

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 18941 of 2025

***Hemant Kanoria*
-versus-
UCO Bank & Ors.**

For the Petitioner	:	Mr. Sandipan Ganguly, Sr. Adv., Mr. Ayan Bhattacharjee, Sr. Adv., Mr. Deepan Kumar Sarkar, Mr. Soumalya Ganguli, Mr. Sambriddha Sen, Mr. Karan Dudhwewal, Mr. Arpit Chowdhury.
For the State	:	Mr. Debasish Roy, Ld.P.P., Mr. Amitabrata Roy, Ld. G.P., Mr. Vivekanada Bose, Ld. Jr. St. Counsel, Ms. Amita Gaur, Ms. Parna Roy Chowdhury, Mr. Shibasish Banerjee.
For the CBI	:	Mr. Rajdeep Majumder, Ld. DSGI, Mr. Amajit De.
For the UCO Bank	:	Mr. Rahul Karmakar, Ms. Rituparna Sanyal, Ms. Antalina Guha.

Heard On : **25.08.2025**

Judgement On : **25.08.2025**

Tirthankar Ghosh, J. :

The petitioner has filed the application under Article 226 of the Constitution of India praying as follows:

- “b)** Review and/or recall the order dated 8th July, 2025 passed by this Hon’ble Court in WPA No.5033 of 2025 (UCO Bank V. The State of West Bengal & Ors.), being Annexure “P-1” hereto;
- c)** Without prejudice to prayer (b) hereinabove, the order dated 8th July, 2025 passed by this Hon’ble Court in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) be recalled and WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) be restored to the file of this Hon’ble Court with leave being granted to the petitioner to intervene in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) as party respondents thereto;
- d)** A writ of and/or in the nature of Mandamus do issue commanding the Respondent No.1 and/or its men, assigns, employees and agents to forthwith and unconditionally withdraw, recall and rescind the complaints dated 20th May, 2022 and 6th May, 2023 issued by the Respondent No.1, being Annexures “P-3” and “P-4” in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) and all consequential steps taken pursuant thereto, if any;

- e)** A writ of and/or in the nature of Prohibition do issue prohibiting the Respondent No.2 and/or its men, assigns, employees and agents from acting in terms of furtherance of the complaints dated 20th May, 2022 and 6th May, 2023 issued by the Respondent No.1, being Annexures “P-3” and “P-4” in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) and from taking any prejudicial step against the Petitioner, directly and/or indirectly, in any manner whatsoever;
- f)** A writ of and/or in the nature of Certiorari do issue calling upon the Respondent and/or its men and/or its agents and/or assigns and/or representatives to forthwith transmit to this Hon’ble Court all the records of the case including all the relevant documents and information required by the petitioner and on the basis whereof the complaints dated 20th May, 2022 and 6th May, 2023 were issued by the Respondent No.1, being Annexures “P-3” and “P-4” in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) so that conscionable justice may be done by quashing all steps taken by the Respondents including all consequential steps and/or actions taken by the Respondents pursuant thereto or in relation therewith, if any, and also by passing such other or further order(s) or direction(s) as this Hon’ble Court may deem necessary in the interests of justice and fairness;

- g)** Such other or further appropriate writ or writs do issue which this Hon'ble Court may deem fit and proper to afford complete justice to the petitioner in the facts and circumstances of the instant case;
- h)** Rule NISI in terms of the prayers above;
- i)** Stay of operation of the order dated 8th July, 2025 passed by this Hon'ble Court in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.), being Annexure "P-1" hereto;
- j)** Injunction restraining the Respondents and/or their men, assigns, employees and agents and anyone claiming through or under them and each of them from acting in terms of furtherance of the complaints dated 20th May, 2022 and 6th May, 2023 issued by the Respondent No.1, being Annexures "P-3" and "P-4" in WPA No.5033 of 2025 (UCO Bank v. The State of West Bengal & Ors.) and from taking any prejudicial step against the Petitioner, directly and/or indirectly, in any manner whatsoever, till disposal of the instant writ petition and till such time this Hon'ble Court deems fit and proper."

