

(2002) 03 DEL CK 0172
In the Delhi High Court
Case No : LPA No. 331 of 1999

Delhi Stock Exchange and Another

APPELLANT

Vs

K.C. Sharma and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Companies Act, 1956 — Section 195
Constitution of India, 1950 — Article 12, 14, 226, 32
Contract Act, 1872 — Section 23
Regional Rural Banks Act, 1976 — Section 30
Securities and Exchange Board of India Act, 1992 — Section 2(1)
Securities Contracts (Regulation) Act, 1956 — Section 10, 11, 11(1), 11(2)(a), 12

Citation : (2002) 7 AD 432 : (2002) 98 DLT 234

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : A.M. Singhvi and Raj Birbal, J.R. Midha, Pankaj Singh and Niraj Singh, for the Appellant; Shanti Bhushan Jayant Bhushan, S.K. Pathank, Narendra Verma, Anil Kumar and Ranjan Daxgan, for the Respondent

Judgement

S.B. Sinha, C.J.—Several question of importance are involved in this Letters Patent Appeal which arise out of the judgment of a learned Single Judge of this court dated 7th July 1999 wherein the writ petition filed by the first respondent herein questioning termination of his services has been allowed.

FACTS:

2. The basic fact of the matter is not in dispute. The first respondent was appointed as General Manager of the appellant herein on or about 5th May 1992. His services were confirmed on 13th November 1993. The terms and conditions of service contained a provision whereby services could be terminated by either of the parties upon giving three months' notice or salary in lieu thereof. The writ petitioner respondent contended that he had been satisfactorily and diligently performing his duties where for he received appreciations and rewards. It has been contended that he being an honest and upright person, took stern decisions

by imposing heavy penalties on erring companies and brokers of the appellant Exchange and had also issued several notices of inspection to the brokers. On 9th June 1995, a murderous assault was engineered by one of the brokers in view of the action against them. Allegedly, an information to the press relating thereto had been issued, which, according to the respondent was made by the police authorities and not by him.

3. Further contention of the writ petitioner/respondent is that Executive Director of the appellant vacated his office on 25th October 1995 where after mala fide action was started being taken against him. Inspection Notices had been issued by him to various brokers including President, Vice President and Senior Directors of Delhi Stock Exchange on 22nd May 1996. His services had been terminated on the very next day viz. 23rd May 1996 without assigning any reason whatsoever. The contention of the respondent in the writ petition was that such purported termination of notice relying on or on the basis of Clause 4 aforementioned, was unconstitutional having regard to the decision of the apex court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, .

4. In M.K. Agarwal v. Gurgaon Gramin Bank and Ors., : [1987]3SCR640 , it has been held:

"9. Now to the second point. The Bank is constituted under the Regional Rural Banks Act, 1976. Having regard to its constitution and nature of its legal entity and the measure of state control, it is an instrumentality of the State and is made of latter's own "flesh and bones" and is, accordingly, "State" within the meaning, and for purposes of Article 12 of the Constitution.

10. The said Regulation 10(2)(a) provides:

10. Termination of service by notice.-

(2)(a) the Bank may terminate the service of an-

(i) officer after giving him three months" notice or pay in lieu thereof;

(ii) employee after giving him one months" notice or pay in lieu thereof;

(b) The power to terminate the service of an officer or employee shall be exercised by the Chairman.

11. This Court dealing with the constitutionality of similar provisions which enabled governmental authorities such terminations simplicities has held that the constitutional pledge of equality and the constitutional guarantee against arbitrary action contained in Article 14, frown upon conferment on the State or its instrumentalities such arbitrary power. (See W.B. State Electricity Board v. D.B. Ghosh; Central Inland Water Transport Corporation Ltd. v. Brojo Nath; O.P. Bhandari v. Indian Tourism Development Corporation Ltd.)

12. It requires, Therefore, to be held that impugned Regulation 10(2)(a) conferring as it does, on the Bank an arbitrary and unguided power is unconstitutional. Consequently, the order dated, August 17, 1982 of purported termination (Annexure 10) of petitioner's services, which has for its foundation a provision which is unconstitutional would require to be an is hereby quashed."

5. The said contention of the respondent found favor with the learned Single Judge.

6. Dr. Abhishek Manu Singhvi, learned counsel appearing on behalf of the appellant herein principally raised four contentions in support of the writ petition:

(i) That the appellant is not a State within the meaning of Article 12 of the Constitution of India, and as such, the writ petition was not maintainable". In support of the said contention, the attention of the court has been drawn to the following factors:

The appellant is registered under the Companies Act and is not a statutory authority having not been created under the provisions of the statute. No share of the appellant is held by the Government. The Central Government or any other government agency does not render any financial assistance. The entire source of revenue of the appellant is derived from the listing fee from the companies. The appellant has its own budget, which is not required to be approved by the Central Government or any statutory authority. The budget and the expenses incurred by the appellant are not controlled by the Government.

No part of the profit is appropriated by the Government. The appellant merely carries on business and it does not enjoy any monopoly status. No formal legal compulsion exists also for the purpose of maintenance of monopoly. The management of the appellant is vested in the Board of Directors who are 17 in number consisting eight to be selected from amongst the Stock Exchange, five nominated by Securities and Exchange Board of India (SEBI) and three are appointed by the SEBI or the Central Government. The learned counsel would contend that in order to be a State within the meaning of Article 12 of the Constitution of India, the authority must exercise a sovereign function and thus, the appellant not being a State within the meaning of Article 12 of the Constitution of India, the writ petition was not maintainable and as such, the impugned judgment cannot be sustained. Strong reliance in this connection has been placed on Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, .

(2) The writ petition was not maintainable against the Delhi Stock Exchange even if it is a State within the meaning of Article 12 of the Constitution of India, as it does not perform any public duty as in the writ petition, the respondent intended to enforce a contract of service. Dr. Singhvi, in support of the said contention, relied on Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti

Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, and Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., . It is also contended that a writ will lie only when the authority exercises functions of public law character and not otherwise. A writ may lie against a public functionary in relation to a discharge of public of public function but not when the relief sought for in the writ petition arises out of a contract.

(3) In any event, no writ petition is maintainable against the Stock Exchange. Strong reliance in this connection pressed on R. Jagadeesh Kumar Vs. P. Srinivasan and others, , Satish Nayak v. Cochin Stock Exchange Ltd., AIR 1975 Ker 373 (Paras 25, 26 and 27) and A. Vaidyanathan Vs. Union of India (UOI) and Another, .

(4) In any view of the matter, as the Board of Directors had lost confidence in the respondent and thus, even assuming that Clause 4 is declared to be ultra virus under Article 14 of the Constitution of India, it is not a fit case where the court would exercise its discretion by directing reinstatement of the writ petitioner/respondent. The learned counsel would contend, in a situation of this nature, the proper course for this court would be to award damages. Reliance in this connection has been placed on O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, , Sudhir Vishnu Panvalkar Vs. Bank of India, , M.L. Kamra Vs. The Chairman-cum-Managing Director, New India Assurance Co. Ltd. and another, , I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others, , Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, , A.K. Das v. National Federation of Cooperative Sugar Factories, , Hindustan Paper Corporation Vs. Purnendu Chakrobarty and Others, and Virender Singh v. Fruits & Vegetable, 1998 LLR 444.

7. Mr. Shanti Bhushan, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that in terms of Securities Contract and Regulation Act, 1976, the appellant is recognized by the Central Government. Its birth, survival, functioning and death are all decided by the Central Government/SEBI.

Its public interface is well settled and its functions are public in nature. It is also subjected to all pervasive and deep control by the Central government/SEBI. It also enjoys the monopoly status conferred to it by the Central Government for Delhi and Haryana. Thus, it would come within the purview of the expression "other authority" within the meaning of Article 226 of the Constitution of India. Reliance in this connection has been placed on Mrs. Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay and another, , Akhileshwar Upadhyaya Vs. Magadh Stock Exchange Association and Others, , Rakesh Gupta and others Vs. Hyderabad Stock Exchange Ltd. and others, , Trilochan K. Doshi v. Stock Exchange of India, 1991 (2) JKJ 346 and Trilochana K. Doshi v. Stock Exchange of India and Anr. 2000 (38) MLJ 83. Our attention in this connection has also been drawn to a decision of the apex court in Delhi Stock Exchange Association

Ltd. Vs. Commissioner of Income Tax, New Delhi, wherein the following statement was made by the appellant itself:

"Shri Salve has also submitted that the earlier decision of this court in Delhi Stock Exchange Association Limited (supra) related to the periods prior to 1956 and that thereafter the Securities Contract and Regulation Act 1956 has been enacted and the assessed has been recognized as a Stock Exchange under the said Act and is being treated as a public authority amenable to the jurisdiction of this court and the High Court under Article 32 and 226 of the Constitution."

