and expressions not defined in the Act but defined in the Companies Act shall have the meaning assigned to them in that Act. Sec. 10 obliges the owner of an industrial undertaking to register the undertaking in the prescribed manner. Sec. 10A authorises the revocation of registration after giving an opportunity to the owner of the undertaking in certain circumstances. Sec. 11 provides for the licensing of the new industrial undertaking and Sec. 11A provides for the licensing of the production and manufacture of the new articles. Sec. 13 provides, among other things, that, except under, and in accordance with, a licence issued in that behalf by the Central Government, no owner of an industrial undertaking shall effect any substantial expansion or change the location of the whole or any part of an industrial undertaking. Sec. 14 provides for a full and complete investigation in respect of applications for the grant of licence or permission under Sections 11, 11A, 13 or 29B. Sec. 15 authorises the Central Government to make or cause to be made a full and complete investigation into the circumstances of the case if the Central Government is of the opinion that :

> (a) in respect of any scheduled industry or industrial undertaking or undertakings (i) there has been, or is likely to be, a substantial fall in the volume of production.... for which, having regard to the economic conditions prevailing, there is no justification; or (ii) there has been, or is likely to be, a marked deterioration in the quality of any article..... which could have been or can be avoided; or (iii) there has been or is likely to be a rise in the price of any article..... for which there is no justification; or (iv) it is necessary to take any such action for the purpose of conserving any resources of national importance; or
>
> (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. After the investigation is made under Sec. 15, Sec. 16(1) provides, if the Central Government is satisfied that such action is desirable, it may issue appropriate directions for
>
> (a) regulating the production of any article .....and fixing the standards of production;
>
> (b) requiring the industrial undertaking to take such steps as the Central Government may consider necessary, to stimulate the development of the industry;
>
> (c) prohibiting resort to any act or practice which might reduce the undertaking's production, capacity or economic value;
>
> (d) controlling the prices, or regulating the distribution of any article.

Sec. 16(2) also provides for the issue of interim directions by the Central Government pending investigation under Sec.

15. Such directions are to have effect until validly revoked by the Central Government.

Chapter III-A consisting of Sections 18A, 18-AA. 18-B, 18-C, 18-D, 18-E and 18-F deals with "direct management or control of Industrial Undertakings by Central Government in certain cases". Sec. 18-A which is entitled "Power of Central Government to assume management or control of an industrial undertaking in certain cases" provides that the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order, if the Central Government is of opinion that :

> (a) an industrial undertaking to which directions have been issued in pursuance of Sec. 16 has failed to comply with such directions, or
>
> (b) an industrial undertaking in respect of which an investigation has been made under section 15 is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Sec. 18-AA refers to "Power to take over industrial undertakings without investigation under certain circumstances". It enables the Central Government by a notified order to authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of whole or any part of the undertaking such functions of control as may be specified in the order, if, without prejudice to any other provisions of the Act, from the documentary or other evidence in its possession, the Central Government is satisfied in relation to the industrial undertaking, that "(a) the persons incharge of such industrial undertakings have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial under taking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public".

Sec. 18-AA(5) stipulates that the provisions of Sections 18- B to 18-E shall be applicable to the industrial undertaking in respect of which an order has been made under s. 18-AA even as they apply to an industrial undertaking taken over under Sec. 18-A. Sec. 18-B specifies the effect of a notified order under Sec. 18-A. Sec. 18C empowers the Court to cancel or vary contracts made in bad faith etc. by the management of an undertaking before such management was taken by the Central Government. Sec. 18-D provides that there shall be no right to compensation for termination of office or contract as a result of the `take over'. Sec. 18-E deprives the shareholders and the Company

of certain rights under the Indian Companies Act. if the industrial undertaking whose management is taken over is a Company. Sec. 18-F empowers the Central Government on the application of the owner of the industrial undertaking or otherwise to cancel the order made under Sec. 18-A if it appears to the Central Government that the purpose of the order has been fulfilled or that for any other reason it is not necessary that the order should remain in force. Sec. 18FD(3) enables the Central Government to exercise the powers under Sec. 18- F in relation to an undertaking taken over under Sec. 18-AA.

The question for consideration is whether Sec. 18-AA excludes natural justice by necessary implication. The development and regulation of certain key industries was apparently considered so basic and vital to the economy of our country that Parliament, in its wisdom, thought fit to enact the Industries Development & Regulation Act, after making the declaration required by Entry 52 of List I of the Seventh Schedule to the Constitution that it was expedient, in the public interest, that the Union should take under its control the industries specified in the schedule to the Act, as earlier mentioned by us. Apart from making provision for the establishment of a Central Advisory Council and other Development Councils, and the licensing of scheduled industries, the Act empowers the Central Government to cause a full and complete investigation to be made where there is a substantial fall in the volume of production for which there is no justification having regard to the prevailing economic conditions or there is marked deterioration in the quality of the goods produced or the price of the goods produced is rising unjustifiably or where conservation of resources of national importance is necessary or the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to public interest (Sec. 15) and thereafter to issue necessary and appropriate directions to the industrial undertaking to mend matters suitably (Sec.

16). Where the instructions issued under Sec. 16 are not complied with or where the investigation reveals that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to the public interest the Central Government may take over the industry under Sec. 18-A. Whether there is an investigation or not, the Central Government may also `take over' the management of the industry under Sec. 18-AA, if consequent on certain wilfull acts of commission on the part of the management the production is likely to be effected but immediate action may prevent such a situation, or the industrial undertaking has been closed for a period of not less than three months and the closure is prejudicial to the scheduled industry. Action under Sec. 18-AA is thus preventive and remedial. Where there is an apprehension that production is likely to be affected as a result of the wilfull acts of the management or where the production has already come to a stand-still because of the closure of the undertaking for a period of not less than three months the Central Government is authorised to intervene to restore production. The object clearly is to take immediate action to prevent a situation likely to affect production or to restore production. There was some argument at the Bar that the expression `immediate action' was not to be found in Sec. 18-AA(1) (b). I do not think that the absence of the expression "immediate action in Sec. 18-AA(1)(b) makes any difference. Sec. 18-AA(1)(a) refers to a situation where immediate preventive action may avert a disaster, whereas Sec. 18-AA contemplates a situation where the disaster has occurred and action is necessary to restore normalcy. Restoration of production where production has stopped in a key industry or industrial undertaking is as important and urgent, in the public interest, as prevention of a situation where production may be affected. Immediate action is,

therefore, as necessary in the situation contemplated by Sec. 18-AA(1)(b) as in the situation contemplated by Sec. 18-AA(1)(a).

It is true that the marginal note refers to the power to take over without investigation but there is no sufficient reason to suppose that the word `immediate' is used only to contra-distinguish it from the investigation contemplated by Sec. 15 of the Act, though, of course a consequence of immediate action under Sec. 18-AA may be to dis-

pense with the enquiry under Sec. 15. In fact, facts which come to light during the course of an investigation under Sec. 15 may form the basis of action under Sec. 18-AA(1)(a). Where in the course of an investigation under Sec. 15 it is discovered that the management have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking or by diversion of funds brought about a situation which is likely to affect the production of the articles manufactured or produced in the industrial undertaking, if the Government is satisfied that immediate action is necessary to prevent such a situation, there is no reason why the Central Government may not straight away take action under Sec. 18-AA(1)(a) without waiting for completion of investigation under Sec. 15. Parliament apparently contemplated a situation where immediate action was necessary, and having contemplated such a situation, there is no reason to assume that Parliament did not contemplate situations which brooked not a moments delay. If Parliament also contemplated situations which did not brook a moment's delay, it would be difficult to read natural justice into Sec. 18-AA. The submission of Shri Nariman was that the immediacy of the situation would be relevant and relatable to the quantum of natural justice and not to a total denial of natural justice. According to him the scope and extent of the opportunity to be given to the party against whom action is taken may depend upon the situation but nothing would justify a negation of a natural justice. He pointed out that in a situation of great urgency which brooked no delay, an order under Sec. 18-AA might be made, the situation could be so frozen that the persons incharge of the industrial undertaking might do no more mischief and the Government could then, without giving further effect to the order under Sec. 18-AA, give a notice to the person incharge to show cause why the order under Sec. 18-AA should not be given effect. In another given case, according to Shri Nariman, notice of, say two weeks, might be given before making an order, if the making of an order was not so very urgent. He suggested that the opportunity to be given might vary from situation to situation but opportunity there must be, either before the decision was arrived at or so shortly after the decision was arrived at and before any great mischief might result from the order. The argument of Shri Nariman would vest in the Government a power to decide from case to case the extent of opportunity to be given in each individual case and, as a corollary, a corresponding right in the aggrieved party to claim that the opportunity provided was not enough. Such a procedure may be possible, practicable and desirable in situations where there is no statutory provision enabling the decision making authority to review, or reconsider its decision. Where there is a provision in the statute itself for revocation of the order by the very authority making the decision, it appears to us to be unnecessary to insist upon a pre-decisional observance of natural justice. The question must be considered by regard to the terms of the statute and by an examination, on the terms of the statute, whether it is possible, practicable and desirable to observe pre-decisional natural justice and whether a post decisional review or reconsideration provided by the statute itself is not a sufficient substitute.

The likelihood of production being jeopardized or the stoppage of production in a key industrial undertaking is a matter of grave concern affecting the public interest. Parliament has taken so serious a view of the matter that it has authorised the Central Government to take over the management of the industrial undertaking if immediate action may prevent jeopardy to production or restore production where it has already stopped. The necessity for immediate action by the Central Government, contemplated by Parliament, is definitely indicative of the exclusion of natural justice. It is not as if the owner of the industrial undertaking is left with no remedy. He may move the Central Government under Sec. 18-F to cancel the order made under Sec. 18-AA. True some mischief affecting the management and top executives may have already been done. On the other hand, greater mischief affecting the public economy and the lives of many a thousand worker may have been averted. While on the one hand mere property rights are involved, on the other vital public interest is affected. This .....again, in the light of the need for immediate action contemplated by Parliament, is a clear pointer to the exclusion of natural justice. It was submitted by the learned counsel that Sec. 18-F did not provide any remedy but merely provided for cancellation of an order of take over on the fulfilment of the purpose of the order of take over or for any other reason which rendered further continuance in force of the order unnecessary because of the happening of subsequent events. According to the learned counsel the basic assumption of Sec. 18-F was the validity of the order under Sec. 18-A or Sec. 18-AA. All that Sec. 18-F did was to prescribe conditions for the exercise of the general power which every authority had under Sec. 21 of the General Clauses Act to cancel its own earlier order. It was said that if Sec. 18-F could be said to impliedly exclude natural justice there is then no reason not to hold that Sec. 21 of the General Clauses Act similarly excluded natural justice in every case. I am unable to agree with these submissions of the learned counsel. Neither Sec. 18-F of the Industries (Development and Regulation) Act nor Sec. 21 of the General Clauses Act, by itself, excludes natural justice. The exclusion of natural justice, where such exclusion is not express, has to be implied by reference to the subject, the statute and the statutory situation. Where an express provision in the statute itself provides for a post decisional hearing the other provisions of the statute will have to be read in the light of such provision and the provision for post decisional hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms of the statute. That a post-decisional hearing may also be had by the terms of Sec. 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provision contained in Sec. 21 of the General Clauses Act may be sufficient to so interpret the terms of a given statute as to exclude natural justice. As I said it depends on the subject, statute and the statutory situation.

I am, therefore, satisfied that the principles of natural justice are not attracted to the situations contemplated by Sec. 18-AA of the Industries (Development and Regulation) Act. In view of the order proposed by my learned brothers Sarkaria and Desai JJ. I do not propose to consider the other questions.

ORDER As per majority decision, the appeals are allowed.

N. K. A. Appeals allowed.

Tessta Setalvad & Anr vs State Of Gujarat & Ors on 12 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 1979, (2004) 3 GCD 1783 (SC)

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  443-445 of 2004

PETITIONER:
Tessta  Setalvad & Anr.

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 12/04/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T (Arising out of SLP (Crl.) Nos. 530-532/2004) ARIJIT PASAYAT,J Leave granted.

In these three appeals, certain observations made by the High Court of Gujarat at Ahmedabad in Crl.A. No. 956/2003 with Crl. Misc. Appln. Nos. 7677/2003 and 9825/2003 are questioned by the appellants.

According to them, the High Court has directly and/or at any rate indirectly cast aspersions on their credibility and bonafides in helping certain persons to approach this Court for redressal of their grievances. The case before the Gujarat High Court related to an alleged communal carnage on 27th February, 2002.

According to the appellants, being human rights activists, they wanted to find out what is the truth and in the process, though after conclusion of the trial, it was reliably felt by them on the basis of verifications made that truth has been the resultant casualty. They had made detailed study of the situation and also met the riot-affected persons. They helped the victims in lodging FIRs, and setting up legal aid clinics for the affected victims. They claim to be anti-fundamentalists and public activists with avowed object of helping victims of communal violence. Their main and sincere objective is to maintain and preserve the secular image of the Nation, secured firmly under the Constitution of India, 1950 (in short the 'Constitution'), the supreme law of the land. Certain

persons, who were not happy with the verdicts rendered by the Trial Court in the case commonly known as "Best Bakery case" also approached the appellants and they helped them in obtaining legal assistance. Unfortunately the High Court, while dealing with the appeal filed by the State of Gujarat, against the acquittal of the accused persons and other connected cases made some caustic observations casting serious aspersions on their bonafides and has used strong words like "super investigators", "anti social" and "anti-national" elements.

Grievance is made that not only were the observations unnecessary and contrary to the truth but also were made against persons who were not even given an opportunity to justify their action. Principles of natural justice were said to have been grossly violated.

Prayer is made, therefore, for deletion of the offending portions from the judgment, which according to the appellants are as follows:

> In Para 15 - "It is stated at the Bar that the Citizens for Justice and Piece petitioner before the Supreme Court in this case, is situated at Mumbai. Like other affidavits, this affidavit of Sahejadkhan was also sworn before the Notary Public at Mumbai whereas this witness resides at Vadodara. From Para-22 of this affidavit it appears that an attempt is made by the journalists/human rights activists and advocate Teesta Setalvad and Mihir Desai, respectively, of the Citizens for Justice and Piece to have parallel investigating agency, whereas the statutory authority to investigate any case is Police, CBI or any other agency established under the Statute. We do not know how far it is proper but we can certainly state that it is not permissible under the law.
>
> Para 20 "This very witness when examined before the court seems to have stated the truth before the court, but unfortunately, it seems that for some reasons, after the pronouncement of the judgment, they fell in the hands of some, who prefer to remain behind the curtain.
>
> x x x Certain elements failed everywhere, at all levels, and to obstruct the development and progress of the State, and trying to misuse the process of law, so far they have not fully succeeded. Sometime back in the name of environment, matter was filed before the Apex court in Narmada matter, which was dismissed by the Apex Court. However, because of the ex parte ad interim order, they were successful in causing huge loss, running into thousands of crores of rupees to the State because of the delay in construction of the dam. Ultimately, such huge loss had to be suffered by the people of the State for no fault of their. Gujarat is very much part and parcel of our Nation and any loss to the State means loss to the Nation.
>
> Once again, almost similar attempt is made not only to cause indirect financial loss to the State, but to create rift between the two communities and spread hatred in the people of the State. Financial loss can be recovered at any time, but it is very difficult to rebuild confidence, faith and harmony between people of the two communities. This time, target is none else but the judiciary of the State and the system as a whole

which is really a matter of grave concern. Most unfortunate part of it is that, some people within the State and the Nation, without realizing the pros and cons of it, unnecessarily giving undue importance to such elements, who are misusing poor persons like Zahira and others.

x x x Instead of that, there are some persons for their petty benefits, trying to add the fuel to the fire, which is already extinguished, and keep the situation tense. They did not know that great harm they are causing to the State and the Nation. One should not cut the branch on which sits. Nation will suffer if Gujarat is made to suffer. It is most unfortunate that attempt is made to create a false impression not only in the other States but also in the world that the Gujarat is a terrorist State, which is factually wrong.

x x x Para 21 - It is most unfortunate that only few handful of people are indulging in dirty tactics and wrongly defaming the States and its people for ulterior motives and reasons. Much could have been said about such elements, but it would have been once again used as publicity, therefore, best thing is to simply ignore them. Even a note taken of this element amounts to giving some importance. Which they do not deserve it at all."

We have heard Mr. Kapil Sibal, learned Senior Counsel for the appellants and Ms. Hemantika Wahi, learned counsel for the State of Gujarat. It is not in dispute and the records also reveal that the appellants were not parties in the case before the High Court. It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and vitally essential tenet of 'Rule of law', that no one should be condemned unheard and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics. The observations quoted above do not prima facie appear to have any relevance to the subject matter of dispute before the High Court. Time and again this Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons. Apart from that, when there is no relevance to the subject matter of adjudication, it is certainly not desirable for the Courts to make any comments or observations reflecting on the bonafides or credibility of any person or their actions. Judicial decorum requires dispassionate approach and the importance of issues involved for consideration is no justification to throw to winds basic judicial norms on mere personal perceptions as saviours of the situation.

Learned counsel for the State of Gujarat also cannot successfully substantiate their relevance or necessity for the case on hand and virtually had to concede that the observations really have no proximate or even remote link with the subject matter of

adjudication which was involved in the cases before the High Court.

Observations should not be made by Courts against persons and authorities, unless they are essential or necessary for decision of the case. Rare should be the occasion and necessities alone should call for its resort. Courts are temples of justice and such respect they also deserve because they do not identify themselves with the causes before it or those litigating for such causes. The parties before it and the counsel are considered to be devotees and Pandits who perform the rituals respectively seeking protection of justice; parties directly and counsel on their behalf. There is no need or justification for any unwarranted besmirching of either the parties or their causes, as a matter of routine.

Courts are not expected to play to the gallery or for any applause from anyone or even need to take cudgels as well against any one, either to please their own or any one's phantasies. Uncalled for observations on the professional competence or conduct of a counsel, and any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.

Even while dealing with recalcitrant subordinate judicial officers, this Court has advised restraint.

As far back as in the year 1963 in Ishwari Prasad Misra v. Mohd. Isa [AIR 1963 SC 1728] this Court seeking through Gajendragadkar.J. (as he then was) in the context of dealing with strictures passed by the High Court against one of its subordinate judicial officers stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary because the Judge against whom imputations are made had no remedy in law to vindicate his position. In K.P. Tiwari v. State of M.P. [1994 Suppl.(1) SCC 540] this Court made the following observations in this context:

"The higher courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err.....It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks - more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

We also extract below the observation of this Court in Braj Kishore Thakur v. Union of India & Ors.[1997(4) SCC 65]:

> "Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that 'a judge who has not committed any error is yet to be born.' No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher courts publicly express lack of faith in the Subordinate Judges. It has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher court to defend his order. Judges of higher courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."

The said observations, would in our view, apply with equal force to all such parties who were not before court and not merely could not be before the court in the proceedings concerned.

In view of the aforesaid we direct that the observations of the High Court, as against the appellants quoted above shall stand expunged and deleted from the judgment of the High Court, and consequently must be treated as having never existed or being part of the High Court judgment. The decision in this case, is confined to the claim of the above appellants only and nothing to do with the claims of other before the High Court and this Court in the other related appeals.

The Appeals are allowed to the extent indicated above.

Bidhannagar (Salt Lake) Welfare Asson vs Central Valuation Board & Ors on 18 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2276, 2007 AIR SCW 3962, 2007 (7) SCALE 546, 2007 (6) SCC 668, (2007) 4 SUPREME 542, (2007) 7 SCALE 546, (2007) 3 CAL HN 95, (2007) 2 CAL LJ 163

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 5519-5520 of 2007

PETITIONER:
Bidhannagar (Salt Lake) Welfare Asson

RESPONDENT:
Central Valuation Board & Ors

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

1. Validity or otherwise of certain provisions of the West Bengal Central Valuation Board (Amendment) Act, 1994 (for short "the Amendment Act") is in question in these appeals which arise out of a judgment and order dated 24.12.2003 passed by a Division Bench of the High Court of Calcutta dismissing the writ petition filed by the appellant herein and, thus, upholding the impugned provisions thereof.

2. Members of the appellant association are occupiers of lands and buildings situated within the territorial limits of the Bidhannagar Municipality. Annual valuation of lands and buildings for the purpose of assessment of municipal tax indisputably is governed by the provisions of the West Bengal Municipal Act, 1993 (for short "the Municipal Act"). In terms of Section 110 thereof, the annual valuation of lands and buildings is required to be determined by the Central Valuation Board (for short "the Board"). The Board was established under the provisions of the West Bengal Central Valuation Board Act, 1978 (for short "the 1978 Act").

3. Valuation of the holdings used to be governed by Sections 10, 11 and 12 of the 1978 Act. Before we embark upon a detailed analysis of the provisions thereof, we may notice that they provided for

publication of the draft valuation list, publication of the final valuation list and amendment of valuation of the list by the Board respectively.

4. Principles of natural justice were to be complied with in terms of Sub- section (3) of Section 10 insofar as upon publication of the draft valuation list, objections were invited and objections, if filed, were required to be considered by the Board for determination thereof upon giving an opportunity of being heard in that behalf. Section 11 provided for publication of the final valuation list together with the amount of consolidated rate payable after determination of the objections filed under Section 10. The final valuation list, so arrived, could be subject to further review in terms of Sections 14 and 15 of the Act.

5. By reason of the impugned amendment, alterations on three principal fields were made, i.e., the provisions relating to publication of the draft valuation list of lands and buildings and finalization thereof, upon hearing objections thereto were deleted. The West Bengal Central Valuation Board (Valuation of Lands and Building) Rules, 1984 (for short "the 1984 Rules") framed under the 1978 Act were also amended by a notification dated 30.03.1984 wherein provisions pertaining to filing objection petitions against the draft annual valuation and determination thereof were deleted. The effect of the said amendment was that the valuation made by the Board was made final, subject to review as provided for under Sections 14 and 15 of the 1978 Act.

6. Contending that the said Amendment Act is violative of Article 14 of the Constitution of India as it deprived the citizens of being heard which is the essence of the principles of natural justice as also lead to procedural unfairness, a writ petition was filed by the appellant. The said writ petition was allowed by a learned Single Judge of the High Court. In arriving at its conclusion, the learned Judge took notice of the contentions raised by the respondents in their counter-affidavits as also other factors relevant for determination thereof at some details. An intra-court appeal was preferred thereagainst in terms of Clause 15 of the Letters Patent Appeal of the Calcutta High Court and by reason of the impugned judgment dated 24.12.2003, the said appeal has been allowed.

7. The High Court opined:

> (i) The requirements of compliance of principles of natural justice have not completely been taken away.
>
> (ii) No case of substantive unreasonableness has been made out.
>
> (iii) In the matter of collection of debt for the purpose of arriving at a general valuation as also for the purpose of determining the objections by the owners and occupiers of the lands and the buildings, the restrictions put on the power of the Review Committee as also the extent to which such power can be exercised do not lead to procedural unfairness; and
>
> (iv) Validity of constitution of the Review Committee cannot also be faulted with.

8. Mr. Bhaskar P. Gupta, learned senior counsel appearing on behalf of the appellant would submit that the Division Bench of the High Court committed a serious error in construing the provisions of the impugned Amending Act insofar as it failed to take into consideration the following:

> (i) The valuation list prepared by the Board and produced in course of the hearing before the learned Single Judge clearly showed that no reason had been assigned in support thereof, and in any event, the same did not bear any real nexus with the factors to be taken into account in the matter of determination of annual valuation as provided under Section 106 of the Municipal Act.
>
> (ii) It may be true that the Amending Act did not exclude the rules of audi alteram partem completely and sought to provide an opportunity of hearing only at the stage of review. However, the provisions thereof would clearly indicate that there is no procedural or substantive observance of the principles of natural justice in the process of determination of annual valuation.
>
> (iii) Opportunity of hearing at the stage of review of the assessment being a post-decisional one, the same does not compensate for the requirements of a pre-decisional hearing.

9. Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of the State of West Bengal and Mr. Altaf Ahmad, learned senior counsel appearing on behalf of the Central Valuation Board, on the other hand, would submit that the procedural fairness as also the principles of natural justice being capable of being read in the provisions of the Amendment Act, the High Court cannot be said to have committed any error in passing the impugned judgment.

10. Assessment of property tax used to be governed by the Bengal Municipal Act, 1932. However, the State of West Bengal enacted the 1978 Act inter alia for constitution of a Central Valuation Board and Valuation Authorities for the purpose of valuation of lands and buildings in West Bengal. By reason of the said provision, the exclusive jurisdiction of the Municipal Committees to make valuation of the lands and buildings which were exigible to levy of property tax was taken away.

11. A Comparative table showing relevant provisions of the 1978 Act and the impugned Amendment Act is as under:

> The 1978 Act The Amendment Act
>
> 5. Members of the Board: (1) The Board shall consist of a Chairman and two other members to be appointed by the State Govt.

(2) The Chairman shall be a person who is or has been an officer of the State Govt. not below the rank of a Secretary.

(3) Of the two other members

(a) one shall be a person who is or has been a member of the judicial service for not less than 7 years and has experience in municipal affairs;

and

(b) the other shall be a person holding a degree in Civil Engineering and having knowledge and experience in the work of valuation and assessment for not less than seven years.

(4) The Chairman and the other members of the Board shall hold office for such period not exceeding six years as the State Government may determine and the terms and conditions of their service including salaries and allowances shall be such as may be prescribed.

5. Members of the Board (1) The Board shall consist of a Chairman and four other members to be appointed by the State Govt.

(2) The Chairman shall be a person who is or has been an officer of the State Govt. (not below the rank of Secretary including ex-officio Secretary).

(3) The four other members shall include the Director of Local Bodies, Government of West Bengal, who shall be the ex-officio member of the Board, and such other officers of the State Government or non-official experts having knowledge and experience in the field of judiciary, Engineering, Valuation and Assessment of properties, economics or social science as the State Government may determine.

(4) The Chairman and the other members of the Board shall hold office for such period not exceeding four years as the State Government may determine and the terms and conditions of their service, including salaries and allowances shall be such as may be prescribed.

(5) The Board shall have a Member-

Secretary who shall be appointed by the State Government from amongst the members referred to in sub-

section (3) and shall be the Chief Executive Officer of the Board.

5A. Validation Notwithstanding anything contained elsewhere in this Act, no action of the Board shall be invalid or otherwise called in question merely on the ground of the existence of any vacancy (initial or subsequent) in the office of the members of the Board.

5A. Validation Notwithstanding anything contained elsewhere in this Act, no action of the Board shall be invalid or otherwise called in question merely on the ground of the existence of any vacancy (initial or subsequent) in the office of the members of the Board.

8. Expenditure incurred on account of salaries and allowances The expenditure incurred by the Board for meeting the salaries and allowances of the Chairman, the other members, the Secretary and Officers and employees serving under the Board shall be defrayed out of the Fund.

8. Expenditure incurred on account of salaries and allowances The expenditure incurred by the Board for meeting the salaries and allowances of the Chairman, the other members, the Secretary and Officers and employees serving under the Board shall be defrayed out of the Fund.

8A. The Board shall maintain the prescribed manner a register of registered valuer surveyors (Gr. I) and registered valuer Surveyors (Gr. II).

8B. Every person who possess such qualifications as may be prescribed shall, subject to such terms and conditions and on payment of such fee, as may be prescribed, be entitled to have his name entered in the register of registered valuer surveyors (Gr. I) and registered valuer surveyors (Gr. II).

10. Preparation of the draft valuation list (1) When the valuation under Sec. 9 of the lands and buildings in any area has been completed, the Board shall cause such valuation to be entered in a list.

(2) The Board shall publish the valuation list in such manner as may be prescribed and shall specify a date within which objections to the list may be filed.

(3) After the expiry of the date specified in sub-sec (2) and within the objection shall be determined, after giving the objector an opportunity of being heard by such officer or officers of the Board as it may specify in this behalf.

(4) The objection shall be filed and determined in such manner as may be prescribed.

10. ***

11. Publication of final valuation list When objections have been determined, the Board shall prepare a final valuation list and shall give public notice of the place or places where such list may be inspected and the valuation (together with the amount of consolidated rate thereon) as recorded in the final valuation list shall, subject to the provisions of Sections 14 and 15, be conclusive.

11. Publication of final valuation list When the general valuation of lands and buildings has been made by the Board under Sec. 9, the Board shall prepare a valuation list and shall give public notice of the place or places where the valuation list may be inspected, and the valuation as aforesaid together with the amount of consolidated rate or property tax, as the case may be, payable thereon, as recorded in the valuation list shall, subject to the provisions of Sections 14 & 15 be conclusive. The Board shall give a notice in writing to the owner or to the lessee, sub-lessee or occupier of any land or building, as the case may be, in all case in which the valuation of such land or building is made for the first time or the annual valuation of such land or building as increased:

Provided that the valuation list as aforesaid may be prepared and published in respect of all the holdings of any municipal area or any area within the jurisdiction of a Corporation specified in the notification under sub-sec (1) of Sec 9 or the holdings of any municipal area within such group of wards or any area within such group of wards within the jurisdiction of a Corporation as the State Government may determine.

12. Amendment of Valuation list by Board The Board may, for reasons to be recorded in writing, amend the valuation list at any time before the date specified for filing objections under sub-sec (2) of Section 10.

12. **** 12A. Alteration or amendment of valuation list (1) Notwithstanding anything contained in Sec 11, the Board may at any time before the date of hearing of an application for review under Section 14 and for reasons to be recorded in writing, direct any alteration or amendment of the valuation list : -

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted together with the valuation thereof; or

(c) by striking out the name of any person or any land or building not liable for payment of consolidated rate or property tax, as the case may be; or

(d) by increasing or decreasing the annual valuation of any holding which, in the opinion, of the Board, has been substantially under-valued or over-valued by reasons of fraud, mis-representation, mistake or error.

14. Application for review (1) The owner or occupier or any other person primarily liable to pay consolidated rate may, if dissatisfied with the valuation of any land or building as entered in the final valuation list, apply to the Board to review the valuation.

(2) The application shall be filed within such time and in such manner as may be prescribed.

(3) Every application presented under sub-sec (1) shall be heard and determined by a Review Committee constituted under Sec 15 in accordance with such procedure as may be prescribed.

(4) No application shall be entertained unless the amount of consolidated rate as recorded in the final valuation list referred to in Sec 11 has been paid or deposited in the office of the Corporation or the Municipality, as the case may be, before the application is filed and the application shall fail unless amount is continued to be paid or deposited till the application is finally disposed of.

14. Application for review (1) The owner or occupier or any other person primarily liable to pay consolidated rate for property tax, as the case may be, may if dissatisfied with the valuation of any land or building as entered in the valuation list, apply to the Corporation or the Board of Councillors concerned to review the valuation.

(2) The application shall be filed within such time and in such manner as may be prescribed.

(3) Every application presented under sub-sec (1) shall be heard and determined by a Review Committee constituted under Sec 15 in accordance with such procedure as may be prescribed.

(4) No application u/sub-sec (1) shall be entertained unless the amount of consolidated rate or property tax, as the case may be, on the previous valuation of land or building as aforesaid has been paid or deposited in the office of the Corporation or Municipality, as the case may be, before the application is filed, and every such application shall fail unless the amount of consolidated rate or property tax as the case may be on the previous valuation as aforesaid is continued to be paid or deposited in the Office of the Corporation or Municipality, as the case may be, till such application is disposed of.

Provided that wherever the previous valuation refers to a valuation made under the Bengal Municipal Act, 1932 (Bengal Act XV of 1932), and in force on the date immediately before the commencement of the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993), no application under sub-section (1) shall be entertained unless the amount of consolidated rate on such previous valuation has been paid or deposited or is continued to be paid or deposited in the office of the concerned Municipality.

15. Review Committee (1) The State Government shall constitute such number of Review Committee as may be considered necessary to hear the applications filed under sub-

section (1) of Section 14.

(2) Each such Review Committee shall consist of two members of whom one shall be its President. The President of each Review Committee shall be appointed by the State Govt.

on such terms and conditions and shall possess such qualifications as may be prescribed. The other members of the Review Committee shall be, where the matter relates to

(i) any land or building in any Ward in Calcutta or Howrah or Chandranagore, the Councillor of the Ward; or

(ii) any land or building in any Ward in a municipality, the Commissioner of that Ward; or

(iii) any land or building in any area other than the areas mentioned in clauses (i) and (ii), such person as the State Government may appoint:

Provided that when a Corporation is, or the Commissioners of a Municipality are, superseded, the State Government shall appoint a person residing in the Ward to which the matter relates as the other member referred in clause (i) or clause (ii).

Provided further that no meeting of a Review Committee shall be held if the President is absent:

Provided also that no decision of a Review Committee shall be invalid or otherwise called in question merely by reason of any vacancy in the office of the other member or due to absence of such member from any sitting.

(3) The Review Committee may confirm, reduce, enhance or annul the valuation of land or building or may direct fresh valuation to be made after such further enquiry as the Review Committee may direct. (4) If there is any difference of opinion between the members of the Review Committee, the matter shall be referred to the Board for decision. (5) The decision of the Review Committee or of the Board, as the case may be, shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to the Review Committee or has been decided by the Review Committee or the Board.

15. Review Committee Every Corporation or Municipality shall, by a resolution constitute Review Committee (s) to hear applications presented under sub-sec (1) of Sec

14. (2) Every Review Committee shall be presided over by the Chairman or the Vice-Chairman of the Municipality and shall consist of two other members, being Councillors of the Municipality, as may be nominated by the Board of Councillors, and another member, who shall be an officer of the Board having knowledge in the assessment of municipal valuation, deputed by the Board:

Provided that in the case of a Corporation, the Presiding Officer and two other members of the Review Committee shall be such persons as may be nominated by the Corporation from amongst the Councillors by a resolution:

Provided further that no decision of a Review Committee shall be invalid or called in question merely by reason of any vacancy in the composition of the Committee or absence of any member from a meeting thereof other than the Presiding Officer:

Provided also that the decision of a Review Committee shall be unanimous.

Provided also that when a Corporation or a Municipality is dissolved, the State Govt shall constitute by notification the Review Committee consisting of a President and such number of other members as may be specified in the notification for the purpose of hearing applications for review. (3) The Review Committee may confirm, reduce, enhance or annul the valuation of land or building as may direct fresh valuation to be made after such further enquiry as the Review Committee may direct. (4) If there is

> any difference of opinion amongst the members of the Review Committee, the matter shall be referred to the Board for decision. (5) The decision of the Review Committee or of the Board, as the case may be, shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to the Review Committee or has been decided by the Review Committee or the Board.

12. The 1978 Act, as noticed hereinbefore, was amended in the year 1994. By reason of the said Amendment Act, a proviso was added to Section 9 which is in the following terms:

> "Provided that the Board may, in accordance with a resolution in this behalf adopted at a meeting of the Board and with the previous approval of the State Government, require (a valuer - Surveyor Grade I or valuer surveyor of Grade II) to make, subject to such conditions as may be prescribed, the general valuation of lands and buildings in the area as aforesaid or in any part thereof under the superintendence, direction and control of the Board on payment of such remuneration as the Board may determine, and every such valuation shall be deemed to have been made by the Board."

13. The effect of the said amendments is inter alia to take away the right of an assessee of a pre-decisional hearing. The provisions of the Amendment Act only provide for a review of the valuation made by the Board as pre-decisional hearing is not required to be given. A review contemplated under the 1978 Act is for all intent and purport in the nature of an appeal. The proviso appended to Section 9 of the 1978 Act is an enabling provision in terms whereof general valuation of lands and buildings in the area as aforesaid or in any part thereof made by a Valuer Surveyor Grade I or Valuer-Surveyor of Grade II, however, shall be under the superintendence, direction and control of the Board. Admittedly, no such exercise had been undertaken.

14. Valuation of lands and buildings is a complex exercise. It requires certain amount of expertise. Valuation is made upon obtaining data prepared from a scientific study. Valuation of a land or building would depend upon several factors. Several methods of valuation may be applied for determination thereof. It is for the expert ordinarily to arrive at a decision as to which mode of valuation having regard to a particular set of factors would entail a correct evaluation. However, in determining the valuation of a land or building, it is not expected of a statutory authority to take recourse to the course of action which may be arbitrary, unscientific or haphazard in nature. Although the proviso appended to Section 9 of the 1978 Act, provided for certain safeguards and as thereby a legal fiction has been created, the same, as noticed hereinbefore, is optional. The Board is not bound to take recourse thereto. Who would be the surveyors eligible for carrying out the survey requires prior approval of the State. The learned Single Judge in his judgment noticed that in stead and place of appointing experts in the field, only casual employees were recruited by the Municipality, who made door to door survey of the properties situated within the area of Bidhannagar Municipality and collected the purported datas of the concerned premises in a field book wherefrom an inspection book was prepared and only on the basis thereof valuation was determined by the Board. Such a course of action was not contemplated by law.

