Bombay High Court M/S.Advani Oerlikon Ltd vs Machindra Govind Makasare & Ors. ... on 17 March, 2011 Bench: Dr. D.Y. Chandrachud, Anoop V.Mohta, R. S. Dalvi VBC 1 lpa261.05

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO.261 OF 2005

IN
WRIT PETITION NO.1743 OF 2005
WITH
LPA NOS.26/2011 & 304 TO 308 OF 2010

M/s.Advani Oerlikon Ltd. ...Appellant.

Versus
Machindra Govind Makasare & Ors. ig ...Respondents.

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Mr.Kiran Bapat for the Appellant.
Mr.V.P.Vaidya for the Respondents.

Mr.A.V.Anturkar against the Reference.

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CORAM : DR. D.Y. CHANDRACHUD,
ANOOP V. MOHTA AND

SMT. ROSHAN DALVI, JJJ.

March 17, 2011.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.) :

The issue whether an appeal can lie under clause 15 of the Letters Patent against a decision of a Single Judge rendered in a Petition invoking Articles 226 and/or 227 of the Constitution has defied conclusive judicial pronouncement. In a sense, this is reflective as much of the ingenuity of the Bar as it is of the expansive constitutional philosophy of vesting jurisdiction in the VBC 2 lpa261.05 High Court to issue writs that remedy injustice. The ruling, which this Full Bench is called upon to render, is guided by pronouncements of the Supreme Court, of Special Benches as well as Full Benches of this Court. That the question of the maintainability of an appeal under Clause 15 of the Letters Patent in such cases continues to arise with such persistence provides a sobering reflection of the limits of the law in providing black letter solutions. We must recognise that the broad and wide categories that the founding fathers of the Constitution created while conferring jurisdiction on constitutional courts were crafted with a sense of vision and purpose. Conceptual openness is a powerful weapon against injustice. The width and amplitude of constitutional provisions ought not then to be constricted into narrow fragments. A provision which is intended to reach out to injustice must be construed in the same liberal spirit with which it was engrafted into the Constitution. We begin this judgment, on a reference to the Full Bench, with the prefatory note that as in other cases involving legal interpretation, strait-jackets are unwise. This Court in answering the questions on which the reference has been made would indicate the broad principles, leaving it as we VBC 3 lpa261.05 must, to the robust sense of justice of the Judges who occupy this Court to consider each case upon its facts while determining questions of maintainability. The quest for certainty in the law is one, but only one of the ideals of a system founded on the rule of law. Yet the law without justice is like the grain bereft of its fibre. For it is justice which like the fibre of the grain provides the texture that nourishes and sustains. Constitutional interpretation must likewise nourish and sustain even as it seeks to remedy injustice. As a matter of first principle, a constitutional provision which is a powerful instrument to combat injustice ought not to be constricted to artificial categories. The Founding Fathers did not do so. Generations of judges did not dilute the broad expanse of those provisions. Nor should we. 2. The reference before the Full Bench has been made on 13 February 2006 by a Division Bench consisting of Hon'ble Mrs.Justice Ranjana Desai and Hon'ble Mr.Justice D.B. Bhosale. The reason for the reference is a discordant note struck by a Division Bench consisting of V.G. Palshikar and D.B. Bhosale, JJ. in a judgment dated 19 September 2005 in National Textile VBC 4 lpa261.05 Corporation (SM) Ltd. vs. Devraj Chandrabali Pai1. In the case before the Division Bench, a work-

man who was chargesheeted by the employer for misconduct was terminated from service upon enquiry. The Labour Court on an application under Section 78 of the Bombay Industrial Relations Act, 1946, came to the conclusion that the punishment of dismissal was shockingly disproportionate to the misconduct proved and ordered reinstatement with continuity of service and full back wages. In an appeal by the employer, the Industrial Court set aside the order of the Labour Court. In a challenge by the workman to the order of the Industrial Court, in a petition which invoked Articles 226 and 227 of the Constitution, a Learned Single Judge of this Court delivered judgment which was questioned in a Letters Patent Appeal. The Division Bench dismissed the appeal on the ground of maintainability and held that "the mere mention of Article 226 will not make an appeal maintainable under clause 15, if in pith and substance what was sought to be exercised as jurisdiction of this Court and what was exercised was the supervisory jurisdiction of this Court". Having said this, the Division Bench observed thus: 1 Letters Patent Appeal 41 of 2005 in Writ Petition 5180 of 1996 VBC 5 lpa261.05 "The position in law according to us existing today is therefore that Article 226 is available to this Court for correcting jurisdictional errors or errors resulting in miscarriage of justice by authorities which are not subordinate to this Court via Article 227. Writ jurisdiction under Article 226 can be exercised for that purpose. However, it need not be so exercised in relation to Tribunals subordinate to it under Article 227. In the instant case the basic order was passed by the Labour Court, the revisional order was passed by the Industrial Court and these two orders were considered by the Learned Single Judge of this Court. It is clear case of exercise of power of superintendence under Article 227 of the Constitution of India. In such situation merely because article 226 is mentioned in the cause title of the petition it cannot be held that such a person is entitled to maintain an appeal." While doubting the correctness of the view of the Court in National Textile Corporation, the Division Bench in its order of referral was prima facie of the view that the Division Bench had not considered the judgment of a Full Bench in Jagdish Balwantrao Abhyankar vs. State of Maharashtra.2 The following points have accordingly been referred to the Full Bench for its decision: 1. Is it a correct proposition of law that this court cannot correct jurisdictional errors or errors resulting in miscarriage of justice committed by authorities which are subordinate to it by invoking powers under Article 226 of 2 AIR 1994 Bombay 141 VBC 6 lpa261.05 the Constitution of India? 2. Is it a correct proposition of law that jurisdictional errors or errors resulting in miscarriage of justice committed by subordinate courts/tribunals can only be corrected by this court in exercise of powers under Article 227 of the Constitution of India. 3. Is it a correct proposition of law that in cases of jurisdictional errors or errors resulting in miscarriage of justice committed by authorities subordinate to this court, which can be corrected by invoking Article 227 of the Constitution of India, Article 226 also can be invoked by a party? 4. Is it open for this court while dealing with a petition filed under Article 226 of the Constitution and/or 227 of the Constitution of India or a Letters Patent Appeal under Clause 15 of the Letters Patent arising from the judgment in such a petition to find out whether the facts justify the party in