The main thrust of prayer of the petitioner is for review and/or recalling the order dated 8th July, 2025 passed by this Court in WPA 5033 of 2025. Learned advocate submits that already an investigation has commenced being Electronic Complex P.S. Case No.41 of 2025 dated 25.02.2025 under Sections 406/419/420/467/468/120B of the Indian Penal Code and the CBI is also

carrying out investigation in respect of the selfsame set of issues and/or complaint which has been suppressed by the UCO Bank and a direction has been obtained from this Court.

Learned advocate for the UCO Bank has submitted that if the petitioner is aggrieved, petitioner should have preferred an appeal against the order passed in WPA 5033 of 2025 instead of a review being prayed for in an application under Article 226 of the Constitution of India.

Rebutting such contentions, learned advocate for the petitioner relied upon three judgments of the Hon'ble Supreme Court. First of such judgment being ***Shivdev Singh v. State of Punjab, reported in 1961 SCC OnLine SC 29***. Reference was drawn to paragraphs 6 and 10 which read as follows:

“6. It was not contended before us that the Director of Rehabilitation had no power to declare a village as a “fauji” village, nor was it contended that an allotment made in favour of a displaced person could never be cancelled. What was, however, contended was that by virtue of Rules 14(6) and 49 of the Administration of Evacuee Property (Central) Rules, 1950, the power to cancel an allotment could not be exercised after 22-7-1952 and that in any case the cancellation of allotment made even prior to this date could not be implemented if it was not implemented before 15-6-1952. This argument is based on Rule 49 which was added on 22-7-1952 and reads as follows:

“49. Repeal.—The Rules contained in the following notifications, namely:

(i) the notification of the Government of Punjab in the Relief and Rehabilitation Department No. 8689-S (Reh), dated 29-8-1951; and

(ii) the notification of the Government of Patiala and East Punjab States Union in the Relief and Rehabilitation Department No. 2 dated 19-2-1952, are hereby repealed:

Provided that subject to the next succeeding proviso anything done or any action taken in exercise of any power conferred by any of the said Rules shall be deemed to have been done or taken under the corresponding provision of these Rules:

Provided that no order other than an order in an appeal made in exercise of any power conferred by any of the said Rules shall have effect—

(a) if it was made after 25-5-1952, or

(b) if it was made on or before 25-5-1952, was not implemented or enforced on or before 15-6-1952.”

10. *The other contention of Mr Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here*

the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J”.

Reiterating the same contentions, reference was made to ***Pohla Singh v. State of Punjab, Reported in (2004) 6 SCC 126***. Attention of the Court was drawn to paragraphs 18 and 19 which reads as follows:

“18. *Shri P.P. Rao, learned Senior Counsel for the respondents (landholders) has also submitted that Civil Writ Petition No. 3213 of 1968 filed by Dhanna Singh had been allowed by the High Court by the judgment and order dated 9-1-1980 and the orders passed by the Collector on 9-6-1961 and that by the Financial Commissioner on 2-3-1967 were set aside. This order of the learned Single Judge of the High Court having not been challenged by the allottees by preferring an appeal, became final and consequently it was not open to another learned Single Judge to entertain another writ petition (Civil Writ Petition No. 1287 of 1980) at the instance of the allottees and to make a declaration that they (allottees) were not bound by the decision rendered on 9-1-1980 in CWP No. 3213 of 1968 and also that they cannot be dispossessed from the land in dispute in compliance therewith. It may be mentioned here that the final order regarding*

declaration of surplus land of Dhanna Singh was passed by the Collector on 9-6-1961 and thereafter the surplus land was allotted to the allottees on 5-3-1962 and a sannad was issued in their favour and they were also put in possession thereof. The allottees had deposited the compensation amount of Rs 13,882.53, which was received by Dhanna Singh. However, in the writ petition filed by Dhanna Singh in 1968 which came to be decided on 9-1-1980, the allottees were not impleaded as parties. The decision in the writ petition clearly affected their rights. Civil Writ Petition No. 1287 of 1980 was filed by the allottees under Articles 226 and 227 of the Constitution, wherein they claimed several reliefs and prayers (ii) and (v) read as under:

“(ii) that the decision contained in the judgment dated 9-1-1980 in CWP No. 3213 of 1968 be declared to be not binding on the petitioners as they had deliberately been omitted from being impleaded as parties in the writ petition.