15. Section 9(1) of the 1978 Act provides for survey in specific areas. We may notice that the appellants in their writ petition and in particular Paragraphs 16 to 24 thereof categorically stated in regard to the mode and manner in which the valuation is required to be done and had in fact been conducted. Paragraph 23 thereof is as under:

> "23. The Central Valuation Board had no infrastructure of its own in survey the building to ascertain the reasonable valuation and they depended entirely upon what the Municipality had conveyed to them which in turn was based on surmise and conjecture is the Municipality did not and/ or could not carry out any house to house survey of all the 17070 holdings in Salt Lake."

16. In their counter-affidavits, the respondents inter alia stated:

> "18. The allegations made in paragraph 23 of the said application are categorically denied and disputed and it is stated that it is on the advice of the Central Valuation Board that the Municipal authority engaged casual staff who, undertook door to door survey of the holdings on being exhaustively trained by the competent office are of Central Valuation Board. The basic data thus collected have been transferred to the Inspection Book. Central Valuation Board prepared the valuation list on such data and the Municipality thereafter despatched notices signed by the Member Secretary of Central Valuation Board to owner/ occupier etc."

17. The Board, therefore, delegated its power to the Municipality which was impermissible in law. It had no control over the recruitments made by the Municipality. Probably it even did not have any control over their work. Who had been supervising the job of the said casual employees has not been disclosed.

18. The result of such an unscientific study may produce a disastrous result and in fact from the pattern of increase in demands by the Bidhanagar Municipality it appears that the increase in the valuation ranges from 3954%, i.e., 39.5 times to 137%, i.e., 1.4 times. Such exorbitant increase in the tax on the public is, in our opinion, itself indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. In a democracy, the people are supreme, and all authorities must function for the public welfare. Excessive increase in the tax burden on the public is surely not for the public welfare. Also, in the aforementioned context, in our opinion, the very method applied by the Municipality and the Central Valuation Board must be held to be arbitrary in nature and hence violative of the Constitution. In Maneka Gandhi v. Union of India [AIR 1978 SC 597], it was held that arbitrariness may be violative of Article 14 of the Constitution.

19. No person was appointed who had an expertise in the field. The casual employees appointed were not trained personnel. Their qualifications are not known. On what basis they could determine the valuation of the buildings and lands has also not been disclosed. They, being not government servants, ordinarily would not have the power to enter into the premises of persons so as to infringe the right of privacy which is otherwise granted to an authority under the 1978 Act.

20. In view of the mode and manner in which the general valuation had been prepared without giving an opportunity of hearing and/ or in any event without even asking the residents of the area in general to have their say, the provisions of the 1978 Act are required to be construed.

21. Section 11 of the 1978 makes such general valuation final. Section 10 has been deleted but the finality clause attached to Section 11 has been retained. By reason of the Amendment Act, the finality clause has been converted to a conclusive one, subject of course to the provisions of Sections 14 and 15 of the 1978 Act. The provision has been made for giving notice only to the lessees and sub-lessees who were occupiers of the buildings where valuation is intended to be made for the first time or the valuation is sought to be increased.

22. Section 12 of the 1978 Act which provided for certain safeguards insofar as it empowered the Board to make amendment of the valuation list has been omitted. Section 13 had been omitted in the year 1984. It is in the aforementioned backdrop, that the provision for review contained in Section 14 is required to be taken into consideration. Before, however, we resort thereto, it may be noticed that in terms of an unamended provision of Section 14, a Review Committee was constituted in terms of Section 15 of the 1978 Act.

23. Under the unamended provision of Section 15, the State Government was to constitute a number of review committees which were required to hear applications presented under Sub-section (1) of Section 14. Such review committees consisted of two members, out of whom the President was required to be appointed by the State Government on such terms and conditions and who was to possess such qualifications which were prescribed and the other member was to be one of the Councillors concerned. The said provision has no application in the instant case. Sub- section (3) of Section 15 of the Unamended Act had a plenary power to confirm, reduce, enhance or annul the valuation of land or building. The Review Committee had the jurisdiction to make further enquiry as it thought fit and proper. It was only the decision of the Review Committee which was made final.

24. Under the Amended provisions, however, the power of the State which was an independent authority, has been taken away. Power to constitute Review Committee has been conferred upon every Corporation or Municipality, as the case may be. Every Review Committee was to be presided by the Chairman or the Vice-Chairman of the Municipality and would consist of two Councillors of the Municipality and an officer of the Board having knowledge in the assessment of municipal valuation.

25. From the plenary and unlimited power of such Review Committee, its power has been curtained only to 25% in the year 2002. The rule of majority has been taken away. The decision under the amended provision is required to be unanimous. In case of difference of opinion, the matter is required to be referred back to the Board.

26. The provisions, in our opinion, are per se unreasonable and arbitrary. The Review Committee is not independent of the Municipality or the Board. Whereas under the 1978 Act, a person having the requisite knowledge was to be appointed by the State Government as Chairman of the Review Committee, the affairs of the Review Committee are controlled only by the Municipality concerned

and the Board under the Amendment Act. The Municipality essentially is interested in increase in valuation of lands and buildings as it would fetch more income to its coffers. It is unthinkable that although the power to make annual valuation is not to be preceded by an opportunity of being heard to the person who would be affected thereby, the power of the Review Committee has been curtailed to 25% of the valuation made by the Board. The members are not independent person and each one of them is, in one way or the other, interested in the matter. Even the officer nominated by the Board who is said to be an expert might have something to do with the annual valuation of the area in question. In any event, the effect of the amendment is that annual valuation is to be made by the Board, then the objections are to be heard by a Committee which again consists of members of the Municipality and the Board, and in the event, the decision is not unanimous, the matter again goes back to the Board.

27. This provision is akin to the well-known doctrine of Caesar to Caesar. It per se contravenes the values attached to the principles of natural justice. We must also take notice of the fact that even the jurisdiction of civil court is barred and, thus, the only remedy which would be available to the taxpayer would be to take recourse to judicial review. Its application in the matter of this nature where disputed questions of fact may arise for its determination, would be very limited. It is unfortunate that the Division Bench opined, although there was no provision therefor, that in case of any final decision of the Board, the taxpayer can go back to the Review Committee.

28. The proviso appended to Section 14 of the 1978 Act makes the situation worse inasmuch as before taking recourse to the review provision a pre-deposit is to be made in terms thereof. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

29. Ordinarily an order entailing civil consequences should be preceded by an opportunity of being heard. [See Rajesh Kumar and Ors. v. D.C.I.T. and Ors., (2007) 2 SCC 181] The impugned Act, however, has taken away such a provision which existed in the earlier one.

30. It may be that the legislature thought that while preparing the general valuation, it may not be possible to give an opportunity of hearing as such and, an opportunity of hearing may be given at a later stage. It is true that an order of assessment under the Act is conclusive subject to Sections 14 and 15 of the Act but keeping in view the limited power conferred upon the Revenue Committee thereunder in terms whereof a part of demand is beyond the pale thereof, it is possible that in a given case the entire exercise of review may end in futility. What, thus, was necessary was to provide for an independent and impartial body constituted for the general redressal of the grievance of the taxpayers.

31. The Committee should not have consisted of the authorities of the Municipality and the officers of the Board alone. Section 15 does not provide for any expertise on the part of the Councillors to determine the objections. As many committees as the Municipality likes may be constituted. Rationality in the decision is, thus, not guaranteed.

32. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664], this Court held:

"44. In short, the general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre- decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hear ing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need fo r utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty pub lic relations exercise."

33. This Court in Calcutta Gujarati Education Society and Another v. Calcutta Municipal Corpn. and Others [(2003) 10 SCC 533], held:

"30. The aforesaid ground also does not seem to be acceptable. It is true that burden of tax based on valuation in the assessment is to be borne by the tenant or occupier but as we have examined the provisions, even though the landlord remains inactive by not contesting the assessment proposed, the tenant or occupier has to be vigilant and has the right to object to the same pursuant to the public and written notices. The tenants or occupants who have to shoulder major portion of the tax burden, therefore, have to be vigilant and raise objections pursuant to public and written notices and contest the assessments on valid grounds in their own interest.

50. We have examined the scheme of the Act and we find that in apportioning the burden of tax on landlord and tenant a uniform scheme or tax structure has been evolved under the Act on the basis of actual and notional rental value of the premises. The liability of the landlord towards tax is limited to the valuation based on actual rent received and the assessment made of the tax based on letting value of the premises is the liability of the tenant/sub-tenant or occupier. Merely because the Tenancy Act is attracted to accommodations with rent less than Rs 3000 per month and not to other accommodations having higher rent, does not create any dissimilar situation in application of the Act to various categories of tenants paying rent more or less than Rs 3000. The portion of tax liable to be paid by the occupant or tenant is not directly recovered by the Corporation from them but is recoverable through the landlord and the landlord has been given right of reimbursement by demanding it

from the tenant, sub-tenant or the occupant. For recovering such portion the tax payable by the tenant, sub-tenant or occupant, which has been paid by the landlord, is deemed to be "rent" only for the limited purpose of its recovery. The modes of recovery are by a demand n otice under the Tenancy Act and if necessary, by filing an eviction suit. Resort to remedy before the regular court is also not prohibited. On this aspect of apportionment of tax and mode of recovery of tax, the Act does not make any discrimination between tenants of premises covered by the Tenancy Act and others not covered by the said Act.

51. As a result of the discussion aforesaid, we find no vice in any of the provisions of the Act although we have considered it necessary to interpret the provisions harmoniously for better application of the provisions of the Act and the Tenancy Act. The various legal provisions assailed before us have been interpreted by us and our conclusions are as under:

"(1) In view of specific provisions of the Act and as the provisions of the Act impose burden of tax to an appreciable extent on the tenants, sub-tenants and occupiers and the tax is liable to be recovered from them through the landlord or directly by attachment of rent or other coercive modes, the tenants, sub-tenants and occupants are entitled to an opportunity to participate in the process of valuation and assessment. They are entitled, therefore to written notices apart from public notice for assessmen t, revision of assessment or amendment of assessment of the 'consolidated rate' or tax. It is also made clear that pursuant to the public notice or written notice, the returns submitted by the tenant, sub-tenant or occupier, with regard to determination of annual value shall be considered by the Corporation. The same procedure would be followed in revision of the annual valuation.

(2) It is further made clear that non-issuance of public notice or notices and/or non-service of written notices to the 'persons primarily liable' would not necessarily invalidate the proceedings of assessment or reassessment or amendment of the valuation for consolidated rate unless it is established by the party aggrieved that a serious prejudice was caused to it for want of notice. (3) Under the provisions of the Act since the tenant, sub-tenant or occupier have to share the burden of an appreciable portion of 'consolidated rate' exclusive or inclusive of 'surcharge' in relation to properties used for non-residential and commercial purposes and as the Act provides for opportunity of participation to them pursuant to a public notice and written notice in assessment and reassessment of tax, they have a right of appeal provided under the Act. It is made clear that tenants, sub-tenants and occupiers held liable for payment of a portion of tax have a right of appeal on predeposit of a portion of tax levied and made recoverable from them.

(4) It is also made clear that to enable the tenant, sub-tenant or occupier as 'person liable' to pay 'consolidated rate', they would have a right to obtain necessary information on payment of requisite fee in accordance with Section 178 of the Act and

corporation authorities are legally bound to furnish such requisite information."

[See also Paras 32 to 34 and 40]

34. The 1978 Act or even the Amending Act have not provided any guidelines. Guidelines are provided in the Municipality Act. When a statute does not provide for procedural fairness, it may be ultra vires.

35. In Dr. Balbir Singh and Others v. M/s. M.C.D. and Others [(1985) 1 SCC 167], this Court held:

> "It is indeed strange that the assessing authorities should have declined to assess the rateable value of 494 properties in South Delhi on the basis of standard rent determinable on the principles laid down in sub-section (1)(A) (2)(b) or (1)(B)(2)(b) of Section 6, merely on the ground that in the opinion of the assessing authorities "the assessees failed to produce the documentary evidence as regards the aggregate amount of reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of the construction". If the assessees failed to produce the documentary evidence to establish the reasonable cost of construction of the premises or the market price of the land comprised in the premises, the asse ssing authorities could arrive at their own estimate of these two constituent items in the application of the principles set out in sub-section (1)(A) (2)(b) or (1)(B)(2)(b) of Section 6. But on this account, the assessing authorities could not justify resort to sub-section (4) of Section 9. It is only where for any reason it is not possible to determine the standard rent of any premises on the principles set forth in Section 6 that the standard rent may be fixed under sub-section (4) of Section 9 and merely because the owner does not produce satisfactory evidence showing what was the reasonable cost of construction of the premises or the market price of the land at the date of commencement of the construction, it cannot be said that it is not possible to determine the standard rent on the principles set out in sub-section (1)(A) (2)(b) or (1)(b)(2)(b) of Section 6. Take for example a case where the owner produces evidence which is found to be incorrect or which does not appear to be satisfactory; can the assessing authorities in such a case resort to sub-

section (4) of Section 9 stating that it is not possible to determine the standard rent on the principles set out in sub-section (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6. The assessing authorities would obviously have to estimate for themselves, on the basis of such material as may be gathered by them, the reasonable cost of construction and the market price of the land and arrive at their own determination of the standard rent. This is an exercise with which the assessing authorities are quite familiar and it is not something unusual for them or beyond their competence and capability. It may be noted that even while fixing standard rent under sub-section (4) of Section 9, the assessing authorities have to rely on such material as may be available with them and determine the standard rent on the basis of such material by a process estimation."

36. In R.K. Kaura v. Municipal Commr., MCD and Others [(2005) 11 SCC 524], this Court held:

> "6. It is true that the order of the respondent Authorities dated 14-11-1996 records that the appellant had appeared and requested for rectification of ex parte assessment dated 9-11- 1993 and had also produced documents. However, it appears that the basis for arriving at the market price of the land had not in fact been disclosed to the appellant nor was the appellant given any opportunity of meeting the same. Accordingly, we set aside the impugned order dated 14-11-1996 and direct the authorities concerned to redetermine the rateable value for the period from March 1989 to 31-3-1994."

37. When a substantive unreasonableness is to be found in a statute, it may have to be declared unconstitutional.

38. In C.B. Gautam v. Union of India and Others [(1993) 1 SCC 78], emphasising the need to comply with principle of natural justice, it was held:

> " Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269-UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary".

Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX- C. There is nothing in the language of Section 269- UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269-UD reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

31. The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

> (1) that the "party aggrieved" in the proceeding before (sic the appropriate authority) acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and (2) that the obligation to

> record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.

39. In Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi & Ors. [(2003) 7 SCC 151], this Court held:

> "51. In the result, we allow the appeals and hold as under:
>
> (1) Section 116(3) is declared invalid as it delegates unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof "

[See also Dewan Daulat Rai Kapoor and Others v. New Delhi Municipal Committee and Others [(1980) 1 SCC 685]

40. In a case of this nature, provision for review was in effect and substance a provision for appeal. But, when a provision for appeal has been laid down, the same should, for all intent and purport, must provide for an effective remedy.

41. This Court in Union of India & Anr. etc. vs. Tulsiram Patel etc. [AIR 1985 SC 1416], held:

> "The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

42. The said dicta was affirmed by a Three Judge Bench of this Court in Chief Security Officer & Ors. vs. Singasan Rabi Das [(1991) 1 SCC 729], stating that principle of natural justice cannot be dispensed with on mere ipso dixit. [See also Tarsem Singh vs. State of Punjab & Ors. (Civil Appeal No.1489 of 2004), decided on 25th January, 2006, Prithipal Singh v. State of Punjab & Ors., 2006 (11) SCALE 28 and Indian Airlines Ltd. v. Prabha D. Kanan [2006 (12) SCALE 58]

43. Principles of natural justice are based on two basic pillars:

> (i) Nobody shall be condemned unheard (audi alteram partem)
>
> (ii) Nobody shall be judge of his own cause (nemo debet esse judex in propria sua causa)

44. Duty to assign reasons is, however, a judge made law. It is considered to be a third pillar. [See Reliance Industries Ltd. v. Designated Authority and Others, 2006 AIR SCW 4911]

45. A Review Committee being a quasi judicial body was required to fulfill the requirements of the three conditions. There is furthermore no reason whatsoever as to why the power of Review Committee was curtailed only to the extent of 25%. It is furthermore beyond any logic as to why rule of simple majority in a multi-member committee could not be applied.

46. In the case of AM (Serbia) & Ors v. Secretary of State for the Home Department [2007] EWCA Civ 16, before the impugned amendment came into force, the Immigration and Asylum Adjudication System had taken the form of a right to appeal against a decision of the Secretary of State to an adjudicator, with a further right of appeal with leave to the Immigration Appeal Tribunal. The jurisdiction of the IAT was not limited to points of law. By the Nationality, Immigration and Asylum Act 2002, appeals from an adjudicator to the IAT were restricted to appeals on points of law (section 101(1)) and conventional judicial review of a refusal of leave to appeal to the IAT was replaced by statutory review of the leave decision (section 101(2)). The words "fairly, quickly and efficiently" formed the crux of the debate which were derived from under section 106(1A) of the 2002 Act. The court, while finding fault with the impugned amendment, observed:

> "I have come to the conclusion that Rule 62(7) is fundamentally flawed. The significance of Robinson is in its demonstration of the role of the courts and the Tribunal in ensuring that the United Kingdom does not fall foul of the Refugee Convention, even where an obvious point of Convention law has been missed by the practitioners. It surely applies on the same basis to the ECHR, where the argument is even stronger because, by section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with an ECHR right and courts and the Tribunal are "public authorities"

for this purpose: section 6(3)(a). There is then a further logical stage in the argument. If it is incumbent upon the AIT to consider and decide Robinson obvious points which have not been advanced by the appellant notwithstanding Rule 62(7), given the rationale of Robinson there is no rational basis for excluding and deciding points of equal force which the appellant draws to the attention of the Tribunal, even though they were not embraced in the grounds of appeal sanctioned by the IAT. For these reasons, I consider that, when he promulgated Rule 62(7), the Lord Chancellor fell into legal error and the Rule cannot survive the Wednesbury challenge."

47. We, therefore, for the aforementioned reasonshave no other option but to hold that the provisions for review conferred in terms of the statute for all intent and purport are illusory ones and do not satisfy the test of Article 14 of the Constitution of India. No statute which takes away sombody's right and/ or imposes duties, can be upheld where for all intent and purport, there does not exist any provision for effective hearing.

48. It is one of those statutes where a decision is rendered by a body which may have an institutional bias although same is not ordinarily contemplated in the case of an individual member being a part of a body.

49. In Dr. Bonham's case [8 Co Rep 113 at 118], Coke, CJ declared a statute ultra vires where a body empowered to impose a levy was itself to be benefited thereby. The said decision was rendered despite the doctrine of parliamentary sovereignty existing in the United Kingdom.

50. We may notice that even this Court in Mithu v. State of Punjab [(1983) 2 SCC 277] has applied the test of non-arbitrariness while striking down Section 303 of the Indian Penal Code. Although the Court may not go into the question of a hardship which may be occasioned to the taxpayers but where a fair procedure has not been laid down, in our opinion, the validity thereof cannot be upheld. [See Smith v. Kvaerner Cementation Foundations Ltd (Bar Council intervening), (2006) 3 All ER 593]

51. For the reasons aforementioned, the judgment of the Division Bench of the High Court is set aside and that of the learned Single Judge is restored. The impugned Act is declared unconstitutional being violative of Article 14 of the Constitution. These appeals are allowed. No costs.

Anita Kushwaha vs Pushap Sudan on 19 July, 2016

Author: T.S. Thakur

Bench: T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL/CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (C) NO. 1343 OF 2008

ANITA KUSHWAHA …APPELLANT

VERSUS

PUSHAP SUDAN …RESPONDENT

WITH

TRANSFER PETITION (CRL.) NO. 116 OF 2011

AJAY KUMAR PANDEY …APPELLANT

VERSUS

STATE OF J & K & ANR. …RESPONDENTS

TRANSFER PETITION (C) NO. 562 OF 2011

SUPRIYA …APPELLANT

VERSUS

PANKAJ DHAR …RESPONDENT

TRANSFER PETITION (C) NO. 1161 OF 2012

RAKHEE CHOWDHARY BALDOTRA …APPELLANT

VERSUS

16:33:17 IST
Reason:

YOGESH KUMAR BALDOTDRA …RESPONDENT

2

TRANSFER PETITION (C) NO. 1294 OF 2012

SONALI PIMPLE @ SONALI MORE & ORS. …APPELLANTS

VERSUS

C.K. MORE …RESPONDENT

TRANSFER PETITION (C) NO. 1497 OF 2012

KALPANA TIWARI …APPELLANT

VERSUS

RAJNI KANT TIWARI …RESPONDENT

TRANSFER PETITION (C) NO. 1573 OF 2012

GEETA BHATIA …APPELLANT

VERSUS

MADHAV BHATIA …RESPONDENT

TRANSFER PETITION (C) NO. 426 OF 2013

BHAVIKA BHARTI …APPELLANT

VERSUS

NAKUL MAHAJAN …RESPONDENT

TRANSFER PETITION (C) NO. 1773 OF 2013

NEHA …APPELLANT

VERSUS

SANDEEP VAISHNAVI …RESPONDENT

TRANSFER PETITION (C) NO. 1821 OF 2013

3

GUNJAN WAZIR …APPELLANT

VERSUS

VIVEK WAZIR …RESPONDENT

TRANSFER PETITION (CRL.) NO. 99 OF 2014

GUNJAN WAZIR …APPELLANT

VERSUS

VIVEK WAZIR & ORS. …RESPONDENTS

TRANSFER PETITION (C) NO. 1845 OF 2013

TAMANA SODI …APPELLANT

VERSUS

TILAK CHOWDHARY …RESPONDENT

TRANSFER PETITION (C) NO. 14 OF 2014

MANJU BALA …APPELLANT

VERSUS

VINOD KUMAR …RESPONDENT

JUDGMENT

T.S. THAKUR, CJI.

1. A three-judge bench of this Court has, by an order dated 21 st April, 2015, referred these Transfer Petitions to a Constitution Bench to examine whether this Court has the power to transfer a civil or criminal case pending in any Court in the State of Jammu and Kashmir to a Court outside that State and vice versa. Out of thirteen Transfer Petitions placed before us, pursuant to the reference order, eleven seek transfer of civil cases from or to the State of Jammu and Kashmir while the remaining two seek transfer of criminal cases from the State to Courts outside that State.

2. The transfer petitions are opposed by the respondents, inter alia, on the ground that the provisions of Section 25 of the Code of Civil Procedure and Section 406 of the Code of Criminal Procedure, which empower this Court to direct transfer of civil and criminal cases respectively from one State to the other, do not extend to the State of Jammu and Kashmir and cannot, therefore, be invoked to direct any such transfer. The Transfer Petitions are also opposed on the ground that the Jammu and Kashmir Code of Civil Procedure, 1977 and the Jammu and Kashmir Code of Criminal Procedure, 1989 do not contain any provision empowering the Supreme Court to direct transfer of any case from that State to a Court outside the State or vice versa. It is also contended on behalf of

the respondents that, in the absence of any provision empowering this Court to direct transfer of civil or criminal cases from or to the State of Jammu and Kashmir, no such power can be invoked or exercised by this Court. It is further urged that the provisions of Article 139-A of the Constitution which empowers this Court to transfer a case pending before one High Court to itself or to another High Court also has no application to the cases at hand as the Constitution 42nd Amendment Act, 1977 which inserted the said provision itself has no application to the State of Jammu and Kashmir. It is argued that in the absence of any enabling provision in the Code of Civil and Criminal Procedure or in the Constitution of India or the State Constitution for that matter, a litigant has no right to seek transfer of a civil or a criminal case pending in the State of Jammu and Kashmir to a Court outside the State or vice versa.

3. On behalf of the petitioners, it was, on the other hand, submitted that while Sections 25 of the Code of Civil Procedure and 406 of Code of Criminal Procedure as applicable to the rest of the country have no application to the State of Jammu and Kashmir, there was no specific or implied prohibition in the said two codes against the exercise of power of transfer by the Supreme Court under the Constitution or under any other provision of the law whatsoever. It was urged that inapplicability of the Central Civil and/or Criminal Procedure Code to the State of Jammu and Kashmir or the absence of an enabling provision in the State Code of Civil and/or Criminal Procedure does not necessarily imply that this Court cannot exercise the power of transfer, if the same is otherwise available under the provisions of the Constitution. So also, the inapplicability of Article 139-A to the State of Jammu and Kashmir by reason of non-extension of the Constitution 42nd Amendment Act to that State does not constitute a disability, leave alone, a prohibition against the exercise of the power of transfer if such power could otherwise be traced to any other source within constitutional framework.

4. The Code of Civil Procedure, 1908 and so also the Code of Criminal Procedure, 1973 (hereinafter referred to as "Central Codes") as applicable to the rest of the country specifically exclude the application thereof to the State of Jammu and Kashmir. This is evident from Section 1 of Code of Civil Procedure, 1908 which deals with short title, commencement and extent reads :

> "1. Short title, commencement and extent- (1) This Act may be cited as the Code of Civil Procedure, 1908. (2) It shall come into force on the first day of January, 1909. [2][(3) It extends to the whole of India except- (a) the State of Jammu and Kashmir; (b) the State of Nagaland and the tribal areas :
>
> Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification. Explanation-In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972 were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution. (4) In relation to the Amindivi Islands, and the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh and the Union territory of Lakshadweep, the

> application of this Code shall be without prejudice to the application of any rule or regulation for the time being in force in such Islands, Agencies or such Union territory, as the case may be, relating to the application of this Code." (emphasis supplied)

5. To the same effect is Section 1 of the Code of Criminal Procedure, 1973 which reads as under:-

> "Short title extent and commencement.
>
> 1. Short title extent and commencement.
>
> (1) This Act may be called the Code of Criminal Procedure, 1973.
>
> (2) It extends to the whole of India except the State of Jammu and Kashmir: Provided that the provisions of this Code, other than those relating to Chapters VIII, X and XI thereof, shall not apply- (a) to the State of Nagaland, (b) to the tribal areas, but the concerned State Government may, by notification, apply such provisions or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications, as may be specified in the notification. Explanation.-In this section, "tribal areas" means the territories which immediately before the 21st day of January, 1972, were included in the tribal areas of Assam, as referred to in paragraph 20 of the Sixth Schedule to the Constitution, other than those within the local limits of the municipality of Shillong." (emphasis supplied)

6. Learned counsel for the respondents, in the light of the above, are perfectly justified in contending that the provisions of Section 25 of the Code of Civil Procedure, 1908 and that of Section 406 of the Criminal Procedure, 1973 as applicable to the rest of India, cannot be invoked by any litigant seeking transfer of any case to or from the State of Jammu and Kashmir. It is equally true that Jammu and Kashmir Code of Civil Procedure, SVT.1977 and Jammu and Kashmir Code of Criminal Procedure SVT.1989 also do not have any provision empowering this Court to direct transfer of any case civil or criminal from any Court in the State to a Court outside that State or vice versa. Resort to the Central or State Codes of Civil and Criminal Procedures for directing transfer of cases to or from the State is, therefore, ruled out. To that extent, therefore, the contentions urged on behalf of the respondents are well-founded and legally unexceptionable.

7. The question, however, is whether independent of the provisions contained in the Codes of Civil and Criminal Procedure is there a source of power which this Court can invoke for directing transfer of a case from the State of Jammu and Kashmir or vice versa. On behalf of the petitioners, it was contended that even when the Central Codes of Civil and Criminal Procedure have no applicability to the State of Jammu and Kashmir and even when the State Codes of Civil and Criminal procedure do not contain any provision empowering this Court to direct transfer it does not mean that this Court is helpless in making an order of transfer in appropriate case where such transfer is otherwise called for in the facts and circumstances of a given case. It was argued with considerable forensic

tenacity that access to justice being a fundamental right guaranteed under Article 21 of the Constitution of India, any litigant whose fundamental right to access to justice is denied or jeopardised can approach this Court for redress under Article 32 of the Constitution of India for protection and enforcement of his/her right. This Court can in any such case issue appropriate directions to protect such right which protection may in appropriate cases include a direction for transfer of the case from that State to the Court outside the State or vice versa. It was strenuously argued that Article 142 of the Constitution of India read with Article 32 amply empower this Court to intervene and issue suitable directions wherever such directions were considered necessary to do complete justice to the parties including justice in the matter of ensuring that litigants engaged in legal proceedings in any Court within or outside the State of Jammu and Kashmir get a fair and reasonable opportunity to access justice by transfer of their cases to or from that State, if necessary.

8. Two distinct questions fall for consideration in the context of what is argued at the Bar. The first involves examination of whether access to justice is indeed a fundamental right and if so, what is the sweep and content of that right, while the second is whether Articles 32 and 142 of the Constitution of India empower this Court to issue suitable directions for transfer of cases to and from the State of Jammu & Kashmir in appropriate situations. Both these aspects, in our view, are well-traversed by judicial pronouncements of this Court as well as those of Courts in England in which the Courts have had an opportunity to examine the jurisprudential aspect of the Right of Access to Justice and its correlation with the right to life. Availability of Article 142 of the Constitution of India for directing transfer of cases in situations where such power is not stricto sensu available under an ordinary statute or the Constitution has also been judicially explored by this Court on several earlier occasions. We may deal with the said two aspects ad seriatim.

9. The concept of 'access to justice' as an invaluable human right, also recognized in most constitutional democracies as a fundamental right, has its origin in common law as much as in the Magna Carta. The Magna Carta lays the foundation for the basic right of access to courts in the following words:

> "No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.
>
> To no man will we sell, to no one will we deny or delay right to justice.
>
> Moreover, all those aforesaid customs and liberties, the observance of which we have granted in our kingdom as far as pertains to us towards our men, shall be observed by all our kingdom, as well clergy as laymen, as far as pertains to them towards their men.
>
> Wherefore, it is our will, and we firmly enjoin, that the English Church be free, and the men in our kingdom have an hold all the aforesaid liberties, rights and concessions, well as peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all aspects and in all places for ever, as is

> aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intention – Given under our hand – the above named and many others being witnesses – in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign."

10. The Universal Declaration of Rights drafted in the year 1948 gave recognition to two rights pertaining to 'access to justice' in the following words:

"Art.8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Art.10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him."

11. To the same effect is Clause 3 of Article 2 of International Covenant on Civil and Political Rights, 1966 which provides that each State party to the Covenant shall undertake that every person whose rights or freedom as recognised is violated, shall have an effective remedy and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, and the State should also ensure to develop the possibilities of judicial remedies.

12. De Smith's book on Judicial Review of Administrative Action (5th Ed., 1995) stated the principle thus:

> "It is a common law presumption of legislative intent that access of Queen's Court in respect of justiciable issues is not to be denied save by clear words in a statute"

13. Prof. M. Cappelletti Rabel a noted jurist in his book 'Access to Justice' (Volume I) explained the importance of access to justice in the following words:

> "The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement – the most 'basic human right' – of a system which purports to guarantee legal right.

14. Courts in England have over the centuries post Magna Carta developed fundamental principles of common law which are enshrined as the basic rights of all humans. These principles were over a period of time recognised in the form of Bill of Rights and Constitutions of various countries which acknowledged the Roman maxim 'Ubi Jus Ibi Remedium' i.e. every right when it is breached must

be provided with a right to a remedy. Judicial pronouncements have delved and elaborated on the concept of access to justice to include among other aspects the State's obligation to make available to all its citizens the means for a just and peaceful settlement of disputes between them as to their respective legal rights. In R v. Secretary of State for Home Dept., ex p Leech (1993 [4] All ER 539) Steyn LJ was dealing with a prisoner who complained that correspondence with his solicitor concerning litigation in which he was involved or which he intended to launch, was being censored by the prison authorities under the Prisons Rules, 1964. He challenged the authority of the Secretary of State to create an impediment in the free flow of communication between him and his solicitor about contemplated legal proceedings. The court held that access to justice was a basic right which could not be denied or diluted by any kind of interference or hindrance. The court said:

> "It is a principle of our law that every citizen has a right of unimpeded access to a court. In Raymond v. Honey 1983 AC 1 (1982 [1] All ER 756) Lord Wilberforce described it as a 'basic right'. Even in our unwritten Constitution, it ranks as a constitutional right. In Raymond v. Honey, Lord Wilberforce said that there was nothing in the Prisons Act, 1952 that confers power to 'interfere' with this right or to 'hinder' its exercise. Lord Wilberforce said that rules which did not comply with this principle would be ultra vires. Lord Elwyn Jonesand Lord Russell of Killowan agreed... It is true that Lord Wilberforce held that the rules, properly construed, were not ultra vires. But that does not affect the importance of the observations. Lord Bridge held that rules in question in that case were ultra vires... He went further than Lord Wilberforce and said that a citizen's right to unimpeded access can only be taken away by express enactment... It seems (to) us that Lord Wilberforce's observation ranks as the ratio decidendi of the case, and we accept that such rights can as a matter of legal principle be taken away by necessary implication."

15. The legal position is no different in India. Access to justice has been recognised as a valuable right by courts in this country long before the commencement of the Constitution. Reference in this regard may be made to Re: Llewelyn Evans AIR 1926 Bom 551 in which Evans was arrested in Aden and brought to Bombay on the charge of criminal breach of trust. Evan's legal adviser was denied access to meet the prisoner. The Magistrate who ordered the remand held that he had no jurisdiction to grant access, notwithstanding Section 40 the Prisons Act, 1894. The question that therefore fell for consideration was whether the right extended to the stage where the prisoner was in police custody. The High Court of Bombay, while referring to Section 340 of the Code of Criminal Procedure, 1898, held that the right under that provision implied that the prisoner should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purposes of preparing his defence. Madgavkar, J., comprising the Bench added that:

> "... if the ends of justice is justice and the spirit of justice is fairness, then each side should have equal opportunity to prepare its own case and to lay its evidence fully, freely and fairly before the Court. This necessarily involves preparation. Such preparation is far more effective from the point of view of justice, if it is made with the aid of skilled legal advice – advice so valuable that in the gravest of criminal trials, when life or death hangs in the balance, the very state which undertakes the

prosecution of the prisoner, also provides him, if poor, with such legal assistance."

16. Reference may also be made to P.K. Tare v. Emperor (AIR 1943 Nagpur

26). That was a case where the petitioner had participated in the Quit India Movement of 1942. The detention was challenged on the ground of being vitiated on account of refusal of permission by the authorities to allow them to meet their counsel to seek legal advice or approach the court in person. The State opposed that plea based on Defence of India Act 1939, which, according to it, took away right of the detenu to move a habeas corpus petition under Section 491 of the Cr.P.C., 1898. Rejecting the contention and relying upon the observation of Lord Hailsham in Eshugbayi v. Officer Administering the Govt. of Nigeria, the court held that such fundamental rights, safeguarded under the Constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in language of utmost vigour, cannot be swept away by implication or removed by some sweeping generality. Justice Vivian Bose, giving the leading opinion of the court explained that the right to move the High Court remained intact notwithstanding the Defence of India Act, 1939. He further held that although courts allow a great deal of latitude to the executive and presumptions in favour of the liberty of the subject are weakened, those rights do not disappear altogether. The Court ruled that the attempt to keep the applicants away from the Court under the guise of these rules was an abuse of the power and warranted intervention. Justice Bose emphasized the importance of the right of any person to apply to the court and demand that he be dealt with according to law. He said:

> "... ... ...the right is prized in India no less highly than in England, or indeed any other part of the Empire, perhaps even more highly here than elsewhere; and it is zealously guarded by the courts."

17. Decisions of this Court too have unequivocally recognised the right of a citizen to move the court as a valuable constitutional right recognised by Article 32 of the Constitution as fundamental right by itself. [See In re under Article 143, Constitution of India [Keshav Singh case] (AIR 1965 SC 745) and L. Chandra Kumar v. Union of India (1997) 3 SCC 261].

18. In Hussainara Khatoon v. State of Bihar (1980) 1 SCC 81 this Court declared speedy trial as an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. It also pointed out that Article 39A made free legal service an inalienable element of reasonable, fair and just procedure and that the right to such services was implicit in the guarantee of Article 21.

