

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:
THE HON'BLE JUSTICE OM NARAYAN RAI

W.P.A. 2580 of 2025

Dr. Tripti Das & Anr.

Vs.

Dr. Phani Bhusan Mandal & Ors.

For the Petitioners : Dr. Kunal Saha, Authorized Representative

For the Respondent No. 1 : Mr. Biswanath Chakraborty, Adv.

For the Respondent No. 2 : Mr. Shibaji Kumar Das, Adv.
Ms. Deblina De, Adv.

For the Respondent No. 3 : Mr. Sarosij Dasgupta, Adv.
Mr. Avijit Dey, Adv.

Hearing Concluded on : 22.01.2026

Judgment on : 16.02.2026

Om Narayan Rai, J.:-

1. This application styled as “an application under Article 226/227 of the Constitution of India” is directed against an order dated May 10, 2024 passed by the National Consumer Disputes Redressal Commission (hereafter “NCDRC”) thereby dismissing the petitioner’s revision against an order dated December 15, 2022 passed by the State Consumer Disputes Redressal Commission.
2. Since this application has been styled as one under Article 226/227 of the Constitution of India, a point of maintainability thereof was taken by the

learned Advocates appearing for the respondents at the very threshold. It was submitted that a petition under Article 226 of the Constitution of India can be entertained only if the same is directed against an authority answering the definition of "State" under Article 12 of the Constitution of India. However, since in the present writ petition only private parties are arrayed as respondents, the same cannot be entertained as a writ petition under Article 226 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:-

3. Dr. Saha appearing for the petitioner submitted that in terms of the judgment of the Hon'ble Supreme Court in the case of ***Universal Sompo General Insurance Company Limited vs. Suresh Chand Jain & Another***¹, a petition under Article 226/227 of the Constitution of India is maintainable against an order passed by the NCDRC and as such the instant petition should be entertained as a writ petition under Article 226 of the Constitution of India.
4. He next relied on a judgment of the Hon'ble Supreme Court in the case of ***Post Graduate Institute of Medical Education and Research & Another vs. Devendra Kumar Sharma & Others***² and submitted that in the said case the Hon'ble Supreme Court had directed the parties to approach the Hon'ble High Court under Article 226 of the Constitution of India. He suggested that the Hon'ble Supreme Court had thus settled that an order of NCDRC should be challenged by way of a writ petition under Article 226 of the Constitution only.

¹ (2024) 9 SCC 148

² Appeal (C) No. 15651/2020, decided on 08.01. 2025

5. He further relied on a judgment of the Hon'ble High Court of Rajasthan in the case of ***Rajeev Chaturvedi vs. Commissioner, Jaipur Development Authority & Another***³ and submitted that in the facts of the present case a petition under Article 227 of the Constitution of India would not be maintainable. It was submitted that the only avenue available to the petitioner to challenge the order passed by the NCDRC is a writ petition under Article 226 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:-

6. In response to the submissions of Dr. Saha, Mr. Das, learned Advocate appearing for the respondent no. 2 relied on a judgment of the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty & Another vs. Rajendra Shankar Patil***⁴ and submitted that a petition under Article 226 of the Constitution of India cannot be maintained only against private parties. He next relied on a judgment of the Hon'ble Supreme Court in the case of ***Siddhartha S. Mookerjee & Another vs. Madhab Chand Mitter & Another***⁵ and submitted that in the said case the Hon'ble Supreme Court had directed the parties to approach the Hon'ble High Court under Article 227 of the Constitution of India since only private parties were involved in the matter.

