

(2010) 06 GUJ CK 0005

In the Gujarat High Court

Case No : Special Civil Application No. 7353 of 2010

Harendrakumar Ratilal Thaker

APPELLANT

Vs

New India Assurance Co. and Others

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Central Motor Vehicles Rules, 1989 — Order 17 Rule 2, Order 8 Rule 10, Order 9 Rule 13

Constitution of India, 1950 — Article 227

Motor Vehicles Act, 1988 — Section 140 , 169

Citation : AIR 2010 Guj 173

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : R.C. Kakkad, for the Appellant;

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned Advocate Mr. Rajesh C. Kakkad for Petitioner Harendrakumar Ratilal Thaker in this group of petitions. In present petitions, Petitioner owner of passenger bus bearing No. GJ.14.T.35 has challenged order passed by Motor Accident Claims Tribunal, Amreli in Claim Misc. Application No. 23/2009 to Claim Misc. Application No. 32/2009 dated 15.5.2010 which were filed by Petitioner under Order 9, Rule 13, Order 8, Rule 10 and Order 17, Rule 2 read with Section 169 of Motor Vehicles Rules, 1989 in respect to Motor Accident Claim Petition Nos. 313 of 1997, 329/ 1997, 330/1997, 331/1997, 400/1997, 442/ 1997, 463/1997, 024/1998, 025/1998 and 026/1998. Motor Accident Claims Tribunal, Amreli has allowed applications preferred by Petitioner and Motor Accident Claim Petitions have been restored to original file for owner of truck No. GJ. 14.T.35 and New India Assurance Co. of said Truck with condition that present Petitioner shall deposit an amount of Rs. 2,11,223.00 in respect to Special Civil Application No. 7353 of 2010, Rs. 2,91,384.00 in respect to Special Civil Application No. 7354 of 2010, Rs. 2,91,384.00 in respect to Special Civil Application No. 7355 of 2010, Rs. 1,79,432.00 in respect to Special Civil

Application No. 7356 of 2010, Rs. 2,11,029.00 in respect to Special Civil Application No. 7357 of 2010, Rs. 1,29,412.00 in respect to Special Civil Application No. 7358 of 2010, Rs. 2,91,384.00 in respect to Special Civil Application No. 7359 of 2010, Rs. 94,447.00 in respect to Special Civil Application No. 7360 of 2010, Rs. 1,61,066 in respect to Special Civil Application No. 7361 of 2010 and Rs. 1,70,640.00 in respect to Special Civil Application No. 7362 of 2010. Claims Tribunal, Amreli directed to deposit amounts as aforesaid within 30 days before Claims Tribunal failing which said order will be inoperative. Claims Tribunal also ordered in each application that after deposit of amount by present Petitioner, said amount be kept in FDR in the name of Nazir of District Court, Amreli till final disposal of main claim petition. In this group of petitions, Petitioner is having grievance against imposing condition to deposit amount as ordered by Claims Tribunal in order dated 15.5.2010 while restoring Miscellaneous Applications to original file.

2. Brief facts of present petitions, are to the effect that the aforesaid group of claim petitions was filed before Claims Tribunal Amreli wherein present Petitioner was opponent No. 1 and present opponent Nos. 1 to 4 were original opponent Nos. 1 to 4. Accident for which compensation was prayed was occurred on Ahmedabad-Bagodara Highway near Loliya Deep 3rd July, 1997. In that accident, Luxury Bus No. GJ.14.T.65 owned by present Respondent No. 3 original opponent No. 4 was drowned. It was submitted that Luxury Bus No. GJ.14.T.35 and GJ.14.T.65 were insured with present Respondent Nos. 1 and 5 original opponent Nos. 2 and 5. Several claim petitions were filed by various applicants but as the same were arising from same accident, said applications were consolidated and evidence was recorded in MACP No. 313 of 1997, all ten claim petitions were decided by consolidated judgment and award dated 29.3.2005. According to Petitioner, summons notice of main claim petition for the first time was served to Petitioner but as the Petitioner was busy in RTO and Police Proceedings in respect of the bus owned by Petitioner, Petitioner could not remain present before claims tribunal on 8.9.1997 and Petitioner also could not file his objections in claim petition and same were disposed of by claims tribunal vide judgment and award dated 29.3.2005. Petitioner was busy in getting released vehicle by paying requisite taxes in all such process present Petitioner was compelled to visit Ahmedabad frequently. Petitioner being diabetic, because of accident, he was mentally upset, due to accident, means of his earning became useless, and he was compelled to work hard round the clock to restart business, thus, present Petitioner has not remained absent intentionally but because of unavoidable circumstances Petitioner could not remain present. According to Petitioner, no notice was served upon Petitioner in respect of proceedings related to No Fault Application and of Lok Adalat in which said matter was placed, meaning thereby, to say that all proceedings in respect of claim petition have been initiated in absence of Petitioner. Judgment and award dated 29.3.2005 passed in absence of Petitioner and is, therefore, ex parte and, therefore, Petitioner has filed aforesaid applications before Claims Tribunal for getting chance to proceed bi-parte.