(v) that the decision dated 9-1-1980 in CWP No. 3213 of 1968 be recalled and the case be redecided after hearing the petitioners who are necessary parties to the said writ petition.”

19. *The recourse taken to the second writ petition by the allottees, therefore, cannot be said to be illegal as their basic grievance was that though they were in possession since 1962 i.e. for nearly 18 years, but the order declaring the land as surplus had been set aside in a writ petition, wherein they were not impleaded as parties. In these circumstances we are of the opinion that the writ petition filed by the allottees was rightly allowed by the learned Single Judge”.*

Attention of the Court was also drawn to **Vishnu Vardhan @ Vishnu Pradhan Vs. The State of Uttar Pradesh & Ors**, reported in 2025 INSC 884.

Reliance was placed on paragraphs 1, 44,45,61,70 & 144 which reads as follows:

*“1. In **Nidhi Kaim v. State of Madhya Pradesh** , a three-Judge Bench of this Court emphatically asserted “... stated simply, nothing ... nothing ... and nothing, obtained by fraud, can be sustained, as fraud unravels everything.”*

44. Insofar as writ proceedings are concerned, it is no longer res integra that any order made on a writ petition affecting the interest of a party who has not been arrayed as a respondent could be invalidated on the ground of breach of natural justice.

*45. We may profitably refer to the decision in **Poonam v. State of U.P.**. Although the decision was rendered in connection with a selection process for allotment of a fair price shop, this Court after analysing various previous decisions emphasised:*

21. We have referred to the aforesaid passages as they state the basic principle behind the doctrine of natural justice, that is, no order should be passed behind the back of a person who is to be adversely affected by the order. The principle behind the proviso to Order 1 Rule 9 that the Code of Civil Procedure enjoins it and the said principle is also applicable to the writs. An unsuccessful candidate challenging the selection as far as the service jurisprudence is concerned is bound to make the selected candidates parties.

61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:

a. In **United India Insurance Co. Ltd. v. Rajendra Singh**, this Court reiterated that fraud unravels everything:

3. “Fraud and justice never dwell together” (*fraus et jus nunquam cohabitant*) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that “no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” (*Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702 : (1956) 1 All ER 341 : (1956) 2 WLR 502 (CA)]).

b. In **Shrisht Dhawan (Smt) v. Shaw Bros.**, it was held:

20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and

is intended to deceive another so that he shall act upon it to his legal injury.....

c. In **A.V. Papayya Sastry v. Govt. of A.P.**, this Court held:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed: “Fraud avoids all judicial acts, ecclesiastical or temporal.”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. ***

24. In *Duchess of Kingstone*, Smith's Leading Cases, 13th Edn., p. 644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was “mistaken”, it might be shown that it was “misled”. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. *It has been said: fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemni patrocinari debent).*

d. *The judgment by Denning, L.J. in **Lazarus Estates Ltd. (supra)**, which has since been quoted with approval by this Court in a catena of decisions including **Nidhi Kaim (supra)**, asserted intolerance for fraud in legal proceedings in the following words:*

No court ... will allow a person to keep an advantage which he has obtained by fraud. [...] Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever....

