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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2193 of 2014

High Court Bar Association Through its Secretary, Chhattisgarh High Court Bar
Association High Court Premises, Bilaspur CG

---- Petitioner

Versus

1. State Of Chhattisgarh through The Secretary Law And Legislative Affairs
Department Mahandi Bhawna Mantralaya New Raipur CG
2. High Court Of Chhattisgarh Through The Registrar General High Court Bodri
Bilaspur CG
3. The Secretary General Administration Department Government Of Chhattisgarh
Mahandi Bhawan Mantralaya New Raipur CG

---- Respondents

And

WA No. 355 Of 2014

Surit Ram S/o Fagulal Aged About 48 years R/o Village Hatod, PS Kasdol, Tahsil-
Kasdol, Distt Baloda Bazar (Old District -Raipur) (CG)

---- Appellant

Vs

1. State Of Chhattisgarh Through its Secretary, Govt. Of Chhattisgarh, Department Of
Water Resource, DKS Bhawan, Mantralaya, Now Present Address Mahanadi
Bhawan, PS Rakhi, New Raipur, Dist Raipur, CG
2. State Industrial Court, Through its Registrar, Raipur, Dist Raipur, CG

---- Respondent

And

WA No. 317 Of 2014

Ramkhilawan Sahu S/o Ganga Prasad Sahu Aged About 50 years R/o Village
Kharche, PO Kasdol, Distt Raipur, CG

---- Appellant

Vs

1. Executive Engineer Construction Division Water Resources Deptt. Kasdol, Distt Raipur, CG
2. Sub Divisional Officer, Ballar Canal Sub Division Kasdol, Tah Kasdol, Distt Raipur, CG

---- Respondents

And

WA No. 378 Of 2014

Janak Ram S/o Tir Singh Patel (wrongly mentioned as Vir Singh Patel in Writ Petition) Aged About 48 years R/o Village Hatod, PS & PO Kasdol, Distt Raipur, Now Baloda Bazar)CG

---- Appellant

Vs.

1. State Of Chhattisgarh Through The Secretary, Water Resources Deptt., Mahanadi Bhawan, PS Rakhi, New Raipur, Dist Raipur, CG
2. Superintending Engineer Water Resources Deptt. Raipur, (CG)
3. Executive Engineer Water Resources Division, Baloda Bazar, Distt. Raipur (CG)
4. Sub Divisional Officer, Water Resources Sub Division, Kasdol, Tahsil: Kasdol, Dist Raipur,
5. Presiding Officer, Industrial Court, Raipur, Dist Raipur, CG
6. Presiding Officer, Labour Court, Raipur, Dist Raipur, CG

---- Respondents

And

WA No. 390 Of 2014

Surendra Kumar Sahu S/o Salikram Sahu , 37 years R/o Vill. And Post Kankera Tah. & Dist. Mahasamund CG

---- Appellant

Vs

1. State Of Chhattisgarh Through Senior Agriculture Development Officer, Block Mahasamund Tah. & Dist. Mahasamund CG
2. Deputy Director Agriculture (Agriculture Department) Mahasamund CG
3. Presiding Officer Labour Court Raipur CG

---- Respondents

And

WA No. 1125 Of 2012

H.S. Bhatia S/o Shri Hakam Singh Bhatia, Aged About 65 years Ex Asst. Manager,
State Bank Of India R/o Budhwari Para PS Dongargarh Distt. Rajnandgaon
Pin:491445 (CG)

---- Appellant

Vs

1. State Bank Of India Through Its Chairman Corporate Central State Bank Bhawan
Madam Cama Road, Mumbai-400021 (MS)
2. Assistant General Manager Regional Office, State Bank Of India, Region No. 4
Dharampura Road Jagdalpur-494001 (CG)
3. Deputy General Manager (Disciplinary Authority) State Bank Of India Zonal Office
Shankar Nagar Raipur-492001 (CG)
4. General Manager (D&PB) (Appointing Authority) State Bank Of India Local Head
Office Bhopal-462001 (MP)
5. Chief General Manger (Appellate Authority) State Bank Of India Local Head Office
Bhopal-462001 (MP)
6. The Reviewing Authority, Appeals & Review Department, State Bank Of India,
Corporate Centre State Bank Bhawan Madam Cama Road Mumbai-400021 (MS)

---- Respondents

And

WA No. 392 Of 2014

Tokram Rajwade S/o Vishal Prasad Aged About 42 years, R/O Kanki Tah. Kartala
PS. Urga Dist. Korba CG

---- Appellant

Vs

1. State Of Chhattisgarh Through Its Executive Engineer Hasdeo Barrage Water
Resource Raipur CG
2. Sub Divisional Officer Hasdeo R.B.C. Water Resource Sub Division No. 1, Pantora
Dist. Janjgir-Champa CG
3. State Of Chhattisgarh Through its Secretary Department Of Law And Legislature
Mahandi Bhawan New Raipur , District-Raipur CG
4. Secretary Department Of General Administration Mantralaya Mahandi Bhawan New
Raipur ,District Raipur (CG)

---- Respondents

For respective Petitioners/Appellants	:	Dr. N.K. Shukla, Sr. Advocate with Shri Vivek Ranjan Tiwari, Shri Anoop Majumdar, Shri Vinod Deshmuh, Shri Harshal Chouhan, Shri K.R. Nair, Shri Sudeep Verma and Shri Dilman Rati Minj, Advocates.
For Respondent/State	:	Shri J.K. Gilda, Advocate General with Shri Ramakant Mishra, Dy.A.G for the State.