filing the petition under Article 226 and/or 227 of the Constitution of India? 5. Can the cause title, averments and the prayers made in the petition be taken into account while deciding whether the petition is one under Article 226 or 227 of the Constitution of India? 6. If the Petitioner elects to invoke Article 226 and/or 227, and facts justify doing so, is it open for the learned single judge to express as to what jurisdiction he/she was exercising and if he/she expresses to have exercised jurisdiction under Article 227 only, is the Letters Patent Appeal against such an order maintainable? 7. Where facts justify and jurisdiction of this court under Article 226 and 227 of the Constitution of India is invoked, is it lawful for this court to hold that the jurisdictional errors or errors resulting in miscarriage of VBC 7 lpa261.05 justice committed by the subordinate courts or tribunals can be only corrected by exercise of powers under Article 227 of the Constitution of India and mentioning Article 226 of the Constitution of India is of no use thus depriving the party of a right of intra court appeal? 8. Where facts justify and a petition is filed under Articles 226 and 227 of the Constitution of India, is it open for this court to hold that Article 226 need not have been invoked because Article 227 is clothed with the power to grant the same relief thus depriving the party of a right to elect or choose a remedy? 9. If the petition is filed only under Article 227 and the order passed therein which amounts to judgment is passed in favour of the Petitioner, whether or not it is open for the respondent in the petition to challenge the said order in an appeal under clause 15 of the Letters Patent contending that though the writ petition was one filed under Article 227, it was also one under Article 226 as facts justify or it ought to have been filed under Article 226 only and, hence, the Letters Patent Appeal is maintainable against an order passed thereon? Certiorari: -3. The power of the High Court to issue a writ of Certiorari, among other writs, is preserved and recognized by Article 226 of the Constitution. In Hari Vishnu Kamath vs. Ahmed Ishaque,3 a Bench of seven Learned Judges of the Supreme Court formulated the principles upon which the issuance of the writ of Certiorari is 3 AIR 1955 SC 233 VBC 8 lpa261.05 founded. Following this judgment and the judgment of the Constitution Bench in Custodian of Evacuee Property vs. Khan Saheb Abdul Shukoor,4 it is well settled that (i) A writ of Certiorari will be issued for correcting errors of jurisdiction; (ii) A writ of Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, such as when it decides without giving an opportunity to the parties to be heard or in violation of the principles of natural justice; (iii) The Court which issues a writ of Certiorari acts in exercise of a supervisory, as distinct from an appellate jurisdiction. Hence, findings of fact of an inferior Court or Tribunal are not reviewed even if they be erroneous; and (iv) A writ of Certiorari can be issued to correct an error in the decision or determination if there is a manifest error apparent on the face of the proceedings such as when the decision is based on clear ignorance or disregard of the provisions of law. It is a patent error which can be corrected by Certiorari, but not just a wrong decision. 4. In T.C.Basappa vs. T.Nagappa,5 the nature and extent 4 AIR 1961 SC 1087 5 AIR 1954 SC 440 VBC 9 lpa261.05 of the writ jurisdiction vested in the High Court under Article 226 of the Constitution was considered. Mr.Justice Mukherjea, who de-

