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IN THE HIGH COURT OF DELHI AT NEW DELHI

MANMOHAN; NAVIN CHAWLA, JJ.

15th March, 2022

W.P.(C) 6483/2021 & CM APPL.20367/2021

WING COMMANDER SHYAM NAITHANI *versus* **UNION OF INDIA AND ORS.**

Petitioner Through: Mr.Ankur Chhibber, Advocate with Mr.H.S. Tiwari, Mr. Anshuman Mehrotra, Mr. Harsh Dhankar, Mr. Nikunj Arora, Advocates

Respondents Through: Mr.Vikram Jetly, Advocate. Mr. Jatin Puniyani, Advocate.

W.P.(C) 5273/2021 & CM APPLs.16227/2021 and 18656/2021

WG CDR VIDHU SINGH *versus* **UNION OF INDIA AND ORS**

Petitioner Through: Mr.Ankur Chhibber, Advocate with Mr.H.S. Tiwari, Mr. Anshuman Mehrotra, Mr. Harsh Dhankar, Mr. Nikunj Arora, Advocates

Respondents Through: Mr.Harish Vaidyanathan Shankar, Advocate with Mr.Syed Husain Adil Taqvi, Advocates.

W.P.(C) 1720/2021 & CM APPLs.4963-4964/2021

EX CPL MADAN KUMAR SINGH *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr.Varun Singh, Advocate with Mr.Akshay Dev and Ms.Alankriti Dwivedi, Advocates

Respondents Through: Mr.Harish Vaidyanathan Shankar, Advocate with Ms.S.Bushra Kazim and Mr.Karan Chhibber, Advocates.

W.P.(C) 8171/2020

AMAR SINGH EX NB SUB & ORS. *versus* **UNION OF INDIA & ORS.**

Petitioners Through: Mr.S.M. Dalal, Advocate.

Respondents Through: Mr.Harish Vaidyanathan Shankar, Advocate with Ms.S.Bushra Kazim, Advocate.

W.P.(C) 9627/2020

COL MUKUL DEV *versus* **UNION OF INDIA AND ORS.**

Petitioner Through: Mr.Rajiv Manglik, Advocate.

Respondents Through: Mr.Harish Vaidyanathan Shankar, Advocate with Mr.Syed Husain Adil Taqvi, Advocates. Mr. Jatin Puniyani, Advocate. Ms.Suparna Srivastava, CGSC with Mr.Tushar Mathur, Ms. Soumya Singh, Advocates.

W.P.(C) 1145/2021

EX AC ASHOK KUMAR DUBEY versus UNION OF INDIA & ORS.

Petitioner Through: Mr.Randhir Singh Kalkal, Advocate.

Respondents Through: Mr.Virender Pratap Singh Charak, Advocate with Ms.Shubhra Parashar, Mr.Pushpender Singh Charak, Mr.Kapil Gaur, Mr.Vaishnav Kirti Singh, Mr.Shubham Ahujam, Mr.Sanjay Singh Chauhan, Mr.Ram Pal Singh Tomar, Mr.Gyanwardhan Singh, Mr.Inderdeep Singh and Mr.Vivek Nagar, Advocates.

W.P.(C) 2513/2021

GP. CAPT. HARBAKSH SINGH MANIANI *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr.Naveen R.Nath, Sr.Advocate with Mr.Rahul Jain, Advocates.

Respondents Through: Mr.G.D.Shanna, Advocate with Mr.Shoumendra Mukharjee, Advocate.

W.P.(C) 3402/2021 & CM APPL.10345/2021
GP CAPT BHUPINDER SINGH *versus* **UNION OF INDIA AND ORS.**

Petitioner Through: Mr.P.K.Dhaka, Advocate.

Respondents Through: Mr.Dev P Bhardwaj, Advocate with Mr.Mohit Bhardwaj, Advocate.

W.P.(C) 9846/2021 & CM APPL.30324/2021
735458 SGT JITENDRA SINGH *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr.Manoj Kumar Gupta, Advocate.

Respondents Through: Mr.Rajesh Kumar Das, Advocate for R-1. Mr.Anshuman, Advocate

W.P.(C) 13013/2021 & CM APPL.2828/2022
GP CAPT D VISWANATH *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr.Deepak Bansal, Advocate.

Respondents Through: Mr.Abhishek Singh, Advocate.

W.P.(C) 235/2022 & CM APPL.657/2022
JWO RK JAISWAL EDN INSTR *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr.Girindra Kumar Pathak, Advocate.

Respondents Through: Ms.Amrita Prakash, Advocate.

W.P.(C) 1693/2022 & CM APPL.4889/2022
772233 CPL AJIT MOHANTY *versus* **UNION OF INDIA & ORS.**

Petitioner Through: Mr. Manoj Kr. Gupta, Advocate.

Respondents Through: Mr.Harish Vaidyanathan Shankar, Advocate with Mr.Karan Chibber and Ms.S.Bushra Kazim, Advocate.

J U D G M E N T

MANMOHAN, J:

CORE ISSUE

1. The issue that arises for consideration in the present batch of matters is whether the power of Judicial Review, a basic feature of the Constitution of India conferred upon the High Courts under Articles 226 and 227 has been taken away totally in view of the judgment passed by the Supreme Court in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr., (2015) 6 SCC 773*** thereby denying litigants the right to approach High Court in writ jurisdiction against the judgment and orders passed by Armed Forces Tribunal.

