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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on :13 October 2023*  
*Pronounced on :16 October 2023*

+ W.P.(C)-IPD 61/2021

AYUR UNITED CARE LLP ..... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.  
 Mr. Ajay Sahni, Mr. Ankit Sahni, Mr.  
 Chirag Ahluwalia and Mr. Mohit Maru, dvs.  
 for R-2

+ W.P.(C)-IPD 63/2021 & CM APPL. 15721/2013

AYUR UNITED CARE LLP ..... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.

+ W.P.(C)-IPD 78/2021, CM APPL. 12922/2013 & CM APPL.  
 12924/2013



AYUR UNITED CARE LLP ..... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.  
 versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.  
 Mr. Arvind Varma, Sr. Advocate with Mr. J.  
 Sai Deepak, Mr. Afzal B. Khan and Mr.  
 Samik Mukherjee and Mr. Debjyoti Sarkar,  
 Advocates for R-2

+ W.P.(C)-IPD 80/2021, CM APPL. 12929/2013 & CM APPL.  
 12931/2013

AYUR UNITED CARE LLP ..... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.  
 Mr. Arvind Varma, Sr. Advocate with Mr. J.  
 Sai Deepak, Mr. Afzal B. Khan and Mr.  
 Samik Mukherjee and Mr. Debjyoti Sarkar,  
 Advocates for R-2

+ W.P.(C)-IPD 86/2021 & CM APPL. 12916/2013

AYUR UNITED CARE LLP ..... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya



and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. Sriram and Mr. Krishnan V, Advs.  
 Mr. Arvind Varma, Sr. Advocate with Mr. J. Sai Deepak, Mr. Afzal B. Khan and Mr. Samik Mukherjee and Mr. Debjyoti Sarkar, Advocates for R-2

+ W.P.(C)-IPD 65/2021, CM APPL. 2842/2010, CM APPL. 17123/2017, I.A. 2520/2022, I.A. 2539/2022 & I.A. 2544/2022

M H POLYMERS PVT.LTD. .... Petitioner  
 Through: Mr. Sushant Singh, Mr. Akshat Gupta and Mr. Saurav Pattanaik, Advs.

versus

UNION OF INDIA & ORS. .... Respondents  
 Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advs. for R-1  
 Mr. Akhil Sibal, Sr. Advocate as Amicus Curiae with Ms. Asavari Jain and Ms. Sanya Kumar, Advs.  
 Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. Sriram and Mr. Krishnan V, Advs.

+ W.P.(C)-IPD 75/2021

THREE N-PRODUCT PVT LTD .... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya and Mr. Noopur Biswas, Advs.



versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.  
 Mr. Arvind Varma, Sr. Advocate with Mr. J.  
 Sai Deepak, Mr. Afzal B. Khan and Mr.  
 Samik Mukherjee and Mr. Debjyoti Sarkar,  
 Advocates for R-2

+ W.P.(C)-IPD 87/2021

AYUR UNITED CARE LLP .... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA AND ORS .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar  
 Mishra, Mr. Sagar Mehlawat, Mr. Alexander  
 Mathai Paikaday, Mr. Sriram and Mr.  
 Krishnan V, Advs.

+ W.P.(C)-IPD 95/2021, CM APPL. 12935/2013 & CM APPL.  
 12937/2013

THREE N-PRODUCTS PVT TLD .... Petitioner  
 Through: Mr. N. Mahabir, Mr. P.C. Arya  
 and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents  
 Through: Mr. Harish Vaidyanathan  
 Shankar, CGSC with Mr. Srish Kumar



Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. Sriram and Mr. Krishnan V, Advs.

Mr. Arvind Varma, Sr. Advocate with Mr. J. Sai Deepak, Mr. Afzal B. Khan and Mr. Samik Mukherjee, Advocates for R-2

+ W.P.(C)-IPD 97/2021, CM APPL. 15749/2013 & CM APPL. 15751/2013

THREE N-PRODUCTS PVT. LTD ..... Petitioner

Through: Mr. N. Mahabir, Mr. P.C. Arya and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. Sriram and Mr. Krishnan V, Advs.

+ W.P.(C)-IPD 98/2021

THREE N-PRODUCT ..... Petitioner

Through: Mr. N. Mahabir, Mr. P.C. Arya and Mr. Noopur Biswas, Advs.

versus

UNION OF INDIA & ANR. .... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat, Mr. Alexander Mathai Paikaday, Mr. Sriram and Mr. Krishnan V, Advs.

Mr. Ajay Sahni, Mr. Ankit Sahni, Mr. Chirag Ahluwalia and Mr. Mohit Maru, dvs. for R-2



**CORAM:  
HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT  
16.10.2023**

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**The Issue in Controversy**

1. This judgment addresses the issue of whether writ petitions, challenging orders passed by the Intellectual Property Appellate Board (IPAB), filed before abolition of the IPAB on 4 April 2021, would have to be heard by a Single Bench or by a Division Bench of this Court.

2. By order dated 28 June 2013, the learned Intellectual Property Appellate Board (the IPAB) has allowed rectification petitions filed by the second respondent, challenging the registration of the mark “AYUR” in favour of the petitioner. Aggrieved thereby, the petitioner has preferred the present writ petitions under Article 226 and 227 of the Constitution of India.

3. A serious preliminary objection has been advanced by the respondents, to the effect that these petitions have necessarily to be listed before a Division Bench of this Court and cannot be heard by a Single Judge.

4. The petitioners submit, *per contra*, that these writ petitions have necessarily to be heard by a Single Judge and cannot, per statute, be



initially listed before a Division Bench.

5. Mr. Sibal and Mr. Sushant Singh proposed certain alternative options which I would deal with at the appropriate stage.

### **Rival submissions**

6. I have heard Mr. Arvind Varma, learned Senior Counsel appearing for Respondent 2 in W.P.(C)-IPD 75/2021, W.P.(C)-IPD 78/2021, W.P.(C)-IPD 80/2021, W.P.(C)-IPD 85/2021 and W.P.(C)-IPD 95/2021 and Mr. J. Sai Deepak, learned Counsel also appearing for Respondent 2 in W.P.(C)-IPD 75/2021, W.P.(C)-IPD 78/2021, W.P.(C)-IPD 80/2021, W.P.(C)-IPD 85/2021 and W.P.(C)-IPD 95/2021, Mr. Chander M. Lall and Mr. Akhil Sibal, learned Senior Counsel who appear as *amicus curiae*, as well as Mr. N. Mahabir for the petitioner in W.P.(C)-IPD 61/2021, W.P.(C)-IPD 63/2021, W.P.(C)-IPD 75/2021, W.P.(C)-IPD 80/2021, W.P.(C)-IPD 86/2021, W.P.(C)-IPD 87/2021, W.P.(C)-IPD 95/2021, W.P.(C)-IPD 97/2021 and W.P.(C)-IPD 98/2021 and Mr. Sushant Singh, learned Counsel appearing for the petitioner in W.P.(C)-IPD 65/2021.

7. Mr. Varma, Mr. Sibal, Mr. Sai Deepak and Mr. Sushant Singh contend that these matters should be listed before the Division Bench. Of said learned Counsel, Mr. Varma, Mr. Sibal and Mr. Sushant Singh follow a more tempered line of argument. They do not contend that a learned Single Judge would *not* have jurisdiction to deal with these petitions, but submit that it would be more appropriate that they are



listed before a Division Bench. Mr. Sai Deepak adopts a more rigid stance and submits that these matters have, *per statute*, necessarily to be listed before a Division Bench and that a learned Single Judge would not possess jurisdiction to decide these writ petitions. I am, therefore, according to Mr. J. Sai Deepak, *coram non judice*.

## 8. Submissions of Mr. J. Sai Deepak

**8.1** Mr. Sai Deepak invited my attention to Rules 4<sup>1</sup>, 2(l)<sup>2</sup> and 8(iii)<sup>3</sup> of the Intellectual Property Division (IPD) Rules, 2021 (“IPD Rules” hereinafter). and Rule 1(xviii)(a) and (b)<sup>4</sup> and Rule 4<sup>5</sup> in Part B in

<sup>1</sup> **4. Jurisdiction** – Every IPR subject matter or case or proceeding or dispute filed before, or transferred to, the IPD, as defined in Rules 2(i), 2(j) and 2(l), shall be heard and adjudicated by a Single Judge of the IPD except those that are to be decided by a Division Bench as per Section 13 of the Commercial Courts Act, 2015.

