the ground of his participation in the nomination for the new Chairman is repelled.

The decision of this Court in *Raj Kishore Sharma and others* v. *State of Punjab and others* (2), is not applicable to the case in hand. In that case the candidate participated in the selection process and having failed, was held, could not challenge the selection headed by a Chairman against whom bias was suggested. The decision is on its own facts. On the same ground the decision of the Supreme Court in *Manak Lal* v. *Dr. Prem Chand Singhvi and others* (3), is not applicable wherein bias was suggested against the Bar Council Tribunal.

For the reasons recorded above, this writ petition is allowed. Resolution Annexure P.4 dated February 21, 1994 accepting resignation of the petitioner or removing him from Chairmanship and further electing respondent No. 5 Bawa Kanwarjit Singh as new Chairman of the Samiti is quashed. There will be no order as to costs.

J.S.T.

Before : Hon'ble R. P. Sethi & G. S. Singhvi, JJ.

SHRI A. S. CHATHA, CHIEF SECRETARY TO GOVERNMENT PUNJAB,—*Petitioner.*

versus

MALOOK SINGH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 148 *of* 1994

May 20, 1994

Letters Patent Appeal, 1919—*Clause X*—*Contempt of Courts Act*, 1971—*Ss.* 19 & 19 (1)—*Constitution of India*, 1950—*Art.* 215—*Letters Patent Appeal against interim order of Single Judge passed in contempt petition is not maintainable when it is not passed in exercise of jurisdiction to punish for contempt—Such order is not a 'judgement' when it neither decides the controversy finally nor any issue involved in contempt petition—Appeal liable to be dismissed for want of maintainability—If, however, tests specified in clause X stand satisfied, an*

(2) 1993 (4) S.L.R. 12.
(3) A.I.R. 1937 S.C. 425.

appeal against order passed by a single judge in contempt proceedings is maintainable when the order has characteristics and trappings of finality and effects valuable rights or causes serious injustice.

Held, that no appeal can be filed by a party as a matter of right against an order passed by the High Court in contempt proceedings except where the order or decision of the High Court is in relation to the exercise of its jurisdiction to punish for contempt. We are also of the opinion that appeal cannot be filed by a party as a matter of right merely against an order issuing notice to show-cause or even against a notice by which contempt proceedings are initiated. If the High Court ultimately declines to punish a contember in exercise of its writ jurisdiction under Article 215 of the Constitution of India or section 12 of the Contempt of Courts Act, then an appeal will not lie as a matter of right.

(para 13)

Held, that if the test as specified in clause X of the Letters Patent is satisfied, an appeal will lie against an order which may be passed by a Single Judge of the High Court even in contempt proceedings. Clause X of the Letters Patent is identical to clause XV which was considered by the Madras High Court in *Shanta V. Pai* v. *Vasanth Builders Madras,* 1991, Criminal Law Journal 3026, and, therefore, the ratio of that decision is clearly attracted in this case.

(Para 15)

Held, that appeal under clause X of the Letters Patent will not lie unless the order passed by a learned single judge has the characteristics and trappings of finality and is an order which affects vital and valuable rights of the parties and it causes serious injustice to a particular party. If the matter is open to consideration or reconsideration or where a party has a right or opportunity to put up its own case, the order cannot be treated as deciding something finally or an order which affects the rights of the parties.

(Para 18)

Held, that what the learned Single Judge has done in this case is nothing more than a mere examination of the order passed by the Government on 14th January, 1994. The learned Single Judge has observed.

> "It appears to me that there has been an attempt by the respondent to circumvent and frustrate the implementation of the order of this Court which *prima facie* amounts to contempt. However, taking an overall view of the situation, the case is adjourned to 18th February, 1994 to *enable the respondent* to fully and effectually comply with the order of this Court.

