

(2005) 01 GAU CK 0057

In the Gauhati High Court

Case No : Civil Revision Petition No"s. 192, 326, 330, 412 and 422, etc., etc., 2003

Oriental Insurance Co. Ltd.

APPELLANT

Vs

Mustt. Rejina Begum and Others

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14, 15, 16, 226, 227
Motor Vehicles Act, 1988 — Section 149, 149(2), 166, 170, 173
Representation of the People Act, 1951 — Section 81

Citation : (2006) ACJ 1609 : AIR 2005 Guw 71 : (2005) 3 GLR 155 : (2005) 1 GLT 1

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : D. Choudhury and A.K. Choudhury, for the Appellant; J. Mollah and A. Bhanu and N. Dutta, Amicus Curiae, for the Respondent

Judgement

I.A. Ansari, J.—It is not uncommon for the Courts to be invited to decide the contours of its own powers under a given provisions of law - constitutional or statutory. The present set of Writ Petitions as well as Civil Revision Petitions too call for determination of the scope of the powers of judicial review under Article 226 and power of superintendence under Article 227 of the Constitution of India, on the one hand, and the ambit of the revisional jurisdiction u/s 115 of the Code of Civil Procedure, on the other.

2. Whether an insurer, under any circumstance, can impugn an award rendered by a Motor Accident Claims Tribunal in an application under Articles 226 and/or 227 of the Constitution of India and whether this constitutional remedy is completely barred so far as an insurer is concerned are the principal questions, which the present set of writ petitions have raised? What has also been raised is the question as to whether an insurer can invoke revisional jurisdiction of the High Court u/s 115 of the CPC (hereinafter referred to as "the Code") on the

grounds beyond those, which are available to an insurer u/s 149(2) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the M. V. Act.")

3. By this common order, I propose to decide, first the maintainability of the present set of Writ Petitions and Civil Revision Petitions, for, maintainability of all these Writ Petitions and Civil Revision Petitions has been challenged on, broadly speaking, similar grounds, the same have been heard together and are capable of being disposed of by one common order.

4. I have heard the learned counsel appearing on behalf of the parties concerned. I have also heard Mr. N. Dutta, learned senior counsel, assisted by Ms. B. Bhuyan, as Amicus Curiae.

5. Challenging, at the very threshold, the maintainability of the present writ petitions, it has been submitted, on behalf of the respondents, that in the light of the law laid down in *Sadhana Lodh Vs. National Insurance Company Ltd. and Another*, it is no longer open to the High Court to entertain against an award, which is appealable u/s 173 of the M.V. Act, any writ petition under Articles 226 and/or 227 of the Constitution of India, for the Apex Court has laid down in *Sadhana Lodh (supra)* that since a limited right of appeal has been provided u/s 173 of the M.V. Act to the insurer, the limited grounds of appeal cannot be enlarged by making any application under Articles 226 and/or 227 of the Constitution. In other words, the resistance to the maintainability of the present set of writ petitions are on the ground that the insurer cannot invoke High Court's jurisdiction under Articles 226 and/or 227 of the Constitution inasmuch as a statutory right of appeal is available to the insurer against the award passed by the Tribunal on limited grounds as provided u/s 149(2) of the M. V. Act, 1988 and if the grievance of the insurer does not fall within the grounds enumerated in Section 149(2), the insurer cannot enlarge the grounds, as provided u/s 149(2), by taking recourse to a writ petition under Articles 226 and/or 227 of the Constitution and invite thereby the High Court to exercise the powers of an appellate Court in the garb of exercising the powers of judicial review under Article 226 and/or superintendence under Article 227. It is further submitted, on behalf of the respondents that the Full Bench decision of this Court in *Smt. Milan Rani Saha Vs. New India Assurance Company Ltd., Agartala and Others*, wherein it has been held to the effect that notwithstanding the limited statutory right of appeal provided to the insurer, the High Court's power under Articles 226 and/or 227 has not been taken away and can be invoked, in an appropriate case, no longer remains a good law and must be deemed to have been overruled by the decision in *Sadhana Lodh (supra)* so far as the insurers are concerned.

6. Referring also to *National Insurance Co. Ltd. v. Sukla Dev Nath*, reported in 2004 (1) GLT 497, it is submitted, on behalf of the respondents, that the decision in *Sukla Dev Nath (supra)* has clearly laid down that an insurer cannot invoke revisional jurisdiction of the High Court u/s 115 of the Code, for, entertaining such revision would be tantamount to expanding the limited right of appeals, which the legislature has chosen to provide to the insurers u/s 149(2) of the Act.

In the light of the decision in *Sukla Dev Nath* (supra) the present set of Civil Revision Petitions may be held to be not maintainable. So contend the respondents.

7. Controverting the submissions made on behalf of the respondents challenging the very maintainability of the present set of Writ Petitions and Civil Revision Petitions, it has been submitted, on behalf of the petitioners, that the decision in *Sadhana Lodh* (supra) does not lay down a law of general proposition that an award given by a Tribunal cannot, in any event, be challenged by an insurer except by way of appeal on the grounds as provided In Section 149(2) of the M. V. Act and that such an interpretation, if resorted to, with regard to the powers of the High Court under Articles 226 and 227, the same would go contrary to the consistent views expressed by the Apex Court that the powers under Articles 226 and 227 cannot be abridged or taken away or curtailed by a statute and in an appropriate case, there is no limitation on the powers of the High Court to invoke its jurisdiction under Articles 226 and 227. The decision in *Sadhana Lodh* (supra), it is reiterated on behalf of the petitioners, does not lay down a law of general proposition and must be read to have been kept confined within the context of the facts of that case and the decision in *Milan Rani Saha* (supra) still holds the field, for, the law laid down therein has not been overruled, directly or by implication, either by the decision in *Sadhana Lodh* (supra) or by any other judicial pronouncement.

