

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 1398 of 2021
With
IA No. CAN 1 of 2022
Parikshit Thakur
Vs.
University Grant Commission & Ors.
and
MAT 1399 of 2021
With
IA No. CAN 1 of 2022
Prosenjit Pal
Vs.
University Grant Commission & Ors.**

**Mr. Kallol Basu, Adv.
Mr. Suman Banerjee, Adv.
For the Appellant**

**Mr. Jaydip Kar, Sr. Adv.
Mr. Mainak Ganguly, Adv.
Mr. Shankar Mukherjee, Adv.
For the Respondent Nos. 17 & 18**

**Mr. Partha Sarathi Sengupta, Sr. Adv.
Mr. Soumya Majumder, Adv.
For the Jadavpur University**

**Mr. Anil Kumar Gupta, Adv.
For the UGC**

Judgment On : 07.02.2022

Harish Tandon, J.:

The aforesaid two appeals are filed by separate respondents challenging the order dated 9th December, 2021 passed by the Single Bench in WPA 17905

of 21 constituting the External Expert Committee for re-evaluating the Academic Performance Indicators (API) of the candidates, their Ph.D. Credentials and other criteria which may be required for selection to the post of Assistant Professor in the International Relations Department of the Jadavpur University. In order to avoid the prolixity of repetition of facts both the appeals are taken up together for final disposal.

A preliminary point has been taken by the Jadavpur University that the order constituting an External Expert Committee is not a 'Judgment' within the meaning of Clause 15 of the Letters Patent and, therefore, the instant appeals are not maintainable.

The extensive arguments were advanced on a preliminary issue at the initial hearing of the instant appeal but we invited the counsels appearing for the parties to make submissions on the merit of the impugned order in order to avoid the segregation of the points canvassed before us. Before we proceed to deal with the preliminary point first, it would be necessary to recapitulate the facts of the case and the pleadings made in the writ petition.

The Respondent nos. 17 and 18 herein filed the writ petition being WPA No. 17905 of 2021 for issuance of writ of certiorari commanding the respondents to transmit all the records pertaining to recruitment process, more particularly, the documents in relation to evaluation of eligibility of the appellants and the revised list dated 12th December, 2019 for the purpose of quashing the same. The writ of mandamus was also sought upon the respondents to rescind, cancel, recall, revoke and withdraw the revised list dated 12th December, 2019 which includes the name of the appellants herein

and to publish the fresh list barring the appellants for the purpose of conducting an interview afresh strictly in terms of the guidelines and statutory regulations applicable in this regard. However, the interim order was also sought for to constitute an External Expert Committee of reputed academicians to re-evaluate the API of each candidates featured in the revised list dated 12th December, 2019.

The employment notification dated 25.10.2019 was published by the respondent no.3 to fill up the existing vacancy in the different categories of posts in various departments including the department of International Relations of Jadavpur University. The subject 'dispute' pertains to the appointment in the post of the Assistant Professor in the department of the International Relations of the Jadavpur University. The said notification would evince that the qualification of the aspirants would be recognised and determined as on the last date of the submission of the application. The modalities of the provision and constitution of the selection committee are undoubtedly regulated and governed by the regulation of the University Grants Commission. Various criterions have been provided in the said regulation concerning the minimum eligibility criteria which need not be detailed as the main writ petition is pending before the Single Bench. The respondent University constituted a screening and selection committee for evaluation of the candidatures of the aspirants and a list was published on 9th December, 2019 containing the names of the aspirants eligible for the interview. The aforesaid aspirants were called/invited in a seminar to make presentation within 15 minutes duration in order to assess the teaching ability. The names of the Writ Petitioner no. 2 i.e., the respondent no. 18, was not featured in the said list