7. Mr. Das next relied on the judgment of the Hon'ble Supreme Court in the case of ***Ibrat Faizan vs. Omaxe Buildhome Private Limited***⁶ and submitted that in the said case, the Hon'ble Supreme Court had held that since the NCDRC is a Tribunal therefore the most appropriate remedy for a

³ 2024 SCC OnLine Raj 365

⁴ (2010) 8 SCC 329

⁵ 2024 SCC OnLine SC 4285

⁶ (2023) 11 SCC 594

party aggrieved by an order passed by NCDRC in appeal under Section 58 (1)(a)(iii) or Section 58(1)(a)(iv) of the Consumer Protection Act, 2019 would be to approach the Hon'ble High Court concerned having jurisdiction under Article 227 of the Constitution of India. It was submitted that in such view of the matter, the judgment of the Hon'ble High Court of Rajasthan in the case of **Rajeev Chaturvedi** (supra) cannot be accepted as having stated the correct position of law.

REJOINDER BY THE PETITIONERS:

8. In the wake of such submission, Dr. Saha submitted that in any case, the petitioners have good ground to add NCDRC as party to the present petition. It is submitted that if NCDRC could be added as a party to the present petition that would render the petition maintainable as one under Article 226 of the Constitution of India.
9. Faced with vehement objection upon making such submission, Dr. Saha set forth to justify the proposed addition of NCDRC as a party respondent in the writ petition. He invited the attention of this Court to the judgment rendered by the Hon'ble Supreme Court in the case of **Shalini Shyam Shetty** (supra) and submitted that the exceptional power of judicial intervention under Article 227 of the Constitution of India was not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice and for public interest. Relying on the said judgment it was further submitted that the provisions of Article 226 of the Constitution of India are rather meant for protection of individual grievance. It was submitted that in view of the observations of the Hon'ble Supreme Court in paragraphs 49(l), (m) and (n) of the said judgment, the

instant petition which has been styled as one under Article 226/227 of the Constitution of India, should be entertained as one under Article 226 of the Constitution of India.

10. He then relied on the following judgments to elaborate on the meaning of a “proper party” and went on to assert that NCDRC would be a proper party to the instant proceeding. It was contented that in view thereof, the present petition should be treated as one under Article 226 of the Constitution of India upon adding NCDRC as a party to this proceeding:-

- i) Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited & Others⁷;**
- ii) Sudhamayee Pattanaik & Others vs. Bibhu Prasad Sahoo & Others⁸; and**
- iii) J. N. Real Estate vs. Shailendra Pradhan & Others⁹.**

11. He further cited the following judgments to demonstrate that Hon’ble High Courts of Odisha and Madras have entertained writ petitions under Article 226 of the Constitution of India in cases where NCDRC has been impleaded as a party:-

- i) M/s. Kkreation Associates, Bhubaneswar vs. The Registrar, NCDRC & Another¹⁰;**
- ii) Kkreation Associates & Another vs. Registrar, NCDRC, New Delhi & Another¹¹;**

⁷ (2010) 7 SCC 417

⁸ (2022) 17 SCC 286

⁹ 2025 SCC OnLine SC 1015

¹⁰ WP(C) No. 14583 of 2024 (Orissa), decided on 13.03.2025

¹¹ 2025 SCC OnLine Ori 2816

iii) BCIL Zed Ria Properties Pvt. Ltd. & Another vs. The Registrar, National Consumer Disputes Redressal Commission, New Delhi & Another¹².

12. He also relied on a judgment of the Hon'ble High Court of Delhi in the case of **The Estate Officer HSVP Sonipat & Another vs. Rajan Bhatia¹³** to contend that in the said case the Hon'ble Delhi High Court had entertained a writ petition under Article 226 of the Constitution of India against an order of the NCDRC without there being any Article 12 authority impleaded as a respondent.

13. Dr. Saha relied on a Co-ordinate Bench judgment of this Court in the case of **Haji Hanif Hakam vs. Debt Recovery Appellate Tribunal at Kolkata & Others¹⁴** and submitted that in the said case this Court had decided that a writ petition under Article 226 of the Constitution of India would be maintainable against an order passed by the Debt Recovery Appellate Tribunal.

