

(1978) 12 DEL CK 0002

In the Delhi High Court

Case No : Company Petition No. 96 of 1977

V.V. Purie

APPELLANT

Vs

E.M.C. Steel Ltd. and Others

RESPONDENT

Date of Decision : 22-12-1978

Acts Referred:

Citation : (1980) 50 CompCas 127 : (1979) ILR Delhi 477

Hon'ble Judges : S. Ranganathan, J

Bench : Single Bench

Advocate : Satish Chander, Ved Vyas and A.P. Jain, for the Appellant;

Judgement

S. Ranganathan, J.

(1) This is a petition u/s 237 of the Companies Act seeking an order for an investigation into the affairs of E.M.C. Steel Ltd., (hereinafter referred to as "the company"). Sri Ved Vyas appearing for the respondents raised two preliminary objections to the maintainability of the petition : (1) that the petitioner has no locus standi to file a petition u/s 237; and "2) that the allegations in the petition and the circumstances in which the petition has been filed show that the petition is mala fide and intended only to harass the respondent by setting in motion a fishing enquiry into the affairs of the company. I am disposing of by this order only these two preliminary objections which, if up-held, would result in the petition being dismissed in limine.

(2) The first respondent the company, was incorporated on August 21, 1971 as the Private Limited Company but became a public company on December 28, 1973. The paid up capital of the company is rupees five lacs being the amount fully paid up on its 50,000 equity shares of the face value of Rs. 10 each. Of these 49996 shares are held by M/s. Electrical Manufacturing Company Ltd., (hereinafter referred to as the holding company") and the remaining four shares are held by three individuals. Respondents 2 to 6 are Directors of the company.

(3) The petitioner is the attorney of Smt. Savitri Devi Maini and her five

daughters who owned premises No. II, Panchsheel Park, Diplomatic Enclave, New Delhi. In response to an advertisement by the petitioner the second respondent approached the petitioner with an offer that the company would take on lease the first floor of the above house (hereafter referred to as "the premises") on rent for a period of three years from August 15, 1975. The rent payable was agreed to be Rs. 2750 per month from August 15, 1975 to July 31, 1977 and Rs. 3000 from August 1, 1977 to July 31, 1978. The terms of the tenancy were set out in a letter addressed to the petitioner by the first respondent. The allegation of the petitioner is that though tenancy was in the name of the company it was really intended for the use of respondents 2 and 5 and that in addition to the sum of Rs. 2750 per month, the second respondent had agreed to pay a sum of Rs. 5000 per month as retainer fee to one P. P. Singh, husband of one of the co-owners of the premises who had been an employee in the holding company till December 31, 1974. It is further alleged that respondents 2 and 5 had assured the petitioner that they would vacate the premises in the event of the premises finding a buyer for the premises and desiring to sell the same. In October 1976 it is stated the owners entered into an agreement to sell the premises to the Government of Egypt and so called upon the respondent to vacate the same. But the respondents had a great influence in political circles and refused to vacate the premises till March 1977. At that time they agreed to vacate the premises provided the full rent paid by them for the period from August 15, 1975 to December 31, 1976 was refunded to them. It is stated that since the petitioners had agreed to sell the property to the Egyptian Government they had no alternative but to agree to this demand. Accordingly, it is stated, that the petitioner's paid a sum of Rs. 53,625 (Rs. 45,375 being rent at Rs. 2750 per month and Rs. 8250 being the sum received by P. P. Singh) to the 5th respondent in cash on March 23, 1977 in the presence of witnesses. It is the allegation of the petitioner that the 5th respondent did not pass on this amount to the company but mis-appropriated it. The petitioner has filed suit No. 554 of 1977 in this Court for declaration that the sum of Rs. 53,625 has been given to the first respondent company through the 5th respondent and this suit is pending adjudication.