2. While learned counsel for the petitioners stated that a coordinate Division Bench of this Court in ***Brijlal Kumar & Ors. vs. Union of India & Ors., W.P.(C) 98/2020*** decided on 24th November, 2020 has held that a writ petition is maintainable against the final order passed by Armed Forces Tribunal, learned counsel for the Respondents stated that the said judgment is *per incuriam* as it is contrary to the judgment passed by the Apex Court in ***Union of India and Ors. vs. Maj. Gen. Shri***

Kant Sharma and Anr.(supra) and the said judgment has not been set aside/overruled till date.

PRELIMINARY OBJECTION ON BEHALF OF THE RESPONDENTS

3. Mr.Harish Vaidyanathan Shankar as well as Mr. Anurag Ahluwalia, learned counsel for Union of India while relying upon ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr*** (supra) submitted that the Supreme Court has specifically held that High Courts should not entertain writ petitions against judgments passed by Armed Forces Tribunal as the parties have an alternative effective remedy of filing an appeal before the Supreme Court under Armed Forces Tribunal Act, 2007. In support of their submission, they relied upon the following portion of the said judgment, wherein it has been held as under:-

"….*36. The aforesaid decisions rendered by this Court can be summarised as follows:*

(i) The power of judicial review vested in the High Court under Article 226 is one of the basic essential features of the Constitution and any legislation including the Armed Forces Tribunal Act, 2007 cannot override or curtail jurisdiction of the High Court under Article 226 of the Constitution of India.(Refer: L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] and S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669] .) (ii) The jurisdiction of the High Court under Article 226 and this Court under Article 32 though cannot be circumscribed by the provisions of any enactment, they will certainly have due regard to the legislative intent evidenced by the provisions of the Acts and would exercise their jurisdiction consistent with the provisions of the Act. (Refer: Mafatlal Industries Ltd. [(1997) 5 SCC 536]) (iii) ***When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*** *(Refer: Nivedita Sharma [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] .) (iv)* ***The High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.*** *(Refer: Nivedita Sharma [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] .) xxxx xxxx xxxx* ***Likelihood of anomalous situation*** *42.* ***If the High Court entertains a petition under Article 226 of the Constitution of India against an order passed by the Armed Forces Tribunal under Section 14 or Section 15 of the Act bypassing the machinery of statute i.e. Sections 30 and 31 of the Act, there is likelihood of anomalous situation for the aggrieved person in praying for relief from this Court****."*

(emphasis supplied)

4. Learned counsel for the respondent-Union of India pointed out that though the Supreme Court in ***Union of India vs. Thomas Vaidyan, Civil Appeal No.5327/2015,*** vide order dated 16th November, 2015, has referred the case of ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) to a larger Bench, yet no order of interim stay of the said judgment has been passed till date. They submitted that till the time the referred question of law is decided by the larger bench, the

judgment in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) constitutes a binding precedent.

5. They emphasised that an appeal is a statutory right and the Armed Forces Tribunal Act, 2007 expressly prohibits an appeal against an interim order. Thus, according to them, this Court should not entertain any writ petition against the interim orders passed by Armed Forces Tribunal.

ARGUMENTS ON BEHALF OF THE PETITIONERS

6. Mr. Ankur Chhibber, Mr.Varun Singh, Mr.S.M. Dalal, Mr.Randhir Singh Kalkal, Mr.P.K.Dhaka, Mr.Manoj Kumar Gupta, Mr.Deepak Bansal and Mr.Girindra Kumar Pathak, learned counsel for the Petitioners admitted that Sections 30 & 31 of Armed Forces Tribunal Act, 2007, provide for an appeal to the Supreme Court against the final order passed by Armed Forces Tribunal. They, however, stated that an appeal to the Supreme Court lies only in such cases where question of general public importance is involved. They pointed out that an appeal lies with the leave of the Armed Forces Tribunal and such leave cannot be granted unless it is certified by the Tribunal that a point of law of general public importance is involved in the decision passed. They contended that matters concerning pay, pension, promotion and discipline are matters personal to the litigants and do not involve any substantial question of law of general public importance. They stated that in such matters, no leave to appeal can be granted under Section 31 of the Armed Forces Tribunal Act, 2007. Thus, according to them, the right to appeal to the Supreme Court under Sections 30 & 31 of the Armed Forces Tribunal Act, 2007 is limited and is not an alternative effective remedy. They stated that a litigant cannot be left high and dry without there being any provision for further appeal against the Armed Forces Tribunal.

7. Learned counsel for the Petitioners submitted that the Constitution Bench of the Supreme Court in ***Rojer Mathew vs. South Indian Bank Ltd. & Ors. (2020) 6 SCC 1,*** after considering the judgment passed by the Supreme Court in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra), has held that Article 136 (2) of the Constitution of India prohibits direct appeal to the Supreme Court from an order passed by Armed Forces Tribunal. They stated that the Constitution Bench has further held that the said provision does not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226 of the Constitution of India. They emphasised that the Constitution Bench in ***Rojer Mathew*** (supra) has held that the limited ouster made by Article 227(4) of the Constitution of India only operates *qua* administrative supervision by the High Court and not with regard to the judicial review.

