

(2016) 04 CAL CK 0010
In the Calcutta High Court
Case No : Writ Petition No. 3989 (W) of 2016

Dynametic Overseas Private Limited

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 15-04-2016

Acts Referred:

Advocates Act, 1961 — Section 30
Banking Regulation Act, 1949 — Section 21
Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : (2016) AIR(Calcutta) 303 : (2017) 1 WBLR 238

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Mr. Abhrajit Mitra, Senior Advocate, Mr. Satadip Bhattacharya, Mr. L. Vishal Kumar, Mr. Rajesh Upadhyay, Mr. Aritra Basu, Ms. Soumosree Chatterjee and Mr. Subhadeep Basak, Advocates, for the Petitioner; Mr. Anirban Pramanick and Mr. Anindya Lahiri, Advoca

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—In view of the common issues involved in these two writ petitions, the same have been heard together. This Bench proposes to dispose of the same by this common judgment and order.

2. The case pleaded in W.P. 3989(W) of 2016 may be noted. The petitioner no. 1 is a private limited company while the petitioner no. 2 is one of its principal officers. The petitioner no. 1 was previously known as R. Piyaarelall International Private Limited (hereafter Piyaarelall). Since 2004, Piyaarelall was availing credit facilities from the State Bank of India, respondent no. 1 (hereafter the SBI). Owing to defaults committed by the SBI, Piyaarelall suffered loss and damages whereby its business was permanently impaired. A civil suit was instituted by Piyaarelall claiming diverse relief. As a retaliatory measure, the SBI issued a notice dated November 27, 2014 threatening to include the name of Piyaarelall in the list of wilful defaulters as provided for by the Reserve Bank of India

(hereafter the RBI) in a document captioned "Master Circular for Wilful Defaulters" (hereafter the master circular). The said notice purported to convey to Piyarelall that if it had any grievance against the decision of the SBI i.e. the proposal to include the names of Piyarelall, its directors and corporate guarantors in the list of wilful defaulters, it may send a representation or appeal in writing within a period of 15 days from date to the Grievance Redressal Committee of the SBI (hereafter the GRC) at the Corporate Centre, Mumbai. It was also informed that if it so desires, it may request for a personal hearing before the GRC. Piyarelall perceived that prior to determination and/or decision to include its name in the list of wilful defaulters it had a right to be heard in compliance with the principles of natural justice. It also perceived that it had a right to receive the decision of the SBI, meaning thereby the reasons for which it was proposed to classify it as a wilful defaulter. By a letter dated December 9, 2014, Piyarelall called upon the SBI to make over a copy of the proposal together with the reasons in support thereof. Since no positive decision was received from the SBI, Piyarelall invoked the writ jurisdiction of this Court by presenting W.P. 105 of 2015 seeking, inter alia, orders on the SBI to withdraw the impugned notice dated November 27, 2014 and to refrain from proceeding further against Piyarelall on the basis of such notice. A coordinate Bench that considered the writ petition disposed it of by an order dated February 17, 2015. Such order reads as follows:

"The Court: This writ challenges a document dated 27th November, 2014. According to Mr. Mitra, learned senior advocate for the writ petitioners it is a decision declaring them as wilful defaulters, without following the correct procedure. According to the bank represented by Mr. Saha, learned advocate it is just a show cause notice.

The submission of Mr. Saha is accepted. The document dated 27th November, 2014 will be taken as a show cause notice. Any alleged decision contained therein will also be taken as an allegation or charge against the petitioners. The petitioners will be at liberty to submit a written defence to this show cause notice, if not already filed and also an additional defence within three weeks from date. The writ petitioners will also be entitled to ask for all documents and details of all facts pleaded in the show cause notice within two weeks from date, which will be provided by the bank within two weeks thereafter.

The adjudication should be made following the norms mentioned in clause 3 especially clause 3(i) of the Master Circular on wilful defaulters published by the Reserve Bank of India. The petitioner should be given a hearing and the decision should be a reasoned one to be made and communicated to the parties.

The interim order dated 5th February, 2015 is hereby vacated.

As no affidavit in opposition has been filed allegations, if any, contained in the petition are not deemed to have been admitted. This application is, accordingly, disposed of."

3. Almost after a year of disposal of the said writ petition, the Deputy General Manager of the SBI issued a notice dated February 16, 2016 reading as follows:

"Madam/Dear Sir,

Personal Hearing Before The Wilful Defaulter Identification Committee

We refer to the notice dated 27.11.2014 issued to you.

2. Your submissions/representations submitted in response to the notice under reference will be examined by the appropriate committee in its meeting to be held on 03.03.2016 at 11 am at State Bank Of India, SAMG, Corporate Centre, Mumbai. You are hereby granted an opportunity for personal hearing to make your submissions before the committee. Accordingly you may remain present at the aforesaid venue or make your submissions through video conferencing arranged at Stressed Assets Management Branch-II, Jeevandeep Building, 1st Floor, 1, Middleton Street, Kolkata 700071 on 03.03.2016 at 11 am.

3. Please note that Lawyers/Chartered Accountants/Consultants who are not partners/Directors/Officers/Employees of the firm/Company will not be allowed to represent your case before the Committee.

4. If you fail to avail the opportunity of personal hearing on the above mentioned date, the committee will pass necessary orders.

5. This communication is issued as per the approval and directions of the committee."

4. The notice dated February 16, 2016 is the subject matter of challenge in W.P. 3989(W) of 2016. The primary grievance of the petitioners is directed against paragraph 3 thereof, extracted supra.