(4) In the meantime, the petitioner has moved this petition u/s 237 of the Companies Act seeking investigation into the affairs of the first respondent company. The allegations on the basis of which the investigation is sought for may be summarised as follows: (i) The company has availed itself of huge financial credit from the Allahabad Bank, Calcutta and diverted the funds either to its own Directors or to the holding company. The overdraft facilities given by the above bank to the company were far out of proportion to its capital and other resources. (ii) The fifth respondent had developed political contacts and by virtue of association with persons in power abused his influence in business matters. (iii) The balance sheet and the profit and loss account and auditors' report of the company disclosed a state of affairs which called for investigation. (iv) The sum of Rs. 53,625 had been mis-appropriated by the 5th respondent. For these

reasons it is prayed that this Court should direct the Central Government to appoint an Inspector to carry out an investigation in the affairs of the company.

(5) I may at once state that of the two preliminary objections raised by Sri Ved Vyas there is no substance in the second objection that the petition is mala fide and intended only to harass the respondents. It is no doubt true that some broad allegations have been made in paragraph 18 and 19 of the petition making certain allegations against the respondents which may not be quite material for the disposal of the petition. But I do not think that the mere fact that such allegations have been made can result in the dismissal of the petition on the grounds suggested by Sri Ved Vyas. If otherwise the petitioner has made out a case for an investigation into the affairs of the company I do not think that the petition can be dismissed because the petitioner is motivated in filing the petition either in view of a pending litigation between the two parties or in view of the grievance of the petitioner that the respondents had taken advantage of certain political situations in their dealings with him.

(6) It is common ground that, apart from the one transaction above referred to in respect of which the petitioner has already filed a suit the petitioner has no manner of interest in or concern with the affairs of the company as a shareholder, creditor or otherwise. This being so, the question raised is whether the petitioner has any locus standi to present, this petition under Sec. 237 of the Act, to ask for an investigation into the affairs of the company.

(7) Section 237 appears in Chapter I of Part Vi of the Companies Act which contains general provisions for the management and administration of the company. This chapter deals with several topics under this head such as the maintenance of registers, the filing of annual returns, the conduct of meetings and proceedings, the qualifications and restraints on management personnel and their remuneration, the manner of maintenance of accounts and audit of company and includes also provisions regarding the investigation into the affairs of the company. Under the sub-heading "investigation", the Act makes two important provisions for enabling an investigation into the affairs of a company which are contained in Section 235 and 237 of the Act. Section 235 enables the Central Government to appoint inspectors to investigate the affairs of the company on an application being made by a specified minimum number of the members of the company or on a report by the Registrar u/s 234 of the Act. Where the members of the company seek an order from the Central Government, the Central Government can require evidence to show that the applicants have good reasons for requiring the investigation. Where the Central Government moves on the basis of a report of the Registrar that will be because in the opinion of the Registrar certain account books and documents of the company disclose an unsatisfactory state of affairs or do not disclose a full and fair statement of the matters to which the document relate, or because he is of opinion, on materials placed before him by any contributory or a creditor or any other person interested, that the business of the company is being carried on in

fraud of its creditors or of persons dealing with the company or otherwise for a fraudulent or unlawful purpose.

(8) Section 237 is the provision with which we are concerned in the present case. This section reads : "Without prejudice to its powers u/s 235, the Central Government : (a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if (i) the company, by special resolution: or (ii) the Court by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government; and (b) may do so if, in the opinion of the Central Government there are circumstances suggesting (i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose ; (ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or (iii) that the members of the company have not been given all the information with respect of its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, the managing agent, the secretaries and treasurers, or the manager, of the company." This Section enables the Central government to appoint inspectors to investigate the affairs of a company in two sets of circumstances. In the first eventuality, namely, where the company has by a special resolution requested the Central Government to do so or the Court by order has declared that S.he affairs of the company ought to be so investigated the Central Government has no option but to appoint an inspector. The second part of the section gives a discretion to the Central Government to consider whether such an investigation is called for and it may do so after consideration of circumstances suggesting the conduct of the business in the manner set out in sub clauses (i), (ii) and (iii) of clause (b) of the above section. It is under subclause (ii) of clause (a) of this section that the present application has been filed.