8. As regards the revisional jurisdiction of the High Courts u/s 115 of the Code, it is submitted, on behalf of the petitioners, that the revisional jurisdiction is nothing but a source of power of superintendence of the High Court over all the Courts sub-ordinate to it and, hence, in an appropriate case, when a Tribunal, constituted under the M. V. Act, which is nothing but a Court sub-ordinate to the High Court, acts without jurisdiction and/or arbitrarily and/or in total disregard of the law contained in that behalf and/or in violation of the principles of natural justice, the revisional jurisdiction can and must be exercised by the High Court to undo the wrong and/or keep the Court within the bounds of law.

9. Let me, now, consider the correctness or otherwise of the preliminary objections raised by the respondents with regard to the maintainability of the present set of Writ Petitions and Civil Revision Petitions, for, if the preliminary objections are sustained, this Court need not enter into the merit of the Writ Petitions and/or the Civil Revision Petitions.

10. While dealing with the present set of revision petitions, it is imperative to note that unlike the power of judicial review and of superintendence, which Articles 226 and 227 confer on the High Courts, the appeal or revision is a creature of legislature and it is up to the legislature to provide or not to provide the right of appeal against a judicial decision or order and, similarly, it is for the legislature to decide whether the High Courts should be given revisional jurisdiction or not in any adjudicatory process.

11. That the revisional jurisdiction is a creation of statute and cannot be assumed or exercised by the High Court in the name of having the power of superintendence over the sub-ordinate Courts unless the statute, in a given case, either expressly or by implication, so provides, cannot be disputed and has, in fact, not been disputed before me. With this limitation in mind, the question as to whether the revisional power u/s 115 of the Code can be invoked against an award passed by a Tribunal has to be considered.

12. A careful reading of Section 115 of the Code reveals that the revisional power can be exercised only when there is no appeal provided for. Hence, when a statute provides for an appeal against a judicial order, revision against such an order will not lie irrespective of the fact whether the right of appeal is absolute or conditional, restricted or otherwise. In other words, howsoever truncated the right of appeal may be, so long as the provisions for appeal remain, revisional jurisdiction cannot be exercised, for, it is for the legislature to decide whether to give or not to give against a judicial order the remedy of absolute right of appeal or restricted right of appeal. When the legislature has chosen to give to the insurer, u/s 149(2) of the M. V. Act, a right of appeal, though limited, it will bar exercise of revisional jurisdiction.

13. Coupled with the above, as has been correctly laid down in *Sukla Dev Nath* (supra), the grounds of appeal given to an insurer u/s 149(2) cannot be expanded by taking recourse to the revisional jurisdiction of the High Court. In other words, when a remedy, by way of appeal, has been provided for by the statute, howsoever restricted such right of appeal may be, the making of the provisions for appeal in themselves create complete bar for the High Court to exercise revisional jurisdiction. Considered thus, I see no reason to take a view different from what this Court has taken in *Sukla Dev Nath* (supra), though reasoning for coming to the same conclusion, namely, that the revisional jurisdiction cannot be invoked against an appealable award is, somewhat, different. In *Sukla Dev Nath* (supra) what has been held is that the limited right of appeal provided to an insurer u/s 149(2) of the M. V. Act cannot be expanded by taking recourse to Section 115 of the Code, whereas I am of the view that the legislature, having provided to the insurer a right of appeal, howsoever truncated such right may be, no revisional jurisdiction can be invoked by the High Court, for. Section 115 of the Code makes it abundantly clear that where an appeal lies, revision will not be entertainable, howsoever restricted the right of appeal may be.

14. What is, of course, of immense importance to note is that an award given by a Tribunal under the M. V. Act is appealable u/s 173 thereof. However, if the amount, in dispute, in the appeal, is less than Rs. 10,000.00, such an award is not appealable.

15. In the revision petitions, which we are concerned with, there is no dispute that the awards are for amounts of more than Rs. 10,000.00; hence, all these awards are appealable. Bearing this aspect of the matter in mind, the

maintainability of the present set of revision petition has to be determined by this Court.

16. In view of the fact that this Court has already held that an award, which is appealable u/s 173, is not revisable by taking resort to Section 115 of the Code, it is not necessary in this set of revision petitions to determine if the Tribunal constituted under the Motor Vehicles Act is a Court within the meaning of Section 115 of the Code.

17. Though a question has been raised as to whether the Tribunal constituted under the M. V. Act is or is not a Court subordinate to the High Court within the meaning of Section 115 of the Code, this question becomes academic, when this Court has taken the view that an award, which is appealable, is not amenable to revisional jurisdiction of the High Court.

18. It is trite that any question, which is not imperative for decision in a writ application or revision and which would be purely academic in nature, the Court should not embark upon the discussion of such academic issues. In other words, if any particular aspect raised in a writ petition or revision is not necessary to be ascertained for the purpose of disposal of the writ petition or revision, the Court should not indulge into the exercise of deciding such an issue. I am guided to adopt this view from the law laid down in *The State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills and Another*, wherein it has been held as follows :

"In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions, there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

19. I may, however, hasten to point out that those revision petitions, wherein the awards are not appealable, have been referred to a larger Bench, for, it has been brought to the notice of this Court, that there are two contradictory decisions of this Court on the question as to whether a Tribunal, constituted under the M. V. Act, is or is not a Court within the meaning of Section 115 of the Code. While in *the State of Assam v. Pranesh Dev Nath* reported in (1991) 2 GLR 389, it has been held that the Tribunal is a Court within the meaning of Section 115 of the Code, the decision in *United India Insurance Co. Ltd. v. Dilip Chakraborty* reported in (1995) 2 GLJ 107, holds that the Tribunal is not a Court within the meaning of Section 115 of the Code.

20. Notwithstanding the fact that an award, which is appealable u/s 173, is not amenable, as held by this Court, to the revisional jurisdiction of the High Court u/s 115 of the Code, a challenge to an award under Articles 226 and/ or 227 of the

Constitution of India stands altogether on a different footing. That an application under Article 226/227, on the one hand, and an application for revision, on the other, do not stand on the same footing is indicated even in *Sukla Dev Nath (supra)*, wherein the Court has held that a challenge under Article 227 of the Constitution of India within the constricted parameters set down by consistent judicial pronouncements would, however, be a different proposition altogether.

