IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 6009 of 2005

Between:

1. M/s. A.P. Wine Dealers Association,

C-4, Matrusri Apartments,

Hyderguda, Hyderabad-29,

Represented by its General Secretary,

Sri D.Venkateshwar Rao

S/o.Sri D.V. Krishna Rao

Aged 51 years.

2. M/s.Twin Cities Wine Merchants Association,

C-4, Matrusri Apartments, Hyderguda,

Hyderabad-29,

Represented by its President

Sri D.Venkateswara Rao,

S/o. Sri D.V. Krishna Rao

Aged 51 years

3. Sri Pentala Ramesh Babu

s/o. Sri Bolla Rao, aged 30 years,

R/o. Krishnalanka, Gampalgudem,

Vijayawada.

4. Sri Aravapalli Laxminarayana

s/o. Sri Gandhi, aged 30 years,

R/o. Mailavaram Village,

Krishna District.

..... PETITIONERS

AND

1. The Deputy Director of Income-Tax

(Investigation), Unit-1(2),

Hyderabad, 4th Floor, Annex Building,

Aayakar Bhavan, Hyderabad-500004.

2. The Commissioner of Prohibition & Excise,

Government of Andhra Pradesh,

Hyderabad.

3. The Superintendent of Prohibition & Excise,

Hyderabad, Prohibition & excise Building,

5th Floor, M.J. Road, Hyderabad.

4. The Prohibition & Excise Superintendent,

Srikakulam, Srikakulam District.

5. The Prohibition & Excise Superintendent,

Vijayanagaram, Vijayanagaram District.

6. The Prohibition & Excise Superintendent,

Vizag, Visakhapatnam District.

7. The Prohibition & Excise Superintendent,

Kakinada, East Godavari District.

8. The Prohibition & Excise Superintendent,

Eluru, West Godavari District.

9. The Prohibition & Excise Superintendent,

Machilipatnam, Krishna District.

10. The Prohibition & Excise Superintendent,

Guntur, Guntur District.

11. The Prohibition & Excise Superintendent,

Ongole, Prakasham District.

12. The Prohibition & Excise Superintendent,

Nellore, Nellore District.

13. The Prohibition & Excise Superintendent,

Chittur, Chittur District.

14. The Prohibition & Excise Superintendent,

Kadapa, Kadapa District.

15. The Prohibition & Excise Superintendent,

Ananthapur, Ananthapur District.

16. The Prohibition & Excise Superintendent,

Kurnool, Kurnool District.

17. The Prohibition & Excise Superintendent,

Karimnagar, Karimnagar District.

18. The Prohibition & Excise Superintendent,

Mahaboobnagar, Mahaboobnagar District.

19. The Prohibition & Excise Superintendent,

Khammam, Khammam District.

20. The Prohibition & Excise Superintendent,

Warangal, Warangal District.

21. The Prohibition & Excise Superintendent,

Nizamabad, Nizamabad District.

22. The Prohibition & Excise Superintendent,

Sangareddy, Medak District.

23. The Prohibition & Excise Superintendent,

Ranga Reddy District.

24. The Prohibition & Excise Superintendent,

Hyderabad, Hyderabad District.

25. The Prohibition & Excise Superintendent,

Nalgonda, Nalgonda District.

26. The Prohibition & Excise Superintendent,

Adilabad, Adilabad District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, direction or order especially in the nature of writ of mandamus declaring the action of the first respondent in calling upon the Superintendents of Excise and Prohibition in the State of Andhra Pradesh to produce the demand drafts submitted by various applicants within 24 hours of the delivery of the judgment and the Hon'ble High Court of Andhra Pradesh now pending writ appeals as illegal, arbitrary, and in excess of the powers conferred on the first Respondent under the provisions of Income tax Act, 1961 and consequently direct the Excise Superintendent to release the original demand drafts to the various applicants without complying with the directions of the first respondent.

Counsel for the Petitioner:MR.S.RAVI

Counsel for the Respondent No.1 : MR.S.R.ASHOK

Counsel for the Respondent Nos.2 to 26 : Advocate General

The Court made the following :

ORDER: (per P.S Narayana.,J)

Facts in brief :

1. An unprecedented novel situation arose in the State of Andhra Pradesh due to the decisions of this Court holding certain portions of the Excise Policy of the State Government being bad ultimately paving the way for issuance of No.DDIT/U-1(2)/2004-05, dated 16-3-2005 whereunder the Superintendents of Prohibition and Excise of the State of Andhra Pradesh were called upon by the 1st respondent, evidently representing the Investigative Agency of the Income Tax Department, to produce all the demand drafts along with the applications of the applicants within 24 hours of the delivery of the Judgment of this Court in pending Writ Petition in the manner indicated in the said proceeding purporting to exercise such power under Section 131(1) and (1A) of the Income Tax Act 1961, hereinafter in short referred to as "Act" for the purpose of convenience. The said action is challenged by writ petitioners 1 to 4. The 1st petitioner is M/s. A.P. Wine Dealers Association, represented by its General Secretary, a registered Association, the 2nd petitioner is M/s. Twin Cities Wine Merchants Association, represented by its President, an unregistered Association and yet another two viz., Sri Pentala Ramesh Babu and Sri Aravapalli Laxminarayana, who are said to be carrying on business as wine merchants. The 1st respondent is Deputy Director of Income Tax (Investigation), Unit 1(2), Hyderabad. The 2nd respondent is the Commissioner of

Prohibition & Excise, Government of Andhra Pradesh. Respondents 3 to 26 are the Prohibition & Excise Superintendents in the State of Andhra Pradesh representing different Districts. The relief prayed for in the Writ Petition is for a writ of mandamus declaring the action of the 1st respondent in calling upon the Superintendents of Excise and Prohibition in the State of Andhra Pradesh to produce the demand drafts submitted by various applicants within 24 hours of the delivery of the judgment by this Court in the pending Writ Appeals, no doubt at present disposed of, as illegal, arbitrary and in excess of the powers conferred on the 1st respondent under the provisions of the Act and consequently direct the Excise Superintendents to release the original demand drafts to the various applicants without complying with the directions of the 1st respondent and to pass such other suitable orders.

2. <u>Submissions of Sri S.Ravi, Counsel for writ petitioners :</u>

Sri S.Ravi, the learned Counsel representing the writ petitioners would maintain that the 1st petitioner is a registered Association who would be ventilating the common cause and the common grievances of the members of the Association and the 2nd petitioner is an unregistered Association whereas petitioners 3 and 4 are the persons concerned with this wine business or trade. The learned Counsel mainly concentrated his submissions on the aspect of the

power, authority or jurisdiction of the 1st respondent in issuing the impugned proceeding calling upon different Excise and Prohibition Superintendents to submit the demand drafts aforesaid. The learned Counsel while making elaborate submissions had drawn the attention of this Court to the language employed in Section 131 of the Act and had compared the language of Section 131 of the Act with the language employed in Section 132 of the Act and had explained the scope and ambit of both the provisions and would contend that in the light of the stand taken by the Income Tax Department that these powers had been exercised by the 1st respondent under Section 131(1) and (1A) of the Act it can be safely concluded that this action would not be protected falling under the issuance of summons for the purpose of Section 131 of the Act. The Counsel would submit that the Investigative Agency is definitely at liberty to take action following the procedure as specified by different provisions of the Act and not beyond thereto and at any rate *omnibus* summons or directives to all the Excise and Prohibition Superintendents of the State calling upon them for the production of the original demand drafts and the applications exercising powers under Section 131 of the Act is impermissible under law. The learned Counsel also explained the different expressions and the words and the language employed in the provisions in this regard. The learned Counsel also would comment that even otherwise the powers specified under Section

131(1) of the Act can be exercised only for the limited purpose as specified under the Act as such and not otherwise. It is no doubt true that each applicant has a right to get his demand draft back but on that ground distinct Court fee need not be paid by each of such applicants since common cause or common grievance of the participants is being ventilated by the 1st petitioner. The mere fact that the 1st petitioner was unable to furnish the names as required by the Income Tax Department would not alter the situation in any way. At any rate, the Counsel would contend that in the light of the Rule 4-A of the Writ Rules, inasmuch as the Writ Petition is based on the common cause of action of questioning the impugned proceeding, separate Court fee need not be paid. The learned Counsel also further contended that the decisions dealing with this aspect and on which strong reliance is being placed, had never considered Rule 4-A of the Writ Rules and hence the said decisions may not be applicable in the light of the specific Rule referred to supra. The learned Counsel also while further elaborating his submissions would contend that demand draft is virtually money and at any rate it would not fall under the expression 'document' and even in this view of the matter Section 131 of the Act is not applicable at all. On the aspect of *locus standi* the Counsel would maintain that the traditional view of *locus standi* had undergone a change and on that technical plea the rights of the parties cannot be defeated. The Counsel also in elaboration

explained the meaning of ‘document’ and the meaning of ‘negotiable instrument’ and the procedure of the Banking Department and the procedure which would be adopted by the Excise Department and the powers of the Income Tax Department in relation to the procedure of unearthing and detecting the real persons and the procedure to be followed in this regard under the provisions of the Act. When the power is non-existent under Section 131 of the Act, the power which may be available under Section 132 of the Act cannot be invoked for justifying the action initiated since it is a non-existent power. The learned Counsel also placed strong reliance on the definition of ‘money’ and the definition of ‘document’ in Random’s Dictionary. The learned Counsel also would maintain that a ‘demand draft’ is just akin to a ‘bank note’ except for some slight difference and the Counsel also made elaborate submissions on the aspect of the meaning of ‘cheque’ and the meaning of ‘demand draft’ in the context of the Banking law. Ultimately the learned Counsel would conclude that at any rate under the guise of protecting the public exchequer or under the guise that larger public interest is involved, when an action initiated by an authority like 1st respondent is totally without jurisdiction, such action may have to be held to be bad for lack of power and authority to exercise such power and hence the legal rights of the writ petitioners and the applicants cannot be defeated on such technical grounds of the plea of *locus standi* and the plea of

non-furnishing of the details and the other like reasons. The Counsel also would maintain that when a prejudicial action is taken, the professional bodies representing the trade quite often would be espousing the cause and would be protecting the interests of the members of such society or Association and hence the Writ Petition cannot be thrown out on the ground of *locus standi.* The learned Counsel also placed reliance on certain decisions to substantiate his submissions in this regard.