5. It is noticed from an up-dated master circular dated January 15, 2015 of the RBI that it has brought about a change in the procedure for identification of wilful defaulters. In terms thereof, a decision would have to be taken by the Identification Committee instead of the GRC. Should such committee be inclined to recommend for reasons to be recorded that a defaulting borrower ought to be placed in the list of wilful defaulters, a Review Committee would have to look into the recommendation and then decide either in favour or against. It is perceived that in view of this master circular, the petitioners were called upon to attend hearing before the Identification Committee.

6. Mr. Mitra, learned senior advocate appearing for the petitioners, contended that the SBI acted illegally and arbitrarily and in a high-handed manner by informing them in advance of the doors of the hearing hall being shut if they are represented by advocates/chartered accountants/consultants not on their pay roll. He contended that with the enforcement of section 30 of the Advocates Act, the right of an advocate to practise cannot be denied and that since an advocate primarily represents a party, an advocate to be engaged by the petitioners to represent them must be allowed audience. In support of his submission, Mr.

Mitra referred to various decisions which shall be dealt with at a later stage of this judgement and order. Alternatively, it was argued by Mr. Mitra that the petitioners should be permitted to take the assistance of their chartered accountant for the purpose of placing their case and in the event such permission be declined, the same would result in miscarriage of justice. According to him, inclusion of the name of a party in the list of wilful defaulters in terms of the master circular visits such party with civil consequences and it is well-known that any action visiting a party with civil consequences must be consistent with principles of natural justice. It was, accordingly, prayed that the impugned notice insofar as the same restricts the right of the petitioners to be represented by advocates/chartered accountants may be set aside and that the SBI be directed to fix a further date to enable the petitioners to present their version through their advocates/chartered accountants.

7. Per contra, Mr. Pramanick, learned advocate for the SBI and its officers contended that the master circular of the RBI does not envisage representation of any defaulting borrower to be represented by either an advocate or a chartered accountant. He referred to the decisions reported in (2008) 4 SCC 406 [Railway Protection Force v. K. Raghuram Babu], (2006) 11 SCC 645 [National Seeds Corporation Ltd. v. K.V. Rama Reddy] and (1999) 1 SCC 626 [Bharat Petroleum Corporation Ltd. v. Maharashtra General Kamgar Union] to submit that the petitioners in a proceeding before the GRC, or for that matter the Identification Committee, cannot claim any right to be represented by advocates/chartered accountants and that the SBI by issuing the impugned notice neither acted illegally or arbitrarily nor in a highhanded manner, as alleged.

8. It would appear from the rival contentions that a short issue arises for determination on this writ petition i.e. whether the petitioners are entitled to be represented by advocates/chartered accountants at the hearing before the Identification Committee of the SBI.

9. Insofar as this Court is concerned, the issue is no longer *res integra*. This Bench in its decision reported in (2015) 1 Comp LJ 160 (Cal) [Kingfisher Airlines Limited v. Union of India] was called upon to consider whether the United Bank of India (hereafter the UBI) was justified in refusing permission to the petitioning company to be represented by its advocates. It was held, in view of the facts pleaded in the responses to the impugned notices, that the petitioning company could claim no right to be represented by an advocate at the hearing before the GRC of the UBI. An Hon'ble Division Bench of this Court while hearing an appeal against the aforesaid decision of this Bench in its decision reported in (2015) 1 Comp LJ 151 (Cal) [Kingfisher Airlines Limited v. Union of India] had the occasion to observe as follows:

"24. The GRC of the bank is to hear the appellant before taking a view on the appellant's representation that the bank has wrongly classified it as a wilful defaulter. The committee does not possess any power to take down evidence. Hence, there is no scope for examining and cross-examining any witness. The

consequences the appellant is likely to suffer are those specified in the MC. The appellant is a company taking a Rs. 398.22 credit limit from the bank.

29. Here the proceeding is between a lender and a borrower, and a committee of the lender is to hear the borrower. The committee is not to decide any lis between the parties; nor is it to adjudicate any dispute; nor to inquire into any charge and record its findings. It is only to take a view on the appellant's representation against proposal of the bank, based on its records related to the appellant's loan account, to classify the appellant as a wilful defaulter.

30. *****

31. The evident purpose of the hearing of the borrower is to ensure that the lender does not commit a mistake in identifying and classifying a borrower as a wilful defaulter. The appellant's representation is that the bank has wrongly classified it as a wilful defaulter. The GRC of the bank supposed to examine the appellant's case closely in the presence of the appellant that will be free to present its case over the course of hearing, is not, however, empowered to take down any evidence.

32. Hence, in ordinary cases, absence of an advocate for the hearing purpose is not likely to defeat the purpose of the hearing. In this case, we do not find any reason to say that the grounds stated by the appellant for permission to engage advocate to appear before the GRC for the hearing purpose have constituted a case that absence of the service of an advocate for the hearing purpose is likely to defeat the purpose of the hearing."

10. The aforesaid decision of the Hon''ble Division Bench is binding on this Bench. Although the decision was rendered in the context of appearance before the GRC of the UBI, the same applies with equal force to appearance before the Identification Committee constituted by the lender banks. Therefore, the petitioners can claim no right of representation by an advocate before the Identification Committee of the SBI.

11. The claim for representation by an advocate advanced on behalf of the petitioners could be rejected here and now, but since Mr. Mitra has referred to a decision of an Hon''ble Division Bench of the Delhi High Court on the same point taking a different view, it is considered necessary to proceed with an open mind and to ascertain as to whether the Delhi High Court has laid down the law correctly and, therefore, its decision could be of persuasive value.

