

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2021

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition Nos.25236 and 25419 of 2018 and 32587 of 2019
and
WMP Nos.29340, 29341, 29575, 29577 and 31239 of 2018
1083, 32967, 32968, 32969 & 36108 of 2019
& WMP Nos.1286 & 1288 of 2020

Church of South India Trust Association,
Represented by its Honorary Treasurer,
Mr. C.Robert Bruce,
5 Whites Road, Royapettah,
Chennai 600 014. ... Petitioner in W.P.Nos.25236 of 2018
and 32587 of 2019

Sri.Samuel Cornelius,
Diocesan Treasurer, Church of South India,
Diocese of Madras,
No.224 Cathedral Road,
Chennai 600 086. Petitioner in W.P.No.25419 of 2018

..vs..

1. The Union of India, represented by
the Secretary to the Government,
Ministry of Corporate Affairs,
New Delhi 110 001.
2. The Director,
Serious Fraud Investigation Office,
2nd Floor, Pryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi 110 003.
3. The Regional Director,
Office of the Regional Director, Southern Region, Chennai,
Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing, Shastri Bhavan,
26 Haddows Road, Chennai 600 006.
4. The Registrar, Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road, Chennai 600 006.

5. Assistant Registrar of Companies,
Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road, Chennai 600 006.
6. Joint Director, Ministry of Corporate Affairs,
5th Floor, A Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi 110 001.

7. E.Premkumar

8. David Chellaraj
(R-7 and R-8 impleaded, vide order of this Court
dated 20.12.2018 made in WMP Nos.32049 &
38805 of 2018 in W.P.No.25236 of 2018)

... Respondents in
WP.No.25236 of 2018

1. Assistant Director (Banking),
Investigation, 4th Floor, Corporate Bhavan,
Survey No.127/1 Thattiannam Village,
Bandlaguda, Hayatnagar,
Hyderabad 500 068.
2. The Union of India, represented by
the Secretary to the Government,
Ministry of Corporate Affairs, New Delhi 110 001.
3. The Director,
Serious Fraud Investigation Office,
2nd Floor, Pryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi 110 003.
4. The Regional Director,
Office of the Regional Director, Southern Region, Chennai,
Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing, Shastri Bhavan,
26 Haddows Road, Chennai 600 006.
5. The Registrar, Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road,
Chennai 600 006.

... Respondents in WP.No.25419 of 2018

1. The Union of India, represented by
the Secretary to the Government,
Ministry of Corporate Affairs,
New Delhi 110 001.
2. The Regional Director,
Office of the Regional Director, Southern Region, Chennai,
Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing, Shastri Bhavan,
26 Haddows Road, Chennai 600 006.
3. The Registrar, Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road,
Chennai 600 006. ... Respondents in WP.No.32587 of 2019

WP.No.25236 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the order passed by the 1st respondent in File No.07/131/2011/CL-II(SR) dated 07.05.2018 and to quash the same.

WP.No.25419 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the order passed by the 2nd respondent in File No.07/131/2011/CL-II(SR) dated 07.05.2018 and the consequential impugned summons in No. SFIO/CSITA/INV/HYD/2017-18/1764 issued by the 1st respondent dated 19.09.2018 served on 24.09.2018 and to quash the same.

WP.No.32587 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in the impugned report in F.NO.ROC-CHN/IPC/ 00346/NOTICE/ORDER U/s.206(4) of the 3rd Respondent, dated 13.12.2017 and to quash the same.

For Petitioner in : Mr.G.Masilamani, Sr.C for
WP.Nos.25236/2018 and M/s.D.Prabhu Mukunth Arunkumar
and 32587/2019

For Petitioner : Mr.C.Selvaraj for
in WP.No.25419 of 2018 Mr.S.V.Karthikeyan

For R1 to R6 in : Mr.G.Rajagopalan, ASG, assisted
WP.No.25236/2018 by Mr.Venkataswamy Babu,
and all the respondents in Central Government
WP.Nos.25419/2018 Senior Panel Counsel
and 32587/2019

For R7 in WP.25236/2018: Mr.R.Sreedhar for Mr.M.Ravi

COMMON ORDER

The instant case will serve as a curtain-raiser bringing to the fore as to how non-compliance of statutory procedure by the authorities, who are bound to exercise it, resulted in spate of litigations and thereby wasting the precious time in adjudicating the lis in a different form and dimension.

Reliefs sought:

2.The writ petitions viz., WP.Nos.25236 of 2018 and 32587 of 2019 have been filed by Church of South India Trust Association, whereas WP.No.25419 of 2018 has been preferred by one Sri Samuel Cornelius, who is the Diocesan Treasurer of Church of South India, Madras Diocese. The reliefs sought in the respective writ petitions are as follows:

(i) Issue a Writ of Certiorari calling for the records relating to the order passed by the Government of India, Ministry of Corporate Affairs, New Delhi in File No.07/131/2011/CL-II(SR) dated 07.05.2018 and to quash the same.

(ii) Issue a Writ of Certiorari calling for the records pertaining to the order passed by the Government of India, Ministry of Corporate Affairs, New Delhi in File No.07/131/2011/CL-II(SR) dated 07.05.2018 as sought in WP.No.25236 of 2018 and the consequential summons issued by the Investigating Officer viz., Assistant Director (Banking), Serious Fraud Investigation Office, Hyderabad, bearing No.SFIO/CSITA/INV/HYD/2017-18/1764 dated 19.09.2018 served on 24.09.2018 and to quash the same.

(iii) Issue a Writ of Certiorari calling for the records relating to the report of the Registrar of Companies, Chennai under Section 206(4) of the Companies Act, 2013, dated 13.12.2017 in F.NO.ROC-CHN/IPC/ 00346/NOTICE/ORDER and to quash the same.

3.Since the reliefs sought herein are interconnected and intertwined, all the three writ petitions were clubbed together and posted before this Court as 'Specially ordered cases', as per the administrative orders of the Hon'ble Chief Justice. Accordingly, they were heard and are decided by this common order.

Background facts:

4.Shorn of unnecessary details, the germane facts and circumstances leading to the filing of the present writ petitions, would run thus:-

4.1 The Church of South India (CSI) is an unregistered body governed by the Constitution of the CSI. It is a religious organization which was inaugurated on 26.09.1947, pursuant to union / agreement reached between the Protestant

Churches of different traditions viz., Angilican, Methodist, Presbyterian and Congregational. There are 24 Dioceses under the CSI. Each Diocese is having its own Constitution. CSI is the largest congregation of Protestant Churches in Asia, which is entitled for protection under Articles 25, 26 and 30 of the Constitution of India.

4.2 The Church of South India Trust Association (CSITA) is a registered Company under Section 26 of the Companies Act, 1913; deemed to be a Company registered under Section 25 of the Companies Act, 1956; and now, under Section 8 of the Companies Act, 2013 to hold the properties of CSI as Trustee thereof. The Constitution of the CSI and the Constitution of the Diocese reflect that it is a democratic organization with inbuilt checks and balances in the matter of administration of their religious and charitable activities. The CSITA being a Charitable Organization, formed for the purpose of holding the properties of the CSI, enjoys the benefit of exemption from paying the income tax.

4.3 While so, based on the report dated 12.01.2016 submitted by the Registrar of Companies, Chennai, under Section 208 of the Companies Act, 2013 (in short, 'the Act, 2013'), which was forwarded by the Regional Director (SR), Chennai, recommending SFIO investigation, by communication dated 02.06.2016, the Government of India, Ministry of Corporate Affairs, New Delhi (hereinafter referred to as 'the Central Government'), exercising its power conferred under Section 212(1)(a) of the Act, 2013, passed an order on 10.06.2016 to investigate into the affairs of the petitioner / CSITA by the Serious Fraud Investigation Office (SFIO).

4.4 One of the Dioceses of CSI viz., Medak Diocese in Andhra Pradesh filed a writ petition in WP.No.38841 of 2016 before the High Court of Judicature at Hyderabad for the State of Telengana and the State of Andhra Pradesh questioning the aforesaid order dated 10.06.2016 passed by the Central Government and the consequential proceedings and notice served on them. On 16.11.2017, the High Court of Hyderabad disposed of the said writ petition by setting aside the order as well the consequential proceedings and notice issued against the petitioner therein and remitted the matter to the Central Government, for exercise of its jurisdiction under Section 212 of the Act, 2013, basing on the report of the Registrar of Companies, within three weeks from the date of receipt of copy of the order.

4.5 In the interregnum period, the petitioner / CSITA filed a writ petition in WP.No.32457 of 2017 challenging the report of the Registrar of Companies, Chennai under Section 208 of the Act, 2013, dated 12.01.2016 and the communication of the Regional Director, Southern Region, Chennai, dated 02.06.2016, which are the basis for the order dated 10.06.2016 passed under Section 212 of the Act, 2013 by the Central Government. The said writ petition was dismissed by this Court, vide order dated 22.02.2018, against which, the

petitioner / CSITA went on appeal in WA.No.844 of 2018. By judgment dated 18.06.2018, the said writ appeal along with WA.No.1036 of 2018, was disposed of, directing the appellants therein to challenge the report of the Registrar of Companies, Chennai dated 13.12.2017 and the consequential order dated 07.05.2018 passed by the Central Government.

4.6 According to the petitioner / CSITA, based on the report of the Registrar of Companies, Chennai, dated 13.12.2017, the Central Government passed the order dated 07.05.2018 assigning the investigation into the affairs of the CSITA to the Serious Fraud Investigation Office (SFIO). However, the said order and the report have not been served on them. Only during the hearing of the writ appeals, a copy of the order dated 07.05.2018 was served on the learned counsel for the CSITA. Thereafter, the CSITA has preferred the first writ petition viz., WP.No.25236 of 2018 to quash the said order dated 07.5.2018 passed by the Central Government.

4.7 Consequent to the order dated 07.05.2018, one Samuel Cornelius, Diocesan Treasurer of the CSI, Madras Diocese, was issued with a summons dated 19.09.2018 by the Assistant Director (Banking), SFIO, Hyderabad, directing him to appear along with documents mentioned therein for examination and recording the statement under Oath, on 27.09.2018 at 11.00am in the office of the Regional Director of SFIO. Aggrieved over the same, the said office bearer has come up with the second writ petition viz., WP.No.25419 of 2018 to quash the summons served on him.

4.8 In the mean while, the petitioner / CSITA, by letters dated 18.06.2018, 01.08.2018 and 09.08.2018, sought a copy of the report dated 13.12.2017, but, the same was not furnished to them for want of instructions from the Central Government. Subsequently, as per the order of this Court dated 28.06.2019 passed in WP.Nos.25236 and 25419 of 2018, the petitioner / CSITA was furnished with a copy of the report of the Registrar of Companies, Chennai dated 13.12.2017 filed under Section 208 of the Act, 2013, which is under challenge in the third writ petition viz., WP.No.32587 of 2019.

Pleadings of the parties:

5.1 According to the petitioner / CSITA, as the investigation by SFIO is a serious in nature, they cannot be deprived of the copy of the report dated 13.12.2017, based on which, the Central Government in exercise of its jurisdiction conferred under Section 212 of the Act, 2013, ordered SFIO investigation into the affairs of the company. Further, the order dated 07.05.2018 proceeded to state that the same was passed under Section 212(1)(a) and (c) of the Act, 2013, basing on the report of the Registrar of Companies, dated 13.12.2017 under Section 208; however, no inspection was made and no enquiry was conducted under Section 206/ 207, as contemplated; no opportunity of being heard was provided as per Section 206(4); and hence, the said report cannot be

treated as a report under section 208. That apart, the order dated 07.05.2018 under Section 212, was passed without forming an opinion as contemplated under Section 210 and also contrary to the order of the High Court of Hyderabad. Therefore, the report dated 13.12.2017 as well as the order dated 07.05.2018 which are under challenge in WP.Nos.25236 of 2018 and 32587 of 2019, are arbitrary, illegal and against the principles of natural justice.

5.2 The petitioner in WP.No.25419 of 2018 stated that summons issued pursuant to the order of the Central Government assigning SFIO investigation into the affairs of the company, did not disclose the fact about the prior approval of the Central Government in consonance with Section 217 of the Act, 2013 and a copy of the order dated 07.05.2018 was not enclosed therein and therefore, the said summons is contrary to the relevant provisions of the Act, 2013 and in violation of the principles of natural justice. It is also stated that the Diocese of the CSI being unregistered body, coming under the control of the CSITA, cannot be subjected to investigation by the SFIO.

6. Denying the averments made in the writ petitions, the respondents 1 to 6 filed a detailed counter affidavit, wherein, it is inter alia stated as under:

6.1 The very purpose of creating the CSITA is to acquire, hold and administer properties of the CSI and its constituent churches, which in turn is part of the 24 Dioceses and hence, the averments of the CSITA that the 24 Dioceses of the CSI are unregistered bodies and the CSITA alone can be commanded in the facts and circumstances of the case to produce the documents, if any, and the Diocese cannot be subjected to investigation by SFIO, are untenable. According to these respondents, the CSITA, CSI and its constituent Diocesan Units have to be treated as single entity, when they come to any investigation.