8. They pointed out that thereafter the Supreme Court in the case of ***Balkrishna Ram vs. Union of India and Anr., (2020) 2 SCC 442*** has explicitly disagreed with the view taken in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) and has held that the High Courts would be justified in entertaining writ petitions in cases of glaring illegality committed by the Armed Forces Tribunal and in such cases

where it seems to the High Courts that they should exercise their power to entertain a writ petition against a final order passed by Armed Forces Tribunal.

9. Thus, according to them the only way to challenge the matters involving pay, pension, promotion and discipline and not involving a substantial question of law of general public importance, is to challenge the same before the High Court by way of a writ petition, as the jurisdiction of the Supreme Court is barred.

REJOINDER ARGUMENTS ON BEHALF OF THE RESPONDENTS

10. In rejoinder, learned counsel for the Union of India submitted that paragraph 215 of the judgment passed by Constitution Bench in ***Rojer Mathew*** (supra) does not constitute a binding precedent as it is not the *ratio decidendi* of the said judgment. In support of their submission they relied upon the judgment passed by the Supreme Court in ***State of Gujarat vs. Utility Users Association (2018) 6 SCC 21,*** wherein it has been held that in order to determine what is *ratio decidendi*, the Inversion Test has to be applied. The relevant portion of the said judgment is reproduced hereinbelow:-

"…114. In order to test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi is what is absolutely necessary for the decision of the case. "In order that an opinion may have the weight of a precedent", according to John Chipman Grey [Another distinguished jurist who served as a Professor of Law at Harvard Law School.] , "it must be an opinion, the formation of which, is necessary for the decision of a particular case"."

11. According to them applying the Inversion Test, it is trite that paragraph 215 of ***Rojer Mathew*** (supra) is not *ratio decidendi* and thereby, not a binding precedent.

12. They further submitted that the judgment passed by the Supreme Court in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) had not been expressly over-ruled either in ***Rojer Mathew*** (supra) or in ***Balkrishna Ram*** (supra) and, thus, the judgment of this Court in ***Brijlal Kumar & Ors.*** (supra) was *per incuriam*.

13. In the alternative, they submitted that the Constitution Bench in ***Rojer Mathew*** (supra) had not considered the effect of Article 33 of the Constitution of India, which reads as under:-

"*33. Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,— (a) the members of the Armed Forces; or (b) the members of the Forces charged with the maintenance of public order; or (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or (d) person employed in, or in connection with, the telecommunication systems set up for the purposes of any Force,*

bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them."

14. They emphasised that the Supreme Court in ***Prithi Pal Singh Bedi vs. Union of India & Anr., (1982) 3 SCC 140*** has held as under:-

"15. Article 33 confers power on the Parliament to determine to what extent any of the rights conferred by Part III shall, in their application to the members of the Armed Forces, be restricted or abrogated so as to ensure the proper discharge of duties and maintenance of discipline amongst them. Article 33 does not obligate that Parliament must specifically adumbrate each fundamental right enshrined in Part III and to specify in the law enacted in exercise of the power conferred by Article 33 the degree of restriction or total abrogation of each right. That would be reading into Article 33 a requirement which it does not enjoin. In fact, after the Constitution came into force, the power to legislate in respect of any item must be referable to an entry in the relevant list. Entry 2 in List I: Naval, Military and Air Forces; any other Armed Forces of the Union would enable Parliament to enact the Army Act and armed with this power the Act was enacted in July 1950. It has to be enacted by the Parliament subject to the requirements of Part III of the Constitution read with Article 33 which itself forms part of Part III. Therefore, every provision of the Army Act enacted by the Parliament, if in conflict with the fundamental rights conferred by Part III, shall have to be read subject to Article 33 as being enacted with a view to either restricting or abrogating other fundamental rights to the extent of inconsistency or repugnancy between Part III of the Constitution and the Army Act. This is no more res integra in view of the decision of the Constitution Bench of this Court in Ram Sarup v. Union of India [AIR 1965 SC 247 : (1964) 5 SCR 931 : (1965) 1 Cri LJ 236] in which repelling the contention that the restriction or abrogation of the fundamental rights in exercise of the power conferred by Article 33 is limited to one set out in Section 21 of the Act, this Court observed as under : ... The learned Attorney-General has urged that the entire Act has been enacted by Parliament and if any of the provisions of the Act is not consistent with the provisions of any of the Articles in Part III of the Constitution, it must be taken that to the extent of the inconsistency Parliament had modified the fundamental rights under those Articles in their application to the person subject to that Act. Any such provision in the Act is as much law as the entire Act. We agree that each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental rights under Part III of the Constitution, that provision does not, on that account, become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective fundamental rights.... Section 21 merely confers an additional power to modify rights conferred by Article 19(1)(a) and (c) by Rules and such rules may set out the limits of restriction. But the specific provision does not derogate from the generality of power conferred by Article 33. Therefore, it is not possible to accept the submission that the law prescribing procedure for trial of offences by court martial must satisfy the requirement of Article

21 because to the extent the procedure is prescribed by law and if it stands in derogation of Article 21, to that extent Article 21 in its application to the Armed Forces is modified by enactment of the procedure in the Army Act itself."

