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**—** Tamil Nadu Registration Rules, Rule 55 — Constitution of India, Article 226 — Properties purchased for Projects under Joint Venture Contract Agreement — Certain properties sold on account of Business loss — Cancellation of Sale Deed sought on ground that sale was without consent of Petitioner — *Held*, Registering Authority bound to consider objections raised on grounds specified in Rule 55 — Petitioner not alleged documents are forged — Fraud committed by selling without consent, not specified ground under Rule 55 — No case made out for invoking power under Rule 55 — Petitioner to seek remedy before competent Civil Court — Writ Petition dismissed. ***Alagar, V. v. Inspector General of Registration*** **(D. Krishnakumar, J.) 2021 (1) CWC 42**

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## TAMIL NADU REGISTRATION RULES

**— Rule 55** — Registration Act, 1908 (16 of 1908) —Constitution of India, Article 226 — Properties purchased for Projects under Joint Venture Contract Agreement — Certain properties sold on account of Business loss — Cancellation of Sale Deed

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## WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974 (6 OF 1974)

**— Sections 4(2)(f), 6, 12(1) & 64** — Appointment of Chairman and Member Secretary of the Tamil Nadu Pollution Control Board Rules, 2019, Rules 2(4)(b)(3)(ii) & 2(4)(b)(3-A) — Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981), Sections 4 & 5(2)(f) — Members of Board — Qualifications prescribed under Rules — Whether contrary to Act — Section 4(2)(f) stipulates that a Member Secretary should possess qualifications, knowledge and experience of scientific, engineering or management of Pollution Control Board — However, no specific Educational qualifications set out under 1974 Act — 2019 Rules intending to fill said gap — Educational and experience criteria specified under Rule 2(4)(b)(3)(ii) and Rule 2(4)(b)(3-A), *held*, bearing a strong nexus to scientific, engineering and management aspects of Pollution Control Board — Rules, *held*, *intra vires* Section 4(2)(f) of Water Act and Sections 4 & 5 of Air Act — Rules also in conformity with Judgment of Apex Court in *Techi Tagi Tara v. Rajendra Singh Bhandari,* 2017 (2) CWC 636 (SC) — Writ Petition challenging *vires* of Rules, dismissed. ***Velazhagan, D. v. State of Tamil Nadu*** **(DB) (Senthilkumar Ramamoorthy, J.) 2021 (1) CWC 68**

# CURRENT WRIT CASES

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**2021 (1) CWC 1**

**IN THE HIGH COURT OF MADRAS**

**R. Subbiah & R. Pongiappan, JJ.**

W.P. No.27397 of 2019

4.6.2020

Dr. R. Muthukumaran, Head of the Department of Anaesthesia, TMCH, Thanjavur ***.....Petitioner***

Vs.

Tamil Nadu State Human Rights Commission, rep. by its Secretary, Greenways Road, Chennai - 600 104. **2.** M. Abraham ***.....Respondents***

**Constitution of India, Article 226 — Protection of Human Rights Act, 1993 (10 of 1994) — Human Rights — Alleged violation of — Complaint — Quashing of — Whether warranted — Daughter of R2 died while undergoing Caesarean operation — Complaint before Human Rights Commission filed by R2 alleging negligence and violation of Human rights on part of attending Doctors — Suit claiming Compensation and Criminal Complaint against Doctors also preferred — Suit dismissed and Criminal Complaint dropped — Application by Petitioner herein for quashing Human Rights Complaint, dismissed — *Held*, dismissal of Suit claiming Compensation not a ground for dismissal of Human Rights Complaint — Impugned Order not a Final Order deciding rights of parties — Issues raised by Petitioner available for contest on merits, while deciding Complaint — Impugned Order, not interfered with — Writ Petition dismissed.** ***(Para 9)***

**Dr. B. Cheran, Advocate for Petitioner.**

**S. Wilson, Advocate for Respondent No.1; R. Gunasekaran, Advocate for Respondent No.2.**

**W.P. DISMISSED — NO COSTS — W.M.P. CLOSED**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned Order passed by the First Respondent in I.A. No.*Nil* of 2018 in S.H.R.C. No.4482 of 2019, dated 18.6.2019 and quash the impugned Order.

**Judgment Reserved on 6.1.2020 and Pronounced on 4.6.2020**

## JUDGMENT

**R. Subbiah, J.**

**1.** The Petitioner calls in question the Order, dated 18.6.2019 passed by the First Respondent in I.A. No.Nil of 2018 in S.H.R.C. No.4482 of 2009, by which, the First Respondent refuses to dismiss the Human Rights Complaint No.4482 of 2009 preferred by the Second Respondent herein.

**2.** The facts which gave rise to the filing of S.H.R.C. No.4482 of 2009 before First Respondent are as follows:

**3.** As per the Complaint filed by the Second Respondent/Complainant before the First Respondent/Commission, the daughter of the Second Respondent/Complainant by name Mrs. Sheela Selvarani, Wife of Abraham Samuel was admitted in the Government RM Hospital, Thanjavur on the morning of 20.1.2009 when she was in the advanced stage of pregnancy. Soon after the admission, the Second Respondent/Complainant was made to sign consent form to the effect that the patient was suffering from heart disease. Subsequently, on 23.1.2009, the daughter of the Second Respondent/Complainant was referred to Thanjavur Medical College Hospital to seek the opinion of the Cardiologist. According to the Second Respondent/Complainant, the Cardiologist, on examination of his daughter, opined that his daughter was hale and healthy and she can withstand any surgery not involving the heart, which was also observed in the case sheet. While so, on 24.1.2009, the Doctors in the Labour ward decided to carry out cesarean operation for the daughter of the Second Respondent/Complainant and she was taken to the emergency operation theatre at about 5.00 am. Dr. S. Delphin performed the surgery to the daughter of the Complainant. It is the contention of the Second Respondent/Complainant that in the operation theatre, the Doctor in charge of anaesthesia administration instructed the Post Graduate students to administer anaesthesia and left the operation theatre. Dr. Delphin had carried out the surgery in the absence of an Anaesthetist - Dr. Kumar with the aid of trainee Doctors. While so, there was a sudden spurt of commotion in the operation theatre and the Petitioner herein was emergently called to attend the patient. It is the further contention of the Second Respondent/Complainant that at the relevant time, Dr. C. Kumaran had attended a patient at a Private Nursing Home called Rohini Hospital, Thanjavur. However, after two hours, the Petitioner entered the theatre. At that time, the Second Respondent/Complainant learnt that the pulse of his daughter has come down, her blood pressure was low and she

was almost dead. The Second Respondent/Complainant was asked to sign the Hospital records. Ultimately, at about 10.00 am on 24.1.2009, the Second Respondent/Complainant was informed about the death of his daughter due to medical complication. According to the Second Respondent/Complainant, due to negligence in treating his daughter by the Petitioner, the death had occurred. According to the Second Respondent/Complainant, his daughter developed some complication while administering anaesthesia and Dr. Kumaran, the duty Doctor in charge of administering anaesthesia did not visit the operation theatre. Therefore, alleging negligence on the part of the Petitioner and other Doctors, the Second Respondent/Complainant has filed S.H.R.C. No.4482 of 2009 before the First Respondent praying to issue notice to all the opposite parties and to Award appropriate compensation to him for the mental agony sustained by him on the death of his daughter.

**4.** Pending SHRC No.4482 of 2009, the Petitioner herein, who is arrayed as fourth Opposite party therein, has filed the Instant Application to dismiss the Complaint against him on the ground that the Second Respondent/ Complainant has already given a Criminal Complaint against him and two other Doctors and it was registered as Crime No.420 of 2009 on the file of Thanjavur West Police Station for the offence punishable under Section 304-A of I.P.C. On registration of such Complaint, the Petitioner, seeking to quash the Criminal Complaint, has filed Criminal Original Petition (MD) No.4713 of 2009 before the Madurai Bench of this Court. When Crl.OP (MD) No.4713 of 2009 was pending, the Investigation Officer has closed the Complainant on 19.8.2016. Recording the same, Crl.O.P.(MD) No.4713 of 2009 was dismissed by this Court on 8.12.2016. Further, even during the pendency of the Criminal Proceedings, the Second Respondent herein has filed a Comprehensive Suit in O.S. No.207 of 2011 before the learned Principal Subordinate Judge, Thanjavur against the Petitioner and other Doctors praying to direct the Defendants/Doctors in the Suit to pay a sum of ₹5 lakhs as Compensation and damages for the Mental Agony suffered by him due to the negligent manner with, which they have treated his daughter Sheela Selvarani and for having caused her death. In the Suit, Written Statement was filed by the Defendants/Doctors. During trial, the Second Respondent/Complainant examined himself as PW1 besides examining Dr. Meenakshi Sundram as PW2 and marked documentary evidence. All the Doctors, who were arrayed as Defendants in the Suit, have examined themselves as DWs.1 to 6 and also marked documentary evidence. The learned Principal Subordinate Judge, upon extensive analysis of the evidence made available had dismissed the Suit on 20.4.2018. When the Civil Court, upon analysis of the oral and documentary evidence concluded that there is no negligence on the part of the Petitioner and other Doctors, the parallel proceedings initiated by the Second Respondent/Complainant before the First Respondent/Commission is not warranted. The pendency of the proceedings before the First Respondent/Commission would only cause

acute Mental Agony and hardship to the Petitioner and therefore, he has filed the unnumbered application to dismiss the Complaint.

**5.** The First Respondent/Commission, on analysing the averments made in the unnumbered application of the Petitioner, has concluded that even though there were Civil as well as Criminal proceedings initiated by the Second Respondent/Complainant against the Petitioner and other Doctors, yet the Complaint filed by the Second Respondent/Complainant has to be independently gone into. Further, the First Respondent, on the basis of a report obtained from the Director, Investigation Wing of the State Human Rights Commission, has concluded that *prima facie* there are materials to show that the Petitioner and other Doctors have violated human rights while extending treatment to the daughter of the Second Respondent/Complainant and therefore, an Enquiry into the Complaint is warranted. Accordingly, the first Respondent Commission dismissed the unnumbered Application filed by the Petitioner. Aggrieved by the same, the present Writ Petition is filed.

**6.** The learned Counsel appearing for the Petitioner would contend that even at the time of admission of the daughter of the Second Respondent, she was suffering from various Medical complications and therefore, "high risk" consent was obtained from the Second Respondent herein. The Petitioner and other Doctors have discharged their duties to the best of their ability and there was no negligence attributable on their part. In any event, the Second Respondent herein, soon after the death of his daughter, has given a Criminal Complaint based on which the case in Crime No.420 of 2009 was registered on the file of Thanjavur West Police Station against the Petitioner and other Doctors for the offence punishable under Section 304-A of I.P.C. Ultimately, the Investigation Officer dropped further investigation into the Complaint, against which, the Second Respondent did not initiate any further proceedings. The Second Respondent has also filed a Comprehensive Suit in O.S. No.267 of 2011 before the Principal Subordinate Judge, Thanjavur and it was dismissed on 20.4.2018 after due trial. While so, for the very same matter, which was already adjudicated by the Competent Civil Court, the Petitioner cannot maintain the Complaint before the First Respondent/ Commission. According to the learned Counsel for the Petitioner, a Petitioner cannot be subjected to multiple proceedings before the Civil Court, Criminal Court and before the First Respondent/Commission. Above all, the Second Respondent has also given a Complaint to the District Collector against the Petitioner and other Doctors based on, which a committee was constituted comprising of the Dean of the Hospital with five Senior Professors to inquire into the Complaint. The Committee has gone into the Complaint given by the Second Respondent and the explanation offered by the Petitioner and other Doctors and thereafter, rejected the complaint on 30.4.2009 by holding that there is no negligence on the part of the Doctors while treating the daughter of the Second Respondent. Similarly, a Complaint was given to the Director of Medical Education and after due

Enquiry, the Directorate has concluded that there is no negligence attributable on the part of the Petitioner and other Doctors. While so, the learned Counsel for the Petitioner would submit that the pendency of the Complaint before the First Respondent/Commission would only cause undue hardship and mental agony to the Petitioner, who is a reputed Doctor by profession. The First Respondent Commission without taking note of the repeated proceedings initiated by the Second Respondent, has passed the impugned Order refusing to dismiss the Complaint given by the Second Respondent and he prayed for allowing this Writ Petition.

**7.** The learned Counsel for the Second Respondent would contend that soon after the death of his daughter, the Complaint in SHRC No.4482 of 2009 was filed in which notice was ordered to the Petitioner. Though the Complaint is pending from 2009, after lapse of 9 years, the present Application has been filed to reject the Complaint in SHRC No.4482 of 2009 on the ground of *res judicata*. The First Respondent has rightly held that the Complaint filed by the Second Respondent has to be independently gone into and the principles of *res judicata* has no application to the proceedings before the First Respondent Commission. The proceedings initiated before the Civil Court or the Criminal Forum will not be a bar for maintaining the present Complaint before the First Respondent as per Section 36 of the Protection of Human Rights Act, 1993. As per Section 36 (1), only if a Complaint was filed and pending before any other State Human Rights Commission or other Commission, then the Complaint before the Commission will be a bar. Moreover, the Judgment of the Civil Court was delivered during the pendency of the Complaint before the Commission and it will not render the proceedings pending before the Commission vitiated. Therefore, the learned Counsel for the Second Respondent prayed for dismissal of the Writ Petition.

**8.** We have heard the Counsel for both sides and perused the materials placed. It is seen from the records that the Second Respondent, alleging Medical negligence on the part of the Petitioner and other Doctors, while giving treatment to his daughter, which resulted in her death, has filed the Complaint before the First Respondent/Commission. During the pendency of such Complaint, the Second Respondent has also given a Complaint before the Thanjavur West Police Station besides filing a Civil Suit for Compensation and damages to the tune of ₹5 lakhs. The Criminal Complaint given by the Second Respondent was dropped on the ground that no further action is necessary. In the Civil Suit filed by the Second Respondent in O.S. No.267 of 2011, the Civil Court has framed issues as to whether the Petitioner and other Doctors committed negligence while treating the daughter of the Second Respondent, if so, whether the Second Respondent is entitled for damages to the tune of ₹5 lakhs. The Civil Court, after considering the oral and documentary evidence, has dismissed the Suit on 20.4.2018. Admittedly, as against the dismissal of the Suit in O.S. No.267 of

2011 on 20.4.2018, the Second Respondent did not prefer any Appeal. It is purportedly on the strength of the dismissal of the Suit in O.S. No.267 of 2011, the Petitioner has filed the present unnumbered application before the Commission to dismiss the Complaint.

**9.** Admittedly, the Complaint was preferred by the Second Respondent before the First Respondent/Commission in the year 2009, well before the institution of the Suit in O.S. No.267 of 2011, alleging human rights violation on the part of the Petitioner and other Doctors. Of course, the Suit was dismissed on 20.4.2018 and it attained a finality. Thus, during the pendency of the Complaint filed by the Complainant/Petitioner herein before the First Respondent/Commission, the Suit was filed by the Second Respondent/Complainant for damages and it was also dismissed by the Civil Court. Therefore, the subsequent developments after the filing of the Complaint has to be taken note of by the Commission while disposing of the Complaint pending before it. However, by citing the dismissal of the Suit filed by the Second Respondent/Complainant during the pendency of the Complaint, the Complaint cannot be dismissed, as pleaded by the Petitioner. The plea of the Petitioner as to the applicability of the principles of *res judicata* can also be gone into by the Commission at the time of final disposal of the Complaint. We also notice that the Complaint preferred by the Second Respondent is at a nascent stage and the order, which is impugned in this Writ Petition, is not a Final Order deciding the rights of the parties. While so, we are of the view that the Petitioner can raise all the points which are raised in this Writ Petition before the First Respondent/ Commission and the Commission has to go into the Compliant preferred by the Second Respondent, independently on merits. In such view of the matter, we do not find any merits in the contentions urged on behalf of the Petitioner in this Writ Petition. The Writ Petition is therefore liable to be dismissed.

**10.** Accordingly, the Writ Petition is dismissed. No Costs. Consequently, W.M.P. No.26854 of 2019 is closed.

**2021 (1) CWC 7**

**IN THE HIGH COURT OF MADRAS**

**R. Subbiah & C. Saravanan, JJ.**

W.P. Nos.5798 & 9564 of 2016

27.2.2020

*WP No.5798 of 2016:*

State of Madhya Pradesh, rep. by the Additional Director of Agriculture, Department of Farmer Welfare & Agriculture Development Government of Madhya Pradesh, State Institute of Agriculture Extension & Training, Bhadbhada Road, Bhopal Madhya Pradesh ***…..Petitioner***

Vs.

Intellectual Property Appellate Board, Chennai, Guna Complex, Chennai-600 018. **2.** Agricultural and Processed Food Products, Export Development Authority, New Delhi-110 016. **3.** Assistant Registrar of Geographical Indications, Office of the Geographic Indications Registry, IP Building, GST Road, Guindy, Chennai - 600 032. **4.** New Darpan Social Welfare Society, Madhya Pradesh. **5.** Basmati Growers Association, Punjab ***…..Respondents***

*W.P. No.9564 of 2016:*

Madhya Kshedtra Basmati Growers Association Samiti, Village Harsili Vikaskhand Badi, Tehsil Badi, District Raisen, Madhya Pradesh ***…..Petitioner***

Vs.

Intellectual Property Appellate Board, Chennai, Guna Complex, Annexe-1, 2nd Floor, No.443, Anna Salai, Teynampet, Chennai-600 018. **2.** Agricultural and Processed Food Products, Export Development Authority, 3, NUCI Building, Siri Institutional Area, August Kranti Marg, New Delhi - 110 016. **3.** Assistant Registrar of Geographical Indications, Office of the Geographic Indications Registry, IP Building, GST Road, Guindy, Chennai - 600 032 ***…..Respondents***

**Constitution of India, Article 226 — Writ jurisdiction — Scope — Manner in which decision was arrived at by Authority can alone be examined and not correctness of decision — Factual disputes cannot be gone into by High Court while exercising power under Article 226 of Constitution of India — Alternative and efficacious remedy available under Section 27 of Geographical Indication of Goods (Registration & Protection) Act, 1999 is Statutory remedy — *Held*, invoking Writ jurisdiction without availing same, not proper and Writ Petition fails — Case-law discussed.** ***(Paras 58 & 61)***

**Code of Civil Procedure, 1908 (5 of 1908), Orders VI, VII & VIII — Pleadings — Evidentiary value — Written submissions enable parties to *lis* to substantiate their pleadings, but do not have evidentiary value to look into — Pleadings raised by parties at first instance or any additional pleadings permitted to be raised alone have evidentiary value — Non-consideration of averments made in Written Submissions will not make Judicial Order invalid.** ***(Para 58)***

**CASES REFERRED**



**J. Sai Deepak, Avinash Sharma, R. Abhishek & Vikram P. Jain for T.K. Bhaskar, Advocates for Petitioner in W.P. No.5798 of 2016; Satish Parasaran, Senior Advocate with Mohit Goel, Malika N for T.K. Bhaskar, Advocate for Petitioner in W.P No.9564 of 2016.**

**P.S. Raman, Senior Advocate for Rajendra Kumar, Ashish Kanta Singh, Gladys Daniel, K. Muthu Selvam, Advocate for Respondent No.2; P. Sanjay Gandhi, Advocate for Respondent No.4 in W.P. No.5798 of 2016 Ashok Kumar, Advocate for Respondent No.5 in W.P. No.5798 of 2016.**

**W.P. DISMISSED — NO COSTS**

*W.P. No. 5798 of 2016 :* Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in its proceedings in OA/5/2014/GI/CH and M.P. No.9/2014 in OA/5/2014/GI/CH dated 5th February 2016 and quash the same and further direct the Third Respondent to *de novo* hear the entire matter.

*W.P. No.9564 of 2016 :* Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in its proceedings in OA/6/2014/GI/CH and M.P. Nos.10 & 11/2014 in OA/6/2014/GI/CH, dated 5th February 2016 and quash the same and consequently direct the Third Respondent to cancel the Geographical Indication on 'Basmati Rice' registered as Geographical Indication No.145 vide Certificate No.238, dated 15th February 2015 and *de novo* hear the entire matter.

**Judgment Reserved on 8.8.2019 and Pronounced on 27.2.2020**

## JUDGMENT

**R. Subbiah, J.**

**1.** Both these Writ Petitions are filed assailing the Common Order, dated 5.2.2016 passed by the Intellectual Property Appellate Board, (IPAB) Chennai (in short 'Board') in various Original Applications.

**2.** W.P. No.5798 of 2016 is filed questioning the validity and/or correctness of the Order passed by the First Respondent-Board on 5.2.2016 in OA/5/2014/GI/CH and M.P. No.9/2014 in OA/5/2014/GI/CH, seeking to quash the said Order, dated 5.2.2016 and to direct the Third Respondent to conduct a *de novo* hearing of the matter.

**3.** W.P. No. 9564 of 2016 has been filed praying to quash the Order, dated 5.2.2016 passed by the First Respondent-Board in OA/6/2014/GI/CH

and M.P. Nos.10 & 11/2014 in OA/6/2014/GI/CH and to issue a consequential direction directing the Third Respondent to cancel the Geographical Indication on 'Basmati Rice' registered as Geographical Indication No.145, vide Certificate No.238, dated 15th February 2015 and to conduct a *de novo* enquiry in the matter.

**4.** The learned Counsel on either side advanced common arguments in both these Writ Petitions since the common Order, dated 5.2.2016 passed by the Board is under challenge in both the Writ Petitions. Therefore, we are taking up both the Writ Petitions for hearing together for disposal.

**5.** For the purpose of disposal of these Writ Petitions, certain facts, which are germane and absolutely warranted are elucidated hereunder.

**6.** The Second Respondent in the respective Writ Petitions namely Agricultural and Processed Food Products Export Development Authority (hereinafter referred as 'APEDA') had filed an application, dated 26.11.2008 before the Third Respondent, The Assistant Registrar of Geographical Indications, Chennai to register Geographical Indication (in short 'GI') for 'Basmati Rice' under Class 30 of the Geographical Indication of Goods (Registration & Protection) Act, 1999 (in short 'Act').

**7.** The said application was numbered as Application No.145. Thereafter, the Third Respondent issued a formality compliance report to APEDA on 23.12.2009. On 29.12.2009, the Third Respondent by communication to APEDA, intimated the constitution of a Consultative group under Rule 33 of the Geographical Indication of Goods (Registration & Protection) Rules, 2002 (in short 'Rules') and the meeting was to be held between the consultative group on 29.1.2010.

**8.** On 20.1.2010, APEDA filed their response to formality compliance report sought for by the Third Respondent and it was also subjected to deliberation and recommendations by the consultative group. Upon appraisal of the same, the Third Respondent issued a formal Examination Report on 4.3.2010 seeking certain information. Even in the Formality Compliance Report, the Third Respondent permitted APEDA to file a revised application based on the reply sent to the Formality Compliance Report within a period of two months. Accordingly, on 22.4.2010, APEDA filed a response to the Formality Compliance Report together with a revised application.

**9.** The said application was accepted by the Third Respondent and published in the GI Registry Journal No.34 on 31.3.2010. On coming to know about the acceptance of the application filed by the APEDA, the State of Madhya Pradesh, the Petitioner herein, filed its Statement of Opposition in TOP. No.19 before the Third Respondent. Similar oppositions were also filed by others from Madhya Pradesh which are numbered as TOP. Nos.13

to 17. Resisting the applications for opposition, APEDA filed its Counter Affidavit on 13.12.2010 before the Third Respondent.

**10.** At this stage, on 26.4.2013, State of Madhya Pradesh has filed an application under Section 12 of the Act read with Rule 37 of the Rules, seeking withdrawal of the acceptance of the application submitted by APEDA. Similar applications were also filed by the other parties from the State of Madhya Pradesh under Section 12 as well as Section 14 of the Act.

**11.** The Third Respondent heard the submissions of the Counsel for the APEDA as also the State of Madhya Pradesh and passed an Order, dated 31.12.2013 holding that APEDA failed to satisfy the fundamental requirement to specify the demarcation of actual Basmati cultivating areas and therefore, directed APEDA to re-file an application seeking GI to register 'Basmati Rice' within sixty days by including the actual Basmati cultivation areas along with a map clearly demarcating such areas.

**12.** Aggrieved by the Order, dated 31.12.2013 passed by the Third Respondent, APEDA filed an Appeal before the First Respondent - Intellectual Property Appellate Board (IPAB). Pending the Appeal, the First Respondent, by Order, dated 12.2.2014, granted Interim Stay of operation of the Order, dated 31.12.2013 of the Third Respondent. The Petitioner - State of Madhya Pradesh filed its Counter Statement on 9.8.2014. APEDA has also filed a reply, dated 26.9.2014 to the Counter Statement of the State of Madhya Pradesh. Upon hearing the submissions of the parties to the Appeal, the First Respondent passed the impugned Order, dated 5.2.2016 and allowed the Appeal filed by APEDA and issued certain directions to the Third Respondent.

**13.** The operative portion of the impugned Order, dated 5.2.2016 of the IPAB reads as follows:

> "*69.* To sum up
>
> *(1)* OA/8/2014/GI/CH filed by Basmati Growers Association, Lahore, Pakistan is hereby dismissed.
>
> *(2)* OA/9/2014/GI/CH filed by Dawaat Foods Limited questioning the *locus standi* of APEDA to file GI Application No.145 is hereby dismissed and the findings in relation to that aspect of the Assistant Registrar, Geographical Indications in the impugned Order, dated 31.12.2013 in GI Application No.145 is hereby upheld.
>
> *(3)* APEDA is entitled to get GI Tag for Basmati Rice in respect of the areas and region specified in the certified copies of the maps annexed with the GI Application No.145 and consequently the Assistant Registrar, GI Registry, Chennai shall proceed with the registration and issue the certificate of registration within a period of four weeks from the date of receipt of the order copy of this Bench.

*(4)* The findings of the Assistant Registrar of Geographic Indications in the impugned Order, dated 31.12.2013 in so far as the same relates to the inclusion of State of Madhya Pradesh in the GI Application No.145 and consequential direction to the Appellant/Applicant APEDA to amend the GI Application No.145 including the uncovered area with the map of the region demarcating the area of production within 60 days is hereby set aside.

*(5)* The Assistant Registrar, Geographical Indications Registry, Chennai shall re-consider the matter afresh in respect of the claim of Respondents/opponents for the inclusion of the areas specified in the State of Madhya Pradesh and other places mentioned in the impugned Order by the Assistant Registrar by affording reasonable opportunity to both sides and by receiving any further evidence from both sides and pass an order in accordance with law within the period of six months from the date of receipt of the order copy of this Bench."

**14.** It is as against this Order, dated 5.2.2016 of the IPAB these Writ Petitions have been filed by the State of Madhya Pradesh as well as the Madhya Kshedtra Basmati Growers Association Samiti, Madhya Pradesh respectively

**15.** Mr. Sai Deepak, learned Counsel appearing for the Writ Petitioner in W.P. No.5798 of 2016 namely State of Madhya Pradesh, would vehemently contend that the application filed under Section 12 of the Act by the Petitioner and other Madhya Pradesh based parties, was filed by invoking Rule 37 of the Rules and Section 60 of the Act, based on the objections raised by the Third Respondent in the Formal Examination Report, dated 4.3.2010 issued to APEDA.

**16.** According to the learned Counsel for the Petitioner in W.P No.5798 of 2016, in the application filed under Section 12 of the Act, attention of the Third Respondent was drawn to the vague and unclear particulars furnished by APEDA in the GI Application with respect to demarcation of areas claimed by it. Notwithstanding such objections, the Third Respondent had proceeded to accept the GI Application and advertised it under Section 13 of the Act. It is on this basis, the Petitioner sought withdrawal of the acceptance to the GI Application filed by APEDA in terms of Section 12 of the Act.

**17.** Further, in the application under Section 12, the Petitioner sought for re-constitution of the Consultative Group, *inter alia*, a direction to undertake an in-depth scientific mapping exercise to identify the Basmati growing regions in every State in India and publish the GI application for acceptance after a thorough mapping exercise had been undertaken. In other words, the Opposition under Section 14 of the Act seeks inclusion 13 Districts of Madhya Pradesh, which are Basmati growing regions, especially when the application filed by APEDA under Section 12 of the Act only seeks to reduce the over-broad and non-specific territorial claims. The Third Respondent, on an objective analysis of the issues and the distinction between the objections raised under Section 14 of the Act and the nature of

the application filed by APEDA under Section 12 of the Act, held that the application filed by APEDA lacks specific demarcation of areas.

**18.** The learned Counsel for the Petitioners also contended that earlier, an application for registration of Basmati, as a GI, was filed by an entity called Heritage and the same was referred to the Consultative Group as required under Rule 33 of the GI Rules. The Consultative Group recommended for its rejection and the recommendations made by the Consultative Group had set the benchmark for examination of similar application filed by APEDA. However, the benchmark set by the Consultative Group in the matter of examination of the application submitted by Heritage, has not been followed while examining the application submitted by APEDA.

**19.** In this context, the learned Counsel for the Petitioner had invited our attention to the Order, dated 31.12.2013 passed by the Third Respondent. The learned Counsel for the Petitioner has taken us to the various paragraphs of the Order, dated 31.12.2013 to contend that the Third Respondent has rendered a specific finding that APEDA was requested to clarify that the Basmati growing area is mapped through a scientific exercise and if any part of the area is excluded, the reason for exclusion was to be explained with supporting documents. In Para No.37 of the Order, dated 31.12.2013, the Third Respondent also specifically listed out the areas indicated by the Petitioner in the Opposition and submitted proof of cultivation of Basmati Rice within the State of Madhya Pradesh since 1990. Further, in Para No.49 of the Order, dated 31.12.2013, it was specifically pointed out that as per the data published by the Directorate of Rice Development, Patna, some of the States like Madhya Pradesh, Rajasthan, Bihar were having Basmati Rice cultivation, but they are left out in the GI Application No.145 filed by APEDA. It was also pointed out therein that when documents and evidence have been filed along with the Opposition to show the actual area of cultivation, the application of APEDA, without including the areas of actual Basmati Cultivation in Madhya Pradesh pointed out in the Opposition, required re-examination.

**20.** It is in those circumstances, the Third Respondent, in the Order, dated 31.12.2013, has concluded that Application No.145 should also include the uncovered area, with the map of the region clearly demarcating the area of production within 60 days from the date of this order. In order to fortify his submission, it is submitted that APEDA had left out certain Basmati growing areas, which areas ought to have been included in Application No.145. The learned Counsel for the Petitioner also relied on Para Nos.24, 36, 49, 50, 51 & 99 of the Order, dated 31.12.2013 of the Third Respondent and contended that the Third Respondent considered the provisions contained under Section 12 of the Act and rightly dismissed the application submitted by APEDA for registration of GI.

**21.** Proceeding further with his submission, the learned Counsel for the Petitioner would submit that the Order, dated 31.12.2013 of the Third

Respondent is indeed a composite Judgment, which relied on the negative applications under Section 12 of the Act and positive Oppositions under Section 14 of the Act, whereby a factual finding has been rendered that the application of APEDA is imperfect and lacks clarity. When such a factual finding has been given holding that the application of APEDA is improper and requires to be re-submitted, the Petitioner did not file any Appeal before IPAB for non-adjudication of the application filed under Section 12 of the Act, especially when the application under Section 12 stood adjudicated and allowed by the Third Respondent. Therefore, the contention of APEDA that the Petitioner did not challenge the non-adjudication of application under Section 12 of the Act, is untenable. This is more so that APEDA never objected to the filing of the application under Section 12 of the Act either on grounds of maintainability or non-compliance of Rule 37 of the GI Rules. In this context, the learned Counsel for the Petitioner also placed reliance on the written submissions made by APEDA on 1.7.2013 before the Third Respondent, to contend that APEDA has not raised any sort of objection, including maintainability of the application under Section 12 of the Act even while responding to the said application orally while making arguments on 13.3.2013. It is also vehemently contended that the Written Statement filed on behalf of APEDA before the Third Respondent, was not filed before the IPAB for its consideration as part of the Appeal memorandum. This is relevant in the context of the assertion made on behalf of APEDA before the IPAB that the Third Respondent, in the composite Judgment, dated 31.12.2013, did not consider or dealt with the contentions raised as against the applicability of Section 12 of the Act. The fact remains that APEDA was aware that the Judgment, dated 31.12.2013 of the Third Respondent was based on Sections 12 & 14 of the Act. Therefore, according to the learned Counsel for the Petitioner, the question of *res-judicata* as contended by APEDA before the IPAB, does not survive for consideration by this Court.

