IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.362 OF 2015

Tata Communications Limited]
Previously known as Videsh Sanchar Nigam]
Limited, a public limited company incorporated]
under the provisions of Indian Companies Act,]
1956 and having its office at VSB, Mahatma]
Gandhi Road, Fort, Mumbai 400 001.] ... Petitioner

V/S.

1. State of Maharashtra]
Through Revenue Minister of Ministry of]
Revenue and Forest, having office at]
Mantralaya, Mumbai 400 023.]

2. Additional Commissioner]
Konkan Division, Mumbai having its office at]
Old Secretarial Building, Mumbai.]

3. Collector, Mumbai Suburban District]
Having his office at Administrative Building]
10th Floor, Government Colony, Bandra]
(East) Mumbai 400 051.]

4. Tahsildar (Revenue), Andheri]
having his office at Tahsildar, Andheri Office]
Compound, Dadabhai Navroji Road, Near]
Bhavans College, Andheri (West), Mumbai]
400 058.]

5. The Government of Maharashtra]
Through the Principal Secretary, Housing &]
Special Assistance Department, having his]
office at Mantralaya, 6th floor, Mumbai]
400 023] ... Respondents

Mr. Virendra Tulzapurkar a/w. Adv. Raj Panchmatia, Adv. Pranav Sampat, Adv. C. Nageshwaran i/by Khaitan & Co. for the Petitioner.

Mr. Vishal Khanavkar, AGP, for Respondent Nos.1 to 5-State.

CORAM : KAMAL KHATA, J.
RESERVED ON : 6th October, 2025.
PRONOUNCED ON : 1st December 2025.

Judgment :

1) The present Petition challenges the impugned order dated 1st June 2014 passed by the Revenue Minister (Respondent No.1). It upholds the decision of the Respondent No. 1 and affirmation by Respondent No. 2 that the land specifically allotted to OCS/VSNL (for their use) had been transferred from VSNL to Tata Communications Ltd., in breach of allotment dated 27th March 1992 and consequently called upon them to pay ₹ 26,06,74,446/- as unearned income recoverable as arrears of land revenue within seven days of demand.

Brief facts.

2) Overseas Communication Services (OCS) was the Department of Ministry of Telecommunications under the Government of India (GoI). On 27th March 1986, the Government of India, through an Office memorandum, transferred the management, control and operations of the international telecommunication services business including all the assets and liabilities of OCS to Videsh Sanchar Nigam Limited ('VSNL') which had been incorporated on 19th March 1986.

3) This Petition concerns land admeasuring 3947.37 square meters situated at village Bandra, Taluka Andheri bearing Survey No.341, CTS No.629 (part) ('writ land') allotted by the Government of Maharashtra to OCS for construction of staff quarters in 1991. In March 1992, the Collector issued final allotment order of the writ land in the name of OCS. Upon receiving the same, VSNL requested the Collector to issue necessary Orders to get the property card, registered in the name of VSNL. Although the construction of staff quarters started in 1992, the construction of two buildings was completed and Brihanmumbai Municipal Corporation ('BMC') issued Occupation Certificate ('OC') on 24th July 1998.

4) Due to the liberalization and disinvestment policy, the Government of India sold 25% out of the 52% of its shareholding in VSNL to a Tata Group Company. Over a period, the Tata Group Company acquired further shares of VSNL from the market. Later, on 20th January 2008, the name of VSNL was changed to Tata Communications Limited a company incorporated under the provisions of the Companies Act, 1956, (TCL) namely the Petitioner.

5) Three years later, on 25th March 2011, on the basis of a Circular dated 22nd May 1990, the Collector (Respondent No3) issued a Show Cause Notice to OCS/VSNL claiming; (i) The construction was not completed after two years of allotment, (ii) The writ land has

been transferred without prior permission from the Collector in breach of condition 4 namely:

> *"The grantee, his executors, administrators, and approved assignees, shall not at any time transfer the said land or any portion thereof or any interest therein without the previous written consent of the Government".*

(iii) The land has been used for the purpose other than the sanctioned purpose.

6) TCL (Petitioner) replied to the Show Cause Notice pointing out that there was no transfer of land, merely the name of VSNL was changed to that of the Petitioner, that the construction was completed in 1998 and the building continued being used as staff quarters for which it was allotted.

7) Without affording a hearing to TCL, on 11th April 2012, the Collector (Respondent No. 3) passed an Order directing the TCL to pay Rs.26.06 crores as unearned income on the basis that the construction was completed in 1998 instead of 1987, no extension was sought for the same and the writ land was 'transferred' by VSNL to TCL without permission.

8) Aggrieved by the decision an appeal was preferred which was summarily dismissed by the Assistant Commissioner (Respondent No. 2) on 16th January 2013 upholding the Collector's

findings. Consequently, a demand letter was issued calling upon the Petitioner to pay the amount of unearned income.

9) Aggrieved by this decision, TCL preferred an Appeal before the Revenue Minister (Respondent No.1) which too was dismissed on 1st June 2014 holding that, ownership of Central Government was 26.12%, TCL was 48.87% and the balance was with financial institution therefore though the writ property was not directly transferred, because the interest in the writ land was created in favour of TCL without permission of the State Government, it amounted to transfer of land. The six judgments relied upon by TCL were held to be inapplicable on the basis that there was not only a change in the name but even control of the company.

10) Aggrieved by these decisions, on 10th July 2014 TCL filed the present Petition impugning inter alia the Order of Respondent No.1 dated 1st June 2014.

11) Upon hearing the parties, by an Order dated 21st July 2014, this Hon'ble Court directed the Government not to take any coercive steps on the basis of the impugned Order. Thereafter, on 31st March 2016, the Petition was admitted and ad-interim injunction was granted in terms of prayer clause (c) staying the effect, operation and implementation of the impugned Order.

Submissions of TCL

12) Dr. Tulzapurkar, learned Senior Counsel for the Petitioner submits that the impugned Order is liable to be set aside on the following grounds:

(i) The reasons given in the Order that there was a change of shareholding which amounted to transfer, was not mentioned as a ground in the Show Cause Notice,

(ii) There is an error apparent on the face of the record, as the said reasoning in the Collector's order (dated 11th April 2012) holding TCL liable for the unearned income on the ground that there was a transfer from VSNL to TCL is unsustainable in view of the legal position that the shareholders are different from the Company and no shareholder has any interest in the assets of the company *in specie*. The rights of the shareholders are restricted to receiving dividends when declared and participation in the management of the Company. Thus, there has not been any transfer of the land or any portion thereof or any interest in the same to any person and the land has remained with the Petitioner.

