IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 5107 of 2024

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1. Union of India, through its Secretary Ministry of Coal, Shastri Bhawan, P.O. Shastri Bhawan, P.S. Sansad Marg, New Delhi-110001.
2. Nominated Authority, Ministry of Coal, Government of India, 120 F-Wing, 1st Floor, Shastri Bhawan, P.O. Shastri Bhawan, P.S. Sansad Marg, New Delhi-110001.

… … Petitioners

Versus

M/s Adani Enterprises Limited (AEL), Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, P.O. & P.S. Khodiyar, Ahmedabad through its authorized representative namely Afroz, aged about 53 years, s/o Mr. Sheik Zahurul Haque, Resident of Second Floor, Above Canara Bank, Magadh Complex, Matwari, P.O. & P.S. Matwari, Hazaribagh, Jharkhand (825301).

…. …. Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

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For the Petitioners : Mr. Anil Kumar, Addl. SGI
Mrs. Chandana Kumari, AC to Addl. SGI
Mr. Abhijeet Kr. Singh, CGC

For the Respondent : Mr. Ajit Kumar, Advocate
Mr. Pandey Neeraj Rai, Advocate
Mr. Rohit Ranjan Sinha, Advocate

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C.A.V. on 23rd September, 2024 **Pronounced on 03/10/2024**

Per Sujit Narayan Prasad, .J.

Prayer:

1. The instant writ petition has been filed under Article 226 of the Constitution of India challenging the order dated 03.08.2024 passed in C.B.C. Case no. 17 of 2024 by the learned Presiding Officer, Coal Bearing Tribunal at Ranchi, where and whereunder, the order to maintain status quo has been granted in favour of the respondent against the petitioner till the disposal of the matter.

Factual Matrix:

2. The brief facts of the case as has been enumerated in the writ petition is required to be referred herein, as under:

M/s Adani Enterprises Ltd. is a company incorporated under the provisions of the Company Act and the respondent was allocated the Gondulpara Coal Block, Jharkhand through auction by the Ministry of Coal.

The Central Government issued an order dated 06.01.2020 and 14.05.2020 as amended to the Nominated Authority for auction of the coal mine for sale of coal. Earlier on 24.06.2009, the petitioner no.1 approved the mine plan which was cancelled by the Hon'ble Supreme Court and thereafter, a tender was issued in 2020 inviting prospective bidders for allotment of coal blocks in which respondent Adani Enterprises Ltd. on 28.12.2020 emerged as the successful bidder of Gondulpara Coal Mines and letter of declaration was issued to the respondent. Thereafter, Coal Mine Development and Production Agreement was executed between the petitioners and the respondent company on 11.01.2021. Subsequently, vesting order was issued in favour of the respondent company on 08.03.2021.

It is the case of the respondent that it had taken all possible steps but during the performance of the activities required to be undertaken to achieve Milestone-2, the company encountered certain circumstances and events which resulted in delay in achievement of the said milestone and in the light of the statement mentioned in the petition under Section 27(i) of the Coal Mines (Special Provisions) Act, 2015, the prayer has been made for declaring the recommendation of the Scrutiny Committee in its 22nd meeting on 08.05.2024 to appropriate the bank guarantee and to restrain the petitioner from taking any coercive steps in furtherance of the said recommendation.

The petition was registered as C.B. Case No. 17 of 2024 and subsequently an injunction petition was filed by the respondent on 29.06.2024 stating therein all the facts and for grant of ex-parte/ad-interim relief.

The Scrutiny Committee held its 22nd meeting dated 08.05.2024 and considered the case of the respondent wherein it has been observed to have considered the show cause notice dated 30.09.2022 for delay in approval of mining plan/project report and corresponding reply dated 27.09.2022 and upon deliberation, allottee was found responsible for delay in obtaining mining plan approval and recommended for appropriation of PBG.

The C.B. case No. 17 of 2024 was registered and by order dated 02.07.2024, the said case was admitted for hearing and direction was issued to file requisites for appearance of opposite party and the matter was posted for order in the stay application.

It is the case of the petitioner that the copy of the petition was served and objection was filed on behalf of the petitioner on 09.07.2024 and on the same day hearing was done on stay application and the learned Tribunal observed that the petition for seeking injunction against the recommendation of the Scrutiny Committee is kept in abeyance till passing of any order by the Nominated Authority regarding appropriation of the bank guarantee.

