REPORTABLE

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

Judgment Reserved on: 13.10.2026
Judgment delivered on: 26.11.2026
Judgment (Full) uploaded on: 27.11.2026

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D.B. Civil Writ Petition No. 49/1996
CNR: RJHC010075361996 | URN: CW / 209U / 1996

Jaisalmer Zila Kisan Sangharsh Samiti, Jaisalmer through its Zila Mantri, Dhan Raj Vyas S/o Shri Raman Lalji Vyas, aged 61 years, resident of village Polji ki Deri, Tehsil & Distt. Jaisalmer

----Petitioner

Versus

1. The State of Rajasthan through Collector, Jaisalmer
2. The Commissioner, Colonisation (Indira Gandhi Canal Project), Bikaner
3. The Deputy Commissioner, Colonisation (Indira Gandhi Canal Project) and Allotting Authority, Jaisalmer
4. The Deputy Commissioner, Colonisation (Indira Gandhi Canal Project) Nachna, District Jaisalmer
5. The Assistant Commissioner, Colonisation (Indira Gandhi Canal Project), Mohangarh, Distt. Jaisalmer.
6. Dr. Ramji Ram s/o Shri Gula Ramji, R/o Chandhan, Tehsil & Distt. Jaisalmer.

----Respondents

Members of the Bar : Mr. Arpit Bhoot
Mr. Vikram Choudhary
Mr. Tanveer Ahamad through V.C.
Mr. Amit Kumar Purohit
Mr. Mrinal Khatri

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Mr. Rajesh Panwar, Senior Advocate & Additional Advocate General assisted by Mr. Aayush Gehlot, Mr. Rakesh Sharma, Mr. Monal Chug, Ms. Pratyksha Rajpurohit, Mr. Aditya Mahecha, Ms. Meenal Singhvi & Mr. Ravindra Puri.
Mr. Deepak Chandak for
Mr. B.L. Bhati, Additional Advocate General
Mr. V.R. Choudhary & Ms. Pintu Pareek
Mr. Rajak Khan Haidar with Mr. Himanshu Soni
Mr. Karmendra Singh

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FULL BENCH

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU
HON'BLE MR. JUSTICE BIPIN GUPTA

C.A.V. JUDGMENT

Sanjay K. Agrawal, CJ

For sake of exposition, this judgment is divided in following parts:-

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Part I:- The facts relating to reference to the Larger Bench (Five Judges Bench):-

1. The Division Bench consisting of V.S. Kokje, J and Mohd. Yamin, J by order dated 20.12.1999 doubted the correctness of the decision rendered by the Full Bench of this Court in the matter of **The R.S.E.B. Accountants' Association, Rajasthan, Jaipur through its Convenor Tek Singh Arora Vs. Rajasthan State Electricity Board through its Secretary, Vidhyut Bhawan, Jyoti Nagar, Jaipur and Another**[1] to the extent qua maintainability of writ petition by unregistered association and referred the matter to the Larger Bench on the following three questions of law for determination :-

> (i) Whether a Bench to which a specific question is referred can travel beyond the scope of reference and answer a question not referred to it; and, if so, whether such a decision is binding on a Division Bench or Single Bench?
>
> (ii) Whether the Full Bench decision decided the question of maintainability of a petition under Article 226 filed by an unregistered association correctly?
>
> (iii) Whether the decision of the Full Bench that an unregistered association cannot file a writ petition alleging breach of fundamental rights as an association by itself have no fundamental rights of its own lay down the law correctly?

1 RLW 1995 (2) (Raj.) page 495

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2. In compliance of order dated 15.09.2026, this Five Judges Bench has been constituted to determine the above stated questions of law. This is how the matter is before us.

3. In **The R.S.E.B. Accountants' Association** (1995) (supra), the following question was referred to the Full Bench for consideration:-

> "Whether in the Schedule to the Rajasthan State Electricity Board Officers (Recruitment, Promotion and Seniority) Regulations, 1974 under Entry No.19 providing quota of 25% for promotion of Accountants holding the qualification of intermediate with ICWA or Graduate with DCWA is valid and is not violative of Arts. 14 & 16 of the Constitution "?

4. The respondents therein raised two preliminary objections; first, the writ petition suffers from *res judicata* because the earlier writ petition filed by a registered Federation, namely, Rajasthan Rajya Vidyut Karamchari Federation Vs. R.S.E.B. (D.B. CWP No.5720/1990) had already been dismissed on 03.01.1991; and second, that the members of Rajasthan Rajya Vidyut Karamchari Federation which was a registered body, cannot submit another writ petition in the name of an unregistered association. An unregistered association cannot file a writ petition, as it has no fundamental rights under Chapter III of the Constitution of India.