15. They also stated that the Supreme Court in ***Rojer Mathew*** (supra) did not have the opportunity to consider the Statement of Objects and Reasons of the Armed Forces Tribunal Act, 2007 which clearly stipulates that the reason for establishment of the Tribunal was due to large number of cases pending before the High Courts. They stated that, in the event, the contentions of the Petitioners were to be accepted, it would lead to the same situation once again which was precisely why the Armed Forces Tribunal Act, 2007 was enacted.

COURT'S REASONING THE POWER OF JUDICIAL REVIEW UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION IS A PART OF THE BASIC STRUCTURE OF THE CONSTITUTION. SECTION 14 OF THE ACT, 2007 ITSELF PRESERVES THE WRIT JURISDICTION OF THE HIGH COURTS

16. The Supreme Court in ***Sangram Singh Vs. Election Tribunal, Kotah and Anr., (1955) 2 SCR 1*** [1] has held that the jurisdiction of the High Court under Article 226 and of the Supreme Court under Article 136 of the Constitution entitles the Constitutional Courts to examine as to whether the Tribunals have acted illegally and these powers cannot be ousted by a statute. It was further held that Articles 226 and 136 of the Constitution are part of the law of the land which cannot be finally determined and altered by any Tribunal of limited jurisdiction.

[1] The relevant portion of the judgment of the Supreme Court in ***Sangram Singh Vs. Election Tribunal, Kotah and Anr.*** (supra) is reproduced hereinbelow: "*13.* ***The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.***"

17. This Court finds that Section 14 of the Armed Forces Tribunal Act, 2007 itself explicitly stipulates that though the Tribunal has wide powers, yet it does not exercise the power of the Supreme Court or the High Court under Articles 226 and 227 of the Constitution of India. Consequently, the Armed Forces Tribunal Act, 2007 itself preserves the writ jurisdiction of the High Courts.

18. Under The Administrative Tribunals Act, 1985, where the writ jurisdiction of the High Court was not preserved, the seven Judges' Bench of the Supreme Court in ***L.Chandra Kumar Vs. UOI and Ors., (1997) 3 SCC 261*** [2] has held that judicial review is a part of basic structure of the Constitution and that the power of judicial review of the High Courts and the Supreme Court cannot be taken away.

[2] *78. …..****We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of***

the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. *79.* ***We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."***

19. The argument that in view of Article 227(4) of the Constitution, the High Court has no power of judicial superintendence over the Armed Forces Tribunal is untenable as Article 227(4) only takes away the administrative superintendence of Courts over the Tribunal relating to armed forces. In, ***L.Chandra Kumar*** (supra) and ***Rojer Mathew*** (supra), it has been categorically held by the Supreme Court that the power of judicial superintendence has not and can never be taken away.

20. Consequently, the power of judicial review under Articles 226 and 227 of the Constitution vests with the High Court even with regard to judgments and orders passed by the Armed Forces Tribunal and this power is a part of the basic structure of the Constitution as has been held in ***L.Chandra Kumar*** (supra) ***Rojer Mathew*** (supra)[3].

[3] ***215. It is hence clear post L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] that writ jurisdiction under Article 226 does not limit the powers of High Courts expressly or by implication against military or armed forces disputes. The limited ouster made by Article 227(4) only operates qua administrative supervision by the High Court and not judicial review. Article 136(2) prohibits direct appeals before the Supreme Court from an order of Armed Forces Tribunals, but would not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226……. 217. The jurisdiction under Article 226, being part of the basic structure, can neither be tampered with nor diluted. Instead, it has to be zealously protected and cannot be circumscribed by the provisions of any enactment, even if it be formulated for expeditious disposal and early finality of disputes. Further, High Courts are conscious enough to understand that such power must be exercised sparingly by them to ensure that they do not become alternate forums of appeal…….***

ARTICLE 33 OF THE CONSTITUTION DOES NOT RESTRICT OR CURTAIL THE RIGHT OF PERSON IN UNIFORM TO FILE A WRIT PETITION

21. Article 33 of the Constitution does not restrict or curtail the right of a person in uniform to file a writ petition. By virtue of Article 33 of the Constitution, the Parliament, while enacting the Army Act (Rule 21), the Air Force Act and the Navy Act, has only prohibited members of the armed forces from taking part in political and non-military activities. These are the only restrictions provided under the said statutes. There is no provision in any of the aforesaid three statutes which prohibits filing of writ petitions under Articles 226 and 227 of the Constitution. Consequently, the judgment in ***Prithi Pal Singh Bedi*** (supra) has no application to the present case.

ACCESS TO JUSTICE IS A BASIC AND INALIENABLE HUMAN RIGHT WHICH IS A PART AND PARCEL OF THE RIGHT TO LIFE IN INDIA

22. The remedy of appeal to Apex Court in a large number of cases may also prove to be ineffective for the members of the Armed Forces posted all over India, as they may find it expensive and difficult to approach the Apex Court.