14. Dr. Saha emphasised that the said judgment had been passed on the basis of a Full Bench judgment of this Court in the case of **Bhowanipore Gujrati Education Society vs. Kolkata Municipal Corporation¹⁵**.

15. He next relied on another Co-ordinate Bench judgment of this Court in the case of **Shamsul Haque vs. Debts Recovery Appellate Tribunal & Others¹⁶** to buttress his contention that writ petitions under Article 226 of the Constitution of India have been entertained by this Court against orders passed by the Debt Recovery Appellate Tribunal and that if it be so the

¹² WP No. 10749 of 2024 (Madras), decided on 05.03.2025

¹³ WP(C) 4394 of 2025 (Delhi), decided on 16.09.2025

¹⁴ 2018 SCC OnLine Cal 288

¹⁵ AIR 2009 Cal 140

¹⁶ 2025 SCC OnLine Cal 6924

petitioners should also be allowed to add the NCDRC as a party to the present proceedings.

16. Dr. Saha further relied on an unreported judgment of a Co-ordinate Bench of this Court in the case of ***Cannon Properties Private Limited vs. National Consumer Disputes Redressal Commission & Others***¹⁷ to drive home the point that this Court has entertained writ petitions under Article 226 of the Constitution of India in cases where NCDRC is a party.

17. Dr. Saha submitted that the plethora of authorities cited by him where writ petitions were entertained with NCDRC being impleaded as a party respondent was suggestive of the fact that NCDRC is at least a proper party in matters where its orders are under challenge and should be allowed to be added as a respondent to the present petition.

REPLY BY THE RESPONDENTS:-

18. Mr. Das, learned advocate appearing for the respondent No. 2 submitted that a statutory Tribunal is not required to defend an order that has been passed by the said Tribunal if a challenge is mounted to such order before this Court in any proceeding. It was submitted that since the Tribunal was not required to defend its own order before the Court, therefore, such a Tribunal could not be said to be a necessary party to a petition and the petitioners' prayer to add NCDRC as a party to the present petition should, therefore, be disallowed. In support of his said contention, he relied on a judgment of the Hon'ble Supreme Court in the case of ***M.S. Kazi vs. Muslim Education Society & Others***¹⁸.

¹⁷ WPA 7291 of 2025 (Calcutta), decided on 13.05.2025

¹⁸ (2016) 9 SCC 263

19. Relying on the judgment of the Hon'ble Supreme Court in the case of ***Ibrat Faizan*** (supra), he asserted that as NCDRC is a statutory Tribunal and as the Hon'ble Supreme Court has, in a matter that had been carried to the Hon'ble Court from the NCDRC itself, held that the appropriate remedy for a party aggrieved by an order passed by the NCDRC under Section 58(1)(a)(iii) or Section 58(1)(a)(iv) of the Consumer Protection Act, 2019 would be to approach the High Court concerned under Article 227 of the Constitution of India.

20. Learned advocates appearing for the respondent Nos. 1 and 3 submit that they shall adopt the submissions of Mr. Das.

21. Mr. Das has distinguished the judgments cited by Dr. Saha and submitted that in none of the judgments cited by Dr. Saha, the question of maintainability of a writ petition has been raised and considered.

REPLY BY THE PETITIONERS:-

22. Dr. Saha in reply has distinguished the judgments cited by Mr. Das and submitted that ***M.S. Kazi*** (supra) has laid down the law only to the extent that a Tribunal is not to be treated as a necessary party. It is submitted that there is no pronouncement by the Hon'ble Supreme Court that a Tribunal cannot be treated as a proper party to a petition.

23. Dr. Saha has also referred to the earlier judgments cited by him and has asserted that NCDRC is a proper party. He has stressed upon the order of the Hon'ble Supreme Court in the case of ***Post Graduate Institute of Medical Education and Research*** (supra) to submit that the appropriate Court for the petitioner is to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India.

