IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON'BLE Mr. JUSTICE B.VEERAPPA

WRIT PETITION NO.18157/2013 (GM-RES)

DATED: 18-09-2019

Shri H. Munireddy, Vs. The Advocate General,State of Karnataka, Bengaluru and Others

O R D E R

The petitioner has filed the present Writ Petitionfor a writ of certiorari to quash the order dated 4.12.2012 passed by respondent No.1 on an Application No.36/2012 and thereby to allow the grantto initiate criminal contempt proceedings against the respondent Nos.2 to 4 as prayed for in Annexure-R.

I. FACTS OF THE CASE:

It is the case of the petitioner that respondent Nos.2 to 4 being the relatives of the complainant, in order to snatch away the property bearing Sy.No.200/2 situated at Kudlu Village, Sarjapura Hobli, Anekal Taluk, Bangalore Rural District have initiated various legal proceedings against the complainant and the said survey number was the subject

matter of the various suits. Respondent Nos.2 to 4 have also succeeded in getting the declaration in respect of the portion of the land, over which, this Court in RFA No.370/2000 held that respondent No.2 has no manner of right, title and interest. It is the further case of the petitioner that after the death of Sri Hosareddigara Nanjappa, his children Sri K.N.Obala Reddy and respondent No.2 K.N.Muniyappa Reddy effected partition in respect of all the joint family properties including the land to an extent of 37 guntas in Sy.No.200/2, Kudlu Village on 19.07.1972. On 26.06.1994, respondent No.2 filed a suit in O.S.No.214/1994 for partition in respect of Sy.No.200/2 measuring 02 acres 20 guntas of land situated at Kudlu Village, owned by one Sri Munivenkatappa. During the pendency of the said suit, respondent No.2 filed one more suit in O.S.No.329/1996 against the complainant/petitioner and Sri K.N.Obala Reddy, seeking for cancellation of the Wills dated 19.07.1972 and 14.07.1993 executed by Sri Munivenkatappa in favour of present petitioner/ complainant. It is the further case of the petitioner that the learned Judge of the trial Court was pleased to club both the suits in O.S.Nos.214/1994 and 329/1996 and dismissed them by a common judgment and

decree dated 18.04.1996. Aggrieved by the said judgment and decree, respondent No.2 preferred appeals in RFA No.370/2000 and RFA No.408/2000 before this Court.

3. During the pendency of the appeals, on 04.08.2003, respondent Nos.2 to 4 entered into a partition dividing the joint family properties including the lands in Sy.No.200/2 of Kudlu Village. On 06.04.2009, after hearing both the parties, this Court dismissed both Regular First Appeals by a common judgment and decrees which has reached finality. When the things stood thus, respondent Nos.3 and 4 with Smt.K.M.Dhanalakshmi, daughter of respondent No.3, suppressing the material facts and previous proceedings which have attained finality in respect of land in Sy.No.200/2, filed a suit in O.S.No.1103/2009 on 19.07.2009 seeking declaration of their ownership asper the Partition Deed. During the pendency of the suit in O.S.No.1103/2009, respondent Nos.3 and 4 filed O.S.No.327/2010 against the petitioner/complainant for declaration of Adoption Deed dated 28.04.1965, Wills dated 19.07.1972 and 14.07.1993 as not binding on them and

various other reliefs in the year 2010. The suit in O.S.No.1103/2009 filed by respondent Nos.3 and 4 came to be decreed on 30.08.2011. Respondent No.2– K.N.Muniyappa Reddy filed RFA No.1986/2011and the said appeal also came to be dismissed on 06.08.2012. Therefore, according to the petitioner, respondent Nos.2 to 4 have committed contempt of court which is criminal in nature. Therefore, he approached the respondent No.1 by filing an application under the provisions of Section 15(1)(b) of the Contempt of Courts Act, 1971 (hereinafter referred as 'the Act' for short) seeking consent for initiation of contempt proceedings. It is the further case of the petitioner that respondent No.1 without application of mind proceeded to pass the impugned order refusing to grant consent. Hence, the present Writ Petition is filed.

II. OBJECTIONS FILED ON BEHALF OF RESPONDNET NO.2.

4. The respondent No.2 filed objections to the main writ petition and contended that on refusal of the consent to initiate criminal contempt of Court proceedings against the respondents by the learned Advocate General in Application No.36/2012 vide order dated 14.12.2012, the petitioner had

earlier filed Criminal Contempt Petition No.02/2013 before the Division Bench of this Court, for initiation of criminal contempt of court proceedings against the respondents. The Division Bench of this Court by the order dated 12.03.2013, directed the office to place the entire papers before the Hon'ble Chief Justice on the administrative side for further orders in the matter, for consideration of taking cognizance of the criminal contempt against the respondents. Therefore, registry had placed the entire records of Crl.CCC No.02/2013 before the Hon'ble Chief Justice for further orders. On 25.03.2013, the Hon'ble Chief Justice on the administrative side, on consideration of entire material on record placed, refused to order for taking cognizance of the criminal contempt as against the respondents. Inspite of the said order passed by the Hon'ble Chief Justice, the petitioner has filed the present writ petition challenging the order dated 14.12.2012 which is not maintainable and liable to be dismissed.

5. Respondent No.1- learned Advocate General has not filed statement of objections. On 05.08.2014, learned counsel for respondent Nos.3 and 4, Sri Sanketh M. Yenegi had submitted that there was no need for respondent

Nos.3 and 4 to file counter to this writ petition. The said submission was placed on record.