3. <u>Submissions of Sri S.R. Ashok, Senior Counsel appearing on behalf of the Income Tax Department :</u>

Sri S.R. Ashok, the learned Senior Counsel representing the Income Tax Department raised a preliminary objection relating to the *locus standi* of the writ petitioners to maintain the Writ Petition and the maintainability of the Writ Petition and also the objection relating to the payment of Court fee. The learned Counsel would maintain that in the light of the relief prayed for in the Writ Petition, the affected applicants are unknown and it is not known whether any members of the 1st petitioner Association had participated by making applications and by depositing the demand drafts and whether their legal rights are infringed at all. The learned Counsel would maintain that though specific request had been made, the Counsel representing the writ

petitioners had not furnished the particulars of the members of the 1st petitioner Association and in the light of the same, the Association cannot espouse the cause of such persons, the unknown applicants. The learned Counsel also would submit that at the best, the membership of the 1st petitioner Association may be 5000 or 6000 and when 1,43,000 applicants made applications and deposited the demand drafts, this Writ Petition in the light of the same, definitely is not maintainable. Inasmuch as the particulars had not been furnished, adverse inference may have to be drawn. The Counsel would submit that it is not a common cause and separate Court fee need to be paid and the Counsel placed reliance on certain decisions to substantiate these contentions. The learned Counsel also would further submit that the State Government cannot take any unreasonable stand in the light of Article 256 of the Constitution of India. The learned Counsel would submit that this is a mode adopted by the Investigative Agency of the Income Tax Department to unearth the real persons since the applicants prima faice on the material which had been placed on record would be just name lenders or benami. In the light of the same, in the interest of protecting public exchequer, the Department had taken up this exercise and had issued the impugned proceeding for the purpose of unearthing and detecting the real persons in relation to the enormous monetary dealings involved in the form of demand drafts in the names of just

several name lenders. The learned Counsel had demonstrated by producing ample material to substantiate his stand in this regard to justify the stand of the Income-tax Department in initiating such action. The learned Counsel made elaborate submissions on the aspect of *locus standi* and would submit that this is not a common cause of action and the applicants, as aggrieved parties, having individual cause of action, may have to approach the Court ventilating their individual grievances. The learned Counsel also would maintain that this is not a public interest litigation and inasmuch as the writ petitioners approached the Court with oblique motive for extraneous considerations to lend a helping hand to dishonest persons who are concealing their wealth, this Court cannot definitely extend its helping hand. The Counsel also made elaborate submissions relating to the scope and ambit of Sections 131 and 132 of the Act. The Counsel would maintain that too numerous persons are involved and in order to protect the exchequer which is needed since large scale fraud is involved in the monetary transactions only for the limited purpose these documents, demand drafts, were called upon and even by furnishing photostat copies of the demand drafts, the same cannot be worked out and the learned Counsel explained the difficulties involved in relation to the same. The learned Counsel also had drawn the attention of this Court to several definitions of 'document' and would contend that at the best this may fall under the

escrow arrangement and made elaborate submissions in this regard. The Counsel made it very clear that this is not a case of seizure falling under Section 132 and the Department is interested in setting the Investigative Agency into motion while taking these documents and looking into these documents for the purpose of unearthing the real persons for the purpose of reaching at the real persons dealing with the monetary transactions. The Counsel would maintain that if the crucial material is returned to the applicants, the investigation cannot be completed by the Income tax Department. The learned Counsel had made elaborate submissions on the aspect of 'negotiable instrument', the procedure involved in the banking transactions and also would maintain that writ petitioners are not clear whether they had approached this Court by way of public interest litigation or adversary litigation or whether it is benami litigation or private litigation. When the writ petitioners are not clear on their stand, the cause on behalf of 1,43,000 applicants who are non-parties and who are not oppressed or depressed classes, the present relief cannot be granted. The learned Counsel made elaborate submissions relating to the criminal investigation and how the State machinery would be acting in this regard and the Tax investigation and the role of the State Government and the role of the Central Government to be played while enforcing the relevant statutory provisions in this field. The Counsel ultimately would conclude that

the protection of the public exchequer is of paramount importance and the non-production of the demand drafts as directed by the 1st respondent at this stage would definitely jeopardize the interest of the public exchequer and hence the larger public interest may have to be taken into consideration and especially in the light of the fact that the writ petitioners had not approached this Court with clean hands by concealing the facts and by suppressing the facts and not furnishing all the particulars in the case, the relief prayed for definitely cannot be granted. Several decisions had been relied upon to substantiate his contentions.

4. <u>Submissions of the learned Advocate General :</u>

The learned Advocate General representing the State Government would take the stand that inasmuch as a large number of 1,43,000 applicants are involved and there is procedure for the return of the demand drafts, there is a problem to the law and order situation and in the light of the same an early decision may be delivered at the hands of this Court. The learned Advocate General however made it clear that the question of interpreting Article 256 of the Constitution of India and the protections of Central Government and the State Government in this regard and the extreme stand of the break down of the Constitutional machinery may not come into play at all for the

reason that the specific stand of the State Government is that in the light of the Excise Policy the applicants had submitted the applications and the demand drafts had been deposited and in the light of the decisions rendered by this Court the present novel situation arose and absolutely the State Government has no role to play and the State Government is not coming in the way of the Income Tax Department and its Investigative Agency in taking such steps which are permissible in law under the provisions of the Act. Further, the learned Advocate General would submit that taking the over-all facts and circumstances it would be just and proper to dispose of the matter at an early date.

5. *Locus standi* of the writ petitioners and the maintainability of the Writ Petition :

While dealing with the aspect of *locus standi* one of us (P.S.Narayana,J) in the "Law of Writs", 3rd Edition, at page 381, commented :

> "The term *locus standi* can be understood as legal capacity to challenge an act, an order or decision. This is one of the most vexed questions of administrative law. Where a party who has no *locus standi* files a petition it need not be heard on merits. The concept of *locus standi* is being liberalized and the scope of the concept is being expanded day to day".

Thus, the traditional view relating to the concept of *locus standi* had undergone a sea change by different judicial pronouncements. The

undernoted decisions may be usefully referred to in this context :

D.Satyanarayana Vs. N.T. Rama Rao

S.P. Gupta Vs. Union of India

K.Ramadas Shenoy Vs. Chief Officers, Town Municipal Council, Udipi

Municipal Council Vs. Vardichan

As per the material available on record, it is clear that there are 1,43,000 applicants who made applications and deposited the demand drafts with the concerned Superintendents of Excise and Prohibition. It is not as though the particulars relating to those applicants who had obtained the demand drafts are not available at all and such particulars are available with the State Government and also with the concerned Banking Institutions upto some extent. Lengthy submissions were made by the learned Senior Counsel representing the Income Tax Department that inasmuch as every individual applicant has a right to get return of his demand draft, it is an individual cause of action and hence the individual Court fee is payable and on this ground itself the merits of the Writ Petition need not be considered. In this context, it may be very relevant to note Rule 4-A of the Writ Rules which reads as hereunder :

> "Two or more persons having a common cause of action may join in a single Writ Petition paying a single set of Court fee".

I n **Ch. Raji Reddy and others Vs. APSRTC, Secunderabad** a

learned single Judge of this Court at para-2 observed :

> "The respondents have issued a notification which is published in local news papers on 31st March, 1997. This notification has been challenged by all the petitioners. Therefore, the learned Counsel for the petitioner submits that since same notification has been challenged by them they have a common cause of action and therefore can join as petitioners and are also liable to pay only one set of Court fee. Different judgments have been referred to during the hearing. One of the judgments relied by the learned Counsel for the petitioner is a recent judgment of this Court in **M.Thirupathi Reddy Vs. A.P. Co-op. Oilseeds Growers' Federation Ltd (2000(4) ALD 1),** in which certain petitioners had joined together and had paid only one set of Court fee. Those petitioners had been transferred by a single order and the Court while disposing of the objection with regard to the Court fee held:
>
> > "There is no merit on the contention of the learned Standing Counsel for the APOILFED that a single Writ Petition on behalf of 21 employees is not maintainable, and each petitioner shall pay a separate set of Court fee. It is relevant to note that the cause of action to file the Writ Petition as regards all the petitioners is common. The cause of action is the refusal of the Management of APOILFED to treat the petitioners as its employees. Since the Writ Petition is grounded on a common cause of action and since common relief is sought by all the petitioners, a single set of Court fee on behalf of the petitioners is sufficient."
>
> But, it appears that a Division Bench judgment of this Court was not shown to the Court at the time of hearing of the matter. The Division Bench of this Court in **G.Kondaiah Vs. A.P. Individual petitioner to pay Court fee unless jural relationship is established (1985(3) APLJ 376).** The Court was relying on a judgment of the Supreme Court reported in ***Mota Singh Vs. State of Haryana*** **(AIR 1981 S.C. 484).** The matter is no longer res integra and the Supreme Court has held it in clear terms as to in which cases several petitioners joining together will have to pay one Court fee or individual Court fee. In the matter before the Supreme Court, independent truck operators had filed a Writ Petition against liability to pay tax under a particular order. Although the same

action of the State had been challenged but the Supreme Court found :

> "It is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of Court fee simply because they have joined as petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable Court fee on his petition. It would be a travesty of law if one were to hold that as each one uses high way, he has common cause of action with rest of truck pliers".

In the present case, may be all the petitioners are aggrieved of the impugned notice but all of them have a separate and distinct cause of action against such notice. Therefore following the Supreme Court judgment I hold that, unless the petitioners in between themselves have a jural relationship even if they challenge the same order it will not amount to having same cause of action. The impugned order may be one but cause of action of the petitioners definitely is separate of each other. One's cause of action is not dependent on another's cause of action."

6. The writ petitioners had filed the present Writ Petition and the details relating thereto had been already specified supra. The impugned action is the direction of the 1st respondent calling for demand drafts from the concerned Superintendents of Excise and Prohibition. In pursuance of the changed Excise Policy of the State Government, which no doubt had been held to be invalid as referred to supra, the individual applicants made applications and also deposited the demand drafts. Thus it is a common action and a common cause wherein the public at large, the intending participants,

participated in pursuance of the aforesaid Excise Policy of the State Government. The said action being one and common, if the impugned action is held to be bad or illegal, or without authority or jurisdiction, the derivative beneficiaries may be numerous, but however in the light of the clear language employed in Rule 4-A of the Rules referred to supra, this may not alter the situation in any way. Apart from this aspect of the matter, in the decisions referred to supra, Rule 4-A of the Rules had not been referred to nor a decision had been rendered considering the language employed in the aforesaid Rule. Inasmuch as it is a common cause of action, especially in the light of the impugned proceeding which had been questioned being common, this objection that the individual Court fee is payable by each applicant cannot be sustained. In **A.P. Arrack Contractors Association Vs. Government of A.P.** a learned single Judge observed at para 10 as hereunder :

> "In the case of a Body incorporated by law, the Corporate Body acquires by law a legal entity or a legal personality of itself and by reason thereof is entitled to sue and be sued in its own name. But an un-incorporated association has no such legal personality or entity. It is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge the same only if all members join in the proceedings by name. The Association, in such a case, cannot maintain an application under Article 226 of the Constitution of India or other legal proceedings in its own name. Even where an Association is permitted by law to bring a legal proceeding, it can do so only when its right as a collective body as distinguished from the aggregate rights of its members are affected by the act impugned or challenged in the proceedings. This is because an incorporated or registered

> society or association has a distinct legal personality of its own with rights and capacities, duties and obligations separate from those of its individual members. It must, however, be clarified that there are certain exceptions to the above principles by virtue of special enactments themselves which enable or entitle such incorporated societies, registered unions or incorporated associations to maintain action including filing of applications under Article 226 of the Constitution of India. To enumerate a few, Toddy Tappers Coop. Societies which by virtue of the Excise Policy are themselves licensees. Likewise, Fishermen Co-operative Societies and similar such societies who manage the affairs and business of the society on behalf of its members either as licensees or by statutory provisions. Another class is the registered trade unions and associations of workmen under the Individual Disputes Act."