23. Further, appeals in the highest Court would result in clogging of dockets and preventing the Apex Court from discharging its primary Constitutional role. The Supreme Court in ***Gujarat Urja Vikas Nigam Limited Vs. Essar Power Limited, (2016) 9 SCC 103***[4] has held that it can hardly be gainsaid that routine appeals to the

highest Court results in obstruction of the constitutional role assigned to the highest Court.

[4] *31. **In L. Chandra Kumar v. Union of India** [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] , in the course of considering the constitutional validity of exclusion of jurisdiction of the High Courts in service matters against the orders of the Central Administrative Tribunal, **this Court observed that the manner in which justice is dispensed with by the tribunals left much to be desired. The remedy of appeal to this Court from the order of the tribunals was too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such remedy was that the docket of this Court was crowded with decisions of the tribunals and this Court was forced to perform the role of a first appellate court**. It was necessary that the High Courts are able to exercise judicial superintendence over decisions of the tribunals. With these observations this Court directed that "all" decisions of the tribunals will be subject to the High Court's writ jurisdiction under Articles 226/227 [L. Chandra Kumar case, (1997) 3 SCC 261, para 91]. It was further observed that the then existing position of direct appeal to this Court from orders of the tribunal will stand modified. xxx xxx xxx 37. In Mathai v. George [Mathai v. George, (2010) 4 SCC 358 : (2010) 2 SCC (Civ) 142 : (2010) 2 SCC (Cri) 835 : (2010) 1 SCC (L&S) 1035], this Court referred to R.K. Jain Memorial Lecture delivered on 30-1-2010 by Shri K.K. Venugopal, Senior Advocate to the effect that: (SCC p. 364, para 15) "15. … an alarming state of affairs has developed in this Court because this Court has gradually converted itself into a mere court of appeal which has sought to correct every error which it finds in the judgments of the High Courts of the country as well as the vast number of tribunals." The court has strayed from its original character as a constitutional court and the Apex Court of the country. Failure to hear and dispose of cases within reasonable time erode confidence of the litigants in the Apex Court. Reference was made to an article by Justice K.K. Mathew to the effect that time, attention and energy should be devoted to matters of larger public concern. Functioning of the Supreme Court was not to remedy a particular litigant's wrong, but consideration of cases involving principles of wide public or governmental interest which ought to be authoritatively declared by the final court. The docket of the court should be kept down so that its volume did not preclude wise adjudication. xxx xxx xxx 40. While there may be no lack of legislative competence with Parliament to make provision for direct appeal to the Supreme Court from orders of tribunals but the legislative competence is not the only parameter of constitutionality. It can hardly be gainsaid that **routine appeals to the highest court** may **result in obstruction of the constitutional role assigned to the highest court** as observed above. This may affect the balance required to be maintained by the highest court of giving priority to cases of national importance, for which larger Benches may be required to be constituted. Routine direct appeals to the highest court in commercial litigation affecting individual parties without there being any issue of national importance may call for reconsideration at appropriate levels.*"

24. In fact, in ***Gujarat Urja*** (supra), the Supreme Court of India made a reference to the Law Commission to examine and submit a Report pertaining to various issues including providing of direct statutory appeals to the Supreme Court from the order passed by Tribunals bypassing the High Courts. The Law Commission[5] has opined that High Courts have unquestionable power of superintendence and control over the Tribunals and the parties aggrieved by the Armed Forces Tribunal Act, 2007 can approach the High Courts under writ jurisdiction.

[5] The Law Commission of India in its Report No.272 states, " 8.1 *Access to justice is a fundamental right of the citizens..... The questions arise as to whether bypassing the jurisdiction of the High Courts violates the right of access to justice or the principle of Federalism, which is a basic feature of the Constitution. The framers of the Constitution deemed it proper to adopt the Federal structure in the judicial hierarchy also. While the Supreme Court is the Apex Court of the Country, the High Courts are the Highest Courts in the States. In the Constitutional scheme, the High Court is not stricto-senso subordinate to the Supreme Court. They are assigned a broad Constitutional role with extensive Constitutional responsibilities. Their power to issue writs is wider than the Supreme Court. Besides, the power of judicial review is also vested in them..... The High Courts have unquestionable power of superintendence and control over the Tribunals under the Constitution. However, the overriding effect in Articles 323-A and 323-B under Part IXV-A cannot in any case denude the High Court of its power of superintendence under Article 227 of the Constitution. The exclusion of jurisdiction of all the Courts except the Supreme Court cannot be construed to mean that the power of judicial review vested in the High Court is also excluded……. ……..As a general rule, the writ court may entertain a petition if substantial injustice has ensued or is likely to ensue or there has been a breach of fundamental principle of justice. The existence of an equally efficacious, adequate and suitable legal remedy is a point of consideration in the matter of granting writs. Under the rule of self-imposed restraint, the writ court may refuse to entertain a petition if it is satisfied that parties must be relegated to the court of appeal or revision or asked to set right mere errors of law which do not occasion injustice in a broad and general sense, unless the order is totally erroneous or raises issues of jurisdiction or of infringement of fundamental right of the petitioner…… I……The provisions of Section 3(o) of the **Armed Forces Tribunal Act, 2007** and the parties aggrieved in those matters can approach the High Court under writ jurisdiction. The Act **excludes the jurisdiction of the High Court under Article 227(4) but not under Article 226. In matters, where AFT has jurisdiction, parties must have a right**

to approach the High Court under Article 226 for the reason that a remedy under Article 136 is not by way of statutory appeal*. The issue is pending for consideration before the larger Bench of the Supreme Court".*