21. Referring to, and relying upon, *Sadhana Lodh (supra)*, while it is contended, on behalf of the respondents, that the writ petitions under Article 226/227 of the Constitution of India is not maintainable, the learned counsel for the petitioners, including Mr. N. Dutta, learned Amicus Curiae, point out that Article 226/227 form part of the basic structure of the Constitution and when the power of judicial review and superintendence, so conferred on the High Court under Article 226/227 of the Constitution, cannot be taken away by amendment of the Constitution, the question of taking away of such a power by enacting a statute, such as, the M. V. Act, does not arise at all. For the proposition that the judicial review forms part of the basic structure of the Constitution, reliance has been placed, particularly, by Mr. N. Dutta, learned Amicus Curiae, on *L. Chandra Kumar Vs. Union of India and others*, wherein the Constitutional Bench of 5 Judges has held, it is pointed out, that the jurisdiction conferred on the High Court under Article 226/227 is a part of the basic structure of the Constitution.

22. In the light of the rival submissions made on behalf of the parties, what falls for consideration is as to whether the decision in *Milan Rani Saha (supra)* has been overruled by *Sadhana Lodh (supra)*, what it will, in effect, mean is that Articles 226 and 227 shall be treated as non est so far as an award made by the Tribunal under the M. V. Act is concerned. Is such an interpretation possible to be attributed to the decision in *Sadhana Lodh (supra)*? This question, in turn, brings us to the more fundamental question, which the respondents have raised, and the question is this : whether the power of judicial review and superintendence conferred on the High Courts under Articles 226 and 227 of the Constitution form part of the basic structure of the Constitution or not ? If so, what are the parameters of these powers ?

23. My quest for an answer to the above questions makes me revert to the case of *L. Chandra Kumar (supra)*. While considering *L. Chandra Kumar (supra)*, what needs to be noticed is that having taken into account the various authorities, which threw light on the question as to whether the power of judicial review forms part of the basic structure of the Constitution or not, the Court expressed in *L. Chandra Kumar (supra)* thus:

"78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, as, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the framers of our constitution incorporated provisions relating to the judiciary would indicate that they were

very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its" wide powers of judicial review. While the constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior Courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior Courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior Courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the sub-ordinate Courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards, which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the sub-ordinate judiciary or to those two man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Court under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation is equally to be avoided.

XXX XXX XXX XXX 90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issue are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals.

Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls to serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits, which will be of use to it in finally deciding the matter."

24. In the face of the decision, which eventually, the Constitution Bench in *L. Chandra Kumar* has arrived at, one can no longer have any doubt that the power of judicial review under Article 226 and the power of superintendence under Article 227 form part of the basic structure of the Constitution and the Parliament, while having the power to amend the Constitution under Article 368, cannot take away or abridge the power so conferred on the High Court under Articles 226/227. When no constitutional amendment restricting the power of judicial review and/or superintendence under Articles 226 and/or 227 of the Constitution is possible, the question of a statute, such as, the M. V. Act, limiting, restricting and/or abolishing and/or setting at naught the power of judicial review conferred on the High Court under Article 226 and/or the power of superintendence vested in the High Court by Article 227 cannot arise at all, though the exercise of such powers cannot be arbitrary and must be exercised within the contours of the settled principles, which the Courts have evolved.

25. Having held that the powers of judicial review conferred on the High Court under Article 226 and of supervision under Article 227 form part of the basis structure of the Constitution, let me, now, turn to the question as to whether the existence of alternate remedy is an absolute bar to the exercise of the powers so conferred on the High Court. While dealing with this aspect of the matter, it is imperative to note that the proposition of law is well settled that where a particular statute provides a self-contained machinery for determination of questions arising under the enactment, the statutory remedies provided therein must be availed of and recourse should not be, ordinarily, allowed to be taken to Writ jurisdiction. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Water Works Co. v. Hawkesfor* (1859) 6 CBNS 336 at p. 356. The rule so laid down by Willes, J. was approved by the House of Lords in *Neville v. Landon Express Newspaper Ltd.* 1919 AC 368 and was reaffirmed by the Privy Council in *Attorney General of Trinidad & Tobago v. Gordon Grant & Co.* 1935 AC 532 and *Secretary of AIR 1940 105* (Privy Council)

26. While considering the above proposition, it is equally important to bear in mind that the principle treating the existence of alternate remedy as a bar to the exercise of jurisdiction under Articles 226 and/or 227 has been a rule of self-imposed restriction, a rule of policy, convenience and discretion rather than a rule of law. Though the Constitution (42nd Amendment) Act, 1976, had placed a bar on the High Court's jurisdiction to entertain certain petitions if any other remedy for redress was provided by or under any other law, the Constitution (44th Amendment) Act, 1978, has removed this restriction. The fall out of this removal further strengthens the principle that there is no rule of law barring exercise of jurisdiction under Articles 226 and/or 227 merely because there exists an alternate remedy, though the fact remains that to the exercise of powers under Articles 226 and 227, existence of alternate remedy has been treated by the Courts as a self-imposed restriction, though of a limited nature.

27. In *Thansingh Nathmal and Others Vs. A. Mazid, Superintendent of Taxes*, the Court, while considering the scope of Article 226 in a case, wherein alternative remedy exists, observed as under :

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restriction.....But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain well imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy of relief, which may be obtained in a suit or other mode prescribed by the statute. Ordinarily, the Court will not entertain a petition for a writ under Article 226 where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy..... The High Court does not, therefore, act as a Court of Appeal against the decision of a Court or Tribunal to correct errors of facts and does not, by assuming jurisdiction under Article 226, trench upon an alternative remedy provided by a statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal or even itself in another jurisdiction for obtaining redress in the matter provided by a statute, the High Court, normally, will not permit by entertaining under Article 226 of the Constitution the machinery created by the statute to be by passed and leave the party applying to it to seek resort to that machinery so set up."