<sup>2</sup> (l) “IPR subject matters or cases or proceedings or disputes” shall include all original proceedings, appellate and other proceedings related to IPR subject matter(s) as defined in Rule 2(i) above filed before the IPD and shall also include:

(i) IPR suits, revocation applications, cancellation applications, other original proceedings, appeals and petitions from the various IPOs and all other proceedings which were hitherto maintainable before the Intellectual Property Appellate Board (“IPAB”) under provisions of the Act(s).

(ii) All suits filed in which IPR subject matter is involved, either under the respective statutes or under common law including suits relating to breach of privacy, rights of publicity.

(iii) Writ Petitions (Civil) [WP(C)], Civil Misc. (Mains) [CM(Main)], Regular First Appeal [RFA], First Appeal from Order [FAO], Civil Revision Petition [CRP] arising out of IPR subject matters and disputes dealt with by the Commercial Courts in Delhi, except matters that are to be dealt with by a Division Bench;

(iv) All pending proceedings before the IPAB relating to Delhi jurisdiction transferred to the Delhi High Court.

<sup>3</sup> **8. Procedure for Writ Petitions (Civil) –**

(i) Writ Petitions filed in the IPD, challenging any orders passed by the IPO/authority, shall consist of a synopsis and list of dates and events, memo of parties, Memorandum of the writ petition including grounds of challenge, prayer/ relief sought, affidavit in support. The Petitioner shall also state both in the application and in the affidavit whether any other remedy was availed of in respect of the same impugned order and if so, provide details thereof including any order passed therein.

(ii) The impugned order shall be annexed with the writ petition.

(iii) Procedures applicable to Writ Petitions (Civil): The Delhi High Court Rules and orders as also the practice directions issued from time to time, to the extent there is no inconsistency with these Rules, shall be applicable to writ petitions filed in the IPD.

<sup>4</sup> **1. Cases ordinarily to be heard by a single Judge** – Subject to the provisos hereinafter set forth the following classes of cases shall ordinarily be heard and disposed of by a Judge setting alone:

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(xviii)(a) Application or petition under Article 226 of the Constitution of India for the issue of any directions, orders or writs in the nature of Mandamus, prohibition, quo-warranto or certiorari for the enforcement of fundamental rights conferred by Part III of the Constitution of India or for any other





Chapter 3 of Volume V of the Delhi High Court Rules, 2018 (“the DHC Rules” hereinafter). His contention is that a conjoint reading of these provisions discloses that a case such as the present writ petition would have to be heard by a Division Bench of this Court.

**8.2 Undisputed position with respect to the IPD Rules:** Apropos the IPD Rules, learned Counsel on both sides are *ad idem* regarding the following position:

(i) Rule 4 of the IPD Rules states that every “IPR Subject Matter or case or proceeding or dispute” filed before the IPD, as defined in Rules 2(i)<sup>6</sup>, 2(j)<sup>7</sup> and 2(l) of the IPD Rules shall be

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purpose, except:

- (i) Petitions where vires of Acts or statutory rules, regulations, or bye-laws are challenged.
- (ii) Petitions where personal liberty is involved.
- (iii) Petitions pertaining to all Revenue/tax matters including entertainment taxes, except Municipal Tax.
- (iv) Petitions arising from the orders of the Board for Industrial and Financial Reconstruction/Appellate Authority for Industrial and Financial Reconstruction or seeking directions to them; and
- (v) Petitions pertaining to Public Interest litigation.
- (vi) Petitions pertaining to the award to Tenders.
- (vii) Petitions relating to Co-operative Societies.

Provided that as regards pending cases, the learned single Judge may hear the part-heard matters.

*Explanation:* The preliminary hearing for admission and final disposal of applications and petitions pertaining to matters mentioned in clause (i) to (x) of sub-rule (xviii)(a) above shall however be before a Bench of two Judges and before a Single Bench when there is no sitting of Division Bench.

(b) A proceeding of a civil nature under a special Act of the Central or State Legislature coming before the Court in the exercise of its original jurisdiction, e.g., under the Indian Trusts Act, 1882, the Companies Act, 1956, the Inventions and Designs Act, the Indian Divorce Act, the Indian Succession Act, the Guardians and Wards Act or the Banking Companies Act, 1949.

**54. All cases to be disposed of by a Bench of two Judges saved as provided by law or by these rules** – Save as provided by law or by these rules or by a special order of the Chief Justice, all cases shall be heard and disposed of by a Bench of two Judges.

- <sup>6</sup> (i) “Intellectual Property Rights (IPR) subject matter” for the purpose of these Rules, shall include:
- i. Matters pertaining to Patents, Copyrights, Trademarks, Geographical Indications, Plant Varieties, Designs, Semiconductor integrated circuit layout-designs, Traditional Knowledge and all rights under common law, if any, associated therewith;
  - ii. Matters relating to passing off, acts of unfair competition, disparagement, comparative advertising etc.;
  - iii. Protection of trade secrets, confidential information and related subject matters;
  - iv. Tortious actions related to privacy and publicity rights involving intellectual property issues;
  - v. Matters pertaining data exclusivity, domain names and other matters relating to data



decided by a Single Judge of the IPD. The exception is with respect to cases which have to be decided by a Division Bench as per Section 13 of the Commercial Courts Act, 2015. Section 13 of the Commercial Courts Act, which deals with appeals from decrees of the Commercial Courts or the Commercial Divisions, would not apply to these writ petitions.

(ii) Rule 2(l) of the IPD Rules defines “IPR Subject Matters or cases or proceedings or disputes”. The expression is defined as including, *inter alia*, writ petitions arising out of IPR Subject Matters, except matters to be dealt with by a Division Bench.

(iii) “IPR Subject Matter” is defined in Rule 2(i) of the IPD Rules as including “matters pertaining to Patents, Copyrights and Trademarks”. The word “matter” is extremely wide and there is no reason why an IPAB order dealing with patents, copyrights, trademarks etc. should not be treated as an “IPR Subject Matter”. Nor does any learned Counsel, on either side, so contend.

### 8.3 A writ petition arising out of such an IPAB order would,

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protection involving intellectual property issues, as also those arising under the Acts as defined in Rule 2(a);

vi. Matters involving internet violations relating to any of the subject matters under clauses (i) through (v) above.

*Explanation:*

(i) for the purpose of these Rules, cases pertaining to the Information Technology Act, 2000 dealing with the rights and liabilities of intermediaries, online market places, e-commerce platforms involving issues relating to any of the aforementioned rights, shall be deemed to be within the purview of intellectual property rights.;

(ii) intermediaries, online market places, e-commerce platforms shall have the same meaning as under Section 2(w) of the Information Technology Act, 2000.

<sup>7</sup> (j) “Intellectual Property Rights Division (IPD)” refers to the division in the Delhi High Court presided over by Single Judges to deal with disputes and cases concerning IPR subject matter.



therefore, be a writ petition arising out of IPR Subject Matter within the meaning of Rule 2(1)(iii) of the IPD Rules. It would, therefore, be an “IPR subject matter or case or proceeding or dispute” as defined in Rule 2(1). This, Mr. Sai Deepak contends, would have been the position, *but for the exception statutorily carved into Rule 2(1)(iii)*. Rule 2(1)(iii) includes, in the definition of “IPR Subject Matters or cases or proceedings or disputes”, writ petitions arising out of IPAB orders [treating IPAB orders as “IPR Subject Matters”], “*except matters that are to be dealt with by a Division Bench*”. Thus, contends Mr. Sai Deepak, the exception in Rule 2(1)(iii) clearly indicates that writ petitions arising out of IPR subject matters fall into two categories – those which are to be heard by Single Judges, and those which are to be heard by a Division Bench. It is necessary, therefore, according to Mr. Sai Deepak, to decide the nature of the writ petitions which would fall into these two distinct categories, and then decide the category into which the present writ petitions would fall.

**8.4** The answer to this query, he submits, is to be found in Rule 8(iii) of the IPD Rules. The said clause makes the DHC Rules applicable to writ petitions filed before the IPD, to the extent they are not inconsistent with the IPD Rules. He, therefore, submits that writ petitions against IPAB orders would also be governed by the DHC Rules.