This order neither decides the controversy finally nor it decides any issue involved in the contempt petition finally. The impugned order does not in any manner affect any of the rights what to say valuable rights of the appellant. In fact the learned Single Judge has taken a lenient view of the matter and has allowed one more chance to the respondent to fully and effectually comply with the Court order. In our opinion this order cannot by any stretch of imagination be construed as a judgment for the purposes of clause X of the Letters Patent and we are fully convinced that the appeal is misconceived. Instead of placing full material before the learned Single Judge and instead of satisfying the learned Single Judge that the appellant (respondent in the contempt petition) has fully and effectively complied with the Court order, the appellant has rushed to a Division Bench by filing this misconceived appeal, as we have held above, is not maintainable.

(Para 19)

S. S. Saron, Deputy Advocate General, Punjab, *for the Appellant.*

P. S. Patwalia, Advocate, *for the Respondents.*

JUDGMENT

G. S. Singhvi, J.

(1) In this appeal appeallant has prayed that order dated 21st 1994, passed by the learned Single Judge in Civil Original Contempt Petition No. 888 of 1993 '*Malook Singh and others* v. *A. S. Chatha*' be set aside and the contempt petition filed by Malook Singh and others be dismissed.

(2) A preliminary objection to the maintainability of this Letters Patent Appeal has been raised by the learned counsel for the respondents and by this order we are deciding this preliminary objection. In order to decide this, it is proper to make reference to some of the facts. Malook Singh and others filed Civil Writ Petition No. 2780 of 1980 claiming seniority on the basis of total length of service. This writ petition came to be allowed by a learned Single Judge on December 6, 1991. Letters Patent Appeal No. 555 of 1992 filed by the State of Punjab against the order of the learned Single Judge was dismissed by the Division Bench on January 4, 1993. Special Leave Petition (Civil) No. 7513 of 1993 was dismissed by the Supreme Court on July 16, 1993. Thereafter original petitioners in the writ petition made representations for implementation of the order of the learned Single Judge dated 1th December, 1991. According to them, despite the representations and notice through counsel, the Government did not implement the order of the learned Single

Judge. For that reason Malook Singh and others filed contempt petition which came to be registered as Civil Original Contempt Petition No. 888 of 1993. A notice of show cause as to why contempt proceedings be not initiated was issued by the learned Single Judge, in response to which the present appellant filed a written-statement. Therein he pleaded that in view of the various decisions of the Supreme Court, seniority cannot be assigned from the date of *ad hoc* appointment and that it was not possible for the respondent in the contempt petition to allow benefit of *ad hoc* service towards seniority to the petitioners. On 17th December, 1993, counsel for the non-petitioners in the contempt petition sought adjournment so as to enable him to seek instructions with regard to full compliance of the order of the Court. On 24th December, 1993, the case was adjourned at the request of the Advocate General and once again it was adjorun-ed to 17th January, 1994. On 14th January, 1994, the State Govern-ment issued a seniority list. When the matter finally came up before the learned Single Judge, he expressed the opinion that action taken by the respondent *prima facie* amounts to contempt. Notwithstand-ing this, the learned Single Judge adjourned the case to 18th February, 1994, to enable the non-petitioner in the contempt petition to fully and effectually comply with the order of the Court. It is against this order of the learned Single Judge that the Letters Patent Appeal has been filed under clause X of the Letters Patent.

(3) When Letters Patent Appeal No. 148 of 1994 came up for con-sideration before the Division Bench along with the Civil Misc. appli-cation No. 257 of 1994, it was given out by the Advocate General of Punjab that by office order dated 14th February, 1994 seniority has been assigned to the writ petitioners according to the date of their initial appointment and the date of regularisation has been mentioned in the seniority as a matter of caution and in obedience to the order of the Division Bench in Letters Patent Appeal No. 555 of 1992 decid-ed on 4th January, 1993. By taking note of this statement of the learned Advocate General, Punjab, the Court ordered the issue of notice of motion subject to the objection regarding maintainability of appeal. The Court also stayed further proceedings pending before the learned Single Judge.