Full Bench
Hon'ble The Chief Justice
Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Shri Justice Goutam Bhaduri

C A V Order

Per Manindra Mohan Shrivastava, J.

6/08/2015

1. In this batch of writ petition and writ appeals, constitutional validity of an explanation under Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, added by the Chhattisgarh High Court (Appeal to Division Bench) Act, 2013 (Amendment Act 2 of 2014) has been challenged. Impugned explanation, added by way of amendment is extracted below:

“**Explanation**-Where points raised in the petition before the Division Bench against the order or judgment of the Single Judge were adjudicated upon, by the Sub-ordinate Court, Tribunal or Quasi-Judicial Authority, as the case may be, it shall be presumed that such order or judgment by the Single Judge of the High Court has been passed in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.”

W.P. (C) No.2193 of 2014 has been filed by the High Court Bar Association, by which, prayer has been made for declaring the aforesaid amendment unconstitutional.

2. In connected Writ Appeals No.390, 392, 378, 355, 317 of 2014 and Writ Appeal No.1125 of 2012, order passed by learned Single Judge in respective cases has been challenged. Though in these writ appeals, the constitutional validity of the impugned explanation is not under challenge, objection to the maintainability of

these writ appeals were raised by way of preliminary submission mainly on the basis that in view of impugned explanation, the appeals are not maintainable as the appeals arise out of the order passed in petitions challenging orders passed by Quasi Judicial Authority and Tribunals. As the maintainability of these writ appeals were dependent upon the decision of W.P. (C) No. 2193/2014 laying challenge to impugned explanation added to Section 2 of the Act of 2006, the aforesaid writ appeals were also directed to be listed with the writ petition and learned counsel for the respective parties in these writ appeals were also heard.

3. In order to provide remedy of an *intra-Court* appeal from the judgment or order passed by one Judge of the High Court in exercise of its original jurisdiction, to a Division Bench of the High Court, legislature enacted the Chhattisgarh High Court (Appeal to Division Bench) Act 2006 (No. 1 of 2007) which was published in Chhattisgarh Rajpatra (*Asadharan*) on 6th January, 2007 and came into force on the date of its publication. Prior to addition of impugned explanation, Section 2 expressly provide for an appeal. For ready reference, the provision is reproduced herein below:

“(2) Appeal to the Division Bench of the High Court from a judgment or order of one Judge of the High Court made in exercise of original jurisdiction:-(1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

- (2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge:

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.

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

- (3) An appeal under sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court”

4. Later on, impugned explanation was added by the Amendment Act of 2013 (2 of 2014) referred to above. Prior to aforesaid amendment and addition of impugned explanation, the proviso to sub-section (1) of Section 2 declared that no appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. By addition of impugned explanation, a legislative presumption has been engrafted that where points raised in the petition before the Division Bench against the order or judgment of the Single Judge were adjudicated upon, by the Subordinate Court, Tribunal or the quasi-judicial Authority, as the case may be, it shall be presumed that such order or judgment by the Single Judge of the High Court has been passed in exercise of supervisory jurisdiction under Article 227 of the Constitution. The attack is on this presumption provided by way of explanation.
5. Learned counsel appearing in Writ Petition (C) No.2193/2014 argued in extenso, to submit that the impugned legislation is unconstitutional because it is essentially in the realm of judicial exercise as to whether or not in a given case, writ appeals would lie. The submission advanced before us is that irrespective of the title of the petition filed before the Single Judge and irrespective of whether issue raised in the petition were adjudicated upon by the subordinate Court, Judicial or Quasi- Judicial Authority, where the petitions have been filed under both Article 226 & 227 seeking to invoke extraordinary jurisdiction under Article 226 of the Constitution, *intra -Court* appeal may be maintainable. Whether or not, it is fervently urged, order or judgment has been passed by Single Judge in exercise of supervisory jurisdiction under Article 227 or in exercise of plenary jurisdiction under Article 226 of the Constitution is a matter of consideration on judicial side in each and every case. It would depend upon host of circumstances which can be examined only by the Division Bench entertaining writ appeal, to come to the conclusion with regard to the maintainability of writ appeal. It was contented that in plethora of decisions of the Apex Court as also of this Court, writ appeals have been found to be maintainable notwithstanding the fact that points raised in the writ appeal against the order or judgment of Single Judge was initially adjudicated upon by a Sub-ordinate Court, Tribunal or Quasi-Judicial Authority. It was contented that it is completely outside the purview of legislative exercise to prescribe a straitjacket formula in the form of legislative presumption in respect of a matter which is essentially required to be examined by the Court. The impugned explanation seeks to pre-judge, contrary to judicially evolved principles, that in a particular class of cases, it shall be presumed that the order by the Single Judge of the High Court has been passed in exercise of