Petitioner submitted in claim Misc. applications that neither any order has been passed for closing right of evidence nor any order to proceed petition ex parte has been passed by Tribunal in main claim petitions. That after considering the objections of opponents qua Claim Misc. Applications, Claims Tribunal allowed the claim miscellaneous applications as aforesaid by order dated 15.5.2010 wherein claims tribunal directed Petitioner to deposit amounts and ordered to invest same as stated earlier which has been objected by Petitioner by filing these petitions. According to Petitioner, insurance company has already paid compensation to original claimants and in that circumstances, without any final outcome of matter, imposition of such condition would be unjust, improper, illegal and against principles of natural justice.

3. It is necessary to note that accident occurred on 3rd July, 1997 at Ahmedabad-Bagodara Highway near Loliya Deep due to sinking of both luxury buses involved in accident as drivers of both buses were driving their respective buses at excessive speed in a rash and negligent manner and when buses reached at the place of accident, at that time, there was much rainy water and both buses tried to drive buses near deep and, therefore, drivers of both buses lost control over their buses and both buses had sunk in the said Liliya Deep and some of the passengers were saved and some of them died in said accident which had taken place due to sheer negligence on the part of drivers of both vehicles and, therefore, aforesaid group of claim petitions were filed by respective claimants before claims tribunal at Amreli. Said claim petitions have been decided by Motor Accident Claims Tribunal, Amreli on 29.3.2005. Claims Tribunal allowed said claim petitions against owner of Bus No. GJ.14.T.35 and claim against owner and insurance company of Bus No. GJ.14.T.65 has been rejected. Operative portion of order of claims tribunal, Amreli dated 29th March, 2005 is quoted as under:

(1) The claim petitions are partly allowed against the opponent i.e. owner of the Bus No. GJ. 14.T.35 and the claim against owner and insurance company of the Bus No. GJ.14.T.J65 is hereby rejected. The claims against the insurance company of bus No. GJ. 14.T.35 are also not maintainable and insurance company is not liable to satisfy the awards.

(2) The applicants are entitled to following compensation amount from owner of the bus No. GJ.14.T.35 with running interest at the rate of 9 per cent p.a. from the date of filing of the claim petitions till its realization and proportionate costs:

Claim Case No. Amount of compensation

313/1997 Rs. 1,75,000/-

329/1997 Rs. 1,75,000/-

330/1997 Rs. 1,45,000/-

331/1997 Rs. 1,05,000/-

400/1997 Rs. 100,000/-

442/1997 Rs. 75000/-

443/1997 Rs. 1,05,000/-

024/1998 Rs. 1,75,000/-

025/1998 Rs. 1,75,000/-

026/1998 Rs. 1,75,000/-

(3) However, as per the ratio laid down by the judgment of the Hon"ble Supreme Court in National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, that insurance company is directed to deposit the amount of compensation payable to applicants as above and recover the same from the owner of the Bus No. GJ.14.T.35 by initiating proceedings before the executing court, it need not file a separate suit.

(4) The opponent owner and insurance company of the Bus No. GJ.14.T.35 are directed to deposit the aforesaid amount of compensation in the office of the Tribunal within one month from the date of this order.

(5) On depositing the aforesaid amount in the office of the Tribunal, deducting the amount of court fees, due if any, 70 % amount shall be deposited in FDR in any Nationalized Bank for the period of five years in the name of the applicants, with condition that no loan or no charge shall be created on this FDR without prior permission of the Tribunal. However, the applicants will be entitled for periodical interest that accrues on the said FDR and remaining 30 % shall be paid to applicants by crossed A/c Payee Cheque.

(6) Amount of interim compensation paid u/s 140 of M.V. Act be recovered first.

(7) Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurance company will pay to the claimants, the offending vehicle shall be attached, as a part of the security. If necessity arises, the executing court shall take assistance of the concerned Regional Transport Authority.

(8) Award be drawn accordingly. Signed & pronounced in open Court today on this 29th day of March, 2005.