12. The decision of the Delhi High Court is reported in 2016 (154) DRJ 164 [Punjab National Bank and Ors. v. Kingfisher Airlines Limited and Ors.]. While deciding Punjab National Bank (supra), the Bench apart from considering the decision of the Hon''ble Division Bench of this Court in Kingfisher Airlines Limited (supra) had considered the decision of an Hon''ble Division Bench of the Bombay High Court reported in (2015) 6 Bom CR 315 [Kingfisher Airlines Limited v. Union

of India], wherein it was observed that a borrower is not entitled as a matter of right to be represented by an advocate before the GRC. However in the peculiar facts and circumstances of the case, and to avoid further delay, the Bench permitted the petitioning company to appoint an advocate to represent it provided an undertaking were given that the hearing of the matter would be concluded in one day.

13. The Delhi High Court in Punjab National Bank (supra) while upholding the order under appeal of the learned single judge disagreed with the views expressed by the Calcutta and the Bombay High Courts and in the process appears to have assigned several reasons. This Bench need not deal with those reasons, which are guided by the personal perception of the learned judges comprising the Bench - an impermissible approach to hold in favour of a party ignoring the basic postulate of the rule of law. There can be no doubt that the mind-set and approaches of judges of the High Courts may vary but when it boils down to the question of interpretation of a legal provision and while agreeing that the interpretation of law must keep pace with contemporary needs and challenges, such law cannot be read, interpreted and understood in a manner that would militate against statutory inhibition. It would, however, be necessary to deal with one observation of the Bench relating to representation before the Labour/Industrial Tribunals while deciding disputes referred under the Industrial Disputes Act, 1947, and one reason for which support has been drawn from a statutory provision i.e. section 30 of the Advocates Act. This Bench considers it necessary to extract the relevant discussion, reading as follows:

"(P) We cannot also be unmindful of the fact that notwithstanding the bar contained in the, practicing advocates have continue to appear before the Labour/ Industrial Court save for the fact that they appear not as advocates wearing black coats and robes but as agents of the employer. This Court cannot shut its eyes to the reality of life and we are of the view that the law may rather be in consonance with the practise than such what is practised in breach.

(Q) That takes us to Section 30 of the Advocates Act supra conferring in the advocates a right to practise. Chief Justice of India Justice T.S. Thakur speaking for the High Court of Karnataka in M/s. Kothari Industrial Corporation Limited v. The Coffee Board held that the right of an advocate to practise before any Court or Tribunal, contained in Section 30 of the Advocates Act, necessarily means that a litigant before any such Court, Tribunal, Authority or person will have a right to engage and avail the services of an advocate.

(T) However to invoke Section 30 supra, the GRC constituted under the Master Circular supra would have to satisfy the test thereof.

(U) GRC is definitely not a Court within the meaning of Clause (i) of Section 30 and neither the Master Circular nor any other legislation within the meaning of Clause (iii) of Section 30 entitles an advocate to practise before the GRC. What remains to be considered is whether the GRC qualifies as a "Tribunal or a person

legally authorised to take evidence" within the meaning of Clause (ii) of Section 30.

(V) We have in this context wondered whether the words "legally authorised to take evidence" qualify both "Tribunal" as well as "person" preceding the same but separated by the word "or".

(X) Though the counsel for the respondents, from Clause 3(ii) of the Master Circular requiring the decision taken on classification as a wilful defaulter to be well documented and supported by requisite evidence contended that the GRC is authorised to take evidence but we find the words "legally authorised to take evidence" meaning, authorised to compel presence of any person as a witness and which we do not find the GRC to be authorised to. It thus cannot be said that the GRC is legally authorised to take evidence.

(Y) The only question which thus remains for consideration to attract the applicability of Section 30 supra is, whether the GRC can be called a "Tribunal" within the meaning of Clause (ii) of Section 30 of the Advocates Act.

(Z) Tribunal is a Latin word meaning "a raised platform on which the seats of the Tribunals or Magistrates are placed" (refer State of M.P. v. Anshuman Shukla, (2008) 7 SCC 487).

(AA) Article 136 of the Constitution of India, while conferring in the Supreme Court the power to grant special leave to appeal, provides for a special leave to appeal from any judgment, decree, determination, sentence or order passed by any Court or Tribunal.

(GG) Seen in this conspectus, the GRC has been constituted by the Master Circular. Such Circulars of the Reserve Bank of India (RBI) have in, ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd. (2010) 10 SCC 1 and in Peerless General Finance & Investment Co. Limited v. Reserve Bank of India, (1992) 2 SCC 343 been held to have a statutory character and force of law. The GRC thus satisfies the test aforesaid of having been constituted by the State.

(HH) In our view, the GRC also satisfies the test of having been invested with the State's judicial power and having the trappings of a Court i.e the authority to determine whether the Bank's/FIs proposal to classify a borrower as a wilful defaulter is in accordance with the requirements of the Master Circular and if so satisfied, to declare the borrower as a wilful defaulter and which declaration vitally affects the rights and reputation of the person so declared. Not only does the Master Circular so provide but we have already noted above the dicta of the Supreme Court in Kulja Industries Limited supra holding that the hearing in this regard has to satisfy the requirement of fairness.

(LL) We are therefore of the opinion that the GRC satisfies the tests prescribed to qualify as a Tribunal.

(MM) Once the GRC is held to be a Tribunal within the meaning of Section 30 of

the Advocates Act, the advocates would have a right to practise before it and axiomatically the borrower before such GRC will have a right to engage and avail the services of an advocate."