(4) Mr. P. S. Patwalia, learned counsel for the respondents, argued that the Letters Patent Appeal by the appellant is not main-tainable in view of the plain and unambiguous language of Section

19 of the Contempt of Courts Act, 1971. Mr. Patwalia argued that no final order has been passed by the learned Single Judge in the contempt petition punishing the appellant and, therefore, the appellant has no *locus standi* to file this appeal. He submitted that only a notice to show cause has been issued by the learned Single Judge caling upon the present appellant to show-cause as to why the proceedings for contempt of Court be not initiated against him. He argued that order passed by the learned Single Judge on 21st January, 1994 does not decide any right of the parties nor has the learned Single Judge decided the matter on merits and, therefore, it cannot be treated as a judgment so as to entitle the appellant to prefer Letters Patent Appeal. Mr. Patwalia argued that the learned Single Judge has not even ordered the issue of notice of punishment and, therefore, it cannot be said that any order has been passed by the learned Single Judge having the trappings and characteristics of a final order affecting the rights of the parties. Mr. Patwalia strenuously argued that against the order dated 21st January, 1994 the present appellant can have no grievance because the only opinion expressed by the learned Single Judge is that *prima facie* action of the respondent in the contempt petition amounts to contempt. The learned Deputy Advocate General argued that the impugned order passed by the learned Single Judge materially affects the rights of the appellant because the learned Single Judge has already expressed the opinion that the present appellant is guilty of contempt. Mr. Saron argued that even though appeal under Section 19 (1) of the Contempt of Courts Act, 1971, may not be maintainable, this appeal can appropriately be treated as an appeal under clause X of the Letters Patent. Mr. Saron argued that by the impugned order the learned Single Judge has decided the controversy regarding maintainability of the contempt petition and, therefore, the appellant has a right to file an appeal under clause X of the Letters Patent. He placed reliance on judgment of a Division Bench of Madras High Court in *Shantha V. Pai* v. *Vasanth Builders, Madras* (1), *Shanti Kumar R. Canji* v. *The Home Insurance Co. of New York* (2), *and Shah Babu Lal Khimji* v. *Jayaben D. Kania and anothers* (3). Mr. Saron also placed reliance on the decisions of the Supreme Court in *Baradakanta Mishra* v. *Mr. Justice*

(1) 1991 C.L.J. 3026.

(2) A.I.R. 1974 S.C. 1719.

(3) A.I.R. 1981 S.C. 1786.

Gatikrushna Misra, C.J. of the Orissa H.C. (4), *and Bakadakanta Mishra* v. *Orissa High Court* (4A), *Purshottam Dass* v. *B. S. Dhillon* (5), *D. N. Taneja* v. *Bhajan Lal* (6).

(5) Article 215 of the Constitution of India declares that every High Court is a Court of record. Being a Court of record, every High Court is vested with all powers of such Court including the power of punishment for contempt of itself and has an inherent jurisdiction as well as right to uphold its dignity and authority. Power of the High Court under Article 215 to punish for contempt of itself is analoguous to Article 129 which confers similar power on the Supreme Court. Prior to the enactment of the Contempt of Courts Art, 1971, it was unequivocally recognised that the High Court has inherent power to deal with the contempt of itself summarily and to adopt its own procedure subject of course to the compliance of rules of natural justice. Entry 77 of List I & Entry 14 of list III of VIIth Schedule 10 the Constitution provides that contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation enacted by appropriate Legislature and it is in the exercise of these legislative powers that the Parliament has enacted Act of 1971. Never the less inherent power of the Supreme Court and the High Court cannot in any manner be treated to have been abridged by the Contempt of Courts Act, 1971. As a matter of fact, Section 22 of 1971 Act lays down that the provisions of 1971 Act shall be in addition to and in derogation of the provisions of any other law relating to Contempt of Courts. This proposition of law was enunciated by the apex Court in *Sukhdev Singh Sodhi* v. *Chief Justice and Judges of the Pepsu High Court* (7). In that case, the Supreme Court held :

> "In any case, so far as contempt of High Court itself is concerned, has distinction from one of the subordinate Court, the Constitution vests these rights in every High Court, so no Act of Legislature could take away that jurisdiction and confer it a fresh by virtue of its own authority."