It is true that the learned Senior Counsel representing the Income Tax Department made a serious attempt to get the particulars of the members of the 1st petitioner Association and a notice in fact had been served and an affidavit in relation thereto also had been filed before this Court. Evidently, the particulars of the members of the 1st petitioner-Association had not been furnished for the reason that all these applicants are not the members of the said Association and may be certain of them may be the members. But however, there is no clear picture before this Court. Submissions in elaboration had been made that because of the non-furnishing of these particulars, serious prejudice is caused to the Income Tax Department to take any specific stand and even in this view of the matter, the Writ Petition cannot be maintained. I n **Calcutta Gas Company (Proprietary) Ltd. Vs. State of West Bengal** it was held that the right

that can be enforced under Article 226 of the Constitution of India shall ordinarily be the personal and the individual right to the petitioner himself though in the case of some of the writs like *habeas corpus* o r *quo warranto* this rule may be relaxed or modified. In **Bombay Dyeing & Manufacturing Co. Vs. State of Bombay** it was held by the Apex Court at para-28 :

> "It is then argued that this is an objection open only to the employees, and that the appellant can make no grievance of it. It is no doubt true that a question as to the constitutionality of a statute can be raised only by a person who is aggrieved by it; but here, the statute deals with rights arising out of contract, and that presupposes the existence of at least two parties with mutual rights and obligations, and it is difficult to see how when the rights of one party to it are interfered with, those of the other can remain unaffected by it. Let us assume that the appellant makes a payment to the Board under S. 3 (1) of the impugned Act on the footing that the law is not unconstitutional as against him. What is there to prevent the employee from suing to recover the same amount from the appellant on the ground that the Act is unconstitutional ? It will be no answer to that claim to plead that the appellant has already paid the amount to the Board. The fact is that a statute which operates on a contract must affect the rights of all the parties to the contract, and if it is bad as regards one of them, it should be held to be bad as regards the others as well. It is unnecessary to pursue this question further, as we have held that the Act is unconstitutional even as regards the appellant."

I n **Bharatiya Homoeopathy College Vs. Students Council, H.M. College, Jaipur** it was held at paras 24 and 25 as hereunder :

> "The learned single Judge who originally dismissed the Writ petition had reason to doubt the *locus standi* of the Students Council of the Junior College to file this so called public interest litigation. These students are studying for the same B. H. M. S. course of the University of Rajasthan. There can be some doubt about their *bona fides* in challenging the order permitting other students of other colleges to appear for the same examination. What is more relevant, there is no basis for alleging any harm to public interest in allowing the students of

the two appellant colleges to appear for the B. H. M. S. examinations of the University of Rajasthan. The University which had inspected these two appellant colleges and considered the course of studies which they offered, was in a far better position to decide whether the students who had studied for the earlier course were fit enough to be allowed to appear for the examinations of the University of Rajasthan. The decision which was taken by the University was a *bona fide* decision after taking into account the standard of teaching offered by the two appellant colleges. The action was also supported by the State Government. The Central Council of Homoeopathy has also recognised these two colleges. The public interest was not in any manner adversely affected by the impugned decision.

The Students Council has now filed an affidavit disclosing its status and its constitution. It does not disclose whether the Council was authorised to file the present litigation, and if so, by whom; whether it has the funds to indulge in this litigation and whether it had the backing of a majority of its members for this litigation. Since on merits also we find that the action must fail, we are not examining these questions any further except for the purpose of indicating that such organisations, without disclosing any material regarding their nature and functions and funding, should not be allowed lightly to undertake litigation in the name of public interest which can cause a lot of damage to others.

In the present case, because of the litigation the students have not been able to complete their B. H. M. S. course for a number of years. Pursuant to the interim order these students have been permitted to appear for examinations conducted in December, 1996 and the results have also been declared. We direct that in accordance with the results so declared the students may be allowed to continue/complete the B. H. M. S. course with the University of Rajasthan in accordance with law and those who have qualified for the B. H. M. S. degree as per these results be granted the degree by the University of Rajasthan."

7. Further submissions had been made by the learned Senior Counsel representing the Income Tax Department that the nature of the litigation itself is not clear, whether it is a public interest litigation, benami litigation, individual litigation, adversary litigation, and in the

absence of particulars and also in the absence of a clear stand relating to the nature of the litigation, the relief prayed in the Writ Petition cannot be granted and on this ground also the Writ Petition may have to be thrown out. In **Mahesh Chand Bisht Vs. Union of India** , in a public interest litigation, the Apex Court directed the petitioners to file affidavit with full particulars of their concern and purpose and also observed that then the maintainability etc., may be considered. In **Janata Dal Vs. H.S. Chowdhary** it was held at paras 63 to 68 as hereunder :

> "The traditional syntax of law in regard to *locus standi* for a specific judicial redress, sought by an individual person or determinate class or identifiable group of persons, is available only to that person or class or group of persons who has or have suffered a legal injury by reasons of violation of his or their legal right or a right legally protected, the invasion of which gives rise to actionability within the categories of law. In a private action, the litigation is bipolar; two opposed parties are locked in a confrontational controversy which pertains to the determination of the legal consequences of past events unlike in public action. The character of such litigation is essentially that of vindicating private rights, proceedings being brought by the persons in whom the right personally inhere or their legally constituted representatives who are thus obviously most competent to commence the litigation.
>
> In contrast, the strict rule of locus is standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of *locus standi* to any member of the public acting *bona fide* and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting *bona fide* and having sufficient interest in maintaining an action for

judicial redress for public injury to put the judicial machinery in; motion like *actio popularis* of Roman Law whereby any citizen could bring such an action in respect of a *public delict*.

It will be befitting to recall the observation of this Court in **People's Union for Democratic Rights v. Union of India, (1982) 3 SCC 235 : 1982 SCC (L&S) 275**, which reads thus :

> "But the traditional rule of standing which confines access to the judicial process only to those to whom legal injury is caused or legal wrong is done has now been jettisoned by this Court and the narrow confines within which the rule of standing was imprisoned for long years as a result of inheritance of the Anglo Saxon system of jurisprudence have been broken and a new dimension has been given to the doctrine of *locus standi* which has revolutionised the whole concept of access to justice in a way 'not known before to the western system of jurisprudence... it is therefore necessary to evolve a new strategy by relaxing this traditional rule of standing in order that justice may /become easily available to the lowly and the lost".

R. S. Pathak, J. (as the learned Chief Justice then was) while agreeing with the directions proposed by Bhagwati, J. (as the learned Chief Justice then was), in **Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161** expressed his view stating, "In public interest litigation, the role held by Court is more assertive than in traditional actions."

M. N. Venkatachaliah, J. speaking for the Bench in **Sheela Barse V. Union of India, (1988) 4 SCC 226** has brought out the distinction between private litigation and public interest litigation in the following words :

> "In a public interest litigation, unlike traditional dispute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the, determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings, cut across and transcend these traditional forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare State ... ... The dispute is not comparable to one between private parties with the result there is no

recognition of the status of a *dominus litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the Court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme."

Though we have, in our country, recognised a departure from the strict rule of *locus standi* as applicable to a person in private action and broadened and liberalised the rule of standing and thereby permitted a member of the public, having no personal gain or oblique motive to approach the Court for enforcement of the constitutional or legal rights of socially or economically disadvantaged persons who on account of their poverty or total ignorance of their fundamental rights are unable to enter the portals of the Courts for judicial redress, yet no precise and inflexible working definition has been evolved in respect of *locus standi* of an individual seeking judicial remedy and various activities in the field of PIL. Probably, some reservation and diversity of approach to the philosophy of PIL among some of the Judges of this Court as reflected from the various decisions of this Court, is one of the reasons for this Court finding it difficult to evolve a consistent jurisprudence in the field of PIL. True, in defining the rule of *locus standi* no 'rigid litmus test' can be applied since the broad contours of PIL are still developing apace seemingly with divergent views on several aspects of the concept of this newly developed law and discovered Jurisdiction leading to a rapid transformation of judicial activism with a far-reaching change both in the nature and form of the judicial, process."

While dealing with the right of Contractors Welfare Association questioning the recovery towards rock recovery a learned single

Judge in **Bhagyanagar Contractors Welfare Association, Hyderabad Vs. MD, M.W.S. & S.B., Hyderabad** observed at para 12 as hereunder :

> "Lastly, I am of the considered view that Bhagyanagar Contractors Welfare Association is not entitled to maintain the Writ Petition. No aggrieved contractor who has suffered rock recovery from his bills is before this Court. No doubt an association like the petitioner may have general programme of protecting the interest of the members. When it comes to recovery, may be rock recovery, from the bills submitted by an individual contractor, the aggrieved person is the individual contractor and not the association. For instance, if there is any dispute regarding payment of a bill by the Water Board to the Contractor, the association cannot seek a reference to arbitrator nor can it file a suit on behalf of the contractor. The Writ Petition, for the above reasons fails and it is accordingly dismissed. No costs."

I n **Union of India Vs. Hindustan Development Corporation Limited** the Apex Court observed at para-2 as hereunder :

> "With the consent of learned counsel for the parties, the appeal is heard finally. The short question is whether the learned Single Judge and the Division bench of the High court were justified in quashing the show-cause notice which only called upon the respondent to file its counter and reply to the show-cause notice so that the adjudicating proceedings may take place. In our view on the question whether Tariff Item 33-B(ii) of the Tariff Act applies or Item 26-AA(i-a) applies, requires investigation of available facts. The High court should not have undertaken the onerous duty of adjudicating upon these questions which were required to be decided on merits by the authorities themselves. Only on the short ground and without going into the merits of the controversy between the parties, orders passed by the learned Single Judge and division bench are vacated. Now the show-cause notice will be required to be adjudicated upon on merits. The respondents will be given liberty to file written reply within eight weeks from today. Thereafter the adjudicating authority will decide the question on merits strictly on the basis of evidence led before it without being in any way influenced by the communication dated

20/9/1982 by Superintendent, central Excise to the respondents or on the basis of any superior authority's order as mentioned in para 33 of the order of the learned Single Judge at p. 291. We also make it clear that the decision shall be rendered by the adjudicating authority strictly on merits after considering the evidence led before it and without being influenced whatsoever by the earlier observations of the High court. It is also made clear that if adjudication ultimately culminates against the respondent, it will be open to it to file an appeal before CEGAT and till the decision of CEGAT on appeal, there will be no recovery of the amount even if it is adjudicated upon by the adjudicating authority in these proceedings. The learned counsel for the appellant submitted that if there is any adjudication made by the authority pursuant to the impugned show-cause notice, an appeal would certainly be maintainable before CEGAT. In our view on the peculiar facts of this case only and not as a precedent we have directed that the recovery of the adjudicable amount shall remain stayed till CEGAT's decision if at all any occasion arises for the respondent to go in appeal. However, it will be open to the appellate authority, namely, CEGAT to direct the respondent in such an eventuality to give sufficient security as may be directed."