livered the judgment of the Court, held that in view of the express provisions of the Constitution, it is not necessary to look back at the early history or the procedural technicalities of these writs in English law. The Court held that a writ in the nature of certiorari could be issued in "all appropriate cases and in appropriate manner" so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows : "In granting a writ of certiorari, the superior Court does not exercise the powers of an appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The supervision of the superior Court exercised through writs of certiorari goes on two points one is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. Certiorari may lie and is generally granted when a Court has acted without or in excess of its jurisdiction." (emphasis supplied). Consequently, as early as 1954, it was settled by the Supreme VBC 10 lpa261.05 Court that a writ of certiorari may lie and is generally granted when a Court has acted without or in excess of its jurisdiction. The position in law that a writ of certiorari can be issued when the decision in question is that of a Court was crystalised in the early years of constitutional interpretation. In Syed Yakoob vs. K.S.Radhakrishnan,6 Mr.Justice P.B.Gajendragadkar (as the Learned Chief Justice then was), speaking for the Constitution Bench placed the matter beyond any position of doubt by holding that the writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: "The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that 6 AIR 1964 SC 477 VBC 11 lpa261.05 findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has

influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari." (emphasis supplied). In Dwarka Nath vs. Income-tax Officer,7 Mr.Justice K.Subba Rao (as the Learned Chief Justice then was), reiterated that "it is well settled that a writ of certiorari can be issued only to quash a judicial or a quasi judicial act and not an administrative act". The Learned Judge noted that Article 226 was couched in comprehensive phraseology and it ex-facie conferred wide powers on the High Court "to reach injustice wherever it is found". This was, however, not to say that the High Courts can function arbitrarily under this Article for, some limitations are implicit in Article 226 and that may be evolved to direct the Article to defined channels. Though the origin of the writ of certiorari in Indian jurisprudence in the 7 AIR 1966 SC 81 VBC 12 lpa261.05 early post constitutional years was to correct errors of jurisdiction on the part of a Court, the scope of the writ of certiorari was extended to judicial or quasi judicial acts of administrative tribunals or authorities. 5. In Naresh Shridhar Mirajkar vs. State of Maharashtra,8 a Bench of nine Learned Judges of the Supreme Court considered whether the jurisdiction under Article 32 of the Constitution to issue writs of certiorari could be utilized to correct judicial orders passed by the High Courts in or in relation to the proceedings pending before them. That question was answered in the negative. Chief Justice P.B.Gajendragadkar, during the course of his judgment rendered for five of the Judges constituting the Bench, adverted to the decision in T.C. Basappa vs. T.Nagappa (supra) and specifically to the observation of Justice Mukherjea that the writ of certiorari may lie and is generally granted when a Court acted without or in excess of jurisdiction. That principle was not overturned in the judgment of the Learned Chief Justice. On the contrary, the judgment proceeded to decide the issue which arose on the basis of the consistent line of decisions which held the 8 AIR 1967 SC 1 VBC 13 lpa261.05 field. While on the one hand, the Court adverted to the earlier judgment in Basappa, there was also a reference in paragraph 53 to the position in England, set out in Halsbury that "certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction. Chief Justice Gajendragadkar held that:"These observations would indicate that in England the judicial orders passed by civil Courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari." (emphasis supplied). The Supreme Court held that the order passed by Mr.Justice Tarkunde in this Court while hearing a suit on the Original Side prohibiting publication of a part of the proceedings could not be amenable to the jurisdiction under Article 32. The Supreme Court held that the rationale was as follows: "If questions about the jurisdiction of superior Courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Art 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter partes, and those which are not inter partes in the sense that they bind strangers to the proceedings. Therefore, in our opinion, having regard to the fact that the impugned order has been passed by a superior Court of Record in the exercise of its inherent powers, the

question about the existence of the said jurisdiction as VBC 14 lpa261.05 well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Art.32." Hence an order passed by the High Court as a superior Court of record was held not to be amenable to correction under Article 32 of the Constitution. Justice Sarkar rejected the argument that High Courts were inferior Courts as appeals lie from them to the Supreme Court. The Learned Judge noted that there were many Tribunals from which no appeals lie to the High Court upon which the Constitution has conferred the powers to issue a writ of certiorari. If appealability was a test, then the High Court would not be able to issue a writ of certiorari to such Tribunals as they would not be then inferior Courts. The Learned Judge held that it would be strange if this consequence were to follow when the Constitution contemplated that the High Courts would have the power to issue writs of certiorari. Hence, a conspectus of the law on the subject clearly indicates that a writ of certiorari does indeed lie under Article 226 of the Constitution against the decision of a Court which is (i) without jurisdiction; or (ii) in excess of jurisdiction; or (iii) as a result of a failure to exercise jurisdiction. VBC 15 lpa261.05 Similarly certiorari can be issued where the Court or tribunal acts illegally or improperly as for instance in breach of the principles of natural justice. 6. Having said this, it is well settled that while exercising the jurisdiction under Article 226 to issue a writ of certiorari, the High Court must observe certain limitations or restraints which have been evolved over the years to channelise the proper exercise of the power. The High Court, for instance, would refrain from entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do than for a Court exercising prerogative writs.9 In Mohd. Hanif Vs. State of Assam,10 the Supreme Court held that in a proceeding under Article 226, the Court is not concerned merely with the determination of private rights of the parties and the object is to ensure that the law of the land is implicitly obeyed and that various authorities and Tribunals act within the limits of their respective jurisdiction. Consequently, it has been held that proceedings by way of a writ would not be appropriate in a case where the decision of the Court would amount to a decree declaring a party's title and ordering 9 Sohanlal vs. Union of India, AIR 1957 SC 529 10 (1969) 2 SCC 782 VBC 16 lpa261.05 restoration of possession. 11 Article 226 is not intended to replace an ordinary remedy by way of a suit.12 7. In Surya Dev Rai vs. Ram Chandar Rai,13 the Appellant had filed a suit before the Civil Judge for a permanent injunction based on title and possession of agricultural land. An application for interim injunction was rejected by the trial Court and the Appellate Court. The Appellant who could not avail of the remedy under Section 115 of the Code of Civil Procedure, 1908 after amendment, filed a petition in the High Court under Article 226. The High Court dismissed the petition holding that it was not maintainable. While allowing the appeal, the Supreme Court held that the order and proceedings of a judicial Court subordinate to the High Court are amenable to writ jurisdiction under Article 226. This aspect of the decision in Surya Dev Rai has been dissented from in Radhey Shyam vs. Chhabi Nath,14 and referred to a larger Bench. The