ANALYSIS & DECISION:

24. Heard learned Advocates appearing for the respective parties and considered the material on record.

25. The Rules of this Court do not permit imposed petition under Article 226 and 227 to be taken up by any Bench. Determination as regards matters pertaining to Article 227 of the Constitution of India lies with a different Coordinate Bench. It is therefore necessary for the petitioners to choose as to before which Court, the petitioners would like to present its case.

26. In the present case, Dr. Saha has insisted that petition under Article 226 is the appropriate remedy and that the present petition should be under Article 226 of the Constitution of India only. In such matter of the two questions fall for consideration by this Court:-

a) Whether a petition under Article 226 of the Constitution of India is maintainable in the facts and circumstances of the present case where all the three respondents are private parties?

b) Whether NCDRC can be permitted to be added as a party to this petition for this petition to be entertained under Article 226 of the Constitution of India?

27. Insofar as the first question is concerned, the same does not need any elaborate exercise in view of the binding *dictum* of the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty*** (supra). Paragraph 51 of the said judgment is important for the present purpose. The same is quoted hereinbelow:-

“51. It is well settled that a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either the Government, governmental agencies or a State or instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with State can be respondents in a writ petition. Under the phraseology of Article 226, High Court can issue writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.”

[Emphasis supplied]

28. Dr. Saha has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Universal Sompo General Insurance Company Limited*** (supra) to submit that a petition under either Article 226 or Article 227 of the Constitution of India would be maintainable against an order of NCDRC. Such submission of Dr. Saha is not at all open to doubt. An order passed by the NCDRC would very well be assailable before the High Court by way of a petition either under Article 226 or under Article 227 of the Constitution of India in terms of the authoritative dictum of the Hon'ble Supreme Court in the case of ***Universal Sompo General Insurance Company Limited*** (supra). However, for the order of NCDRC to be assailable in a writ petition under Article 226 of the Constitution of India “*the main respondent should be either the Government, governmental agencies or a State or instrumentalities of a State within the meaning of Article 12*” in terms of the law laid down by the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty*** (supra).

29. Undoubtedly, a writ petition under Article 226 of the Constitution could still be entertained despite the respondents being private persons, if it could be demonstrated that the private person (persons) arrayed as the respondent has (have) discharged some public function or that the case at hand is one

of inherent lack of jurisdiction or there is a challenge thrown to the vires of any statute or its provision(s) or the order impugned has led to infringement of any fundamental right or the order impugned has been passed in violation of principles of natural justice.

30. On the contrary, in view of the instructive mandate of the Hon'ble Supreme Court in the case of ***Ibrat Faizan*** (supra) which has been reiterated in ***Universal Sompo General Insurance Company Limited*** (supra) an order of NCDRC which is not appealable before the Hon'ble Supreme Court can always be challenged under Article 227 of the Constitution of India irrespective of who the respondents are.
31. In the present case challenge to the order of NCDRC is premised at best on the ground of erroneous exercise of jurisdiction by NCDRC which can be appropriately tested by this Court in the exercise of its jurisdiction under Article 227 of the Constitution of India.
32. When by approaching this Court under Article 227 of the Constitution of India, the mandates of the Hon'ble Supreme Court in both ***Shalini Shyam Shetty*** (supra) as well as ***Universal Sompo General Insurance Company Limited*** (supra) can be respectfully followed to there is no reason for this Court to tenaciously stick to the remedy under Article 226 of the Constitution of India notwithstanding the fact that all the respondents are private entities/persons where none has discharged any public function and when it is not the petitioners' case that NCDRC did not hear the petitioners at all or that NCDRC inherently lacked (lacks) jurisdiction to pass the order impugned.

33. Furthermore, writ remedy is a remedy of discretion. It is now well-settled that a writ petition may not be entertained in certain cases even if the same is maintainable. The following extract from the judgment of the Hon'ble Supreme Court in the case of **Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority & Ors.**¹⁹ deserves notice in this context:-

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition

¹⁹ (2023) 109 GSTR 402 : 2023 SCC OnLine SC 95

and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper."