8. Mr. Shanti Bhushan would contend that hire and fire theory is not legally permissible and such archaic doctrine has been held to be ultra virus Article 14 of the Constitution of India as also contrary to and inconsistent with the public policy in terms of Section 23 of the Indian Contract Act in Central Inland Water Corporation v. B.N. Ganguli (supra) and DTC Mazdoor Congress (supra). Learned counsel would further urge that the appellant should not be permitted to raise the question of loss of confidence in this appeal as, such a question had never been raised. He would contend that the matter relating to loss of confidence, was raised before a Division Bench of this court on earlier occasion, but when the same was remitted back to the learned Single Judge, the said contention had not been raised before the learned Single Judge at all. Our attention, in this connection, has been drawn to the following findings of the learned Single Judge.

"When the point had not been argued before this Court, it is really quite inexplicable as to how it could be argued before the Division Bench that the point was argued and not considered by this Court"...." It is too much for the litigants to say especially before any court that the point argued was not considered."

9. Mr. Shanti Bhushan would further draw our attention to the following observations of the learned Single Judge as regards the conduct of the appellant:

"Any party before the court of law should have placed on record all the facts".

10. The learned counsel states that the alleged plea of loss of confidence is completely an afterthought because neither the termination letter dated 23rd May 1996 (page 108) nor the minutes of the relevant board meeting (item No. 8 p. 1760 nor the reply dated 6th June 1996 (p. 235) by the appellants to the letter dated 31st May 1996 of the respondent seeking reasons of the termination (point VII at p. 141) nor the counter affidavit (p. 119-125) filed by the appellant on 25th April 1997 nor the alleged minutes dated 13th March 1997 (p. 227-228) of the so called meeting formed to hear the respondent after more than 10 months of his termination had any reference even to any iota of any whisper of the alleged loss of confidence.

11. He would urge that an illegally dismissed employee cannot be deprived of his legitimate right of reinstatement merely on the whims and fancies of the employer and in support of the said contention, reliance has been placed on Kanhaiyalal Agrawal and Others Vs. The Factory Manager and others, .

12. In view of the rival contentions as noticed herein before, the questions which arise for consideration in this appeal are:

I. Whether the Delhi Stock Exchange is State under Article 12 of the Constitution of India and is amenable to writ jurisdiction?

II. Whether the issue relating to the termination of service of the General Manager is purely in the realm of contract and, Therefore, not amenable to writ jurisdiction?

III. Whether the termination of contract of employment of the General Manager of Delhi Stock Exchange by the Board of Directors after taking into account the material on record which leads to loss of confidence is not valid in law?

IV. Whether in a case where the Stock Exchange has lost confidence in its General Manager who was holding the post of trust should be reinstated on the Stock Exchange or is it not appropriate to grant him compensation in lieu of reinstatement as per the ratio of judgment of Supreme Court in the case of O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others,

V. Whether the Writ Court committed an error of jurisdiction in not considering one of the fundamental contentions as was pressed that being a case of loss of confidence and the employee having the post of trust?

13. Re: Question No. 1

Article 12 of the Constitution of India reads thus:

"In this part unless the context otherwise requires "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

14. The fact is that Delhi Stock Exchange is a company incorporated under the Companies Act. It is not created under a statute. According to the appellant, Delhi Stock Exchange would not come within the purview of expression "other authorities" contained in Article 12 of the Constitution of India, having regard to its salient features which are as under:

15. The salient features of the Delhi Stock Exchange as stated by the petitioner are as under:

i) Delhi Stock Exchange is incorporated under the Companies Act. It is not created by any statute.

ii) The entire capital of the Delhi Stock Exchange comes from the members and not from the Government/Government agencies.

iii) The Delhi Stock Exchange receives no financial assistance from the Government/Government agencies.

- iv) The source of revenue/finance of the Delhi Stock Exchange is mainly from listing fees received from the listed companies.
- v) The Delhi Stock Exchange has its own budget for which it does not require the approval of the Ministry of Finance or any other Government agency.
- vi) There is no control of the Government over the expenses of the Delhi Stock Exchange.
- vii) The profit of the Delhi Stock Exchange, if any, are not appropriated by the Government. Rather the Government has no control over it.
- viii) The Delhi Stock Exchange does not have nay monopoly status.
- ix) The overall management of the affairs of the Delhi Stock Exchange is vested in the Board of Directors.
- x) The Board of Directors of Delhi Stock Exchange comprises of seventeen members. The constitution of the board of Directors is as follows:
 - a) Eight Directors elected from amongst the members.
 - b) Three Directors appointed by the Central Government or the Securities and Exchange Board of India.
 - c) Five public representatives are nominated by the Securities & Exchange Board of India as Directors. These public representatives are from amongst the persons of integrity having necessary professional competence and experience to the arrears related to Securities market.
 - d) Executive Director appointed by Board of Directors subject to prior approval of SEBI.

16. Whereas the respondents, on the other hand, would contend that the Delhi Stock Exchange is an instrumentality of the State within the meaning of Article 12 of the Constitution of India. The respondents contend that the Central Government/SEBI has a deep and pervasive control over the affairs of the Stock Exchange. It was contended that they have very important functions to perform which have a direct nexus with the development of the economy inasmuch as people's savings are required to be and can be harmonized only through the Stock Exchange. It was pointed out that a small shareholder needing money can transfer his shares only through Stock Exchange and as such, having regard to the provisions contained in Securities Contract and Regulation Act, 1956 (hereinafter referred to as "the 1956 Act"), the Stock Exchanges are required to build confidence in the small investors. It was further submitted that although it does not have any statutory monopoly, it has a de facto monopoly.

17. Let us consider as to whether the control of the Central Government/SEBI in terms of the provisions of the 1956 Act, is so deep and pervasive so as to bring it within the authority contained in Article 12 of the Constitution of India.

18. The 1956 Act was enacted to prevent undesirable transactions in securities by regulating the business of dealing therein by providing for certain other matters connected therewith. Stock Exchange has been defined in Section 2(j) to mean "any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities." Section 3 provides for an application for recognition of stock exchanges. Section 4 empowers the Central Government to grant recognition to stock exchanges subject to the conditions imposed upon it upon satisfying itself that it fulfills the criteria thereof. Sub-section (2) of Section 4 lays down the conditions "for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to-

- (i) the qualifications for membership of stock exchanges;
- (ii) the manner in which contracts shall be entered into and enforced as between members;
- (iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
- (iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government."

19. Recognition of the Stock Exchange under the Section is required to be published in the Gazette of India. The rules of the recognized stock exchanges can be amended only upon approval of the Central government. Section 5 provides for withdrawal of recognition. Section 6 empowers the Central Government to call for periodical returns or direct enquires to be made. Section 7 provides for annual reports to be furnished to the Central Government. Section 9 empowers the Stock Exchange to make bye-laws. Section 10, however, also empowers the Central Government to make or amend bye-laws of recognized stock exchange. Section 11 empowers the Central Government to supersede governing body of a recognized stock exchange. Section 12 empowers the Central Government to suspend business of recognized stock exchanges. Section 13 empowers the Central Government to declare contracts in notified areas illegal by notification in the official gazette. Section 19 prohibits any person to organize or assist in organizing or be a member of any stock exchange other than a recognized stock exchange for the purpose of assisting in, entering into or performing any contracts in securities. Section 21 provides that where securities are listed on the application of any person in any recognized Stock Exchange, such person shall comply with the conditions of the listing agreement with that Stock Exchange. u/s 22, an appeal is maintainable against an order passed by the Stock Exchange to list securities of public companies. Section 23 provides for penalties in relation to the matters specified therein. Section 29 of the Act is in the following terms:

"Protection of action taken in good faith.-No suit, prosecution or other legal

proceeding whatsoever shall lie in any Court against the governing body or any member, office-bearer or servant of any recognized stock exchange or against any person or persons appointed under Sub-section (1) of Section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made there under."

20. The provisions above-mentioned clearly go to show that not only Stock Exchanges perform an important function, its control by the Central Government/ SEBI are deep and invasive. So invasive is control of the SEBI and even the writ petitioner against the impugned order preferred an appeal before SEBI and filed a representation before SEBI which was entertained. The appellant herein submitted itself to the jurisdiction of SEBI without any demur whatsoever. The SEBI constituted an independent Committee and despite pendency of the writ petition before this court arrived at its own finding. This also goes to show that not only the Central government but also a statutory authority exercises deep and pervasive control over the Stock Exchange. It may be that it does not receive any financial assistance. But receiving the financial assistance is not the only criteria for holding that an instrumentality of the State would come within the purview of the definition of "other authorities".

21. Although, it may not be of much relevance, but we may notice that in Delhi Stock Exchange Association Ltd. Vs. Commissioner of Income Tax, New Delhi, , the Delhi Stock Exchange itself has given out that it is being considered to be under "other authorities" within the meaning of Article 12 of the Constitution of India.

22. Admittedly, its main source of revenue is from listing fees received from the listed companies. Its power to list companies flows from a statute. In doing so, it exercises a quasi judicial function and appeal lies against its order refusing to list companies.

23. The Stock Exchanges, although statutorily do not enjoy a monopoly status, having regard to the provisions of the Act, as noticed hereinbefore, it factually does so inasmuch as unless and until a Stock Exchange is recognized by the Central Government in terms of Section 4 of the Act, no other Stock Exchange can perform the said function. The State had been taking on more and more commercial activities and thus courts have examined the purport and ambit of activities of such bodies keeping in view a wider and wider range of measures the executive and the Central Government adopt. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , it was held:

"Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large-scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens

come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise."

