Ludlow Jute Company Ltd. Vs Apeejay Pvt. Ltd

Court: Calcutta High Court

Date of Decision: July 7, 1978

Acts Referred: Constitution of India, 1950 â€" Article 19, 226, 226(1), 31
Foreign Exchange Regulation Act, 1973 â€" Section 28, 29, 29(1), 31, 31(1)
Monopolies and Restrictive Trade Practices Act, 1969 â€" Section 20(A)

Citation: 82 CWN 1078 : (1978) 2 ILR (Cal) 310

Hon'ble Judges: M.M. Dutt, J; D.C. Chakravorti, J

Bench: Division Bench

Advocate: Ashoke Kumar Sen, Monotosh Mukherjee, A.C. Bhabhra, S.N. Dutt, in F.M.A. 430 of 1978, S.M. Sanyal and L.K. Chatterjee, in F.M.A. 1009 of 1978, for the Appellant;N.C. Chakrabarti, L.K. Chatterjee in F.M.A. 430 of 1978, Ashoke Kumar Sen, Monotosh Mukherjee, R.C. Deb, Balai Roy, A.C. Bhabhra and S.N. Dutta, F.M. A 1009 of 1978, for the Respondent

Judgement

M.M. Dutt, J.
These two appeals, one preferred by Ludlow Jute Company Ltd. (hereinafter referred to as "Ludlow") and the other by the

Union of India and another, are directed against the judgment of a learned Single Judge of this Court. By the said judgment, the learned Judge

made the Rule nisi obtained by the Respondent No. 1 Apeejay Pvt. Ltd. (hereinafter referred to as "Apeejay") on its application under Article 226

of the Constitution absolute.

2. The Appellant Ludlow is a company incorporated under the law of Massachusetts, in the United States of America. The Appellant has its Jute

Mills in India. On June 8, 1977, Ludlow entered into an agreement with Apeejay. By the said agreement Ludlow agreed to sale and Apeejay

agreed to purchase the assets of Ludlow at a price of U.S. 2,176,000-00 on certain terms and conditions. Some of the terms relevant for these

appeals are set out below:

9. Conditions precedent to purchaser"s obligations: All obligations for the Purchaser arising from this Agreement are subject to the fulfilment of

each of the following conditions.

9.4. Governmental Approval: Approval satisfactory to the Purchaser and its Counsel of the consummation of the transactions contemplated by this

Agreement shall have been obtained from the Government of India pursuant to the provisions of the Foreign Exchange Regulation Act of 1973 and

any other applicable laws, rules or regulations of India and such approval shall be and remain in full force and effect at all relevant times.

10.4. Government Approval: Approval satisfactory to seller and its Counsel of the consummation of the transaction contemplated by this

Agreement and their remittance of the proceeds thereof to the United States shall have been obtained from the Government of India pursuant to

the provisions of the Foreign Exchange Act of 1973 and any other applicable laws, rules or regulations of India and such approval shall be and

remain in full force and effect at all relevant times.

3. It appears that Ludlow had made an application to the Government of India praying for permission to transfer its assets to Apeejay in terms of

the agreement, but the Government of India by its order dated November 23, 1977, refused to give its approval to proposed transaction. The said

order of the Government of India was accepted by Ludlow, but Apeejay felt aggrieved and moved this Court under Article 226 of the Constitution

against the said order. It was alleged by Apeejay that neither it nor its representative was ever heard by the Central Government and that no

opportunity was given to it to explain or represent its case. It was contended that the disapproval of the agreement by the Central Government was

vitiated as the Central Government acted in violation of the principles of natural justice. Further, it was contended that the Central Government

acted without jurisdiction in not assigning any reason for the disapproval. It was prayed that a writ in the nature of mandamus should be issued

directing the Central Government not to give effect to the impugned order dated June 8, 1977. It was also prayed that a writ in the nature of

certiorari should be issued for the purpose of quashing the impugned order. On the said application, a Rule nisi was issued.