referring judgment adopts the view that the aforesaid observations in Surya Dev Rai are not consistent with the 11 Hindustan Steel Ltd. vs. Kalyani Banerjee, (1973) 1 SCC 273 12 Mohan Pandey vs. Ushal Rani Rajgaria, (1992) 4 SCC 61. 13 (2003) 6 SCC 675 14 (2009) 5 SCC 616

law which has been consistently followed in earlier decisions. The reference to the larger Bench of the correctness of the decision in Surya Dev Rai was because the issues arose out of a properly constituted suit in a civil court for the grant of an injunction. The position that the writ of certiorari is available to correct errors of jurisdiction on the part of an inferior Court or tribunal is not affected. That the writ of certiorari under Article 226 is available to correct errors of jurisdiction of inferior Court or Tribunals is settled in view of a consistent line of authority, reading together Hari Vishnu Kamath, Custodian of Evacuee Property, Basappa and Syed Yakoob. The decision of nine judges in Mirajkar in fact specifically cited the judgment in Basappa. Article 227: 8. Article 227 of the Constitution confers on every High Court a power of superintendence over all Courts and Tribunals throughout the territory, in relation to which it exercises jurisdiction, excepting any Court or Tribunal constituted by or under any law relating to the armed forces. The distinction between Articles 226 and 227 of the Constitution is that while VBC 18 lpa261.05 proceedings under Article 226 of the Constitution are in the exercise of the original jurisdiction of the High Court, proceedings under Article 227 of the Constitution are not original, but are supervisory. The supervisory power under Article 227 of the Constitution is exercised with restraint to ensure that inferior Courts or tribunals act within the bounds of their authority. The jurisdiction is exercised to remedy grave cases of injustice or a failure of justice such as when (i) The Court or Tribunal has assumed jurisdiction which it did not possess; (ii) The Court or Tribunal has declined or failed to exercise jurisdiction which is conferred upon it which has occasioned a failure of justice; (iii) The Court or Tribunal has exercised its jurisdiction so as to over step the limits of its jurisdiction; and (iv) There is a patent perversity or breach of the principles of natural justice. 9. The body of precedent on the subject has been revisited in the judgment of the Supreme Court in Surya Dev Rai vs. Ram Chander Rai,15 by a Bench of two Learned Judges of the Supreme Court. The Supreme Court has adverted to the difference between 15 (2003) 6 SCC 675 VBC 19 lpa261.05 Articles 226 and 227 of the Constitution - Article 226 being a proceeding in the exercise of the original jurisdiction of the High Court, while a proceeding under Article 227 is not original, but only supervisory. Upon a review of the decided cases, the Supreme Court has observed that "it seems that the distinction between the two jurisdictions stands almost obliterated in practice", this probably being the reason why it has become customary for lawyers to label their petitions as falling under both Articles 226 and 227 of the Constitution. While laying down the broad principles governing the parameters for the exercise of jurisdiction under Article 226 or 227 of the Constitution, the Supreme Court has cautioned that these