28. There is no rule with regard to certiorari as there is with regard to mandamus that it will lie only where there is no other equally effective remedy. The Rule requiring exhaustion of statutory remedies before the grant of writ had nothing to do with the jurisdiction of the Court - it was a rule of policy, convenience and discretion rather than a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction and discretion of the High Court to grant relief under this Article (See *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, , *Zila Parishad Moradabad Vs. Nundan Sugar*

Mills, Amroha, , Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava, , Union of India (UOI) Vs. T.R. Varma, N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, and M.G. Abrol Vs. Shantilal Chhotlal and Co.,

29. In ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, the Supreme Court observed as follows :-

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India on the ground of alternative remedy, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. This plenary right of the High Court to issue a prerogative writ will not, normally, be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction".

30. In Seth Chand Ratan Vs. Pandit Durga Prasad (D) by Lrs. and Others, the Supreme Court observed as follows (at page 2743 of AIR) :-

"13..... When a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is, no doubt, a rule of policy, convenience and discretion and the Court may, in exceptional cases, issue a discretionary writ of certiorari. Where there is complete lack of jurisdiction for the officer or authority or tribunal to take action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then, notwithstanding the existence of an alternative remedy, the High Court can exercise its jurisdiction to grant relief. When the party had statutory remedy of assailing the order passed by the District Court by filing an appeal to the High Court itself, he could not by pass the said remedy and take recourse to proceedings under Articles 226 and 227 of the Constitution. Such a course of action may enable a litigant to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of Court Fee or deposit of some amount or fulfillment of some other conditions for entertaining the appeal."

31. In short, Article 226 is not meant to short circuit or circumvent the statutory procedures. Of course, in case of infringement of fundamental rights or where the authority or the Tribunal lacks jurisdiction or violates the principles of natural justice or acts arbitrarily or acts under a statute, which is ultra vires, the bar of

alternative remedy not apply. The reason is that such an order has to be treated as void or non est.

32. In *K. Venkatachalam Vs. A Swamickan and Another*, election of an MLA was challenged by way of a writ petition under Article 226 of the Constitution on the ground that the said MLA was not an elector in the electoral roll in the constituency and, as such, lacked the basic qualification of being an MLA from the said constituency. The returned candidate opposed the writ petition on the ground of an alternative remedy of filing an election petition being available u/s 81 of the Representation of the People Act, 1951 and bar contained in Article 329(b) of the Constitution. The Supreme Court repelled the contention of the alternative remedy and held that Article 226 of the Constitution is couched in the widest possible terms and unless there is a clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised, when there is any act, which is against any provision of law or violative of constitutional provisions and when recourse cannot be had to the provisions of the Act for the appropriate relief. In this case, the Supreme Court observed, "Consider the case where the person elected is not a citizen of India. Would the Court allow a foreign citizen to sit and vote in the Legislative Assembly and not exercise jurisdiction under Article 226 of the Constitution?" It was, thus, held that the High Court had rightly exercised its jurisdiction in entertaining the writ petition under Article 226 of the Constitution and declared that the appellant was not entitled to sit in Tamil Nadu Legislative Assembly with consequent restraint order on him from functioning as a Member of the Legislative Assembly.

33. *Jeevan Reddy, J.*, in his majority judgment on behalf of a Constitution Bench of nine Judges of the Supreme Court in the *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, held the where a refund of tax/ duty is claimed on the ground that it has been collected from the petitioner/plaintiff by misinterpreting or misapplying any of the rules, regulations or notifications, such a claim has necessarily to be preferred under and in accordance with the provisions of the respective enactments before the authorities specified thereunder and within the period of limitation prescribed therein. No suit is maintainable in that behalf. While the jurisdiction of the High Courts under Article 226 and of the Supreme Court under Article 32 cannot be circumscribed by the provisions of the said enactments, they will certainly have due regard to the legislative intent evidenced by the provisions of the said Acts and would exercise their jurisdiction consistent with the provisions of the Act. The writ petition will be considered and disposed of in the light of the respective statutory provisions. This is for the reason that the power under Article 226 has to be exercised to effectuate the rule of law and not for abrogating it. Even while acting in exercise of the said constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them.

34. In *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj*

Wadhvani and Another, a three-Judges Bench of the Supreme Court observed thus :

"8. The only point, therefore, requiring to be considered is whether the High Court should have rejected the writ petition of the respondent in limine because he had not exhausted all the statutory remedies open to him for having his grievance redressed. The contention of the learned Solicitor-General was that the existence of an alternative remedy was a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est. In all other cases, he submitted, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners.

9. We see considerable force in the argument of the learned Solicitor-General. We must, however, point out that the Rule that the party, who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open to him under the law is not one, which bars the jurisdiction of the High Court to entertain the petition or to deal with it, but is rather a rule which Courts have laid down for the exercise of their discretion. The law on this matter has been enunciated in several decisions of this Court but it is sufficient to refer to two cases : In Union of India (UOI) Vs. T.R. Varma, speaking for the Court said:

"It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in "Rashid Ahmed v. Municipal Board, Kairana" the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs" vide also K.S. Rashid and son v. Income Tax Investigation Commission and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition under Article 226, unless there are good grounds therefor."

There is no difference between the above and the formulation by Das, C. J., in State of Uttar Pradesh v. Mohammad Nooh, where he observed;

It must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior Court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior Courts subordinate to it and ordinarily the

superior Court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of a certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies.

After referring to a few cases in which the existence of an alternative remedy had been held not to bar the issue of a prerogative writ, the learned Chief Justice added;

It has also been held that a litigant who has lose this right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari.

In the result this Court held that the existence of other legal remedies was not per se a bar to the issue of a writ of certiorari and that the Court was not bound to relegate the petitioner to the other legal remedies available to him.

10. The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive, and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

35. What is, thus, clear is that in A.V. Venkateswaran (supra), it was submitted by the learned Solicitor General that unless there was a complete lack of jurisdiction or where the order impugned in the writ petition had been passed in violation of the principles of natural justice, existence of alternative remedy would bar entertainment of a writ petition under Article 226. Reacting to this submission, the Apex Court held that notwithstanding these two fundamental limitations, which the Writ Courts have imposed on themselves, a discretion vests in the High Courts to entertain writ petition and grant the relief even if there exists an alternative remedy. Since exercise of writ jurisdiction of the High Court is a matter of discretion, it would be undesirable to lay down inflexible rules, which can be applied with rigidity in every case, which comes before the Court, for, the exercise of jurisdiction may depend on a variety of individual facts, which would govern proper exercise of discretion of the Court.