4. The Rule nisi was opposed by Ludlow as also by the Union of India. Ludlow filed two affidavits-in-opposition, one dated December 20, 1977

and the other dated January 9, 1978. Both the said affidavits were affirmed by T.J. Dineen, the Managing Director of Ludlow. In both these

affidavits, it was alleged on behalf of Ludlow that the company found it difficult to manage its business in India from the United States. Accordingly,

it entered into the assets purchase agreement with Apeejay. Pursuant to Clause 9.4 in the agreement and as advised and directed by the Reserve

Bank of India, Ludlow made an application to the Director of Investment, Department of Economic Affairs, Government of India, for permission

to transfer its business to Apeejay. It was alleged that Apeejay had also met the Government authorities and represented its case and also

participated on or about June 29, 1977, in a joint meeting with representatives of the Government of India and Ludlow. In the meantime, as the

permission to carry on business in India granted to Ludlow by the Reserve Bank of India was expiring, Ludlow wrote to the Reserve Bank for

further extension of time and the Reserve Bank by its letter dated November 12, 1977, granted time for completion of transfer of the business.

Ultimately by the letter dated November 23, 1977, the Department of Economic Affairs, Ministry of Finance, Government of India communicated

to Ludlow the inability of the Government to grant approval to the proposed transfer of assets by Ludlow to Apeejay. Ludlow by its letter dated

November 30, 1977, to the Government of India accepted the slid decision and through its legal advisers, M/s J.B. Dadachanji and Company,

Advocates, New Delhi, by their letter dated December 2, 1977, informed Apeejay that in view of the Government''s decision the agreement

between them had become inoperative and null and void. Further, the case of Ludlow was that under the assets purchase agreement dated June 8,

1977, Apeejay was to assume all liabilities for losses incurred from March 17, 1977, till the date of transfer in the event of an approval being

granted to the purchase agreement. As the approval was not granted by the Government, those losses amounting to Rs. 68.88 lakhs for the period

between March 1, 1977 and December 11, 1977, had to be borne by Ludlow. After the receipt of the said letter of rejection dated November

23, 1977, Ludlow, in view of the said losses and in order to mitigate further losses which were likely to be incurred by it, started negotiations with

various parties and ultimately entered into an agreement with M/s Kanowria Chemicals and Industries Ltd. that pending the outcome of the writ

petition, Kanowria Chemicals and Industries Ltd. would get the jute products manufactured for export at the Jute Mills of Ludlow in Calcutta by

drawing their capital and using the staff and workmen of Ludlow on payment of a fixed monthly fee of Rs. 1,00,000 and also 15% of the net

profits which would be in excess of rupees one crore per annum. Further, Ludlow has also entered into an assets purchase agreement with M/s

Kanowria Chemicals and Industries Ltd. which again is subject to the ultimate orders of this Court on the writ petition moved by Apeejay. It was

contended by Ludlow that the writ petition was not maintainable as it sought to enforce an alleged contractual obligation. It was also contended

that Apeejay had no contractual right against Ludlow after the decision of the Central Government.

5. The Central Government raised certain technical objections in its affidavit-in-opposition and alleged that Apeejay did not approach the Central

Government for the grant of approval to the proposed transaction and as such, Apeejay had no locus standi to maintain the writ petition. After

considering the proposed trans action in all its aspects, the Central Government was unable to give its approval to the said proposed transaction

and accordingly advised Ludlow to treat the matter as closed by its letter dated November 23, 1977. Ludlow had accepted the said decision of

the Government by its letter dated November 30, 1977, addressed to the Under Secretary, Ministry of Finance. It was contended that no part of

the cause-of-action arose within the jurisdiction of this Court and as all the Respondents were outside the jurisdiction, the petition under Article

226 of the Constitution was not maintainable. It was denied that Apeejay had any right to get an opportunity of being heard as it had not made any

application, nor had it any locus standi to make any representation. Further, it was denied that the Central Government had acted without

jurisdiction in disapproving the proposed transaction or that the Central Government had acted in violation of the principles of natural justice.

6. At the hearing of the Rule nisi, it was contended on behalf of Apeejay that the Central Government did not proceed in accordance with the rules

of natural justice inasmuch as Apeejay was not given any hearing and that no reason was given by the Central Government in refusing to grant

approval to the asset purchase agreement. On the other had, it was contended on behalf of both Ludlow and Union of India that Apeejay was not

entitled to any hearing and that in any event, no grievance could be made in that regard, for, as a matter of fact such hearing was given to Apeejay.

It was further contended by them that no reason was required to be given by the Central Government in refusing to grant approval to the proposed

transaction.