**22.** The learned Counsel for the Petitioner would proceed to contend that APEDA, while filing an application for getting GI registration for Basmati Rice, ought to have included the State of Madhya Pradesh as well, inasmuch as it was aware of the purchase of Basmati Rice from major rice exporters from the State of Punjab and Haryana and other States. This is more so that the State of Madhya Pradesh has placed adequate evidence in the website of APEDA itself that the State of Madhya Pradesh has been contributing significantly for export of Basmati Rice from India to other Countries. In fact, APEDA not only is aware of such exports, but also expressly permitted such exports from the ICD Depot in Mandideep, Madhya Pradesh. The learned Counsel for the Petitioner also took us to the export data of Basmati Rice from ICD Mandideep and contended that the Petitioner has legitimately expected in good faith that APEDA would file the Application for GI for Basmati Rice by including 13 out of 51 Districts of Madhya Pradesh, but intentionally the other Basmati cultivating areas have been excluded in the

application. It is also contended that two parties cannot file GI application for the same product, as it would defeat the object of protecting the purity of GI. In such circumstances, it is open to the Petitioner to file an opposition for inclusion of certain uncovered areas in the application for GI filed by APEDA. The non-inclusion of certain Basmati cultivating areas in the State of Madhya Pradesh, would affect those, who legitimately produce and sell Basmati Rice in the State of Madhya Pradesh. When the State Government of Madhya Pradesh came to know about the decision taken by the Consultative Group and the GI Registry in relation to an earlier application filed by M/s. Heritage for GI registration of Basmati Rice, the State Government and other Madhya Pradesh based parties preferred applications under Section 12 of the Act to expose the over-broad claims of APEDA to the Third Respondent. Therefore, it is contended that APEDA has conducted itself in a most partisan manner, even though it claims to be the guardian of Basmati Rice in the interest of farmers cultivating Basmati Rice.

**23.** The learned Counsel for the Petitioner has taken us through the various portions of the Order passed by the IPAB and contended that there are patent error, perversities and infirmities in the same. According to the learned Counsel for the Petitioner, in Para No.18 of the order, which is impugned in this Writ Petition, the conclusions reached by IPAB are without application of mind with respect to distinction between Sections12 & 14 of the Act. The IPAB also did not appreciate the express provisions contained under Section 2(1)(e) of the Act, which goes against the grant of GI jurisprudence and Agreement on Trade related Aspects of Intellectual Property Rights (in short TRIPS) history. By pointing out the observations rendered in Para No.39 of the impugned Order, the learned Counsel would contend that the observation that "Basmati Rice has been traditionally grown and produced in a specific region of the Indo-Gangetic Plain below the foot hills of Himalayas" is without any reasoning and evidence. Such observation alters the very basis on which the Third Respondent had arrived at a conclusion to direct APEDA to include the 13 Districts of State of Madhya Pradesh. Similarly, the learned Counsel for the Petitioner has drawn our attention to each and every one of the observations made by the Board in Para Nos.40, 45, 47, 48, 49, 50, 57, 62 & 65 of the order of the IPAB and contended that Sections 12 & 14 of the Act have been misconstrued and not properly considered by the IPAB while appreciating the Opposition of the Petitioner. The IPAB also failed to consider as to whether APEDA has strictly complied with the requirements under Section 11 of the Act despite the Madhya Pradesh based parties raising grave and fundamental objections in the manner in which APEDA claimed GI registration only in respect of five States without any demarcation of Basmati growing areas within the said States, including Delhi. It is further stated that IPAB erred in holding that the Indo-Gangetic Plain is the traditional Basmati growing area without any documentary evidence to substantiate the same. The IPAB, while

directing the Third Respondent to grant GI registration to APEDA for Basmati Rice, ought to have tested the veracity of the claim made by APEDA, even in the absence of any objections from the Madhya Pradesh based parties. APEDA, being a statutory body and claiming themselves to have taken several steps to protect the national interest, has in fact acted against the Public interest. The finding of the IPAB that Indo-gangetic Plain is the traditional Basmati Rice growing area, has defeated the very object of remanding the case for inclusion of certain areas claimed by Madhya Pradesh based parties, especially when the IPAB has positively directed the Third Respondent to grant GI registration in favour of APEDA for Basmati Rice. Therefore, according to the learned Counsel for the Petitioner, the remand proceedings resorted to by the IPAB has become an empty formality. On the one hand, the IPAB has remanded the matter back to the Third Respondent for fresh consideration and at the same breath, it had directed issuance of GI Registration Certificate to APEDA for Basmati Rice. By accepting APEDA's claim that Indo-Gangetic Plain is the only traditional Basmati Rice growing area, the IPAB has completely set aside the well merited findings rendered by the Third Respondent in the Judgment, dated 31.12.2013. Further, the finding of the IPAB that "Popular perception" is the criterion for grant of GI, is wholly untenable and it goes against the spirit of Section 2(1)(e) of the Act, which sets out three important requirements, namely "quality", "reputation" and other "Characteristic" in relation to geographical origin of the goods. The IPAB has only considered the element of "reputation" of the areas claimed by APEDA, instead it ought to have examined the claim of APEDA in proper perspective. Further, no where in the order which is impugned in these Writ Petitions, the IPAB has undertaken an analysis of APEDA's claim for including the entire State of Delhi as a traditional Basmati growing area, since Delhi as well as Uttar Pradesh are not even associated with Basmati cultivation.

**24.** The learned Counsel for the Petitioner contended that IPAB failed to take note of Section 8(4) of the Act, whereby the Third Respondent is treated as the authority to appreciate the facts in relation to an application filed for grant of GI registration. When the Third Respondent has come to an irresistible conclusion that APEDA has not satisfied the fundamental requirements of GI application, the IPAB ought not to have interfered with such finding. As per Section 8(4) of the Act, the IPAB ought to have enquired if it had the jurisdiction to entertain the Appeal on the issue of area demarcation. The IPAB, as an Appellate Tribunal, ought to have undertaken an exercise to define its own jurisdiction while examining the claim of APEDA for GI registration. In such circumstances, the piecemeal inclusion of certain areas, as claimed by APEDA, while excluding certain areas as claimed by the Madhya Pradesh based parties, is required to be interfered with by this Court in exercise of the powers conferred under Article 226 of the Constitution of India. According to the learned Counsel for the

Petitioner, this Court is empowered to venture into a finding in exercise of Writ jurisdiction to examine as to whether the inclusion of five States by APEDA namely Punjab, Haryana, Himachal Pradesh, Delhi and Uttarkhand without any clear, specific and reasoned demarcation and to adjudicate the same in this Writ Petition and to correct the perverse findings rendered by the IPAB. In this context, the learned Counsel for the Petitioner placed heavy reliance on the decision of the Honourable Supreme Court in ***Atlas Cycle (Haryana) Limited v. Kitab Singh,*** 2013 (1) LLN 561 (SC) : 2013 (12) SCC 573, to contend that when irregularity and infirmity are glaringly evident in the Order passed by a Statutory Authority, the Writ Court would be fully justified in interfering with such conclusion and the relevant portion of the said order of the Supreme Court reads as follows:

> "*11.* .. ... We are conscious of the fact that the High Court exercising Writ of certiorari would not permit to assume the role of the Appellate Court, however, the Court is well within its power to interfere if it is shown that in recording the said finding the Tribunal/Labour Court had erroneously referred to admit the admissible and material evidence, or had erroneously admitted only inadmissible evidence which has influenced the impugned finding, the Writ Court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by way of a Writ of certiorari."

**25.** For the same proposition, with respect to maintainability of a Writ Petition as against a perverse Order passed by a Quasi-Judicial Tribunal or Forum, the learned Counsel for the Petitioner placed reliance on the decision of the Honourable Supreme Court in ***Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour) and others),*** 1985 (1) LLN 11 (SC) : 1984 (4) SCC 635.

**26.** Mr. Satish Parasaran, learned Senior Counsel appearing for the Petitioner in W.P. No.9564 of 2016 would vehemently contend that the basis on which certain areas have been included by APEDA in their application for registration of GI, is without any scientific evidence. The areas mentioned by APEDA in the application for GI are the entire States of Punjab, Haryana, Himachal Pradesh, Delhi, Uttarkhand, parts of Uttar Pradesh and Jammu and Kashmir. Upon consideration of the application under Section 12 of the Act, the Third Respondent rightly directed APEDA to withdrew the acceptance of such application filed by APEDA on the ground that it failed to satisfy the fundamental and basic requirement to make a clear, specific and reasoned demarcation of actual Basmati Rice cultivating areas. It was also reasoned that the actual Basmati cultivating areas must be included in the GI application and such areas must be identified upto the Village and Panchayat level. Therefore, the Third Respondent directed APEDA to re-submit the application by rectifying the defects pointed out therein. However, APEDA filed an Appeal before the Board and it was allowed without considering the objections raised by the

Petitioners with respect to the areas indicated in the application filed by APEDA. The learned Senior Counsel appearing for the Petitioner would further contend that a bare perusal of the application under Section 12 of the Act would show that the very basis of the said application was the unreasoned and unscientific manner in which the entire States were included by APEDA in the GI application. By pointing out Section 11 of the Act, the learned Senior Counsel would contend that the objection of Section 11 of the Act is to identify with specificity the territories/areas sought to be included and supported by history and commercial production of the product for a significant period of time prior to the date of filing of the application for GI. The application under Section 12 of the Act clearly captures the history of the region where Basmati Rice is grown and it was also part of the deliberations with the Consultative Group under Rule 33 of the GI Rules on 26.11.2008. Even in the meeting convened on 28.1.2010 between the Consultative Group and representatives of the Second Respondent, it was directed to ascertain the correctness of the particulars furnished by APEDA with respect to area of demarcation *inter alia* to provide relevant information on the mapping of the area which was guided by the National Basmati field trials. The Second Respondent/APEDA was also asked to furnish the names and address of farmers, who constituted the authority provided under the APEDA Act. However, the response of APEDA to the above clarification sought for by the Consultative Group was manifestly evasive.

**27.** The learned Senior Counsel appearing for the Petitioner in W.P. No.9564 of 2016 would also contend that the application under Section 12 of the Act dealt with in detail the reply filed by APEDA to the questions raised by the Consultative Group. In the reply filed to the application under Section 12 by the APEDA, it merely listed out certain areas as Basmati Cultivating regions without an element of clarification regarding the boundaries or the extent of area or on what basis the areas were identified. In the reply, the Second Respondent also relied on Section 2(e) of the GI Act and Article 22.1 of the TRIPS Agreement to state that a Geographical Indication can be afforded protection solely on the basis of the reputation attributable to the geographical area. This submission, according to the learned Senior Counsel appearing for the Petitioner cannot be sustained, inasmuch as reputation is not the sole basis for granting a GI and it had no statutory support or could not be relied upon. A product's reputation or popular perception might not be an accurate reflection of facts, especially in the case of agricultural goods. By pointing the reply filed by APEDA to the application under Section 12 of the Act, the learned Senior Counsel would contend that the reply with reference to the claim of APEDA that they have used scientific tests and research to confirm that the variety of Rice growing in the pre-defined areas claimed in the GI application comply with the notified parameters for Basmati, is far from truth. According to the learned Senior Counsel appearing for the Petitioner, even on the date of publication of the Basmati

as GI and until this date, APEDA has not clearly submitted an account for inclusion of the areas indicated in the GI application.

**28.** The learned Senior Counsel appearing for the Petitioner in W.P. No.9564 of 2016 also would further point out the Counter Affidavit filed by the Petitioner before the IPAB to the Appeal filed by APEDA and contend that the Petitioner had listed out various Districts in the States claimed by APEDA in the GI application by referring to a book titled "Aromatic Rices" by R.K. Singh, U.S. Singh and G.S. Singh published in 2000 to substantiate that the areas indicated in the GI application of the APEDA is palpably without any clarity or rationale. However, the IPAB did not consider the fact that APEDA fundamentally failed to identify the actual basmati cultivating areas in the State of Madhya Pradesh and also did not consider the claim of the opposition parties for inclusion of certain areas.

**29.** The learned Senior Counsel further submitted that as per the Act, an Opposition can be made prior to grant of GI Registration and subsequent to publication for acceptance, namely, an Opposition under Section 14(1) of the Act and withdrawal of acceptance by the GI Registrar under Section 12 of the Act. In an Opposition under Section 14 of the Act, the Third Respondent has the power to consider even those grounds which are not raised by an opponent in the Opposition. In other words, according to the learned Senior Counsel appearing for the Petitioner, the Third Respondent has enormous power for either granting or refusing to grant GI registration. In the light of the above statutory safeguards provided under the Act, Oppositions were filed but they were not properly considered by the IPAB while allowing the Appeal filed by APEDA.

**30.** As regards the alternative remedy provided under Section 27 of the Act, it is contended by the learned Senior Counsel appearing for the Petitioner that Section 27 envisages initiation of a proceeding either before the GI Registrar or the IPAB. The IPAB is the Appellate Authority under the provisions of the Act. The IPAB has taken a decision, although unreasoned and erroneous, with respect to the grant of GI Registration to the areas included by APEDA in the GI Application, while so, it is practically futile on the part of the Petitioner to approach the subordinate of the Appellate Authority, namely the Third Respondent/Registrar and to agitate the same issue. It is even more futile exercise for the Petitioner to approach the IPAB under Section 27 of the Act, since the IPAB is pre-disposed on the issue thereby rendering the proceedings under Section 27 otiose and academic. Even though the IPAB has the power under Section 27 to look into the objections raised by the Petitioner with respect to the areas included by the Second Respondent/APEDA, the IPAB took a conscious decision to limit the scope of the Petitioner's future remedy to seek for exclusion of the State of Madhya Pradesh in the GI registration. In such circumstances, the Petitioner has no other remedy but to approach this Court with this Writ Petition.

Therefore, the learned Senior Counsel appearing for the Petitioner prayed for allowing this Writ Petition and to direct the Third Respondent to conduct a *de novo* enquiry in the matter afresh, after affording adequate and sufficient opportunity to all the parties.

**31.** Opposing the submissions made by the learned Counsel for the Petitioner in both the Writ Petitions, Mr. P.S. Raman, learned Senior Counsel appearing for the Second Respondent in these Writ Petitions, namely APEDA, would vehemently oppose the Writ Petitions filed by the Petitioners. It is the contention of the learned Senior Counsel appearing for the Second Respondent that APEDA is a Statutory Authority established under the Agricultural and Processed Food Products Export Development Authority Act, 1985 (for short, 'the APEDA Act') enacted by the Parliament. The APEDA Act was enacted for development and promotion of export of certain agricultural and processed food products from India, including Basmati Rice. According to him, APEDA is a non-trading body constituted to represent the interest of the producers/stakeholders, including farmers, exporters and importers of Basmati. As per the APEDA Act, apart from a Chairman to be appointed by the Central Government, three other Members of Parliament, 8 Members appointed by the Central Government to represent the Ministry of Agriculture and Rural Development, commerce, finance, industry, food, Civil supplies, Civil aviation, shipping and transport; 5 members to represent the State and Union Territories; 7 members to represent the Indian Council of Agricultural Research, National Horticulture Board, the National Agricultural Cooperative Marketing Federation, the Central Food Technological Research Institute etc., 12 members to represent fruit and vegetable product industries, other scheduled products industries etc., and 2 members from amongst the Specialists and Scientists in the field of agriculture, economics and marketing of scheduled products, were included. Therefore, it is submitted by the learned Senior Counsel that APEDA has wide representation from all the stakeholders with diverse interest in the field. From the constitution of APEDA in the year 1995, it had taken several initiatives to protect the goodwill and propriety of "Basmati Rice" on a global basis for the benefit of all the stakeholders by enforcing the common law rights on their behalf. Listing out the details of the efforts taken by APEDA as required under Section 10(2)((b) of the APEDA Act, the learned Senior Counsel submitted that several actions have been taken to prevent the attempt by Third party persons to misappropriate the name 'Basmati' and its deceptive variants such as Texmati, Kasmati, Basnati, Basmall etc., and APEDA has been enforcing labelling Guidelines in India through legal actions initiated at various stages. APEDA has also successfully challenged and forced a voluntary surrender/revocation of claims of patent taken out in United States of America by Ricetec Inc., during the year 2000, seeking to confer monopoly upon Ricetec towards production and marketing of rice grains *inter alia* claiming rights with

respect to export of Basmati Rice to United States of America. During the year 2003, APEDA along with All India Rice Exporters Association (in short, AIREA) established a society, by the name of Basmati Export Development Foundation (BEDF) with the objective of undertaking the promotion and development of supply chain of Basmati Rice and in particular, to promote, develop and coordinate the integrated activities with diverse stakeholders, such as farmers, traders, exporters and consumers.

**32.** Thus, according to the learned Senior Counsel, for the past 25 years, APEDA has been successfully tackling illegal attempts towards usurpation of goodwill and propriety in the name of Third parties. According to the learned Senior Counsel appearing for the Second Respondent, Basmati Rice has been recognised as a product produced and grown in specific region below the foothills of Himalayas, in North India.

**33.** The origin of Basmati Rice, according to the learned Senior Counsel appearing for the Second Respondent, was in Indo-Gangetic Region and therefore, the entire region is the place of origin within the scope and definition of Section 2(e) of the Act. In order to curb any such attempt to get GI tag by the Third party and to get a statutory protection for Basmati, a Bill for amending APEDA Act was passed in the Lok Sabha on 25.2.2019 with specific reference to the word 'Basmati' to be conferred with Geographic Indication. As a sequel thereof, on 26.11.2008, APEDA filed an application to register 'Basmati' as a Geographical Indication in Class 30 under the GI Act and it was numbered under Application No.145. Thereafter, deliberations took place and the consultative group was formed for making a recommendation as required under Rule 33 of the Rules.

**34.** Pursuant thereto, the Third Respondent issued a formal Examination Report on 23.12.2009 seeking certain information which were complied with by APEDA on 29.12.2009 and the application of APEDA was accepted by the Third Respondent which was also advertised in the GI Journal No.34 dated 31.3.2010.

**35.** While so, on 19.10.2010, the Third Respondent communicated to the APEDA that the Writ Petitioner herein and other opponents from the State of Madhya Pradesh have filed oppositions as contemplated under Section 14 of the GI Act. The main opposition of the Writ Petitioner is to include the State of Madhya Pradesh, particularly Morena, Bhind, Gwalior, Sheopur, Datia, Shivpuri, Guna, Vidisha, Raisen, Sehore, Hoshangabad, Jabalpur and Narsinghpur in the application for registration of Basmati as "GI". In the said application, after completion of pleadings and evidence, arguments were heard by the Third Respondent on 18.3.2013. In the meantime, Petitioner filed an application on 9.4.2013 purportedly under Section 12 of the Act read with Rule 37 of the Rules. The application for opposition was allowed by the Third Respondent with a direction to APEDA to re-file the application by including "uncovered areas".

**36.** Aggrieved by the same, an Appeal was filed before the IPAB and it was allowed on 5.2.2016 with a direction to the Third Respondent to register Basmati in respect of undisputed area claimed by APEDA and to re-consider the matter afresh for inclusion of the areas specified in the State of Madhya Pradesh. Pursuant to such direction, the Third Respondent issued a Certificate of Registration for "Basmati" in favour of APEDA on 15.2.2016.

**37.** Further, as directed by the IPAB in the Order, dated 5.2.2016, the Third Respondent has to complete the re-adjudication proceedings within six months, however, it was the Petitioner who did not take any steps to conclude the proceedings before the Third Respondent by repeatedly taking adjournments. In any event, now final order has been passed by the Third Respondent on 15.3.2018, which is also challenged in W.P. Nos.567 & 7030 of 2018 and they are pending before this Court.

**38.** The learned Senior Counsel appearing for APEDA would also contend that the bone of contention raised on behalf of the Petitioners is that APEDA cannot claim entire States in its registration, but only certain specified areas of the States forming part of the registered GI areas. However, it is the contention of the learned Senior Counsel appearing for APEDA that traditionally, Basmati Rice is grown in the region set out in the application submitted by APEDA before the Third Respondent. It is his contention that in view of the international recognition given for Basmati Rice as a product of the Indo-Gangetic Plain, any efforts to arbitrarily vary or modify the Basmati growing areas would compromise and lower India's image in the comity of nations, besides it would dilute and undermine the integrity of Basmati Rice as a prized product of India.

**39.** As regards the similar application submitted by an entity, called Heritage and rejection thereof by the Consultative Group, the learned Senior Counsel appearing for the Second Respondent would contend that the rejection was warranted on the ground that the Heritage, as a Society, was formed only by farmers, traders, commission agents and millers of Karnal District of Haryana District, however, the Society does not adequately represent the interest of all the producers in the areas other than Karnal District of Haryana. Therefore, the benchmark set for rejection of the application of Heritage cannot be the basis for consideration of application of APEDA. Further, in the case of the application submitted by APEDA, the Third Respondent has conclusively held that all the requisite criteria have been fulfilled by APEDA as required under Section 11 of the Act. Therefore, the rejection of the application submitted by an entity called Heritage, has nothing to do with the application of APEDA.

**40.** Next, it is the submission of the learned Senior Counsel appearing for the Second Respondent that the Writ Petitioners never challenged the application submitted by APEDA with respect to the area of cultivation mentioned therein. In other words, the issue with regard to area of Basmati

cultivation was never an issue before the Third Respondent as well as in the Appeal filed by APEDA before the IPAB. Even in the notice of opposition filed by the Petitioner under Section 14 of the GI Act, it was only submitted that APEDA had not included in the application for registration of the areas that produce and cultivate Basmati Rice in Madhya Pradesh. Therefore, it was submitted in the notice of Opposition that if the application of APEDA is entertained for GI registration, without including Madhya Pradesh in its area, even though, the State of Madhya Pradesh is in Indo Gangetic Plain and is producing Basmati in several areas, Basmati growers in the State of Madhya Pradesh as well as the consuming public and trade would be put to irreparable loss. Precisely, the prayer sought for in the notice of Opposition is only to include the State of Madhya Pradesh, in the application for registration of Basmati Rice as GI and not otherwise. Thus, it could be evident from the notice of Opposition that the Petitioner never opposed the area of cultivation indicated by APEDA in the application, rather, the Petitioner wanted to include certain areas that produce and cultivate Basmati Rice in Madhya Pradesh. However, in the Order, dated 31.12.2013 of the Third Respondent, while allowing the application of Opposition, the Third Respondent directed the Second Respondent/APEDA to file an amended GI Application No.14 by including the uncovered area, with map of the region clearly demarcating the area of production within 60 days. The Order, dated 31.12.2013 of the Third Respondent was subjected to challenge before the IPAB by APEDA and it was allowed by setting aside the Order, dated 31.12.2013 of the Third Respondent. It is specifically contended by the learned Senior Counsel appearing for the Second Respondent/APEDA that as against the Order, dated 31.12.2013 of the Third Respondent, the Second Respondent/APEDA has filed an Appeal before the IPAB. However, the Writ Petitioners never assailed the Order, dated 31.12.2013 insofar as it relates to confirmation of the APEDA's demarcation of Basmati growing areas in the GI application. Thus, the demarcation of Basmati growing areas specified by APEDA, has attained finality. While so, according to the learned Senior Counsel appearing for the Second Respondent/APEDA, the present Writ Petitions themselves are barred by the doctrines of *res-judicata* and estoppel.

**41.** Elaborating on the issue of *res-judicata* and estoppel, the learned Senior Counsel appearing for the Second Respondent would contend that when once a Judgment in a formal Suit or proceedings reached a finality, it binds the parties to the '*lis'* in all respects and for the same cause of action, another Suit or proceedings is barred. The principle of *res-judicata*, according to the learned Senior Counsel, is based on the need to give a finality to judicial decisions. When a case has been decided on a question of fact or law and it reaches finality, the same cannot be permitted to be agitated again and again. Otherwise, it will frustrate the litigant in whose favour a decision has been rendered. This principle, according to the learned

Senior Counsel, is based on the touch stone of principles of fair play and justice. In order to buttress this submission, the learned Senior Counsel appearing for the Second Respondent relied on the decision of the Honourable Supreme Court in the case of ***Satyendra Kumar and others v. Raj Nath Dubey and others,*** AIR 2016 SC 2231, to drive home the point that no man should be vexed twice for the same cause and this principle is to be applied to put an end to the litigation. When a judicial decision has reached a finality, it must be accepted as correct and binding between the parties and no one can thereafter be permitted to either directly or indirectly sue the other in any other form.

**42.** The learned Senior Counsel appearing for the Second Respondent would further contend that when the Petitioner did not challenge the Order, dated 31.12.2013 of the Third Respondent in relation to demarcation of the area indicated in the application under Section 14 of the GI Act filed by the Second Respondent, the IPAB felt it necessary to direct the Third Respondent to issue certificate of registration to APEDA with respect to the areas specified in the application under Section 14 of the Act. In this context, the learned Senior Counsel appearing for the Second Respondent invited the attention of this Court to Paragraph No.50 the Order, dated 5.2.2016 of the IPAB, which is impugned in these Writ Petitions, and contended that the IPAB has rendered a specific finding that APEDA has filed GI Application No.145 on 26.11.2008, however, for about seven years, for compliance of various formalities, the application was kept pending. Therefore, the IPAB, taking note of the fact that APEDA is a statutory body and it may not have any personal interest or bias against any individual or group of individual, directed the Third Respondent to issue certificate of registration to APEDA in respect of the areas indicated in its GI application. Such an order came to be passed by the IPAB after hearing elaborately the parties. While so, the Order passed by the IPAB, which is impugned in these Writ Petitions, need not be interfered with by this Court.

**43.** The learned Senior Counsel appearing for the Second Respondent would also further contend that pursuant to the Order passed by the IPAB, which is impugned in these Writ Petitions, the Third Respondent has registered Basmati as a GI in Class 30 in respect of rice originating from the areas indicated in the application filed by APEDA. When GI certificate has already been issued to APEDA, the present Writ Petitions are not maintainable. According to the learned Senior Counsel appearing for the Second Respondent, there is an alternative, efficacious and statutory remedy available to the Petitioners, but without exhausting the same, the present Writ Petitions have been filed under Article 226 of The Constitution of India. The learned Senior Counsel also drew our attention to Section 27 of the Act, which is corresponding to the provisions contained under Section 57 of the Trade Marks Act. In this context, the learned Senior Counsel appearing for the Second Respondent placed reliance on the Full Bench

decision of the Delhi High Court passed on 5.2.2016 in the case of Data ***Infosys Limited and others v. Infosys Technologies Limited,*** 2016 (65) CTC Delhi 209, wherein it was held that in respect of matters relating to invalidity of registration of a Trade Mark, the jurisdiction to decide the merits of the disputes is exclusively with the statutory authorities and the Civil Court jurisdiction is barred. The learned Senior Counsel appearing for the Second Respondent therefore would contend that the powers to be exercised by the Third Respondent under the Act has been conferred by the Legislature, while so, the parallel remedy sought for by the Petitioners to exercise the powers vested with this Court under Article 226 of the Constitution of India need not be granted. Therefore, the learned Senior Counsel appearing for Second Respondent prayed for dismissal of these Writ Petitions as not maintainable and to direct the Petitioners to avail the statutory remedy conferred under Section 27 of the Act.

**44.** Mr. Sanjay Gandhi, learned Counsel appearing for the Fourth Respondent in W.P. No.5798 of 2016 - New Darpan Social Welfare Society, Bhopal, PLACED reliance on the Counter Affidavit AND would contend that the State of Madhya Pradesh has been producing Basmati Rice for many decades now, however, the Second Respondent, at the time of filing application for GI registration before the Third Respondent, has not considered the long-standing production of Basmati Rice in the State. The failure on the part of the Second Respondent to include the areas of cultivation within the State of Madhya Pradesh, would result in monopolization of certain vested interested farmers and thereby excluding the genuine farmers from the State of Madhya Pradesh. By pointing out Section 17(1) of the Act, it is stated that the Basmati farmers in the State of Madhya Pradesh qualify themselves as genuine producers within the meaning of Section 17(1) of the Act, however, they were omitted to be included in the application filed by APEDA before the Third Respondent. This has resulted in ruining of the economic condition of farmers who have been surviving on the production of Basmati Rice in Madhya Pradesh for many generations. It is also stated that the farmers in these region are poor and uneducated and they did not understand their right associated with the production of Basmati Rice. The non-inclusion of Basmati producing areas of Madhya Pradesh, will severely harm the conditions of the Madhya Pradesh farmers. It is also stated that the Basmati Rice possess an enormous international demand and export potential. The rice is well-suited to many Asian dishes and is exported to numerous foreign countries all over Asia, Europe and America. According to the Fourth Respondent, the areas in Madhya Pradesh alone cultivated and exported approximately 40 quintals of Basmati Rice during the year 2009 and a large quantity of Basmati Rice exported from India is produced in Madhya Pradesh by the local farmers of the State. While so, non-inclusion of the State of Madhya Pradesh had crippled the export opportunities to the farmers in this region. The Second Respondent, being a statutory body and proprietor of Geographic Indication of Basmati

Rice under Section 2(n) of the Act, has a responsibility to sufficiently analyse and identify the production areas of the rice before filing the application seeking GI. However, the Second Respondent, without undertaking any scientific or accurate analysis of the areas where the Basmati Rice is grown, has hastily filed the application before the Third Respondent excluding the areas of cultivation in Madhya Pradesh. In such circumstances, according to the Fourth Respondent the IPAB failed to consider the aforesaid aspects and the order, which is impugned in these Writ Petitions, violates the basic objectives of the Act and the Rules to protect the genuine interest of the farmers who are engaged in cultivating Basmati Rice. Therefore, the Fourth Respondent prayed for allowing the Writ Petitions as prayed for.

**45.** On the contrary, Mr. Ashok Kumar, the learned Counsel appearing for the Fifth Respondent in W.P. No.5798 of 2016 would contend that the Writ Petitions are an abuse of process of law and they are not maintainable. According to the learned Counsel, when a GI Certificate has been issued in favour of the Second Respondent by the Third Respondent and it was also acted upon, the present Writ Petitions are not maintainable. If the Petitioners are in any manner aggrieved by the issuance of the Certificate, the remedy available to them is to challenge the Certificate under the Act. Further, the opposition filed by the Writ Petitioner herein under Section 14 of the Act was objectively considered by the IPAB after affording opportunity to the parties, and the IPAB directed the Third Respondent to consider the matter afresh for inclusion of State of Madhya Pradesh, more particularly the areas indicated by the Petitioners herein in their application under Section 14 of the Act. When such being the case, the Petitioners ought to have only approached the Third Respondent/GI Registrar, instead of filing the present Writ Petition to set aside the order of the IPAB. Pursuant to the said Order passed by the IPAB, on 26.11.2008, GI Registration was issued to APEDA by the Third Respondent. Even during the pendency of the Writ Petitions, the Third Respondent heard the parties to the present Writ Petitions and passed an Order, dated 15.3.2018 holding that the Writ Petitioners failed to produce any documentary evidence with respect to the area of cultivation in the State of Madhya Pradesh. It was also held that the documents and evidence filed by the opponents only show the importance and special characteristic of rice cultivated in Madhya Pradesh and not Basmati Cultivation. In other words, it was held by the Third Respondent that the plea of the Petitioners is not supported by any documentary evidence and therefore, disallowed the Oppositions filed by the Writ Petitioners herein. Challenging the Order, dated 15.3.2018, the Petitioners also filed W.P. Nos.567 & 7030 of 2018 before this Court and they are pending. Therefore, it is submitted that the order, which is impugned in these Writ Petitions, is in the nature of an interim Order with a direction to the Third Respondent to consider the matter afresh and now the Final Order has been passed by the Third Respondent on 15.3.2018. Therefore, the Order, dated 5.2.2016 passed by the IPAB, which is impugned in these Writ Petitions,

has got merged with the final Order passed on 15.2.2016 by the Third Respondent issuing a GI Certificate in favour of APEDA.

**46.** The learned Counsel appearing for the Fifth Respondent further submitted that in direct Geographical Indication, the place of origin is explicit and it is always either prefixed or suffixed with the goods. One commodity may have two or more Geographical Indication, for example Madurai Jasmine and Mysore Jasmine or Malabar Coffee or Malabar Pepper. It is contended that the aforesaid aspects have been considered by the Consultative Group, an expert body constituted in accordance with Rule 33 of the Rules, who have gone into the intricate specialisation involved in the claim made by APEDA. The Expert body have gone through all the aspects and determined the territory where Basmati Rice is grown and cultivated. Such a determination by the expert body does not call for interference by this Court and he prayed for dismissal of the Writ Petitions.

**47.** In reply, as regards maintainability of the Writ Petitions, the learned Counsel for the Petitioner in W.P. No.5798 of 2016 would contend that this Court, in exercise of writ jurisdiction, can interfere with the Order passed by the IPAB. In order to buttress this submission, the learned Counsel for the Petitioner relied on several decisions. He placed reliance on the decision of the Honourable Supreme Court in ***Ram and Shyam Company v. State of Haryana and others,*** 1985 (3) SCC 267, to contend that the Rule, which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. Further, an Appeal, in all situations, cannot be expected to provide an alternative remedy keeping aside the distinction between jurisdiction and merits. For the same proposition, he has also relied on decisions of the Supreme Court rendered in (i) ***Dhampur Sugar Mills Limited v. State of U.P. and others,*** 2007 (8) SCC 338; (ii) ***A.V. Venkateswaran, Collector of Customs, Bombay v. Ramachand Sobraj Wadhwani and another,*** AIR 1961 SC 1506; and (iii) ***ABL International Limited and another v. Export Credit Guarantee Corporation of India Limited and others,*** 2004 (3) SCC 553 and 2005 (10) SCC 495).

