MANU/TN/7729/2018

IN THE HIGH COURT OF MADRAS

CRP (NPD) No. 1476 of 2018

Decided On: 01.10.2018

Appellants: **AGD (P.) Ltd.**
Vs.
Respondent: **Registrar of Companies**

Hon'ble Judges/Coram:
S. Manikumar and Subramonium Prasad, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Ramakrishnan Viraraghavan, Senior Advocate and G. Sivashankaran

ORDER

1. Instant civil revision petition has been filed against the order dated 9th January, 2018, made in CP No. 178 of 2017, on the file of the National Company Law Tribunal, Single Bench, Chennai.

2. Short facts leading to the revision petition are that, AGD (P.) Ltd., is a private company incorporated on 24th April, 1959 under the Companies Act, 1956 having its registered office at 810, Hollow Block, Trichy Road, Ramanathapuram, Coimbatore - 641045, Tamil Nadu, India. They are carrying on the business of agriculturalists for growing all kinds of trees and plants and production of various agricultural commodities.

3. The petitioner-company has 3 directors on the Board of the company. Petitioner-company had proposed to enter into an agreement, for sale of a part of its agricultural land, to a third party. Upon proceeding to execute the agreement of sale, with the third party, for a part of the agricultural land, owned by the petitioner-company it was brought to their notice that the name of the company had been struck off from the register of companies. On further scrutiny, it was found that the name of the petitioner-company was struck off from the register of companies on account of the failure of the petitioner-company, to file the statutory returns since 2010, by a suo motu action of the respondent, after issuing a notice of striking off and dissolution in Form STK-7, under section 248 of the Companies Act, 2013 dated 28th June, 2017.

4. The petitioner-company has employed the services of a part time accountant, for filing of the necessary statutory returns, under the Companies Act, 1956/2013 from the financial year 2009-10 and onwards. However, the said accountant has violated the trust of the directors and had not filed any of the said statutory returns in spite of payments being made to him for his services. The directors were not aware that the said returns, were not filed with the registrar of companies. The audited financial statements, from the financial year 2009-10 upto the financial year 2016-17 were duly adopted by the shareholders at the annual general meetings held in the respective years. The petitioner-company has agricultural land to the tune of 44.05 acres, which is used for agricultural activities. Petitioner-company has two unsecured creditors, to the tune of Rs. 7,379.77/- Consequent to the striking off the name of the company from the register of companies, the petitioner-company is prejudiced, as

the company is unable to proceed with the sale of part of the agricultural land to the third party.

5. On the above facts, the petitioner-company prayed for the following reliefs, under section 252(3) of the Companies Act, 2013, that the National Company Lay Tribunal to,-

(i) direct the respondent to restore the name of the petitioner-company in the register of companies maintained by them.

(ii) direct the petitioner-company to file the audited financial statements and annual return for the financial year 2009-10 on wards with the respondent.

6. Report of the registrar of companies, is extracted hereunder:

"1. The Ministry of Corporate Affairs vide letter dated 17th February 2017 had advised RoCs to initiate action under section 248 of the Companies Act, 2013 for striking off the name of companies which have failed to file financial statements or annual returns for immediately preceding two financial years.

2. In the above background registrar of companies, Tamil Nadu, Coimbatore had identified 4266, companies for action under section 248 of the Act. Notice under section 248(1) of the Act in Form STK-1 have been issued to these companies.

3. Notice under section 248 read with relevant rules in STK-5 have been published in Official Gazette and Ministry's website and relevant information was published in Form STK-5A in English and Tamil dailies and the names of those companies have been shared with regulatory authorities like Income-tax, Central Excise and Service Tax authorities seeking objection, from all concerned and from general public.

4. After verifying the replies received and the filing position, 3,889 companies have been finally struck off and their names have been published in the Official Gazette.

5. The subject company is one among such companies identified by this office for action under section 248 of the Act. After due notice and after completing the due procedure the company was finally struck off under section 248(5) of the Act on 15th July, 2017 along with other companies and its name has been published in Gazette of India dated 15th July, 2017.

6. In the instant case, the company had defaulted in filing its statutory returns since 2010. Hence, as per the directions of Ministry notice under section 248(1) in STK-5 were issued to company and its directors on 3rd March, 2017 of the Companies Act, 2013. No reply has been received from the company and its directors. Hence, the company was struck off under section 248(5)..

7. Regarding averments made in of the petition, its is submitted that notice under section 248(1) was issued to the company and its directors in Form STK-1 by speed post on 3rd March, 2017.

8. However, it is respectfully submitted that registrar of companies has no objection in restoring the name of the company back to the register of companies subject to the following:

(i) As per NCLT (Amendment) Rules, 2017, Rule 87A has been inserted into the NCLT Rules, 2016. As per rule 87A(4), where the Tribunal makes an order restoring the name of the company in the register, the order shall direct that:

(a) The appellant or applicant shall deliver a certified copy to the registrar of companies within thirty days from the date of the order;

(b) On such delivery, the registrar of companies do, in his official name and seal, publish the order in the Official Gazette;

(c) The appellant or applicant do pay to the registrar of companies his costs of and occasioned by the appeal or application, unless the Tribunal directs otherwise; and

(d) The company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made there under within such time as may be directed by the Tribunal.

(ii) Further, as per instructions of the Regional Director, the filed offices have been directed to obtain an affidavit from the directors of the company that the company which is to be restored did not involve itself in any unlawful action and was not used as means to transact tainted money during demonetisation period.

9 . In view of the above, it is respectfully submitted that if this hon'ble Tribunal deems it fit to restore the name of the subject company with specific directions in regard to the matters specified in 8(i) an 8(ii) of paragraph 11 above, with such costs as deemed fit and proper under the circumstances of the case."

7. Considering the report of the registrar of companies filed, facts and circumstances of the case, the Tribunal rejected the application in CP No. 178 of 2017, dated 9th January, 2018, as follows:

"Representative for applicant present. Counsel for RoC also present. Representative for the applicant submitted that the applicant-company has been struck off and for last 8 years no business was carried on by the company. The object of the company was to cultivate the agricultural lands. The intention is to sell some of the lands. Therefore, there is no plausible reason for revival of the company. The applicant can explore-the possibilities of winding up the company. Accordingly, the application stands rejected."

8 . Aggrieved by the same instant civil revision petition has been filed, on the following grounds:-

"1. The Tribunal failed to appreciate that the petitioner-company has been in existence for more than 57 years and has been carrying on business or operations for a period of two immediately preceding financial years. Consequently the requirements of section 248 of the Companies Act, 2013 for striking of the petitioner-company have not been satisfied.

2. The Tribunal failed to appreciate that, due to the absence of grounds under section 248 of the Companies Act, the respondent had fairly stated in its counter filed before the Tribunal that it had no objection in restoring the name of the petitioner-company to the register of companies.

3. The Tribunal erroneously held that there was no plausible reason for revival of the petitioner-company. The Tribunal ignored documentary evidence placed before it that the petitioner-company never ceased to carry on its business or operations and the question of revival of the company, therefore, does not arise.

4. The Tribunal failed to appreciate that the non-filing of the audited financial statements and the annual returns from 2009-10 were neither willful nor wanton but is beyond the control of the petitioner-company.

5. The Tribunal erred in holding that the intention of the petitioner to sell some of its agricultural lands will lead to exploring the possibilities of winding up petitioner-company."

9. Contradicting the grounds raised in the civil revision petition, the respondent has filed a counter-affidavit, wherein it is stated as follows:

"(i) With reference to the averments of the petitioner at paras III and TV of the petition, it is submitted that the petitioner-company has not filed its statutory returns with this respondent for the financial year 2010 to 2016. As per the Ministry's Instruction, and as per the provision of section 248(1) of the Companies Act, 2013, the respondent has taken suo motu action for striking off the company from the registrar of companies. As such, Notice "was sent to the company and its directors on 28th February, 2017 and thereafter publication of Notice of STK-5 in the Gazette was made on 8th April, 2017, and publication of STK-7 Notice in Official Gazette was effected on 15th July, 2017, and the company was struck off.

(ii) Being aggrieved by the above action of the respondent-Registrar, the petitioner had filed petition for revival/restoration of the company under section 252(3) of the Companies Act, 2013 before the National Company Law Tribunal (Chennai Bench) in CP No. 178/17. The respondent had filed its counter/reply report before the National Company Law Tribunal. The said application was rejected by the National Company Law Tribunal on 9th January, 2018.

(iii) The averments of the petitioner under grounds of appeal are denied and the petitioner is put to the strict proof.

(iv) Any appeal against the order of National Company Law Tribunal shall be filed before the National Company Law Appellate Tribunal and the High Court has no role under section 421 of the Companies Act, 2013,"

With the above averments, respondent has prayed for dismissal of the writ petition.