which constrained him to make representation and subsequently, a revised list was published on 12th December, 2019 featuring the name of the Respondent no. 18 which according to the said respondent would manifestly admit the erroneous evaluation of API and other criterions. The said Respondent nos. 17 and 18 appeared in the interview on 22nd December, 2019 but they were not permitted to make presentation in a seminar whereas the appellants were allowed to make presentations. The challenge to the aforesaid action of the university and the selection/ screening committee is founded on the primary premise that the regulation of the University Grants Commission for the year 2020 and amended from time to time have been clearly violated more particularly, for non-inclusion of the female member despite the fact that there were sizeable number of female aspirants who applied for such posts. It is further contended that there is a complete lack of transparency and impartiality and the nepotism and the favouritism are evident from the conduct of the aforesaid committee. The another ground for challenge pertains to possessing the valid Ph. D. degree of the appellant in MAT 1398 of 2021 and non-adherence of the UGC guide regulations in evaluating the API. To summarise, the challenge was founded on the assertion that the selection/screening committee was not constituted strictly in terms of the UGC regulations and guidelines issued by the State of West Bengal from time to time. The respondents did not possess the requisite eligibility criterion nor the evaluation as to API was made in fair and impartial manner. Though the name of the Respondent nos. 17 and 18 were included in the revised list but they were not permitted to make presentation in the seminar and ultimately they have been eliminated from the zone of the appointment.

In the backdrop of the same, the writ petition was moved by the aforesaid respondents and in course of the hearing for a limited purpose of passing an interim order, the university admits the irregularities in the selection process and make a counter offer to constitute an External Expert Committee of 7 members being an academicians of repute for re-evaluating the academic performance of the candidates. However, the appellant took a plea that the university cannot act contrary to the UGC regulations and the Act enacted for the said university i.e., the Jadavpur University Act, 1981 as amended subsequently by the West Bengal University Laws (Amendment Act, 2011). However, the learned Judge proceeded to appoint the External Expert Committee as suggested by the university repelling the contention of the appellant as the university itself found that the eligibility of the candidates appears to be faulty. The Single Bench further observed that one selection committee held in favour of the eligibility whereas the other opined differently. It is further held that Section 27 (2) of the amended Act of 2011 can be placed in action in the event of a recommendation made by the selection committee and such recommendation is not accepted by the Vice-Chancellor of the University. It is further held that the constitution of External Expert Committee shall not be caused irrevocable prejudice to the appellants if constituted as an interim measure until the university discloses the further facts on affidavits. Ultimately the direction was based upon the External Expert Committee, so constituted, to re-evaluate the API of the candidates, their Ph. D. credentials and any other criteria required for selection of the Associate Professor in the International Relations Department of the University.

The preliminary objection is taken on the maintainability of the appeal as according to Mr. Sengupta, learned Senior Advocate mere constitution of the External Expert Committee for limited purpose does not constitute a judgment within the meaning of Clause 15 of Letters Patent. The judgment of the Supreme Court rendered in case of ***Shah Babulal Khimji vs. Jayaben D. Kania & Anr. reported in (1981) 4 SCC 8*** is heavily relied upon by Mr. Sengupta on the proposition of law when an order may constitute a judgment under Clause 15 of Letters Patent. According to Mr. Sengupta, the interlocutory order which is merely procedural and in furtherance of the lis does not vitally effect nor deciding an issue on the points involved in the list do not come within the purview of judgment under the Letters Patent. He further submits even if an order may cause some inconvenience to a party but are procedural in nature does not satisfy the integral principles of a judgment being purely interlocutory in nature. Mr. Sengupta submits that the principles laid down in Khimji's case has been consistently followed by the different High Courts including the Supreme Court in subsequent decisions which would be evident from the judgment rendered in case of ***Mithailal Dalsangar Singh & Ors. vs. Annabai Devram Kini & Ors. reported in (2003) 10 SCC 691, Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors. reported in (2006) 5 SCC 399 and Tamilnad Mercantile Bank Shareholders Welfare Association (2) vs. S.C. Sekar & Ors. reported in (2009) 2 SCC 784***. It is further submitted that Section 27 (2) of the amended Act, 2011 can only apply on an eventuality of the recommendations made by the selection Committee and not accepted by the Vice-Chancellor. It has no manner of application when two sets of selection committee opined differently

as a resultant effect no recommendation could be made by the selection committee. He candidly submits and reiterated the stand of the university that there was irregularity in the selection process and the only solution which can be resorted to is the constitution of the External Expert Committee consisting of the academicians of repute in order to resolve such disputes and augment the fairness in the selection process.