supervisory jurisdiction under Article 227 of the Constitution of India. A matter which is essentially to be adjudicated by the Courts, cannot be pre-judged by a legislation. Therefore, it is contended, the legislation, virtually is an injunction prohibiting judicial exercise. It is also contended that the provision in effect, bars access to justice. The judgment in the case of **National Council for Teachers Education and another Vs. Shri Rawatpura Sarkar Sansthan** passed on 8th August, 2013 in W.A. No.428/2013 and other connected matters, does not issue any mandate much less declares that in the eventuality, as contemplated in the impugned explanation, it will always be a case of exercise of supervisory jurisdiction under Article 227 of the Constitution of India. There can be no legislation of presumption of fact. The legislative device to control manner of exercise of power of judicial review by nullifying judicially propounded theory of overlapping of jurisdiction under Article 226 & 227 of the Constitution is un- constitutional. It is also contended that in the case of **National Council for Teachers Education** (supra), on the other hand, it has been categorically held that each case has to be examined on its facts and circumstances. With the impugned explanation, this exercise can no longer take place. The usurpation of judicial powers by legislative provision is against the constitutional principles of separation of power. In support of the contention advanced by learned counsel for the petitioners, reliance has been placed in the following judgments:

1. V.K. Walnekar and Ors. Vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr. (AIR 2006 CG92)
2. Gujarat State Road Transport Corporation Vs. Firoze M. Mogal & another (AIR 2014 Gujarat 33)
3. Chhattisgarh Chemical Mill Mazdoor Sangh Vs. Director, Keystone Industries Ltd. and Ors., 2007 (3) MPHT 86 (CG)
4. M.M.T.C. Limited Vs. Commissioner of Comm.Tax and Ors., (2009) 1 SCC 8
5. Ashok K. Jha and Ors. Vs. Garden Silk Mills Ltd. And Another (2009) 10 SCC 584
6. Ramesh Chandra Sankla and Ors. Vs. Vikram Cement and Ors. (2008) 14 SCC 58
7. Mavji C. Lakum Vs. Central Bank of India (2008) 12 SCC 726
8. State of Uttar Pradesh and Ors. Vs. Dr.Vijay Anand Maharaj (AIR 1963 SC 946)
9. State of Madhya Pradesh & Ors. Vs. Visan Kumar Shiv Charan Lal (AIR 2009 SC 1999)
10. Hari Vishnu Kamath Vs. Ahmad Ishaque and Ors (AIR 1955 SC 233)
11. Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and

another, 1986 Supp SCC 401

12.M/s. Sterling Agro Industries Ltd. Vs. Union of India & Ors.
(AIR 2011 Delhi 174)

13.Jasmer Singh Vs. State of Haryana & Ors. (2015) 4 SCC 458

14.State of Bombay Vs. Narothamdas Jethabai and another , 1951 SCR 51

15.Bakhtawar Trust and Ors. Vs. M.D. Narayan & Ors. (AIR 2003 SC 2236)

6. Per contra, learned Advocate General, defending the legislation, submits that in the absence of any challenge to legislative competence of the State legislature to enact law on the subject i.e. the Act of 2006, isolated challenge to the explanation, added by way of amendment, is liable to be rejected. Referring to the objects and reason of the enactment of the Act of 2006 and the objects and reason behind the amendment of the Act of 2006 by the Amendment Act 2014, adding impugned explanation, it was contended that while deciding batch of writ appeals **National Council for Teachers Education** (supra), the Division Bench noticed that in case there is difficulty in deciding whether the Single Judge exercised jurisdiction under Article 226 or 227 of the Constitution, then there would be uncertainty regarding *intra- Court* appeal which would increase litigation and that has to be avoided. It was also argued that the observations made in that case constitute expediency to expressly provide in law as to when a jurisdiction shall be deemed to have been exercised under Article 227 and specifically provide when no *intra -Court* appeal would lie against an order of a Single Judge, as has been done in U.P. This judicial mandate of the Court was noticed by the legislature as reflected in the objects and reasons behind the addition of impugned explanation by way of amendment under challenge. The impugned explanation only seeks to explain and clarify the existing provision as to in which category of cases, judgment/order made by the Single Judge of the High Court shall be deemed to have been passed in exercise of its supervisory jurisdiction under Article 227 of the Constitution. This legislative policy does not offend any of the constitutional principles much less lacking in legislative competence to enact law on the subject in exercise of legislative power under Article 246 of the Constitution with reference to relevant entry 11-A of list three of the VIIth Schedule of the Constitution. It has been argued that no right of appeal can be claimed *de hors* an express provision of law. While creating a remedy of *intra-Court* appeal under the main Enactment of 2006, it has been clearly provided in Section 2 thereof that an appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution. The proviso clearly carves out those orders which are either interlocutory in nature or passed in exercise of supervisory jurisdiction under Article 227 of the Constitution. Thus, the