6.2 It is established principle in corporate jurisprudence that if somebody or a person or a group of persons is trying to play fraud or taking advantage of the corporate personality for immoral, illegal or other purpose which are against public policy, then the corporate veil of the company has to be pierced. In the present case, the CSI and its constituent Diocesan Units, taking advantage of the corporate personality of the CSITA, have availed bank loans by creating charges on the immovable and movable properties, tax benefits, suing the property disputes, etc., however, the CSITA does not show any fixed assets in the balance sheet filed with the Registrar of Companies and hence, the corporate veil of the CSITA deserves to be pierced.

6.3 The Central Government ordered investigation into the affairs of the petitioner / CSITA by SFIO, on 07.05.2018, after a thorough analysis of the report dated 13.12.2017

submitted by the Registrar of Companies under Section 208, which is in continuance of the earlier report dated 12.01.2016. Moreover, the High Court of Hyderabad, while remitting the matter, directed the Central Government only to reconsider the same afresh in terms of Section 212 of the Act, basing on the report of the Registrar of Companies. Hence, there is no need for a fresh inspection and inquiry under section 206/207 of the Act, 2013.

6.4 Since all the procedural aspects of the Act, 2013, have been complied with by the respondent authorities and reasonable opportunity of being heard was given to the CSITA, none of the civil rights of the petitioner have been affected.

6.5 An order under section 212 for investigation by SFIO is just a preliminary step in the proceedings and the investigation by SFIO is concluded by the submission of the Investigation report to the Central Government, as mandated under Section 212(12) of the Act, 2013. Only after considering the investigation report by the Central Government, the truth of real allegations will be brought out to proceed with prosecution of the CSITA and its officers including Directors, depending on the findings contained in the Investigation Report. Hence, the question of violation of the principles of natural justice, does not arise at this stage.

6.6 It is the further case of the respondents that various allegations were raised against the petitioner / CSITA, which compelled the Central Government to order inspection of the Books of Accounts of the company on 08.08.2011 under Section 209A of the Companies Act, 1956. Accordingly, inspection was conducted and a report was submitted pointing out various violations of the Act. Based on the same, prosecution was launched against the company and its officers before the Economic Offences Court, Chennai. Subsequently, notice dated 05.10.2015 under section 206(4) of the Act, 2013 was issued, to which, the petitioner / CSITA submitted its explanation on 15.10.2015. After considering the same, the Registrar of Companies, filed the report dated 12.01.2016 under Section 208 of the Act, 2013. Pursuant to the same, the Central Government under Section 212, ordered investigation into the affairs of the Company by SFIO, which was quashed by the High Court of Hyderabad. Thereafter, the Registrar of Companies, submitted another report dated 13.12.2017 in continuation of the earlier report dated 12.01.2016 under Section 208. Based on the same, the Central Government passed the order dated 07.05.2018 under Section 212 (1)(a) and (c) of the Act, 2013, after complying with all the procedures as envisaged in sections 206 to 208, which holds good in law. Consequently, the summons dated 19.09.2018 came to be issued to the office bearer of one of the units of the petitioner / CSITA. However, with an intent to delay the proceedings, the petitioner / CSITA is involved in the act of forum shopping. On this ground alone, the present writ petitions are liable to be dismissed.

7. During the pendency of the writ petitions, one E.Premkumar and David Chellaraj, who are the members of CSI Diocese, were impleaded as the respondents 7 and 8 respectively in WP.No.25236 of 2018, vide order of this Court dated 20.12.2018. The newly impleaded respondents filed their respective counter affidavits.

8. According to the averments made in the counter affidavit filed by the seventh respondent, the writ petition was sworn by one Robert Bruce claiming himself to be the Treasurer of the CSITA, who is not a validly elected Treasurer and as per the order dated 18.11.2016 passed by the National Company Law Tribunal in CP.No.2 of 2016, as confirmed by this Court vide order dated 20.12.2018 in CRP.No.3739 of 2016, he has no locus standi to represent the CSITA and the entire election process is under the investigation of SFIO and hence, the writ petition filed by him on behalf of the CSITA is not maintainable and the same is liable to be dismissed in limini. It is also averred therein that the contents of the affidavit filed in support of the writ petition are not only false averments, but also misleading and fraudulent in nature, besides suppressive of material facts. Therefore, there is urgent need to regulate the affairs of the CSITA so as to ensure proper accountability, transparency and propriety.

9. The eighth respondent in his counter affidavit, stated that the CSITA is a company registered under the Companies Act and is also functioning as a Trust and hence, it is bound by the provisions of the Companies Act as well as the law relating to that of Trust; and WP.No.38841 of 2016 was filed by the power of attorney of the CSITA before the High Court of Hyderabad, the present two writ petitions were filed by the CSITA itself and the third writ petition was filed by the subordinate of the CSITA and thus, the petitioner / CSITA cannot be permitted to indulge in forum shopping and forum swapping. The counter affidavit further proceeds to state that the report of the Registrar of Companies filed before the Central Government would clearly disclose that the CSITA is found guilty of mismanagement of the trust properties and misappropriation of the trust funds through its officers and hence, appropriate action has to be initiated to safeguard the trust and its movable and immovable properties from the hands of the unworthy people. Thus, it is prayed that the writ petition may be dismissed and the investigation into the affairs of the petitioner / CSITA by SFIO may be ordered.

Submissions of the Counsels:

10.1 Mr.Masilamani, learned Senior Counsel representing the counsel on record for the petitioner / CSITA submitted that the order dated 07.05.2018 impugned in WP.No.25236 of 2018, has been passed by the Central Government exercising its

power under Section 212 of the Act, 2013, however, without forming an opinion as contemplated under Section 210, which is contrary to the order dated 16.11.2017 passed by the High Court of Hyderabad in WP.No.38841 of 2016 as well and hence, the same is non-est in law. It is also submitted that the impugned order has not been served on the petitioner / CSITA and as such, the same is in violation of the principles of natural justice.

10.2 The learned Senior Counsel further submitted that the order dated 07.05.2018 referred to the report of the Registrar of Companies, dated 13.12.2017 impugned in WP.No.32587 of 2019, which cannot be treated as report under Section 208, unless it is preceded by an inspection or enquiry as contemplated under Sections 206 and 207, as per which, the Registrar or Inspector shall inspect the books of account or conduct enquiry and other books and papers of the Company. He also submitted that though replies were properly sent, with respect to the notice regarding allegations, no enquiry was conducted under Section 207 and therefore, the impugned report suffers from error apparent on the face of the record. Adding further, he submitted that the Registrar of Companies does not have powers under Section 208 to recommend the investigation by SFIO. Thus, according to him, the impugned report is liable to be quashed.

11.1 Mr.C.Selvaraj, learned counsel representing the counsel on record for the petitioner in W.P.No.25419 of 2018 submitted that consequent to the order dated 07.05.2018 passed by the Central Government, the impugned summons dated 19.09.2018 came to be issued by the first respondent /SFIO, directing the petitioner to appear for examination and recording of statement under Oath, without disclosing the prior approval of the Central Government in consonance with Section 217(4) of the Act, 2013; a copy of the order dated 07.05.2018 ordering investigation by SFIO, has not been enclosed therein; and hence, the impugned summons is arbitrary, illegal and violative of the principles of natural justice. It is also submitted that since the order dated 07.05.2018 is pertaining to investigation into the affairs of the CSITA by SFIO, the summons sent to the petitioner herein, who is an office bearer of the CSI, Madras Diocese, is contrary to law and hence, it is liable to be set aside.

11.2 Drawing the attention of this Court to the report of the Registrar of Companies dated 12.01.2016, a copy of which is enclosed at page 217 of the typed set of papers dated 19.11.2019, the learned counsel, with respect to the allegation relating to 'amendment of the Memorandum of Association (MoA) and Articles of Association (AoA) without the approval of the Central Government', submitted that the amendment was taken place on 05.03.2002 i.e., prior to the introduction of the Companies Act, 2013 and hence, 1956 Act only applies to the facts of the present case; further,

Section 25 of the Companies Act, 1956, corresponds to Section 8 of the Companies Act, 2013, which deals with amendment and as per the said provisions, only for amending the objects, prior permission of the Central Government is required and hence, there is no violation of the provisions of Section 31 of the 1956 Act. As regards the second allegation relating to vacation of office by the Directors, he submitted that the prosecution was with respect to the non-filing of statutory returns and therefore, the comments of the Officer in this regard, is nothing but meaningless. In respect of the allegation against Bishops and their stooges for unauthorized usage of rent free bungalows, luxury cars and unwarranted free world tours, he submitted that the Registrar has usurped the power of the Civil Court and he does not have any power to raise such allegation and his power is restricted only to send a report under Section 206 (4) of the Act, instead he sent a report under Section 208 stating that the verification of books of account and records of the company are required. He also submitted that the interpretation of document, viz., settlement deed, dated 21.05.1979, is a question of law.

11.3 With respect to other allegations, the learned counsel submitted that there is no separate PAN number for each Diocese, as they are unregistered bodies and the CSITA alone has got PAN number and it gives power of attorney to all the Bishops to do the business of individual Diocese. He further submitted that without verifying the financial statement, the Registrar of Companies recommended to order for SFIO investigation, in respect of the alleged mismanagement and misappropriation of funds in the CSI Kalyani Hospital, which is incorrect in the eye of law. Thus, he totally refuted the comments given by the Registrar of Companies, as there was no specific allegation made against the petitioner.

11.4 The learned counsel further submitted that the letter dated 02.06.2016 arises out of the fresh complaints received by various complainants and the same is not in continuance of the earlier report dated 12.01.2016 and as such, the Registrar of Companies ought to have followed Section 206 and filed another report under Section 208. In other words, in respect of the complaints received after 12.01.2016, the Registrar of Companies has to make enquiry afresh and file another report under Section 208, after complying with Section 206. He also submitted that based on the report dated 12.01.2016, the Central Government ordered SFIO investigation into the affairs of the CSITA, vide order dated 10.06.2016, which was subsequently, set aside by the High Court of Hyderabad by order dated 16.11.2017 in WP.No.38841 of 2016 and the matter was remanded to the Central Government, for exercise of its jurisdiction under Section 212 of the Act, but, the said order was not strictly complied with by the Central Government. However, the learned counsel fairly submitted that the petitioner is inclined to appear for enquiry, if any such order is passed by this Court.

11.5 Referring to Sections 210 and 212 of the Act, 2013, the learned counsel submitted that based on the report dated 13.12.2017, the impugned order dated 07.05.2018 has been passed under Section 212(1)(a) and (c) of the Act; and section 212(1)(a) speaks about the report of the Registrar of Companies under Section 208, for which, the Registrar has to follow Section 206(4), which was not done in the present case. He further submitted that as per Section 208, the Registrar or Inspector shall, after inspection of the books of account or enquiry under Section 206 and other books and papers of the company under section 207, submit a report in writing to the Central Government along with documents if any, including recommendation about further investigation; and hence, the report under Section 208 should be made after complying with the provision of Section 206, where serious scrutiny is required. With these submissions, the learned counsel prayed to allow these writ petitions by setting aside the impugned proceedings.

12.1 Mr.G.Rajagopalan, learned Additional Solicitor General assisted by Mr.Venkataswamy Babu, learned Central Government Senior Panel Counsel appearing for the respondents 1 to 6 submitted that the issue raised before this Court is, whether there are sufficient materials on record to order SFIO investigation. Referring to sub section (1) of Section 212, he submitted that without prejudice to the provisions of Section 210, where the Central Government is of the opinion that it is necessary to investigate into the affairs of a Company by the SFIO, subject to the following conditions: (a) on receipt of a report of the Registrar or Inspector under Section 208; or (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated; (c) in the public interest; or (d) on the request made by any Department, either Central Government or State Government. Even assuming that the impugned order will not stand under section 212(1)(a) for not following the relevant provisions by the Registrar or Inspector, while making report under Section 208, it is very much sustainable, in view of clause (c) of Section 212(1), on the ground of public interest. To buttress the said submission, he placed reliance on the following decisions of the Supreme Court:

(i) In Barium Chemicals Limited and another v. Company Law Board and Others, [1966 Supp SCR 311 : AIR 1967 SC 295], wherein it was held as follows:-

"31. The object of Section 237 is to safeguard the interests of those dealing with a company by providing for an investigation where the management is so conducted as to jeopardize those interests or where a company is floated for a fraudulent or an unlawful object. Clause (a) does not create any difficulty as investigation

is instituted either at the wishes of the company itself expressed through a special resolution or through an order of the court where a judicial process intervenes. Clause (b), on the other hand, leaves directing an investigation to the subjective opinion of the government or the Board. Since the legislature enacted Section 637 (i)(a) it knew that Government would entrust to the Board its power under Section 237(b). Could the legislature have left without any restraints or limitations the entire power of ordering an investigation to the subjective decision of the Government or the Board? There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency. But the Authority is required to arrive at such an opinion from circumstances suggesting what is set out in Sub-clauses (i), (ii) or (iii). If these circumstances were not to exist, can the government still say that in its opinion they exist or can the Government say the same thing where the circumstances relevant to the clause do not exist? The legislature no doubt has used the expression 'circumstances suggesting'. But that expression means that the circumstances need not be such as would conclusively establish an intent to defraud or a fraudulent or illegal purpose. The proof of such an intent or purpose is still to be adduced through an investigation. But the expression 'circumstances suggesting' cannot support the construction that even the existence of circumstances is a matter of subjective opinion. That expression points out that there must exist circumstances from which the Authority forms an opinion that they are suggestive of the crucial matters set out in the three sub-clauses. It is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded. It is also not reasonable to say that the clause permitted the Authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose. It is equally unreasonable to think that the legislature could have abandoned even the small

safeguard of requiring the opinion to be founded on existent circumstances which suggest the things for which an investigation can be ordered and left the opinion and even the existence of circumstances from which it is to be formed to a subjective process. This analysis finds support in Gower's Modern Company Law (2nd Ed.) p. 547 where the learned author, while dealing with Section 165(b) of the English Act observes that 'the Board of Trade will always exercise its discretionary power in the light of specified grounds for an appointment on their own motion' and that 'they may be trusted not to appoint unless the circumstances warrant it but they will test the need on the basis of public and commercial morality.' There must therefore exist circumstances which in the opinion of the Authority suggest what has been set out in Sub-clauses (i), (ii) or (iii). If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute."