4. The question of liability of insurance company has been decided by Claims Tribunal in paragraph 29 in respect to Luxury Bus No. GJ. 14.T.35 as discussed in paragraphs 29 and 30 as under:

Liability of Compensation:

29. It is contended by the LA Mr. Sayani for the insurance company that the insured of Luxury Bus No. GJ.14.T.35 was plying his bus without permit. In support of his contention, RTO Certificate from Bhavnagar is also produced by him on record. In view of the contention raised by the LA Mr. Sayani as there was no permit on the date of accident and it is found that it is breached of driver and

owner of the offending vehicle as he has not obtained permit for the vehicle in question. It is further contended that the driver of the offending vehicle was not holding valid driving licence at the time of accident. In view of this contention, he has relied upon National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, which reads as under:

The insurer resisted the claim on the ground that the insured had not obtained permit to ply the vehicle and therefore, in terms of the policy of insurance the insurer had no liability. Tribunal accepted the plea. It was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof.

On verification of record, it is found that the permit of the Bus No. GJ.14.T.35 issued by the RTO, Bhavnagar has expired prior to accident. Further, as per certificate of RTO, Bhavnagar, the said permit was not renewed till the date of accident. This leads to a clear finding that the offending vehicle was being used without valid permit of RTO, thereby violating the provisions of M.V. Act and terms of policy. There is no substance in the submission of the LA for the insurance company that the driver of the offending vehicle has no valid driving licence because documents produced in the matter show that the licence was valid on the date of accident.

In view of the above cited ratio, the claim against the insurance company is not tenable, but however as per the aforesaid ruling of the Hon"ble Supreme Court, the insurance company can be directed to deposit the amount of compensation and recover the same from the owner of the Bus. For this, I rely upon para 13 of the aforesaid ruling which is as under:

... Before release of the amount to the claimants, owner of the offending vehicle shall furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the concerned Regional Transport Authority. The executing court shall pass appropriate orders in accordance with law as to the manner in which the owner of the vehicle shall make payment to the insurer. In case there is any default, it shall be open to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle i.e., the insured.

30. It is brought to the notice during the course of argument that the Petitioners of this petitions have also joined the owner and insurance company of the luxury bus No. GJ.14.T.65, but it is found from the evidence on record that the said vehicle was not involved in the alleged accident and, therefore, the claim against the owner and insurance company of the Bus No. GJ.14.T.65 is required to be dismissed and hence it is dismissed.

5. Thus, in view of decision given by Claims Tribunal in its award, liability of the insurance company has been denied and it is held that insurance company is not liable to pay any amount of compensation to claimants, therefore, claim against insurance company of luxury bus of Petitioner is not tenable but however direction has been issued to insurance company of luxury bus of Petitioner to deposit amount of compensation and then to recover same from Petitioner means owner of Bus No. GJ.14.T.35. It is also necessary to note that summons issued by claims tribunal was served upon Respondents Nos. 1,3 and 4 but no appearance was filed by Petitioner and Petitioner had remained absent and no advocate was engaged by Petitioner. After passing of award by claims tribunal, amount has been deposited by insurance company and same has been disbursed to original claimants. These facts have been mentioned by claims tribunal, Amreli in para 5 page 27 of order dated 15.5.2010. Therefore, para 5 of order dated 15.5.2010 is quoted as under:

That this Tribunal has considered submissions made on behalf of the present applicant and insurance Co. The Insurance Co. has deposited the amount and the same has been disbursed to the original applicants, thus, now the dispute remains with the owner of the Bus No. GJ.14.T.35 and the Insurance Co.

6. Learned Advocate Mr. RC Kakkad appearing for Petitioner has submitted that in view of common award passed by claims tribunal as referred above, execution proceedings have been initiated by insurance company against present Petitioner and after receiving summons from executing court, Petitioner has approached claims tribunal, Amreli by filing Miscellaneous Applications as aforesaid for setting aside ex parte award and restoration of claim petitions. It is necessary to note that Petitioner had remained absent in original proceedings which were filed by claimants and not engaged any advocate for defending the proceedings and common award was, thereafter passed on 29th March, 2005 and, thereafter also, Petitioner remained silent and no steps have been taken by Petitioner against ex parte award before claims tribunal at Amreli. It is also necessary to note that in main proceedings, no written statement was filed by Petitioner. Claims Tribunal has consolidated all ten matters and decided to proceed with present Petitioner ex parte. After receiving notice from executing court in respect to proceedings initiated by insurance company, immediately Petitioner has approached motor accident claims tribunal Amreli on 27th March, 2006 with a prayer to set aside ex parte award and restore original claim petitions and give reasonable opportunity to Petitioner to defend proceedings of claim petitions. Said applications are dated 27th March, 2006 but were presented before claims tribunal, Amreli on 28th January, 2009 and registered by claims tribunal in the year 2009. Said applications remained pending with Petitioner for a period of three years and no steps have been taken by Petitioner though it was within his knowledge that he is facing execution proceedings arising from ex parte award passed by claims tribunal on 29th March, 2005 against him. In Miscellaneous Applications, date mentioned is 27.3.2006 but in fact, they were presented before claims tribunal, Amreli by Advocate Mr. H.J. Bhadula on 28th January, 2009 as per endorsement