Reliance also was placed on **Rani Laxmibai Kshetriya Gramin Bank Vs. Chand Beari Kapoor** wherein it was held that the pleadings must fully aver facts and rights flowing therefrom in the pleadings to enable the respondent to meet the petitioner's case effectively. While dealing with public interest litigation and non-furnishing of the material facts the Apex Court in **Sanjay Musale Vs. State of M.P. and others** held that where the material facts had not been furnished, a busybody or an interloper cannot be permitted to maintain a Writ Petition. In **M.P. Mittal Vs. State of Haryana** the Apex Court observed at para-5 as hereunder :

"Now there is no dispute that the appellant knowingly and deliberately entered into the Guarantee agreement, and is liable as Guarantor to make payment of the dividend due from

> Messrs. Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at 2,02,166/- in respect of the period ending with, the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail."

8. Lengthy submissions were made on the ground of *bona fides* and the learned Senior Standing Counsel representing the Income Tax Department would maintain that when the facts are suppressed and when the material is not placed *bona fide* before the Court, definitely such party is not entitled to any relief under Article 226 of the Constitution of India. Yet another submission was made that this is not a Writ Petition filed in representative capacity nor is it a case of public interest litigation since 1,43,000 applicants are neither the persons who are incapable of prosecuting their litigations nor otherwise disabled for any other reason and on this ground also the merits of the Writ Petition need not be gone into. These submissions made in elaboration by the learned Senior Counsel representing the

Income Tax Department on the aspect of *locus standi* and maintainability of the Writ Petition need not detain this Court any longer for the reason that the writ petitioners are ventilating a common grievance and a common cause and the impugned action is the common cause in relation to the trading community concerned with the Excise Policy of the State Government and inasmuch as the 1st petitioner-Association is entitled to ventilate the common grievance of the said body of persons which would be prejudicial to their interests, such Association can definitely represent such cause and maintain the Writ Petition. Quite often common causes or common grievances would be agitated by the concerned societies or associations on the ground that such actions would either infringe their legal rights or would be prejudicial to their interests. In **M.S. Jayaraj Vs. Commissioner of Excise** it was held by the Apex Court at paras 12 and 14 as hereunder :

> "In this context we noticed that this Court has changed from the earlier strict interpretation regarding *locus standi* as adopted in ***Nagar Rice & Flour Mills v. N.Teekappa Gowda & Bros*** **(1970) 1 SCC 570**) and **Jasbhai Motibhai Desai Vs. Roshan Kumar (1976) 1 SCC 671)** and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction. A four-Judge Bench in **Jasbhai Motibhai Desai (1976) 1 SCC 671)** pointed out three categories of persons vis-à-vis the *locus standi* : (1) a person aggrieved; (2) a stranger; and (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that anyone belonging to the third category is easily distinguishable and such persons interferes in things which do not concern him as he masquerades to be a crusader of justice. The judgment has cautioned that the High Court should do well to reject the petitions of such busybody at

the threshold itself. Then their Lordships observed the following :

> "38. The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be 'persons aggrieved'".
>
> .....
>
> In the light of the expanded concept of the *locus standi* and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of *locus standi*. If the Excise Commissioner has no authority to permit a liquor shop owner to move out the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the Writ Petition has strictly no *locus standi*. So we proceed to consider the contentions on merits."

As can be seen from the observations referred to supra, it is clear that reliance had been placed on **Jasbhai Motibhai Desai Vs. Roshan Kumar**, a Judgment of 4-Judge Bench. No doubt there is some discussion relating to what is the meaning of an aggrieved person. A very technical ground had been raised that even petitioners 3 and 4, the individuals who had joined the present Writ Petition, had not specifically averred that they made the applications and made the

deposits. On an over-all appreciation of the facts and circumstances, especially in the light of the liberalized trend of the Apex Court on the concept of *locus standi* and also the maintainability of the Writ Petition and also taking into consideration the scope and ambit of Article 226 of the Constitution of India, a public law remedy wherein the Constitutional Courts are expected to set aside an unjust action in whatever corner it may be found, this Court is not inclined to adopt the restricted technical approach so as to defeat the rights of the writ petitioners especially in the light of the view expressed by the Apex Court in **Jayaraj's** case referred (17) supra. Hence, these contentions made in elaboration by the learned Senior Standing Counsel representing the Income Tax Department definitely do not find favour with this Court and the same are hereby rejected and hence this Court is inclined to further proceed with the merits and demerits of the Writ Petition.

9. **Order impugned in the Writ Petition :**

Office of the Deputy Director of Income Tax (Inv)
Unit-I(2), Hyderabad
Room No.472, 4th Floor, Annex Bldg., Aaykar Bhavan,
Hyderabad –500004, Tel(040) 23240672 Fax No.(040) 23240671

No.DDIT/U-I(2)/2004-05 Dated : 16-3-2005

To

The Superintendent of Prohibition & Excise,

Hyderabad,

Prohibition & Excise Bldg (5th Floor), M.J. Road, Hyderabad.

Sir,

Sub : Production of documents – Reg.

*****

Whereas it is learnt that the Government of Andhra Pradesh has migrated the system of awarding contracts for running retail shops selling Indian Liquor from the auction system to a lottery system and called for applications.

Whereas it is learnt that the applicant for the retail shops should alone with the application form pay a non-refundable application fee of Rs.5,000 and also submit a demand draft for a value not less than 1/3rd of the licence fee payable for the retail shop applied for, the value of the licence fee being fixed at Rs.2,50,000, Rs.5,00,000 and Rs.8,00,000 depending on the area in which the retail shop is located,

Whereas it is learnt that a class of persons filed nearly 1,43,000 applications for about 7,500 retail shops all over the State of Andhra Pradesh for which the applications are called for,

Whereas it is learnt that the policy of the Government of Andhra Pradesh for awarding contracts for running retail shops selling Indian Liquor from the auction system to a lottery system is a subject matter of a writ filed by the existing shop owners and the matter is presently pending before the Hon'ble High Court of Andhra Pradesh,

Whereas the undersigned has reason to suspect that large amounts of cash were deposited in various banks from undisclosed sources, to obtain the demand drafts submitted along with the applications and thus it constitutes concealed income,

Whereas on a prima facie enquiry, it is opined that a large number of applicants and/or account holders from whose accounts the funds were drawn for obtaining the aforesaid DDs are found to be either benami/fictitious persons and the return of the DDs to such applications would thwart the enquiry by the Income Tax Department rendering recovery of taxes also an impossible task,

Whereas the undersigned is vested with powers to call for the

documents required for conducting enquiry in relation to cases involving concealment of income by any person or class of persons in terms of sub section (1) and (1A) of Section 131 of the Income Tax Act, 1961,

Accordingly, I call upon you to

To produce all the demand drafts submitted along with the relevant applications of the applicants within 24 hours of the delivery of the judgment of the Hon'ble High Court of Andhra Pradesh in the pending Writ Petition in the manner indicated hereunder :

a. Only the original application forms submitted along with the original demand drafts pertaining to unsuccessful candidates needs to be produced

b. In the case of successful applications, applications alone be produced for appropriate enquiry by the Income Tax Department

c. This is subject to such orders that may be issued by the Hon'ble High Court of Andhra Pradesh in the said batch of Writ Petitions.

Yours faithfully,

Sd/-

(BHASKAR GOSWAMI)

Deputy Director of Income

Tax (Inv), Unit.1(2), Hyderabad

10. <u>Relevant Constitutional provision :</u>

Article 256 of the Constitution of India reads :

Obligation of States and the Union - The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall

extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

In **State of Rajasthan Vs. Union of India** the Apex Court explained the ambit of Article 256 of the Constitution of India in the context of advise by Home Minister, Government of India to Chief Minister of the State to recommend to the Governor in relation to dissolution of the Legislative Assembly and the advise is not a directive and no relief can be granted as against such advise. Certain submissions in this regard were made by the learned Senior Standing Counsel representing the Income Tax Department on the ground that the State Government cannot take any inconsistent stand in relation to the proposed action by the Income Tax Department, a wing of the Central Government. The specific stand taken by the learned Advocate General representing the State Government is that due to the law and order problem and the other like problems, the State Government is taking such a stand and requesting for early disposal of the Writ Petition inasmuch as the 1st respondent had exercised the power purporting to be under Section 131 of the Act. The learned Senior Counsel representing the Income Tax Department though at a particular point of time made certain submissions in this regard this question had not been seriously pursued further. In the light of the language employed in the Constitutional provision referred to supra,

this question need not be deeply gone into especially in view of the remoteness of this question and not being directly germane to the present litigation. Hence, this Court is not inclined to express any opinion relating to the same in this regard.

11. <u>Pleadings in brief</u> :

In the affidavit filed in support of the Writ Petition, certain details relating to the Excise Policy in pursuance of which the applications and the deposits by way of demand drafts had been made and also the Policy of the State Government which had been questioned in the Writ Petitions and Writ Appeals had been averred. The provisions of Section 131 and 132 of the Act had been referred to and several details had been furnished how these provisions are not applicable and the 1st respondent cannot invoke the power of issuing the impugned proceeding in the light of the language employed therein. The writ petitioners also pleaded that in the normal courses after filing of an application for grant of IL 24 licence, the 1/3rd fee paid in advance would have been adjusted in the case of successful applicants towards the licence fee, with an obligation on such successful applicants to pay balance 2/3rd fee. In the case of unsuccessful applicants they would lose the sum of Rs.5000/- paid as non-refundable application fee. However, the 1/3rd Annual Licence Fee paid in advance would be refunded in favour of

respective applicants. It was further pleaded that many of the small merchants who had applied for IL 24 Licence are already hard pressed for finances as in some cases they had borrowed funds at exorbitant rate of interest. While the matter stood thus the 1st respondent in purported exercise of power under Section 131 of the Act issued instructions to all the Superintendent of Prohibition & Excise in the State of Andhra Pradesh to produce the demand drafts represented by the unsuccessful applicants within 24 hours of the delivery of the judgment of the Hon'ble High Court of Andhra Pradesh in the pending matters. Further in the case of unsuccessful applicants the Superintendent of Excise have been called upon to produce the original application forms. In so far as the successful applicants are concerned only the application forms are to be produced by the respective Superintendent of Prohibition & Excise. It was further pleaded that the provisions of Section 131 and 132 of the Act operate in totally different spheres. While Section 131 of the Act is designed for the purposes of gathering information by way of investigation for completing an assessment, Section 132 authorises search and seizure in certain cases. The power of the authorities under Section 131 is confined to gathering evidence which would help the Department establish concealment of any income. The 1st respondent has no power to act under Section 132(1) of the Act without actually issuing search warrants in respect of a particular

assessee. The provisions of Section 131(1A) of the Act relied upon by the 1st respondent is confined to gathering of evidence under Section 131(1) of the Act and the same cannot be extended to taking custody of an instrument such as demand draft which is essentially money, and such a power is absent in Section 131(1) of the Act. It was further pleaded that the 1st respondent under the guise of exercise of power under Section 131 of the Act cannot take custody of the demand drafts. As a matter of fact the demand draft would not give any information as to the sources of funds of a particular applicant or by what process it was purchased. So long as the 1st respondent has information of particulars about demand draft which are filled up in the application form in any case, there would be no necessity for the 1st respondent to take the demand drafts from the custody of the Excise Superintendents. Certain other details also had been averred in paras 13 and 14 of the affidavit filed in support of the Writ Petition and ultimately the relief which had been referred to supra had been prayed for.