Mr. Jaydip Kar, learned Senior Advocate appearing for the Respondent nos. 17 and 18 adopted the submission of Mr. Sengupta, Senior Advocate and submits that there is no final decision taken by the Single Bench in the impugned order nor it has any impact of deciding any point or the issue involved in the writ petition. He further submits that the report of the External Expert Committee may or may not be accepted by the Single Bench which would be evident from the findings returned therein to the effect that the respondents in the writ petitions were directed to exchange the affidavits disclosing all material facts touching upon the issues raised in the writ petitions.

Mr. Gupta appearing for the University Grants Commission has endeavoured to submit that the university cannot defer the regulation framed by the University Grants Commission and has to act strictly in terms thereof.

Mr. Basu, the learned Advocate for the appellants submits that the constitution of External Expert Committee is contrary to the provision of the university grant regulation as well as the Jadavpur University Act as amended from time to time and such order is amenable to be challenged by way of an appeal under Clause 15 of Letters Patent. Mr. Basu was critical in his submission that the single Bench has constituted the External Expert

Committee on the recommendation of the university without adverting to the fact that the same is opposed to the aforesaid statutory documents. Mr. Basu vociferously submits that such committee is neither recognised in the statutory document nor there is any reflection therein for such exercise to be adopted and, therefore, it affects the very right accrued to his clients. He, thus, submits that the effect of the Constitution of such committee has far reaching impact and impinge upon the exercise already undertaken and the steps taken thereupon. According to Mr. Basu, it is not a case of routine order to be passed in furtherance of the proceeding nor a purely interlocutory but has a vital effects on the rights of his client. He thus, submits that the vital issues involved in the report have been virtually determined by constituting an External Expert Committee and superseding the selection committee duly constituted under the regulation and on the Act applicable thereto. He finally submits that an exception curved out in Khimji's case relating to the interlocutory orders having a trapping of the judgment under Clause 15 of the Letters Patent is eminently present in the instant case and, therefore, the appeal is maintainable.

In the backdrop of the aforesaid facts and the submissions as succinctly jotted down herein before we first proceed to decide the preliminary point relating to the maintainability of the appeal under Clause 15 of the Letters Patent.

It admits no ambiguity that the appeal is a statutory right and cannot be availed in absence thereof. The right of appeal must be specifically provided in the statute as no inherent right of an appeal can be presumed unless so provided. The difficulty often arises what would constitute a judgment under

Clause 15 of the Letters Patent and what would not. In Khimji's case, the pivotal issue was whether an order which is not a judgment defined in the Code of Civil Procedure and for which no remedy is provided under Section 104 and Order 43 Rule 1 of the Code can still be regarded as a judgment for the purpose of an appeal under Clause 15 of the Letters Patent. Another point which arose was whether Section 104 and Order 43 Rule 1 of the Code of Civil Procedure has no manner of application nor can be used as a guiding factor for ascertaining whether such order comes within the ambit of the judgment contemplated under Clause 15 of the Letters Patent. The Apex Court ultimately held that there is no inconsistency between the provision contained in Section 104 and Order 43 Rule 1 of the Code with the Letters Patent nor the Letters Patent excludes and overrides applicability of the aforesaid provisions in these words:

78. *"Thus, after considering the arguments of counsel for the parties on the first two limbs of the questions, our conclusions are:*

(1) That there is no inconsistency between Section 104 read with Order 43 Rule 1 and the appeals under the Letters Patent and there is nothing to show that the Letters Patent in any way excludes or overrides the application of Section 104 read with Order 43 Rule 1 or to show that these provisions would not apply to internal appeals within the High Court.

(2) That even if it be assumed that Order 43 Rule 1 does not apply to Letters Patent appeals, the principles governing these provisions would apply by process of analogy.