70. *For a writ petition under Article 32 of the Constitution to be entertained, the petitioner has to run a case establishing prima facie violation or imminent threat of violation of any Fundamental Right. In this context, some relevant judicial pronouncements are discussed below.*

a. *In **D.A.V. College v. State of Punjab**, this Court held:*

44. *We have already found that none of the provisions of the Act offend any fundamental rights of the petitioners. But it is contended on behalf of the petitioners that in a petition under Article 32 once it is alleged and a prima facie case is made out that the fundamental rights of a citizen are threatened or*

violated this Court is not only bound to entertain it for determining to what extent the allegation is valid but is also bound to go into the question, if raised, that the law under which it is alleged that his fundamental right is infringed is invalid on the ground of want of legislative competence. There are two facets to this submission. Firstly, whether ultimately any fundamental right in fact is threatened or violated, so long as a prima facie case of such a threat or violation is made out a petition under Article 32 must be entertained. Secondly, once it is entertained irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. While the first proposition is valid, the second is not.

46. *It is apparent therefore that the validity or the invalidity of the impugned law, on the ground of legislative competence should purport to infringe the fundamental rights of the petitioner as a necessary condition of its being adjudicated. But if in fact the law does not, even on the assumption that it is valid, infringe any fundamental rights, this Court will not decide that question in a petition under Article 32. The reason for it is obvious, namely, that no petition under Article 32, will be entertained if fundamental rights are not affected and if the impugned law does not affect the fundamental rights it would be contrary to*

this principle to determine whether that law, in fact, has legislative competence or not.

(emphasis ours)

b. In **Amrit Lal Berry v. CCE**, a coordinate Bench of this Court had the occasion to rule that:

11. [...] But, we may point out here that a mere failure to apply a rule which ought to have been applied may not, by itself, justify an invocation of the powers of this Court under Article 32 of the Constitution. In order to succeed in a petition under Article 32 of the Constitution the petitioner has to disclose how his fundamental right has been infringed by a particular rule or decision or its application. The impact of the Rule or decision upon the facts of each petitioner case has to be clearly brought out.

12. In the cases before us, the fundamental rights alleged to be violated could only be the general ones embraced by Article 16(1) of the Constitution which reads:

“There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.” Where a petitioner alleges that he has been denied equality of opportunity for service, during the course of his employment as a government servant, it is incumbent upon him to disclose not only the Rule said to be infringed but also how this opportunity was unjustifiably denied on each particular occasion. The equality of opportunity in a matter relating to employment implies equal treatment to persons

similarly situated or in the same category as the petitioner. It postulates equality of conditions under which a number of persons belonging to the same category compete for the same opportunities and a just and impartial application of uniform and legally valid standards in deciding upon competing claims. It does not exclude justifiable discrimination.

(emphasis ours)

c. In **Ramdas Athawale (5) v. Union of India**, it was observed by this Court that:

46. *It is equally well settled that Article 32 of the Constitution guarantees the right to a constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, Article 32 does not apply. It is well settled that no petition under Article 32 is maintainable, unless it is shown that the petitioner has some fundamental right. In Northern Corpn. v. Union of India [Northern Corpn. v. Union of India, (1990) 4 SCC 239] this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone Article 32 is attracted.*

(emphasis ours)

d. In **Harbhajan Singh v. State of Haryana**, this Court referring to the decisions in **D.A.V. College (supra)** and **Ramdas Athawale (supra)** observed as follows:

11. But the above decisions do not wholly support the stand of the respondents. This Court in *D.A.V. College [D.A.V. College v. State of Punjab, (1971) 2 SCC 269]* has held that there are two aspects. The first is whether ultimately any fundamental right in fact is threatened or violated. So long as a *prima facie* case of such a threat or violation is made out, a petition under Article 32 must be entertained. Second, once it is entertained, irrespective of whether it is found ultimately that in fact no fundamental rights of the petitioners are invaded, the vires of the legislation or the competence of the legislature to enact the impugned legislation must be gone into and determined. [The Constitution Bench in *D.A.V. College [D.A.V. College v. State of Punjab, (1971) 2 SCC 269]*, further held that while the first proposition is valid, the second is not. Thus, the entertainment of the writ petition does not mean that this Court has to examine the impugned legislation or legislative competence if the same is not found to be infringing fundamental rights.