principles cannot be tied down in a strait-jacket formula or within rigid rules. 10. In Shalini Shyam Shetty vs. Rajendra Shankar Patil,16 the Supreme Court considered the provisions of the Bombay High Court Original Side Rules, 1957 and the Bombay High Court Appellate Side Rules, 1960. The Supreme Court observed that petitions under Articles 226 and 227 are treated differently: To a 16 (2010) 8 SCC 329 VBC 20 lpa261.05 proceeding under Article 227 of the Constitution only the Appellate Side Rules of the High Court apply, but to a proceeding under Article 226, either the Original Side or the Appellate Side Rules, depending upon the situs of the cause of action, will apply: "It is clear that to a proceeding under Article 227 of the Constitution of India only the Appellate Side Rules of the High Court apply. But to a proceeding under Article 226, either the Original Side or the Appellate Side Rules, depending on the situs of the cause of action will apply. : Therefore, the High Court Rules treat the two proceedings differently inasmuch as a proceeding under Article 226, being an original proceeding, can be governed under the Original Side Rules of the High Court, depending on the situs of the cause of action. A proceeding under Article 227 of the Constitution is never an original proceeding and can never be governed under the Original Side Rules of the High Court. Apart from that the writ proceeding by its very nature is a different species of proceeding." The Supreme Court held that Articles 226 and 227 "stand on substantially different footing". Whereas a proceeding under Article 226 is an original proceeding, the jurisdiction under Article 227 is neither original nor appellate, but is "for both administrative and judicial superintendence". Whereas under Article 226, the High Court normally annuls or quashes an order or proceeding, in VBC 21 lpa261.05 exercise of its jurisdiction under Article 227 the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. Whereas the jurisdiction under Article 226 is normally exercised where the party is affected, the power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. While the power under Article 226 "is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights", the jurisdiction under Article 227 is exercised by the High Court "for vindication of its position as the highest judicial authority in the State." The Supreme Court emphasized that from an order of the Single Judge passed under Article 226, a Letters Patent Appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of the power under Article 227. The Supreme Court, on an analysis of the precedents on the subject , formulated the principles for the exercise of the jurisdiction of the High Court under Article 227 of the Constitution thus: "(a) A petition under Article 226 of the Constitution is VBC 22 lpa261.05 different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different. (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above. (c) High Courts

cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court. (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (Waryam Singh v. Amarnath, AIR 1954 SC 215) and the principles in Waryam Singh have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court. (e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it,"within the bounds of their authority". (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction VBC 23 lpa261.05 which is vested in them. (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunal and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or justice because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised. (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L.Chandra Kumar v. Union of India ((1997) 3 SCC 261) and therefore abridgment by a constitutional amendment is also very doubtful. (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. (k) The power is discretionary and has to be exercised on equitable principles. In an appropriate case, the power can be exercised suo motu. (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it VBC 24 lpa261.05 transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory. (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt

and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. (n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above. (o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality." Maintainability of Appeals: 11. As we approach the issues which arise for our determination, we begin by stating the well settled position in law that an appeal under Clause 15 of the Letters Patent, is available against a judgment of a Single Judge in a Petition which properly VBC 25 lpa261.05 invokes the provisions of Article 226 of the Constitution. Contrariwise, an appeal under Clause 15 of the Letters Patent does not lie in a situation where the petition properly invokes jurisdiction only under Article 227 of the Constitution. Where a petition is truly relatable only to the provisions of Article 227 of the Constitution and powers are exercised only under Article 227, an appeal by the Petitioner would not be maintainable. 12. In State of Maharashtra vs. Kusum Charudutta,17 a Special Bench consisting of five Judges of this Court held thus: "In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this would not, and ought not to be held, to deprive a party of the right of appeal under clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226." In Umaji Keshao Meshram vs. Smt.Radhikabai,18 the Supreme 17 1981 Mh.L.J. 93 18 AIR 1986 SC 1272 VBC 26 lpa261.05 Court held that where a petition is filed under Article 226 of the Constitution and is heard by a Single Judge according to the Rules of the High Court, an intra-court appeal will lie from that judgment if such a right of appeal is provided in the charter of the High Court as, for instance, under Clause 15 of the Letters Patent of the Bombay High Court. Equally, Article 227 is not an original proceeding and an intra-court appeal does not lie against the judgment of a Learned Single Judge of the Bombay High Court given in a petition under Article 227 of the Constitution by reason of such appeal being expressly barred by Clause 15 of the Letters Patent. The Supreme Court then dealt with the question as to whether an appeal would lie from the decision of a Single Judge in a case where the petition had invoked both Articles 226 and 227 of the Constitution. The Supreme Court answered that question in the following terms: "In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice

to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought VBC 27 lpa261.05 not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226." 13. A conflict arose between different Benches of this Court on the interpretation of the judgment of the Supreme Court in Umaji (supra). In Sushilabai Laxminarayan Mudliyar vs. Nihalchand Waghajibhai Shaha,19 a Full Bench while considering a reference made to it held that even when in the cause title of an application both Articles 226 and 227 of the Constitution have been mentioned, the Learned Single Judge is at liberty to decide, according to the facts of each particular case, whether such an application ought to be dealt with only under Article 226 of the Constitution or under Article 227 read with Article 226 of the Constitution. The Full Bench held that in determining the question of maintainability of an appeal against such a judgment of the Single Judge, the Division Bench has to find out whether in substance the judgment has been delivered by the Single Judge in exercise of the jurisdiction under Article 226 of the Constitution. In the event that the Single Judge, while passing his judgment on an application which had mentioned both Articles 226 and 227 of 19 1989 Mh.L.J. 695 VBC 28 lpa261.05 the Constitution has in fact invoked only the supervisory powers under Article 227, the appeal would not lie under Clause 15 of the Letters Patent. The judgment of the Full Bench was reversed by the Supreme Court in Sushilabai Laxminarayan Mudliyar vs. Nihalchand Waghajibhai Shaha.20 The Supreme Court held that the Division Bench of this Court to which the matter was sent back, had erred in holding that the Single Judge had passed an order under Article 227 of the Constitution when the grounds taken in the petition unmistakably established that it was a petition under Article 226 of the Constitution and that the order passed by the Learned Single Judge was also under Article 226. The Supreme Court held that the Full Bench had wrongly construed the judgment in Umaji's case. The true test as reiterated by the Supreme Court is that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution and the party chooses to file an application under both the Articles, the Court ought to treat the application as one under Article 226 of the Constitution and the mere fact that the Court has given ancillary directions which pertain to Article 227 should not deprive the party 20 AIR 1992 SC 185 VBC 29 lpa261.05 a right of appeal under Clause 15 of the Letters Patent where a substantial part of the order appealed against is under Article 226 of the Constitution. 14. A similar view has been enunciated by a Full Bench of this Court in Jagdish Balwantrao Abhyankar vs. State of Maharashtra,21 where the conclusions have been formulated as follows : "(i) The right to elect or choose a remedy against the order of the subordinate Court or Tribunal, that is, whether to file a petition under Art.226 of under Art. 227 or both under Art. 226 or Art. 227 of the Constitution rests with the party aggrieved by the said order; (ii) When the party has invoked the jurisdiction of the High Court under Art.226, it is not open to the High Court to exercise