10. On 31st July, 2018, this Court passed following order:

Correctness of the order, made in CP No. 178 of 2017, filed under section 252(3) of the Companies Act, 2013, is challenged, in this civil revision petition, under article 227 of the Constitution of India.

2. Material on record discloses that in exercise of powers under section

248(1) of the Companies Act, 2015, notice, dated 28th February, 2017, has been issued, in Form STK-1, under the Companies Act. There was no reply from the revision petitioner. Hence, Form STK-7, notice has been issued, for striking off notice/resolution. For brevity, striking off notice, dated 28th June, 2017, is reproduced hereunder:

FORM STK-7
NOTICE OF STRIKING OFF AND DISSOLUTION
[Pursuant to sub-section (5) of section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS-OFFICE OF THE registrar of companies TAMIL NADU, COIMBATORE

683, Coimbatore Stock Exchange Building, II Floor Trichy Road, Singanallur Coimbatore-641 005.

Notice No. STK-7/ROCCBE/2017/1

Dated: 28/6/2017 Reference:

"In the matter of Companies Act 2013 and the below mentioned 286 Companies in Annexure A.

This is with respect to this Office's STK-1 Notices issued from 23rd February, 2017 and notice in Form STK - 5 issued on 14th March, 2017 and 7th April, 2017. Notice is hereby published that pursuant to sub-section (5) of section 248 of the Companies Act, 2013 the said names have this day of 28th June, 2017 been struck off the register of companies and the said companies are dissolved."

3. Section 252(1) provides for an appeal to the Tribunal, which reads, thus:

"Appeal to Tribunal (corresponds to section 560 of the 1956 Act).

Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.

4. Provisos to sub-section (1) of section 252 of the Companies Act, 2013 are reproduced hereunder:

"Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned:

Provided further that if the Registrar is satisfied, that the

> name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its director, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2). A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation."

5. Sub-section (3) of section 252 of the Companies Act, 2013, provides for an application to be made to the Tribunal for restoration of the company and the same reads, thus:

> "If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order of the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

6. Clause 252 of the Notes on Clauses reads thus : This clause corresponds to sub-section (6) of section 560 of the Companies Act, 1956 and seeks to provide that any person, aggrieved by an order of the Registrar notifying a company as dissolved under clause 248 can file an appeal to the Tribunal within three years for restoration of the name of the company in the register of companies. If Tribunal is of the opinion that removal of name is not justified or in the absence of any ground, may order for restoration of the name. The company shall file the copy of order with Registrar and the Registrar shall restore the name and issue a fresh certificate of incorporation. The clause further provides that where the name of the company is struck off from the register of companies, the name of the company may be restored, if the Tribunal, on an application by the company, any member or creditor, is satisfied that the company was carrying on business or was in operation or otherwise and it is just to restore the name of company to the register of companies before the expiry of twenty years."

7. Thus, when section 252 of the Companies Act, 2015, provides for an appeal, as against the order of the Registrar to the Tribunal, within three years, from the date of the order of the Registrar, sub-section (3) of section 252 of the Companies Act, 2013, provides for an application to be made by

the company before the expiry of twenty years from the publication in the Official Gazette of the notice, under sub-section (5) of section 248.

8. In the case of former, i.e., sub-section (1) of section 252, the Tribunal should arrive at the conclusion that the removal of the company from the register of companies, is not justified, in view of the absence of any of the grounds, on which the order was passed by the Registrar and in the case of the latter, i.e., sub-section 3 of section 252 of the Companies Act, 2013, the Tribunal should satisfy that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the Register of Companies.

9. As per sub-section (6) of section 248 of the Companies Act, 2013, Registrar, before passing an order, under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company, within a reasonable time and if necessary, obtain necessary undertakings from the managing director, director or other persons in-charge of the management of the company.

10. Sub-section (5) of section 248 of the Companies Act, 2013, speaks about the striking off the name of the company from the register of companies and publication of the notice thereof in the Official Gazette. For the sake of convenience, sub-section (5) of section 248 of the Companies Act, 2013, is reproduced hereunder:-

> "At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved."

11. Notes on section 248 is extracted below : "This clause corresponds to section 560 of the Companies Act, 1956 and seeks to provide the circumstances under which the Registrar shall send a notice to the company and all the directors of the company of his intention to remove the name of the company from the register of companies. The clause further provides that a company may by a special resolution or with the consent of seventy-five per cent members in terms of paid-up share capital may also file an application to the Registrar for removing the name of the company from the register of companies. Where company is regulated under special law, approval of the regulatory body constituted, shall also be obtained and enclosed with application. The clause further seeks to provide that at the expiry of the time mentioned in the notice, the Registrar may strike of the name of the company from the register of companies, and on the publication in the Official Gazette of this notice, the company shall stand dissolved. However, the Registrar, before passing an order shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time. The liability of every director, manager or other officer exercising any power of management and every member of company dissolved shall continue and may be enforced as if company had not been dissolved."

12. Thus, a conjoint reading of sub-sections (5) and (6) of section 248 and

section 252 of the Companies Act and Notes on the above sections, makes it clear that there should be an order passed by the registrar of companies, which requires to be published, in the Official Gazette and before passing such an order, under sub-section (5), Registrar has to satisfy certain parameters set out in sub-section (6).

13. A bare reading of the proceedings, dated 28th June, 2017, extracted supra, indicates that there was no order passed under sub-section (5) and the proceedings, dated 28th June, 2017, of the registrar of companies, Tamil Nadu, Coimbatore, indicates only publication.

14. Sub-section (5) of section 248 of the Companies Act deals with publication in the Official Gazette, but sub-section (6) of the section mandates passing of an order. An order requires to be passed in terms of sub-section (6) and published as per sub-section (5) of the section 248 of the Act. Mere publication alone would not give rise to a cause of action to file an appeal. During the course of hearing of the instant civil revision petition, Ms. S. Meena Kumari, learned Central Government standing counsel, for the respondent submitted that while powers are exercised under section 248 of the Companies Act, 2013, by the registrar of companies, for removal/striking off, the usual procedure followed by the registrar of companies, is to cause publication, as done in the instant case, i.e., issuing Form No. STK-7 notice. In the foregoing paragraphs, we have already observed that there should be an order, under sub-section (6) of section 248, before publication, under sub-section (5) of section 248 of the Companies Act, 2013.

15. In the above said circumstances, we hereby direct the registrar of companies, Coimbatore, to file a specific affidavit as to whether any order under sub-section (5) is passed before causing publication of the notice, registrar of companies, Coimbatore is directed to produce the file.

16. Call on 7th August, 2018.

11. registrar of companies, Tamil Nadu, Coimbatore, has filed an additional counter affidavit, dated 18th September, 2018, wherein after extracting section 248 of the Companies (Removal of Names) Rules, 2016 and the procedure followed by the registrar of companies for striking off, registrar of companies, Tamil Nadu, Coimbatore, has stated hereunder:

"(d) Intimation of Regulatory Authorities : The registrar of companies shall simultaneously intimate the concerned regulatory authorities regulating the company, viz., Income-tax authorities, Central Excise and Service Tax authorities having jurisdiction over the company about the proposed action of Removal or Striking off of names of such companies seek objections if any to be furnished within a period of 30 days from the date of issue of the letter of intimation and if no objections are received within 30 days from the date of issue of the letter of intimation from the respective authorities, it shall be presumed that they have no objection to the proposed action of striking off or removal of Name.

(e) Strike off name and publish Notice of dissolution of the company:

Thereafter as per rule 9 of Companies (Removal of Names) Rules, 2016, the Registrar shall cause a Notice under sub-section (5) of section 248 for striking off the name of the company from the register of companies and its dissolution to be published in Official

Gazette in Form STK-7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

The Registrar has followed the above mentioned procedures for striking off the name of the petitioner-company from the Register in terms of section 248(1) of the Companies Act and the rules made thereunder. Under the above said rules there is no such requirement for the registrar of companies to issue an order under section 248(5) of the Act before causing publication. The said requirement is to be complied by the Registrar only for the cases which are filed under section 248(2) of the Companies Act.

The other mode of strike off is by the company on its own after following procedure prescribed under section 248(2) and the rules made thereunder. The company shall file Form STK-2. The copy of the e-form STK-2 along with instruction kit is enclosed for the kind perusal of this hon'ble Court."

12. Reading of the above, makes it clear that the registrar of companies, after issuing the notice has presumed that the petitioner-company has no objection to the proposed action of striking off or removal of the company.

13. Nowhere, in the additional counter, registrar of companies, Tamil Nadu, Coimbatore, has stated that he has passed an order, striking off the companies.