6. I have heard learned counsel for the parties to *lis.*

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES:

7. Sri C.M. Nagabushana, learned counsel appearing for the petitioner contended that since the impugned order passed by respondent No.1 is not a speaking order and it appears, as if it is an endorsement issued on the basis of a detailed order, the said order has to be quashed by this Court. He further contendedthat the impugned order passed by respondent No.1 is without application of mind because, he has not examined the details as to how respondent Nos.2 to 4 have committed contempt by abusing the process of law as held by the Division Bench of this Court in the case of *Vijaya Bank Employees Housing Co-operative Society Limited Vs. Muneerappa* reported in *1990(2) KLJ 513*.

8. The learned counsel would further contend that respondent No.1 even has not made any reference to the fact

that respondent Nos.2 to 4 after being fully aware of the facts and the right that has been already adjudicated and concluded by this Court in RFA Nos.370/2000 and 408/2000 which was the subject matter of suit in O.S.No.1103/2009 and the said suit was decreed against respondent No.2. Aggrieved by the same, respondent No.1 preferred RFA No.1986/2011 and the respondents Nos.2 to 4 concealing the above said fact and judicial proceedings, went on with the matter for nearly two decades before the trial Court as well as before this Court in RFA No.1986/2011.

9. He further contended that respondent No.1 without taking into consideration the law laid down by this Court in the case of *R. Sadagoppan Vs. Sri K. Rajaiah*, reported in *ILR 2009, KAR 3302*, that filing of multiple suit without mentioning the filing or pendency of the earlier suits, amounts to abuse of the process of the Court calculated to hamper the due course of judicial proceedings or the orderly administration of justice is a Contempt of Court, has passed the impugned order, which is like giving legal opinion to an aggrieved party and does not contemplate the provisions of

Section 15(1)(b) of the Act. He would further contend that mere reading of the Order passed by respondent No.1 clearly indicates that it is illegal, arbitrary and unreasonable and absolutely non consideration of records, no reasons are assigned for refusal of consent and based on irrelevant grounds, the impugned order is passed. Therefore, the impugned order cannot be sustained. He would further contend that respondent No.1 has rejected the application based on the irrelevant grounds. Therefore, same cannot be sustained.

10. He further contended that the Division Bench of this Court disposed off Crl. CCC No.2/2013 mainly on the ground that the petitioner had not obtained consent from the learned Advocate General as contemplated, in view of the dictum of the Hon'ble Supreme Court in the case of *P.N. Duda Vs. P. ShivShanker and others reported in AIR 1988, SCC 1208 and Bal Thackrey Vs. Harish Pimpalkhute and another reported in AIR 2005 SC 396* and the intimation made by the Registrar General was to the effect that, in view of the aforesaid judgments, the Hon'ble Chief Justice declined to take *suo-moto* cognizance of the

criminal contempt on 25.03.2013 on administration side and that will not come in the way of the petitioner to challenge the impugned order passed by respondent No.1 exercising the powers under Section 15(1)(b)of the Act. Therefore, he sought to allow the writ petition.

11. In support of his contention, learned counsel relied upon the following Judgments of the Hon'ble Supreme Court;

1. *Ratan Chandra Sharma and Another Vs. Kum. Sheetal Sharma and Others reported in 2002(5) Kar.L.J. 365 (DB) at para 19 and 20*
2. *Bal Thackrey Vs. Harish Pimpalkhute and another reported in AIR 2005 SC 396 at para25*
3. *The Siemens Engineering and Manufacturing Co. of India Ltd Vs. The Union of India and another reported in AIR 1976 SC 1785 at para 6*
4. *Consumer Action Group and another Vs. State of T.N. and Others reported in (2000) 7 SCC 425 at para 30 and 32*
5. *Conscientious Group Vs. Mohammed Yunus and Others reported in (1987) 3 SCC 89 at para-4*
6. *P.N. Duda Vs. P. Shiv Shanker and Others reported in AIR 1988 SC 1208*
7. *N. Venkataramanappa Vs. D.K. Naikar and another reported in AIR 1978 KAR 57.*

12. Per contra Sri Sanket M. Yenegi, learned counsel

appearing for respondent Nos.3 and 4 vehemently contended that the facts and circumstances of the case has to be looked into in the light of the dictum of the Hon'ble Supreme Court in the case of *P.N. Duda Vs. P. Shiv Shanker and Others* stated supra and if considering the Duda case, the petitioner has no remedy as against the order passed by the learned Advocate General. The only remedy available to the petitioner is to file application for contempt proceedings before the Hon'ble Chief Justice. He further contended that the order passed by learned Advocate General can be considered equivalent to the order of Hon'ble Chief Justice and they are one at the same. The order passed by the learned Advocate General is on administrative side and it cannot be interfered by exercising the judicial power by this Court. He further contended that since the order passed by the learned Advocate General is just and proper, the present writ petition is not maintainable.

13. He further contended that it is an undisputed fact that after the impugned order was passed by the leaned Advocate General refusing to give consent, the petitioner has filed Crl.C.C.C. No.2/2013. The Division Bench of this Court

rejected the said Contempt petition and the learned Chief Justice refused to pass any order taking *suo-moto* cognizance on administration side. It is nothing but merger of the orders passed by the Division Bench of this Court, learned Advocate General as well as the order passed by the Chief Justice on administrative side. Therefore, the present writ petition is not maintainable. He would further contend that the order passed by the learned Advocate General in his discretion cannot be interfered with by this Court, unless the order is passed on irrelevant grounds. He further contended that irrespective of the order passed by respondent No.1-learned Advocate General, this Court cannot interfere with the said order exercising the judicial review under Articles 226 and 227 of the Constitution of India, since it is a discretionary order passed under Section 15(1)(b) of the Act.