19. In Imtiyaz Ahmad v. State of Uttar Pradesh & Ors. (2012) 2 SCC 688, a two-Judge Bench of this Court to which one of us (Thakur J.) was also a party, this Court examined the correctness of an interlocutory order passed by a learned Single Judge of the High Court of Allahabad, whereby, the Single Judge had stayed the order passed by the Additional Chief Judicial Magistrate, directing registration of a case against the respondents. Since the matter had remained pending before the High Court, and was not heard for a long time of over six years or so and since several other cases in different High Courts in India were similarly pending in which the proceedings before the Trial Court had been stayed, no matter the cases involved commission of heinous offences like murder, rape, kidnapping and dacoity etc., this Court enlarged the scope of the proceedings and directed the

Registrar Generals of the High Courts to furnish a report containing statistics of cases pending in the respective Courts in which the proceedings had been stayed at the stage of registration of FIR, and framing of charges in exercise of powers under Article 226 of the Constitution or Section 482 or 397 of the Code of Criminal Procedure. On the basis of the statistics so furnished by the High Courts, this Court held that administration of justice was facing problems of serious dimensions. This Court also noticed, on the basis of the material made available by the High Courts, that unduly long delay was being caused in the disposal of the cases resulting in a blatant violation of the rule of law and the right of common man to seek access to justice. Emphasizing the importance of access to justice and recognizing the right as a fundamental right relatable to Article 21 of the Constitution of India, this Court observed:

> "……
>
> 25. Unduly long delay has the effect of bringing about blatant violation of the rule of law and adverse impact on the common man's access to justice. A person's access to justice is a guaranteed fundamental right under the Constitution and particularly Article 21. Denial of the right undermines public confidence in the justice delivery system and incentivises people to look for shot cuts and other fora where they feel that injustice will be done quicker. In the long run, this also weakens the justice delivery system and poses a threat to the rule of law.
>
> 26. It may not be out of place to highlight that access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well. Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and inequitable [see United Nations Development Programme, Access to Justice – Practice Note (2004)]
>
> 27. The present case discloses the need to reiterate that "access to justice" is vital for the rule of law, which by implication includes the right of access to an independent judiciary. It is submitted that the stay of investigation or trial for significant periods of time runs counter to the principle of rule of law, wherein the rights and aspirations of citizens are intertwined with expeditious conclusion of matters. It is further submitted that delay in conclusion of criminal matters signifies a restriction on the right of access to justice itself, thus amounting to a violation of citizen's rights under the Constitution, in particular under Article 21."
>
> 20. The Court held that rule of law, independence of judiciary and access to justice are conceptually interwoven. The Court also referred to the International Covenant on Civil and Political Rights and the statute of the International Criminal Court. It also referred to Article 47 of the Charter of Fundamental Rights of European Union, 2007 and European Convention on Human Rights and Fundamental Freedom, 1950. Reliance was placed upon the European Court of Human Rights decision in Delcourt v. Belgium, 1970 ECHR 1 to hold that access to justice was a valuable human and

fundamental right relatable to Article 21 of the Constitution of India. Having said that, this Court issued directions for better maintenance of the Rule of Law and better administration of Justice by the High Courts. It also directed the Law Commission of India to undertake a study and submit its recommendations in relation to measures that need to be taken by creation of additional courts and other allied matters including rational and scientific methods for elimination of arrears to help reduce delay and speedy clearance of the backlog of cases.

21. In Brij Mohan Lal v. Union of India and Ors. (2012) 6 SCC 502 this Court declared that Article 21 guarantees to the citizens the rights to expeditious and fair trial. The Court observed:

"137. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens."

22. In Tamilnad Mercantile Bank Shareholders Welfare Association v.

S.C. Sekar and Others (2009) 2 SCC 784, this Court declared that an aggrieved person cannot be left without the remedy and that access to justice is a human right and in certain situations even a fundamental right.

23. In order that the juristic content and basis of access to justice as a fundamental right is not provided only by judicial pronouncements, the Commission for Review of the Constitution has recommended that access to justice be incorporated as an express fundamental rights as in the South African Constitution, 1996. Article 34 of the South African Constitution reads:

"Art.34: Access to Courts and Tribunals and speedy justice.

(1) Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a Court or tribunal or forum or where appropriate, another independent and impartial Court, tribunal or forum.

(2) The right to access to Courts shall be deemed to include right to reasonably speedy and effective justice in all matters before the Courts, tribunals or other forum and the State shall take all reasonable steps to achieve that object."

24. Insertion of Article 30 A in the Constitution in the following terms was accordingly proposed by the Commission:

"30 A: Access to Courts and Tribunals and speedy justice.

(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.

(2) The right to access to Courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object."

25. The recommendation has not yet led to the incorporation of the proposed Article 30 A, but, that does not in the least matter, for what the proposed article may have added to the constitutional guarantees already stands acknowledged as a part of the right to life under Article 21 of the Constitution by judicial pronouncements of this Court. The proposed incorporation of Article 30 A, would have simply formalised what already stands recognised by Judges and Jurists alike. V. Krishna Iyer J. has in his inimitable style explained the importance of access to justice in the following words :

> "Access to justice is basic to human rights and directive principles of State Policy become ropes of sand, teasing illusion and promise of unreality, unless there is effective means for the common people to reach the Court, seek remedy and enjoy the fruits of law and justice."

26. To sum up : Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of 'Ubi Jus Ibi Remedium', the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.

27. This Court has by a long line of decisions given an expansive meaning and interpretation to the word 'life' appearing in Article 21 of the Constitution. In Maneka Gandhi v. Union of India (1978) 1 SCC 248, this Court declared that the right to life does not mean mere animal existence alone but includes every aspect that makes life meaningful and liveable. (to be checked). In Sunil Batra v. Delhi Administration (1978) 4 SCC 494 the right against solitary confinement and prison torture and custodial death was declared to be a part of right to life. In Charles Sobhraj v. Suptd. Central Jail (1978) 4 SCC 104 the right against bar fetters was declared to be a right protected under Article

21 of the Constitution. In Khatri II v. State of Bihar (1981) 1 SCC 627, the right to free legal aid was held to be a right covered under Article 21 of the Constitution. In Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 526 the right against handcuffing was declared to be a right under Article 21. So also in Rudal Shah v. State of Bihar (1983) 4 SCC 141 the right to compensation for illegal and unlawful detention was considered to be a right to life under Article 21 and also under Article 14. In Sheela Barse v. Union of India (1988) 4 SCC 226, this Court declared speedy trial to be an essential right under Article 21. In Parmanand Katara v. Union of India (1989) 4 SCC 248, right to emergency, medical aid was declared to be protected under Article 21 of the Constitution. In Chameli Singh v. State of U.P. (1996) 2 SCC 549 and Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520, right to shelter, clothing, decent environment and a decent accommodation was also held to be a part of life. In M.C. Mehta v. Union of India (1997) 1 SCC 388, right to clean environment was held to be a right to life under Article 21. In Lata Singh v. State of U.P. (2006) 5 SCC 475, right to marriage was held to be a part of right to life under Article 21 of the Constitution. In Suchita Srivastava v. Chandigarh Administration (2009) 9 SCC 1, right to make reproductive choices was declared as right to life. While in Sukhwant Singh v. State of Punjab (2009) 7 SCC 559 right to reputation was declared to be a facet of right to life guaranteed under Article 21. In the recent Constitution Bench Judgment decision of this Court in Subramanian Swamy v. Union of India [W.P (Crl.) No.184 of 2014], this Court held reputation to be an inherent and inseparable component of Article 21.

28. Given the fact that pronouncements mentioned above have interpreted and understood the word "life" appearing in Article 21 of the Constitution on a broad spectrum of rights considered incidental and/or integral to the right to life, there is no real reason why access to justice should be considered to be falling outside the class and category of the said rights, which already stands recognised as being a part and parcel of the Article 21 of the Constitution of India.

If "life" implies not only life in the physical sense but a bundle of rights that makes life worth living, there is no juristic or other basis for holding that denial of "access to justice" will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and justice administered. The Citizen's inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

29. What then is the sweep and content of that right is the next question that must be answered for a fuller understanding of the principle and its significance in real life situations.

30. Four main facets that, in our opinion, constitute the essence of access to justice are :

i) The State must provide an effective adjudicatory mechanism;

ii) The mechanism so provided must be reasonably accessible in terms of distance;

iii) The process of adjudication must be speedy; and

iv) The litigant's access to the adjudicatory process must be affordable.

(i) The need for adjudicatory mechanism: One of the most fundamental requirements for providing to the citizens access to justice is to set-up an adjudicatory mechanism whether described as a Court, Tribunal, Commission or Authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, Tribunal or Authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well recognized principles of natural justice.

(ii) The mechanism must be conveniently accessible in terms of distance:

The forum/mechanism so provided must, having regard to the hierarchy of courts/tribunals, be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief. (See D.K. Basu v. State of West Bengal (2015) 8 SCC 774.

(iii) The process of adjudication must be speedy. "Access to justice" as a constitutional value will be a mere illusion if justice is not speedy.

Justice delayed, it is famously said, is justice denied. If the process of administration of justice is so time consuming, laborious, indolent and frustrating for those who seek justice that it dissuades or deters them from even considering resort to that process as an option, it would tantamount to denial of not only access to justice but justice itself. In Sheela Barse's case (supra) this Court declared speedy trial as a facet of right to life, for if the trial of a citizen goes on endlessly his right to life itself is violated. There is jurisprudentially no qualitative difference between denial of speedy trial in a criminal case, on the one hand, and civil suit, appeal or other proceedings, on the other, for ought we know that civil disputes can at times have an equally, if not, more severe impact on a citizen's life or the quality of it. Access to Justice would, therefore, be a constitutional value of any significance

and utility only if the delivery of justice to the citizen is speedy, for otherwise, the right to access to justice is no more than a hollow slogan of no use or inspiration for the citizen. It is heartening to note that over the past six decades or so the number of courts established in the country has increased manifold in comparison to the number that existed on the day the country earned its freedom. There is today almost invariably a court of Civil Judge junior or senior division in every taluka and a District and Sessions Judge in every district. In terms of accessibility from the point of view of distance which a citizen ought to travel, we have come a long way since the time the British left the country. However, the increase in literacy, awareness, prosperity and proliferation of laws has made the process of adjudication slow and time consuming primarily on account of the over worked and under staffed judicial system, which is crying for creation of additional courts with requisite human resources and infrastructure to effectively deal with an ever increasing number of cases being filed in the courts and mounting backlog of over thirty million cases in the subordinate courts. While the States have done their bit in terms of providing the basic adjudicatory mechanisms for disposal of resolution of civil or criminal conflicts, access to justice remains a big question mark on account of delays in the completion of the process of adjudication on account of poor judge population and judge case ratio in comparison to other countries.

(iv) The process of adjudication must be affordable to the disputants:

> Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society. Legal aid to the needy has been recognized as one of the facets of access to justice in Madhav Hayawadanrao Hoskot vs. State Of Maharashtra (1978) 3 SCC 544 where this court observed:
>
> "If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make availale legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court."

31. Affordability of access to justice has been, to an extent, taken care of by the State sponsored legal aid programmes under the Legal Service Authorities Act, 1987. Legal aid programmes have been providing the much needed support to the poorer sections of the society in the accessing justice in Courts.

32. That brings us to the second facet of the question referred to us namely whether Article 32 of the Constitution of India read with Article 142 empowers the Supreme Court to direct transfer in a situation where neither the Central Code of Civil Procedure or the Central Code of Criminal Procedure empowers such transfer to/from the State of Jammu and Kashmir. The need for transfer of cases from one court to the other often arises in several situations which are suitably addressed by the courts competent to direct transfers in exercise of powers available to them under the Code of Civil Procedure (CPC) or the Code of Criminal Procedure (Cr.P.C.). Convenience of parties and witnesses often figures as the main reason for the courts to direct such transfers. What is significant is that while in the rest of the country the courts deal with applications for transfer of civil/criminal cases under the provisions of the CPC and the Cr.P.C. the fact that there is no such enabling provision for transfer from or to the State of Jammu and Kashmir does not detract from the power of a superior court to direct such transfer, if it is of the opinion that such a direction is essential to subserve the interest of justice. In other words, even if the provision empowering courts to direct transfer from one court to other were to stand deleted from the statute, the superior courts would still be competent to direct such transfer in appropriate cases so long as such courts are satisfied that denial of such a transfer would result in violation of the right to access to justice to a litigant in a given fact situation.

33. Now if access to justice is a facet of the right to life guaranteed under Article 21 of the Constitution, a violation actual or threatened of that right would justify the invocation of this Court's powers under Article 32 of the Constitution. Exercise of the power vested in the court under that Article could take the form of a direction for transfer of a case from one court to the other to meet situations where the statutory provisions do not provide for such transfers. Any such exercise would be legitimate, as it would prevent the violation of the fundamental right of the citizens guaranteed under Article 21 of the Constitution.

34. That apart from Article 32 even Article 142 of the Constitution can be invoked to direct transfer of a case from one court to the other, is also settled by a Constitution Bench decision of this Court in Union Carbide Corporation v. Union of India (1991) 4 SCC 584. One of the questions that fell for consideration in that case was whether this Court could in exercise of its powers under Articles 136 and 142 withdraw a case pending in the lower court and dispose of the same finally even when Article 139-A does not empower the court to do so. Answering the question in the affirmative, this Court held that the power to transfer cases is not exhausted under Article 139-A of the Constitution. This Court observed that Article 139-A enables the litigant to seek transfer of proceedings, if the conditions in the Article are satisfied. The said Article was not intended to nor does it operate to affect the wide powers available to this Court under Articles 136 and 142 of the Constitution. The following two passages from the judgments are apposite in this regard:

> "61. To the extent power of withdrawal and transfer of cases to the apex Court is, in the opinion of the Court, necessary for the purpose of effectuating the high purpose of Articles 136 and 142(1), the power under Article 139-A must be held not to exhaust the power of withdrawal and transfer. Article 139-A, it is relevant to mention here, was introduced as part of the scheme of the Constitution Forty-second Amendment. That amendment proposed to invest the Supreme Court with exclusive jurisdiction to determine the constitutional validity of central laws by inserting Articles 131-A, 139-A and 144-A. But Articles 131-A and 144-A were omitted by the Forty-third Amendment Act, 1977, leaving Article 139-A intact. That article enables the litigants to approach the apex Court for transfer of proceedings if the conditions envisaged in that article are satisfied. Article 139-A was not intended, nor does it operate, to whittle down the existing wide powers under Articles 136 and 142 of the Constitution."

35. Dealing with the question whether a provision contained in an ordinary statute would affect the exercise of powers under Article 142 of the Constitution, this Court held, that the constitutional power under Article 142 was at a different level altogether and that an ordinary statute could not control the exercise of that power. Speaking for the majority, Venkatachaliah J., as His Lordship then was, observed:

> "The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment or power – limited in some appropriate way – is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy.....
>
> But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

36. In the cases at hand, there is no prohibition against use of power under Article 142 to direct transfer of cases from a Court in the State of Jammu and Kashmir to a Court outside the State or

vice versa. All that can be said is that there is no enabling provision because of the reasons which we have indicated earlier. The absence of an enabling provision, however, cannot be construed as a prohibition against transfer of cases to or from the State of Jammu and Kashmir. At any rate, a prohibition simplicitor is not enough. What is equally important is to see whether there is any fundamental principle of public policy underlying any such prohibition. No such prohibition nor any public policy can be seen in the cases at hand much less a public policy based on any fundamental principle. The extraordinary power available to this Court under Article 142 of the Constitution can, therefore, be usefully invoked in a situation where the Court is satisfied that denial of an order of transfer from or to the Court in the State of Jammu and Kashmir will deny the citizen his/her right of access to justice. The provisions of Articles 32, 136 and 142 are, therefore, wide enough to empower this Court to direct such transfer in appropriate situations, no matter Central Code of Civil and Criminal Procedures do not extend to the State nor do the State Codes of Civil and Criminal Procedure contain any provision that empowers this court to transfer cases. We accordingly answer the question referred to us in the affirmative.

37. The transfer petitions shall now be listed before the regular bench for hearing and disposal on merits keeping in view what has been observed above.

.....CJI.

(T.S. THAKUR) .....J. (FAKKIR MOHAMED IBRAHIM KALIFULLA) .....J. (A.K. SIKRI) .....J. (S.A. BOBDE) .....J. (R. BANUMATHI) New Delhi July 19, 2016 ITEM No. 1A Court No. 1 SECTION XVIA (For Judgment) S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS TRANSFER PETITION (C) No. 1343 of 2008 ANITA KUSHWAHA Petitioner (s) VERSUS PUSHAP SUDAN Respondent(s) with T.P.(Crl.) No. 116 of 2011, T.P.(C) No. 562 of 2011, T.P.(C) No. 1161 of 2012, T.P.(C.) No. 1294 of 2012, T.P.(C) No. 1497 of 2012, T.P. (C) No. 1573 of 2012, T.P.(C.) No. 426 of 2013, T.P.(C.) No. 1773 of 2013, T.P.(C.) No. 1821 of 2013, T.P.(Crl.) No. 99 of 2014, T.P.(C) No. 1845 of 2013, T.P.(C.) No. 14 of 2014 Date : 19.07.2016 These matters were called on for pronouncement of judgment today.

For Appellant(s) Ms. Mona K.Rajvanshi, Adv.

Mr. Abhishek Atrey, Adv.

Mr. R.C.Kaushik, Adv.

Mr. Himanshu Shekhar, Adv.

Mr. Yash Pal Dhingra, Adv.

Mr. Sunil Kumar Verma, Adv.

Ms. Madhu Moolchandani, Adv.

Mr. Rajender Mathur, Adv.

Mr. Shailendra Bhardwaj, Adv.

Ms. Jaspreet Gogia, Adv.

Mr. Debasis Misra, Adv.

Ms. Kaveeta Wadia, Adv.

For Respondent(s) Mr. Rajesh Srivastava, Adv.

Ms. Pragya Baghel, Adv.

Mr. Ramesh Babu M.R., Adv.

Mr. D.K.Sinha, Adv.

Mr. Rabin Majumdar, Adv.

Mr. S.N.Terdol, Adv.

Mr. Bimal Roy Jad, Adv.

Mr. C.D.Singh, Adv.

Mr. Venkita Subramonium T.R., Adv.

Ms. Laxmi Arvind, Adv.

Mr. Ashok Mathur, Adv.

Mr.Sunil Fernadese, Adv.

Hon'ble the Chief Justice pronounced the

judgment of the Bench comprising Hon'ble the Chief Justice, Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla, Hon'ble Mr. Justice A.K.Sikri, Hon'ble Mr. Justice S.A.Bobde and Hon'ble Mrs. Justice R.Banumathi.

In terms of the signed judgment, these transfer petitions shall now be listed before the regular Bench for hearing and disposal on merits.

(Shashi Sareen)
AR-cum-PS

(Veena Khera)
Court Master

(Signed reportable judgment is placed on the file)

Automotive Tyre Manufactureres Assn vs The Designated Authority & Ors on 7 January, 2011

Author: D.K. Jain

Bench: H.L. Dattu, D.K. Jain

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 949 OF 2006

AUTOMOTIVE TYRE MANUFACTURERS ASSOCIATION -- APPELLANT

VERSUS

THE DESIGNATED AUTHORITY & ORS. -- RESPONDENTS

WITH

CIVIL APPEAL NO.8012 of 2010
&
CIVIL APPEAL NO.2007 OF 2006
&
CIVIL APPEAL NO.2115 OF 2006

JUDGMENT

D.K. JAIN, J.:

1. This batch of civil appeals under Section 130E of the Customs Act, 1962 (for short "the Act") arises out of a common judgment and order, dated 9th September 2005, passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal) whereby the appeals filed by the appellants herein, have been dismissed and the levy of anti-dumping duty, imposed under Section 9A of the Customs Tariff Act, 1975 (for short "the Tariff Act") vide Notification 36/2005-Cus dated 27th April 2005 has been affirmed.

2. As common questions of law are involved in all the appeals and even the background facts are identical, these are being disposed of by this common judgment. However, to appreciate the controversy and the rival stands thereon, we shall refer to the facts in Civil Appeal No. 949 of 2006 as illustrative:

The appellant in this appeal viz. Automotive Tyre Manufacturers Association (for short "ATMA"), is an association representing domestic tyre manufacturing units, who import Nylon Tyre Cord Fabric (for short "NTCF") from various countries, including China, as one of their basic raw materials for manufacture of tyres.

Sometime in 2003, the Association of Synthetic Fibre Industry (for short "ASFI"), respondent No. 3 herein, filed an application under the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles & for Determination of Injury) Rules, 1995 (for short "the 1995 Rules") before the Designated Authority (hereinafter referred to as "the DA") inter-alia, praying for imposition of anti-dumping duty under Section 9A of the Act, on imports of NTCF from China. In their application, ASFI had specifically contended that China being a non-market economy country, normal value of the export price from that country had to be determined as per the principle contemplated in para 7 of Annexure I to the 1995 Rules.

3. Taking cognizance of the application, on 29th October 2003, the DA initiated investigation by issuing notification in terms of Rules 5 and 6 of the 1995 Rules, indicating the period of investigation from 1st April 2002 to 30th June 2003. After conducting investigations, the DA recorded preliminary findings and issued public notice in that behalf on 30th June 2004, vide Notification No. 14/20/2003-DGAD, recommending imposition of provisional anti-dumping duty at the rate of US $ 0.69 per Kg on NTCF originating in and exported from China. The recommendations made in the preliminary findings were accepted by the Central Government, and provisional anti-dumping duty was, accordingly, imposed vide Notification No. 72/2004-Cus, published on 26th July 2004. It would be of some significance to note here that the 2nd proviso to Rule 13 of the 1995 Rules postulates that the levy of provisional duty, in the first instance, can be for a period of six months, which may be extended by a further period of three months on the request of exporters representing a significant percentage of the trade involved.

4. Being aggrieved, one of the constituent members of ATMA viz.

Apollo Tyres Ltd. filed Writ Petition No. SCA/8747/2004 before the Gujarat High Court, challenging the preliminary findings mainly on the ground that the investigation proceedings were in violation of the principles of natural justice and the procedure prescribed by the 1995 Rules. The said writ petition was dismissed by the High Court on 20th July 2004, observing thus:

"we do not think it fit to entertain this petition at this stage, when the interested parties including exporters and importers are provided an opportunity to submit their views and are also assured of oral hearing."

5. The DA granted a public hearing to all the parties on 1st September 2004. However, on 1st November 2004, the officer functioning as the DA, who had conducted the investigations in the

instant case was transferred, and a new officer took over as the DA. On 6th January 2005, the appellants herein, in particular ATMA and Ningbo Nylon, a Chinese exporter, requested the newly appointed DA to grant a fresh public hearing, before finalizing his report/recommendations.

6. On 12th January 2005, the DA sent the disclosure statement to all the parties concerned. On 17th January 2005, the appellants wrote a letter of protest to the DA, inter alia, contending that their submissions were not examined; the newly appointed DA had failed to grant them a public hearing and some of the new submissions made by the domestic industry formed part of the record.

7. One of the constituent members of ATMA viz. J.K. Industries Ltd. filed a Civil Writ Petition (No.548 of 2005) before the High Court of Rajasthan at Jodhpur challenging the investigation proceedings, preliminary findings and the disclosure statement. On 25th January 2005, the High Court admitted the said writ petition and granted ad- interim stay restraining the DA from issuing final findings in terms of the disclosure statement.

8. Thereafter, on 16th February 2005, the High Court modified the earlier interim stay order dated 25th January 2005 to the extent that the DA was allowed to proceed to record the final findings but the same had to be placed in a sealed cover.

9. On 9th March 2005, the DA issued final findings, vide notification No. 14/20/2003-DGAD, recommending the imposition of anti-dumping duty on NTCF originating from China at the rate of US $ 0.54 per Kg to US $ 0.81 per Kg.

10. AFSI, respondent no. 3 herein, filed SLP (C) No. 6878-6879 of 2005 challenging the orders of the High Court of Rajasthan dated 25th January 2005 and 16th February 2005. This Court granted leave in the said SLP, and set aside the said interim orders.

11. Ultimately, on 21st April, 2005, the High Court of Rajasthan dismissed the writ petition filed by JK Industries Ltd. observing that:

> "such findings are not reached by the Designated Authority in exercise of any legislative power vested in it for the purpose of deciding any litigatious contentions between the various interests or to adjudicate or to decide upon rights of any party to lis."

Aggrieved by the said order, JK Industries preferred SLP (C) 11061 of 2005 before this Court. The said SLP was dismissed on 13th May 2005 in view of the alternative remedy available to the appellant. The Court, inter alia, observed that:

> "However, we clarify that the following observations made in the impugned judgment by the Division Bench of the High Court- "investigation by the Designated Authority is in aid of legislative function"-shall not come in the way of the hearing by the Appellate Authority of any judicial review sought for thereafter by either party."

12. The Central Government accepted the final findings of the DA, and issued Notification No. 36/2005-Cus dated 27th April 2005 levying anti-dumping duty at different rates varying from US $ 0.54 per Kg to US $ 0.81 per Kg on NTCF w.e.f. 26th July 2004.

13. M/s. Apollo Tyres filed W.P. No. 19896 of 2005 before the High Court of Kerala for quashing the final findings of the DA. The High Court observed that since the petitioners had been represented by ATMA before the DA, ATMA should approach the High Court. Thereafter, ATMA filed W.P. No.20587 of 2005 before the High Court.

14. By a common order dated 12th July 2005, the High Court of Kerala disposed of both the writ petitions, directing the incumbent DA to grant hearing on the issues raised in the writ petition, and issue orders modifying the final findings to the extent required.

15. ASFI filed S.L.P. (C) No. 15704-15705 of 2005 before this Court challenging the said order of the High Court of Kerala. This Court disposed of the SLP vide order dated 12th August 2005, suspending the operation of the judgment of the High Court of Kerala, and directing the parties to pursue the remedy before the Tribunal under Section 9C of the Act.

16. As afore-mentioned, the Tribunal has dismissed the appeals, preferred by ATMA, Apollo Tyres, J.K. Tyres, ASFI and Ningbo Nylon and confirmed the levy of anti-dumping duty in terms of Notification No. 36/2005-Cus. Dealing with the main grievance of the appellants viz. denial of an opportunity of hearing and thus, violation of the principles of natural justice, the Tribunal has held that:- (i) an anti-dumping duty has all the characteristics of a tax as it is imposed under statutory power without the tax-payers consent, and its payment is enforced by law, therefore, issuance of the notification by the Central Government in the Official Gazette under Rule 18 of the 1995 Rules read with Section 9A(1) of the Tariff Act imposing anti- dumping duty upon importation of the subject article in India is purely a legislative function; (ii) the process of imposing anti-dumping duty which is legislative in nature does not decide any existing dispute or `lis' inter-parties; it only determines whether imposition of anti- dumping duty is called for in relation to dumped imports and if so, at what rate, on the basis of the information collected from the exporters- importers and a large number of other interested parties; (iii) there can never be a `lis' between the State and its citizens in the matter of exercise of legislative power to impose tax as there is no "right-duty"

> relationship between the Central Government imposing anti-dumping duty under the Tariff Act and the 1995 Rules, and the exporters or importers who are given an opportunity to give information under the Rules and that the principles of natural justice are not applicable to a legislative process for enactment of law and the persons affected have no right to an opportunity to be heard before the enactment; (iv) if, however, the Parliament, in its wisdom, for an impost like the anti-
>
> dumping duty, which arises due to and has nexus with the interest of domestic industry, provides a mechanism for taking into consideration the views of those who will be affected and the other interested parties, that will not amount to vesting in them a right to be heard personally, arising as a consequence of the principles of

> natural justice, against taking legislative action of imposing anti-dumping duty and fixing its rate for the subject article and (v) in cases where investigative procedure leading to determination of the rates of taxes is undertaken by the Parliament, through its agencies, as per its rules of business, there will be absolutely no scope for any judicial tribunal to examine whether any procedural irregularity was committed by not consulting any particular section of the public likely to be adversely affected by such law. This is precisely why legislative enactments are not generally made subject to the principles of natural justice, as doing so may lead to a finding of irregularity of procedure which is prohibited by the constitutional scheme of law making. It is settled law that there is no right to be heard before the making of legislation, whether primary or delegated, unless specifically provided by the Statute.

17. Thus, the Tribunal held that the imposition of anti-dumping duty being legislative in character, the principles of natural justice were not applicable to the proceedings before the DA and, therefore, persons affected had no right to be heard before the imposition of duty.

18. Hence the present appeals.

Submissions made on behalf of the appellants:

19. Mr. S.K. Bagaria, learned senior counsel appearing on behalf of ATMA, piloting the arguments on behalf of the appellants, referring to various provisions of the Tariff Act and 1995 Rules strenuously urged that the functions discharged by the DA are quasi-judicial in nature. Relying on the decisions of this Court in Province of Bombay Vs. Khushaldas S. Advani & Ors.1; Shri Radheshyam Khare & Anr. Vs. The State of Madhya Pradesh & Ors.2; Shivji Nathubhai Vs. Union of India & Ors.3; Shankarlal Aggarwala & Ors. Vs. Shankarlal Poddar & Ors.4 S.K. Bhargava Vs. Collector, Chandigarh & Ors.5, Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand & Ors.6; Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I & Anr.7, learned counsel contended that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party and disputed by another, on the basis of some objective standards, and is required by the terms of the statute to act judicially, then such authority discharges quasi-judicial functions. Learned counsel submitted that such attributes are in-built in the scheme of the Tariff Act and the 1995 Rules, in as much as:-(i) there are interested parties, some opposing the levy and some supporting the levy; (ii) there is a lis between these interested parties; (iii) Rule 6(1) of the 1995 Rules mandates that the DA has to issue a public notice to all interested parties, and their responses to the same are elicited; AIR 1950 SC 222 AIR 1959 SCR 1440 AIR 1960 SC 606 AIR 1965 SC 507 (1998) 5 SCC 170 [1963] Supp. 1 S.C.R. 242 (2008) 14 SCC 151

(iv) evidence and information is collected, and the evidence presented by one interested party is made available to the other interested parties in terms of Rule 6; (v) a public hearing is conducted, and all the information presented orally has to be subsequently reduced into writing as per Rule 6(6); (vi) Rule 12 and 17 provide that the DA is required to determine all matters of facts and law by adjudicating on the material placed before the said authority and record reasons leading to the final determination on the existence, degree and effect of dumping and (vii) Section 9C of the Tariff Act

contemplates an appeal to the Tribunal on all aspects of the determination by the DA viz. the existence, degree and effect of dumping. Learned counsel then urged that since the said Section provides for a remedy of appeal on all the facets of determination, the Tribunal has no option but to examine all aspects viz. existence, degree and effect of dumping on the basis of the material placed before the DA, in order to confirm, modify or annul the orders appealed against. Commending us to the decision of a Constitution Bench of this Court in PTC India Limited Vs. Central Electricity Regulatory Commission8, learned counsel contended that whenever a particular statute provides for an appeal against the decision of an authority, then orders/decisions of that authority are quasi-judicial in nature. In order to buttress the argument, learned counsel also commended (2010) 4 SCC 603 us to two publications of the Government of India viz. "Anti-Dumping and Anti-Subsidy Measures" and "Anti-Dumping, A Guide" wherein the Government has accepted that the functions of the DA are quasi-judicial in nature. Learned counsel argued that even the procedure adopted by the DA leads to the inescapable conclusion that it discharges quasi-judicial functions in as much as the DA grants all interested persons an opportunity to make oral submissions. Relying on the decision of this Court in Designated Authority (Anti-Dumping Directorate), Ministry of Commerce Vs. Haldor Topsoe A/S9, learned counsel contended that it is a settled practice that if during the course of investigations, the DA conducting the public hearings is transferred, the new DA grants a fresh hearing before making the final order.

20. Learned counsel urged that in light of the observations made by this Court in Reliance Industries Ltd. Vs. Designated Authority & Ors.10 and J.K. Industries Vs. Union of India (SLP (C) No.11061 of 2005), it is fallacious to contend that the functions discharged by the DA are legislative in nature. Learned counsel submitted that in Tata Chemicals Limited (2) Vs. Union of India & Ors.11 and Tata Chemicals Limited Vs. Union of India & Ors.12, this Court has also held that an appeal before the Tribunal is (2000) 6 SCC 626 (2006) 10 SCC 368 (2008) 17 SCC 180 (2007) 15 SCC 596 maintainable against the determination by the DA together with the Customs Notification. Learned counsel contended that even if the DA's functions are held to be in exercise of conditional legislation, it would be of the nature as mentioned in the third category of cases highlighted in State of T.N. Vs. K. Sabanayagam & Anr.13 and Godawat Pan Masala Products I.P. Ltd. & Anr. Vs. Union of India & Ors.14, in as much as the levy of duty would depend on the satisfaction of the DA on objective facts placed by one party seeking benefits, and even in such a situation principles of natural justice are required to be complied with.

21. Learned counsel urged that at this stage the respondents cannot be allowed to contend that no prejudice was caused to the appellants due to non-grant of hearing, as the DA did not take this stand either in the disclosure statement or in the final findings. Further, the respondents have not submitted any counter-affidavit in this behalf. Commending us to the decision of this Court in Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.15, learned counsel contended that the validity of an order has to be judged by the reasons mentioned therein, and cannot be supplemented by fresh reasons in the form of (1998) 1 SCC 318 (2004) 7 SCC 68 (1978) 1 SCC 405 affidavits or otherwise. Learned counsel contended that despite several requests, the incumbent DA did not grant hearing to ATMA. Learned counsel complained that after the issuance of disclosure statement, a specific request for personal hearing was made vide letter dated 24th January, 2005 but the DA did not even make a reference to the said request in his final order.

According to the learned counsel, non-consideration of the request for hearing by itself has caused grave and serious prejudice to the appellants.

22. Learned counsel asserted that even if it is held that the functions of the DA are administrative in nature, the principles of natural justice would still have to be complied with as the decision of the DA entails far-reaching civil consequences. In support, reliance was placed on the decisions of this Court in Mohinder Singh Gill (supra); Maneka Gandhi Vs. Union of India & Anr.16 ; Sahara India (supra); SBP & Co. Vs. Patel Engineering Ltd. & Anr.17 and C.B. Gautam Vs. Union of India & Ors.18.

23. Relying heavily on the decision of a Constitution Bench of this Court in Gullapalli Nageswara Rao & Ors. Vs. Andhra Pradesh State Road Transport Corporation & Anr.19, learned counsel contended that the final determination by the new DA without granting a hearing to the appellants is (1978) 1 SCC 248 (2005) 8 SCC 618 (1993) 1 SCC 78 AIR 1958 SC 308 bad in law in as much as it is well settled that the principles of natural justice mandate that the authority who hears, must also decide. Learned counsel urged that the hearing granted by the new DA to the Advocates of Ningbo Nylon, the Chinese Exporter, is of no consequence in so far as the Indian Tyre Manufacturers were concerned, particularly when the hearing granted to Ningbo Nylon was confined to their offer of price undertaking, which otherwise is a confidential hearing not akin to the public hearing, which was requested by ATMA.

24. In relation to the levy of anti-dumping duty during the interregnum period between 26th January, 2005 to 26th April, 2005, Mr. Bagaria contended that the provisions of the Tariff Act or the Rules made thereunder do not contemplate the power to levy duty retrospectively, save and except as provided in Section 9A(3) of the Tariff Act. Relying on the decisions of this Court in The Cannanore Spinning and Weaving Mills Ltd. Vs. Collector of Customs and Central Excise, Cochin & Ors.20; Hukam Chand Etc. Vs. Union of India & Ors.21; Orissa State Electricity Board & Anr. Vs. Indian Aluminum Co. Ltd.22; Regional Transport Officer, Chittoor & Ors. Vs. Associated Transport Madras (P) Ltd. & Ors.23; Mahabir Vegetable (1969) 3 SCC 221 (1972) 2 SCC 601 (1975) 2 SCC 431 (1980) 4 SCC 597 Oils (P) Ltd. & Anr. Vs. State of Haryana & Ors.24 and Bakul Cashew Co. & Ors. Vs. Sales Tax Officer, Quilon & Anr.25, learned counsel contended that if no power has been conferred upon the delegatee by the parent Act to levy tax or duty retrospectively, the delegatee cannot confer upon itself any such power by making any such Rule nor can it exercise any such power or levy duty or tax retrospectively. Section 9A(3) of the Tariff Act only provides for the levy of duty retrospectively prior to the date of issuance of notification levying provisional duty and the instant case, is therefore, not covered under Section 9A(3). Learned counsel urged that Section 9A (3) makes it manifest that wherever the legislature intended to confer the power to levy duty retrospectively, it has specifically provided for the same.

25. Learned counsel then contended that the submission of the respondents that the levy of anti-dumping duty is in continuation for the period of five years commencing from the levy of provisional duty is contrary to the scheme and provisions of the Tariff Act. It was submitted that it is manifest from the plain language of Section 9A, the charging provision, that the levy of anti-dumping duty is not automatic. Therefore, the continuity of the levy, in terms of the Section

itself, is only for the period of notification and nothing more and there could be continuity only when the (2006) 3 SCC 620 (1986) 2 SCC 365 final notification is issued before the expiry of the provisional duty covered under the provisional notification. However, if the Government allows the period of levy of the provisional duty to expire, and issues the final notification thereafter, there can be no levy during the interregnum period.

26. Emphasising that provisional anti-dumping duty being a short-term measure, which in terms of Rule 13 of the 1995 Rules can remain in force only for a period not exceeding six months, extendable by a further period of three months under the circumstances mentioned in the said Rule, learned counsel pointed out that since in the instant case, there was no such extension, the period for levy of provisional duty expired on 25th January, 2005. Furthermore, in S&S Enterprise Vs. Designated Authority & Ors.26, this Court had observed that the imposition of anti-dumping duty under Section 9A of the Tariff Act, is the result of the General Agreement on Tariff and Trade and, therefore, the levy of provisional duty should be in accordance with Rule 13 of the 1995 Rules and Article 7.4 of the agreement on Tariffs and Trade, 1994 (for short "the WTO Agreement"), which contemplates that the provisional duty shall be limited to as short a period as possible, and, in fact, provides for the outer limit for the imposition of provisional duty.