jurisdiction under Art. 227 of the Constitution when a relief can be granted to the party under the Article invoked. Therefore, there cannot be a test whether the High Court was justified in exercising its powers or the reliefs granted were under Art. 227 of the Constitution; (iii) Where the facts justify filing an application either under Art. 226 or under Art. 227 and the party chooses to file the application under both these Articles, the Court ought to treat the application as one filed under Art. 226 if the substantial part of the order appealed against is under Art. 226. If in deciding such an application made under Arts. 226 and 227 of the 21 AIR 1994 Bombay 141 VBC 30 lpa261.05 Constitution, the Single Judge of the High Court grants ancillary directions which pertain to Art. 227, then by the reason of such ancillary directions being given in the order, the petition should not be treated as one under Art. 226, so that a party is not deprived of his valuable right of an intra-court appeal under Clause 156 of the Letters Patent." 15. In Lokmat Newspapers Pvt. Ltd. vs. Shankarprasad,22 a complaint filed by the Respondent under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was dismissed by the Labour Court and the dismissal of the complaint was affirmed in revision by the Industrial Court. A Writ Petition by the Respondent under Articles 226 and 227 of the Constitution was dismissed by a Single Judge. An appeal by the Respondent was entertained by the Division Bench which held that the employer was guilty of unfair labour practices consequent upon which reliefs were granted to the workman in the Letters Patent Appeal. On behalf of the employer, it was sought to be contended before the Supreme Court that the petition filed by the Respondent before the High Court was in substance under Article 227 and that hence, the judgment of the Single Judge could not have been appealed against under Clause 22 AIR 1999 SC 2423 VBC 31 lpa261.05 15 of the Letters Patent. The Supreme Court adverted to the averments contained in the petition filed by the workman while invoking Articles 226 and 227 of the Constitution and observed that it was clear that the workman had tried to make out a case for the interference of the High Court seeking an appropriate writ of Certiorari under Article 226 of the Constitution. Noting that the appeal before the Division Bench under Clause 15 of the Letters Patent was maintainable, the Supreme Court held as follows : "Basic averments for invoking such jurisdiction were already pleaded in the Writ Petition for High Court's consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned single judge nowhere stated that the Court was considering the Writ Petition under Article 226 of the Constitution of India. It is equally true that the Learned Single Judge dismissed the Writ Petition by observing that the Courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said observation equally supports the conclusion that the learned Judge was not inclined to interfere under Articles 226 and 227. As seen earlier, that he was considering the aforesaid Writ Petition moved under Articles 226 as well as 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of

learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the Writ Petition of the respondent." VBC 32 lpa261.05 After adverting to the judgment in Umaji's case, the Supreme Court concluded thus: "It was open to the respondent to invoke jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such jurisdiction was invoked and when his Writ Petition was dismissed on merits, it cannot be said that the learned single Judge had exercised his jurisdiction only under Article 226 (sic) of the Constitution of India. This conclusion directly flows from the relevant averments made in the Writ Petition and the nature of jurisdiction invoked by the respondent as noted by the learned single Judge in his judgment, as seen earlier. Consequently, it could not be said that clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of learned single Judge." 16. In several decisions of a comparatively recent vintage, the Supreme Court has considered the maintainability of appeals under Clause 15 of the Letters Patent against decisions of Single Judges of the High Court in petitions invoking Article 226 and/or Article 227 of the Constitution. In the State of Madhya Pradesh vs. Visan Kumar Shiv Charanlal,23 a reference under Section 10 of the Industrial Disputes Act, 1947 was decided in favour of the workman by the Labour Court. A Petition under Article 227 of the Constitution filed by the employer was dismissed by the Single 23 (2008) 15 SCC 233 VBC 33 lpa261.05 Judge. The Division Bench dismissed a Letters Patent Appeal on the ground of maintainability holding that the order appealed against was under Article 227. The Supreme Court accepted the contention of the employer, the State of Madhya Pradesh, that nomenclature was of no consequence and it was the nature of the relief sought and the controversy involved which determined the article that was applicable. After adverting inter alia to the decisions in Umaji, Sushilabai, Lokmat and Surya Dev Rai (supra), the Supreme Court held that the High Court was not justified in holding that the Letters Patent Appeal was not maintainable. In Ashok K.Jha vs. Garden Silk Mills Limited.,24 the Supreme Court held thus: "If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra- court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers. We agree with the view of this Court in 24 (2009) 10 SCC 584 VBC 34 lpa261.05 Ramesh Chandra Sankla ((2008) 14 SCC 58) that a statement by a learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge." (emphasis supplied). 17. The same principles have been formulated by the Supreme