12. In the counter affidavit filed by the 1st respondent, several of the aspects had been specifically denied. No doubt a supplementary affidavit was filed by the 1st respondent taking a specific stand that in spite of specific request made, the 1st petitioner had not furnished the relevant information of the 1st petitioner-Association and had not

disclosed the persons on whose behalf the cause is being espoused. The maintainability of the Writ Petition had been specifically raised denying almost all the allegations in this regard and it was stated that 1st petitioner-Association cannot be construed to be a representative body of the applicants who participated in the tender process initiated by the Government in the month of February 2005 and it is not the case of the 1st petitioner that 1,43,000 applicants who participated in the special tendering process are members of the 1st petitioner-Association and in the absence of particulars adverse inference may have to be drawn and hence there is no cause of action to file the Writ Petition. It was also specifically averred in para-3 of the counter affidavit that in pursuance of the tendering process initiated by the Government of Andhra Pradesh in February 2005 it is believed to be true that 1,43,000 applications were submitted by varied persons seeking to participate in the excise auctions proposed to be held by the Government. On initial enquiry in one District information had surfaced that huge amounts were deposited in cash in various banks in the State for the purpose of obtaining demand drafts in the context of the tendering process. The investigation in that District by the Income Tax Department disclosed that prima facie substantial part of the amount so deposited by way of demand drafts represented concealed income or unaccounted income of the applicants or the persons who provided the funds as most of such persons were not

on the rolls of Income Tax. The very fact that substantial part of the amount had been deposited person cash into the banks over-night is enough ground for further verification and investigation. It was further averred that in a small town from one bank, demand drafts were purchased for more than Rs.10 crores in four days out of which Rs.8.04 crores represents cash deposits made in the bank without there being a regular account. Subsequent enquiries in some of the other Districts showed that there are many such instances. Since the aggregate amount received by the Government by way of demand drafts is of the order of Rs.1900 crores, it was opined by the Directorate of this Department that further investigation into the whole aspect is necessary more so in view of the prima facie information received that substantial part of the amount so utilized for demand drafts represented cash deposits made across the counter in the Banks. Demand drafts were also obtained in a sum of Rs.40,000/- and to Rs.49,000/- in most of the cases in order to circumvent the instructions issued by the Reserve Bank of India that demand draft for Rs.50,000/- and above cannot be purchased by a cash deposit. In some cases, even that norm was broken by the Bankers in issuing demand drafts for more than Rs.50,000/- against cash deposits. In view of the aforesaid facts and circumstances the Directorate of the Income Tax Department called upon the Joint Commissioner and Commissioner of Prohibition & Excise to furnish Photostat copies of

the applications and/or in the alternative permit the Income Tax Department to peruse the material by letter dated 11-3-2005. The 2nd respondent replied on 15-3-2005 that the issue was subjudice before this Court and that the Income Tax Department's request was being referred to the learned Advocate General for opinion. Thereafter nothing was heard from the Excise Department. In spite of the fact that the 1st respondent renewed his request by personally approaching the authorities in the Excise Department no information was furnished. In these circumstances the Income Tax Department was left with no option except to invoke the jurisdiction vested in it under Section 131(1) r/w. Section 131(1A) of the Act calling upon the Prohibition & Excise Superintendents of the respective Districts, respondents 3 to 24, to produce the relevant applications and demand drafts for investigation. The imminent reason for issue of such summons was that it would have been wholly impossible for the Income Tax Department to cull out or nab the information if the Excise Department were to return the demand drafts to the applicants concerned soon after completion of the tendering process. Such return of the demand drafts by the Excise Department would have rendered the entire investigation process initiated by the Income Tax Department a futility. It was further stated at para-5 of the counter affidavit of the 1st respondent that in deference to the orders of this Court pending disposal of the Writ Petition, the State of Andhra

Pradesh furnished a copy of the Register of applications in respect of 12 Districts and Compact Disk (CD) containing such information in respect of 11 other Districts. It was realized in most of the cases that details of Bank and branch from where the demand drafts were obtained was not incorporated in the said computer data. In a few cases the demand draft number was not even noted and in a few cases the details of the Bank and the branch were not correctly noted. Therefore, mere furnishing of the Register would not be adequate to conduct proper verification. It was also averred that the sequence in which the demand drafts were obtained from each Bank is also a relevant factor in the matter of conduct of investigation and this acquires added significance more so in cases where huge cash was deposited in one account and demand drafts were purchased for the benefit of a few hundreds of applicants. As an instance, it was averred that Rs.52.99 lakhs was deposited in a bank account within two days i.e., on 17-2-2005 and18-2-2005 for purchasing demand drafts for the benefit of about 40 applicants and there are many such instances. It was pleaded that it is in this context the pattern of purchasing the demand drafts is also required to be noticed and investigated. In a few cases the demand draft application had been signed by one person while the demand draft had been used for the benefit of another application. On the context of verifying the sources and resources for these demand drafts it is absolutely essential to

look at the original demand drafts because there had been a designed process adopted by the applicants or the benamis. It was also further stated that it was understood by the Income Tax Department that quite a good number of applicants are non-existing and their names had been used by vested interests. There is every possibility for existence of quite a good number of benami cases and fictitious persons and it was averred that if the demand drafts are allowed to be returned it would be impossible for the Income Tax Department to unearth the real persons and keeping these aspects in mind the Income Tax Department had invoked the jurisdiction under Section 131 r/w. Section 131(1A) of the Act for summoning all the applications and the relevant demand drafts for further investigation. It was further averred in para-8 of the counter affidavit that under Section 131 of the Act, the jurisdiction can be invoked for production of document if the authority “has reason to suspect” that any income had been concealed or is likely to be concealed by any person or class of persons and the reports received from the Field Officers establish the ingredients required for forming the opinion that there has been concealment or likely concealment of income and hence the jurisdiction under Section 131(1) r/w. Section 131(1A) of the Act had been invoked. It was also further pleaded in para-9 that the demand draft is a ‘document’ and it was also stated that merely because demand draft also happens to be a negotiable instrument

within the meaning of Negotiable Instruments Act it cannot lose its basic characteristic feature of being a document. For the purpose of invoking Section 131(1) of the Act it is sufficient if it is a document and merely because it is a valuable document or invaluable document it does not cease to be a document. Therefore, the jurisdiction of the Income-tax authority cannot be divested to summon such a document on the ground that it is valuable or invaluable document. Since inherent features of a document are required to be noticed for the purpose of investigation, the Department was well within its power or jurisdiction to summon demand drafts under Section 131 r/w. Section 131(1A) of the Act and impound them if need be for effective investigation of the case. It is specifically averred that in order to establish the designed process of purchase of demand drafts in seriatim by cash deposit in violation of the R.B.I. norms also it is necessary to examine the original demand drafts and even on this count the summoning of demand drafts was justified. The definition of 'document' also had been averred in elaboration. It was further pleaded in para 11 that Section 131(1A) of the Income-tax Act has to be understood on the language employed in the said Section. The scope and ambit of the said provision cannot be based on contrastive language employed in Section 132 of the Act. Sections 131(1) and 131(1A) of the Act have been brought on the statute book for a totally different purpose while Section 132 is in a totally different

direction. Therefore the comparative and contrastive analysis sought to be made by the petitioners for the purposes of interpreting Section 131(1) of the Act is not correct in law. It is not the case of the Department that the demand draft is being seized much less the funds covered by demand drafts are being appropriated under the impugned communication. It is only for the limited purpose of investigation and for gathering of evidence for effective investigation the demand drafts had been summoned. It is akin to treating of currency involved in a crime and there is absolutely no infirmity whatsoever in summoning of such demand drafts for conduct of effective investigation of an important issue like tax evasion of a huge order. In any event, having regard to the scheme and background of the tendering process evolved by the Excise Department of the State of Andhra Pradesh, the demand drafts cannot be said to be intended to be used as a negotiable instrument and it is not as if the Prohibition & Excise Superintendent has got unfettered freedom to encash the demand drafts drawn in his favour at any and every stage. Under the scheme of tendering, all the applicants have to furnish demand drafts for an amount equivalent to 1/3rd of the probable licence fees. After drawl of lots, the successful applicant is called upon to obtain licence by depositing the balance 2/3rd and in the eventuality of such applicant not coming forward to take the licence, the deposit amount is forfeited and draw would be conducted amongst the remaining

tenderers. The demand drafts belonging to remaining unsuccessful tenderers are eventually liable to be returned by the authorities and therefore the Excise Superintendent has neither power or authority to encash the demand draft in respect of unsuccessful applicants nor could they transfer it in favour of a third party. The only option available for the Excise Superintendents is to return the applications and the demand drafts to unsuccessful bidders. It is only on the happening of the contemplated event of success favouring a particular applicant, the demand draft could be encashed by the Excise Superintendent. Therefore, in this sense it is akin to escrow. It is settled law that escrow is a document and viewed from this angle the respondent is within his jurisdiction to summon the applications as well as the demand drafts under Section 131 r/w. Section 131(1A) of the Act. It was also further pleaded in para-13 that the enquiry into the whole gamut could be finished by the Department within a reasonable time from the date of handing over of applications and the demand drafts to the Income Tax Department. Even assuming without conceding that the said marginal delay might cause inconvenience or prejudice in a stray case, it cannot be made the basis to return the demand drafts en masse. It is settled law that between a larger public good and private stray inconvenience it is the former that should be the determining factor. Further in para-14 it was averred that the petitioners grievance in the present Writ Petition

appears to be based on an unwarranted assumption that the Department is resorting to seizure of demand drafts which is not correct. For the present, the Department is not desirous nor is it contemplating to seize the demand drafts in pursuance of the impugned communications. It is only on completion of the investigation, the Department could take further action under other provisions of the Act that too in cases where no satisfactory explanation is forthcoming from the applicant concerned as to the sources or resources from which the funds had been procured for purchasing of the demand drafts in question. It is depending on the exigencies and warrant further proceedings would be initiated in identified cases under Section 132 of the Act or any other provisions of the Act. For the present, the Department is rest content collecting the information and other documents for appropriate investigation as to the sources of the unaccounted funds and unearthing the real persons behind untrue, benami or fictitious applicants. It was further pleaded in para-15 of the counter affidavit that though averment had been made that funds were borrowed by a few applicants for buying demand drafts the petitioners have not given details of those small merchants much less the cases in which borrowed funds were utilized at higher rate of interest. At any rate the same has no relevance in the context of adjudication of jurisdictional aspect on the relief required to be granted. However, it is surprising that the