(2005) 3 SCC 337

27. Learned counsel contended that in the instant case, the provisional levy was finalized and validated by paragraph 2 of the final anti-dumping duty notification dated 27th April, 2005, and by virtue of the said paragraph the provisional duty was merely replaced by the final duty. Rule 20(2)(a) of the 1995 Rules uses the expression "where a provisional duty has been levied" and "in absence of provisional duty", thereby making it clear that the final measure merely validates the provisional duty already levied. The use of the said expression also establishes that Rule 20(2)(a) applies only when the provisional duty had in fact been levied, and therefore the said Rule has no application to the interregnum period. This position is also clarified by Rule 21 of the 1995 Rules which provides that if final duty is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer, and if it is lower, the differential shall be refunded to the importer, argued the learned counsel. Learned counsel asserted that the scheme of Rules 20 and 21 also makes it clear that no additional liability can be fastened for the periods prior to the date of final levy over and above the provisional duty for the period during which such provisional levy was in force. Learned counsel thus, argued that if Rule 20(2)(a) is construed as conferring any power on the Central Government to levy duty retrospectively, the Rule itself would become ultra vires the Act, and such construction which maintains the validity of the provision should be preferred. Commending us to the decisions of this Court in State of Madhya Pradesh & Anr. Vs. Dadabhoy's New Chiri Miri Ponri Hill Colliery Co. Pvt. Ltd.27 and Yudhishter Vs. Ashok Kumar28, learned counsel submitted that reading down of a legislation to maintain its validity is an accepted principle of law.

28. Learned counsel then submitted that even if it is assumed that the Government has the power to levy anti-dumping duty retrospectively, even then the conditions precedent for making such retrospective levy as mentioned in Rule 17(1)(a) and Rule 20(2)(a), which respectively require the

DA, to record: (i) a finding as to whether retrospective levy is called for and if so, the reasons thereof and the date of commencement of such levy and (ii) a specific finding to the effect that the dumped imports would have, in the absence of the provisional duty, led to injury, were not satisfied. Relying on the decision of this Court in Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. & Ors.298 Mr. Bagaria submitted that when a statutory authority is required to discharge its functions in a particular manner, such functions must be discharged in that manner alone or not at all. Learned counsel urged (1972) 1 SCC 298 (1987) 1 SCC 204 (2003) 2 SCC 111 that Section 9A which is the charging Section must be construed strictly, and when the said Section itself makes the levy of duty contingent upon the existence of notification, there can be no scope for invoking any concept of continuity in the absence of a notification.

29. Learned counsel urged that Section 9A(5) of the Tariff Act does not have any application in the instant case as the anti-dumping duty referred to in that Section is the final duty, and not the provisional duty. The position is also clarified by the first and second proviso to the said sub-Section, in as much as the first proviso refers to the extension of "such imposition" by five years, and such extension can only be in relation to the final levy, while second proviso relates to the extension of final levy for a further period of one year when the review is initiated before the expiry of five years. Learned counsel urged that the fact that the outer time limit of five years is only contemplated in relation to the final duty and not the provisional duty is also evident from Article 11.3 of the WTO Agreement. Learned counsel contended that the outer limit for the levy of provisional duty cannot be set at naught by an alleged theory of continuity.

30. Learned counsel contended that in light of the decision of this Court in Shenyang Matsushita S. Battery Co. Ltd. Vs. Exide Industries Ltd. & Ors.30, the DA is required to construct normal value after sequentially applying the different methods mentioned in paragraph 7 of Annexure I of the 1995 Rules, and only if construction by the first two methods is not possible, reliance can be placed on the third method. Learned counsel contended that in the instant case, the domestic industry had premised their application on the assumption that normal value can be constructed on the basis of any of the methods, and therefore, it resorted to the last method viz. the price paid or payable in India. This erroneous approach was adopted by the DA in the Initiation Notification dated 29th October, 2003. The appellants objected to the same in their submissions before the DA, and the same was ignored by the DA in its preliminary findings, and thereafter, in the disclosure statement. Learned counsel contended that the method followed by the DA is clearly in violation of the requirements of paragraph 7 of the Annexure I of the 1995 Rules in as much as it did not undertake any selection process for selecting market economy third country, it did not invite any comments and it did not give any opportunity to the parties in that regard.

31. Ms. Meenakshi Arora, learned counsel appearing on behalf of Ningbo Nylon adopting the same line of arguments, submitted that the second (2005) 3 SCC 39 hearing granted to Ningbo Nylon by the new DA on 9th March 2005, was only for the purpose of Ningbo Nylon's price undertaking, and the same cannot be equated with the public hearing envisaged under Rule 6(6) of the 1995 Rules, in as much as: (i) Section 9B(1)(c)(iii) makes it clear that the price undertaking is in the nature of an agreement between a specific exporter and the Central Government wherein the exporter agrees to revise its price in a manner that the injurious effect of dumping is eliminated; (ii) confidential

information has to be considered to ascertain the injurious effect of dumping and (iii) in terms of Rule 7, the hearing relating to price undertaking is confidential, and the same does not relate to all the aspects of investigation or to all the parties before the DA. Learned counsel thus, urged that even if it is assumed that the second hearing granted to counsel for Ningbo Nylon was in the nature of a public hearing in terms of Rule 6(6), the same cannot be considered as an effective opportunity as it is inconceivable for any counsel to participate in any meaningful discussion unless accompanied by the representative of the concerned exporter. Furthermore, the notice for hearing on 9th March 2005, given on 7th March, 2005 could not be considered as an adequate opportunity keeping in view the time difference between India and China.

Submissions made on behalf of the Respondents:

32. Mr. Harin P. Raval, learned Additional Solicitor General, appearing on behalf of the DA, defending the decision of the Tribunal, contended that since the 1995 Rules were in the nature of a "super special legislation", having economic policy overtones, this Court should adopt a policy of judicial deference. Commending us to the decision of this Court in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors.31, learned counsel urged that while interpreting a legislation, the Courts should have regard to both the text and context of the legislation, and in light of the fact that the 1995 Rules contemplate adjustment of India's international trade policy measures, allowing a great deal of leeway in terms of policy operation, any judicial interpretation of the 1995 Rules must accord with this object of these Rules.

33. To start with, learned counsel strenuously urged that the levy of anti- dumping duty as per the procedure laid down in 1995 Rules constitutes a legislative act. Drawing support from the decisions of this Court in Shri Sitaram Sugar Company Ltd. & Anr. Vs. Union of India & Ors.32 and Dalmia Cement (Bharat) Ltd. & Anr. Vs. Union of India & Ors.33, learned counsel stressed that it is a settled principle that price fixation is a legislative (1987) 1 SCC 424 (1990) 3 SCC 223 (1996) 10 SCC 104 function, and the legislature is competent to delegate its power to its agent and authorize it to adjudicate and arrive at findings of fact, which would be conclusive. Learned counsel pleaded that it is again a settled principle of law that principles of natural justice do not apply in case of legislative acts. In support, reliance was placed on the decisions of this Court in Ramesh Chandra Kachardas Porwal & Ors. Vs. State of Maharashtra & Ors.34; Saraswati Industrial Syndicate Ltd. & Ors. Vs. Union of India35 and P.M. Ashwathanarayana Setty & Ors. Vs. State of Karnataka & Ors.36. Moreover, in relation to the cases involving economic regulation, the Courts have usually adopted a policy of deference as was held by this Court in the The State of Gujarat & Anr. Vs. Shri Ambica Mills Ltd., Ahmedabad & Anr.37, asserted the learned counsel. In relation to taxing statutes in particular, larger discretion is accorded in light of their inherent complexity as was held in Jardine Henderson Limited Vs. Workmen & Anr.38 Learned counsel further contended that competence to legislate encompasses the competence to legislate both prospectively and retrospectively as was held in M/s. Krishnamurthi & Co. Etc. Vs. State of Madras & Anr.39 and Empire (1981) 2 SCC 722 (1974) 2 SCC 630 (1989) Supp (1) SCC 696 (1974) 4 SCC 656 (1962) Supp (3 SCR 582 (1973) 1 SCC 75 Industries Ltd. & Ors. Vs. Union of India & Ors.40. Commending us to the decision of this Court in Haridas Exports (supra), learned counsel urged that since in an anti-dumping proceeding, no interest group other than the domestic producers have full legal standing, it is evident that the said proceedings are

not adversarial, judicial or quasi-judicial in nature. However, at a later stage of his arguments, the learned counsel candidly conceded that at best the proceedings before the DA could be considered as administrative in nature.

34. Learned counsel urged that it is also well settled that the principles of natural justice will take their color from the context of the statutory provisions under which the issue is to be adjudicated as has been observed in The New Prakash Transport Co. Ltd. Vs. The New Suwarna Transport Co. Ltd.41 and Haryana Financial Corporation & Anr. Vs. Kailash Chandra Ahuja42. Learned counsel submitted that the alleged breach of natural justice principles has to be judged in light of the prejudice caused to the party, and public interest, and not merely on technicalities. Learned counsel asserted that in any event in the instant case, the new DA had afforded an opportunity of hearing to the appellants on 7th March, 2005, which they failed to avail of. (1985) 3 SCC 314 AIR 1957 SC 232 (2008) 9 SCC 31 Learned counsel submitted that at the most the present case may be considered as one in which only a "partial hearing" was granted, and, therefore, in such a situation, the appellants were obliged to establish that some prejudice had been caused to them because of lack of proper oral hearing. In support of the argument, reliance was placed on the decision of this Court in State Bank of Patiala & Ors. Vs. S.K. Sharma43. Controverting the stand of the appellants that the recommendation of the DA was vitiated because the incumbent DA had not heard the appellants, learned counsel placed heavy reliance on the decision in Ossein and Gelatine Manufacturers' Association of India Vs. Modi Alkalies and Chemicals Limited & Anr.44, wherein despite the fact that hearing was conducted by one authority, and the decision was rendered by another, this Court did not set aside the said decision. Learned counsel emphasised that since in the instant case the appellants have neither established prejudice, nor have they challenged the findings of the DA on injury or in the sunset review, there is no merit in these appeals. Relying on P.M. Aswathanarayana Setty (supra), learned counsel pleaded that having regard to the object of the legislation, this Court should prefer an interpretation that would save the proceedings of the DA. Distinguishing the decision in PTC India Ltd. (supra), learned (1996) 3 SCC 364 (1989) 4 SCC 264 counsel submitted that reliance on the said decision by the appellants was misplaced in as much as in the said judgment, the Court itself clarified that its findings shall not be construed as a general principle of law applicable to other enactments and Tribunals. Moreover, the proceedings under Section 62 of the Electricity Act, 2003 are adversarial in nature, and therefore they cannot be likened to an anti-dumping investigation in which the only consideration is fairness in trade. Learned counsel asserted that while the proceedings under the Electricity Act relate to regulation of electricity within the territory of India, anti-dumping investigations, by their very nature, have an international perspective; the decision of the Commission under Electricity Act is binding whereas the findings of the DA are merely recommendatory; while the interests of various groups have to be examined in proceedings under the Electricity Act, no interest group other than the domestic industry has full legal standing in an anti-dumping investigation and that proceedings under the Electricity Act are held by a court of law, but anti-dumping investigation is conducted by governmental agencies through administrative procedures.

35. Mr. Krishnan Venugopal, learned senior counsel appearing on behalf of the ASFI contended that the exact scope and ambit of the principles of natural justice, including the nature of hearing to be accorded must be decided keeping in view the nature and object of the Tariff Act and the 1995 Rules,

and therefore, the question as to whether the hearing contemplated under the 1995 Rules is oral or by written representation will have an important bearing on the issue as to whether the new DA was required to conduct a fresh public hearing. According to the learned counsel even if the functions of the DA are held to be quasi-judicial in nature, the new DA is not required to hold a fresh public hearing as under Rule 6(6) of the 1995 Rules while interested parties are allowed to present information orally, but the DA can take into consideration only that information which is subsequently reproduced in writing and, therefore, the principles enunciated in Gullapalli (supra) are not applicable in the instant case. In that case, the oral hearing was preceded by written objections and representations, while under the Tariff Act and Rules, the sequence is reversed in as much as in proceedings before the DA, parties present oral information followed by reproduction of that information in writing, argued the learned counsel. Commending us to the decisions in General Manager, Eastern Railway & Anr. Vs. Jawala Prosad Singh45; Madhya Pradesh Industries Ltd. Vs. Union of India & Ors.46; J.A. Naiksatam Vs. Prothonotary & Senior Master, High Court of Bombay & Ors.47; R Vs. Immigration Appeal (1970) 1 SCC 103 (1966) 1 SCR 466 (2004) 8 SCC 653 Tribunal & Anr.48and Selvarajan Vs. Race Relations Board49, learned counsel contended that as per the prescribed procedure an opportunity to place the relevant information on record in writing is sufficient compliance with the principles of audi alteram partem. To buttress his stand, reliance was placed on the decisions of this Court in Gramophone Company of India Ltd. Vs. Birendra Bahadur Pandey & Ors.50; M/s. Tractoroexport, Moscow Vs. M/s Tarapore & Company & Anr..51 and Jolly George Varghese & Anr. Vs. The Bank of Cochin.52. It was also contended that since Sections 9A to 9C were introduced in the Tariff Act in order to comply with India's WTO obligations, the interpretation of these provisions should be consistent with the provisions of the treaty. It was urged that having submitted written submissions on 10th September, 2004 pursuant to the public hearing on 1st September, 2004, as also the rejoinder, the appellants cannot complain of violation of the principles of natural justice, more so when the DA had also afforded opportunities to counsel of the appellants on two occasions i.e. 25th January, 2005 and 7th March, 2005, to appear before him but the appellants failed to appear on both the occasions. It was asserted that in any event the principles enunciated in Gullapalli (supra) are [1988] 2 All ER 65 [1976] 1 All ER 12 (1984) 2 SCC 534 (1969) 3 SCC 562 (1980) 2 SCC 360 not applicable to the instant case, in as much as the role of the DA is merely recommendatory.

36. It was argued that the decision of a two judge Bench in Reliance Industries (supra), relied upon on behalf of the appellants, is per incuriam in light of the decision of the three judge Bench decision in Haridas Exports (supra), which was not even noticed in Reliance Industries (supra).

37. As regards the decision in PTC India (supra), inter-alia, holding that whenever an appeal is provided against an order, the determination becomes quasi-judicial, it was submitted that as the said observations were made in the context of the Electricity Act, which is entirely different in purport and scope from the Tariff Act read with the 1995 Rules, the ratio of the said decision has no bearing on the facts of the present case. Learned counsel stressed that one of the attributes of a quasi-judicial authority is that it must render a binding decision, and if its decision is merely advisory, deliberative, investigatory or conciliatory in character, which has to be confirmed by another authority before it becomes binding, then such a body is administrative in character, as was observed by this Court in Union of India Vs. Mohan Lal Capoor.53, which is the case here, as the

role of the DA is (1973) 2 SCC 836 merely recommendatory. In support, reliance was placed on the decision of this Court in Tata Chemicals (2) (supra).

38. Relying on the decisions of this Court in P. Sambamurthy & Ors. Vs. State of Andhra Pradesh & Anr.54; Union of India Vs. K.M. Shankarappa55 and B.B. Rajwanshi Vs. State of U.P. & Ors.56, learned counsel urged that it is a settled principle of law that the executive cannot sit in judgment over the decision of a quasi-judicial body, and since the Central Government has the power to alter or annul the recommendations of the DA, even logically the DA cannot be held to be a quasi-judicial authority. Learned counsel pleaded that a rigid application of the principles of natural justice in such a situation would defeat the purpose of the administrative enquiry conducted by the DA which is conducted with a view to elicit information from a broad spectrum of interested persons, as was held in Jayantilal Amrit Lal Shodhan Vs. F.N. Rana & Ors.57

39. Learned counsel contended that there are certain peculiar features of the investigation conducted by the DA which make it manifest that the DA is not a quasi-judicial authority. Firstly, in light of the fact that there are numerous interested parties and many competing economic interests are (1987) 1 SCC 362 (2001) 1 SCC 582 (1988) 2 SCC 415 [1964] 5 SCR 294 involved in an anti-dumping investigation, it is fallacious to assume that the proceedings are in the nature of a simple lis between two parties. Secondly, the suo motu power invested in the DA to conduct investigations is in furtherance of his policy-making role in the nation's international trade regime. Thirdly, under Rule 7, the DA is required to keep certain information confidential, and this procedure whereby the parties do not know what information is being taken into account by the DA while making the determination is alien to quasi-judicial proceedings. Fourthly, the information collected by the DA is not required to be sworn on affidavit or otherwise and the witnesses do not testify on oath. Moreover, Rule 6(8) of the 1995 Rules empowers the DA to take into account unverified information, which procedure is inconsistent with the DA being classified as a quasi-judicial authority. Fifthly, the procedure of "sampling" contemplated under Rule 17(3) allows the DA to limit its findings to a reasonable number of interested parties or to articles using a statistically valid sample, and based on this, the DA can fix a country-wise margin of dumping which will apply to all exporters, a procedure unknown to quasi-judicial proceedings.

40. Learned counsel contended that even if it is assumed that the DA discharges quasi-judicial functions and the principles of natural are held to be applicable to the proceedings before it, still it is not sufficient to merely allege breach of natural justice, and actual prejudice must be demonstrated, as was held in Haryana Financial Corporation (supra) and Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.58. It was asserted that in the present case, the appellants have failed to demonstrate any prejudice to them with reference to any material placed by them before the DA.

41. In response to the challenge against the retrospective levy of anti- dumping duty during the interregnum period between 26th January, 2005 to 27th April, 2005, Mr. Venugopal submitted that in absence of the stay granted by the Rajasthan High Court on 25th January, 2005, the Central Government could have, under the second proviso to Rule 13, extended the provisional duty for a further period of nine months from 25th January, 2005. Learned counsel further urged that under Rule 20(2)(a), the DA after recording a finding of actual injury, was empowered to recommend

imposition of anti-dumping duty from the date of the imposition of the provisional duty. Learned counsel submitted that the appellant's contention that Rule 20(2)(b) is ultra vires the Tariff Act as the power to levy anti- dumping duty retrospectively is found in sub-section (3) of Section 9A of the Tariff Act is misconceived as an anti-dumping investigation always (1993) 4 SCC 727 relates to a past period known as the "period of investigation", and therefore, there is no question of retrospectivity.

42. Mr. Venugopal also pleaded that the present appeals had in fact been rendered infructuous as the original final findings by the DA are no longer in existence in view of the fact that a sunset review has been conducted by the DA, pursuant to which the Central Government has revised the levy of duty vide its notification dated 31st March, 2009, which has not been put in issue by the appellants.

43. Mr.C.S. Vaidyanathan, learned senior counsel appearing on behalf of ASFI, urged that the 1995 Rules are a complete code in themselves; Rule 6 provides the framework within which the DA has to operate, and therefore, the applicability of principles of natural justice is limited to those areas that are provided under the 1995 Rules. Learned counsel contended that anti- dumping investigation conducted by the DA is administrative in nature, whereas the imposition of anti-dumping duty is legislative in character. Relying on the decisions of this Court in Keshav Mills (supra); Ramesh Chandra Kachardas Porwal (supra); Union of India & Anr. Vs. Cynamide India & Anr.59; Shri Sita Ram Sugar Company Limited & Anr. Vs. Union (1987) 2 SCC 720 of India & Ors.60; State Bank of Patiala (supra) and Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd. & Ors.61, learned counsel submitted that there is no straight jacket formula to apply the principles of natural justice, and the effect of the alleged breach of natural justice has to be considered while determining the remedial action. It was asserted that there was no prejudice caused to the appellants due to the alleged breach of natural justice, and therefore, there was no merit in the appellants' claim. It was urged that if this Court were to conclude that there has been a violation of the principles of natural justice, it would be appropriate to remand the matter back to the DA for de novo adjudication from the stage the procedural irregularity had intervened.

44. Commending us to the definition of the term "determination" as contained in the Webster's Dictionary and the Oxford Dictionary, learned counsel submitted that the use of the said term in Section 9C of the Tariff Act, when understood in the context of the 1995 Rules, leads to the incontrovertible conclusion that it is the determination by the DA that is made appealable, and not the notification levying anti-dumping duty. Therefore, it is manifest that the imposition of duty is legislative in nature.

(1990) 3 SCC 223 (2005) 5 SCC 337 Discussion:

45. Before addressing the contentions advanced on behalf of the parties, it will be necessary and expedient to survey the relevant statutory provisions under which the levy, questioned in these appeals, has been imposed. Section 9A of the Tariff Act contemplates levy of anti-dumping duty on dumped articles. It reads as follows:

9A. Anti-dumping duty on dumped articles.- (1) Where any article is exported from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation.- For the purposes of this section,-

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6);

or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the

country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dump ing duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-

dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case may be, shall not apply to articles imported by a hundred per cent. Export-oriented undertaking or a unit in a free trade zone or in a special economic zone. Explanation.--For the purposes of this sub-section, the expression "hundred per cent export-oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944.

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti- dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub- section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

> Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:
>
> Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.
>
> (6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.
>
> (7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.
>
> (8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to the date for determination of rate of duty, non-levy, short levy, refunds, interest, appeals, offences, and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act."

46. Section 9C of the Tariff Act provides for an appeal against the order passed under Section 9A thereof and reads thus:

> "9C. Appeal.-(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees (1B) Every application made before the Appellate Tribunal-

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

47. The 1995 Rules lay down a comprehensive procedure for identification, assessment and collection of anti-dumping duty on dumped articles. The Rules, relevant for these appeals, read as under:

4. Duties of the designated authority.-(1) It shall be the duty of the designated authority in accordance with these rules-

(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to Central Government as to-

(i) normal value, export price and the margin of dumping in relation to the article under investigation, and

(ii) the injury or threat of injury to an industry

established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries.

(d) to recommend the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, and the date of commencement of such duty; and

(e) to review the need for continuance of anti-dumping duty.

5. Initiation of investigation.- (1) Except as provided in sub-

rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry. (2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of -

(a) dumping
(b) injury, where applicable, and
(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an

investigation pursuant to an application made under sub- rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective

output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. (4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3). (5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

6. Principles governing investigations.- (1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, inter alia, contain adequate information on the following:-

(i) the name of the exporting country or countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

(i) the known exporters or to the concerned trade association where the number of exporters is large, and

(ii) the governments of the exporting countries:

Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing

within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation: For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country. (5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organizations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation. (8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

7. Confidential information- (1) Notwithstanding anything contained in sub-rules (2), (3)and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17,the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information. (2) The designated authority may require the parties providing information on confidential basis to furnish non- confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible. (3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information.

10. Determination of normal value, export price and margin of dumping. - An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, inter alia, the principles laid down in Annexure I to these rules.

11. Determination of injury. - (1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India. (2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if-

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

12. Preliminary findings. - (1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain:-

> (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
>
> (ii) a description of the article which is sufficient for customs purposes;
>
> (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
>
> (iv) considerations relevant to the injury determination; and
>
> (v) the main reasons leading to the determination.

2. The designated authority shall issue a public notice recording its preliminary findings.

16. Disclosure of information. - The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

17. Final findings. - (1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding -

(a) as to, -

(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;

(iii) a casual link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,

(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry.

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding-

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) Considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:

Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

20. Commencement of duty. - (1) The anti-dumping duty levied under rule 13 and rule 18 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1)-

(a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty:

Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

> Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking.
>
> Provided also that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from the date of violation of the undertaking or such date as the Central Government may specify in each case.

21. Refund of duty. - (1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer."

48. Thus, the first and foremost question for adjudication is the nature of proceedings before the DA appointed by the Central Government under Rule 3 of the 1995 Rules for conducting investigations for the purpose of levy of anti-dumping duty in terms of Section 9A of the Act. To put it differently, the question is whether the decision of the DA is legislative, administrative or quasi-judicial in character? However, for the purpose of the present case, we shall confine our discussion only to the question as to whether the function of the DA is administrative or quasi-judicial in character as Mr. Rawal, learned counsel appearing for the DA had finally conceded before us that it is not legislative in nature.

49. More often than not, it is not easy to draw a line demarcating an administrative decision from a quasi-judicial decision. Nevertheless, the aim of both a quasi-judicial function as well as an administrative function is to arrive at a just decision. In A.K. Kraipak & Ors. Vs. Union of India & Ors.62, this Court had observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power, regard must be had to: (i) the nature of the (1969) 2 SCC 262 power conferred; (ii) the person or persons on whom it is conferred; (iii) the framework of the law conferring that power; (iv) the consequences ensuing from the exercise of that power and (v) the manner in which that power is expected to be exercised.

50. The first leading case decided by this Court on the point was Khushaldas S. Advani (supra). In that case, while dealing with the question whether the governmental function of requisitioning property under Section 3 of the Bombay Land Requisition Ordinance, 1947 was an administrative or

quasi-judicial function, Das J. (as His Lordship then was), while concurring with the majority, in his separate judgment, upon reference to a long line of cases expressing divergent views, deduced the following principles, which could be applied for determining the question posed in para 48 supra:

> "(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-

judicial act provided the authority is required by the statute to act judicially."

51. In Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmi Chand & Ors.63, a Constitution Bench of this Court had observed that:

> "Often the line of distinction between decisions judicial and administrative is thin: but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial:
>
> it is the duty to act judicially which invests it with that character..... ..... To make a decision or an act judicial, the following criteria must be satisfied:
>
> (1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;

> (2) it declares rights or imposes upon parties obligations affecting their civil rights; and (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to 1963 Supp (1) SCR 242 a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

52. Having examined the scheme of the Tariff Act read with the 1995 Rules on the touchstone of the aforenoted principles, particularly the first principle enunciated in Khushaldas S. Advani (supra), we have no hesitation in coming to the conclusion that this is an obvious case where the DA exercises quasi-judicial functions and is bound to act judicially. A cursory look at the relevant Rules would show that the DA determines the rights and obligations of the `interested parties' by applying objective standards based on the material/information/evidence presented by the exporters, foreign producers and other `interested parties' by applying the procedure and principles laid down in the 1995 Rules. Rule 5 of the 1995 Rules provides that the DA shall initiate an investigation so as to determine the existence, degree and effect of any alleged dumping upon the receipt of a written application by or on behalf of the domestic industry; sub-rule (4) thereof empowers the DA to initiate an investigation suo motu on the basis of information received from the Commissioner of Customs or from any other source. When the DA has decided to initiate an investigation, Rule 6 requires that a public notice shall be issued to all the interested parties as mentioned in Rule 2(c) of the 1995 Rules, as also to industrial users of the product, and to the representatives of the consumer organizations in cases when the product is commonly sold at the retail level. It is manifest that while determining the existence, degree and effect of the alleged dumping, the DA determines a `lis' between persons supporting the levy of duty and those opposing the said levy.

53. Further, it is also clear from the scheme of the Tariff Act and the 1995 Rules that the determination of existence, effect and degree of alleged dumping is on the basis of criteria mentioned in the Tariff Act and 1995 Rules, and an anti-dumping duty cannot be levied unless, on the basis of the investigation, it is established that there is:

> (i) existence of dumped imports; (ii) material injury to the domestic industry and, (iii) a causal link between the dumped imports and the injury. Rule 10 of the said Rules lays down the criteria for the determination of the normal value, export price and margin of dumping, while Rule 11 deals with the determination of injury which according to Annexure II to the 1995 Rules is based on positive evidence and involves an objective examination of both: (a) the volume and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products. (See: S&S Enterprise Vs. Designated Authority & Ors.64). It is evident that the determination of injury is premised on an objective examination of the material submitted by the parties. Moreover, under Rule 6(7) of the 1995 Rules, the DA is required to make available the evidence presented to it by one party to other interested parties, participating in the investigation. It is also pertinent to note that Rule 12 of the 1995

> Rules which deals with the preliminary findings, explicitly provides that such findings shall "contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected." A similar stipulation is found in relation to the final findings recorded by the DA under Rule 17(2) of the 1995 Rules.

Above all, Section 9C of the Tariff Act provides for an appeal to the Tribunal against the order of determination or review thereof regarding the existence, degree and effect of dumping in relation to imports of any article, which order, obviously has to be based on the determination and findings of the DA. The cumulative effect of all (2005) 3 SCC 337 these factors leads us to an irresistible conclusion that the DA performs quasi-judicial functions under the Tariff Act read with the 1995 Rules.

54. Having come to the conclusion that the DA is entrusted with a quasi-judicial function, the next question for consideration is whether or not the decision of the DA dated 9th March 2005, returning the final findings in terms of Rule 17 of the 1995 Rules is in breach of the principles of natural justice, resulting in vitiating the subject notification under Rule 18 of the said Rules?

55. It is trite that rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. In A.K. Kraipak (supra), it was observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

56. In Mohinder Singh Gill (supra), upon consideration of several cases, Krishna Iyer, J. in his inimitable style observed thus:

> "48. Once we understand the soul of the rule as fairplay in action -- and it is so -- we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -- but nothing less. The `exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self- defeating or plainly contrary to the common sense of the situation."

57. In Swadeshi Cotton Mills Vs. Union of India65, R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus:

> "Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle--as distinguished from an absolute rule (1981) 1 SCC 664 of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

(Emphasis supplied by us)

58. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a strait-jacket nor is it a general rule of universal application. Undoubtedly, there can be exceptions to the said doctrine. As stated above, the question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of these matters that the question of

application of the said principle can be properly determined. (See: Union of India Vs. Col. J.N. Sinha & Anr.66.)

59. In light of the aforenoted legal position and the elaborate procedure prescribed in Rule 6 of 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules. In so far as the instant case is concerned, though it was sought to be pleaded on behalf of the respondents that the incumbent DA had issued a common notice to the Advocates for ATMA and Ningbo Nylon, for oral hearing on 9th March 2005, however, there is no document on (1970) 2 SCC 458 record indicating that pursuant to ATMA's letter dated 24th January 2005, notice for oral hearing was issued to them by the incumbent DA. Moreover, the alleged opportunity of oral hearing on 9th March, 2005, being in relation to the price undertaking offer by Ningbo Nylon, cannot be likened to a public hearing contemplated under Rule 6(6) of the 1995 Rules. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli (supra), if one person hears and other decides, then personal hearing becomes an empty formality. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly.

60. For the view we have taken above, we deem it unnecessary to deal with the other contentions urged on behalf of the parties on the merits of the levy.

61. This brings us to the question of relief. In view of our finding that the recommendation of the DA stands vitiated on account of non-compliance with the basic principle of audi alteram partem, the appeals must succeed. However, the question for consideration is whether the appellants will be entitled to the refund of the duty already paid and collected. It is trite law that in the case of indirect taxes like central excise duties and customs duties, the tax collected by the State without the authority of law, shall not be refunded to the petitioner unless he alleges and establishes that he has himself borne the burden of the said duty and that he has not passed on the burden of duty to a third party. In such a situation, the doctrine of unjust enrichment comes into play. On the doctrine of unjust enrichment, in Mafatlal Industries Ltd. & Ors. Vs. Union of India & Ors.67, a decision by a bench comprising of nine learned Judges of this Court, B.P. Jeevan Reddy, J., speaking for the majority, had observed thus:

> (1997) 5 SCC 536 "The doctrine of unjust enrichment is a just and salutary doctrine. No person can seek to collect the duty from both ends.

In other words, he cannot collect the duty from his purchaser at one end and also collect the same duty from the State on the ground that it has been collected from him contrary to law. The power of the court is not meant to be exercised for unjustly enriching a person. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched."

62. In the instant case, the DA, during the Sunset Review (Notification No.14/20/2008-DGAD dated 31st March, 2009) had recorded a clear finding to the effect that the Chinese exporters had been underselling below the non- injurious price to the tune of 25-20% during the period of investigation. It is, therefore, manifest that the burden of anti-dumping duty had been absorbed by the exporters. The said finding of fact attained finality in as much as it had not been assailed by any of the interested parties. In light of the fact that the importers viz. ATMA and its constituent members have passed on the burden of the levy to third person(s), it follows that members of ATMA cannot claim refund of the anti-dumping duty levied in terms of the Notification No.36/2005-Cus. In any event, ATMA and its constituent members have neither pleaded nor adduced any evidence to show that they had not passed on the burden of the duty to any other person.

63. In any case, we are of the opinion that the appellants cannot claim refund of duty already levied in as much as they have not specifically challenged the findings of the sunset review, and therefore, the findings in relation to the existence of dumped imports, material injury to domestic industry and causal link between dumped imports and material injury to domestic industry remain unchallenged. In that view of the matter, particularly when the existence of dumping has not been put in issue, we are of the opinion that refund of the duty to any of the appellants would be inconsistent with the object and scheme of the Tariff Act and the 1995 Rules.

64. In the result, the appeals are allowed to the extent mentioned above; the decision of the Tribunal is set aside and Notification No.36/2005-Cus., dated 27th April 2005, is quashed. However, considering the facts and circumstances of the case, the parties are left to bear their own costs.

..... (D.K. JAIN, J.) ..... (H.L. DATTU, J.) NEW DELHI;

JANUARY 7, 2011.

(ARS)

Krishna Mohan Medical College And ... vs Union Of India on 1 September, 2017

Author: Amitava Roy

Bench: Amitava Roy

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 448 OF 2017

KRISHNA MOHAN MEDICAL COLLEGE
AND HOSPITAL & ANR. ….PETITIONERS

VERSUS

UNION OF INDIA AND ANOTHER ….RESPONDENTS
WITH
I.A. NO. 73716 OF 2017

JUDGMENT

AMITAVA ROY, J.

The challenge laid in this petition under Article 32 of the Constitution of India at its institution was mounted on the order dated 31.05.2017, whereby the respondent - Union of India had directed debarment of the petitioner college i.e. Krishna Mohan Medical College, Mathura from admitting students in the MBBS course for the academic years 2017-18 and 2018-19 and at the same time authorized the Medical Council of India (for short, hereinafter to be referred to as “MCI”) to encash the bank guarantee of Rs. 2 crores submitted by the petitioners. This Court, after hearing the parties, by order dated 01.08.2017 rendered in a batch of writ petitions including the one in hand, the lead petition being Writ Petition (C) No. 411 of 2017 (Glocal Medical College and Super Specialty Hospital and Research Centre vs. Union of India and Another), while annulling the above order, remitted the matter to the Central Government with the direction to extend fresh consideration of the materials on record and after affording an opportunity of hearing to the petitioners' Colleges/Institutions to the extent necessary, deliver a reasoned decision on the issue of confirmation or otherwise of the conditional letter of permission (for short “LOP”) granted to them. The second round of contest witnessed by the instant interim application under consideration, has been precipitated by the order dated 10.08.2017 passed by the Central Government in purported compliance of the directions contained in this Court's order dated 01.08.2017 referred to

hereinabove.

2. We have heard Mr. P.S. Patwalia, learned senior counsel for the petitioners, Mr. Maninder Singh, learned Additional Solicitor General for the Union of India and Mr. Vikas Singh, learned senior counsel for the Medical Council of India.

3. A brief preface of the factual backdrop has to be outlined being indispensable. The petitioners, as required under the Indian Medical Council Act, 1956, (for short, hereafter to be referred to as "The Act") and the Establishment of Medical College Regulations, 1999 (abbreviated hereinafter as the "Regulations") framed thereunder did submit a scheme/application for establishment of a new medical college at Mathura, Uttar Pradesh in the name and style of Krishna Mohan Medical College & Hospital, Mathura (hereinafter referred to as "College" as well) for the academic year 2016-17 before the Ministry of Health and Family Welfare (Department of Health and Family Welfare) Government of India. The Ministry forwarded the application to the MCI for evaluation and recommendations as per the Act, whereafter the latter caused an inspection to be made of the college on 18 th & 19th December, 2015. According to the MCI, several deficiencies having been detected, it recommended to the Central Government not to issue LOP for establishment of a new college for the academic year 2016-17.

4. According to the respondents, the Central Government through its Hearing Committee, afforded an opportunity of hearing to the petitioners thereafter and on an examination amongst others, of the compliance verification and assessment carried out thereafter, found several persisting deficiencies.

5. Skipping over the inessential intermediate stages, suffice it would be to state that though in view of the above exercise undertaken, the Central Government disapproved the application of the petitioners for establishment of the new college for the academic year 2016-17 and accepted the recommendations of the MCI, on the intervention of the Oversight Committee, constituted by this Court, by its order dated 02.05.2016 rendered in Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others1, principally to oversee all statutory functions under the Act and to issue appropriate remedial directions, the Central Government, in terms of the recommendations of the Oversight Committee dated 29.08.2016, issued a LOP for establishment of the petitioner college with an annual intake of 150 MBBS seats for the academic year 2016-17 subject to the following conditions:

> "(i) An affidavit from the Dean/Principal and Chairman of the Trust/Society/ University/Company etc. concerned, affirming fulfillment of all deficiencies and statements made in the respective compliance report submitted to MHFW by 22 June 2016.
>
> (ii) A bank guarantee in the amount of Rs.