25. This Court is also of the view that access to justice is a basic and inalienable human right which civil societies recognize and enforce. It has been repeatedly held that access to justice is a part and parcel of the right to life in India and this right is so basic and inalienable that no system of governance can possibly ignore its significance leave alone afford to deny the same to its citizens. (See: ***Anita Kushwaha vs. Pushpa Sudan (2016) 8 SCC 509*** and ***Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited (2016) 9 SCC 103***). In fact, even the Law Commission of India in its Report No.272 admits that access to justice is a Fundamental Right of the citizens and the power of judicial review also vests in the High Courts. (See: **The Law Commission of India's Report No.272**)

NEITHER SECTION 30 NOR SECTION 31 OF THE ARMED FORCES TRIBUNAL ACT, 2007 CONSTITUTES AN ALTERNATIVE EFFECTIVE REMEDY IN ALL CASES

26. In ***Ex. Lac Yogesh Pathania vs. Union of India & Others, (2019) 4 SCC 311***, it has been held that the Apex Court will exercise jurisdiction under Sections 30 and 31[6] of the Armed Forces Tribunal Act, 2007 only where substantial question of law of general public importance is involved.

[6] ***"Section 30. Appeal to Supreme Court. – (1) Subject to…….31, an appeal shall lie to the Supreme Court against the final decision or order of the Tribunal……..provided there shall be no appeal against an interlocutory order of the Tribunal. Section 31. Leave to appeal. – (1) An appeal to the Supreme Court shall lie with the leave of the Tribunal……that a point of law of general public importance is involved…….or it appears to the Supreme Court that the point is one which ought to be considered by that Court."***

27. The Law Commission of India in its Report No.272, after relying on ***Segal, Zeev, "The Power to Probe into Matters of Vital Public Importance", 58 TLR 941 (1984)***, has opined that a question cannot be said to be of public importance unless it is important throughout the State. The Law Commission has opined that the matters of public importance may mean matters relating to Governmental action or inaction which arouse something in the nature of a nationwide crisis of confidence.

28. In ***Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr., (1989) 4 SCC 635***, ***Union of India and Ors. Vs. CDR. Ravindra V. Desai, (2018) 16 SCC 273*** and ***Union of India and Anr. Vs. Ex. Naik Surendra Pandey, (2015) 13 SCC 625***, it has been held that issues such as pay, pension, promotion and discipline are personal to litigants and do not involve any question of law of general public importance.

29. As against interlocutory order of the Armed Forces Tribunal, Section 30 of the Act itself provides that no appeal to the Supreme Court shall be maintainable.

30. Consequently, this Court is of the view that neither Section 30 nor Section 31 of the Armed Forces Tribunal Act, 2007 which provide for leave to appeal to the Supreme Court constitute an alternative effective remedy in all cases where the parties are aggrieved by the decision passed by Armed Forces Tribunal and where the Tribunal refuses leave to appeal.

PARAGRAPH 215 OF THE CONSTITUTION BENCH'S JUDGMENT IN ROJER MATHEW (SUPRA) CONSTITUTES RATIO DECIDENDI OF THE SAID JUDGMENT

31. The decision passed in ***Rojer Mathew*** (supra) is not a case where the Constitution Bench made a passing reference to the decision passed in ***Union of India & Ors. vs Maj. Gen. Shri Kant Sharma*** (supra). In fact, it was pursuant to specific Question No.7 framed by the Constitution Bench that the same was answered in paragraph 215 of ***Rojer Mathew*** (supra).

32. It is settled law that in the light of the question before the Court, the principal underlying the decision constitutes the *ratio decidendi*[7].

[7] In ***Director of Settlements, A.P. and Ors. Vs. M.R. Apparao and Anr., (2002) 4 SCC 638***, the Apex Court has held as under:- "*7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC 794 [(sic)]). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See Narinder Singh v. Surjit Singh [(1984) 2 SCC 402] and Kausalya Devi Bogra v. Land Acquisition Officer [(1984) 2 SCC 324] .)….."*

33. This Court is also of the view that reference order in ***Union of India vs. Thomas Vaidyan*** (supra) does not constitute a bar on the Constitution Bench from deciding the issue.

34. Consequently, paragraph 215 of the Constitution Bench's judgment in ***Rojer Mathew*** (supra) constitutes *ratio decidendi* of the said judgment and also constitutes a binding precedent in accordance with the inversion test laid down in the case of ***State of Gujarat vs. Utility Users Association*** (supra).

THE SUPREME COURT IN BALKRISHNA RAM (SUPRA) REINSTATED THE RIGHT TO CHALLENGE VERDICTS OF THE AFT IN THE HIGH COURTS

35. The argument of the respondents that the judgment passed in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) continues to be good law as it has not been expressly overruled either in ***Rojer Mathew*** (supra) or in ***Balkrishna***

Ram (supra) is not correct.