**8.5** Rule 4 in Part B in Chapter 3 of Volume V of the DHC Rules (which, hereinafter, would be referred to as “Rule 4 of the DHC Rules”, for the sake of convenience), submits Mr. Sai Deepak,



requires all cases to be disposed of by a Division Bench, “save as provided by law or by these Rules or by special orders of the Chief Justice”. The present writ petitions, according to Mr. Sai Deepak, do not fall within the excepted category.

**8.6** Though, according to Mr. Sai Deepak, Rule 4 of the DHC Rules, read with the exception in Rule 2(1)(iii) of the IPD Rules, concludes the issue, Mr. Sai Deepak submits that Rule 1 in Part B of Chapter III in Volume V of the Delhi High Court Rules (which, hereinafter, would be referred to as “Rule 1 of the DHC Rules”, for the sake of convenience) does not indicate to the contrary. Mr. Sai Deepak contends that, as rectification petitions, which were earlier heard by the IPAB, are, by virtue of Rule 1(xviii)(b), to be heard by a Single Bench, it would be incongruous if writ petitions challenging orders of the IPAB in rectification petitions were also heard by a learned Single Judge. The jurisdiction of a learned Single Judge, in such a case, would encompass original jurisdiction in rectification petitions as well as appellate jurisdiction over orders passed by the IPAB in rectification petitions. That, according to Mr. Sai Deepak, cannot be allowed and there is no Rule or other statutory provision which so requires.

**8.7** Mr. Sai Deepak sought to rely on the fact that, prior to 2003, when the IPAB was constituted, rectification petitions were decided by Single Judge of this Court. With the constitution of the IPAB in 2003, these matters were transferred to the IPAB. The IPAB was abolished in 2021, whereafter these matters came back to Single



Judges of this Court. He, therefore, submits that the IPAB was essentially exercising the very same jurisdiction which the Single Judge of this Court was exercising prior to the establishment of the IPAB and after its abolition. When the *status quo ante* thus stands restored, Mr. Sai Deepak submits that, in deciding the question of the Bench before which an appeal against a rectification order would lie, the Court is required to keep in mind the fact that, between 2003 and 2021, the IPAB was exercising the same jurisdiction which the Single Judge is presently exercising. A decision of the High Court in a rectification petition, prior to 2003 and after 2021, would lie before a Division Bench, as the rectification petition would be decided by a Single Judge. As the *status quo ante* which existed prior to 2003 now stands restored after 2021, Mr. Sai Deepak's contention is that it would be anomalous to hold that, for challenges against rectification petitions filed between 2003 and 2021, the challenge would lie before a Single Judge of this Court.

**8.8** Mr. Sai Deepak also tendered written submissions dated 20 September 2023, in which, apart from the above, it is further contended that an anomalous situation may arise if the Single Judge, after hearing a writ petition against the order passed by the IPAB, deems it necessary to set aside the order and remand the order for reconsideration. In such event, as the jurisdiction of the IPAB is now exercised by the Single Judge of this Court, the remand would be by the Single Judge to himself, or herself. It is submitted that such a situation would be gravely anomalous and that the only way of avoiding such an anomaly is if the writ petition assailing the order of



the IPAB is initially heard by a Division Bench.

**8.9** Mr. Sai Deepak also relies on the judgment of the High Court of Madras in *B. Mohamed Yousuff v. M/s Prabha Singh Jaswant Singh*<sup>8</sup>, which holds that writ petitions, challenging orders passed by the IPAB, would lie before a Division Bench of the High Court of Madras. He also relied on the judgments of Division Bench of this Court in *Resilient Innovations Pvt. Ltd. v. Phonepe Pvt. Ltd.*<sup>9</sup> and *V.R. Holdings v. Hero Investocorp Ltd*<sup>10</sup>.

## **9. Submissions of Mr. Arvind Varma**

**9.1** Mr. Varma did not contend that this Bench would *not* have jurisdiction to hear these writ petitions, but contended that the interests of propriety would require that these matters be heard by the Division Bench. He joined Mr Sai Deepak in his contention that Single Judges are, consequent to the abolition of the IPAB, exercising the same jurisdiction, of rectification, which the IPAB was exercising. He, too, therefore, contends that, if Single Judges exercise rectification jurisdiction and jurisdiction over appeals against decisions of the IPAB in rectification petitions, it would result in an obvious, and avoidable, anomaly.

**9.2** Mr. Varma, too, placed considerable reliance on the judgment of the High Court of Madras in *B. Mohamed Youssuf*<sup>8</sup> which, in his

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<sup>8</sup> 2006 SCC OnLine Mad 961

<sup>9</sup> 2023 SCC OnLine Del 2972

<sup>10</sup> 2023 SCC OnLine Del 4673



submission, expounds the correct legal position, and deserves acceptance by this Court.

## **10. Submissions of Mr. Akhil Sibal**

**10.1** Assisting the Court as *amicus curiae*, Mr. Akhil Sibal submits that, according to him, the Rules do not compel adjudication of writ petitions challenging orders passed by the IPAB either by Single Judges or by the Division Benches of this Court. In such circumstances, he submits that the Court should adopt the most appropriate course, which would be to have such writ petitions heard and decided by Division Benches.

**10.2** Mr. Sibal has also echoed, in support of this submission, the submission of Mr. Sai Deepak of the possibility of an incongruous situation arising, were the Single Judge, hearing a writ petition against an order passed by the IPAB, to deem it appropriate to remand the matter. Such a remand, he submits, would be by the learned Single Judge to herself or himself, which is anomalous and destructive of the principle of judicial hierarchy.

**10.3** Mr. Sibal, in the circumstances, offers three alternative suggestions for this Court to follow.

**10.4** The first is that the Registry be directed to list all writ petitions, assailing orders passed by the IPAB before its dissolution, before the Division Bench of this Court, rather than Single Judges. This is the



course of action, he submits, which was adopted by the Division Bench of the High Court of Madras in *B. Mohamed Yousuff*<sup>8</sup>, which decision, he submits, ought to commend itself to judicial acceptance by this Bench.

**10.5** Mr. Sibal also relies on Rule 1 of the DHC Rules, which requires cases ordinarily to be heard by a Single Judge. The word “ordinarily”, he submits, indicates that there is no inflexible Rule that writ petitions should be heard by Single Judges. He has also relies, in this context, on para 12 of the report in *Krishan Gopal v. Shri Prakash Chandra*<sup>11</sup>, which, interpreting the word “ordinarily”, observes that “normally it would be Single Judge of the High Court, who can exercise the jurisdiction, which is vested in the High Court, but in appropriate cases, such jurisdiction can also be exercised by two or more Judges”. He also cites *Delhi Tourism and Transport Development Corporation v. Swadeshi Civil Infrastructure*<sup>12</sup> (“DTTDC”, hereinafter) and *Yudhvir Singh v. Nagmani Financial Services (P) Ltd*<sup>13</sup>, as instances where this Court has, on the judicial side, directed matters to be placed before the Division Bench.

**10.6** The second suggestion proposed by Mr. Sibal is to frame the following question of law and invoke proviso (b)<sup>14</sup> of Rule 1 of the Delhi High Court Rules, by calling upon the Chief Justice to provide

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<sup>11</sup> (1974) 1 SCC 128

<sup>12</sup> MANU/DE/0157/2021

<sup>13</sup> (2003) 108 DLT 142

<sup>14</sup> Provided that –

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(b) a Judge before whom any proceeding mentioned in clause (xviii) is pending, may, with the sanction of the Chief Justice, obtain the assistance of any other Judge or Judges for the hearing and determination of such proceeding or of any question or questions arising therein.





the assistance of any other Judge or Judges for hearing and determination thereof:

“(i) Whether a Single Judge ought to hear pending writ petitions under Articles 226/227 of the Constitution of India assailing the orders of the erstwhile Intellectual Property Appellate Board (IPAB) post its dissolution and substitution with the High Court?”

**10.7** The third suggestion proffered by Mr. Sibal is for referring the matter to the Chief Justice on the administrative side, to consider the amendment of the Delhi High Court Rules. He cites, for this purpose, the judgment of the High Court of Punjab and Haryana in *Baljit Kaur Vohra v. Dr. Vikramjit Singh Vohra*<sup>15</sup>. Mr. Sibal also relies on the judgment of High Court of Madras in *B. Mohamed Yousuff*<sup>8</sup>.