14. The observation in paragraph (P) (supra) could have been made based on consideration of what actually happens in the Labour/Industrial Courts in the capital, without examining the relevant provision of the Industrial Disputes Act, 1947 i.e. section 36. Unless the preconditions laid down in sub-section (4) of section 36 are satisfied, there is no question of any legal practitioner being permitted to appear before the Labour Courts/Industrial Tribunals. Be that as it may.

15. Paragraph (Q) and onwards were relied on by Mr. Mitra to persuade this Bench to take a different view upon reconsideration of its own decision and the Hon''ble Division Bench decision affirming it, referred to supra. With the deepest of respect for the learned judges who comprised the Hon''ble Division Bench of the Delhi High Court, this Bench regrets its inability to be ad idem with the conclusions recorded in paragraphs (GG), (HH) and (LL), for the reasons that follow.

16. Section 30 of the Advocates Act provides as follows:

"30. Right of advocate to practise. - Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends, -

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

17. That all Courts are tribunals but not the other way round is too well-settled for any authority to be cited. However if any authority is required, one may usefully refer to the Constitution Bench decisions reported in 1992 Supp (2) SCC 651 [Kihoto Hollohan v. Zachillhu] and (2010) 11 SCC 1 [Union of India v. Madras Bar Association]. Having regard to such Constitution Bench decisions and also on the plain reading and understanding of section 30, "courts" in clause (i) would not include a "tribunal" particularly when "tribunal" is separately used in clause (ii). In the considered view of this Bench, neither grammar nor convenience compels the construction adopted by the learned judges in Punjab National Bank (supra) [to the effect that the phrase "legally authorised to take evidence" in clause (ii) qualifies "person" only and not "tribunal"] to be accepted. However, since nothing much turns on this and assuming that the words "legally authorised to take evidence" in clause (ii) qualifies the word "person" only and not the word "tribunal", one may proceed to examine certain relevant aspects touched upon in Punjab National Bank (supra) and having a bearing on the issue at hand.

18. At the dawn of the Constitution, a Constitution Bench of the Supreme Court while examining whether an Industrial Tribunal functioning under the Industrial Disputes Act, 1947 was a "tribunal" within the meaning of Article 136 of the Constitution, considered what is meant by a "court". In its decision reported in AIR 1950 SC 188 [Bharat Bank Ltd. v. Employees], the Bench ruled that before a person or persons can be said to constitute a "court", it must be held that they derive their powers from the State and are exercising the judicial powers of the State. It was also held therein that the expression "tribunal" as used in Article 136 does not mean the same thing as court but includes, within its ambit all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions.

19. What constitutes the "judicial power" of the State needs to be understood at this stage. This Bench can do no better but refer to some other Constitution Bench decisions of the Supreme Court.

20. In the decision reported in AIR 1965 SC 1595 [Associated Cement Companies Ltd. v. P.N. Sharma], the principal point of law which arose in the civil appeal by special leave was whether the State of Punjab, respondent no. 2, exercising its appellate jurisdiction under Rule 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 was a tribunal within the meaning of Article 136 (1) of the Constitution. Hon"ble P.B. Gajendragadkar, C.J. (as His Lordship then was) while holding that the State Government was indeed a "tribunal" within the meaning of Article 136 of the Constitution, observed:

"8. In every State there are administrative bodies or authorities which are required to deal with matters within their jurisdiction in an administrative manner and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often do take into consideration questions of policy. It is not unlikely that even in this process of reaching administrative decisions, the administrative bodies of authorities are required to act fairly and objectively and would in many cases have to follow the principles of natural justice; but the authority to reach decisions conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on Courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decisions pronounced by Courts.

9. *** As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is

really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts, and features which are distinct and separate. The basis and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.

25. It would thus be seen that in dealing with the question as to whether Respondent 2, while it exercises its appellate power under Rule 6(6), is a tribunal under Article 136(1), we must enquire whether Respondent 2 has been clothed with the State's inherent judicial power to deal with disputes between parties and determine them on the merits fairly and objectively. That is the test which has been consistently applied by this Court in considering the question about the status of any body or authority as a tribunal under Article 136(1). Before we proceed to apply this test to Respondent 2's status under Rule 6(6), we think it is necessary to advert to one aspect of the matter which sometimes creates some confusion.

26. We have referred to the three essential attributes of a sovereign State and indicated that one of these attributes is the legislative power and legislative function of the State, and we have also seen that in determining the status of an authority dealing with disputes, we have to enquire whether the power conferred on the said authority or body can be said to be judicial power conferred on it by the State by means of a statute or statutory rule. The use of the expression "judicial power" in this context proceeds on the well-recognised concept of political science that along with legislative and executive powers, judicial power vests in a sovereign State.

In countries where rigid separation of powers has been effected by written Constitutions, the position is very different. Take, for instance, the Australian Constitution. Section 71 of the Commonwealth of Australia Constitution Act (63 & 64 Vict. Chapter 12) provides that the judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as Parliament prescribes. It is clear that the scheme of Sections 71 to 80 which form part of Chapter III of the said Constitution, is that the judicial power of the State can be conferred only on courts recognised by the provisions of the said Chapter. In other words, it is not competent to the legislature in Australia to confer judicial power properly so-called on any body or authority other than or apart from the courts recognised by Chapter III and so, the use of the expression "judicial power" or its conferment in regard to tribunals which are not courts properly so-called, would under the Australian Constitution be wholly inappropriate. If any tribunals other than courts are established and power is given to them to deal with and decide special disputes between the parties, the power which such tribunals would exercise

cannot be described as judicial power, but would have to be called quasi-judicial power.