5. The petitioners therein relied on Rule 59 of the High Court of Judicature for Rajasthan Rules, 1952 (hereinafter referred to as 'the Rules of 1952') and the Full Bench decision rendered by this Court in the matter of **Habu Vs. The State of Rajasthan**[2] in submitting that the Full Bench is bound to decide the question as

2 AIR 1987 (Rajasthan) 83

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has been referred and cannot decide any other point and it is for the Full Bench to consider whether the question referred has to be answered in affirmative or negative and not to answer at all. However, the Full Bench accepted the plea of *res judicata* and held that the writ petition is not maintainable relying upon the principles underlying Section 11 of the Code of Civil Procedure, 1908. The Full Bench, thereafter, went further and observed that an unregistered association has no fundamental right to approach the Constitutional Court under Article 226 of the Constitution of India. Thereafter, the Full Bench proceeded to lay down the seven conditions (a) to (g) and held that if all the seven conditions are fulfilled, then such an unregistered association can file a writ petition in respect of a legal right, but the said association cannot file a writ petition alleging breach of fundamental right, as the association by itself has no fundamental rights of its own.

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6. The Full Bench, in view of the finding on maintainability, held that the question as referred needed no consideration. Nonetheless, heard the parties on merits and answered the reference by upholding Entry No.19 of the Schedule to the Rajasthan State Electricity Board Officers (Recruitment, Promotion and Seniority) Regulations, 1974, while expressly stating that the finding on merits was not to be treated as precedent.

7. The Rajasthan State Electricity Board Accountants' Association, Jaipur challenged the aforesaid decision of the Full Bench before the Supreme Court in the matter of **Rajasthan State Electricity Board Accountants Association, Jaipur Vs**

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Rajasthan State Electricity Board and Another[3]. Their Lordships noticed the maintainability objection but held that since there is a dispute on the facts as to whether any of the members of the appellant-association was a member of Rajasthan Rajya Vidyut Karamchari Federation, their Lordships did not propose to go into the objection regarding maintainability of the writ petition filed by the appellants therein and dealt with the matter on merits and dismissed the petition finding no merit.

8. With the aforesaid brief factual background, we will consider the three questions referred by the Division Bench doubting the correctness of the Full Bench judgment qua the maintainability of the writ petition.

Part-II:- Scope of Reference under Rule 59 and whether an observation on a question not referred is binding (Question No.(i)).

Answer to Question No. (i)

Question (i) states as under :-

Whether a Bench to which a specific question is referred can travel beyond the scope of reference and answer a question not referred to it; and, if so, whether such a decision binds a Division Bench or Single Bench ?

9. A Full Bench derives its jurisdiction to decide the reference under Rule 59 of the Rules of 1952 which states as under:-

> **"59. Reference of a case to a larger Bench**.- The Chief Justice may constitute a Bench of two or more Judges to decide a case or any question or questions of law formulated by a Bench hearing a case. In the latter event the decision of such Bench on the question or questions so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question or questions and dispose of the case after

3 (1997)3 SCC 103

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deciding the remaining questions, if any, arising therein."

10. In accordance with the provisions of Rule 59 of the Rules of 1952, the Full Bench is required to decide the question which has been referred to it and cannot decide any other point.

11. In the matter of **Habu** (supra), the Full Bench of this Court has taken a view that it is for the Full Bench to consider whether the question referred has to be answered in affirmative or negative or not to answer at all and held as under:-

"8. On a plain reading of the aforesaid rule it is obvious that this bench is called upon to determine only the question formulated by Hon'ble G. Sharma, J. We do not find any other rule in the High Court Rules which gives power to Hon'ble the Chief Justice to constitute a Bench of two or more Judges for deciding a case or any question referred to. The argument of the learned counsel is that reference could not be made to this Bench as the learned Judge himself has agreed with one of the view taken by this court and once he was in agreement the reference was incompetent. We are unable to accept this contention because despite the fact that learned Judge accepted the view in Shaukin's case yet he had a right to refer the matter to Hon'ble the Chief Justice for referring it to Full Bench. It is for the Full Bench to consider thereafter whether the question framed has to be answered in affirmative or negative or not to answer at all. It is true that the scope of the Full Bench is only to the extent the rule provides, as has been held by the Full Bench of this Court in State of Rajasthan v. Shiamlal (3) Where this court held:

"It appears to me, therefore, that R. 59 cannot be exhaustive of the powers which the Chief Justice must process in regulating the functioning of the Court to constitute appropriate Benches for the decision of such questions which may, from time to time, necessarily arise"."