## **11. Submissions of Mr. Sushant Singh:**

**11.1** Mr. Sushant Singh submits that Rule 4 of the IPD Rules has to be given a purposive interpretation. He relies on the preamble to the IPD Rules to state that the purpose of the IPD Rules was to bring into existence the Intellectual Property Division (IPD) and delineate its powers, functions and authority. While interpreting the provisions of the IPD Rules, he submits, this purpose has to be borne in mind. Mr. Sushant Singh would exhort this Court not to interpret Rule 4 of the IPD Rules in absolute terms as, he submits, if such an interpretation were to be extended, it would result in the same Single Judge exercising original rectification jurisdiction as well as appellate jurisdiction over orders passed by the IPAB in rectification petitions,

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<sup>15</sup> 2000 SCC OnLine P&H 937



which is obviously incongruous and anomalous.

**11.2** In order to resolve such an anomaly, Mr. Sushant Singh would exhort this Court to invoke proviso (b) to Rule 1 of the Delhi High Court Rules. As a substantial question of jurisdiction has arisen, Mr. Sushant Singh submits that, exercising jurisdiction vested by the said proviso (b) to Rule 1, I should refer the matter to a Division Bench. He has also cited illustrative decisions in which learned Single Judges of this Court have, keeping in mind the importance of the issue involved, referred the matter to Division Benches, subject to orders of Hon'ble the Chief Justice.

**11.3** Mr. Sushant Singh has also reiterated the contention articulated by his predecessor Counsel that, if the learned Single Judge were to entertain a writ petition assailing an order passed by the IPAB, and come to the view that the matter was required to be remanded, an anomalous situation would arise in which the learned Single Judge would effectively be remanding the matter to herself or himself. This, again, constitutes a reason why the initial jurisdiction, to hear the writ petition directed against an order of the IPAB, ought to be exercised by a Division Bench.

**11.4** Mr. Sushant Singh has also invoked the principles of morality and independence of judiciary to support his stand. He submits that entertaining of the present writ petitions by a Single Judge, who is also seized of appellate jurisdiction over the orders passed by IPAB in rectification matters, may be destructive of morality and the



independence of the judiciary.

## **12. Submissions of Mr. N. Mahabir:**

**12.1** Mr. Mahabir, arguing *per contra*, submits that the issue in controversy is concluded by Rule 4 of the IPD Rules, which clearly requires all IPR subject matters or cases or proceedings or disputes to be heard by Single Judges of this Court, except cases which are required to be heard by Division Benches as per Section 13 of the Commercial Courts Act, 2015. There being no dispute about the fact that the present cases do amount to “IPR subject matters or cases or proceedings or disputes”, as defined in Rule 2(1) of the IPD Rules, Rule 4 concludes the issue and requires the present writ petitions necessarily to be heard by a Single Judge.

**12.2** Mr. Mahabir would contend that Mr. Sai Deepak has misunderstood the import of the concluding caveat “except matters that are to be dealt with by a Division Bench” in Rule 2(1)(iii) of the IPD Rules. He submits that the said expression does not indicate, in any manner, that writ petitions envisaged by Rule 2(1)(iii) are of two kinds; those which are to be heard by Single Benches and those which are to be heard by Division Benches. He submits, rather, that the expression “except matters that are to be dealt with by a Division Bench” has been employed because Rule 2(1)(iii) is not restricted to writ petitions, but also covers Regular First Appeals (RFAs) and First Appeal from Orders (FAOs). RFAs and FAOs may either be such as are to be heard by Single Benches or by Division Benches. It is to



cater to these categories of cases, submits Mr. Mahabir, that Rule 2(1)(iii) carves out an exception in respect of matters which are to be dealt with by a Division Bench, and not to cater to writ petitions.

**12.3** Even if the DHC Rules were to be applicable, submits Mr. Mahabir, the cases would fall not under Rule 1(xviii)(b), but under Rule 1(xviii)(a), as Rule 1(xviii)(a) specifically covers writ petitions, whereas Rule 1(xviii)(b) deals with “other civil matters”. Under Rule 1(xviii)(a), submits Mr. Mahabir, all writ petitions, which seek issuance of a writ of *certiorari*, have to be heard by a Single Judge.

**12.4** As such, submits Mr. Mahabir, even if the provisions of the IPD Rules and the DHC Rules were to be harmoniously constructed, the sequitur would be that writ petitions directed against the orders passed by the IPAB have to be heard by Single Judges of this Court.

**12.5** Mr. Mahabir also submits that the contention that the IPAB had stepped into the shoes of the Single Judge on its coming into existence and that, after the abolition of the IPAB, the Single Judge has stepped into the shoes of IPAB, is fundamentally flawed. He submits that each exercises its own clearly statutorily delineated jurisdiction. The mere fact that, consequent on abolition of IPAB, matters which were earlier being filed before the IPAB, would have to be filed before the High Court, he submits, does not imply that the High Court has stepped into the shoes of the IPAB.

**12.6** Mr. Mahabir has placed reliance on para 37 of the judgment of



the Division Bench of this Court in *V.R. Holdings*<sup>10</sup>, para 9 of the judgment in *National Sewing Thread Co. Ltd. v. James Chadwick and Brothers Ltd.*<sup>16</sup> and para 27 of the judgment in *Satyanarain Khandelwal v. Prem Arora*<sup>17</sup>.

**13. Submissions of Mr. Chander. M. Lall, *Amicus Curiae*:**

**13.1** Assisting the Court as *amicus curiae*, Mr. Chander Lall, learned Senior Counsel, submits that the Commercial Courts Act has set up three types of Courts to deal with commercial disputes, namely, the Commercial Courts, the Commercial Division and the Commercial Appellate Division, of which the Commercial Division and the Commercial Appellate Division are located in the High Court. He submits that, while the Commercial Division of the High Court consists of Single Benches, the Commercial Appellate Division consists of Division Benches. The very fact that Division Benches are designated as a Commercial *Appellate* Division, itself, submits Mr. Lall, militates against the contention that the Division Benches can exercise *original* commercial jurisdiction. Writ petitions, he submits, moreover, are extraordinary *original* petitions, which can certainly not be entertained by an Appellate Division of the High Court, as they are not a continuation of the proceedings before the IPAB. For this purpose, he relies on *State of UP v. Dr. Vijay Anand Maharaj*<sup>18</sup>.

**13.2** The submissions of learned Counsel who contest the

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<sup>16</sup> (1953) 1 SCC 794

<sup>17</sup> 2022 SCC OnLine Del 2142

<sup>18</sup> 1962 SCC Online SC 12



jurisdiction of this Bench to hear these petitions, he submits, amounts to requiring the Commercial Appellate Division to hear original writ proceedings, which is *ex facie* anomalous.

**13.3** Adverting to the IPD Rules, Mr. Lall points out that the IPD Rules have been promulgated after the implementation of the Tribunals Reforms Act, 2021 and the consequent abolition of the IPAB. Rule 4 of the IPD Rules, he submits, clearly stipulates that the matters filed before the IPAB shall, save and except in cases which fall under Section 13 of the Commercial Courts Act, be heard and adjudicated by Single Judges of the IPD. Mr. Lall relies on the definition of “Intellectual Property Rights Division”, as contained in Section 2(j) of the IPD Rules, as “the Division in the Delhi High Court *presided over by Single Judges* to deal with disputes and cases containing IPR subject matter”. As such, he submits that the disputes and cases containing IPR subject matter have necessarily to be heard by Single Judges, who alone constitute the IPD.

**13.4** Mr. Lall seriously contests the contention that the IPAB had stepped into the shoes of the High Court, or that the High Court has stepped into the shoes of the IPAB. No shoe of one, he submits, has ever been worn by the other. He submits that there is a fundamental difference between the Single Judge of this Court and the IPAB. The IPAB, he submits, merely has the trappings of a Court but cannot be regarded as a Civil Court, for which purpose, he relies on the judgment of a Division Bench of this Court in *Promoshirt SM SA v.*



*Armasuisse*<sup>19</sup>. Mr. Lall has also drawn my attention to Section 92(2) of the Trade Marks Act 1999, prior to its abolition by the Tribunals Reforms Act, 2021, which conferred limited power of Civil Courts to the IPAB. The IPAB, therefore, cannot, by any stretch of imagination, be said to have stepped into the shoes of the High Court; nor can it be said that the High Court stepped into the shoes of the IPAB. In fact, he submits, the High Court exercises writ jurisdiction, which the IPAB does not even possess.