24. The Indian Council of Agricultural Research, a society registered under the Societies Registration Act has been held to be "State" in P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, on the ground that the control of the Central Government over its affairs was deep and pervasive. Reference in this connection may also be made to B.S. Minhas Vs. Indian Statistical Institute and Others, . This aspect of the matter has also been held in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, holding that:

"from the basic obligation to obey the Fundamental Rights, it would lead to considerable erosion of the efficiency of the Fundamental Rights, for in that event the Government would be enabled to over-ride the Fundamental Rights by adopting the stratagem of carrying out its functions through the instrumentality or agency of a corporation, while retaining control over it. The Fundamental Rights would then be reduced to little more than an idle dream or a promise of unreality."

25. The functions of the appellant are such that it has also been granted exemption from payment of Income Tax. Its functions are so important that for granting withdrawal and supersession of recognition, the orders are required to be published in the official gazette which is not done in cases of private organizations.

26. In All India Schools Employees Association v. defense Minister-cum-Chairman, Board of Governors, Sainik Schools Society, 1998 (Supp 3) SCR 398 it was held that a school is also a State within the meaning of Article 12 of the Constitution of India. In Miss. Mohini Jain Vs. State of Karnataka and others, , having regard to the State's obligation to provide education, it was held that the educational institutions carry on the supplementary sovereign functions. It was held "When the State Government grants recognition to the private educational institutions, it creates an agency to fulfill its obligation under the constitution". From the Preamble of the 1956 Act, it would appear that the same casts a duty upon the Central Government mainly to perform the function of regulating the business of dealing in securities and prevent undesirable transactions therein and the Central Government in turn had assigned the said function to all recognized stock exchanges and to that extent, it performs governmental functions.

27. In UP State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and Ors., , it was held:

"20. ...In exercise of power conferred on the State Government by Section 30 of the Bank Act, Rules have been framed called "the U.P. Cooperative Land Development Banks Rules, 1971". For the service conditions of the employees of the appellant, we have to refer to the Societies Act and the Regulations framed by the U.P. Cooperative Institutional Service Board constituted u/s 122 of the

Societies Act as well as to the Services Rules framed by the appellant under Regulation 102 of the Service Regulations. Service Rules framed by the appellant shall be operative only after their approval by the Institutional Service Board. Any order of dismissal by the appellant can be issued only after its approval by the aforesaid Board. If we refer to the Bank Act, it will be seen that u/s 3 there shall not be more than one State Land Development Bank for the whole of the State of Uttar Pradesh and that sole Bank is the appellant. It has thus exclusive jurisdiction for whole of the State of Uttar Pradesh. It can admit as members Land Development Banks whose number can be as many as may be deemed necessary by the Registrar of the Cooperative Society for the State of Uttar Pradesh. Appellant is also vested with various powers under the Bank Act which powers are not available to a cooperative society registered merely under the Societies Act. If refer to some of the provisions of the Bank Act it will be seen that the Registrar of the Cooperative societies for the State of Uttar Pradesh shall be the Trustee for the purpose of securing the fulfillment of the obligations of the State Land Development Bank to the holders of debentures issued by the Board of Directors. The powers and functions of the Trustee shall be governed by the provisions of the Bank Act and by the instrument of Trust executed between the appellant and the Trustee as modified or substituted from time to time by their mutual agreement and with the approval of the State Government. Trustee is to be a corporation sole. The Board of Directors of the appellant may from time to time issue debentures of various denominations with the previous sanction of the State Government and the Trustee and subject to such terms and conditions as the State Government may impose against the unconditional guarantee by the State Government for repayment in full of the principal and payment of interest thereon or on the security of mortgages, charges or hypothecations etc. u/s 9 of the Bank Act, the state Government constitutes a Guarantee Fund on such terms and conditions as it may deem fit, for the purpose of meeting losses that might arise on account of loans advanced by the Land development Banks on the security of mortgages not being fully recovered due to such circumstances as may be prescribed. The appellant and the Land Development Banks shall contribute to such fund at such rates as may be prescribed. Under Rule 6 of the Bank Rules the Guarantee Fund shall be maintained by the Finance Department of the State Government in the Public Accounts Section of the State Accounts and all contributions to the Fund and interest earned on investment made from the Fund shall be credited direct to the Fund. It is not necessary for us to quote various other sections and rules but all these provisions unmistakably show that the affairs of the appellant are controlled by the State Government though it functions as a cooperative society and it is certainly an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution."

28. Following are some of the important Sections of SEBI Act which support the assertion that Central Government has deep and all pervasive close control on the functioning of all RSEs (Recognized Stock Exchanges):

(1) Preamble of the SEBI Act which inter alia reads, "An Act to provide for the establishment of a Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto".

(2) Section 11(1), which cast a duty upon SEBI to protect the interest of the investors and promote the development of and regulate the securities market.

(3) Section 11(2)(a), specifically casts a duty upon SEBI to regulate, even the business (means regulation of even day-to-day business) and that is why it is under this section that SEBI from time to time issues directions to RSEs about the nature, type, extent and percentage of margin money to be taken from the members of RSEs; Capital Adequacy Norms to be observed by the said members; nature, organization structure and duties of Market Surveillance department etc.

(4) Section 11(2)(j) requires SEBI to perform such functions and exercise such powers under SCRA 1956, which may be delegated to it by the Central Government.

29. The apex court, again in *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, held that when a private body carries on public duty, as in the case of an institution whereby recognitions and affiliations are to be granted with conditions, Stock Exchanges are also recognized subject to various conditions. Unlike the companies registered under the Indian Companies Act, the bye-laws of a Stock Exchange can be amended. Even for amendment in bye-laws, the Stock Exchange requires approval of the Central Government. The Central Government, having regard to the provisions of the 1956 Act, as noticed hereinbefore, can interfere in the functions of the Stock Exchange at every stage.

30. Section 20 of the 1956 Act is a pointer to show that it is an instrumentality of the State inasmuch as the protection of action taken in good faith has been extended to Stock Exchanges which are granted only to public servants. The Central Government even can delegate its power in favor of the SEBI.

31. As would be noticed hereinafter, the history shows that various legislations had been enacted for safeguarding the interests of the investors and particularly small investors. Economy of the country, one way or the other, to a large extent would depend upon the dealings of the Stock Exchange.

32. The concept that all public sector undertakings incorporated under the Indian Companies Act or Societies Registration Act for being State must be financed by the Central Government and under the deep and pervasive control thereof has undergone a sea change. The thrust, in our opinion, should be not upon the composition of the company but the duties and functions performed by it. Thus, Whether the appellant is a body which exercises public function, is the primary question which should be raised and answered.

33. In *Chander Mohan Khanna Vs. The National Council of Educational Research*

and Training and other[OVERRULED], , the Supreme Court cautioned against the wide expansionist meaning given to the State under Article 12 and held:

"Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of welfare state, independent institution, Corporation and agency are generally subject to state control. The State control does not render such body as "State" under Article 12. The State control, however vast and pervasive is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out governmental activities and governmental functions of vital public importance, there may belittle difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution."

34. In *Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others*, , the Supreme Court held:

"In a Welfare State, as has been pointed out on more than one occasion by this Court, Governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion. Having given our anxious consideration to the facts of the case, we are not in a position to hold that ICPS is either an agency or instrumentality of the State so as to come within the purview of "other authorities" in Article 12 of the Constitution."

35. It may be true that the Karnataka, Kerala and Madras High Courts in *R. Jagadeesh Kumar Vs. P. Srinivasan and others*, , *Satish Nayak v. Cochin Stock Exchange Ltd.*, AIR 1975 Ker 373 and *A. Vaidyanathan Vs. Union of India (UOI) and Another*, , had held that the Stock Exchange is not a State.

36. The Karnataka High Court decision in *R. Jagadeesh Kumar v. P. Srinivasan* (supra) was dealing with the case where, in relation to the writ petitioner, Karnataka Stock Exchange, Bangalore was not performing the sovereign function.

37. We may, however, notice that in *Raiesh Kumar Maheshwari Vs. Union of India and Others*, , a Division Bench of this court has held that the Stock Exchange exercises the function of public character. The Karnataka decision was also based on a concession that the Delhi Stock Exchange is not a public authority.

38. There exists a distinction between a statutory authority and a public authority. A writ not only lies against a statutory authority, it will also be maintainable against a person who is performing duties under a statute and exercises monopoly power.

39. This aspect of the matter has been considered in *Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarkm Trust and Ors. v. V.R. Radani and Ors.* (supra). It has clearly been stated that the writ petition would be maintainable against other persons or bodies who perform public duty. The nature of duty imposed on the body would be highly relevant for the said purpose. Such type of duty must be judged in the light of the positive obligation owned by a person or authority to be the affected party.