It is the case of the petitioner that the learned Tribunal has considered the petition dated 03.08.2024 and without hearing the counsel for the petitioner, the order has been passed in favour of the respondent to maintain status quo till the disposal of the matter even though there was a condolence on the said date.

It is also the case of the petitioner that immediately thereafter on 03.08.2024, an application for stay of operation of the order passed by the nominated authority has been filed enclosing the copy of the order dated 02.08.2024 even though a petition filed for injunction was kept in abeyance and as such, there was no occasion before the respondent company to file a fresh petition and even the order dated 02.08.2024 passed by the nominated authority has not been challenged by the respondent company before the

learned Tribunal and in absence thereof, the interim order could not have been passed.

Being aggrieved thereof, the same is under challenge by way of filing the instant writ petition.

3. It is evident from the factual aspect as referred hereinabove that the respondent preferred a case under Section 27 of the Coal Mines Act, 2015 praying therein the following reliefs:

> *"i. Pass an order declaring that the recommendation made by the 22nd meeting of the Scrutiny Committee on 08.05.2024 and circulated vide Office Memorandum dated 04.06.2024 to appropriate the bank guarantee furnished by the Petitioner is arbitrary and illegal;*
>
> *ii. Pass an order to restrain the respondents from taking any coercive steps in furtherance of the recommendation made by the 22nd meeting of the Scrutiny Committee on 08.05.2024 including any attempt to issue an appropriation order;*
>
> *iii. Pass an order directing the Respondent No. 2 to approve the mine plan with external OB dump area of 103 ha as delineated in the plan submitted by Petitioner and grant proportionate extension of time to the Petitioner Company to achieve Milestone-2 (MS-2) for the period of delay which is not attributable to the Petitioner Company;*
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> *…"*

4. However, the learned court while passing the order has taken note of the plea taken by the respondent who is petitioner herein wherein the ground has been taken that the matter is being considered by the Coal Ministry and as such, the petition seeking injunction against the recommendation of the Scrutiny Committee being considered.

5. The learned court has expressed the opinion that the petition of the respondent herein to grant injunction against the recommendation of the Scrutiny Committee has been considered to be premature because no order from Nominated Authority has been passed. Further, the reason has been assigned that the respondent through its supplementary affidavit has himself submitted that vide office memorandum dated 18.06.2024 issued by the Ministry of Coal, Government of India, a 'Draft Mining Plan Guidelines for Coal and Lignite Blocks, 2024' has been circulated inviting the observations of the stakeholders.

The learned court further came to the finding that the competent authorities are duly considering over the matter and the guidelines alleviating the complication faced in the anvil.

It has further been observed based upon the information furnished on behalf of the petitioner with respect to the consultation and as such, the learned court has opined that since the stake holders are informed that consultation on Draft Mining Plan Guidelines for Coal and Lignite Blocks 2024 is scheduled to be held on 01.07.2024, as such, the petition for seeking injunction against the recommendation of the Scrutiny Committee has been kept in abeyance till the passing of any order by the Nominated Authority regarding appropriation of Bank Guarantee.

6. The respondent after the order dated 09.07.2024 has moved the court for grant of ad-interim relief for grant of status quo in favour of the respondent till the final disposal of the matter since the nominated authority vide order dated 02.08.2024 has passed an order for appropriation of performance bank guarantee. Thereafter, the learned court vide order dated 03.08.2024, the day when the petition was filed praying therein stay of the operation of the order dated 02.08.2024, has directed to maintain status quo till the disposal of the matter.

7. The said order is under challenge before this Court by way of writ petition under Article 226 of the Constitution of India.

Argument on behalf of the Petitioners:

8. Mr. Anil Kumar, learned Additional Solicitor General of India appearing for the petitioners has taken the ground that the order dated 03.08.2024 is per se illegal reason being that on the same day, i.e., on 03.08.2024, copy of the petition was served and the effective order to maintain status quo has been passed without providing an opportunity of hearing to the petitioners.

9. Learned Additional Solicitor General of India, on the aforesaid premise, has submitted that the order dated 03.08.2024 is not sustainable in the eyes of law, as such, is fit to be interfered with.