**13.5** As his last submission, Mr. Lall contends that accepting the stand canvassed by Mr. Varma, Mr. Sai Deepak, Mr. Sibal and Mr. Singh, would result in denying, to the petitioners in these writ petitions, a valuable option of appeal to the Division Bench by way of Letters Patent Appeal (LPA). An interpretation which eviscerates an appellate remedy, he submits, has necessarily to be eschewed.

## **Analysis**

**14.** To my mind, the statutory position is clear as crystal, and it is not open to this Court, by resort to interpretative calisthenics, to deviate from it. This Court can only abide by the statutory dictate. It cannot legislate.

### **15. Applicability of the doctrine of purposive interpretation**

**15.1** The principle of purposive interpretation of statutory

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<sup>19</sup> 2023 SCC OnLine Del 5531



instruments has no application to provisions which fix jurisdiction in an authority. If the statute says that a particular category of matters are to be heard by Single Judges, then Single Judges, and Single Judges alone, can hear those matters. The statute has to be obeyed. Where the statute is unambiguous, and fixes jurisdiction, no occasion arises to resort to any interpretative principles. The Court has merely to comply with the statutory edict. This requirement has its genesis in a principle of far greater vintage and sanctity than the principle of purposive interpretation, dating back to *Taylor v. Taylor*<sup>20</sup>, *Nazir Ahmed v. King Emperor*<sup>21</sup> and *State of U.P. v. Singhara Singh*<sup>22</sup>, and followed to this day, that, where the statute requires a particular act to be done in a particular way, that act has to either to be done in that way or not done at all, all other ways of doing the act being necessarily proscribed. This principle would apply as much to plenary, as to subordinate, legislation, of course with the caveat that if subordinate legislation is contrary to plenary legislation, the latter would prevail. No such conflict, however, arises in the present case.

**15.2** The corollary is, therefore, that, if the statute requires a particular act to be done by a particular authority, that authority, and that authority alone, can do that act. If, therefore, to reiterate, the statute requires that a particular category of cases have to be heard and decided by Single Judges, they have to be decided by Single Judges, and by no one else. Two sequiturs follow.

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<sup>20</sup> (1875) 1 Ch D 426

<sup>21</sup> AIR 1936 PC 253

<sup>22</sup> AIR 1964 SC 358





**15.3** The first, already noted, is that no authority, other than a Single Judge, can exercise such jurisdiction.

**15.4** The second is that a Single Judge, before whom such a case comes up for adjudication, cannot *refuse* to exercise jurisdiction. Of course, if, for any reason, it is personally not possible for her, or him, to hear the matter, such as a case where conflict of personal interest may be involved, she, or he, can recuse. That, however, would be attributed to personal disability of the concerned Judge to hear the matter, and has nothing to do with the question of jurisdiction.

**15.5** As I see it,

- (i) Rule 4 of the IPD Rules, read in conjunction with the various clauses in Rule 1, concludes the matter, and unambiguously requires that writ petitions such as those before me have necessarily to be heard by Single Judges, and
- (ii) even if, *arguendo*, the DHC Rules were to apply, they, too, would require these writ petitions to be heard by a Single Judge.

The statutory mandate being thus clear and free from ambiguity, I do not see any occasion to resort to the principle of purposive interpretation. If the statute requires these writ petitions to be heard by a Single Judge, I cannot, by resorting to intricate principles of interpretation, refuse to exercise jurisdiction, or hold that these matters should be listed before the Division Bench.



## 16. The statutory mandate flowing from the IPD Rules

**16.1** Rule 4 of the IPD Rules effectively states that every “IPR Subject Matter or case or proceeding or dispute” filed before the IPD, as defined in Rules 2(i), 2(j) and 2(l) of the IPD Rules shall be decided by a Single Judge of the IPD. The exception is with respect to cases which have to be decided by a Division Bench as per Section 13 of the Commercial Courts Act, 2015. It is not in dispute that Section 13 of the Commercial Courts Act would not apply to the present writ petition.

**16.2** Rule 2(l) of the IPD Rules defines “IPR Subject Matters or cases or proceedings or disputes”. The expression is defined as including, *inter alia*, writ petitions arising out of IPR Subject Matters, except matters to be dealt with by a Division Bench.

**16.3** “IPR Subject Matter” is defined in Rule 2(i) of the IPD Rules as including “matters pertaining to patents, copyrights and trademarks”. The word “matter” is extremely wide and there is no reason why an IPAB order dealing with patents, copyrights, trademarks etc. should not be treated as an “IPR Subject Matter”. Albeit in the context of Article 142 of the Constitution of India, the Supreme Court, in *Monica Kumar v. State of U.P.*<sup>23</sup>, defines “matter” as covering “every kind of proceeding pending in Court including civil or criminal”. No learned Counsel has, in fact, sought to argue that orders

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<sup>23</sup> (2008) 8 SCC 781 (para 45)



passed by the IPAB would not fall within the definition of “IPR Subject Matter”.

**16.4** A writ petition arising out of such an IPAB order would, therefore, be a writ petition arising out of IPR Subject Matter within the meaning of Rule 2(1)(iii) of the IPD Rules. “All original proceedings, appellate and other proceedings related to IPR subject matters as defined in Rule 2(i) of the IPD Rules filed before the IPD” are, per definition, “IPR subject matters or cases or proceedings or disputes”.

**16.5** It is important, in this context, to carefully read the opening main part of Rule 2(1) of the IPD Rules to which, in my opinion, none of the learned Counsel have accorded the necessary importance. Rule 2 (1) commences thus:

“ ‘IPR subject matters or cases or proceedings or disputes’ *shall include all original proceedings, appellate and other proceedings related to IPR subject matter(s) as defined in Rule 2(i) above filed before the IPD and shall also include ...*”

Clauses (i) to (iv) which follow are, therefore, proceedings which are “also included” in the definition of “IPR subject matters or cases or proceedings or disputes”. They do not, therefore, qualify in any manner, the preceding opening words of Rule 2 (1), *vide* which “all original proceedings, appellate and other proceedings related to IPR subject matter(s) as defined in Rule 2(i) filed before the IPD” are, *ipso facto*, “IPR subject matters or cases or proceedings or disputes”.



- 16.6** The resultant position which emerges is that, inasmuch as
- (i) orders passed by the IPAB are “IPR subject matters” as defined in Rule 2(i),
  - (ii) writ petitions directed against orders passed by the IPAB, therefore, fall within the ambit of the expression “original proceedings, appellate and other proceedings related to IPR subject matter(s) as defined in Rule 2(i), and
  - (iii) the present writ petitions have indisputably been filed before the IPD,

the present writ petitions qualify as “IPR subject matters or cases or proceedings or disputes” even by virtue of the opening words of Rule 2 (1). There is no need, therefore, to proceed to the “also include” part of the definition or, therefore, to any of the clauses (i) to (iv) which follow, including clause (iii).

**16.7** The inexorable sequitur is that, by virtue of Rule 4 of the IPD Rules, these writ petitions would necessarily have to be heard by a learned Single Judge.

**16.8** Assuming clause (iii) in Rule 2(1) of the IPD Rules applies:

**16.8.1** Even if, for the sake of argument, clause (iii) in Rule 2(1) of the IPD Rules were to apply, the consequence would remain the same.

**16.8.2** Clause (iii) in Rule 2(1) covers “Writ Petitions (Civil), Civil Miscellaneous (Mains) petitions, RFAs, FAOs and Civil



Revision Petitions” arising out of IPR subject matters. All such proceedings are, per definition, “IPR subject matters or cases or proceedings or disputes” within the meaning of Rule 2(l), subject, however, to the proceedings not falling within the exception carved into Rule 2(l), which applies to “matters that are to be dealt with by a Division Bench”.

**16.8.3** Mr. Sai Deepak sought to contend that this concluding caveat – “matters that are to be dealt with by a Division Bench” – figuring in Rule 2(l) indicated that writ petitions fell into two categories; those which were to be dealt with by Single Judges and those which were to be dealt with by Division Benches. Mr. Mahabir disputed the correctness of this contention, pointing out that this concluding caveat applies to all the categories of matters envisaged in the earlier part of the clause, among which are RFAs and FAOs. RFAs and FAOs, he points out, may either be amenable to Single Bench or Division Bench jurisdiction. The concluding exception, in Rule 2(l), to “matters that are to be dealt with by a Division Bench”, he submits, is intended to cater to RFAs and FAOs.