In *R. L. Kapur* v. *State of Madras* (8), the Supreme Court once again examined the scope of the powers of the High Court to punish

(4) A.I.R. 1974 S.C. 2255.
(4A) A.I.R. 1976 S.C. 1206.
(5) A.I.R. 1978 S.C. 1014.
(6) A.I.R. 1988 S.C. Cases (Criminal 546.
(7) A.I.R. 1954 S.C. 186.
(8) 1972 (1) S.C. Cases 651.

contempt of itself. By making reference to its earlier decision in *Sukhdev Singh Sodhi's case* (supra), the Supreme Court observed :

> "The answer to such a question is furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. After 215 declares that every High Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure."

In *Delhi Judicial Service Association* v. *State of Gujarat* (9), the Supreme Court once again reiterated its earlier view and observed :

> "Article 129 provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself."

Once again in *Brahma Prakash Sharma* v. *State of U.P.* (10), the Supreme Court held :

> "From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Article 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit.
>
> It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior court as Courts of Record."

(6) From the above referred pronouncements of the Supreme Court, it is clear that the High Court being a Court of Record has got inherent powers to punish contempt of itself.

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(9) 1991 (4) S.C.C. 406.

(10) A.I.R. 1954 S.C. 10.

(7) Act of 1971 provides the procedure which is required to be followed by the High Court to deal with cases of contempt of itself as well as that of the subordinate Courts. Sections 2(b) and 2(c) of the Act define "civil contempt and criminal contempt." Section 12 provides for punishment for contempt of Court. Section 14 lays down the procedure where the contempt is in the face of Supreme Court or of High Court. Section 15 speaks of the circumstances in which cognizance of criminal contempt in other cases can be taken. Sections 16, 17 and 18 also deal with the procedure of criminal contempt. Section 19 contains provision for appeals. his Section reads as under :

"19. Appeals. (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—

(a) where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court ;
(b) where the order or decision is that of a Bench to the Supreme Court :

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended ;

(b) if the appellant is in confinement, he be released on bail ; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—
(a) in the case of an appeal to a Bench of the High Court, within thirty days ;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

(8) The ambit and scope of Section 19 (1) came up for consideration before the apex Court in *Baradakanta Mishra* v. *Mr. Justice Gatikrushna Misra, C. J. of the Orissa H.C.* (supra). Therein the Supreme Court held :

"——The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether *suo motu* or on a motion or a reference. That is why the terminus a *quo* for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion of a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision."

(9) In the second case of *Bakadakanta* v. *Orissa High Court* (supra), the Supreme Court once again reiterated its earlier view and observed :

".....Only those orders or decision in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable under Section 19 of the Contempt of Courts Act, 1971."

(10) In *D. N. Taneja* v. *Bhajan Lal* (supra), the Supreme Court once again held that the right of appeal is available under Section 19(1) only against any decision or order of a High Court in the exercise of

its jurisdiction to punish for contempt. The Supreme Court also examined the provisions of Article 215 of the Constitution and observed :

> "When the High Cout acquits the contemner, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. *So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution.*" (underlining is ours).

(11) In *Shanta Vi Pai's case* (Supra), on which reliance has been placed by Shri S. S. Saron, a Division Bench of the Madras High Court made reference to its earlier unreported decision in *Vidya Charan Shukla* v. *Tamil Nadu Olympic Association* (Contemt Appeal No. 5 of 1990 and L.P.A. No. 123 of 1990), wherein it has observed :

> ".....Thus, on the very plain language of Section 19(1) (2) and (3), it emerges that the Act has provided for an appeal against a decision of the High Court in exercise of its jurisdiction to punish for contempt, and consequently an appeal would lie only where the jurisdiction to punish for contempt has been exercised and the contemner has been punished, and in no other case. If the High Court has refused to exercise its jurisdiction to punish for contempt on the ground that no case for contempt has been made out or any such other ground, such an order of the High Court cannot be said to be an order passed in exercise of its jurisdiction to punishment for contempt....."

> "There appears to be a sound rationale behind the restricted right of appeal provided under Section 19 of the Act only against the order or decision where the contemner has been punished and against no other order. It appears to us that the legislature by restricting the right of appeal under Section 19(1) of the Act only to cases where an order of punishment had been recorded in exercise of its jurisdiction to punish for contempt and not in cases where the Court refused to punish for contempt was actuated by the common sense policy of preventing vexatious litigation. It would, in our opinion, be vexatious, if a party

to a litigation could pursue applications to commit his opponent for contempt of Court in the court of appeal, when the trial Court whose process, it was alleged had been disobeyed was of the opinion that no vindication of its own order was necessary To allow appeals in such cases would amount to encouraging vexatious litigation. It is for this reason that the right of appeal under S. 19 (1) of the Act has been restricted to appeal against order or decision where punishment has been recorded."