7. The learned Judge came to the findings that no hearing was given to Apeejay, that no reason was given in the impugned order disapproving the

proposed transaction and that accordingly, the Central Government acted in violation of the principles of natural justice. In that view of the matter,

the learned Judge by his judgment quashed the impugned order of the Central Government dated November 23, 1977 and declared that the

agreement dated June 8, 1976, subsisted subject to the approval of the Central Government. Further, it was observed by the learned Judge that

this order would not prevent Ludlow to enter into a fresh agreement with a third party at its own risk and peril. A writ in the nature of mandamus

was directed to be issued by the learned Judge commanding the Union of India and the Controller of Capital Issues not to give effect to the

impugned order. The Rule was made absolute. Hence these two appeals.

8. Ludlow is a company not incorporated under any law in, force in India. The Foreign Exchange Regulation Act, 1973, puts certain restrictions on

acquisition, holding, transfer etc. of immovable property in India by such a company. Section 31(1) of the said Act provides as follows:

(1) No person who is not a citizen of India and no company (other than a banking company) which is not incorporated under any law in force in

India or in which the non-resident interest is more than forty per cent shall, except with the previous general or special permission of the Reserve

Bank, acquire or hold or transfer or dispose of by sale, mortgage, lease, gift, settlement or otherwise any immovable property situate in India:

Provided that nothing in this sub-section shall apply to the acquisition or transfer of any such immovable property by way of lease for a period not

exceeding five years.

9. It is manifest from Section 31(1) of the Foreign Exchange Regulation Act, 1973, that it is the Reserve Bank of India which is alone competent to

grant permission for the transfer to Apeejay by Ludlow of the assets belonging to Ludlow. The said Act does not provide that such an application

may also be made to the Central Government. But nevertheless, the application was made to the Central Government for its permission to

complete the proposed assets purchase transaction. Indeed Clause 4 of the said agreement makes it obligatory to obtain the approval of the

Central Government and in our opinion, it will not be unreasonable to infer that in discharge of such obligation Ludlow had made the application to

the Central Government for its approval of the proposed transaction. It is, however, the case of both Ludlow and Apeejay, in so far as we have

been able to ascertain the same from the submission made by their respective Learned Counsel, that in view of the guidelines framed by the Central

Government, Reserve Bank was to refer the matter to the Central Government, but in order to expedite the matter Ludlow had made the

application for approval directly to the Central Government. It appears that by virtue of the power conferred on it by Section 75 of the Foreign

Exchange Regulation Act, the Central Government has framed certain guidelines. Some of these guidelines relate to Section 29 of the Act. Before

we refer to the relevant guidelines, it may be stated that Section 29 has no manner of application whatsoever to the facts of the present case.

Section 29(1) inter alia provides that a person resident outside India (whether a citizen of India or not) or a person who is not a citizen of India but

is resident in India, or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-

resident interest is more than forty per cent or any branch of such company, shall not, except with the general or special permission of the Reserve

Bank,

(a) carry on in India or establish in India a branch, office, or other place of business for carrying on any activity of a trading, commerce or industrial

nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained u/s 28; or

(b) acquire the whole or any part of any undertaking, in India of any person or company carrying on any trade, commerce or industry or purchase

the shares in India of any such company.

10. It thus appears that Section 29(1) does not contemplate the approval of the Central Government for the transfer of assets by a company not

incorporated under any law in force in India. Under the guidelines framed by the Central Government some matters which are provided for in

Section 29 will be dealt with by the Reserve Bank of India and some other matters will be referred by the Reserve Bank of India either to the

Ministry of Industry and Civil Supplies or to the Ministry of Finance (Department of Economic Affairs), on the following basis:

Ministry of Industry and Civil Supplies--

(a) All cases relating to manufacturing and industrial activities.

(b) Cases relating to industrial consultancy. Department of Economic Affairs--

(a) All cases relating to trading companies.

(b) All cases relating to plantation companies, construction and non-manufacturing and non-industrial companies.

(c) Acquisition of the whole or any part of any undertaking in India carrying on any trade, commercial or industrial nature.

(d) Purchase of shares of Indian companies.

It thus appears that none of the above guidelines provides for the reference by the Reserve Bank of India to the Central Government of any case

involving a proposal for sale by a foreign company of its assets to any other company incorporated under the law of India.