(9) The clause is couched in very wide language. It does not specifically impose any conditions or spell out any requirements to be satisfied before a petitioner comes to Court or the Court directs the appointment of an inspector. Nevertheless, can it be said that there are certain implicit or inherent limitations on the exercise by the Court of its power under this clause ? An attempt was made earlier unsuccessfully to read into the section one such limitation. It was argued that the Court cannot exercise such a power unless it is already in seisin of some other matter relating to the company and the request for investigation is made to the Court incidentally in the course of such proceedings. But this argument was rejected by the Bombay High Court in the case of Alembic Glass Industries (1972) 42 Comp Cas 63. It is sufficient to read the third head-note in that decision appearing at page 63.

"There is nothing in the language of Section 237(a)(ii) indicating that a petition simplicities for action u/s 237(a)(ii) cannot be entertained and that the power conferred by Section 237(a)(ii) can only be exercised by the Court against a company in respect of which some other proceeding is pending in the Court and the Court considers it proper to direct appointment of an inspector."

The same view was taken by Kapur J in the case of Delhi Flour Mills Co. Ltd. 1975 (45) Comp Cas 33.

(10) In view of the above decisions, Shri Ved Vyas stated that he would not press that argument here but he contended that, however wide the language of Section 237 may be, it should not be so construed as to vest an absolute and unlimited right in a complete and total stranger who has no manner of interest in connection with a company to seek an investigation into its affairs. Before considering this contention, it is necessary to refer to the observations of Kapur, J. in the case of Delhi Flour Mills Co. Ltd., (supra) which, according to Shri Lekhi, has already decided the point. No doubt, Kapur, J. observed in that case :

"One serious misgiving has been in my mind concerning the present petition which I may now set out. It is open to any petitioner to move the Court for an order of investigation against the company. He need not be a share-holder; he need not have any personal interest ; he may be a complete stranger and yet he can move the Court seeking an order for investigation of the affairs of a company. If the Court has to deal with such petitions, the Court may be literally flooded with them. It is Therefore necessary for the Court to act most cautiously on the question of considering whether the affairs of a company need investigation."

But that was a case of a petition filed by a shareholder of the company and the learned Judge had no occasion to deal with the issue of locus standi now raised. The observations were made in a different context and, in fact, they show that the learned Judge was also emphasising the necessity of exercising great caution and restraint in invoking the aid of the section.

(11) After deep consideration, I have come to the conclusion that the argument of Shri Ved Vyas has to be accepted. The courts are intended to provide redress to litigants who complain of the infringement of their legal rights and, in the absence of very clear words in a statute, it may not be construed as conferring on any person a right to move a Court when no legal injury has been caused to him. The legal maxim "Ubi Jus Ibi remedium" has two facets. It signifies, in the first place, that whenever the law gives a right or prohibits an injury", the person who is injured or whose right is infringed will have a remedy of action in the Courts. The converse of this proposition is equally true, viz. that there is no remedy by way of legal action unless there is the infringement of a legal right to demand that an act shall not be done. The common law as well as the several statutes create rights and duties and they also provide for certain remedies against the violation of the rights or non-performance of the duties. The

provisions for remedies have to be construed as intended for seeking remedies against the infringement of the legal rights. Where a person has no legal interest, he has no grievance in the eye of law and he cannot seek intervention of the Court.

(12) It is the above principle that has been applied by the Courts even while interpreting the scope of prerogative writs and they have always insisted that the person who approaches the Court must be one whose legal rights are affected and who has a legal grievance. This position has been reiterated in a series of decisions of the Supreme Court. In *Chiranjit Lal Chowdhuri v. The Union of India and others* 1950 S.C.P. 869, Mukherje[^]J. observed :

"To make out a case under this article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced, under article 32 must ordinarily be the rights of the petitioner himself who complains of infraction of such rights and approaches the court for relief. This being the position, the proper subject of our investigation would be what rights, if any, of the petitioner as a share-holder of the company have been violated by the impugned legislation."