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12. The Full Bench considered the scope of reference under Rule 59 of the Rules of 1952 and held that where specific questions are referred, the Larger Bench answered the referred question while remitting the issues which are to be dealt with by the Bench from which the matter originated.

13. Reference jurisdiction is consultative or advisory jurisdiction of the larger Bench which he renders on opinion being asked by the smaller Bench which may be either a Single Bench or it may be a Division Bench and it is purely advisory in nature. The larger Bench, as the case may be, as in the present case is the Full Bench, is to extend its advise in its jurisdiction which is advisory in nature and purely consultative in nature to enable the referring Benches, who are smaller in composition, to dispose of the matter, as the case may be, on the basis of opinion given by the larger Bench. The law in this regard is very well settled.

14. Way back in the year 1961, in the matter of **Commissioner of Income-tax, Bombay v. Scindia Steam Navigation Co. Ltd.**[4], a Constitution Bench of the Supreme Court has held in no uncertain terms that reference jurisdiction or special jurisdiction is different from appellate or supervisory jurisdiction. The Supreme Court while considering jurisdiction of the High Court in a reference under Section 66 of the Indian Income-tax Act, 1922 has held that the High Court hearing a reference under that section did not exercise any appellate or revisional or supervisory jurisdiction over the Tribunal. It acted purely in an advisory capacity on a reference which properly came before it under

4 AIR (1961) SC 1633

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Section 66(1) and (2) of the Indian Income-tax Act, 1922. Their Lordships have also held that the High Court gives the Tribunal advice, but ultimately it is for the Tribunal to give effect to that advice. Their Lordships further held that it was the essence of such a jurisdiction that the Court shall decide only questions which were referred to it and not any other questions. Similar is the proposition of law laid down in the matter of **Petlad Turkey Red Dye Works Co. Ltd. v. Commissioner of Income-tax, Bombay North**[5] in which Their Lordships have observed that the jurisdiction of the High Court was confined to giving an opinion. It was purely advisory and the High Court had no jurisdiction to direct the Tribunal to take fresh evidence.

15. The decision in aforesaid two cases i.e. **Scindia Steam Navigation** (supra) and **Petlad Turkey Red Dye Works** (supra) has been followed with approval by the Supreme Court in the matter of **Commissioner of Income-tax, Delhi v. Bansi Dhar and Sons**[6].

16. In the matter of **Kesho Nath Khurana And Others v. Union of India**[7], the Supreme Court has held that where only a question of law is referred by single Judge to Division Bench, the Bench must decide that question only and send the case back to the single Judge along with its answer to the question. It has been observed as under (SCC p. 39, para 1): -

> "1... The Division Bench ought to have sent the appeal back to the Single Judge with the answer rendered by them to the question referred by the Single Judge

5 AIR (1963) SC 1484
6 AIR 1986 SC 421
7 1981 (Supp) SCC 38

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and left it to the Single Judge to dispose of the second appeal according to law."

17. Likewise, in the matter of **Kerala State Science & Technology Museum v. Rambal Co. and Others**[8], the Supreme Court has held in unmistakable terms that jurisdiction of the larger Bench is confined in case of reference on the specific issue and the larger Bench cannot adjudicate upon the issue which is not the question referred to it and observed as under : -

"8. It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the larger Bench cannot adjudicate upon an issue which is not the question referred to."

18. In the matter of **T.A. Hameed v. M. Viswanathan**[9], the Supreme Court has also held that since only a reference was made to the Full Bench of the High Court, the Full Bench should have answered only the question referred to it and remitted the matter to the Division Bench for deciding the matter on merits. It has been observed as under (SCC p. 245, para 12): -

"12... Since, only reference was made to the Full Bench, the Full Bench should have answered the question referred to it and remitted the matter to the Division Bench for deciding the revision petition on merits."

19. The Supreme Court in the matter of **Sukumaran, P.M. And Others v. Puthiya Kuttimappilakath Shalima**[10] again by relying upon **Kesho Nath Khurana** (supra) and **Kerala State**

8 (2006)6 SCC 258
9 (2008)3 SCC 243
10 AIR SCW 2008 SC 2021

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Science & Technology Museum (supra) has held that larger Bench should only answer the reference and send back the case.

20. The decision of **Kesho Nath Khurana** (supra), was noted with approval by the Supreme Court in Constitution Bench judgment in the matter of **Supreme Court Advocates-On-Record Association and Another v. Union of India**[11].