Act of 2006, from its very inception never intended to provide remedy of appeal where the order was passed in exercise of supervisory jurisdiction. By explanation, it has only been clarified as to when the order shall be deemed to have been passed by a Single Judge in exercise of supervisory jurisdiction under Article 227 of the Constitution. It is further contended that the impugned explanation has not usurped directly or indirectly, judicial functions and the legislature only classifies the category of cases wherein remedy of writ appeal would not be available. As the right of appeal is only creature of statute, it is perfectly within the competence of the legislature to provide in which case, appeal shall lie and also expressly provide in which cases, appeal would not lie. This has only been done to avoid and do away with the difficulty in view of overlapping jurisdiction of Article 226 & 227 of the Constitution, of which judicial notice was taken by this Court in the case of **National Council for Teachers Education** (supra). Therefore, the amendment only seeks to effectuate the judicial verdict of this Court. As it is well settled that while examining legality of an order passed by the subordinate Court, judicial or quasi judicial authority, High Court exercises supervisory jurisdiction, therefore, in those class of cases, it has been expressly provided by explanation that in such cases, the order of the learned Single Judge shall be deemed to have been passed in exercise of supervisory jurisdiction. In support of his contention, learned Advocate General places reliance on following authorities:

1. State of Maharashtra Vs. Kusum wd/o Charudutta and Ors., 1981 Mh. L.J. 93
 2. Dharamdeo Vs. Bijarat & Ors. (1996) 2 SCC 313
 3. Madras Bar Association Vs. Union of India and Anr. (2014) 10 SCC 1
 4. Nivedita Sharma Vs. Cellular Operators Association of India and Ors. (2011) 14 SCC 337
 5. Hakim Singh Vs. Shiv Sagar and Ors. (AIR 1973 All. 596)
 6. Hasinuddin Khan and Ors. Vs. Dy. Director of Consolidation and Ors. (1980) 3 SCC 285
 7. Anandilal Chourasia & Anr. Vs. State of M.P. & Ors. (AIR 2008 M.P. 257) (FB)
7. Upon Re-organization of State of Madhya Pradesh vide Madhya Pradesh Re-Organization Act, 2000, State of Chhattisgarh was separately carved out and separate High Court was also created for the State of Chhattisgarh which came into existence on the appointed day i.e. 1st November, 2000. Amongst other provisions, Section 23 of the Re-Organization Act, 2000 provides that the High Court of Chhattisgarh shall have, in respect of any part of the territories included in the State of Chhattisgarh, all such jurisdiction, powers and authority as, under the law in force

immediately before the appointed day, are exercisable in respect to that part of the State territories by the High Court of Madhya Pradesh. Section 25 of the Re-organization Act provides that subject to the provisions of Part IV, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Madhya Pradesh shall, with the necessary modifications, apply in relation to the High Court of Chhattisgarh and accordingly, the High Court of Chhattisgarh shall have all such powers to make rules and orders with respect to practice and procedure. Under Clause-10 of the Letters Patent of the Nagpur High Court which continued in the High Court of Madhya Pradesh also, remedy of *intra Court* appeal known as Letters Patent Appeal was available before a Division Bench of the High Court against an order passed by a Single Judge until Letters Patent Appeal were abolished by the Madhya Pradesh Uchcha Nyayalay (Letters Patent Appeals Samapti) Adhiniyam, 1981 (No.29 of 1981). The validity of this, however, was challenged before the High Court of Madhya Pradesh and a Full Bench of the High Court vide its judgment dated 27.8.1984 declared the Act of 1981 ultra vires the powers of the State Legislature (reported in AIR 1985 MP 42). The effect was that *intra-Court* appeal remedy continued. The aforesaid decision of the High Court of Madhya Pradesh was challenged before the Hon'ble Supreme Court in Civil Appeal No.1222-1224 of 1985, which was allowed by the Supreme Court vide its judgment dated 11.1.2005 deciding batch of appeals including the aforesaid appeals (reported in JT 2005 (1) SC 370).

8. As the Act of 1981 stood revived, the remedy of *intra- Court* appeal under Letters Patent came to an end. At this stage, large number of writ appeals were pending before this Court and when those appeals came up for hearing, objections to the maintainability of those appeals were raised. The Division Bench of this Court in the case of **V.K. Walnekar and Ors. Vs. Bilaspur Raipur Kshetriya Gramin Bank & Anr.** decided controversy vide its order dated 29.4.2005 (reported in AIR 2006 C.G. 92) by holding that in view of judgment of the Supreme Court in the case of **Jamshed N. Guzdar Vs. State of Maharashtra and Ors.** [J.T. 2005 (1) SC 370] stood revived and Letters Patent Appeal were no longer maintainable. As result, the *intra-Court* appeal remedy remained no longer available in this Court.
9. In this background, the State Legislature of Chhattisgarh enacted the Act of 2006 to provide for the *intra-Court* appeal remedy. The statement of objects and reason of the Act of 2006 states thus:

“At present there is no provision of law to file an appeal against a judgment or order passed by one Judge of the High Court in exercise of

original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court by virtue of the Chhattisgarh Uchcha Nyayalaya (Letter Patent Appeal Samapti) Adhiniyam, 1981 (No.29 of 1981).

2. Lacking of appeal to Division Bench causes hardship to a common litigant as well as the State Government because filing of appeal directly against the order or judgment of Single Bench of the High Court to the Supreme Court is expensive and time consuming.

3. It is, therefore, proposed to provide for an appeal to the Division Bench of the High Court against a judgment or order of one Judge of the High Court made in exercise of original jurisdiction.