36. In the case of ***Rojer Mathew*** (supra), the Supreme Court had framed various questions of law to be answered by the Constitution Bench. One of the issues framed for consideration by the Constitution Bench was Question No.7, namely, "*Whether direct statutory appeals from tribunals to the Supreme Court ought to be detoured?*"

37. The said question was dealt with by the Constitution Bench from paragraph 194 of the said judgment and in paragraph 200 (xvi), Section 30 of the Armed Forces Tribunal Act, 2007 was expressly referred to. After discussing the judgment in ***Maj. Gen. Shri Kant Sharma*** (supra) as well as the judgment in ***L.Chandra Kumar*** (supra), the Constitution Bench in ***Rojer Mathew*** (supra) gave its conclusion in paragraph 215 that Article 136(2) of the Constitution prohibits direct appeal to the Supreme Court from an order passed by the Armed Forces Tribunal but does not prohibit an appeal to the Supreme Court against the judicial review exercised by the High Court under Article 226 of the Constitution.

38. In paragraphs 12, 13 and 14 of the judgment passed in ***Balkrishna Ram*** (supra), the Supreme Court has held that the reliance placed by the respondents therein on the judgment passed in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra) was *'entirely misplaced'* as the said judgment could not have overruled the judgment passed by the Constitution Bench in ***L.Chandra Kumar*** (supra).

39. Further, the Supreme Court in ***Balkrishna Ram*** (supra) has not only expressed doubt with regard to correctness of directions (iii) and (iv) contained in paragraph 36 of the judgment in ***Union of India and Ors. vs. Maj. Gen. Shri Kant Sharma and Anr.*** (supra), but it went on to hold that there cannot be a blanket ban on exercise of writ jurisdiction because that would effectively mean that writ Court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in ***L.Chandra Kumar*** (supra). The Supreme Court in ***Balkrishna Ram*** (supra)[8] has also held that it will be for the High Courts to decide in the peculiar facts and circumstances of each case whether they should exercise its extraordinary writ jurisdiction or not. Consequently, the Supreme Court in ***Balkrishna Ram*** (supra) reinstated the right to challenge verdicts of the AFT in the High Courts.

[8] ***"12. Reliance placed by Ms Dwivedi on the judgment of this Court in Shri Kant Sharma [Union of India v. Shri Kant Sharma, (2015) 6 SCC 773 : (2015) 2 SCC (L&S) 386] is entirely misplaced. The issue before this Court in this case was whether the High Court was justified in entertaining writ petitions against the orders of AFT. This is a judgment by two Judges and obviously it cannot overrule the judgment of the Constitution Bench in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . The Division Bench, after referring to various judgments including the judgment in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] , summarised its findings in para 36 as follows: (Shri Kant Sharma case [Union of India v. Shri Kant Sharma, (2015) 6 SCC 773 : (2015) 2 SCC (L&S) 386] , SCC pp. 804-805)..... 13… We have our doubt, with regard to the correctness of Directions (iii) and (iv) of the judgment, since in our opinion it runs counter to the judgment rendered by the Constitution Bench. 14… There may be cases where the High Court would be justified in exercising its writ jurisdiction because of some glaring illegality committed by AFT. One must also remember that the alternative remedy must be efficacious and in case of a Non-Commissioned Officer (NCO), or a Junior Commissioned Officer (JCO); to expect such a person to approach the Supreme Court in every case may not be justified. It is extremely difficult and beyond the monetary reach of an ordinary litigant to approach the Supreme Court. Therefore, it will be for the High Court to decide in the peculiar facts and circumstances of each case whether it should exercise its extraordinary writ***

jurisdiction or not. There cannot be a blanket ban on the exercise of such jurisdiction because that would effectively mean that the writ court is denuded of its jurisdiction to entertain such writ petitions which is not the law laid down in L. Chandra Kumar [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] *."*

THE JURISDICTION OF A WRIT COURT IS VASTLY DIFFERENT AND DISTINCT FROM THAT OF AN APPELLATE COURT

40. However, this Court would like to clarify that a right to appeal is a creation of Statute and it cannot be claimed as a matter of right. The right to appeal has to exist. It cannot be created by acquiescence of the parties or by the order of the Court. It is neither a natural nor an inherent right attached to the litigant being a substantive, statutory right. [See: ***United Commercial Bank Ltd. v. Their Workmen, AIR 1951 SC 230; Kondiba Dagdu Kodam v. Savitribai Sopan Gujar, AIR 1999 SC 2213; and UP Power Corporation Ltd. v. Virenddra Lal, (2013) 10 SCC 39***]. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature as conferring jurisdiction upon a Court or Authority, is a legislative function. There is no right to appeal against an order/judgment passed by the Armed Forces Tribunal to the High Court.