21. The Chhattisgarh High Court in the matter of **Ratan Kumar Jain v. State of M.P. & Others.**[12] has held that reference jurisdiction is governed by the rules framed by the High Court and while considering the scope of advisory limited jurisdiction, it has further been held that unless the stated question is referred by the referring Judge to the larger Bench, the larger Bench is not right in answering the question and observed as under: -

> "26. In the light of well settled legal principle quoted supra, it is clear to us that since the learned Single Judges while making reference though quoted Rule 35 but did not formulate any question/s to enable this Bench to answer them and hence, it does not appear possible for this bench to answer the reference.
>
> 27. Indeed, if this bench in its limited advisory reference jurisdiction probe to discern as to what question/s could have been possibly referred to the bench by the referring Judges or after reading the entire reference order, proceed to formulate the question/s and answer them, as urged by one of the learned counsel then perhaps we would be travelling beyond our advisory reference jurisdiction. It is not for this Bench to exercise the powers conferred by Rule 35 ibid and nor even advise as to what question could be or should be framed and referred to Full Bench. Such issues in our

11 (2016)5 SCC 1
12 2013 (II) MPJR-CG 71

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considered view are not in our province. In other words, the law does not permit us to exceed our jurisdiction while exercising the said jurisdiction which as observed supra is confined to answer only specific stated questions referred or to decide the matter itself, if referred in specific terms but not beyond it. As a matter of fact, our advisory reference jurisdiction would arise only when the stated question/s is referred but not otherwise.

28. Now so far as Rules on the issues are concerned, suffice it to say, the M.P. Rules take care of all situations arising in the case. A reference to Rules 8 to 12 of Chapter 4 which deal with reference to larger Bench may be sufficient to mention in this regard.

29. In the light of foregoing discussion, judicial discipline demand that we should not probe into any legal debate arising in the case and nor should embark upon any exercise for deciding issues which may have arisen except to decline to answer the reference that being the only option left in such circumstances. We accordingly decline to do so."

22. Recently, in the matter of **Askari Hussain and Others Vs. Dinesh Kumar And Others**[13], their Lordships of the Supreme Court relying upon the decision in **State of Punjab v. Salil Sabhlok And Others**[14] held that the Larger Bench is to decide only the question of law referred to it together with any subsidiary question that logically and unavoidably arises. Further, their Lordships of Supreme Court held that the Referee Bench is to return the question referred with the answer to the Bench that made the reference to facilitate the said Bench to decide the issues arising for decision bearing in mind such answers. As such, the answer to the question is that the Larger Bench should decide

13 2026 INSC 929
14 (2013)5 SCC 1

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only the question of law referred to it, along with the subsidiary question, if any, that arises logically and unavoidably. The Supreme Court observed in relevant para-14 as under:-

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> "14. Law, therefore, seems to be well-settled that normally, the course that should be adopted by the referee Bench is to return the questions referred with the answers to the Bench that made the reference to facilitate the said Bench to decide the issues arising for decision bearing in mind such answers. However, as held in Salil Sabhlok (supra), the referee Bench may answer any subsidiary question that may logically and unavoidably arise by adopting a common sense approach."

Answer to Question No.1

The binding part of a reference judgment is the answer to the question referred it. An observation or determination on an issue not referred does not become binding merely because it is contained in the judgment; its precedential value must be assessed by examining whether it was genuinely part of the ratio. A Bench cannot travel beyond the specific question referred to it and it must answer that question and leave the unreferred issues for decision of the appropriate Bench.

Part-III:- Maintainability of a writ petition by an unregistered association under Article 226: Governing Principles (Question Nos.(ii) and (iii)

Answer to Question No.(ii) and (iii)

Question No.(ii) and (iii) state as under:-

Whether the Full Bench decision decided the question of maintainability of a petition under Article 226 filed by an unregistered association correctly ?

Whether the decision of the Full Bench that an unregistered association cannot file a writ petition alleging breach of fundamental rights, as an association by itself have no fundamental rights of its own lay down the law correctly ?

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23. Since both the questions are interwoven and connected with each other, therefore, they are being considered and answered together for the sake of convenience.

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24. The maintainability of a writ petition instituted by an unregistered association cannot be determined solely by reference to the fact of non-registration. The inquiry must extend to the nature of the right asserted, the capacity in which the petition is brought and the persons whose rights are sought to be protected and the legal basis upon which the association claims standing.

25. Article 226 of the Constitution of India confers wide jurisdiction upon the High Courts to issue appropriate writs for the enforcement of fundamental rights and for other purposes. Nevertheless, the existence of jurisdiction under Article 226 of the Constitution of India does not dispense with the requirement that the petitioner establish a legally sustainable basis for invoking that jurisdiction.

26. The question of registration, legal personality, *locus standi* and entitlement to enforce the rights of members are related but distinct questions. They must not be treated as interchangeable.