144. In the wake of the unbecoming conduct of the trio, we do not feel bound by the nature of relief claimed by Vishnu. We, therefore, consider it appropriate to order/direct as under:

- i. the impugned order of the High Court dated 28th October, 2021 passed in WP (Civil) 2272/2019 [Reddy Veeranna

- v. State of Uttar Pradesh & ors.] stands set aside, since fraud has vitiated the entire proceedings;*
- ii.** *as a corollary to the above, the judgment and order dated 5th May, 2022 in **Reddy Veerana (supra)** (which too was obtained by playing fraud) is declared to be a nullity and stands recalled in exercise of our inherent powers;*
 - iii.** *the order dated 30th January, 2023 passed by this Court in MA 255/2023 in C.A. No. 3636/2022 is recalled, also in exercise of our inherent powers;*
 - iv.** *WP (Civil) 2272/2019 [Reddy Veeranna v. State of Uttar Pradesh & ors.] is remanded in its entirety to the High Court;*
 - v.** *as a consequence of (iv) supra, WP (Civil) 2272/2019 will stand revived and restored on the file of the High Court with direction to implead Vishnu Vardhan and T. Sudhakar as additional respondents;*
 - vi.** *WP (Civil) 2272/2019 will be decided afresh by the High Court in accordance with law, upon hearing all interested parties;*
 - vii.** *should any disputed question of fact arise for decision disabling it to decide the same based on affidavit evidence, the High Court may in its discretion permit the parties to lead oral and documentary evidence regarding the claim for compensation as well as re-determination and apportionment thereof amongst the rightful claimants, as if it were exercising powers under Section 54 of the 1894 Act.*
 - viii.** *till such time a decision is given by the High Court, the interim order dated 21st January 2025, whereby we allowed Reddy to furnish securities through his*

partnership firm Manyata-Pristine instead of cash deposit, shall continue meaning thereby that the securities furnished by him in the form of title deeds of immovable properties shall remain deposited with this Court and shall be subject to and abide by further orders of the High Court;

- ix.** *however, the interim order dated 3rd October, 2024 restraining Reddy from entering into any agreement to sell and/or to create third party rights in respect of the immovable assets owned by him (except those for which security has been furnished), his family and the companies created by him or his family members shall remain in abeyance subject to his cooperating with the High Court for early disposal of the writ petition;*
- x.** *in the event of non-cooperation from the side of Reddy, the High Court may pass such restraining order as it may deem fit and proper.*
- xi.** *having regard to the magnitude of fraud which we have detected in course of consideration of these proceedings, we find it just and proper to request the Chief Justice of the High Court to preside over the Division Bench for finally deciding the writ petition as early as possible, and subject to the convenience of the Bench, preferably by the year end;*
- xii.** *all questions on merits, other than those decided vide this judgment, including re-determination of fair and just compensation for the acquired land and apportionment thereof, are kept open for being urged before the High Court;*

- xiii.** *having regard to the track record of the trio, the possibility of a compromise cannot be totally ruled out and if they file terms of settlement, we hope and trust that the High Court will carefully examine such terms to ensure that public interest is not hindered in its acceptance; and*
- xiv.** *pending suits/proceedings, if any before any judicial fora /administrative authority, shall be taken to its logical conclusion in accordance with law.*

Learned advocate further submitted that this Hon'ble High Court in ***Smt. Diblu Naskar Vs. State of West Bengal reported in 2009 SCC OnLine Cal 1155***, has held that when an individual was not a party in the writ petition and is affected by the outcome of such order, the writ petition is maintainable at the instance of such petitioner for recalling the order. The relevant part of the judgment as cited by the learned advocate appearing for the petitioner is as follows:

23.“In a case where an order is passed by a Court in judicial proceedings in violation of natural justice either because entire facts have not been stated before the Court or the Court has been misled or that the Court has committed an error, it should be the duty of the Court to correct itself in exercise of its inherent power and technicalities ought not to be allowed to transcend justice.