14. Though in the case on hand, correctness of the order made in CP No. 178 of 2017 filed under section 252(3) of the Companies Act, 2013 has been challenged, in order to ascertain, as to whether any order striking off by the registrar of companies, Tamil Nadu, has been filed for the companies, files were called for.

15. Details culled out from the files are hereunder:

(i) In Letter No. RoC/CBE/STK1/2017/44/2079 to 2082/17, dated 28th February, 2017, Deputy registrar of companies, Tamil Nadu, Coimbatore, has issued a notice to the petitioner-company, under sub-sections (1) and (2) of section 248 of the Companies Act 2013, intending to remove the company from the register of companies and called upon the company to submit a representation within 30 days from the receipt of this, notice.

Letter, dated 28th February, 2017, is extracted hereunder:

Form No. STK-1

Notice by Registrar for removal of name of the company from the register of companies

[Pursuant to sub-section (1) of section 248 of the Companies Act, 2013 and rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS OFFICE OF THE registrar of companies TAMIL NADU, COIMBATORE

683, Coimbatore Stock Exchange Building, II Floor Trichy Road, Singanallur Coimbatore-641 005.

Letter No. RoC/CBE/STK1/2017/44/2079 to 2082/17, dated-28th February,

2017 Reference:

In the matter of AGD (P.) LTD. (U01117 TZ 1959 PTC 000300) - In the matter of Companies Act, 2013 (1) Pursuant to sub-sections (1) and (2) of section 248 of the Companies Act, 2013, notice is hereby given that as per available record:

- the company has failed to commence its business within one year of its incorporation; or

- the company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the stats of a dormant company under section 455; or

- the company has filed an application under sub-section (2) of section 248 for removing the name from the register of companies on the grounds mentioned in sub-section (1) of section 248.

(2) Therefore, on the basis of aforesaid ground(s), I intend to remove the name of company from the register of companies and request you to send your representation along with copies of the relevant documents, if any within thirty days from the date of receipt of this notice.

(3) Unless a cause to the contrary is shown within the time period above mentioned, the name of the above mentioned company shall be liable to be removed from the register of companies. However, the directors of the company shall be liable for appropriate action under the Act.

(Iqbal Hussain Ansari)
Deputy registrar of companies, Tamil Nadu Coimbatore

To

AGD PRIVATE LIMITED
810, HOLLOW BLOCK,
TRICHY ROAD, RAMANATHAPURAM
COIMBATORE-641045.

(ii) Issuance of the above notice under section 248 of the Companies Act, 2013, has been recorded. Thereafter, registrar of companies, Tamil Nadu, Coimbatore has addressed a letter to Chief Commissioner of Income-tax and others, forwarding a list of companies which were proposed to be considered for striking off under section 248(1) of the Companies Act, 2013. Letter dated 14th March/2017 is extracted hereunder:

GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE registrar of companies

COIMBATORE

Stock Exchange Building, II Floor, 683,

Trichy Road, Coimbatore-641 005.

e-Mail roc.coimbatore@mca.gov.in Phone 0422 2319640

ROC/Cbe/Sec. 248/2017/2112 to 2117/17 Date : 14.03.2017 To

1. The Chief Commissioner of Income-tax, O/o. the Chief Commissioner of Income-tax, 63, Race Course Road, Coimbatore - 641 018.

2. The Chief Commissioner of Income-tax, O/o. the Chief Commissioner of Income-tax, 2, VP Rathinasamy Nadar Road, Bibikulam, Madurai - 625 002.

3. The Chief Commissioner of Income-tax, O/o. the Chief Commissioner of Income-tax, New No. 44, Old No. 4, Williams Road, Cantonment, Trichirapalli-620 001.

4. The Chief Commissioner of Central Excise, 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018.

5. The Chief Commissioner of Service Tax, 6/7, A.T.D. Street, Race Course, Coimbatore - 641 018.

Sir, Sub: Forwarding of List of Companies which are proposed to be considered for striking off under section 248(1) of the Companies Act, 2013 - Seeking of objections - reg.

I am forwarding herewith a list containing names of 329 companies along with their registered office address, which are proposed to be considered for action of removal/striking off the names of such companies from the register of companies.

This office has been notice in Form STK-1 to the above companies and their directors as per address as available on record seeking representation, if any, against the proposed action of striking off, within 30 days from the date of the said notice.

Notices in STK-5 containing the names of the companies are also being placed in the MCA website and published in Official Gazette and newspapers, seeking objections, if any, from the public.

It is requested that the list may be shared with concerned offices having jurisdiction over the companies and objections, if any may be furnished to this office. If no objections are received within 30 days, it shall be presumed that regulatory authority has no objection to the proposed action of striking off or removal of names of these companies from the register of companies.

Encl: As above.

Yours faithfully
(JOSEKUTTY V.E.)
REGISTRAR OF COMPANIES
TAMIL NADU, COIMBATORE

OFFICE OF THE registrar of companies, TAMIL NADU, COIMBATORE

List of companies, to which notices, in STK-1 under section 248(1) of the Companies Act, 2013 were issued till 3rd March, 2017

Sl. No.	CIC	Company Name	Company Registered Address	Date of Issue
44	U01117TZ1959PTC000300	A G D PRIVATE LIMITED	AGD PRIVATE LIMITED TRICHY ROAD, RAMANA-THAPURAM 810, HOLLOW BLOCK, 641045 COIMBATORE-Coimbatore India COIMBATORE INDIA	28th February, 2017

(iii) Paper publication in terms of sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013, and rule 7(1) of the Companies (Removal of names and the companies from the Register of Companies) Rules, 2016, has been made in Indian Express Newspaper, dated 11th May, 2017. Publication reads, thus:

FORM No.STK-5A

PUBLIC NOTICE

[Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

OFFICE OF THE registrar of companies TAMIL NADU, COIMBATORE

FORM No.STK - 5A

PUBLIC NOTICE

[Pursuant to sub-section (1) and sub-section (4) of section 248 of the Companies Act, 2013 and rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016]

683, Coimbatore Stock Exchange Building, II Floor Trichy Road, Singanallur Coimbatore 641 005.

Public Notice No.STK5A/ROCCBE/2017/1 Date: 17th April, 2017

Reference :

In the matter of striking off of companies under section 248 (1) of the Companies Act, 2013, of the Companies as per details below :

1. Notice is hereby given that the registrar of companies has a reasonable cause to believe that the following companies whose names are listed at Ministry's website (*www.mca.gov.in*) on the web link *htte://www.mca.gov.in/Ministry/2/roc coimbatore html*, have not been carrying on any business or operation for a period of two immediately preceding financial years and have not made any application within such period for obtaining the status of dormant company under section 455 of the Companies Act, 2013.

And, therefore, proposes to remove/strike off the names of the above mentioned companies from the register of companies and dissolve them unless a cause is shown to the contrary, within thirty days from the date of this notice.

2. Any person objecting to the proposed removal/striking off of name of the companies from the register of the companies may send his/her objection to the office address mentioned here above within thirty days from the date of publication of this notice.

Registrar of Companies
Tamil Nadu, Coimbatore

(iv) Similar publication has been made in a Vernacular Newspaper, Tamil Nadu, dated 11th May, 2017, same is extracted hereunder:

படிவம் எண் எஸ்.டி.கே 5A
பொது அறிவிப்பு
(கம்பெனிகள் சட்டம் 2013–ன் 248 (1) மற்றும் (4) – ம் பிரிவு & கம்பெனிகள் பெயர் நீக்க விதிகள் 2016–ன் 7(1)–ம் விதி பிரகாராம்)

பாரத அரசு
கம்பெனிகள் விவகார அமைச்சகம்
கம்பெனிகள் பதிவாளர், அலுவலகம் தமிழ்நாடு–கோயமுத்தூர்
கோவை பங்கு சந்தை வளாகம், 2–ம் தளம்
683 திருச்சி சாலை, சிங்காநல்லூர், கோயம்முத்தூர் 641 005

பொ.அ.எண் : எஸ்.டி.கே 5A/ஆர்.ஒ.சி–சிபிஇ.2017.2 நாள்: 17.04.2017

கம்பெனிகள் சட்டம் 2013–ன் 248 (1)–வது பிரிவின்படி கம்பெனிகள் பெயர் பதிவு நீக்கம் சம்பந்தமாக:

1. அமைச்சக இணையதள (www.mca.gov.in) முகவரியில் உள்ள http://www.mca.gov.in/MinistryV2/roc_coimbatore.html இணைப்பில் குறிப்பிடப்பட்டுள்ள கம்பெனிகள் கடந்த இரு நிதி ஆண்டுகளில் தொழில் நடத்தி வராமல் இயக்கமின்றி, கம்பெனிகள் சட்டம் 2013–ன் 455 – வது பிரிவின்படி இயக்கமற்ற கம்பெனி என தானாக முன்வந்து விண்ணப்பிக்கவில்லை என்று கம்பெனி பதிவாளர் கருத காரணம் உள்ளதால், இந்த அறிவிப்பு வெளியான 30 தினங்களுக்குள் அத்தகைய கம்பெனிகளின் பெயர்களை கம்பெனிகள் பதிவேட்டிலிருந்து பதிவு நீக்கம் செய்யப்பட்டு பின்பு கலைத்துவிட உத்தேசிக்கப்பட்டுள்ளது.