petitioner, without specifying the details as to the members of the Association, is espousing the cause of third persons without indicating its authority to represent their case and thus the petitioners appear to be interlopers representing the cause of a class of people without any ostensible connection whatsoever. Further, the assertion of the petitioners that demand drafts could not give any information as to the source of funds of a particular applicant or by what process it was purchased is not correct but it is only on the circumstantial evidence the Department would be able to prove as to the real person figuring in each transaction as a group of transactions. The very fact that some of the applicants had been grouped as part of formation of a syndicate are also to be proved from the mode and method adopted by the applicants in the matter of purchase of demand drafts. It is in this context the seriatim of purchase of demand drafts, Bank in which they were purchased and the dates on which they were purchased would throw any amount of circumstantial evidence and this information is not forthcoming from the registers maintained by the Excise Department and therefore the original demand drafts are required for Department for conducting the investigation. It was also averred that the inherent features of the demand drafts are required to be preserved at least for initial conduct of investigation. It was also further pleaded in para-17 that as per the information gathered by the Department, benami nature of the

transactions are large in number. The ways and means adopted by some of the dealers for concealing the real identity of the applicant also deserves consideration. The Department has reason to believe that some of the applicants have designedly concealed the real persons and the applications had been made in benami names. In some of the cases, it is photo identity sought to be produced on the application need not be real but these aspects can be resolved either way only after investigation of all the aspects concerning the applications. For this reason, the demand drafts of the applicants have to be preserved, at least till the Department is able to form prima facie opinion of the factum of concealment. For the purpose of Section 131(1) of the Act it is sufficient if the authority has suspicion about the possible concealment. The gamut of reports from the field officers is sufficient for the 1st respondent to lay foundation for suspecting that everything is not well with the purchase of demand drafts submitted in the present tendering process. It was further pleaded in para-18 that the assertion in paragraph-14 that some of the applicants could have been outside the jurisdiction of this respondent authority is not true and correct. The Directorate of Income-Tax has got State wide authority and its jurisdiction extends to the entire State. The Deputy Director draws his power and authority only through the Director. It is only after taking assent of the Director of Income-tax (Investigation) the 1st respondent had issued

summons under Section 131 r/w. Section 131(1A) of the Act. At any rate, at the stage of calling for documents in terms of Section 131 of the Act for the purposes of conducting investigation, it is not necessary that the possible assessee should be within the jurisdiction of the 1st respondent. It was pleaded in para-19 that the petitioners have not made out a case for invoking the jurisdiction of this Court and the real person who is possibly affected by the impugned action is not before this Court. None of the applicants who submitted their applications or demand drafts came forward before this Court seeking any relief. It is not the case of the writ petitioners that any of the 1,43,000 applicants are members of the 1st petitioner Association. In so far as petitioners 2, 3 and 4 are concerned, they have absolutely no *locus standi* to file the present Writ Petition. It is not the case of the petitioners that 1,43,000 applicants belong to such class of persons in the Association who were unable to espouse their cause. As the applicants have got wherewithal to pursue their legal rights, if any, it is not open to the petitioners to espouse the case of 1,43,000 applicants who participated in the tendering process especially when the petitioners have absolutely no concern with the said applicants. If was pleaded at para-20 of the counter affidavit that even assuming without conceding that the 1st petitioner is entitled to represent the cause of 1,43,000 applicants and is espousing their cause, such espousal must be deemed as

enforcement of individual cause of such applicant in which case Court fees must be paid on behalf of the applicant and a single set of Court fees paid by the writ petitioners Association is not correct, without prejudice to the contention that writ petitioners 1 and 2 as Associations cannot maintain the Writ Petition especially when there is no ostensible connection between the petitioners and 1,43,000 applicants participating in the tendering process muchless there is any jural relationship between them. In any event the equity jurisdiction of this Court under Article 226 of the Constitution of India cannot be extended to protect the tax evaders and there is substantial material prima facie to show that there had been any amount of concealment of income and the resources had emanated from unaccounted sources and it is not only proper but also legitimate to allow the Income Tax Department to discharge its functions without being stifled by the busybodies like the writ petitioners. The equity jurisdiction of this Court shall not be extended in favour of the petitioners as they approached this Court with oblique motive of stifling the entire enquiry or investigation initiated by the Income Tax Department.

13. As can be seen from the respective pleadings of the parties, in substance the stand taken by the writ petitioner is that the 1st respondent has no power, authority or jurisdiction to issue the

impugned proceeding and on the contrary the 1st respondent justifying the issuance of such proceeding under the provisions of Section 131(1) and (1A) of the Act.

14. Relevant statutory provisions :

The whole theme revolves around Sections 131 and 132 of the Act, and in particular Section 131 of the Act and the said provisions read as hereunder :

> **Section 131: Power regarding discovery, production of evidence etc :**
>
> (1)The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit in respect of the following matters, namely:-
>
> a. discovery and inspection
>
> b. enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
>
> c. compelling the production of books of account and other documents; and
>
> d. issuing commissions.
>
> **1A:** If the Director-General or Director of Joint Director or Assistant Director or Deputy Director, or the authorized officer referred to in sub-section (1) of Section 132 before he takes action under clauses (i) to (v) of that sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purpose of making any enquiry or investigation relating thereto, it shall be competent for him to

exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.

(2) Omitted

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not –

a. impound any books of account or other documents without recording his reasons for so doing, or

b. retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director-General or Commissioner or Director therefore, as the case may be.

Section 132 : Search and seizure:

(1) Where the Director-General or Director or Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as the case may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that -

a. any person to whom a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 (XI of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income-tax Act, 1922 (XI of 1922), or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of

account or other documents as required by such summons or notice, or

b. any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act, or

c. any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

then, -

A. The Director-General or Director or the Chief Commissioner or Commissioner, as the case may be, may authorize any Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer; or

B. such Joint Director or Joint Commissioner, as the case may be, may authorize any Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer

(the officer so authorized in all cases being hereinafter referred to as the authorized officer) to-

i. enter and search any building, place, vessel, vehicle or air craft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

ii. break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

iii. seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

iv. place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

v. make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorization from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue;

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorized officer and such action of the authorized

officer shall be deemed to be seizure of such valuable article or thing under clause (iii).

(1A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorized by the Director-General or Director or any other Chief Commissioner or Commissioner or any such Joint Director or Joint Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorization under sub-section (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in Section 120, authorize the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.

(2) The authorized officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorized officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to sub-section (1), serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

Explanation : For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).

(4) The authorized officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination

may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (XI of 1922), or under this Act.

Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed –

i. that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

ii. that the contents of such books of account and other documents are true; and

iii. that the signature and every other part of such books of account and other documents which purport to be in the hand-writing of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and in Sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A) as a result of a search initiated or requisition made before the 1st day of July, 1995, the Assessing Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Deputy Commissioner, -

i. estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

ii. calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), or this Act;

(iia) determining the amount of interest payable and the amount

of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922), or this Act, as if the order had been the order of regular assessment;

(iii) specifying the amount that will be required to satisfy any

existing liability under this Act and any one or more of the acts specified in clause (a) of sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default, and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into account the materials available with him, the Assessing Officer is of the view that it is not possible to ascertain the which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly;

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets retained under sub-section (5) may be dealt with in accordance with the provisions of Section 132B.

(7) If the Assessing Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Assessing Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorized officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director-General or Director for such retention is obtained :

Provided that the Chief Commissioner, Commissioner, Director-General or Director shall not authorize the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (XI of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorized officer, for reasons to be recorded by him in writing, extends the period of operation of the order beyond sixty days, after obtaining the approval of the Director or, as the case may be, Commissioner for six extension:

Provided that the Director or, as the case may be, Commissioner shall not approve the extension of the period for any period beyond the expiry of thirty days after the completion of all the proceedings under this Act in respect of the years for which the books of account, the other documents, money, bullion, jewellery or other valuable articles or things are relevant.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) of sub-section (1A) may make copies thereof, or take extracts therefrom, in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.

(9A) Where the authorized officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents or assets seized under that sub-section shall be handed over by

the authorized officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) or sub-section (1A) objects for any reason to the approval given by the Chief Commissioner, Commissioner, Director General or Director under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make application to the Chief Commissioner or Commissioner stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(11A) Every application referred to in sub-section (11) which is pending immediately before the 1st day of October, 1984, before an authority notified under that sub-section as it stood immediately before that day shall stand transferred on that day to the Chief Commissioner or Commissioner, and the Chief Commissioner or Commissioner may proceed with such application from the stage at which it was on that day :

Provided that the applicant may demand that before proceeding further with the application, he be re-heard.

(12) On receipt of an under sub-section (1) the Board, or on receipt of the application under sub-section (11), the Chief Commissioner or Commissioner, may, after giving the applicant an opportunity of being heard, pass such orders as it or he thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).

(14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorized officer -

i. for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;

ii. for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.- In computing the period referred to in sub-section (5) for the purposes of that sub-section, any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.- In this section, the word “proceeding” means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (XI of 1922), or this Act, which may be pending on the date on which a search is authorized under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

15. <u>Meaning of ‘document’:</u> Submissions at length were made by the respective Counsel on the aspect of meaning of ‘document’ especially in the light of the language employed in Section 131 of the Act. The word or expression ‘document’ is defined in inclusive form in Section 2(22AA) of the Act and the said provision reads as hereunder :

"document" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

In Random’s Dictionary, in relation to ‘document’ it is stated :

1. a written or printed paper furnishing information or evidence, as a passport, deed, bill of sale, bill of lading, etc.; a legal or official paper

2. any written item, as a book, article, letter etc., especially of a factual or informative nature

3. *Archaic* evidence; proof.

4. to furnish with documents, evidence or the like: a carefully documented biography

5. to support by documentary evidence : to document a case

6. *Naut.* to provide (a vessel) with a certificate giving particulars concerning its nationality, ownership, tonnage, dimensions etc., according to its size and purpose.

7. *Obs.* to instruct

Just like that, in relation to 'money' it is stated :

1. gold, silver, or other metal in pieces of convenient form stamped by pubic authority and issued as a medium of exchange and measure of value.

2. See **paper money**

3. any circulating medium of exchange, including coins, paper money, and demand deposits.

4. any article or substance used as a medium of exchange, measure of wealth, or means of payment as checks on demand deposit, wampum etc.

5. a particular form of denomination of currency

6. See **money of account**

7. property considered with reference to its pecuniary value

8 . an amount or sum of money : *Can you lend me some money ?*

9. wealth considered in terms of money : *She was brought up with money.*

10. **moneys or monies.** *Law,* pecuniary sums.

11. pecuniary profit : *During that period everyone made money.*

12. **for one's money,** *Informal* with respect to one's opinion, choice, or wish : *For my money, there's nothing to be gained by waiting.*

13. **in the money** *Slang.* **a.** in possession of a great deal of money; affluent: *You can see he's in the money, look at all those clothes he buys.*

b . first, second, or third place in a contest, especially a horse or dog race.

14. **make money,** to make a profit; become rich : *It is an interesting occupation, but you'll never make money at it.* – **adj.**

15. having access to or controlling large sums of money or financial influence : *The wall street money men say the stock market will continue to rise.*

16. having, spending, or requiring large sums of money : *I wanted to invest in the scheme, but it was a money proposition.*

17. of or pertaining to money

18. used for carrying, keeping or handling money : *Have you seen my little money purse ?* moneyless – *adj.*

- Syn. **1.** coin, cash, currency, specie, change. **7.** funds, capital, assets, wealth, riches.