(3) That having regard to the nature of the orders contemplated in the various clauses of Order 43 Rule 1, there can be no doubt that these orders purport to decide valuable rights of the parties in ancillary proceedings even though the suit is kept alive and that these orders do possess the attributes or character of finality so as to be judgments within the meaning of Clause 15 of the Letters Patent and hence, appealable to a larger Bench.

(4) The concept of the Letters Patent governing only the internal appeals in the High Courts and the Code of Civil Procedure having no application to such appeals is based on a serious misconception of the legal position.”

In Khimji's case, even after holding that the orders contemplated under Section 104 and Order 43 Rule 1 of the Code are appealable in nature but it does not abrogate the wider power enshrined in Clause 15 of the Letters Patent. Even if the orders which are not covered under the aforesaid provisions of the Code yet, can be regarded as a judgment under Clause 15 of the Letters Patent as ascribing the narrower meaning would frustrate the very purpose of Clause 15 of Letters Patent. It is further held that the wider meaning of the judgment should be assigned under Clause 15 of the Letters Patent depending upon the facts of the each case however, a distinction was drawn therein that inter-locutory order which are of routine nature without impairing valuable rights cannot be regarded as a judgment under Clause 15 of the Letters Patent. The inter-locutory order thus, have a traits and trappings of the finality deciding the issue in a main or an ancillary proceeding to constitute a judgment under Clause 15 of the Letters Patent. The order can be

regarded as a judgment provided it affects the valuable right and cause a serious prejudice to adversary. The relevant excerpts from the Khimji's judgment is reproduced as under:

3. “Intermediary or interlocutory judgment.- Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43 Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the Trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger bench. Take the converse case in a similar suit where the Trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses

his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the Trial Judge would not amount to a judgment within the meaning of Clause 15 of the Letters Patent but will be purely an interlocutory order. Similarly, suppose the Trial Judge passes an order setting aside an *ex parte* decree against the defendant, which is not appealable under any of the clauses of Order 43 Rule 1 though an order rejecting an application to set aside the decree passed *ex parte* falls within order Order 43 Rule 1 Clause (d) and is appealable, the serious question that arises is whether or not the order first mentioned is a judgment within the meaning of Letters Patent. The fact, however, remains that the order setting aside the *ex parte* decree puts the defendant to a great advantage and works serious injustice to the plaintiff because as a consequence of the order, the plaintiff has now to contest the suit and is deprived of the fruits of the decree passed in his favour. In these circumstances, therefore, the order passed by the Trial Judge setting aside the *ex parte* decree vitally affects the valuable rights of the plaintiff and hence amounts to an interlocutory judgment and is, therefore, appealable to a larger Bench ”.

In **Mithailal Dalsangar Singh & Ors.** (Supra), the Apex Court reiterates the principles laid down in Khimji’s case in the following:

12. “We are also of the opinion that the letters patent appeal against the order setting aside the abatement of the suit was not maintainable. What is a “judgment” within the meaning of Letters Patent came up for the consideration of this Court in *Shah Bahulal Khimji v. Jayaben D. Kania*. It was held that a decision by a trial Judge on a controversy which affects valuable rights of one of the parties is a “judgment”. However, an

interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties, and which work serious injustice to the party concerned. This Court further held that there is no inconsistency between Section 104 read with Order 43 Rule 1 CPC and the appeals under the Letters Patent. The Letters Patent do not exclude or override the application of Section 104 read with Order 43 Rule 1 CPC to internal appeals within the High Court. Even if it is assumed that order 43 Rule 1 does not apply to Letters Patent appeals yet the principles governing those provisions would apply by a process of analogy. A perusal of Section 104 read with Rule 1 of Order 43 CPC shows that while an appeal is provided against an order refusing to set aside the abatement or dismissal of a suit; there is no appeal provided against an order whereby the abatement or dismissal of a suit has been set aside. Whether the trial Judge passed an order setting aside an abatement or allowed substitution of the legal representatives, no valuable right of parties was decided. The constitution of the suit was rendered good and the suit proceeded ahead for being tried on merits. Such an order does not amount to “judgment” within the meaning of Letters Patent.”