33. The question which we have to decide in the present appeal is whether the State Government is a tribunal when it exercises its authority under Rule 6(5) or Rule 6(6). No rules have been made prescribing the procedure which the State Government should follow in dealing with appeals under these two sub-rules, and there is no statutory provision conferring on the State Government any specific powers which are usually associated with the trial in courts and which are intended to help the court in reaching its decisions. The requirements of procedure which is followed in courts and the possession of subsidiary powers which are given to courts to try the cases before them, are described as trappings of the courts, and so, it may be conceded that these trappings are not shown to exist in the case of the State Government which hears appeals under Rule 6(5) and Rule 6(6). But as we have already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trappings may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power. It has been conferred on the State Government by a statutory rule and it can be exercised in respect of disputes between the management and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal. Having regard to these distinctive features of the power conferred on the State Government by Rule 6(5) and Rule 6(6), we feel no hesitation in holding that it is a tribunal within the meaning of Article 136(1).

(underlining for emphasis)

21. Reference was made in paragraph (DD) of the decision in Punjab National Bank (supra) to the concurring view of Hon'ble R.S. Bachawat, J. (as His Lordship then was). It would be profitable to quote the relevant portion of His Lordship's view on the point:

"44. An authority other than a court may be vested by statute with judicial power in widely different circumstances, which it would be impossible and indeed inadvisable to attempt to define exhaustively. The proper thing is to examine

each case as it arises, and to ascertain whether the powers vested in the authority can be truly described as judicial functions or judicial powers of the State. For the purpose of this case, it is sufficient to say that any outside authority empowered by the State to determine conclusively the rights of two or more contending parties with regard to any matter in controversy between them satisfies the test of an authority vested with the judicial powers of the State and may be regarded as a tribunal within the meaning of Article 136. Such a power of adjudication implies that the authority must act judicially and must determine the dispute by ascertainment of the relevant facts on the materials before it and by application of the relevant law to those facts. This test of a tribunal is not meant to be exhaustive, and it may be that other bodies not satisfying this test are also tribunals. In order to be a tribunal, it is essential that the power of adjudication must be derived from a statute or a statutory rule.***"

(underlining for emphasis)

22. Even the view extracted supra makes it clear that to constitute a "tribunal", albeit within the meaning of Article 136 of the Constitution, an outside authority must be vested with the judicial power of the State by a statute/statutory rule to examine a dispute between rival groups and to decide the rights of the parties.

23. While deciding Associated Cement Companies (supra), the Supreme Court referred to an earlier Constitution Bench decision reported in AIR 1964 SC 1140 [Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, Additional Collector of Customs, Calcutta]. That was a case governed by the Sea Customs Act, 1878. An order was passed by the Collector of Customs confiscating the appellant's motor vessel under Section 167(12A) of the Act of 1878 and giving it option under Section 183 thereof to pay a fine of Rs. 25 lakhs in lieu of confiscation. It was contended that the order was passed on a misconception of Section 52A. An appeal was preferred before the Central Board of Revenue. The Board expressed its concurrence with the conclusion of the Collector of Customs. Revision filed against the appellate order also failed whereupon the Supreme Court was moved and special leave to appeal was obtained. The Additional Solicitor General had urged that none of the Customs authorities that had dealt with the appellant's case is a "tribunal" within the meaning of Article 136 of the Constitution and hence the appeal was incompetent. It was ultimately held as follows :

"9. It is settled by decisions of this Court that the Customs Officer who initially acts under Section 167(12-A) is not a Court or Tribunal, though it is also settled that in adjudicating upon the question as to whether Section 52-A has been contravened by any ship and by such contravention the said ship has made itself liable to confiscation under Section 167(12-A), the Customs Officer has to act in a quasi-judicial manner. In *Sewpujanrai Indrasanarai Ltd. v. Collector of Customs*, AIR 1958 SC 845 this Court has held that an order of confiscation or penalty passed under the Sea Customs Act is not a mere administrative or executive act, but is really a quasi-judicial act, and, therefore, an application for a writ of certiorari lies in respect of such order under Article 226 of the

Constitution.

.....Similarly, in *Thomas Dana v. State of Punjab*, AIR 1959 SC 375 this Court has observed that the Collector and other Officers in the hierarchy mentioned by the Sea Customs Act may have to act judicially in the sense of having to consider evidence and hear arguments in an informal way; even so, the Act does not contemplate that in doing so, the said authorities are functioning as a Court.

10.The result, therefore, is that it is no longer open to doubt that the Customs Officer is not a Court or Tribunal though in adjudicating upon matters under Section 167 of the Act he has to act in a judicial manner....."

24. The other decision is *Kihoto Hollohan* (supra), wherein it was observed :

"99. Where there is a lis - an affirmation by one party and denial by another - and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. ***"

25. Reference in this connection may also be made to the decision of a Bench of two learned judges reported in (2005) 7 SCC 472 (*Management Committee, Montfort Senior Secondary School v. Vijay Kumar*) where meaning assigned to the words "judicial", "judicial power" and "judicial authority" in certain foreign decisions and legal dictionaries were noticed while examining the question as to whether the Delhi High Court was justified in upholding the order of the Delhi School Tribunal constituted in terms of section 11 of the Delhi School Education Act, 1973 that rejected the plea of the appellant to refer the dispute between it and the respondent no.1, a dismissed teacher, to arbitration under the Arbitration and Conciliation Act, 1996.