14. In support of his contentions, learned counsel relied upon the following judgments.

1. *N. Venkataramanppa Vs. D.K. Naikar and another* reported in *AIR 1978 KAR 57 at para 6.*

2. *P.N. Duda Vs. Shiv Shankar* reported in *(1988) 3 SCC 167 at para 27, 38, 40, 59 and 63.*

3. *Bal Thackrey Vs. Harish Pimpalkhute and Others* reported in *(2005) 1 SCC 254at para 4.*

4. *State of U.P. and another Vs. Johri Mal* reported in *2004 AIR SCW 3888 at para34*.

5. *State of N.C.T. of Delhi and another Vs. Sanjeev alias Bittoo* reported in *AIR 2005 SC 2080 at para16*.

6. *Ekta Shakti Foundation Vs. Government of NCT of Delhi* reported in*AIR 2006 SC 2609 at para 16*.

15. Sri Subramanya, learned Addl. Advocate General along with Ms. Niloufer Akbar, learned AGA for respondent No.1 sought to justify the impugned order passed by the learned Advocate General and contended that in pursuance of the order passed by the learned Advocate General, the petitioner has already approached the Division Bench of this Court in Crl. CCC No.02/2013 and also the Hon'ble Chief Justice. Therefore, the only remedy available to the petitioner is to approach the Hon'ble Supreme Court under the provisions of Section 19(1) of the Act. Therefore, he sought to dismiss the present writ petition. In support of his contentions, he relied upon the dictum of the Hon'ble Supreme Court in the case of

'*Baradakanta Mishra vs. Mr. Justice Gatikrushna Mishra*' reported in 1975 SCR (1) 524.

16. Sri Sanjeevaraddi B.N., learned counsel for respondent No.2 sought to justify the impugned action of respondent No.1 in support of his statement of objectionsfiled by him.

17. The learned counsel further contended that the petitioner at paragraphs 18, 19, 20 and 21 of the pleadings in Crl.C.C.C. No.2/2013 has in categorical terms stated about the order passed by respondentNo.1 refusing to give consent. Therefore, indirectly the order passed by the learned Advocate General merges with the order passed by the Division Bench of this Court. Therefore, he sought to dismiss the presentwrit petition.

IV. <u>POINT FOR DETERMINATION:</u>

18. In view of the rival contentions of learned counsel for the parties, the only point that arises for consideration in the present writ petition is;

> *"Whether respondent No.1- learned Advocate General is justified in rejecting the application filed*

under the provisions of Section 15(1)(b) of the Contempts of Court Act, 1971 in the facts and circumstances of the present case?"

V. CONSIDERATION:

19. It is the specific case of the petitioner that respondent Nos.2 to 4 have committed contempt of Court, which is criminal in nature by making spurious claims over the property not belonging to them by filing multiple suits in different Courts and initiating multiple proceedings before various authorities in respect of the same subject matter and the same has attained finality before this Court. As such, an application was made by the petitioner as required under Section 15(1)(b) of the Act seeking consent of respondent No.1 to initiate criminal contempt proceedings against respondent Nos.2 to 4. The application filed by the petitioner consists of eleven pages, giving the details along with Annexures-A to Q and therefore, it is relevant to consider the Provisions of Section 15(1)(b) of the Contempt of Courts Act, 1971which reads as under;

"15. Cognizance of criminal contempt in othercases:

(1) In the case of criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take

action on its own motion or on a motionmade by

(b) any other person, with the consent in writing of the Advocate-General"

20. The whole object of Section 15 of the Act, which prescribes mode of taking cognizance so as to safeguard the valuable time of the Court being wasted by frivolous proceedings by the parties. Section 15 of the Act enables the High Court or the Supreme Courtto take action under that Section on its own motion oron a motion made by the learned Advocate General. The consent in writing of the Advocate General is requisite only for a person moving for contempt. But there is no such restriction or requirement when the Court wants to initiate action on its own motion under Section 15 of the Act.

21. If the issue involved in the proceedings had a greater impact on the Administration of justice and on the justice delivery system, the Court is competent to go into the contempt proceedings, even without consent of the Advocate General as the case may be. The act of the learned Advocate General in giving his consent under the Act neither involves a decision on the rights of the petitioner nor affects the

interests of the respondents. The decision of the learned Advocate General to give his consent in writing, to file a contempt petition, neither precludes the Court from giving its decision on the question whether the objectionable utterances or writings constituted contempt of Court, nor precludes the respondents from raising a plea that their utterances or writings do not constitute contempt of Court. The act of the learned Advocate General, in giving his consent in writing under the Contempt of Courts Act is, therefore, an administrative act and not a judicial or a quasi judicial act.

22. Before initiation of proceedings by a private person, consent of the learned Advocate General is a must. Every citizen has no unfettered right in this respect, because in some cases, he may act more out of personal prestige and vendetta than out of motive to uphold the dignity of the Court. In order to safeguard such a situation, the framers of the Act thought that a restriction should be imposed on such application being filed directly and required to be filed with the written consent of the learned Advocate General, who holds a constitutional position and can scrutinise any such application before coming to Court. The learned Advocate

General being the highest Law Officer at the State level and also as the officer of the Courts is vitally interested in the purity of the administration of justice and preserving the dignity of the Courts. He is expected to examine whether the averments in the proposed motion of a criminal contempt are made, vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further, if cases found to be vexatious, malicious or motivated by personal vendetta and not in publicinterest and will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme court is not accompanied by the written consent of the aforesaid Law Officer, the very purpose of requirement of prior consent will be frustrated. For a valid motion, compliance with the requirements of Section 15 of theAct is mandatory.