In *The State of Orissa Vs. Madan Gopal Rungta*, the High Court had not decided the respective merits of the rival contentions between the parties as it was of opinion that the matter could be satisfactorily gone into in the course of a suit. However, the Court passed an order on the writ petitions giving certain directions. The Supreme Court held that language of Art 226 did not permit the High Court to pass an order of the nature above mentioned. *Kania C. J.* observed : "The language of the Article shows that the issuing of writs or directions by the Court is not founded only on its decision that a right of the aggrieved party under Part Iii of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article. In the *Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and others* Supplementary (3) S.C.R. 1(5) the applicant company had been appointed under an agreement as the manager of another company (*Oriental Gas Company Ltd.*) which owned an industrial undertaking for the manufacture and sale of fuel gas in Calcutta. The West Bengal Legislature enacted the *Oriental Gas Company Act, 1960* providing that the said undertaking should stand transferred to the State Government for five years for management and control and notifications were passed in pursuance thereof. The applicant by a petition under Art. 226 sought to impugn the constitutional validity of the said Act. The first question that fell to be considered was whether the appellant had the locus standi to file the petition

under Art. 226 of the Constitution. Subha Rao-J. (as he then was) stated the principle thus : "The argument of learned counsel for the respondents is that the appellant was only managing the industry and it had no proprietary rights therein and. Therefore, it could not maintain the application. Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is Therefore clear that persons other than those claiming fundamental right can also approach the court seeking a relief there under. The article in terms does not describe the classes of persons entitled to apply there under; but it is implied: in the exercise of the extra ordinary jurisdiction that the relief asked for must be one to enforce a legal right. In the State of Orissa v. Madan Gopal Rurga this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Art. 226 of the Constitution. In Chiranjit Lal Chowdhuri V, The Union of India, it has been held by this Court that the legal right that can be enforced under Art. 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of petitioner under Art. 226 of the Constitution. The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The question, Therefore, is whether in the present case the petitioner has a legal right, and whether it has been infringed by the contesting respondents."

(13) The above decisions show that inspire of the wide language of Art. 226 and inspire of the fact that Art. 32 is also intended to ensure the protection of Fundamental Rights, the courts have held that only a person who has a legal right and who is prejudicially affected by a particular legislation or act can approach the court for obtaining the relief under the said provisions. This is a general principle which should apply in respect of any petitioner approaching a Court for redress.

(14) Shri Lekhi argued that Section 237 appears in the context of a number of statutory provisions which are intended to regulate the management and administration of companies in, public interest. He took me broadly through the various allegations made against the company. He pointed out that, according to the petition, the annual accounts and balance sheet of the company contained various aspects which required Explanation and clarifications. The annual reports showed that the company had been obtaining funds from the bank and diverting it to the holding company and that the company had opened a foreign bank account and personally violating the provisions of the Foreign Exchange Regulations Act. These are matters affecting public interest. He also points out that section 237(a) does not contain any restrictive provisions such as far as the provision regarding a minimum number of persons who can approach the Central Government u/s 235. He submits that no limitations should be inferred or

presumed to exist and that it should be held that it is open to any member of the public to come forward and file a petition that the affairs of a public company are not being properly managed and that an investigation into its affairs should be directed by the Court. He submits that the mere consideration that a wide interpretation of Section 237 would open the flood gates of litigation cannot be taken to be a relevant consideration for interpreting the wide and unrestricted language of Section 237.