36. Laying down the position of law on the subject as to when, in the face of existence of the right of appeal or revision, a Court may interfere in exercise of

certiorari jurisdiction, the Constitution Bench in *State of Madhya Pradesh v. Mohammad Nooh*, AIR 1958 SC 86, laid down as follows :

"On the authorities referred to above, it appears to us that there may conceivably be cases - and the instant case is in point - where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal of first instance is so patent and loudly obstructive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play, the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the "tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

37. In *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, the Court has held that notwithstanding the existence of alternative remedy, the High Court may, in an appropriate case, still exercise its writ jurisdiction in, at least, 3 contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of the principles of natural justice; or (iii) where the orders of the proceedings are wholly without jurisdiction or the vires of an enactment is challenged. (See also *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*,

38. In *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, it has been held that though the existence of statutory remedy does not affect the jurisdiction of the High Court to issue a writ, the fact remains that the existence of an adequate legal remedy needs to be taken into consideration in the matter of granting writs and if such a remedy exists, it would be a sound exercise of discretion to refuse to interfere in the writ jurisdiction unless there are good grounds for such exercise of jurisdiction. It has been further clarified that there are, at least, two well-recognized exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is *ultra vires*, it is open to a party aggrieved thereby to

move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent without his being obliged to ; wait until those proceedings run their full course. (See *Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others*, In the second place, the doctrine has-no application to a case, where the impugned order has been made in violation of the principles of natural justice. (See *State of Uttar Pradesh v. Mohammad Nooh* AIR 1958 SC 86.

39. I have already held that an award, which is appealable u/s 173 MV Act, is not amenable to revisional jurisdiction of the High Court. Can this restriction have any bearing on the High Court's powers under Articles 226 and/or 227? That the curtailment of the revisional jurisdiction of the High Court cannot take away its constitutional jurisdiction to issue a writ of certiorari to a Civil Court subordinate to it or the power conferred on the High Court cannot be taken away by removing the revisional jurisdiction, has been succinctly described in *Surya Dev Rai Vs. Ram Chander Rai and Others*, wherein the Apex Court, while dealing with the recent amendment of the Code of Civil Procedure, whereby the High Court's revisional jurisdiction in respect of interlocutory orders has been taken away, observed and held as under ;

"We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away - and could not have taken away - the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil Court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115, CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled."

40. In *Surya Devi Rai's* case (supra), the Apex Court, while laying down the parameters of powers under Articles 226 and/or 227, considered a large number of authorities on the question as to when the powers under Article 226 and/or 227 can be exercised. Dealing with this aspect of the matter, the Court observed as follows :

"10. Article 226 of the Constitution of India preserves to the High Court the power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well settled. It would suffice for our purpose to quote from the seven-Judge Bench decision of this Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, The four propositions laid down therein were summarized by the Constitution Bench in *The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc.*, as under AIR p. 1094, para 15 :

The High Court was not justified in looking into the order of 2-12-1952, as an appellate Court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in *Hari Vishnu Kamath v. Ahmad Ishaque*

and the following four propositions were laid down-

1. Certiorari will be issued for correcting errors of jurisdiction :
2. Certiorari will also be issued when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice :
3. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or tribunal, even if they be erroneous :
4. An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not mere wrong decision :

*** ** 12. In the exercise of certiorari jurisdiction, the High Court proceeds on an assumption that a Court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an appellate Court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior Court.

13. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari were so set out by the Constitution Bench: (AIR pp. 412-13, paras 26-27).

The common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a Court sitting as a Court of appeal only, could have examined and, if necessary, corrected and the Appellate Authority under the statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the Appellate Authority disregarded any mandatory provisions of the law but what can be said at the most was that it had

disregarded certain executive instructions not having the force of law, there is no case for the exercise of the jurisdiction under Article 226.

14. The Constitution Bench in *T.C. Basappa Vs. T. Nagappa and Another*, held that certiorari may be and is generally granted when a Court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings from the absence of some preliminary proceedings or the Court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the Court or tribunal, though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision of determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but mere wrong decision is not amenable to a writ of certiorari.

**** * 19. Thus, there is no manner of doubt that the orders and proceedings of a judicial Court subordinate to the High Court are amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

20. Authority in abundance is available for the proposition that an error apparent on the face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* (sic). It was held that the alleged error should be self-evident. An error, which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or Court but may not substitute its own findings or directions in lieu of the one given in the proceedings forming the subject-matter of certiorari.

Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior Court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior Court has committed any of the preceding errors occasioning failure of justice".

41. The fall out of the observations of the Apex Court in *Surya Dev Rai* (supra), particularly, with regard to what has been laid down by a seven-Judge Bench in

Hari Vishnu Kamath (supra), is that there are, at least, four circumstances in which a writ of certiorari may be issued by the High Court, the four circumstances being as follows :

"1. Certiorari will be issued for correcting errors of jurisdiction :

2. Certiorari will also be issued when the Court or tribunal acts illegally in the exercise of its undoubted jurisdiction, for, when it decides without giving an opportunity to the parties to be heard or Violates the principles of natural justice :

3. The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or tribunal, even if they be erroneous :

4. An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error, which can be corrected by certiorari but not mere wrong decision."

42. In fact, in the State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, the Supreme Court had culled down the principles governing the exercise of powers under Article 227. Taking into account what had been culled down as the parameters of the powers of the High Court under Article 227 in Navjot Sandhu (supra), the Supreme Court in Surya Dev Rai (supra), observed thus :

The principles deducible, well settled as they are, have been well summed up and stated by a two-Judge Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, para 28. This Court held :

i. The jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;

ii. The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

iii. The power must be exercised sparingly, only to keep subordinate Courts and tribunals within the bound of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

43. What is, however, of immense importance to note is that the Court has clarified in Surya Dev Rai (supra) that while exercising certiorari jurisdiction, the High Court proceeds on the assumption that the Court, which has the jurisdiction over a subject-matter, has jurisdiction to decide wrongly as well as rightly and that the High Court would not, therefore, assign to itself, while exercising the

power of certiorari, the role of an appellate Court and step into appreciating or evaluating the evidence and/ or substitute its own findings in the place of those arrived at by the inferior Court. In short, while acting on the certiorari jurisdiction, though the High Court cannot convert itself into an appellate Court, it remains free to exercise the powers of issuing writ of certiorari if the conditions precedent for exercise of such powers exists. As to when the High Court can interfere under Articles 226 and/or 227 is summed up in *Surya Dev Rai* (supra) as follows :

"Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder :

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory order; passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping subordinate Courts within the bounds of their jurisdiction. When a Subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction, which it does have or the jurisdiction though available, is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceeding such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonable and the

subordinate . Court has chosen to take one view, the error cannot be called gross or patent..