26. The aforesaid decisions are authorities for the proposition that in India, the State i.e. either the Union or its component states, has an inherent judicial power. The courts of law and other bodies such as tribunals and other statutory authorities have been obliged to perform judicial functions, and powers are vested in this behalf by the State by a statute/statutory rule. In discharge of their functions, these courts, tribunals and other statutory authorities are considered to be the delegates of the State. Since the judicial power of the State for administration of justice to its subjects are exclusively vested in courts or tribunals, these fora necessarily have to decide disputes between parties that are brought before it according to accepted norms of judicial procedure. That a true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites i.e. (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in

dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law, seems to have been accepted by the Supreme Court itself in *Bharat Bank* (supra). It also proceeded to lay down that a quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2) referred to above, but does not necessarily involve (3) and never involves (4), since the place of (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice.

27. The ruling of the Supreme Court in its decision reported in AIR 1973 SC 303 [*Union of India v. K.P. Joseph*] that the principle of *audi alteram partem* applies even in respect of an administrative order which confers right and imposes duties, cannot also be ignored. What logically follows is that merely because parties are heard and evidence produced by them considered prior to an order being passed by an administrative authority does not necessarily make his order a quasi-judicial order. It remains to be an administrative order with the authority passing the order being under an obligation to discharge functions as if it were a quasi-judicial authority.

28. Insofar as courts are concerned, there appears to be no problem. It is only in respect of the tribunals and other statutory authorities that an enquiry is needed to come to a conclusion as to whether the judicial power of the State has been vested in them or not. The test formulated in *Associated Cement Company* (supra) has to be applied in such a situation. If vested with the State's judicial power, the tribunals and other statutory authorities could be regarded as "tribunal" within the meaning of Article 227 as well as Article 136 of the Constitution; if not, they cannot be so regarded.

29. There can be no disagreement with the views expressed in *Punjab National Bank* (supra) in respect of two aspects, i.e. the GRC has no power to compel the attendance of a witness for adducing evidence, and that the master circular does not provide for representation by an advocate and hence clause (iii) of section 30 would have no application in a case of the present nature. However, taking a cue from the above decisions and applying the test formulated by the Supreme Court, there can hardly be two opinions that insofar as the present dispute is concerned, the GRC/Identification Committee of the SBI does not wear the hat of an adjudicator upon entrustment of judicial functions to it by the State by any legislation; on the contrary, it would proceed to discharge a purely administrative function as a part of its duty envisaged in the RBI's master circular. Although the master circular may have statutory force, the same does not envisage adjudication of a dispute between a borrower and a lender by an outside authority. In the real sense, between the lender and the borrower there is no lis that as an adjudicator the GRC/Identification Committee is required to decide, - lis here meaning an affirmation by one party and denial by another involving the rights and obligations of the disputing parties. The tentative decision to include a defaulting borrower in the list of wilful defaulters is taken by the GRC/

Identification Committee of the lender bank and it is such committee that decides upon finally in regard to inclusion/exclusion except that with the advent of the up-dated master circular, the final decision now rests with a Review Committee. The GRC/ Identification Committee do not comprise of persons having no connection with the affairs of the lender bank but, on the contrary, comprises of officers of the lender bank itself. The proceeding of the GRC/ Identification Committee for inclusion of a defaulting borrower in the list of wilful defaulters is essentially a fact-finding exercise, followed by an administrative decision. Such proceeding does not assume the character of a proceeding before a tribunal, where the adjudicator appointed to decide rights of parties has to proceed without bias and predilection, and maintain absolute fairness and impartiality. If the reasoning in Punjab National Bank (supra) were to be accepted, every statutory authority duty bound in terms of statutory provisions to decide rights and obligations of citizens quasi-judicially before taking an administrative action would have to be regarded as "tribunal", for e.g. an authority acting under statutory provisions to cancel licenses/permits, an authority authorised to determine tax liabilities, an authority empowered to take disciplinary action against its employee on a finding of misconduct arrived at in pursuance of domestic enquiry, etc. If such an authority were regarded as a "tribunal", it would stand to reason that its decision could be made amenable to the jurisdiction of the High Courts under Article 227 or of the Supreme Court under Article 136 of the Constitution. The position in law obviously is not so, since the GRC/Identification Committee does not decide any lis. As the GRC/ Identification Committee of the lender bank, it considers the cause shown by the borrower and after hearing its version decides either in favour or against inclusion of the borrower's name in the list of wilful defaulters. In the process the functions of the GRC/Identification Committee are not anything more than administrative or executive acts.

30. In view of this Bench's understanding of the law based on authoritative decisions of the Supreme Court, it is held that the GRC/Identification Committee of the lender bank has not been delegated judicial functions by the State and cannot be regarded as a "tribunal" within the meaning of clause (ii) of section 30 of the Advocates Act. In terms of the master circular of the RBI, it is nothing more than an administrative authority and its decision to either identify or declare a defaulting borrower as a wilful borrower is effectively an administrative decision although in the process of giving such administrative decision, the GRC/ Identification Committee may have to comply with principles of natural justice and give its decision in a fair manner supported with reasons. If only the master circular being the law relevant for the present purpose had entitled an advocate to practise before the GRC/Identification Committee, the right of representation of a borrower before it could have been extended to an advocate, and not otherwise.