In ***Midnapure People’s Cooperative Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors. reported in (2006) 5 SCC 399*** the Apex Court succinctly gave an illustration what would come within the ambit of judgment for the purpose of Letters Patent and what would not in the following:

15. *“interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:*

- (i) *Orders which finally decide a question or issue in controversy in the main case.*
- (ii) *Orders which finally decide an issue which materially and directly affects the final decision in the main case.*
- (iii) *Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.*
- (iv) *Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.*
- (v) *Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties. ”*

Ultimately it is held that the routine order passed to further the progress of the case and the order which make some inconvenience or some prejudice but not finally determining the rights of the parties shall not come within the purview of the judgment though the orders which finally decides the question or the issues directly affecting the main case either in the main or ancillary proceeding may constitute a judgment in the following:

16. *“The term “judgment” occurring in clause 15 of the Leeters Patent will take into its fold not only the judgments as defined in Section 2 (9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, “judgments” for the purpose of*

filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments’ for the purpose of filing appeals provided under the Letters Patent.”

In **Tamilnad Markentile Bank Shareholders’ Welfare Association** (Supra) the pivotal issue was whether an appeal under Clause 15 of Letters Patent is mainly against an order of injunction passed in a contempt proceeding when Section 19 of the Contempt of Courts Act technically does not engulf such order to be appealable, it was held that it would be so as it affects the right vitally in the following words:

15. *“On or about 10-6-2008, a contempt petition, being CP No.508 of 2008 was filed. The Managing Director of the Bank, Shri G. Narayanamurthy, was alone made a party-contemnor. The petition was filed for alleged disobedience of the order of the learned Single Judge dated 26-7-2006 passed in Oas Nos. 597 to 599 of 2006. In the said petition the following prayer was made:*

“to punish the respondent for disobeying the orders of this Hon’ble Court dated 26-7-2006 in Oas Nos. 597 to 599 of 2006 in CS No.981 of 2004.”

An interim injunction was also prayed for therein, which reads as under:

“to declare the election of Directors held at the 83th and 85th Annual General Meetings as null and void as the same is contrary to the orders of this Hon’ble Court dated 26-7-2006 in OA No.597 of 2005 in CS No.981 of 2004.”

It was further held therein that even an irregular order passed by the court shall come within the ambit of the judgment under Clause 15 of the Letters Patent in the following:

49. *“It is also well settled that even an irregular order can be set aside by the same court or by a higher court. In Isaacs v. Robertson it has been held:*

Their Lordships would, however, take this opportunity to point out that in relation to orders of a court of unlimited jurisdiction it is misleading to seek to draw distinctions between orders that are ‘void’ in the sense that they can be ignored with impunity by those persons to whom they are addressed, and orders that are ‘voidable’ and may be enforced unless and until they are set aside. Dicta that refer to the possibility of there being such a distinction between orders to which the descriptions ‘void’ and ‘voidable’ respectively have been applied can be found in the opinions given by the Judicial Committee of the Privy Council in Marsh v. Marsh AC at P.284 and Macfoy v. United Africa Co. Ltd.; but in neither of those appeals nor in any other case to which counsel has been above to refer Their Lordships has any order of a court of unlimited jurisdiction been held to fall in a category of court orders that can simply be ignored because they are vid ipso facto without there being any need for proceedings to have them set aside. The cases that are referred to in these dicta do not support the proposition that there is any category of orders of a court of unlimited jurisdiction of this kind: what they do support is the quite different proposition that there is a category of orders of such a court which a person affected by the order is entitled to apply to have set aside

ex debito justitiae in the exercise of the inherent jurisdiction of the court without his needing to have recourse to the rules that deal expressly with proceedings to set aside orders for irregularity and give to the Judge a discretion as to the order he will make. The Judges in the cases that have drawn the distinction between the two types of orders have cautiously refrained from seeking to lay down a comprehensive definition of defects that bring an order into the category that attracts ex debito justitiae the right to have it set aside, save that specifically it includes orders that have been obtained in breach of rules of natural justice.