2. கம்பெனிகள் பதிவேட்டிலிருந்து பதிவு நீக்கம் செய்யப்படுவதற்கு ஆட்சேபனை உள்ளோர் 30 தினங்களுக்குள் அதை கம்பெனிகள் பதிவாளருக்கு தெரிவிக்கும்படி கோரப்படுகின்றனர்.

கம்பெனிகள் பதிவாளர்
தமிழ்நாடு – கோயமுத்தூர்

16. Notice of Striking off and Dissolution [Pursuant to sub-section (5) of section 248 of the Companies Act, 2013 and rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016], Government of India, Ministry of Corporate Affairs, Office of the registrar of companies Tamil Nadu, Coimbatore, has been published in the Gazette of India in English on 28th June, 2017. Tabular column, namely, S. No. 40.-U01117TZ1959PTC000300-AGD PRIVATE LIMITED. Similar Gazette notification has been issued in Hindi on 30th June, 2017.

17. When the Gazette Notifications published on 28th June, 2017 in English and 30th June, 2017 in Hindi, state that the petitioner-company has been struck off on 28th June, 2017, under section 248 of the Companies Act, 2013. File note strangely states only on 4th July, 2017, petitioner-company was found fit for striking off, under section 248(5) of the Companies Act, 2013. File note reads thus:

Registered Office:	810, HOLLOW BLOCK, TRICHY ROAD, RAMANATHAPURAM, COIMBATORE, Coimbatore, Tamil Nadu ,641045, India.
Name of the comp...	AGD PRIVATE LIMITED
Date of incorporation 24.04.1959	Type of Company : Private Non-govt company
Nature of company :	Company category: Company limited by shares
Main Business:	Whether listed or ... Yes --No
Maximum no. of members	Mail ID: cadevaraj@gamil.com
Number of active charge...	Company status: Strike off
Authorized capital: 100,000.00	Amount of active charges...
Suspended at Sto...	

Annual return filing details:

Date of filing of Annual Return	*Financial year end date*	*Date of AGM*
15.07.2010	31.03.2009	28.09.2009
28.11.2009	31.03.2008	26.09.2008
28.11.2009	31.03.2007	28.09.2007

Balance sheet filing details:

Date of filing of balance sheet	*Date of balance sheet (Financial year ...*	*Date of AGM*
18.07.2010	31.03.2009	28.09.2009
18.07.2010	31.03.2008	26.09.2008
17.07.2010	31.03.2007	28.09.2007

Fit for Strike off under section 248(5) of the Companies Act, 2013"

18. File note on 14th December, 2017 of the Deputy Registrar of the Companies, Tamil Nadu, Coimbatore, reads, thus:

"CIN of the company: U01117TZ1959PTC000300

Registered Office:	810, HOLLOW BLOCK, TRICHY ROAD, RAMANATHAPURAM, COIMBATORE, Coimbatore, Tamil Nadu ,641045, India.
Name of the comp...	AGD PRIVATE LIMTIED
Date of incorporati...24.4.1959	Type of Company : Private
Nature of company : Non-govt company	Company category: Company limited by shares
Main Business:	Whether listed or ... Yes --No
Maximum no. of memebrs	Mail ID: cadevaraj@gamil.com
Number of active charge...	Company status: Strike off
Authorised capital: 100,000.00	Amount of active charges...
Suspended at Sto...	

Annual return filing details:

Date of filing of Annual Return	Financial year end date	Date of AGM
15.0.2010	31.03.2009	28.09.2009
28.11.2009	31.03.2008	26.09.2008
28.11.2009	31.03.2007	28.09.2007

Balance sheet filing details:

Date of filing of balance shee	*Date of balance sheet (Financial year ...*	*Date of AGM*
18.07.2010	31.03.2009	28.09.2009
18.07.2010	31.03.2008	26.09.2008
17.07.2010	31.03.2007	28.09.2007

The company has not filed Sr's from 2010. STK-1 issued on 28th February, 2017. STK-5 dated 14th March, 2017 and published on web site on 7th April, 2017 and published in official Gazette on 8th April, 2017. The company has struck off from 28th June, 2017 and published STK-7 on Official Gazette on 15th July, 2017 and published on website 9th July, 2017."

THE GAZETTE OF INDIA, APRIL 8, 2017 (CHAITRA18, 1939)

44. U01117TZ1959PTC000300 - A G D PRIVATE LIMITED"

19. Now, from the files, it is clear that the petitioner-company has been found fit for striking off only on 4th July, 2017, whereas publication under section 248(5) has been effected, as if, the company had already been strike off on 28th June, 2017 itself. No order under sub-section (6) of section 248 of the Companies Act 2013, has been passed by the registrar of companies, Tamil Nadu, Coimbatore, striking off the petitioner-company from the Register of Companies, in which event, what is the effect of the petitioner-company, proceeding under section 252(3) of the Companies Act, 2013, and the orders passed thereon?

20. Perusal of the files, produced does not disclose any specific order passed under section 248 of the Companies Act, 2013, whereas we find only the publication under sub-section (5) of section 248 of the Companies, Act, 2013.

21. From the facts and materials, it could be seen that the petitioner has not filed any appeal, against striking off or against publication of the Gazette notification, stated supra, but the petitioner-company has filed an application under section 252(3) of the Companies Act, 2013, for the reliefs extracted supra. At the risk of repetition, section 252(3) of the Companies Act, 2013 is reproduced:

> "(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."

Said application in CP No. 178 of 2017 has been rejected on 9th January, 2018, against which the instant civil revision petition is filed.

22. Article 227 of the Constitution of India, which deals with the superintendence by High Courts, over all courts/tribunals, reads, thus:

> "227. Power of superintendence over all courts by the High Court. - (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
>
> (2) Without prejudice to the generality of the foregoing provision, the High Court may-
>
> (a) call for returns from such courts;
>
> (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
>
> (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

> Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces."

23. We deem it fit to consider the scope and power of the superintendence of the High Court, under article 227 of the Constitution of India,

(i) In Jodhey v. State MANU/UP/0304/1952 : AIR 1952 All. 788, after hearing the history of article 227 of the Constitution of India, the Allahabad High Court hold, thus,

> '9. A comparison of the above provision of law with analogous provisions of law prior to the Constitution of India brings into prominence some important features of the new state of law established by the Constitution. The most important feature of article 227, Constitution of India, is that it has omitted any restriction on the power of the High Court to interfere in judicial matters, which was imposed by sub-section (2) of section 224, Government of India Act, 1935. In this way, it has enlarged the power of the High Court and restored the power, which was given to it under the Government of India Act, 1915. It is also significant that the words restricting the power of the superintendence of the High Courts for the time being subject to its appellate jurisdiction, a restriction which was contained not only in the Government of India Act 1935 but also in the Government of India Act, 1915, as well as in the High Court Act, 1861, are also omitted from article 227 of the Constitution of India. The effect of this omission to my mind is to make it clear beyond doubt that all courts functioning within the territory in relation to which the High Court exercises its jurisdiction were subject to supervisory jurisdiction of High Court. Thus, even special Courts set up under Acts of Legislature for specific purposes would also be subject to its jurisdiction. It seems to me that in this regard article 227 has vested the High Court with a greater power than that given to it even under the Government of India Act, 1915, or the High Court Act, 1861.
>
> It is also relevant in this connection to note that the Constitution of India has given this supervisory power to the High Court not only over all Courts but also over all tribunals throughout the territories in relation to which it exercises its jurisdiction. The word "tribunals" did not find a place either in the Government of India Act of 1935 or in the Government of India Act, 1915 or in the High Court Act, 1861. The purpose of the addition of the word "tribunals" to article 227, to my mind was to emphasise the fact that not only bodies which are Courts within the strict definition of that term would be subject to the supervisory jurisdiction of the High Court but all bodies that