11. It is contended on behalf of both Ludlow and Apeejay that if the Central Government had approved of the proposed transaction, there would

not be any difficulty to obtain the permission of the Reserve Bank u/s 31(1) and that was also one of the considerations for which Ludlow had

made the application to the Central Government. It may be said that from the practical point of view there was some justification for Ludlow to

make an application for approval to the Central Government. But the provisions of the Foreign Exchange Regulation Act do not confer any

authority on the Central Government to deal with such an application. As has been said earlier, it is only the Reserve Bank of India which can

entertain and dispose of such an application u/s 31 of the Act. In our opinion, it was not only from the practical point of view that the application

was made by Ludlow to the Central Government but, as has been noticed already, it was obligatory for Ludlow to make an application to the

Central Government for its approval of the proposed transaction as provided in Clause 9.4 of the agreement. It, therefore, comes to this, that

although the Central Government had no authority under the statute to deal with any such application, the two contracting parties, namely, Ludlow

and Apeejay chose to obtain the approval of the Central Government in fulfilment of one of the conditions precedent to, the consumption of the

agreement. The Central Government dealt with the application not as a statutory authority, far less a quasi-judicial authority, but as a referee or an

arbiter of two private individuals. The position of the Central Government was, therefore, no better than a private individual in whom the two

contracting parties reposed confidence in the matter of the approval of the proposed assets purchase agreement. The Central Government had no

obligation to consider such an application and it could have expressed its unwillingness to deal with the application or could refer the Applicant to

the Reserve Bank of India for necessary permission. In such circumstances, we fail to see how the principles of natural justice on which much

arguments have been made on behalf of the parties, can be invoked. We may dispose of these appeals on that ground alone, but as elaborate

submission have been made on behalf of the parties before us on the question as to whether the Central Government had followed the rules of

natural justice in dealing with the application of Ludlow, we would like to say a few words in that regard.

12. It is significant to notice that the Learned Counsel of Ludlow and Apeejay have made their respective submissions on the footing that the

Central Government was exercising administrative functions in regard to the application of Ludlow for approval of the assets purchase agreement.

Indeed, Mr. Asoke Kumar Sen, Learned Counsel for Ludlow, submits that the function of the Central Government is only administrative by virtue

of the guidelines framed for the Reserve Bank of India by the Central Government u/s 75 of the Foreign Exchange Regulation Act in the matter of

exercise of Reserve Bank''s function u/s 29 of the said Act. It has been already pointed out that Section 29 or the guidelines framed for the

operation of that section have no manner of application to the facts and circumstances of the present case.

13. We may, however, proceed on the assumption that the Central Government was an administrative authority and was exercising administrative

functions so far as the application of Ludlow was concerned. It is now well-settled that an administrative authority is also required to act in

accordance with the principles of natural justice. The grievance of Apeejay is that the Central Government had violated the rules of natural justice

inasmuch as in the first place, Apeejay was not given any opportunity of being heard and in the second place, the impugned order did not contain

any reason for the refusal by the Central Government to grant approval to the proposed transaction. In The Keshav Mills Co. Ltd. and Another

Vs. Union of India (UOI) and Others, it has been laid down by the Supreme Court that the principles of natural justice do apply to administrative

orders or proceedings. The concept of natural justice cannot be put into a straitjacket. The only essential point that has to be kept in mind in all

cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned

should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. In

Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it has been observed by Bhagwati J., who delivered the majority judgment, that the

aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure

justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to

administrative inquiry. In view of the said observation, it is apparent that the administrative authorities are also to follow the rules of natural justice

which mean that they should give the parties to be affected by their decisions reasonable opportunities to represent their cases. In other words, the

administrative authorities are to observe in all their acts ''a fair play in action''.

14. The next question is whether an administrative authority is required to give reasons for its decision. In Mahabir Jute Mills Ltd., Gorakhpore Vs.

Shibban Lal Saxena and Others, the Supreme Court has approved the following observations of the Allahabad High Court:

The function of the Government is administrative. In law administrative decisions are not generally required to be accompanied by a statement of

reasons. There is nothing in the Industrial Disputes Act or the notification aforesaid requiring the State Government to state its reasons in support of

its conclusions. There was nothing particular in the present case impelling the issuance of such a direction to the State Government.