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above-said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) in practice, the parameters for exercising jurisdiction to issue a writ of and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order of proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case".

44. What is, now, worth pointing is that the remedy of certiorari jurisdiction is available not against the decision, but against the decision-making process. In the decision-making process, if the Court or the Tribunal or, for that matter, any other authority deciding the case ignores the vital piece of evidence and thereby arrives at an erroneous conclusion or misconstrues the provisions of an enactment, there is no impediment in taking resort to Constitutional powers under Articles 226 and/or 227. This position of law can be clearly gathered from the observations made in *State of Andhra Pradesh Vs. P.V. Hanumantha Rao (D) thr. Lrs. and Another*, which run as follows:

"True it is that remedy of the writ petition available in the High Court is not

against the "decision-making process". In the "decision-making process", if the Court, tribunal or authority, deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such errors and prevent gross injustice to the party complaining.

7. In the case of Surya Dev Rai (supra), while examining the nature and ambit of power of the High Court to issue writs under Article 226 or 227 of the Constitution, the above-stated legal position has been recognized by observing thus (SCC p. 696, para 39) :

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules.....At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

This Court has recognized the right of the High Court to interfere with orders of subordinate Courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby."

45. The language used in Articles 32 and 226 of our Constitution is, if I may borrow the words of the decision in T.C. Basappa v. T. Nagappa, reported in AIR 154 SC 440, very wide and the powers of the" Supreme Court as well as of the High Courts extend to issuing of orders, writs or directions including writs in the nature of "habeous corpus, mandamus, quo warranto, prohibition and certiorari" as may be considered necessary for enforcement of the fundamental rights and, in the case of the High Courts, for other purposes as well and, further, that the High Courts can make an order or issue a writ in the nature of "certiorari", in all appropriate cases and in appropriate manner, so long as they keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting of such writs.

46. That Article 226 is couched in such comprehensive phraseology that it confers on the High Court the power to undo injustice, wherever it is found, is clearly emphasized in Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, However, the exercise of this power, as I have already pointed out above, cannot be arbitrary and is governed by the self-imposed limitations evolved by the Courts themselves.

47. The authorities cited above clearly show that the power of the High Court under Articles 226 and/or 227 cannot be restricted by a statute. The restraint of not interfering with an order, which is adhered to by the High Courts, is really a self-imposed restriction and this restriction will not stand in the way of exercise

of writ jurisdiction if the grounds for exercise of such powers exist. In other words, notwithstanding the relief provided, within the scheme of an enactment, against an order passed by a Court or Tribunal, the High Court can still exercise jurisdiction of issuing writ of certiorari under Articles 226 and/or 227, when the Tribunal or the Court, subordinate to the High Court, is found to have acted without jurisdiction i.e. by assuming jurisdiction, where no such jurisdiction exists, or refuses to exercise jurisdiction, where the jurisdiction exists, or acts beyond its jurisdiction or acts in flagrant disregard of law or rule governing its function or in violation of the principles of natural justice occasioning thereby failure of justice or when its order is based on clear misreading or utter disregard of the provisions of law or when it acts under a statute, which is ultra vires. Though a mere erroneous decision is not amenable to writ jurisdiction under Articles 226 and/or 227, yet when an error is apparent on the face of the proceedings, such as, when it is based on clear ignorance or utter disregard of the provisions of law or gross failure of justice has occasioned thereby, the power to issue writ of certiorari under supervisory jurisdiction may be resorted to, though this power should be resorted to sparingly and only in appropriate cases, where the judicial consciousness of the High Court dictates it to act, lest a gross violation of justice or grave injustice should occasion.

48. Bearing in mind the parameters of the powers of the high Court under Articles 226 and 227, as indicated hereinabove, I, now, turn to the case of *Sadhana Lodh* (supra). Let me, first, put the facts of the case as discernible from the decision referred to in *Sadhana Lodh* (supra). The facts, in brief, were thus. Against an award of Rs. 3,50,000/-, the insurer came before this Court under Article 226/227 of the Constitution of India. While the learned Single Judge dismissed the application, the Division Bench entertained the same and interfered with the award by reducing the amount of compensation from Rs. 3,50,000/- to Rs. 3,00,000/-. It was in this factual scenario that the decision in *Sadhana Lodh* (supra) needs to be appreciated. It was contended before the Supreme Court, on behalf of the claimant, that when a remedy of appeal is available to the insurer, an application under Article 227 was misconceived. This submission was countered by the insurer by contending that since an insurer has limited grounds of appeal available to it u/s 173 of the MV Act and when, by availing any of these grounds, an insurer cannot challenge the award questioning the quantum of compensation awarded by the Tribunal, it should be opened for the insurer to file an application under Article 226/227. This argument, raised on behalf of the insurer, was repelled by their Lordships of the Supreme Court in the manner as indicated in Para 6 of the decision, which is reproduced hereinbelow :

The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open

to an insurer to take any plea other than those provided u/s 149(2) of the Act. (See National Insurance Co. Ltd., Chandigarh Vs. Nicolletha Rohtagi and Others, This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court u/s 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court u/s 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected and a State enactment has barred the remedy of filing revision u/s 115, Civil Procedure Code, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus where the State Legislature has barred a remedy of filing a revision petition before the High Court u/s 115, Civil Procedure Code, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution."