(ii) In *Swadeshi Cotton Mills v. Union of India*, [(1981) 1 SCC 664], wherein it was held as follows:-

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

59. We find merit in this contention. It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but as was pointed out by this Court in *Barium Chemicals* (ibid), the existence of circumstances from which the

inferences constituting the opinion, as the sine qua non for action are to be drawn, must be demonstrable, and the existence of such "circumstances", if questioned, must be proved at least prima facie.

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

(iii) In *Sunair Hotels Limited v. Union of India* and another [Judgment of the Delhi High Court, dated 26.04.2017 passed in WP(C) No.3444 of 2016], it was observed as follows:

"61. From the perusal of the above, it is patently clear that the impugned order is based upon material that has been prima facie demonstrable before this Court. The facts and circumstances summarised in the preceding paragraphs hereinabove, also reveal that the impugned order cannot be said to have been based on any irrelevant or extraneous considerations. In my view, Respondent No.1 has bestowed sufficient attention to the ample material available before it, before passing the impugned order.

62. The ground on which investigation was found to be warranted is 'public interest', within the meaning of the provisions of Section 212 of the 2013 Act. The Black's Law Dictionary, Sixth Edition, defines the expression 'public interest' to mean something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.

63. In view of the facts and circumstances as

have been elaborated in the preceding paragraphs, the argument that the impugned order be set aside, since no public interest has been made out, is baseless, devoid of merit and thus rejected."

12.2 The learned Additional Solicitor General further submitted that pursuant to the direction of the High Court at Hyderabad, after two rounds of litigation, the order and summons impugned in respective WP Nos.25236 and 25419 of 2018, came to be issued and there is no procedural violation, as alleged by the petitioners. It is also submitted that considering the nature of the allegations raised against the petitioner/ CSITA, the Registrar of Companies filed a report under Section 208, recommending to order SFIO investigation, as the SFIO investigation alone can bring all the irregularities into light; whether the petitioner/CSITA has committed any fraud, is to be tested by the Investigating Authority and the investigation as ordered under Section 212, is yet to be commenced; and hence, the question of violation of the principles of natural justice does not arise at this stage and the petitioners are not at all aggrieved in any manner.

12.3 Adding further, the learned Additional Solicitor General submitted that though the petitioner / CSITA claimed that they had already submitted all the required documents for scrutiny, the documents produced did not disclose all the particulars. It is also submitted that to exercise its control over the properties of the church and diocese, the petitioner / CSITA is forming them as 'Society', which is evident from the Certificates pertaining to the 'Krishna Godavari Diocese' enclosed at Pages 316 and 317 (members of the society consisting of Bishops, clause 5 (a), and powers of the Treasurer); the Diocesan units are using separate PAN numbers, apart from CSITA having a PAN; as far as the allegation pertaining to Coimbatore CSI Diocese is concerned, the CSITA stood as guarantor for a sum of Rs.3.5 crores and if that loan is defaulted, the properties belonging to the CSITA will be attached and SARFAESI action will be initiated against the guarantor also; in this regard, FIR has been registered on the file of the Thiruppur Police Station, which was stayed by this Court; and there were various proceedings initiated against the petitioner / CSITA by the Customs Officials and Income Tax Officers, besides Economic Offence cases and the SFIO alone is having power to deal with all the issues; and hence, the order passed by the Central Government to investigate the affairs of the company by SFIO, based on the report of the Registrar of Companies and consequential summons issued, do not call for any interference by this Court.

12.4 The learned Additional Solicitor General also contended that the order impugned in the writ petition was

passed after forming the opinion as required by Section 210 and hence, there is no requirement to quash the same. According to him, sufficient materials are available with the Central Government for ordering investigation by SFIO and in the case on hand, the investigation was ordered based on the report forwarded by the Registrar of Companies, under Section 208 and it is a case of agreement between the Registrar of companies and the Central Government. Therefore, the Central Government is deemed to have complied with the requirement of Section 212 and no exception to the order impugned, could be taken.

12.5 Mr.Venkataswamy Babu, learned Central Government Senior Panel Counsel, appearing for the Official respondents submitted that criminal cases have been registered against two of the office bearers of CSITA, on the allegation that they have sold the church property for a throw-away price. Further, he produced a sealed cover containing the noting proceedings relating to the subject company, for perusal of this Court.

13.1 Mr.R.Sreedhar, learned counsel representing the counsel on record for the seventh respondent in WP.No.25236 of 2018 questioned the capacity of C.Robert Bruce, Honorary Treasurer of the petitioner / CSITA in filing the writ petition. He also submitted that earlier two identical writ petitions came to be filed by the petitioner herein, challenging the report of the Registrar of Companies dated 12.01.2016 and the communication of the Regional Director (SR), Chennai dated 02.06.2016, out of which, the second writ petition viz., W.P.No.32457 of 2017 came to be dismissed as premature, vide order dated 22.02.2018, against which, WA.No.844/2018 was filed; and the first writ petition in WP.SR.No.123943 of 2017 came to be dismissed at SR stage for non-compliance of the defects pointed out by the Registry, by order dated 01.11.2019. Thus, according to the learned counsel, the petitioner has played fraud upon the Court and indulged in forum shopping and hence, the writ petition is hit by the principle of res judicata.

13.2 The learned counsel also submitted that the order dated 10.06.2016 passed under Section 212 of the Act, 2013 was quashed by the High Court of Hyderabad and the Central Government was directed to take note of the report filed by the Registrar of Companies under Section 208 and to consider the matter afresh under Section 212 alone. According to him, under Section 206(4) enquiry was conducted and records were called for from the CSITA and after receiving reply, the report under Section 208 dated 12.01.2016 was made and that report containing 45 pages, remains unchallenged and hence, the same is still in force. Even in the present writ petition, the petitioner / CSITA has not challenged the said report. He drew the attention of this Court to clauses (a) to (c) of Section 212(1) and submitted that SFIO investigation can be

ordered by this Court, if not invoking by sub section (1)(a) or (1)(b) of section 212, but by Section 212 (1)(c), viz., in the public interest, since the petitioner / CSITA is involved in mismanagement and misappropriation of crores of money. In support of the said submission, he placed reliance on the decision in Sunair Hotels Limited v. Union of India and another, wherein taking note of the existence of public interest, the order passed by the Central Government assigning the investigation of the company by SFIO, was confirmed by the Delhi High Court. He further submitted that the petitioner / CSITA has approached this Court with unclean hands, stating that the order of the Hyderabad High Court was made ready on 19.12.2017, but before receiving the said order copy, the petitioner / CSITA has filed WP.No.32457 of 2017 on 11.12.2017, conveniently omitting the observations made by the Hyderabad High Court in the said order; since the order of the Hyderabad High Court was not challenged, it has become final and binding on the parties. Thus, the materials available on record would disclose that SFIO investigation is very much essential.

13.3 According to the learned counsel, prior to the Act, 2013, the petitioner / CSITA was constituted and hence, any amendment to the Articles of Association has to be made by way of passing a special resolution and the same has to be forwarded to the Registrar of Companies for making necessary entry. In this regard, he drew the attention of this Court to Clauses 4 and 7 of the AoA, dated 05.03.2002; only one PAN is available in the name of CSITA, but it is being used by 24 Dioceses and hence, the funds are routed through the petitioner / CSITA only.

13.4 The learned counsel further submitted that based on the NCLT Order, Justice K.Sampath (Retd.) was appointed as Administrator, against which, a Civil Revision Petition came to be filed, which was dismissed by this Court; subsequently, the Honorary Treasurer C.Robert Bruce was removed and the very same NCLT Bench removed the Administrator and gave power to CSITA itself; though major decisions were stalled, the petitioner has taken all the decisions and also passed resolution to that effect. According to the learned counsel, such act of the petitioner / CSITA was not intimated to the Registrar of Companies and hence, the same amounts to fraud; since the order passed by the Division Bench with respect to removal of Robert Bruce was not challenged, the same attained finality. Further, there are violations of the provisions of Company law as well as other Regulations, which are overlapping. Hence, the learned counsel sought to dismiss the writ petition.

14.1 Reiterating the averments made in the counter affidavit, Mr.T.R.K.Kumarasingh, learned counsel for the

eighth respondent in WP.No.25236 of 2018 submitted that the legal status of CSITA, by virtue of interpretation itself, is a company, but with respect to functions, it is a trust, as per the Memorandum of Association and the Articles of Association framed in the year 1947. In this regard, he drew the attention of this Court to MoA and AoA of the CSITA. He also raised a preliminary issue as regards the maintainability of the writ petition. According to him, the writ petition before the Hyderabad High Court was filed by one Dr.Vimal Sukumar, General Power of Attorney, representing the petitioner therein, as against the order dated 10.06.2016 passed by the Central Government, whereas the writ petition before this Court was filed by the CSITA itself and the order impugned herein is in pursuance of the order dated 16.11.2017 passed by the Hyderabad High Court in WP.No.38841 of 2016; and as such, no separate writ petition can lie before this Court and the petitioner can redress its grievances before the High Court at Hyderabad.

14.2 The learned counsel further referred to the decision of the Delhi High Court in Sunair Hotels Limited case (supra) and submitted that the order passed by the Central Government, assigning the investigation into the affairs of the petitioner / CSITA to SFIO, in the public interest, does not warrant any interference. He also submitted that this Court has got power to suo motu order for SFIO investigation, in the public interest; and that, since the petitioner is a company as well as Trust, the Court has got inherent duty to protect the same under *parens patriae* jurisdiction. To substantiate the said contention, he referred to the following decisions:

(i) Coastal Projects Ltd v. IFCI Limited and another, Delhi High Court, (DB) [LPA.Nos.641 and 642 of 2016 dated 20.12.2018]:

"33. The Court has the power while dealing with the matter under the Contempt of Courts Act, to order for an investigation of the matter which comes in the knowledge of the Court regarding any violation, breach of law etc. and such a power stands derived from the Constitution itself, hence the submission of the learned counsel for the appellants that the Court cannot pass any direction for investigation while dealing with the contempt petition is absolutely untenable in law, hence the same is rejected. The impugned order passed by the learned Single Judge, in view of the facts and circumstances of the case, has been passed fully within the precincts of the power of the Court and the direction for investigation by the SFIO into the prima facie allegations which have been referred to in the gist of the report is just and proper."

(ii) Court on it's own motion v. UOI, [Jharkhand High Court], 2018 (3) JCR 44:

" 15. ... Power of the High Court under Article 226 of the Constitution of India to direct the C.B.I to investigate the cognizable offence in a State without consent of the State Government was substantially the issue in the case of State of West Bengal and others Vrs. Committee for protection of democratic rights, West Bengal and others reported in (2010) 3 SCC 571, decided by the constitution Bench of the Hon'ble Supreme Court. The Hon'ble Apex Court at para 57 of the report dealt with the powers of judicial review conferred on the High Court and held that the High Courts are authorized under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any Government to enforce fundamental rights and, " for any other purpose". It was also observed that powers of judicial review conferred on the High Court undoubtedly are in a way wider in scope. At para 68(v) the Apex court has also observed as follows:-

"Para 68(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Article 32 and 226 of the Constitution".

We are therefore of the opinion that in an appropriate case direction can be issued on the SFIO under Article 226 of the Constitution of India to enquire whether the case involves serious fraud or not into the affairs of the Company.

At this stage we refrain from expressing any opinion whether it is case of serious fraud in the misuse and misappropriation of public money by the Agency or any other body or individuals with the aid of the authorities of Lender Bank and NHAI. It is to be enquired whether there has been a deliberate failure on the part of the authorities and the lender Banks in discharge of their public duties with an intention to favour the Agency?

...

17. The SFIO is a multidisciplinary body comprised of experts of different fields appointed by the Central Government from amongst persons of ability, integrity and experience in banking; corporate affairs; taxation; forensic audit; capital market; information technology; law; or such other fields as may be prescribed. The SFIO has a mandate under the Act of 2013 and the notification under which it is created to investigate serious cases of fraud in relation to a company in the public interest under Section 212 of the Act of 2013. The present matter relates to involvement of the Concessionaire Company incorporated under the Companies Act and also the instrumentalities of the State i.e. the authorities of the consortium of Banks led by Canara Bank, NHA and also the State Government. The conspectus of facts and circumstances that have emerged in the matter of execution of such large project with an outlay of Rs.1654 crores approximately and the manner in which huge advances have been made by the lending bank out of the public exchequer without any commensurate progress of work over a period of about 5 years since it commenced in December 2012, requires an inquiry as to whether its a case of serious fraud which needs to be investigated."