4. Hence this Bill.”

10.A plain reading of Section 2 of the Act of 2006 reveals that it provides for remedy of appeal from a judgment or order passed by one Judge of the High Court in exercise of its original jurisdiction under Article 226, to a Division Bench comprising of two judges of the same High Court.

The proviso, however, provides that no writ appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution. It was upon enactment of the aforesaid provision providing for express remedy of appeal that the remedy of *intra-Court* appeal was again created. Since then appeals are being filed before the Division Bench of this Court against an order passed by one Judge of the High Court in exercise of its original jurisdiction under Article 226 of the Constitution.

However, the Act of 2006 was amended by the State Legislature vide Amendment Act No.2 of 2014 notified and published in Chhattisgarh Rajpatra. By this amendment, the impugned explanation, referred to above, has been added. The explanation, as it patently reads, creates a legislative presumption. According to this presumption, where points raised in the petition before the Division Bench against the order or judgment of the Single Judge were adjudicated upon by the Subordinate Court, Tribunal or Quasi Judicial Authority, as the case may be, it shall be presumed that such order or judgment by the Single Judge has been passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, by this legislative presumption, every case where initial order, against which petition was filed before the Single Judge, was passed by a Subordinate Court, Tribunal or Quasi Judicial Authority, the order of the Single Judge shall always and invariably be deemed to have been passed in exercise of supervisory jurisdiction. Irrespective of the nature of jurisdiction that may have actually been exercised, the impact and

effect of the explanation is that where the orders or proceedings under challenge before the Single Judge, emanates or arises from an order passed by Subordinate Court, Tribunal or Quasi Judicial Authority, there is no scope for any argument or submission that the petition filed before the Single Judge was a petition both under Articles 226 & 227 of the Constitution or, in substance, while challenging the order of the Subordinate Court, Tribunal or Quasi Judicial Authority, writ jurisdiction under Article 226 was also invoked or any relief for issuance or order was prayed for. The legislative presumption shuts the remedy of appeal once the order passed by the Single Judge is in a case arising from an order passed by Subordinate Court, Tribunal or quasi Judicial Authority.

11. The pivotal question arising for consideration is whether by such legislative device, it is permissible under the law, to create a legislative presumption of such a kind in the backdrop of the submission advanced before the Court, that such legislative presumption is against judicially evolved principles based upon interpretation and analysis of scope and ambit of the jurisdiction of the High Court under Article 226 & 227 of the Constitution.
12. In order to resolve the controversy, we are required to survey decisions rendered by the Apex Court as also by this Court and other High Courts on the aspect of jurisdiction of the High Court under Article 226 & 227 of the Constitution with particular reference to those cases where the issue with regard to maintainability of writ appeal/Letters Patent Appeal was examined, to find out whether remedy of appeal to Division Bench against the order of Single Judge was available or not. It is also required to be examined whether the principles judicially evolved, laid down test for determination as to whether writ appeal would lie, irrespective of whether the order against which the petition was filed before learned Single Judge, was passed by a Subordinate Court, Tribunal or Quasi Judicial Authority.
13. In the case of **Umaji Keshao Meshram** (supra), an issue with regard to maintainability of an *intra-Court* appeal to a Division Bench of two judges of the High Court of Bombay from the judgment of a Single Judge of that Court arose for consideration. The remedy of appeal therein was provided under Clause-15 of the Letters Patent which provided for *intra-Court* appeal. While deciding an *intra-court* appeal under the Letters Patent, amongst others, a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made in exercise of appellate jurisdiction by a Court subject to jurisdiction of the High Court, an order made in exercise of revisional jurisdiction and a sentence or order passed or made in

exercise of power or superintendence under Section 107 of the Govt of India Act or in exercise of criminal jurisdiction were expressly excluded from the purview of appeal. While tracing the legal and constitutional history and examining the scope and ambit of High Courts power under Article 226 and 227 of the Constitution, the Supreme Court held :

“107. Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath v. Syed Ahmad Ishaque* before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the Tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of courts specified in that rule, they shall be heard and finally disposed of by a Single Judge. The question is whether an appeal would lie from the decision of the Single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Such was the view taken by the Allahabad High Court in *Aidal Singh v. Karan Singhand* by the Punjab High Court in *Raj Kishan Jain v. Tulsi Dassand Barham Dutt v. Peoples' Cooperative Transport Society Ltd., New Delhi* and we are in agreement with it.”

14. The Supreme Court held that where the facts justify a party in filing a petition under Article 226 or 227 of the Constitution of India and the party chooses to file petition under both the Articles, in fairness and justice to such party and in order not to deprive him of his valuable right of appeal, the Court ought to treat the application as being made under Article 226 of the Constitution. It was further held that if in deciding the matter, in the final order, the Court gives ancillary directions which may pertain to Article 227 of the Constitution, this ought not to be held to deprive a party, of the right of the right of appeal under Clause 15 of the Letters Patent where

substantial part of the order sought to be appealed against is under Article 226 of the constitution. In substance, the issue of maintainability of the appeal will be required to be decided on aforesaid parameters irrespective of whether the order challenged before the Single Judge originated from subordinate Court, Tribunal or Quasi Judicial authority. The aforesaid principles laid down by the Supreme Court in **Umaji** (supra) were succinctly relied upon and followed in the case of **Mangalbhai and Ors. Vs. Dr. Radhyshyam s/o Parischandra Agrawal** (1992) 3 SCC 448 and **Sushilabai Laxminarayan Mudliyar and Ors. Vs. Nihalchand Waghajibhai Shaha and Ors.** 1993 Supp (1) SCC 11.