27. An association that is not registered under a particular statute does not necessarily become incapable, in every circumstance, of approaching a Constitutional Court. Conversely, the mere fact that an association represents a group of individuals does not automatically confer upon it an unrestricted right to maintain every form of writ proceeding and the Court must determine whether the association seeks to vindicate a right

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vested in itself, to represent the rights of identified members, or to raise a public law grievance in a legally permissible representative capacity.

Part-IV:- Conditions in Para-7 of *R.S.E.B. Accountants' Association's*: Doubt of the Referring Bench and Re-examination of Conditions (c), (d) and (f).

28. The present controversy concerns the conditions as laid down in Para-7 of **The R.S.E.B. Accountants' Association** (1995) (supra), so far as the conditions No.(c), (d) and (f) are concerned, the reference requires reconsideration, as according to the reference, they operate as inflexible preliminary barriers to genuine representative or public interest proceedings under Article 226 of the Constitution of India. The relevant conditions as laid down in para-7 of **The R.S.E.B. Accountants' Association** (1995) (supra), with which we are concerned, state as under :-

> (a) xx xx xx xx
> (b) xx xx xx xx
> (c) That the members must be of the category of poor/illiterate/helpless or disable,
> (d) That the individual member must not be capable of filing a writ petition.
> (e) xx xx xx xx
> (f) That such an association must have its own Constitution, and
> (g) xx xx xx xx

29. According to the Referee Bench, such conditions leave no discretion in the Court in the matter and even if, one of the conditions is not fulfilled, the petition has to be taken to be not maintainable.

30. The objection is to making these conditions rigid prerequisites to the maintainability of a writ petition, rather than permitting the Court to examine the nature of grievance,

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representative character of the proceedings, the authority of the association and *bona fides* of the claim in the circumstances of the particular case.

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31. The condition No.(c) requires that members of an association must fall within the category of poor, illiterate and helpless or disabled persons. Such a condition, if applied as a rigid threshold requirement, would give rise to a Pandora's box of preliminary inquiries concerning the personal circumstances of the members of an association and the Court would be required to examine the financial position, educational background, social circumstances and individual capacity of the members before even considering whether the grievance raised in the writ petition deserves adjudication. This would introduce an additional preliminary inquiry into the maintainability of proceedings, even where the writ petition raises a genuine grievance affecting a body of persons or a matter of public interest.

32. This approach would risk converting access to constitutional remedies into an inquiry into the personal status of each member, instead of allowing the Court to consider whether the grievance raised warrants judicial scrutiny. The requirement should therefore not be applied as an inflexible condition precedent to entertaining a writ petition.

33. The constitutional approach to representative proceedings and public-interest litigation recognises that access to justice should not be confined to the traditional model of an individual litigant approaching the Court solely for an individual remedy and

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the Court should be able to consider genuine collective grievances without requiring a preliminary determination of the personal financial or social status of every member.

34. Similarly, condition No.(d) of para-7 requires that an individual member should not be capable of filing a writ petition. Such a requirement cannot be treated as an inflexible condition for access to the jurisdiction under Article 226 of the Constitution of India. The fact that an individual member may be capable of approaching the Court independently should not, by itself, prevent a collective body from raising a genuine grievance through representative proceedings.

35. A collective or representative petition may be an appropriate means of presenting a common grievance, avoiding unnecessary multiplicity of proceedings and placing the issue before the Court in an organised manner. The maintainability of such proceedings should not depend exclusively upon whether every individual member could have filed a separate writ petition. If the condition is applied rigidly, the very capacity of individual members to approach the Court would become a ground for rejecting collective proceedings, even where the grievance is common and the association is authorised to represent its members. Such an approach would unnecessarily restrict the availability of representative proceedings. The Court is competent to examine the *bona fides* of the petition, the nature of the grievance, the authority of the persons instituting the proceedings and the relief sought. These matters can be scrutinised judicially without

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imposing a blanket condition that the individual members must be shown to be incapable of filing a writ petition.

36. Similarly condition (f) requires that the association must have its own constitution. The existence of a formal constitution should not be imposed as an inflexible threshold requirement for the maintainability of a petition under Article 226 of the Constitution of India by an unregistered association.

37. The absence of registration and the absence of rules or a constitution governing an association are not necessarily the same thing. The relevant inquiry should be whether the association is identifiable, whether it has the authority to institute the proceedings, whether the members have authorised it to represent their common grievances and the proceedings are bona fide.

38. Article 226 of the Constitution of India does not expressly prescribe registration of an association or possession of a formal written constitution as a universal prerequisite for invocation of the constitutional jurisdiction of the High Court. The requirements relevant to representative proceedings should be assessed in the context of the applicable law and the facts of the case, rather than through an inflexible formal condition.

