

ITEM NO.52

COURT NO.17

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Special Leave to Appeal (C) No(s). 17501-17502/2024

(Arising out of impugned final judgment and order dated 31-05-2024 in RP No. 117/2023 13-03-2023 in WA No. 47/2023 passed by the Gauhati High Court)

N. F RAILWAY VENDING AND CATERING CONTRACTORS
ASSOCIATION LUMDING DIVISION

Petitioner(s)

VERSUS

THE UNION OF INDIA & ORS.

Respondent(s)

[ONLY I.A. NO. 171832/2024 IS LISTED UNDER THIS ITEM.]
(IA No. 171832/2024 - EX-PARTE STAY)

Date : 13-08-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Rana Mukherjee, Sr. Adv.
Mr. S. Wasim A. Qadri, Adv.
Mr. Tamim Qadri, Adv.
Mr. Saeed Qadri, Adv.
Mr. Diwas Kumar, Adv.
Mr. Saahil Gupta, Adv.
Mrs. Kareena Fareed, Adv.
Mrs. Bhavna Kapur, Adv.
Mr. Deepak Bhati, Adv.
Ms. Udit Singh, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. IA No. 179024 of 2024 is an application seeking recall/modification of our order dated 29th July, 2024. By such order, we adjourned hearing of the special leave petitions *sine die* with liberty to mention the same after the larger Bench decides the question referred to it by the coordinate Bench in the decision reported in (2023) 7 SCC 740 : **S.Narahari vs. S.R. Kumar**.
2. The reason why notice on the special leave petitions was not issued is

indicated in paragraph 2 of the said order.

3. Our *prime facie* view of disagreeing with the decision in **S. Narahari** (*supra*) is strengthened by the decision of this Court reported in (1999) 1 SCC 81 : **M/s. Upadhyay & Co. vs. State of Uttar Pradesh** which, in no uncertain terms, lays down that the principles flowing from Order 23 Rule 1 of the Code of Civil Procedure, 1908 are also applicable to special leave petitions filed before this Court. This decision does not appear to have been placed for consideration of the coordinate Bench in **S. Narahari** (*supra*).

4. However, in view of the development subsequent to passing of the order dated 29th July, 2024, i.e., issuance of communication dated 31st July, 2024 by the respondents to the effect that members of the petitioning Association are required to vacate the spaces occupied by them as well as to deposit the amounts unilaterally demanded within 15 (fifteen) days, we are inclined to recall that part of the order dated 29th July, 2024 by which hearing of the special leave petitions was adjourned *sine die*. It is ordered accordingly.

5. Having heard Mr. Mukherjee, learned senior counsel in support of the special leave petitions and the application for stay (IA No. 171832/2024), we are of the considered view that in the event the larger Bench decides the question referred to it in a manner that is ultimately beneficial for the members of the petitioning Association, meaning thereby that a fresh round of special leave petition would be maintainable notwithstanding an earlier challenge to the same judgment and order before this Court having been withdrawn without leave to file afresh and after an unsuccessful attempt to have the same reviewed by the High Court, it would not be in the interests of justice and could also cause irreparable harm to the members of the petitioning Association if we were to dismiss the special leave petition at this stage.

6. Issue notice on the special leave petition as well as on the application for stay, returnable in four weeks.

7. Dasti, in addition, is also permitted.

8. Till the next date of hearing, the members of the petitioning Association shall not be dislodged from the spaces under their occupation and they shall be allowed to carry on business without prejudice to the rights and contentions of the respondents.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)