(iii) C.K. Rajan vs State of Kerala and Others [AIR 1994 Ker 179]:

"... In Sitarama Chetty v. Subramania Ayyar, 39 Mad 700 : (AIR 1917 Mad 551), the Madras High Court, citing Attorney General v Brodie, (1846) 4 Moo Ind App 190 and Maharanee Shibessoree v. Mothooranath, (1869-70) 13 Moo Ind App 270, held that the High Courts and the mofussil Courts were Courts of both law and equity and that they can exercise jurisdiction over religious and charitable institutions in the same way as the Courts Chancery did in England."

(iv) Guruvayoor Devasthanam Managing Committee and another v. C.K.Rajan and others, (2003) 7 SCC 546:-

"90. The curtain of this litigation must be drawn here and now. The State admittedly implemented many of the suggestions of the high Court. They would not be reopened. Some suggestions of the High Court are pending consideration at the hands of the State. They may be considered. The State shall, however, as regard the directions of the High Court which according to it cannot be complied with, pass appropriate

orders recording sufficient and cogent reasons therefor as expeditiously as possible and not beyond a period of three months from the date of communication of this order. The High Court, if any proceeding is initiated in relation thereto, may deal therewith in accordance with law. The administration of the temple, it is stated, has been taken over by the State and the other statutory functionaries. They shall, we have no doubt in our mind, having regard to the fact that special treatment has been accorded to the temple by the State Legislature, carry out its activities in true letter and spirit thereof. The State and the statutory functionaries would be well advised to give full credence to the tenets and practices subject of course to the provisions of the statute. The State should furthermore make all endeavours to see that the sentiments of the devotees are respected. In view of our findings aforementioned, the adverse remarks made in the impugned judgment against the appellant in C.A. No. 2151/1994 shall stand expunged.

91. Before parting with this case, however, we must complement the High Court about the gigantic task undertaken by it leading to discovery of a number of irregularities in the matter of management of temple detected in the process. We hope and trust that the judgment of the High Court would prove to be an eye-opener to the State and now onwards it will be able to fulfill the hopes and aspirations of millions of devotees of Lord Krishna. These Appeals are disposed of on the aforementioned terms. No order as to costs."

(v) I. Nelson and another v. Kallayam Pastorate and others [2007 AIR (SC) 1337]:

"21. Keeping in view the interest of the general public, we see no reason as to why in a case of mismanagement of such charitable organizations, although run by minorities, the Court cannot oversee its functions. The Courts, indisputably, act as guardian of such societies. [See Guruvayoor Devaswom Managing Committee & Anr. vs. C.K. Rajan & Ors. (2003) 7 SCC 546.] Even otherwise, rights under Articles 25 and 26 of the Constitution are not absolute and unfettered. The right to manage, it goes without saying, does not carry with it a right to mismanage."

(vi) Shekh Abdul Kayum v. Mulla Alibhai [1963 (3) SCR 623] :-

"22. There cannot, in our opinion, be any doubt about the correctness of the legal position that trustees cannot transfer their duties, functions and powers to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust, but having once entered upon the trust he cannot renounce the duties and liabilities except with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his office or any of his functions except in some specified cases. The rules against renunciation of the trust by a trustee and against delegation of his functions by a trustee are embodied, in respect of trusts to which the Indian Trusts Act applies, in sections 46 and 47 of that Act. These sections run thus

"46. A trustee who has accepted the trust can- not afterwards renounce it except (a) with the permission of a principal Civil Court of Original Jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. A trustee cannot delegate his office or- any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation."

14.3 That apart, the learned counsel pointed out the report of the Independent Auditors appointed by the Income Tax Department, wherein it was clearly stated that the appointment of SFIO is a sine qua non for the CSITA. Taking this Court to the definition of the word "mismanagement" from law lexicon, he submitted that the petitioner / CSITA is involved in serious offence of mismanagement of the trust properties, which has to be tested by SFIO.

14.4 Referring to the decision of the Supreme Court in State v. N.S.Ganeswaran [(2013) 3 SCC 594], the learned counsel submitted that infraction of law would not vitiate the order for investigation unless prejudice and injustice are made out by the accused persons. It is also submitted that whether the investigation is necessary or not, is based on the interest of both parties and in the case on hand, at paragraph no.31 of the affidavit filed in support of the writ petition, it was stated that the petitioner is always ready and willing to face any enquiry conducted in accordance with law and hence, there is no necessity to follow any procedure as envisaged in the provisions of the Act, 2013. He further submitted that the eighth respondent will not get any relief, if the matter is once again placed before the authority concerned and hence, this Court may order SFIO investigation, based on the materials available on record and in that event, no prejudice would be caused to the petitioner / CSITA.

14.5 It is further submitted that the Medak Diocese of the CSITA challenged the order of inspection under Section 209A of the 1956 Act, passed by the Central Government dated 08.08.2011 by filing a writ petition in Writ Petition No.21343 of 2011, which was dismissed by this Court vide order dated 01.03.2012 and thereafter, inspection had taken place and the report was sent to the Central Government. Immediately, after passing the order, assigning the investigation of the company to the SFIO, the Power of Attorney of the petitioner filed a writ petition before the Hyderabad High Court. The said factum would prove that there were multifarious proceedings by the same petitioner/ CSITA before different forums. In such circumstances, the SFIO investigation has to be ordered and the same has to be monitored by this Court, besides providing sufficient safeguards for such investigation. He also submitted that without prejudice to Section 210, independently under Section 212, the Central Government can act. In this connection, he relied upon the phraseology used in the Section "necessary to investigate" and "opinion of the Central Government". That apart, this Court has power to invoke its special jurisdiction under Article 226 and order for SFIO investigation, since the involvement of the petitioner in the activities, would cause serious threat to the public interest. Adding further, he submitted that the stand of the petitioner that the CSI Dioceses are unregistered bodies, is totally incorrect as by its own action, more particularly, in all the audit reports for the past 72 years, the CSI Synod is described as an unit of the CSITA. When the audit report of all the yester years state that the CSI Synod and CSITA are the units of one company by the auditors, the claim that the Dioceses are not units of the company, is a false statement.

14.6 The learned counsel further submitted that the petitioner has buried the quagmire created by CSI; the

Bishops, Clergy and CSI Synod which are to protect the truth and the downtrodden, started to imbibe the charity funds. It is also submitted that since the petitioner is the owner of the lands, the employees of the petitioner cannot do anything other than its regulations; even the Bishops are the employees of the company and getting salaries from the company, the commission of offences like fraud, misappropriation of funds, etc. should be termed as criminal offences.

14.7 It is further submitted on the side of the respondents that the petitioner / CSITA is a company registered under Section 8 of the Companies Act, 2013; after inspection of books of account of the company, the Registrar of Companies, Chennai, reported to the Central Government with a statement that the business of the company is for fraudulent / unlawful purposes and recommended for a thorough investigation by the Serious Fraud Investigation Office into the affairs of the company and its units; and hence, all the actions done by the petitioner without proper approval from the authorities concerned, shall be treated as unlawful and liable for both criminal and civil consequences. It is further submitted that with respect to the allegations raised against the petitioner /CSITA, certain documents have not been produced by the Police Authorities and the Police authorities have not even admitted the same before the learned Magistrate and hence it cannot be said that investigation was done in a proper manner; and that, there are various other issues to be looked into, in these cases.

15.1 By way of reply, Mr.G.Masilamani, learned Senior Counsel appearing for the petitioner /CSITA submitted that assuming that the petitioner has committed fraud on this Court, the learned counsel for the respondents 7 and 8 would have sought recalling such order obtained by the petitioner by playing fraud, whereas the same is not the position. In respect of the two writ petitions already filed, one writ petition was not even numbered and another was adjudicated and ultimately, dismissed and hence, the question of fraud does not arise herein. Also, the principle of res judicata cannot be applicable to the facts to the present case.

15.2 The learned Senior Counsel further submitted that as per the provisions of the Companies Act, an inspection or enquiry has to be conducted under Section 206 of the Act, 2013, and recommendation has to be made to the Central Government, on the basis of which, it is the prerogative right of the Central Government to order SFIO investigation; in this case, the impugned report dated 13.12.2017 submitted to the Central Government contained new allegations arising subsequent to the report dated 12.01.2016, for which, inspection and enquiry as envisaged under the provisions of

Sections 206 /207 have to be given to the petitioner / CSITA and in the absence of such procedure, the impugned report cannot be treated as report under section 208 and hence it is non-est in the eye of law. Referring to sections 210 to 212 of the Act, 2103, he submitted that Section 210 contemplates investigation into the affairs of the company by appointing Inspectors by the Central Government, whereas Sections 211 and 212 deals with SFIO investigation and therefore, it is for the Central Government to decide what kind of further action to be taken. He further submitted that the order impugned in the writ petition was straightaway passed invoking the jurisdiction under Section 212 and without adhering to the other provisions preceding to the same i.e., Section 210. Adding further, he submitted that each and every allegation made in the complaints were replied by the petitioner / CSITA to the Central Government and that is why, one of the Dioceses had approached the High Court of Hyderabad and obtained an order in their favour. It is also pointed out that while forwarding the original Report of the Registrar of Companies, dated 28.08.2012, under section 209A of 1956 Act, the Regional Director (SR), Chennai, in the communication dated 18.10.2012 addressed to the Central Government, was of the view that no serious fraud has been brought out warranting investigation by SFIO. As such, the contention of the learned counsel for the respondents 7 and 8 is contrary to the facts of the present case. However, the learned senior counsel submitted that W.P.No.32587 of 2019 came to be filed as per the directions of the Division Bench of this Court in Writ Appeal Nos.844 and 1036 of 2018, dated 18.06.2018.

16.1 In reply to the arguments made by the learned counsel for the private respondents, Mr.C.Selvaraj, learned counsel for the petitioner submitted that there is no misappropriation or illegality took place, as alleged by the respondents, since the Police authorities have given a clean chit against the petitioner / CSITA in the investigation as well as in the final report, which is pursuant to the order passed in the Crl.O.P.No.14889 of 2015, dated 22.06.2016.

16.2 The learned counsel further submitted that the CSITA is located at Chennai and hence it has every jurisdiction to file these writ petitions before this Court. He also placed reliance on the decision of the Supreme Court in Mohinder Singh Gill and another v. the Chief Election Commissioner, New Delhi and others [(1978) 1 SCC 405], wherein it was held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. Thus, according to the learned counsel, the impugned proceedings do

not stand in the eye of law, since it was not complied with the mandatory requirements as laid down in the Act, 2013 and hence, the same are liable to be quashed.

17.This Court has given its thoughtful consideration to the submissions made by all the parties and also carefully and meticulously perused the materials available on record, including the original files circulated by the official respondents.

Brief about the Institution:

18.Before proceeding further, it would be appropriate to brief about the Institution. The CSITA is a non-Governmental, public, religious, charitable and non-profit company with no shareholders, debentures or other characteristics of a trading or listed company. It was incorporated on 26th September 1947 as a "Company Limited by Guarantee" i.e., a "Limited Company without Shares". Its identification number (CIN) is U93090TN197NPL00036 and its registration number is 000346. It consists of the Moderator, Secretary and Treasurer of the Synod together with 12 other members elected by the Synod. It has different unit called as Diocese. Through it, the Church (i.e., the CSI) continues to serve the public at large in rural, sub-urban and urban areas irrespective of caste, creed and religion and they are summarized as follows:

The medical needs of the masses are being attended to by Hospitals and Health Centres numbering about 50. The number of education institutions within the CSITA - 94 colleges, 578 Secondary Schools, 1467 Elementary and Nursery Schools, 47 Technical Institutions, 24 Para Medical Institutions, others 44 - continue to cater for the educational needs. The Boarding Homes, Hostels and Day care Centres cater to the needs of children, who are orphaned, poor, deserted and differently abled. The provision of drinking water facilities and other amenities are extended to the under privileged communities, professional Training Schools both formal and non-formal continue to provide skills to men and women. Assistance in Community Development, environmental concern and self-employment schemes are also being carried out.

As per section 8 of the Companies, 2013, the CSITA is regarded as a limited company for the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any such other object. Secondly, the CSITA company needs to apply its profits, if any, or other income in promoting its objects. It cannot distribute its dividend to its members. The standards and procedures specified in the Act, 2013 have not percolated into the system of management of properties and finance over the last 72 years. The Trust Association has been a mere spectator when all the business is done by the Synod Executive, working committee, Diocesan Councils and Diocesan

property Committees and even by adhoc administrative committees in the name of the CSITA.

The CSITA is a non-profit company, who has religion and charity as its objects among other things, but whose operation is now, sought to be tested under the scanner of the Serious Fraud Investigation Office (SFIO) casting a shadow of doubt and suspicion on various aspects of its governance. Thus, it should be concerned about what pollutes the Church of South India today.