**16.8.4** The issue is of no particular moment and, therefore, does not deserve much discussion. Suffice it, therefore, to state that, as Rule 2(l)(iii) does, as Mr. Mahabir correctly points out, cover not just Civil Writ Petitions, but also FAOs and RFAs, the concluding exception in the clause cannot be read as indicating, for certain, that IPD writ petitions may either be amenable to Single Bench or Division Bench jurisdiction. To that extent, Mr. Mahabir’s



interpretation of the concluding exception in Rule 2(1)(iii) is preferable to that advanced by Mr. Sai Deepak.

**16.8.5** I will, however, proceed on the premise that IPD writ petitions may also, in certain cases, be heard by Division Benches. Do the present writ petitions fall into that category?

**16.8.6** Ordinarily, Rule 2(1)(iii) being a part of the IPD Rules, the exception in Rule 2(1)(iii) must also relate to some provision of the IPD Rules. In other words, matters which are to be dealt with by the Division Bench as per the IPD Rules alone would fall within the scope of the said exception. Of course, if the IPD Rules incorporate, either expressly or by reference, the provisions of any other Rules, including the DHC Rules, apropos writ petition jurisdiction, then recourse to such other Rules may be justified.

**16.8.7** Mr. Sai Deepak then relied on Rule 8(iii) of the IPD Rules. According to him, Rule 8(iii) incorporates, by reference, into the provisions relating to writ petitions under the IPD Rules, the DHC Rules.

**16.8.8** On this, too, I am not able to entirely concur with Mr. Sai Deepak. Rule 8 is a provision which deals with procedure, and not with substantive conferment of jurisdiction. It is titled “Procedure for Writ Petitions (Civil)”. Sub-rule (i) deals with the requirements of a writ petition, challenging orders passed by the IPO/authority, such as a synopsis, the list of dates, memo of parties, Memorandum of the writ



petition, and the like, and the constituents thereof. Sub-rule (ii) requires the impugned order to be annexed to the writ petition. Sub-rule (iii) has to be understood in this light, as akin to sub-rules (i) and (ii). It stipulates that the DHC Rules and orders and practice directions issued from time to time, insofar as they do not conflict with the IPD Rules, would apply to writ petitions filed in the IPD. It is clear that the provision is intended to cater to procedural aspects of Civil Writ Petitions filed in the IPD, not addressed by sub-rules (i) and (ii). It cannot be read as a provision incorporating, by reference, provisions of the DHC Rules which deals with substantive conferment of authority and power to hear and adjudicate writ petitions.

**16.8.9** The reliance, by Mr. Sai Deepak, on Rule 8(iii) of the IPD Rules as justifying recourse to the DHC Rules, for determining whether the present writ petitions would have to be heard by a Single Judge or by the Division Bench does not, therefore, appear to me to be appropriate.

**16.8.10** Again *arguendo*, even if it were to be assumed that Rule 8(iii) of the IPD Rules justifies recourse to the DHC Rules, to decide the categories of IPD writ petitions which would lie before a learned Single Judge, and those which would lie before the Division Bench, I am of the opinion that I would still be competent to adjudicate these writ petitions. I proceed to elucidate the reason why.



## **16.9** Assuming the DHC Rules apply:

**16.9.1** Mr. Sai Deepak places reliance on Rule 4 of the DHC Rules. Rule 4, however, starts with the words “save as provided by law or by these rules or by special order of the Chief Justice”. The stipulation, in Rule 4, that all cases shall be heard and disposed of by a Division Bench is, therefore, subject to any provision to the contrary contained in the DHC Rules themselves.

**16.9.2** Rule 1(xviii)(a) is, in my opinion, such a provision, which indicates to the contrary.

**16.9.3** Rule 1 of the DHC Rules specifically requires the classes of cases enumerated in the various clauses thereof, to ordinarily be heard and disposed of by a Single Judge. In view of the opening words of Rule 4, Rule 4 would necessarily be subject to Rule 1. In other words, if the case falls within one of the clauses of Rule 1, it would have to be heard by a Single Judge, and Rule 4 would not apply.

**16.9.4** I am not inclined to attribute much significance to the word “ordinarily” in the opening part of Rule 1. Even Mr Sibal, who canvassed this contention, could not, in my view, cite any such extraordinary circumstance which would justify my departing from what Rule 1 prescribes.

**16.9.5** Clause (xviii)(a) of Rule 1 expressly and specifically





covers petitions under article 226 of the Constitution “for the issue of any directions, orders or writs in the nature of Mandamus, prohibition, *quo warranto* or *certiorari* for the enforcement of the fundamental rights ... or for any other purpose”, except the categories of petitions in the said sub-clauses (i) to (x). These enlisted sub-clauses of clause (xviii)(a) cover petitions where the vires of any Act, statutory regulation, rule or bye-laws is under challenge, petitions where personal liberty is involved, tax matters, petitions arising from the BIFR or AAIFR, public interest litigations, petitions relating to tenders, petitions relating to cooperative societies, petitions relating to the Armed Forces, land acquisition matters and petitions arising out of orders passed by this Court on the administrative side. The present writ petitions do not fall within any of these enlisted categories. They, therefore, fall within the main part of clause (xviii)(a), as they are writ petitions seeking writs of *certiorari* and mandamus. By virtue of the opening words of Rule 1 of the DHC Rules, therefore, the present writ petitions have necessarily to be heard by a Single Judge.

#### **16.9.6**      Applicability of proviso (b) to Rule 1:

**16.9.6.1**      Proviso (b) to Rule 1 has been pressed into service both by Mr. Sibal and Mr. Sushant Singh. To my mind, the provision has no application to the present case at all. Having said that, proviso (b) is a truly strange provision, and I have no hesitation in acknowledging that I was not even aware of its existence; to my knowledge, I do not know of any instance, in all my years of practice and thereafter, in which this proviso has been invoked. It is, quite clearly, not a



provision which envisages reference of a matter by a learned Single Judge to the Division Bench, which is a matter of fairly common occurrence. Mr. Sushant Singh appears, with respect, to have misconstrued proviso (b) as envisaging reference of a writ petition by a Single Judge to a Division Bench. It does no such thing. Rather, proviso (b) envisages a Single Judge, *before whom a writ petition is pending*, seeking the sanction of the Chief Justice to co-opt another learned Judge, or other learned Judges, to *assist* her, or him, in hearing and deciding the writ petition. The word “assist” is extremely problematic and, frankly speaking, very unhappy, given the context in which it is used. In a Division Bench, both the judges cooperate and, by joint and harmonious application of mind, decide the matter. It cannot be said that either Judge is merely “assisting” the other. That, however, is what proviso (b) envisages. Several questions arise. What is the status of the “assisting” Judge? Does he become, *ipso facto*, a part of the Bench which is deciding the matter? If the role of the newly co-opted Judge is merely to “assist”, will the final judgment, then, be rendered by the learned Single Judge who was *in seisin* of the proceedings, or by a Division Bench which would include the “assisting” Judge? Most importantly, in what circumstances would the learned Single Judge, before whom the writ petition is pending, seek assistance? The matter becomes even more complex when one notices that the proviso envisages seeking of assistance not merely by another Judge, but even by more than one Judges. In other words, in exercise of the power conferred by proviso (b), a Single Judge, who is hearing the writ petition, may seek the sanction of the Chief Justice to depute, not just one, but even more than one, Judges



to assist him in hearing and deciding the matter.

**16.9.6.2** As I said, proviso (b) is inherently problematic. Perhaps, for this reason, I do not know of any instance in which a Single Judge of this Court, hearing a writ petition, has requested the Chief Justice to depute another Judge, or more than one Judges, to assist him in hearing and deciding the matter. As worded, therefore, proviso (b) has, to my knowledge, never been invoked. Nor do I envisage its invocation in the foreseeable future; which is why I forbear from referring this provision to the Rules Committee of this Court perhaps for reconsideration at least regarding the manner in which it is worded.