2 crore in favour of MCI, which will be valid for 1 year or until the first renewal assessment, whichever is later. Such bank guarantee will be in addition to the prescribed fee submitted along with the application.

2. The OC has also stipulated as follows:

> 1 (2016) 7 SCC 353
>
> (a) OC may direct inspection to verify the compliance submitted by the college and considered by OC, anytime after 30 September, 2016.

(b) In default of the conditions (I) and (ii) in para 1 above and if the compliances are found incomplete in the inspection to be conducted after 30 September, 2016, such college will be debarred from fresh intake of students for 2 years commencing 2017-18."

6. The letter, amongst others mentioned as well that the next batch of students in the MBBS Course for the academic year 2017-18 would be admitted in the College only after obtaining permission of the Central Government and fulfilling the conditions as above, as stipulated by the Oversight Committee.

7. While pursuant to the above letter of permission, the petitioners admitted students for the academic year 2016-17 and furnished the bank guarantee of Rs. 2 crores as required and as claimed by them also did submit the affidavit affirming fulfillment of all deficiencies and statements made in the relevant compliance report, the MCI caused another inspection of the college to be made on 18th and 19th November, 2016, in course whereof, according to it, several deficiencies were noticed, amongst others in the faculty at 32.31% and in residents at 34.78%, which however at the spot itself, were disputed/denied by the authorized representatives of the petitioners. This, to be precise, would be evident on the face of the inspection report annexed to the interim application No. 73716 of 2017, the authenticity whereof has not been questioned by the respondents. The petitioners, on the very same date i.e. 19.11.2016, did also submit a representation before the MCI providing the detailed information supported by contemporaneous facts and records contradicting the findings of deficiencies, as recorded by the assessors, detailed by the MCI. To be specific, the representation contained exhaustive materials pertaining to the alleged deficiencies in faculty and residents, as recorded during the inspection conducted on 19.11.2016.

8. While the matter rested at that and the representation was pending before the MCI, it deputed a team of assessors for carrying out surprise assessment of the college on 09.12.2016. The petitioners have pleaded that as this inspection was close on the heels of the one, conducted on 19.11.2016 and their representation vis-a-vis the deficiencies pointed out therein was pending consideration, they intimated the MCI of their inability to partake in the exercise, as proposed. The Executive Committee of the MCI subsequent thereto in its meeting on 22.12.2016 though noted the representation dated 19.11.2016, did not deal with the explanation offered by the petitioners on merits and instead took note of their purported non-cooperation in the proposed inspection of the college on 09.12.2016 and recommended to the Central Government that the petitioners college be debarred from admitting students in the MBBS Course for the two academic years 2017-18 and 2018-19 for having failed to fulfill their undertaking of removing the deficiencies and providing the infrastructure, as required under the Regulations.

9. The Central Government, thereafter afforded an opportunity of hearing to the petitioners on 17.01.2017 through a Hearing Committee, in which the Director General of Health Services (for short, hereafter to be referred to as "DGHS") did participate and finally the proceedings thereof were forwarded to the Central Government and the Oversight Committee for the necessary decision. As had been noted inter alia in the order dated 01.08.2017 alluded to hereinabove, whereby the issue of confirmation or otherwise of the LOP of the petitioner college/institution was remitted to the Central Government for a fresh consideration, only a truncated version of the said proceedings were forwarded to the Oversight Committee sans the observations of the DGHS on the various aspects pertaining to the issue involved. Be that as it may, as the records testify, the Oversight Committee on an independent consideration of the materials on record laid before it by the Central Government, though belatedly, offered its observations on the various deficiencies pointed out in the inspection held on 18 th and 19th November, 2016 and recommended confirmation of the conditional LOP granted on 12.09.2016. The order dated 31.05.2017 of the Central Government followed debarring the petitioners college from admitting students for two academic years 2017-18 and 2018-19 and authorizing the MCI to encash the bank guarantee of Rs. 2 crores. To reiterate, this order was challenged in the writ petition in hand, wherein the following reliefs have been prayed for:

> "(a) Issue a Writ Order or direction quashing the order of Respondent No.1-Union of India contained in letter No. U-12012/127/2016-ME-I [3084749] dated 31.05.2017 debarring the Petitioners from taking admission in MBBS Course for academic sessions 2017-2018 and 2018-20189 and authorizing Respondent No.2-MCI to encash the bank guarantee of Rs.2 Cr. furnished by the Petitioners to MCI;

and

(b) Issue a Writ of Mandamus or any Writ, Order or direction in the nature of Mandamus directing the Respondents to grant renewal of permission for academic year 2017-18 and also permit the petitioner to admit the students for academic year 2017-2018; and/or

(c) Issue or pass any writ, direction or order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

10. After hearing the parties and on a prima facie consideration of the materials available including the documents furnished by the parties, this Court interfered with the order dated 31.05.2017 and directed the Central Government to consider afresh the same by reevaluating the recommendations/views of MCI, Hearing Committee, DGHS and the Oversight Committee, as available and also after affording an opportunity of hearing to the petitioners college/institution to the extent necessary and thereafter pass a reasoned order. A time frame of 10 days was also fixed for the purpose.

11. The overwhelming premise in which the above direction was issued can be culled out from the following excerpts of the aforementioned order dated 01.08.2017.

"21. A bare perusal of the letter dated 31.05.2017 would demonstrate in clear terms that the same is de hors any reason in support thereof. It mentions only about the grant of conditional permission on the basis of the approval of the Oversight Committee, and an opportunity of hearing vis-à-vis the recommendations of the MCI in its letter dated 15.01.2017 highlighting the deficiencies detected in course of the inspection st nd undertaken on 21 and 22 December, 2016, but is conspicuously silent with regard to the outcome of the proceedings of the Hearing Committee, the recommendations recorded therein both of the Committee and the DGHS and more importantly those of the Oversight Committee conveyed by its communication dated 14.05.2017, all earlier in point of time to the decision taken. This assumes importance in view of the unequivocal mandate contained in the proviso to Section 10A(4) of the Act, dealing with the issue, amongst others of establishment of a medical college. The relevant excerpt of sub-section 4 of Section 10A of the Act for ready reference is set out hereinbelow:

> "(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1);
>
> Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:"
>
> 22. Though as the records testify, a hearing was provided to the petitioner colleges/institutions through the Hearing Committee constituted by the DGHS (as mentioned in the proceedings dated 23.3.2017) qua the recommendations of the MCI contained in its letter dated 15.01.2017, as noted hereinabove, the proceedings of the Hearing Committee do reflect varying views of the Hearing Committee and the DGHS, the latter recommending various aspects bearing on deficiency to be laid before the OC for an appropriate decision. The Central Government did forward, albeit a pruned version of the proceedings of the Hearing Committee to the Oversight Committee after a time lag of almost six weeks. The reason therefor is however not forthcoming. The Oversight Committee, to reiterate, though on a consideration of all the relevant facts as well as the views of the MCI and the proceedings of the Hearing Committee as laid before it, did cast aside the deficiencies minuted by the MCI and recommended confirmation of the letters of permission of the petitioner colleges/institutions, the impugned decision has been taken by the Central Government which on the face of it does not contain any reference whatsoever of all these developments.
>
> 23. As a reasonable opportunity of hearing contained in the proviso to Section 10A(4) is an indispensable pre-condition for disapproval by the Central Government of any

> scheme for establishment of a medical college, we are of the convinced opinion that having regard to the progression of events and the divergent/irreconcilable views/recommendations of the MCI, the Hearing Committee, the DGHS and the Oversight Committee, the impugned order, if sustained in the singular facts and circumstances, would be in disaccord with the letter and spirit of the prescription of reasonable opportunity of hearing to the petitioner institutions/colleges, as enjoined under Section 10A(4) of the Act. This is more so in the face of the detrimental consequences with which they would be visited. It cannot be gainsaid that the reasonable opportunity of hearing, as obligated by Section 10A(4) inheres fairness in action to meet the legislative edict.

With the existing arrangement in place, the MCI, the Central Government and for that matter, the Hearing Committee, DGHS, as in the present case, the Oversight Committee and the concerned colleges/institutions are integral constituents of the hearing mechanism so much so that severance of any one or more of these, by any measure, would render the process undertaken to be mutilative of the letter and spirit of the mandate of Section 10A(4).

24. Having regard to the fact that the Oversight Committee has been constituted by this Court and is also empowered to oversee all statutory functions under the Act, and further all policy decisions of the MCI would require its approval, its recommendations, to state the least, on the issue of establishment of a medical college, as in this case, can by no means be disregarded or left out of consideration.

Noticeably, this Court did also empower the Oversight Committee to issue appropriate remedial directions. In our view, in the overall perspective, the materials on record bearing on the claim of the petitioner institutions/colleges for confirmation of the conditional letters of permission granted to them require a fresh consideration to obviate the possibility of any injustice in the process.

25. In the above persuasive premise, the Central Government is hereby ordered to consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner colleges/institutions. We make it clear that in undertaking this exercise, the Central Government would re-evaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. It would also afford an opportunity of hearing to the petitioner colleges/institutions to the extent necessary. The process of hearing and final reasoned decision thereon, as ordered, would be completed peremptorily within a period of 10 days from today. The parties would unfailingly co-operate in compliance of this direction to meet the time frame fixed."

12. It would thus be patently evident from the above operative directions, that the Central Government in accordance therewith was required to consider afresh the materials on record pertaining to the issue of confirmation or otherwise of the letter of permission granted to the petitioner college and in undertaking the said exercise, it was imperative for it to reevaluate the recommendations/views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available and also to afford an opportunity of hearing to the petitioner college/institution to the

extent necessary. It is in this background that the order dated 10.08.2017 rendered thereafter and oppugned in the interim application impelling the instant adjudicative pursuit, needs to be analyzed.

13. Paragraph 17 of the order dated 10.08.2017 recites the following in endorsement of the reiteration, by the Central Government of its decision dated 31.05.2017 to debar the petitioner college/institution from admitting students for a period of two academic years i.e. 2017-18 and 2018-19 and to authorize the MCI to encash bank guarantee of Rs.2 crores.

"17. Now, in compliance with the above direction of Hon'ble Supreme Court dated 1.8.2017, the Ministry granted hearing to the college on 3.8.2017, The Hearing Committee after considering the records an oral & written submission of the college submitted its report to the Ministry. The findings of the Hearing Committee are as under:

> The college did not allow inspection on 09.12.2016 on the ground that compliance inspection was already carried out on 18-19 November, 2016. The letter dated 09.12.2016 from the Principal clearly mentions that the college is not ready for inspection. The assessors have noted that the college appeared closed on 09.12.2016.

In the SAF form for November inspection, the deficiency relating to faculty and residents each is in excess of 30%.

In the opinion of the Committee, MCI was not precluded from conducting Inspection subject to sufficient reason and justification. The Committee agrees with the decision of the Ministry conveyed by letter dated 31.05.2017 to debar the college for 2 years and also permit MCI to encash bank guarantee.

18. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 to debar the college for 2 years and also permit MCI to encash bank guarantee."

14. A plain reading of the above quoted text would yield the following reasons, as recorded by the Central Government, to justify the impugned decision:

> (a) The college did not allow inspection on 09.12.2016 on the ground that compliance inspection had already been carried out on 18th/19th November, 2016.
>
> (b) The letter dated 09.12.2016 of the Principal of the college/institution clearly mentions that the college was not ready for inspection.
>
> (c) The Assessors have noted that the college appeared to be closed on 09.12.2016.
>
> (d) In the SAF Form for November inspection, the deficiency relating to faculty and residents each is in excess of 30%.

(e) In the opinion of the Hearing Committee, MCI was not precluded from conducting successive inspections subject to sufficient reason and justification.

(f) The Hearing Committee agrees with the decision of the Ministry conveyed by the letter dated 31.05.2017 to debar the college for two academic years and to permit MCI to encash the bank guarantee.

15. Broadly therefore, two reasons have weighed with the Hearing Committee to reiterate the earlier decision of the Central Government for debarring the petitioner college/institution from admitting students for the academic years 2017-18 and 2018-19 and for authorizing the MCI to encash the bank guarantee of Rs. two crores. Firstly, the petitioner college/institution did not allow inspection on 09.12.2016 and secondly, in the inspection conducted on 18-19.11.2016, deficiencies relating to Faculty and Resident Doctors was found each to be in excess of 30%.

16. Mr. Patwalia, learned senior counsel for the petitioners has insistently argued that the endeavour to conduct a second inspection merely within three weeks of the earlier exercise conducted on 18-19.11.2016 was impermissible and further in the facts of the case lacks bona fide more particularly, when the alleged deficiencies noticed in the earlier inspection had been controverted by the petitioner college/institution in its detailed representation, consideration whereof was pending. Further the Hearing Committee did not make any attempt whatsoever to independently re-examine/re-evaluate the materials on record, as directed by this Court by its order dated 01.08.2017, thus rendering the impugned order dated 10.08.2017 ex facie illegal and non est in law. According to the learned senior counsel, the so-called deficiencies referred to in the order dated 10.08.2017 do not exist so as to disqualify the petitioner college/institution, a fact recorded, amongst others by the Oversight Committee in its communication dated 14.05.2017 as well as by the DGHS as minuted in the proceedings of 17.01.2017. Apart therefrom, the representation of the petitioners dated 19.11.2016 qua the deficiencies pointed out by the assessors has been disregarded without recording any reason. The learned senior counsel thus urged that in view of the preponderant materials on record, negating the existence of the deficiency relating to faculty and residents in particular, as recorded by the assessors of the MCI, the decision to debar the petitioner college/institution from admitting students for the academic years 2017-18 and 2018-19 and to authorize the MCI to encash the bank guarantee of 2 crores is palpably illegal, unfair and unjust. Qua the aspect of the proposed inspection of the petitioner college/institution on 09.12.2016, Mr. Patwalia has drawn our attention to the communication dated 14.05.2017 of the Oversight Committee addressed to the Central Government wherein it observed that only eight institutions including the petitioner institution/college were attempted to be subjected to two inspections in quick succession for the same purpose, which according to it, was not authorized by it. Mr. Patwalia, thus sought to underline that the proposed inspection of 09.12.2016 of the petitioner college/institution, in the attendant facts and circumstances, was an act of selective victimization, which cannot receive judicial imprimatur.

17. As against this, the learned senior counsel for the respondents in unison have urged that in absence of any legal bar, as noted in the impugned order dated 10.08.2017, successive inspections can be conducted by the MCI, if warranted. According to them, the petitioner college/institution in

not cooperating in the inspection on 09.12.2016 did attempt to withhold the correct state of affairs, for which it is not entitled to any equitable consideration. They argued further, that as would be crystal clear from the materials on record that amongst others, the deficiency relating to faculty and residents, was each in excess of 30%, in terms of the Regulations, the petitioners are not entitled to establish and/or continue its college/institution thereunder and thus the impugned order is unassailable in law and on facts.

18. The contrasting assertions have received our due consideration. The impugned order dated 10.08.2017, it cannot be gainsaid, has to be assuredly tested on the touchstone of the operative directions contained in this Court's order dated 01.08.2017 remanding the issue involved to the Central Government for a fresh consideration on merits after affording opportunity of hearing to the petitioner college/institution. As would be patent from the order presently under scrutiny, the Hearing Committee and for that matter, the Central Government had focused only on two aspects namely, non-cooperation of the petitioner college/institution in the proposed inspection on 09.12.2016 and the subsisting deficiencies relating to faculty and residents, which allegedly is each in excess of 30%. There is no indication whatsoever as to whether the Hearing Committee/the Central Government had, as directed by this Court, re-appraised/reexamined the recommendations views of the MCI, Hearing Committee, DGHS and the Oversight Committee, as available on records. The materials intended by this Court to be taken note of by the Hearing Committee/Central Government did include, amongst others the recommendations of the Oversight Committee contained in its communication dated 14.05.2017, the observations of the DGHS recorded in the proceedings of 17.01.2017 as well as the representation dated 19.11.2016 submitted by the petitioner college/institution qua the deficiencies allegedly noticed by the assessors of the MCI during the inspection on 18-19.11.2016. This assumes importance in view of the fact that the deficiencies relating to faculty and residents, which according to the assessors of the MCI each is in excess of 30%, as noted in that inspection had been controverted and duly explained by the petitioner college/institution with supporting materials. The order dated 10.08.2017 does not contain a semblance of such consideration. To state the least, in view of the eventful backdrop, in which the matter was remanded to the Central Government for a fresh look on merits, in our opinion, it was incumbent on it or its Hearing Committee to scrupulously analyze all the materials on record and arrive at a dispassionate decision on the issue. This visibly has not been done. The factum of non-cooperation of the petitioners in the second inspection on 09.12.2016 was available before this Court at the time of passing of the order dated 01.08.2017 and thus could not have been extended a decisive weightage to conclude against them.

19. As the impugned order dated 10.08.2017 would reveal, it is apparent that for all practical purposes, the Hearing Committee/Central Government did not undertake a dispassionate, objective, cautious and rational analysis of the materials on record and in our view, returned wholly casual findings against the petitioner college/institution. This order thus has to be held, not to be in accord with the spirit and purport of the order dated 01.08.2017 passed by this Court. Suffice it to state, the order does not inspire the confidence of this Court to be sustained in the attendant facts and circumstances.

20. In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10A(4) mandating against disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to 'fair hearing', it is not longer res integra, is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of 'fair hearing' requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to 'fair hearing' casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.

21. No endeavour whatsoever, in our comprehension, has been made by the respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP granted to the petitioner college/institution as on 12.09.2016. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for the LOP depending on the stages involved. This however does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis-a-vis the scheme for establishment of a college before disapproving the same. The manner in which the respondents, in the individual facts of the instant case, have approached the issue, leads to the inevitable conclusion that the materials on record do not support determinatively the allegation of deficiency in course of the process undertaken, as alleged. We are thus of the considered opinion that in view of the persistent defaults and shortcomings in the decision making process of the respondents, the petitioner college/institution ought not to be penalised. Having regard to the progression of events, the assertions made by the petitioners in the representations countering the deficiencies alleged, the observations/views expressed by the Oversight Committee in its communication dated 14.05.2017 and the DGHS in the hearing held on 17.01.2017 negate the findings with regard to the deficiencies as recorded by the assessors of the MCI in the inspections held. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, we are of the considered opinion that the conditional LOP granted to the petitioner college/institution on 12.09.2016 for the academic year 2016-17 deserves to be confirmed. We order accordingly. However, as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, we direct the Central Government/MCI to cause a fresh inspection of the petitioner college/institution to be made in accordance therewith for the academic year 2018-19 and lay the report in respect thereof before this Court within a period of eight weeks herefrom. A copy of the report, needless to state, would be furnished to the petitioner college/institution at the earliest so as to enable it to avail its remedies, if so advised, under the Act and the Regulations. The Central Government/MCI would not encash the bank guarantee furnished by the petitioner college/institution. For the present, the impugned order dated 10.8.2017 stands modified to this

extent only. The direction for a writ, order or direction to the respondents to permit the petitioner college/institution to admit students for the academic year 2017-18, in the facts of the case, is declined. The Registry would list the writ petition and I.A. No. 73716 of 2017 immediately after the expiry of period of eight weeks, as above mentioned.

.....CJI. [Dipak Misra] .....J. [Amitava Roy] .....J. [A.M. Khanwilkar] New Delhi;

September 1, 2017.

ITEM NO.1501 COURT NO.2 SECTION X
(For judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 448/2017

KRISHNA MOHAN MEDICAL COLLEGE AND HOSPITAL & ANR. Petitioner(s)

VERSUS

UNION OF INDIA & ANR. Respondent(s)

WITH
I.A.NO.73716 OF 2017

Date : 01-09-2017 These matters were called on for pronouncement of judgment today.

For Petitioner(s) Mr. Gaurav Bhatia, AOR
Mr. Utkarsh Jaiswal,Adv.
Mr. Abhishek Singh,Adv.

For Respondent(s) Mr. Gaurav Sharma, AOR

Hon'ble Mr. Justice Amitava Roy pronounced the judgment of the Bench comprising of Hon'ble the Chief Justice of India, His Lordship and Hon'ble Mr. Justice A.M. Khanwilkar.

Certain directions are passed in the writ petition and I.A. List the writ petition and I.A.No.73716 of 2017 immediately after the expiry of period of eight weeks in terms of the signed reportable judgment.

(OM PARKASH SHARMA) (RAJINDER KAUR)
AR CUM PS BRANCH OFFICER

(Signed reportable judgment is placed on the file)

Calcutta Municipal Corporation vs Pawan K. Saraf And Anr on 13 January, 1999

Equivalent citations: AIR 1999 SUPREME COURT 738, 1999 AIR SCW 346, (1999) 1 RECCRIR 699, (1999) 1 PAT LJR 81, (1999) 1 SCJ 324, (1999) SC CR R 277, (1999) 1 CURCRIR 5, (1999) 1 SUPREME 30, (2000) ALLCRIC 124, 1999 CALCRILR 178, (1998) 2 RAJ CRI C 158, (1998) CRILR(RAJ) 442, 1999 FAJ 138, (1999) 1 EFR 271, (1999) 1 FAC 1, (2001) 2 MADLW(CRI) 477, (1999) MAD LJ(CRI) 280, 1999 ADSC 1 37, 1999 ALLMR(CRI) 1 538, (1999) CRILT 296, (1999) 16 OCR 226, 1999 (2) SCC 400, 1999 FAJ 1, 1999 CRILR(SC MAH GUJ) 76, (1999) 24 ALLCRIR 437, (1999) 1 SCALE 31, (1999) 1 ALLCRILR 12, 1999 CHANDLR(CIV&CRI) 352, 1999 CRILR(SC&MP) 76, (1999) 1 ANDHLT(CRI) 78, (1999) 1 JT 39 (SC), 1999 SCC (CRI) 218

Bench: K.T. Thomas, D.P. Wadhwa

CASE NO.:
Special Leave Petition (crl.) 3708 of 1998

PETITIONER:
CALCUTTA MUNICIPAL CORPORATION

RESPONDENT:
PAWAN K. SARAF AND ANR.

DATE OF JUDGMENT: 13/01/1999

BENCH:
K.T. THOMAS & D.P. WADHWA & S.S. MOHAMMED OUADRI

JUDGMENT:

JUDGMENT 1999 (1) SCR 74 The following Order of the Court was delivered :

When we dismissed the Special Leave Petition on 5.11.1998 we also said that reasons of such dismissal will follow. Accordingly we state our reasons hereunder :

Special leave petition has been filed by the Calcutta Municipal Corporation against an order of a Single Judge of the High Court of Calcutta quashing a prosecution proceeding pending against the respon-dent for offence under Section 16(l)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). The aforesaid proceedings were initiated in the following background :

On 19.7.1989 a Food Inspector of the Corporation of Calcutta took sample of compounded Asafoetida from the shop of the respondent. When one of the parts of the sample was sent to the Public Analyst, Calcutta it was analysed and found to be adulterated as it did not conform to the standard prescribed for that food article and hence report was forwarded to the Local Health Authority. A complaint was thereafter filed against the respondent before the Magistrate Court concerned for the aforesaid of- fence. When respondent entered appearance he made an application to the court for sending one of the remaining parts of the sample to the Director of Central Food Laboratory and the court despatched it as prayed for. The Director of Central Food Laboratory sent a Certificate to the court specifying the result of the analysis to the effect that the food article contained in the sample conforms to the standard prescribed for com-pounded Asafoetida.

Respondent thereupon move the trial court for discharging him from prosecution, but the learned Magistrate declined to do so on the premise that "the certificate of analysis issued by the Director of Central Food Laboratory was not complete as results of certain tests were not indicated therein.' Respondent then moved the High Court in revision challenging the aforesaid order of the Magistrate, learned Single Judge of the High Court upheld the contentions of the respondents and quashed the prosecu-tion proceedings. Report of the Public Analyst contains the following particulars :

"Test for Starch	:	Positive
Natural colouring Matter	:	Present
Test for Colophony Resin	:	Positive
Test for Galbanum Resin	:	Negative
Test for Ammoniaccum Resin	:	Negative
Test for any other foreign Resin	:	Positive
Test for coal tar dyes	:	Negative
Total Ash	:	0.9%
Test for Mineral Pigment	:	Negative
Ash Insoluble in dil. HCI	:	0.06%
Alcoholic Extract (with 90% of alcohol) is estimated by the U.S.P. 1936 method	:	4.4%

And am of opinion that the sample of compound Asafoetida does not conform to the standard in respect of Alcoholic Extract. Further it contains Colophony resin and Foreign resin. Hence, it is Adulterated.

Signed this 17th day of August, 1989."

The Certificate of Central Food Laboratory contains the following facts :

"Certified that the sample.....was in a condition fit for analysis and has/have been tested analysed and that the result/results of such tests analysis are stated below :

Total Ash %	-	0.66
Ash Insoluble in dil. HCI %	-	0.04
Alcoholic extract (with 90% alcohol) %	-	5.50
Test for Colophony	-	Negative
Test for colour		Coal tar dye absent
Boric acid test	-	Positive

And I am of the opinion that the sample conforms to the standards of compounded Asafoetida as per P.FA. Rules, 1955."

The standard of quality of compounded Asafoetida is specified in Item No. A.04 of Appendix B of the Prevention of Food Adulteration Rules, 1955 which is extracted below :

"It shall not contain -

(a) Colophony resin,

(b) galbanum resin,

(c) ammoniaccum resin,

(d) any other foreign resin,

(e) coal tar dyes,

(f) mineral pigment,

(g) more than 10 per cent total ash content,

(h) more than 1.5 per cent ash insoluble in dilute hydrocholoric acid, (i) less than 5 per cent alcoholic extract, (with 90 per cent of alcohol) as estimated by the U.S.P. 1936 method."

Sri Tapas Ray, learned senior counsel for the petitioner- Corpora-tion, contended before us that as the certificate is silent about galbanum resin, ammoniaccum resin and mineral pigment it must be presumed that the Director of Central Food Laboratory has not conducted those tests with the sample and hence the certificate cannot be acted on as such.

If the certificate issued by the Director of Central Food Laboratory did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory. The Central Food Laboratory is established in accordance with Section 4 of the Act. Rule 4 of the PFA Rules contains provisions to be followed by the Director of Central Food Laboratory on receipt of a part of the sample sent by the court. Sub-rule (4)

prescribes that "receipt of a package containing a sample for analysis the Director or an officer authorized by him, shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seal thereon." Sub-rule 5 says that after the analysis the certificate thereof shall be supplied forthwith to the sender in Form II.

Section 13 of the Act contains provisions regarding report of Public Analyst as well as the Certificate of the Director of Central Food Laboratory. After institution of prosecution against the person from whom the sample of the article of food was taken (and/or the person whose name and address were disclosed under Section 14-A), the accused has the right to apply to the court to get one of the remaining parts of the sample of the food article analysed by the Central Food Laboratory. It is a right con-ferred on the aforesaid accused in order to defend the prosecution launched against him or them. For availing themselves of the aforesaid statutory right all that they have to do is to make application to the court within the prescribed time. Once the application is made it is not the look out of the accused to get the result of the analysis made by the Central Food Laboratory.

Sub-section (2-B) of Section 13 requires the court to despatch one of the parts of the sample under its own seal to the Director of Central Food Laboratory. Once it is despatched it is the duty of the said Director to send a Certificate to the court "in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis". Sub- section (3) of Section 13 is important in this context and is extracted below :

> "The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the public analyst under sub-section (1)."

When the statute says that certificate shall supersede the report it means that the report would stand annulled or obliterated. The word "supersede" in law, means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal", (vide Black's Law Dictionary, 5th Edn.). Once the Certificate of the Director of Central Food Laboratory reaches the court the Report of the Public Analyst stands displaced and what may remain is only a fossil of it.

In the above context the proviso to sub-section (5) can also be looked at which deals with the evidentiary value of such certificate. The material portion of the proviso is quoted below :

> "Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory.....shall be final and conclusive evidence of the facts stated therein."

If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disprov- ing the fact. This is the import of Section 4 of the Evidence Act which defines three kinds of presumptions among which the last is "conclusive proof. "When one fact is declared by this Act to be conclusive proof of another the court shall, on proof of the one fact regard the other as proved and shall not allow evidence to be given for the purpose of disproving it."

Thus the legal impact of a Certificate of the Director of Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.

If the argument of the learned counsel for the Corporation is upheld and the Certificate of the Director of Central Food Laboratory is sidelined as pleaded by him, the consequence is that there will not be anything surviving to show the quality or standard of the food articles involved in the case. Even that apart, the accused will be deprived of his statutory right to disprove the Report of the Public Analyst.

The aforesaid position has been delineated by this Court in two decisions. In Municipal Corporation of Delhi v. Ghisa Ram, AIR (1967) SC 970 = [1967] 2 SCR 116 the Director of Central Food Laboratory reported to the court that the part of the sample sent to him became highly decomposed and hence no analysis was possible. The accused was there-upon acquitted and the acquittal was challenged on the contention that in the absence of a Certificate of the Director the Central Food Laboratory, for any reason whatsoever, the Report of the Public Analyst will stand and the court can act on it. This Court has observed that the right of the accused to have the sample analysed by the Director of Central Food Laboratory is a valuable one and such right has been given "in order that, for his satisfaction and proper defence, he should be able to have the sample.... analysed by a greater expert whose certificate is to be accepted by court as "conclusive evidence".

In Chetumal v. State of Madhya Pradesh & Anr., AIR (1981) SC 1387 = [1981] 3 SCC 72 a certificate was called for from the Director of Central Food Laboratory but the Director had reported that the specimen impres-sion of the seal sent to him did not tally with the seal on the container in which sample was sent to him. In the Certificate the Director mentioned that the article of food was adulterated as some of the elements were not in conformity with the standard prescribed. The trial court thereupon convicted the accused relying on the Report of the Public Analyst which was confirmed in appeal and High Court in revision did not interfere. But this Court set aside the conviction and sentence with the following obser- vations :

> "It is clear that the conviction cannot stand. Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so super-seded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from con-sideration because of the tampering of the seals, there was really no evidence before the Court on the basis of which the appellant could be convicted. The court could not fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory."

For the aforesaid reasons the High Court has rightly quashed the prosecution proceedings on the strength of the Certificate of the Director of Central Food Laboratory which has come on record in the case.

D.P. WADHWA, J. This special Leave Petition is barred by 309 days. It is against an order made in revision by the Calcutta High Court uphold-ing the order of the trial court acquitting the respondent of an offence under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (Act, for short). There is an application by the petitioner seeking condonation of delay in filing this petition. Reliance has been placed on a decision of this Court in Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., AIR (1987) SC 1353. It was submitted that the Court should be liberal in condoning the delay. Liberal all right, but delay is inexcusable unless sufficient cause is shown. It is not the law that when an application seeking condonation of delay is filed by the State or any authority, this Court must invariably condone the delay irrespective whether sufficient cause is shown or not. In Ramlal & Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361, this Court said :

> "In construing s.5 of the Limitation Act it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discre-tion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad. 269.
>
> "Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words sufficient cause' receiv-ing a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant".

In para 4 of the application, petitioner has described the following circumstances which according to it would amount to sufficient cause for the court to condone the delay : "The impugned order was passed on 13.08.1997, however, as the Ld. Advocate for the petitioner Corporation in the High Court did not communicate the result of the case to the Corporation, the Certified Copy of the same could be applied only upon knowing the result on 12.02.1998. Accordingly, the Certified Copy of the Order was ready for delivery on 20.04.1998. The same was col-lected by the officers of the Law Department of the Petitioner Corporation during May, 1998, and a decision to file the SLP was taken during June, 1998. The Advocate-on-record for the Petitioner was instructed to file the S.L.P. upon re-opening of this Hon'ble Court after summer vacations. Upon examination of the papers sent for

filing S.L.P. it was found that the same were insufficient to draft the S.L.P. Accordingly, vide letter dated 14.07.1998, a requisition was sent for forwarding the required documents, this requisition was followed by a reminder dated 27.07.1998. The Officer of the Corporation visited Delhi in con-nection with this case and other matters on 02.09.1998, but again without Annexure P-2 to the S.L.P., though the S.L.P. was finalised and the Affidavit was sworn by the Officer of the Corporation but for want of Annexure P-2 to the S.L.P. the same could not be filed. The Annexure P-2 to the S.L.P. was received on 15.09.98, and thereafter this S.L.P. was filed without any delay."

Annexure P-2 is a report of the Central Food Laboratory dated November 2, 1989. It is not that this report was not with the petitioner. On the face of it, there appears to be no sufficient cause to condone the delay. We did not think it even necessary to issue notice on this application and dismissed the application. It is only when circumstances mentioned in the application before this Court would show sufficient cause to condone the delay that notice is required to be issued. Rule 10 of Order XVI of the Supreme Court Rules, 1966 provides that where a petition for special leave has been filed beyond the period of limitation prescribed therefore and is accom-panied by an application for condonation of delay, the Court shall not condone the delay without notice to the respondent. In Ram Lal Kapur & Sons (P) Ltd. v. Ram Nath and Ors, [1963] 2 SCR 242, a preliminary objection was raised to the hearing of the appeal by the respondent that this Court granted special leave ex parte and it should be revoked as having been improperly obtained. Application (petition) seeking leave was filed after a great deal of delay, i.e., after lapse of 4 years. The Court observed :

> "It is obvious that it was an application which had been filed far beyond the period of limitation prescribed by the rules of this Court. Learned Counsel for the respondent urged that there were no sufficient grounds for condoning that long delay and that we should therefore revoke the leave."

The Court, however, did not accede to the request of the respondent for revoking the leave in the peculiar circumstances of the case before it and went on to observe as under :

> "Nevertheless, we consider that we should add that, except in very rare cases, if not invariably, it should be proper that this Court should adopt as a settled rule that the delay in making an applica-tion for special leave should not be condoned ex- parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave on the ground that the delay in making the same was improperly condoned years after the grant of the leave when the Court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. We would suggest that the rules of the Court should be amended suitably to achieve this purpose."

It is, therefore, only when this Court from the facts stated in the application seeking condonation of delay is prima facie of the view that there could be sufficient cause that notice is required to be issued. If the application does not make out any such cause there is no bar dismissing the application without notice to the other party. Since no sufficient cause was shown by the petitioner as noted above, we dismissed the petition on the ground of delay.

Though we dismissed the special leave petition on the ground of delay as well as on merits, on reconsideration I feel it is contradiction in terms. If we dismiss the petition on the ground of delay we cannot go into the merits though at best it could be said that it is not a fit case for this Court to exercise its jurisdiction under Article 138 of the Constitution.

Be that as it may. With due respect to my learned brethren I think I should not express any opinion on the statement of law that if the certificate issued by the Director of Central Food Laboratory did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory". This is how I look at the things.

Under the Rules framed under the Prevention of Food Adulteration Act, standard of quality of compounded asafoetida which was alleged to be adulterated has been prescribed. Compounded asafoetida shall not contain :

(a) Colophony resin,

(b) Galbanum resin,

(c) ammoniaccum resin,

(d) any other foreign resin,

(e) coal tar dyes,

(f) mineral pigment,

(g) more than 10 per cent total ash content,

(h) more than 1.5 per cent ash insoluble in dilute hydrocholoric acid, (i) less than 5 per cent alocoholic extract, (with 90 per cent of alcohol) as estimated by the U.S.P. 1936 method.

In the present case, while the Public Analyst analysed the article with reference to all the items aforesaid, the certificate issued by the Director of CFL did not show any testing for galbanum resin, ammoniaccum resin and mineral pigment. Under Section 13 of the Act, Public Analyst is to submit his report in form as may be prescribed. Similarly, the Director, CFL is also to send the certificate of the analysis of the sample in the form prescribed. Forms are prescribed under Rule 4 of the Rules

framed under the Act. While Public Analyst is to send his report in form 1 as prescribed under Rule 4(1) of the Rules, certificate of test or analysis by the CFL is to be sent in form 2 as prescribed under Rule 4(5) of the Rules. In the present case, it would be seen that while the Public Analyst has sent his report of analysis in the form prescribed, it was not so done by the Director of CFL. Should not analysis by each of these two authorities show that the sample was tested with reference to the standard prescribed? The question that may arise for consideration is if in such a case, it could be said that the report of the Director of CFL would supersede that of the Public Analyst when the report of the Director, CFL is not in the form prescribed. Prime facie it may be so but it certainly requires consideration. This Court should not reach its decision ex-parte of its own without notice to the parties and without hearing the matter in depth.