19. For the sake of convenience, the factual score that needs to be depicted with necessitous chronology, as presented by the parties, is as follows:

- ◆ On 08.08.2011, the Ministry ordered inspection for CSITA under Section 209 A (search and seizure) of the Companies Act, 1956.
- ◆ On 28.08.2012, an inspection report was submitted by the Registrar of Companies, recommending investigation by the SFIO in respect of (i) filing two sets of accounts, one with the Income Tax Department covering all the organization (Individual units / institutions, Dioceses of Church of South India which are either unincorporated body or registered society falling outside the scope and ambit of the Inspection under Section 209A of the Companies Act, 1956; and (ii) members are continuously sending complaints.
- ◆ On 18.10.2012, the Regional Director sent a letter based upon the above mentioned inspection report to the Director (Inspection and Investigation), Ministry of Corporate Affairs, New Delhi, stating that not much of serious financial irregularity could be unearthed and no ground for serious fraud could be identified as reported by the Inspection Officers. Further, it was stated therein that there was no serious fraud warranting investigation by SFIO. However, the Regional Director has forwarded the report to the Central Government to examine and issue necessary instructions.
- ◆ On 12.01.2016, the Registrar of Companies filed a report under Section 208 of the Companies Act, 2013, in which, internal pages 9 to 45 deal with the report under Section 209A dated 28.08.2012. It was stated that as per the directions of the Central Government, prosecutions were filed before the Economic Offences Court. It was ultimately suggested to order investigation into the affairs of the petitioner by the SFIO. The reasons for the same are (i) Continuous complaints; (ii) Amendment in MoA and AoA; and (iii) Mismatch in the consolidated financial statement, assumption that business of the company is carried on for a fraudulent / unlawful purpose.
- ◆ On 02.06.2016, the Regional Director, Southern Region,

Chennai sent a letter to the Central Government recommending investigation by SFIO, based upon the report dated 12.01.2016.

- ◆ On 10.06.2016, the Central Government ordered investigation into the affairs of the CSITA by SFIO.
- ◆ Challenging the aforesaid order dated 10.06.2016 passed by the Central Government, Medak Diocese of CSITA filed a Writ Petition bearing No.38841 of 2016 before the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh.
- ◆ On 16.11.2017, the High Court of Hyderabad set aside the order dated 10.06.2016 and the consequential proceedings dated 21.09.2016 and remitted the matter to the Central Government, to exercise its jurisdiction under Section 212 of the Act, based on the report of the Registrar of Companies, which is nothing but report dated 12.01.2016, within three weeks from the date of receipt of a copy of the order.
- ◆ In the meanwhile, the petitioner / CSITA filed Writ Petition No.32457 of 2017 before this Court to quash the report dated 12.01.2016 of the Registrar of Companies and the consequential proceedings dated 02.06.2016 of the Regional Director, Southern Region, Chennai. By order dated 22.02.2018 this Court dismissed the said writ petition as premature, with liberty to challenge the subsequent order in the manner known to law.
- ◆ The petitioner went on appeal in Writ Appeal No.844 of 2018. While hearing the appeal, the Central Government produced a copy of the order of the Joint Director, New Delhi, in File No.07/131/2011/ CL-II (SR), dated 07.05.2018, in which it was stated that the Registrar of Companies, Chennai, vide its report dated 13.12.2017 has highlighted certain issues, which necessitate the Central Government to order investigation by the SFIO in the public interest against the petitioner.
- ◆ By judgment dated 18.06.2018, the writ appeal was disposed of, granting liberty to the petitioner to challenge the said report.
- ◆ Representations dated 01.08.2018 and 09.08.2018 were made requesting a copy of the report dated 13.12.2017. However, the same were not considered.
- ◆ In the mean while, the petitioner challenged the order dated 07.05.2018 passed by the Central Government under Section 212(a) and (c) of the Act, ordering investigation into the affairs of the company by SFIO, by filing WP.No.25236 of 2018.
- ◆ Subsequently, summons dated 19.09.2018 came to be issued to one Samuel Cornelius, Diocesan Treasurer of CSI, Madras Diocese, which is questioned in WP.No.25419 of 2018.
- ◆ As per the direction of this Court, the petitioner / CSITA was served with a copy of the Report dated

13.12.2017, against which, WP.No.32587 of 2019 came to be filed.

Thus, it is clear from the aforesaid factual matrix that the relief sought in WP.No.25236 of 2018 will have bearing on W.P.No.25419 of 2018; the report dated 13.12.2017 which is under challenge in WP.No.32587 of 2019, is the basis for the order dated 07.05.2018 sought to be quashed in WP.No.25236 of 2018; and hence, the issues involved in all the three writ petitions are interconnected and intertwined.

20.1 The relevant portion of the order dated 07.05.2018 impugned in WP.No.25236 of 2018 is, for better understanding, extracted hereunder:-

WHEREAS the Central Government is empowered under section 212(1)(a) & (c) of the Companies Act, 2013 to order investigation into the affairs of any company on receipt of a report of the Registrar or Inspector under section 208 and in the public interest.

2.AND WHEREAS the Registrar of Companies, Chennai vide its report 13.12.2017 highlighted following issues which necessitate the Ministry to consider ordering investigation in public interest:-

i. Filing of different sets of Financial Statements with Income Tax Authorities and ROC till 31.03.2013 and as such the financial statements filed with the RoC till 2013 did not reflect the true and fair view of the affairs.

ii. Misappropriation of funds of CSI Kalyani Hospital at Mylapore, Chennai - Laity Association of CSI Madras Diocese complained that huge amount of funds of CSI Kalyani have been misappropriated in purchase of medicines, equipment's and no proper accounts have been maintained. It is alleged that about Rupees Seven Crores of the Company's funds have been misappropriated during 2014. Further, foreign funds / contribution received from Christopher Blind Mission International, Germany was also misused. The Company failed to reply to the said allegations when RoC sought reply to the allegations.

iii. CSI Christ Church, Gandhipuram, Coimbatore allegedly sold and purchased properties unauthorizedly and in violation of the bylaws of CSI and in the sale deeds the sale consideration was misrepresented with malafide intention and to defraud the Government of stamp duty.

iv. Various hospitals, educational institutions etc. function under the Company spread over five Southern states. Large number of Public avail services of the said institutions and hence, large public interest is involved. RoC has been constantly receiving complaints making serious allegations of

mismanagement and misappropriation of funds and properties involving crores of rupees including funds received as donation / contribution from abroad. Hence, the veracity of the complaints needs to be ascertained through an investigation.

3.NOW therefore, in exercise of powers conferred under section 212(1)(a)&(c) of the Companies Act, 2013, the Central Government hereby orders and assigns investigation into the affairs of Church of South India Trust Association (CSITA) to the Serious Fraud Investigation Office (SFIO).

20.2 The challenge made in WP.No.25419 of 2018 is to the impugned summons issued by the Assistant Director (Banking), Investigation, Hyderabad, dated 19.09.2018, served on 24.09.2018, wherein and whereby, the petitioner, who is one of the officer bearer of CSI Madras Diocese, was directed to appear along with the documents mentioned therein, before the Officer at 11.00 am on 27.09.2018 for examination and recording of statement under oath.

20.3 The report of the Registrar of Companies, Chennai, dated 13.12.2017, which is questioned in WP.No.32587 of 2019, arises out of the consolidated accounts of all the Dioceses filed from the financial year 2013-14 as well as various complaints received with respect to the allegations of misappropriation in CSI Kalyani, fraudulent, dubious sale of immovable property in CSI Coimbatore Diocese, etc. In the said report, it was opined that investigation through SFIO is indispensable, to find out the veracity of the allegations raised in the complaints.

21.1 At the outset, this Court is inclined to go into the preliminary objections raised by the private respondents. It is submitted that the writ petition filed by C.Robert Bruce claiming himself as Honorary Treasurer of the petitioner / CSITA, is not maintainable. According to them, the said C.Robert Bruce is not a validly elected Treasurer and as per the order dated 18.11.2016 passed by the National Company Law Tribunal in CA.No.12 of 2016 in CP.No.2 of 2016, which was confirmed by this Court vide order dated 20.12.2018 in CRP.No.3739 of 2016, he was removed from the said post and hence, he has no locus standi to file the writ petition on behalf of the CSITA and that, the entire election process is under the investigation of SFIO. It is also submitted that as per Section 8 of the Act, 2013, prior approval of the Central Government is required for amendment to Memorandum and Articles of Association, with respect to members of the CSITA, whereas no such approval was sought from the Central Government. Another objection raised by them is that the petitioner / CSITA is involved in the act of forum shopping; and the order impugned in W.P.No.25236 of 2018 is pursuant to the order dated 16.11.2017 passed by the High Court of Hyderabad in WP.No.38841 of 2016 and hence, the same has to be

challenged only before that High Court.

21.2 On the other hand, it is submitted on the side of the petitioner that by virtue of amendment to Clause 4 of the Memorandum and Articles of Association, the said Robert Bruce is a elected representative of the petitioner / CSITA and the same was also recognised by the Registrar of Companies, Chennai and that, a resolution was passed on 21.02.2017 to that effect by the CSITA Committee of Management. It is also submitted that after dismissal order dated 20.12.2018 passed by the Division Bench in CRP.No.3739 of 2016, the order of the NCLT was modified on 08.01.2019 and hence, the said Robert Bruce can very well file the writ petition on behalf of the petitioner / CSITA, whereas the private respondents made repeated complaints against the petitioner raising frivolous allegations. It is further submitted that the office of the petitioner / CSITA is situated at Chennai and hence, the instant writ petition is well within the jurisdiction of this Court.

21.3 It is seen from the typed set filed by the seventh respondent dated 10.01.2018 that in the order dated 18.11.2016 passed in CA.No.12 of 2016 in CP.No.2 of 2016, the National Company Law Tribunal, after detailed discussion, was inclined to dismiss the application in limini on the ground that Dr.Daniel R.Sadananda, Secretary and Robert Bruce, Treasurer, have no locus standi to file the same. While doing so, it was observed that the company came to be incorporated under the provisions of the Company law and has its management committee to represent and hence, they are not the regular office bearers of the company; the persons who have signed as Honorary Secretary and Honorary Treasurer of the CSITA, are also holding the salaried office as General Secretary and Treasurer respectively of the Synod; in respect of the CSITA, there is no permanent membership as envisaged under Section 2 (55) of the Act, 2013. However, having regard to the attending circumstances, the Tribunal proceeded to remove all the Directors and Managing Committee including the office bearers by appointing the Hon'ble Mr. Justice K.Sampath (Retd.) as the Chairman and consequential directions. The said order was challenged before this Court in CRP.No.3739 of 2016, which was ultimately dismissed by order dated 20.12.2018, in view of the availability of alternative remedy. Subsequently, the Division Bench of the National Company Law Tribunal, vide order dated 29.06.2018, in CP.No.13 of 2017, observed that the locus standi of the petitioner therein and his consenters as well as that of the persons representing the company could not be ascertained. Thereafter, considering the fact that the period of the Administrator expired on 08.12.2016 and a new Board having come into existence in the election duly held, the Division Bench of the NCLT by order dated 08.01.2019 in MA.Nos.19,20,21,22 and 23 of 2019 in CP.No.2 of 2016,

permitted the newly constituted Board to discharge the functions of the company in its ordinary course of business without taking any major decisions in dealing with either the assets of the company or the policies of the company pending disposal of the company petition. Thus, it is clear that there was a cloud over the position of the said Robert Bruce to act as Treasurer. Such being the actual position, this Court is of the view that the issue involved is a mixed question of facts and law, which has to be decided along with other issues.

21.4 Further, taking note of the fact that various allegations are raised against the petitioner / CSITA, which are serious in nature; all the three writ petitions are specially ordered cases; and the petitioner / CSITA is a religious and charitable institution, which caters the needs of the beneficiaries / stakeholders, this Court is not inclined to dismiss the writ petition on the technical ground, but is inclined to delve into the matter on merits.

Overview of principles of law:

22. For effective adjudication of the present writ petitions, it would be relevant to consider the principles of law enunciated with regard to the provision of sub section (1) of section 212 and other allied provisions, under Chapter XIV of the 2013 Act, which reads as under:

"212. Investigation into affairs of company by Serious Fraud Investigation Office -

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office-

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation."

"206. Power to call for information, inspect books and conduct inquiries:

(1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further

information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company--

(a) to furnish in writing such information or explanation; or

(b) to produce such documents, within such reasonable time, as may be specified in the notice.

(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar:

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, he may, by another written notice, call on the company to produce for his inspection such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice:

Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he

deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

(5) Without prejudice to the foregoing provisions of this section, the Central Government may, if it is satisfied that the circumstances so warrant, direct inspection of books and papers of a company by an inspector appointed by it for the purpose.

(6) The Central Government may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the inspection of books of account of a company or class of companies.

(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues."

"207. Conduct of inspection and inquiry: (1) Where a Registrar or inspector calls for the books of account and other books and papers under Section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanation in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.

(2) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be, -

(a) make or cause to be made copies of books of account and other books and papers; or

(b) place or cause to be placed any marks of identification in such books in token of the

inspection having been made.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry;

(b) summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

(4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company."

"208. Report on inspection made:— The Registrar or inspector shall, after the inspection of the books of account or an inquiry under Section 206 and other books and papers of the company under Section 207, submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support."

"210. Investigation into affairs of company - (1) Where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company,—

(a) on the receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution

passed by a company that the affairs of the company ought to be investigated; or

(c) in public interest, it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the Central Government may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Central Government may direct."