(III) The Order dated 16th January 2013 is without any reasons. The impugned order upholding the said Order is

against law. It is settled law that an unfair trial but a fair appeal does not cure the defects in the proceedings.

(IV) The impugned Order upholding the Order dated 16th January 2013 on the ground that there was a change of shareholding which amounted to transfer of assets is totally unsustainable. He submitted that the Respondent No.1 failed to consider the various decisions cited before him.

13) Dr. Tulzapurkar further submitted that the impugned Order is unsustainable in law referring to the reasons given by Respondent No.1 in the following paragraphs of the impugned Order:

(i) Paragraph 23 held that the VSNL continued to be that of the Central Government although in 1991 it sold its shares to employees of VSNL and on 31st March 2001 reduced its shareholding to 52.97% by selling the remaining shareholding to the employees of Indian Financial Institution, Indian Nationalized Bank etc.

(ii) Paragraph 27 held that Tata Industrial Group taking control over VSNL under the disinvestment policy of the Government of India was not only a case of change of name.

(iii) Paragraph 32 that the Respondent No.1 has held

that the interest of the Petitioner in the property was created without prior permission of the State Government.

(iv) Paragraph 35 of the impugned Order held that there was a change in ownership rights without informing the Government.

He submits that the essence of the impugned order is the finding that the change in shareholding pattern of VSNL, pursuant to the disinvestment process, is construed as a change in the ownership of VSNL's assets, thereby resulting in a transfer to TCL. He relies on the judgments in the following cases to rebut this contention:

(i) Bacha Guzdar vs. Commissioner of Income Tax[1]

(ii) Balco Employees Union vs. Union of India[2]

(iii) M/s. Din Chemical & Coating Pvt. Ltd. vs. The State of West Bengal[3]

(iv) International Hospital (Pvt) Ltd. Vs State of U.P.[4]

(v) Great Eastern Shipping Co. Ltd. vs. Oil Natural Gas Corporation Ltd.[5]

(vi) M/s. Economic Investment Corporation vs. The Commissioner of Income Tax[6]

(vii) W.H. Targett (India) Ltd. vs. Mr. S. Ashraf[7]

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1 (1955) 1 SCR 876 (para 7 to 9).
2 (2002) 2 SCC 333 (para 68 to 75).
3 2012 SCC OnLine Cal. 10950.
4 2003 SCC OnLine All 1220
5 (2005) 3 Mh.L.J. 824 (para 8 & 9).
6 1969 SCC OnLine Cal.57.
7 2008 SCC OnLine Cal.384 (para 30 to 34)

14) He further submits that the impugned Order is not based on grounds and reasons which were set out in the initial Show Cause Notice dated 25th of March 2011 issued by the Respondent No.3. Therefore, the Respondent No.1 is not entitled to supplant the grounds or reasons absent in the Show Cause Notice. Referring to *63 Moons Technologies Ltd. vs. Union of India* [8] he submits that the settled position in law is that the Authority must disclose all materials in the Show Cause Notice to enable the party to reply and show cause. In absence of such a disclosure, there is a clear breach of principles of natural justice.

15) Furthermore, the Order dated 11th April 2012 passed by Respondent No.3 refers to a purported *"Report Submitted by Enquiry Officer"* and places reliance on it. This purported report, however, was never furnished to the Petitioner. The non-disclosure of this very report formed one of the grounds on which TCL challenged the Orders of Respondent Nos.2 and 3 dated 11th April 2012 and 16th January 2013. Referring to the decision in *T. Takano vs. SEBI* [9] it is submitted that non-disclosure of material that forms a basis of a decision amounts to clear breach of natural justice.

16) He further submits that, the procedure leading to the

8 (2019) 18 SCC 401 (para 100)
9 (2022) 8 SCC 162.

passing of the impugned Order is flawed and contrary to law. Respondent No.1 failed to appreciate that the Order passed by Respondent No.2 which was challenged before Respondent No.1 was in violation of principles of natural justice. No reasons are to be found in the Order of Respondent No.2 which was challenged before Respondent No.1. In view thereof, the Respondent No.2's Order was liable to be set aside. He submitted that, it is settled position in law that an unfair trial and a fair appeal cannot cure the defect in the procedure where the principles of natural justice are violated by passing the Order in the Appeal.

17) Referring to the decision in the case of *Institute of Chartered Accountants of India vs. L.K. Ratna & Ors.*[10], he submitted that the whole procedure adopted in this matter was vitiated.

18) He further submitted that the impugned Order is *ex facie* contrary to law. Respondent No. 1 has proceeded on the premise that the subject writ land stood transferred from VSNL to TCL. The foundational error in this finding—one that goes to the root of the matter—is that any transfer of immovable property can only be effected under the Transfer of Property Act, 1882 ('TPA') and necessarily involves two parties to the transfer. In the present case, there are no two parties: VSNL, the owner of the land, has not transferred its interest in the writ land to anyone. The only event

10 (1986) 4 SCC 537 (paras 15, 16 and 30)

that occurred was a change in name—VSNL became TCL—and the corporate entity continues to exist, albeit under the new name. Consequently, there is no question of any transfer of land or property by VSNL to TCL.

19) He submitted that the impugned Order is also *ex facie* contrary to Section 54 of the TPA, which mandates that a transfer of immovable property valued at more than ₹100 must be effected through a registered conveyance duly executed by two parties. In the absence of such a registered conveyance, the law does not recognize any transfer. In the present case, it is not even the State's case that a conveyance was executed. The finding of Respondent No. 1 is, therefore, patently contrary to law. Accordingly, there is no violation of any condition of the original allotment letter.