Argument of Mr. Tapas Ray, learned counsel for the Calcutta Municipal Corporation, that since the report of the Director of CFL was silent about galbanum resin, ammoniaccum resin and mineral pigment it must be presumed that he had not conducted those tests with the sample and such certificate issued by him is not valid cannot be brushed aside without hearing full arguments. It is on this ground that I have expressed my inability to concur with the view that if the certificate issued by the Director, CFL did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory. As a matter of fact I think that this Court should not lay down a law on an ex parte hearing. It is not material even if the dismissal of the petition does not prejudice the other party. Any law declared by this Court applies all over. It is binding on all the courts in the country under Article 141 of the Constitution.

In Municipal Corporation of Delhi v. Ghisa Ram, [1967] 2 SCR 116 the plea which found acceptance by this Court was that the respondent having been denied his right of obtaining the report of Director, CFL because of the delay by the appellant in launching the prosecution, the respondent could not be validly convicted. It was case where sample of curd was lifted from the shop of the respondent. This court held :

> "It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, event though that report continues to be evidence in the case of the facts contained therein."

The Court also observed :

> "We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst, we consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible."

In Chetumal v. State of Madhya Pradesh & Anr., [1981] 3 SCC 72, an objection was taken that the certificate issued by the Director, CFL could not be taken into consideration as he had reported that the specimen impression seal sent to him did not tally with the seal of the container in which the sample of oil was sent to him. This Court held :

> The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the court on the basis of which the appellant could be convicted. The court could not fall back on the report of Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the court to fall back upon the report of the Public Analyst to convict the appellant." These two judgments, in my view, do not deal with the issue raised in the present case. As seen above the report of the Director, CFL is not in the form prescribed inasmuch as it did not show if the Director con-ducted test respecting all the standards laid down the rule.1 would, therefore, rather dismiss the Special Leave Petition on the ground of delay without expressing any opinion on the merit of the case.

State (Nct Of Delhi) vs Ahmed Jaan on 12 August, 2008

Equivalent citations: 2008 AIR SCW 5692, AIR 2009 SC (SUPP) 695, 2008 (14) SCC 582, 2008 (8) SRJ 558, (2010) 4 PUN LR 234, (2008) 4 ALLCRILR 288, (2008) 2 EFR 587, (2008) 4 RECCIVR 126, (2008) 2 RENCR 234, (2008) 4 PUN LR 735, (2008) 11 SCALE 455, 2008 CRILR(SC&MP) 769, (2008) 3 MAD LJ(CRI) 851, (2009) 75 ALLINDCAS 241 (SC), (2009) 64 ALLCRIC 571, (2010) 1 CURCRIR 465, 2009 (2) SCC (CRI) 864, (2008) 6 SERVLR 447, (2010) 167 DLT 658, (2008) 2 CRILR(RAJ) 769, 2008 CRILR(SC MAH GUJ) 769, (2008) 3 JCC 2128 (SC), (2008) 4 RECCRIR 119, (2008) 4 SCT 25, (2008) 4 CHANDCRIC 88

Author: Arijit Pasayat

Bench: Mukundakam Sharma, Arijit Pasayat

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2008
(Arising out of SLP (Crl.) No. 131 of 2006)

State (NCT of Delhi) ...Appellant

Versus

Ahmed Jaan ...Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Delhi High Court dismissing the Criminal Revision Petition (Crl.R.P.No.356/2004) on the ground that there was inordinate delay in filing and re-filing the revision petition.

3. Factual position as highlighted by the appellant is as follows:

> The respondent, who is a resident of Jammu &, Kashmir, was apprehended at Sheila Cinema in Delhi on 05.03.1997 on the basis of information that he belongs to a terrorist outfit "Tehreek-ul-Mujahideen' (TUM) of J&K. From a search of his person and his hotel room, a letter containing instructions regarding activities to be carried out in Delhi for collecting money and arms for freedom of Kashmir was recovered. The letter contained coded information regarding RDX and Grenades as "AT'TA' and 'ANAR' and was allegedly written by one Abu Ibrahim. A personal diary containing telephone numbers of Pakistan and a sum of Rs.30,000/-

suspected to be Hawala money were also recovered from the respondent. It was found that the respondent had been frequently coming to Delhi and stayed at Welcome Guest House and used to make telephone calls to his contacts in Pakistan and collected money in Delhi which he used to transfer to Srinagar through carpet dealers at Kashmir and Commission agents for goats and thus, he actually got transferred Rs.17-1/4 lacs through Ghayasuddin and Mohd. Ahad of Srinagar.

The respondent was charge sheeted under Sections 121/121A/122/124-A/120-B of Indian Penal Code, 1860 (in short `IPC') on the above allegations of being a member of TUM and for conspiring in waging war against the Government of India. The respondent was thereafter tried in the Court of the Addl. Sessions Judge, Delhi in Sessions Case No.7/98.

By order dated 30.10.1998 in Sessions Case No.7/98, the learned Addl. Sessions Judge discharged the accused at the threshold, holding that prima facie there was no legal evidence to show that the respondent has committed any of the alleged acts.

Aggrieved, the appellant filed Criminal Revision Petition 356/2004, along with an application for condoning the delay in filing the petition. After filing the revision petition, the Registry of the High Court raised certain objections, and the file was received back in the Department for curing the defects. Unfortunately, due to paucity of space, the file got mixed up with other files in the office of the Standing Counsel, and was traced only in June, 2003. The revision petition was thereafter re-filed along with an application for condonation of delay in re-filing.

The High Court dismissed Crl. Rev. Petition No.356/2004 and Crl. M.A. No. 5227/2004 by judgment dated 10.8.2005, being of the view that there was unexplained delay in filing and re-filing the revision petition.

4. It is submitted by learned counsel for the appellant that the High Court did not even deal with the explanations given by the appellant in explaining the delay. The summary rejection by the High Court holding that delay has not been properly explained was not correct. It is pointed out that the conclusions of learned trial Judge directing discharge are unsustainable both on facts and in law.

5. Learned counsel for the respondent on the other hand submitted that merely because the allegations were serious in nature, the order impugned before the High Court does not require

interference as it is blemishless. Learned trial Judge rightly noted that there was no evidence of criminal conspiracy against him and therefore his discharge was rightly directed.

6. At this juncture, it is stated, at this length of time it would not be proper to set aside the order of High Court.

7. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In N. Balakrishnan v. M. Krishnamurthy (AIR 1998 SC 3222) it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

8. What constitutes sufficient cause cannot be laid down by hard and fast rules. In New India Insurance Co. Ltd. v. Shanti Misra (1975 (2) SCC 840) this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In Brij Indar Singh v. Kanshi Ram (ILR (1918) 45 Cal 94 (PC) it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In Shakuntala Devi Jain v. Kuntal Kumari (AIR 1969 SC 575) a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

9. In Concord of India Insurance Co. Ltd. v. Nirmala Devi (1979 (4) SCC 365) which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In Lala Mata Din v. A. Narayanan (1969 (2) SCC 770), this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

10. In State of Kerala v. E. K. Kuriyipe (1981 Supp SCC 72), it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In Milavi Devi v. Dina Nath (1982 (3) SCC 366), it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

11. In O. P. Kathpalia v. Lakhmir Singh (1984 (4) SCC 66), a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In Collector Land Acquisition v. Katiji (1987 (2) SCC 107), a Bench of two Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.

12. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non- grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In Prabha v. Ram Parkash Kalra (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice- oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

13. In G. Ramegowda, Major v. Spl. Land Acquisition Officer (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice

where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected, but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

14. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.

15. The above position was highlighted in State of Haryana v. Chandra Mani and Ors. (1996 (3) SCC 132); Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma (1996 (10) SCC 634) and State of Nagaland v. Lipok AO and Ors. (2005 (3) SCC 752). It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

16. We find that the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to examine the correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. According to us, the explanations offered were plausible and deserved to be accepted. Accordingly, we set aside the impugned order of the High Court and remit the matter to it to hear the Criminal Revision on merits. It is made clear that we have not expressed any opinion on merits.

17. The appeal is allowed.

.....J. (Dr. ARIJIT PASAYAT) .....J. (Dr. MUKUNDAKAM SHARMA) New Delhi, August 12, 2008

AMBROSE AND OTHERS V. DON BOSCO

S. Vaidyanathan, J.:— This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 08.01.2020 passed by the learned District Munsif Judge, Sankarapuram in I.A. No. 345 of 2019 in O.S. No. 164 of 2014, on the ground as to whether the Trial Court was right in rejecting the condonation of delay Petition, which was filed seeking to set aside the exparte decree passed in O.S. No. 164 of 2014.

2. In I.A. No. 345 of 2019 seeking to condone the delay of 865 days in filing a Petition to set aside the exparte decree passed in O.S. No. 164 of 2014, Petitioners have stated that, the 2 Petitioners' father, i.e. the 4 Defendant in the Suit made a promise to the Petitioners that, he will take care of the case and believing his words, Petitioners went in search of job to Chennai and Kerala. As the 4 Defendant passed away all of a sudden, details regarding the case were not known to the Petitioners, until they were informed by their Counsel. Hence, the Petitioners were unable to file the Petition on time.

3. In a similar circumstance, in C.M.P. Nos. 21784 and 21785 of 2017 filed to condone the delay of 765 days in preferring the Appeal, a Division Bench of this Court, by an order dated 15.02.2018, dismissed the said Petitions. For better appreciation, relevant paragraphs of the said decision are extracted hereunder:

"32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and length of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with/condone the aspect of 'Condonation of Delay.' However, in this regard, the Petitioner/concerned litigant is to offer/satisfactorily present reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to do substantial justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under Section 5 of the Limitation Act, 1963 is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure ends of justice. However, 'Sufficient Cause'/'Good Cause' is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court Brijesh Kumar v. State of Haryana reported in (2014) 11 SCC 351 : AIR 2014 SC 1612.

3.6. The Petitioner has come with unclean hands and the Hon'ble Supreme Court in the decisions, which were cited by the Petitioner, had categorically held that the 'length of delay is not a matter, but the acceptance of explanation is only criteria and even if delay may be long, but if there is justification, long delay can also be condoned'. If there is a short delay and the explanation is not satisfactory and if it is on account of smack or inaction and want of bona fide or dilatory strategy, this Court cannot help the persons, who come before this Court to condone the delay and protract the proceedings."

4. In view of the reasons stated in the orders of this Court, and as the reasons assigned on behalf of the Petitioners herein are not satisfactory, this Court is of the view that,

there is no need to interfere with the orders passed by the Court below, and the same is confirmed.

5. In view of the above, this Civil Revision Petition stands dismissed. No costs. Consequently, connected C.M.P. No. 6236 of 2020 is closed.

K. B. Lal (Krishna Bahadur Lal) vs Gyanendra Pratap on 8 April, 2024

Author: Sudhanshu Dhulia

Bench: A.S. Bopanna, Sudhanshu Dhulia

2024 INSC 281 REPORTABL

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2024
(ARISING OUT OF SLP (C) NO.14974 OF 2022)

K.B. LAL (KRISHNA BAHADUR LAL) …APPELLANT

Versus

GYANENDRA PRATAP & ORS. ...RESPONDENTS

JUDGMENT

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The appellant before this court has challenged the order dated 19.05.2022 passed by the High Court of Judicature at Allahabad, by which the petition filed by the appellant under Article 227 of the Constitution of India was dismissed. The appellant had invoked the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India, against the order Barabanki, who had upheld the order dated 07.10.2021 of the Civil Judge (Jr. Division), Barabanki.

3. The dispute between the parties to this appeal relates to a piece of land situated in village Gharsaniya, Pargana Dewa, Tehsil-Nawabganj, District - Barabanki, which was sold by one Kalawati (Respondent No. 4 herein) to one Mansa Ram (Respondent No. 5 herein), vide sale deed dated 30.03.2006. Thereafter, the property was sold by Respondent No. 5 to the appellant herein vide a registered sale deed dt. 13.04.2006.

4. On 22.04.2006, Civil Suit for permanent injunction and cancellation of the sale deed dated 30.03.2006, was filed by the Respondent Nos. 1, 2 & 3 herein before the Civil Judge (Jr. Division), Barabanki. The appellant was impleaded as Defendant No. 3 in the suit. It was contended before the Trial Court by Respondent Nos. 1, 2 & 3 that Respondent No. 4 had no transferrable right or title over the property when the sale deed dated 30.03.2006 was executed in favour of Respondent No. 5

and thus, the property could not have been sold to Respondent No. 5. Respondent Nos. 1, 2 & 3 asserted their claim over the property before the Trial Court stating that they were the bhumidhar & joint owners of the suit property and were also in possession of the same because the predecessor-in-interest of the property was their uncle and he had executed a will deed dated 20.05.1997 in their favour.

5. After service of notice, vakalatnama of the appellant's counsel was filed on 22.04.2006. During the course of the hearing, an order dated 06.09.2006 was passed by the trial court, by which the suit was to proceed ex-parte against the appellant. In the order dated 06.09.2006, it was recorded by the Trial Court that a perusal of the record would indicate that the appellant was duly served, but he did not file any written statements, and thus, it would be appropriate to proceed ex-parte against him. It is this order of the trial court, which was sought to be recalled by the appellant by filing an application under Order IX, Rule 7 of the Code of Civil Procedure, 1908 (hereinafter "CPC"). However, this application was filed by the appellant on 01.09.2017, i.e. after an inordinate delay of almost 11 years. To explain the delay, the appellant argued that the summons and notice of the case were not received by him and that the advocate appointed by him belonged to another city, who did not pursue the case diligently, and it was only in the year 2011, when he inspected the case file that he came to know about the order dated 06.09.2006. Even here as to why it took him another 6 years to file the application, as he had the knowledge in any case in the year 2011, has not been explained. But this is not enough. Even this application, filed in the year 2017, was admittedly not pressed before the Trial Court by the appellant, for the reason that correct facts were not mentioned in the application. Finally, another application under Order IX, Rule 7 of the CPC came to be filed yet again by the appellant on 23.11.2020.

6. This second application filed by the appellant was dismissed by the trial court vide order dated 07.10.2021. What weighed in with the trial court, while dismissing the appellant's application under Order IX, Rule 7 of the CPC, was the fact that the appellant was duly served and had filed vakalatnama of his counsel in April 2006 but did not file written statements in time and on 12.07.2011 an application was filed by the appellant, seeking permission to file the written statements. It was noted by the Trial Court that the explanation tendered by the appellant for the delay in filing the application under Order IX, Rule 7 of the CPC was that the advocate appointed by him at the time of receiving summons, i.e., April 2006, did not pursue the matter diligently and had defrauded the appellant. Thus, the appellant appointed another advocate, namely Shri R.D. Rastogi in May 2006. This explanation, as noted by the trial court, was based on contradictory statements and wrong facts, and no reasonable cause was given for the delay caused. Hence, it was dismissed.

7. Aggrieved by order dated 07.10.2021 by which his application under Order IX, Rule 7 of the CPC for setting aside the order dated 06.09.2006 was dismissed by the trial court, the appellant preferred a Revision, which came before Additional District Judge, Barabanki (hereinafter referred to as "Revisional Court"). Vide order dated 28.03.2022, the revisional court dismissed the Civil Revision filed by the appellant. The revisional court, upon examination of the material on record, found that the first application under Order IX, Rule 7 of the CPC which was filed by the appellant on 01.09.2017, was not pressed, owing to the fact that initially he had appointed an advocate who did not attend the case, and wrong facts were mentioned by a 'junior advocate' in the first

application. Hence, another advocate filed the second application on 23.11.2020, mentioning the correct facts. Yet, the signature on the first application filed in the year 2017 and on that of the second application filed in the year 2020 were of the same advocate, namely, Shri R.D. Rastogi. It was also observed by the revisional court that although it was averred by the appellant that he was put in dark by the counsel earlier engaged by him, there is no reference to his name. Thus, upon consideration of the entire material on the record, it was held by the revisional court that the application under Order IX, Rule 7 of the CPC for recalling order dated 06.09.2006 was filed by the appellant not only after a long delay of 14 years, but also without assigning any satisfactory reasons for the delay, hence, the revisional court found no error in the order dated 07.10.2021 of the trial court and accordingly, the Civil Revision preferred by the appellant was dismissed.

8. Assailing the order of the revisional court, the appellant filed a petition under Article 227 of the Constitution of India, invoking the supervisory jurisdiction of the High Court of Judicature at Allahabad. The High Court, vide impugned order dated 19.05.2022, affirmed the orders of both the courts below and dismissed the petition filed by the appellant. The High Court, while dismissing the said petition, took note of the fact that the suit was filed before the trial court in the 2006, by the respondent-plaintiffs and the appellant-defendant appeared and filed the vakalatnama of his counsel on 22.04.2006 and in the year 2011, moved an application seeking permission to file written statements. Upon consideration of the fact that the appellant's counsel remained the same throughout, the High Court was of the opinion that while filing the application in the year 2011, the appellant's counsel would definitely have come to know about the order dated 06.09.2006, by which the trial court had decided to proceed ex-parte against the appellant. Despite this, the first application under Order IX, Rule 7 of the CPC was moved only on 01.09.2017, which was also not pressed for 3 years, and then the second application was moved on 23.11.2020 without showing any "good cause", as required under Order IX, Rule 7 of the CPC. Thus, no perversity was found by the High Court in the orders of both the courts below. The High Court hence refused to exercise its supervisory jurisdiction under Article 227 of the Constitution, and in our opinion, rightly so.

In this case the main question is of delay. Should an inordinate delay, which has no reasonable explanation be condoned?

9. Whether an application filed by the appellant, under Order IX, Rule 7 of the CPC can be allowed, after a delay of almost 14 years, is the only question before us. Was there a sufficient cause for filing such a belated application?

Although the term 'sufficient cause' has not been defined in the Limitation Act, it is now well-settled through a catena of decisions that the term has to be construed liberally and in order to meet the ends of justice. The reason for giving the term a wide and comprehensive meaning is quite simple. It is to ensure that deserving and meritorious cases are not dismissed solely on the ground of delay.

10. There is no gainsaying the fact that the discretionary power of a court to condone delay must be exercised judiciously and it is not to be exercised in cases where there is gross negligence and/or want of due diligence on part of the litigant (See Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. (2021) 18 SCC 384). The discretion is also not supposed to be exercised in the absence of any

reasonable, satisfactory or appropriate explanation for the delay (See P.K. Ramachandran v. State of Kerala and Anr., (1997) 7 SCC 556). Thus, it is apparent that the words 'sufficient cause' in Section 5 of the Limitation Act can only be given a liberal construction, when no negligence, nor inaction, nor want of bona fide is imputable to the litigant (See Basawaraj and Anr. v. Special Land Acquisition Officer., (2013) 14 SCC 81). The principles which are to be kept in mind for condonation of delay were succinctly summarised by this Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Ors., (2013) 12 SCC 649, and are reproduced as under:

> "21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice. 21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation. 21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
>
> 21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
>
> 21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
>
> 21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice. 21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.
>
> 21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.
>
> 21.9. (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration.

It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted, or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

……." (emphasis supplied) Having perused the application under Order IX, Rule 7 of the CPC dated 23.11.2020, filed by the appellant, and the accompanying affidavit, wherein the appellant had sought the benefit of Section 5 of the Limitation Act, for condonation of a delay of almost 14 years, we find there was no satisfactory or reasonable ground given by the appellant explaining the delay. We say this for two reasons. First, it is an admitted position by the appellant himself that upon an inspection of the case file in the year 2011, he came to know about the order dated 06.09.2006, by which the Trial Court had decided to proceed ex-parte against him. What prevented the appellant from filing the application under Order IX, Rule 7 that year itself has not been satisfactorily explained at all, as the first application was only filed in the year 2017. Secondly, the explanation offered by the appellant, which is that the advocate appointed by him did not pursue the matter diligently, and then another advocate was appointed by him who inadvertently forgot to file the application does not find support from the records. What is clear is that the appellant has been grossly negligent in pursuing the matter before the trial court. Thus, the trial court, the revisional court as well as the High Court, were correct in dismissing the belated claim of the appellant. We find no reason to interfere with the impugned order dated 19.05.2022 of the High Court of Judicature at Allahabad.

The appeal stands dismissed.

……J. [SUDHANSHU DHULIA] …… ……J. [PRASANNA B. VARALE]
New Delhi.

April 08, 2024.

Manoharan vs Sivarajan & Ors on 25 November, 2013

Equivalent citations: AIRONLINE 2013 SC 180, (2013) 14 SCALE 347, (2013) 4 BANKCAS 679, (2013) 4 CURCC 424, (2013) 4 KER LT 828, (2014) 102 ALL LR 228, (2014) 122 REVDEC 285, (2014) 133 ALLINDCAS 58, (2014) 1 ALL RENTCAS 474, (2014) 1 ALL WC 902, (2014) 1 BOM CR 121, (2014) 1 CIVILCOURTC 68, (2014) 1 CIVLJ 909, (2014) 1 CLR 70 (SC), (2014) 1 JLJR 571, (2014) 1 MAD LW 83, (2014) 1 PUN LR 810, (2014) 1 RECCIVR 247, (2014) 1 WLC(SC)CVL 103, (2014) 2 ICC 538, (2014) 2 JCR 50 (SC), (2014) 2 PAT LJR 23, (2014) 3 CIVLJ 909, (2014) 3 MPLJ 495, 2014 (4) SCC 163, (2014) 5 MAH LJ 3, (2016) 8 SCALE 684, (2017) 1 SERVLR 788, (2017) 2 ESC 333, (2017) 7 ADJ 98 (SC)

Author: V.Gopala Gowda

Bench: V. Gopala Gowda, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10581 OF 2013
(Arising out of SLP(C) NO. 23918 OF 2012)

MANOHARAN …APPELLANT

Vs.

SIVARAJAN & ORS. …RESPONDENTS

J U D G M E N T

V.Gopala Gowda J.

Leave granted.

2. This appeal is filed by the appellant questioning the correctness of the judgment and final Order dated 21.03.2012 passed by the High Court of Kerala at Ernakulam in RFA No. 678 of 2011 urging various facts and legal contentions in justification of his claim.

3. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled for the relief as prayed in this appeal.

The appellant approached the respondent no. 1 - a money lender, for a loan of [pic]2,20,000/-. The respondent no. 1 agreed to give him the loan in return of execution of a sale deed with respect to 3 cents of land in re- survey No. 111/13-1 in Block No. 12 of Maranalloor village by the appellant in his favour. It was agreed upon between the parties that the respondent no. 1 will reconvey the property in favour of the appellant on repayment of the loan. The appellant accordingly executed sale deed No. 575 of 2001 at sub Registrar's office at Ooruttambalam with respect to 3 cents of land in Re-survey No.111/13-1 in Block no.12 of Maranalloor village in favour of respondent no.1. The respondent no. 1 executed an agreement of re- conveyance deed in favour of the appellant regarding the above mentioned property on the same day.

4. The learned senior counsel, Mr. Basanth R. appearing on behalf of the appellant argued that the appellant approached the respondent no.1 several times with money for re-conveying the property in favour of the appellant as was agreed upon between them but the respondent no. 1 evaded from doing so.

5. It is also the case of the appellant that respondent no.1, instead of issuing a deed of re-conveyance, sold the property to Respondent nos. 2 and 3 without the knowledge of the appellant. The appellant sent a legal notice to the respondent no.1 requesting him to appear before the sub Registrar's office for the execution of re-conveyance deed regarding the plaint schedule property to which the respondent no. 1 did not oblige. The appellant then filed a suit being OS No. 141/2007 before the Court of sub Judge, Neyyattinkara for mandatory injunction, for declaration of the sale deed executed by Respondent no.1 in favour of Respondent nos. 2 and 3 as null and void, for execution of re-conveyance deed in his favour and also for consequential reliefs. The suit was valued at [pic]3,03,967/- and the court fee was valued at [pic]28,797/-. The appellant paid 1/10th of the court fee i.e., [pic]2880/- at the time of filing the suit. The Court of sub Judge, Neyyattinkara granted injunction in favour of the appellant restraining the respondents from carrying out new construction activities including the parts of the plaint schedule property until further orders.

6. The court of sub Judge, Neyyattinkara heard the application for extension of time sought by the appellant for paying the balance court fee. However, the application was rejected and the file was closed by the learned sub Judge. The appellant then filed Regular First Appeal No. 678 of 2011 along with an application for condonation of delay in filing the appeal. The High Court dismissed the application for condonation of delay on the ground that the delay in filing the appeal was not explained by the appellant and consequently, dismissed the Regular First Appeal filed by the appellant. The High Court's opinion that the appellant has not given any ground for delay in filing the Regular First Appeal is not sustainable since the appellant has categorically claimed that he was not aware of the rejection of the suit of the appellant for delayed payment of court fee by the learned

sub Judge.

7. In the light of the facts and circumstances of the case, the following points would arise for our consideration:

> 1. Whether the learned sub Judge was justified in rejecting the suit for non- payment of court fee?
>
> 2. Was the appellant entitled to condonation of delay for non- payment of court fee by the learned sub Judge?
>
> 3. Whether the High Court was right in rejecting the application for condonation of delay filed by the appellant against the decision of the learned sub judge who rejected the suit of the appellant for non- payment of court fee?
>
> 4. What Order?

Answer to Point no. 1

8. Section 149 of the Civil Procedure Code prescribes a discretionary power which empowers the Court to allow a party to make up the deficiency of court fee payable on plaint, appeals, applications, review of judgment etc. This Section also empowers the Court to retrospectively validate insufficiency of stamp duties etc. It is also a usual practice that the Court provides an opportunity to the party to pay court fee within a stipulated time on failure of which the Court dismisses the appeal. In the present case, the appellant filed an application for extension of time for remitting the balance court fee which was rejected by the learned sub Judge. It is the claim of the appellant that he was unable to pay the requisite amount of court fee due to financial difficulties. It is the usual practice of the court to use this discretion in favour of the litigating parties unless there are manifest grounds of mala fide. The Court, while extending the time for or exempting from the payment of court fee, must ensure bona fide of such discretionary power. Concealment of material fact while filing application for extension of date for payment of court fee can be a ground for dismissal. However, in the present case, no opportunity was given by the learned sub Judge for payment of court fee by the appellant which he was unable to pay due to financial constraints. Hence, the decision of the learned sub Judge is wrong and is liable to be set aside and accordingly set aside.

Answer to Point no.2

9. In the case of State of Bihar & Ors. v. Kameshwar Prasad Singh & Anr.[1], it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing the cases on merit. The relevant paragraphs of the case read as under:

> "11. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters

on merits. This Court in Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987)ILLJ 500 SC held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice-that being the life purpose for the existence of the institution of Courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides.

A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

XXX XXX XXX

12. After referring to the various judgments reported in New India Insurance Co. Ltd. v. Shanti Misra [1976] 2 SCR 266, Brij Inder Singh v. Kanshi Ram (1918)ILR 45 P.C. 94, Shakuntala Devi Jain v. Kuntal Kumari [1969]1 SCR 1006, Concord of India Insurance Co. Ltd. v. Nirmala Devi [1979] 118 ITR 507(SC), Lala Mata Din v. A. Narayanan [1970] 2 SCR 90, State of Kerala v. E.K. Kuriyipe 1981 (Supp)SCC 72, Milavi Devi v. Dina Nath (1982)3 SCC 366a, O.P. Kathpalia v. Lakhmir Singh AIR 1984 SC 1744, Collector, Land Acquisition v. Katiji (1987) ILLJ 500 SC, Prabha v. Ram Parkash Kalra 1987 Supp(1)SCC 399, G. Ramegowda, Major v. Sp. Land Acquisition Officer [1988] 3 SCR 198, Scheduled Caste Co-op. Land Owning Society Ltd. v. Union of India AIR 1991 SC 730, Binod Bihari Singh v. Union of India AIR 1993 SC 1245, Shakambari & Co. v. Union of India AIR 1992 SC 2090, Ram Kishan v. U.P. SRTC 1994 Supp(2)SCC 507 and Warlu v. Gangotribai AIR 1994 SC 466, this Court in State of Haryana v. Chandra Mani 2002(143) ELT 249(SC) held ;

'……The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach injustice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants.' To the same effect is the judgment of this Court in Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma AIR 1996 SC 2750.

13. In Nand Kishore v. State of Punjab (1995)6 SCC 614 this Court under the peculiar circumstances of the case condoned the delay in approaching this Court of about 31 years. In N. Balakrishnan v. M. Krishnamurthy 2008(228)ELT 162(SC) this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor. In this context it was observed in 2008(228) ELT 162(SC) :

> It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court."

10. In the case in hand, it is clear from the evidence on record that the appellant could not pay court fee due to financial difficulty because of which his suit got rejected. It is also pertinent to note that the appellant had moved the Court claiming his substantive right to his property. The appellant faced with the situation like this, did not deserve the dismissal of the original suit by the Court for non- payment of court fee. He rather deserved more compassionate attention from the Court of sub Judge in the light of the directive principle laid down in Article 39A of the Constitution of India which is equally applicable to district judiciary. It is the duty of the courts to see that justice is meted out to people irrespective of their socio economic and cultural rights or gender identity.

11. Further, Section 12(h) of the Legal Services Authorities Act, 1987 provides that every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

“in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court” Further, Section 12 of the Kerala State Legal Services Authorities Rules, 1998 states that:

“12. Any person whose annual income from all sources does not exceed Rupees Twelve Thousand shall be entitled to legal services under clause (h) of Section 12 of the Act”.

Therefore, subject to the submission of an affidavit of his income, the court fee of the appellant could have been waivered or provided by the District Legal Services Authority, instead of rejection of the suit.

12. Further, in the case of State of Maharashtra V. Manubhai Pragaji Vashi and Others[2], it has been held that:

“17. ..... we have to consider the combined effect of Article 21 and Article 39A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures 'justice, social, economic and political'. Article 39A of the Constitution provides 'equal justice' and 'free legal aid'. The State shall secure that the operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The principles contained in Article 39A are fundamental and

> cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way-by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) to provide free legal aid 'by suitable legislation or by schemes' of 'in any other way', so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.(Emphasis supplied).....”
>
> 13. Further, Article 39A of the Constitution of India provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties. Therefore, in the light of the legal principle laid down by this Court, the appellant deserved waiver of court fee so that he could contest his claim on merit which involved his substantive right. The Court of sub Judge erred in rejecting the case of the appellant due to non- payment of court fee. Hence, we set aside the findings and the decision of the Court of sub Judge and condone the delay of the appellant in non-payment of court fee which resulted in rejection of his suit.

Answer to Point no. 3

14. Having answered Point nos. 1 and 2 in favour of the appellant, we are inclined to answer point no. 3 as well in his favour.

In the case of Muneesh Devi v. U.P. Power Corporation Ltd. and Ors.[3], it was held as under:

> “15. In the application filed by her for condonation of delay, the Appellant made copious references to the civil suit, the writ petition and the special leave petition filed by her and the fact that the complaint filed by her was admitted after considering the issue of limitation. She also pleaded that the cause for claiming compensation was continuing. The National Commission completely ignored the fact that the Appellant is not well educated and she had throughout relied upon the legal advice tendered to her. She first filed civil suit which, as mentioned above, was dismissed due to non payment of deficient court fees. She then filed writ petition before the High Court and special leave petition before this Court for issue of a mandamus to the Respondents to pay the amount of compensation, but did not succeed. It can reasonably be presumed that substantial time was consumed in availing these remedies. It was neither the pleaded case of Respondent No. 1 nor any material was produced before the National Commission to show that in pursuing remedies before the judicial forums, the Appellant had not acted bona fide. Therefore, it was an eminently fit case for exercise of power under Section 24-A(2) of the Act. Unfortunately, the National Commission rejected the Appellant's prayer for condonation of delay on a totally flimsy ground that she had not been able to substantiate the assertion about her having made representation to the Respondents

for grant of compensation."

15. In the case in hand, the High Court, vide its impugned judgment dated 21.03.2012 held that the appellant has not provided sufficient grounds for delay in filing the appeal. This decision of the High Court is unsustainable in law. The appellant has categorically stated that he went to his advocate's office at Neyyattinkara on 24.05.2011 to enquire about the status of the suit. His advocate informed him that the learned sub Judge has rejected the suit on 11.8.2008 for non-payment of balance court fee. The advocate claimed that he has informed the same to the appellant through a postal card but the appellant claims that the same has not reached him and he was under the impression that his application for extension of time for payment of court fee will be allowed by the learned sub Judge. He further claimed that he had applied for procurement of the certified copy of the decision of the learned sub Judge on the same day.

16. The learned senior counsel Mr. K.P. Kylasantha Pillay, appearing on behalf of the respondents alleged that the appeal of the appellant before this court is based on wrong and frivolous grounds. The material produced by them in support of their contention is totally based on the merit of the case. Since, we are not deciding the merit of the case, the material produced by the respondents in support of their contention becomes irrelevant. We have condoned the delay in paying the court fee by the appellant while answering point nos. 1 and 2. We see no reason in rejecting the application filed by the appellant for condonation of delay in filing the appeal before the High Court as well.

17. In view of the aforesaid reasons, the impugned judgment passed by the High Court is not sustainable and is liable to be set aside as per the principle laid down by this Court in as much the High Court erred in rejecting the application for condonation of delay filed by the appellant. We accordingly, condone the delay in filing the appeal in the High Court as well.

Answer to Point no. 4

18. In view of the reasons assigned while answering point nos. 1,2 and 3 in favour of the appellant, the impugned judgment passed by the High Court is set aside and the application filed by the appellant for condonation of delay is allowed. Therefore, we allow the appeal by setting aside the judgments and decree of both the trial court and the High Court and remand the case back to the trial court for payment of court fee within 8 weeks. If for any reason, it is not possible for the appellant to pay the court fee, in such event, he is at liberty to approach the jurisdictional district legal service authority and Taluk Legal Services Committee seeking for grant of legal aid for sanction of court fee amount payable on the suit before the trial court. If such application is filed, the same shall be considered by such committee and the same shall be facilitated to the appellant to get the right of the appellant adjudicated by the trial court by securing equal justice as provided under Article 39A of the Constitution of India read with the provision of Section 12(h) of the Legal Services Authorities Act read with Regulation of Kerala State. We further direct the trial court to adjudicate on the rights of the parties on merit and dispose of the matter as expeditiously as possible.

19. The appeal is allowed in terms of the observations and directions given as above to the trial court. There will be no order as to costs.

……J. [SUDHANSU JYOTI MUKHOPADHAYA]
……J. [V. GOPALA GOWDA] New Delhi, November 25, 2013

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[1] (2000) 9 SCC 94
[2] (1995) 5 SCC 730
[3] 2013 (9) SCALE 640

- 22-

M.P. Steel Corporation vs Commnr. Of Central Excise on 23 April, 2015

Author: R.F. Nariman

Bench: R.F. Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4367 OF 2004

M.P. STEEL CORPORATION …APPELLANT

VERSUS

COMMISSIONER OF CENTRAL
EXCISE ...RESPONDENT

J U D G M E N T

R.F. Nariman, J.

1. The facts giving rise to the present appeal are as follows. The appellant is engaged in ship breaking activity at Alang Ship Breaking Yard. The appellant imported a vessel, namely, M.V. Olinda, for the purpose of breaking the same, and filed a Bill of Entry when the vessel was imported on 7.2.1992. It declared in the said Bill of Entry that the Light Displacement Tonnage of the vessel was 7009 metric tons. On 19.2.1992, the appellant was informed by the Superintendent of Customs and Central Excise Alang that the Light Displacement Tonnage of the ship is actually 8570 tons and that customs duty was to be levied on this tonnage. On 3.3.1992, the appellant cleared the vessel on payment of customs duty on the basis of 7009 metric tons and executed a bank guarantee for Rs.19,90,275/- being the difference in customs duty on 1561 metric tons. On 25.3.1992, the Collector of Customs, Rajkot, directed the Assistant Collector, Bhavnagar to encash the bank guarantee furnished by the appellant. On 2.4.1992, the Superintendent of Customs and Central Excise sent a letter to the appellant communicating the decision of the Collector, as aforesaid. The bank guarantee was duly encashed on 3.4.1992. After protesting against the said illegal action of the Department in encashing

the bank guarantee, the appellant preferred an appeal against the Superintendent's letter dated 2.4.1992 and the Collector's order dated 25.3.1992 before CEGAT. On 23.6.1998, the Appellate Tribunal allowed the appeal and set aside the order of the Collector dated 25.3.1992. In the year 2000, the Department preferred an appeal before this Court. On 12.3.2003, this Court allowed the appeal holding:

> "This appeal is against a judgment dated 23.6.1998 passed by the Customs, Excise And Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai.
>
> Facts briefly stated are that the respondent filed a Bill of Entry in respect of ship M.V. Olinda imported by them for purposes of breaking. The respondent showed the light displacement tonnage (LDT) as 7009 metric tons. This declaration was not accepted by the Superintendent of Customs and Central Excise. The respondent, thus, approached the Assistant Collector. The question was how LDT was to be calculated. It appears that between the Assistant Collector and the Collector there was some internal correspondence on this aspect. The Collector took a policy decision on how LDT was to be calculated. The Collector conveyed this decision to the Assistant Collector by his letter dated 25.3.1992. Pursuant thereto the Superintendent of Customs and Central Excise passed an order dated 2nd April, 1992 in respect of vessel M.V. "Olinda". Of course the order dated 2nd April, 1992 is based on the decision of the Collector. However, the order remains that of the Superintendent of Customs and Central Excise.
>
> The respondent filed an appeal directly before CEGAT. CEGAT has disposed of this appeal by the impugned order. CEGAT negatived a contention that the appeal was not maintainable before them on the basis that the Superintendent's order is nothing more than a communication of the order passed by the Collector (Appeals). CEGAT held that the appeal was in fact against the Collector's order.
>
> In our view, the reasoning of CEGAT cannot be sustained. The decision taken by the Collector was not taken in his capacity as Collector (Appeals). Also the order by which respondent is aggrieved is the order passed by the Superintendent. An appeal against that order has to be filed before the Commissioner (Appeals) under Section 128. By virtue of Section 129-A, CEGAT has no jurisdiction to entertain such an appeal.
>
> It is clear that the impugned order is passed without any jurisdiction. Therefore, it cannot be sustained. We, thus, set aside the order. The appeal is accordingly allowed. There will be no order as to costs.
>
> We clarify that we have not gone into the merits of the matter and that it will be open to the respondent to adopt such remedy as they may be advised, if in law they are entitled to do so."