15. In **Mangalbhai** (supra), facts were that against an order passed by Resident Deputy Collector dismissing appeal, petition under Article 226 & 227 of the Constitution was filed before the High Court. The matter was heard by the Single Judge. An order was passed against which a Letters Patent Appeal before the Division Bench of High Court was preferred. The appeal was dismissed by the Division Bench taking the view that in truth and substance, the order was passed by the learned Single Judge under Article 227 of the Constitution against which Letters Patent Appeal was not maintainable. The matter was taken to the Supreme Court by the aggrieved party. Submission advanced before the Supreme Court was that in the heading of the petition, it was clearly stated that it was a petition under Article 226 and 227 of the Constitution and that even though Article 227 was mentioned in the petition, but, in substance it was a petition under Article 226 and that the entire tenor of the order of the learned Single Judge showed that it was dealing with a petition under Article 226. Therefore, in such case appeal would lie.

Relying upon the ratio of law and the principles evolved in the case of **Umaji** (supra), the Supreme Court held as under:

“5. After a perusal of the contents of the writ petition filed before the High Court as well as the judgment of the learned Single Judge, we are clearly of the view that both the petition filed in the case and the order of the learned Single Judge were in substance under Article 226 of the Constitution.”

In the other case of **Sushilabai** (supra) also, similar issue arose for consideration in a matter where relying upon principles laid down in **Umaji** case (supra), the supreme Court further explained principles with regard to maintainability of writ appeal as below :

4. “In *Umaji* case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application

under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.....”

In yet another case of **Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad** (1999) 6 SCC 275, the issue with regard to maintainability of Letters Patent against the order of a Single Judge arose in the background that the petition in which Single Judge passed order arose out of an order passed by Industrial Court. While repelling the preliminary objection to the maintainability of the Letters Patent Appeal on the ground that the order passed by the learned Single Judge was essentially an order in exercise of supervisory jurisdiction under Article 227 of the Constitution and hence appeal not maintainable, the Supreme Court held:

“16. It is, therefore, obvious that the writ petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for the High Court’s interference seeking issuance of an appropriate writ of certiorari under Article 226 of the Constitution of India. Basic averments for invoking such a jurisdiction were already pleaded in the writ petition for the High Court’s consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the writ petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the writ petition by observing that the courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, he was considering the aforesaid writ petition moved under Article 226 as well as Article 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the

respondent.”

The principles laid down in para-107 of **Umaji** (supra) were relied upon to hold that the aforesaid decision squarely gets attracted on the facts of that case. The Supreme Court held as under:

“16.....The aforesaid decision squarely gets attracted on the facts of the present case. It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 226 (*sic* 227) of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge. It is also necessary to note that the appellant being the respondent in letters patent appeal joined issues on merits and did not take up the contention that the letters patent appeal was not maintainable. For all these reasons, therefore, the primary objection to the maintainability of the letters patent appeal as canvassed by learned counsel for the appellant, has to be repelled.”.....

16. In the case of **Kanhaiyalal Agrawal and Ors. Vs. Factory Manager, Gwalior Sugar Company Ltd.** (2001) 9 SCC 609, relying upon the decision in the case of **Lokmat Newspapers** (supra), it was held that if the Single Judge of the High Court in considering petition under Article 226 or Article 227 of the Constitution and a petition so filed is dismissed by the Single Judge on merits, the matter may be considered in its proper perspective in an appeal. It was a case arising out of an order passed by the Industrial Court.

17. In the case of **Surya Dev Rai Vs. Ram Chander Rai and Ors.** 2003 (6) SCC 675 also, the Supreme Court held as under :

“ 39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-

jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma.....”

In its subsequent decisions in the case of **Shahu Shikshan Prasarak Mandal and another Vs. Lata P.Kore and Ors.** (2008) 13 SCC 525, **Mavji C. Lakum** (supra), **Visan Kumar Shiv Charan Lal** (supra), **Radhey Shyam and another Vs. Chhabi Nath and Ors.** (2009) 5 SCC 616 and **Ashok K. Jha** (supra), the principles laid down by the Supreme Court with regard to maintainability of an *intra-Court* appeal in matters arising out of an order passed by a Tribunal, extensively referred to hereinabove, have been re-stated and reaffirmed.

On similar lines in the case of **MMTC Ltd. Vs. Commissioner of Commercial Tax and Ors.** (2009) 1 SCC 8 in which an issue with regard to maintainability of appeal under M.P. Uchcha Nayayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 was involved and where the appeal was dismissed as not maintainable, the Supreme Court upon survey of its decisions right from the case of **Hari Vishnu Kamath Vs. Ahmad Ishaque** (supra) followed by judgment in **Umaji** (supra) and many other decisions, held that the High Court was not justified in holding that the letters patent appeal would not be maintainable. In holding so, the principles reiterated herein above were applied with special reference to principles laid down in **Umaji** (supra) **Mangalbhai** (surpa) **Lokmat Newspaper** (supra) and **Surya Dev Rai** (supra).