**48.** Above all, it is contended by the learned Counsel for the Petitioner that the GI registration granted to APEDA has resulted in exclusion of certain areas where Basmati Rice is cultivated and had put the Petitioner to immense hardship. The IPAB has given undue importance to APEDA as a statutory creation while neglecting the interest of farmers involved in Basmati Rice cultivation in the State of Madhya Pradesh. The Order passed by the IPAB, which is impugned in these Writ Petitions, will have a long-term adverse consequences for the evolution of GI jurisprudence in India. Therefore, the learned Counsel for the Petitioner prays this Court to set aside the order of the Board with a direction to the Third Respondent to conduct a *de novo* enquiry within a time bound manner for adjudication of GI application of APEDA taking into account the objections raised by the

Madhya Pradesh based parties in the applications filed by them under Section 12 of the Act.

**49.** We have given our thoughtful consideration to the submissions made by the Counsel on either side and perused the materials placed on record. As we have dealt with the contentions urged on behalf of either side, we refrain our self from reiterating the factual aspects any further in this order, however, certain facts which are absolutely germane and necessary alone are dealt with hereunder for the purpose of disposal of these Writ Petitions.

**50.** APEDA, a statutory body established by the Government of India under the Ministry of Commerce, is governed by the APEDA Act. The object of the APEDA Act is to ensure development and promotion of certain agricultural and processed food products from India, including Basmati Rice. It is also an admitted fact that APEDA involved itself in various activities intended to protect the farmers. As a statutory body, APEDA has initiated actions by way of oppositions/rectifications/Civil Suits/issuing cease and desist letters/amicable settlements etc., against Third party registrations and use of the term "Basmati", the usurpers of goodwill and propriety to gain monopoly. In this direction, APEDA has filed an application, dated 27.11.2008 for registration of the name "Basmati" as a Geographical Indication in India to ensure that the rice sold under it are recognised as "Basmati" grown in the geographical areas mentioned therein. In Para No.17 of the application, dated 27.11.2008, APEDA has indicated that in India, Basmati Rice is being cultivated in the following areas:

| | | |
|---|---|---|
| (i) | Punjab | Entire State |
| (ii) | Haryana | Entire State |
| (iii) | Himachal Pradesh | Entire State |
| (iv) | Delhi | Entire State |
| (v) | Uttarkhand | Entire State |
| (vi) | Uttar Pradesh | Agra, Aligarh, Badaun, Bagpat, Bareily, Binor, Bullandhshahr, Etah, Etawah, Farrukhabad, Firozabad, Gautam Budh Nagar, Ghaziabad, Hathras, JP Nagar, Kannauj, Mainpuri, Mathura, Meerut, Moradabad, Muzaffar Nagar, Oraiya, Pilibhit, Rampur, Sahajahanpur and Saharanpur |
| (v) | Jammu & Kashmir | Jammu & Kathua |

**51.** According to APEDA, as per the provisions of the Seeds Act, 1966 and the recommendations of the Central Sub-Committee on Crops Standards Notification and Release of Varieties for Agricultural Crops constituted by the Central Seed Committee established under Section 3 of the Seeds Act, the rice grown in the aforesaid areas satisfy the qualification and conform to certain pre-determined standards set out for declaring a rice variety as

Basmati Rice. Reference was also made to the fact that the variety of rice should be either a traditionally known BASMATI or evolved through breeding process. Further, a reference was made to the testing and evaluation done through the National Basmati Trials (NBT) for quality parameters set out by the All India Coordinated Rice Improvement Project, released and notified under the Seeds Act, 1996. It was also stated therein that the varieties should be suitable to be grown in the areas of India in the Indo-gangetic Plains. The primary quality characteristics of Basmati Rice was also tabulated in Para No.19 of the Application of APEDA dated 27.11.2008 with reference to the standardized protocol set out by the Directorate of Rice Research, Hyderabad. However, in the application submitted by APEDA, State of Madhya Pradesh has not been included. This according to the Writ Petitioners, is a serious omission on the part of APEDA in not including the areas where Basmati Rice is grown and cultivated in the State of Madhya Pradesh. Therefore, the Writ Petitioner filed a Notice of Opposition during August 2010 for the application for registration of Geographical Indication submitted by APEDA before the Third Respondent.

**52.** In the Notice of Opposition filed by the Writ Petitioner before the Third Respondent/GI Registrar, it was contended that Basmati Rice grown in the areas of Madhya Pradesh has all the qualities of Basmati Rice with reference to primary quality and other ancillary characteristics. It was also stated by the Petitioners that the farmers in Madhya Pradesh have been cultivating the traditional varieties of Basmati Rice for several decades now. It was also claimed in the Notice of Opposition that the processing of Basmati in Madhya Pradesh is akin to the one indicated in the application submitted by APEDA in the other States. Reference was also made to the fact that due to increasing demand of the farmers in the State, Madhya Pradesh Seed and Farm Development Corporation (a Government Undertaking) has also been distributing seed of Basmati varieties to the farmers of Madhya Pradesh since late 1990. Therefore, in the Notice of Opposition, it was prayed to include the State of Madhya Pradesh, particularly, Morena, Bhind, Gwalior, Sheopur, Datia, Shivpuri, Guna, Vidisha, Raisen, Sehore, Hoshangabad, Jabalpur, Narshinghpur.

**53.** The application for Opposition was taken up by the Third Respondent. The Third Respondent, after hearing extensively the submission of both sides concluded that from the data published by the Directorate of Rice Development, Patna, there are some States like Madhya Pradesh, Rajasthan and Bihar, which are engaged in cultivation of Basmati Rice and those areas were left uncovered by APEDA in their application seeking registration for Basmati as a GI. Therefore, by Order, dated 31.12.2013, the Third Respondent directed APEDA to file an amended GI Application No.145 by including the uncovered areas, with map of the region clearly demarcating the area of production within 60 days. Assailing the Order, dated 31.12.2013, APEDA has filed the Appeal before the IPAB. The IPAB,

by Order, dated 5.2.2016, allowed the Appeal filed by APEDA, which is challenged in the above Writ Petitions.

**54.** Earlier, when these Writ Petitions were taken up for hearing by this Court, by Order, dated 17.2.2016, this Court directed APEDA not to take any precipitative action in respect of Basmati Rice produced in the State of Madhya Pradesh in the existing areas where it is grown. By the same order, this Court has listed out the issues that were required to be adjudicated in these Writ Petitions. The Order, dated 17.2.2016 can usefully be extracted hereunder:

> "The learned Senior Counsel for the Petitioner fairly states that the issue of inclusion of certain areas of Madhya Pradesh as Basmati growing areas would have to be examined by the Assistant Registrar of Geographical Indications, in view of the impugned Order of the Intellectual Property Appellate Board and there are already directions to conclude that aspect within a period of six months. The issue which is sought to be raised before us, as per the submissions made, is that certain States have been included in toto, while actually what should have been included was certain specified areas of those States where the cultivation of Basmati Rice goes on. It is his contention that such plea is not capable of being raised in the proceedings before the Assistant Registrar of Geographical Indications and can be raised before this Court as a consequence of the impugned order.
>
> *2. Per contra*, it is pleaded by the learned Senior Counsel for Respondent No.2 that the Petitioner never assailed the earlier order of the Assistant Registrar of Geographical Indications and has thus lost its right to raise this issue as otherwise they could always raise this issue before the Assistant Registrar of Geographical Indications, subject to the meeting of the terms and conditions required for raising such an objection.
>
> *3.* The aforesaid is the limited controversy which will have to be examined by this Court as agreed to by both sides.
>
> *4.* Let Counter-Affidavits be filed by the Respondents restricting to the aforesaid aspects within a period of three weeks.
>
> *5.* Rejoinder, if any be filed within two weeks thereafter.
>
> *6.* The learned Counsel for parties to keep ready short synopsis running into not more than two pages each.
>
> *7.* List on 5.4.2016 at the end of the Board.
>
> *8.* The learned Counsel for parties assured that they will not take more than one half day between themselves."

**55.** Therefore in the light of the above Order passed by this Court, the learned Counsel for both sides have advanced elaborate arguments and we have heard them and also perused the documents produced in support of their respective case, including their written submissions filed before us.

**56.** The learned Counsel for both the Petitioners vehemently contended that the IPAB erroneously allowed the Appeal filed by APEDA without objectively considering the oppositions filed by them. Therefore, in order to

consider this submission, it is necessary to look into certain provisions of the Act and Rules and they are extracted hereunder:

> "*Section 12. Withdrawal of acceptance.*— Where, after the acceptance of an application for registration of a geographic indication but before the registration, the Registrar is satisfied
>
> *(a)* that the application has been accepted in error; or
>
> *(b)* that in the circumstances of the case the geographical indication should not be registered or should be registered subject to conditions or limitations or to conditions additional to or different from the conditions or limitations subject to which the application has been accepted,
>
> the Registrar may, after hearing the Applicant if he so desires, withdraw the acceptance and proceed as if the application had not been accepted.
>
> *13.* .....
>
> "*Section 14. Opposition to registration.— (1)* Any person may, within three months from the date of advertisement or re-advertisement of an application for registration or within such further period, not exceeding one month, in the aggregate as the Registrar, on application made to him in such manner and on payment of such fee as may be prescribed allows, give notice in writing in the prescribed manner to the Registrar, of opposition to the registration.
>
> *(2)* The Registrar shall serve a copy of the notice on the Applicant for registration and, within two months from the receipt by the Applicant of such copy of the notice of opposition, the Applicant shall send to the Registrar in the prescribed manner a Counter-Statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his Applicant.
>
> *(3)* If the Applicant sends such Counter-Statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.
>
> *(4)* Any evidence upon which the opponent and the Applicant may rely shall be submitted in such manner and within such time as may be prescribed to the Registrar, and the Registrar shall give an opportunity to them to be heard, if they so desire.
>
> *(5)* The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the Registration is to be permitted, and may take into account a ground of objection whether relied upon by the opponent or not.
>
> *(6)* Where a person giving notice of opposition or an Applicant sending Counter-Statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the costs of proceeding before him, and in default of such security being duly given, may treat the opposition or application, as the case may be, as abandoned.
>
> *(7)* The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a Counter-Statement on such terms as he thinks fit."

**57.** Section 12 of the Act deals with withdrawal of an application for registration of a Geographical Indication. As per Section 12(1) of the Act, when an application for registration of a Geographical Indication has been

accepted by the Third Respondent, whether in whole or subject to certain conditions or limitations, the Third Respondent shall, cause the application to be advertised in such manner as may be prescribed. Section 12(2) of the Act provides the power to the Third Respondent to re-notify the application for the defects or error that may be pointed out. In other words, as per sub-section (2) of Section 12, after advertisement of an application for registration of GI, if any error made in the application, has been corrected or any amendment was permitted to be made under Section 15 of the Act, the Third Respondent, in his discretion, may cause the application to be re-advertised or to notify it in the manner prescribed. In the present case, APEDA has filed an application in the year 2008 for registration of Basmati as GI by including certain areas of cultivation in various States of the Country in which Madhya Pradesh was not included as an area of Basmati cultivation. The notice thereof was made by the Third Respondent *viz*., a Formality Compliance Report on 23.12.2009. When the application of APEDA was under process, Statement of Opposition in TOP. No.19 was filed by the Petitioner--State of Madhya Pradesh and other Madhya Pradesh based parties in TOP Nos.13 to 17 on 29.9.2010 to include 13 Districts in the State of Madhya Pradesh also as Basmati cultivating areas. The Statement of Opposition was opposed by APEDA by filing a Counter Affidavit. After hearing the rival submissions and considering the materials placed on record, the Third Respondent passed an Order, dated 31.12.2013 holding that APEDA had failed to satisfy the basic and fundamental requirement in indicating a clear, specific and reasoned demarcation of actual Basmati Cultivation areas. This Order, dated 31.12.2013 is in consonance with Section 12 of the Act, inasmuch as the Third Respondent found certain fundamental defects in submitting an application for registration of GI. Furthermore, the Order, dated 31.12.2013 has been passed after considering the Oppositions filed by the Petitioner and other Madhya Pradesh based parties as contemplated under Section 14 of the Act. When such an order was passed by the Third Respondent rejecting the application of APEDA, the Petitioner cannot be expected to file an Appeal thereof before the Appellate Authority. Therefore, the argument of the learned Senior Counsel appearing for the Second Respondent/APEDA that the Order, dated 31.12.2013 has reached finality insofar as it relates to confirmation of the APEDA's demarcation of Basmati Growing areas in the GI application, cannot be countenanced. Had it been so, APEDA need not have filed an Appeal before the Board. The Order, dated 31.12.2013 cannot be construed as the one to grant GI Registration to Basmati Rice insofar as it relates to the areas indicated by the APEDA in the application for GI Registration, but it was rejected or merely returned to more specifically indicate clearly and specifically the demarcation of actual Basmati Cultivation areas. Consequently, the issue of *res-judicata* or estoppel does not survive for our consideration in these Writ Petitions.

**58.** The vehement contention of the Counsel for the Petitioners in these Writ Petitions is that the IPAB, as an Appellate Authority, committed grave error and irregularity in considering the Appeal preferred by APEDA on several counts. In this context, the learned Counsel for the Petitioners has taken us to each and every observation of the IPAB to contend that the Board ought to have considered this submission of the Petitioner or ought not to have considered such a plea raised by the Second Respondent/ APEDA. He also placed heavy reliance on the application filed under Section 12 of the Act and contended that the IPAB has failed to consider the Opposition in proper perspective. For example, one of the contentions made by the learned Counsel for the Petitioner in W.P. No.5798 of 2016, which is also reflected in Para No.14 (i) of his written submission is that "Senior Counsel Shri. P.S. Raman was not the Counsel for APEDA before the Assistant Registrar in 2013 and therefore his submissions with respect to what transpired in the hearing of June 2013, are without any personal knowledge or factual basis. On the contrary, the Written Submissions filed by APEDA in 2013 prove the contentions of the State of MP that APEDA had waived all formalities and had indeed responded to the contentions. Similarly, in Para No.16 of the Written Submission, it is stated that "no where in the discussion on Section 12 in APEDA's Appeal before the IPAB, APEDA has challenged the maintainability of Section 12 Application or non-compliance of procedure under Rule 37 of the GI Rules. This proves once more that contrary to the submissions made by the Senior Counsel for APEDA, Shri. P.S. Raman, on August 8, 2019 before this Honourable Court, no procedural objections were raised on June 13, 2013 by Shri. Jyoti Sagar, APEDA's Counsel, on the final date of hearing before the Assistant Registrar. Instead, Shri. Sagar had waived notice and the right to file reply on the ground that he would respond to it orally and address it as part of APEDA's written Submission before the Assistant Registrar." This is one of the tip of the ice bergs and there are several claims made by the learned Counsel for the Petitioners with respect to the written submissions filed before the Board. While assailing the order of the IPAB, the learned Counsel for the Petitioners has made similar averments with respect to each paragraph. The argument of the learned Counsel for the Petitioners, though attractive, but not impressive. We hasten to add that written submissions are entertained by the Court to enable the parties to the '*lis'* to more elaborately and extensively make their submissions to substantiate their pleadings. However, such Written Statement cannot have any evidentiary value to be looked into. In other words, non-consideration of the averments made in the Written Submission, will not make a Judicial Order invalid. The pleadings raised by a party to the "*lis*" at the first instance or any additional pleadings permitted to be raised alone, will be taken as the one which has an evidentiary value and not the written submissions. In the present case, much has been argued by the learned Counsel for the Petitioner in W.P. No.5798 of 2016 as regards non-consideration of the written submissions made before

the Appellate Board, which we cannot countenance. The portions of the written submissions and the points that are sought to be agitated before this Court in these Writ Petitions, are all matters which relates to factual submissions raised by the learned Counsel before the Assistant Registrar or the IPAB. Whether such arguments were in fact raised, or not raised or the manner in which arguments were advanced, cannot be considered by this Court in these Writ Petitions, nor are they relevant for our consideration while examining the correctness or validity of the Order passed by the IPAB, which is impugned in these Writ Petitions. All that the Writ Court can examine, in exercise of its power under Article 226 of the Constitution of India, is that whether the order under challenge has been passed by considering all the relevant material particulars or they are omitted to be considered and whether there were any irrelevant materials which have been considered while coming to the conclusion. While dealing with a Writ Petition, this Court cannot conduct a roving enquiry to fish out certain facts or venture into an arena which has to be best left to be decided by the Statutory Authority. This is more so that in the present case, the dispute is with respect to inclusion or exclusion of certain areas in Madhya Pradesh, where Basmati Rice is grown by the farmers. This is a factual dispute which has to be gone into by the Third Respondent or the IPAB and this Court in exercise of its power under Article 226 of the Constitution of India, cannot venture into it. It is needless to mention that while dealing with a Writ Petition, this Court can only examine the manner in which the statutory authority had arrived at a decision and not the correctness of such decision.

**59.** Notwithstanding the above observation, we have also gone through the Order passed by the Board, which is impugned in these Writ Petitions. In Para Nos.15 to 18 of the Order, dated 5.2.2016, the Board has dealt with the Opposition Applications filed by the Petitioners. Similarly, the arguments advanced by the Petitioners herein before the Board, as also the learned Counsel for APEDA, have been briefly summarised by the Board from Para Nos.19 to 29. From Para No.30, the Board has summarised the origin of the dispute, the claim made by the APEDA, as also the Petitioners herein, the plea with respect to locus-standi raised by the Petitioners as against APEDA, etc., While examining the Opposition filed by the Petitioners under Section 12 of the Act, the Board, in Para Nos.47, 50 & 51 held as follows:

> "*47.* It is also pertinent to state that the opponents have filed an application under Section 12 of the Act with a main prayer to withdraw the acceptance of the GI Application No.145 and sought for re-constitution of the consultative group. The perusal of the said applications filed by the opponents in TOP 13 to 17 and TOP 19 reflects that they have come forward with a parrot like version similar to that of their version in their oppositions in TOP 13 to 17 and TOP 19 and it is stated by them categorically and uniformly that the primary contention between the parties pertains to the boundaries and extent of the Basmati growing regions. Therefore, it is very clear that their only grievance is the non-inclusion of the State of Madhya Pradesh in the GI Application No.145. As we have already

pointed out it is to be stated that GI Application No.145 fulfils the requirements contemplated as per provision under Section 11 of the Act and we would deal with the said grievance in the later portion of the Judgment.

*50.* .. It is pertinent to note that GI Application No.145 has been filed by APEDA as early as on 26.11.2008 and even after the lapse of seven years APEDA has been kept waiting for the GI recognition of Basmati Rice relating to the areas and region specified in GI Application No.145. We are also constrained to state that the APEDA is a statutory body created by an Act of Parliament and one of the responsibility shouldered by APEDA is to protect Basmati Rice which is an iconic heritage of India and we cannot overlook and brush-aside the serious threat of infringement and misappropriation of the name "Basmati" rice produced from our country and there is a paramount need to preserve and protect globally in the national interest. History reveals that APEDA is fighting for such public cause and initiated several actions in our country and as well as in other countries and Rich-tech case is an eye opener for becoming more vigilant in protecting Basmati Rice which has obtained world reputation and recognition. We are also hastened to state that APEDA being a public statutory body, it may not have any personal interest or bias against anybody, group or state for denying their genuine right for their inclusion in respect of the Basmati Rice grown area in GI application.

*51.* Considering the above said undisputed facts, we are constrained to arrive at the irresistible and inevitable conclusion that the Registrar of GI Registry shall grant GI TAG for Basmati in respect of the geographic region and areas specified by APEDA in GI Application No.145. In view of the above said reasons, we have no hesitation to hold that APEDA is entitled to get GI TAG for the region and areas specified in the certified maps of Basmati Rice grown areas produced in GI Application No.145. Accordingly, the Registrar of GI Registry shall proceed with the registration of GI for Basmati Rice in respect of the geographic region and area specified in APEDA in GI Application No.145 and the Certificate of registration is to be issued within a period of four weeks from the date of receipt of the order copy of this Bench."

**60.** Admittedly, even before this Court, the Petitioners have no qualm or grievance with respect to the areas of Basmati cultivation indicated by APEDA in their application for registration of Basmati in Application No.145. On the other hand, the grievance of the Petitioners appears to be that certain areas in the State of Madhya Pradesh have been excluded in Application No.145. Therefore, when there is no dispute with respect to the areas included by APEDA in Application No.145, the IPAB is justified in directing the Third Respondent to issue GI Registration with respect to geographic region and area specified in GI Application No.145. Accordingly, GI Registration Certificate was also issued by the Third Respondent on 15.2.2016 to APEDA in respect of the areas which are covered in their Application No.145. Challenging the grant of GI Registration, the petitioners have also filed W.P. Nos.567 & 7030 of 2018 and they are pending before this Court. Therefore, we are of the view that the issue as regards the validity of the issuance of GI Registration, has to be

examined by this Court only in W.P. Nos.567 & 7030 of 2018 and not in the present Writ Petitions. As mentioned above, in the present Writ Petitions, the challenge is to the validity of the Order, dated 5.2.2016 passed by the IPAB, which we have extracted above. The IPAB, in our opinion, has rightly directed the Third Respondent to issue GI Registration Certificate to APEDA in respect of the areas indicated in Application No.145, over which the Petitioners have no qualm or grievance. Of course, for a same produce, two GI Certificates of Registration cannot be issued and precisely that is the reason why the Petitioners have come up with the present Writ Petitions. At the same time, when once a Certificate for Registration of GI for Basmati Rice was issued and it was also challenged by the Petitioner by filing W.P. Nos.567 & 7030 of 2018 and they are pending before this Court, the relief sought for in these Writ Petitions had only become academic.

**61.** The learned Counsel appearing for the Petitioners in both the Writ Petitions have vehemently contended that still the present Writ Petitions are maintainable before this Court and this Court can examine the validity of the Order, dated 5.2.2016 passed by the IPAB *de hors* the GI Registration Certificate issued in favour of APEDA. In this context, the learned Counsel for the Petitioners relied on decision of the Honourable Supreme Court in the case of ***Shankara Cooperative Housing Society Limited v. M. Prabhakar and others,*** 2011 (5) SCC 607, to contend that when there are error apparent on the face of the records, a Writ Petition is always maintainable. For the same proposition, the learned Counsel appearing for the Petitioners also relied on several decisions which we are not inclined to refer to in this Order. Given the subsequent development that had taken place in this case during the pendency of the present Writ Petitions, we are not inclined to go into the question as regards maintainability of the present Writ Petitions. At the same time, we have to observe that the Petitioners have an alternative and efficacious remedy available by filing an application to the Registrar of Trade Mark under Section 27 of the Act seeking to cancel or vary the GI Certificate issued to APEDA. It is a statutory remedy, which the Petitioners ought to have availed instead of pursuing with the present Writ Petitions. Therefore, we are of the view that the contentions raised on behalf of the Second Respondent/APEDA relating to maintainability of these Writ Petitions are well founded.

**62.** In the result, both the Writ Petitions fail and the same are accordingly dismissed. No Costs.

**2021 (1) CWC 36**

**IN THE HIGH COURT OF MADRAS**

**Senthilkumar Ramamoorthy, J.**

W.P. No.20637 of 2010 & M.P. No.1 of 2009

11.12.2020

Sulaihar, rep. by Power Agent, K.K. Shaik Dawood, No.8/78, Sowrimuthu Street, Mannadi, Chennai-600 001 ***.....Petitioner***

Vs.

Deputy Director, Enforcement Directorate, Shastri Bhavan, Chennai-6. **2.** Union of India, rep. by its Secretary to Ministry of Finance, Department of Revenue, New Delhi ***.....Respondents***

**Constitution of India, Article 226 — Writ Petition — Delay and Laches — Travellers Cheques for a total amount of UK Pounds 2000 seized from Petitioner's house by Enforcement Directorate in year 1974 — Said confiscation set aside by High Court in CMA in year 1999 and refund directed — In year 2000, amount of ₹32,371 received as refund by Petitioner without prejudice to right to claim Interest at 15% p.a. — Instant Writ Petition claiming Interest filed in year 2009 — *Held*, Writ Petition filed 9 years after receipt of refund suffering from delay and laches — Explanation of Petitioner that he had visited office of R1 to request for payment of Interest and Writ Petition was filed as R1 refused to pay same, not sufficient to explain delay of 9 years — If Petitioner had filed Suit for Recovery of Interest, Suit would have been rejected for limitation — Writ Petition dismissed on ground of delay and laches.** ***(Para 13)***

**CASES REFERRED**

C. Arasakumar *alias* C.A. Kumar *v.* Union of India, *CDJ 1991 MHC 218*..... 7, 10
Dejero Logix Pvt. Ltd. *v.* Commissioner of Customs (Imports) Air Cargo, New Customs House near IGI Airport, New Delhi, *W.P. (C) 2575/2015 dated 27.4.2017*..... 7
Kalpana Glass Fibre Pvt. Ltd. *v.* State of Orissa, *CDJ 2012 Orissa HC 411* ..... 7
Life Insurance Corporation of India *v.* Gangadhar Vishwanath Ranade (Dead) by L.Rs., *AIR 1990 SC 185*..... 5
Northern Plastics Ltd. *v.* Collector of Customs & Central Excise, *2000 (1) CTC 683 (SC)* ..... 5
Satinder Singh *v.* Umrao Sing, *AIR 1961 SC 908* ..... 5
State of Maharashtra *v.* Digambar, *1995 (4) SCC 683*..... 13
Suganmal *v.* State of Madhya Pradesh, *1965 (16) STC 2398* ..... 7
Union of India *v.* Tata Chemicals, *2014 (6) SCC 335* ..... 5

**K.M. Abdul Nazeer, Advocate for Petitioner.**

**N. Ramesh, Special Public Prosecutor for Respondent No.1.**

**W.P. DISMISSED — NO COSTS — M.P. CLOSED**

**Prayer :** Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the Respondents to pay 15% Interest towards the value of UK Pounds 1800 of ₹32,371 from 16.8.1974 till the date of actual return to the Petitioner or in the alternative to direct the

Respondents to pay ₹94,259 being the differential amount after adjusting the sum of ₹32,371 paid on 16.3.2000 from and out of the value of UK Pounds 1800 as on 26.11.1999 along with interest at the rate of 15% per month from 16.3.2000.

## JUDGMENT

**1.** A sum of ₹32,371 was paid to the Petitioner on 16.3.2000 as the rupee equivalent of UK Pounds 1800, which was seized from the Petitioner's house on 16.8.1974. The present Writ Petition is filed for a direction to the Respondents to pay interest on ₹32,371 at 15% per annum from the date of seizure (16.8.1974) till the date of payment of the rupee value thereof (16.3.2000) or, in the alternative, to pay a sum of ₹94,259, which is the rupee equivalent of UK Pounds 1800 as on 16.3.2000 after setting-off the sum of ₹32,371, which was paid on 16.3.2000.

**2.** On 16.8.1974, the officers of the Enforcement Directorate seized travellers Cheques for UK Pounds 2000 from the Petitioner. The Petitioner and his wife gave a statement to the effect that they had returned from Penang, Malaysia on 10.6.1974 and had brought travellers Cheque for UK Pounds 2000 which had been duly declared to the Customs Authority of arrival. They also stated that the original travellers Cheques were lost and subsequently replaced by the foreign exchange dealer, Thomas Cook, by issuing travellers Cheques in lieu. Pursuant to the said seizure, a Show Cause Notice was issued and the adjudication Order, dated 5.5.1997 was pronounced imposing a penalty of ₹3,000 in addition to the confiscation. The Petitioner carried the matter in Appeal before the Foreign Exchange Regulation Appellate Board (the Appellate Board). By Order, dated 14.2.1980, in Appeal No.863 of 1977, the Appellate Board confirmed the order of confiscation of UK Pounds 2000 but reduced the penalty to ₹1,000.

**3.** The order of the Appellate Board was challenged in C.M.A. No.82 of 1992 before this Court. By Order, dated 26.11.1999, this Court upheld the confiscation of UK Pounds 2000 but set aside the order of the Appellate Board as regards the confiscation of UK Pounds 1800 on the ground that the substitute travellers Cheques were issued to the Petitioner on 23.7.1974 and, consequently, she had time till 23.8.1974 (30 days), as per the provisions of the Foreign Exchange Regulation Act, 1973 (FERA) to make the requisite declaration. Consequently, the seizure on 16.8.1974 was held to be contrary to the provisions of FERA. On that basis, the Enforcement Directorate was directed to refund the value of 1800 pounds. The said sum was refunded on 16.3.2000. However, no interest was paid on the sum of ₹32,371, which represents the principal value of UK Pounds 1800 as on the date of seizure. The present Writ Petition was filed in the said facts and circumstances for the relief mentioned supra.

**4.** I heard Mr. K.M. Abdul Nazeer, the learned Counsel for the Petitioner and Mr. N. Ramesh, the learned Standing Counsel for the Enforcement Directorate.

**5.** Mr. Abdul Nazeer submitted that this Court by Order, dated 26.11.1999 in C.M.A. No.82 of 1992 directed the Enforcement Directorate to refund the value of UK Pounds 1800. The said order was not carried in Appeal by the Enforcement Directorate and, therefore, attained finality. Section 42(3) of the FERA provided for the payment of interest at the rate of 6% per annum in all cases other than cases of confiscation either under Section 63 of FERA or under the Customs Act, 1962. According to Mr. Abdul Nazeer, the confiscation was set aside by this Court and, therefore, the statutory interest liability under Section 42(3) of FERA is triggered *ipso facto*. Even otherwise, he submits that a party that makes payment belatedly is liable to pay interest thereon. In support of his contentions, he referred to and relied upon the following Judgments, which are set out along with context and principle:

(i) ***Life Insurance Corporation of India and another v. Gangadhar Vishwanath Ranade (Dead) by L.Rs.,*** AIR 1990 SC 185, wherein a Writ Petition was filed on account of the refusal of the LIC to pay interest on the principal amount in spite of the inordinate delay in payment. The Hon'ble Supreme Court held that the Writ Petition is maintainable and affirmed the order of the High Court granting Interest at 15% per annum.

(ii) ***Northern Plastics Ltd. v. Collector of Customs & Central Excise,*** 2000 (1) CTC 683 (SC) : 2000 (1) SCC 545, wherein the Hon'ble Supreme Court examined whether a person is entitled to the value of goods which were wrongfully confiscated and sold along with interest thereon. In that fact situation, the Hon'ble Supreme Court concluded that the owner of the goods would have been entitled to the use of the said goods but for the wrongful confiscation thereof. As such, the person responsible for such confiscation is liable to pay the monetary value of the said goods with interest thereon at 12 % per annum from the date of confiscation till the date of payment.

(iii) ***Satinder Singh and others v. Umrao Sing and others,*** AIR 1961 SC 908, wherein, in the context of land acquisition, it was held that the person whose land was acquired is entitled to interest at 4% per annum on the compensation amount from the date when possession of the land was taken to the date on which the Compensation amount was deposited or paid.

(iv) ***Union of India v. Tata Chemicals,*** 2014 (6) SCC 335, wherein, in the context of wrongful deduction of tax by a resident on payments due to a non-resident, the Supreme Court concluded that interest was payable on the refunded sum.

**6.** On the contrary, Mr. Ramesh, the learned Counsel for the Enforcement Directorate, submitted that the Writ Petition is not maintainable. In order to substantiate this contention, he pointed out that the Petitioner is a Malaysian citizen; as such, she is not entitled to maintain this Writ Petition. His second contention is that the order of confiscation was challenged before the Appellate Board and, thereafter, before this Court in C.M.A. No.82 of 1992.

Although the Petitioner succeeded partly in C.M.A. No.82 of 1992, this Court, by Order, dated 26.11.1999, directed the Enforcement Directorate to refund the value of UK Pounds 1800 but did not direct the payment of interest thereon. Consequently, the Petitioner should have requested for a modification of the said order or carried the matter in Appeal if the Petitioner intended to claim interest on the rupee equivalent of UK Pounds 1800. To put it differently, the contention of the learned Counsel is that the proceedings relating to the confiscation attained finality with the Order dated 26.11.1999. Accordingly, a separate Writ Petition for payment of interest is not maintainable.

**7.** He further submitted that the confiscation was set aside by Order, dated 26.11.1999 on a technicality, namely, that the statutory time limit of 30 days for declaring that the Petitioner is in the possession of foreign currency had not expired as on 16.8.1974 (*i.e.* the date of confiscation). Therefore, he submitted that the Petitioner is not entitled to interest. In support of his contentions, the learned Counsel for the Enforcement Directorate relied upon the following Judgments, which are set out along with context and principle:

(a) ***C. Arasakumar alias C.A. Kumar v. Union of India,*** CDJ 1991 MHC 218. In the said case, a specific sum of money was seized from the Petitioner therein on the ground of violation of the provisions of FERA. The order of adjudication was challenged before the Foreign Exchange Regulation Appellate Board and, thereafter, by way of a Civil Miscellaneous Appeal before this Court. The said Civil Miscellaneous Appeal was allowed and the Enforcement Directorate was directed to refund the amount seized. Pursuant thereto, the amount seized was refunded without interest. A Writ Petition was filed in those facts and circumstances but the Writ Petition came to be rejected on the ground that Section 42(3) of FERA does not provide for payment of interest on confiscated currency notes. In addition, the Court concluded that the Petitioner therein was not entitled to interest for the reason that the Judgment of the Court in the Civil Miscellaneous Appeal did not direct that the amount be refunded with interest.