Argument on behalf of the Respondent:

10. Mr. Ajit Kumar, learned senior counsel has submitted that the order dated 03.08.2024 is not fit to be interfered with reason being that it is incorrect on the part of the petitioner to take the plea that no opportunity of hearing was given to the petitioners rather the petition dated 03.08.2024 appending therein the order dated 02.08.2024 was served to the learned counsel for the petitioner-Union of India and thereafter, the order was passed on 03.08.2024.

11. It has been submitted that the learned court has passed the order on the premise that if the order of maintaining status quo will not be passed then the performance bank guarantee will be appropriated and as such, considering the nature of relief sought for, the order has been passed on 03.08.2024 which cannot be said to suffer from error.

12. The issue of maintainability has also been raised since the writ petition has been filed under Article 226 of the Constitution of India challenging the order passed by the Judicial Officer at the rank of the Additional Judicial Commissioner-I, Ranchi.

    According to the learned senior counsel, the order impugned ought to have been challenged under Article 227 of the Constitution of India.

13. Learned senior counsel has further submitted, in course of argument, that even accepting the argument advanced on behalf of the learned ASGI that serious error has been committed by not providing an opportunity of hearing on the same day when the order was passed, then the order needs to be passed of remand which may be done but simultaneously the interest of the respondent may also be protected.

Response to the argument made on behalf of the Respondent:

14. Mr. Anil Kumar, learned Additional Solicitor General of India has advanced his argument that so far as the maintainability of the writ petition is concerned, by referring to the pleading made in the writ petition, that

even if the wrong provision has been mentioned in the provision of law, the same will be immaterial reason being that the pleading is to be seen not the provision of law, therefore, even accepting the contention of the learned counsel for the respondent that the petition ought to have been filed under Article 227 of the Constitution of India depending upon the pleading made in the writ petition, the same may be considered to be filed under Article 227 of the Constitution of India.

Analysis:

15. This Court has heard the learned counsel for the parties and gone across the finding recorded by the learned court in the impugned order.

16. The first issue regarding the maintainability of the writ petition needs to be considered in view of the objection raised on behalf of the learned senior counsel appearing for the respondent.

17. It is the admitted fact that the present petition has been filed under Article 226 of the Constitution of India. The petition under Article 226 of the Constitution of India cannot be held to be maintainable in view of the fact that the order which is impugned has been passed by the Judicial Officer at the rank of Additional Judicial Commissioner-I, Ranchi, as such, the order since is under challenge having been passed by the Judicial Officer, the writ petition cannot be entertained as has been filed under Article 226 of the Constitution of India but the question herein is that while deciding the said issue only the provision of law is to be seen or the pleading or substance of the petition is to be seen.

18. Law is well settled that the nomenclature of an application is really not material and the substance is to be seen but at the same time, duty is cast on the parties to properly frame their applications and indicate the provisions of law applicable for making the application. Nomenclature may not be normally material but there is a purpose in indicating the nomenclature in a clear and precise manner. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Mohinder Singh v.***

Harminder Singh, (2004) 6 SCC 26. Relevant paragraph of the same is quoted as under:

> *"6. Though the nomenclature of an application is really not material and the substance is to be seen, yet it cannot be said that a party shall be permitted to indicate any provision and thereafter contend that the nomenclature should be ignored. Duty is cast on the parties to properly frame their applications and indicate the provisions of law applicable for making the application. Nomenclature may not be normally material."*

19. The Hon'ble Apex Court in the case of ***Jogendrasinhji Vijaysinghji v. State of Gujarat, (2015) 9 SCC 1*** while deciding the maintainability of the Letters Patent Appeal has categorically held that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context.

20. This Court, in view of the ratio laid down by the Hon'ble Apex Court and further taking into consideration the settled position of law that a petition should not be dismissed due to wrong nomenclature and also taking into consideration the nature of pleading made in the writ petition, is of the view that the instant petition will be said to be filed under Article 227 of the Constitution of India.

21. This Court is now proceeding to examine the propriety of the order passed by the learned court wherein the order has been passed to maintain status quo with respect to the decision taken by the authority for appropriation of the performance bank guarantee by passing order on 02.08.2024.