The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular it can be set aside by the court that made it on application to that court; if it is regular it can only be set aside by an appellate court on appeal if there is one to which an appeal lies.”

The law expounded in the aforesaid decisions may be carved out to the extent that the orders for which an appeal is provided under the Code of Civil Procedure shall come within the ambit of the judgment under Clause 15. But equally the narrower meaning should not be ascribed to the judgment appearing under Clause 15 of the Letters Patent. The court must interpret the word ‘judgment’ appearing in Clause 15 of the Letters Patent to be of wider connotation and the orders not contemplated under Section 104 and Order 43 Rule 1 of the Code may still be regarded as a judgment under the Letters

Patent. The orders which are passed in a routine manner to secure the progress of the suit or the proceedings or the order which causes some inconvenience or prejudice but does not finally decide the issue may not be regarded as a judgment under Clause 15 of the Letters Patent. The vital tests may be imported to the extent that the order be it interlocutory or otherwise vitally affects the rights of the parties or decides the issues whether directly or substantially or ancillary involved in the proceeding are amenable to the appeal as the judgment under Clause 15 of the Letters Patent. The Interlocutory order may be regarded as a judgment if it is found to be palpably illegal and contrary to the statutory provision. The order which takes away the valuable rights or impair or abrogates the same may still be regarded as a judgment under Clause 15 of the Letters Patent. Because of the wider meaning having ascribed to the judgment under Clause 15 of the Letters Patent, it is a solemn duty of the Appellate Court to find out the elements and/or principles laid down in the aforesaid judgment in the perspective of the facts involved therein.

In the instant case, the primary challenge is thrown on the constitution of the selection committee, the manner of evaluating the API and the other credentials including the Ph.D. degree obtained by the appellants being contrary to the regulations and/or statute and the publication of the revised list. The Single Bench is required to consider and determine finally whether there has been any infraction of the regulations and the other relevant acts not only in constituting the selection committee but also evaluating the credentials strictly in terms of the provisions contained therein. Constituting an External Expert Committee has a far reaching impact on the constitution of

the selection committee in terms of the relevant regulations/Act. In other words, the tenet of the order would evidently imply that the said External Expert Committee shall undertake the exercise of the selection committee so constituted and substitute its findings, impliedly at the inter-locutory stage, the selection committee has been superseded by the External Expert Committee which in our opinion vitally affects the rights of the appellant being the respondents therein and, therefore, such order would come within the ambit and purview of the judgment under Clause 15 of the Letters Patent.

So far as the merit of the order is concerned we hasten to add that the primary point concerning the constitution of the selection committee, evaluation of the credential including API and securing the Ph. D. degree before the last date of an application are to be decided after the exchange of affidavits by the respective respondents in the writ petition. Merely because the university has contended that the selection process was faulty does not invite the constitution of the External Expert Committee without affording an opportunity of hearing to other contesting respondents. The issue as indicated above, can be conveniently resolved on the disclosure of the documents and if the constitution of the committee appears to have been made in complete disregard to the statutory provisions, the reliefs as claimed can be conveniently granted with the consequential orders. The court should not act simpliciter on the ipse dixit of one of the respondents who conceded the point at the time of hearing but must afford an opportunity to the other respondents whose rights would be vitally affected. Superseding the committee is an extreme step pending the final adjudication without their being a cogent and convincing findings returned in the order. We have not been taken to any provisions by

either of the parties that the External Expert Committee can be constituted. The authorities cannot go beyond the circumference of the statutory provision. Equally the court should not pass an order which offends the statutory provision that too without the disclosure of the material documents by the contesting parties. The order impugned is, thus, set aside. Both the appeals succeed and are accordingly disposed of.

In view of the disposal of both the appeals, the connected applications filed therein are also disposed of.

No order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Rabindranath Samanta, J.)