(b) ***Dejero Logix Pvt. Ltd. v. Commissioner of Customs (Imports) Air Cargo, New Customs House near IGI Airport, New Delhi,*** W.P. (C) 2575/2015 dated 27.4.2017, wherein a Division Bench of the Delhi High Court concluded that the customs authorities are liable to pay the value of goods at the time of seizure and not the value at the time of subsequent sale of said goods.

(c) ***Kalpana Glass Fibre Pvt. Ltd. v. State of Orissa & others,*** CDJ 2012 Orissa HC 411, wherein the Division Bench of the Orissa High Court referred to and relied upon the Judgment of the Constitution Bench of the Hon'ble Supreme Court in ***Suganmal v. State of Madhya Pradesh &***

***others,*** 1965 (16) STC 2398, and concluded that a Writ Petition would not be maintainable for the refund of money which was unlawfully collected as tax and that a Civil Suit should be filed in respect thereof.

**8.** I considered the submissions of the learned Counsel for the respective parties and examined the materials on record.

**9.** The facts are largely undisputed in the present case. Both parties agree that travellers Cheques for a total of UK pounds 2000 were seized from the Petitioner's house by the officers of the Enforcement Directorate on 16.8.1974. The confiscation was upheld in the adjudication proceedings of the Enforcement Directorate, dated 5.5.1977 and the proceedings of the Appellate Board, dated 14.2.1980. Thereafter, the confiscation of UK pounds 1800 was set aside by Order, dated 26.11.1999 in C.M.A. No.82 of 1992 on the ground that the Petitioner was entitled to make a declaration that she was in possession of the said UK Pounds 1800 on or before 23.8.1974 and, therefore, the foreign currency should not have been seized on 16.8.1974. The Enforcement Directorate was directed to refund the value of UK Pounds 1800 on the aforesaid grounds. Both parties also agree that the said Order, dated 26.11.1999 attained finality.

**10.** Pursuant thereto, the Enforcement Directorate enclosed a refund bill for ₹32,371 on 11.2.2000. Upon receipt of the said bill, by reply, dated 18.2.2000, the Petitioner signed the claim bill for ₹32,371 without prejudice to the right to claim Interest at 15% per annum on the said amount from the date of confiscation till the date of receipt of the rupee value thereof. Thereafter, the said amount was received by the Petitioner under Demand Draft, dated 10.3.2000 on 16.3.2000. 11. The main ground on which the Petitioner claims interest is that Section 42(3) of FERA stipulates that interest is payable at 6% per annum in all cases other than cases relating to confiscation either under Section 63 of FERA or under the Customs Act, 1962. According to Mr. Abdul Nazeer, the present case is one of unlawful confiscation and, therefore, Section 42(3) would apply and the Enforcement Directorate is under a statutory liability to pay Interest at 6% per annum. On this issue, Mr. Ramesh relied upon the Judgment of this Court in ***Arasakumar*** wherein, in very similar facts, this Court concluded that the expression "such proceeds" in Section 42(3) refers to proceeds realized in terms of Section 42(1) of FERA, which are required to be kept in a separate account in terms of Section 42(2). This Court also concluded therein that the order in the Civil Miscellaneous Appeal did not direct the payment of interest and, therefore, the Petitioner therein was not entitled to claim interest by filing a separate Writ Petition. I see no reason to differ with the conclusion in ***Arasakumar*** that the expression "such proceeds" in Section 42(3) of FERA pertains to proceeds realized pursuant to a direction under Section 42(1), which are deposited in a separate account in terms of sub-section 2 thereof. The inference from the above conclusion would be that

interest cannot be claimed under Section 42(3) of FERA but the legitimacy of the interest claim *de hors* Section 42(3) is a distinct matter and it should be examined whether the Petitioner's claim is otherwise sustainable.

**12.** Mr. Abdul Nazeer contended that the Petitioner could not claim interest in C.M.A. No.82 of 1992 because the said Appeal challenged the order of the Appellate Board, dated 14.2.1980 and, therefore, the Petitioner could only pray for setting aside the order of the Appellate Board. Nonetheless, upon receipt of the Order, dated 26.11.1999 whereby the order of confiscation of UK Pounds 1800 was set aside, the Petitioner could have requested for a modification of the said order so as to direct the payment of interest on the rupee equivalent of UK Pounds 1800. In the alternative, the Petitioner could have impugned the said order in so far as interest liability is concerned. Indeed, it is clear from the Letter, dated 18.2.2000 that the Petitioner signed the claim bill for ₹32,371 without prejudice to her right to claim Interest at 15% per annum. Therefore, even at that juncture, the Petitioner was fully cognizant of the fact that she could claim interest.

**13.** This leads to a significant aspect of the case. The Petitioner received a sum of ₹32,371 from the Enforcement Directorate on 16.3.2000. Prior to that, by Letter, dated 18.2.2000, the Petitioner put the Enforcement Directorate on notice that she is receiving the said sum without prejudice to her right to claim interest. Thereafter, the present Writ Petition claiming interest was filed on or about 28.8.2009. Thus, it is clear that the Writ Petition was filed more than 9 years after receiving the rupee equivalent of UK Pounds 1800. Upon perusal of the Affidavit, I find that the Petitioner stated that she and her Counsel visited the office of the 1st Respondent to request for the payment of interest and that she was constrained to file the Writ Petition on account of non-payment thereof. Apart from this statement, no explanation is offered for the delay and no written reminders are on record. If the Petitioner had filed a Suit to recover interest, such Suit would have been rejected *in limine* on the ground of limitation. On the applicability of laches to proceedings under Article 226, it is sufficient to refer to ***State of Maharashtra v. Digambar,*** 1995 (4) SCC 683, where it was held as under:

> "*21.* Whether the above doctrine of laches which disentitled grant of relief to a party by equity Court of England, could disentitle the grant of relief to a person by the High Court in exercise of its power under Article 226 of our Constitution, when came up for consideration before a Constitution Bench of this Court in *Moon Mills Ltd. v. M.R. Meher, President, Industrial Court,* AIR 1967 SC 1450 : 1967 (2) LLJ 34, it was regarded as a principle that disentitled a party for grant of relief from a High Court in exercise of its discretionary power under Article 226 of the Constitution.
>
> *22.* A Three-Judge Bench of this Court in *Maharashtra SRTC v. Shri Balwant Regular Motor Service,* 1969 (1) SCR 808 : AIR 1969 SC 329, reiterated the said principle of laches or undue delay as that which applied in exercise of power by the High Court under Article 226 of the Constitution.

*23.* Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily. Thus, a public law remedy is discretionary and, in the overall facts and circumstances, including the complete failure to provide a reasonable explanation for the delay, I am not inclined to exercise discretion in favour of the Petitioner, who has approached the Court rather belatedly. Thus, I am of the view that the Writ Petition is liable to be rejected solely on the ground of laches. In addition, as stated earlier, the Petitioner did not seek a modification of or challenge the order in C.M.A. No.82 of 1999 so as to claim interest."

**14.** In the result, the Writ Petition fails and is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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**2021 (1) CWC 42**

**IN THE HIGH COURT OF MADRAS**
**(*Madurai Bench*)**

**D. Krishnakumar, J.**

W.P.(MD) No.11225 of 2020

9.9.2020

V. Alagar ***…..Petitioner***

Vs.

Inspector General of Registration and others ***…..Respondents***

**Registration Act, 1908 (16 of 1908) — Tamil Nadu Registration Rules, Rule 55 — Constitution of India, Article 226 — Properties purchased for Projects under Joint Venture Contract Agreement — Certain properties sold on account of Business loss — Cancellation of Sale Deed sought on ground that sale was without consent of Petitioner — *Held*, Registering Authority bound to consider objections raised on grounds specified in Rule 55 — Petitioner not alleged documents are forged — Fraud committed by selling without consent, not specified ground under Rule 55 — No case made out for invoking power under Rule 55 — Petitioner to seek remedy before competent Civil Court — Writ Petition dismissed.** ***(Paras 6 & 7)***

**PR. Boomee Rajan, Advocate for Petitioner.**

**K. Sathiya Singh, Additional Government Pleader for Respondent Nos.1 to 3.**

**W.P. DISMISSED — NO COSTS**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the Second & Third Respondents to cancel the fraudulent Sale Deed, dated 24.3.2020 in Document No.1457 and Document No.1195, dated 29.5.2020 based on the Petitioner's Representation, dated 17.3.2020 & 4.8.2020.

## JUDGMENT

**1.** This Writ Petition is filed seeking for a direction to direct the Respondents 1 to 3 to cancel the fraudulent Sale Deeds, dated 24.3.2020 in Document No.1457 and Document No.1195, dated 29.5.2020, based on the Representations, dated 17.3.2020 & 4.8.2020.

**2.** Mr. K. Sathiyasingh, learned Additional Government Pleader, takes notice for the Respondents 1 to 3. By consent, this Writ Petition is taken up for final disposal at the stage of admission itself.

**3.** The learned Counsel appearing for the Petitioner submitted that the Petitioner as well as the Fourth & Fifth Respondents are engaged in business, namely, "SPA" Enterprises and they entered into a Joint Venture Contract Agreement and the same was registered vide Document No.101 of 2002, on 25.11.2002. In this regard, some properties were purchased by the Petitioner as well as the Fourth & Fifth Respondents. Consequently, they suffered loss and thereafter, one of the Partners, Selvam died. Later, the Petitioner came to know that the Fourth & Fifth Respondents sold the property to the Sixth Respondent without getting his consent, through registered Sale Deeds, dated 24.3.2020, in Document Nos.1457 & 1195, dated 29.5.2020. Therefore, the Petitioner made a Representation, dated 4.8.2020 to the Respondents, to cancel the Sale Deeds, which were executed by the Fourth & Fifth Respondent without knowledge or consent of the Petitioner. Since no action has been taken, the Petitioner has filed this present Writ Petition.

**4.** The learned Additional Government Pleader, on instructions, submitted that the District Registrar enquired into the Petition mentioned Sale Deeds, which are executed in favour of the Sixth Respondent. The allegation made in this Petition is not covered under the Registration Act and Rules. It is purely Civil in nature. He further submitted that if the registration of Sale Deed is fraudulent, the Petitioner can establish his rights before the Civil Court for cancelling the registered Sale Deed.

"Section 82 of the Tamil Nadu Registration Rules:

> *82. Penalty for making false statements, delivering false copies of translations, false personation, and abetment.*— whoever—
>
> *(a)* intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or enquiry under this Act; or
>
> *(b)* intentionally delivers to a Registering Officer, in any proceeding under this Act or the Rules made thereunder a false copy or translation of a document, or a false copy of a map or plan; or

*(c)* falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any preceding or enquiry under this Act; or

*(d)* abets anything made punishable by this Act, shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both."

**5.** The allegation found in the Representations of the Petitioner does satisfy Rule 55 of the Registration Rules and Circular issued by the Inspector General of Registration, Letter No.41530/U1/2017, dated 9.4.2018. Rule 55 of the Tamil Nadu Registration Rules, reads as follows:

"*55.* It forms no part of a Registering Officers duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but, he is bound to consider objections raised on any of the grounds stated below:

*(a)* that the parties appearing or about to appear before him are not the persons they profess to be;

*(b)* that the document is forged;

*(c)* that the person appearing as a representative, assign or agent, has no right to appear in that capacity;

*(d)* that the executing party is not really dead, as alleged by the party applying for registration; or

*(e)* that the executing party is a minor or an idiot or a lunatic."

**6.** Thus the Petitioner has not convinced the Court that the grounds raised in the Complaint would satisfy the parameters of the aforesaid Rule as well as Circular. Unless, the Complaint of the Petitioner has made out a case that the documents registered by the Respondents 4 & 5 are forged, the Respondent cannot invoke the power under Rule 55 extracted above.

**7.** The allegation of the Petitioner is that the Fourth & Fifth Respondents sold the property to the Sixth Respondent without getting consent and thereby committed fraud on the Registration-Department is not covered under the aforesaid Rule. The Petitioner can seek his remedy only before the competent Civil Court. This Court is not inclined to entertain this Petition and the same is liable to be dismissed.

**8.** Accordingly, this Writ Petition is dismissed. No costs.

*Note :* In view of the present lock down owing to COVID-19 pandemic, a Web copy of the Order may be utilized for official purposes, but, ensuring that the copy of the Order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

**2021 (1) CWC 45**

**IN THE HIGH COURT OF MADRAS**

**Pushpa Sathyanarayana, J.**

W.P. No.8716 of 2019 & W.M.P. No.9279 of 2019

9.12.2020

*(Heard through Video Conference)*

R. Saranya. **2.** Minor Yogendra. **3.** Minor Sanjay [*The minor Petitioners are represented by their next friend and Guardian, the First Petitioner*] ***.....Petitioners***

Vs.

Manager, Life Insurance Corporation of India, Chengalpattu Branch, Jeevan Jyothi, Guntur Church Road, Chengalpattu-603 001. **2.** G. Dhanasekar ***.....Respondents***

**Insurance Act, 1938 (4 of 1938), Section 39 — Insurance Policy — Nominee — Role of — Deceased during his lifetime bought 2 Insurance Policies — R2, brother of deceased named Nominee in Policies — Petitioners, wife and children of deceased aggrieved by act of R2 in attempting to appropriate entire Insurance amount — *Held*, R2, only a Nominee — Role of Nominee is to receive Insurance amount in trust and distribute same among Legal Heirs as per Law of Succession — Policy amount, in instant case, receivable part of estate of deceased and Petitioners along with mother of deceased entitled to equal share in same — R1 directed to directly release amount in their favour — Writ Petition allowed.** ***(Paras 10 & 11)***

**CASES REFERRED**

Sarbati Devi *v.* Usha Devi, *AIR 1984 SC 346* ..... 8

**P. Sesubalan Raja, Advocate for Petitioner.**

**S. Janarthanam, Advocate for Respondent No.1; Respondent No.2 : Not Ready in Notice.**

**W.P. ALLOWED — NO COSTS — W.M.P. CLOSED**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the 1st Respondent to release the insured amount under Policy Nos.707057293 & 707057415 proportionately in favour of the Petitioners.

**JUDGMENT**

**1.** Petitioner has sought for a Writ of mandamus, to direct the First Respondent to release the insured amount under Policy Nos.707057293 and 707057415 proportionately in favour of the Petitioners.

**2.** The wife and children of one Mr. Ramakrishnan, who died, on 25.8.2018, are the Petitioners. The Writ Petition is filed seeking a mandamus to the First Respondent, who is the Life Insurance Corporation of India Ltd,

to release the insured amount under two of the policies taken by the first Petitioner's husband in their favour.

**3.** According to the Petitioners, during the life time of the deceased Ramakrishnan, he had taken two insurance policies bearing Nos.707057293 and 707057415 with the First Respondent. He had been paying the premium till his death. As the First Petitioner is inexperienced and was not well-educated, her husband had appointed the Second Respondent, who is his paternal uncle's son, as nominee in the said policies.

**4.** However, after the death of the First Petitioner's husband, the Second Respondent is trying to appropriate the entire insurance amount taking advantage of the nomination made in his favour. Though a Legal Notice was issued to the First Respondent, the First Respondent has not yet settled the amount in favour of the Petitioners.

**5.** It is a well settled principle that a nominee is only a Trustee holding the amount on behalf of the actual beneficiaries and does not have any vested right or interest in the same. Already the First Petitioner has lost her husband and is struggling with her minor children, if the above amounts are not released in her favour and the Second Respondent is allowed to appropriate the same, she will be put to serious prejudice. Therefore, the above Writ Petition has been filed seeking a direction to the First Respondent to release the amount directly in favour of the beneficiaries *i.e.* the Petitioners.

**6.** The prayer of the Petitioners has been resisted by the First Respondent by filing a Counter Affidavit contending that they have not acted anything detrimental to the interest of the beneficiaries and has not shown any undue haste in releasing the amounts under the policies.

**7.** Heard both sides and perused the materials placed before this Court.

**8.** The amount that may be received by the nominee would form part of the estate of the deceased and the same should be distributed as per the rule of succession, to which, the parties are governed. This has been settled as early as in 1984 in ***Sarbati Devi and another v. Usha Devi,*** AIR 1984 SC 346. In the said Judgment, the conflict between the law of succession and the right of the nominee under Section 39 of the Insurance Act, 1938, has been discussed. In Paragraph 12 of the said Judgment, it has been held as follows:

> "*12.* Moreover there is one other strong circumstance in this case which dissuades us from taking a view contrary to the decisions of all other High Courts and accepting the view expressed by the Delhi High Court in the two recent Judgments delivered in the year 1978 and in the year 1982. The Act has been in force from the year 1938 and all along almost all the High Courts in India have taken the view that a mere nomination effected under Section 39 does not deprive the heirs of their rights in the amount payable under a Life Insurance Policy. Yet Parliament has not chosen to make any amendment to the Act. In

such a situation unless there are strong and compelling reasons to hold that all these decisions are wholly erroneous, the Court should be slow to take a different view. The reasons given by the Delhi High Court are unconvincing. We, therefore, hold that the Judgments of the Delhi High Court in *Fauza Singh case,* AIR 1978 Del. 276, and in *Uma Sehgal case,* AIR 1982 Del 36 : ILR 1981 (2) Del 315, do not lay down the law correctly. They are, therefore, overruled. We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the Life Insurance Policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them."

**9.** As held by the Hon'ble Apex Court in the above decision, when the nominee is only an authorised person to receive the amount and distribute in accordance with the law of succession, the Second Respondent, who is a nominee, cannot have any right over the said amount.

**10.** It is also not in dispute that the Petitioners, under the law of succession, which governs them, are entitled to an equal share in the estate of the deceased. The Policy amount receivable is a part of the estate of the deceased and the Petitioners are entitled to equal share.

**11.** It is also pertinent to note that in the Affidavit filed in support of the Writ Petition, in Paragraph 5, it has been stated that the Second Respondent is attempting to appropriate the entire insurance amount by colluding with First Petitioner's mother in law. Be that as it may, if the mother in law of the First Petitioner, who is the mother of the deceased, is alive, she is also entitled to an equal share in the policy amount as clause I heir of the deceased. The Second Respondent, is only a nominee, who is authorised to receive the insurance amount in trust and distribute among the Legal Heirs as per law of succession. The Petitioners have specifically alleged that the Second Respondent is attempting to deny the lawful entitlement of the Petitioners. Therefore, it would be appropriate to direct the First Respondent to directly release the amount in favour of the Petitioners.

**12.** For the reasons stated above, the Writ Petition is allowed directing the First Respondent to release the insurance amount payable under the Policy Nos.707057293 & 707057415 taken in the name of the deceased, directly to the Petitioners and also the mother-in-law of the First Petitioner, whose name is not known. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

**2021 (1) CWC 48**

**IN THE HIGH COURT OF MADRAS**
***(Madurai Bench)***

**Pushpa Sathyanarayana, J.**

W.P.(MD) No.2117 of 2020

28.2.2020

V. Velmurugan ***.....Petitioner***

Vs.

State of Tamil Nadu, rep. by its Secretary, Industries Department, Secretariat, Chennai-600 009.
**2.** District Collector, Perambalur District, Perambalur ***.....Respondents***

**Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), Section 10-A *[as amended by Mines and Minerals (Development and Regulation) Amendment Act, 2015 (10 of 2015)]* — Applicability of provision — Petitioner applied for Mining Lease in year 1996 — Lease granted in year 2005 after completion of all formalities — Stand of Respondent that by virtue of Section 10-A, Applications made prior to commencement of 2015 Act, ineligible — *Held*, Section 10-A applicable only in cases, where all stages not cleared and Lease has not been granted — Provision not applicable in cases, where Application is already processed and supported by recommendation of Government — In instant case, approvals of State and Central Government obtained in 1998 itself — Grant of Lease pending only because State Government was of opinion that Rule 22-D was applicable — Section 10-A would not apply when only execution of Lease was pending — Petitioner entitled to have Lease Deed executed in his favour — Writ Petition allowed.** ***(Para 10)***

**CASES REFERRED**

Bhushan Power and Steel Ltd. *v.* S.L. Seal, *2017 (2) SCC 125* ..... 12
Gujarat Pottery Works Pvt. Ltd. *v.* B.P. Sood, *AIR 1967 SC 964* ..... 11

**Lakshmi Narayanan for Kingsly Solomon, J., Advocate for Petitioner.**

**J. Padmavathi Devi, Special Government Pleader for Respondents.**

**W.P. ALLOWED — NO COSTS**

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the 1st Respondent to execute a Lease Deed in favour of the Petitioner for quarrying limestone in S.F. 415/1 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District as per the G.O(3D) No.39, dated 10.6.2005.

**JUDGMENT**

**1.** This Writ Petition is filed seeking for issuance of a Writ of Mandamus directing the 1st Respondent to execute a Lease Deed in favour of the Petitioner for quarrying limestone in S.F. 415/1 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District as per G.O.(3D) No.39, dated 10.6.2005.

**2.** The brief facts and circumstances necessitating filing of the present Writ Petition, are stated hereunder:

(i) One Subramaniam and the Petitioner herein had applied for quarrying limestone in S.F. Nos.412/1, 415/1 & 415/3 of Olaipadi (west) Village, Kunnam Taluk, Perambalur District under Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 [hereinafter referred to 'MMDR Act, 1957] on 23.2.1996. Apart from these two applications, two other persons *viz*., K.R. Kandasamy and Yesarex had also filed applications for such grants. The said applications were considered and the Director of Geology and Mining recommended the mining lease applications of the Petitioner and the said Subramaniam in S.F. 415/1;

(ii) The said applications, along with the reports of the District Collector as well as Director of Geology and Mining were sent to the Government for consideration. The Government, after obtaining necessary opinion, approved the application of the Petitioner on certain terms.

(iii) While the matter stood thus, an Injunction Suit in O.S. No.324 of 2005 came to be filed by one Pagotharivu, in which, the District Collector, the Revenue Divisional Officer, Perambalur and Tahsildar, Kunnam and the Petitioner herein were made as parties. Due to pendency of the said Suit, the Second Respondent has not executed lease deed in favour of the Petitioner for quarrying limestone. Thereafter, the Suit came to be dismissed on 14.3.2013;

(iv) After obtaining the Judgment and Decree in the said Suit, the Petitioner made a representation to the Second Respondent to execute the Lease Deed. Even after receipt of such representation, no action was taken. Thereafter, the Petitioner sent several representations, but, no fruitful action is forthcoming;

(v) As per the MMDR Act, 1957, the power to regulate the mineral vests with the Central Government and the power to grant prospecting, reconnaissance and mining with respect to minor mineral has been granted to the State Government. The District Collector has only the role of Ministerial act to execute and register the Lease Deed. According to the Petitioner, the mineral, which is sought to be quarried in this Petition, is a major mineral and the formalities of getting approval from the Central and State Governments were already completed by the Order of the First Respondent vide G.O.(3D) No.39, dated 10.6.2005. The Petitioner has also complied with all the requirements as mandated under the Mineral Concession Rules, 1960. When the State and Central Governments have already cleared all the formalities, the Second Respondent cannot keep execution of the Lease Deed pending in favour of the Petitioner. Therefore, the Petitioner is before this Court seeking for the aforementioned relief.

**3.** The Second Respondent filed Counter Affidavit stating that this Writ Petition is filed after a lapse of 15 years to enforce the Government Order in

G.O.(3D) No.39, dated 10.6.2005 for execution of Lease Deed, which is not maintainable and the same is liable to be dismissed on laches. As per Rule 31(1) of the Mineral Concession Rules, 1960, the Lease Deed for mining activities has to be executed within a period of six months from the date of the order for grant of lease.

**4.** Further it is stated in the Counter Affidavit that the Central Government brought major amendments in the MMDR Act, 1957 and the amended Act came into effect from 12.1.2015. As per the provisions of Section 10-A(2)(c) of the Mines & Minerals (Development and Regulation) Amendment Act, 2015 [hereinafter referred to 'Amended Act, 2015'], lease ought to have been executed within 2 years from the date of commencement of the Amended Act, 2015. Further, as per Rule 8(4) of Mineral (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 [hereinafter referred to as 'MCR Rules'] mining lease shall be executed and registered on or before 11.1.2017, failing which, the right of the Applicant under Section 10-A(2)(c) of the amended Act, 2015 shall be forfeited. In the case on hand, the Petitioner has not made any Representation from 12.1.2015 to 11.1.2017. Therefore, the Lease Deed cannot be executed in view of the limitation as stated above. As the Lease Deed was not executed and not registered before 11.1.2017 as required under the MCR Rules, the mining areas sought to be granted in the subject area become void. Further, Section 3(i) Clause (ea) of the amended Act, 2015 specifies the notified minerals, such as, limestone, iron ore etc. As per Section 10-B of the Amended Act, 2015, grant of mining leases in respect of notified minerals are only through auction. Therefore, the relief sought in the Writ Petition has become redundant and devoid of any merit.

**5.** The question that arise for consideration is whether the Petitioner is entitled for the execution of Lease Deed in his favour for quarrying lime stone by the 1st Respondent as per G.O.(3D) No.39, dated 10.6.2005.

**6.** The undisputed facts are as follows:

(i) The application for grant of lease of lime stone was made by the Petitioner on 23.2.1996;

(ii) The 2nd Respondent approved the same and forwarded it to the Director of Mines and Geology on 25.3.1996;

(iii) The Director of Mines and Geology approved the grant of lease for the Petitioner and forwarded the same to the State Government on 28.6.1996;

(iv) The State Government had forwarded the papers to the Central Government for its approval and Central Government had approved the same and sent it back to the State Government;

(v) The State Government was under the impression that the amendment to Rule 22-D of MCR Rules, applies to the Petitioner as the lease was to the extent of less than 4 hectares. Therefore it was sent for the opinion of the Government Pleader; and

(vi) As the Government Pleader opined that Rule 22-D of MCR Rules does not apply, the State Government had taken up the file for consideration and finally lease was granted on 10.6.2005. However before executing the Lease Deed O.S. No.324/2005 was filed by the one Pagotharivu for the relief of Permanent Injunction not to execute the Lease Deed. The said Suit came to be dismissed on 14.3.2012. Thereafter, the Petitioner made a representation to execute a Lease Deed as there was no impediment for the execution of the same.

**7.** The first objection raised by the First Respondent is that as per Rule 31(1) of MCR, 1960 the lease deed ought to have been executed within six months from the date of order of granting lease, failure of which, the approval granted will automatically lapse.

**8.** The learned Counsel for the Petitioner submitted that the Petitioner had complied with all the procedures for obtaining a Lease Deed. It was the pendency of above said O.S. No.324 of 2005, that was cited for not executing the Lease Deed which is also admitted by the Second Respondent. Hence Rule 31(1) cannot be put against the Petitioner. Besides, unless it could be shown that the above said delay was attributed to the Petitioner, the period provided under Rule 31(1) could not run against the Petitioner. Hence, the objection raised by the Respondents that after the issuance of grant of mining lease on 10.6.2005 the lease deed was not executed within 6 months is unsustainable.

**9.** In the meanwhile, there were major amendments in the MMDR Act 1957 by virtue of the MMDR Amendment Act 2015. Section 10 prescribes the procedure for obtaining prospecting Licenses and mining leases in respect of land in, which the minerals are vested with the Government. Therefore, the question that arise for consideration is whether the introduction of Section 10 is applicable to the case on hand. As stated supra, there were several stages before grant of the lease like getting approval from State Government and Central Government, etc. in this regard Section 10-A is relevant.

"*Section 10-A. Rights of existing concession holders and Applicants.— (1)* All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

*(2)* Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:

*(a)* Applications received under Section 11-A of this Act;

*(b)* where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting Licence has been granted in respect of any land for any mineral, the permit holder or the Licensee shall have a right for obtaining a prospecting Licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the Licensee, as the case may be,—

*(i)* has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

*(ii)* has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting Licence;

*(iii)* has not become ineligible under the provisions of this Act; and

*(iv)* has not failed to apply for grant of prospecting Licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting Licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

*(c)* where the Central Government has communicated previous approval as required under sub-section (1) of Section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting Licence or mining lease shall be granted under Clause (b) of this subsection except with the previous approval of the Central Government."

**10.** A reading of the above provision makes it clear that if an application made for grant of lease has not been processed further, the same shall become ineligible. Whereas, if the application is already processed and supported by a recommendation of the Central Government or if the State Government had given the letter of intent (by whatever name it is called), then the mining lease shall be granted subject to the fulfilment of the conditions of the previous approval or the letter of intent within a period of 2 years from the date of commencement of the said Act. In short, Section 10-A is applicable only for those cases where all the stages have not been cleared and the necessary approvals and the lease has not been granted. In the present case, the approvals of the State Government and the Central Government were obtained even as early as in 1998. It was withheld by the State Government due to the amendment to the Rule 22-D. However, the

lease was approved on 10.6.2005 itself and as the lease has already been granted, Section 10-A has no application. As the lease has already been granted, the amended MCR Rules will not apply. It is only the execution of Lease Deed was remaining to be done, the objection that Section 10-A would apply to the said case is rejected.

**11.** The Learned Counsel for the Petitioner urged that the execution of Lease Deed is only a ministerial act as already the approval of Lease Deed is granted and placed his reliance on ***Gujarat Pottery Works Pvt. Ltd. v. B.P. Sood and others,*** AIR 1967 SC 964, as follows:

> "*7.* The granting of a lease is different from the formal execution of the Lease Deed. The Mineral Concession Rules, 1949, made under Section 5 of the 1948 Act and hereinafter referred to as the 1949 rules, deal with the procedure for the grant of mining leases in respect of land in which the minerals belong to Government, under Chapter IV. Rule 27 deals with applications for mining leases. Rule 28-A provides that when a mining lease is granted the formal lease shall be executed within six months of the order sanctioning the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. It is really the sanctioning of the lease which amounts to the granting of the lease. Execution of the formal lease is only compliance with the legal requirements to make the grant legally enforceable.
>
> *9.* Thus the Deed of agreement really granted the lease to Jagmal. It was the mere execution of the proper lease which was put off and the proper formal lease was to be executed later.
>
> *11.* We are, therefore of opinion that the lease in favour of Jagmal was really granted in December 1939 and that the execution of the lease in November 1951 was only to give a formal shape to the lease granted much earlier, The lease in suit therefore is a lease which comes within the expression 'existing mining lease' within read 2(c) of the 1956 Rules."

**12.** The attention of court was also adverted to the ***Bhushan Power and Steel Ltd. v. S.L. Seal,*** 2017 (2) SCC 125, wherein, the Hon'ble Supreme Court had an occasion to interpret the Section 11-A in the following manner:

> "*21*. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10-A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved. First, applications received under Section 11-A of the Act. Section 11A, under new avatar is an exception to Section 11 which mandates grant of prospecting License combining lease through auction in respect of minerals, other than notified minerals. Section 11-A empowers the Central Government to select certain kinds of Companies mentioned in the said Section, through auction by competitive bidding on such

terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting License or mining lease in respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the Companies, which can be selected now for this purpose under the new provision are different from the Companies, which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11-A, they are saved and protected, which means that these applications can be processed under Section 11-A of the Act. Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting license had been granted and the permit holder or the Licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of Applicants, it appears, is that such Applicants, with hope to get the license, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.

*22.* Third category is that category of Applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the raison d'etre is that certain right had accrued to these Applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal Lease Deed remained to be executed.

It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led the Parliament to make such a provision saving those rights, and understandably so."

**13.** If the said principle enunciated in the aforesaid Judgment is applied to the case on hand, undoubtedly, the Petitioner is entitled to have the Lease Deed executed in his favour.

**14.** As discussed above after the disposal of Suit on 14.3.2012, it was intimated by the Petitioner to the First Respondent on 30.6.2014 followed by remainder 1.7.2014, which was also responded by the State on 23.7.2014. There was a further communication from the First Respondent on 25.7.2014. Once again the Petitioner had given remainders on 18.5.2017, 13.6.2017 & 4.9.2017. Despite the above remainders, the First Respondent did not come forward to execute the Lease Deed. In view of the fact that Section 10-A does not apply to Petitioner, there is no impediment to direct the First Respondent to execute the Lease Deed.

**15.** Accordingly, this Writ Petition is allowed and the Second Respondent is directed to execute the Lease Deed in favour of the Petitioner for quarrying lime stone in S.F. No.415/1 of Olaipai (West), Kunnam Taluk, Perambalur District as per the G.O.(3D) No.39, dated 10.6.2005, in accordance with law. The above said exercise has to be completed in expedition, however, on or before 30.4.2020. No Costs.

**2021 (1) CWC 55**

**IN THE HIGH COURT OF MADRAS**
***(Madurai Bench)***

**M. Sathyanarayanan & P. Rajamanickam, JJ.**

W.A.(MD) No.466 of 2020 & C.M.P.(MD) Nos.3861 of 2020

4.9.2020

Director General of Police, Dr. Radhakrishnan Salai, Mylapore, Chennai-600 004. **2.** Additional Director General of Police (Administration), Office of the Director General of Police, Dr. Radhakrishnan Salai, Mylapore, Chennai-600 004. **3.** Additional Director General of Police (Social Justice and Human Rights), Office of the Director General of Police, Dr. Radhakrishnan Salai, Mylapore, Chennai-600 004. **4.** Commissioner of Police, Trichy City Police, Trichy ***.....Appellants***

Vs.