20) He further submits that Respondent No. 1 has travelled beyond the terms of the allotment by effectively introducing a new condition—that there cannot be any change in ownership, shareholding, or management of the Government. He submits that, during the disinvestment of VSNL, the Central Government itself transferred its shareholding in VSNL to the Tata Group, and the Tata Group (i.e., TCL) thereafter acquired additional shares from the market. Consequently, there was a change in the shareholding of the Company. Even assuming that there was a change in the

management or control of VSNL, the allotment letter contains no prohibition against such change. The impugned order, therefore, travels beyond the scope of the allotment and imposes a condition that does not exist.

21) He further submits that Respondent No. 1 also failed to appreciate that the Show Cause Notice did not allege that unearned income became payable on account of any change in the ownership or shareholding of VSNL. Nor did the Orders of the Assistant Commissioner or the Collector rely on such a ground while supporting the demand for unearned income. Respondent No. 1 has thus acted without jurisdiction in holding that a change in ownership or shareholding of VSNL amounts to a transfer of land. This finding, being completely outside the Show Cause Notice, also results in a breach of the principles of natural justice.

22) He submits that there is no order imposing a levy of unearned income on the ground that the construction was not completed within two years. The construction was, in fact, completed in 1998, and the State Government never raised any objection regarding delay. In any event, and without prejudice, the impugned order also fails to consider that the order of Respondent No. 3 expressly provided for regularisation of any delay in completion of construction by the Petitioner. This aspect is not even adverted to in

the impugned order.

23) He further submitted that the necessary premium was already paid when the land was transferred by OCS to VSNL. In these circumstances, it cannot be contended that the transfer from OCS to VSNL was contrary to law or that it attracted the payment of unearned income.

24) In view of the above, he submitted that the impugned order of Respondent No.1, as well as the impugned orders passed by Respondent Nos.2 and 3, are contrary to law and are liable to be set aside. He therefore prayed that the Petition be allowed with costs.

Submissions of State Government

25) *Per contra*, Mr. Khanavkar, learned AGP for the State submitted that the Petition deserves to be dismissed.

26) Under a memo dated 3rd August 1983, advance possession of the writ land was handed over to OCS, a department under the Department of Telecommunications, Government of India, and a possession receipt was issued on 14th March 1984. Although VSNL was incorporated on 19th March 1986, the management, control, and operations of OCS were transferred to VSNL on 27th March 1986. The actual grant of occupancy rights in respect of the writ land was made in favour of OCS only on 27th March 1992. He submitted that the original allottee of the land was OCS and there is no dispute

that the original grant stood exclusively in favour of OCS. He further submitted that the Petitioner has produced no material to show that OCS, being a department, ever ceased to exist. OCS is not a body corporate.

27) It is undisputed that the possession and occupancy rights over the writ land, as well as the interest granted under the 27th March 1992 grant, were transferred from OCS to VSNL, and subsequently VSNL came to be taken over by the Tata Group. Respondent No. 2 has clearly recorded this in his order. The purpose of the grant is set out in Clause 1 thereof. Clause 4 expressly provides that the grantee shall not transfer the land or any interest therein without the prior sanction of the Government. The expression 'interest in' plainly refers to rights of possession, occupation, construction, and similar incidents of landholding. Clause 7 further stipulates that, in the event of a transfer of the land, the Government of Maharashtra shall be entitled to unearned increment.

28) Admittedly, the possession, interest, and control in the subject land—originally granted to OCS—were transferred from OCS to VSNL without obtaining prior sanction of the Government of Maharashtra. He submits that, without prejudice to the above, the acquisition of majority shareholding in VSNL by TCL fundamentally altered the beneficial ownership, interest, and control of the land

granted to OCS, and constitutes a direct transfer of interest and possession in the land.

29) Reliance is placed on the decision in the case of *State of Rajastan v. Gotan lime stone Bhaniji Udyog Pvt. Ltd. and Anr*[11]. The relevant clause is as under:

> *"23. In the present case there are two transactions. Viewed separately, there may be nothing wrong with either or both but if real nature of transaction is seen, the illegality is patent. In* ***first transaction of transfer of lease from the firm to the company****, with the permission of the competent authority, only disclosure made while seeking permission for transfer is of* ***transforming partnership business into a private limited company*** *with same partners as Directors without there being any financial consideration for the transfer and without there being any third party.* ***There is perhaps nothing wrong in such transfer by itself.*** *In the* ***second transaction,*** ***the entire shareholding is transferred for share price and control of mining lease is acquired by the holding company without any apparent price for lease****. Technically lease rights are not sold, only shares are sold. No permission for transfer of leasehold rights may be required. Let us now see the combined effect and real substance of the two transactions.* ***The partnership firm holding leasehold rights has successfully transferred the said rights to a third party for consideration in the form of share price which is nothing but price for sale of mining lease which is not allowed and for which no permission has been granted.*** *Thus, if these facts were disclosed to the competent authority, permission for transfer of mining rights for financial consideration could not be allowed. Mining rights belong to the State and not to the lessee and the lessee has no right to profiteer by trading such rights. In fact the lessee has also not claimed such a right. The lessee can either operate the mine or surrender or*

11 (2016) 4 SCC 469

> *transfer only with the permission of the authority as legally required.* ***In the present case, the lessee has achieved indirectly what could not be achieved directly by concealing the real nature of the transaction.*** *Is it legally permissible, is the question."*
>
> (***Emphasis added***)

30) He submits that, the said judgment clarifies (i) Even if it is a case of mere transfer, acquisition of shares between two corporate entities, the underlining effect thereof is a transfer of control and interest in the property belonging to the State of Maharashtra. The said transfer being without permission would lead to the breach of conditions of the grant. (ii) It is perfectly legal for the State of Maharashtra to be aggrieved only by one of the two transfers/transactions and no mala-fides can be assigned to such an action. (iii) A private entity cannot be permitted to benefit at the expense of the public property. (iv) Technicalities under the provisions of the companies act required to be ignored when it comes to public property and public interest. (v) There is no delay on the part of the State of Maharashtra in initiating action by way of issuing a show cause notice, considering the fact that the process of share transfer was completed and the name change process took place in the year 2008. Further, there is nothing brought on record to show that the State of Maharashtra was put to official notice of the aforesaid. Something which is prohibited to be done directly cannot

be permitted to be done indirectly.