22. The ground has been taken on behalf of the petitioner-Union of India that no opportunity of hearing has been provided rather on the same day, i.e., on 03.08.2024, only after serving copy of the same and without calling upon the learned counsel for the petitioners, the learned court has passed the order.

23. The aforesaid fact has not been dispute by the learned senior counsel appearing for the respondent since the same is apparent from the face of the order that there is no reference of any argument advanced on behalf of the petitioners rather the learned court has taken note of the order dated

02.08.2024 as also the order dated 09.07.2024 and based upon that the learned court has come to the opinion that there is urgent need of passing order of status quo till the disposal of the matter.

24. It is, thus, evident that the learned court has not bothered to call upon the petitioner-Union of India and in absentia the order has been passed even there is no reference in the said order as to whether the copy of the petition dated 03.08.2024 along with the order dated 02.08.2024 has been served upon the learned counsel for the petitioner or not.

25. The position of law is well settled that when the order is being passed either by the quasi-judicial authority or in the judicial side, it is incumbent to take into consideration each and every aspect of the matter, at least in brief, particularly with respect to the plea if taken by the parties and the reference of the notice issued even if after issuance of the notice, the party has not appeared, the same is to be incorporated in the order passed by the judicial officer in the judicial side or by the quasi-judicial authority or by the administrative authority.

26. The law is also settled that the consideration and reason is the soul of the order and in absence thereof, order cannot be said to be justified one. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519***, wherein, it has been held at paragraph-19 as under:

> *"... ... ...Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless. ... ..."*

27. Likewise, the Hon'ble Apex Court in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496***, wherein, at paragraph-47, it has been held as under:

> *"47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice….. …… ….."

28. The fact about providing no opportunity of hearing to the petitioner-Union of India since is admitted, as such, this Court is of the view that the order dated 03.08.2024 needs to be interfered with.

29. Accordingly, the order dated 03.08.2024 passed in C.B.C. Case No. 17 of 2024 is hereby, quashed and set aside.

30. Learned senior counsel appearing for the respondent has submitted that there is no difficulty in quashing of the order but the interest may be protected otherwise the performance bank guarantee will be appropriated.

31. Serious objection has been made on behalf of the learned counsel for the petitioners that no such order may be passed otherwise the wrong committed by the learned court will be allowed to be perpetuated.

32. This Court, considering the rival submissions of the parties and in order to consider this aspect of the matter, is first of the view that as to whether while exercising the power conferred under Article 227 of the Constitution of India can any order be passed, interim in nature, if the order is passed by the Judicial Officer and; as to whether in the facts and circumstances of the instant case, if the order interim in nature will be passed, whether it will not

lead to perpetuating the illegality already committed causing prejudice to the parties.

33. So far as the first issue is concerned, Article 227 of the Constitution of India is to be exercised under the supervisory power. The issue of applicability of Article 227 of the Constitution of India has been dealt with by the Hon'ble Apex Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and Ors., (2003) 6 SCC 675*** but the applicability of Article 227 of the Constitution of India has again been re-considered by the Full Bench of the Hon'ble Apex Court comprising of three Hon'ble Judges in the case of ***Radhey Shyam and Anr. Vs. Chhabi Nath and Ors., (2015) 5 SCC 423***.

34. The view taken by the Hon'ble Apex Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and Ors.*** (supra) regarding the exercise of power under Articles 226 and 227 of the Constitution of India, in order to look into the propriety of the judicial order, has been over-ruled and it has been laid down that if the order has been passed by the Judicial Officer, the same is to be looked into so far as its propriety is concerned under Article 227 of the Constitution of India. Relevant paragraph of the judgment rendered in ***Radhey Shyam and Anr. Vs. Chhabi Nath and Ors.,(supra***) is being reproduced as under***:***

> *"**27.** Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226.*
>
> ***29.** Accordingly, we answer the question referred as follows:*
>
> *29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.*
>
> *29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.*
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> *29.3. Contrary view in Surya Dev Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] is overruled."*

35. Further the question which requires consideration is the prayer made by the learned senior counsel for the respondent for passing interim order till passing the fresh order by the learned court on remand.