S.S. Sivaperumal. **2.** P. Anbarasan ***.....Respondents***

**Service Law — Transfer — Order of — Interference with — Whether warranted — R1/Petitioner working as Superintendent in Trichy transferred to Chennai — R1 seeking retention at Trichy as his wife was employed in Trichy and daughter was studying in Xth Std. in Trichy — *Held*, many Employees similarly placed as R1 — Government Employees cannot insist retention at one place — Transfer of Employees for administrative reasons, part and parcel of job profiles — Transfer of R1 in light of noticed indiscipline behaviour, *held*, only for smooth running of administration — Setting aside of Transfer Order by Single Judge, erroneous — Writ Appeal allowed — Order of Single Judge set aside.** ***(Paras 22, 23 & 24)***

**CASES REFERRED**

C. Thangaraj *v.* Registrar, Central Administrative Tribunal, *W.P. No.2282 of 2020, dated 31.1.2020* ..... 13, 21
Registrar, Madras High Court *v.* R. Perachi, *2012 (2) LLN 304 (SC)* ..... 19
Somesh Tiwari *v.* Union of India, *2009 (2) SCC 592* ..... 10, 14

**M. Muthu Geethaiyan, Special Government Pleader for Appellants.**

**M. Valinayagam, Senior Counsel for D. Nallathambi, Advocate for Respondent No.1; No Appearance for Respondent No.2.**

**W.A. ALLOWED — C.M.P. CLOSED — NO COSTS**

**Prayer :** Writ Appeal filed under Clause 15 of Letters Patent, against the Order of this Court made in W.P.(MD) No.2886 of 2020, dated 16.3.2020.

**JUDGMENT**

**M. Sathyanarayanan, J.**

**1.** The official Respondents in W.P.(MD) No.2886 of 2020, are the Appellants.

**2.** The First Respondent/Writ Petitioner challenged the impugned Order of transfer and relieving Orders, dated 6.2.2020, passed by the Respondents 2 & 5, respectively and the consequential directions for his retention at Trichy, in the vacant post of Superintendent, which exists in the Office of the Fourth Respondent on humanitarian grounds.

**3.** The Writ Petition after contest, came to be allowed vide impugned Order, dated 16.3.2020 and hence, this Writ Appeal.

**4.** The First Respondent/Writ Petitioner joined the service as a Junior Assistant on 10.7.1992, on compassionate ground and got his promotion as Assistant on 9.10.2002 and he was posted at the District Police Office, Perambalur and thereafter, got a promotion as Superintendent on 13.3.2013 and posted at Greater Chennai Police Office, Chennai. The First Respondent/Writ Petitioner had suffered a heart attack in the year 2013 and undergone the procedure and in order to facilitate his heart treatment, he was transferred to Regional Police Transport Workshop, Trichy in Tamil Nadu Special Police, I Battalion, Trichy on 21.10.2016.

**5.** It is a case of the First Respondent/Writ Petitioner that he has rendered sincere and unblemished service with utmost satisfaction to his superiors and he was also awarded with 'Certificate of Commemoration' with a cash Award of ₹2,000 for completion of 25 years of service. The First Respondent/Writ Petitioner also submitted Applications, dated 29.5.2019 & 7.11.2019 to the Second Appellant/Second Respondent, to accommodate him in any vacancy that may arise in the Office of the Commissioner of Police, Trichy City and the Fifth Respondent, since his immediate superior of the Writ Petitioner has also made a positive endorsement.

**6.** It is a specific case of the First Respondent/Writ Petitioner that the Fifth Respondent was a freshly appointed Officer and assumed charge and he was not well-versed with the Office procedures and therefore, he used to commit mistakes and the First Respondent/Writ Petitioner was used to rectify the same and as such, he developed personal animosity as if the First Respondent/Writ Petitioner was deserving his Office. The First Respondent/Writ Petitioner due to his ill health, also applied for Medical leave for a week from 7.2.2020, but to his shock and surprise, vide proceedings of the Second Respondent, dated 6.2.2020, he was transferred to the Third Respondent-Office at Chennai and he was also relieved on the same day, vide proceedings of the Fifth Respondent.

**7.** It is the stand of the Fifth Respondent that though the impugned Order of transfer, dated 6.2.2020, passed by the Second Appellant is for the administrative grounds for the reason it is really a punitive transfer, at the instance of the Fifth Respondent. It is also pleaded by the First Respondent/ Writ Petitioner that his spouse is employed at Trichy and his daughter is studying Xth standard in the School at Trichy and he cannot be transferred to

Chennai during the middle of academic year affecting her education, care and security in violation of the G.O.Ms. No.10, Personnel and Administrative Reforms Department, dated 7.1.1994, as well as Guidelines for transfer of Ministerial Staff, dated 14.2.2018 and hence, prays for interference.

**8.** The Writ Petition was entertained and the Second Respondent, who filed the Counter Affidavit and apart form denying the allegations, took a stand that though the Second Respondent has issued a Memo to the Fifth Respondent to take Disciplinary action against the First Respondent/Writ Petitioner on 23.8.2018 and however, it was found missing and the First Respondent/Writ petitioner was the dealing Superintendent in that Section and despite that, no Disciplinary action has been initiated against the Writ Petitioner and insofar as the allegations of *mala fide* and punitive transfer is concerned, it is the stand of the Second Respondent in Paragraph Nos.15, 16 & 18 of the Counter Affidavit that the administration took a call taking into account his indiscipline behaviour and therefore in the exigency of administration, he has been transferred to Chennai.

**9.** The Second Respondent also took a stand, insofar as his request for continuous accommodation at Trichy, there are 21 Superintendents also made a request for their accommodation at Trichy and as such, the request cannot be considered positively and prays for dismissal of the Writ Petition.

**10.** The learned Single Judge after taken into consideration of the rival submissions and on perusal of the materials placed and also in the light of the Judgment rendered by the Hon'ble Supreme Court in ***Somesh Tiwari v. Union of India and others,*** 2009 (2) SCC 592, which laid down the preposition that if there is malice and the Employee is transferred on the basis of non-existent facts and if the same is punitive and on the facts of this case, found that the impugned Order has been passed by the Second Appellant is punitive, only to intimidate the First Respondent/Writ Petitioner and accordingly, quashed the order of transfer as well as the consequential relieving order with direction, directing the Appellants/Respondents 1 to 4 to post the First Respondent/Writ Petitioner in his original place of duty.

**11.** The learned Special Government Pleader appearing for the Appellants/Respondents has drawn the attention of this Court to the Counter Affidavit of the Second Appellant/Second Respondent and he would submit that though the Fifth Respondent was directed to issue Memo to the First Respondent/Writ Petitioner on 23.8.2018, it was found missing and the First Respondent/Writ Petitioner was the dealing Superintendent in that Section and despite that, no Disciplinary action has been initiated. The Second Appellant/Second Respondent being in charge of administration, has also taken note of his indiscipline behaviour and in order to ensure smooth functioning of the administration, took a fair and conscious decision to transfer the First Respondent/Writ Petitioner to Chennai. It is also pointed

out by the learned Special Government Pleader that the First Respondent/Writ Petitioner had also worked at Chennai prior to his Promotion and transfer to Trichy and also in a nearby district at Perambalur.

**12.** Insofar as the plea made by the First Respondent/Writ Petitioner as to the employment of his spouse at Trichy and that her daughter is undergoing Xth standard examination, the same cannot be a ground for the reason that, there are very many spouses of the Employees may be in similar position and if it is taken into consideration, it may not be impossible to transfer anybody and it is only a guiding factor and not a determinative one and in the light of the well settled legal position as to the interference with the order of transfer passed by the administration, prays for allowing of the Writ Appeal and setting aside the impugned Order passed in the Writ Petition.

**13.** Mr. M. Muthugeethaiyan, learned Special Government Pleader appearing for the Appellants has also placed reliance upon the unreported decision vide Order passed in ***C. Thangaraj v. Registrar, Central Administrative Tribunal,*** W.P. No.2282 of 2020, dated 31.1.2020, in support of his submission.

**14.** *Per contra*, Mr. Vallinayagam, learned Senior Counsel, assisted by Mr. D. Nallathambi, learned Counsel appearing for the First Respondent/Writ Petitioner would submit that, though the impugned Order of transfer is worded cleverly, the real reason has came out in Paragraph Nos.15, 16 & 18 of the Counter Affidavits filed by the Second Appellant/ Second Respondent and it is a clear case of punitive transfer and the learned Single Judge taken note of the well settled legal position, enunciated in the Judgment in ***Somesh Tiwari v. Union of India and others,*** 2009 (2) SCC 592, cited supra, has rightly interfered with the order of transfer.

**15.** It is also pleaded by the learned Senior Counsel appearing for the First Respondent/Writ Petitioner that the First Respondent/Writ Petitioner is a heart patient and he is taking treatment at Moorthys Hospital, at Trichy and that apart, his wife is also employed at Trichy and his daughter slated to join in Higher Secondary first year School at Trichy and if he transferred out of Trichy at this crucial juncture, not only his health is likely to be deteriorated but his family would also suffer and hence, prayed for mercy.

**16.** This Court has carefully considered the rival submissions and also perused the materials placed before it.

**17.** The impugned Order of transfer passed by the Second Respondent/ Second Appellant reads that he has transferred on administrative ground. In Paragraph No.9 of the Counter Affidavit filed by the Second Appellant/ Second Respondent, it is averred that he directed issuance of Memo to the Fifth Respondent to take Disciplinary action against the First Respondent/ Writ Petitioner on 23.8.2018 and however, the said Memo was found

missing and though the First Respondent/Writ Petitioner was the dealing Superintendent in that Section, no Disciplinary action has been taken against him.

**18.** In Paragraph Nos.15, 16 & 18 of the said Counter Affidavit, the Second Appellant/Second Respondent took a stand that the administrative reason for effecting the transfer of the First Respondent/Writ Petitioner is with regard to the indiscipline behaviour and according to the learned Senior Counsel appearing for the First Respondent/Writ Petitioner, on account of the said reason, the transfer is nothing but punitive one and therefore, the said order has been rightly set aside by the learned Single Judge, while allowing the Writ Petition.

**19.** The Hon'ble Supreme Court of India in ***The Registrar, Madras High Court v. R. Perachi and others,*** 2012 (2) LLN 304 (SC) : 2011 (12) SCC 137, has considered the similar issue. The facts of the case would disclose that the Respondent was working as Sheristadar category I, in the Court of Principal District Judge, Thoothukudi and he was holding additional charge of the post of Personal Assistant to the District Judge, Thoothukudi and vide order of the Principal District Judge, Thoothukudi, dated 19.9.2006, on behalf of the High Court was transferred outside the District on administrative grounds and the same was put to challenge before the High Court on jurisdiction. A Division Bench of this Court had interfered with the order of transfer, on account of the lack of jurisdiction and that it is also a punitive one and he is likely to loose his Seniority as well as his pay.

**20.** The Registrar General of High Court of Madras, aggrieved by the quashing of the impugned Order of transfer by the Division Bench of this Court, filed the Special Leave Petition and it was entertained and converted into Civil Appeal No.7936 of 2011. The Hon'ble Supreme Court of India, had elaborately dealt with the factual aspects as well as the earlier decisions with regard to the challenge made to the order of transfer on the account of *mala fide* and punishment and allowed the Civil Appeal filed by the High Court of Madras. It is relevant to extract the following Paragraph Nos.31, 33 & 35:

> "*31.* Noting that the Respondent No.1 was transferred on account of an anonymous Complaint the Division Bench had referred to a few Judgments wherein this Court has emphasized the responsibility of the Higher Judiciary to guard the Judicial Officers in the Subordinate Courts against unjustified Complaints. *Ishwar Chand Jain* (supra) was a case where the Advocates, who were not satisfied with the Orders passed by the Appellant Judicial Officer had made unjustified Complaints against him. This Court had set-aside the order of termination of services of the Appellant, which was based on these Complaints, and in that context observed that if Complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on the judicial side, no Judicial Officer would feel protected. In *K.P. Tiwari* (supra) the High Court had made disparaging remarks, against the Appellant, a Judicial

Officer, while recalling an unjustified bail order granted by him. This Court had deprecated attributing of improper motives to the Subordinate Officers. In *Ramesh Chandra Singh* (supra) Disciplinary proceedings were initiated by the High Court against the Appellant Judicial Officer for a Bail Order which order could not be said to be unjustified. The Disciplinary action was disapproved by this Court and the matter was remitted to the Full Court for its consideration.

*33.* The Division Bench also erred in ignoring that the First Respondent had been transferred under a Common Order alongwith two other Employees *i.e.* S. Kuttiapa Esakki, and one T.C. Shankar. The Writ Petitions filed by them had been dismissed. Besides, a Judgment of a co-ordinate bench in A.K. Vasudevan was cited before the Division Bench wherein the facts were almost identical. It was therefore, not expected of the Division Bench to take a different view from the point of view of judicial discipline. To put it in the words of this Court in *Sri Venkateswara Rice Ginning & Groundnut Oil Mill v. State of Andhra Pradesh,* AIR 1972 SC 51, ? it is regrettable that the learned Judges, who decided the latter case overlooked the fact that they were bound by the earlier decision? (Para 9 of the report in AIR).

*35.* Thus it is very clear that the impugned Judgment and Order are wholly unsustainable, and in complete disregard of the law laid down by this Court. This Court has, therefore, to allow this Appeal and to set-aside the Judgment and Order, dated 28.8.2008 passed by the Madras High Court on W.P.(MD) No. 7121 of 2007. Accordingly, this Appeal is allowed and the Order, dated 28.8.2008 passed by the Madras High Court on Writ Petition (MD) No.7121 of 2007 is set-aside. The said Writ Petition shall stand dismissed. There will, however, not be any order as to the costs."

**21.** A Division Bench of this Court, to which one of us (MSNJ) was party, has also considered the similar issue in ***C. Thangaraj v. Registrar, Central Administrative Tribunal,*** W.P. No.2282 of 2020, dated 31.1.2020, (cited supra) and upheld the Order passed by the Central Administrative Tribunal by relying upon the above cited decision of the Hon'ble Supreme Court of India.

**22.** In the considered opinion of this Court, the wheels of the administration should run smoothly and the concerned Administrative Head is also under obligation to ensure that the concerned officials performed their duties diligently and properly. It is the specific stand of the Second Appellant/Second Respondent that in order to ensure smooth running of the administration, in the light of the fact of having noted indiscipline behaviour on the part of the First Respondent/Writ Petitioner, a fair decision of transfer was taken to transferring him out of Trichy to chennai.

**23.** It is also to be noted at this juncture, that the First Respondent/Writ Petitioner, who was accommodated as a Junior Assistant by way of compassionate ground appointment, served in the capacity at Chennai also and thereafter, on his Promotion as Assistant, got posted at District Police Office, Perambalur, which is a nearby district to Trichy and on his further promotion as Superintendent, was once again accommodated at Trichy.

Thereafter, he was transferred to Trichy on 21.10.2016 and he has completed three years of service also.

**24.** Once a person joins in the Government job, he is expected to serve throughout Tamil Nadu and he cannot insist that he should be accommodated in a particular place. No doubt, the wife of the First Respondent/Writ Petitioner is employed at Trichy and their daughter at the time of transfer was studying in Xth standard and if the said fact has been taken into consideration for his retention at Trichy, there may be very many Employees, who are similarly placed like that of the First Respondent/Writ Petitioner and in that event, they cannot be transferred, which in turn, leads to difficulty in overseeing the Administration.

**25.** In the considered opinion of this Court, the impugned Order of transfer as well as the consequential relieving Order passed against the First Respondent/Writ Petitioner cannot be faulted with, in the light of the above cited reasons.

**26.** The impugned Order bristles with error apparent on the face of the record and therefore, it warrants interference. In the result, this Writ Appeal is allowed and the impugned Order passed in the Writ Petition in W.P.(MD) No.2886 of 2020, dated 16.3.2020, is set aside and consequently, Writ Petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

*Note:* In view of the present Lock Down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

**2021 (1) CWC 62**

**IN THE HIGH COURT OF MADRAS**

**A.P. Sahi, C.J. & Senthilkumar Ramamoorthy, J.**

W.A. No.482 of 2020 & C.M.P. No.7294 of 2020

8.9.2020

Dental Council of India, Aiwan-e-Galib Marg, Kotla Road, Temple Lane, Opposite to Mata Sundari College for Women, Mandi House, New Delhi-110 002 ***.....Appellant***

Vs.

PSR Lakhmi Bhuvaneshwari Preethi. **2.** Registrar, Tamil Nadu Dr. MGR Medical University, No.69, Anna Salai, Guindy, Chennai-600 032. **3.** Madha Dental College and Hospital, rep. by its Principal, Kundrathur, Chennai-600 050. **4.** Ragas Dental College and Hospital, Represented by its Principal, No.2/102, East Coast Road, Uthandi ***.....Respondents***

**Dentists Act, 1948 (16 of 1948), Section 20 — Dental Council of India BDS Course Regulations, 2007, Regulation IV — Migration from College — Approval from Dental Council — Entitlement to — R1 Student, aggrieved by exhorbitant demand by R3-College, sought migration to R4-College in III year BDS Course — Request for migration denied by Dental Council — Single Judge directed Appellant Council to give permission to R1 to migrate to R4-College — *Held*, as per Regulation IV, migration permissible on Compassionate grounds — Request for migration on account of demand of exorbitant fee, not a routine ground — No bar in Regulation IV from accepting an Application not satisfying prescribed Compassionate grounds — Discretion under Regulation IV to be exercised reasonably and non-arbitrarily — Fact that R1 obtained TC from R3-College, to jeopardise her career if not given admission elsewhere — R1 directed to submit fresh Application considering observations made herein — Dental Council directed to revisit Regulations on Migration to create wider frame work ensuring Migration on reasonable grounds — Writ Appeal disposed of.** ***(Paras 10 & 11)***

**CASES REFERRED**

Dental Council of India *v.* Anhad Raj Singh, *2018 (1) SCC 723*..... 9

**S. Haja Mohideen Gisthi, Advocate for Appellant.**

**Om Prakash, Senior Counsel for AR. Karthik Lakshmanan, Advocate for Respondent No.1.**

**W.A. DISPOSED OF — NO COSTS — M.P. CLOSED**

**Prayer :** Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the Order, dated 11.3.2020 passed in Writ Petition No.32782 of 2019.

**Judgment Reserved on 27.8.2020 and Pronounced on 8.9.2020**

**JUDGMENT**

**Senthilkumar Ramamoorthy, J.**

**1.** The First Respondent herein was a student of the Third Respondent College in the Bachelor of Dental Surgery (BDS) course. According to the First Respondent, the Third Respondent demanded exorbitant tuition and examination fees and donations from her over a period of time. These problems entailed the filing of three Writ Petitions, namely, W.P. No.14867 of 2017 for revaluation; W.P. No.3572 of 2019 for a Mandamus to direct the Respondents therein to conduct the III year BDS examination for the First Respondent herein as a special case; and W.P. No.8192 of 2019 for a Mandamus to transfer her to the Government Dental College, Chennai. While the latter Writ Petitions were pending, the First Respondent obtained a Transfer Certificate from the Third Respondent College. W.P. Nos.3572 & 8192 of 2019 were disposed of by directing the Dr. M.G.R. Medical University to forward the request for migration of the First Respondent/ Petitioner to the Dental Council of India (the Dental Council), along with the University's recommendation, for approval in accordance with the Dental Council's regulations. In these circumstances, the First Respondent decided to migrate to the Fourth Respondent College, and the Fourth Respondent agreed to admit her in the III year BDS course for the Academic year 2020-2021. Therefore, the approval of the Dental Council, *i.e.,* the Appellant herein, was requested for by the Dr. M.G.R. Medical University by Letter, dated 14.8.2019. By Order, dated 18.9.2019, the Appellant rejected the request for approval of migration on the ground that it is contrary to the Dental Council of India BDS Course Regulations, 2007 (the BDS Regulations). The said order was impugned in the Writ Petition. The Writ Petition was allowed by Order, dated 11.3.2020, whereby the Order, dated 18.9.2019 of the Appellant was quashed and, consequently, the Appellant was directed to give permission to the First Respondent herein to join the Fourth Respondent College in the third year of the BDS Course for the academic year 2020-2021. The said order is impugned in this Appeal.

**2.** We heard Mr. S. Haja Mohideen Gisthi, the learned Counsel for the Appellant and Mr. Om Prakash, the learned Senior Counsel for the First Respondent.

**3.** Mr. Haja Mohideen Gisthi contended that the impugned Order in the Writ Petition is not sustainable inasmuch as it is directly contrary to the BDS Regulations, which were framed by the Dental Council under Section 20 of the Dentists Act, 1948. According to Mr. Gisthi, these are statutory regulations and, therefore, the Dental Council is obligated to comply strictly with the BDS Regulations. He invited our attention to Regulation IV of the BDS Regulations. Regulation IV is as under:

"*IV. Migration:*

*(1)* Migration-II from one Dental College to another is not a right of a student. However, migration of students from one dental college to another Dental College in India may be considered by the Dental Council of India. Only the exceptional cases on extreme Compassionate grounds*, provided the following criteria are fulfilled. Routine migrations on other ground shall not be allowed.

*(2)* Both the Colleges, *i.e.* one at which the student is studying at present and one to which migration is sought, are recognised by the Dental Council of India.

*(3)* The Applicant Candidate should have passed first professional BDS examination.

*(4)* The Applicant Candidate submits his application for migration, complete in all respects, to all authorities concerned within a period of one month of passing (declaration of results) the first professional Bachelor of Dental Surgery (BDS) examination.

*(5)* The Applicant candidate must submit an Affidavit stating that he/she will pursue 240 days of prescribed study before appearing at IInd professional Bachelor of Dental Surgery (BDS) examination at the transferee Dental College, which should be duly certified by the Registrar of the concerned University in which he/she is seeking transfer. The transfer will be applicable only after receipt of the Affidavit.

*Note 1:*

*(i)* Migration is permitted only in the beginning of IInd year BDS Course in recognised Institution.

*(ii)* All applications for migration shall be referred to Dental Council of India by College Authorities. No Institution/University shall allow migration directly without the prior approval of the Council.

*(iii) Council reserved the right not to entertain any application which is not under the prescribed compassionate grounds and also to take independent decisions where Applicant has been allowed to migrate without referring the same to the Council.* (Emphasis added)

*Note 2: Compassionate ground criteria:*

*(i)* Death of supporting guardian.

*(ii)* Disturbed conditions as declared by Government in the Dental College area."

**4.** By relying upon the aforesaid BDS Regulation IV, he pointed out that migration from one Dental College to another is not a student's right and that a request for migration may be considered and approved by the Dental Council only in exceptional cases on extreme compassionate grounds. Besides, he pointed out that the said migration is permitted only in the beginning of the II year BDS Course in recognized institutions and not in the III year. Even with regard to compassionate grounds, he pointed out that the compassionate grounds criteria are specified in the regulations, namely, death of a supporting guardian or disturbed conditions, as declared by the Government, where the dental college is situated.

**5.** In this case, he pointed out that the Fourth Respondent-College had agreed to admit the student in the third year BDS Course if the Dental

Council approved the migration. The request for approval of the proposed migration was rejected by the Dental Council because such approval would be contrary to the BDS Regulations. In addition, the reasons cited by the student are problems relating to the demand of exorbitant tuition and examination fees and these do not qualify as compassionate grounds for migration. Thus, the learned Counsel contended that the order of the Dental Council should not have been quashed, whereas the learned Single Judge issued an order that is not in conformity with the BDS Regulations. In support of this contention, he invited the attention of the Court to Paragraph 10 of the impugned Order in the Writ Petition wherein the Writ Court recognized and recorded the fact that the First Respondent/Petitioner cannot be allowed to migrate to the Fourth Respondent-College if one complies with the regulations of the Dental Council strictly. He also referred to the Order, dated 18.9.2019 of the Dental Council wherein the relevant Regulation IV was set out and the First Respondent was informed that the Executive Committee of the Dental Council discussed and deliberated upon the matter before deciding that the request is liable to be rejected because it is not in accordance with law. Therefore, he submitted that the Dental Council had taken a decision after duly considering the request in light of the applicable regulations.

**6.** He also referred to the Order of the High Court of Madhya Pradesh in W.P. No.7836 of 2016, wherein the Madhya Pradesh High Court cautioned the Medical Council of India and the Dental Council of India to be careful and vigilant and not to give any undue benefit to influential people while applying the regulations and to instead apply regulations uniformly without discrimination. For all these reasons, the learned Counsel concluded by submitting that the order in the Writ Petition is liable to be reversed.

**7.** In response, the learned Senior Counsel for the First Respondent contended that the case has a long history and that the First Respondent was constrained to seek migration on account of compelling circumstances. In support of this contention, he referred to the list of dates and events wherein the repeated demands for exorbitant fees, including examination fees and tuition fees, are detailed. He pointed out that these events took place on various dates commencing from the year 2014 all the way through till 2019 and entailed the filing of three previous Writ Petitions. These events even included the lodging of a police Complaint on 2.2.2019 by the father of the First Respondent before the Superintendent of Police, Ambattur. Therefore, he contended that the First Respondent had been constrained to seek migration to a different college. Pursuant to Order, dated 30.7.2019 in W.P. No.8190 of 2019, he pointed out that this Court directed the Dr. M.G.R. Medical University to consider the request for migration and forward the same with its recommendation to the Dental Council. Pursuant thereto, the Fourth Respondent gave its 'no objection' Letter on 5.8.2019 to admit the First Respondent in the III year of the BDS Course. On 14.8.2019, the

Registrar of the Dr. M.G.R. Medical University also forwarded the letter requesting approval for transfer to the Dental Council. The impugned Order of the Dental Council came to be issued thereafter and the same was interfered with by interpreting the BDS Regulations liberally and on compassionate grounds.

**8.** We examined the submissions of the learned Counsel/learned Senior Counsel for the respective parties and examined the records.

**9.** The limited question that arises for consideration is whether the First Respondent is entitled to the approval of the Dental Council for the proposed migration from the Third Respondent to the Fourth Respondent-College. The BDS Regulations of the Dental Council govern the aforesaid question. The BDS Regulations relating to migration were considered by the Hon'ble Supreme Court in ***Dental Council of India v. Anhad Raj Singh,*** 2018 (1) SCC 723, wherein the Interim Order of the Division Bench of the Delhi High Court that directed the authorities to permit the Candidate to join the Transferee College was reversed not only on the ground that the Interim direction amounted to granting the final relief but also because Regulation IV of the BDS Regulations and the objections on that basis were not considered by the Division Bench. On perusal of Note 1(i) of Regulation IV of the BDS regulations, it is clear that migration is permitted only in the beginning of the II year BDS Course in recognized institutions. The proposed migration by the First Respondent is for the purpose of joining in the third year BDS Course in the fourth Respondent-College. Apart from Note 1(i), we find that Regulation IV(4) & (5) also provide that the Candidate should apply within a stipulated period and also submit an Affidavit stating that she will complete 240 days of prescribed study before appearing for the II year examination. These requirements underscore the fact that migration is permissible only at the commencement of the II year. Indeed, the learned Single Judge was also conscious of the fact that the BDS Regulations do not permit migration, in these facts and circumstances, and recorded the same in Paragraph 10 of the impugned Order. Thus, the order of the learned Single Judge cannot be sustained and is liable to be set aside.

**10.** Nevertheless, we note that Regulation IV also stipulates that migration is not a student's right and a request for migration would be considered by the Dental Council only in exceptional cases on extreme compassionate grounds, and that routine migrations on other grounds shall not be allowed. Note 1(iii) stipulates, *inter alia*, that the "Council reserved the right not to entertain any application which is not under the prescribed compassionate grounds". Note 2 specifies 'compassionate ground criteria' as the death of a supporting guardian or disturbed conditions, as declared by Government, in the Dental College area. The present request for migration is on the basis that the student encountered various problems, as detailed above, in the Third Respondent-College especially with regard to the

demand of exorbitant fees. While the reason for seeking migration does not satisfy the aforementioned prescribed compassionate grounds criteria, this is, undoubtedly, not a request for a routine migration. It also cannot be construed as a whimsical or unreasonable request when the facts and circumstances are viewed in totality. While two compassionate grounds criteria are specified in Note 2(i) & (ii) of Regulation IV, Note 1(iii) thereof appears to provide some latitude and discretion to the Dental Council by stipulating that the Dental Council reserves the right to reject an application that does not satisfy the prescribed compassionate grounds criteria. This clause, in our view, confers a discretion but does not impose an obligation on the Dental Council to reject an application that does not meet the prescribed compassionate grounds criteria. Nonetheless, this discretion is intended to be exercised reasonably and non-arbitrarily and the test would always be whether the application for migration satisfies the compassionate grounds requirement, be it on the compassionate grounds criteria prescribed in Note 2(i) & (ii) or otherwise. For example, a student may be subject to physical violence or sexual harassment in a college and may seek migration for these reasons. In each case, the Dental Council would have to examine if it qualifies as a compassionate ground by exercising its discretion judiciously. Thus, in our view, the compassionate grounds criteria in Note 2 (i) & (ii) are illustrative and not exhaustive.

**11.** On the facts of this case, we are acutely conscious of the fact that the student has obtained a transfer Certificate from the Third Respondent-College and her career is likely to be severely affected unless some arrangement is made for the continuation of her education. Keeping in mind this situation and the discussion in the preceding paragraph, in case the First Respondent is willing to join the II year BDS course and the Fourth Respondent-College is willing to admit her in the II year, we grant leave to the First Respondent to make a fresh representation to the Dental Council through the Dr. M.G.R. Medical University for permission to migrate by joining the II year of the BDS course. Upon receipt of such representation, the Dental Council is directed to consider the same in light of the observations contained herein and pass orders thereon on merits within a period of four weeks from the date of receipt of such representation. Before parting with the case, we note that the facts and circumstances set out above highlight the necessity for the Dental Council to revisit the BDS Regulations on migration so as to create a frame work that ensures high standards of dental education while also enabling migration, on reasonable grounds, in a wider range of situations.

**12.** For reasons set out above, the impugned Order in the Writ Petition is set aside and the Writ Appeal is disposed of on the above terms. No Costs. Consequently, connected Miscellaneous Petition is closed.

**2021 (1) CWC 68**

**IN THE HIGH COURT OF MADRAS**

**A.P. Sahi, C.J. & Senthilkumar Ramamoorthy, J.**

W.P. Nos.6940, 6943 & 10332 of 2020 & W.M.P. Nos.8283, 8284, 8286 & 12557 of 2020

23.9.2020

*W.P. Nos.6940 & 6943 of 2020:*

D. Velazhagan ***.....Petitioner***

Vs.

State of Tamil Nadu, rep. by its Chief Secretary, Fort St. George, Chennai. **2.** State of Tamil Nadu, rep. by Principal Secretary to Government, Environment and Forests Department, Fort St. George, Chennai. **3.** Tamil Nadu Pollution Control Board, represented by Chairman, 76, Anna Salai, Guindy Industrial Estate, Race View Colony, Guindy, Chennai-600 032 ***.....Respondents***

**Appointment of Chairman and Member Secretary of the Tamil Nadu Pollution Control Board Rules, 2019, Rules 2(4)(b)(3)(ii) & 2(4)(b)(3-A) — Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), Sections 4(2)(f), 6, 12(1) & 64 — Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981), Sections 4 & 5(2)(f) — Members of Board — Qualifications prescribed under Rules — Whether contrary to Act — Section 4(2)(f) stipulates that a Member Secretary should possess qualifications, knowledge and experience of scientific, engineering or management of Pollution Control Board — However, no specific Educational qualifications set out under 1974 Act — 2019 Rules intending to fill said gap — Educational and experience criteria specified under Rule 2(4)(b)(3)(ii) and Rule 2(4)(b)(3-A), *held*, bearing a strong nexus to scientific, engineering and management aspects of Pollution Control Board — Rules, *held*, *intra vires* Section 4(2)(f) of Water Act and Sections 4 & 5 of Air Act — Rules also in conformity with Judgment of Apex Court in *Techi Tagi Tara v. Rajendra Singh Bhandari,* 2017 (2) CWC 636 (SC) — Writ Petition challenging *vires* of Rules, dismissed.** ***(Paras 16, 17 & 18)***

**CASES REFERRED**

Techi Tagi Tara *v.* Rajendra Singh Bhandari, *2017 (2) CWC 636 (SC)* ..... 9, 13, 18
Union of India *v.* Indian Radiological & Imaging Association, *2018 (5) SCC 773* ..... 19

**A. Yogeshwaran for B. Poongkhulali, Advocate for Petitioner in W.P. No.6940 & 6943 of 2020; G. Arulmurugan, Advocate for Petitioner in W.P.No.10332 of 2020.**

**Vijay Narayan, Advocate General assisted by V. Jayaprakash Narayanan, Government Pleader for Respondent Nos.1 & 2 in W.P. Nos.6940 & 6943 of 2020 & for Respondent No.1 in W.P. No.10332 of 2020 & N. Manohanan, Advocate for Respondent No.3 in W.P. Nos.6940 & 6943 of 2020 & for Respondent No.2 in W.P. No10332 of 2020.**

**W.Ps. DISMISSED — NO COSTS — M.Ps. CLOSED**

**Prayer :** *W.P. No.6940 of 2020 :* Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring Rule 2(4)(b)(3)(ii) & 2(4)(b)(3-A) of the Appointment of Chairman and Member Secretary of the Tamil Nadu Pollution Control Board Rules, 2019 as *ultra vires* the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Constitution of India.