31) He further submitted that the possession of the land and the interest therein are presently with TCL. A broad interpretation of the word 'transfer' is necessary in the context of the government Land, Grants to protect the public revenue and ensure adherence to the conditions of grant. In the present case, there was clearly a 'transfer' from OCS to VSNL and later from VSNL to TCL. The first transfer was not registered as Section 90 of the Indian Registration Act 1908 exempts the registration of grants and assignments by Government, for land or any interest therein. In the letter dated 23rd October 2001, addressed by the Ministry of Communications, Government of India to the Chairman and Managing Director of VSNL. Transfers affected through acquisition of companies by way of share purchase and or amalgamation constitute 'transfers', even if not executed under the Transfer of Property Act, 1882, referring to the decision in the case of *M/s. Jaiprakash Industries Ltd. v. Delhi Development Authority*[12].

32) He further submits that Respondent No. 2 in the impugned order clearly held that the contention of the Petitioner that there is no transfer of the land since it is still in their possession is fallacious as the transfer from OCS to VSNL and now to TCL, a publicly limited company. This reasoning and finding of Assistant Commissioner is

12 2024 INSC 273

neither challenged by the Petitioner before Revenue Minister nor disturbed in the order passed by Revenue Minister. This finding is not assailed in the writ petition. According to him, the submissions regarding the Transfer of Property Act, 1882 are irrelevant in the present case in view of the provisions of the Government Grants Act, 1895. The grant was made subject to specific conditions; breach of such conditions entitles the State Government to impose unearned income/increment. Such unearned income/increment constitutes land revenue and is recoverable as land revenue. Land revenue is attached to the land and may be recovered either from the original grantee or the holder of the land. This is evident from the conjoint reading of sections 2, sub-clause 2, 12, 19, and Sections 23, 31, 37, 64 and 168 of the Maharashtra Land Revenue Code, 1908.

33) He submits that a series of corporate restructuring events have resulted in the change in the ultimate controlling entity and the beneficial user /occupiers to possession of the land, thereby triggering an unearned increment clause. TCL has not challenged the quantum of unearned income. It has neither raised any ground in the Writ challenging the applicability of the Government Resolution dated 21st November 1957, pertaining to unearned income. TCL has also not challenged the finding of Respondent No 2 that there are in fact two transfers involved in the matter and that finding has not

been disturbed. He submits that the principles of natural justice were followed and the Collector passed his order after hearing the petitioner. The observations of the Tahsildar that made his report were reproduced in the show cause notice and TCL had replied to the same. Thus, no prejudice was caused to TCL even if the report was not separately furnished to him.

Reasons and Conclusion:

34) Having heard both learned counsels and upon perusing the record, I have arrived at the following conclusions.

35) I find merit in the submissions advanced by Dr. Tulzapurkar. The very basis on which the Collector passed the impugned order was contrary to law, and the consequent affirmation by the Assistant Commissioner and the Revenue Minister is equally flawed.

36) The first ground for issuance of the Show Cause Notice – namely, that the construction was not completed within two years of taking possession - is wholly unsustainable as it is clearly barred by limitation. The possession was handed over on 14th March 1985; the allotment letter was issued on 27th March 1992; construction commenced in 1992, was completed in 1998, and an Occupation Certificate was granted by BMC. No explanation is offered for initiating action only in 2012, fourteen years after the building was completed. The Show Cause Notice is therefore unsustainable on this

ground.

37) The third ground - that the land has been used for a purpose other than the sanctioned purpose without permission from the Government/Collector – is equally unsubstantiated. The Respondents have produced no documentary material to support or justify this allegation. This ground, too, is therefore unsustainable.

Is transfer of shares, a transfer of assets of a company.

38) The second ground - that the property was transferred without prior permission of the Government/Collector – raises the question: whether dilution shareholding pursuant to the Government's disinvestment policy (where the Government as a 100% shareholder, reduced its stake) amounts to transfer of the company's assets to TCL.

39) This issue is no longer *res integra*. A consistent line of decisions of the Supreme Court has squarely negated such a contention, holding that a company is a legal entity distinct from its shareholders, and that shareholders – irrespective of the extent of their shareholding – possess no right, title or interest in the assets of the company. The relevant paragraphs from the judgements relied upon are reproduced below for ready reference:

40) In *Bacha F Guzdar* (supra):

"10. The interest of a shareholder vis-à-vis the company was explained in Charanjit Lal Chowdhury v. Union of India [Charanjit Lal Chowdhury v. Union of India, 1950 SCC 833 at p. 862 : 1950 SCR 869 at p. 904]. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the articles of association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. ***The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders.*** *The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders.*

11. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Edn., p. 894, where the etymological meaning of "dividend" is given as dividend, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of

the company in which he holds the shares if and when the company declares, subject to the articles of association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it.

12. The High Court expressed the view that until a dividend is declared there is no right in a shareholder to participate in the profits and according to them the declaration of dividend by the company is the effective source of the dividend which is subject to tax. This statement of the law we are unable to accept. Indeed the learned Attorney General conceded that he was not prepared to subscribe to that proposition. The declaration of dividend is certainly not the source of the profit. The right to participation in the profits exists independently of any declaration by the company with the only difference that the enjoyment of profits is postponed until dividends are declared.

*13. **It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate.** Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders. In Halsbury's Laws of England, Vol. 6 (3rd Edn.), p. 234, the law regarding the attributes of shares is thus stated:*

"488. Attributes of shares.—A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the nature of real estate."

14. In Borland's Trustee v. Steel Bro. & Co. Ltd. [Borland's Trustee v. Steel Bro. & Co. Ltd., (1901) 1 Ch 279] , Farwell, J. held that : (Ch p. 279)

"A share in a company cannot properly be likened to a sum of money settled upon and subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the company, measured, for the purposes of liability and dividend, by a sum of money...."