(15) To take the last point first, I agree that if the section, can be read as envisaging beyond all doubt that it will be open to any person to come to the court and seek an investigation into the affairs of any company, the courts should not be deterred from giving that interpretation merely because it might open the flood gates of litigation, for, where the statute is clear the court should give effect to the right created and should not restrict that right merely in order to minimise litigation. But where the language of the section is not so clear and where there is nothing in the scheme of the Act to warrant the giving of an altogether too liberal and wide interpretation I think it is legitimate to take into consideration the fact that such a wide interpretation might result in a spurt of litigation by persons having no direct interest or concern in the subject matter thereof.

(16) I have already pointed out that, on general principles, it would not be correct to read the section as authorising any man in the street to seek orders for investigation into the affairs of a company, merely because it is a public company and its affairs are, in his opinion, being conducted to the detriment of public interest. The interest which the person may have as a member of the public in the purity of the administration of public companies is too remote and intangible for the infraction of which he may move a court. That apart I do not think that Section 237 is capable of such a wide interpretation even when read in the context of the Scheme and the various other provisions of the Companies Act. There are several provisions of the Companies Act which contemplate restrictions and provisions to safeguard the interests of the public. A contravention of the provisions of the Act would also be an offence which can lead to a criminal prosecution. Nevertheless whenever there is a violation of the statute, a right to seek redress from the courts is conferred only upon the statutory authorities who are entrusted with the supervision of the companies or on members, creditors or other persons interested in the company. u/s 397-398, where the affairs of a company, inter alia, are being conducted in a manner prejudicial to the public interest, the intervention of the court may be sought but only by a specified number of members of the company though even a smaller number may apply subject to certain conditions and restrictions. A petition for the winding up of a company even where such winding up is occasioned by the conduct of its affairs in disregard of the statute and to the detriment of public interest, can be presented only by the company, its creditors or contributories or by the designated officers of the Government. Where a company is being wound up and it appears that the business of the company has been carried on in a fraudulent manner, only the liquidator, creditor or contributory can seek

appropriate orders from the court against the persons who are alleged to have been parties to the carrying on of the business in a manner aforesaid. Thus the scheme of the Act does not seem to envisage that, merely because a company is a public company, it would be open to any member of the public to move the Court for directions.

(17) The recent decision of the House of Lords in *Gouriet & others Vs. Attorney General* 1977 3 W.L.R. 300 is of some relevance in this context. The Post Office Act and the Telegraph Act in England made it an offence for persons engaged in the business of the Post Office willfully to delay or omit to deliver postal packets and messages in the course of transmission and for any person to solicit or endeavor to procure another person to commit such an offence. The executive council of the Union of Post Office Workers resolved to call on its members not to handle mails to South Africa during a particular week and similar action was also proposed by other trade-unions. The plaintiff *Gouriet* sought the Attorney General's consent to act as plaintiff in relator proceedings for an injunction to restrain the postal union from the above course but the Attorney General withheld his consent. Thereafter the plaintiff issued a writ of summons in his own name and applied to the judge in Chambers for an injunction in the same terms. The injunction in the terms sought for was granted by the Court of Appeal, by invoking the very wide language of Order 15 Rule 16 of the Rules of the Supreme Court which read as follows :

"No action or other proceedings shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby and the court may make binding declarations of rights whether or not any consequential relief is or could be claimed."

The above decision was reversed by the House of Lords for several reasons but we are concerned here only with the application of the principle that a person whose rights as a private individual are not affected cannot seek an injunction even if it be to prevent what he considers to be the threatened breach of law or even the commission of an offence".

(18) At the outset, Lord Wilberforce explained the scope of a relator action (p 30) : "A relator action is a type of action which has existed from the earliest times is one in which the Attorney-General, on the relation of individuals (who may include local authorities or companies) brings an action to assert a public right. It can properly be said to be a fundamental principle of English Law that private rights can be asserted by individuals, but that public rights can only be asserted by the Attorney-General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney-General enforces them as an officer of the Crown. And just as the Attorney-General has in general no power to interfere with the assertion of private rights so in general no private person has the right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out. An appeal was made to the Year Books to controvert this universally accepted proposition.