In that case, it has been observed by the Supreme Court that in diverse society such as ours the Government has to work through several

administrative agencies which have got a very wide sphere and if every administrative order is required to give reasons it will bring the

governmental machinery to a standstill. It is well-settled that while the rules of natural justice would apply to administrative proceedings, it is not

necessary that the administrative orders should be speaking orders unless the statute specifically enjoins such a requirement. Further, it has been

observed that it is desirable that such orders should contain reasons when they decide matters affecting rights of parties. The above Supreme Court

case has been relied on by Mr. Sen and also by Mr. N.C. Chakrabarti, Learned Counsel appearing on behalf of the Central Government. It has

been contended by them that an administrative order, like the present one refusing to grant approval to the proposed transaction between Ludlow

and Apeejay, is not required to be a speaking order, for there is no provision in the statute concerned that the order should be supported by

reasons. In our view, what has been laid down by the Supreme Court in Mahabir Jute Mills" case Supra referred to above, is that when an

administrative order affects the right of any person such an order should also state the reasons.

15. In a later decision of the Supreme Court in The Siemens Engineering and Manufacturing Company of India Ltd. v. The Union of India and Anr.

AIR it has been observed by Bhagwati J. as follows:

If Courts of law are to be replaced by administrative authorities and Tribunals, as indeed, in some kinds of cases, with the proliferation of

administrative law, they may have to be so replaced, it is essential that administrative authorities and Tribunals should accord fair and proper

hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them.

Then alone administrative authorities and Tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with

the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of

audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper

spirit and mere pretence of compliance with it would not satisfy the requirement of law.

In this case, the Supreme Court has emphasised the need for giving reasons by authorities exercising quasi-judicial functions. Such authorities may

be either administrative authorities or Tribunals, but in either case the quasi-judicial functions which they exercise require that they should give

reasons in support of their orders. There is, however, some distinction between an administrative authority exercising quasi-judicial function and

such authority exercising purely administrative function. When it is purely administrative function, the authority exercising it has to observe fair play

in action and when its order affects the right of a person such authority should, in our view, also comply with the rules of natural justice by giving

such person an opportunity to make his representation and also by indicating in its order that it has acted fairly and not arbitrarily and that can be

done by giving reasons in support of the order.

16. Keeping the above principles in view, we may now consider whether Apeejay had any right which may be said to have been affected by the

order of the Central Government so as to justify its claim to a hearing by the Central Government. In the writ petition, it has been alleged that the

fundamental right of Apeejay as guaranteed by Articles 19 and 31 of the Constitution has been infringed by the impugned order. No other right has

been pleaded in the writ petition. Apart from the fact that Ludlow and Apeejay being companies are not citizens and consequently have no

fundamental rights, there cannot be any doubt that neither of them has the right, far less any fundamental right, to get an approval of the Central

Government of the proposed transaction. In Andhra Industrial Works Vs. Chief Controller of Imports and Others, it has been held by the

Supreme Court that on the basis of the Import Trade Policy an Applicant has no absolute right, much less a fundamental right, to the grant of an

import licence. That principle has been reiterated by the Supreme Court in the subsequent decision in J. Fernandes and Co. Vs. Deputy Chief

Controller of Imports and Exports and Others, . The same principle also applies to the Apeejay. In other words, Ludlow or Apeejay has no

absolute right, far less a fundamental right, to get the approval of the Central Government for the assets purchase agreement. It is contended by

Mr. Sen and Mr. Chakrabarti too that no right has been created in favour of either Ludlow or Apeejay, but the agreement in question only relates

to a proposal. The agreement never came into existence as there was no approval of the Central Government and accordingly, no right accrued to

either party to the agreement. The right claimed by Apeejay is an inchoate right. In support of that contention, Mr. Sen has placed reliance on an

English decision in Re Longlands Farm v. Superior Developments Ltd. (1968) 3 All. E.R. 552. What happened in that case was that on April 2,

1964, the Plaintiff and the Defendants, a Property Development Company, executed a document in which it was stated that the Defendants were

agreeable to the purchase of 57 acres of agricultural land at a certain price subject to the Defendants obtaining planning permission to their entire

satisfaction for the development of the land and to questions of their title being to their approval. The application for permission was made and

refused. The Plaintiff who considered his liability under the document of April 2, 1964, to be at an end, took out a summons seeking an order that

the registration of the contract be vacated. It was held that the document was not an option but was a conditional contract which would become

absolute if the Defendants obtained planning permission to their satisfaction and approved the title. In Kuenigl v. Donnersmarck and Anr. (1956) 1

Q.B. 519 it was observed by McNair J. that as the two conditions precedent to the validity of the agreement concerned were never fulfilled, the

agreement never came into effect.