23. The aim and purpose of enactment of Section 212 and other allied sections under Chapter XIV of the Act, 2013, is to prevent a company from acting in a manner prejudicial to the interests of the shareholders and further to enable the Central Government to assume power to step in, where there is reason to suspect that a company may be conducting its affairs in a manner prejudicial to the public interest at large. The order impugned in the first writ petition viz., WP.No.25236 of 2018 was passed by the Central Government under section 212 of the Act, 2013. A reading of the aforesaid provision makes it clear that an investigation into the affairs of a company by SFIO, can be ordered by the Central Government either under Section 212 (1) (a) or (1) (b) or (1) (c) or (1) (d), however, without prejudice to the provisions of Section 210. This power is to be exercised, if the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO. That opinion has to be based on the report of the Registrar or Inspector under section 208.

24. As per the provisions of the Act, 2013, there is a power to conduct inspection under Section 206 and to conduct enquiry under section 207. Both these powers are to be exercised by the Registrar or Inspector and thereafter, the report has to be made. The Registrar or the Inspector, after inspection of the Books of account or inquiry under section 206 and other books and papers of the company under section 207, shall submit a report in writing to the Central Government along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary. For that, reasons have to be set out. The power of search and seizure vesting in the Registrar adumbrates to section 209.

25. Then comes Section 210, which confers power on the Central Government to order investigation into the affairs of the company either on the report of Registrar or on special

resolution passed by a company or in public interest. Further, this section empowers the Court or the Tribunal to order that the affairs of a company ought to be investigated. For the purpose of investigation, the Central Government has the power to appoint inspector(s) and seek report. Section 212 deals with investigation into affairs of the company by SFIO. This power is to be exercised, if the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the SFIO. That opinion has to be based on the report of the Registrar or Inspector under section 208; or on intimation of a special resolution passed by a company that its affairs are required to be investigated; or in the public interest; or on the request from any department of the Central Government or the State Government.

26. By Section 211, the SFIO is established to investigate frauds relating to a company. It is a very special office and headed by a Director and consists of such number of experts from the fields enumerated in sub section (2) to be appointed by the Central Government from amongst persons of ability, integrity and experience. The wide powers that this office enjoy, as is set out in various sub sections of section 212, would denote as to how its involvement comes after the investigations are assigned to it by the Central Government. By their very nature, the investigations into frauds relating to a company have to be assigned. They have to be of such magnitude and seriousness demanding involvement of experts in the fields enumerated in sub section (2) of section 211. Therefore, while exercising the powers under section 212, the Central Government ought to be not only forming an opinion about the necessity to investigate into the affairs of the company, but also, such investigation has to be assigned to the SFIO.

Analysis:

27. In the light of the aforesaid legal principles, the submissions made by the parties are required to be considered. Though extensive arguments were made at the bar on various issues, yet, the issues germane for deciding the cases at hand alone are dealt with.

28. The main thrust of the contentions raised on the side of the petitioners are that despite the order of the High Court of Hyderabad, dated 16.11.2017 in WP.No.38841 of 2016, the Central Government passed the impugned order dated 07.05.2018 under section 212 of the Act, 2013, to investigate the affairs of the petitioner/ CSITA by the SFIO, without forming an opinion as envisaged under Section 210. Further, the said order is on the basis of the report of the Registrar of Companies dated 13.12.2017 filed under section 208, which was filed, without conducting any inspection or enquiry as provided under Section 206 / 207 and hence, the said report

cannot be construed as a report under Section 208 of the Act, 2013. That apart, an opportunity of being heard as contemplated under Section 206(4) was not provided to the petitioner / CSITA, before filing the report dated 13.12.2017. It is also contended that the petitioner / CSITA has not been served with a copy of the report dated 13.12.2017, which is in violation of the principles of natural justice. Hence, it is prayed to allow the writ petitions by setting aside the report of the Registrar of Companies and the order passed by the Central Government and the consequential summons.

29. On the contrary, the learned Additional Solicitor General appearing for the official respondents contended that the impugned order dated 07.05.2018 was passed after a thorough analysis of the report dated 13.12.2017 submitted by the Registrar of Companies under Section 208, which is in continuance of the earlier report dated 12.01.2016; the High Court of Hyderabad, while remitting the matter, directed the Central Government only to reconsider it afresh in accordance with Section 212 of the Act and accordingly, the Central Government reconsidered the matter afresh based on the report dated 13.12.2017; and there is no violation of the provisions of the Act, 2013 and hence, there is no need for a fresh inspection / enquiry under section 206 or 207. It is also contended that after complying with all the formalities as provided under Section 206, the Registrar filed his report under Section 208 and there is no violation of the principles of natural justice. Further, the investigation by SFIO is only at a preliminary stage and is concluded only after submission of the Investigation report as mandated under Section 212(12) of the Act, 2013 and therefore, no prejudice would be caused to the petitioner / CSITA, in the event of the same being continued. Thus, according to him, the Report, order and the consequential summons impugned herein are perfectly valid in law and the same do call for any interference by this Court.

30. Drawing the attention of this Court to the voluminous typed set of papers, the learned counsel for the respondents 7 and 8 in WP.No.25236 of 2018, raised various allegations against the petitioner / CSITA, with respect to fraud, misappropriation of funds, illegal sale of properties, mismanagement, etc. According to them, the petitioner was incorporated on 26.09.1947 under the Indian Companies Act 1913 as provided under Section 26 Company limited by Guarantee and when the Companies Act, 1956 was introduced by repealing the Indian Companies Act 1913, then automatically the provisions of Section 25 of the Companies Act, 1956 would be applicable to the petitioner company (now section 8 of the Companies Act 2013). However, the petitioner vide its ordinary resolutions dated dated 05.03.2002 and 17.06.2005, changed the MoA and AoA, without obtaining the approval of the Central Government as well as without passing the special resolution as per

sections 17, 21 & 31 of the Companies Act, 1956. It is also submitted that dehors the provisions of the Act, 2013, this Court has got ample powers to suo motu order investigation into the affairs of the petitioner / CSITA by SFIO. To fortify the same, the following rulings were relied upon:

(i) In *Parmeshwar Das Agarwal v. The Additional Director (Investigation) Serious Fraud Investigation office, Ministry of Corporate Affairs and others* [2016 SCC Online Bombay 9276], a Division Bench of the High Court of Bombay, relying on the judgment of the Hon'ble Supreme Court in *Barium Chemicals v. Company Law Board* [(1966) Supp SCR 311] and *Rohtas Industries v. S.D. Aggarwal* [(1969) 1 SCC 325], held thus:

"40. Thus, the principle is that there has to be an opinion formed. That opinion may be subjective, but the existence of circumstances relevant to the inference as to the *sine qua non* for action must be demonstrable. It is not reasonable to hold that the clause permits the Government to say that it has formed an opinion on circumstances which it thinks exist. Since existence of circumstances is a condition fundamental to the making of the opinion, when questioned the existence of these circumstances have to be proved at least *prima facie*.

47. However, by its very title, the investigation under Section 212 by the SFIO ought to be on the basis of the opinion of the Central Government that it is necessary to investigate into the affairs of the company by SFIO. That opinion has to be based on the report of the Registrar or Inspector under Section 208; on intimation of a special resolution passed by a company that its affairs are required to be investigated; in the public interest or; on the request from any department of the Central Government or the State Government. By Section 211, the SFIO is established to investigate frauds relating to a company. It is a very special office and headed by a Director and consists of such number of experts from the field enumerated in subsection (2) of Section 211 to be appointed by the Central Government from amongst persons of ability, integrity and experience. The wide powers that this office enjoys, as is set out in various subsections of Section 212, would denote as to how its involvement comes after the

investigations are assigned to it by the Central Government. By their very nature the investigations into frauds relating to a company have to be assigned. They have to be of such magnitude and seriousness demanding involvement of experts enumerated in sub-section (2) of Section 211. Therefore, while exercising the power under sub-section (1) of Section 212, the Central Government ought to be not only forming (1966) Supp SCR 311 (1969) 1 SCC 325 an opinion about the necessity to investigation into the affairs of the company, but further that such investigations have to be assigned to the SFIO."

(ii) The Delhi High Court in Sunair Hotels Limited case (supra), held as under:

"30. The Central Government is entrusted with the power in Section 212 of the Companies Act, 2013 to order an investigation by the SFIO if in its discretion such an investigation is necessary to safeguard public interest. It is true that the text of the statute does not contain an explicit right to challenge the opinion of the Central Government. However, this does not mean that the power confers absolute discretion over the decision and that its decision consequently attains unassailable finality. An order of investigation is an administrative order because, as explained in Barium Chemicals (supra) -

"The discretion conferred to order an investigation is administrative and not judicial since its exercise one way or the other does not affect the rights of a company nor does it lead to any serious consequences, as for instance, hampering the business of the company."

31. Being an administrative order, it is essential that the Government must form an opinion under the section and it has been repeatedly affirmed by the jurisprudence of courts that the certain defects in the formation of opinion is justiciable."

...

47. In the present case Sunair has challenged the order as being arbitrary and illegal primarily on the ground that the Central Government did not make the order on the basis of sufficient material. On this basis they contend that the application of mind in order to form an opinion was defective. It needs to be first established that no order of investigation passed under Section 212 of the Companies Act, 2013 may be challenged on such grounds before examining the veracity of the factual basis of these grounds. To elaborate on the standard of review that courts may exercise in reviewing a decision to order an investigation into the affairs of a company, it is imperative to first understand the character of the ordering authority, nature of investigation that would be conducted and effects of such an investigation on the company.

(iii) In Rohtas Industries case (supra), the majority judgment explained the substantial effect that investigations have on Companies in the following words:

"It may be noted that before the Central Government can take action under Section 235, certain preconditions have to be satisfied. In the case of an application by members of the company under clause (a) or (b) of Section 235, the same will have to be supported by such evidence as the Central Government may require for the purpose of showing that the applicants have good reasons for requiring the investigation, and the Central Government may, before appointing an Inspector, require the applicant to give security for such amount not exceeding Rs.1000, as it may think fit for payment of the costs of the investigation. From the provisions contained in Sections 235 and 236, it is clear that the legislature considered that investigation into the affairs of a company is a very serious matter and it should not be ordered except on good grounds. It is true that the investigation under Section 237(b) is of a fact-finding nature. The report submitted by the Inspector does not bind anybody. The Government is not required to act on the basis of that report, the company has to be called upon to have its say in the matter but yet the risk - it may be a grave one - is that the appointment of a Inspector is likely to receive much press publicity as a result of which the

reputation and prospects of the company may be adversely affected. It should not therefore be ordered except on satisfactory grounds.

49. Since an investigation into the affairs of a company is likely to have a serious impact on the confidence of its shareholders and of the general public, it is also vital that before such an investigation is ordered, the deciding authority must appraise itself of all the relevant facts."

(iv) In *Karvy Stock Brokers Ltd v. Union of India*, the Telegana High Court held as under:

"The quintessence of the above judgments is that under Section 212(1) of the Act, the Central Government, on the sources referred to under clauses (a) to (d) of the said sub-section, is required to form an opinion that it is necessary to investigate into the affairs of the company by SFIO. It goes without saying that for formation of an opinion with regard to necessity for ordering investigation into the affairs of the company by SFIO, the necessary concomitant is existence of prima facie circumstances, which should be demonstrable before the court when questioned. As the investigation will have serious impact on the functioning of the company and its prospects, it is vital that before ordering investigation, the authority shall appraise itself all the relevant facts. Further, forming an opinion and ordering investigation, is an administrative act of the Central Government, and, therefore, it shall be on satisfactory grounds, and if the same are found to be defective, the action contemplated, is justiciable.

31. It emerges from the pleadings and submissions summarised in the preceding paragraphs that various complaints were received raising allegations against the petitioner / CSITA, which prompted the Central Government to order inspection of the Books of Accounts of the company on 08.08.2011 under Section 209A of the Companies Act, 1956 and the said inspection was conducted and a report pointing out various violations of the provisions of the 1956 Act, was submitted on 29.08.2012 to the Central Government, which in turn, instructed to launch prosecutions against the petitioner and its officers before the Economic Offences Court, Chennai. Subsequently, an inquiry under section 206(4) of the Companies Act, 2013 was conducted on 05.10.2015 and the Registrar of Companies, after completion of the inquiry, filed a report dated 12.01.2016 under Section 208 of the Act, 2013.

Based on the same, the Central Government ordered investigation into the affairs of the petitioner by Serious Fraud Investigation Office (SFIO) under Section 212 of the Act, 2013, on 10.06.2016. The said order was challenged in W.P.No.38841/2016 before the High Court of Hyderabad.