I have not found in Shivdeo Singh (supra) a law laid down by the Apex Court that the former and the latter petitions are required to be heard by the self-same Judge who decides the former one. In Pohla Singh (supra), a learned Judge who had not passed order on the former petition passed order on the latter petition. Since it is settled

law that power of review inheres in every Court of plenary jurisdiction and that a Court of Writ exercises power of review not under Order 47, CPC but in exercise of its inherent jurisdiction and in the interest of justice [see Pintu Acharyya v. State of West Bengal, reported in 1997 (2) CLJ 428], I do not consider that by deciding the issues raised in the present petition I would transgress my authority. In terms of the determination fixed by the Hon'ble the Chief Justice, I do have the authority to hear and decide the present petition and even to interfere for preventing miscarriage of justice and to correct an error committed by the Writ Court resulting from non-disclosure of full facts.

Rule 5 of Order 47, CPC requiring a review petition to be heard by that Judge who passed the order under review, if available, is a procedural provision. Procedural law, it is well-known, is the handmaid of justice. It has to bend before justice. When a Writ Court has plenary powers to review an order passed in writ jurisdiction affecting substantive rights of parties, the procedure laid down in Rule 5 would not stand in the way. That in the case of Shivdeo Singh (supra) Hon'ble Khosla, J. of the High Court had the occasion to deal with both the former and the latter petitions is, thus, absolutely immaterial”.

Mr. Roy, learned Public Prosecutor appearing on behalf of the State has submitted a report wherefrom it reflects that from January, 2025 till the last week of February, 2025 a preliminary enquiry was conducted and thereafter on 25th February, 2025, Electronic Complex Police Station Case No.41 of 2025 dated 25.02.2025 has been registered for investigation and the materials till date as collected by the investigating agency as submitted by the learned Public Prosecutor, according to him, requires investigation in respect of the

following individuals, namely (i) Mr. Hemant Kanoria (Managing Director) (ii) Mr. Sunil Kanoria (Director) (iii) Mr. Srinivasachari Rajagopal (Director) (iv) Mr. Malay Mukherjee (Director) (v) Mr. Ramkrishna Agarwal (Additional Director) (vi) Dr. Punita Kumar Sinha (Director) (vii) Mr. Shyamalendu Chatterjee (Director) & (viii) Tamali Sengupta.

However, on a query from this Court it has been submitted by the learned Public Prosecutor that the involvement of any public servants till date has not surfaced in course of the investigation.

On the other hand, Mr. Majumder learned DSGI appearing for the CBI submits that preliminary enquiries being No.PE0732025E0001 dated 25.07.2025 and No.PE0732025E0002 have been registered against the present petitioner, M/s. SREI Equipment Finance Limited (SEFL) and M/s SREI Infrastructure Finance Limited (SIFL), respectively & other Directors/incumbents of the companies and unknown public servants.

On an overall submissions of each of the parties I find that CBI till date has not registered a Regular Case and is simply conducting a preliminary enquiry to assess whether there is involvement of any public servant in respect of the information furnished on 06.05.2023 and the CID is investigating regarding the offences only under the Indian Penal Code so far as the directors and other employees of the company is concerned, so at this juncture, I believe it would be inappropriate to prescribe the course of action for any particular agency.

So far as the UCO Bank is concerned, their conduct at this stage is not assessed as the investigation which is being carried out may be prejudiced at this stage.

Another aspect which requires consideration of this court is relating to the precedents relied upon by the petitioner. The aforesaid three judgements relied upon by the petitioner deal with civil rights conferred by the civil law or by statute. Thus they are distinguishable from the principles to be followed in criminal law before the commencement of criminal proceedings are concerned. It would be pertinent to refer to relevant observations of the Hon'ble Supreme Court in **S.A.L. Narayan Row v. Ishwarlal Bhagwandas** reported in 1965 SCC OnLine SC 18:

“8..... The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal.....”.