49. I am unable to locate, in the decision of *Sadhana Lodh* (supra), any observation by the Apex Court to the effect that in view of the limited right of appeal provided to an insurer u/s 149(2) of the M. V. Act, interference with such an award is impermissible even if recognized principles for interference with such an award exists; for instance, when the Tribunal has acted without jurisdiction or in excess of its jurisdiction or in flagrant disregard of law or rules or procedure or in violation of the principles of natural justice occasioning failure of justice. Undoubtedly, a mere wrong decision by a Tribunal, which has the jurisdiction to decide, cannot be a ground for interference under Articles 226 and/or 227. The Apex Court observed in *Sadhana Lodh* (supra) that a mere wrong decision "without anything more" is not enough to attract jurisdiction of High Court under Article 226 of the Constitution. The expression "without anything more", used in *Sadhana Lodh* (supra), is, to my mind, of great significance. The decision in *Sadhana Lodh* (supra) has to be read in the background of the authorities discussed hereinbefore and when read in this light, it clearly follows that what the Apex Court has laid down in *Sadhana Lodh* (supra) is that a Writ Court cannot convert itself into a Court of appeal and thereby enlarge the limited grounds on which the award can be impugned in the appeal by an insurer, but at the same time, if the conditions precedent for exercise of powers under Article 226/227 exists, the same cannot be ignored merely because the State has not provided an unlimited right of appeal, for, doing so would amount to accepting a proposition that by providing a right of appeal, limited or otherwise, the Legislature can taken away the jurisdiction of the High Court under Article 226

and/or 227. No doubt, the writ jurisdiction shall be exercised, as laid down in *Mafatlal Industries Ltd. (supra)*, to effectuate the rule of law and not to abrogate it and while the powers under Article 226 cannot be circumscribed by any enactment, the legislative intent, as evidenced by the enactment, must be given due regard and the exercise of jurisdiction under Article 226 has to be consistent with the provisions of the enactment and not contrary thereto. In short, thus, when the M.V. Act prescribes a complete scheme for the relief of granting of compensation and circumscribes, with the help of the provisions, such as, Section 149(2), the insurer's right of appeal, the High Court cannot, in exercise of its jurisdiction under Article 226 and/ or 227, convert itself into a Court of appeal and determine the correctness of the decision; but when the Tribunal oversteps its jurisdiction or indulges in arbitrariness in granting compensation or it acts in denial of the principles of natural justice or acts without jurisdiction or in flagrant disregard of the law or the procedure occasioning thereby failure of justice, interference in exercise of certiorari jurisdiction will not only be possible, but would become imperative, for, non-interference even in such cases, where the exercise of powers under Article 226 and/or 227 is warranted, will amount to abdicating by the High Court its authority under Article 226/227, which forms the basic structure of the Constitution. Such a course, as suggested by learned counsel for the respondents, would be contrary to the established principles governing the exercise of writ jurisdiction and cannot, in any way, be described to be in tune with what *Sadhana Lodh (supra)* lays down.

50. It is trite that a decision is an authority for what it actually decides and not what can be deduced from it. Though even obiter dictum of the Supreme Court is binding on all the Courts, the fact remains that to be a binding authority on any specific issue, the issue must be, at least, raised and answered directly or by implication. Reference may be made to *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, wherein the Apex Court has observed, "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact .situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear". Reference may also be made to *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, wherein the Court has laid down, "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed." The Apex Court has explained the doctrine of precedent in *Krishena Kumar and Others Vs. Union of India and others*, thus, "The doctrine of judicial precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it." Clarifying the doctrine of stare decisis, the Apex Court in *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, held, "it. is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and

treat it to be the complete "Law" declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while apply the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, this Court cautioned :

"It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

51. Keeping in view the above fundamental principles of interpretation of the doctrine of judicial precedents, when I revert to the case of *Sadhana Lodh* (supra), I notice that the limited question raised in *Sadhana Lodh* (supra) was as to whether by taking recourse to Article 226/227, the High Court can interfere with the quantum of compensation awarded by the Tribunal merely on the ground of erroneous use of multiplier. It is in this context that *Sadhana Lodh* (supra) laid down that the writ Court cannot act like a Court of appeal, for, as I have already indicated hereinabove, while exercising the certiorari jurisdiction, the Court, as held in *Surya Dev* (supra), assumes that the subordinate Court, which has the jurisdiction to decide the matter, has also the jurisdiction to decide the same erroneously and whether the decision is correct or incorrect cannot become the subject-matter for assuming jurisdiction under Article 226/227 unless the well recognized conditions precedent for exercise of such powers exists on record.

52. Because of what have been pointed out above, I do not find any force in the submissions made before this Court that *Sadhana Lodh* (supra) has overruled the Full Bench decision of this Court in *Milon Rani Saha* (supra).

53. If the objections raised on behalf of the respondents that *Sadhana Lodh* (supra) bars jurisdiction of the High Court completely under Articles 226/227 of the Constitution is accepted, the same would not only be contrary to the established law of the land, as has been indicated hereirabove, -but also prove disastrous, for, such an approach would set at naught the whole object with which Articles 226 and 227 stand embodied in the Constitution. Let me, now, consider some examples in this regard. Let us assume, for a moment, hat a Tribunal, without giving any notice, in terms of Section 170 of the MV Act, to an insurer, determines the amount of compensation and, then, directs the insurer to make payment of the compensation so awarded; such an order, though contrary to the provisions of Section 170 and also in violation of the principles of natural justice, is not appealable u/s 173 of the MV Act inasmuch as Section 149(2)