(12) The Division Bench proceeded to make reference to various decisions of the Supreme Court and sustained the preliminary objection with reference to Section 19 (1) by saying :

"The preliminary objection about the lack of maintainability of the appeal under Section 19 (1) of the Act, therefore, succeeds and we hold that in the facts and circumstances of the case, the order of the learned trial Judge refusing to commit the respondent for contempt of Courts is not appealable, as of right, under Section 19 (1) of the Act."

(13) We are in respectful agreement with the Division Bench of Madras High Court In our considered opinion, no appeal can be filed by a party as a matter of right against an order passed by the High Court in contempt proceedings except where the order or decision of the High Court is in relation to the exercise of its jurisdiction to punish for contempt. We are also of the opinion that appeal cannot be filed by a party as a matter of right merely against an order issuing notice to show cause or even against a notice by which contempt proceedings are intiated. If the High Court ultimately declines to punish a contemner in exercise of its writ jurisdiction under Article 215 of the Constitution of India or Section 12 of the Contempt of Courts Act, then too appeal will not lie as a matter of right.

(14) Argument of Mr. Saron regarding maintainability of the appeal under clause X of the Letters Patent now need be examined. This point has been directly examined by the Division Bench of Madras High Court in *Shanta V. Pai's case* (Supra). In that case, the Division Bench once again referred to its earlier decision in *Vidya Charan Shukla's case* (supra) and observed :

"Section 19 (1) of the Act, indeed, restricts the right of appeal to the Division Bench from an order or decision of a single

Judge and to the Supreme Court from an order or decision of a Division Bench, passed in exercise of the High Court's jurisdiction to punish for contempt where any punishment is recorded against the contemner. It does not provide for an appeal in any other eventuality. It is, therefore, only in the field occupied by Section 19 (1) of the Act that recourse to clause 15 of the Letters Patent cannot be had and not in cases not governed by Section 19 (1). As a matter of fact, Section 22 of the Act itself declares that the provisions of the contempt of Courts Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt. The other law referred to in Section 22 would also embrace Article 215 of the Constitution of India which declares every High Court to be a Court of record, having all the powers of such a court, including the power to punish for contempt of itself. Any order passed by the Court in exercise of its inherent jurisdiction, as a court of record, except which is appealable under Section 19 (1) of the Act, would, if it qualifies the test of being a 'judgment' within the meaning of clause 15 of the Letters Patent and does not fall in any of the excluded categories enumerated therein, would be appealable under that clause. If the intention of the Legislature was to take away the power of the High Court to entertain appeals in all contempt matters, there was no difficulty in saying so in unequivocal terms of Section 19 (1) itself. The only effect that Section 19(1) of the Act can have on clause 15 of the Letters Patent is that an appeal against an order or decision passed by the High Court in exercise of its jurisdiction to punish for contempt would lie, as of right, under that section and not under clause 15 of the Letters Patent because, by virtue of clause 44 of the Letters Patent, the special provisions of Section 19 (1) would prevail over the general right of appeal contained in clause 15 of the Letters Patent."

(15) We are in agreement with the views expressed by the Madras High Court and hold that if the test as specified in clause X of the Letters Patent is satisfied, an appeal will lie against an order which may be passed by a Single Judge of the High Court even in contempt proceedings. Clause X of the Letters Patent is identical to clause XV which was considered by the Madras High Court in *Shanta V. Pai's case* (supra) and, therefore the ratio of that decision is clearly attracted in this case.

(10) The last point which requires determination is as to whether the impugned order of the learned Single Judge can be termed as a judgment within the meaning of clause X of the Letters Patent. Clause X of the Letters Patent is :

> "10. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court."