40. But, in disputedly, in discharging its functions, the Delhi Stock Exchange has to deal with the public in general. It has some say as regards changing economic scenario of the country. Stock exchanges all over the country play a vital role in maintaining the vitality of the economy. Economic reforms of the country, particularly those in corporate sector, have a vital say in the development of economical physique of the country wherein formation of Stock Exchange and the role played by it assumes an important role.

41. It is pertinent to mention here that in *Rajendra Rathor and Another Vs. Madhya Pradesh Stock Exchange and Others*, , it was noted that:

14. Stock Exchange, as commonly know, it a body of individuals engaged in the business of selling, buying or dealing in securities. It provides facilities to liquefy capital to enable a person to convert his/her investment made in a Company into cash by disposing of the shares held to some one else. It thus, gives mobility to the capital in the absence of which the capital invested in the form of shares would be locked up.

15. The stocks and shares in the Exchange are dealt in three ways: (i) Spot delivery contract (ii) Ready delivery contract and (iii) Forward contracts. These contracts sometimes also carry the risk of degenerating into speculative transactions amounting to pure gambling which could subvert the main object of Stock Exchange. That is why the Securities Contract (Regulation) Act, 1956 was enacted to prevent undesirable transactions in securities by prohibiting certain business action and by providing for some other connected matters."

42. It is worthwhile to note the history of the formation of the Stock Exchanges. Bombay Securities Contracts Act, 1925 was enacted which governed the dealings in stock exchanges. Thereafter, Securities Contract Regulation Act, 1956 being Act 42 of 1956 was enacted which came into force on 4th September 1956 in terms whereof 1925 Act was repealed. The said Act was enacted by the Parliament in terms of Entry 42 in List I of the Seventh Schedule of the Constitution of India.

43. The object said legislation would be found from the report of the Gorwala

Committee which is in the following terms:

"The problem which Government have asked us to examine is the manner of regulation of stock exchanges. This must be taken to imply that from the point of view of the public interest, Government considers, firstly, that stock exchanges do fulfill a legitimate and useful function in their own sphere and, secondly, that the function needs to be properly regulated. A consideration of the functions of a stock exchange is perhaps the most suitable starting point for the formulation of an approach to the problem of regulation. The legitimate function of a Stock Exchange is to provide, Consistently with the larger public interest, a forum and a service which are so organized, in the interests of both buyers and sellers, as to ensure the smooth and continual marketing of shares. Buyers or sellers of shares are of different kinds. There are those who buy shares to invest or sell shares for ready cash. It is the interests of those that must be kept constantly in mind, since it is for them primarily that the stock exchange exists. There are also those who buy in the hope to sell at a profit or sell in the hope to buy at a profit. In popular language, they are speculators as distinguished from genuine investors, though the two groups of course are by no means mutually exclusive; for, by way of example, a man who has bought to invest may later persuade himself to sell to make profit. Nevertheless, the existence of a body of speculators is one of the main features of almost all the stock exchanges with which we are concerned."

44. In terms of the provisions contained in Section 30 of the Securities Contracts (Regulation) Act, 1956, a regulation known as the Securities Contracts (Regulation) Rules, 1957 was framed. The Companies (Issue of Share Certificates) Rules was passed and the Preference Shares (Regulation of Dividends) Act, 1960 was passed. In 1966 The Capital Issue (Application for Consent) Rules, 1966 was passed. In 1969 The Capital Issue (Exemption) Order, 1969 was passed. In 1975 the Companies (Transfer of Profits to Reserves) Rules, 1975 was passed. In the same year, The Companies (Declaration of Dividend out of Reserves) Rules, 1975 was passed and The Companies (Declaration of Beneficial Interest in Shares) Rules, 1975 was passed. In 1986 the Securities Contracts (Reference to the Company Law Board) Rules, 1986 was passed.

45. A new Act known as Securities and Exchange Board of India Act, 1992 came into force in the year 1992. Section 2(1) of the said Act defines "securities" as in the same meaning as contained in Section 2(2) of the Securities Contracts (Regulation) Act, 1956. Several Acts and Rules were again made in the year 1992 viz.

"The Capital Issues (Control) Repeal Act, 1992.

SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

SEBI (Insider Trading) Regulations, 1992.

SEBI (Merchants Bankers) Rules, 1992.

SEBI (Merchants Bankers) Regulation, 1992.

The Special Court (Trial of offences Relating to Transactions in Securities) Act, 1992.

In 1993 again, several statutes were brought on the statute book which are:

SEBI (Appeal to Central Government) Rules, 1993.

SEBI (Debenture Trustees) Rules, 1993.

SEBI (Debenture Trustees) Regulations, 1993.

SEBI (Mutual Funds) Regulations, 1993.

SEBI (Portfolio Managers) Rules, 1993.

SEBI (Portfolio Managers) Regulations, 1993.

SEBI (Registrars to an issue and Share Transfer Agents) Regulations, 1993

SEBI (Underwriters) Rules, 1993.

SEBI (Underwriters) Regulations, 1993.

The year also saw a spate of rules and regulations which are:

SEBI (Annual Report) Rules, 1994.

SEBI (Bankers to an issue) Rules, 1994.

SEBI (Bankers to an issue) Regulations, 1994.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994

RBI (Board for the Financial Supervision) Regulations, 1994.

46. Depository's Act came to be enacted in the year 1996 in terms whereof National Securities Depository Ltd. came into being. Central Depository Service Limited was promoted by the Bombay Stock Exchange and Bank of India. Several guidelines had been issued by SEBI.

47. Operation of the capital market at all the places including Delhi, are governed by the prevalent laws, some of which have been enumerated herein before. Such laws are meant to protect the interest of the investors and securities and to protect the development of and regulate the security markets in India. Stock Exchanges are given the entire monopoly in the transactions relating to shares under the complete control of the Government of India by the SEBI and/or the Central Government through the laws mentioned herein before.

48. At this juncture, it would be relevant to notice the history and relevance of the said Act, as observed in *Dahiben Umedbhai Patel and Ors. v. Norman James Hamilton and Ors.*, (1985) 57 Comp Cas 700 which is in the following terms:

"Now, as the preamble of the Act shows, it was enacted, inter alia, to prevent undesirable transactions in securities by regulating the business of dealing therein. The Preamble clearly indicates that what was intended to be done by the enactment was to regulated the business of dealing in securities. It is obvious that there was business carried on by people consisting of that in the course of such business, there were undesirable transactions in securities which had to be controlled. It would be permissible to look into the evil to remedy which the legislation was intended and the conditions prevalent prior to the enactment of the Regulation Act can certainly be referred to for the purpose of construing the provision of law. So far as Bombay was concerned, trading in securities was controlled by the Bombay Security Contracts Control Act 1925, which was enacted to regulate and control certain contracts for the purchase and sale of securities in the City of Bombay and elsewhere in the Bombay Presidency. Under that Act, "Securities" included Stocks, shares, bonds, debentures, debenture stock and any other instrument of a like nature. The "Stock exchange" was defined as meaning "any association, organization or body of individuals, whether incorporated or not, established for the purpose of assisting, regulating and controlling business in buying, selling and dealing to stocks, shares, bonds, debentures, debenture stock and any other like securities". Section 4 of that Act required a Stock Exchange to be recognized by the Governor-in-Council and the stock exchange had to submit rules for the regulation and control of transactions in securities other than ready delivery contracts and furnish such information in regard to such recognition as the Governor-in-Council may require. Section 6 of the Act required that every contract for the purchase or sale of securities, other than a ready delivery contract, entered into after a date to be notified in this behalf by the Governor-in-Council shall be void unless the same is made subject to and in accordance with the rules duly sanctioned under and every such contract shall be void unless the same is made between members or through a member of a recognized stock exchange, and no claim shall be allowed in any civil court for the recovery of any commission, brokerage, fee or reward in respect of any such contract. This is a provision which is very similar to Section 13 of the Regulation Act. It was, however, found that the impact of this Act on the regulation of trading in securities was not significant. Huge losses suffered by the investing public during 1928 to 1938 brought forth pubic criticism and the Government of Bombay appointed a committee called Morrison Committee in 1936. Recommendations made by this committee were not found to be useful. The Government of India had appointed a committee in May, 1948, headed by Dr. P.J. Thomas, Economic adviser to the Ministry of Finance, to submit a report or a suitable law to regulate the stock exchanges in India. Later on in 1951, a draft Bill on stock exchange regulation was prepared by the Government and this Bill was referred to an expert committee under the chairmanship of Mr. A.D. Gorwalla. The present Act is a result of the recommendations of the Gorwalla committee which were formulated in the form of Securities Contracts (Regulation) Bill, 1954. One of the terms of reference of the committee was to consider draft proposals of the Government on the subject of stock exchange

regulation."