Court in Mavji C.Lakum vs. Central Bank of India,25 where the Court noted that apart from the fact that the petition was labeled under Article 226 of the Constitution, it was clear that the grounds raised in the petition suggested that the petition was not only under Article 227, but also under Article 226 of the Constitution. Consequently, the contentions raised and the facts stated in the petition justified the Respondent in filing an application both under Articles 226 and 227 of the Constitution. A similar view was taken by the Supreme Court in Shahu Shikshan Prasarak Mandal vs. Lata P. Kore.26 In M.M.T.C. vs. Commissioner of Commercial Tax,27 the Supreme Court noted that the High Court had merely proceeded on the basis of the 25 (2008) 12 SCC 726 26 (2008) 13 SCC 525 27 (2009) 1 SCC 8 VBC 35 lpa261.05 nomenclature given in the Petition which invoked Article 227 of the Constitution. A Division Bench of the High Court had held that the order of the Single Judge was passed in exercise of the power of superintendence under Article 227 against which a Letters Patent Appeal was not maintainable. While reversing that view, the Supreme Court observed that "the High Court did not consider the nature of the controversy and the prayers involved in the Writ Petition". 18. The principles which emerge can be elucidated as follows: (i) The fundamental principle which must be applied in determining the maintainability of an appeal under Clause 15 of the Letters Patent, is whether the facts justify a party in filing an application either under Article 226 or Article 227 of the Constitution. Where in such a case, a party chooses to file an application under both the Articles, it should not be deprived of a right of appeal. The Court must treat the application as one under Article 226 of the Constitution. If the Single Judge in the course of the final order has issued an ancillary direction which pertains to Article 227, this would not deprive a party of a right of appeal VBC 36 lpa261.05 under Clause 15 of the Letters Patent; (ii) Equally, it is now a settled principle that a mere nomenclature which is used by a party is not dispositive of the nature of the jurisdiction that is invoked and of the nature of the power that is exercised by the Single Judge; (iii) In deciding as to whether the facts justify the invocation of the jurisdiction either under Article 226 or Article 227 of the Constitution, due regard has to be had to (a) the nature of the controversy; (b) the nature of the jurisdiction invoked; and (c) the true nature of the principal order passed by the Single Judge; (iv) Where the contention that is raised, the grounds taken and the reliefs sought in the petition justify the invocation of both Articles 226 and 227 of the Constitution, an appeal under Clause 15 of the Letters Patent against a judgment of the Single Judge would be maintainable; (v) The mere fact that while dismissing such a petition, the Learned Single Judge has observed that no ground for interference under Article 227 has been made out, would not deprive the aggrieved party of a right of appeal under Clause 15 of the Letters Patent. 19. The judgment of the Division Bench in National Textile VBC 37 lpa261.05 Corporation vs. Devraj Chandrabali Pai, does not, in our view lay down the correct position in law. The Division Bench held that Article 226 is available for correcting jurisdictional errors or errors resulting in miscarriage of justice by authorities which are not subordinate to the High Court through Article 227. This view, with respect, is directly contrary to the observations of the Supreme