made by Registrar, District Court, Amreli. Therefore, in view of this background, claims tribunal, Amreli has considered lapse committed by Petitioner in not remaining present before claims tribunal in original proceedings. No written statement was filed and no advocate was engaged by Petitioner after service of summons issued by claims tribunal in original claim petitions. Even after passing of common award by claims tribunal on 29th March, 2005, immediately, no steps were taken by Petitioner upto January, 2009. Miscellaneous Applications filed by Petitioner for setting aside ex parte award were registered in 2009 though such miscellaneous applications were already prepared by Petitioner on 27th March, 2006. In spite of such sheer negligence and intentional lapse on the part of Petitioner, claims tribunal has, after considering facts and circumstances of the case, granted opportunity to participate in proceedings by order dated 15.5.2010 though Petitioner remained absent in original proceedings and even after pronouncement of judgment by claims tribunal, initiated no steps for setting aside ex parte award. Considering entire facts and circumstances of case, claims tribunal has restored original proceedings for giving just and reasonable opportunity to Petitioner and imposed condition to deposit entire amount in respect to each claim petition before claims tribunal and also ordered that such amounts are to be deposited in FDR. According to my opinion, Claims tribunal passed said order in Miscellaneous Applications on 15th May, 2010 just to test bona fides of the Petitioner which is clearly establishing fact that if Petitioner wants to have reasonable opportunity to defend his case, then, he must have to deposit amount of compensation awarded by claims tribunal, before claims tribunal, within thirty days and according to my opinion; this is a condition imposed by claims tribunal just to test bona fide challenge of Petitioner is there or not. Therefore, such condition has been imposed by claims tribunal while setting aside ex parte award against Petitioner and insurance company of bus No. GJ.14.T.35. The Claims Tribunal imposed condition to deposit amount of compensation awarded by claims tribunal before claims tribunal within thirty days failing which order dated 15.5.2010 shall remain inoperative. Considering facts from record and considering challenge of Petitioner against aforesaid order before this Court, such challenge suggests that there is no bona fide challenge of Petitioner before claims tribunal when miscellaneous applications were filed, otherwise, such reasonable condition imposed by claims tribunal would not have been challenged by Petitioner before this Court. Considering conduct of Petitioner of preparing such miscellaneous applications on 27th March, 2006 and then to keep same pending with him and presentation thereof only in the year 2009 on 28th January, 2009, according to my opinion, there is no bona fide intention on the part of the Petitioner and the sole intention on the part of the Petitioner is just to avoid deposit of compensation as directed by claims tribunal in original proceedings because insurance company is not held liable by claims tribunal, Amreli. Therefore, contention raised by learned Advocate Mr. R.C. Kakkad on behalf of the Petitioner that Claims Tribunal, Amreli has committed gross error in imposing such condition to deposit entire amount and imposition of such condition by claims tribunal is harsh and unreasonable, cannot be accepted in