41. The jurisdiction of a writ Court under Article 226 of the Constitution is vastly different and distinct from that of an appellate Court. The writ Court, while examining the judgment passed by the Tribunal, will exercise the power of judicial review which means that the Court shall examine the decision-making process and interfere only for correcting errors of jurisdiction or errors apparent on the face of record or if the Tribunal has acted illegally. [See:***Hari Vishnu Kamath versus Syed Ahmad Ishaque and Ors., (1955) 1 SCR 1104***[9] and ***Surya Dev Rai Vs. Ram Chander Rai & Ors, (2003) 6 SCC 675*** [10]. Further, the aforesaid judgment was followed by the Supreme Court in the case of ***Sameer Suresh Gupta Through PA Holder Vs. Rahul Kumar Agarwal, (2013) 9 SCC 374*** and it was held that the power of superintendence conferred on Article 227 of the Constitution is supervisory and that the power of judicial superintendence must be exercised sparingly to keep the subordinate Courts and Tribunals within the limits of their authority. Consequently, a writ petition is not an appeal in disguise. It is not even a substitute for an appeal.

[9] ***Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Ors., (1955) 1 SCR 1104*** "***21. ……On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction……(2) Certiorari will also be issued when the court or Tribunal acts illegally ……as when it…. violates the principles of natural justice (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction….. (4)……when the decision of the inferior Court or Tribunal is erroneous in law……. 22. It may therefore be taken as settled that a writ of certiorari could be issued to correct….. an error apparent on the face of the record?.....an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case***."

[10] ***Surya Dev Rai Vs. Ram Chander Rai and Ors., (2003) 6 SCC 675*** "*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 (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. xxx xxx xxx (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*

(ii) 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 thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the 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 convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

CONCLUSION

42. To conclude, a Tribunal has to function under the Statute, whereas the higher judiciary (High Courts and the Supreme Court), which is a Constitutional authority, is entrusted not only with the task of interpreting the laws and the Constitution, but also with judicial superintendence over the Tribunals in order to preserve the independence of judiciary while discharging the sovereign function of dispensing justice. The Constitution confers on the Constitutional Court the power of judicial review which is exclusive in nature. Judicial review goes some way to answer the age old question '*who guards the guards*'? Judicial review among many other important aspects of the Constitution is indispensable and while creating any other mode of adjudication of disputes, the judicial review cannot be compromised with.

43. Consequently, the power of judicial review has consistently been held to be one of the basic features of the Constitution. Basic feature i.e. forming core structure of the Constitution. The said core structure cannot be affected even by way of constitutional amendment. (See: ***Kesavananda Bharati Sripadagalveru versus State of Kerala, (1973) 4 SCC 225***)

44. The jurisdiction of High Court under Articles 226 and 227 of the Constitution cannot be bypassed merely by making a provision for direct appeal to the Supreme Court against an order of a Tribunal for the reason that the Apex Court exercises jurisdiction under Sections 30 and 31 of the Armed Forces Tribunal Act, 2007 only if a point of law of general public importance is involved. In ***Ex. Lac Yogesh Pathania*** (supra), the Supreme Court has clarified that appeals under the Armed Forces Tribunal Act are considered only if a point of general public importance is involved.

45. The Armed Forces Tribunal Act, 2007 excludes the administrative supervision of the High Court under Article 227(4) of the Constitution but not judicial superintendence and certainly not jurisdiction under Article 226 of the Constitution.

46. In ***Rojer Mathew*** (supra) judgment, a Constitution Bench of the Supreme Court has held that Article 226 of the Constitution does not restrict writ jurisdiction of High Courts over the Armed Forces Tribunal observing the same can neither be tampered with nor diluted. Instead, the Supreme Court has held that High Court's jurisdiction has to be zealously protected and cannot be circumscribed by the provisions of any

enactment.

47. The Supreme Court in Balkrishna Ram (supra) following the earlier judgment passed by a seven-judges Bench in the case of ***L.Chandra Kumar*** (supra) has observed that the writ jurisdiction of High Courts over Tribunals cannot even be taken away by a legislative or constitutional amendments and the 2015 judgment of ***Union of India and Ors. versus. Maj. Gen. Shri Kant Sharma and Anr.***(supra) by a Bench of two Judges cannot overrule the law already laid down. It has also held that the remedy of a direct appeal from the order passed by Armed Forces Tribunal to the Supreme Court would be extremely difficult and beyond the monetary reach of an ordinary litigant. Consequently, the Supreme Court in Balkrishna Ram (supra) reinstated the right to challenge verdicts of the Armed Forces Tribunal in the High Courts.

48. However, the Writ Court while examining the judgment/order passed by the Tribunal, will exercise the power of judicial review which means that the Court shall examine the decision-making process and interfere only for correcting errors of jurisdiction or errors apparent on the face of record or if the Tribunal acts illegally. (See: ***Hari Vishnu Kamath*** (supra); ***Surya Dev Rai*** (supra) and ***Rajendra Diwan versus Pradeep Kumar Ranibala and Anr. (2019) 20 SCC 143***.**)**

49. This Court would like to emphasise, with all the power that it commands, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. Further, the writ jurisdiction of High Court cannot be exercised "*in the cloak of an appeal in disguise*". (See: ***Rajendra Diwan versus Pradeep Kumar Ranibala and Anr., (2019) 20 SCC 143***).[11]

[11] *"85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised "in the cloak of an appeal in disguise". 86. In exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyse the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law."*

50. Keeping in view the aforesaid conclusions, the preliminary objection raised by Union of India with regard to the maintainability of the present writ petitions is rejected. List the present batch of matters before the roster bench for consideration in accordance with the parameters laid down hereinabove on 21st March, 2022.