49. A reference in this connection also be made to *Madhubai Amathalal Gandhi v. Union of India*, AIR S.C. 21 wherein the Supreme Court traced the history as under:

"(2) At the outset it is necessary to notice briefly how a Stock Exchange is worked and how it is controlled or regulated by the State. "Stock Exchange" means, "Any body of individuals, whether incorporated or not, constituted for the purpose of assisting or controlling the business of buying, selling or dealing in Securities". The history of stock exchanges in foreign countries as well as India shows that the development of Joint stock enterprise would never have reached its present stage but for the facilities which the stock exchanges provided for dealing in securities. They have a very important function to fulfill in the country's economy. Their main function, in the words of an eminent writer is "to liquefy capital by enabling a person who has invested money in, say, a factory or a railway, to convert it into cash by disposing of his share in the enterprise to someone else". Without the stock exchange capital would become immobilized. The proper working of a stock exchange depends upon not only the moral stature of the members but also on their caliber. It is a trite saying that a jobber or dealer is born and not made. In the words of the same author, a jobber must be a man of good nerve, cool judgment, and ready to deal under any ordinary conditions, and he must be man of financial standing, considerable experience, with an understanding of market psychology. There are three modes of dealing in shares and stocks, namely, (1) spot delivery contracts, i.e., a contract which provides for the actual delivery of securities on the payment of a price thereof either on the day of the contract or the next day, excluding perhaps the period taken for the dispatch of the securities or the remittance of money from one place to another; (2) ready delivery contract, which means a contract for the purchase or sale of securities for the performance of which no time is specified and which is to be performed immediately or within a reasonable time; (3) forward contracts i.e., contracts where under the parties agree for their performance at a future date. If the stock exchange is in the hands of unscrupulous members, the second and third categories of contracts to buy or sell shares may degenerate into highly speculative transactions or, what is worse, purely gambling ones. Where the parties do not intend while entering into a contract of sale or purchase of securities that only difference in prices should be paid, the transaction even though speculative, is valid and not void, for "there is no law against speculation as there is against gambling". But, if the parties do not intend that there should be any delivery of the shares but only the difference in prices should be accounted for, the contract, being a wager, is void. More often than not it is difficult for a court to distinguish one from the other, as a wagering transaction may be so cleverly camouflaged as to pass off as a speculative transaction. These mischievous potentialities inherent in the transactions, if left uncontrolled, would tend to subvert the main object of the institution of stock exchange and convert it into a den of gambling which would ultimately upset the

industrial economy of the country.

(3) For that reason, in Bombay as early as 1925 the Bombay Securities Contracts Act was passed to regulate and control contracts for the purchase and sale of securities in the City of Bombay and elsewhere in the Bombay presidency. u/s 6 of that Act.

"Every contract for the purchase or sale of securities. other than a ready delivery contract, entered into after a date to be notified in this behalf by the Provincial Government shall be void, unless the same is made subject to and in accordance with the rules duly sanctioned u/s 5 and every such contract shall be void unless the same is made every such contract shall be void unless the same is made between members or through a member of a recognized stock exchange; and no claim shall be allowed in any Civil Court for the recovery of any commission, brokerage fee or reward in respect of any such contract."

50. The matter has been considered in Rakesh Gupta and others Vs. Hyderabad Stock Exchange Ltd. and others, wherein the Division Bench noticed the dissenting voice in V. Punnen Thomas Vs. State of Kerala, which found support in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, , Anadi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarm Trust and Ors. v. V.R. Radani and Ors., AIR 1989 SC 1609, Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and several other decisions and held that a writ of mandamus can be issued the Stock Exchange. It accepted the view of the Bombay High Court in Mrs. Sejal Rikeen Dalal and others Vs. The Stock Exchange, Bombay and another, , a judgment of Sujata Manohar, J. (as she then was) and Akhileshwar Upadhyaya Vs. Magadh Stock Exchange Association and Others . It was observed in para 45 that:

"Before we part with this judgment, we have felt that the Government of India and SEBI have almost made the guidelines mechanical in application and the Exchange has also adopted the same as a rule to find out who qualifies as being possessed of the required amount of liquid cash and property or experience. While these may be relevant for testing the solvency of the member and experience for the type of work members of the Exchange are required to do, merely because someone is able to show his possession of wealth without showing how he has acquired it, there is a chance of many unscrupulous persons entering as members of Exchange and indulging in activities to enrich themselves at the cost of the public at large. If the recent happenings with the key role of stock brokers have not given any lesson, there is a chance of such persons taking over the control of the Exchange who small have no regard to the norms of the trade. While solvency, as we have observed earlier, is important, it would be examined whether the assets are genuine and truly belong to the applicant who seeks membership and that he has not arranged such assets or obtained by questionable means and methods. It is time, we feel persuaded to observe, for the Stock Exchanges to realize that they are not trading in an individual capacity;

they are doing some kind of institutional business for which the institution must enjoy the confidence of the people. The Government of India and SEBI shall do service to the people by seeking a declaration of assets of members of the Stock Exchanges and also information as to the source from which assets have been procured and evolve some method by which profits by the members of the Stock Exchanges and their agents are kept under watch and control so that they do not take advantage of the position of the member of the Exchange and repeat scams at the cost of the fair name of the country. In the applications which we dispose of today, we have such statements which show wealth of the petitioners therein which create doubt about their genuineness. The respondent-Exchange, SEBI and the Central Government thus, in our opinion shall be taking the blame of permitting such persons to become members, if proper precautionary measures are not introduced by way of rules, bye-laws or even guidelines issued either by SEBI or the Central Government."

51. Yet again in *Rajendra Rathor and Another Vs. Madhya Pradesh Stock Exchange and Others*, , B.A. Khan, J. speaking for the Division Bench, observed as under:

25. All this enabled Stock Exchange to perform duties which were public in nature and wherein the element of public interest was present. If it was required not to enter into a contract of a particular type or to enlist security of a specified category or to enlist members of a particular qualification, it was discharging a public duty imposed on it and if this gave rise in turn on any rights and obligations the same were surely enforceable in the writ jurisdiction. It cannot be washed away that the Exchange under the statute Rules and the Bye Laws obligations in number of areas of its operation. Therefore, if any breach was alleged of such obligations by the aggrieved person invoking any of the rights created in the process, writ jurisdiction would always be available to such person in such circumstances.

52. Holding that even if it is not a State, a writ will lie, it was observed in para 26 as under:

"26. We accordingly hold that even if Stock Exchange was not regarded "State" under Article 12 it could still be amenable to writ jurisdiction under Article 226 in certain cases where it was shown that it was performing statutory/public duty cast on it under the statute, Rules and Bye-Laws giving rise to an obligation which it owed to the aggrieved party and which was breached in some manner. It would, Therefore, all depend upon the facts and circumstances of each case. There may be cases where the writ would certainly issue and cases where the writ jurisdiction would not be available. A dealing or a transaction within the Exchange may be private in nature but where its manner and method was covered by statutory Rules and Bye-laws and a breach alleged thereof even that would attract the writ jurisdiction on account of breach of statutory duty. As such, Stock Exchange could be subject to the writ jurisdiction depending upon the nature of the action complained of and the obligation arising out of it, having

its genesis in the Act, Rules and Bye-Laws framed there under."

53. In *Trilochana K. Doshi v. Stock Exchange of India and Anr.*, 2000 (4) MLJ 83, it was held that a petition under Article 226 of the Constitution of India can be maintainable against the Stock Exchange.

54. What will be a public utility service, has been noticed in *Corpus Jurisdiction Secundum* 998, in the following terms:

"As a general rule, a public utility has the duty to give the public reasonable and adequate service at reasonable rates and without delay.

A public utility has the duty to supply a commodity or to furnish service to the public. This duty exists independently of statutes regulating the manner in which it shall do business or of contracts with municipalities or individuals, and is imposed because the utility is organized to do business affected a public interest and holds itself out to the public as being willing to serve all members thereof. Broadly speaking, the primary duty of a public utility is to give reasonable and adequate service at reasonable rates and without delay."

55. In an article by Sue Arrow Smith on Judicial Review and Contractual Powers of the public authorities, it is stated:-

"In other words, they should accept that these powers are reviewable as a matter of principle but that review may be negated or limited by specific policy factors, rather than continue searching for some "public law" element to the decision as a justification for applying public law doctrines to the case before them. Support for this approach is found in the judgments of the Court of Appeal in *Brown, Kelly and Emmett*, and also, implicitly, in the recent cases on review of procurement; and it is a pity that the Court of Appeal did not take the opportunity presented recently in *u Jones v. Swansea City Council* to endorse such an approach, since this clearly commended itself to the Court."

56. Public bodies are required to follow certain principles and guidelines (see *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, .

57. In *Harinder Singh Arora Vs. Union of India (UOI) and Others*, , the apex court stated that the State need not enter into a contract with anybody but it must do so fairly without discretion and without unfair procedure. Reference in this connection, may also be made to *Kasturi Lal v. State of Jammu and Kashmir*,.

58. What, although, may be apparent to a private law remedy, having regard to the facts and circumstances thereof, the remedy may be held to be a public remedy. Thus, whether a particular case involves a public law element or private law element depends upon the facts of each case.

59. In *Assambrook Exports Ltd. and Another Vs. Export Credit Guarantee Corpn. of India Ltd. and Others*, , it has been held:

35. In *R. v. Tower Hamlets London Borough Council, ex Chetnik Development*

Ltd., (1988) AC 858, at was stated:-

"The Court is entitled to investigate the action of the local authority with a view to seeing whether or not they ought not to have taken into account or neglected to take into account. Once that question is answered in favor of the local authority, it may still be possible to say that, although the local authority had kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the Court can interfere."