Part-V:- The Scheme of the Rajasthan High Court Rules and impermissibility of a straitjacket formula for Public-Interest Proceedings.

39. The Rajasthan High Court Rules governing public-interest litigation including Rules 385-F and 385-G provide a framework for scrutiny of such proceedings and the material and disclosures

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required in connection with them. The scheme should be considered in its entirety and a requirement concerning the constitution of an association should not be treated as a substitute for a universal registration requirement which is not expressly provided.

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40. The relevant provisions of Chapter XXII-A of the Rules of 1952 are as under:-

> **385-B. PIL Petition to be heard ordinarily by a Division Bench** - Every matter to be taken up as PIL Petition, whether on a regularly filed petition or upon a letter petition or upon suo motu cognizance, shall be separately registered as "PIL Petition"; and every such PIL Petition shall, unless otherwise ordered by the Chief Justice, be laid before and dealt with by a Division Bench: Provided that any PIL Petition entertained and dealt with by a Division Bench shall ordinarily be placed before the same Bench always unless otherwise ordered by the Chief Justice.
>
> **385-E. Filing of PIL Petition** - A petition, drawn as nearly as possible in conformity with the Format appended to these, rules could be filed in the High Court espousing a public cause in the nature of regular public interest petition by an individual or by individuals having social public standing/ professional status/ public spirited antecedents. Such petition could also be filed by or with any social action group or a non-governmental organization: Provided that in every petition filed in public interest, the particulars of the petitioner, or of the petitioners when there be more than one petitioner, shall be distinctly stated; and the petition shall carry photograph as well as address proof of every individual petitioner and so also of the deponent filing the affidavit in support of the petition: Provided further that in every petition filed by or with any social action group or non-governmental organisation, a specific resolution of such group or organisation to file such petition while authorising particular person or persons to prosecute the matter shall also be annexed to the petition.

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385-K(a)- Letter petition, addressed to the Chief Justice and directed by him to be registered as PIL Petition, shall be so registered.

385-M. Procedure for scrutiny of Letter Petitions and registration of PIL Petition thereupon - (1) All Letter Petitions other than those mentioned in rule 385-K above, shall be forwarded to the Registrar (Judicial) in original, who shall mark it to a member of the Letter Petitions Cell for scrutiny. The member shall scrutinize the Letter Petition so marked in the light of the guidelines contained in this Chapter or as may, from time to time, be issued by the Chief Justice. After scrutiny, the Letter Petition shall be submitted with scrutiny-note to the Chief Justice or to a Judge or a Committee of Judges, nominated for the purpose by the Chief Justice.

(2) The Chief Justice or the Judge or the committee of Judges nominated by the Chief Justice, may either direct that the Letter Petition be registered as PIL Petition or may pass such other order as deemed fit.

(3) Where the Judge or the Committee of Judges nominated by the Chief Justice, directs registration of a Letter Petition as a PIL Petition, the same shall be so registered and placed before the Chief Justice for assignment to a Bench for hearing:

Provided that the Chief Justice or the Judge or the Committee of Judges as referred above, before directing a Letter Petition to be registered as a PIL Petition may cause any such enquiry to be made in relation to the petitioner, and may require such further and better particulars from the petitioner, as deemed proper and necessary.

(4) No one shall have a right to be heard by the Chief Justice or by the Judge or the Committee of Judges nominated by the Chief Justice in respect of a Letter Petition before its registration; and no correspondence shall be entertained in respect of any Letter Petition.

(5) The High Court shall not be obliged to maintain a record of every Letter Petition; nor shall the Chief Justice or the Judge or the Committee of Judges nominated by the Chief Justice, be bound to assign or communicate reasons for any order made under sub-rules (2) and (3) of this rule.

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41. The aforesaid Rules collectively demonstrate that the Rules provide for scrutiny of the public cause and the material placed before the Court, while recognising that a PIL may originate even from a letter addressed to the Hon'ble Chief Justice and the rule contemplates more than one mode through which a public cause may be brought before the Court for consideration and does not make the existence of a formally registered association, the sole gateway to a public interest jurisdiction.

42. If a letter addressed to Hon'ble the Chief Justice may, in accordance with the Rules, be registered as a PIL, the question necessarily arises whether a genuine public cause brought by an identifiable group of affected persons, acting collectively through a Sangharsh Samiti, should be shut out merely because that group does not satisfy every condition prescribed in paragraph 7 of **The R.S.E.B. Accountants' Association** (1995) (supra). The Rules provide for scrutiny of the cause and the person or body bringing it forward, but the Rules do not justify converting the conditions in that judgment into an inflexible formula applicable irrespective of the nature and circumstances of the public grievance.

Part-VI:- Representative proceedings and Public Interest Litigation.