perform the functions of courts and are akin to them are drawn within the purview of its supervision and cannot claim exemption from it merely by virtue of the fact that they do not come within the strict category of civil, revenue, or criminal courts as known under the ordinary law of the land. Certain other minor changes in this article are also noteworthy. A contrast of the marginal note appended to article 227 of the Constitution of India with the marginal notes of section 224, Government of the India Act, 1935, section 107, Government of India Act, 1915, and section 15, High Courts Act, 1861, is instructive. The marginal note of article 227 of the Constitution of India is "Power of superintendence over all Courts by the High Courts". This may be contrasted with the marginal note of section 224, Government of India Act, 1935, which was "Administrative functions of the High Court" and the marginal note of section 107, Government of India Act, 1915, which was "Powers of High Court with respect to subordinate Courts". Similarly, die marginal note of section 15, High Courts Act, 1861, was "High Courts to superintend and to frame rules of practice for subordinate Courts". The alteration in this marginal note also emphasises the fact that the powers of the High Court under the Constitution extend not merely to administrative functions but embraces all functions, whether administrative or judicial. It also indicates that this power under the Constitution extends to all Courts and is not confined to "subordinate Courts" as indicated by the marginal note of section 107, Government of India Act, 1915. A comparison of the draft Constitution with the enacted Constitution shows that the marginal notes were inserted under the authority of and with the knowledge of the Constituent Assembly. Under the above circumstances the view regarding the inadmissibility of marginal notes expressed by the Privy Council in Balraj Kunwar v. Jagatpal Singh MANU/PR/0022/1904 : 31 Ind. App. 132 (PC) should be taken to have undergone change both in India as well as in England vide Iswari Prasad v. N.B. Sen, 55 Cal. WN 719 (FB). Marginal notes inserted in those circumstances have been held to be admissible by a Full Bench decision of the Allahabad High Court in Ram Saran v. Bhagwat Prasad MANU/UP/0214/1928 : AIR 1929 All. 53 (FB) by a Full Bench decision of the late Chief Court of Avadh in Emperor v. Mumtaz Husain, MANU/OU/0039/1935 : AIR 1935 Oudh 337 (KB.) and by a Full Bench decision of the Bombay; High Court in Emperor v. Ismail Sayad Saheb Mujawar, MANU/MH/0060/1933 : AIR 1933 Bom. 417 (FB). In a recent decision of the Bombay High Court reported in the State of Bombay v. Heman Santlal, MANU/MH/0026/1952 : AIR 1952 Bom. 16, it was held by Chagla, CI that the marginal notes of the Constitution may be referred to for the purpose of understanding the drift of the articles. In Suresh Chandra v. Bank of Calcutta Ltd., MANU/WB/0496/1950 : 54 Cal. WN 832 at p. 836 the marginal notes of an Indian Act were compared with the corresponding marginal notes of the English Act to elucidate the meaning of the section. The contrary view expressed in the Commr. of Income-Taxi Excess Profit Tax v. Parasram Jethanand, MANU/TN/0268/1950 : AIR 1950 Mad. 631 and Sutlej Cotton Mills Ltd. v. Commr. of Income-tax, West Bengal MANU/WB/0208/1950 : AIR 1950 Cal. 551 should not, therefore, be accepted without qualification. The opinion which I, however, have formed is

independently of the marginal notes and is based on the article itself viewed in the light of its historical background.

10. To emphasise and to clarify the plenary nature of power of superintendence vested in the High Court the provision of law relating to it has been split up into four clauses. The first clause enunciates the general power of supervision given to High Court over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It is couched in a language which would vest the High Court with a power that is not fettered with any restriction and must embrace all aspects of the functions exercised by every court and tribunal. On a proper interpretation of this clause it is difficult to my mind to hold that the powers of superintendence are confined only to administrative matters: There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. To fulfill this function it seems to me that the power of superintendence of the High Court over judicial matters is as necessary as over administrative matters. As a matter of fact judicial function of a court is not less important than its administrative function. In fact it is more necessary to rectify lapses in judicial matters than defects in administrative matters. A judicial error might affect the rights, liberty and freedom of the subject whereas an administrative error might not do so. To my mind superintendence over judicial functions is a necessary complement of superintendence over administrative functions and it is sometimes very difficult to say where the one ends and the ether begins. If the High Court is to perform this function efficiently and effectively, it must act on both sides, otherwise the very power of superintendence will be crippled and what has been achieved on the administrative side might be lost on the judicial side.

11. Clause (2) of article 227 seems to emphasise the administrative aspect over which the High Court can exercise power of superintendence and enumerates the various instances of superintendence in the administrative field. The use of words "without prejudice to the generality of the foregoing provision" is not without significance. It seems to imply that the power of superintendence over administrative functions given to the High Court does not in any way derogate from the general power of superintendence given by clause (1).

12. Clause (a) of article 227 again enumerates certain specific matters which would fall on the administrative side of the work of a court.

13. Clause (4) shows that the only courts exempted from the superintendence of the High Court are Courts or tribunals constituted by or under any law relating to the Armed Force's. A mention of the solitary exemption also emphasises the clear field of superintendence which is left within the jurisdiction of the High Court after exempting the prohibited area covered by the Military

Courts or tribunals mentioned therein.

14. A reading of the entire article 227 of the Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the Constitution makers was to make the High Court' responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a court or tribunal has been made final by an Act or the fact that the body performing judicial functions is special tribunal constituted under a statute cannot be set up as a bar to the exercise of this power by the High Court. The prohibited area is to be found within the four corners of the Constitution itself and nowhere else.

15. The fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. It seems to me that these powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjutifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy.

Under this power, the High Court will not be justified in converting itself into a Court of Appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party.'

(ii) In Trimbak v. Ram Chandra MANU/SC/0064/1977 : AIR 1977 SC 1222, the Supreme Court held as follows:

"It is a well-settled rule of practice of this court not to interfere with the exercise of discretionary power under articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where the order passed results in manifest injustice, that a court can justifiably intervene under article 227 of the Constitution."

(iii) The hon'ble Apex Court in Surya Dev Rai v. Ram Chander Rai MANU/SC/0559/2003 : [2003] 6 SCC 675 held, a revision could be maintained under certain circumstances, invoking article 227 of the Constitution of India, and therefore, it is not possible to hold that no revision

is maintainable under any provisions of law. In this view, when it is shown that the trial court has failed to exercise its jurisdiction, properly applying the provisions of law, or when it is so that the trial court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this court, can be interfered by this court. The Supreme Court, at paragraph Nos. 6 to 39, held as follows:

> **6.** According to Corpus Juris Secundum (Vol. 14, p. 121) certiorari is a writ issued from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case.
>
> **7 .** HWR Wade & CF Forsyth define certiorari in these words : "Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed - that is to say, it is declared completely invalid, so that no one need respect it.
>
> The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion." (Administrative Law, 8th Edn., p. 591).
>
> **8 .** The learned authors go on to add that problem arose on exercising control over justices of the peace, both in their judicial and their administrative functions as also the problem of controlling the special statutory body which was addressed to by the Court of King's Bench. "The most useful instruments which the court found ready to hand were the prerogative writs. But not unnaturally the control exercised was strictly legal, and no longer political. Certiorari would issue to call up the records of justices of the peace and commissioners for examination in the King's Bench and for quashing if any legal defect was found. At first there was much quashing for defects of form on the record, i.e., for error on the face. Later, as the doctrine of ultra vires developed, that became the dominant principle of control", (p. 592)
>
> **9 .** The nature and scope of the writ of certiorari and when can it issue was beautifully set out in a concise passage, quoted hereafter, by Lord Chancellor Viscount Simon in Ryots of Garabandho and other villages v. Zamindar of Parlakimedi and Anr. MANU/PR/0020/1943 : AIR 1943 PC 164. "The ancient writ of certiorari in England is an original writ which may issue out of a superior court requiring that the record of the proceedings in some cause or matter pending before an inferior court should be transmitted into the superior court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated, and the object is to secure by the exercise of the authority of a superior court, that the jurisdiction of the inferior tribunal should be properly exercised. This writ does not issue to correct purely executive acts, but, on the other hand, its application is not narrowly limited to inferior "courts" in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as

distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits, in British India."

10. Article 226 of the Constitution of India preserves to the High Court power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well-settled. It would suffice for our purpose to quote from the 7-Judge Bench decision of this court, the hon'ble Supreme Court in Hari Vishnu Kamath v. Ahmad Ishaque MANU/SC/0095/1954 : [1955] 1 SCR 1104. The four propositions laid down therein were summarised by the Constitution Bench in The Custodian of Evacuee Property Bangalore v. Khan Saheb Abdul Shukoor, etc. MANU/SC/0297/1961 : [1961] 3 SCR 855 as under:

> ".....the High Court was not justified in looking into the order of 2nd December, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court, hon'ble Supreme Court in Hari Vishnu Kamath v. Ahmad Ishaque MANU/SC/0095/1954 : 1955 1 SCR 1104 : ((s) AIR 1955 SC 233) and the following four propositions were laid down:-
>
> (1) Certiorari will be issued for correcting errors of jurisdiction;
>
> (2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;
>
> (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.
>
> (4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

11. In the initial years the Supreme Court was not inclined to depart from the traditional role of certiorari jurisdiction and consistent with the historical background felt itself bound by such procedural technicalities as were well-known to the English Judges. In later years the Supreme Court has relaxed the procedural and technical

rigours, yet the broad and fundamental principles governing the exercise of jurisdiction have not been given a go-by.