23. Respondent No.1- learned Advocate General is expected to exercise his discretion reasonably and in accordance with the policy indicated as contemplated under the provisions of the Act. It is well settled that when a private person files an application under Section 15(1)(b) of

the Act, absolute discretionary is vested with the learned Advocate General in the matter of according consent. Grant or refusal of consent by the learned Advocate General under Section 15 of the Act is discretionary. At the time of according consent, the learned Advocate General should have thoroughly examined the matter before giving his consent. In discharging the duties entrusted to the learned Advocate General under the provisions of Section 15 of the Act, there was no scope for a cavalier approach. Admittedly in the present case, respondent No.1 has not examined with reference to the averments and the documents produced by the petitioner and has not recorded any grounds for refusal and also not stated in the impugned order whether there is public interest orwhether the petitioner has made out any ground for according consent.

24. It is relevant to state that the the Governor of the State shall appoint a person, who is qualified to appoint a Judge of a High Court to be learned Advocate General for the State and it shall be the duty of the learned Advocate General to give advice to the Government of the State upon such legal

matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by His Excellency Governor and to discharge the functions conferred on him by or under the Constitution or any other law for the time being in force and the Advocate General shall hold office during the pleasure of the Governor and shall receive such remuneration as the Governor may determine Conduct of Government Business. Article 165(2) of the Constitution of India refers to discharge of functions confirmed on the Advocate General by the Constitution or any other law, includes the provisions of Section 15(1)(b) of the Contempt of Courts Act. He has to act or give advice to the Court as contemplated under Section 15(1(b) of the Act.

25. The Hon'ble Supreme Court while considering the provisions of Contempt of Courts Act, 1971 in the case of *Conscientious Group Vs.Mohammed Yunus and Others* reported in (1987) 3 SCC 89 at para No.4 has held as under;

> *"The petitioner filed Criminal Miscellaneous Petition No.5244 of 1986 praying for recalling the aforesaid order dated December 12, 1986 on the ground that*

at the time when he applied to the court for withdrawal of the petition he was not aware that under Rule 3(c) of the Rules framed by this Court, the contempt petition could be maintained with the consent of the Solicitor General, if the Attorney General was, for any reason, not in a position to give consent to the filing of the petition."

"The petition for contempt can be maintained even with the consent of the Solicitor General, we would make it clear that it would be open to the petitioner to approach the Solicitor General and to revive the petition after obtaining the consent of the Solicitor General under Rule 3(c). Since this remedy is available to the petitioner for reviving the petitioner for contempt, we do not propose to recall the order permitting withdrawal of the petition. The petition can be revived by the petitioner after obtaining the consent of the Solicitor General. We may point out that the petition will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground."

26. The above said judgment has been considered in the subsequent judgment reported in *(1988) 3 SCC 167* in the case of *P.N. Duda Vs. P. Shiv Shanker and others*. Though the Bench consisting of two Hon'ble judges indicated their reasons separately while concurring, at para Nos.27, 38, 40 and 59 has held as under;

"27. Subsequently the petitioner in that case filed Criminal Miscellaneous Petition No. 5244 of 1986 praying for recalling the aforesaid order on the ground that at the time when he applied to the court for withdrawal of the petition he was not aware that under Rule 3(c) of the Rules framed by this Court, the

contempt petition could be maintained with the consent of the Solicitor General, if the Attorney General, for any reason, was not in a position to give consent to the filing of the petition. He was so allowed. Thereafter the petitioner approached the Solicitor General. But the Solicitor General declined to give the consent in public interest. He gave certain reasons in support of his conclusion. The Court in the aforesaid decision by scrutinising reasons was of the opinion that the reasons stated by the Solicitor General refusing to grant consent could not be said to be irrelevant and the petition was dismissed. In dismissing this application this Court observed at page 93 of the report "No doubt, by the last of the sentence of the said order, the Bench has also observed that 'the petitioner will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground' but this only means that such a refusal can be called in question before this Court by the petitioner by appropriate process". In other words, the effect of the decision is that the reasons given by the Attorney General or the Solicitor General in giving or not giving his consent were justiciable.

38. Shri Gopal Subramaniam has appeared before us and filed a statement signed by the learned Attorney General and also made his oral submissions. Shri Trivedi, intervener has also made his submissions. The main plank of their submissions is that the actions of the Attorney General and the Solicitor General to act were motivated because of the allegation of bias in the aforesaid letter. Reliance was placed in the case of Vassiliades v. Vassiliades and another, A.I.R. 1945 P.C. 38 where the Judicial Committee reiterated that it was highly desirable that all proceedings should be dealt with by persons who are above any suspicion, however, unreasonable, of being biased. It was reiterated that in any case, there was no question of the petitioner being without remedy because the Court can always take action suo motu. The question, therefore, is whether there was a duty cast upon the Attorney