makes no mention of the fact that omission to give notice to the insurer can be made a ground to challenge the award. In a situation, such as this, the insurer would be saddled with the liability to indemnify the insured without having been accorded any opportunity of hearing. Such an order would not only be in flagrant disregard of the very scheme of the M.V. Act, but it would also be against the principles of natural justice. Can, in such a factual scenario, the High Court refuse to exercise jurisdiction under Article 226/227 if it is satisfied that what the insurer alleges is correct; the answer to this question has to be an emphatically "no", for, any affirmative answer to the question so posed would be totally contrary to the law and wholly inconsistent with the authorities cited above. An affirmative answer, in this regard, would amount to allowing the Legislature to whittle down the powers of the High Court under Article 226 and/or 227, though the same have been held to form part of the basic structure of Constitution. Assume, for a moment, that an insurer is not allowed to be represented by a lawyer of its own choice before the Tribunal under the M.V. Act. In such a case, though Section 149 of the MV Act does not entitle the insurer to challenge the award on the ground of its not having been allowed a lawyer of its choice to represent it before the Tribunal, the fact remains that such a right cannot be denied to an insurer and must, therefore, be interfered with by the High Court, if necessary, by taking resort to Articles 226/227, notwithstanding the fact that the denial of such an opportunity is not provided as a ground for appeal to the insurer u/s 149. Let me also assume a situation in which the registered owner of a vehicle, while taking out his car from inside his garage located within his compound, injures one of the inmates of his own house. Though the accident has not taken place on account of the use of the vehicle at a public place, no insurance policy existed for such an accident and no compensation can be awarded in such a situation in terms of the insurance policy, yet if the Tribunal awards compensation in such a case, can the insurer challenge the award on the ground that it is statutorily and contractually not liable to pay compensation in the case. In such a case too, non-interference by the High Court in exercise of its writ jurisdiction would be tantamount to allowing the Tribunal to award compensation in respect of an accident, which was outside the ambit of the M.V. Act itself, though such a violation is not perceived as a ground for appeal u/s 149. Similarly, where the evidence given on record is that a deceased rickshaw-puller used to earn Rs. 1,000/- per month, can the Tribunal arbitrarily hold that the rickshaw-puller must be earning Rs. 10,000/- per month and determine compensation on the basis of such an amount. Though a mere error in computing the compensation may not become a ground for exercise of certiorari jurisdiction, yet if the determination of compensation suffers ex facie from arbitrariness, such arbitrariness cannot be allowed to survive by referring to Section 149(2), for, the rule of law abhors arbitrariness and is anathema to the sense of justice. Let us also take the instance, when a fiancée of a deceased, who met with an accident, raises a claim for compensation on the ground that she was dependent on the deceased. Though no right of compensation is available u/s 166 of the M.V. Act to a person unless he or she is a legal

representative, the Tribunal awards compensation to such a claimant. Can the High Court allow such an award to stand good on record merely on the ground that the Legislature has chosen not to allow the insurer the right to impugn the award on the ground that the claimant does not have the locus standi. Allowing such an award to stand good on record will amount to putting seal of approval on arbitrariness of the Tribunal or the act of the Tribunal, which is wholly contrary to the scheme of the very enactment under which the Tribunal functions.

54. One can, thus, multiply the examples, when the High Court may, notwithstanding the limited right of appeal provided to the insurer u/s 149(2), have to interfere in certiorari jurisdiction in order to keep the Tribunal within the bounds of law. What the High Court cannot do is to convert itself into a Court of appeal, but it will be too much to say that under no circumstances, the High Court under Article 226/227 can interfere with an award passed by a Tribunal even if the award be a nullity in the eyes of law or is completely perverse or even when the award passed is one, which cannot stand most reluctant judicial scrutiny.

55. I am fortified in coming to the above conclusion from the Full Bench decision in National Insurance Co. Ltd. Vs. Soma Devi and Others, wherein, on considering the parameters of the decision in Sadhna Lodh (supra), the Full Bench observed and held as follows :-

"11. Their Lordships of the Apex Court, therefore, have clearly and categorically held and decided that for whatever reasons the grounds of challenge with respect to an award cannot be enlarged by an insurer by filing a petition under Articles 226/227 of the Constitution on the premise that insurer having limited grounds available to it u/s 173 of the Act, it is therefore, permissible for it by invoking the extraordinary jurisdiction of the High Court to extend or enlarge the grounds by taking recourse to the remedy of filing a petition under Articles 226/227 of the Constitution. This has been held impermissible.

12. The aforesaid proposition of law thus sets at rest any controversy, or doubt about the maintainability of any such petition under Article 226 or 227 of the Constitution and, therefore, the Division Bench judgment of this Court in United India Insurance Co. Ltd. Vs. Sumitra Devi and Others, taking a view contrary to the aforesaid view of the Apex Court, is hereby overruled. The overruling of the judgment in Sumitra Devi, or for the matter reliance placed by us (in doing so) upon the ratio in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, does not and cannot mean that, apart from an award based on any question relating to the quantum of compensation not being liable to be challenged by an insurer in a petition filed under Articles 226/227 of the Constitution of India, the doors of this Court are always completely shut to a person, including an insurer, in invoking this Court's extraordinary jurisdiction under Articles 226/227 of the Constitution where such a person, including an insurer satisfies this Court that the award is a complete perversity, or a nullity in the eyes of law, or that either the Tribunal has had no jurisdiction in passing the

award, or the award has been passed on grounds and for reason which, on the touchstone of any constitutional or legal provision or even a provision in common law, cannot stand judicial scrutiny. For instance, where an insurer approaches this Court by filing a petition under Articles 226/227 of Constitution of India assailing an award of the Tribunal on the ground that, contrary to all principles as are found in the law of Torts or those relating to fixing tortious liability, the claimant had no cause to prefer any claim at all, or that there was no wrong done by any one, not the least by the insurer respondent, as far as the alleged causing of the alleged injuries or for that matter even the factum of the accident was concerned."

56. It is also worth noticing, if I may hasten to emphasize, that merely because of the fact that the High Court, as I have held above, does not enjoy the revisional jurisdiction in respect of appealable awards passed by the Tribunals under the MV Act, it does not mean that by curtailing the revisional jurisdiction of the High Court, its constitutional jurisdiction to issue writ of certiorari has been taken away.

57. In the result and for the reasons discussed above, I hold that all the Civil Revision Petitions enlisted above are not maintainable, the same having arisen out of the impugned awards, which are appealable, and shall, therefore, stand dismissed accordingly. This will, however, not debar, in an appropriate case, the revision petitioners from challenging the award by way of writ application. No costs.

58. I further clarify that the writ petitions, which have been enlisted above, though maintainable, are being disposed of, on merit, by independent orders.