43. The principle of public interest undertaking and representative litigation was also considered by the Supreme Court in the matter of **S.P. Gupta And Others Vs. President of India**[15] and **People's Union for Democratic Rights And Others vs. Union of India And Others**[16]. These authorities

15 AIR 1982 SC 149
16 (1982)3 SCC 235

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recognize the importance of access to justice where a common grievance is raised on behalf of persons whose circumstances or the nature of the issue may make collective proceedings appropriate.

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44. In the matter of **Bandhua Mukti Morcha Vs. Union of India And Others**[17] the Supreme Court emphasized that procedural requirements must not defeat access to fundamental-right remedies and the Court observed in para-12 as under:-

> "12. Then again clause (1) of Article 32 says that the Supreme Court can be moved for enforcement of a fundamental right by any 'appropriate' proceeding. There is no limitation in regard to the kind of proceeding envisaged in clause (1) of Article 32 except that the proceeding must be "appropriate" and this requirement of appropriateness must be judged in the light of the purpose for which the proceeding is to be taken, namely, enforcement of a fundamental right. The Constitution makers deliberately did not lay down any particular form of proceeding for enforcement of a fundamental right nor did they stipulate that such proceeding should conform to any rigid pattern or straight jacket formula as, for Example, in England, because they knew that in a country like India, where there is so much of poverty, ignorance, illiteracy, deprivation and exploitation, any insistence on a rigid formula of proceeding for enforcement of a fundamental right would become self defeating because it would place enforcement of fundamental rights beyond the reach of the common man and the entire remedy for enforcement of fundamental rights which the Constitution makers regarded as so precious and invaluable that they elevated it to the status of a fundamental right, would become a mere rope of sand so far as the large masses of the people in this country are concerned. The Constitution makers therefore advisedly provided in clause (1) of Article 32 that the

17 (1984) 3 SCC 161

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> Supreme Court may be moved by any 'appropriate' proceeding, 'appropriate' not in terms of any particular form but 'appropriate' with reference to the purpose of the proceeding. That is the reason why it was held by this Court in the *Judges Appointment and Transfer Case* (supra) that where a member of the public acting bona fide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons who on account of poverty or disability or socially or economically disadvantaged position cannot approach the court for relief, such member of the public may move the court even by just writing a letter, because it would not be right or fair to expect a person acting pro bono publico to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in court for enforcement of the fundamental right of the poor and deprived sections of the community and in such a case, a letter addressed by him can legitimately be regarded as an "appropriate" proceeding."

45. In the matter of **Mahinder Kumar Gupta And Others Vs. Union of India (UOI), Ministry of Petroleum and Gas And Others**[18], the Court held as under:-

> "6. Under these circumstances, we find no arbitrariness or unjustness in prescription of the guidelines for the eligibility criteria. The second writ petition stands liable to be dismissed on the sole ground that the Association cannot file a writ petition as it has no fundamental right under Article 32 of the Constitution. One of the petitioners/appellants has claimed as having partnership, but the details thereof have not been given. We, therefore, dismiss the appeal as well as the writ petitions with costs quantified at Rs.20,000/- each."

46. In **S.P. Gupta** (supra), the Supreme Court has held that it is not possible for the Court to lay down any hard and fast rule or

18 (1995)1 SCC 85

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any strait-jacket formula for determining or delimiting sufficient interest in public-interest litigation. The Court explained that the variety of circumstances in a modern society, involving public duties and collective rights and interests, cannot be confined within a rigid mould. The question of sufficient interest must be determined by the Court in the circumstances of each case, consistently with the constitutional objectives. This principle is particularly relevant to conditions No.(c), (d) and (f) of paragraph 7 of **The R.S.E.B. Accountants' Association** (1995) (supra) and these conditions, if applied mechanically, risk imposing a straitjacket formula upon the very category of public-interest proceedings for which the law has evolved a flexible approach to standing.

47. In the matter of **N.K. Prasada v. Government of India And Others**[19], their Lordships, while considering the scope of public-interest litigation, expressly observed that merely because the floodgates of litigation may open, that circumstance by itself is no ground to close the doors of the Courts of Justice. Their Lordships further emphasised that the doors of justice should be kept open, while recognising the need to remain mindful of the public ground realities and to exercise appropriate restraint in case of abuse and as such, the Lordships further held that the principle relevant to the present controversy that the possibility of an increase in litigation cannot, by itself, justify restricting access to constitutional remedies through a rigid and universal formula. The duty of the Court is to preserve and effectively exercise its constitutional jurisdiction and not to curtail its reach by erecting

19 (2004)6 SCC 299

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technical barriers which prevent genuine public wrongs from being brought before the Court.