General or the Solicitor General to consider the question of granting consent in terms of clause (b) of section 15(1) of the Act in an appropriate case and if in fact such consent was not granted that question could be considered by the Court. It is not a question of making the Attorney General or the Solicitor General a party to a contempt proceeding in the sense that they are liable for contempt, but if the hearing of the contempt proceedings can be better proceeded by obtaining the consent of the Attorney General or the Solicitor General and the question of justifiability of giving the consent is interlinked on the analogy of Order II Rule I of the Code of Civil Procedure which has application to a civil proceeding and not to a criminal proceeding, it is permissible to go into this question. Indeed, in the case of Conscientious Group (supra) precisely this was done, where an application for contempt was filed and which was revived pursuant to the previous order and the Court while doing so had reserved the right to consider on the previous occasion the question if the Solicitor General refuses to give consent improperly or on irrelevant ground the Court could consider that question. In the case of Conscientious Group, (supra) the Court went into the reasons given by the Solicitor General declining consent. This Court in that case held on examination that such consent was properly refused. This is a complete answer to the contention that in a contempt petition the grounds for either giving consent or not giving consent or for not considering the application for consent are justiciable and that question can not be gone into in that proceeding though it must be emphasised in that proceeding that the Solicitor General was not made a party to the proceeding. In my opinion it will be more appropriate for an officer of the Court whose action is being investigated to be made a party in the proceedings otherwise it would be violative of the rule of audi alteram partem. On behalf of the learned Solicitor General, Shri
A.K. Ganguly has made elaborate submissions. It

was submitted by Shri Ganguly that the procedure followed by the petitioner simultaneously seeking the consent of the Attorney General was not proper and the Solicitor General had been invoked and that was not proper and legal. It is not possible to accept this submission. It was contended that there was no doctrine of necessity applicable in this case because even if the Attorney General or the Solicitor General does not give consent a party is not without a remedy and can bring this to the notice of the Court. Discretion vested in law officers of this Court to be used for a public purpose in a society governed by rule of law is justiciable. Indeed, it was gone into in the case of Conscientious Group (supra) and itwill be more appropriate that it should be gone into upon notice to the law officer concerned. Itis a case where appropriate ground for refusal to act can be looked into by the Court. It cannot be said as was argued by Shri Ganguly that the refusal to grant consent decides no right and it is not reviewable. Refusal to give consent closes one channel of initiation of contempt. As mentioned hereinbefore there are three different channels, namely, (1) the Court taking cognizance on its own motion; (2) on the motion by the Attorney General or the Solicitor General; and (3) by any other person with theconsent in writing of the Attorney General or the Solicitor General. In this case apparently the Attorney General and the Solicitor General have not moved on their own. The petitioner could not move in accordance with law without the consent of Attorney General and the Solicitor General though he has a right to move and the third is the court taking notice suo motu. But irrespective of that there was right granted to the citizen of the country to move a motion with the consent. In this case whether consent was to be given or not was not considered for the reasons stated by the Attorney General. Those reasons are linked up with the Court taking up the matter on its own motion. these are inter-linked. In that view of the matter these are justiciable and indeed it may be instructive to consider why this practice grew up of

having the consent . This was explained in S. K. Sarkar v. V. C. Misra, [1981] 2 S.C.R. 331 where Sarkaria, J. speaking for the Court observed at page 339 of the report that the whole object of prescribing these procedural modes of taking cognizance undersection 15 of the Act was to safeguard the valuable time of the High Court or the Supreme Court being wasted by frivolous complaints of contempt of court. Frequent use of this suo motu power on the information furnished by an incompetent petition, may render these procedural safeguards provided in subsection (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings. In this connection the Court referred to the observations of Sanyal Committee appointed to examine this question where it was observed: "In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would giveconsiderable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate- General in some categories of cases at least . . . " It was the practice that except where the Court feels inclined to take action suo motu parties were entitled to move only by the consent. If no justiciable reason was given in an appropriate case and such consent was refused can it be said that it would not be proper for the Court to investigate the same?

40. Our attention was drawn by Shri Ganguly to a decision of the Allahabad High Court in G.N. Verma v. Hargovind Dayal and others,
A.I.R. 1975 Allahabad 52 where the Division Bench reiterated that Rules which provide for the manner in which proceedings for Contempt of Court should

be taken continue to applyeven after the enactment of the Contempt of Courts Act, 1971. Therefore cognizance could be taken suo motu and information contained in the application by a private individual could be utilised. As we have mentioned hereinbefore indubitably cognizance could be taken suo motu by the Court but members of the public have also the right to move the Court. That right of bringing to the notice of the Court is dependent upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or L) without consideration of that right granted to any other person under section 15 of the Act that could be investigated on an application made to the Court.

59. In the first place the role of the Attorney General/Solicitor General is more akin to that of an amicus curiae to assist the court in an administrative matter rather than a quasi-judicial role determining a lis involving rights of a member of the public vis-a-vis an alleged contemner. As pointed out by the Supreme Court in S.C. Sarkar v. V.C. Misra, [1981] 2 S.C.R. 331, there are difficulties in the Court making frequent use of the suo motu power for punishing persons guilty of contempt. The Attorney General offers his aid and assistance in two ways. On the one hand, he moves the Court for action when he comes across cases where he thinks there is necessity to vindicate the dignity and reputation of the Court. On the other, he helps in screening complaints from the public to safeguard the valuable time of the Court The observations of Lord Reid and Lord Cross in the Thalidomide case: A.G. v. Times Newspapers, [1972] A.C. 277, of the House of Lords, in a different context, in Gouriet v. Union of Post office Workers, [1978] A.C. 435 and of Lord Denning and Lawton LJ, in the same case in the Court of Appeal (1977-1 Q.B. 729) bring but this aspect of the Attorney General's functions."