In this context specific stand had been taken by the Senior Standing

Counsel representing the Income Tax Department that the demand drafts in the present context is only an escrow arrangement and placed strong reliance on a Division Bench decision in **Global Trust Bank Ltd. Vs. Kakateya Cement Sugar & Industries Ltd.** wherein it was observed at paras 17, 18 and 22 as hereunder :

> As seen from Ex.B1 plaintiff deposited an amount of Rs.200 Lakhs in "Escrow" deposit with the defendant in connection with the purchase of shares from the third party under the MOU. The said fact is admitted in Ex.A11 also. As stated above for creation of an "Escrow" arrangement it is not necessary that the party, for whose benefit the amount is kept in deposit, should be a signatory to the arrangement. Since the third party with whom the money or deed is deposited is under an obligation to return the same to the grantee after the conditions of the grant are fulfilled, it is necessary for the person holding the money or deed to satisfy itself if the terms and conditions of the agreement are fulfilled or not. Therefore, the observations of the Court below towards the end of para 14 of the order under appeal in Civil Miscellaneous Appeal No.3422 of 1999, "…… it is not for the respondent (defendant) bank to adjudicate upon the terms and conditions of the document, that was held by it under the escrow arrangement" cannot be said to be correct.
>
> Looking at the issue in another angle the "Escrow" arrangement entered into by the plaintiff with defendant, in connection with the purchase of shares from the third party, is an agreement between the plaintiff and defendant. Therefore, plaintiff and defendant, as parties to the agreement under Ex.B1 are bound by the terms of the arrangement between them. Therefore, for Ex.B1 to come into force it is not necessary for the third party to sign Ex.B1. But surprisingly plaintiff suppressed the MOU and Ex.B1 also in the plaint and the affidavit filed in support of inasmuch AS No.1365 of 1999, and for obvious reasons did not seek a declaration in respect of MOU or Ex.B1 in his suit. For this reason also, the Court below was in error in holding that since the third party has not signed Ex.B1, it is an ineffective document.
>
> 22. When once shares are released and sent to the defendant by the Income Tax Department, and blank share transfer forms are delivered by the third party to the defendant, defendant as

per Ex.B1, is under an obligation to transfer proportionate amount of the value of the shares released, with accrued interest thereon, to the third party by debiting the same to the account of the plaintiff under 'escrow' arrangement. Therefore, *S.Barkat Ali and others v. Dharmambal Ammal,* AIR 1940 Mad. 98 and *N.M.N. Duraiswami Chettiar v. Dindigul Urban Co-operative Bank Limited and another,* AIR 1957 Mad.745, relied upon by the learned Counsel for the plaintiff, in support of his contention that the relationship between the banker and its constituent is that of a debtor and creditor are of no help for a decision in this case. The facts in those cases are entirely different from the facts of this case, and the Court in those cases was not either considering or deciding the nature of amounts deposited with a banker under an 'Escrow' arrangement. The Supreme Court in *Shanti Prasad Jain v. The Director of Enforcement* AIR 1962 Supreme Court 1764 held :

> "the law is well settled that when moneys are deposited in a Bank, the relationship that is constituted between the banker and the customer is one of debtor and creditor and not trustee and beneficiary. The banker is entitled to use the moneys without being called upon to account for such user, his only liability being to return the amount in accordance with the terms agreed between him and the customer. And it makes no difference in the jural relationship whether the deposits were made by the customer himself, or by some other persons, provided the customer accepts them. *There might be special arrangement under which a Banker might be constituted a trustee,* but apart from such an arrangement, his position *qua* Banker is that of a debtor and not trustee".

In *New Bank of India Ltd. v. Pearey Lal,* AIR 1962 Supreme Court 1003, it is held that :

> "In the absence of other evidence a person paying money into a Bank, whether he is a constituent of the Bank or not, may be presumed to have paid the money to be held as bankers ordinarily hold the moneys of their constituents. If no specific instructions are given at the time of payment or thereafter, and even if the money is held in a suspense account the bank does not thereby become a trustee for the amount paid. In other words, when a person dealing with a bank delivers money to the Bank an intention to create a relation of creditor and debtor between him and the Bank is presumed, it being the normal course of the business of the Bank to accept deposits from its

customers. But this presumption is one of fact arising from the nature of the business carried on by the Bank and is rebutted by proof of special instructions, or circumstances attending the transaction. *Where the money is paid to a bank with special instructions to retain the same pending further instructions or to pay over the same to another person who has no banking account with the bank and the bank accepts the instruction and holds the money pending instructions from that person, or where instructions are given by a customer to his banker that a part of the amount lying in his account be forwarded to another bank to meet a bill to become due and payable by him and the amount is sent by the broker as directed, a trust results and the presumption which ordinarily arises by reason of payment of the money to the bank is rebutted".*(emphasis supplied)

Therefore, in view of the instructions given by the plaintiff in Ex.B1, defendant should be deemed to be in the position of a 'deemed trustee' for the amount of Rs.200 Lakhs deposited by the plaintiff with it, for a period of three years from 10-10-1996 or three months from the date of last release of shares by the Income Tax Department. So, the mere fact that the defendant issued Exs.A9 and A10 certificates, which obviously must have been issued at the request of plaintiff, that the amounts mentioned therein are standing to the credit of the account of the plaintiff, can have no relevance or consequence for deciding this appeal. Exs.A4 to A6, income tax deduction certificates also have no relevance for a decision in these proceedings, because as long as the money is lying in deposit in the name of the plaintiff, the defendant is under an obligation, under the provisions of the Income Tax Act, to deduct tax on the interest accrued and send the same to the Income Tax Department. Therefore, defendant rightly deducted income tax on the interest accrued and sent Form No.16-A, Exs.A4 to A6 certificates to the plaintiff."

Section 29 of the Indian Penal Code defines 'document' as :

"The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means intended to be used, or which may be used, as evidence of that matter.

Explanation 1.-It is immaterial by what means or upon what

substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations : A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document. A cheque upon a banker is a document. A power-of-attorney is a document. A map or plan which is intended to be used or which may be used as evidence, is a document. A writing containing directions or instructions is a document.

Explanation 2.- Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section although the same may not be actually expressed.

Illustration: A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

Section 3(18) of General Clauses Act 1897 defines ‘document’ as hereunder :

> "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter”

Oxford Advanced Learner’s Dictionary of Current English, 5th Edition, specifies :

> “**Document :** An official or formal paper, form, book etc., giving information about evidence or proof of, or a record of, legal documents; documents of ownership; travel documents; Documents detailing government meetings were leaked to the press.”

Likewise, Black's Law Dictionary with pronounciations, 6th Edition, specifies :

> "**Document:** an instrument on which is recorded, by means of letters, figures, or marks, the original, official, or legal form of defendant, which may be evidentially used. In this sense the term "document" applies to writings; to words printed, lithographed, or photographed; to maps or plans; to seals, plats, or even stones on which inscriptions are cut or engraved. In plural, the deeds, agreements, title-papers, letters, receipts, and other written instruments used to prove a fact. As used as a verb, to support with documentary evidence or authorities.
>
> Within meaning of the best evidence rule, document is any physical embodiment of information or ideas; e.g., a letter, a contract, a receipt, a book of account, a blueprint, or an X-ray plate.

No doubt in relation to the expression or word "document" employed in Section 131 of the Act it was contended that it being just money it would not fall under the expression 'document' and hence even on the prima facie reading of the language employed in Section 131 of the Act it cannot be said that the 1st respondent is empowered to issue the impugned proceeding.

16. Whether the impugned order be sustained : In the light of the Excise Policy of the State Government several applicants made applications along with demand drafts and in view of the decisions of this Court in relation to the said Policy holding the same as bad in Law, the State Government may have to return the said demand drafts. The Investigative Agency of the Income Tax Department had entered this fray to the limited extent of unearthing the real persons

behind these monetary transactions. The learned Senior Standing Counsel representing the Income Tax Department had placed lot of material relating to several Districts and also produced the statistical data in several cases and meticulously had explained how the applicants who can be said to have made the applications along with the demand drafts are not the real persons and why *bona fide* the Income Tax Department is suspecting and how the directions issued in the subsequent proceedings are essential for the purpose of such investigation had been explained. It is true that in the interest of protecting public exchequer this move was taken by the Income Tax Department. However, the investigative machinery of the Income Tax Department may have to operate within the permissible limits as provided by the statutory provisions and it cannot act beyond thereto under the guise of protecting the public exchequer. In this backdrop, now it has to be seen whether the impugned proceeding of the 1st respondent to be sustained or liable to be quashed.

17. The relevant statutory provisions i.e., Sections 131 and 132 of the Act already had been specified above. The words "….*shall for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (V of 1908) when trying a suit in respect of the following matters* …." in Section 131(1) of the Act would assume some importance. Section 131(1)(c) specifies about compelling the production of books of account and other documents.

In Section 131(1A) of the Act, the words "….*referred to in sub-section (1) of Section 132 before he takes action under clauses (i) to (v) of that sub-section*….", the words "….. *has reason to suspect that any income has been concealed or is likely to be concealed*…..", the words "….. *by any person or class of persons within his jurisdiction*…..", the words "…… *then for the purpose of making any enquiry or investigation relating thereto*…..", the words "….. *it shall be competent for him to exercise the powers conferred under sub-section (1) on the income tax authorities referred to in that sub-section*…" and also the further words "…..*notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority*" would assume lot of importance. It is the specific stand taken by the Income Tax Department that the impugned proceeding had been issued under these provisions only and hence a careful scrutiny of these provisions may be essential. It is not their case that this power is being exercised under Section 132 of the Act. In **Union of India Vs. Gopal Das Gupta** while dealing with the distinction between the powers that had been conferred directly by the Act under Section 135 and 131 it was held that the Parliament made a distinction between the powers that have been conferred directly by the Income-tax Act in Section 135 and those which have been made available by drawing from sources in another statute, as Section 131 makes the powers

under Civil Procedure Code applicable to Income-tax proceedings and Section 135 refers to an enquiry which is provided for in Section 142 and Section 135 is a general provision while Section 131 is a special provision and the special provisions in Section 131 have to be given the meaning for the special and limited purpose for which they have been incorporated in the said section. In **I.T.O. Vs. James Joseph O'Gorman** the Division Bench of Calcutta High Court while dealing with the powers of income-tax authorities to summon for furnishing information and production of documents under Section 131 held :

> "A plain reading of sub-section (1) of Section 131 of the Income-tax Act, 1961, makes it clear that the persons mentioned in the sub-section are vested with the powers of a court as provided under the Code of Civil Procedure, 1908. Order XI of the Code of Civil Procedure empowers a court of discovery and inspection under various rules of the Order and those rules are only applicable and could be exercised by a court in a pending suit. Under the circumstances, when similar powers have been given to the authorities concerned in Section 131(1) of the Income-tax Act, as have been given under the Code of Civil Procedure to a Court, unless there is a proceeding pending before the authorities concerned, no such power can be exercised."