The meaning and scope of the term "judgment" used in clause X of the Letters Patent which is analogous to similar clause of Letters Patent of the High Courts has become subject matter of numerous pronouncements by our High Court and the Supreme Court. A Full Bench of Delhi High Court considered the controversy in *Begam Aftab Zahani* v. *Lal Chand Khanna* (11). After making reference to clause X of the Letters Patent, the Full Bench observed :

> "We feel that we have to construe the word 'judgment' in Section 10 of the Act in its own context and in the background of its own statutory scheme and that the ratio of the Privy Council decision merely goes to suggest that the word "judgment" as used in the Letters Patent may not be restricted to the literal definition of the expression "judgment" as contained in the Civil P. C. The Letters Patent when providing for appeals from Judgments in our view, contemplates judgments which have both the effect of a decree as defined in the Code and of such order as may effect the merits of a controversy between the parties by determining some disputed right or liability. A judgment may thus be either final or preliminary or interlocutory. In order to decide whether an adjudication should be treated as a "judgment" within the meaning or Clause 10 of the Letters Patent, we feel that regard should be had not to the form of the adjudication but to its effect upon the suit or the civil proceeding in which it is made. If its

(11) A.I.R. 1969 Delhi 85.

effect, whatever its form and whatever the nature of the proceedings in which it is made, is to put an end to the suit or proceeding, or of its effect, if not complied with, is to put an end to the suit or proceeding, the adjudication is indisputably a 'judgment' within the meaning of this clause. Other decisions or determination upon a disputed controversy on the merits in a suit or proceeding may also appropriately fall within the contemplation of the word 'judgment'. It is not possible to lay down any definite rule which would meet the requirements of all cases and whether an order or decision constitutes a 'judgment' or not, the Court has to take into consideration the nature of the order and its effect on the suit or the civil proceeding which it is made. Each case would thus depend on its own peculiar facts and circumstances."

(17) In *Shah Babu Lal Khimji* v. *Jayaben D. Kania and another* (supra). three Judges Bench of the Supreme Court considered—the entire case law on the subject and then held :

"There is no inconsistency between Section 104 read with O. 43, R. 1 and the appeals under the Letters Patent and there is nothing to show that the Letters Patent in any way excludes or overrides the application of S. 104 read with O. 43, R. 1 or to show that these provisions would not apply to internal appeals within the High Court. Even if it be assumed that O. 43, R. 1 does not apply to Letters Patent Appeals. the principles governing these provisions would apply by process of analogy. Having regard to the nature of the of the orders contemplated in the various clauses of O. 43. R. 1, there can be no doubt that these orders purport to decide valuable rights of the parties in ancillary proceedings even though the suit is kept alive and that these orders do possess the attributes or character of finality so as to be judgments within the meaning of Cl. 15 of the Letters Patent and hence, appealable to a larger Bench. The concept of the Letters Patent governing only the internal appeals in the High Courts and the Code of Civil Procedure having no application to such appeals is based on a serious misconception of the legal position."

In the context of the Letters Patent, the Court further observed :

"The concept of a judgment as defined by the Code of Civil Procedure seems to be rather narrow and the limitations engrafted by sub-section (2) of Section 2 cannot be physically imported into the definition of the word 'judgment' as used in Cl. 15 of the Letters Patent because the Letters Patent has advisedly not used the term 'order' or 'decree' anywhere. The intention, therefore, of the givers of the Letters Patent was that the word 'judgment' should receive a much wider and more liberal interpretation than the word 'judgment' used in the Code of Civil Procedure. At the same time, it cannot be said that any order passed by a trial Judge would amount to a judgment ; otherwise there will be no end to the number of orders which would be appealable under the Letters Patent. It seems to us that the word 'judgment' has undoubtedly a concept of finality in a broader and not a narrower sense. In other words, a judgment can be of three kinds :—

(1) ... ...

(2) ... ...