In the case of **Visan kumar Shiv Charan Lal** (supra) relying upon aforementioned decisions, the issue of maintainability of Letters Patent Appeal in a matter arising out of order of Labour Court on the face of similar provision with regard to appeal as in the present case was considered and the writ appeal was held maintainable by applying aforesaid well settled judicially evolved principles with regard to maintainability of writ appeal despite the fact that the order passed by the Labour Court was challenged by filing petition before the Single Judge and against the order of Single Judge Letters Patent Appeal was filed.

18. In a recent order passed the Supreme Court in the case of **Shiv Kumar Vs. Union of India** (Civil Appeal No.3231/2015) decided on 30.3.2015 even though the matter arose out of an order passed by the Appellate Authority in the Central Industrial Security Force, considering that the writ petition was filed under Article 226 of the Constitution, it was held that proviso to Section 2 (1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 does not preclude an appeal being filed to the Division Bench.

19. A survey of the aforesaid decisions rendered by the Supreme Court in catena of decisions settles the legal position with regard to maintainability of a writ appeal by laying down that where facts of the case justify filing of petition both under Article 226 & 227 of the Constitution and where the petitioner has sought relief invoking jurisdiction under Article 226 of the Constitution, remedy of writ appeal would be available. It has also been held that no straitjacket formula can be laid down but it would depend upon facts and circumstances of each case as to what is the nature of relief sought in the petition and would also depend upon the order passed by the Single Judge disposing of the writ petition. In all these cases, issue with regard to maintainability of writ appeal arose for consideration in the factual premise that the order of Single Judge was passed in a petition arising out of orders passed by Subordinate Court, Tribunals or Quasi Judicial Authority. It is thus luminescently clear that even in a case where the petition before the Single Judge arises out of order passed by Subordinate Court, Tribunal or Quasi Judicial Authority, in the given facts and circumstances of the case and applying the parameters and test laid down by the Supreme Court in the above cited decisions, writ appeal may be held maintainable. Therefore, to say that in cases where the orders are passed by the Subordinate Court, Tribunal or Quasi Judicial Authority, it shall always and invariably be a case of exercise of supervisory jurisdiction under Article 227 of the Constitution irrespective of the nature of relief sought and the orders passed by the Single Judge, would be a negation of the judicially evolved principles laid down in aforesaid binding decisions.
20. The statutory prescription engrafted by way of impugned explanation completely ousts inquiry, by way of judicial exercise, by applying aforesaid test as to whether in a given case, writ appeal would lie or not. The explanation takes away the power of judicial review exercisable by the Division Bench while hearing an appeal against an order passed by the Single Judge in a matter arising out of order passed by a Tribunal or a Quasi Judicial Authority. The legislative presumption provided under the impugned explanation prevents access to justice and examination of each and every case on its facts and circumstances, to come to a judicial conclusion with regard to maintainability of writ appeal. Thus, the submission that the impugned legislation, in the form of explanation, raises a legislative presumption, contrary to judicially evolved principles based on analysis of scope and ambit of High Courts powers under Article 226 & Article 227 of the Constitution, has to be accepted. It is essentially a matter of consideration on judicial side as to whether in a given case, writ appeal would be maintainable or not, by applying the test laid down by the Supreme Court in plethora of decisions, referred to above. The impugned explanation seeks to take away this power of judicial review by engrafting a

legislative presumption merely on the basis that the order challenged before the Single Judge was passed by the Subordinate Court, Tribunal or Quasi Judicial Authority. Reliance placed by learned Advocate General on the decision in the case of **Kusum** (supra) is misplaced. The aforesaid decision only advances the submission of the petitioner. The aforesaid decision also holds that where the facts justify a party in filing an application either under Article 226 or Article 227 of the Constitution and the party chooses to file his application under both these Articles, in fairness and justifies to such a party and not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if deciding the matter, in the final order, the Court gives ancillary directions akin to Article 227 of the Constitution, this would not and ought not to be held, to deprive a party of the right of appeal under Clause 15 of the Letters Patent Appeal where the substantial part of the order sought to be appealed against is under Article 226 of the Constitution. The decisions which have been cited hereinabove right from the judgment of the Supreme Court in the case of **Umaji**(supra), the same principles has been stated and re-stated time and again.

21. Reliance placed on the decision of Allahabad High Court in the case of **Hakim Singh** (supra) and the decision of the Supreme Court in the case of **Hasinuddin Khan** (supra) and **Dharamdeo** (supra) is also misplaced. In the case of **Hakim Singh**, (supra), constitutionality of the Amending Ordinance and the Amending Act was challenged on the grounds firstly that the provision thereof are *ultra vires* and beyond the competence of the State legislature and secondly that they are violative of Article 14 of the Constitution. Therein, the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) (Amendment) Ordinance, 1972 later replaced by U.P. High Court (Abolition of Letters Patent Appeals) (Amendment) Act (32 of 1972) abolished remedy of appeal against a particular class of litigation arising on a particular subject matter. The abolition of the right of appeal in relation to a particular category of disputes came up for consideration and in those factual premise and nature of challenge to the constitutionality that the aforesaid judgment was delivered by the Full Bench of the High Court. Present case is clearly distinguishable as the explanation impugned in this petition raises legislative presumption that whenever the order is passed by a Subordinate Court, Tribunal or Quasi Judicial Authority, it shall be deemed to have been passed in exercise of supervisory jurisdiction. For that reason, the other two decisions in the case of **Hasinuddin Khan** (supra) and **Dharamdeo** (supra) are also distinguishable which dealt with the same enactment as in the case of **Hakim Singh**(supra).