31. Should the decision in Punjab National Bank (supra) hold the field and the GRC/Identification Committee be regarded as a "tribunal" within the meaning of

section 30(ii) of the Advocates Act, it would have to be regarded as a "tribunal" within the meaning of Article 136 of the Constitution too and a petition for special leave may be presented before the Supreme Court against the decision of the GRC/Identification Committee. No High Court, far less this Court, would make such an interpretation of the laws that would enable a party to approach the Supreme Court direct against an administrative decision by way of special leave petition. The fallacy in the reasoning of the Bench leading to the GRC being given an exalted status of a "tribunal" is so conspicuous that it is hard to overlook.

32. Since the decision of the Delhi High Court in Punjab National Bank (supra) has evidently not taken note of the decisions in Bharat Bank (supra), Kihoto Hollohan (supra) and Vijay Kumar (supra) as well as the extracted passages from the decision in P.N. Sharma (supra) in the proper perspective, this Bench has no hesitation to hold that the same is unworthy of being relied upon and cannot be pressed into service by Mr. Mitra to urge this Bench to revisit its own decision.

33. It would not be irrelevant to notice at this stage the decisions relied on by Mr. Pramanick and the proposition of law laid down therein based on consideration of previous decisions of the Supreme Court on the point of representation of a delinquent employee in a domestic enquiry by a legal practitioner. A sentence from the decision in K.V. Rama Reddy (supra) summarises the legal position and is extracted below:

"7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation. ***"

34. Harsh it is, no doubt, for an employee facing domestic enquiry. More often than not, the enquiry officer is a man of the organisation to which both the disciplinary authority and the delinquent employee belong. Obviously, it does not meet the test of justice being seen to be done. The employee may be a Group "D" staff, not knowing how to defend himself. If the presenting officer is not a legally trained person and the rules/regulations governing such enquiry do not recognise the right of being assisted even by a co-employee, the poor employee has to fight it out alone against his mighty employer. If such a poor employee is not entitled to assistance, does a defaulting borrower in the absence of a right of representation being recognised in the master circular stand on a better footing? No, never! The High Courts are bound by the law laid down by the Supreme Court and the ingenuity on display in search of providing succour to parties who do not blink an eye-lid to ruin the nation's economy has to be eschewed.

35. Now, the other decisions cited by Mr. Mitra are taken up for consideration.

36. The decisions reported in AIR 1983 SC 109 [Board of trustees of the Port of

Bombay v. Dilipkumar Raghavendranath Nadkarni], (1991) 2 SCC 283 [J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd.] and (1972) 3 SCC 542 [C.L. Subramaniam v. Collector of Customs, Cochin] were relied on in support of the proposition that the petitioners have a right to be represented by an advocate/chartered accountant when the committee consists of legally trained persons.

37. In Dilipkumar Raghavendranath Nadkarni (supra), regulation 12(8) of the Bombay Port Trust Employees Regulations came into force from May 8, 1976 and it permitted representation of a delinquent by a legal practitioner if the presenting officer appointed by the disciplinary authority were a legal practitioner. The Supreme Court proceeded to set aside the decision of the disciplinary authority for failure to afford to the delinquent the opportunity to appear through a legal practitioner since, according to the Court, the inquiry stood vitiated thereby. Dismissal of the appeal with costs was thus ordered. It would appear from paragraph 8 of the decision that whether or not in a domestic enquiry, which is likely to result in serious civil and pecuniary consequences to the party proceeded against should be permitted to appear through a legal practitioner with a view to giving him a reasonable opportunity to defend himself, on his request, was kept open. This decision, therefore, has no application on facts and in the circumstances.

38. The decision in J.K. Aggarwal (supra) had been considered by this Bench while deciding Kingfisher Airlines Limited (supra). There cannot be any dispute with regard to the proposition of law laid down therein. However in the present case, there is no evidence which is worthy of reliance that any member of the GRC/Identification Committee is a legally trained person. Law is well-settled that when a point of law is required to be substantiated by facts, the party raising the point must plead and prove such facts by evidence which must appear from the writ petition, and that if such facts are not pleaded or the evidence in support of such fact is not annexed to the writ petition, the Court shall not entertain the point. Reference in this connection may be made to the decision reported in (1988) 4 SCC 534 [Bharat Singh v. State of Haryana]. It is the duty of the petitioners to show by annexing relevant evidence to the writ petition that members comprising the GRC/Identification Committee are legally trained persons. That having not been shown, the decision in J.K. Aggarwal (supra) as well as the decision of the Madras High Court reported in (2005) 2 MLJ 119 [Chairman and Managing Director, Hindustan Teleprinters Ltd. v. M. Rajan Isaac], also cited by Mr. Mitra, has no application here.

39. In C.L. Subramaniam (supra), the Supreme Court held that the fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him, lest the scales should be weighed against him; keeping in mind such circumstance and bearing in mind rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 and its contravention, the Court

had proceeded to grant relief to the appellant. This Bench has failed to comprehend the materiality of this decision for deciding the issue that has emerged here.

40. The next decision that calls for consideration is the one reported in (2013) 4 WBLR (Cal) 919 [Santanu Ghosh and ors. v. State Bank of India and ors]. It appears on perusal thereof that a coordinate Bench of this Court proceeded to strike down the decision of the bank basically on the ground that the written representation of the petitioner was not considered and it was the ipse dixit of the officers comprising the committee that the petitioner was a wilful defaulter, which was recorded. The stage at which Santanu Ghosh (supra) was decided and the stage at which the petitioners have approached this Bench are wholly different and, therefore, the observations in Santanu Ghosh (supra) are of no help to them.