36. The law is well settled that so far as the issue of Article 227 of the Constitution of India is concerned wherein the power which is to be exercised by the High Court under Article 227 of the Constitution of India is very limited. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329** wherein the Hon'ble Apex Court while tracing the evolution of Article 227 of the constitution of India has observed which is being reproduced as under:

> ***32.*** *In AIR para 14 at p. 217 of Waryam Singh [AIR 1954 SC 215] this Court neatly formulated the ambit of High Courts' power under Article 227 in the following words:*
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> > *"14. This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors."*
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> ***33.*** *Harries, C.J. in the Full Bench decision in Dalmia [AIR 1951 Cal 193] stated the principles on which the High Court can exercise its power under Article 227 very succinctly which we would better quote: (AIR pp. 193-94, para 6)*
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> > *"6. Though this Court has a right to interfere with decisions of courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in Manmatha Nath Biswas v. Emperor [AIR 1933 Cal 132] . In that case a Bench over which Sir George Rankin, C.J. presided held that Section 107, Government of India Act (which roughly corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep subordinate courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner."*
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> ***34.*** *In stating the aforesaid principles, Harries, C.J. relied on what was said by George Rankin, C.J. in Manmatha Nath Biswas v. Emperor [AIR 1933 Cal 132] . At AIR p. 134, the learned Chief Justice in Manmatha Nath case [AIR 1933 Cal 132] held:*
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> > *"... superintendence is not a legal fiction whereby a High Court Judge is vested with omnipotence but is as Norman, J., had said a term having a legal force and signification. The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and that they*

do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law."

37. *The Constitution Bench in Nagendra Nath [AIR 1958 SC 398] , unanimously speaking through B.P. Sinha, J. (as His Lordship then was) pointed out that High Court's power of interference under Article 227 is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals function within the limits of its authority.*

(emphasis supplied)

38. *The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela [AIR 1968 SC 1481] also expressed identical views. Bachawat, J. speaking for the unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by the State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law.*

39. *So the same expression, namely, to keep the courts and tribunals subordinate to the High Court "within the bounds of their authority" used in Manmatha Nath Biswas [AIR 1933 Cal 132] , to indicate the ambit of High Court's power of superintendence has been repeated over again and again by this Court in its Constitution Bench decisions.*

40. *Same principles have been followed by this Court in Mani Nariman Daruwala v. Phiroz N. Bhatena [(1991) 3 SCC 141] , wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to. This Court made it clear that except to this "limited extent" the High Court has no jurisdiction to interfere with the findings of fact (see SCC pp. 149-50, para 18). In coming to the above finding, this Court relied on its previous decision rendered in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447] . The decision in Chandavarkar [(1986) 4 SCC 447] is based on the principle of the Constitution Bench judgments in Waryam Singh [AIR 1954 SC 215] and Nagendra Nath [AIR 1958 SC 398] discussed above.*

41. *To the same effect is the judgment rendered in Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi [(1995) 6 SCC 576] . In SCC para 9 at pp. 579-80 of the Report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.*

42. *Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in Lonand Grampanchayat v. Ramgiri Gosavi [AIR 1968 SC 222] (see AIR pp. 222-34, para 5 of the Report) and the decision of this Court in Jijabai Vithalrao Gajre v. Pathankhan [(1970) 2 SCC 717] . The Constitution Bench ratio in Waryam Singh [AIR 1954 SC 215] about the scope of Article 227 was again followed in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898] .*

> ***48.*** *The jurisdiction under Article 226 normally is exercised where a party is affected but power under Article 227 can be exercised by the High Court suo motu as a custodian of justice. In fact, the power under Article 226 is exercised in favour of persons or citizens for vindication of their fundamental rights or other statutory rights. The jurisdiction under Article 227 is exercised by the High Court for vindication of its position as the highest judicial authority in the State. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed ex debito justitiae or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. –"*

37. In the preceding paragraphs we have considered the judgment passed by the Hon'ble Apex Court in the case of ***Radhey Shyam and Anr. Vs. Chhabi Nath and Ors.*** (supra) but we have not found, as has been placed by the learned senior counsel for the respondent, that even under Article 227 of the Constitution of India, the order can be passed interim in nature rather it has been laid down under paragraph 29.2 that the jurisdiction under Article 227 of the Constitution is distinct from the jurisdiction under Article 226 of the Constitution of India and thereby, to that effect the view taken by the Hon'ble Apex Court in the case of ***Surya Dev Rai vs. Ram Chander Rai and Ors.*** (supra) has been over-ruled.