2. After this judgment, on 23.5.2003, the appellant filed an appeal before the Commissioner (Appeals) against the order passed by the Superintendent, Customs dated 2.4.1992. On 4.8.2003, an application to condone delay in filing the appeal was made in the following terms:

"As appeal against the order of the Supdt. of Customs was filed by us within 60 days of the receipt of the certified true copy of the judgment of the Hon'ble Supreme Court. It is our respectful submission that since the appeal was filed by us before the correct forum with due dispatch after receipt of the Supreme Court's judgment, there has been no delay in filing the appeal. It is well settled now that the time taken for pursuing a remedy before another appellate Forum is to be excluded for the purpose of computing the period for filing an appeal. (Union Carbide India Ltd. Vs. CC 1998 (77) ECR 376, Karnataka Minerals & Mfg. Co. Ltd. Vs. CCE 1998 (101) ELT 627)."

3. By an order dated 27.10.2003, the Commissioner of Customs (Appeals) dismissed the appeal on the ground of delay stating that the appeal had been filed way beyond the period of 60 days plus 30 days provided for in Section 128 of the Customs Act. Against this order, CESTAT dismissed the appeal of the appellant stating that the Commissioner (Appeals) had no power to condone delay beyond the period specified in Section 128.

4. Shri Viswanathan, learned senior advocate appearing on behalf of the appellant argued before us that the entire period starting from 25.3.1992 up till 12.3.2003 ought to be excluded by applying Section 14 of the Limitation Act. According to him, Section 14 of the Limitation Act would apply to exclude this period from the period of 90 days allowed in filing an appeal filed to the Collector (Appeals) inasmuch as vide Section 29 (2) of the Limitation Act Section 14 of the Limitation Act would also apply to Tribunals set up under special or local Acts. According to him, the entire period with which he was prosecuting, with due diligence, the abortive appeal filed before CEGAT should be excluded, which would include the period even prior to 22.6.1992 when the abortive appeal was filed. As an alternative submission, on the assumption that Section 14 applied only to Courts and not to Tribunals, he submitted that the principle of Section 14 would then apply. According to him, Section 128 of the Customs Act before its amendment in 2001 would be attracted on the facts of this case giving him a period of 90 days plus an extended period of a further period of 90 days within which the present appeal could be filed. This being the case, on an application of Section 14, the appeal would be filed with no delay at all even if the period from 3.4.1992 to 22.6.1992 and 12.3.2003 to 23.5.2003 is to be taken into account, as that would be less than 180 days given to file the appeal under the old Section 128. He cited a number of authorities which we will deal with in the course of this judgment in support of all the aforesaid propositions.

5. Shri A.K. Sanghi, learned senior advocate appearing on behalf of the Department argued that Section 128 of the Customs Act excluded the application of Section 14 of

the Limitation Act in that the scheme of the Section is that only a limited period should be given to an assessee beyond which the appeal would become time barred. In the present case, Section 128 as amended post 2001 would apply to the facts of this case and on the appellant's own showing the appeal is out of time by eleven and a half years. Section 128 only gives the appellant 60 days plus another 30 days which have long gone. He also argued that Section 14 of the Limitation Act would not apply to Tribunals but only to Courts, and the Collector (Appeals) was at best a quasi-judicial Tribunal. Further, according to him, no question of any principle of section 14 would get attracted. In fact, according to him, there is no pleading qua Section 14 at all – the only pleading is for condonation of delay and not for exclusion of time. Section 14 requires that five necessary ingredients must be satisfied on facts before it can be attracted. The appellant has neither pleaded nor proved any of these ingredients. He also cited a number of authorities which we will refer to in the course of this judgment.

Ingredients of Section 14.

Section 14 of the Limitation Act reads as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

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

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

6. Shri A.K. Sanghi, learned senior counsel appearing on behalf of the Department has stated that at no point of time has the appellant taken up a plea based on Section 14. Neither has the appellant met with any of the five conditions set out in paragraph 21 of Consolidated Engg. Enterprises v. Principal secy., Irrigation Deptt., (2008) 7 SCC 169, which reads as follows:-

"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court."

7. Technically speaking, Shri A.K. Sanghi, may be correct.

However, in an application for condonation of delay the appellant pointed out that they were pursuing a remedy before another appellate forum which ought to be excluded. We deem this averment sufficient for the appellant to contend that Section 14 of the Limitation Act or principles laid down under it would be attracted to the facts of this case.

We might also point out that conditions 1 to 4 mentioned in the Consolidated Engineering case have, in fact, been met by the appellant. It is clear that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party. The prior proceeding had been prosecuted with due diligence and in good faith, as has been explained in Consolidated Engineering itself. These phrases only mean that the party who invokes Section 14 should not be guilty of negligence, lapse or inaction. Further, there should be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. On the facts of this case, as the earlier Supreme

Court order dated 12.3.2003 itself points out, there was some confusion as to whether what was appealed against was the Superintendent's order or the Collector's order. The appellant bona fide believed that it was the Collector's order which was appealed against and hence an appeal to CEGAT would be maintainable. This contention, however, ran into rough weather in this Court. Further, the time taken between 3.4.1992 and 22.6.1992 to file an appeal cannot be said to be inordinately long. Thus, neither was there any negligence, lapse or inaction on facts nor did the appellant delay proceedings to harass the Department by pretending that there was a mistake. Condition (3) was also directly met – this Court in the order dated 12.3.2003 set aside CEGAT's order on the ground that it was without jurisdiction. It is indisputable that the earlier proceeding and the later proceeding relate to the same matter in issue and thus condition 4 is also met. Condition 5, however, has not been met as both the proceedings are before a quasi- judicial Tribunal and not in a Court. This, however, is not fatal to the present proceeding as what is being held by us in this judgment is that despite the fact that Section 14 of the Limitation Act may not apply, yet the principles of Section 14 will get attracted to the facts of the present case. It is in this way that we now proceed to consider the law on the subject.

Whether the Limitation Act applies only to Courts and not to Tribunals

8. A perusal of the Limitation Act, 1963 would show that the bar of limitation contained in the Schedule to the Act applies to suits, appeals, and applications. "Suit" is defined in Section 2(l) as not including an appeal or an application. The word "Court" is not defined under the Act. However, it appears in a number of its provisions (See: Sections 4,5,13,17(2),21). A perusal of the Schedule would show that it is divided into three divisions. The first division concerns itself with suits. Articles 1 to 113 all deal with "suits".

9. Sections 2(a),(e) and (i) are material in that they define what is meant by an applicant, a plaintiff and a defendant.

"2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "applicant" includes—

(i) a petitioner;

(ii) any person from or through whom an applicant derives his right to apply;

(iii) any person whose estate is represented by the applicant as executor, administrator or other representative;

(e) "defendant" includes—

(i) any person from or through whom a defendant derives his liability to be sued;

(ii) any person whose estate is represented by the defendant as executor, administrator or other representative;

(i) "plaintiff" includes—

(i) any person from or through whom a plaintiff derives his right to sue;

(ii) any person whose estate is represented by the plaintiff as executor, administrator or other representative;"

10. Section 3(2) which is material states as follows:

> "3(2) For the purposes of this Act-
>
> a) A suit is instituted-
>
> (i)In an ordinary case, when the plaint is presented to the proper officer;
>
> (ii)In the case of a pauper, when his application for leave to sue as a pauper is made; and
>
> (iii)In the case of a claim against a company which is being wound up by the court, when the claimant first sends in his claim to the official liquidator;
>
> (b) Any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted –
>
> (i)in the case of a set off, on the same date as the suit in which the set off is pleaded;
>
> (ii)in the case of a counter claim, on the date on which the counter claim is made in court;
>
> (c)an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court."

11. A perusal of Section 3(2) shows that "suits" are understood as actions begun in courts of law established under the Constitution of India.

12. In the Schedule, the second division concerns itself with appeals. These appeals under Articles 114 to 117, are either under the Civil Procedure Code, the Criminal Procedure Code, or intra-court appeals so far as the High Courts are concerned. These appeals again are only to "Courts" established under the Constitution.

13. Equally, in the third division, all applications that are referred to are under Articles 118 to 137 only to "Courts", either under the Civil Procedure Code or under other enactments.

14. Sections 13, 21 and Articles 124, 130 and 131 of the Limitation Act are again important in understanding what is meant by the expression "Court". They are set out below:

> "13. Exclusion of time in cases where leave to sue or appeal as a pauper is applied for.—In computing the period of limitation prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper has been made and rejected, the time during which the applicant has been prosecuting in good faith his application for such leave shall be excluded, and the court may, on payment of the court fees prescribed for such suit or appeal, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.
>
> 21. Effect of substituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:
>
> Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.
>
> (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.

Schedule |124. |For a review of |Thirty |The date of| | |judgment by a court|days |the decree | | |other than the | |or order. | | |Supreme Court. | | | |130. |For leave to appeal| | | |as a pauper -- | | | |(a) to the High |Sixty days|The date of| | |Court; | |decree | | | | |appealed | | | | |from. | | |(b) to any other |Thirty |The date of| | |court. |days |decree | | | | |appealed | | | | |from. | |131. |To any court for |Ninety |The date of| | |the exercise of its|days |the decree | | |powers of revision | |or order or| | |under the Code of | |sentence | | |Civil Procedure, | |sought to | | |1908 (5 of 1908), | |be revised.| | |or the Code of | | | | |Criminal Procedure,| | | | |1898 (5 of 1898). | | | It will be seen that suits and appeals that are covered by the Limitation Act are so covered provided court fees prescribed for such suits or appeals are paid. Under Section 13, set out hereinabove, this becomes clear. That is why time is excluded in cases where leave to file a suit or an appeal as a pauper is granted in the circumstances mentioned in the Section. 'Courts' that are mentioned in this Section are therefore courts as understood in the strict sense of being part of the Judicial Branch of the State.

15. Section 21 also makes it clear that the suit that the Limitation Act speaks of is instituted only by a plaintiff against a defendant. Both plaintiff and defendant have been defined as including persons

through whom they derive their right to sue and include persons whose estate is represented by persons such as executors, administrators or other representatives. This again refers only to suits filed in courts as is understood by the Code of Civil Procedure. In this regard, Section 26 of the CPC states:

> "Section 26- Institution of suits (1)Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.
>
> (2) In every plaint, facts shall be proved by affidavit."

16. When it comes to applications, again Articles 124, 130 and 131 throw a great deal of light. Only review of judgments by a "court" is contemplated in the Third Division in the Schedule. Further, leave to appeal as a pauper again can be made either to the High Court or only to any other court vide Article 130. And by Article 131, a revision petition filed only before Courts under the Code of Civil Procedure Code or the Code of Criminal Procedure are referred to. On a plain reading of the provisions of the Limitation Act, it becomes clear that suits, appeals and applications are only to be considered (from the limitation point of view) if they are filed in courts and not in quasi- judicial bodies.

17. Now to the case law. A number of decisions have established that the Limitation Act applies only to courts and not to Tribunals. The distinction between courts and quasi-judicial decisions is succinctly brought out in Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., 1950 SCR 459. This root authority has been followed in a catena of judgments. This judgment refers to a decision of the King's Bench in Cooper v. Wilson. The relevant quotation from the said judgment is as follows:-

> "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:
>
> (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law. A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4). The place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

18. Under our constitutional scheme of things, the judiciary is dealt with in Chapter IV of Part V and Chapter V of Part VI. Chapter IV of Part V deals with the Supreme Court and Chapter V of Part VI deals with the High Courts and courts subordinate thereto. When the Constitution uses the

expression "court", it refers to this Court system. As opposed to this court system is a system of quasi-judicial bodies called Tribunals. Thus, Articles 136 and 227 refer to "courts" as distinct from "tribunals". The question in this case is whether the Limitation Act extends beyond the court system mentioned above and embraces within its scope quasi-judicial bodies as well.

19. A series of decisions of this Court have clearly held that the Limitation Act applies only to courts and does not apply to quasi- judicial bodies. Thus, in Town Municipal Council, Athani v. Presiding Officer, Labour Court, (1969) 1 SCC 873, a question arose as to what applications are covered under Article 137 of the Schedule to the Limitation Act. It was argued that an application made under the Industrial Disputes Act to a Labour Court was covered by the said Article. This Court negatived the said plea in the following terms:-

> "12. This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908, governed applications under the Code of Civil Procedure only, it clearly implied that the applications must be presented to a court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to courts whose proceedings were governed by the Code of Civil Procedure. As best, the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than courts, such as a quasi judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the Code of Civil Procedure or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than courts, are now to be governed for purposes of limitation by Article 137." Similarly, in Nityananda, M. Joshi & Ors. v. Life Insurance Corporation & Ors., (1969) 2 SCC 199, this Court followed the judgment in Athani's case and turned down a plea that an application made to a Labour Court would be covered under Article 137 of the Limitation Act. This Court emphatically stated that Article 137 only contemplates applications to courts in the following terms:
>
> "3. In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963 all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when

> the court is closed." Again under Section 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.'"

20. In Kerala State Electricity Board v. T.P. Kunhaliumma, (1976) 4 SCC 634, a 3-Judge Bench of this Court followed the aforesaid two judgments and stated:-

> "22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case [(1969) 1 SCC 873 : (1970) 1 SCR 51] and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act." This judgment is an authoritative pronouncement by a 3-Judge Bench that the Limitation Act applies only to courts and not to quasi- judicial Tribunals. Athani's case was dissented from on a different proposition – that Article 137 is not confined to applications under the Code of Civil Procedure alone. So long as an application is made under any statute to a Civil Court, such application will be covered by Article 137 of the Limitation Act.

21. The stage is now set for a decision on which wide ranging arguments were made by counsel on both sides. In Commissioner of Sales Tax, U.P., Lucknow v. Parson Tools and Plants, Kanpur, (1975) 4 SCC 22, a 3-Judge Bench was confronted with whether Section 14 of the Limitation Act applied to the Sales Tax authorities under the U.P. Sales Tax Act. In no uncertain terms, this Court held:-

> "8. Mr Karkhanis is right that this matter is no longer res Integra. In Shrimati Ujjam Bai v. State of U.P. [AIR 1962 SC 1621 : (1963) 1 SCR 778] Hidayatullah, J. (as he then was) speaking for the Court, observed:
>
> "The Taxing authorities are instrumentalities of the State. They are not a part of the legislature, nor are they a part of the Judiciary. Their functions are the assessment and collection of taxes and in the process of assessing taxes, they follow a pattern of action which is considered judicial. They are not thereby converted into courts of civil judicature. They still remain the instrumentalities of the State and are within the definition of 'State' in Article 12."
>
> 9. The above observations were quoted with approval by this Court in Jagannath Prasad case [AIR 1963 SC 416 : (1963) 2 SCR 850 : 14 STC 536] and it was held that a Sales Tax Officer under U.P. Sales Tax Act, 1948 was not a court within the meaning

of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasi-judicial functions. The decision in Jagannath Prasad case it seems, was not brought to the notice of the High Court. In view of these pronouncements of this Court, there is no room for argument that the Appellate Authority and the Judge (Revisions) Sales tax exercising jurisdiction under the Sales Tax Act, are "courts". They are merely Administrative Tribunals and "not courts". Section 14, Limitation Act, therefore, does not, in terms apply to proceedings before such tribunals." It then went on to discuss whether the general principle underlying Section 14 would be applicable and held:-

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

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

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

22. It is clear that this judgment clearly laid down two things – one that authorities under the Sales Tax Act are not "courts" and thus, the Limitation Act will not apply to them. It also laid down that the language of Section 10 (3-B) of the U.P. Sales Tax Act made it clear that an unusually long period of limitation had been given for filing a revision application and therefore said that the said Section as construed by the Court would not be unduly oppressive. Most cases would, according to the

Court, be filed within a maximum period of 18 months but even in cases, rare as they are, filed beyond such period, the revising authority may on its own motion entertain the revision and grant relief. Given the three features of the U.P. Sales Tax Act scheme, the Court held that the legislature deliberately excluded the application of the principle underlying Section 14 except to the limited extent that it may amount to sufficient cause for condoning delay within the period of 18 months.

23. Close upon the heels of this judgment comes another 3-Judge Bench decision under the same provision of the U.P. Sales Tax Act. In this judgment, another 3-Judge Bench in C.S.T. v. Madan Lal Das and Sons, 1976 (4) SCC 464, without adverting to either Parson Tools or the three other judgments mentioned hereinabove went on to apply Section 12 (2) of the Limitation Act to proceedings under the U.P. Sales Tax Act. None of the aforesaid four decisions were pointed out to the court and it was not argued that the Limitation Act applies only to courts and not to Sales Tax authorities who are quasi-judicial Tribunals. This judgment, therefore, is not an authority for the proposition that the Limitation Act would apply to Tribunals as opposed to courts. Clearly the conclusion reached would be contrary to four earlier decisions three of which are 3-Judge Bench decisions.

24. In fact, even after this judgment, in Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal, (1996) 9 SCC 414, this Court held that a Land Acquisition Officer under the Land Acquisition Act not being a court, the provisions of the Limitation Act would not apply. The court concluded, after adverting to some of the previous judgments of this Court as follows:-

> "18. Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the considered view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore, is not a court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18. The High Court, therefore, was not right in its finding that the Collector is a court under Section 5 of the Limitation Act.
>
> 19. Accordingly, we hold that the applications are barred by limitation and the Collector has no power to extend time for making an application under Section 18(1) for reference to the court."

25. Two other judgments of this Court need to be dealt with at this stage. In Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker, (1995) 5 SCC 5, a 2-Judge Bench of this Court held that the Limitation Act would apply to the appellate authority constituted under Section 13 of the Kerala Buildings (Lease and Rent Control) Act , 1965. This was done by applying the provision of Section 29(2) of the Limitation Act. Despite referring to various earlier judgments of this Court which held that the Limitation Act applies only to courts and not to Tribunals, this Court in this case held to the contrary. In distinguishing the Parson Tools' case, which is a 3-Judge Bench binding on the Court that decided Mukri Gopalan's case, the Court held:-

"If the Limitation Act does not apply then neither Section 29(2) nor Section 14(2) of the Limitation Act would apply to proceedings before him. But so far as this Court is concerned it did not go into the question whether Section 29(2) would not get attracted because the U.P. Sales Tax Act Judge (Revisions) was not a court but it took the view that because of the express provision in Section 10(3)(B) applicability of Section 14(2) of the Sales Tax Act was ruled out. Implicit in this reasoning is the assumption that but for such an express conflict or contrary intention emanating from Section 10(3)(B) of the U.P. Sales Tax Act which was a special law, Section 29(2) would have brought in Section 14(2) of the Limitation Act even for governing period of limitation for such revision applications. In any case, the scope of Section 29(2) was not considered by the aforesaid decision of the three learned Judges and consequently it cannot be held to be an authority for the proposition that in revisional proceedings before the Sales Tax authorities functioning under the U.P. Sales Tax Act Section 29(2) cannot apply as Mr. Nariman would like to have it." It then went on to follow the judgment reported in The Commissioner of Sales Tax, U.P. v. M/s. Madan Lal Das & Sons, Bareilly, (1976) 4 SCC 464 which, as has been pointed out earlier, is not an authority for the proposition that the Limitation Act would apply to Tribunals. In fact, Mukri Gopalan's case was distinguished in Om Prakash v. Ashwani Kumar Bassi, (2010) 9 SCC 183 at paragraph 22 as follows:

"22. The decision in Mukri Gopalan case [(1995) 5 SCC 5] relied upon by Mr Ujjal Singh is distinguishable from the facts of this case. In the facts of the said case, it was the District Judges who were discharging the functions of the appellate authority and being a court, it was held that the District Judge, functioning as the appellate authority, was a court and not persona designata and was, therefore, entitled to resort to Section 5 of the Limitation Act. That is not so in the instant case where the Rent Controller appointed by the State Government is a member of the Punjab Civil Services and, therefore, a persona designata who would not be entitled to apply the provisions of Section 5 of the Limitation Act, 1963, as in the other case." The fact that the District Judge himself also happened to be the appellate authority under the Rent Act would have been sufficient on the facts of the case for the Limitation Act to apply without going into the proposition that the Limitation Act would apply to tribunals.

26. Quite apart from Mukri Gopalan's case being out of step with at least five earlier binding judgments of this Court, it does not square also with the subsequent judgment in Consolidated Engg. Enterprises v.

Principal secy., Irrigation Deptt., (2008) 7 SCC 169. A 3-Judge Bench of this Court was asked to decide whether Section 14 of the Limitation Act would apply to Section 34(3) of the Arbitration and Conciliation Act, 1996. After discussing the various provisions of the Arbitration Act and the Limitation Act, this Court held:

"23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the

> Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long.

Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award." While discussing Parson Tools, this Court held:

> "25……In appeal, this Court held that (1) if the legislature in a special statute prescribes a certain period of limitation, then the Tribunal concerned has no jurisdiction to treat within limitation, an application, by excluding the time spent in prosecuting in good faith, on the analogy of Section 14(2) of the Limitation Act, and (2) the appellate authority and the revisional authority were not "courts" but were merely administrative tribunals and, therefore, Section 14 of the Limitation Act did

not, in terms, apply to the proceedings before such tribunals.

26. From the judgment of the Supreme Court in CST [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] it is evident that essentially what weighed with the Court in holding that Section 14 of the Limitation Act was not applicable, was that the appellate authority and the revisional authority were not "courts". The stark features of the revisional powers pointed out by the Court, showed that the legislature had deliberately excluded the application of the principles underlying Sections 5 and 14 of the Limitation Act. Here in this case, the Court is not called upon to examine scope of revisional powers. The Court in this case is dealing with Section 34 of the Act which confers powers on the court of the first instance to set aside an award rendered by an arbitrator on specified grounds. It is not the case of the contractor that the forums before which the Government of India undertaking had initiated proceedings for setting aside the arbitral award are not "courts". In view of these glaring distinguishing features, this Court is of the opinion that the decision rendered in CST [(1975) 4 SCC 22 :

1975 SCC (Tax) 185 : (1975) 3 SCR 743] did not decide the issue which falls for consideration of this Court and, therefore, the said decision cannot be construed to mean that the provisions of Section 14 of the Limitation Act are not applicable to an application submitted under Section 34 of the Act of 1996." In a separate concurring judgment Justice Raveendran specifically held:

"44. It may be noticed at this juncture that the Schedule to the Limitation Act prescribes the period of limitation only to proceedings in courts and not to any proceeding before a tribunal or quasi-judicial authority. Consequently Sections 3 and 29(2) of the Limitation Act will not apply to proceedings before the tribunal. This means that the Limitation Act will not apply to appeals or applications before the tribunals, unless expressly provided.

While dealing with Parson Tools, the learned Judge held:

"56. In Parson Tools [(1975) 4 SCC 22] this Court did not hold that Section 14(2) was excluded by reason of the wording of Section 10(3-B) of the Sales Tax Act. This Court was considering an appeal against the Full Bench decision of the Allahabad High Court. Two Judges of the High Court had held that the time spent in prosecuting the application for setting aside the order of dismissal of appeals in default, could be excluded when computing the period of limitation for filing a revision under Section 10 of the said Act, by application of the principle underlying Section 14(2) of the Limitation Act. The minority view of the third Judge was that the revisional authority under Section 10 of the U.P. Sales Tax Act did not act as a court but only as a Revenue Tribunal and therefore the Limitation Act did not apply to the proceedings before such Tribunal, and consequently, neither Section 29(2) nor Section 14(2) of the Limitation Act applied. The decision of the Full Bench was challenged by the

> Commissioner of Sales Tax before this Court, contending that the Limitation Act did not apply to tribunals, and Section 14(2) of the Limitation Act was excluded in principle or by analogy. This Court upheld the view that the Limitation Act did not apply to tribunals, and that as the revisional authority under Section 10 of the U.P. Sales Tax Act was a tribunal and not a court, the Limitation Act was inapplicable. This Court further held that the period of pendency of proceedings before the wrong forum could not be excluded while computing the period of limitation by applying Section 14(2) of the Limitation Act. This Court, however, held that by applying the principle underlying Section 14(2), the period of pendency before the wrong forum may be considered as a "sufficient cause" for condoning the delay, but then having regard to Section 10(3-B), the extension on that ground could not extend beyond six months. The observation that pendency of proceedings of the nature contemplated by Section 14(2) of the Limitation Act, may amount to a sufficient cause for condoning the delay and extending the limitation and such extension cannot be for a period in excess of the ceiling period prescribed, is in the light of its finding that Section 14(2) of the Limitation Act was inapplicable to revisions under Section 10(3-B) of the U.P. Sales Tax Act. These observations cannot be interpreted as laying down a proposition that even where Section 14(2) of the Limitation Act in terms applied and the period spent before wrong forum could therefore be excluded while computing the period of limitation, the pendency before the wrong forum should be considered only as a sufficient cause for extension of period of limitation and therefore, subjected to the ceiling relating to the extension of the period of limitation. As we are concerned with a proceeding before a court to which Section 14(2) of the Limitation Act applies, the decision in Parson Tools [(1975) 4 SCC 22 : 1975 SCC (Tax) 185 : (1975) 3 SCR 743] which related to a proceeding before a Tribunal to which Section 14(2) of the Limitation Act did not apply, has no application."
>
> 27. Obviously, the ratio of Mukri Gopalan does not square with the observations of the 3-Judge Bench in Consolidated Engineering Enterprises. In the latter case, this Court has unequivocally held that Parson Tools is an authority for the proposition that the Limitation Act will not apply to quasi-judicial bodies or Tribunals.

To the extent that Mukri Gopalan is in conflict with the judgment in the Consolidated Engineering Enterprises case, it is no longer good law.

28. The sheet anchor in Mukri Gopalan was Section 29(2) of the Limitation Act. Section 29(2) states:-

> "29. Savings.— (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as,

> and to the extent to which, they are not expressly excluded by such special or local law." A bare reading of this Section would show that the special or local law described therein should prescribe for any suit, appeal or application a period of limitation different from the period prescribed by the schedule. This would necessarily mean that such special or local law would have to lay down that the suit, appeal or application to be instituted under it should be a suit, appeal or application of the nature described in the schedule. We have already held that such suits, appeals or applications as are referred to in the schedule are only to courts and not to quasi-judicial bodies or Tribunals. It is clear, therefore, that only when a suit, appeal or application of the description in the schedule is to be filed in a court under a special or local law that the provision gets attracted.

This is made even clearer by a reading of Section 29(3). Section 29(3) states:-

> "29. Savings.— (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law."

29. When it comes to the law of marriage and divorce, the Section speaks not only of suits but other proceedings as well. Such proceedings may be proceedings which are neither appeals nor applications thus making it clear that the laws relating to marriage and divorce, unlike the law of limitation, may contain proceedings other than suits, appeals or applications filed in courts. This again is an important pointer to the fact that the entirety of the Limitation Act including Section 29(2) would apply only to the three kinds of proceedings mentioned all of which are to be filed in courts.

30. It now remains to consider the decision of a 2-Judge Bench reported in P. Sarathy v. State Bank of India, (2000) 5 SCC 355. This judgment has held that an abortive proceeding before the appellate authority under Section 41 of the Tamil Nadu Shops and Establishment Act would attract the provisions of Section 14 of the Limitation Act inasmuch as the appellant in this case had been prosecuting with due diligence another civil proceeding before the appellate authority under the Tamil Nadu Shops and Establishment Act, which appeal was dismissed on the ground that the said Act was not applicable to nationalized banks and that, therefore, such appeal would not be maintainable. This Court made a distinction between "Civil Court" and "court' and expanded the scope of Section 14 stating that any authority or Tribunal having the trappings of a Court would be a "court" within the meaning of Section 14. It must be remembered that the word "Court" refers only to a proceeding which proves to be abortive. In this context, for Section 14 to apply, two conditions have to be met. First, the primary proceeding must be a suit, appeal or application filed in a Civil Court. Second, it is only when it comes to excluding time in an abortive proceeding that the word "Court" has been expanded to include proceedings before tribunals.

31. This judgment is in line with a large number of authorities which have held that Section 14 should be liberally construed to advance the cause of justice – see: Shakti Tubes Ltd. v. State of Bihar, (2009) 1 SCC 786 and the judgments cited therein. Obviously, the context of Section 14

would require that the term "court" be liberally construed to include within it quasi-judicial Tribunals as well. This is for the very good reason that the principle of Section 14 is that whenever a person bonafide prosecutes with due diligence another proceeding which proves to be abortive because it is without jurisdiction, or otherwise no decision could be rendered on merits, the time taken in such proceeding ought to be excluded as otherwise the person who has approached the Court in such proceeding would be penalized for no fault of his own. This judgment does not further the case of Shri Viswanathan in any way. The question that has to be answered in this case is whether suits, appeals or applications referred to by the Limitation Act are to be filed in courts. This has nothing to do with "civil proceedings" referred to in Section 14 which may be filed before other courts or authorities which ultimately do not answer the case before them on merits but throw the case out on some technical ground. Obviously the word "court" in Section 14 takes its colour from the preceding words "civil proceedings". Civil proceedings are of many kinds and need not be confined to suits, appeals or applications which are made only in courts stricto sensu. This is made even more clear by the explicit language of Section 14 by which a civil proceeding can even be a revision which may be to a quasi-judicial tribunal under a particular statute.

Whether the Principle of Section 14 would apply to an appeal filed under Section 128 Customs Act.

"128. Appeals to Commissioner (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within [sixty days] from the date of the communication to him of such decision or order:

> [Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.] [(1-A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :
>
> Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.] (2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf." Prior to its amendment in 2001, the said Section read as under:-
>
> "128. Appeals to Collector (Appeals).—(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Collector of Customs may appeal to the Collector (Appeals) within three months from the date of the communication to him of such decision or order:
>
> Provided that the Collector (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf." We have already held that the Limitation Act including Section 14 would not apply to appeals filed before a quasi-judicial Tribunal such as the Collector (Appeals) mentioned in Section 128 of the Customs Act. However, this does not conclude the issue. There is authority for the proposition that even where Section 14 may not apply, the principles on which Section 14 is based, being principles which advance the cause of justice, would nevertheless apply. We must never forget, as stated in Bhudan Singh & Anr. v. Nabi Bux & Anr., (1970) 2 SCR 10, that justice and reason is at the heart of all legislation by Parliament. This was put in very felicitous terms by Hegde,J. as follows:

"Before considering the meaning of the word "held" in Section 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law- makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature, there is little reason to believe that it represents the legislative intent."

32. This is why the principles of Section 14 were applied in J.

Kumaradasan Nair v. Iric Sohan, (2009) 12 SCC 175 to a revision application filed before the High Court of Kerala. The Court held:

"16. The provisions contained in Sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed some mistake. The provisions of Sections 5 and 14 of the Limitation Act alike should, thus, be applied in a broad based manner. When sub-section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise, the provisions of Section 5 of the Limitation Act would apply. There cannot be any doubt whatsoever that the same would be applicable to a case of this nature.

17. There cannot furthermore be any doubt whatsoever that having regard to the definition of "suit" as contained in Section 2(l) of the Limitation Act, a revision application will not answer the said description. But, although the provisions of Section 14 of the Limitation Act per se are not applicable, in our opinion, the principles thereof would be applicable for the purpose of condonation of delay in

filing an appeal or a revision application in terms of Section 5 thereof.

18. It is also now a well-settled principle of law that mentioning of a wrong provision or non-mentioning of any provision of law would, by itself, be not sufficient to take away the jurisdiction of a court if it is otherwise vested in it in law. While exercising its power, the court will merely consider whether it has the source to exercise such power or not. The court will not apply the beneficent provisions like Sections 5 and 14 of the Limitation Act in a pedantic manner.

When the provisions are meant to apply and in fact found to be applicable to the facts and circumstances of a case, in our opinion, there is no reason as to why the court will refuse to apply the same only because a wrong provision has been mentioned. In a case of this nature, sub-section (2) of Section 14 of the Limitation Act per se may not be applicable, but, as indicated hereinbefore, the principles thereof would be applicable for the purpose of condonation of delay in terms of Section 5 thereof." The Court further quoted from Consolidated Engineering Enterprises an instructive passage:

"21. In Consolidated Engg. Enterprises v. Irrigation Deptt. [(2008) 7 SCC 169] this Court held: (SCC p. 181, para 22) "22. The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded. See Shakti Tubes Ltd. v. State of Bihar [(2009) 1 SCC 786]."

33. Various provisions of the Limitation Act are based on advancing the cause of justice. Section 6 is one such. It reads as follows:-

> "6. Legal disability.—(1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified therefor in the third column of the Schedule.
>
> (2) Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.
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> (3) Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.
>
> (4) Where the legal representative referred to in sub-section (3) is, at the date of the death of the person whom he represents, affected by any such disability, the rules contained in sub-sections (1) and (2) shall apply.
>
> (5) Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Explanation.—For the purposes of this section, 'minor' includes a child in the womb." On the assumption that Section 6 does not apply on the facts of a given case, can it be said that the principles on which it is based have no application? Suppose, in a given case, the person entitled to institute a proceeding not governed by the Limitation Act were a minor, a lunatic or an idiot, would he not be entitled to institute such proceedings after such disability has ceased, for otherwise he would be barred by the period of limitation contained in the particular statute governing his rights. This Section again is a pointer to the fact that courts always lean in favour of advancing the cause of justice where a clear case is made out for so doing.

34. However, it remains to consider whether Shri Sanghi is right in stating that Section 128 is a complete code by itself which necessarily excludes the application of Section 14 of the Limitation Act. For this proposition he relied strongly on Parson Tools which has been discussed hereinabove. As has already been stated, Parson Tools was a judgment which turned on the three features mentioned in the said case. Unlike the U.P. Sales Tax Act, there is no provision in the Customs Act which enables a party to invoke suo moto the appellate power and grant relief to a person who institutes an appeal out of time in an appropriate case. Also, Section 10 of the U.P. Sales Tax Act dealt with the filing of a revision petition after a first appeal had already been rejected, and not to a case of a first appeal as provided under Section 128 of the Customs Act. Another feature, which is of

direct relevance in this case, is that for revision petitions filed under the U.P. Sales Tax Act a sufficiently long period of 18 months had been given beyond which it was the policy of the legislature not to extend limitation any further. This aspect of Parson Tools has been explained in Consolidated Engineering in some detail by both the main judgment as well as the concurring judgment. In the latter judgment, it has been pointed out that there is a vital distinction between extending time and condoning delay. Like Section 34 of the Arbitration Act, Section 128 of the Customs Act is a Section which lays down that delay cannot be condoned beyond a certain period. Like Section 34 of the Arbitration Act, Section 128 of the Customs Act does not lay down a long period. In these circumstances, to infer exclusion of Section 14 or the principles contained in Section 14 would be unduly harsh and would not advance the cause of justice. It must not be forgotten as is pointed out in the concurring judgment in Consolidated Engineering that:

> "Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [(2006) 6 SCC 239] therefore lays down the correct legal position."

35. Merely because Parson Tools also dealt with a provision in a tax statute does not make the ratio of the said decision apply to a completely differently worded tax statute with a much shorter period of limitation – Section 128 of the Customs Act. Also, the principle of Section 14 would apply not merely in condoning delay within the outer period prescribed for condonation but would apply de hors such period for the reason pointed out in Consolidated Engineering above, being the difference between exclusion of a certain period altogether under Section 14 principles and condoning delay. As has been pointed out in the said judgment, when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the concerned statute continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.

36. Shri Sanghi also cited Ranbaxy Laboratories Ltd. v. Union of India, (2011) 10 SCC 292. He relied upon paragraph 14 of this judgment which reads as follows:-

> "14. It is a well-settled proposition of law that a fiscal legislation has to be construed strictly and one has to look merely at what is said in the relevant provision; there is nothing to be read in; nothing to be implied and there is no room for any intendment. (See Cape Brandy Syndicate v. IRC [(1921) 1 KB 64] and Ajmera Housing Corpn. v.CIT [(2010) 8 SCC 739] .)".