12. In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.

13. In Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam MANU/SC/0101/1958 : [1958] SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari where so set out by the Constitution Bench:-

> "The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only could have examined and, if necessary, corrected and the appellate authority under a statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under article 226."

14. The Constitution Bench in T.C. Basappa v. T. Nagappa MANU/SC/0098/1954 : [1955] 1 SCR 250, held that certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the

following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

15. Any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The proceedings of judicial courts subordinate to High Court can be subjected to certiorari.

16. While dealing with the question whether the orders and the proceedings of subordinate court are amenable to certiorari writ jurisdiction of the High Court, we would be failing in our duty if we do not make a reference to a larger Bench and a Constitution Bench decisions of this Court and clear a confusion lest it should arise at some point of time. Naresh Shridhar Mirajkar v. State of Maharashtra MANU/SC/0044/1966 : [1966] 3 SCR 744, is a nine-Judge Bench decision of this court. A learned Judge of Bombay High Court sitting on the Original Side passed an oral order restraining the Press from publishing certain court proceedings. This order was sought to be impugned by filing a writ petition under article 226 of the Constitution before a Division Bench of the High Court which dismissed the writ petition on the ground that the impugned order was a judicial order of the High Court and, hence, not amenable to a writ under article 226. The petitioner then moved this Court under article 32 of the Constitution for enforcement of his fundamental rights under article 19(1)(a) and (g) of the Constitution. During the course of majority judgment Chief Justice Gajendragadkar quoted the following passage from Halsbury Laws of England (Vol. 11 p. 129, 130) from the footnote : "(....in the case of judgments of inferior courts of civil jurisdiction) it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p. 887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground". His Lordship then said:

> "The ultimate proposition is set out in terms : Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction." These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari."

17. A perusal of the judgment shows that the above passage has been quoted "incidentally" and that too for the purpose of finding authority for the proposition that a judge sitting on the Original Side of the High Court cannot be called a court "inferior or subordinate to High Court" so as to make his orders amenable to writ jurisdiction of the High Court. Secondly, the abovesaid passage has been quoted but nowhere the Court has laid down as law by way its own holding

that a writ of certiorari by High Court cannot be directed to Court subordinate to it. And lastly, the passage from Halsbury quoted in Naresh Shridhar Mirajkar's case (supra) is from 3rd edition of Halsbury Laws of England (Simond's Edn., 1955). The law has undergone a change in England itself and this changed legal position has been noted in a Constitution Bench decision of this Court in Rupa Ashok Hurra v. Ashok Hurra MANU/SC/0910/2002 : [2002] 4 SCC 388. Justice SSM Quadri speaking for the Constitution Bench has quoted the following passage from Halsbury's Laws of England, 4th edn. (Reissue) Vol. 1(1):

> "103. Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court in the King's Bench for review or to remove indictments and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs."
>
> "109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

18. Naresh Shridhar Mirajkar's case was cited before the Constitution Bench in Rupa Ashok Hurra's case and considered. It has been clearly held : (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by superior court to an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.

19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to High Court are amenable to writ jurisdiction of High Court under article 226 of the Constitution.

20. Authority in abundance is available for the proposition that an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error

apparent on the face of the record was well set out in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale MANU/SC/0169/1959 : [1960] 1 SCR 890. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

21. Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior court has committed any of the preceding errors occasioning failure of justice.

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-articles (2) and (3) of article 227 with which we are not concerned here at. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under article 227 is wider than the one conferred on the High Court by article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

23. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under article 227 of the Constitution, was traced in Waryam Singh v. Amarnath MANU/SC/0121/1954 : [1954] SCR 565. The jurisdiction can be traced back to section 15 of High Courts Act, 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and then section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not

otherwise subject to appeal or revision. That restriction has not been carried forward in article 227 of the Constitution. In that sense article 227 of the Constitution has width and vigour unprecedented.

Difference between a writ of certiorari under article 226 and supervisory jurisdiction under article 227.

24. The difference between articles 226 and 227 of the Constitution was well brought out in Umaji Keshao Meshram v. Smt. Radhikabai MANU/SC/0132/1986 : [1986] Supp. SCC 401. Proceedings under article 226 are in exercise of the original jurisdiction of the High Court while proceedings under article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping-the limits of jurisdiction.

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

inferior court or tribunal should have made. Lastly, the jurisdiction under article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In Chandrasekhar Singh v. Siva Ram Singh MANU/SC/0069/1978 : [1979] 3 SCC118, the scope of jurisdiction under article 227 of the Constitution came up for the consideration of this court in the context of sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judge Bench summed up the position of law as under:

> (i) that the powers conferred on the High Court under article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure;
>
> (ii) the scope of interference by the High Court under article 227 is restricted. The power of superintendence conferred by article 227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors;
>
> (iii) that the power of judicial interference under article 227 of the Constitution is not greater than the power under article 226 of the Constitution;
>
> (iv) that the power of superintendence under article 227 of

the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under article 227, convert itself into a Court of Appeal.

28. Later, a two-Judge Bench of this court in Baby v. Travancore Devaswom Board MANU/SC/0692/1998 : [1998] 8 SCC 310, clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it. Does the amendment in section 115 of CPC have any impact on jurisdiction under articles 226 and 227?

29. The Constitution Bench in L. Chandra Kumar v. Union of India MANU/SC/0261/1997 : [1997] 3 SCC 261, dealt with the nature of power of judicial review conferred by article 226 of the Constitution and the power of superintendence conferred by article 227. It was held that the jurisdiction conferred on the Supreme Court under article 32 of the Constitution and on the High Courts under articles 226 and 227 of the Constitution is part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even by constitutional amendment, not to speak of a parliamentary legislation. A recent Division Bench decision by Delhi High Court (Dalveer Bhandari and H.R. Malhotra, JJ) in Criminal Writ Petition Nos. 758, 917 and 1295 of 2002 - Govind v. State (Govt. of NCT of Delhi) decided on 7th April, 2003 (reported as MANU/DE/0273/2003 : [2003] 6 ILD 468 makes an in-depth survey of decided cases including almost all the leading decisions by this Court and holds - "The power of the High Court under article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution." The essence of constitutional and legal principles, relevant to the issue at hand, has been correctly summed up by the Division Bench of the High Court and we record our approval of the same.

30. It is interesting to recall two landmark decisions delivered by High Courts and adorning the judicial archives. In Balkrishna Hari Phansalkar v. Emperor MR MANU/MH/0104/1932 : 1933 Bom. 1, the question arose before a Special Bench: whether the power of superintendence conferred on the High Court by section 107 of Government of India Act, 1915 can be controlled by the Governor-General exercising his power to legislate. The occasion arose because of the resistance offered by the State Government to the High Court exercising its power of superintendence over the Courts of Magistrates established under Emergency Powers Ordinance, 1932. Chief Justice Beaumont held that even if power of revision is

taken away, the power of superintendence over the courts constituted by the ordinance was still available. The Governor-General cannot control the powers conferred on the High Court by an Act of Imperial Parliament. However, speaking of the care and caution to be observed while exercising the power of superintendence though possessed by the High Court, the learned Chief Justice held that the power of superintendence is not the same thing as the hearing of an appeal. An illegal conviction may be set aside under power of superintendence but - "we must exercise our discretion on judicial grounds, and only interfere if considerations of justice require us to do so."