36. In *Tata Cellular Vs. Union of India*, , S. Mohan, J. observed (Para 101):- "A modern comprehensive statement about judicial review by Lord Denning is very apposite; it is perhaps worthwhile noting that stresses the supervisory nature of the jurisdiction:

Parliament often entrusts the decision of a matter to a specified person or body, without providing for any appeal. It may be a judicial decision, or a quasi-judicial decision, or an administrative decision. Sometimes Parliament says its decision is to be final. At other times it says nothing about it. In all these cases the Courts will not themselves take the place of the body of whom Parliament has entrusted the decision. The Courts will not themselves embark on a rehearing of the matter: *Healey v. Minister of Health*, (1955) QB 221. But nevertheless, the Courts will, if called upon, act in a supervisory capacity. They will see that the decision making body acts in fairly: See in *Re. H.K. (an Infant)*, (1967) 2 QB 417. The Courts will ensure that the body acts in accordance with the law. If a question arises on the interpretation of words, the Courts will decide it by declaring what is the correct interpretation: See *Punton v. Minister of Pensions and National Insurance*, (1963) WLR 186. And if the decision-making body has gone wrong in its interpretation they can set its order aside: see *Ashbridge Investments Ltd. v. Minister of Housing and Local Government*, (1956) 1 WLR 1320. (I know of some expressions to the contrary but they are not correct). If the decision-making body is influenced by considerations which ought not influence it; or fails to take into account which it ought to take into account, the Court will interfere: See, *Padfield v. Minister of Agriculture, Fisheries and Food*, 1968 AC 997. If the decision-making body comes to its decision on no evidence or comes to an unreasonable finding - so unreasonable that a reasonable person would not have come to it - then again the Courts will interfere; See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, (1948) 1 KB 223, If the decision-making body goes outside its powers or misconstrues the extent of its powers, then too, the Courts can interfere: See *Anisminic Ltd. v. Foreign Compensation Commission*, (1969) 2 AC 147. And, of course, if the body acts in bad faith or for an ulterior object, which is not authorized by law, its decision will be set aside: See *Sydney Municipal Council v. Campbell*, 1925 AC 338. In exercising these powers, the Courts will take into account any reasons which the body may give for its decisions. If gives no reasons - in a case when it may

reasonably be expected to do so, the Courts may infer that it has no good reason for reaching its conclusion, and act accordingly: See Padfield's case (1968) AC 997. "

37. The learned Judge further observed (Para 102):-- "We may usefully refer to Administrative Law Rethinking Judicial Control of Bureaucracy by Christopher F. Edley, JR (1990 Edn). At page 96 it is stated thus:

A great deal of administrative law boils down to the scope of review problem; defining what degree of defense a Court will accord an agency's findings, conclusions, and choices, including choice of procedures. It is misleading to speak of a "doctrine" of "the law", of scope of review. It is instead just a big problem, that is addressed piecemeal by a large collection of doctrines, Kenneth Culp Davis has offered a condensed summary of the subject; "Courts usually substitute (their own) judgment on the kind of questions of law that are within their special competence, but on other question they limit themselves to deciding reasonableness; they do not clarify the meaning of reasonableness but retain full discretion in each case to stretch it in either direction."

60. Yet again, the case of LIC of India and Another Vs. Consumer Education and Research center and Others, was considered in Assam brook Exports Ltd (supra) and it was held:

"The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law --be it a legislative act or the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalize the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions."

61. Having regard to the various decisions, we are of the opinion that the appellant satisfies the following conditions laid down by the apex court in Ramana Dayaram Shetty v. The International Airport Authority of India (supra):

- (i) there is control over the management of the Corporation by the State;
- (ii) the corporation enjoys state conferred or state protected monopoly status; and
- (iii) the functions carried own by the corporation closely relate to the governmental functions inasmuch as
 - (a) that it is under deep rooted, all pervasive and extensive control of the Government through the Securities Exchange Board of India under the SEBI Act of 1992 and SCRA of 1956;
 - (b) it has a complete monopoly status within the specified territorial limits.

(c) It carries out important public/state functions that of completely controlling and regulating the transactions in securities in the country.

Re: Question No. 2

62. The services of the respondent were terminated on 23rd May 1996 purported to be in terms of the offer of appointment.

63. It is not in dispute that such a clause commonly known as "Henry VIII Clause" has been declared ultra virus Article 14 of the Constitution of India and Section 23 of the Indian Contract Act.

64. The apex court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, has clearly held:

"90. ...This principle is that the courts will not enforce and ill, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power."

65. Yet again, the apex court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, observed:

"199. Thus on a conspectus of the catena of cases decided by this Court the only conclusion follows is that Regulation 9(b) which confers powers on the authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating the services or by making payment in lieu of notice without assigning any reasons in the order and without giving any opportunity of hearing

to the employee before passing the impugned order is wholly arbitrary, uncanalised and unrestricted violating principles of natural justice as well as Art. 14 of the Constitution. It has also been held consistently by this Court that the Government carries on various trades and business activity through the instrumentality of the State such as Government Company or Public Corporations. Such Government Company or Public Corporation being State instrumentalities are State within the meaning of Article 12 of the Constitution and as such they are subject to the observance of fundamental rights embodied in Part III as well as to conform to the directive principles in Part IV of the Constitution. In other words the Service Regulations or Rules framed by them are to be tested by the touchstone of Article 14 of Constitution. Furthermore, the procedure prescribed by their Rules or Regulations must be reasonable, fair and just and not arbitrary, fanciful and unjust. Regulation 9(b), Therefore, confers unbridled, uncanalised and arbitrary power on the authority to terminate the services of a permanent employee without recording any reasons and without conforming to the principles of natural justice. There is no guideline in the Regulations or in the Act, as to when or in which cases and circumstances this power of termination by giving notice or pay in lieu of notice can be exercised. It is now well settled that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders, but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9 (b) is illegal and void as it is arbitrary, discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power to be exercised in manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Regulation 9(b) does not expressly exclude the application of the "audi alteram partem" rule and as such the order of termination of service of a permanent employee cannot be passed by simply issuing a month's notice under Regulation 9(b) or pay in lieu thereof without recording any reason in the order and without giving any hearing to the employee to controvert the allegation on the basis of which the purported order is made.

202. This has been referred to and relied upon in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, (supra) and a similar Rule 9 (i) was termed as "HENRY VIII CLAUSE" as it confers arbitrary and absolute power upon the Corporation to terminate the service of a permanent employee by simply issuing a notice or pay in lieu thereof without recording any reason in the order and without giving any opportunity of hearing to the employee. Thus, the Rule 9(i) of the Services Discipline and Appeal Rules, 1979 was held void u/s 23 of the Indian Contract Act, 1872, as being opposed to

public policy and is also ultra virus of Article 14 of the Constitution to the extent that it confers upon the Corporation the right to terminate the employment of a permanent employee by giving him three months" notice in writing or by paying him the equivalent of three months" basic pay and dearness allowance in lieu of such notice.

203. Regulation 9(b) of the impugned Regulation framed under the Delhi Transport Corporation Act which is in pari material with the said Rule 9 (i) is void u/s 23 of the Contract Act as being opposed to public, policy and is also ultra virus Article 14 of the Constitution.

204. Another crucial question is to consider how far the impugned provisions of Regulation 9 (b) framed under the Delhi Road Transport Act can be read down in order to save it from unconstitutionality. Several decisions have been cited at the bar in order of impress upon the Court that the impugned provisions have been made for public purposes and for public interest and as such it should be read down in a manner that will save the said provisions from the on slaught of constitutional invalidity.

See also D.K. Yadav Vs. J.M.A. Industries Ltd., .

66. It is not in dispute that the writ petitioner/respondent was a permanent employee. Having regard to the fact that such a provision has been held ultra vires, we are of the opinion that the petitioner's services could not have been dispensed with relying on or on the basis of the provisions contained in the offer of appointment.

Re: Question Nos. III to V

67. The writ petitioner, inter alia, alleged that the action of the appellant in terminating his service was mala fide. The said contention of the respondent found favor with the learned Single Judge. It is not in dispute that the respondent as General Manger of the appellant, joined the services in May 1992. According to the appellant, although initially his work and conduct was good but gradually it was found that he had not been taking interest. He allegedly generated controversy and was shifted to Investors" Grievance Cell in February 1993. Allegedly, files of various companies had been pending with him for a long time as a result whereof, the NOCs to be granted to the said companies had been held back. Several other acts of misconduct on his part had been enumerated. A detailed agenda note was allegedly prepared before the same was placed before the Board of Directors in its meeting dated 23rd May 1996. The relevant portion of the said Agenda Note is as under:

"The above facts indicate that all said and done, Mr. Sharma is unable to pull along with his superiors, colleagues and subordinates and outsiders (those dealing with him in the capacity as General Manager, Delhi Stock Exchange). It may be that his nature is such but nevertheless it tends to vitiate the pleasant atmosphere in DSE and disrupts smooth and effective functioning of the office.