27. The Hon'ble Supreme Court in the case of *Bal Thackrey Vs. Harish Pimpalkhute and Another* reported in *AIR 2005 SC 396*, considering the provisions of Article 215 of the Constitution R/w Section 15 of the Contempt of Courts Act at para Nos.13,14, 15 and 18 has held as under;

> *"13. In P.N.Duda's case (supra), it was held that :-*
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> *54. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney General chooses to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the court and request the court to take action (vide C. K. Daphtary v. O. P.*
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> *Gupta and Sarkar v. Misra); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move to the court."*
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> *14. The direction issued and procedure laid down in Duda's case is applicable only to cases that are initiated suo motu by the Court when some information is placed before it for suo motu action for contempt of court.*
>
> *15. A useful reference can also be made to some*

observations made in J.R.Parashar, Advocate, and Others v. Prasant Bhushan, Advocate and Others [(2001) 6 SCC 735]. In that case noticing the Rule 3 of the Rules to regulate proceedings for contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) suo motu; or (b) on a petition made by Attorney-General or Solicitor-General, or (c) on a petition made by any person and in the case of a criminal contempt with consent in writing of the Attorney-General or the Solicitor-General as also Rule 5 which provides that only petitions under Rules 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney-General or Solicitor-General had granted the consent. In that case, it was noticed that the Attorney-General had specifically declined to deal with the matter and no request had been made to the Solicitor-General to give his consent. The inference, therefore, is that the Registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of suo motu cognizance in para 28 it was observed as under:-

"Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it.

They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police had refused to take cognizance of their complaint. In any event the power to act suo motu in matters which otherwise require the Attorney-General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources, such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise sub-section (1) of Section 15 might be rendered otiose"

18. The directions in Duda's case when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the

powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the court suo motu on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of suo motu power on the basis of information furnished in a contempt petition otherwise incompetent underSection 15 of the Act may render the procedural safeguards of Advocate-General's consent nugatory. We are of the view that the directions given in Duda's case are legal andvalid.

28. The Division Bench of this Court in the case of *Ratan Chandra Sharma and Another Vs. Kum. Sheetal Sharma and Others* reported in *2002(5) Kar.L.J. 365 (DB)* at para Nos.19 and 20 has held as under;

"19. The provisions of Section 15 of the Act are procedural in nature and the law mandates that any person who wants to move the High Court or the Supreme Court to punish the contemner under the provisions of the Act, has to obtain consent of the Advocate-General in writing or the Attorney-General, as the case may be. There is no provision in the Act providing for alternative remedy in the event of the Advocate-General's refusal to grant his consent in writing, even in cases where there are justifiable grounds, or where the Advocate-General grants consent against few and refuses to give his consent against others, to initiate contempt proceedings against the contemner.

20. Though, this observation does not specifically answer the question now raised, however, in such an event, this Court has ample discretion either to take

suo motu cognizance or reject a petition of the party if it is frivolous or if the contempt alleged is technical or trivial. However, the Court should exercise this power sparingly. In our opinion, this would meet the ends of justice in such circumstances where the Advocate-General refuses his consent. Otherwise, the very purpose of the Act would be defeated if in an appropriate case, the Advocate- General refuses to grant his consent in writing.

29. The Honb'le Supreme Court in the case of *The Siemens Engineering and Manufacturing Co. of India Ltd., Vs. The Union of India and Another* reported in *AIR 1976 SC 1785* at para-6 has held as under;

"6. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support or its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same

reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the Customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs authorities and the validity of the adjudication made by the Customs authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under Customs and Excise laws an independent quasi-judicial tribunal, like the Income-tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi- judicial tribunal would definitely inspire greater confidence in the public mind. By careful perusal of the impugned order passed by the AG it is only stated first para reiteration of the averments made by the petitioner and second para by way of advice which is stated that it is open for the AG for rejection of application on the ground stated in the present application. Therefore, considerable opinion that institution suit O.S. No. 11/2019 cannot be concluded as criminal contempt of court as defined under Section 2(c) of the Act."

30. A careful perusal of the impugned order at Annexure-S dated 14.12.2012 passed by the learned Advocate

General, would go to show that at para No.1 of the impugned order there is only reiteration of the averments made by the petitioner and in para No.2 by way of advice it is stated that *"It is open for the applicant to apply for rejection of the plaint on the grounds stated in the present application. I am of the opinion that the institution of O.S.No.1103/2009 cannot be construed as criminal contempt of Court as defined in Section 2(c) of the Act."* which clearly indicates that the learned Advocate General-respondent No.1 has not examined the pleadings and the judgments in support of the contentions raised by the petitioner while exercising the powers under the provision of Section 15(1)(b) of the Act. My view is forfeited by the judgment of Hon'ble Supreme Court in the case of *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela-I Circle and Other* reported in *(2008) 16 VST 181 (SC)* wherein, the Hon'ble Supreme Court reiterating the judgment in the case of *Raj Kishore Jha Vs. State of Bihar & Others* reported in *(2003) 11 SCC 519* has held as under:

> *"10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same*

it becomes lifeless. Even in respect of administrative orders Lord Denning,
M.R. in Breen v. Amalgamated Engg. Union (1971) 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that theaffected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicialor quasi-judicial performance."

31. The Hon'ble Supreme Court in the case of *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank vs. Jagdish Sharan Varshney and others reported in (2009) 4 SCC 240* at para No.8 has held as under;

"8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N.Mukherjee v. Union of India, is that people must have confidence in the judicial or quasi- judicial

authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that somereasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

32. The Hon'ble Supreme Court in the case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota v.* Shukla and Brothers reported in (2010) 4 SCC 785 at Para 13 has held as under.