31. In Manmatha Nath Biswas v. Emperor MANU/WB/0155/1932 : (1932-33) 37 CWN 201, a conviction based on no legal reason and unsustainable in law came up for the scrutiny of the High Court under the power of superintendence in spite of right of appeal having been allowed to lapse. Speaking of the nature of power of superintendence, the Division Bench, speaking through Chief Justice Rankin, held that the power of superintendence vesting in the High Court under section 107 of the Government of India Act, 1915, is not a limitless power available to be exercised for removing hardship of particular decisions. The power of superintendence is a power of known and well-recognised character and should be exercised on those judicial principles which give it its character. The mere misconception on a point of law or a wrong decision on facts or a failure to mention by the courts in its judgment every element of the offence, would not allow the order of the Magistrate being interfered with in exercise of the power of superintendence but the High Court can and should see that no man is convicted without a legal reason. A defect of jurisdiction or fraud on the part of the prosecutor or error on the "face of the proceedings" as understood in Indian practice, provides a ground for the exercise of the power of superintendence. The line between the two classes of case must be, however, kept clear and straight. In general words, the High Court's power of superintendence is a power to keep subordinate courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-Judge Bench of this Court recently in State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru MANU/SC/0396/2003 : JT 2003 (4) SC 605, para 28. This Court held:

> (i) the jurisdiction under article 227 cannot be limited or fettered by any Act of the State Legislature;
>
> (ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;
>
> (iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on

> the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

33. In Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers MANU/SC/0335/2003 : [2003] 4 Scale 241, another two-Judge Bench of this court dealt with section 115 of the CPC. The Court at the end of its judgment noted the submission of the learned counsel for a party that even if the revisional applications are held to be not maintainable, there should not be a bar on a challenge being made under article 227 of the Constitution for which an opportunity was prayed to be allowed. The court observed - "If any remedy is available to a party, no liberty is necessary to be granted for availing the same."

34. We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away - and could not have taken away-the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor the power of superintendence conferred on the High Court under article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in section 115 of the CPC, and is available to be exercised subject to rules of self-discipline and practice which are well-settled.

35. We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran's case relied on by the learned counsel for respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The Full Bench added that every interlocutory order passed in a civil suit is not subject to review under article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:

> "[Where an aggrieved party approaches the High Court under article 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under article 226 of the Constitution would not be maintainable."

36. It seems that the High Court in its decision impugned herein formed an impression from the above-quoted passage that a prayer for issuance of injunction having been refused by trial court as well as the appellate court, both being subordinate to High Court and the dispute being between two private parties, issuance of injunction by High Court amounts to issuance of a mandamus against a private

party which is not permissible in law.

37. The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari, also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between article 226 and article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in T.C. Basappa v. T. Nagappa MANU/SC/0098/1954 : [1955] 1 SCR 250 and Province of Bombay v. Khushaldas S. Advani (dead) by LRs. MANU/SC/0034/1950 : 1950 SCR 621, as also a three-Judge Bench decision in Dwarka Nath v. Income-tax Officer, Special Circle, D Ward, Kanpur MANU/SC/0166/1965 : [1965] 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially. We are, therefore, of the opinion that the writ of certiorari is directed against the act, order of proceedings of the subordinate court, it can issue even if the lis is between two private parties.

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act No. 46 of 1999 with effect from 1st July, 2002 in section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction, where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate

court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the

> act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in super session or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.
>
> **39.** Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under article 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

(iv) In Following Surya Devi's case, cited supra, in Jeya v. Sundaram Iyyar MANU/TN/2209/2005 : 2005 (4) MLJ 278, this court held that,

> "When it is shown that the trial court has failed to exercise its jurisdiction, properly applying the provisions of law, or when it is so that the trial court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this court, there can be interference by this court."

(v) In Managing Director, Makkal Tholai Thodarpu Kuzhuman Ltd. v. V. Muthulakshmi MANU/TN/9582/2007 : 2007 (6) MLJ 1152, at paragraph 28, this Court held that,

> "28. Therefore, the consistent judicial pronouncement by the Supreme Court as well as this court makes it very clear that in case where the lower court passes an order which cannot be accepted by any prudent sense, it is always open to the High Court under article 227 of the Constitution of India to correct the same by exercising the right of superintendence."

(vi) In B.K. Muniraju v. State of Karnataka MANU/SC/7166/2008 : [2008] 4 SCC 451, the hon'ble Supreme Court at paragraphs 22 to 25, held as follows:

> **22.** It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases

where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave mis-carriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

23. It is useful to refer the decision of this court in Surya Dev Rai v. Ram Chander Rai MANU/SC/0559/2003 : [2003] 6 SCC 675 wherein, in para 38, held as under:

> "38.(3) Certiorari, under article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (Hi) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

24. It is clear that whether it is a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (z) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. It is also clear that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

25. As observed in Surya Dev Rat (supra), the exercise of jurisdiction under article 226 or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. To put it clear though the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

(vii) In Udhayabhanu v. Ranganayaki MANU/TN/0216/2009 : AIR 2009 Mad. 91, at paragraph 21, this court held as follows:

> "12. The court is of the opinion that it can interfere with an order passed by a court, which has patently usurped the jurisdiction exercisable by any other court and there is no impediment to interfere with the same, if the courts, subordinate to the High Court are allowed to transgress their powers by touching the subjects,

which are not earmarked for them, the justice will not be rendered to the needy persons. Under supervisory jurisdiction, the High Court has got every power to correct the orders and decisions of the courts below, which are passed without jurisdiction, particularly when they are not specifically conferred with power to try a particular subject."

(viii) In World Wide Brands Inv. v. Smt. Dayavanthi Jhamnadas Hinduja MANU/TN/1351/2008 : 2009-1-LW 658, a hon'ble Division Bench of the Madras High Court, at paragraph Nos. 11 to 22, considered a catena of judgments and held as follows:

'11. In Waryam Singh v. Amarnath MANU/SC/0121/1954 : AIR 1954 SC 215, the Apex Court has held that the power of superintendence conferred by article 227 of the Constitution is to be exercised more sparingly and only in appropriate case in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

12. The above said law is again reiterated by the Apex Court in Singaram Singh v. Election Tribunal MANU/SC/0044/1955 : AIR 1955 SC 425, and Nagendra Nath Bora v. Commissioner of Hills Division & Appeals MANU/SC/0101/1958 : AIR 1958 SC 398.

13. In T. Prem Sagar v. Standard Vacuum Oil Co. MANU/SC/0178/1963 : AIR 1965 SC 111, it has been held that in writ proceedings if an error of law apparent on the fact of the records is disclosed and the writ is issue, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the Legislature to the decisions of specially constituted Tribunals.

14. In Joint Registrar of Co-Operative Societies, Madras v. P.S. Rajagopal Naidu, Govindarajulu MANU/SC/0533/1970 : AIR 1970 SC 992, the Apex Court has held that the High Courts should not act as a court of appeal and re-appraise and re-examine the relevant facts and circumstances which led to the making of order.

15. In Muni Lal v. Prescribed Authority MANU/SC/0488/1976 : AIR 1978 SC 29, it has been held that the High Court cannot re-appreciate the evidence and come to its own conclusion different from that of the prescribed authority.

16. In Ganpat Ladha v. Sashikant Vishnu Shinde MANU/SC/0378/1978 : AIR 1978 SC 955, the Apex Court has held that the High Courts cannot justify the exercise of its discretionary powers under article 227 of the Constitution as to the finding of fact; unless such finding of fact is clearly perverse and patently unreasonable.

17. In Chandavarkar Sita Ratna Rao v. Ashalata S. Guram MANU/SC/0531/1986 : [1986] 4 SCC 447, the Apex Court at p. 460, para (4) has held, thus:

> "It is true that in exercise of jurisdiction under article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under articles 226 and 277 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion, therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere, it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under article 227 of the Constitution. On the first point, therefore, the High Court was in error."

18. In Ouseph Mathai v. M. Abdul Khadir MANU/SC/0718/2001 : [2002] 1 SCC 319, the Apex Court in para 4 has held, thus:

> "It is not denied that the powers conferred upon the High Court under articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt, article 227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior courts and Tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party."

19. In State v. Navjot Sandhu MANU/SC/0396/2003 : [2003] 6 SCC 641, the Apex Court, at page 656, para 28 has held as under:

> "Thus, the law is that article 227 of the Constitution of India gives the High Court the power of superintendence over all

courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeking that they obey the law. The powers under article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under article 227, must be exercised sparingly and only to keep subordinate court and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under article 227 could not be exercised "as the cloak of an appeal in disguise"."

20. In Surya Dev Rai v. Ram Chander Rai MANU/SC/0559/2003 : [2003] 6 SCC 675, the Apex Court has held that exercise of power under article 226 is available only to correct the error committed by the Court or the authority and the error should be self-evidence. The Apex Court had also cautioned that such an error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari.

21. In Ranjeet Singh v. Ravi Prakash MANU/SC/0243/2004 : [2004] 3 SCC 682 the Apex Court has held that unless, the High Court finds patent error in the order of the tribunal or appellate board, it would not be proper to interfere in such order in exercise of jurisdiction under article 227 of the Constitution.