(3) Intermediary of interlocutory judgment—Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43 Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and, therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote. For instance, where the trial Judge in a suit under Order 37 of the Code of Civil Procedure refuses the defendant leave to defend the suit, the order directly affects the defendant because he loses a valuable right to defend the suit and his remedy is confined only to contest the plaintiff's case on his own evidence without being given a chance to rebut that evidence. As such an order

vitally affects a valuable right of the defendant it will undoubtedly be treated as a judgment within the meaning of the Letters Patent so as to be appealable to a larger Bench. Take the converse case in a similar suit, where the trial Judge allows the defendant to defend the suit in which case although the plaintiff is adversely affected but the damage or prejudice caused to him is not direct or immediate but of a minimal nature and rather too remote because the plaintiff still possesses his full right to show that the defence is false and succeed in the suit. Thus, such an order passed by the trial Judge would not amount to a judgment within the meaning of clause 15 of the Letters Patent but will be purely an interlocutory order."

"Thus in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

(18) The Supreme Court then indicated some guidelines which deserve to be kept in mind by the Courts while considering appeals against interlocutory orders, after making reference to some of the tests indicated in *Tuljaram Row* v. *Alagappa Chettiar* (12), by Sir White, C.J., and further observed :

"Apart from the tests laid down by Sir White C.J., the following considerations must prevail with the court :

(1) That the trial Judge being a Senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial

(12) 1912 I.L.R. 35 Madras 1.

Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is *ex facie* legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3) The tests laid down by Sir White, C.J., as also by Sir Couch, C.J., as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind.

These decisions clearly bring out the principles that appeal under clause X of the Letters Patent will not lie unless the order passed by a learned Single Judge has the characteristics and trappings of finality and is an order which affects vital and valuable rights of the parties and it causes serious injustice to a particular party. If the matter is open to consideration or reconsideration or where a party has a right or opportunity to put up its own case, the order cannot be treated as deciding something finally or an order which affects the rights of the parties.

(19) What the learned Single Judge has done in this case is nothing more than a mere examination of the order passed by the Government on 14th January, 1994. The learned Single Judge has observed :

> "It appears to me that there has been an attempt by the respondent to circumvent and frustrate the implementation of the order of this Court which *prima facie* amounts to contempt. However, taking an overall view of the situation, the case is adjourned to 18th February, 1994 *to enable the respondent* to fully and effectually comply with the order of this Court."

This order neither decides the controversy finally nor it decides any issue involved in the contempt petition finally. The impugned order does not in any manner affect any of the rights what to say valuable rights of the appellant. In fact the learned Single Judge has taken

a lenient view of the matter and has allowed one more chance to the respondent to fully and effectually comply with the Court order. In our opinion this order cannot by any stretch of imagination be construed as a judgment for the purposes of clause X of the Letters Patent and we are fully convinced that the appeal is misconceived. Instead of placing full material before the learned Single Judge and instead of satisfying the learned Single Judge that the appellant (respondent in the contempt petition) has fully and effectively complied with the Court order, the appellant has rushed to a Division Bench by filing this misconceived appeal, which, as we have held above, is not maintainable.

(20) For the reasons aforesaid, the appeal is held to be not maintainable and is, therefore, dismissed with costs which we assess at Rs. 1,000. (one thousand).

R.N.R.

Before Hon'ble Ashok Bhan & H. S. Brar, JJ.

M/S HARYANA VANASPATI AND GENERAL MILLS.—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 7408 *of* 1990.

July 15, 1994.

Constitution of India, 1950—*Arts.* 14 & 19—*Haryana General Sales Tax Act,* 1973—*S.* 13-B—*Haryana General Sales Tax Rules,* 1975—*Rl.* 28-*A* (9) (1) & 28-*A* (10) (*v*)—*Concession—Exemption from payment of tax for period of seven years—Closure of business during period of exemption—Cancellation of exemption certificate under rule* 28-*A* (9) (1)—*Rl.* 28-*A* (10) (*v*) *requiring exempted dealer to pay in lump sum entire amount of tax exempted on closure—Both the said rules are* intra vires *Arts.* 14 *and* 19 *of the Constitution—Condition for refund of amount of tax exempted is not un reasonable restriction not arbitrary—Retrospective operation of the rules is not illegal.*

Ashok Bhan, J.

Held, that we find no force in the contention of the petitioner that rules 28-A (8) (i) and 28-A (10(v) of the Rules are *ultra vires*