32.The High Court of Hyderabad, after detailed analysis, set aside the said order and remanded the matter to the Central Government for fresh consideration to exercise its power under Section 212, basing on the report dated 10.06.2016 of the Registrar of Companies, within three weeks from the date of receipt of a copy of the order. The relevant paragraphs of the order passed by the Hyderabad High Court, for the sake of convenience, are reproduced hereinbelow:

"The petitioner is not challenging the jurisdiction or authority of 1st respondent to order investigation by SFIO. Therefore, the procedure followed by the 1st respondent alone is examined in this writ petition. According to Merriam Webster's Dictionary of Law, the word "opinion" means- a belief stronger than impression and less strong than positive knowledge

Therefore, the 1st respondent is required to form an opinion i.e., something more than mere re-telling of gossip or hearsay and reflects judgment or belief resulting from what one thinks on a particular question. Such belief or conviction is manifested by 1st respondent in ordering investigation by SFIO. The words "is of the opinion" "that it is necessary to investigate" impose a jurisdictional duty on Central Government to form opinion on the necessity of investigation by SFIO. The material before Central Government is considered from the view point of necessity of such investigation by SFIO. Without again juxtaposing the operative portion of the order impugned in the writ petition, it can be held that the order impugned in the writ petition by itself does not show the existence of opinion, much less necessity for ordering investigation by SFIO. This Court hastens to add that no particular expression is suggested and it is accepted that the opinion depends upon case to case basis. But the subjective opinion, if is available in the order passed for investigation by SFIO, then the Central Government is satisfying the requirement for ordering investigation by SFIO. If the contention of Mr.Lakshman i.e., the report under section 208 is available, there is reference to report in the order impugned and that conforms to the requirement of section 212, is untenable, for if such is the intention of Parliament, then the syntax or structure of section 212 would have been otherwise. The section is interpreted as the section stands by

following the settled principles of interpretation. In the case on hand, this Court is of the view that the order dated 10.06.2016 of 1st respondent does not reflect forming opinion on the necessity for investigation by SFIO.

.....

For the above reasons, it is held that the order impugned in the writ petition does not satisfy the requirements i.e., "is of the opinion", "that it is necessary to investigate" in Section 212(1) of the Act. The order dated 10.06.2016 is set aside and the consequential proceedings dated 02.08.2016 and notice dated 21.09.2016 are also set aside. The matter is remitted to 1st respondent for exercise of its jurisdiction under section 212 of the Act, basing on the report of the Registrar of Companies, within three weeks from the date of receipt of a copy of this order.

It is clarified that this Court has not examined the merits of the matter and after perusing the record produced, the issue is remitted back to 1st respondent for re-consideration afresh in accordance with section 212 of the Act.

The writ petition is ordered as indicated above. There shall be no order as to costs."

33. Thereafter, the Registrar of Companies, submitted the report dated 13.12.2017, under section 208 to the Central Government, recommending the SFIO investigation into the affairs of the petitioner / CSITA, which is impugned in the third writ petition viz., WP.No.32587 of 2019. Based on the same, the Central Government passed the order dated 07.05.2018, exercising its power conferred under Section 212 of the Act, 2013, which is under challenge in the first writ petition viz., WP.No.25236 of 2018. Consequently, the SFIO issued summons to the office bearer of one of the Units of the petitioner / CSITA, which is questioned in the second writ petition viz., WP.No.32587 of 2019. Thus, the two main controversies revolved around herein are as follows:

(i) whether the report dated 13.12.2017 submitted by the Registrar of Companies under Section 208 of the Act, 2013, is valid in law?

(ii) Whether the order dated 07.05.2018 passed by the Central Government assigning the investigation of the petitioner / CSITA to the SFIO, is in consonance with the provisions of Section 212 of the Act, 2013?

Issue No.1:

34.1 As against the report dated 13.12.2017 filed by the Registrar of Companies under Section 208, it is the specific contention made on the side of the petitioner that the same cannot be treated as report under Section 208, unless it is

preceded by an inspection / enquiry under Section 206 / 207; and that the ordering investigation by SFIO, will have serious effect on the prospects of the company and therefore, issuance of notice and opportunity of being heard, which are the cardinal principles of natural justice, cannot be dispensed with. Though the Division Bench of this Court vide judgment dated 18.06.2018 in WA.No.844 of 2018, granted liberty to challenge the said report, a copy of the same has not been served on the petitioner/CSITA. Only as per the direction of this Court, the copy of the same was furnished to them. Thus, the impugned report, based on which, the Central Government ordered investigation into the affairs of the company by the SFIO, without complying with the provisions of law, is non est in law, besides violating the principles of natural justice.

34.2 Per contra, the learned Additional Solicitor General appearing for the respondents submitted that after complying with the provisions of Section 206 and upon receipt of the explanation from the petitioner / CSITA, the Registrar of Companies filed the report dated 12.01.2016, with an opinion that it is just and necessary that the affairs of the company ought to be investigated by SFIO under Section 212 of the Act, 2013. With regard to the said report, there is no grievance on the side of the petitioner / CSITA, about the compliance of the statutory provisions by the Registrar of Companies. The same was also not questioned in WP.No.38841 of 2016 before the High Court of Hyderabad. Hence, the report dated 13.12.2017 filed by the Registrar of Companies to the Central Government is nothing but a report in continuance of the earlier report dated 12.01.2016. In such circumstances, no fresh inspection / enquiry as contemplated under Section 206 / 207 is warranted. It is also contended that under sub-section (4) of Section 206, the jurisdiction of the Registrar of Companies is of suo motu in nature, because if he is satisfied based on the information available with him, or furnished to him, or on a representation by any person that the business of the company is being carried on for a fraudulent or unlawful purposes or not in compliance with the provisions of the Act, or if the grievance of the investors are not being addressed, he is empowered to issue notice specifying the allegations, and calling upon the company to furnish reply thereto, and carryout the inquiry, after providing the company a reasonable opportunity of being heard. Under the first proviso to sub-section (4) of Section 206, if the Central Government is satisfied that circumstances so warrant, direct the Registrar or the inspector appointed by it for the purpose, to carryout the inquiry under this sub-section. Therefore, issuance of notice and opportunity of being heard are not required.

34.3 As regards the provision of law, it is vivid that Section 206(4) of the Act, 2013, mandates issuance of notice and opportunity of hearing and even under the proviso, the

Central Government, if satisfied that the circumstances warrant, is empowered to direct the Registrar to carry out the inquiry under this sub section i.e., sub section (4) of Section 206 of the Act, 2013, which mandates issuance of notice and opportunity of hearing prior to conduct of inquiry. Therefore, the proviso does not carve out any exception to the main provision and it only additionally empowers the Central Government to direct the Registrar of Companies to conduct inquiry by following the procedure under the sub section. Such being the legal position, it is to be examined whether the Registrar of Companies has complied with the said requirements, while submitting the report dated 13.12.2017 to the Central Government.

34.4 Admittedly, the earlier report dated 12.01.2016 was filed under section 208 of the Act, 2013, by the Registrar of Companies, after issuance of notice under section 206(4) dated 05.10.2015 and upon receipt of the information / explanation from the petitioner / CSITA, whereas the perusal of the report dated 13.12.2017 would not disclose the issuance of notice under section 206(4) to the petitioner / CSITA. It proceeds to state as if the same was in continuation of the report dated 12.01.2016. Apart from the averments as were stated in the report dated 12.01.2016, the impugned report dated 13.12.2017 also contained some other new allegations relating to the consolidated accounts from the financial year 2013-14, misappropriation in CSI Kalyani Hospital and fraudulent, and dubious sale of immovable property in CSI Coimbatore Diocese. It is to be noted here that the filing of the said report was brought to the notice of the petitioner / CSITA only at the time of hearing the writ appeal in WA.No.844 of 2018, which was disposed of, along with connected WA.No.1036 of 2018, vide judgment dated 18.06.2018, the relevant passage of which, is usefully reproduced hereunder:

"6.On the above background, when the appeals are called today, the learned Additional Solicitor General appearing for the Ministry of Corporate Affairs produced a copy of the order of the Joint Director, Ministry of Corporate Affairs, Government of India, New Delhi-1 in File No.07/131/2011/CL-II (SR) issued in favour of the appellants in which it has been stated that the Registrar of Companies, Chennai vide its Report dated 13.12.2017 highlighted certain issues which necessitate the Ministry to consider ordering investigation in public interest against the appellants. The learned Additional Solicitor General further submitted that without challenging the Report dated 13.12.2017 of the Registrar of Companies, Chennai, approaching this Court by filing the writ petition and writ appeals are not at all maintainable.

7.At this stage, the learned counsel for the

appellants submitted that the appellants may be given liberty to challenge the Report of the Registrar of Companies, Chennai dated 13.12.2017 and the consequential order passed by the Joint Director, Ministry of Corporate Affairs, New Delhi dated 07.05.2018.

8. In view of the limited prayer now made by the learned counsel for the appellants, the writ appeals are disposed of by directing the appellants to challenge the Report of the Registrar of Companies, Chennai dated 13.12.2017 and the consequential order passed by the Joint Director, Ministry of Corporate Affairs, New Delhi dated 07.05.2018, if they so advised. No costs. Consequently, connected Miscellaneous Petitions are closed."

Even thereafter, a copy of the said report dated 13.12.2017 was not served to the petitioner / CSITA. Subsequently, as per the direction of this Court in WP.Nos.25236 and 25419 of 2018, it was served on the petitioner / CSITA. Upon receipt of the same, pursuant to the liberty granted by the Division Bench, the petitioner / CSITA challenged the said report in WP.No.32587 of 2019. Thus, this Court is of the view that since the allegations raised therein are serious in nature and the same would affect the reputation of the petitioner company, the Registrar of Companies, before filing such report, has to comply with the provision of section 206(4) and the failure to do so, in violation of the principles of natural justice, vitiates the Report filed under section 208.

34.5 The cardinal point that has to be borne in mind, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. The procedure prescribed must be just, fair and reasonable, even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The authorities have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice. At this stage, it would be apt to refer to the observation of the Supreme Court in *Automotive Tyre Manufacturers Assn. v. Designated Authority*, [(2011) 2 SCC 258], which reads as follows:-

"80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made,

is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infringement of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application."

34.6 In *Swadeshi Cotton Mills Vs. Union of India*, [(1981) 1 SCC 664] R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus (SCC p.666; Headnote):

"Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo iudex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with

situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

34.7 From the aforesaid legal proposition, it could be seen that the principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing; and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself. Applying the same to the facts of the present case, the report filed by the Registrar of Companies on 13.12.2017, without complying with the provisions of section 206, sans merit. However, considering the nature of the allegations raised against the petitioner / CSITA, this Court is not inclined to quash the same, but, in the interest of justice, is inclined to treat the said report as notice under Section 206(4), to which, the petitioner / CSITA shall file its detailed explanation / objections along with documentary evidence, within a given time. Upon receipt of the same, the Registrar of Companies shall also file a consolidated report under section 208 to the Central Government in a time bound manner. Accordingly, the first issue is answered.

Issue No.2:

35.As regards the order dated 07.05.2018, passed by the Central Government to investigate the affairs of the petitioner / CSITA by the SFIO, the perusal of which would reveal that the same was passed, without forming an opinion as envisaged under section 210. There is no dispute in regard to the power of the Central Government under Section 212 and its existence. Though it is contended on the side of the respondents that the Central Government has formed the requisite opinion before passing the order under section 212 (1)(a) and (c) of the Act, 2013, the perusal of the noting proceedings circulated by the respondent officials, would not whisper anything about the opinion as contemplated under section 210 of the Act, 2013. It contains only the communications between the Central Government and the Registrar of Companies through Regional Director (SR), Chennai. Though the minutes of the Oversight Committee meeting held on 17.04.2018 reveal that upon considering the report of the Registrar of Companies and the direction of the High Court of Hyderabad, in view of the provisions of Section 212(1)(a) and (c) of the Act, 2013, a recommendation was made to investigate the affairs of the company by the SFIO, the mandate of the law under section 210, to form an opinion for

ordering such investigation, was not complied with by the Central Government, before passing the impugned order dated 07.05.2018. Though it was argued on the side of the respondents that the report dated 13.12.2017 is in continuance of the earlier report dated 12.01.2016, which holds the field and no inspection / enquiry as per the provisions of law, is required, it was clearly stated in paragraph no.2 of the impugned order that the issues highlighted in the report of the Registrar of Companies, Chennai dated 13.12.2017 necessitated the Central Government to consider the order of investigation in public interest. That apart, the impugned order contains the mere extracts of the allegations referred to in the report of the Registrar of Companies and the same cannot be treated as sufficient compliance by the Central Government for exercising its drastic power. Something more was required and to be established as circumstances or material enough for exercise of such power. Thus, it is manifest that there was no material available to show that the Central Government has formed the requisite opinion before passing the order to investigate into the affairs of the petitioner by the SFIO.

36.It is noteworthy to mentioning that already, the High Court of Hyderabad vide order dated 16.11.2017 in WP.No.38841 of 2016, set aside the order dated 10.06.2016 and remanded the matter to the Central Government for fresh consideration to exercise of its jurisdiction under Section 212 of the Act, 2013, on the ground that the order does not reflect forming opinion on the necessity for investigation by SFIO under Section 210. Despite the same, the Central Government passed the order dated 07.05.2018 without forming an opinion as envisaged under section 210, but merely relying upon the report dated 13.12.2017. Such attitude on the part of the respondents cannot be countenanced. According to Merriam Webster's Dictionary of Law, the word 'opinion' means - a belief stronger than impression and less strong than positive knowledge. The words 'is of the opinion' 'that it is necessary to investigate' impose a jurisdictional duty on Central Government to form opinion on the necessity of investigation by SFIO. Therefore, in the considered view of this Court, the Central Government is required to form an opinion, as prescribed in the provisions of Section 210 for exercising the power under section 212, as observed by the High Court of Hyderabad.