22. The Superintendence power of the High Court under article 227 of the Constitution of India, over all Courts and tribunals is basically to keep the subordinate courts/tribunals/appellate authorities constituted under statutes within their bounds and not for correcting mere errors. The exercise of power is limited to want of jurisdiction, errors of law, perverse findings, gross violation of principles of natural justice and like the one. It may be exercised, if it is shown that grave injustice has been done to the person, who has invoked the jurisdiction with such grievance, the Court does not act as an appellate authority to reappraise the evidence and come to a different conclusion. Even if two views are possible, in exercise of power, the Court would not be justified in substituting its own reason for the reasons of the subordinate courts/tribunals or appellate tribunals/boards. Of course, the power of this Court is not taken away, where the statutory appellate tribunal/board brushes aside the evidence on conjunctures and without giving cogent

> reasons, which would result in error apparent on the face of the records. Unless, the errors questioned are apparently error, perverse and the findings are not supported by any materials, the exercise of power under article 227 of the Constitution to interfere with in such orders may not be available.

(ix) In Ramesh Chandra Sankla v. Vikram Cement AIR 2009 SC 712, at para 81, held as follows:

> '81. The power of superintendence under article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae, i.e., to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice".'

24. Prayer is to set aside the order made in CP No. 178 of 2017, dated 9th January, 2018. True that there is an alternative remedy under the NCLT Act, 2013, to prefer an appeal to the Tribunal. But when the error is apparent on the face of record, we are of the view that exercise of power under article 227 of the Constitution of India is not ousted. Order dated 9th January, 2018 has been made on the submission of the petitioner that company has been struck off. Tribunal cannot be found fault with, in placing on record the submission. But the fact remains that, an application under section 252(3) of the Companies Act, 2013, can be entertained only in a case, where there is an order by which the company is struck off. Legislation if any enacted, providing for an alternative remedy, cannot take away the constitutional powers of the High Courts, under article 226 or 227 of the Constitution of India. High Court in exercise of jurisdiction under article 226 or 227 of the Constitution of India, may not entertain a writ petition, on the ground of availability of an alternative remedy, but the rule cannot have universal application. It is well settled that despite existence of an alternative remedy, still, High Court in exercise of its jurisdiction, entertain a writ petition and pass suitable orders, if it is found that the authority had not acted in accordance with law.

25. Reference can be made to the decisions in Whirlpool Corporation v. Registrar of Trade Marks, Mumbai MANU/SC/0664/1998 : [1998] 31 CLA 195 (SC)[1998] 1 SCC 1, Ms. Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd. MANU/SC/0563/2005 : [2005] 8 SCC 242, State of HP v. Gujarath Ambuja Cement Ltd. MANU/SC/0421/2005 : [2005] 6 SCC 499.

26. A hon'ble Division Bench of this Court, in P. Vinmani v. General Manager, State Bank of India, SAM Branch, Anna Salai, Chennai, MANU/TN/0247/2011 : AIR 201 Mad. 220, at paragraph No. 12 of the judgment held, thus:

> "It is true that when there is a provision of alternative remedy, which is more effective, the writ petition cannot be entertained unless such a remedy is exhausted. In fact, this law is reiterated by the Apex Court in the judgment reported in the case of MANU/SC/0541/2010 : [2010] 8 SCC 110 AIR 2010 SC 3413 (cited supra). Availing alternative remedy is general rule, but there are exceptions. In case if the order of the Tribunal is questioned on the ground of want of jurisdiction, the provisions of article 226 of the

Constitution can be invoked and more so, when it is pleaded that the order questioned in this writ petition is a nullity and non-est in law. In this context, we may also refer that when an order of the Tribunal is a nullity, an appeal there from cannot be of greater validity and in that sense, the question of directing the parties to prefer an appeal against that order, which is a nullity, is if no consequence. In the event when the order is void, non-est, relegating a person to avail alternative remedy would result in palpable injustice. In that sense, in the decision reported in the case of Municipal Council v. Kamal Kumar MANU/SC/0227/1964 : AIR 1965 SC 1321, the Apex Court has held that the High Court could retain the discretion to interfere in proper cases, even in the case when the impugned order is ultra vires."

27. In Shalini Shyam Shetty v. Rajendra Shankar Patil MANU/SC/0508/2010 : [2010] 8 SCC 329, the hon'ble Supreme Court explained the difference between the scope and exercise of power under article 226 or 227 of the Constitution of India.

28. Apparently, when there is no order under sub-section (6) of section 248 of the Companies Act, 2013, the question is whether the steps taken by the petitioner under section 252(3), for the reliefs prayed for, have any legs to stand? In such circumstances, whether this court can strike off the proceedings initiated by the petitioner? or on the facts and circumstances, exercise of its supervisory jurisdiction, mould the relief prayed for and pass appropriate orders. Let us consider few decisions on the power of the Court to mould the relief and issue directions,

(i) In Pasupuleti Venkateswarlu v. The Motor & General Traders MANU/SC/0415/1975 : [1975] 1 SCC 770, at para 4, the hon'ble Apex Court held as follows:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-a-vis. circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances.

Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are my raid. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

(ii) In Hindalco Industries Ltd. v. Union of India MANU/SC/0663/1994 : [1994] 2 SCC 594, the hon'ble Supreme Court, at para 7, held as follows:

> '7. It is settled law that it is no longer necessary to specifically ask for general or other relief apart from the specific relief asked for. Such a relief may always be given to the same extent as if it has been asked for provided that it is not inconsistent with that specific claim which the case raised by the pleadings. The court must have regard for all the relief and look at the substance of the matter and not its forms. It is equally settled law that grant of declaring relief is always one of discretion and the court is not bound to grant the relief merely because it is lawful to do so. Based on the facts and circumstances the court may on sound and reasonable judicial principles grant such declaration as the facts and circumstances may so warrant. Exercise of discretion is not arbitrary. If the relief asked for is as of right. Something is included in his cause of action and if he establishes his cause of action, the court perhaps has been left with no discretion to refuse the same, But when it is not as of right, then it is one of the exercise of discretion by the court. In that event the court may in given circumstances grant which includes "may refuse" the relief. It is one of exercising judicious discretion by the court. Same consideration would apply to the causes under the Act and the Tribunal has such discretion. The Tribunal, while keeping justice, equity and good conscience at the back of its mind, may when compelling equities of the case oblige them, shape the relief consistent with the facts and circumstances established in the given cause of action. Any uniform rigid rule, if be laid, it itself turns out to be arbitrary. If the Tribunal thinks just, relevant and germane, after taking all the facts and circumstances into consideration, would mould the relief, in exercising its discretionary power and equally would avoid injustice. Likewise when the right to remedy under the Act itself arises on the presence or absence of certain basic facts, at the time of granting relief, may either grant the relief or refuse to grant the same. It would be one of just and equitable exercise of the discretion in moulding the ancillary relief. It is not as of right. In Associated Provincial Picture Houses Ltd. case' under Sunday Entertainments Act, 1932, the licensing authority while granting permission to exhibit cinematographs, imposed certain conditions, prohibiting the children under age of 15 years to be admitted in the theatre. It was challenged as being arbitrary. Dealing with the discretionary power of the licensing authority, the Court of Appeal held that the law recognised certain principles on which discretion must be exercised but within the four corners of those principles. The discretion is not absolute one. The exercise of such a discretion must be a real exercise of the discretion. If in any statute conferring the jurisdiction, there are to be found, expressly or by implication, matters to which the authorities exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters. Expressions have been used in cases where the powers of local authorities came to be considered relating to the sort of thing that may give rise to interference by the court. Bad faith, dishonesty-those, of course, stand by themselves,

> unreasonableness, attention given to extraneous circumstances, disregard of public policy, and things like that have all been referred to as being matters which are relevant for consideration. The discretion must be exercised reasonably. A person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said to be acting unreasonably.'

29. In the case on hand, on the premise that there is an order, striking off the company from the register of companies, the petitioner has filed an application under section 252(3) of the Companies Act, 2013, and orders have been passed in CP No. 178 of 2017, dated 9th January, 2018, which is impugned in this revision petition. But this court on perusal of files, has found that there is no order under section 246(6) of the Act, at all. By inadvertence the petitioner-company, was of the view that, there was an order under section 248(6), of the Companies Act, 2013, and proceeded further whether this court is denuded of the power under article 227 of the Constitution of India, to ignore the fundamental error committed by the registrar of companies, and direct the petitioner to avail the alternate remedy under section 252(3) of the Companies Act, 2013, which admittedly, not availed by the petitioner, on the premise that there was an order under section 248(6) of the Companies Act, 2013.

30. Going through the material on record and files, we are of the view that when there is no order under section 248(6) of the Companies Act, 2013, passed by the registrar of companies, the consequential publication effected under section 248(5), is not valid.

31. In view of the finding, it is for the petitioner to take appropriate course. Accordingly, civil revision petition is disposed of. No Costs.