(***Emphasis added***)

41) In *Balco Employees Union* (supra)

"75 In the instant case, either the land was acquired and then given on lease by the State Government to BALCO or permission was given by the District Collector for transfer of private land in favour of BALCO. This was clearly permissible under the provisions of Section 165(6) as it then stood and it is too late in the day, 25 years after the last permission was granted, to hold that because of this disinvestment, it must be presumed that there is a transfer of land to the non-tribal in the year 2001 even though the land continues to remain with BALCO to whom it was originally transferred. The giving of land to BALCO on lease was in compliance with the provisions of Section 165(6) of the Revenue Code. ***Moreover, change of management or in the shareholding does not imply that there has now been any transfer of land from one company to another. If the original grant of lease of land and permission to transfer in favour of BALCO between the years 1968 and 1972 was valid, then, it cannot now be contended that there has been another transfer of land with the Government having reduced its stake to 49%. Even if BALCO had been a non-public sector undertaking the transfer of land to it was not in violation of the M.P. Land Revenue Code.*** *The decision of this Court in Samatha case [(1997) 8 SCC 191] is inapplicable in the present case as the statutory provision here does not contain any absolute prohibition of the type contained in Section 3(1) of the Andhra Pradesh Regulation, which was the basis of the decision in Samatha case [(1997) 8 SCC 191] ."*

(***Emphasis added***)

42) In *M/s Din Chemicals* (supra)

> *"14 .... Let me now consider as to how far the principle laid down in the said decision of the Hon'ble Supreme Court is applicable to the facts of the instant case. I have already indicated above that the case which was before the Hon'ble Supreme Court was a case of amalgamation of the two companies which is not the case before this Court. In case of amalgamation of two companies the transferor company losses its existence and all the property, rights, powers of every description including all leases and tenancy right, industrial, import and all other licences, of the transferor company without any further act or deed are transferred and vested or deemed to be transferred or vested in favour of the transferee company. Thus, in case of amalgamation no doubt the lease-hold interest of the transferor company stands transferred in favour of transferee company but the such transfer is not contemplated in case of transfer of share by the shareholder of the company to the stranger purchasers of such shares, as it was held in Mrs. Bacha F. Guzdar, Bombay v. Commissioner of Income Tad, Bombay (supra) by the Hon'ble Supreme Court that a shareholder who buys share does not buy any interest in the property of the company which is a juristic person entirely distinct from shareholders. It was further held therein that the true position of a shareholder in a company is that on buying shares he becomes entitled to participate in the profit of the company as and when the company declares, subject to articles of association, that the profits or any portion thereof would be distributed by way of dividends amongst the shareholders. It was further held therein that he has further a right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole. In the present case, it is nobody's case that the company was wound up and the assets of the wound up company which were left over after winding up of the said company was transferred by the promoter shareholder in favour of the stranger purchaser.* ***As such, by following the aforesaid decision of the Hon'ble Supreme Court as well as of this Hon'ble Court, this Court has no hesitation to hold that with the transfer of the share by the promoter shareholder to the present shareholder, namely the transferees of such share, the lease hold interest of the company was not transferred from the promoter shareholder to the present***

shareholder of the said company. The petitioner-company which obtained the said lease from the Government, still remains the lessee of the said plot of land and its leasehold interest in the said plot of land remains unaffected by transfer of share by the promoter shareholders to the present holders. *As such, this Court holds that the restrictive clause regarding transfer of the lease hold interest of the lessee in favour of a stranger, sub-lessee or assignee, does not attract in the present case and as a result, the demand for transfer fees for recognizing the alleged transfer of leasehold interest from the erstwhile shareholders of the said company to the present shareholder, is absolutely illegal and unlawful and as such, that part of such demand, which was made by the concerned authority in the impugned order and/or letter as aforesaid, stands quashed..."*

(***Emphasis added***)

43) In *International Hospital (P.) Ltd.* (supra)

"9. We have not been shown any statutory provision by the learned counsel for the respondents as to under which law the change in constitution charges or revised rental could be imposed. We have, therefore, to see whether there was any contract between the parties for imposition of such charges. Annexure-E of the writ petition contains the Policies and Procedures for Institutional Premises Management issued by the N.O.I.D.A. This document indicates what N.O.I.D.A. itself means by change in constitution. In clause (c)(1) thereof it is mentioned that "the application for change in constitution from proprietorship to partnership. Pvt. Ltd. Co., Public Ltd. Co., or vice versa should come from the original lessee (s)/lessee/allottee(s) transferee(s).

10. Thus, the expression "Change in constitution" according to N.O.I.D.A. itself means a change in the legal entity, i.e., from proprietorship to partnership or to a private limited or public limited company. Hence, it is evident that the understanding of N.O.I.D.A. itself, which issued this document, was that a change of constitution means a change of the legal entity as mentioned above and not transferring of shares of a company.

11. Shri Vinod Mishra learned counsel for the

respondents submitted, however, that sub-clause (5) of Clause (c) of this document Indicates that change within a company amounts to change in the constitution of the company. We do not agree. It is well-settled that a company is a distinct legal company separate from its share-holders, as held in the leading case of Salomon v. Salomon and Co. Ltd., 1897 AC 20 (HL). A company, once incorporated, has an entity, which is different from its shareholders and directors vide State Trading Corporation v. C.T.O., AIR 1963 SC 1811 (1822); Ram Chand & Sons Sugar Mills v. Kanhayalal, AIR 1966 SC 1899 (Para 9); Electronics Corporation of India Ltd. v. Secretary, Revenue Department, (1999) 4 SCC 458 and Mrs. Bacha F. Guzdar v. Commissioner of Income Tax, AIR 1955 SC 74 (77), etc. Hence, if the shares of a company are transferred, it does not mean that the legal entity of the company is changed. *In any event, even if the submission of Shri Mishra is accepted, in the present case, there is no charge which can be imposed on the petitioner as change in the constitution charges as the petitioner has retained 25% of the share as required by Clauses 7 and 9 read with Clause 14 of Annexure-E to the writ petition."*

(***Emphasis added***)

44) In *Great Eastern Shipping Co. Ltd* (supra):

"8. Thus, the plaintiffs are valuing their claim in relation to the value of their shares in Odeon. Perusal of the valuation clause in two other suits shows that same approach is adopted by the plaintiffs in those suits also. Thus the subject matter of these suits are the shares which were held by the plaintiffs. The plaintiffs as share holders will not get any interest over the property of the company. In my opinion, therefore, in these circumstances, reliance was rightly placed by the learned Counsel appearing for the defendants on a judgment of the Supreme Court in the case of Mrs. Bacha F. Guzdar v. Commissioner of Income Tax, AIR 1955 S.C. 74, particularly on following observations:

"A shareholder has got no interest in the property of the company though he has undoubtedly a right to

participate in the profits if and when the company decides to divide them. The interest of a shareholder 'vis-a-vis' the company was explained in the 'Sholapur Mills Case' - 'Charanjit Lal v. Union of India' 1950 SCC 833 : AIR 1951 SC 41 at pp. 54, 55(B). That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. *It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association, to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company.* ***The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders.*** *The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act (12th Ed. page 894) where the etymological meaning of dividend is given as dividend, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company.*

9. The plaintiffs, therefore, are not at all justified in claiming any temporary injunction or an order of appointment of receiver in relation to the property of the defendant No. 3/company. The property is held by the company. What is surprising is that the plaintiffs are seeking temporary injunction against the company also restraining it from dealing with its own property. It is further to be seen here that now third party interests have been created in the property, the shares have been purchased by the Runwal family for valuable consideration. They have taken due care before purchasing the property. They published public notice.

None of the plaintiffs raised any objection."

(***Emphasis added***)

45) In *Economic Investment Corporation Ltd.* (supra):

"6. When read with the said proviso, the meaning of this would be that the person upon whom the notice under Section 46(SA) has been served fails to comply with the notice, the moneys specified in that notice may be recovered from such person either by resorting to the proceedings under the Revenue Recovery Act, 1890 or as an attachment in a civil proceeding under the Code of Civil Procedure. The only question, therefore, which arises in this context is does the Allahabad Bank hold any money for of on account of the Meghtibundh Tea Company, who was the assessee for the demand in question? For an answer to that question, we must tum to the provision in Section 11 (5) under which the change in name stated at the outset took place. ***In the corresponding provisions of the Companies Act, 1956, it is provided in Section 21, that a Company may, by special resolution and with the approval of the Central Government signified in writing, change its name.*** *In Section 23(1), it is stated that when a company changes its name under Section 21, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations 'embodied therein.....'*

9. It was of course pointed out on behalf of the respondents that in the return of income submitted by the old company (vide page 64 of the paper book), the name of the assessee was given as "Meghlibundh Tea Company Ltd.. (now Economic Investment Corporation Ltd.') and, the return of the Income-tax therefore, the Economic Investment Corporation was already there in however, it has been therefore, the economic Investment Corporation was already there in quibble, which has no substance in law, by the appellant but by contended on behalf of the appellant that the return was submitted not contended a tanese the sananast of the return was

submitted no ***Here again is another because the new company is label, as has already been nothing but the old company with a new stated; there has been no change in position and no change in legal status.*** *It was further pointed out that subsequent to the assessment. on 24th September. 1949, it is the appellant who asked for time to pay the aforesaid tax and on different dates in 1949-1950, the appellant assessed money to the extent of Rs. that so far as the substantive company paid up part of the 22,000/-. Here again Dr. Pal submits liability to pay is concerned, the appellant does not deny it and cannot deny, in view of the provisions under Section 11(3) of the Companies Act. The grievance of the petitioner is that the Income-tax Officer, even though informed of the change of name, did not substitute the name of the appellant-company in place of the old one in his assessment records. This confusion has taken place in view of the reference to the provision in Section 26 of the Income-tax Act, 1922 in the proceedings leading up to the appeal. That Section has no application to the instant case. So far as sub-section (1) of Section 26 is concerned, it deals only with the situation arising from a reconstitution of a partnership firm, which is not the case here. Sub-section (2), on the other hand, speaks of legal succession by one person to another in the same capacity. which is also not the case here. because as has been stated at the beginning, there has been no legal succession, because the juristic entity is the same, namely, the old company under a new name. Sub- section (2) of Section 26, therefore, is not attracted either. Upon this, however, Dr. Pal based his argument that there is no provision in law as to what would happen under the law of Income-tax when there is a change of name of a company under the provisions of Section 11(3) of the Companies Act, 1913. The answer to that is simple, namely, that no such question does arise in law just as it arises in the case of a legal succession under sub-section (2) and in the case of a reconstitution of a partnership firm under sub-section (1) of Section 26. In both these cases, there is a substitution or succession of one legal person by another legal person. To our mind, there has been no*

substitution or succession of one legal person by another legal person in the instant case. There has, to reiterate again, been only a change in name. It is only for that reason that no special provision has been considered necessary to meet that situation like the instant one in the Income-tax Act. From whatever angle of vision the problem viewed at, we have no doubt that there has been no irregularity or illegality in demanding the money from the Allahabad Bank Limited, which undoubtedly holds the assets of the Meghibundh Tea Company which assets are now in the hands of the appellant-company.

46) In *W H Targett (India) Limited* (supra):

"30. It was not necessary to consider the applicability of the provisions of sections 5 and 6 of the Transfer of Property Act, 1882, while deciding the writ petition. This is not a case of transfer of interest in property from one person to another. ***The property was purchased by Marble Trading Company Limited. The name of Marble Trading Company Limited was changed to W.H. Targett (India) Limited. The property is still retained by the company, which was earlier known as Marble Trading Company Limited and presently is known as W.H. Targett (India) Limited.*** *As this is not a case of transfer, the Hon'ble Judge, while considering the writ petition, had no occasion to consider the applicability of sections 5 and 6 of the Transfer of Property Act, 1882.*

34. Satya Brata Sinha, J. while allowing the writ petition relied upon the decision in case of Sulphur Dyes Ltd. (supra). ***In the said decision it was held that, on change of its name, the company was entitled to mutation of its name in the Register of Members in the other company in which it was holding shares. No application would be required for rectification of the said register of members."***

(Emphasis added)

47) In light of the above judgements, it is abundantly clear that a transfer of shares does not amount to transfer of the assets of the Company. The decision in *Gotan Lime Stone* (supra) has no application in the present case. The facts of that case are clearly distinguishable on two counts. First, the original partnership firm was converted into a company, and that company thereafter sold its entire 100% shareholding to another entity. Second, the partnership's only asset was the mining lease, which effectively stood transferred to the third company. The Court, therefore, held that the lessee had indirectly achieved what could not have been done directly, while concealing the true nature of the transaction.