The net result is that tasks cannot be got done with the necessary speed and effectiveness. This problem will arise regardless of whichever Division Mr. Sharma is posted.

Consequently, there is a loss of confidence in the capacity of Mr. K.C. Sharma being able to deliver the goods when called upon to do so. It is not intended to cast any aspersions on the character, integrity or ability of Shri K.C. Sharma. He is holding a senior position in the Exchange and a position of trust, but since the Exchange has lost confidence in him, it is proposed to terminate the services of Mr. Sharma in terms of para 4 of the letter of appointment dated 12th November, 1993 by giving him three months pay in lieu of notice."

68. The Board which consisted of various public nominees including a former Judge of this court resolved to terminate his services in terms of Clause 4 of the Appointment Letter, which is as follows:

"4. Notice:

Your services shall be liable to be terminated on three months notice or salary in lieu thereof on either side except on disciplinary grounds in which case, no such notice or payment in lieu thereof shall be necessary."

69. The writ petitioner/respondent opposed the Chairman by a representation dated 25th June 1996 whereupon a detailed hearing was given to him by a Committee of the Directors comprising of Shri Vijai Kapoor, Justice M.L. Jain (Retired) and Shri R.N. Bansal, public nominees on the Board of Delhi Stock Exchange and Shri Ashok Kacher, SEBI nominee on the Board. The said Committee also arrived at a finding that his grievances had no merit.

70. There exists a controversy as to whether the said purported note has ever been placed before the Board of Directors. Allegations and counter allegations have been made. Affidavits of the members of the Board of Directors had been filed which resulted in filing further affidavits by the parties pointing out existence of the purported reasons why such affidavits had been filed. Submission of Dr. Singhvi, learned counsel appearing on behalf of the appellant is that the learned Single Judge committed a serious error in so far as it failed to take notice of the plea of the appellant that it has lost confidence in the respondent inter alias on the ground that such a plea had never been taken. The learned counsel would contend that the note on agenda having been formed part of the additional counter affidavit, although technically the expression "loss of confidence" might not have been used, such a plea is implicit. In any event, the learned counsel would contend that in a case this nature, the court, in exercise of its jurisdiction under Article 226 of the Constitution of India, should give monetary compensation. Reliance in this connection has been placed on:

O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, , Sudhir Vishnu Panvalkar Vs. Bank of India, , M.L. Kamra Vs. The Chairman-cum-Managing Director, New

India Assurance Co. Ltd. and another, , I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others, , Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, , A.K. Das v. National Federation of Cooperative Sugar Factories, and Virender Singh v. Fruits & Vegetable, 1998 LLR 444 .

71. The learned counsel has produced before us a chart containing various decisions showing the amount of compensation awarded in lieu of reinstatement with back wages. It reads as under:

1. JUDGMENTS ON THE COMPENSATION AWARDED IN LIEU OF REINSTATEMENT WITH BACK WAGES --SUPREME COURT AND DELHI HIGH COURT

Sl. no	Title of the case	Citation	Court	Organisation	Grade	Amount- (Rs)	Principle followed
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1.	O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, S.C. ITDC (Hotel Ranjit) Manager					Compensation equivalent to 3-33 years last drawn salary including allowances The Corpus, if invested, at prevailing rate of interest will give 50% of annual salary without any work and he can work else where and earn whatever he is worth over and above getting 50% of salary.
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2.	Workmen Vs. Bharat Fritz Werner (P) Ltd. and Another, SC Bharat Fritz Wenner (P) Ltd. Workmen	Rs. 2,22,000/-	The Supreme Court			applied the principles laid down in O.P. Bhandari's case.
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3.	Virender Singh Vs. Fruits & Veg. Projects 1998 LLR 444 Delhi H.C. National Dairy Development Board Executive	Rs. 4 lakhs	The Court			followed the principles laid down in O.P. Bhandari" case.
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4.	Amarjit Singh Vs PNB & Ors. 1986 (2) LLJ 354 Delhi H.C. Punjab National Bank GM at Lender Branch	Rs. 1 Lakh as compensation and Salary from the date of termination (24.3.85) till date of judgment (24.3.86) with all other terminal benefits				
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II. JUDGMENTS ON THE COMPENSATION AWARDED IN LIEU OF REINSTATEMENT WITH BACK WAGES - SUPREME COURT - OFFICERS

Sl. no.	Title of the case	Citation	Court	Organization	Grade	Amount (Rs)	Principle followed
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1.	K.A. Barot Vs State of Gujrat 1990 (Supp.) SCC 287 SC Gujrat Judicial Service Civil Judge	Rs. 50,000/-	Appellant out of employment for about 17 years			
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2.	M.L. Kamra Vs. The Chairman-cum-Managing Director, New India Assurance Co. Ltd. and another, SC New India Assurance Co. Ltd. Divisional Manager	Rs. 1,00,000/-	Lumpsum in lieu of reinstatement and further continuation of service			
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3.	Miss Radha Bai Vs. Union Territory of Pondicherry represented by its chief Secretary and others, SC Social Welfare Dept. Govt. of Pondichery Asst. Director	Rs. 3 lakhs plus pension & retirement benefits Rs. 3 lakhs as compensation for				
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loss of honour, reputation and mental agony in the long battle, Pension and other consequential benefits

4. Wasim Beg Vs. State of Uttar Pradesh and Others, SC U.P. State Leather Dev. Corpn. Works Manager Rs, 2,00,000/-

III. JUDGMENTS ON THE COMPENSATION AWARDED IN LIEU OF REINSTATEMENT WITH BACK WAGES SUPREME COURT-WORKMEN

Sl. No. Title of the case Citation Court Organisation Grade Amount (Rs) Principle followed

1. I.T.C. Ltd., Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar) and Others, SC I.T.C. Machine Operator Rs. 11,250/- Salary and other allowances payable to the workman for a period of 5 years

2. Anil Kumar Chakraborty and Another Vs. Saraswatipur Tea Company Limited and Others, SC Saraswatipur Tea Co. Ltd. Compounder Rs. 50,000/-

3. Naval Kishore (Workman) Vs. Darbshaw B. Cursetjee's Sons and Others, SC M/s Darbshaw B Cursetjee's sons (P) Ltd. Workman Rs. 2 lakhs Lump-sum compensation in lieu of reinstatement with back wages

4. Chandu Lal Vs. Management of Pan American World Airways Inc., SC Pan American World Airways Inc. Workman Rs. 2 lakh

5. U.P. State Road Transport Corporation Vs. Muniruddin, SC U.P.S.R.T.C. Conductor 35,000/- Rs. Lump-sum in lieu of benefits

6. Yashvir Singh Vs. Modern Food Industry (1) Ltd. & Anr. 1992 (1) SLR 420 SC Modern Food Inds. (I) Ltd. & Anr. Workman Rs. 75,000/- Lump-sum compensation in lieu of reinstatement with back wages.

7. Gujarat State Road Transport Corpn., and another Vs. Mulu Amra, SC Gujarat State Road Transport Corpn. Workman Rs. 75,000/- Compensation in lieu of reinstatement with back wages

8. Syed Azam Hussaini Vs. Andhra Bank Ltd., SC Andhra Bank Clerk Rs. 75,000/- Lumpsum instead of reinstatement & back wages

9. A.K. Dns Vs. National Federation of Co-Op. Sugar Factories Ltd. 1995 (5) SLR 504 SC Sugar Factory Driver Rs. 40,000/-

72. However, on the other hand, Mr. Shanti Bhushan relied on the following judgments for showing that the court had even considered grant of entire back wages plus compensation in some cases.

73. Tarlochan Singh Mokha v. M/s Shriram Piston & Himalaya House and Ors., 1998 4 AD (Del) 225, Sant Raj and Another Vs. O.P. Singla and Another, , Naval Kishore (Workman) v. M/s Darbshaw B. Cursetjee's Sons and Ors., 1984 Lab IC 1558 and Virender Singh v. General Manager, Fruit & Vegetable Project and Anr.,

1998 3 AD (Del) 17.

74. Mr. Shanti Bhushan, learned counsel for the writ petitioner would also submit that the court normally should pass a judgment of reinstatement with full back wages whenever it is found that the order of termination from services is illegal.

75. The learned counsel, relying on the observations made by Ramaswami, J. in Delhi Mazdoor Congress (supra), would contend that honest employees should not be kept out of employment. It was submitted:

(i) The writ petitioner's record throughout his career was outstanding

(ii) He had been granted increment out-of-turn.

(iii) He had received appreciation letters.

His services were terminated because:

(i) He was loyal to law;

(ii) He was loyal to the public at large;

(iii) He was loyal to the country; and

(iv) He was not loyal to a particular group.

76. It was submitted that prior to issuance of the impugned order of termination, no warning had been given nor any show cause notice had been issued.

77. The learned counsel would contend that the writ petitioner at the time of termination was 36 years only and he tried his best to obtain another employment but failed in his attempt to do so and as such, it is unlikely that he would get a job.