17. It is not disputed by Mr. Deb, Learned Counsel for Apeejay that in order to make the agreement effective and valid, the approval of the

Central Government is necessary. It is, however, contended by him that no doubt the contract in question is a contingent contract, but Apeejay has

a right to see that the contract becomes absolute on the fulfilment of the condition precedent, namely, obtaining of the Government sanction. It is

contended by him that the right of Apeejay under the contract is not an inchoate right and therefore, Apeejay is interested in the matter of obtaining

Government sanction.

18. The contract in question is a contract of sale subject to some conditions precedent which must be fulfilled before one party can enforce the

contract against the other. Again, the right to enforce the contract by one party is an inchoate right and it will not become an absolute right so long

as the conditions precedent are not fulfilled. The first condition is that Ludlow should apply to the Central Government for the approval of the

contract. Ludlow was, therefore, under an obligation to make an application to the Central Government for its sanction. Such an application was

made by it in discharge of its obligation under the contract. So far as the Central Government is concerned, on the assumption that is the proper

authority to deal with such an application, the only right that was available to the Applicant was the right to have the application considered by it.

Such consideration should be in accordance with the rules of natural justice. On the aforesaid assumption, the question will naturally arise whether

the Central Government had dealt with the application in accordance with the rules of natural justice or at least in a fair way.

19. There is no dispute that Ludlow was given a hearing by the Central Government. Ludlow was satisfied that the Central Government had acted

fairly in the matter of disposal of the application made by it. It has no grievance against the Central Government. Ludlow was as much interested in

the contract as Apeejay. In other words, both parties were interested in the consummation of the contract which, according to them, depended on

the approval of the same by the Central Government. It is not the case of Apeejay that Ludlow had not made a proper representation to the

Central Government, nor is it the case that Ludlow was not given a fair treatment by the Central Government. The application was made by

Ludlow to the Central Government not only for its own benefit but also for the benefit of Apeejay, for they were jointly interested in the completion

of the sale. Ludlow was, therefore, acting as an agent of Apeejay. The consideration by the Central Government of the representation made by

Ludlow was consideration of the representation of Apeejay as well. It was not the contract that both Ludlow and Apeejay should jointly make an

application to the Central Government for its sanction, but it was Ludlow who was to make the application for permission. Under the contract,

Apeejay has no right to make such an application to the Central Government. In these circumstances, it is not understandable how Apeejay can

insist on a hearing by the Central Government. In our opinion, hearing given to Ludlow by the Central Government was hearing of Apeejay too.

Moreover, under the proviso to Section 31(3) of the Foreign Exchange Regulation Act, no permission shall be refused by the Reserve Bank unless

the Applicant has been given a reasonable opportunity for making a representation in the matter. If we assume that the Central Government was

discharging the function of the Reserve Bank, it had no obligation whatsoever to give any such opportunity to any person other than the Applicant

who was in this case, Ludlow.

20. Much has been said on behalf of Apeejay that the impugned order of the Central Government is vitiated as it does not contain any reason. This

contention is based on a misconception that the Central Government was the proper statutory authority in view of the guidelines framed for Section

29 of the Foreign Exchange Regulation Act. Much reliance has been placed by Mr. Deb on the observation of Lord Denning which has been

upheld by the House of Lords in Padfield and Ors. v. Ministry of Agriculture, Fisheries and Food and Ors. (1968) A.C. 997. It was observed by

Lord Denning as follows:

It is said that the decision of the Minister is administrative and not judicial. But that does not mean that he can do as he likes, regardless of right or

wrong. Nor does it mean that the Courts are powerless to correct him. Good administration requires that complaints should be investigated and

that grievances should be remedied. When Parliament has set up machinery for that very purpose, it is not for the Minister to brush it on one side.

He should not refuse to have a complaint investigated without good reason.