Examples can be found of cases, in early times, where subjects were allowed to assert in the courts rights of the Crown (see Year Books Series Vol. XVII, Ed. II, 1314-15, Selden Society v. W. C. Holland). But all these cases were cases asserting, through writs of quo warranto or analogous writs, claims of a nature which in modern times came to be made by prerogative writs, or cases concerned with some proprietary right of the Crown : they were not cases of individuals asserting rights belonging to the public. No instance of this could be brought forward, whether in ancient or modern times." And expressed his conclusion thus (p. 316) :

".....I shall content myself with saying that in my opinion there is no support in authority for the proposition that declaratory relief can be granted unless the plaintiff in proper proceedings in which there is a dispute between the plaintiff and the defendant concerning their legal respective rights or liabilities either asserts a legal right which is denied or threatened or claims immunity from some claims that the defendant is infringing or threatens to infringe some public right so as to inflict special damage on the plaintiff."

Viscount Dilhorne, referring to Order 15 Rule 16 above mentioned, pointed out (p. 327) :

"It does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the Court. It merely provides that no objection can be made on the ground only that a declaration is sought. In my opinion, it provides no grounds for saying that since 1883 the courts have had jurisdiction to entertain an action instituted by a person other than the Attorney General who does not claim that any personal right or interest will be affected and who is seeking just to protect public rights."

At p. 332, Lord Diplock observed

"The only kinds of rights with which courts of justice are concerned are legal rights ; and a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it or is invoked by other party to settle a dispute between them as to the existence or nature of the right claimed. So far the court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as the subsisting right or as one which may come into existence in the future conditionally on the happening of an event."

Lord Fraser had this to say (p. 352) :

". . . the plaintiff has expressly disclaimed any special interest and has sued simply as, a member of the public. In the field of public rights I find confirmation in several of the cases that were cited to us for my view there was no difference in the extent of the courts jurisdiction in actions by private persons and whether

the action claims an injunction or a declaration. The case of London Association of Shipowners and Brokers Vs. London and India Docks Joint Committee (1892) 3 Ch. 242, C.A. might at first sight appear to support a wider power to make declarations but that is not really so. All the learned Judges who took part in the decision thought the plaintiffs would only be entitled to a declaration if their private rights were being injured or threatened . . . all the cases cited to us where declarations concerned with public rights were made at the instance of private parties suing alone were cases only either their private rights were affected or they had suffered a special damage by infringement of the public rights."

(19) The above extracts contain an enunciation of the general principle that the courts will not entertain actions on behalf of private persons to enforce the observance of public rights and duties unless they have a personal interest in the matter and unless their rights and interests are in some way affected. I think that, even in the interpretation of Section 237, this basic limitation should be treated as implicit and the section should not be given an interpretation which would make it possible for persons to start litigation in respect of what does not concern them. The section should be so interpreted as to enable relief to be obtained only by some person whose rights have been affected by the manner in which the affairs of the company have been conducted or accounts maintained and has, Therefore, a grievance in the eyes of law for which he seeks relief from the court. There is ample scope for the invocation of Sec. 237 by persons whose rights are infringed or affected and whose interests need to be protected or safeguarded by an investigation A creditor who is unable to move the Central Government under S. 235; member or members though aggrieved, are unwilling to move the Central Government or unable to fulfill the requirements of S. 236 and hence unable to move the Central Government members who approach the Central Government under Sections 235 & 237(b) and are not aggrieved by the rejection of their applications; a company which wants an investigation but is unable to have a special resolution passed. These are all some illustrations of persons who would be able to move the court u/s 237(a). It is, Therefore, not as if the scope of the remedy enacted by this provision would be unreasonably curtailed or would become illusory by reading into the section an implied limitation to exclude persons having no manner of interest or concern with the company, from availing of it.

(20) For the above reasons I uphold the preliminary objection raised by the respondent to the maintainability of the petition and dismiss the petition in limine. There will however be no order as to costs.