**16.9.6.3** In any event, as I have already said, proviso (b) calls for application, if at all, while deciding the controversy in dispute in the writ petition. The proviso is obviously intended to apply during the hearing of the substantive writ petition. This is clear from the words “before whom any proceeding mentioned in clause (xviii) is pending”. The proviso is, therefore, envisaged as being invoked by the Single Judge who is hearing the writ petition. If, during the hearing of the writ petition, the Single Judge feels it necessary to adopt the somewhat peculiar procedure that proviso (b) contemplates, he would be free to do so. The proviso cannot, however, have any application in deciding whether the present writ petitions would lie before a learned Single Judge, or before the Division Bench.

**16.9.6.4** That apart, even if proviso (b) were invocable at this



stage itself, its invocation is a matter of discretion, to be exercised by the Judge hearing the writ petition. I do not see any reason to invoke the proviso. With great respect to all my learned Sisters and Brothers on the bench, and their unquestionable judicial acumen, I think I am capable of deciding the dispute at hand without their assistance, valuable though it would have been.

**16.9.6.5** The request, by Mr. Sibal and Mr. Singh, to me, to invoke proviso (b) is, therefore, declined.

**16.9.7** Nor do I see any justification for referring the present issue, of whether these writ petitions can be heard and decided by me, or would have to be placed before a Division Bench, to any larger bench for decision. The issue, in my opinion, is squarely covered by the existing Rules, and there is no such intricate legal question as would justify the taxing of two brains instead of one.

**16.9.8** Assuming, therefore, that the DHC Rules apply, these writ petitions would still be capable of being heard and decided by a Single Judge, in view of Rule 1(xviii)(a) of the DHC Rules.

**16.10** Whether, therefore, one views the issue through the prism of the IPD Rules, or the prisms of the IPD Rules and the DHC Rules together, these writ petitions can be heard and decided by a Single Judge.



## 17. Other Submissions

**17.1** In view of my finding that the IPD Rules, whether seen by themselves or in conjunction with the DHC Rules, requires these writ petitions to be necessarily decided by a Single Judge, I do not intend to burden this judgment with any discussion regarding the history of the creation, and later abolition, of the IPAB. Such considerations pale into insignificance where the mandate of the Rule is clear, categorical and unequivocal. Where the IPD Rules require, mandatorily, these writ petitions to be heard and decided by a Single Judge, I am obligated, by my oath of office, to do so. It is well settled that a Court which is statutorily obligated to decide a matter cannot refuse to do so, unless, for reasons personal to the concerned Judge, she, or he, deems it appropriate to recuse.

### **17.2** Has the *status quo ante* been restored?

That said, I must observe that there is a fundamental fallacy in the attempt, of learned Counsel, to seek to contend that, with the abolition of the IPAB and listing, before Single Judges of this Court, of rectification petitions which were pending before the IPAB, the *status quo ante*, as it existed prior to creation of the IPAB, has been restored. It is not so. The submission notes a fundamental development that has taken place, in the form of the promulgation of the IPD Rules. The IPD Rules make all the difference. It cannot, therefore, be said that we are back to the state in which things were, before the IPAB came into being.



### **17.3 The decision in *B. Mohamed Yousuff*<sup>8</sup>**

**17.3.1** The judgment of the High Court of Madras in *B. Mohamed Yousuff*<sup>8</sup>, on which learned Counsel for the respondents, as well as Mr. Sibal, placed extensive reliance, cannot, in my opinion, constitute a useful guide to deciding the issue in controversy, which pertains to the position as it obtains in this Court. There is nothing to indicate that any provision, similar to the IPD Rules, or even Rule 1(xviii)(a) of the DHC Rules, applies to the High Court of Madras. At any rate, the judgment in *B. Mohamed Yousuff*<sup>8</sup> does not refer to any such Rule.

**17.3.2** In fact, in para 28 of the report of the said decision, the High Court has specifically held that the power of scrutiny of the orders passed by the IPAB, as exercised by the High Court, “is the power to issue a writ of certiorari and/or mandamus as well as of power of judicial superintendence”. Rule 1(xviii)(a) of the DHC Rules clearly requires writ petitions, which seek issuance of a writ of *certiorari* on mandamus, and which do not fall within any of the excepted categories envisaged in the various sub-clauses of the said clause, to be heard and decided by Single Judges. If anything, therefore, the judgment of the High Court of Madras in *B. Mohamed Yousuff*<sup>8</sup>, when seen in the light of the provisions of the IPD Rules or even of the DHC Rules, would support the jurisdiction of Single Judges of this Court to hear the present writ petitions.



## **17.4** The “stepping into shoes” submission

**17.4.1** The entire edifice of the submission that the vesting of jurisdiction, with Single Judges of this Court, of the power to decide rectification petitions, which, prior to the abolition of the IPAB, were filed with the IPAB and, consequent to the abolition of the IPAB, are now listed before this Court, as well as challenges to orders passed by the IPAB, would result in an incongruous and anomalous situation, is predicated on the erroneous premise that the Single Judge of this Court has “stepped into the shoes of the IPAB”. Consequent on the abolition of the IPAB, the shoes that it wore stand discarded. The Single Judges of this Court continue to wear the shoes which they always wore. It is not as though, consequent on the abolition of the IPAB, when certain matters which were listed before the IPAB are now listed before Single Judges of this Court, the Single Judges now wear two shoes (or two hats, for that matter); one when they discharge jurisdiction as Single Judges and the other when they hear and decide cases which had earlier been filed before the IPAB. The only change is that matters which were pending before the IPAB are now to be heard by Single Judges of this Court. When a Single Judge of this Court hears a rectification, or an appeal against the order of the Registrar of Trade Marks which was filed before the IPAB prior to its abolition, he does not do so as a pseudo-IPAB, or as an IPAB in disguise. He does so as a Single Judge of this Court. The decision rendered by him in such a case cannot be treated as equal to the decision which the IPAB might have rendered, had it continued to exist and retain dominion over the matter. The decision is pre-



eminently the decision of the Single Judge of this Court.

**17.4.2** Once the myth of switching of shoes is thus dispelled, nothing substantial survives in the argument of anomaly or incongruity resulting, were the present petitions to be decided by a Single Judge. The Legislature is well within its authority in modifying the statute to direct that matters, which were hitherto pending before the IPAB, would, consequent on the abolition of the IPAB, be decided by the High Court. If that decision is taken by a Single Judge of the High Court, he does not, in doing so, act as a successor to the IPAB, or step into his shoes. He acts as a Single Judge of the High Court who, by statutory fiat, is now required to decide the matter which was filed before another authority, which stands abolished. He decides the case as a Single Judge of this Court, and as no one else. He wears the same shoes which he wears while deciding any other case as a Single Judge of this Court.

**17.4.3** At the same time, while deciding appeals against orders passed by the IPAB, before its abolition, he acts as a hierarchically – or at least judicially – superior authority to the IPAB. The order which he is examining is the order passed by the IPAB, which is judicially regarded as subject to his supervisory jurisdiction, or judicial review jurisdiction by way of writ. Viewed thus, it becomes evident that the entire plea of incongruity and abnormality resulting, if Single Judges of this Court were to decide appeals against orders passed by the IPAB prior to its abolition, is fundamentally misconceived. There is neither incongruity nor anomaly involved.





While hearing and deciding a challenge to an order passed by the IPAB, this Court acts as a Court having supervisory jurisdiction, as well as jurisdiction of judicial review, over the decision of the IPAB. While hearing and deciding an original rectification petition, this Court is exercising an original jurisdiction vested in it by statute. There is, therefore, no incongruity at all, if the Single Judge exercises both powers, for the simple reason that the Single Judge of this Court is regarded, conceptually, as judicially superior to the IPAB. In fact, this submission of learned Counsel, in order for it to survive, has to depend on the illusion that the Single Judge has stepped into the shoes of the IPAB. Once this is revealed as an illusion, the proverbial wind stands, as it were, knocked out of the sails of the submission.

**17.4.4** In that view of the matter, the judgment of the Supreme Court in *Nahar Industrial Enterprises Ltd v. HSBC*<sup>24</sup>, too, does not call for discussion.