*W.P. No.6943 of 2020 :* Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Second Respondent culminating in Notification, dated nil bearing Number No.01/MS/TNPCB/2020 calling for applications for the post of Member Secretary of the Third Respondent, quash the same.

*W.P. No.10332 of 2020 :* Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring Rule 2(4)(b)(3-A) of the Appointment of Chairman and Member Secretary of the Tamil Nadu Pollution Control Board Rules, 2019 as being Unconstitutional and *ultra vires* the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981.

**Judgment Reserved on 2.9.2020 and Delivered on 23.9.2020**

## JUDGMENT

**Senthilkumar Ramamoorthy, J.**

**1.** In W.P. Nos.6940 of 2020, the validity of Rules 2(4)(b)(3)(ii) & 2(4)(b)(3-A) of the Appointment of Chairman and Member Secretary of the Tamil Nadu Pollution Control Board Rules, 2019 (the TNPCB C & MS Appointment Rules) is challenged both on the ground that it is unconstitutional and *ultra vires* the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act) and the Air (Prevention and Control Pollution) Act, 1981 (the Air Act). W.P. No.6943 of 2020 is filed for a Writ of Certiorari to quash the Notification bearing No.01/MS/TNPCB/2020 in respect of calling for applications for the post of Member Secretary of the Tamil Nadu Pollution Control Board (the TNPCB). In W.P. No.10332 of 2020, validity of Rule 2(4)(b)(3-A) of the TNPCB C & MS Appointment Rules) is challenged both on the ground that it is unconstitutional and *ultra vires* the Water Act and the Air Act.

**2.** As is evident from the above, the dispute pertains to the TNPCB C & MS Appointment Rules. The TNPCB C & MS Appointment Rules were framed in exercise of powers conferred by Sections 64(2)(e) of the Water Act. The challenge is focused on two aspects. The first aspect is the requirement that the Member Secretary should have 25 years field experience in environmental protection and enforcement of environmental legislation. The relevant rule in this regard is Rule 2(4)(b)(3) which is as under:

| | |
|---|---|
| *3.* Qualification and Experience | *(i)* Must possess a Post Graduate Degree in Engineering or Technology in Environmental Engineering or allied Sciences.<br>*(ii) 25 years field experience in Environmental Protection and Enforcement of* |

| | |
|---|---|
| | *Environmental Legislation.* [emphasis added] |

**3.** The Petitioners do not have any reservation or objection in respect of the qualification specified in Rule 2(4)(b)(3)(i), namely, the Educational qualification requirement, but have strong objection to the "enforcement of environmental legislation" requirement in Rule 2(4)(b)(3)(ii).

**4.** In addition, the amendment to Rule 2(4)(b) on 29.1.2020 whereby Clause 3-A was inserted specifying an age limit is under challenge. The said Clause 3-A is as under:

"*Rule 2(4)(b)(3-A):*

*Age limit* - Must not have completed 55 years".

**5.** The main basis of challenge to the experience criterion is that it has the effect of excluding highly qualified Candidates, who would be eminently suitable to discharge the functions of a Member Secretary. According to the Petitioners, it would effectively convert a selection post into a promotional post because only persons who are employed in the TNPCB would satisfy the requirement of having 25 years field experience in environmental protection and enforcement of environmental legislation. As a consequence, this rule would eliminate everyone except persons already employed by the TNPCB. From an *ultra vires* perspective, the basis of challenge is as set out below. These rules were framed in exercise of powers under Section 64(2)(e) of the Water Act. The Water Act specifies the qualification of a Member Secretary in Section 4(2)(f) of the Act. The said Section 4(2)(f) is as under:

> "A full time Member Secretary, possessing qualifications, knowledge and experience, scientific, engineering or Management aspects of pollution control to be appointed by the State Government."

**6.** The contention of the Petitioners is that Section 4(2)(f) does not mandate that a Member Secretary should have 25 years field experience both in environmental protection and the enforcement of environmental legislation.

**7.** By incorporating such an experience criterion, the State Government in exercise of delegated legislation, has exceeded the scope and ambit of the parent legislation. Consequently, Rule 2(4)(d)(3)(ii) is *ultra vires* Section 4(2)(f) of the Water Act and Sections 4 & 5 of the Air Act. With regard to the age requirement, it is contended that the prescription of an upper age limit of 55 years would once again exclude competent and experienced Candidates especially when viewed in the context of the requirement of 25 years of field experience both in environmental protection and enforcement of environmental legislation. The present Writ Petitions are filed in these facts and circumstances.

**8.** We heard Mr. Yogeshwaran, the learned Counsel, who appeared for Ms. B. Poongkhulali, the learned Counsel for the Petitioner in W.P. Nos. 6940 & 6943 of 2020 ; Mr. G. Arul Murugan, the learned Counsel for the Petitioner in W.P. No.10332 of 2020; Mr. Vijay Narayan, the learned Advocate General for Respondents 1 & 2 in W.P. Nos.6940 & 6943 of 2020 and for Respondent 1 in W.P. No.10332 of 2020; and Mr. N. Manoharan, learned Counsel for Respondent 3 in W.P. Nos.6940 & 6943 of 2020 and for Respondent 2 in W.P. No.10332 of 2020.

**9.** At the outset, Mr. Yogeshwaran clarified that W.P. Nos.6940 & 6943 of 2020 are not Public interest litigations; instead, they are filed by a postgraduate in environmental engineering, who was previously an Assistant Environmental Engineer of the TNPCB, for declaratory relief *qua* the TNPCB C&MS Appointment Rules. Therefore, these Petitions are maintainable. With the above preamble, Mr. Yogeshwaran advanced the first contention, namely, that Rule 2(4)(b)(3)(ii) of the TNPCB C&MS Appointment Rules is *ultra vires* Section 4(2)(f) of the Water Act. In order to substantiate this contention, he invited our attention to the said Section 4(2)(f). He pointed out that Section 4(2)(f) deals with the qualifications of the full time member secretary of state pollution control boards. He contended that it specifies that the full time member secretary should possess qualifications, knowledge and experience in respect of the scientific, engineering or managerial aspects of pollution control. It does not specify that the full time member secretary should have experience in the enforcement of environmental legislation. Consequently, he contends that the stipulation of 25 years field experience in environmental protection and enforcement of environmental legislation is *ultra vires* Section 4(2)(f) of the Water Act. For the same reasons, it is *ultra vires* Sections 4 & 5 of the Air Act, which draw reference to the Water Act and are in *pari materia*. His second contention was that the TNPCB C&MS Appointment Rules are in violation of the Judgment of the Hon'ble Supreme Court in ***Techi Tagi Tara v. Rajendra Singh Bhandari,*** 2017 (2) CWC 636 (SC) : 2018 (11) SCC 734. (***Techi Tagi Tara***). In support of this contention, he referred to Paragraphs 24, 25, 31 to 35 of the said Judgment wherein the Hon'ble Supreme Court emphasized the fact that the State Government should appoint experts in the field, who are professionals, as member secretary or chairman of the respective pollution control boards and such appointment should be preceded by extensive deliberation. Paragraphs 24-25; 31-35 of the said Judgment are relevant and are as under:

> "*24*. On the second grievance relating to the issue of Guidelines by the NGT, the meat of the matter concerns the appointment of officials, who are experts in their field and are otherwise professional. This is for each State Government to consider and decide what is the right thing to do under the circumstances – should an unqualified or inexperienced person be appointed or should the SPCB be a representative but expert body? The Water Act and the Air Act as well as

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

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

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

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

*33.* Unfortunately, notwithstanding all these suggestions, recommendations and Guidelines the SPCBs continue to be manned by persons, who do not necessarily have the necessary expertise or professional experience to address the issues for

which the SPCBs were established by law. The Tata Institute of Social Sciences in a Report published quite recently in 2013 titled "Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards" had this to say about some of the appointments to the SPCBs:

> "An analysis of data collected from State Pollution Control Boards, however, gives a contrasting picture. It has been observed that time and again across state Governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards like Karnataka (A a senior BJP leader), Himachal Pradesh (B a Congress party leader and former MLA), Uttar Pradesh (C appointed on the recommendation of SP leader X), Arunachal Pradesh (D a sitting NCP party MLA), Manipur Pollution Control Board (E a sitting MLA), Maharashtra Pollution Control Board (F a former bureaucrat) are in blatant violation of the apex Court Guidelines. The Apex Court has recommended that the appointees should be qualified in the field of environment or should have special knowledge of the subject. It is unfortunate that in a democratic set up, key enterprises and boards are headed by bureaucrats for over a decade. In this connection, it is very important for State Governments to understand that filling a key regulatory post with the primary intention to reward an ex-official through his or her appointment upon retirement, to a position for which he or she may not possess the essential overall qualifications, does not do justice to the people of their own states and also staffs working in the State Pollution Control Boards. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non- transparent unilateral decision. Many senior environmental scientists and other Officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons, who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the board. It has also been argued by various environmental groups that if the Government is unable to find a competent person, then it should advertise the post, as has been done recently by states like Odisha. However, State Governments have been defending their decision to appoint bureaucrats to the post of Chairperson as they believe that the vast experience of IAS officers in handling responsibilities would be easy. Another major challenge has been appointing people without having any knowledge in this field. For example, the appointment of G with maximum qualification of Class X as Chairperson of State Pollution Control Board of Sikkim was clear violation of Water (Prevention and Control of Pollution) Act, 1974."

*34.* The concern really is not one of a lack of professional expertise – there is plenty of it available in the country – but the lack of dedication and willingness to take advantage of the resources available and instead benefit someone close to the powers that be. With this couldn't-care-less attitude, the environment and Public trust are the immediate casualties. It is unlikely that with such an attitude, any substantive effort can be made to tackle the issues of environment degradation and issues of pollution. Since the NGT was faced with this situation, we can appreciate its frustration at the scant regard for the law by some State

> Governments, but it is still necessary in such situations to exercise restraint as cautioned in *State of U.P. v. Jeet S. Bisht.*
>
> *35*. Keeping the above in mind, we are of the view that it would be appropriate, while setting aside the Judgment and Order of the NGT, to direct the Executive in all the States to frame appropriate Guidelines or recruitment rules within six months, considering the institutional requirements of the SPCBs and the law laid down by Statute, by this Court and as per the reports of various committees and authorities and ensure that suitable professionals and experts are appointed to the SPCBs. Any damage to the environment could be permanent and irreversible or at least long-lasting. Unless corrective measures are taken at the earliest, the State Governments should not be surprised if Petitions are filed against the State for the issuance of a Writ of *quo* warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a Writ of *quo* warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such."

**10.** By also referring to Paragraph 28 of the Judgment, he pointed out that the Bhattacharya Committee recommended that there should be discouragement of the flow of persons on deputation to the boards and that such position should not be filled up with the primary intention to reward an ex-official, through his or her appointment upon retirement, to a position for which he or she may not possess the essential overall qualifications.

**11.** Mr. Yogeshwaran's third contention was that the TNPCB C&MS Appointment Rules are designed in such a manner that only a person, who is already an Employee of the TNPCB would be eligible to become the Member Secretary. As a result, the position of the Member Secretary gets converted into a promotion post whereas it is intended to be a selection post. In particular, he pointed out that the requirement of 25 years experience in the enforcement of environmental legislation would eliminate everyone other than persons currently employed in the TNPCB. Consequently, the impugned rules are exclusionary and, therefore, arbitrary. In this connection, he countered the contention of the State of Tamil Nadu in its Counter Affidavit. The State of Tamil Nadu had stated therein that the criteria prescribed in the rules would be satisfied by eligible Candidates from the TNPCB, the Central Pollution Control Board, the Ministry of Environment and Forests and Climate Change (the MoEF), the Department of Environment (the DoE), the State Environmental Impact Assessment Authority (SEIAA), the Central Leather Research Institute (the CLRI), the National Environmental Engineering Research Institute (the NEERI), Forest Officers, Corporations, Municipalities, Panchayats, etc. By drawing reference to the rejoinder of the Petitioners and in particular, Paragraphs 18 to 22 thereof, he contended that except the officials of the TNPCB and the Central Pollution Control Board, none of the other categories that were specified in the Counter Affidavit of the State would fulfill the criteria

specified in the TNPCB C & MS Appointment Rules. In order to illustrate this contention, he pointed out that the officials of the MoEF do not enforce environmental legislation, albeit to the limited extent of granting environmental clearance. Even if the grant of environmental clearance is treated as the enforcement of environmental legislation, such Officers would not have performed such role for 25 years given the limited duration of such appointments. Similarly, as regards the Secretary of the DoE, he/she performs functions delegated under Sections 5 & 19 of the Environment Protection Act, 1986 (the Environment Protection Act) and also holds the position of the Member Secretary in the SEIAA as well as the State Coastal Zone Management Authority. These posts are occupied by Civil servants who serve for a limited term and would not satisfy the 25 years of experience criterion. As regards the CLRI and NEERI Employees, he pointed out that these are research institutions and that they do not perform any function related to the enforcement of environmental legislation. With regard to Forest Officers, he submitted that they do not deal with environmental pollution and the prevention and control thereof. With regard to Local Bodies, such as Corporations and Municipalities and Panchayats, he submitted that they are project proponents and are, therefore, required to approach the TNPCB for environmental clearance. For all these reasons, he submitted that the contentions of the State are untenable and that the TNPCB C&MS Appointment Rules would curtail the eligible Applicants to those who are presently employed in the TNPCB, and that they are consequently arbitrary.

**12.** The learned Counsel for the Petitioner in W.P. No.10332 of 2020, which is a public interest litigation, Mr. G. Arul Murugan, adopted the submissions of Mr. Yogeshwaran as regards Rule 2(4)(b)(3)(ii) and also contended that the amendment to Rule 2(4)(b)(3-A) whereby the age limit of 55 years was introduced is liable to be struck down. He submits that it would considerably curtail the zone of consideration because there would be very few Candidates - with the requisite Educational qualifications and 25 years experience both in environmental protection and the enforcement of environmental legislation - who are below the age of 55. Therefore, he contends that this stipulation is contrary to the Hon'ble Supreme Court Judgment and the applicable environmental laws.

**13.** In response to these contentions, the learned Advocate General pointed out that the TNPCB C&MS Appointment Rules were framed in accordance with the mandate of the Hon'ble Supreme Court in ***Techi Tagi Tara***. The learned Advocate General referred to Paragraphs 24 & 25 of the said Judgment wherein the Hon'ble Supreme Court held that each State Government should frame appropriate rules for appointment of experts to the post of chairman and member secretary of the respective pollution control boards. With this in mind, the TNPCB C&MS Appointment Rules were framed and the specification of the requirement that the Candidate should

possess a post Graduate Degree in Engineering or technology in environmental engineering or allied sciences coupled with the requirement that the Candidate should possess 25 years field experience in environmental protection and enforcement of environmental legislation are entirely rational and relevant for the purpose of selecting Candidates with the necessary expertise and professional competence. He also contended that the functions of Member Secretary are both regulatory and enforcement related. Therefore, it is not sufficient to appoint persons with theoretical knowledge. It is for this reason that the criterion of 25 years field experience in environmental protection and enforcement of environmental legislation criteria has been stipulated. He also pointed out that the Petitioner in W.P. No.6940 & 6943 of 2020 is a disgruntled former Employee of the TNPCB with a tainted record and, therefore, the Petitions, at his instance, are not maintainable. W.P. No.10332 of 2020 is a Public interest litigation and the settled legal position is that such Petitions are not maintainable in service matters. He concluded his submissions by pointing out that the TNPCB C&MS Appointment Rules are entirely in conformity with the Water Act and other relevant environmental legislation. Therefore, no interference is warranted.

**14.** We considered the submissions of the learned Counsel and the learned Advocate General for the respective parties and examined the materials on record.

**15.** The first contention that is required to be dealt with is whether the TNPCB C&MS Appointment Rules are *ultra vires* the Water Act and Air Act. On perusal of the Water Act and, in particular, Section 4(2)(f) thereof, we find that Section 4 sets out the composition of a state pollution control board. Sub-section (2)(f) deals with a member secretary and generically specifies that a full time member secretary should possess qualifications, knowledge and experience in respect of the scientific, engineering or managerial aspects of pollution control. Thus, it is not a provision that prescribes the requisite educational and experience qualification on the basis of which a member secretary may be recruited. Consequently, per force, one needs to examine if the Water Act contains any other provisions in this regard. Section 6 specifies disqualifications of a member of the Central or State Board and Section 12(1) empowers the prescription of the terms and conditions of service of a member secretary. However, there does not appear to be any other provision in the Water Act that specifies the requisite educational or experience requirements for a member secretary. Hence, one must turn to the rule-making power. The power of the State Government to frame rules is contained in Section 64 of the Water Act. Section 64 enables the State Government to make rules to carry out the purposes of the Water Act in respect of matters not falling within the purview of Section 63.

**16.** The prescription of qualifications for the Recruitment of a chairman or member secretary of the state board is undoubtedly not within the purview of Section 63. Section 64(2)(e) empowers the framing of rules regarding the terms and conditions of the chairman and member Secretary and Section 64(2)(g) empowers the framing of rules regarding the powers and duties to be exercised by the above-mentioned members of the state board. Section 64(2)(p) is the residuary clause that enables the framing of rules on any other matter which has to be or may be prescribed. The present TNPCB C&MS Appointment Rules have been framed under powers conferred under Section 64 of the Water Act. Upon carefully considering the Water Act, including the residuary Clause, we conclude that the Tamil Nadu Government is empowered to frame rules for fulfilling the purposes of the Water Act, including by prescribing the qualifications for recruitment of a member secretary. A reference to the Air Act, on this issue, is also pertinent. Section 4 of the Air Act states that the state board constituted under Section 4 of the Water Act shall be deemed to be the state board for the purposes of the Air Act. Section 5 thereof deals with a situation where the Water Act is not in force in a state or a state board has not been constituted under the Water Act. In such event, it specifies the composition of the state board. Section 5(2)(f) of the Air Act is largely in *pari materia* with Section 4(2)(f) of the Water Act, albeit it expressly provides for the prescription of qualifications and experience. It reads as under:

> "a full-time member-secretary having such qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control *as may be prescribed*, to be appointed by the State Government." (Emphasis added)

**17.** As indicated above, Section 4(2)(f) of the Water Act does not set out specific qualifications or experience and, therefore, it is necessary to frame rules for such purpose. The impugned rules are intended to fill that gap. On closely examining Rule 2(4)(b)(3)(ii) & Rule 2(4)(b)(3-A), we find that the Educational and experience criteria specified therein are clearly germane and bear a strong nexus to the scientific, engineering and management aspects of pollution control. Thus, we do not find anything in the said Rules that contradict or contravene or exceed the scope of the generic prescription in Section 4(2)(f) that the member secretary should possess "qualifications, knowledge and experience of scientific, engineering or Management aspects of pollution control." Hence, we conclude that Rule 2(4)(b)(3)(ii) & Rule 2(4)(b)(3-A) are *intra vires* Section 4(2)(f) of the Water Act and Sections 4 & 5 of the Air Act.

**18.** The next contention of the learned Counsel for the Petitioners was that Rule 2(4)(b)(3)(ii) & 2(4)(b)(3-A) violate the Judgment of the Supreme Court in ***Techi Tagi Tara***. The impugned Rules mandate that only persons with relevant Educational qualifications and 25 years work experience in environmental protection and enforcement of environmental legislation are eligible. In ***Techi Tagi Tara***, the Supreme Court held that experts with professional competence and not ex-bureaucrats should be appointed. Given

the qualifications stipulated in the impugned rules, it would not be possible to appoint retired bureaucrats or political leaders, without the necessary domain expertise, to the said post. Therefore, we conclude that the TNPCB C&MS Appointment Rules are fully in conformity with the observations of the Hon'ble Supreme Court in ***Techi Tagi Tara***.

**19.** The last contention was that the TNPCB C&MS Appointment Rules are designed to convert a selection post into a promotion post. In support of this contention, Mr. Yogeshwaran relied upon the rejoinder wherein the Petitioner has explained as to why persons from the DoE would not be eligible to apply the post. He further pointed out that the persons from the various Departments, organizations like CLRI, NEERI, Corporations, Municipalities and Panchayats would not be eligible. This contention is not devoid of merit. However, the fact that the zone of consideration is narrowed down on account of the stipulation of qualification criteria cannot be a ground to strike down the rule in the absence of arbitrariness. This principle would also apply as regards the fixation of the maximum age of 55 years. In ***Union of India v. Indian Radiological & Imaging Association,*** 2018 (5) SCC 773, while dealing with the prescription of training requirements in the context of pre-natal diagnosis, the Supreme Court held as under in Paragraph 16:

> "*16.* Parliament which has the unquestioned authority and legislative competence to frame the law considered it necessary to empower the Central Government to frame rules to govern the qualifications of persons employed in genetic counselling centres, laboratories and clinics. The wisdom of the legislature in adopting the policy cannot be substituted by the Court in the exercise of the Power of Judicial Review. Prima facie the Judgment of the Delhi High Court has trenched upon an area of legislative policy. Judicial review cannot extend to reappreciating the efficacy of a legislative policy adopted in a law which has been enacted by the competent legislature. Both the Indian Medical Council Act, 1956 and the PCPNDT Act [PCPNDT Act] are enacted by Parliament. Parliament has the legislative competence to do so. The Training Rules, 2014 were made by the Central Government in exercise of the power conferred by Parliament. *Prima facie*, the Rules are neither *ultra vires* the parent legislation nor do they suffer from manifest arbitrariness." We previously concluded that the impugned rules are not *ultra vires* the Water Act. In drawing our final conclusion, the following factors are significant: this Court is not sitting in Appeal over the prescription of qualification criteria; the educational, experience and age criteria cannot be said to be irrelevant or arbitrary; the Court cannot prescribe the criteria by substituting its views; and the impugned rules do not violate the Judgment in *Techi Tagi Tara*. Therefore, we conclude that the Petitioners have failed to make out a case to strike down the rules. Because W.P. No10332 of 2020 is the only Petition filed in Public interest and given the above conclusion, we do not propose to examine the maintainability issue.

**20.** In the result, these Writ Petitions are dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

**2021 (1) CWC 79**

**IN THE SUPREME COURT OF INDIA**

**Ashok Bhushan, R. Subhash Reddy & M.R. Shah, JJ.**

W.P.(C) No.560 of 2020

5.11.2020

Gurusimran Singh Narula ***.....Petitioner***

Vs.

Union of India and another ***.....Respondents***

**Disaster Management Act, 2005 (53 of 2005), Sections 10 & 36 — Atomic Energy Rules, 2012 — Constitution of India, Articles 21 & 32 — Pandemic — Covid-19 — Spraying of disinfectants on human beings — Regulation of — Covid-19 Pandemic, an unfortunate health disaster — Ministry of Health and Family Welfare, under Section 10 of 2005 Act, empowered to lay down Guidelines and measures to be taken to combat disaster — Advisory issued by Ministry on 18.4.2020 against spraying of disinfectant on people for Covid-19 management — However, no measures taken by Government to regulate or prevent spraying of disinfectants on human beings — *Held*, Right of Life guaranteed under Article 21 includes within its ambit Right to Health — Duty of Government to issue necessary direction under Section 36 of 2005 Act to prevent use of disinfectants to protect health of citizens — Power conferred upon Authority under Statute to be exercised for benefit of people in general — Government should rise to situation and exercise its responsibilities to regulate situation — Government directed to issue directions under 2005 Act regarding ban/regulation of tunnels involving spraying of disinfectants and also regarding exposure of human beings to ultraviolet rays — Writ Petition disposed of with said directions.** ***(Paras 23, 29, 32, 34, 35, 36, 41 & 42)***

**CASES REFERRED**

Commissioner of Police *v.* Gordhandas Bhanji, *AIR 1952 SC 16* ..... 36
Devika Biswas *v.* Union of India, *2016 (10) SCC 726* ..... 19
L. Hirday Narain *v.* Income Tax Officer, Bareilly, *1970 (2) SCC 355* ..... 37
Municipal Council, Ratlam *v.* Shri Vardichan, *1980 (4) SCC 162* ..... 38

**Tushar Mehta, Solicitor General for Respondents.**
**Anita Shenoy, Senior Advocate for Intervenor.**

**W.P. DISPOSED OF WITH DIRECTIONS**

**JUDGMENT**

**Ashok Bhushan, J.**

**1.** This Writ Petition filed in the Public interest under Article 32 of the Constitution of India seeks direction to forthwith ban on spraying of all

kinds of disinfectants on human beings, which is being done supposedly for protecting the human beings from the Novel Corona Virus disease 2019 (Covid-19).

**2.** The World Health Organisation (WHO) declared novel Corona Virus disease, 2019 (hereinafter referred to as Covid-19) as a Pandemic on 11.3.2020. All countries including India after spread of the pandemic had taken and are still taking different measures to contain the disease and protect its citizens from Covid-19. On 29.3.2020, Ministry of Health and Family Welfare, Government of India, released Guidelines on disinfection of common Public places including Offices. The scope as contained in the Guidelines is to the following effect:

> "*Scope*: This document aims to provide interim guidance about the environmental cleaning/decontamination of common Public places including offices in areas reporting COVID-19.
>
> Corona Virus Disease 2019 (COVID-19) is an acute respiratory disease caused by a novel Corna Virus (SARS-CoV-2), transmitted in most instances through respiratory droplets, direct contact with cases and also through contaminated surfaces/objects. Though the virus survives on environmental surfaces for varied period of time, it gets easily inactivated by chemical disinfectants..."

**3.** On 18.4.2020, Director General of Health Services (EMR Division), Ministry of Health and Family Welfare, issued an advisory against spraying of disinfectants on people for Covid-19 arrangements. Even though in the above advisory, spraying of individuals or groups was not recommended, several bodies, Organizations started using spraying tunnels to disinfect the human body. The press Release, dated 23.4.2020 was issued by National Capital Laboratory (Council for Scientific and Industrial Research), which was joint press release by CSIR-NCL Pune-ICT Mumbai, stating that the use of mist based sanitization is expected to provide safeguard to front-line health care professionals including paramedical staff, police and Employees providing essential services. Other public organizations also started using the walk way spray tunnels, and other measures for disinfecting humans at various Public places.

**4.** This Writ Petition under Article 32 has been filed on 5.6.2020 praying for following reliefs:

> "(i) Issue a Writ in the nature of Mandamus or any other appropriate Writ, direction or order a forthwith ban on the usage, installation, production, advertisement of disinfection tunnels involving spraying or fumigation of chemical disinfectants for the purposes disinfecting human being and/or
>
> (ii) Issue a Writ in the nature of Mandamus or any other appropriate Writ, direction or order a forthwith ban on usage, installation, production,

advertisement of disinfection tunnels involving spraying or fumigation of organic disinfectants for the purposes disinfecting human beings and/or

(iii) Issue a Writ in the nature of Mandamus or any other appropriate Writ, direction or order a forthwith ban on the usage, installation, production, advertisement of disinfection tunnels exposing human beings to ultraviolet rays for the purposes disinfecting them and/or

(iv) To pass such other orders and Further Orders as may be deemed necessary on the facts and in the circumstances of the case."

**5.** The Petitioner in the Writ Petition referred to and relied the advisory, dated 18.4.2020 and has also referred to press Release, dated 23.4.2020 issued by CSIR-NCL, Pune-ICT, Mumbai, where tunnels for external body surface sanitization of personal walk was recommended.

**6.** The Petitioner's case in the Writ Petition is that although the Ministry of Health and Family Welfare, Government of India, has not approved the use of any self claimed organic or ayurvedic disinfectant for spraying or fumigation purposes nor approved any chemical disinfectants on human body but lot of Organizations/Public Authorities are using chemical disinfectants for spraying and fumigation. Several instances in the Writ Petition of public authorities installing disinfecting tunnel has been given in the Writ Petition.

**7.** Publication from World Health Organization has also been relied where it is clearly stated that spraying and introducing bleach or other disinfectant into body will not protect against Covid-19 and can be dangerous. Quoting World Health Organization, it is pleaded that the Ultraviolet (UV Lamps) should not be used to disinfect the hands and other areas of the skin. Reference has also been made of advanced disinfectant tunnel developed jointly by Indian Institute of Technology, Kanpur and Artificial Limb Manufacturing Corporation of India.

**8.** Articles questioning against the use of disinfectant tunnels have also been referred to and relied by the Petitioner. Certain materials where different experts have recommended use of UV light and disinfectant tunnel has also been referred to. In view of several discordant note expressed by certain experts and organizations, the Writ Petition prayed for directions as quoted above.

**9.** This Court issue notice to Respondent Nos.1-3 on 10.8.2020. No notice having been issued to the Respondent Nos.4 to 6, they be deleted from the array of the parties. The Respondent No.1 has filed a Counter Affidavit, dated 1.9.2020 where Advisory, dated 18.4.2020 as well as minutes of meeting, dated 9.6.2020 held under the chairmanship of Director General Health Services, with regard to review on use of disinfection tunnel using various chemicals and spraying disinfectants have been brought on the

record. Taking note of the meeting Proceeding, dated 9.6.200 where spraying disinfectant was not recommended by the minutes, This Court passed following order on 7.9.2020:

"Order

A Counter Affidavit has been filed on behalf of Union of India. In the Counter Affidavit at page 40 copy of meeting - Annexure 'G' dated 9.6.2020 has been brought on the record, where it has been decided that spraying disinfectants is not recommended. Shri Tushar Mehta, learned Solicitor General submits that relevant directions and Circulars shall be issued to all concerned.

As prayed by Shri Tushar Mehta, learned Solicitor General, list after two weeks."

**10.** After the aforesaid order, another Affidavit titled as 'Compliance Affidavit, dated 28.9.2020' by Respondent No.1 where O.M. dated 23.9.2020 has been brought on the record reiterating that spraying of individuals or groups with disinfectant using any modality is not recommended and hence, all States/Union Territories are directed to ensure that such practices are not implemented in the States/UTs.

**11.** An additional Affidavit has also been filed by Respondent No.1 with regard to use of Ultraviolet (UV) rays to disinfect/sterilize edible items like fruits and vegetables. Petitioner has also filed consolidated rejoinder Affidavit. An intervention application has also been filed by one Ideal Flow Pvt. Ltd. which claims to be a Company, which has developed and designed pressurized steam disinfectant chamber. The Applicant submits that in designed pressurized steam disinfectant chamber, natural oils are mixed in an emulsifier solution. Applicant claims that the product has various health benefits. Applicant further submitted that there is a major difference between disinfectant tunnels spraying chemical disinfectant and pressurized disinfection chamber, any blanket ban as sought in the Writ Petition may seriously impact the business of the Applicant, in light of the major difference of the Applicant's product from that of disinfection tunnel mentioned in the Writ Petition.

**12.** We have heard the Petitioner appearing in person, Shri Tushar Mehta, learned Solicitor General for the Respondents and Smt. Anita Shenoy, Senior Advocate for the Intervenor.

**13.** The Petitioner submits that although the Ministry of Health & Family Welfare, the Respondents No.1 through its Advisory, dated 18.4.2020 had stated that spraying of disinfectant on human being is not recommended but Union of India has not taken any step to stop use, advertisement and sale of chemical based disinfection tunnels. The Petitioner submits that there is no study anywhere in the world by any credible health agency which states that human disinfection tunnels are effective against Covid-19 Virus. On the contrary, there are sufficient health advisories by the WHO, Respondent

No.1 and other international agency that tunnels are counter productive and harmful for human health. There has been no advisory issued by Respondent No.1, which recommends usage of any organic solution for spraying on human body against Covid-19 pandemic.

**14.** The Petitioner submits that in absence of any recommendation of health authorities, there is a trend across the Country where people are producing self- certified so called safe disinfection tunnels with variety of organic solutions. The Petitioner submits that the concept of "human disinfection" through walk in tunnel is flawed and misconceived and be not permitted at any cost in light of Right to Health under Article 21 of the Constitution.

**15.** Shri Tushar Mehta, learned Solicitor General, submits that answering Respondent No.1 had not issued any advisory for usage, installation, production, advertisement of disinfection tunnel involving spraying or fumigation of chemicals/organic disinfectants for the purpose of disinfecting human beings. Learned Solicitor General has referred to Advisory, dated 18.4.2020 issued by Respondent No.1. It is further submitted that in the meeting held on 9.6.2020 under the Chairmanship of Director General Health Services, review on use of disinfection tunnel was made and it was reiterated that spraying disinfectant is not recommended in both health care and non-health care settings. Shri Mehta submits that the States/UTs have to implement the Guidelines, dated 18.4.2020 and the role of the Government of India is limited to providing necessary Guidelines and financial support.