view of the facts and circumstances of the present case. In this matter, insurance company has already deposited amount and that amount has already been disbursed by claims tribunal to respective claimants and thereafter execution proceedings have been initiated by insurance company for recovering said amount as per award passed by claims tribunal from present Petitioner. Therefore, according to my opinion, in the peculiar facts and circumstances of present case, if any other condition would have been imposed by claims tribunal and if this condition would not have been imposed by claims tribunal, then, it would have nullified execution proceedings which have been initiated by insurance company against present Petitioner. Therefore, from perusal of the order under challenge dated 15.5.2010, it appears that sufficient care has been taken by claims tribunal while granting opportunity to Petitioner with such condition considering interest of Insurance Company and the lapse committed by Petitioner. Claims Tribunal has also taken sufficient care that whatever amount is deposited by Petitioner, same is required to be invested in FDR and such FDR has to be kept in the custody of the Nazir of District Court, Amreli. Therefore, according to my opinion, this is a just, reasonable and proper condition imposed by claims tribunal which would enable Petitioner to defend his case properly by filing written statement and produced relevant documents and to lead oral evidence before Claims Tribunal and thereafter, question can be examined by claims tribunal whether insurance company of bus owned by present Petitioner can be held liable or not. For that, claims tribunal has rightly imposed condition for testing bona fides of the Petitioner whether it is genuine proceedings initiated by the Petitioner or not, or whether it is just to avoid execution proceedings initiated by insurance company or not. Claims Tribunal, Amreli cannot pass any order which may nullify execution proceedings initiated by insurance company against present Petitioner on the basis of common award passed by claims tribunal on 29th March, 2005. Therefore, according to my opinion, condition imposed by claims tribunal against Petitioner while granting such opportunity to Petitioner cannot be considered to be unreasonable, harsh or unjust, but, on the contrary, a reasonable condition has been imposed while taking sufficient care that such amount which may be deposited by Petitioner will have to be invested in FDR and no payment therefrom is to be made to insurance company. If such condition would not have been imposed, then, execution proceedings initiated by insurance company would have become meaningless and directions issued by claims tribunal in common award also would have become useless and it would have created adverse impact and consequences against New India Assurance Co. Ltd. which insurance company has complied with directions issued by claims tribunal and has deposited entire amount by showing its bona fide and which amount has been disbursed in favour of claimants and, therefore, entire exercise carried out by insurance company would have resulted into futility means clear financial loss to insurance company and therefore, just to consider interest of insurance company which is a public authority having amount of public exchequer, claims tribunal has rightly imposed condition, so, amount that may be deposited by Petitioner is to be invested in FDR and such FDR is to be kept in

safe custody of Nazir of District Court, Amreli and further litigation can be avoided between Petitioner and insurance company. Therefore, according to my opinion, condition which has been imposed by claims tribunal, Amreli while restoring original claim petitions amounts to substantial justice done by claims tribunal in interest of all respective parties including insurance company and, therefore, such condition cannot be considered to be harsh or unreasonable and, therefore, contentions raised by learned Advocate Mr. Kakkad for Petitioner cannot be accepted and hence same are rejected.

7. Apart from that, it is discretionary order passed by claims tribunal while deciding restoration applications filed by Petitioner. According to my opinion, discretion vested in claims tribunal Amreli has been rightly exercised by claims tribunal while giving reasoned order in support of that and there are reasons to protect interest of insurance company which has shown its bona fide by depositing amount, otherwise, claim of insurance company against present Petitioner would have become meaningless and useless that is clear financial loss to public body for no fault of its own because in fact, insurance company has not been held liable by claims tribunal, Amreli, even though, in compliance of condition imposed by claims tribunal, insurance company has deposited amount of compensation and same has been disbursed in favour of claimants and, therefore, it is duty, rather legal obligation upon claims tribunal to protect interest of insurance company and for that, discretion has been rightly exercised by claims tribunal, Amreli by imposing such condition upon Petitioner and for that also, it cannot be considered that discretionary powers of claims tribunal have been exercised in an arbitrary manner. On the contrary, claims tribunal has rightly exercised discretionary powers in the interest of justice, for doing substantial justice between the parties.

8. Considering reasoning given by claims tribunal, Amreli in order dated 15.5.2010 while deciding miscellaneous applications filed by Petitioner, claims tribunal has not committed any error apparent on the face of record which would require interference of this Court in exercise of powers under Article 227 of Constitution of India. Recently Apex Court has considered scope of Article 227 of Constitution of India in case of State of Haryana and Others Vs. Manoj Kumar, decided on 9th March 2010. The relevant Paras 22 to 29 are quoted as under:

22. The Appellants urged that the jurisdiction of the High Court under Article 227 is very limited and the High Court, while exercising the jurisdiction under Article 227, has to ensure that the courts below work within the bounds of their authority.

23. More than half a century ago, the Constitution Bench of this Court in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, settled that power under Article 227 is limited to seeing that the courts below function within the limit of its authority or jurisdiction.

24. This Court placed reliance on Nagendra Nath's case in a subsequent judgment in Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, The court observed that jurisdiction conferred under Article 227 is not by any means appellate in its nature for correcting errors in the decisions of subordinate courts or tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

25. This Court had an occasion to examine this aspect of the matter in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, The court observed as under:

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. For this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

26. This Court again clearly reiterated the legal position in Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives, The court again cautioned that the High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

27. A three-Judge Bench of this Court in Mrs. Rena Drego Vs. Lalchand Soni, Etc., again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. In Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others, this Court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.

29. This Court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.

9. In view of above observations and discussion made by this Court, contentions raised by learned advocate Mr. Kakkad cannot be accepted and hence there is no substance in these petitions and, therefore, these petitions are dismissed.