48. The Condition Nos.(c), (d) and (f) of paragraph 7 of **The R.S.E.B. Accountants' Association** (1995) (supra) should not be applied mechanically so as to exclude a bona fide public cause merely because the affected persons have organised themselves into a Sangharsh Samiti, rather than an established association. The appropriate course would be to examine the genuineness of the public injury, the bona fides of the petitioners and the authority under which the proceedings are instituted, while ensuring that the constitutional doors of this Court remain open to genuine causes.

49. The fact that an association may not itself possess a particular fundamental right cannot, without examining the nature of the proceedings and the rights sought to be vindicated, be treated as an absolute bar to the association espousing the cause of its members.

50. The principle of public-interest litigation, as explained in **S.P. Gupta** (supra) requires that the question of sufficient interest be considered in the circumstances of each case, rather than through a rigid and universal formula.

51. As such, we answer the question Nos.(ii) and (iii) that the requirements governing institution and scrutiny of PIL proceedings under Chapter XXII-A should be given due weight, while Condition Nos.(c), (d) and (f) of Para-7 of **The R.S.E.B. Accountants' Association** (1995) (supra) should be read down appropriately,

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and a genuine public cause ought not to be rejected at the threshold solely because the persons affected have organized themselves into a Sangharsh Samiti, rather than an established association. The Court has to examine the *bona fides* of the petition, the nature of the public injury, the authority of the persons instituting the proceedings and the relief sought, without confining access to its constitutional jurisdiction within a rigid and universal formula.

Part VII:- Conclusion and Answers to Questions No.(i), (ii) and (iii)

52. Accordingly, our answer to questions No.(i), (ii) and (iii), are as under:-

52.(i) The binding part of a reference judgment is the answer to the question referred it. An observation or determination on an issue not referred does not become binding merely because it is contained in the judgment; its precedential value must be assessed by examining whether it was genuinely part of the ratio. A Bench cannot travel beyond the specific question referred to it and it must answer that question and leave the unreferred issues for decision of the appropriate Bench.

52.(ii) The Condition No.(c), (d) and (f) of Para-7 of **The R.S.E.B. Accountants' Association** (1995) (supra) should be read down so that genuine public causes ought not to be rejected at the threshold solely because the persons affected have organized themselves into a Sangharsh Samiti rather than an established association. The Court has to examine the bona fides of the

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petition, the nature of the public injury, the authority of the persons instituting the proceedings and the relief sought, without confining access to its constitutional jurisdiction within a rigid and universal formula.

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52.(iii) The rights of an association must be distinguished from the fundamental rights of its members and that the ability of an association to invoke the constitutional jurisdiction depends upon the nature of rights asserted, the constitutional provision invoked and the legal capacity in which the petition is instituted.

52.(iv) The Association itself has no fundamental right merely because its members have such rights; that, however, does not by itself prevent a representative proceeding for the enforcement of a member's right.

52.(v) If the association is unregistered and has no juristic personality, the proper course may be to array the office-bearers as co-petitioners/ representatives and whether the petition should be entertained depends on the nature of the grievance and the recognized conditions for representative/ PIL standing.

53. As such, the Full Bench judgment with regard to the Condition Nos.(c), (d), and (f) of para-7 is clarified and the referred question of law is answered accordingly.

54. The reference is accordingly disposed off in the aforestated terms. Let the matter be placed before the appropriate Bench having roster for consideration of the writ petition.

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55. We place on record our appreciation for the valuable assistance rendered by Mr. Arpit Bhoot, Mr. Vikram Choudhary, Mr. Tanveer Ahamad through Video Conferencing (at Jaipur), Mr. Amit Kumar Purohit, Mr. Mrinal Khatri, Mr. Rajesh Panwar, (Senior Advocate) Additional Advocate General with Mr. Aayush Gehlot, Mr. Rakesh Sharma, Mr. Monal Chug, Ms. Pratyksha Rajpurohit, Mr. Aditya Mahecha, Ms. Meenal Singhvi & Mr. Ravindra Puri, Mr. Deepak Chandak, Mr. B.L. Bhati, Additional Advocate General, Mr.V.R. Choudhary, Ms. Pintu Pareek, Mr.Rajak Khan Haidar, Mr. Himanshu Soni, Mr. Karmendra Singh, learned Members of the Rajasthan High Court Bar Association, Jodhpur, who appeared and made submissions in arriving at the aforesaid conclusion.

(MUNNURI LAXMAN), J (SANJAY K. AGRAWAL), CJ

(BALJINDER SINGH SANDHU), J (CHANDRA SHEKHAR SHARMA), J

(BIPIN GUPTA), J

Himanshu Soni/(Reserved)

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