78. Relying on various decisions, the learned counsel would contend that loss of confidence in an employee should not be presumed unless it is specifically pleaded and proved. Reference in this connection may be made to:

Kanhaiyalal Agarwal and Ors. v. The Factory Manager, Gwalior Sugar Company Limited, 2001 (8) Scale 300, M.K. Agarwal v. Gurgaon Gramin Bank and Ors., : [1987]3SCR640 , P.L. Kantha Rao and others Vs. State of Andhra Pradesh and others, , L. Michael and Another Vs. Johnson Pumps Ltd., , The Management of Brooke Bond India (Private) Ltd. Vs. Y.K. Gautam, , Assam Oil Company Vs. Its Workmen, , Sant Raj and Another Vs. O.P. Singla and Another, C and Delhi Consumer Coopt. Wholesale Store Ltd. Vs. S.L.Thakural, .

79. In any event, the learned counsel would contend that in a case of this nature, the court should not follow the line of cases in O.P. Bhandari (supra) and assess compensation having regard to the following decisions:

Tarlochan Singh Mokha v. M/s Shriram Piston and Himalaya House and Ors., 1998 4 AD (Del) 225, Sant Raj and Another Vs. O.P. Singla and Another, , Naval

Kishore (Workman) v. M/s Darbshaw B. Cursetjee's Sons and Ors., 1984 Lab IC 1558 and Virender Singh v. General Manager, Fruit and Vegetable Project and Anr., 1998 3 AD (Del) 17.

80. The question as to whether the agenda note was circulated or not is a serious disputed question of fact. It is true that in terms of provisions of Section 195 of the Companies Act, a presumption arises that affairs of the company must have been done in due course of business. But there may be intrinsic evidence to show that the presumption is rebuttable.

81. The fact, however, remains that loss of confidence was not a ground for termination of service. The order terminating the service, ex facie, was not stigmatic. From a statement made in the counter-affidavit as also the additional affidavit, it is evident that there were serious charges against the writ petitioner.

82. On the other hand, the writ petitioner, as noticed hereinbefore, had, inter alia, contended that the order of termination was passed having regard to the fact that the petitioner issued notices of inspection to various persons including the President and the Vice President and in fact not only was he threatened but a murderous assault had taken place on him by or at the instance of a member of Delhi Stock Exchange, Shiv Charan Das Aggarwal. Even when the matter was pending investigation, the petitioner was charged with using his office and provisions for making correspondence with the authorities. Despite the fact that the petitioner suffered serious injury resulting in a Press Release by the Commissioner of Police, the petitioner was requested to give details of the police case filed by him inter alias on the ground that he had been giving statement before the Press. Such allegations and counter allegations of serious nature are themselves, in our opinion, a pointer to the fact that as no love is lost between the parties, it would not be advisable to direct reinstatement irrespective of the fact that loss of confidence had been pleaded or proved. In O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, , it was held as under:

Para 6 "In so far as the high level Managerial Cadre is concerned, the matter deserves to be viewed from an altogether different perspective, a larger perspective which must take into account the demands of national interest and the resultant compulsion to ensure the success of the Public Sector in its competitive co-existence with the Private Sector. The Public Sector can never fulfill its life aim or successfully vie with the Private Sector if it is not managed by capable and efficient personnel with unimpeachable integrity and the requisite vision, who enjoy the fullest confidence of the policy makers of such undertakings....."

Para 7 "It is in the public interest that such undertakings or their Board of Directors are not compelled and obliged to entrust their management to personnel in whom on reasonable grounds, they have no trust or faith and with whom they are in a bonafide manner unable to function harmoniously as a team working arm-in-arm with success in the aforesaid three dimensional sense as

their common goal. The factors have to be taken into account by the Court at the time of passing the consequential order, for the Court has full discretion in the matter of granting relief, and the Court can sculpture the relief to suit the needs of the matter at hand. The Court, if satisfied that ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate provided the employer pays reasonable compensation as indicated by the Court."

83. The writ petitioner holds a key post. He exercise various statutory powers. He has to deal with the public. He has to act in close association and confidence with the Board of Directors. It may be that the case of the appellant that the writ petitioner has lost confidence is not based on any material and/or is grossly exaggerated. Having regard to the decision of the apex court in Assam Oil Company Vs. Its Workmen, that it is not a fit case where we should direct reinstatement. It is trite that the court can, in appropriate cases, decline reinstatement. It is true, as has been submitted by Mr. Shanti Bhushan that in M.K. Agarwal v. Gurgaon Gramin Bank and Ors. (supra), the court granted relief of reinstatement with 50% back wages even in case of manager of a bank when its decision does not lay down any law. It has followed O.P. Bhandari v. Indian Tourism Development Corpn. Ltd. Such a relief was granted in the facts of the case.

84. It is difficult to lay down any law in the absolute terms as to how the amount of compensation should be computed. It depends on various factors:

- (i) Past experience
- (ii) Age of the officer
- (iii) His prospects of getting a better job
- (iv) Mitigation of loss

85. A distinction has to be borne in mind between a suit for damages and the exercise of discretion of a writ court in granting compensation in lieu of reinstatement.

86. Sant Raj and Another Vs. O.P. Singla and Another, arose out of an award of an Industrial Tribunal wherein with back wages had been granted. Therein, one year's wages were modified for the fact that the petitioner were held entitled to back wages in full for a period of 12 years in lieu of relief reinstatement. It was considered to be adequate compensation.

87. Naval Kishore (Workman) v. Darbshaw B. Cursetjee's Sons and Ors., 1984 (2) LabIC 1558 was again a case which arose out of an award. Therein, the amount of Rs. 2 lakhs was awarded out of which Rs. 1,10,000/- was awarded as future compensation for loss of service at the rate of 15,000/- per year for eight years.

88. In Chandu Lal Vs. Management of Pan American World Airways Inc., , damages of Rs. 2 lakhs had been granted by way of adequate compensation.

89. In *Tarlochan Singh Mokha v. Shriram Pistons & Himalaya House and Ors.*, 1998 4 AD (Del) 225 while awarding damages, an amount of Rs. 5,82,785.75P was granted besides the sum which had already been received by the plaintiff therein namely, Rs. 57,204.25 holding that the plaintiff under the guise of claiming damages, cannot try to enrich himself.

90. In *Virender Singh v. General Manager, Fruit & Vegetable Project and Anr.*, 1998 3 AD (Del) 17, a sum of Rs. 4 lakhs was held to be adequate compensation.

91. Some sort of a guess work and to some extent even a rule of thumb may be imperative in calculating the damages. In the instant case, the appellant, by orders of this court passed from time to time, has already paid a sum of Rs. 7,50,000/- to the writ petitioner/respondent. The services of the writ petitioner/respondent were terminated, he was given over a sum of Rs. 42,000/- in lieu of three months' wages. Admittedly, he was entitled to the annual gratuity also. According to the appellant, he was entitled to a sum of Rs. 30,000/- per month. It is, Therefore, not a case where the writ petitioner did not receive any sum from the appellant at all.

On the question of amount of compensation to be paid in lieu of reinstatement, the Hon'ble Supreme Court has held:-

Para 10 "In our considered opinion, compensation equivalent to 3.33 years salary (including allowances as admissible) on the basis of the last pay and allowances drawn by the Appellant would be a reasonable amount to award in lieu of reinstatement taking into account the following factors viz:-

1. The corpus if invested at the prevailing rate of interest (15%) will yield 50% of the annual salary and allowances. In other words every year he will get 50% of what he would have earned by way of salary and allowances with four additional advantages:

- i. He will be getting this amount without working.
- ii. He can work somewhere else and can earn annually whatever he is worth over and above, getting 50% of the salary he would have earned.
- iii. If he had been reinstated he would have earned the salary only up to the date of superannuation (up to 55, 58 or 60 as the case may be) unless he died earlier. As against this 50% he would be getting annually he would get not only beyond the date of superannuation for his lifetime (if he lives longer), but even his heirs would get it in perpetuity after his demise.
- iv. The corpus of lump sum compensation would remain intact, in any event."

92. In that view of the matter, we are of the opinion that payment of compensation for a sum of Rs. 12 lakhs shall meet the ends of justice. Out of the aforementioned amount of Rs. 12 lakhs, the amount which has already been paid to the respondent by the appellant, shall be adjusted. Such balance amount should be paid to the appellant within a period of three months from date.

93. Mr. Shanti Bhushan submitted that the writ petitioner had tried to obtain employment but did not succeed so far. It is, Therefore, not ruled out that he has a chance of getting re-employment. As agreed to by the learned counsel for the parties, the writ petitioner may be technically reinstated in service for a period of three months. However, as the writ petitioner would neither join in his service, nor he shall be assigned with the duties and the functions. as agreed to by the learned counsel for he petitioner. He would not claim any salary for the said period but he would, during the afore-mentioned period, try to obtain an alternative job. The appellant, however, shall issue a formal letter of reinstatement on the afore-mentioned terms to which Dr. Singhvi, learned counsel for the appellant agreed.

94. This appeal is disposed of with the afore-mentioned directions. In the facts and circumstances of this case, however, the parties shall bear their own costs throughout.