22. The other argument of learned Advocate General that the impugned explanation was

enacted by way of amendment in compliance of the direction issued by the Division Bench in **National Council for Teachers Education** (supra) is equally misconceived. On the contrary, in that judgment, it was categorically held in para-32 that it is not the heading of the writ petition but the substance of the order passed by Single Judge that is material and it is substance of the order passed that determines whether the order was passed under Article 226 or Article 227 of the Constitution. Moreover, the objects and reasons behind enactment of the principal Act of 2006 are clearly meant to provide remedy of appeal. The impugned explanation seeks to create a bar by creating legislative presumption, contrary to judicially evolved principles and therefore has to be declared unconstitutional.

Per Navin Sinha, Chief Justice (concurring)

I have had the benefit of perusing the very erudite discussion by my esteemed Learned Brother M. M. Srivastava J. with a very illuminating reference to precedents on the issue. I am wholly in concurrence with my Learned Brother that ultimately the nature of jurisdiction exercised by the Learned Single Judge in each case would be a matter for judicial assessment in the given facts of that case and the nature of order passed. There could be no standardised or uniform yardstick applicable across the board irrespective of the nature of jurisdiction actually exercised raising a presumption for exercise of supervisory powers by the Learned Single Judge merely because the order under challenge had been passed by a Tribunal or Quasi Judicial body. However, I venture to add to the same few words on another issue.

Article 227 of the Constitution vests power in the High Court of superintendence over all the Subordinate Courts and Tribunals situated within its jurisdiction. Section 2 of Chhattisgarh High Court (Appeal to Division Bench) Act (hereinafter after referred to as 'the Act') provides for remedy of an appeal before the Division Bench from an order passed by a Learned Single Judge in exercise of original jurisdiction under Article 226 of the Constitution. The proviso carves out an exception that no such appeal shall be maintainable against an interlocutory order or where the Learned Single Judge has exercised supervisory jurisdiction under Article 227 of the Constitution. In other words, subject to the fact that it was not the plenary exercise of powers under Article 226 but exercise of supervisory powers in contradistinction to the same, no appeal shall lie. Though there may be some overlapping in the exercise of the two powers, the manner of analysis as to which power had been exercised has already been discussed at length by my Learned Brother M.M.Shrivastava, J and I do not propose to reiterate the same.

The Explanation added to Section 2 by the Amendment Act 2 of 2014 travels

beyond the constitutional prescription of the supervisory jurisdiction under Article 227 in its application to the Subordinate Courts and Tribunals by including quasi-judicial bodies which are essentially subject to the Certiorari jurisdiction. Every error need not be corrected in supervisory jurisdiction but only those which lead to gross miscarriage of justice while the Certiorari jurisdiction is much more wider. By the incorporation of Explanation to Section 2 through Amendment Act 2 of 2014, the enquiry which was permissible under the proviso, whether the Single Judge had exercised plenary powers under Article 226 or supervisory jurisdiction under Article 227 has been effectively closed by raising a presumption sans actual state of affairs or facts that may exist with regard to nature of jurisdiction actually exercised. Effectively, the Explanation renders the exception carved by the proviso redundant. The purpose of an Explanation is only to remove any ambiguity or make necessary clarification of a statutory provision. An Explanation cannot override the main Section or the proviso to it, but can only explain it. In the event of any conflict, the Explanation has to give way to the proviso.

The meaning of an explanation and its interpretation was considered in (1985) 1 SCC 591 (S. Sundaram Pillai v. V.R.Pattabiraman) as under:

"53. Thus, from a conspectus of the authority referred to above, it is manifest that the object of an Explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same"

In the present case, the Explanation raises an absolute presumption with regard to the nature of the power exercised irrespective of the actual nature of the power that may have been exercised. It would be extremely hazardous to raise a presumption without first establishing the necessary facts on basis of which the presumption is to be drawn. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact. When, however, the fact to be established is of such a nature

that direct evidence about its existence or non-existence would be available, the proper course is to resort to the direct evidence rather than to decide the matter by reliance on presumptions which can therefore go awry.

Applying the aforesaid principles of legislative interpretation, the Explanation to Section 2 inserted by the Amendment Act 2 of 2014 is therefore held to be bad for that additional reason.

Per Goutam Bhaduri, J. (concurring).

23. In the result, the writ petition is allowed. The impugned explanation as amended vide Amendment Act No. 2 of 2014 is declared unconstitutional and inoperative in law. All the connected writ appeals are directed to be placed before the Division Bench for further orders.

Sd/-

**(Navin Sinha)
CHIEF JUSTICE**

Sd/-

**(Manindra Mohan Shrivastava)
JUDGE**

Sd/-

**(Goutam Bhaduri)
JUDGE**