"13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non- recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. These principles are not only applicable to administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to the judgment. Now, we may refer to certain judgments of this Court as well as of the High Courts which

have taken this view."

33. The Hon'ble Supreme Court in the case of *East Coast Railway and Another v. Mahadev Appa Rao and others reported in (2010) 7 SCC 678* has held as under;

> *"9. There is no quarrel with the well- settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be lodged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge. The legal position in this regard is settled by the decision of this Court in Commr. of Police v. Gordhandas Bhanji wherein this Court observed: (AIR p.18, para 9)*
>
> *"9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the languages used in the order itself."*

34. The Hon'ble Supreme Court while considering the provisions of Section 2(c), 12 and 15 of the Contempt of Courts Act, in the case of *Muthu Karuppan Vs.*

Parithi Illamvazhuthi and Another reported in *AIR 2011 SC 1645* and the dictum of Bal Thackrey case stated supra at para Nos. 7, 9 and 14 has held as under:

> "*7. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.*
>
> *9. The contempt proceedings being quasicriminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises as observed above, the contempt proceedings being quasi criminal in nature require strict adherence to the procedure prescribed under the Rules applicable in suchproceedings.*
>
> *14. It is clear from the recent decision of this Court in Prashanth Bhushan's case (2010 AIR SCW 5356) (Supra) that if he issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system, the court is competent to go into the contempt proceedings even without the consent of the Advocate General as the case may be."*

35. The Hon'ble Supreme Court in the case of *Oil*

and Natural Gas Corporation Limited Vs. Western GECO International Limited reported in *(2014) 9 SCC 263* while considering the public interest at para No.38 has held as under;

> "38. *Equally important and indeed fundamental to the policy of Indian Law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides, the celebrated audi alteram tartem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstance while taking a view one way or the other way. Non application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the Court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy or Indian law."*

36. The Hon'ble Supreme Court while considering the provisions of Arbitration and Conciliation Act, in the case of *Associate Builders v. Delhi Development Authority reported in (2015) 3 SCC 49* at para 28 has held as under;

> *"28. In a recent judgment, ONGC Ltd. v. Western Geco International Ltd. , this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of*

the fundamental policy of Indian law. The Court held: (SCC pp. 278-80, paras 35 & 38-40)

"35. What then would constitute the 'fundamental policy of Indian law' is the question. The decision in ONGC does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects that rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

38. Equally important and indeed

fundamental to the policy of Indian law is the principle that a court an so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule on of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognized as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will notbe sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesday principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude andplay at the joints in making awards will be open to challenge and may be cast

away or modified depending upon whether the offending part is or is not severable from the rest."

37. The Hon'ble Supreme Court while considering the application of mind both by the Court and quasi judicial authority in the latest judgment in the case of *Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI)* made in Civil Appeal No.4779/2019 dated 08.05.2019 at para No.17 has held as under;

17. Yet another expansion of the phrase "public policy of India" contained in Section 34 of the 1996 Act was by another judgment of this Court in Western Geco (supra), which was explained in Associate Builders (supra) as follows: "28. In a recent judgment, ONGC Ltd. v. Western Geco International Ltd. [(2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held: (SCC pp. 278-80, paras 35& 38-40)

"35. What then would constitute the 'fundamental policy of Indian law' is the question. The decision in ONGC [(2003) 5 SCC 705 : AIR 2003 SC 2629] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination

whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or 20 authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the powerexercised by the court or the authority does nothave to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powersthat affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objectivemanner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge. xxxxxx xxx

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our

jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will notbe sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude andplay at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

38. The Judgment relied upon by the learned counsel for respondent Nos.3 and 4 in the case of *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi* reported in *AIR 2006 SCC 2609*, wherein, it was a case of policy

decision taken by the Central Government in implementation of the scheme called the 'Detailed Scheme for Capacity Building of Self Help Groups' to prepare and supply supplementary nutrition under the Integrated Child Development Scheme Programme, it held that, "While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy. In the matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere". This Court has no quarrel to the said law laid down by the Hon'ble Supreme Court. What is challenged in the present writ petition is only the Constitutional Function exercised by the learned Advocate General under Section 15(1)(b) of the Act and whether the order passed is with cogent reasons has to be looked into. Therefore, the said judgment is not applicable to the facts and circumstances of the present case.

39. The another judgment relied upon by the learned counsel for respondent Nos.3 and 4 in the case of

State of N.C.T. of Delhi and another Vs. Sanjeev alias Bittoo reported in AIR 2005 SC 2080, wherein, the Hon'ble Supreme Court has held that judicial review can only be on the ground of illegality, irrationality and procedural impropriety. Admittedly, in the present casesince there is no examination of relevant records and relevant facts, the order passed by the learned AdvocateGeneral-respondent No.1 is not a speaking order. Without assigning any reasons and except reiteration of the averments made in the complaint, absolutely there is no independent reason. Therefore, the order passed by the learned Advocate General is without any basis, irrational and procedural impropriety. Therefore, the said judgment has no application to the facts and circumstances of the present case.

40. Another decision relied upon by the learned counsel for respondent Nos.3 and 4 in the case of *State of U.P. and another Vs. Johri Mal reported in 2004 AIR SCW 3888*, wherein, the Hon'ble Supreme Court held that the scope of judicial review is very very limited. This Court has no quarrel with the law laid down by the Hon'ble Supreme Court. In view of the fact that learned Advocate

General has passed a non-speaking order, this Court has to interfere only with a view to maintain the majesty of the Court from the frivolous litigation to abuse the process of Court. Therefore, the said judgment is not applicable to the facts and circumstances of the present case.