41. The decision reported in (2004) 2 ARB LR 163 [Faze Three Exports Ltd. v. Pankaj Trading Co.] arose out of a proceeding under the Arbitration and Conciliation Act 1996. It would appear from the discussions made therein that arbitral proceedings are not administrative in nature and they are at least quasi-judicial. It is in such circumstances that the learned judge proceeded to make the observations on which reliance has been placed. Such observations would not apply where proceedings are purely administrative. This decision is also of no help to the petitioner.

42. Reliance has also been placed on the decision reported in (2002) 5 SCC 685 [Indian National Congress (I) v. Institute of Social Welfare] for the proposition that it is not necessary for any lis between two parties to be determined for the authority to be regarded as quasi-judicial and paragraphs 20 to 25 and 27 to 29 have been referred to in this connection. It would appear from paragraph 20 of the decision that whether or not the Election Commission in exercise of its powers under section 29-A of the Representation of People Act, 1951 exercises administrative or quasi-judicial powers was the question that fell for consideration. Paragraphs on which reliance have been placed by Mr. Mitra (20 to 25 and 27 to 29) must necessarily be read together with paragraph 26 reading as follows:

"26. Coming to the second argument of learned counsel for the respondents, it is true that mere presence of one or two attributes of quasi-judicial authority would not make an administrative act as a quasi-judicial act. In some case, an administrative authority may determine question of fact before arriving at a decision which may affect the right of an appellant but such a decision would not be a quasi-judicial act. It is a different thing that in some cases, fair play may demand affording of an opportunity to the claimant whose right is going to be affected by the act of the administrative authority, still such an administrative authority would not be a quasi-judicial authority."

However, having regard to the provisions of section 29-A, it was observed in

paragraph 31 as follows:

"31. From the aforesaid provisions, it is manifest that the Commission is required to consider the matter, to give opportunity to the representative of the political party and after making enquiry and further enquiry arrive at the decision whether to register a political party or not. In view of the requirement of law that the Commission is to give decision only after making an enquiry, wherein an opportunity of hearing is to be given to the representatives of the political party, we are of the view that the Election Commission under Section 29-A is required to act judicially and in that view of the matter the act of the Commission is quasi-judicial."

43. The observations made in the decision ought to be borne in mind while deciding whether a particular act is administrative in nature or quasi-judicial. Much would depend on the applicable law. Take the case of an application made by a person for a permit to operate stage carriage service or one made for a liquor licence. Can the applications be rejected on the mere ipse dixit of the permit granting/licensing authority, if the relevant statute provides guidelines for fair consideration thereof? The answer has to be in the negative. Not only are the guidelines to be followed, opportunity of hearing has to be afforded unless the statute expressly or by implication excludes a hearing. The administrative act of grant/refusal to grant must be preceded by quasi-judicial exercises. Insofar as the master circular is concerned, there is no doubt that the lender identifies a defaulting borrower who ought to be placed in the list of wilful defaulters and upon hearing the version of the defaulting borrower ultimately decides in regard to its inclusion/non-inclusion in the list. Notwithstanding the requirement of the master circular regarding the requirement of compliance with natural justice, the GRC/Identification Committee of the lending bank not being authorised to take evidence cannot be said to discharge functions other than administrative. Having regard to the above, there is no question of holding in favour of representation of the petitioners before the GRC/Identification Committee by an advocate. It cannot be gainsaid that the right of an advocate to practise is not unrestricted and is subject to reasonable restrictions.

44. Apart from the discussions above, there is one other point which is a hurdle that the petitioners have not been able to clear. Hearing was sought to be afforded to the petitioners in compliance with the order of the coordinate Bench dated February 17, 2015. By that date, the up-dated master circular had come into existence which required the Identification Committee to consider the point of identification of a defaulting borrower as a wilful defaulter. Such up-dated master circular provides that a hearing may be afforded to the party proceeded against if the Identification Committee considers it necessary. The master circular does not refer to representation by an advocate. In the absence of any such enabling provision, clause (iii) of section 30 would stand in the way and not permit a representation by an advocate as of right. In proceedings before the GRC/Identification Committee if at all the petitioners had the right of being

represented by their advocates and sought enforcement thereof, they ought to have urged the point before the coordinate Bench on February 17, 2015 when their earlier writ petition was disposed of directing the bank to give hearing. Having regard to the legal position that in terms of the up-dated master circular no party can claim a hearing before the Identification Committee as a matter of right and the petitioners having been made entitled to a hearing by an order of the coordinate Bench, the plea raised herein is barred by constructive res judicata.

45. In course of hearing, Mr. Mitra was called upon to satisfy this Bench as to whether the petitioners did in fact seek representation by an advocate/chartered accountant. Attention was invited to letters dated March 3, 2015 and March 23, 2015. Regrettably, such letters were not proved to the satisfaction of the Bench to have been served on the SBI.

46. Insofar as representation by a chartered accountant is concerned, such right of representation is not to be readily inferred. The petitioners have also not in their response to the notice dated November 27, 2014 set up any necessity of being assisted by a chartered accountant. There is, thus, no question of the petitioners being allowed the assistance of a chartered accountant. However, the accountant of the petitioners or any one directly related to the affairs of the petitioner no.1 and in its pay roll may be allowed to assist the petitioners.

47. For all the reasons aforesaid, there is no merit in W.P. 3989(W) of 2016, which stands dismissed accordingly. For identical reasons, W.P. 3990(W) of 2016 also stands dismissed.

48. The Identification Committee of the SBI shall fix a date in May, 2016 with at least 72 hours" advance notice to the petitioners for hearing them and shall thereafter pass appropriate orders in accordance with law.

49. Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of W.P. No. 3990 (W) of 2016. Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.