48) The present case stands on an entirely different footing for at least two reasons. First, OCS transferred all its assets to VSNL, and thereafter VSNL diluted its 100% shareholding – initially in favour of its employees and financial institutions, and subsequently by divesting a substantial portion of its shareholding to TCL. It is undisputed that the Central Government continues to retain 25% substantial stake in TCL. Second, the writ land is not the sole asset of VSNL. The mere dilution of shareholding in VSNL cannot, therefore, be characterized as a transfer of the writ land to TCL, nor can it be construed as an indirect attempt to achieve what could not be achieved directly.

49) The decisions of the Collector, Assistant Commissioner and Revenue Minister have completely overlooked the settled legal position laid down by the Hon'ble Supreme Court - that a transfer of shares, by itself, does not constitute a transfer of property, and that shareholders have no proprietary interest in the company's assets. As an inevitable corollary no interest in the company's immovable property is transferred or effected. Further there is a fundamental defect in the show cause notice itself : it does not state that the alleged change in shareholding amounted to a "transfer" forming the basis of the demand. This omission alone vitiates the notice. The reasoning that the property stood transferred from VSNL to the Petitioner is untenable, since shareholders possess no proprietary rights in the company's assets *in specie*.

50) I also find merit in the submission that an authority must disclose all materials in the SCN so as to enable the notice to meaningfully respond and effectively show cause. This principle stands fortified by *T. Takano* (supra) wherein the Hon'ble Supreme Court held:

> *"50. The following principles emerge from the above discussion:*
>
> *(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and*
>
> *(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to*

> *disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.*
>
> *Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure."*

51) In the present case, the justification furnished in the impugned orders rests on grounds wholly outside the scope of the show cause notice. It is well established that grounds and reasons not contained in the SCN cannot subsequently be supplied or supplemented at the stage of adjudication. The impugned orders, therefore, cannot be sustained.

52) Applying the principles laid down in *T. Takano v. SEBI*, a show-cause notice that fails to disclose the material relied upon violates the principles of natural justice and must be set aside.

53) I find no merit in the Respondents' submission that possession and occupancy rights in the writ land - granted to OCS under the grant letter 27th March 1992 - were transferred to VSNL and thereafter "taken over" by the Tata Group.

54) Moreover, Dr Tulzapukar's contention that: An unfair trial and a fair appeal cannot cure the defect in procedure where the principles of natural justice are violated – is supported by the following judgments:

55) See *Institute of Chartered Accounts of India* (supra):

> *"15. Learned counsel for the appellant relies on Chandra Bhavan Boarding and Lodging v. State of Mysore [(1969) 3 SCC 84 : AIR 1970 SC 2042 : (1970) 2 SCR 600] , where this Court found that the procedure adopted by the Government in fixing a minimum wage under Section 5(1) of the Minimum Wages Act, 1948 was not vitiated merely on the ground that the Government had failed to constitute a committee under Section 5(1)(a) of that Act. Reference was also made to K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43 : 1984 SCC (L&S) 520] where the petitioner complained of a breach of the principles of natural justice on the ground that he was not given an opportunity to rebut the material gathered in his absence. Neither case is of assistance to the appellant. In the former, the court found that reasonable opportunity had been given to all the concerned parties to represent their case before the Government made the impugned order. In the latter, the court held that no real prejudice had been suffered by the complainant in the circumstances of the case.*
>
> *16. It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act under Section 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in Regulation 14 which prescribes what the Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary.*

30. Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its finding that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

56) See *Tilak Chand Mangatram Obhan* (supra):

"4. Mr Bobde first invited our attention to the observation made by Lord Reid in Ridge v. Baldwin [(1963) 2 All ER 66] at p. 81 to the following effect:

"I need not consider what the result would have been if the Secretary of State had heard the case for the appellant and then had given his own independent decision that the appellant should be dismissed."

Mr Bobde submitted that inherent in this observation is the view that the defect could have been cured if the Secretary of State had made the final decision on the basis of the record without being influenced by the decision impugned before him. We do not think that it would be permissible to draw such an inference. That cannot be said to be the ratio of the decision. The learned Judge himself says in so many words that he does not consider what would have been the result if the

Secretary had given his independent decision. The decision could have gone one way or the other. Therefore, the above observation does not help Mr Bobde. If the defect is one which goes to the root of the matter and which is incurable it cannot be remedied by the higher authority taking a decision independent of the authority that rendered the initial decision. In Leary v. National Union of Vehicle Builders [(1970) 2 All ER 713 : 1971 Ch 34] it was conceded that the disciplinary authority had not followed the requirements of natural justice. The question which was posed for consideration was : Can a deficiency of natural justice before a trial tribunal be cured by a sufficiency of natural justice before an Appellate Tribunal? Megarry, J., after stating that the sheet should be made as clean as possible; I think it should be the same sheet and not a different one, proceeded to add at p. 720 as under:

"If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, although not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

But the learned counsel pointed out that in Calvin v. Carr [(1979) 2 All ER 440, 448] the aforesaid observations from Leary were described as too generally stated. Their Lordships pointed out that it affirms a principle which may be found correct in a category of

cases but to seek to apply it generally would tantamount to overlook, what in the end is a fair decision, notwithstanding some initial defect. There is, however, a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or bias against the delinquent of which the other members know not or the said member is in a position to influence the decision-making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done but must also appear to be done. Would it so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him? And we repeat the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the like. Such is the view taken in a recent decision of this Court in Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-educational) Higher Secondary School [(1993) 4 SCC 10 : 1993 SCC (L&S) 1106 : JT (1993) 3 SC 487] . That was a case where the enquiry was alleged to be vitiated on account of violation of the rules of natural justice due to the presence of a person who was strongly biased against the delinquent. While dealing with this contention this Court observed : (SCC p. 22, para 12)

"The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee, had percolated throughout the enquiry proceedings thereby vitiating the principles of natural justice and the findings made by the enquiry

committee was a product of a bias and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner."

In this view of the matter this Court concluded that the decision of the appellate authorities could not cure the initial defect in the constitution of the Enquiry Committee and the consequences flowing from one of the members of the Enquiry Committee being biased. In this view of the matter this Court had allowed the appeal.