In that case, the Minister was under a statutory duty to make an investigation relating to a complaint. There can be no doubt that when an

administrative officer is required to perform certain duty under a statute, he should perform the same fairly. The actions in the matter should be

supported by reasons which may be said to be a basic principle of natural justice. In Union of India (UOI) Vs. Sankalchand Himatlal Sheth and

Another, relied on by Mr. Deb, Chandrachud J. (as he then was) observed as follows:

It is true that the frontiers of natural justice principles are ever expanding and Judges are becoming increasingly conscious of the range of

possibilities of those principles. They are anxious to impress the fundamentals of fair procedure on all those who exercise authority over others,

statutory or otherwise.

Relying on the said observation it is contended that even though the Central Government had no statutory duty to consider the application for

sanction, yet it was incumbent upon the Central Government to follow the fundamentals of fair procedure in dealing with the application for

sanction. The Government has to perform both statutory and non-statutory duties. Non-statutory duties are those which are required to be

performed in course of administration. Even in cases of such non-statutory actions of a Government officer affecting the rights of persons, such

officer should nor act arbitrarily but should act honestly and fairly. But in the instant case, the Central Government was not discharging any

statutory or non-statutory duty in dealing with the application made by Ludlow. It has been stated already that it was only the Reserve Bank of

India which could entertain such an application u/s 31 of the Foreign Exchange Regulation Act. Sankalchand"s case Supra referred to above has,

therefore, no application to the facts and circumstances of the instant case. In Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others,

the Supreme Court relied on the following observation of Prof. S.A. de Smith as contained in Judicial Review of Administrative Action (2nd ed. p.

418):

If the record is incomplete (e.g. because reasons or findings of material fact are omitted), has the Court power to order the Tribunal to complete its

record? It is common ground that the Court has no inherent power to compel a Tribunal to give reasons for its decisions.... If, of course, a Tribunal

is required by statute to declare its reasons or its findings on the material facts, an order of mandamus may be obtained to compel the Tribunal to

perform its legal duty.... Where a Tribunal that is not expressly obliged to give reasons for its decisions chooses not to give any reasons for a

particular decision, it is not permissible to infer on that ground alone that its reasons for that decision were bad in law. Even if it gives reasons which

are ex facie insufficient in law to support its decision, the Court will not necessarily assume that these are the sole reasons on which the Tribunal has

based its decision....

In spite of the above observation, it might be said that the Central Government should have given some reasons in not according its approval to the

proposed transaction. The Central Government was not exercising any statutory or non-statutory duty, but it was acting as a reference or an

arbiter of the parties or as a recommending authority. The question of giving reasons does not therefore arise at all. Moreover, Apeejay was not

the Applicant, but it was Ludlow who made the application. Ludlow was satisfied with the decision of the Central Government. Therefore,

Apeejay has no locus standi to challenge the said decision on the ground that no reason has been given.

21. It is, however, the contention of Ludlow that Apeejay was as a matter of fact afforded an opportunity to make representations to the Central

Government and that it did avail itself of that opportunity by making representations. In para. 2(b) of the affidavit-in-opposition of Ludlow, it has

been inter alia stated as follows:

Pursuant to the aforesaid and as advised and directed by the Reserve Bank of India, the Respondent No. 3 made an application, inter alia, to the

Director of Investment, Dept. of Economic Affairs, Govt. of India, for clearance of the Respondent No. 3"s proposal to transfer its Indian business

to the Petitioner and pursued the same with them. The Petitioner Apeejay (Pvt.) Ltd., also make the Government authorities and represented its

case as would be evident from Annexure "G" to the writ petition of the Petitioner and further they also participated on or about June 29, 1977, in a

joint meeting with the representatives of Government of India and of the Respondent No. 3.

The Respondent No. 3 referred to in para. 2(b) is Ludlow. In para. 12 of the affidavit-in-reply, Apeejay has dealt with para. 2(b) of the said

affidavit-in-opposition, but the statements which have been quoted above have not been denied by Apeejay in that paragraph or in any other

paragraph. On the contrary, in para. 29 of the affidavit-in-reply affirmed by Baijnath Singh, one of the Directors of Apeejay, it has been inter alia

stated as follows:

I further say that the Petitioner had also been present on different occasions along with the representative of the Respondent No. 3 Messrs.

Ludlow Jute Company in connection with discussions made with the Central Government for granting approval for the transfer of assets of

Respondent No. 3 to the Petitioner company.