41. The another judgment relied upon by the learned counsel in the case of Bal Thackrey Vs. Harish Pimpalkhute and another stated supra, wherein, the Hon'ble Supreme Court at para Nos.4 and 5 ultimately upheld the judgment of Duda case that there must be proper reasons recorded by the Solicitor General/Advocate General. Though in the Duda case, both the learned Judges have given their reasons separately but while concurring at para Nos.38 and 40 of the said judgment have proceeded to record that 'the right of bringing to the notice of the Court is dependant upon consent being given either by the Attorney General or the Solicitor General and if that consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the Court'. Therefore, infact the said judgments i.e., Balatakre and Duda cases stated supra relied upon by the learned counsel for

respondents is in favour of the petitioner and in no way it is helpful to the respondents.

42. Today while dictating the judgment, learned counsel for respondent Nos.3 and 4 produced copies of judgment of Kerala High Court and Bombay High Court. In the case of *Dr. Joseph Kuzhijalil Vs. Joseph Pulikunnel Alias P.S. 1999 (2) ALT Cri 442, 2000 CriLJ 1264*, wherein, the contempt alleged is that of a subordinate Court. The claim is that by publication of a pamphlet marked at Annexure-A, the first respondent had attempted to prejudice the due course of a judicial proceeding and this amounted to criminal contempt within the meaning of the Act. On that basis, instead of making a request to the concerned subordinate Court to make a reference for action under the Act, the petitionermoved the Advocate General by invoking Section 15 of the Contempt of Courts Act. Under Section 15(2) of the Act, the High Court may take action on a criminal contempt of a subordinate Court either on a motion made by the Advocate General or on a reference made toit by the Subordinate Court. Section 15(2) of the Act does not

contemplate moving of an application by a litigant or any other person competent before the Advocate General regarding criminal contempt of a subordinate Court, but Section 15(1) of the Act which is in general terms provides in case of a criminal contempt. In those circumstances, the Kerala High Court held that the writ petition is not maintainable.Admittedly in the present case, the application filed by the petitioner under Section 15(1)(b) of the Act came to be rejected without application of mind and without assigning any reasons. Therefore, the said judgment has no application to the facts and circumstances of the present case.

43. Learned counsel also relied upon the decision of the Bombay High Court made in Criminal Contempt Petition No.5/2012 dated 04.02.2013, where the Bombay High Court relying upon the dictum of the Hon'ble Supreme Court in the case of P.N. Duda Vs. Shiv Shanker and Others and Bal Thackrey Vs. Harish Pimpalkhute & others stated supra has come to conclusion that, in the said case admittedly the Advocate General has declined to grant consent and for which he has recorded the following reasons:

> *"I do not grant consent for initiation of criminal contempt proceedings since even assuming the news reports are as alleged by you there is no allegation that scandalizes the Court or which lowers the authority of any Court or which interferes with the administration of justice or prejudices any judicial proceeding or obstructs the administration of justice or tends to any of the foregoing. None of the allegations make out a case of criminal contempt."*

Under those circumstance, the reasons assigned have been accepted by the Court and has been held that the writ `petition is not maintainable. This Court has no quarrel with the law laid down by the Bombay High Court relying upon the judgment of Duda and Takre case wherein, the learned Advocate General in categorical terms has stated that there is no allegation of scandalising the Court or which lowers the authority of any Court or which interferes with the administration of justice or prejudices any juridical proceeding or obstructs the administration of justice. None of the allegations make out a case of Criminal Contempt. Therefore, the complainant therein has not made out any case and under those circumstances, the Bombay High Court has held that the writ petition is not maintainable. Admittedly in the present case, learned Advocate General has not applied mind to the relevant facts and the judgments relied upon by the

complainant before passing the impugned order. Absolutely no reasons are assigned except advising the complainant to file an application for rejection of plaint which is not contemplated under the provisions of Section 15 of the Act. Therefore the said judgment is also not applicable to the facts and circumstances of the present case.

V. CONCLUSION:

44. In view of the aforesaid reasons, the impugned order passed by the learned Advocate General –respondent No.1 without examining the material on record or assigning any reason and by mere advising does not amount to consent as contemplated under Section 15(1)(b) of the Act. He has to exercise his functions as a Constitutional Authority under the provisions of Section 15(1)(b) of the Act to advice the Court. Whether the petitioner has made out any ground or not for issuing consent, has to be examined with reference to the entire material on record and has to give his opinion passed a reasoned order. Mere advice to a party is not a consent as contemplated under the provisions of Section 15(1)(b) of the Act and also the learned Advocate General is not justified

in rejecting the application. Therefore, the impugned order passed by the learned Advocate General-respondent No.1 cannot be sustained.

45. For the aforesaid reasons, the issue raised in the present writ petition is answered in Negative holding that respondent No.1- learned Advocate General is not justified in rejecting the application of the petitioner under Section 15(1)(b) of the Act, without examination of the pleadings, documents and reasons.

46. In view of the above, the writ petition is allowed. The impugned order dated 14.12.2012 passed by the learned Advocate General-respondent No.1 as per Annexure-S is hereby quashed. The matter is remanded to the learned Advocate General-respondent No.1 for reconsideration with reference to the pleadings and examination of entire material on record and pass appropriate order in accordance with law. It is needless to observe that the learned Advocate General without being influenced by any of the observation made by this Court and keeping in view the law laid down by the Hon'ble Supreme Court stated supra, shall pass a reasoned

order strictly in accordance with law.

Ordered accordingly.