A Division Bench of Bombay High Court in **Rina Sen Vs. C.I.T., Patna** held :

> "The existence of a pending proceeding is a condition precedent and sine qua non for the exercise of power under Section 131(1) of the Income tax Act, 1961. The words "notwithstanding that no proceeding with respect to such person or class of persons are pending" occurring in sub-section (1A) OF Section 131 leave no room for doubt that while

the authorities specified under Section 131(1A) are empowered to take action if there is “reason to suspect” that any income has been concealed or is likely to be concealed by any person or class of persons even though no proceeding with respect to such person or class of persons is pending before him or any other income tax authority, the authorities specified in Section 131(1) of the Act can do so only if a proceeding is pending before them. The proceeding within the meaning of Section 131(1) of the act must, therefore, be an independent proceeding pending from before and it is only in connection with that proceeding that commission can be issued.

If was further held that :

“The petitioner had challenged the validity of the notice dated March 22, 1992, issued by the Assistant Valuation Officer in the matter of ascertainment of cost of construction etc., of the house property of the assessee, in terms of Section 131(1)(d) and its service could not be interpreted as amounting to initiation of any proceeding. In order to confer jurisdiction on the Assessing Officer etc., to issue commission, that is to say, to make reference to the Valuation Officer to ascertain the cost and age of construction of the house, a proceeding must be pending from before. It was plain that if the impugned notice was struck down, the so-called proceedings would also automatically stand quashed. The proceeding could not also be deemed to be pending with the issue of the notice dated March 8, 1991, under Section 143(2). From a bare perusal of the notice it was clear that it had been issued in connection with the assessment year 1990-91. In other words, pursuant to the said notice, the Assessing Officer was entitled to require the petitioner to furnish such information as might be necessary in connection with ascertainment of income during the accounting year relevant to assessment year 1990-91. However, it was the definite case of the petitioner that the house in question was constructed during the period from 1967 to 1973. While considering the question of ascertainment of income during the period relevant to the assessment year 1990-91 under Section 143(3) of the Act, the Assessing Officer could not travel back to the alleged period of construction. The petitioner had produced evidence while strongly suggested that after purchase of the land in 1965, she constructed a portion of the house at least prior to December, 1968 when

she was granted electric connection and completed the construction prior to 1974 when the Ranchi municipality started collecting taxes etc., with respect to the house. In her return filed for the assessment year 1982-83, the petitioner had declared rental income, allegedly from the said house, at Rs.5,714 which after due enquiry was accepted by the Income-tax Officer under Section 143(3) of the Act. This also showed, prima facie, that the house was in existence prior to April 1, 1982. The impugned notice was not valid and was liable to be quashed."

In **Jamnadas Madhavji & Co. Vs. Panchal** it was held :

"The Officers mentioned in Section 131(1) of the Income-tax Act, 1961 viz., the Income-tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner, Commissioner (Appeals) and Commissioner are conferred with the same powers as are vested in a court under the Code of Civil Procedure , 1908 when trying a suit. The Code of Civil Procedure confers upon a Court powers, for the exercise whereof, existence of a suit or a proceedings is a sine qua non. In *pari materia*, therefore, powers in respect of matters mentioned in Section 131(1) viz., (a) discovery and inspection ; (b) enforcing the attendance of any person and examining him on oath ; (c) compelling the production of books of account and other documents; (d) issuing commissions, can be exercised only if a proceeding is pending before the concerned officer and not otherwise. Under sub-section (1A) of Section 131, if the Assistant Director of Inspection has reason to suspect that any income has been concealed, then, for an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) of Section 131, notwithstanding that no proceedings with respect to such person are pending before him or any other income-tax authority. It is thus obvious that whereas an officer mentioned in Section 131(1) can exercise powers thereunder only if a proceeding is pending before him, the officer mentioned in Section 131(1A), viz., the Assistant Director of Inspection, can exercise such powers notwithstanding that no proceedings are pending before him or before any other officer. Also relevant to the context is the form of the summons under Section 131(1) which commences with the words :*"whereas your attendance is required in connection with the*

proceedings under the Income-tax Act in your case". The form also assumes and presupposes the existence of a pending proceeding before the concerned officer. Further, Explanation 2 to Section 132 of the Act also indicates that but for its artificial and extended definition of the word "proceeding", proceeding would mean one actually pending and not one completed and concluded.

The assessee submitted his income-tax returns for the assessment years 1972-73, 1973-74 and 1974-75. For the assessment years 1972-73 and 1973-74, assessment orders were passed by the Income-tax officer in March and April, 1975 and the appeals against these orders and further appeals to the Income-tax Appellate Tribunal were all disposed of finally. For the assessment year 1974-75, the assessment proceedings became time-barred in March 1977. Subsequently, the assessee received from the Income-tax Officer summons under Section 131 of the Act calling upon the assessee to furnish information, documents and books of account on various points specified therein in respect of the previous years relevant to the very assessment years 1972-73 to 1974-75. In reply thereto, it was submitted that the assessments for the assessment years 1972-73 and 1973-74 were completed long back in March/April, 1975 and the assessment for the assessment year 1974-75 had become time-barred. Consequently, as no proceedings were pending, there was no question of any summons being issued. The assessee then received a letter dated October 30, 1980 along with a fresh summons stating that Section 131 could be invoked even where no proceedings were pending and that the purpose of the information called for was with a view to investigate whether the above assessment should be reopened under Section 147 or not. On a writ petition it was held :

i. that no proceeding as pending when the Income-tax Officer issued the impugned summons and, therefore, the summons was liable to be quashed;

ii. that the reason for issuing the summons as stated by the Income-tax Officer in his letter of October 30, 1980 was to investigate whether the assessment for the assessment years 1972-73 to 1974-75 should be reopened under Section 147. It was for the Income-tax Officer to first decide whether he had reason to believe that income had escaped assessment. Only

> if he decided that question in the affirmative, could he initiate proceedings under Section 147 and only thereupon could he become entitled to invoke Section 131(1). Therefore, the impugned summons was liable to be quashed."

In fact, the learned Judge followed the view expressed in **Dwijendra Lal Brahmachari Vs. New Central Jute Mills Co.Ltd. .**

18. In the light of the clear language of Section 131(1) and 131(1A) of the Act, the question whether a demand draft would fall under the definition of 'document' may not be such an essential question to be considered. The relevant definitions in this regard and also the contention that it is just an escrow arrangement and also the contention that it only represents money, already had been referred to supra. The question whether a demand draft is a 'document' within the meaning of Section 131(1) and 131(1A) of the Act or not would assume importance if these provisions can be otherwise attracted to save the power of the 1st respondent to issue the impugned proceeding. On a careful scrutiny of the language employed in both the provisions referred to supra and the limited purpose for which the said provisions can be invoked as clearly envisaged and specified in the said provisions, this Court is of the considered opinion that only for the purposes specified therein, this power can be exercised by the 1st respondent and not otherwise. It is no doubt true that the Income Tax Department in the interest of protecting the public exchequer and

unearthing the benami monetary transactions and to catch hold of the real persons behind the transactions had commenced this move, but it is unfortunate that it has no legal sanction. When power had been exercised by an authority not conferred by law, such action cannot be upheld on the ground that if otherwise held, it would be detrimental to the public exchequer. Courts of Law cannot deviate from the specific statutory provisions unless they are otherwise declared to be either invalid or unconstitutional as such. When the 1st respondent intends to take shelter under the umbrella of sub-section (1) and sub-section (1A) of Section 131 of the Act, it is the bounden duty of the said authority to justify the issuance of the impugned proceeding and to satisfy the Court that in Law it is permissible for him to do so. In the absence of such justification, on such a ground, the writ Court cannot come to the aid of the Income Tax Department in upholding the impugned proceeding under the guise of protecting the public exchequer. The Counsel representing the writ petitioners in fact made it clear that the investigative machinery of the Income Tax Department can be well utilized for the purpose of unearthing the real persons behind the monetary transactions by resorting to the procedure as specified by different provisions of the Act but definitely not by issuing the impugned proceeding under the provisions which would not authorize the Department to do so. Be it small or big, true or suspiciable, real or benami fish in the applicants pool, the resultant

of the Excise Policy of the State Government, though the object aimed at by the Income Tax Department is appreciable, the mode adopted by the issuance of the impugned proceeding is impermissible in law. Hence, this Court is left with no other option except to hold that the impugned proceeding issued by the 1st respondent is without authority or jurisdiction inasmuch as the 1st respondent lacks such authority under the provisions specified supra and hence the impugned proceeding definitely cannot be sustained.

19. <u>To what relief :</u> In the light of the foregoing discussion, despite several minute technical objections raised by the learned Senior Standing Counsel for the Income Tax Department, the writ petitioners are bound to succeed and accordingly the Writ Petition is hereby allowed with a further direction to all the concerned Excise and Prohibition Superintendents in the State to forthwith return the demand drafts in question to all the applicants as expeditiously as possible, at any rate, within a period of two weeks from today. Inasmuch as the Income Tax Department had initiated this action, in the interest of public exchequer this Court makes no order as to costs.

Justice G. Bikshapathy

_____

Justice P.S. Narayana

Date : -4-2005

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Wednesday, Thirteenth day of April Two Thousand and Five.

ASSISTANT REGISTRAR

To:

One copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

One copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

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Hyderabad.

3. The Superintendent of Prohibition & Excise,

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4. The Prohibition & Excise Superintendent,

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5. The Prohibition & Excise Superintendent,

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6. The Prohibition & Excise Superintendent,

Vizag, Visakhapatnam District.

7. The Prohibition & Excise Superintendent,

Kakinada, East Godavari District.

8. The Prohibition & Excise Superintendent,

Eluru, West Godavari District.

9. The Prohibition & Excise Superintendent,

Machilipatnam, Krishna District.

10. The Prohibition & Excise Superintendent,

Guntur, Guntur District.

11. The Prohibition & Excise Superintendent,

Ongole, Prakasham District.

12. The Prohibition & Excise Superintendent,

Nellore, Nellore District.

13. The Prohibition & Excise Superintendent,

Chittur, Chittur District.

14. The Prohibition & Excise Superintendent,

Kadapa, Kadapa District.

15. The Prohibition & Excise Superintendent,

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16. The Prohibition & Excise Superintendent,

Kurnool, Kurnool District.

17. The Prohibition & Excise Superintendent,

Karimnagar, Karimnagar District.

18. The Prohibition & Excise Superintendent,

Mahaboobnagar, Mahaboobnagar District.

19. The Prohibition & Excise Superintendent,

Khammam, Khammam District.

20. The Prohibition & Excise Superintendent,

Warangal, Warangal District.

21. The Prohibition & Excise Superintendent,

Nizamabad, Nizamabad District.

22. The Prohibition & Excise Superintendent,

Sangareddy, Medak District.

23. The Prohibition & Excise Superintendent,

Ranga Reddy District.

24. The Prohibition & Excise Superintendent,

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25. The Prohibition & Excise Superintendent,

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26. The Prohibition & Excise Superintendent,

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27. 2 C.Cs. to Government Pleader for Prohibition & Excise,

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28. C.Cs. to Advocate General,

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High Court Buildings,

Hyderabad (OUT).

29. 2 C.Cs. to Standing Counsel for

Income-tax Department,

High Court of Andhra Pradesh,

High court Buildings,

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