Court in the decisions especially in Basappa and Syed Yakoob (supra). The Supreme Court has categorically held that there is no manner of doubt that orders and proceedings of a Court subordinate to the High Court are amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution where the Court has acted in excess of jurisdiction, or without jurisdiction or has failed to exercise jurisdiction. Similarly, the writ can be issued where in exercise of its jurisdiction the Court acts illegally or improperly. The Supreme Court held that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The proceedings of Courts subordinate to the High Court can, it has been held, be VBC 38 lpa261.05 subjected to certiorari. The decision of the Division Bench in National Textile Corporation, therefore, does not represent the correct position in law. 20. Upon this discussion, we now proceed to answer the questions formulated in the order of reference: Re: 1 : It is not a correct proposition in law that this Court cannot correct jurisdictional errors or errors resulting in miscarriage of justice committed by authorities which are subordinate to it by invoking powers under Article 226 of the Constitution. Re: 2 : It is not a correct proposition in law that jurisdictional errors or errors resulting in miscarriage of justice committed by subordinate Courts/Tribunals can only be corrected by this Court in exercise of powers under Article 227 of the Constitution. The writ of certiorari can be issued under Article 226 of the Constitution where the subordinate Court or Tribunal commits an error of jurisdiction. Where the subordinate Court or VBC 39 lpa261.05 Tribunal acts without jurisdiction or in excess of it or fails to exercise jurisdiction, that error of jurisdiction can be corrected. Moreover when the Court or tribunal has acted illegally or improperly such as in breach of the principles of natural justice the writ of certiorari is available under Article 226. Re: 3 : Where the facts justify the invocation of either Article 226 or Article 227 of the Constitution to correct a jurisdictional error or an error resulting in a miscarriage of justice committed by authorities subordinate to this Court, there is no reason or justification to deprive a party of the right to invoke the constitutional remedy under Article 226 of the Constitution. Re: 4 : It is open to the Court while dealing with a petition filed under Articles 226 and/or 227 of the Constitution or a Letters Patent Appeal under Clause 15 of the Letters Patent arising from the judgment in such a petition to determine whether the facts justify the party in filing the petition under Article 226 and/or 227 of the Constitution. VBC 40 lpa261.05 Re: 5 : The cause title, the averments and prayers in the petition can be taken into account while deciding whether the petition is one under Article 226 and/or 227 of the Constitution. Re: 6 : If the petitioner elects to invoke Article 226 and/or 227 of the Constitution and the facts justify such invocation, a Letters Patent Appeal against the order of the Learned Single Judge would be maintainable even though the Single Judge has purported to exercise jurisdiction only under Article 227 of the Constitution. The fact that the Learned Single Judge has adverted only to the provisions of Article 227 of the Constitution would not bar the maintainability of such an

appeal. The true test is whether the facts justify the invocation of Articles 226 and 227 and this has to be determined on the facts of each case having due regard to (i) the nature of the jurisdiction invoked; (ii) the averments contained in the petition; (iii) the reliefs sought; and (iv) the true nature of the principal order passed by the Single Judge. The true nature of the order passed by the Single Judge has to be determined on the basis of the principal character of the relief granted. The fact that an ancillary direction has been issued under Article 227 of the VBC 41 lpa261.05 Constitution would not dilute the character of an order as one with reference to Article 226. What has to be ascertained is the true nature of the order passed by the Single Judge and not what provision is mentioned while exercising this power. Re: 7 : Where a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not lawful for the Court to hold that jurisdictional errors or errors resulting in a miscarriage of justice committed by the subordinate Courts or Tribunals can be corrected only by exercising powers under Article 227 (and that the mentioning of Article 226 is redundant), thus depriving the party of a right of appeal under Clause 15 of the Letters Patent. Re: 8 : When a petition is filed under Articles 226 and 227 of the Constitution and the facts justify the filing of such a petition, it is not open to the Court to hold that Article 226 need not have been invoked, on the ground that Article 227 is clothed with the power to grant the same relief thus depriving the party of a right to elect or choose a remedy. VBC 42 lpa261.05 Re: 9 : In a situation where a petition is filed under Article 227 of the Constitution and judgment is rendered in favour of the Petitioner, recourse to an appeal under Clause 15 of the Letters Patent is not barred to the Respondent before the Single Judge merely on the ground that the petition was under Article 227. In State of Madhya Pradesh vs. Visan Kumar Shiv Charanlal (supra), the appeal before the Division Bench was filed by the Respondent to the proceedings before the Single Judge in a petition which had been instituted under Article 227. Accepting the submission that a nomenclature is of no consequence and it is the nature of the reliefs sought and the controversy involved which determine which Article is applicable, the Supreme Court held that the appeal before the Division Bench was maintainable. A similar position arose in the decision of the Supreme Court in M.M.T.C. vs. Commissioner of Commercial Tax (supra). The Division Bench of the High Court had held that since the petition before the Single Judge was under Article 227 of the Constitution, an appeal at the behest of the Respondent to the petition was not maintainable. The Supreme Court held that the High Court was not justified in VBC 43 lpa261.05 holding that the Letters Patent Appeal was not maintainable since the High Court did not consider the nature of the controversy and the prayers involved in the Writ Petition. 21. Consequently, when a petition which is filed before the Single Judge invokes Article 227 of the Constitution and a decision is rendered in favour of the Petitioner, it is open to the Respondent to demonstrate before the Division Bench in appeal that the nature of the controversy, the averments contained in the petition, the reliefs sought and the principal character of the order of the Learned Single Judge would support the maintainability of the appeal on the ground that the facts

justify the invocation of both Articles 226 and 227 of the Constitution. Whether that is so will be determined by the Division Bench on the circumstances of each case. 22. The reference to the Full Bench would stand answered in these terms. We direct that all Writ Petitions which have been tagged together with the reference shall now be placed before the respective Division Benches. The papers and proceedings of the VBC 44 lpa261.05 petitions which have been tagged from the Nagpur Bench shall be remitted back to that Bench for being placed before the appropriate Court according to the assignment of work.

(Dr.D.Y.Chandrachud, J.)

(Anoop V. Mohta, J.)

ig (Smt.Roshan Dalvi, J)