Annexure "G" referred to in para. 2(b) of the affidavit-in-opposition is a letter dated November 15, 1977, written by Apeejay to the Controller of

Capital Issues who was also the Joint Secretary, Finance. It is apparent from the said letter that Apeejay had discussed with, the Controller of

Capital Issues in regard to the proposal for the acquisition of the Jute Mills of Ludlow. In that letter also, it was represented by Apeejay that the

assets of the four companies which were under it were much below rupees 20 crores and therefore the provision of Section 20(A) of the

Monopolies and restrictive Trade Practices Act, 1969, was not attracted. In this connection, we may set out the submission made on behalf of

Apeejay before the learned trial Judge as recorded by him in his judgment:

Mr. Deb, appearing on behalf of the Petitioner in support of the Rule, contended that in terms of Clause 10.4 of the Agreement, the right and

interest of the Petitioner in obtaining the approval of the Central Government were admitted by the Respondent no 3 in their affidavits. The

Petitioner company made the Government Authorities and represented its case. They also participated on or about June 29, 1977, in a joint

meeting held with the representative of the Government of India as well as with the Respondent No. 3.

Mr. Deb has not denied before us as having made the above submissions before the learned trial Judge. The facts stated above unmistakably show

that Apeejay was given an opportunity to make representations in regard to the grant of approval to the proposed transaction and that such

opportunity was utilised by Apeejay and as a matter of fact, it had made representations to the authority concerned and also held discussions with

such authority. In view of these facts, we do not think that the Central Government had not acted fairly or in accordance with the rules of natural

justice, even assuming that the Central Government was the authority responsible to deal with the application for approval.

22. The Applicant was Ludlow and if the Applicant accepts the decision of the Central Government, it is difficult to understand how Apeejay who

had no locus standi to make an application can challenge the order of the Central Government. If Ludlow had chosen not to make an application

as required under the terms of the contract, Apeejay would have no right to ask for specific performance of that contract for the purpose of

compelling Ludlow to make such an application for approval. It would have been, therefore, a case for breach of contract for which a civil suit for

damages might be instituted.

23. Now we may consider the question of maintainability of the application under Article 226 of the Constitution at the instance of Apeejay. Under

the unamended provision of Article 226, one must prove the existence of legal right before one can ask for any relief under that Article. It has been

noticed already that Apeejay had no locus standi to make an application to the Central Government, nor had the Central Government any authority

to deal with such an application under the Foreign Exchange Regulation Act. Further, Ludlow''s application was considered by the Central

Government and its decision has been accepted by Ludlow. We do not, therefore, find the existence of any legal right so far as Apeejay is

concerned. The learned Judge has placed reliance on a decision of the Supreme Court in The D.F.O., South Kheri and Others Vs. Ram Sanehi

Singh, and proceeded on the view that though the source of the right of Apeejay was in the contract, yet it could ask for relief against the alleged

unlawful and arbitrary action of the Central Government by a writ petition. In our view, however, that decision has no application to the instant

case. In that case, the Supreme Court has held that where the action of a proper authority invested with statutory powers is challenged, the writ

petition is maintainable even if a right to relief arises out of breach of contract. In the instant case, there is no question of the exercise of any

statutory power, for we have already discussed that the Central Government was not exercising any statutory power in dealing with the application

for approval which was made by Ludlow. Where the right is contractual and such right has not been infringed by any authority in the exercise of

statutory powers, a writ petition, in our view, will not be maintainable. Apart from all that has been stated above, there is another difficulty of

Apeejay. Under Article 226 of the Constitution as amended by the Constitution (Forty second Amendment) Act, 1976, the writ petition is also not

maintainable, for it does not come under any of Clauses (a), (b) and (c) of Article 226(1) as contended by Mr. Chakrabarti for the Central

Government. Another technical objection has been taken by Mr. Chakrabarti, namely, that as no part of the cause-of-action has arisen within the

jurisdiction of this Court, the writ petition is not maintainable. It is not necessary for us to decide that objection for, in our opinion, the writ petition

is not maintainable as Apeejay has no locus standi to move such a petition.

24. For the reasons stated above, we are of the view that the learned Judge was not right in making the Rule absolute. We, therefore, set aside the

order of the learned Judge and discharge the Rule nisi. These two appeals are allowed, but in view of the facts and circumstances of the cases, we

direct each party to bear its own costs.

25 The operation of this judgment will remain stayed for a period of three weeks from date, as prayed for on behalf of Apeejay.

D.C. Chakravorti, J.

26. I agree.