**16.** Learned Counsel for the Intervenor has submitted that the product which is being designed by the Applicant does not use any chemical as human disinfectant rather it uses natural oil which promotes health. The Applicant opposes any blanket ban on the use of such products for human disinfection.

**17.** We have considered the submission of learned Counsel for the parties and perused the record.

**18.** The Writ Petition raises following three questions:

(i) Whether spraying or fumigation of any kind of chemical disinfectants on human beings without the approval of the relevant ministry is violative of Article 21 ?

(ii) Whether spraying or fumigation of any kind of self- claimed organic disinfectant on human beings without the approval of the relevant Ministry is violative of Article 21 ?

(iii) Whether exposure of human beings to artificial ultraviolet rays is violative of Article 21 ?

All the above questions being inter-connected are being taken together.

**19.** Article 21 of the Constitution provides for protection of life and personal liberty. The expression 'life' used in Article 21 has wide import and connotation. Article 21 encompasses a bundle of rights, which have been recognized from time to time by the legislature of this Country and Courts of this Country including this Court. Right to life as recognized under Article 21 is Right to live with dignity. Right to health is also recognized as an important facet of Article 21 of the Constitution. We may refer to pronouncement of this Court in ***Devika Biswas v. Union of India and others,*** 2016 (10) SCC 726, where this Court held that Right to Health is an integral facet of Right guaranteed under Article 21 of the Constitution. In Paragraph 107 of this Court dealing with Right to Health laid down following:

> "*107.* It is well established that the right to life under Article 21 of the Constitution includes the right to lead a dignified and meaningful life and the right to health is an integral facet of this right. In *CESC Ltd. v. Subhash Chandra* Bose dealing with the right to health of Workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to, which India is a party. Similarly, the bare minimum obligations of the State to ensure the preservation of the right to life and health were enunciated in *Paschim banga Khet Mazdoor Samity v. State of W.B*."

**20.** In the present case, Right to Health under consideration is in wake of pandemic Covid-19. The provisions of Disaster Management Act, 2005 (hereinafter referred to as Act, 2005), has been invoked to combat Covid-19 by different authorities constituted under Act, 2005. Covid-19 is a notified disaster for the purposes of the Act, 2005 by the Government of India.

**21.** The Act, 2005, is an act for effective Management of disasters and matters connected therewith and incidental thereto. Disaster Management includes prevention of danger/threat of a disaster, mitigation or reduction of risk of a disaster, preparedness to deal with the disaster and prompt response to any threatening disaster situation or disaster etc. Under Section 3, National Disaster Management Authority is established for the purposes of the Act. Section 8 provides for the constitution of National Executive Committee. Section 10 deals with powers and function of National Executive Committee. The National Executive Committee is to assist the National Authority in discharge of its functions and have the responsibility for implementing the policies and plans of the National authority and ensure the compliance of the directions issued by the Central Government for the purposes of the Central Government. Sub-section (2) of Section 10 enumerates various powers and functions of the National Executive Committee. Section 10 which is relevant for this case is as follows:

> "*10. Powers and functions of National Executive Committee.— (1)* The National Executive Committee shall assist the National Authority in the discharge of its

functions and have the responsibility for implementing the policies and plans of the National Authority and ensure the compliance of directions issued by the Central Government for the purpose of disaster Management in the country.

*(2)* Without prejudice to the generality of the provisions contained in sub-section (1), the National Executive Committee may—

*(a)* act as the coordinating and monitoring body for disaster Management;

*(b)* prepare the National Plan to be approved by the National Authority;

*(c)* Coordinate and monitor the implementation of the National Policy;

*(d)* lay down guidelines for preparing disaster Management plans by different Ministries or Departments of the Government of India and the State Authorities;

*(e)* provide necessary technical assistance to the State Governments and the State Authorities for preparing their disaster Management plans in accordance with the Guidelines laid down by the National Authority;

*(f)* monitor the implementation of the National Plan and the plans prepared by the Ministries or Departments of the Government of India;

*(g)* monitor the implementation of the Guidelines laid down by the National Authority for integrating of measures for prevention of disasters and mitigation by the Ministries or Departments in their development plans and projects;

*(h)* monitor, coordinate and give directions regarding the mitigation and preparedness measures to be taken by different Ministries or Departments and agencies of the Government;

*(i)* evaluate the preparedness at all governmental levels for the purpose of responding to any threatening disaster situation or disaster and give directions, where necessary, for enhancing such preparedness;

*(j)* plan and coordinate specialised training programme for disaster Management for different levels of Officers, Employees and voluntary rescue Workers;

*(k)* coordinate response in the event of any threatening disaster situation or disaster;

*(l)* lay down guidelines for, or give directions to, the concerned Ministries or Departments of the Government of India, the State Governments and the State Authorities regarding measures to be taken by them in response to any threatening disaster situation or disaster;

*(m)* require any department or agency of the Government to make available to the National Authority or State Authorities such men or material resources as are available with it for the purposes of emergency response, rescue and relief;

*(n)* advise, assist and coordinate the activities of the Ministries or Departments of the Government of India, State Authorities, statutory bodies, other governmental or non-governmental organisations and others engaged in disaster Management;

*(o)* provide necessary technical assistance or give advice to the State Authorities and District Authorities for carrying out their functions under this Act;

*(p)* promote general education and awareness in relation to disaster Management; and

*(q)* perform such other functions as the National Authority may require it to perform."

**22.** The powers under sub-section (2) of Section 10 Clauses (i) & (l) of Act, 2005, have been delegated to Secretary, Ministry of Health and Family Welfare, Government of India, by Notification, dated 11.3.2020. The Notification, dated 11.3.2020 is as follows:

"*ORDER*

In exercise of the powers conferred under Section 69 of the Disaster Management Act, 2005, Union home Secretary being Chairman of the National Executive Committee (NEC) hereby delegates its power under Clauses (i) & (l) of sub-section (2) of Section 10 of the Disaster Management Act, 2005 to Secretary, Ministry of Health and Family Welfare, Government of India to enhance the preparedness and containment of novel Corona Virus (COVID-19) and the other ancillary matters connected thereto. This order shall be deemed to have come into effect from 17th January, 2020.

(Sanjeev Kumar Jindal)
*Joint Secretary to the*
*Government of India"*

**23.** Thus it is the Secretary, Ministry of Health and Family Welfare, who had to lay down the guidelines or give directions to the concerned Ministries or Departments of Government of India, the State Governments and State Authorities regarding measures to be taken by them in response to any disrupting situation or disaster. The Pandemic has threatened the health of entire citizenry of the country and all facets relating to pandemic Covid-19, its prevention, mitigation and cure are to be dealt with and taken care of authorities empowered with different duties and functions under different statutes including Disaster Management Act, 2005.

**24.** We may first refer to the Advisory, dated 18.4.2020 which was issued against spraying of disinfectant on people for Covid-19 Management. The Advisory, dated 18.4.2020 states:

"*Advisory against spraying of disinfectant on people for COVID-19 Management:*

Ministry of Health & Family Welfare has received many queries regarding the efficacy (if any) of use disinfectants such as Sodium hypochlorite spray used over the individuals to disinfect them. The strategy seems to have gained of lot of media attention and is also being reportedly used at local levels in certain districts/Local Bodies.

*Purpose of the document:*

To examine the merit of using disinfectants as spray over human body to disinfect them from COVID-19 and to provide appropriate advisory

*Disinfectants* are chemicals that destroy disease causing pathogens or other harmful microorganisms. It refers to substances applied on inanimate objects owing to their strong chemical properties. Chemical disinfectants are recommended for cleaning and disinfection only of frequently touched areas/surfaces by those who are suspected or confirmed to have COVID-19. Precautionary measures are to be adopted while using disinfectants for cleaning - like wearing gloves during disinfection.

In view of the above, the following advisory is issued:

- Spraying of individuals or groups is NOT recommended under any circumstances. Spraying an individual or group with chemical disinfectants is physically and psychologically harmful.
- Even if a person is potentially exposed with the COVID-19 Virus, spraying the external part of the body does not kill the Virus that has entered your body. Also there is no scientific evidence to suggest that they are effective even in disinfecting the outer clothing/body in an effective manner.
- Spraying of chlorine on individuals can lead to irritation of eyes and skin and potentially gastrointestinal effects such as nausea and vomiting. Inhalation of sodium hypochlorite can lead to irritation of mucous membranes to the nose, throat, respiratory tract and may also cause bronchospasm.
- Additionally use of such measures may in fact lead to a false sense of disinfection & safety and actually hamper public observance to hand washing and social distancing measures."

**25.** Even though the above advisory was issued by Directorate General of Health Services not recommending spraying of disinfectant on people for Covid-19 Management but several contrary opinion have been expressed by other bodies and Organisations. In this context, reference has been made to the joint Press Release, dated 23.4.2020 by NCL (CSIR). The Press Release, dated 23.4.2020 states:

"*Publication and Science Communication Unit*

Press release April 23, 2020

Safe concentration of disinfectant in walk through spray tunnels and their scientific design

*Joint Press Release:* CSIR-NCL Pune and ICT Mumbai

CSIR-National Chemical Laboratory (CSIR- NCL), Pune evaluated various concentrations of sodium hypochlorite to find effective chemical disinfectants for the mist sanitization system.

The use of mist-based sanitization is expected to provide safeguards to frontline healthcare professionals, including paramedic staff, police, and Employees providing essential services. These people are more likely to get the infection and unknowingly spread arising from various sources. A lot of advisories have appeared against the use of such tunnels from various agencies, which does not have any scientific basis.

Efficacy of sodium hypochlorite, also known as hypo or bleach, ranging from 0.02% to 0.5% weight concentration was studied on personnel walking through mist tunnel Unit, besides antibacterial activity against standard microorganisms before and after exposure in the walk through. Results indicated that 0.02% to 0.05% weight concentration did not show an adverse effect on normal skin flora and yet destroyed the standard microbes. Thus, we recommend using 0.02% -0.05 wt. % sodium hypochlorite solution (200 to 500 ppm) for external body surface sanitization of personnel walk through the mist tunnel by following standard safety precautions."

**26.** The Petitioner has also referred to in the Writ Petition various articles where different experts have recommended for effective sanitization amid Covid-19 pandemic by disinfection tunnels, different studies for and against disinfectment of human body has been referred to and relied in the Writ Petition.

**27.** After Notice was issued in the Petition, the Counter Affidavit was filed. In the Counter Affidavit Respondent No.1 has also brought on record the minutes of the Meeting, dated 9.6.2020 chaired by Director General Health Services where review was made on the use of disinfection tunnels. Observations as recorded in the minutes are as follows:

"*1*. Use of disinfection tunnel the matter of spraying of disinfectant on people for COVID-19 Management was discussed in the Joint Monitoring Group and an advisory in this regard has been issued by MOHFW/DGHS, EMR Division which is available on the website of the ministry. It clearly states the following:

"Spraying of individuals or groups is NOT recommended under any circumstances. Spraying an individual or group with chemical disinfectants physically and psychologically harmful.

- Even if a person is potentially exposed with the Covid-19 virus, spraying the external part of the body does not kill the virus that has entered your body. Also there is no scientific evidence to suggest that they are effective even in disinfecting the outer clothing/body in an effective manner.
- Additionally use of such measures may in fact lead to a false sense of disinfection and safety and actually hamper public observance to hand washing and social distancing measures.

It is reiterated that spraying of individuals with disinfectants (such as tunnels, cabinets, chambers, etc.) is not recommended. This could be physically and psychologically harmful and would not reduce an infected person's ability to spread the virus through droplets or contact. Moreover, spraying individuals with chlorine and other toxic chemicals could result in eye and skin irritation, bronchospasm due to inhalation, and gastrointestinal effects such as nausea and vomiting.

*2.* Use of Chemicals As per the advisory by MOHFW/DGHS, EMR Division:

Chemical disinfectants are recommended for cleaning and disinfection only of frequently touched areas/surfaces by those who are suspected or confirmed to

have COVID-19. Precautionary measures are to be adopted while using disinfectants for cleaning – like wearing gloves during disinfection. Spraying of chlorine on individuals can lead to irritation of eyes and skin and potentially gastrointestinal effects such as nausea and vomiting. Inhalation of sodium hypochlorite can lead to irritation of mucous membranes to the nose, throat, respiratory tract and may also cause bronchospasm.

The chemicals such as freshly prepared 1% sodium hypochlorite or 70% ethanol etc., are to be used as indicated, to disinfect inanimate surfaces using mops/wipes for the recommended contact time.

*3. Spraying disinfectants:*

Spraying disinfectants is not recommended in both health care and non health care settings.

In indoor spaces, routine application of disinfectants to environmental surfaces by spraying or fogging (also known as fumigation or misting) is not recommended for COVID-19 as the disinfectants may not be effective in removing organic material and may miss surfaces shielded by objects, folded fabrics or surfaces with intricate designs. If disinfectants are to be applied, this should be done with a cloth or wipe that has been soaked in disinfectant.

Spraying or fumigation of outdoor spaces, such as streets or marketplaces, is also not recommended to kill the COVID-19 virus or other pathogens because disinfectant is inactivated by dirt and debris and it is not feasible to manually clean and remove all organic matter from such spaces. Moreover, spraying porous surfaces, such as sidewalks and unpaved walkways, would be even less effective. Even in the absence of organic matter, chemical spraying is unlikely to adequately cover all surfaces for the duration of the required contact time needed to inactivate pathogens. Furthermore, streets and sidewalks are not considered to be reservoirs of infection for COVID-19. In addition, spraying disinfectants, even outdoors, can be harmful for human health.

The committee referred to the document of the World Health Organisation on 'Cleaning and disinfection of environmental surfaces in the context of COVID-19'.

**28.** It is further relevant to notice that in Paragraph 13 of the Affidavit, dated 1.9.2020, following statement has also been made:

"*13*. It is most respectfully submitted that as public health and Hospitals are State subject, it is for the States/Union Territories to implement the Guidelines issued by the Ministry of Health and Family Welfare and the role of Government of India is limited to providing necessary guidance and financial support.

... ... ..."

**29.** From the pleadings brought on record on behalf of Respondent No.1, it is clear that although by the advisory by Respondent No.1, spraying of disinfectant on human body is not recommended but Respondent No.1 has not taken any further steps in the above context taking any measure either to prevent or regulate the spraying of disinfectant on the human body.

**30.** We have noted above the powers and functions of National Executive Committee under Section 10 of the Act, 2005, which specifically empowers the National Executive Committee to give directions regarding measures to be taken by the concerned ministry and Departments of the Government, State Governments and State Authorities in response to the threatening situation or disaster.

**31.** Section 36 of the Act, 2005, expressly enumerates the responsibilities of Ministries and Departments of the Government of India. Section 36 which is relevant for the case is as follows:

"*36. Responsibilities of Ministries or Departments of Government of India.*— It shall be the responsibility of every Ministry or Department of the Government of India to—

*(a)* take measures necessary for prevention of disasters, mitigation, preparedness and capacity building in accordance with the guidelines laid down by the National Authority;

*(b)* integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the Guidelines laid down by the National Authority;

*(c)* respond effectively and promptly to any threatening disaster situation or disaster in accordance with the Guidelines of the National Authority or the directions of the National Executive Committee in this behalf;

*(d)* review the enactments administered by it, its policies, rules and regulations, with a view to incorporate therein the provisions necessary for prevention of disasters, mitigation or preparedness;

*(e)* allocate funds for measures for prevention of disaster, mitigation, capacity-building and preparedness;

*(f)* provide assistance to the National Authority and State Governments for—

*(i)* drawing up mitigation, preparedness and response plans, capacity-building, data collection and identification and training of personnel in relation to disaster Management;

*(ii)* carrying out rescue and relief operations in the affected area;

*(iii)* assessing the damage from any disaster;

*(iv)* carrying out rehabilitation and reconstruction;

*(g)* make available its resources to the National Executive Committee or a State Executive Committee for the purposes of responding promptly and effectively to any threatening disaster situation or disaster, including measures for—

*(i)* providing emergency communication in a vulnerable or affected area;

*(ii)* transporting personnel and relief goods to and from the affected area;

*(iii)* providing evacuation, rescue, temporary shelter or other immediate relief;

*(iv)* setting up temporary bridges, jetties and landing places;

*(v)* providing, drinking water, essential provisions, health care, and services in an affected area;

*(h)* take such other actions as it may consider necessary for disaster Management. "

**32.** When Respondent No.1 has issued advisory that use of disinfectant on human body is not recommended and it has been brought into its notice that despite the said advisory, large number of Organizations, public authorities are using disinfectants on human body, it was necessary for the Respondent No.1 to issue necessary directions either to prevent such use or regulate such use as per requirement to protect the health of the people. The provisions of Disaster Management Act, Section 10, 36 and other provisions are not only provisions of empowerment but also cast a duty on different authorities to act in the best interest of the people to sub-serve the objects of the Act.

**33.** We have extracted Paragraph 13 of the Counter Affidavit where it has been stated by the Respondent No.1 that public health and Hospitals, it is for the States/UTs to implement Guidelines by the Ministry of Health and Family Welfare and role of the Central Government is limited to provide necessary Guidelines and financial support.

**34.** No exception can be taken to the above pleading but the provisions of the Act, 2005, confer certain more responsibilities and duties on the Respondent No.1 apart from issuance of Guidelines and providing financial support. The Act, 2005, is special legislation containing self-contained provisions to deal with a disaster. The Pandemic being a disaster within the meaning of Act, 2005, has to be dealt with sternly and effectively.

**35.** We have no doubt that the Union and the States are taking all measures to contain the pandemic and all mitigating steps but the facts which have been brought on record in this Writ Petition indicate that in the present case, something more was required to be done by Respondent No.1 apart from issuing advisory that use of disinfectant on human body is not recommended. When Public Authorities/Organizations were using disinfectants both chemical/organic on the human body and there are various studies to the effect that it may be harmful to the health and the body. Some more actions were required to remove the cloud of uncertainty and to regulate the use even if it was to either prevent such use or regulate the use so that health of citizens is amply protected.

**36.** When a Statute confer power on authority and that power is to be exercised for the benefit of the people in general, the power is coupled with the duty. This Court in ***Commissioner of Police v. Gordhandas Bhanji,*** AIR 1952 SC 16, speaking through Vivian Bose, J., had laid down the off-quoted preposition in Paragraph 28:

> "*28.* The discretion vested in the Commissioner of Police under ₹250 has been conferred upon him for public reasons involving the convenience, safety, morality and welfare of the public at large. An enabling power of this kind conferred for public reasons and for the public benefit is, in our opinion, coupled with a duty to exercise it when the circumstances so demand. It is a duty, which cannot be shirked or shelved nor it be evaded, performance of it can be compelled under Section 45."

**37.** This Court again in ***L. Hirday Narain v. Income Tax Officer, Bareilly,*** 1970 (2) SCC 355, reiterated the same principle in following words:

> "*13.* ....if a statute invests a Public Officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are *prima facie* enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right-public or private- of a citizen."

**38.** Justice V.R. Krishna Iyer had elaborately dealt the above principle in ***Municipal Council, Ratlam v. Shri Vardichan and others,*** 1980 (4) SCC 162. The above case was a case where ***Municipal Council Ratlam*** was entrusted with certain duties to the public, which was sought to be enforced by the residents through Section 133, Cr.P.C. where Magistrate issued certain directions to the Municipal Corporation, which came to be challenged in this Court. Justice Krishna Iyer quoting Benjamin Bisraiely, in Paragraph 9 of the Judgment stated:

> "*9.* ...All power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist." Discretion becomes a duty when the beneficiary brings home the circumstances for its benign exercise."

**39.** With regard to judicial process, important observations were made by this Court in the above case that affirmative action taken in the judicial process is to make remedy effective failing which the right becomes sterile. In Paragraph 16 of the Judgment, following observations have been made:

> "*16.* ....The nature of the judicial process is not purely adjudicatory nor is it functionally that of an umpire only. Affirmative action to make the remedy effective is of the essence of the right which otherwise becomes sterile..."

**40.** Justice Krishna Iyer also laid down that improvement of public health is paramount principle of governance. In Paragraph 24, following has been observed:

> "*24.* ...The State will realise that Article 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as amongst its primary duties'..."

**41.** An additional Affidavit has been filed by the Respondent No.1 where details regarding use of Ultraviolet UV rays disinfectant/sterilize edible food items like fruits and vegetables has been quoted. In additional Affidavit, rules have been relied namely 'Atomic Energy (Radiation Processing of Food and Allied Product) Rules,2012', which rules require that no person shall operate the facility without obtaining a License for radiation processing of food and allied products under the Rules. Facility has been defined as radiation processing facility for food and allied product. There are hosts of regulatory measures of radiation for use of UV rays with regard to food and other articles. We are of the view that for spraying disinfectant on human body, fumigation or use of UV rays against the human body, there has to be regulatory regime when Respondent No.1 itself is of the view that such use is not recommended. The Respondent No.1 has wide powers and responsibilities under Act, 2005, which could have been utilized to remedy the situation. In event, use of disinfectant on human body is to cause adverse effect on the health of the people, there has to be immediate remedial action and Respondent No.1 cannot stop only by saying that such use is not recommended.

**42.** In view of the foregoing discussion, we are of the view that ends of justice be served in disposing the Writ Petition by issuing the following directions:

(i) The Respondent No.1 may consider and issue necessary directions in exercise of powers vested in it under the Disaster Management Act, 2005, regarding ban/Regulation on the usage of disinfection tunnels involving spraying or fumigation of chemical/organic disinfectants for the human beings.

or

(ii) There shall be similar consideration and directions by the Respondents as indicated above with regard to exposure of human being to artificial ultraviolet rays.

(iii) Looking to the health concern of the people in general, the aforesaid exercise be completed by Respondent No.1 within a period of one month.

**2021 (1) CWC 94**

**IN THE SUPREME COURT OF INDIA**

**L. Nageswara Rao & S. Ravindra Bhat, JJ.**

C.A. No.3345 of 2020 with C.A. Nos.3346-3348 of 2020, C.A. No.3349/2020, C.A. No.3350 of 2020 & C.A. Nos.3351-3352 of 2020

9.10.2020

Nilay Gupta ***.....Appellant***

Vs.

Chairman, NEET PG Medical and Dental Admission/Counselling Board 2020 and Principal Govt. Dental College and others ***.....Respondents***

**Education — Medical Education — Admission — PG Medical Courses — NRI Quota — Deletion of — Whether valid — Admissions for PG Medical Course — Prescribed 15% of quota for NRI students withdrawn by Private Colleges at eleventh hour — Single Judge in Writ Petition filed by Appellants/NRI candidates held that change of policy mid-stream was illegal and contrary to law — *Held*, decision to not provide NRI Quota within domain of Private Colleges — However, deletion of Quota after NRI candidates had applied for Counselling and committed themselves as NRI candidates, detrimental to them — Duty of concerned Authority to provide reasonable Notice to aspiring Candidates — In peculiar facts of case, Special Counselling session directed to be conducted for Candidates, who were given admission pursuant to Judgment of Single Judge — Seats to be offered to NRI Candidates only on basis of merit — No disturbance whatsoever to be caused to Students already accommodated after deletion of NRI Quota — Validity of deletion of NRI Quota and timeline within which Institutions decide to do away with Quota in ongoing Admission process, not prescribed — Directions issued considering facts and circumstances of matter, to do complete justice to all parties — Appeals disposed of.** ***(Paras 33, 34 & 35)***

**Education — Medical Education — Admission — Determination of Quota — Discretion of Private Authorities — Checks upon — Determination of Quota for particular category of Candidates, within internal policy making domain of Management of Private Medical Colleges — Discretion of Management to prescribe for Quotas — However, discretion not to be untrammelled so as to be unfair to Candidates — Discretion held to be tempered, modified and revised within reasonable time.** ***(Paras 28 & 30)***

**Constitution of India, Article 226 — Medical Admission — Direction to admission without existing right — Whether valid — Decision of Single Judge directing Board to give admission to NRI Students, after deletion of NRI Quota by Management — *Held*, when no right to get admission**

**established by NRI Students, grant of relief by Single Judge, unwarranted — Decision, *held*, opened Pandora's Box by creating rights in favour of Petitioners at cost of Third parties (Candidates, who had been given admission after deletion of NRI Quota) — Displacements of already admitted Candidates and further litigations few consequences of decision of Single Judge — Single Judge, *held*, ought to have directed Board to consider case of Candidates instead of giving broad relief having unwarranted consequences.** ***(Paras 29 & 32)***

**Education — Medical Education — Decision of Apex Court in *P.A. Inamdar case* — NRI Quota — Implications — *Held*, decision of Seven-Judge Bench in *P.A. Inamdar case* declared that Private Colleges as part of their autonomous decision making can set apart some percentage of seats for admission of Students of their choice — NRI Quota prescribed as 15% of overall intake — However, said prescription only potential and not compulsory — Four crucial elements *viz.* (i) discretion of Management, (ii) limit (15%), (iii) seats only for genuine and *bona fide* NRI Students, (iv) filing up of quota on merit basis, for determination of NRI Quota laid down in *Inamdar case* — Nothing in Judgment declaring that 15% was unqualified and unalterable part of Admission process in Post-Graduate Medical courses.** ***(Paras 24 & 25)***

**CASES REFERRED**



**V. Giri, Senior Counsel for Appellant.**

**Manish Singhvi, Additional Advocate General for Respondents; Siddharth Dave, Wasim Qadri & Nakul Dewan, Senior Counsel for Respondents; Anand Verma, D.K. Garg & Shiv Mangal Sharma, Advocates for Respondents.**

**C.As. DISPOSED OF**

## JUDGMENT

**S. Ravindra Bhat, J.**

**1.** These Appeals were heard with the consent of learned Counsel for the parties.

**2.** The Appellants are aggrieved by a decision of a Division Bench of the Rajasthan High Court, which upset the findings of a learned Single Judge of that High Court, who found that the change of seat matrix for admission to

post graduate (PG) Medical and Dental seats in Colleges in the State of Rajasthan, for the Academic year 2020-2021, by eliminating the Non-Resident Indian (NRI) quota was unsustainable in law. The Appellants were admitted pursuant to the direction issued by the learned Single Judge, who had ruled that the deletion of such quota was contrary to law. Two sets of Appeals and intervention applications arise for consideration: one, Appeals arising from Petitions filed by Dr. Nilay Gupta, and Dr. Surmil Sharma, the original Writ Petitioners (who had succeeded before the Single Judge and were consequently given admission as NRI Candidates) and two, Appeals filed by Dr. Arushi Mittal, Dr. Priyanka Sharma, Dr. Anjali Agarwal, Dr. Aditya Punia, Dr. Varun Bhargava and Dr. Deepak Ramnani, who are aggrieved by the impugned Judgment inasmuch as the admissions they were granted pursuant the Single Judge's directions, despite not being parties to the original Writ Petition, have now been overturned. An application to intervene has been preferred by Dr. Tirth Jitendra Kumar Modi, who was granted admission to a PG course in the Respondent-Private College on 27.8.2020, after the impugned Judgment was delivered; he has paid the fees and attended classes so far.

**3.** The factual matrix is that the process of admission to PG Medical and Dental courses for Academic year (AY) 2020-2021 began sometime in early 2020. The procedure for selection for admissions began with the NEET Post Graduate Test/Common Eligibility Test, which was held in January, 2020. The schedule/calendar for filling of the PG seats was made available online and also published in leading Newspapers. Contemporaneously, a meeting of the PG Counselling board for admissions to MD/MDS course was held by the Chairman, NEET PG Counselling board - 2020 (hereafter "board"). This meeting held on 17.3.2020, was attended by representatives of Colleges, including Private Colleges as well as officials of the State and Union Governments. The minutes, *inter alia*, recorded as follows:

> "The following is a brief record of discussions held and decisions taken during the meeting.
>
> *1.* The notification for NEET PG Medical Dental advertisement was discussed finalized and approved.
>
> *2.* The instruction booklet was discussed and finalized and on direction it was decided to send it to Hon'ble Advocate General for vetting.
>
> *3.* The seat matrix and fees structure was obtained from all Medical Dental Colleges.
>
> *4.* It was decided to send the instruction booklet along with seat matrix and the fee structure information obtained from all the Medical Dental College to the Government.
>
> *5*. Seats remaining vacant, if any due to non availability of NRI Candidates in second round of counselling will be filled up as per merit and choice of the

Candidates applying under 15% quota of the College and fees as prescribed by the fee committee of the College.

Meeting ended with the vote of thanks."

**4.** The NEET PG 2020 examination had been held sometime in January, and the results were declared on 31.1.2020. The Appellants were registered under the NRI category with the board for allotment of seats in the discipline of MD (Radio-diagnosis) in Rajasthan, sometime in the third week of March 2020.

**5.** The Instruction Booklet for State Medical & Dental PG Seats Allotments, 2020, which intimated the terms, which applied to Candidates stated *inter alia* that:

*"(a)* NEET qualified Candidates possessing a Degree of MBBS/BDS from Colleges situated in the State of Rajasthan, and all Medical Officers/Medical teachers serving under the Government of Rajasthan are eligible to participate for admissions in 50% of the total seats in private Medical Colleges;

*(b)* For the remaining 50% of the total seats in Private Colleges, all NEET qualified Candidates possessing an MBBS/BDS Degree from anywhere are eligible to participate;

*(c)* There are 3 types of seats as per the Medical Council of India (MCI) - Government seats, Management seats, and NRI seats. The responsibility for the type of seats in the seat matrix lie with the concerned institution."

**6.** The Instruction Booklet further stipulated, *inter alia*, that the seat matrix would be announced in "due course". The Medical and Dental Colleges, which offered admissions, were to delineate the categories of seats as well as the respective fee to be charged in accordance with prevailing laws, regulations etc. Clause 19 of the Instruction Booklet required separate documents to be furnished for NRI Candidates in Proforma II and in the form of undertakings.

**7.** The eligibility for filling NRI seats was spelt out in the following terms:

"Eligibility for NRI Seats As per Order No.F5 (968) DME/LC/2018/1997, dated 29.4.2019 of Government of Rajasthan, following will be the Guidelines applicable for the admission in under Graduate/Post Graduate, Medical/Dental courses under NRI quota in all Private and Government institutions of the State:

*1*. At least one of the parents of students should be an NRI and shall ordinarily be residing abroad as an NRI; or

*2.* The person who sponsors the student for admission should be a first Degree relative of the student (*i.e.* real Brother/real Sister) and should be ordinarily residing abroad as an NRI; or

*3.* If student is taken as a ward by some other nearest relative [as mentioned below (i) to (v) such students also may be considered for admission provided the guardian has *bona fidely* treated the student as a ward. For this following

nearest relative (NRI) of Candidate, who should be ordinarily residing abroad as an NRI can only be considered:

*(i)* Real Brother and sister of father *i.e.* real uncle and real aunt.

*(ii)* Real brother and sister of mother *i.e.* real maternal uncle and maternal aunt.

*(iii)* Father and mother of father *i.e.* grandfather and grandmother.

*(iv)* Father and mother of mother *i.e.* maternal grandfather and maternal grandmother.

*(v)* First Degree-paternal and maternal cousins."

*4.* All NRI Candidates shall submit a proof being sponsored as NRI/OCI/ PIO in the form of Certificate issued by the Indian embassy/Ministry of external affairs, Government of India for this purpose. In the absence of that Certificate a duly notarized undertaking executed by the sponsor and notarized by the Notary Public of the foreign country where the sponsor resides being submitted by the sponsor, it be treated as sufficient as to the factum of the residence of the sponsor.

*5.* An Affidavit from the sponsor that he/she looks after such student and will sponsor the entire course fee of the Candidate.

(Refer requirement of additional documents for Candidates applying for NRI seats under 'List of documents to be deposited at the time of reporting', Page 11 & 12 of the instruction booklet)

*Priority:*

For admission under NRI Quota in Medical/Dental Courses in the Colleges in the State of Rajasthan, priority shall be given to the NRI with ancestral background of the State of Rajasthan by own/parents/Grandparents resided in State of Rajasthan at least for a period of 5 years at any time. The proof of residence will also be applicable for the consideration priority for NRI Quota, for which document (electricity/water bill/Documents of immovable property/ Indian Passport/Ration Card/Voter ID/Aadhaar Card etc.) to the effect for this criteria is required to be submitted by ward of NRI (including PIO/OCI).

Firstly, allotments of NRI Quota seats shall be allotted to candidate having ancestral background of the State of Rajasthan by own/parents/Grandparents resided in State of Rajasthan at least for a period of 5 years. Later on remaining Vacant NRI seats will be allotted/filled by the Candidates of NRI belonging to other states.

For PIO/OCI: Overseas Citizens of India (OCI), Persons of Indian Origin (PIO) are allowed for admission under NRI Quota."

**8.** On 11.4.2020 apparently, one of the Respondents, *i.e.* Mahatma Gandhi Medical College, Jaipur (hereafter "MGMC"), published its admission notification which stated *inter alia* that the total MD seats offered were 144; that NRI/management quota seats would be 22, (*i.e.* 15% of the total seats) and that other than NRI/Management quota seats, the other 50%

would be state quota seats (of the total, *i.e.* 72) and 50 seats were All India quota seats. The details of MD/MS seats available in the MGMC were also shown in a tabular form. For MD (Radio diagnosis), 1 seat was earmarked in the All-India 35% quota; 3 seats were set apart for the state quota; and 2 seats were set apart for NRI/Management quota seats. The Appellants had by then, furnished the requisite documents to claim admission in the NRI quota sometime in early March itself.