37. We do not see how this judgment furthers the argument of Shri Sanghi. This is only reiteration of the classic statement of law contained in the Cape Brandy Syndicate case. Further, the context of this paragraph is that a literal meaning has to be given to a charging Section in a tax statute. When it comes to machinery provisions in tax statutes and provisions which provide for appeals and the limitation period within which such appeals have to be filed, it is clear that the aforesaid observations would have no application whatsoever.

38. Shri Sanghi then referred us to Sree Balaji Nagar Residential Assn. v. State of Tamil Nadu, (2015) 3 SCC 353 and read out paragraphs 10 and 11 from the said judgment. What was held by this Court in that case was that Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 does not exclude any period during which a land acquisition proceeding which might have remain stayed on account of an injunction granted by any Court. This was so held by contrasting the language of section 24(2) with the language of Section 19 and Section 69 of the same Act. This judgment again would have no direct bearing on the proposition canvassed by Shri Sanghi that Section 128 of the Customs Act forms a complete code by itself.

What periods are to be excluded under Section 14

39. Shri Viswanathan, learned senior counsel appearing for the appellant, placed before us a judgment of the Andhra Pradesh High Court in which it was held that even prior to the institution of a particular proceeding, time taken in steps taken for prosecuting such proceedings should also be excluded. In Tirumareddi Rajarao & Ors. v. The State of Andhra Pradesh & Ors., AIR 1965 A.P. 388, the Andhra Pradesh High Court held that the period taken for preparatory steps before instituting proceedings should also be excluded. It said:

> “13. We may now turn to the Chambers Twentieth Century Dictionary for the meanings of the expression "to prosecute". It means:
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> To follow onwards or pursue in order to reach or accomplish; to engage in practise to follow up to pursue, chase, to pursue by law; to bring before a Court.
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> 14. These meanings do not vouch the construction of the section advanced by the learned Government Pleader. In our opinion, the section does not render it essential that the prosecution of the proceedings should be continued exclusively in the Court, i.e. the actual proceeding in the Court. There is justification for the view that it is only the actual period between the presentation of a proceedings and the disposal of that particular proceeding should be allowed under the sub-section.

The time during which a party has been taking the indispensable and necessary steps preparatory to initiate the proceedings in a court should also be regarded as the time during which he has been prosecuting the civil proceeding.

It is also to be borne in mind that sub-section (1) makes no reference to the pendency of the suit, appeal or other proceeding in a Court of law. The legislature had used words of general import and of widest amplitude. So, we do not find any justification for reading a restriction into that sub-section and to hold that the time during which a party was engaged in taking steps for invoking the aid of the Court falls outside the contemplation urged on behalf of the respondents, while the pendency of a proceeding in a Court could be deducted in computing the period of limitation, the time occupied in obtaining certified copies of the judgment which is an essential requisite for the filing of an appeal or revision in the higher Court has to be disregarded for purposes of S. 14. We do not think that the legislature would have contemplated such a situation. It would certainly result in an anomaly to hold that the time covered by taking the steps absolutely necessary for initiating proceedings in a Court should be included in calculating the period of limitation while the time during which a former suit or application was pending in a Court should be excluded. In our considered judgment the section does not make any distinction between the steps which a litigant has to take to initiate proceedings in a Court and the actual pendency of those proceedings in the Court."

40. In Mst. Duliyabai & Ors. v. Vilayatali & Ors., AIR 1959 MP 271, a Division Bench of the High Court held:-

> "What would be the time during which the plaintiff has been prosecuting with due diligence another civil proceeding in a Court of appeal? Certainly the time requisite for obtaining the certified copies under Section 12 of the Limitation Act would be included within the meaning of the section. Also the limitation prescribed for the filing of an appeal would be included, if the appeal be filed on the last day of limitation.
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> But if the appeal be filed earlier, the time from the date of the order impugned upto the actual date of filing of the appeal would certainly be the time during which the plaintiff can be said to be prosecuting another civil proceeding in a court of appeal. We are unable to endorse the view of the learned trial Judge on this point. A Division Bench of this Court consisting of Sir Gilbert Stone, C. J. and Niyogi, J., in the case of Kasturchand v. Wazir Begum' : (AIR 1937 Nag 1) : ILR (1937) Nag 291, held with reference to Article 11 (1) of the Limitation Act as follows:
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> "Then it is said that the plaintiff is out of time owing to the operation of Article 11 (1) of the Limitation Act which, in the case of a suit by a person against whom an order is passed on his objection in execution proceedings, fixes one year. The dates are as follows: the objection order was passed on 5-3- 1928. The plaint was presented in one Court on 15-9-1928, of course in time. That was returned by that Court on 14-12-1928, for presentation to what that Court held to be the proper Court. The plaintiff challenging the correctness of that order appealed on 6-2-1929 and the appeal was dismissed on 2-9-1929, and the plaint was presented to the Court as decided by die first Court, on 25-11-1929. In our opinion the plaintiff has been litigating the matter in a Court which she bona fide believed to be the correct

> tribunal, believing, to the extent of incurring costs of an appeal against the decision that it was not the correct tribunal, for something like 10 months.
>
> Those 10 months must be taken into account in considering the period that has elapsed between the date of suit and the date when the plaint was eventually filed in the correct Court, and if this is so taken into account the time that has expired is less than a year. The limitation point, therefore, in our opinion, fails."

In the case of Abdul Sattar v. Abdul Husan, AIR 1936 Cal 400, the plaintiffs had applied for execution of their decree. The judgment-debtors raised objections to the execution on the ground of adjustment of the decree. The question of adjustment was fought in appeals upto the highest Court. Ultimately it was decided against the plaintiffs by the final appellate Court. The learned Judges constituting the Division Bench held that the plaintiffs were entitled to exclude the entire period from the date of the order recording the adjustment upto the date of the final order of the highest appellate Court. We feel that this interpretation of Section 14 is in consonance with the wording of the Section. Therefore, differing from the learned trial Judge, we hold that the appellants were entitled to exclude the period from 18-9-1948 to 15-12-1948."

41. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bonafide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant – appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding, i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetieth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety first day till the final appeal is ultimately dismissed. This example also goes to show that the expression "the time during which the plaintiff has been

prosecuting with due diligence another civil proceeding" needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.

42. Section 14 has been interpreted by this Court extremely liberally inasmuch as it is a provision which furthers the cause of justice. Thus, in Union of India v. West Coast Paper Mills Ltd., (2004) 3 SCC 458, this Court held:

> "14. ... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in Roshanlal Kuthalia v. R.B. Mohan Singh Oberoi[(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right." Similarly, in India Electric Works Ltd. v. James Mantosh, (1971) 1 SCC 24, this Court held:
>
> "7. It is well settled that although all questions of limitation must be decided by the provisions of the Act and the courts cannot travel beyond them the words 'or other cause of a like nature' must be construed liberally. Some clue is furnished with regard to the intention of the legislature by Explanation III in Section 14(2). Before the enactment of the Act in 1908, there was a conflict amongst the High Courts on the question whether misjoinder and non-joinder were defects which were covered by the words 'or other cause of a like nature'. It was to set at rest this conflict that Explanation III was added. An extended meaning was thus given to these words. Strictly speaking misjoinder or non-joinder of parties could hardly be regarded as a defect of jurisdiction or something similar or analogous to it."

43. As has been already noticed, Sarathy's case i.e. (2000) 5 SCC 355 has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression "prosecuting with due diligence" to institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to be abortive. Explanation (a) to Section 14 was only meant to clarify that the day on which a proceeding is

instituted and the day on which it ends are also to be counted for the purposes of Section 14. This does not lead to the conclusion that the period from the cause of action to the institution of such proceeding should be left out. In fact, as has been noticed above, the explanation expands the scope of Section 14 by liberalizing it. Thus, under explanation

(b) a person resisting an appeal is also deemed to be prosecuting a proceeding. But for explanation (b), on a literal reading of Section 14, if a person has won in the first round of litigation and an appeal is filed by his opponent, the period of such appeal would not be liable to be excluded under the Section, leading to an absurd result. That is why a plaintiff or an applicant resisting an appeal filed by a defendant shall also be deemed to prosecute a proceeding so that the time taken in the appeal can also be the subject matter of exclusion under Section 14. Equally, explanation (c) which deems misjoinder of parties or a cause of action to be a cause of a like nature with defect of jurisdiction, expands the scope of the section. We have already noticed that the India Electric Works Ltd. judgment has held that strictly speaking misjoinder of parties or of causes of action can hardly be regarded as a defect of jurisdiction or something similar to it. Therefore properly construed, explanation (a) also confers a benefit and does not by a side wind seek to take away any other benefit that a purposive reading of Section 14 might give. We, therefore, agree with the decision of the Madhya Pradesh High Court that the period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the Section. The view of the Andhra Pradesh High Court is too broadly stated. The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the Section - that is to put the litigant in the same position as if the abortive proceeding had never taken place.

What applies to the facts of this case: the limitation period in Section 128 pre-amendment or post amendment

44. Shri A.K. Sanghi, learned senior counsel appearing on behalf of the revenue, has strongly contended before us that the present appeal must attract the limitation period as on the date of its filing. That being so, it is clear that the present appeal having been filed before CESTAT only on 23.5.2003, it is Section 128 post amendment that would apply and therefore the maximum period available to the appellant would be 60 plus 30 days. Even if time taken in the abortive proceedings is to be excluded, the appeal filed will be out of time being beyond the aforesaid period.

45. It is settled law that periods of limitation are procedural in nature and would ordinarily be applied retrospectively. This, however, is subject to a rider. In New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840, this Court held:

> “5. On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well- established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the

> change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective."

46. In answering a question which arose under Section 110A of the Motor Vehicles Act, this Court held:

> "7....."(1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.
>
> (2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle.

Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish a vested right of action by providing for a shorter period of limitation."

47. This statement of the law was referred to with approval in Vinod Gurudas Raikar v. National Insurance Co. Ltd., (1991) 4 SCC 333 as follows:-

> "7. It is true that the appellant earlier could file an application even more than six months after the expiry of the period of limitation, but can this be treated to be a right which the appellant had acquired. The answer is in the negative. The claim to compensation which the appellant was entitled to, by reason of the accident was certainly enforceable as a right. So far the period of limitation for commencing a legal proceeding is concerned, it is adjectival in nature, and has to be governed by the new Act — subject to two conditions. If under the repealing Act the remedy suddenly stands barred as a result of a shorter period of limitation, the same cannot be held to govern the case, otherwise the result will be to deprive the suitor of an accrued right. The second exception is where the new enactment leaves the claimant with such a short period for commencing the legal proceeding so as to make it unpractical for him to avail of the remedy. This principle has been followed by this Court in many cases and by way of illustration we would like to mention New India Insurance Co. Ltd. v.Smt Shanti Misra [(1975) 2 SCC 840 : (1976) 2 SCR 266] . The husband of the respondent in that case died in an accident in 1966. A period of two years was available to the respondent for instituting a suit for recovery of damages. In March, 1967 the Claims Tribunal under Section 110 of the Motor Vehicles Act, 1939 was constituted, barring the jurisdiction of the civil court and prescribed 60 days as the period of limitation. The respondent filed the application in July, 1967. It was held

> that not having filed a suit before March, 1967 the only remedy of the respondent was by way of an application before the Tribunal. So far the period of limitation was concerned, it was observed that a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action. In view of the change of the law it was held that the application could be filed within a reasonable time after the constitution of the Tribunal; and, that the time of about four months taken by the respondent in approaching the Tribunal after its constitution, could be held to be either reasonable time or the delay of about two months could be condoned under the proviso to Section 110- A(3)." Both these judgments were referred to and followed in Union of India v. Harnam Singh, (1993) 2 SCC 162, see paragraph 12.

48. The aforesaid principle is also contained in Section 30(a) of the Limitation Act, 1963.

"30. Provision for suits, etc., for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908.—Notwithstanding anything contained in this Act,—

(a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be instituted within a period of [seven years] next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:"

49. The reason for the said principle is not far to seek. Though periods of limitation, being procedural law, are to be applied retrospectively, yet if a shorter period of limitation is provided by a later amendment to a statute, such period would render the vested right of action contained in the statute nugatory as such right of action would now become time barred under the amended provision.

50. This aspect of the matter is brought out rather well in Thirumalai Chemicals Ltd. v. Union of India, (2011) 6 SCC 739 as follows:

> "22. Law is well settled that the manner in which the appeal has to be filed, its form and the period within which the same has to be filed are matters of procedure, while the right conferred on a party to file an appeal is a substantive right. The question is, while dealing with a belated appeal under Section 19(2) of FEMA, the application for condonation of delay has to be dealt with under the first proviso to sub-section (2) of Section 52 of FERA or under the proviso to sub-section (2) of Section 19 of FEMA. For answering that question it is necessary to examine the law on the point.
>
> Substantive and procedural law
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> 23. Substantive law refers to a body of rules that creates, defines and regulates rights and liabilities. Right conferred on a party to prefer an appeal against an order is a substantive right conferred by a statute which remains unaffected by subsequent changes in law, unless modified expressly or by necessary implication. Procedural law

establishes a mechanism for determining those rights and liabilities and a machinery for enforcing them. Right of appeal being a substantive right always acts prospectively. It is trite law that every statute is prospective unless it is expressly or by necessary implication made to have retrospective operation.

24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and an aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.

25. Law on the subject has also been elaborately dealt with by this Court in various decisions and reference may be made to a few of those decisions. This Court in Garikapati Veeraya v. N. Subbiah Choudhry [AIR 1957 SC 540] , New India Insurance Co.

Ltd. v. Shanti Misra [(1975) 2 SCC 840], Hitendra Vishnu Thakur v. State of Maharashtra [(1994) 4 SCC 602 : 1994 SCC (Cri) 1087] , Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar [(1999) 8 SCC 16] and Shyam Sunder v. Ram Kumar [(2001) 8 SCC 24] , has elaborately discussed the scope and ambit of an amending legislation and its retrospectivity and held that every litigant has a vested right in substantive law but no such right exists in procedural law. This Court has held that the law relating to forum and limitation is procedural in nature whereas law relating to right of appeal even though remedial is substantive in nature.

26. Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective and a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective."

51. This judgment was strongly relied upon by Shri A.K. Sanghi for the proposition that the law in force on the date of the institution of an appeal, irrespective of the date of accrual of the cause of action for filing an appeal, will govern the period of limitation. Ordinarily, this may well be the case. As has been noticed above, periods of limitation being procedural in nature would apply retrospectively. On the facts in the judgment in the Thirumalai case, it was held that the repealed provision contained in the Foreign Exchange Regulation Act, namely, Section 52 would not apply to an appeal filed long after 1.6.2000 when the Foreign Exchange Management Act came into force, repealing the Foreign Exchange Regulation Act. It is significant to note that Section 52(2) of the repealed Act provided a period of limitation of 45 plus 45 days and no more whereas Section 19(2) of FEMA provided for 45 days with no cap thereafter provided sufficient cause to condone delay is shown. On facts, in that case, the appeal was held to be properly instituted under Section 19, which as has been stated earlier, had no cap to condonation of delay. It was, therefore, held that the Appellate Tribunal in that case could entertain the appeal even after the period of 90 days had expired provided sufficient cause for the delay was made out.

52. The present case stands on a slightly different footing. The abortive appeal had been filed against orders passed in March- April, 1992. The present appeal was filed under Section 128, which Section continues on the statute book till date. Before its amendment in 2001, it provided a maximum period of 180 days within which an appeal could be filed. Time began to run on 3.4.1992 under Section 128 pre amendment when the appellant received the order of the Superintendent of Customs intimating it about an order passed by the Collector of Customs on 25.3.1992. Under Section 128 as it then stood a person aggrieved by a decision or order passed by a Superintendent of Customs could appeal to the Collector (Appeals) within three months from the date of communication to him of such decision or order. On the principles contained in Section 14 of the Limitation Act the time taken in prosecuting an abortive proceeding would have to be excluded as the appellant was prosecuting bona fide with due diligence the appeal before CEGAT which was allowed in its favour by CEGAT on 23.6.1998. The Department preferred an appeal against the said order sometime in the year 2000 which appeal was decided in their favour by this court only on 12.3.2003 by which CEGAT's order was set aside on the ground that CEGAT had no jurisdiction to entertain such appeal. The time taken from 12.3.2003 to 23.5.2003, on which date the present appeal was filed before the Commissioner (Appeals) would be within the period of 180 days provided by the pre amended Section 128, when added to the time taken between 3.4.1992 and 22.6.1992. The amended Section 128 has now reduced this period, with effect from 2001, to 60 days plus 30 days, which is 90 days. The order that is challenged in the present case was passed before 2001. The right of appeal within a period of 180 days (which includes the discretionary period of 90 days) from the date of the said order was a right which vested in the appellant. A shadow was cast by the abortive appeal from 1992 right upto 2003. This shadow was lifted when it became clear that the proceeding filed in1992 was a proceeding before the wrong forum. The vested right of appeal within the period of 180 days had not yet got over. Upon the lifting of the shadow, a certain residuary period within which a proper appeal could be filed still remained. That period would continue to be within the period of 180 days notwithstanding the amendment made in 2001 as otherwise the right to appeal itself would vanish given the shorter period of limitation provided by Section 128 after 2001.

53. We, therefore, set aside the order dated 25.2.2004 and remand the case to CESTAT for a decision on merits. The appeal is allowed in the aforesaid terms. There will be no order as to costs.

.....J. (A.K. Sikri) .....J. (R.F. Nariman) New Delhi;

April 23, 2015.

Shakuntala Devi Jain vs Kuntal Kumari And Ors. on 5 September, 1968

Equivalent citations: AIR1969SC575, [1969]1SCR1006, AIR 1969 SUPREME COURT 575

Bench: S.M. Sikri, R.S. Bachawat, K.S. Hegde

JUDGMENT

Bachawat, J.

1. The respondent Sumat Prashad filed an application for execution of a final decree in a partition suit. The appellant filed objections under Section 47 of the Code of Civil Procedure By an order dated January 20, 1967 the Subordinate Judge, Delhi, dismissed the objections. It is common case before us that under the relevant Civil Rules and Orders the Subordinate Judge, Delhi, was not required to draw up a formal expression of the decision under Section 47 as a decree. On March 17, 1967 the appellant filed on appeal against this order in the Delhi High Court. Alongwith the memorandum of appeal she filed a plain copy of the order and an application praying that the appeal be entertained without a certified copy of the order. In the application she stated that one had applied for a certified copy of the order but the same was not ready and that she would file the certified copy as soon as it would be ready and available to her. She added, that she wanted urgent interim relief and would be seriously prejudiced if she waited for a certified copy. She also filed an application for stay of execution. On the same date a Bench of the High Court admitted the appeal, granted an interim stay and directed issue of notice to the respondents. The attention of the Court was not drawn to the fact that a certified copy of the order had not been filed nor was the application for dispensing with the certified copy moved and an order obtained thereon. The appeal was registered as Execution First Appeal No. 86 of 1967. The appellant diligently prosecuted the appeal. On October 25, 1967 the respondents raised an objection that the appeal was incompetent as a certified copy of the order under appeal had not been filed. On November 3, she filed an application for condonation of the delay in filing the copy under Section 5 of the limitation Act. On November 6, she obtained a certified copy and on the same day she filed it in court. On December 22, 1967 the High Court held that as the memorandum of appeal was not accompanied by a certified copy of the order, the appeal was incompetent, and that there was no sufficient ground for condoning the delay in filing the copy. Accordingly the High Court dismissed the appeal and the application under Section 5 of the Limitation Act. The present appeal has been referred after obtaining special leave from this Court.

2. Two questions arise in this appeal. First, was the appeal from the order disposing the objections under Section 47 incompetent in view of the fact that the memorandum of appeal was not accompanied by certified copy of the order appealed from? Second, whether the delay in filing the

appeal should be condoned under Section 5 of the Limitation Act?

3. Section 2(2) of the Code of the Civil Procedure defines "decree". Unless there is anything repugnant in the subject or context "decree" means "the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144..." It is because the determination of any question within Section 47 is a decree that the appellant could file an appeal from the order under Section 96 of the Code. Order 41 Rule 1 of the Code provides that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader "and the memorandum shall be accompanied by a copy of the decree appealed from and (unless the appellate court dispenses therewith) of the judgment on which it is founded". Under Order 41 Rule 1 the appellate court can dispense with the filing of the copy of the judgment but it has no power to dispense with the filing of the copy of the decree. A decree and a judgment are public documents and under Section 77 of the Evidence Act only a certified copy may be produced in proof of their contents. The memorandum of appeal is not validly presented, unless it is accompanied by certified copies of the decree and the judgment.

4. The contention of Mr. Misra is that a decree is the formal expression of the adjudication and that where, as in this case, no formal decree is drawn up, the determination under Section 47 is a judgment and the Court having admitted the appeal must be presumed to have dispensed with the filing of the copy of the judgment. In this connection he drew our attention to Section 2(2), 33 and Order 20 Rules 1, 4, 6. We are unable to accept these contentions. We are not satisfied that the High Court dispensed with the filing of the copy of the order under Section 47. Admittedly, the High Court did not pass any express order to that effect. It may be that in a proper case such an order may be implied from the fact that the High Court admitted the appeal after its attention was drawn to the defect. (See C.I.P. Railway Co. v. Radhakrissen Jaikissen). But in the present case the High Court was not aware of the defect and did not intend to dispense with the filing of the copy.

5. Moreover an order under Section 47 is a decree, and the High Court had no power to dispense with the filing of a copy of the decree. Ordinarily a decree means the formal expression of an adjudication in a suit. The decree following the judgment and must be drawn up separately. But under Section 2(2), the term "decree" is deemed to include the determination of any question within Section 47. This inclusive definition Of decree applies to Order 41 Rule 1. In some courts, the decision under Section 47 is required to be formally drawn up as a decree and in that case the memorandum of appeal must be accompanied by a copy of the decree as well as the judgment. But in some other Courts no separate decree is drawn up embodying the adjudication under Section 47. In such a case, the decision under Section 47 is the decree and also the judgment, and the filing of a certified copy of the decision is sufficient compliance with Order 41 Rule 1. As the decision is the decree, the appeal is incompetent unless the memorandum of appeal is accompanied by a certified copy of the decision. Our attention was drawn to the decision in Bodh Narain Mahto v. Mahavir Prasad and Ors. (2) Where Agarwala J. seems to have held that where no formal decree was prepared in the case of a decision under Section 47 the appellant was not required to file a copy of the order with the memorandum of appeal. We are unable to agree with this ruling. The correct

practice was laid down in a Kamala Devi v. Tarapada Mukherjee (3) where Mookerjee J. observed:--

> "Now it frequently happens that in cases of execution proceedings, though there is a judgment, an order, that is, the formal expression of the decision is not drawn up. In such cases the concluding portion of the judgment which embodies the order may be treated as the order against which the appeal is preferred. In such a case it would be sufficient for the appellant to attach to his memorandum of appeal a copy of the judgment alone, and time should run from the date of the judgment. Where, however, as in the case before us, there is a judgment stating the grounds of the decision and a separate order is also drawn up embodying the formal expression of the decision, copies of both the documents must be attached to the memorandum, and the appellant is entitled to a deduction of the time taken up in obtaining copies thereof."

6. We hold that the memorandum of appeal from the o'rder dated January 20, 1967 should have been accompanied by a certified copy of the order and in the absence of the requisite copy the appeal was defective and incompetent.

7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in re-filing the appeal with the certified copy should be condoned under Section 5 of the Limitation Act, If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in Krishna v. Chathappan (4) "section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafides is importable to the appellant."

8. The record discloses that the appellant made repeated attempts to obtain a certified copy of the order. She is a pardanashin lady and her affairs were managed by her husband Ajit Prasad and sometimes by her son Virendra. On March 2, 1967 she applied for a certified copy of the order under appeal. The application distinctly stated that she wanted a copy of the order dated January 20, 1967 dismissing her objections. The application bore the serial number 17542. The copying department supplied to her a copy of another order passed by the Court on the same date dismissing Sumat Prasad's objections to the appellant's application for execution. The mistake is solely attributable to the negligence of the copying department. In her affidavit the appellant stated that the application for a copy dated February 17, 1967 was in respect of the order dismissing Sumat Prasad's objections. This statement is not correct, but it may well be that having got a certified copy of the order dismissing Sumat Prasad's objections she believed that she had applied for a copy of that order.

9. On March 2, 1967 the appellant's son Virendra made another application for a certified copy of the order. He got the certified copy on March 10. In paragraph 6 of the petition for condonation of delay the appellant stated that Virendra did not give her the copy and this statement was corroborated by Virendra in his supporting affidavit. In paragraph 9 she stated that Virendra had misplaced the copy and due to fear of reprimand he did not inform her or her husband, Virendra's

affidavit is silent on this point. But the affidavits sufficiently establish that the appellant did not receive the certified copy from Virendra. Had she received the copy there is no reason why she would not have filed it along with the memorandum of appeal on March 17, 1967.

10. On March 20, 1967 the appellant filed another urgent application for a certified copy of the order dated January 20, 1967 and also copies of two other orders dated February 17, 1967 and May 13, 1966. On this application bearing serial number 19461 the copying department made a note on March 23, 1967 that the orders dated February 17, 1967 and May 13, 1966 were not found and the applicant should be asked to indicate the file whereon the orders were. It is surprising that the copying department should have asked the appellant to give this clarification. If the department found difficulty in finding the orders, it should have contacted the officer-in charge of the records who would have secured the orders for them. The note did not indicate why a copy of the order dated January 20, 1967 was not being supplied. The next note on the application dated March 27, indicates that the application was returned to the appellant. From the next note dated April 11, it appears that the clerk-in-charge, copying department, directed that the application be filed. We may safely presume that before April 11, the application was re-submitted by the appellant to the copying department. There is nothing to show that the clarification asked for was not supplied by the appellant. The department took no further action on the application and made no effort to supply the certified copies to the appellant. No ground was given by the department for not supplying a certified copy of the order dated January 20, 1967. The tune for filing the appeal expired on April 20, 1967. On October 25, 1967 the respondents took the objection for the first time that the appeal was incompetent. Before that date, the record of the Executing Court including the Original order appealed from had been received by the High Court. On October 27, 1967 the appellant made another application for a certified copy and on November 6, 1967 as soon as she received the copy she filed it in Court. The appellant made repeated attempts to procure a certified copy. The failure of the copying department to supply the copy inspite of those applications contributed largely to the unfortunate delay in filing it. The appellant cannot be held responsible for the laches of the copying department. Once her son actually got the copy but she never received it. The appellant could have filed another copy before November 6, 1967 had it been supplied to her by the copying department. We are inclined to accept the statement that she was under the bona fide impression that the certified copy was not ready, and that is why it was not supplied to her by the copying department. It is not a case where it is possible to impute to the appellant want of bona fides or such inaction or negligence as would deprive her of the protection of Section 5 of the Limitation Act. We are therefore inclined to allow her application under Section 5 and to condone the delay in re-filing the appeal with a certified copy of the order.

11. In the result, we allow the appeal. The application filed by the appellant under Section 5 of the Limitation Act is allowed and the order of the High Court dismissing Execution First Appeal No. 86 of 1967 is set aside. The appeal is remanded to the High Court so that it may deal with and dispose of the appeal on the merits. There will be no order as to the costs of the appeal in this Court.

N. Balakrishnan vs M. Krishnamurthy on 3 September, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3222, 1998 (7) SCC 123, 1998 AIR SCW 3139, 1998 (5) SCALE 105, 1998 (6) ADSC 465, 1998 SCFBRC 427, 1998 (2) REVLR 253, (1999) 1 MAD LW 739, 1999 (121) PUN LR 462, (1999) 1 PUN LR 462, 1999 (136) MADLW 739, 1998 REVLR 2 253, 1998 ADSC 6 465, 1998 (2) ALL CJ 1347, (1998) 6 JT 242 (SC), 1999 (1) SRJ 233, 1998 (2) UJ (SC) 603, (1999) 1 ICC 630, (1999) 1 RENCR 595, (2000) 2 RENTLR 477, (1999) 1 ANDHLD 305, (1999) 1 ANDH LT 298, (1999) 1 RENCJ 260, (1999) 1 APLJ 15, (1999) 1 CIVILCOURTC 12, (1998) 3 LANDLR 287, (1999) 1 MAD LJ 114, (1998) REVDEC 607, (1998) 31 CORLA 139, (1998) 7 SUPREME 209, (1998) 5 SCALE 105, (1999) 1 ALL WC 15, (1999) 1 CALLT 51, (1999) 1 CIVLJ 378, (1998) 3 CURCC 233, (1999) 1 CURLJ(CCR) 596, (1999) 1 RAJ LW 107, (1999) 2 RECCIVR 578, (1998) 2 ALL RENTCAS 664, (1997) 3 WLC (RAJ) 180

Bench: S.Saghir Ahmad, K.T. Thomas

PETITIONER:
N. BALAKRISHNAN.

Vs.

RESPONDENT:
M. KRISHNAMURTHY.

DATE OF JUDGMENT: 03/09/1998

BENCH:
S.SAGHIR AHMAD, K.T. THOMAS.,

ACT:

HEADNOTE:

JUDGMENT:

JUDGEMENT Thomas J.

Leave granted.

Explanation for the apparently inordinate delay in moving an application was accepted by the trial court under Section 5 of the Limitation Act, 1963, but the High Court in revision reversed the finding and consequently dismissed the motion. That order of the High Court has given rise to these appeals.

Facts barely needed for these appeals are the following:

> A suit for declaration of title and ancillary reliefs filed by the respondent was decreed ex-parte on 28.10.1991. Appellant, who was defendant in the suit, on coming to know of the decree moved an application to set it aside. But the application was dismissed for default on 17.02.1993. Appellant moved for having that order set aside only on August 19, 1995 for which a delay of 883 days was noted. Appellant also filed another application to condone the delay by offering an explanation which can be summarized thus:
>
> Appellant engaged an advocate (one Sri MS Rajith) for making the motion to set the ex-parte decree aside but the advocate failed to inform him that the application was dismissed for default on 17.2.1993. When he got summons from the execution side on 5.7.1995 hye approached his advocate but he was told that perhaps execution proceedings would have been taken by the decree holder since there was no stay against such execution proceedings. On the advice of the same advocate, he signed some papers including a Vakalatnama for resisting the execution proceedings, besides making a payment of Rupees Two Thousand towards advocate's fees and other incidental expenses. But the fact is that the said advocate did not do anything in the court even thereafter - On 4.8.1995 the execution warrant was issued by the court and he became suspicious of the conduct of his advocate and hence rushed to the court from where he got the disquieting information that his application to set aside the ex-parte decry stood dismissed for default as early as 17.2.1993 and that nothing was done in the court thereafter on his behalf. He also learned that his advocate has left the profession and joined as legal assistant of MS Maxworth Orcheads India Limited. Hence he filed the present application for having the order dated 7.2.1993 set aside.

Appellant did not stop with filing the aforesaid application. He also moved the District Consumer Disputes Riderless Forum, Madras North ventilating his grievance and claiming a compensation of rupees on lakh as against his erstwhile advocate. The said forum passed final order directing the said advocate to pay a compensation of Rs. Fifty thousand to the appellant besides a cost of Rs. Five Hundred.

Though, the trial court was pleased to accept the aforesaid explanation and condoned the delay a single Judge of the High Court of Madras who heard the revision, expressed the view that the delay of 883 days in filing the application has not been properly explained. Hence the revision was

allowed and trial court order was set aside. An application for review was made, but that was dismissed. Hence these appeals.

The reasoning of the learned single Judge of the High Court for reaching the above conclusion is that the affidavit filed by the appellant was silent as to why he did not meet his advocate for such a long period. According to the learned single Judge:

> "If the appellant was careful enough to verify about the stage of the proceedings at any point of time and had he been misled by the counsel then oily it could have been said that due to the conduct of the counsel the party should not be penalised."

Learned single judge then observed that when the party is in utter negligence, he cannot be permitted to blame the counsel. Learned single judge has further remarked that:

> "A perusal of the affidavit does not reveal any diligence on the part of the respondent in the conduct of the proceedings. When already the suit has been decreed ex-parte, the respondent ought to have been more careful and diligent in prosecuting the matter further. the conduct of the respondent clearly reveals that at any point of time, he has not relished his responsibility as a litigant."

Appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to condone the dela. In such cases, the superior cut would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammeled by the conclusion of the lower court.

The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the court in different situations in not because on the expiry of such time a bad cause would transform into a good cause.

Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. the object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.

In this case explanation for the delay set up by the appellant was found satisfactory to the trial court in the exercise of its discretion and the High Court went wrong in upsetting the finding, more so when the High Court was exercising reversional jurisdiction. Nonetheless, the respondent must be compensated particularly because the appellant has secured a sum of Rs. Fifty thousand from the delinquent advocate through the Consumer Disputes Riderless Forum. We, therefore, allow these appeals and set aside the impugned order by restoring the order passed by the trial court but on a condition that appellant shall pay a sum of Rupee Ten thousand to the respondent (or deposit it in this court within one month from this date.

The appeals are disposed of accordingly.

Collector Land Acquisition, Anantnag & ... vs Mst. Katiji & Ors on 19 February, 1987

Equivalent citations: 1987 AIR 1353, 1987 SCR (2) 387, AIR 1987 SUPREME COURT 1353, 1987 21 STL 82, 1987 SCFBRC 147, (1987) 167 ITR 471, (1987) 1 ALL WC 675, (1987) 1 APLJ 41, (1987) 1 LS 28, 1987 RAJLR 132, 1987 HRR 213, 1987 (12) ECC 346, 1987 REV LR 169, 1988 ALL CJ 114, (1987) 13 ALL LR 306, (1987) IJR 287 (SC), 1987 UJ(SC) 2 29, (1987) 1 JT 537 (SC), 1987 BLJR 465, ILR 1987 KANT 2844, 1987 (1) ALL RENT CAS 288 (2), (1987) 13 ECC 27, (1987) 1 ALL RENTCAS 288(2), (1987) 28 ELT 185, (1987) 71 FJR 143, (1987) 1 LABLJ 500, (1987) 1 LANDLR 437, (1987) 100 MAD LW 676, (1987) 66 STC 228, 1987 (2) SCC 107, (1987) 1 SUPREME 253, (1987) 1 CIVLJ 552, (1987) 62 COMCAS 370

Author: M.P. Thakkar

Bench: M.P. Thakkar, B.C. Ray

PETITIONER:
COLLECTOR LAND ACQUISITION, ANANTNAG & ANR.

Vs.

RESPONDENT:
MST. KATIJI & ORS.

DATE OF JUDGMENT19/02/1987

BENCH:
THAKKAR, M.P. (J)
BENCH:
THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 1353 1987 SCR (2) 387
1987 SCC (2) 107 JT 1987 (1) 537
1987 SCALE (1)413
CITATOR INFO :
R 1988 SC 897 (7)

ACT:
Indian Limitation Act, 1963 ; s.5--Condoning delay in filing appeal--Existence of 'sufficient cause'--Determination of--State seeking condonation of delay----To be treated

equitably.

HEADNOTE:

An appeal by the State. against a decision enhancing compensation in respect of acquisition of lands for a public purpose, raising important questions as regards principles of valuation, was dismissed by the High Court as time barred, being four days beyond time, by rejecting an application for condonation of dalay.

The State appealed to this Court by special leave.

Allowing the appeal,

HLED: 1.1 The expression 'sufficient cause' employed by the legislature in s.5 of the Indian Limitation Act, 1963 is adequately elastic to enable the Courts to do substantial justice to parties by disposing of matters on merits. [388E-F]

1.2 The State which represents the collective cause of the community. does not deserve a litigant-non-grata status. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an equitable manner. The Courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression 'sufficient cause'. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits. [390B-C]

2. In the instant case, sufficient cause exists for delay in instituting the appeal in the High Court. Delay is, therefore, condoned. The matter is remitted to the High Court for disposal on merits. [390C-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 460 of 1987.

From the Judgment and Order dated 14.4. 1986 of the Jammu & and Kashmir High Court in Civil 1st Appeal No. 54 of 1985.

Altar Anjad, Adv. General and S.K. Bhattacharya for the Appellants.

S.M. Aquil and Shakeel Ahmed for the Respondents. The Order of the Court was delivered by THAKKAR, J. To condone, or not to condone, is not the only question. Whether or not to apply the same standard in applying the "sufficient cause" test to all the litigants regardless of their personality in the said context is another.

An appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800% (from Rs. 1000 per kanal to Rs.8000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time barred being 4 days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaning- ful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

> "Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained"

> does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a liti- gant, are accorded the same treatment and the law is admin- istered in an even handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experi- ence shows that on account of an impersonal machinary (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the in-

herited bureaucratic methodology imbued with the note-mak- ing, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more diffi- cult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "suffi- cient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on mertis in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore. set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides. Appeal is allowed accordingly. No costs.

P.S.S. Appeal allowed.