5. This being the only point urged in this appeal and we finding therein must dismiss this appeal. The appeal, therefore, fail and is dismissed. There will be no order as to costs."

57) See *Leary v. National Union of Vehicle Builders*[13]:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the Rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of a right of appeal when a valid decision to expel him is subsequently made. Such a deprivation is a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be

13 (1970) 3 WLR 434

cured by a sufficiency of natural justice in an appellate body."

58) In view of the above discussion, all three grounds of the SCN are unsubstantiated and unjustified.

59) Further, the State, having remained inactive for more than twenty-five years, has raised a claim that is misconceived and hopelessly time-barred. The demand is not only unsubstantiated but also grossly belated. The Petitioners have been needlessly drawn into prolonged litigation and subjected to an inequitable and unwarranted claim.

60) The Collector, Assistant Commissioner, and the Revenue Minister are expected to know the law and to abide by the binding decisions of the Hon'ble Supreme Court and High Court. Even assuming that the settled legal position was overlooked at the time of passing the impugned orders, once the Petition was filed, the State Government ought to have sought proper legal advice before choosing to defend such actions. The State, unlike a private litigant, must discourage litigation, resolve disputes at the threshold, thereby pre-empt disputes wherever possible, and act in a manner consistent with its constitutional obligation to uphold the law as interpreted by the Courts. Any issues between the State and Central Government are to be addressed in an appropriate forum and not converted into avoidable litigation of this nature.

61) Defending orders that are contrary to settled law serves neither the interest of the State nor that of the public; it needlessly burdens the Courts and compels Petitioners to incur substantial costs to vindicate their rights. The absence of any meaningful deterrent only encourages the continuation of unjustified proceedings, fostering a perception that decisions are taken by State and its authorities for extraneous reasons, and that such authorities – shielded from personally accountability – may disregard binding law with impunity.

62) The State is today the single largest litigant, and the public exchequer bears the costs or burden of every needless contest. The Supreme Court has repeatedly emphasised that the Government is "no ordinary party" but must function as a model litigant - meeting just or honest claims and not defeating lawful entitlements through technical pleas or obstinate resistance: see *Dilbagh Rai Jarry v. Union of India, (1974) 3 SCC 554; State of Punjab v. Geeta Iron & Brass Works Ltd., (1978) 1 SCC 68; Madras Port Trust v. Hymanshu International, (1979) 4 SCC 176; Urban Improvement Trust, Bikaner v. Mohan Lal, (2010) 1 SCC 512.* These decisions underscore that State litigation policy must be conciliatory rather than combative or adversarial, that wasteful litigative expenditure is itself a public wrong, and that governments and statutory authorities cannot raise

frivolous or unjust objections, nor behave like private litigants driven by profit or hostility. When petition is well-founded in law, the State is duty-bound to concede or resolve it, rather than compelling persons to undergo avoidable litigation.

63) This Court has recently in *Yuvraj Vasantrao Pandhare v. State of Maharashtra, 2024 (Bom HC)*[14], following *Dilbagh Rai Jarry* and *Geeta Iron & Brass Works Ltd.* reiterated that governmental "indifference" compels citizens to litigate and that the State enjoys a "dubious distinction of being the largest litigant", underscoring the urgent need for a litigation policy anchored in fairness, settlement and responsibility rather than technical objections or defences.

64) In my view, despite clear law / binding precedent on the subject of change in shareholding pattern in a company as more particularly set out in the case of *(i) Bacha Guzdar vs. Commissioner of Income Tax*[15]*, (ii) Balco Employees Union vs. Union of India*[16]*, (iii) M/s. Din Chemical & Coating Pvt. Ltd. vs. The State of West Bengal*[17]*, (iv) International Hospital (Pvt) Ltd. Vs State of U.P.*[18]*, (v) Great Eastern Shipping Co. Ltd. vs. Oil Natural Gas Corporation Ltd.*[19]*, (vi) M/s. Economic Investment Corporation vs. The Commissioner of*

14 2024:BHC-AS - 17812
15 (1955) 1 SCR 876 (para 7 to 9).
16 (2002) 2 SCC 333 (para 68 to 75).
17 2012 SCC OnLine Cal. 10950.
18 2003 SCC OnLine All 1220
19 (2005) 3 Mh.L.J. 824 (para 8 & 9).

Income Tax[20]*, (vii) W.H. Targett (India) Ltd. vs. Mr. S. Ashraf*[21], the State chose to defend an untenable order, compelled the Petitioner to litigate for years, and thereby misused public funds and court time. The State's defence based on *Gotan Limestone* is an afterthought; that decision was rendered only in 2016, whereas the decisions of the Collector and Assistant Commissioner and Revenue Minister were all passed much earlier.

65) The Supreme Court's repeated exhortations since as earlier as 1974 too largely remained unimplemented and on paper. In these circumstances, the imposition of costs upon the State is necessary to ensure accountability and to deter untenable actions or defence of proceedings that are demonstrably well-founded and supported by law.

66) The State may consider constituting an committee preferably comprising of retired High Court Judges and Senior Advocates - to examine such matters at the threshold. Effective scrutiny and filtering of cases would reduce avoidable litigation, ease the burden on Courts, and indirectly curtail the substantial expenditure incurred by the State – now one of the nation's largest litigants - as well as help address the burgeoning pendency of cases across the Country. The State may also adopt a procedure requiring

20 1969 SCC OnLine Cal.57.
21 2008 SCC OnLine Cal.384 (para 30 to 34)

the concerned authority to approach such committee/s for its recommendation on whether judicial determination of a proposed action or defence is warranted.

67) Having regard to the length of time (nearly a decade) for which the Petitioners were forced to pursue this litigation, the significant legal costs incurred by the Petitioners in engaging attorneys and counsel, and the necessity of jolting the concerned authorities – whose indifferent approach, despite repeated judicial exhortations over four decades, has resulted in such avoidable proceedings – out of their apathy, costs of ₹ 25 lakhs are imposed on the Respondents, to be paid to the Petitioners within four weeks of the uploading of this order on the website of the Bombay High Court.

68) In light of the above, the Writ Petition succeeds and is allowed in terms of prayer clauses (A) and (B) with costs as directed hereinabove.

(KAMAL KHATA, J.)