38. It has also been observed taking reference of the judgment rendered in the case of ***Umaji Keshao Meshram and Ors. vs. Radhikabai and Anr., 1986 Supp SCC 401*** that proceedings under Article 226 of the Constitution of India are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution of India are not original but only supervisory.

    It has also been observed that the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (*i*) the court or tribunal has assumed a jurisdiction which it does not have, (*ii*) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (*iii*) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of

jurisdiction. For ready reference, paragraph-23 of the said judgment is being referred as under:

> *"**23.** The Bench then referred to the history of writ of certiorari and its scope and concluded thus: (Surya Dev Rai case [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675] , SCC pp. 687-90, paras 18-19 & 24-25)*
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> > *"18. Naresh Shridhar Mirajkar case [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] was cited before the Constitution Bench in Rupa Ashok Hurra case [Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388] and considered. It has been clearly held: (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by a superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can the writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.*
> >
> > *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.*
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> > ***
> >
> > *24. The difference between Articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Radhikabai [Ganga Saran v. Civil Judge, Hapur, 1986 Supp SCC 401] . Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.*
> >
> > *25. Upon a review of decided cases and a survey of the occasions, wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under*

> *Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labelling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.""*

39. The Hon'ble Apex Court since has laid down that the power to be exercised under Article 227 of the Constitution of India is not having original jurisdiction but only supervisory and once the power is supervisory then it is to be used sparingly and only for in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (*i*) the court or tribunal has assumed a jurisdiction which it does not have, (*ii*) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (*iii*) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

40. Herein, in the instant case, the admitted case of the parties, particularly the petitioner herein, is that the order impugned has been passed without providing an opportunity of hearing and as such the miscarriage has been

caused to the petitioner herein while passing the effective order to maintain status quo against the order assed by the authority dated 02.08.2024.

41. Therefore, this Court is of the view that it is a fit case where the power is to be exercised under Article 227 of the Constitution of India by interfering with the order dated 03.08.2024, as such, we have interfered with the order, but the argument which has been advanced for passing interim order, this Court is of the view that no such direction can be passed by this Court under Article 227 of the Constitution of India reason being that if such indulgence will be granted then the scope of Article 227 will be questioned and that will be in conflict with the power which is to be exercised under Article 226 of the Constitution since when the law has been laid down that the power under Article 227 of the Constitution is to be used sparingly and only for in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors then passing of the interim order will lead to accelerating the error committed even though this Court has interfered with the impugned order by quashing it so that the learned court may remain within the bounds of their authority and not by correcting errors.

If that is the imposition of law then once the error has been corrected by quashing the order dated 03.08.2024 and if in such circumstances, any indulgence will be passed by this Court by protecting the interest of the respondent in continuation of the order dated 03.08.2024, the same will lead to exceeding the jurisdiction by this Court in exercising the power under Article 227 of the Constitution.

42. This Court, therefore, is of the view that no such indulgence can be granted in order to further the illegality which has been committed by the learned court to be perpetuated.

43. Law in this regard is well settled that illegality cannot be allowed to be perpetuated. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in ***State of Orissa and Anr. vs. Mamata Mohanty, (2011) 3 SCC 436***, wherein at paragraphs-56 and 57 it has been observed which reads as under:

> ***"56.*** *It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.)*
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> ***57.*** *This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same. While dealing with a similar issue, this Court in Hotel Balaji v. State of A.P. [1993 Supp (4) SCC 536 : AIR 1993 SC 1048] observed as under : (SCC p. 551, para 12)*
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> > *"12. ... '2. ... To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [1 NY 3 (1847) : A.M.Y. p. 18] at p. 18:*
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> > *"a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn : great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead : and courageous enough to acknowledge his errors.""*

44. This Court, in view of the above, is of the view that no indulgence can be granted to the respondent by allowing to further continue the order dated 03.08.2024.

45. Accordingly, the instant writ petition stands allowed, as such, disposed of.

46. The matter is remitted to the learned court to pass afresh order, after providing adequate and sufficient opportunity of hearing to the parties, preferably within a period of three weeks from the date of receipt/production of copy of this order.

47. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree,

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

Saurabh /**A.F.R.**