So far as the right of the accused in a writ petition prior to commencement of the investigation is concerned the Hon'ble Supreme Court in ***Union of India v. W.N. Chadha, reported in 1993 Supp (4) SCC 260*** has settled the law. The following paragraphs are relevant which reads as follows:

“80. *The rule of audi alteram partem is a rule of justice and its application is excluded where the rule will itself lead to injustice. In S.A. de Smith's Judicial Review of Administrative Action, (4th Edn.) at page 184, it is stated that in administrative law, a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication in the presence of some factors, singly or in combination with another. Those special factors are mentioned under items (1) to (10) under the heading “Exclusion of the audi alteram partem rule”.*

81. *Thus, there is exclusion of the application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law “lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation” and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands.*

82. *Bhagwati, J. (as the learned Chief Justice then was) in Maneka Gandhi [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] speaking for himself, Untwalia and Murtaza Fazal Ali, JJ. has stated thus : (SCC p. 290, para 14)*

“... Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly, or to use the words of Lord Morris of Borth-y-Gest, from ‘fair play in action’, it may equally be excluded where, having regard to the nature of the

action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion.”

83. *Thus, it is seen from the decision in Maneka Gandhi [(1978) 1 SCC 248] that there are certain exceptional circumstances and situations whereunder the application of the rule of audi alteram partem is not attracted.*

87. *A Division Bench of the Allahabad High Court in Indian Explosives Ltd. (Fertiliser Division) Panki, Kanpur v. State of U.P. [(1981) 2 LLJ 159 : 1981 Lab IC (NOC) 148 : (1981) 2 LLN 270 (All)] after referring to the decision in Barnet [(1972) 2 QB 342 : (1972) 1 All ER 1185 (CA)] and Norwest Holst Ltd. v. Secretary of State for Trade [1978 Ch 201 : (1978) 3 All ER 280 (CA)] said thus:*

“Thus, it has been recognised by Judges of undoubted eminence that a decision on substantive rights of parties is one thing and a mere decision that another body investigate and decide on those substantive rights is quite another, and the principle of hearing is not applicable to the latter class of cases.”

88. *The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged enquiry follows is a relevant — and indeed a significant — factor in deciding whether at that stage there ought to be hearing which the statute did not expressly grant.*

89. *Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.*

90. *Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.*

91. *In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335, 359 : 1992 SCC (Cri) 426] this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy, JJ.) were parties after making reference to the decision of the Privy Council in Emperor v. Khwaja Nazir Ahmad [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] and the decision of this Court in State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272] has pointed out that : (SCC p. 359, para 40)*

“... the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation....”

92. *More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.*

98. *If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.*

120. *For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed”.*

The said principle is still followed and has been reiterated by the Hon’ble Supreme Court in ***Central Bureau of Investigation -versus- Surendra Patwa and Others, reported in 2025 SCC OnLine SC 934***, the relevant paragraph is as follows:

“10. *From a perusal of the above paragraphs, it is clear that the principles of natural justice are not applicable at the stage of reporting a criminal offence. It has further been clarified that providing an opportunity of being heard prior to the commencement of a criminal action (i.e. registration of an FIR), would frustrate the very purpose of initiating a criminal proceeding, which is to meet the ends of justice. More specifically, para 98.1 of Rajesh Agarwal's case (supra) explicitly states that no opportunity of being heard is required before an FIR is lodged or registered”.*

Having considered that none of the judgments relied upon by the petitioner deal with a proposed accused in relation to a criminal proceeding

before commencement of criminal investigation, the said judgments are not applicable to the facts of the present case.

Guided by the observations made above, I am of the opinion that, the audience of the present writ petitioner was not called for at the stage when WPA 5033 of 2025 was heard by this Court.

As such, I am not inclined to interfere with the prayers advanced by the writ petitioner.

Consequently, WPA 18941 of 2025 is dismissed.

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

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)