**9.** The original notice spelling out the schedule for admissions, including verification of documents etc. had fixed 30.3.2020 as the date for verification of status of NRI Applicants. This process was postponed on 10.4.2020, to 14.4.2020. Before that date, however, on 13.4.2020, the State NEET PG Counselling board published a seat matrix in which the NRI quota was shown as NIL. It transpired that the MGMC had, in the meanwhile furnished a seat matrix to the State NEET Board showing that there would be no separate seats earmarked for the NRI quota, and that such NRI Candidates would be considered for admission in the Management quota. The final seat matrix for PG Medical allotments for AY 2020-2021- furnished by the MGMC - was annexed to the reply filed by the board before the Single Judge. It clearly showed that 22 seats were set apart as 'Management' seats, and none were shown as part of the Management seats under the NRI quota. With respect to Radio Diagnosis, the position was that out of a total of 6 seats, 1 was kept apart as 'Management quota'. On 14.4.2020, a Notification was issued by the board stating that the seat matrix for the current year would not contain the NRI Quota. The said Notification/ intimation read as follows:

> "Office of the Chairman, NEET PG Medical & Dental Amission/Counseling Board-2020 and Principal, Govt. Dental College, Subhash Nagar, Behind T. B. Hospital, Jaipur, Rajasthan Phone: 0141-2280090 NEET PG Medical & Dental Admission/Counseling 2020 (Rajasthan State) important information for NRI Candidates 14.4.2020 Seat Matrix (13.4.2020) available at the website (compiled on the basis of seats information provided by respective Colleges) does not have any NRI seat this year. The Candidates, who have applied for allotment on NRI seats will accordingly be considered based on their remaining eligibility criteria.
>
> Chairman NEET PD Medical & Dental Admission Counseling Board-2020 and Principal, Govt. Dental College, Jaipur."

**10.** Feeling aggrieved, the two Appellants, *i.e.* Dr. Nilay Gupta and Dr. (Ms) Surmi Sharma (both of who had concededly applied as NEET qualified Candidates for the admission in the NRI seats) approached the Rajasthan High Court, contending that the decision to do away with the NRI quota was arbitrary. They highlighted their having received a Notice on 10.4.2020 to be in readiness for online counselling towards admission to the NRI seats. They relied upon the minutes of the Meeting, dated 17.3.2020 and submitted that the NEET Counselling Board was to first fill the NRI seats in NRI quota, and if there were no left out seats, to fill them as part of the larger

Management quota. It was also submitted that on 13.4.2020, the NEET PG Counselling Bord whimsically and without any rationale, in its final seat matrix deleted the NRI quota altogether following it up with a Notification of 14.4.2020, stating that all NRI seats would now be considered as part of the Management quota. The board and the MGMC resisted the Writ Petition, especially the Appellants' reliefs claimed (that the Respondents be directed to give them admission to seats as NRI candidates). It was stressed by the Respondents that no student has a right to claim admission and that private Medical Colleges cannot be compelled to earmark a separate quota for NRI Candidates if they chose not to do so out of volition. It was further stated that NRI Candidates could and were considered for admission to seats in the Management quota.

**11.** By the Judgment and Order, dated 10.7.2020, the learned Single Judge of the High Court, relying upon the seven Judges' ruling of this Court in ***P.A. Inamdar and others v. State of Maharashtra,*** 2005 (4) CTC 81 (SC) : 2005 (6) SCC 537, as well as other rulings ***Modern Dental College and Research Centre v. State of M.P and others,*** 2012 (7) SC 433 and ***Manipal University v. Union of India,*** 2017 (15) SCC 664, held that after having appeared in the NEET PG examination and qualifying it, and after having approached the Colleges (including MGMC) for the NRI seats, the Appellants could not be deprived of their choice of admission in NRI seats by the Respondents through the process of deletion of the NRI quota seats altogether. The learned Single Judge held that there can be no distinction between the NRI seats and Management seats and it was only after exhausting the option of filling eligible NRI Candidates in that quota that the remaining seats in the 15% could be treated as Management quota seats. Relying upon the minutes of the meeting of 17.3.2020, which indicated the sequence of admission (in which NRI students were to be first counselled for the purpose of their document verification, after which Management seats could be filled), it was held that the change of policy mid-stream as it were, by the board and the Colleges was contrary to law. The learned Single Judge also directed that the Appellants, *i.e.* the Writ Petitioners before the High Court should be given admission forthwith.

**12.** In compliance with the directions of the Single Judge, the two Appellants were given admission to courses of their choice. Since the Judgment had far reaching repercussions, Third party Appeals were filed by students, who had been offered MD/MDS seats in the Management quota, and, who faced threat to their admission; likewise, the board too appealed. The Division Bench allowed these Appeals by the impugned Judgment, by accepting the plea of the Colleges, the board and the Third party Appellants. The Division Bench reasoned that no student can claim a right to a quota (NRI quota in this case). It also held that the Judgments of this Court in ***P.A. Inamdar,*** supra and the other decisions nowhere indicate that an obligatory NRI quota should be earmarked by all Private Colleges, which have a choice

of either doing it, or filling the seats, which otherwise fall within the Management quota, as part of the Management quota seats. In other words, according to the Division Bench, the private institution has the choice of earmarking an NRI quota or not doing so, and proceeding to fill the Management quota by considering NRI students as part of the general Management seats quota. The impugned Judgment also held that the Respondents could not be blamed for not providing an NRI quota, or for changing the seat matrix; it further noted that the object of carving out a quota was to enable the private institution to charge a higher fee; in the present case, it held that the fee prescribed for NRI Candidates and Management quota Candidates was the same; therefore, the private Colleges could well exercise their discretion not to earmark an NRI quota.

**13.** Mr. V. Giri, learned Senior Counsel for the Appellants argued that the action of the board, in countenancing the MGMC's decision to abolish the NRI quota, after calling the students to opt for such quota, much after the declaration of NEET test results on 31.1.2010, is arbitrary. It was urged that the entire sequence in this case, shows that the board, the Universities and the concerned Colleges were clear that there would be an NRI quota and that if seats from that quota, after the counselling, remained unfilled, only such residual seats would be filled up by Management quota Candidates. Much emphasis was placed upon the minutes of the Meeting, dated 17.3.2020, under the aegis of the board, to which all colleges were parties. This Court's attention was also drawn to the original seat matrix, published in the Notification, dated 11.4.2020, of MGMC, which clearly represented that out of 144 seats in the MGMC, a clear 15% NRI quota was shown; and that the table even detailed that two NRI seats in the Radio Diagnosis discipline for MD seats. Being so, the board and the MGMC could not have gone back on their decisions, at a late stage, when the students (who had opted for NRI seats in Rajasthan) were left with little or no choice.

**14.** Mr. Siddharth Dave, learned Senior Counsel appearing for another Candidate, who was prejudiced on account of the Division Bench's directions, supported Mr. Giri's submissions. He highlighted that right from the ***P.A. Inamdar,*** supra this Court has maintained that an NRI quota is available for overseas/NRI Candidates, who wish to undertake studies in Private Colleges in India, especially in Medical courses. There is a twin objective behind creation of this quota: first, to augment the coffers of the Private College, and enable "cross-subsidization" of seats, for the benefit of meritorious but poor students, and secondly, to enable students, who have been schooled abroad to culturally immerse themselves and find their roots in Indian society. Such being the case, the Managements of Private Colleges could not have unilaterally and at the last moment, withdrawn this quota, to the detriment of the students, who had consciously opted for it, and were left with little, or worse, no options. It was submitted that even the seat matrix shown last, *i.e.* on 13.4.2020, should not have included Management quota

Candidates as eligible for the NRI quota; this aspect was noticed, and commented upon by the Single Judge, based on a correct reading of the scheme of admissions.

**15.** Mr. Wasim Qadri, learned Senior Counsel, Mr. Anand Verma and Mr. DK Garg, learned Counsel, made submissions on behalf of Candidates. It was submitted that as a result of the Single Judge's directions, another round of counseling had taken place and students were accommodated in the NRI quota; they had to give up the seats which they had previously opted for, in other Medical Colleges, to accept NRI seats, because that conformed to their choice of discipline. Hence, submitted these Counsel, the Division Bench's ruling has resulted in adverse consequences to them.

**16.** Mr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan, argued that the NRI quota could not apply in the facts and circumstances of the case as the institutions (Private Colleges) had not claimed any seats under the NRI quota, for which the seat matrices were furnished by them on 11.4.2020. The allotment of seats was thus required to be made strictly in accordance with the merit of the Candidates, who had applied in the NRI quota, as well as for the Management seats. It was urged that the learned Single Judge erred in usurping the powers of the Counselling Board and directing it to allot particular subjects (Radio-diagnosis to Dr. Nilay Gupta and Obstetrics & Gynaecology to Dr. Ms. Surmil Sharma).

**17.** Mr. Nakul Dewan, learned Senior Counsel appearing for the Intervenor, Dr. Modi, highlighted that due to disruption which occurred on account of the Covid-19 pandemic, the process for admission of PG courses was delayed; on 10.4.2020, the revised schedule was issued by the board. When the Private Colleges had to furnish their seat matrices to the board, they took a decision not to avail of the NRI quota. Thus, the board published the seat matrix, which clearly indicated that 22 seats were earmarked for Candidates, who had applied in the Management quota category. Agreeing with the submissions on behalf of the state, that an NRI quota was not obligatory, Mr. Dewan contended that the genesis of that quota can be traced to the observations in ***T.M.A. Pai Foundation v. State of Karnataka,*** 2002 (5) CTC 201 (SC) : 2002 (8) SCC 481, that unaided Private Colleges are "entitled to autonomy in their administration" even when they are bound to make merit-based admissions. The Court had stated that a "certain percentage" (of the total intake) can be set apart to be filled by College Managements, based on merit determined by a common test, to be conducted by the state or its agencies, or the College. These observations were elaborated, and the Court enabled the creation of an NRI quota in such Colleges, in ***P.A. Inamdar,*** supra. He also relied on the subsequent in ***Modern Dental College,*** supra.

**18.** Mr. Shiv Mangal Sharma, appearing for the Fourth Respondent, *i.e.* Dr. Anjaneya Singh Kathait, in the Appeal filed by Dr. Deepak Ramnani,

supported the submissions of Shri Dewan, and highlighted that all Candidates, who were granted admissions in the NRI quota, after the Single Judge's directions, were considerably low in merit. They were given undeserving benefit, entirely because of erroneous directions by the Single Judge, who could have at best required the board to consider NRI Candidates, on the basis of their merit, in the NEET process. It was submitted that as a result, there was no question of interfering with the impugned Judgment, which was justified both on merits as well as in law. This position was also adopted on behalf of the Board, which is separately arrayed as Respondent.

*Analysis and Conclusions:*

**19.** The documents on the record show that a total of 717 seats were initially notified for admission in postgraduate Medical courses in Government Colleges in the Rajasthan State; 427 of were notified as intake in five Private Colleges in the state. The board, in its Notification, dated 10.4.2020 had stated that the rescheduling of Central NEET Counselling for the State of Rajasthan had been re-notified; the fresh schedule for the state indicated that counselling fee was to be deposited between 11.4.2020 and 13.4.2020. Concurrently the online registration for first counselling and information for filing of applications by the Candidates was between 11.4.2020 & 13.4.2020, up to 11.55 p.m. The third and fourth steps comprised of verification of Disability Certificate of all persons with disabilities as well as verification of status of NRI Applicants. Management quota seats were notified by MGMC on 13.4.2020; these were 22 (out of a total of 144 seats available in that College.) During the intervening period, the Private Colleges lodged their seat matrices; consciously, they omitted the NRI quota. After publishing the matrix on 13.4.2020 and after the Board's Notification of 10.4.2020 (setting out sequentially, in terms of date and time, the steps to be taken for registration counselling and admission), the final position *vis-à-vis* unavailability of NRI seats was notified on 14.4.2020.

**20.** The provisions of the Rajasthan University of Health Sciences Act, 2005[1] throws open admission to all courses, offered by Medical Colleges affiliated to the University, to be open to all, subject to such reservations as may be made in favour of Scheduled Caste, Scheduled tribe, Other backward classes, girl students "and other categories in accordance with any law or orders of the State Government for the time being in force." By virtue of insertion of Section 10-D in the Medical Council of India Act, 1956 and regulations framed thereafter, participation in a common National Examination, ("NEET") by institutions offering Medical courses - including post graduation courses, as well as its attempt by Candidates wanting admission, became compulsory. The governing enactment, which set up the

1. Section 7

Respondent MGMC, is the Mahatma Gandhi University of Medical Sciences and Technology, Jaipur Act, 2011. It provides[1] for the procedure to be adopted for admissions, as well as for reservations. Per Proviso to Section 32(2), admission in professional courses is to be only through entrance test; By Section 32(3), reservations for "Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes, women and handicapped persons shall be provided as per the Policy of the State Government." Regulations framed pursuant to the amendment effected in 2016, to the Medical Council of India Act, in respect of admission to Post-Graduate Medical courses, made it obligatory for both institutions and students alike to give effect to the Common Eligibility Test (NEET).[2]

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1. Section 32, which reads as follows:

"*32. Admissions.— (1)* Admission in she University shall be made strictly on the basis of merit.

*(2)* Merit for admission in the University may be determined either on the basis of marks or grade obtained in the qualifying examination and achievements in co-curricular and extra-curricular activities or on the basis of marks or grade obtained in the entrance test conducted at the State level either by an association of the universities conducting similar courses of by any agency of the State:

Provided that admission in professional and technical courses shall be made only through entrance test.

*(3)* Reservation in admission to the University for Scheduled castes, scheduled tribes, backward classes, special backward classes, women and handicapped persons shall be provided as per the policy of the State Government."

2. Regulation 9, to the extent it is relevant, introduced in 2018, reads as follows:

"*9. Procedure for selection of Candidate for Postgraduate courses shall be as follows.— (1)* There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely 'National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each Academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

*(2)* The "designated authority" to conduct the 'National Eligibility-*cum*-Entrance Test' shall be the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

*(3)* In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-*cum*-Entrance Test for Postgraduate courses' held for the said Academic year. However, in respect of Candidates belonging to Scheduled Castes, Scheduled Tribes, and other Backward Classes, the minimum marks shall be at 40th percentile. In respect of Candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-*cum*-Entrance Test for Postgraduate courses. Provided when sufficient number of Candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-*cum*-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only.

*(4)* The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible Candidates shall be prepared on the basis of the marks obtained in National Eligibility-*cum*-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only."

**21.** The rival contentions of the parties may be summarized as follows. The original Writ Petitioners, (all of whom are before this Court) argue on the one hand that the admission process really began sometime in January 2020 when the NEET written test took place. The meeting convened by the board and attended by all parties concerned including Private Colleges, who participated in admissions to postgraduate courses in Private Colleges, clearly intended as on 17.03.2020, to fill up the 15% quota firstly amongst eligible NRI Candidates and thereafter fill the leftover seats as part of the Management quota. This understanding resulted in two consequences for NRI Candidates; the first was that they filed their applications and produced all relevant documents to support the claim that they were eligible for that quota; secondly with the publication of the board's Notification of 10.4.2020, some of them (if not all of them) had applied as NRI Candidates within the time indicated in the rescheduled timeline. Thus, goes the argument, having held out to all NRI Candidates about the availability of seats for that quota as well as the sequence of filling up those seats, at the penultimate hour, the board could not have decided unilaterally or even permitted Colleges unilaterally to withdraw the NRI quota seats altogether. In support of their arguments two lines of authorities are cited: the first are those Judgments starting with ***P.A. Inamdar,*** supra which hold that while private educational institutions have the right to admit students of their choice, that right can be regulated by law and that a quota for NRI Candidates to the extent of 15% is permissible. The second is the line of reasoning which says, typically in the context of selection process for recruitment to public posts ***K. Manjushree v. State of Andhra Pradesh & another,*** 2008 (3) SCC 512, that once the process begins, there cannot be a change in the "rules of the game", *i.e.* substantial change in the matrix of consideration, which adversely or irreversibly affects the prospects of Candidates, who reposed their faith and expectations on the integrity of the procedure, and its continuance till its completion.

**22.** The arguments of the state, the Colleges and candidates (who were admitted to the seats after the impugned Judgment), on the other hand, is that ***P.A. Inamdar,*** supra did not carve out the NRI quota in stone. In other words, private educational institutions including Medical Colleges, are not obliged to set apart such a quota, and that the observations of this Court in the said decision only enable the Colleges or Universities to avail of that quota to the extent of 15%. In a given year, the Management of the Private College may choose not to have any quota for NRI Candidates; in the next year, it may choose to have it but not to the extent of 15% and prefer to limit it to 5%; likewise, for the third year, depending on demand, the Private College or institution may provide for 15% NRI quota. It is hence, argued that the decision of all Private Colleges in Rajasthan not to avail of the NRI quota reservation or set apart, and rather fill up the entire 15% from amongst those, who had opted for Management seats, was justified. The counsel appearing for the private colleges urged that the decision not to offer an NRI quota in

Medical Colleges in the State of Rajasthan was voluntarily and consciously taken, given the extraordinary and unusual situation created by the pandemic. The explanation given by the Colleges was that in their assessment, NRI quota seats might not have been filled up to the normal expected levels and in the circumstances, it was more appropriate to merge the seats earmarked for NRI Candidates with the Management seats. The accommodation of NRI quota Candidates, who had opted to be treated as such, in the admission process was transparent and uniform in that all of them were considered on merits for the Management quota seats. Thus, there was no real prejudice suffered by such NRI Candidates. It was underlined by the Candidates admitted pursuant to the impugned Judgment, that were the clock to be set back and the directions of the Single Judge affirmed, they would be irreparably prejudiced. It was lastly argued that the Single Judge could not have directed the admission of the Petitioners, who had approached the High Court, regardless of their merit, even within the NRI quota.

**23.** It is undoubtedly a matter of record that on 17.3.2020, when the board convened the meeting attended by representatives of all participating colleges (including private Medical Colleges offering seats in the postgraduate Medical courses in Rajasthan), the unanimous thinking was to offer NRI/Management seats to the extent of 15% of the total admission intake. This 15% turned out to be about 22 seats in MGMC. In the same meeting, it was unanimously decided that the task of filling NRI seats would be taken up before filling the Management seats; this meant as a corollary, that NRI counselling would be taken up first and after allocation of seats to suitable NRI Candidates, the leftover seats would be filled by Management quota Candidates. This was followed by the submission of forms by NRI Candidates for the purpose of verification of their documents. When the provisional seat matrix was published on 10.4.2020, it did not indicate that those opting for admission exclusively as NRI Candidates would be considered as belonging to any other category. It was only on 11.4.2020 that the Private Colleges appear to have sent their final matrix to the board. This matrix, unbeknown to the NRI Candidates, proposed deletion of the NRI quota. In the circumstances, when the final matrix was published for each College detailing the quotas for individual disciplines, the original earmarking for NRI Candidates was absent.

**24.** A plain reading of the Judgment of this Court in ***Inamdar,*** supra reveals that a provision for 15% NRI quota was a not compulsory; it was only potential. This is clearly evident from the following passage in that Judgment, which all counsel from either side of the bar, insisted on reading:

> "Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases

> coming to this Court, neither the students, who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. *A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the Management subject to two conditions.* First, such seats should be utilized *bona fide* by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to Islamic Academy's direction to regulate." (Emphasis supplied)

Clearly, this Court had the benefit of past experience with the concept of NRI quota: Witness its skepticism about filling of such seats (in the past) by undeserving and unmerited candidates, to the detriment of more meritorious students. Therefore, the Court indicated a limited quota with some essential controls in the manner of filling up of such NRI quota seats. These were:

> (a) The NRIs, who wish to bring their children to this country not only for their education but also to get them reunited with the Indian cultural ethos by virtue of being here and to enable the NRIs to expend money, (which they would be spending elsewhere on education of their children) to reach their mother land.
>
> (b) Having pointed out the reality behind the incorrect or "misnamed" NRI quota and found substance in the purpose behind allowing such quota, this Court favoured a limited reservation, not exceeding 15% of sanctioned seats, to be made available for the NRIs, however, depending on the discretion of the Management.
>
> (c) This Court, however, imposed two conditions for admission under the NRI quota, firstly, that such seats should be utilized bona fide by NRIs only and for their children or wards and secondly, that within this quota, merit should not be given a complete go by.

**25.** The four crucial elements in the NRI quota, per ***Inamdar,*** supra are: one, the discretion of the Management (whether to have the quota or not); two, the limit (15%); three, that seats should be available for genuine and *bona fide* NRI students, and lastly that the quota was to be filled based on merit.

**26.** The Board's Notification, dated 10.4.2020 with respect to the sequence or calendar of events, for the purpose of admissions to PG courses in Medical Colleges in Rajasthan, on which much emphasis was placed, reads as follows:

| S. No. | Event | Date (s) for Medical Courses | Date(s) for Dental Courses | Date(s) for 6 months Liberalised Course under PCPNDT Act |
|---|---|---|---|---|
| 1. | Deposition of the counseling Fee (on-line)<br>Those who have already deposited earlier (from 18.03.2020 to 26.03.2020) need not deposit again | 11.04.2020 to 13.04.2020 by 5.00 pm | 11.04.2020 to 13.04.2020 by 5.00 pm | 11.04.2020 to 13.04.2020 by 5.00 pm |
| 2. | On-line registration for first and second round of counselling and information form filling by the candidates<br>Those who have successfully completed / filled both Part 1 as well as Part 2 of the information form earlier need not fill again<br>Those who deposited the counseling fee earlier but could not complete Part 2 of the information form are required to complete the same now | 11.04.2020 to 13.04.2020 by 11.55 pm | 11.04.2020 to 13.04.2020 by 11.55 pm | 11.04.2020 to 13.04.2020 by 11.55 pm |
| 3. | Verification of Disability certificate of all persons with disabilities (PwD) candidates | 14.04.2020 | 14.04.2020 | -- |
| 4. | Verification of status of NRI applicants | 14.04.2020 | 14.04.2020 | -- |
| 5. | Verification, Allotment and Joining by Sr. Demonstrator candidates for In-Service Quota (sub quota) | 14.04.2020 | 14.04.2020 | -- |
| 6. | Publishing of merit list | 15.04.2020 | 15.04.2020 | -- |
| 7. | Deposition of registration amount as per forfeiture clause (on-line) | 16.04.2020 to 18.04.2020 by 4.00 pm | Not applicable | -- |
| 8. | On-line choice filling and locking by the candidates | 16.04.2020 to 18.04.2020 by 11.55 pm | 16.04.2020 to 18.04.2020 by 11.55 pm | -- |
| 9. | Processing of seat allotment (on-line) by Admission Board-2020 | 21.04.2020 to 22.04.2020 | 21.04.2020 to 22.04.2020 | Dates to be declared later |
| 10. | Declaration of the result & generation of on-line allotment letters | 22.04.2020 (midnight) | 22.04.2020 (midnight) | |
| 11. | Physical reporting OR on-line reporting and document verification at the allotted college along with printout of allotment letter, all original documents, deposition of prescribed admission fee, required bonds and other documents as listed in instruction booklet and as per the procedure mentioned in the allotment letter<br>Guidelines for reporting shall be available at the website separately. | 23.04.2020 to 29.04.2020 by 5:00 pm | 23.04.2020 to 29.04.2020 by 5:00 pm | |
| 12. | Second round of counselling | To be announced later | | |
| 13. | Commencement of academic session | To be announced later | | |

**All eligible candidates who wish to participate in the counseling process must register themselves through the above mentioned websites by completing Part 1 as well as Part 2. A candidate who fails to register by completing both Part 1 as well as Part 2 shall not be eligible to participate in the counseling.**

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**27.** Earlier, the break of seats published on 17.3.2020, stated that 15% of the total intake in PG Medical courses were to be filled by NRI/Management quota aspirants; the sequence to be adopted undoubtedly clarified that in the order of things, the NRI Candidates' applications would be considered first for counselling and admissions, and the 'left over' seats would then be filled from amongst merited Management quota Applicants, in addition to the 35% Management seat Candidates. The Colleges, however consciously decided not to go-ahead with the NRI quota - a decision, the basis of which is explained as the assessment by such Private Colleges offering MD courses, that there was a likelihood that many NRI seats would go unfilled.

**28.** Given that the ***T.M.A. Pai Foundation,*** supra was by a Larger Bench of 11 Judges, and ***P.A. Inamdar,*** supra was a Judgment delivered by Seven Judges, this Court is clear that precedentially, those and other previous Judgments of this Court, only declared that as a part of the Private Colleges'

autonomous decision making, they could set apart some percentage of seats for admission to students of their choice. The ***Inamdar,*** supra decision is important, inasmuch as it declared that the set apart (or quota, so to say) for NRIs should be about 15% of the overall intake. Other decisions of this Court in ***Modern Dental College & Research Centre*** (supra) and the recent in ***Christian Medical College Vellore Association v. Union of India,*** 2020 SCC Online SC 423, have underlined the paramountcy of the NEET requirement as a common standard regulating Medical courses' admissions in India, irrespective whether the courses are offered in publicly owned, state owned or privately owned or managed institutions. A combined effect of the provisions of the Medical Council of India Act and regulations with respect to admissions (which have been progressively amended in respect of eligibility for admission to courses, procedure for admission, etc.) and the decisions of this Court, is that Private Colleges and institutions which offer such professional and technical courses, have some elbow room: they can decide whether, and to what extent, they wish to offer NRI or Management quotas (the limits of which are again defined by either judicial precedents, enacted law or subordinate legislation). In these circumstances, it is held that the Respondent-Management (of MGMC) possessed the discretion to indicate whether, and to what extent, NRI reservations could be provided. As is evident, there is nothing in ***P.A. Inamdar,*** (supra) to say that a 15% NRI quota is an unqualified and unalterable part of the admission process in post graduate Medical courses. It was, and remains within the discretionary authority of the Management of private Medical Colleges, within their internal policy making domain.

**29.** The impugned Judgment, in this Court's opinion, is correct, in that it held that the Single Judge could not have directed admission of the Candidates before him. There is a body of case law ***Tirumala Tirupati Devasthanams v. K. Jotheeswara Pillai,*** 2007 (9) SCC 461***; Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh,*** 1977 (4) SCC 145; ***K.V. Rajalakshmiah Setty v. State of Mysore,*** AIR 1967 SC 993, which clarifies that sans a statutory duty, a positive direction to do something in a specific manner, cannot be given ("it must be shown that there is a Statute which imposes a legal duty and the aggrieved party has a legal right under the Statute to enforce its performance., ***Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh,*** 1977 (4) SCC 145."). The NRI Candidates could not assert a right to be admitted; furthermore, while granting relief, the Single Judge could at best have directed consideration of the cases of the Writ Petitioners before him. However, the broad nature of the relief granted resulted in creation of rights which, implicated parties had not in the first instance, approached the High Court (unlike Dr. Nilay Gupta or Dr. Surmil Sharma), at the cost of Third parties who had by then been given admission based on their merit as Management quota students, another

set of individuals who had not professed any grievance, were given admission, post Judgment of the single judge.

**30.** The preceding observations ought to have been dispositive of the present case. Nevertheless, the Court is of the opinion that the discretion of Private Managements, who set up and manage Medical Colleges cannot be left to such an untrammelled Degree as to result in unfairness to Candidates. Undoubtedly, these private institutions have the discretion to factor in an NRI or any other permissible quota. Yet that discretion should be tempered; if the discretion to have such a quota is exercised, it should be revised or modified reasonably, and within reasonable time. This case presents some unusual features in that the admission calendar appears to have been thrown out of gear on account of the Covid-19 pandemic. The NEET written test was held in January, and the results were declared on *i.e.* 31.1.2020. At that stage, and soon thereafter till the end of March, the thinking of the Colleges and the board appears to be that the NRI quota in Private Medical Colleges would be maintained (evident from the minutes of meeting dated 17.3.2020). The rapidity with, which the pandemic progressed perhaps generated a broad consensus among Private Colleges that going ahead with the NRI quota would be inadvisable. This Court cannot comment on the wisdom of such thinking as it falls within the exclusive domain of private decision-making. What is striking however is that even when this thinking was emerging, the original schedule, and the sequence for filling up of the NRI seats was maintained - and even rescheduled. Thus, in terms of the board's Notification of 10.4.2020, the NRI students' documents were to be verified on 14.4.2020. Apparently, immediately a day after that Notification, on 11.4.2020 to be precise, the Private Colleges en masse appear to have decided not to proceed with the NRI quota and instead 'merge' it with the 35% Management quota seats, and proceed to fill them entirely based upon rank based merit of the Management quota Candidates arranged in terms of their ranking and performance in the NEET. NRI Candidates were to be treated as Management quota Candidates, and their applications too, considered on the basis of their overall merit in that category. Viewed in isolation, this decision is perfectly valid; it gives one the impression that NRI students were not prejudiced. Undoubtedly, the decision to abolish the NRI quota was exclusively within the scope of the private institutions' decision-making. Yet what is apparent is that by this time, the NRI students had not only started applying for counselling, but had also submitted all their documents for verification to determine their eligibility for the NRI quota seats, and in a sense, committed themselves as Candidates for NRI quota seats in Rajasthan for whatever perceived advantages they could reasonably see in their favour. Hence, when the matter stood thus, when the final seat matrices were published on 13.4.2020, it acted to the unfair detriment of these NRI students.

**31.** Noticeably, the Writ proceedings initiated by the two Candidates (Dr. Nilay Gupta and Dr. Surmil Sharma) did not claim that it was representative in character. It only sought to highlight the arbitrariness in the admission procedure and premised it largely upon the violation of the mandate of this court in ***P.A. Inamdar,*** (supra). As held earlier, private Medical Colleges are not obliged to provide for such NRI quota seats to the extent of 15% in any given year, but the peculiarities of this case, which are: the prevailing pandemic, the various steps which impelled the NRI quota Candidates to commit themselves, and the eleventh hour policy change brought about through the final matrix published on 13.4.2020, acted to the distinct disadvantage of these NRI Candidates. It also appears from the record that most of the students reconciled themselves to their candidature being considered on merits at par with the Management quota Candidates. Many such NRI students, who did not approach the Court were given admission in disciplines other than their primarily choices, due to their relative standing in the state merit list of NEET eligible Candidates.

**32.** The directions of the Single Judge injected in an altogether different dimension to the facts in directing that the Writ Petitioners before him be given admission, rather than leaving it to the board. A Pandora's Box of fresh claims appears to have been opened up. This resulted in a so-called second round of counselling exclusively meant for NRI Candidates (in the second and third week of July, 2020), resulting in the drawing up of an NRI quota list, which was then acted upon. The resultant displacements led to those who had been given admission based upon the relatively higher merit ranking in the Management quota, approaching the Division Bench with Third party Appeals. The Division Bench set aside the Single Judge's directions. Another round of admissions to postgraduate seats was given to the Third party Appellants. It therefore falls upon this Court to work out the most equitable manner of ensuring that the least disturbance occurs in the particular circumstances of this case.

**33.** As a result of the above discussion, it is evident that the NRI quota is neither sacrosanct, not inviolable in terms of existence in any given year, or its extent. However, if a Medical College or institution or, for that matter, the State regulating authority, such as the board in the present case, decide to do away with it, reasonable notice of such a decision should be given to enable those aspiring to such seats to choose elsewhere, having regard to the prevailing conditions.

**34.** In the circumstances of this case and to do justice to all the parties, this Court is of the opinion that a special counselling session should be carried out by the board, confined or restricted to the seats in respect of which admissions were made pursuant to the Single Judge's directions. In this counselling session, the board should ensure participation of the concerned Colleges; the counselling shall be a limited one, confined only to

the number of seats offered and filled as a result of the Single Judge's Judgment. Such seats shall be offered to the NRI Applicants solely on the basis of merit; the seats vacated by such merited students (in the other disciplines) shall then be offered to the beneficiaries of the Single Judge's orders. If for any reason, such students (*i.e.* lower down in NRI merit, who are offered seats in other disciplines) do not wish to take up the offer, the College concerned shall refund the fee collected from such student. It is also made clear that this special round of counselling should not disturb those admissions, where students had accepted the deletion of the NRI quota, and were accommodated in the Management quota, unless they had approached the Court at the earliest opportunity, in April 2020, before the Judgment of the learned Single Judge. The entire process shall be completed with a week from the date of this Judgment.

**35.** This Court clarifies that the validity of deletion of the NRI quota altogether, by Colleges, and their "merger" as part of the larger Management quota, was not questioned as a general proposition; the premise on which the parties argued their cases was that the NRI quota is inflexible and cannot be altered. The time within which an institution decides to do away with the quota during an ongoing admission process has not been prescribed, inasmuch as the observations as to unfairness in the nature of the deletion is in the specific circumstances of this case. Likewise, the directions in the previous Paragraph are with regard to the circumstances of this case, and to do complete justice to all parties.

**36.** The Appeals and pending Applications are disposed of in the above terms.