37.It is a salutary principle of administrative law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection, it would be appropriate to refer to the decision of the Supreme Court in Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422, wherein it was held as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor (1875) 1 Ch D 426 which was followed by Lord Roche in Nazir Ahmad v. King Emperor AIR 1936 PC 253 who stated as under:

"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

Applying the aforesaid ratio decidendi, the order passed by the Central Government, in exercise of its power under Section 212 of the Act, 2013, without forming an opinion as contemplated under Section 210, lacks merit. The second issue is answered accordingly.

38. At the same time, it is important to note here that the official respondents are proceeding against the petitioner/CSITA right from the year 2011, however, they did not follow the statutory requirements and complete the proceedings in accordance with law, within a reasonable time. The report of the Registrar of Companies dated 12.01.2016 addressed to the Central Government, pointed out various allegations levelled in the complaints received, such as (i) Amendment of MoA and AoA without the approval of Central Government; (ii) Allegation against Directors as to vacation of office; (iii) Allegation against Bishops and their stooges for unauthorised usage of rent free bungalows, luxury cars and unwarranted free world tour for Bishops; (iv) mismatch in the Audit report - TDS; (v) Criminal cases filed against the Bishops; (vi) Criminal cases registered against the 19 persons including three Bishops of CSI Coimbatore Diocese; (vii) Election in 22 Dioceses has not been conducted properly; (viii) foreign contribution details; (ix) power of attorney; (x) consolidated cash flow statement and the balance sheet; (xi) election of office bearers; (xii) CSITA committee; (xiii) maintenance of bank account; (xiv) constitution of CSITA, Synod, Diocese; (xv) filing of statutory returns by CSITA; (xvi) tax deduction at source; (xvii) special audit of IT Department; (xviii) consolidated income and expenditure account; (xix) accounting system; (xx) PAN; (xxi) foreign contribution received by the company; (xxii) auditors qualification; (xxiii) Illegal exemptions obtained from income tax department; (xxiv) Query on the functioning of CSI Coimbatore Diocese; (xxv) Irregularity in the election of Treasurer in CSI Coimbatore Diocese; (xxvi) procedural lapses in the election of members of CSITA; (xxvii) Irregularity in the election of the Bishop in the CSI Coimbatore Diocese; (xxviii) failure to explain the distribution of power in CSI and CSITA; (xxix) Irregularity in the conduct of election of Bishop- CSI Coimbatore Diocese; (xxx) Illegal sale of property

in Coimbatore Diocese; (xxxi) Mismanagement and misappropriation of funds in the CSI Kalyanai Hospital; and (xxxii) Irregularities brought out in the writ petition filed by David Chellaraj.

39. In addition to the above, there are serious other allegations levelled against the petitioner / CSITA during the course of hearing, by the learned counsel for the respondents 7 and 8, who drew the attention of this Court to the voluminous typed set of papers filed by them and their counter affidavits in this regard, which are as follows:

(i) The petitioner / CSITA is the organization, which owns and administers all the properties of CSI. The value of the properties under its control and administration is worth about several lakhs of crores and spread across the South India. However, contrary to the object for which the petitioner / CSITA has been formed, its management is riddled with instances of fraud, mismanagement, misfeasance, misappropriation, siphoning of funds etc. and to the extent to which as ordinary church members have been able to access such information.

(ii) The petitioner / CSITA being a charity company, before amending the Memorandum of Articles of Association, should get prior permission from the Central Government, whereas they did not get any such permission. Even though, there is no amendment made by the company, the Bishops, who are the employees of the company, have entered into the administration and are doing all illegal actions. In this regard, the Central Government and the Registrar of companies have filed 43 criminal cases against the petitioner / CSITA.

(iii) As per the Regulations, a registered company shall have a single PAN card, whereas some of the sub units of the CSITA are having multiple PAN cards.

(iv) The Bishops shall entrust with the religious works. But they themselves prepared bogus record and submitted to the Director of Collegiate Education and illegally acting as the correspondent / Secretary of the company's Higher Educational institutions. They are illegally withdrawing huge money from the company's different bank accounts and collecting money by appointing employees to all of its sub units like colleges, schools, hospitals etc.

(v) Without the approval of the company, a vast extent of land and other properties were misused by the sub units of the company.

(vi) There is constant change with respect to statutory auditors of the Company, only to camouflage accounts and conceal vital information in the balance sheets of the company.

(vii) There is no control or monitoring mechanism in the petitioner / CSITA as to the end use of the money or the expenditure incurred by various units and sub units. So that,

the Dioceses have sold / purchased properties and have gone to the extent of borrowing monies from the financial institutions without prior approval of the CSITA. The balance sheets of the CSITA do not disclose or reflect the details of fixed assets / immovable properties, secured loans, sale of properties, sale consideration, purchase of properties, receipt of foreign contribution, income and expenditure of other Dioceses, units and sub units.

(viii) In respect of Kanyakumari Diocese, they have been doing unlawful land sale, mortgaging properties in different banks, illegally withdrawing money from the accounts of the CSITA, leasing properties, etc. Similar unlawful activities have been carried on in CSI Dioceses at Coimbatore.

(ix) As per the Memorandum of Articles of Association of the company, all income should go to the charity and shall be declared before the Income Tax Authorities, whereas the company's income was utilised for the personal luxuries tour to international countries and not been declared before the Income tax authorities.

(x) Though the value of the properties has been increased from 1947 to 2017, a perusal of the recent sale deeds would disclose that the CSITA company properties sold for far-decreased price after 70 years.

(xi) The company has no property list, even though there is a property board and employees for the maintenance of properties. Even after 70 years, the properties of the CSITA have not been identified. Properties donated by the individuals also were scooped by the evangelical department employees and no valuable step was taken to retrieve the documents and properties.

(xii) The beneficiaries do not know the financial statements of CSITA for the past 70 years. Till date, the annual accounts are not given to beneficiaries or any others.

(xiii) According to the Report of the Registrar of Companies, there was fraudulent / unlawful business carried on by the petitioner / CSITA and its management, which shall be unearthed only by proper enquiry and investigation by the SFIO.

Thus, according to the respondents 7 and 8, there is an urgent need to regulate the affairs of the company so as to ensure transparency and accountability.

40. The aforesaid allegations, in the opinion of this Court, cannot be slightly brushed aside as the same are heinous in nature. There cannot be any smoke without fire. While the culture of secrecy should be broken and a culture of accountability and transparency be practised, the culture of questioning is also a desirable element. Also, there cannot be any difference of opinion by any of the parties that the Central Government can very well invoke Section 212(1)(c), i.e. in the public interest and order investigation into the affairs of the petitioner company. The decisions reproduced

above would disclose that this Court has power to suo motu order investigation by SFIO. At this juncture, it is to be noted that there is no Civil Suit or Company Petition pending touching the issue involved herein. It is an admitted fact that the petitioner is now, available with all the impugned proceedings including the report of the Registrar of Companies. Their grievance is that the Central Government did not follow the relevant provisions as mandated under the Companies Act and they did not form an opinion, before ordering investigation by SFIO. It is also significant to point out that the petitioner stated in the affidavit filed in support of the writ petition in WP.No.25236 of 2018 that they are always ready and willing to face any enquiry conducted in accordance with law, besides the learned counsel for the petitioner during the course of argument, fairly submitted that the petitioner is inclined to cooperate with any kind of investigation to be done by the official respondents.

41.A repeated argument was made on the side of the respondents that there are sufficient materials available on record to order investigation into the affairs of the petitioner by SFIO. Even as per the statute as well as suo motu power, this Court can order such investigation. However, this Court is not inclined to do so, as it is not sitting in appeal over the decision of the Central Government in ordering investigation into the affairs of the company under Section 212(1)(a) and (c) of the Act and scope of this Court under Article 226 of the Constitution of India, with regard to judicial review, is limited to the examination of decision making process and not the decision.

42. At this juncture, it may not be out of place to mention that the petitioner / CSITA is a non-profit company started to do charity and Evangelism. But, the criminal cases numbering more than 40 had already been filed pointing out that some self wanted people hide all information and truth and are illegally doing against the CSITA. Charity was completely driven away. People from different angles are shooting the CSITA company and it finds itself in the midst of activities of illegalities and fraud committed by those in power. Without the orders of the CSITA, the CSI employees like bishops cannot take any decisions. Since the main function of the company is charity, there cannot be any wastage of money for any other purpose other than charity. As the CSITA is the legal authority, administration should be done by its regulations. The allegation against the evangelical department is that they are not doing worship for the well being of the company and its beneficiaries and stakeholders. Instead, it is doing misappropriation and illegalities by selling most of the properties belonging to the Association. It is also placed on record that due to non-submission of accounts, the beneficiaries / donars to the CSITA could not get IT

exemption. Such activities cannot be permitted to be sustained, having due regard to the object of the institution, which is to preach and propagate the religion of Christianity to the world and uplift the members of the CSI. Mere preaching from the church pulpits about "Christian holiness and Stewardship" does not work, when it comes to managing the finance and properties of the church in the most ethical way. The corporate morality and the biblical ethics reflected in the character of God are to be combined to form a base for maintaining the CSITA's corporate personality. Therefore, regulatory requirements are very much essential to bring about good governance in such a non-profit association.

43. Be it noted, the files circulated by the official respondents would reveal that the proceedings was initiated against the petitioner/ CSITA for the alleged misappropriation, mismanagement, fraud etc., in the year 2011. Since then, the respondent authorities have been simply exchanging the communications from one office to another, without complying with the statutory provisions, within a reasonable time. Taking note of the serious nature of the allegations raised, the inordinate and undue delay caused by the respondent authorities, cannot be simply wished away. Hence, this Court directs the respondent authorities to take action against the erring officials, departmentally.

Conclusion:

44. In the upshot of the aforesaid discussions and reasonings, this Court holds as under:

(i) The petitioner / CSITA shall submit its detailed explanation/ objections along with documentary evidence to the report of the Registrar of Companies dated 13.12.2017, which is impugned in WP.No.32587 of 2019, treating it as a show cause notice under Section 206(4) of the Act, 2013, within a period of two weeks from the date of receipt of a copy of this order and thereafter, appear for enquiry between 17.02.2021 - 22.02.2021. It is made clear that the respondent shall not entertain any further request for adjournment. On completion of such procedure, the Registrar of Companies, Chennai, shall consider the same and submit a consolidated report under section 208 to the Central Government, within a period of two weeks thereafter, without causing any delay.

(ii) On receipt of the said report, the Central Government shall form an opinion independently and strictly in accordance with the provisions of Section 210, and thereafter, proceed further in accordance with Section 212 of the Act, 2013, within a period of three weeks therefrom.

(iii) Inasmuch as the report dated 13.12.2017 has been treated as notice under Section 206(4), the order dated 07.05.2018 impugned in WP.No.25236 of 2018 passed by the Central Government, basing on the said report, and the consequential summons issued by the SFIO, which is under

challenge in WP.No.25419 of 2018, do not survive.

(iv) Since the allegations made against the petitioner are serious in nature, any delay by the respondents in completing the process as directed and provided under the relevant provisions of law, will be viewed seriously.

(v) The respondent authorities shall take action against the officials, who are responsible for the delay in proceeding the matter, departmentally.

45. All these writ petitions are disposed of, in the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk/rk

To

1. The Secretary to the Government,
Union of India,
Ministry of Corporate Affairs,
New Delhi 110 001
2. The Director,
Serious Fraud Investigation Office,
2nd Floor, Prayavaran Bhavan,
C.G.O.Complex, Lodhi Road,
New Delhi 110 003
3. The Regional Director,
Office of the Regional Director, Southern Region,
Chennai, Ministry of Corporate Affairs,
Government of India,
5th Floor, A Wing, Shastri Bhavan,
26 Haddows Road, Chennai 600 006
4. The Registrar, Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road, Chennai 600 006
5. Assistant Registrar of Companies,
Office of the Registrar of Companies,
Tamil Nadu, Chennai,
Shastri Bhavan, 2nd Floor,
26 Haddows Road, Chennai 600 006

6. Joint Director, Ministry of Corporate Affairs,
5th Floor, A Wing, Shastri Bhavan,
Dr. Rajendr Prasad Road,
New Delhi 110 001

7. Assistant Director (Banking),
Investigation, 4th Floor, Corporate Bhavan,
Survey No.127/1 Thattiannaram Village,
Bandlaguda, Hayatnagar,
Hyderabad 500 068.

8. The Registrar,
The Registrar of Companies,
Tamilnadu, Chennai,
Shastri Bhavan, 2nd Floor,
26, Haddows Road, Chennai.

+2cc to Mr.S.Bharathi Rajan, Advocate SR.4887
+1cc to Mr.M.Ravi, Advocate SR.5313
+1cc to Mr.Venkataswamy Babu, Advocate SR.5755

Writ Petition Nos.25236 and 25419 of 2018 and 32587 of 2019
and
WMP Nos.29340, 29341, 29575, 29577 and 31239 of 2018
1083, 32967, 32968, 32969 & 36108 of 2019
& WMP Nos.1286 & 1288 of 2020

BS (CO)
CB(03/02/2021)



सत्यमेव जयते

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