**17.5** The decision in *DTTDC*<sup>12</sup>:

**17.5.1** The judgment in *DTTDC*<sup>12</sup>, rendered by a coordinate Single Bench of this Court, in fact, contains some useful pointers. The issue before the Court, in that case, was whether appeals arising out of judgments or orders passed by Commercial Courts at the level of the District Judge exercising original civil jurisdiction, should be listed before Single Judges, or Division Benches, of this Court. The Court observed that Section 13(1A) of the Commercial Courts Act, as

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<sup>24</sup> (2009) 8 SCC 646



amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, specifically provided that any person, aggrieved by the judgment or order of a Commercial Court at the level of the District Judge exercising original civil jurisdiction may appeal to the Commercial Appellate Division of the High Court. The Commercial Appellate Division, as per Section 5(1) of the Commercial Courts Act, necessarily consists of Division Benches of the Court. Thus, the Court held that Section 13(1A), read with Section 5(1) of the Commercial Courts Act, necessarily required appeals, against judgments and orders passed by Commercial Courts at the level of District Judge to be heard and decided by Division Benches of the High Court.

**17.5.2** This decision, in fact, supports the stand being espoused by Mr. Mahavir and Mr. Lall, rather than that being espoused by learned Counsel who argue to the contrary. This Court has, in *DTTDC*<sup>12</sup>, recognised the pre-eminence of the statute in identifying the authority, or the strength of the Bench, which has to deal with a particular category of cases. Section 13(1A), read with Section 5 of the Commercial Courts Act requires appeals, against judgments and orders of Commercial Courts at the level of District Judge, to be heard by Division Benches; ergo, held the Court, the appeals have to be heard and decided by a Division Bench. If this reasoning is extrapolated to the statutory position which obtains to the case at hand, as Rule 4, read with Rule 2(l) and 2(i) of the IPD Rules requires writ petitions, arising out of IPD matters, to be heard by Single



Judges, and as the same position emerges even if one were to take the DHC Rules into consideration – by virtue of Rule 1(xviii)(a) – these writ petitions have necessarily to be heard and decided by the Single Judge, applying the *DTDC*<sup>12</sup> principle.

## **17.6 The decisions in *Resilient Innovations*<sup>9</sup> and *V.R. Holdings*<sup>10</sup>**

**17.6.1** *Resilient Innovations*<sup>9</sup> and *V.R. Holdings*<sup>10</sup> involved issues which have nothing in common with the controversy at hand. In each case, the Division Bench was seized with Letters Patent Appeals (LPAs), challenging decisions passed by Single Judges of this Court in rectification petitions preferred under Section 57 of the Trade Marks Act. In *Resilient Innovations*<sup>9</sup>, the respondent contended that no LPA was maintainable against the decision of a Single Judge in a rectification petition. Pared to its essentials, the decision of the Division Bench in *Resilient Innovations*<sup>9</sup> held that, as Clause 10 of the Letters Patent which governed LPA jurisdiction vested in this Court did not exclude judgments rendered by Single Judges in rectification petitions, and the Trade Marks Act did not, either expressly or by necessary implication, exclude the availability of the remedy of an intra-Court appeal against such judgments, an intra-Court appeal would lie.

**17.6.2** The same controversy arose in *V.R. Holdings*<sup>10</sup>, in which it was sought to be contended that the decision in *Resilient Innovations*<sup>9</sup> was required to be referred to a Larger Bench, as it did not consider the impact of Section 13 of the Commercial Courts Act.



The Division Bench which decided *V.R. Holdings*<sup>10</sup> agreed with this contention, to the extent of failure, on the part of the earlier Division Bench which decided *Resilient Innovations*<sup>9</sup> to consider the impact of Section 13 of the Commercial Courts Act, but declined the request for referring the dispute to a larger bench as, in its view, even if Section 13 of the Commercial Courts Act were to be taken into account, the conclusion would remain the same, which was that the remedy of LPA was available against a judgment passed by a Single Judge in a rectification petition.

**17.6.3** The dispute at hand is not concerned, in any manner, with the appellate jurisdiction of the Division Bench of this Court. The decisions in *Resilient Innovations*<sup>9</sup> and *V.R. Holdings*<sup>10</sup> do not, therefore, illumine our path in any way.

### **17.7** The “remand” submission

**17.7.1** One of the submissions which was advanced by Mr. Sibal and Mr. Singh was that an anomalous situation could arise if a Single Judge, hearing a challenge, by way of writ petition, to the decision of the IPAB, deemed it appropriate to remand the matter for reconsideration. There is, however, no IPAB anymore in existence. The remand would, therefore, effectively be by the Single Judge to herself, or himself. This, submit learned Counsel, is obviously anomalous. The only way of avoiding the anomaly would be if the appeal itself were to be heard by a Division Bench, instead of a Single Judge.



**17.7.2** The submission misconstrues the precise nature of a remand. Setting aside of the order under challenge is a prerequisite, before the dispute can be remanded for reconsideration. Consideration of the dispute is, therefore, done *de novo*, i.e. anew. If, in the interregnum, by legislative fiat or otherwise, the authority which is capable of considering the dispute, as originally raised, has changed, it is obviously the changed authority which would reconsider the matter. Remand, therefore, does not necessarily require the matter to be sent back to the very authority which had earlier considered the matter. *It is the dispute which is remanded for a fresh consideration*, not the authority who passed the earlier order who is asked to reconsider the dispute. If, therefore, between the time when the order under challenge was passed by the IPAB, and the final decision to remand is taken by this Court on the appeal preferred against the said order, the IPAB, whether by reason of abolition or otherwise, is no longer competent to adjudicate on the dispute, which now falls within the competence of the Single Judge of this Court, the dispute would be considered, *de novo*, by the Single Judge. There is no incongruity or anomaly in this. It is not as though the Single Judge is remanding the matter to himself. The matter is remanded for reconsideration to the authority who, at that point of time, is competent to adjudicate on it. That the said authority happens to be the Single Judge does not convert the order into a remand by Caesar to Caesar.

**17.7.3** This submission too, therefore, fails.



**18.** The issue being, in my opinion, squarely covered by the provisions of the IPD Rules, I see no reason to accede to Mr. Sibal's request for framing any question of law or invoking proviso (b) to Rule 1 of the DHC Rules.

### **Conclusion**

**19.** Summing up, therefore, I am of the opinion that writs against orders passed by the IPAB prior to its abolition can be heard and decided by the Single Judge of this Court, for the following reasons:

(i) Rule 4 of the IPD Rules clearly requires every "IPR subject matter or case or proceeding or dispute" to be decided by a Single Judge.

(ii) The decision of the IPAB constitutes "IPR Subject Matter" within the meaning of Rule 2(i) of the IPD Rules.

(iii) A writ petition which challenges the decision of the IPAB is, therefore, within the ambit of the expression "original proceedings, appellate or other proceedings relating to IPR subject matter" and is, therefore, an "IPR subject matter or case or proceeding or dispute" as defined in Rule 2(1) of the IPD Rules.

(iv) This actually concludes the controversy. Rule 4, read with Rule 2(i) and 2(1) of the IPD Rules require writ petitions,



challenging orders passed by the IPAB, to be decided by Single Judges. No real occasion arises to refer to the “also includes” part of Rule 2(1), or clauses (i) to (iv) which follow.

(v) Nonetheless, even if clause (iii) were to apply, writ petitions, arising out of IPR subject matters are specifically included, by the said clause (iii), in the category of “IPR subject matters or cases or proceedings or disputes”. Clause (iii) of Rule 2(1), read with Rule 4, therefore, reinforces the position that writ petitions, directed against orders passed by the IPAB prior to its abolition, have to be decided by Single Judges.

(vi) As there is no provision in the IPD Rules, which requires such writ petitions to be dealt with by Division Benches, the exception in Rule 2(1)(iii) does not alter this position.

(vii) Nonetheless, even if one were to take this exception into consideration and, based on Rule 8(iii), take the DHC rules also into account, writ petitions against orders passed by the IPAB would still have to be heard by Single Judges, as they fall within Rule 1(xviii)(a) in Part B of Chapter 3 of the DHC Rules.

(viii) Rule 4 of Chapter 3 of the DHC Rules would not, therefore, apply.

(ix) The position being thus clear from the Rules, any



hesitation or refusal, by the Single Judge, to hear these petitions, short of recusal, would amount to abdication of the judicial function vested in him. Recourse to the history of the IPD Rules, or the evolution of the statute from time to time, or the creation and abolition of the IPAB, as grounds not to exercise the jurisdiction vested, by the IPD Rules and even by the DHC Rules, in the Single Judge would, in my opinion, be completely unjustified.

**20.** The objection that these writ petitions cannot, or ought not, to be heard by the Single Judge is, therefore, rejected.

**C. HARI SHANKAR, J.**

**OCTOBER 16, 2023**

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