[Emphasis supplied]

34. The aforesaid judgment in the case of **Godrej Sara Lee Ltd.** (supra) was rendered in the context of exercise of discretion to entertain a writ petition in the wake of availability of statutory alternative remedy. There is no reason why the guiding principle of the said case should not apply to the present case. Accordingly, even if the writ remedy is available, keeping in mind the dictum of **Shalini Shyam Shetty** (supra) and guided by the authority of **Godrej Sara Lee Ltd.** (supra) this Court can still exercise discretion to not entertain the petition as one under Article 226 of the Constitution of India and to route the petitioner to the appropriate remedy under Article 227 of the Constitution of India.
35. In such view of the matter, Dr. Saha's contention that the instant petition can be maintained under Article 226 of the Constitution of India cannot be accepted. Insofar as the judgment in the case of **Post Graduate Institute of Medical Education and Research** (supra) is concerned in the said case the

Hon'ble Supreme Court has directed the petitioner therein to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution of India against an order of the NCDRC. It is settled law that a judgment is an authority for what it actually decides and not what logically follows therefrom. In such view of the matter the said judgment cannot help the petitioners at all in the instant case where all respondents are private persons and there is ample scope for challenging the relevant order of NCDRC before the same Court in its jurisdiction under Article 227 of the Constitution of India.

36. In fact if the petitioner's case is seen in the light of the judgments of the Hon'ble Supreme Court in the case of ***Siddhartha S. Mookerjee*** (supra) and ***Ibrat Faizan*** (supra) it would at once be clear that the remedy of the petitioner would be under Article 227 of the Constitution of India only. It is pertinent to note that in both the cases i.e. in the case of ***Siddhartha S. Mookerjee*** (supra) and ***Ibrat Faizan*** (supra) all the parties before the Hon'ble Supreme Court were private parties and the Hon'ble Supreme Court has clearly held in such cases that the appropriate remedy would be to approach the Hon'ble High Court under Article 227 of the Constitution of India.
37. In such view of the matter, the first question that has fallen for consideration of this Court is answered in negative holding that the present petition cannot be entertained under Article 226 of the Constitution of India.
38. Insofar as the second question is concerned, Dr. Saha has relied on several judgments to indicate that while NCDRC may not be a necessary party to the present proceeding but it is definitely a proper party. Even if Dr. Saha's

contention is simply accepted and taken at face value then also would the present petition positively answer the test of **Shalini Shyam Shetty** (supra)? In the considered view of this Court it would not. **Shalini Shyam Shetty** (supra) has stated in no uncertain terms that “a writ petition is a remedy in public law which may be filed by any person but the main respondent should be either the Government, governmental agencies or a State or instrumentalities of a State within the meaning of Article 12.”

39. Now the question is will NCDRC be the main respondent in the petition? The answer has again to be in the negative. The reason therefor is the other authoritative dictum of the Hon'ble Supreme Court in the case of **M.S. Kazi** (supra). The Hon'ble Supreme Court has in the said case clearly held that “*the Tribunal is not required to step into the arena of conflict for defending its order. Hence, the Tribunal is not a necessary party to the proceedings in a special civil application.*” Ergo even if added to the present proceedings, NCDRC would not be the “main respondent” as it is not required to defend its own orders.

40. The judgments in the case of **M/s. Kkreation Associates, Bhubaneswar** (supra), **Kkreation Associates & Another** (supra), **BCIL Zed Ria Properties Pvt. Ltd. & Another** (supra) and **Cannon Properties Private Limited** (supra) cited by Dr. Saha only indicate that a petition under Article 226 has been entertained by various Hon'ble High Courts where NCDRC has been arrayed as a party but that does not mean that by mere adding NCDRC as a party to the present petition the same would become entertainable as a petition under Article 226 of the Constitution of India unless NCDRC is the main respondent as ordained by **Shalini Shyam Shetty** (supra) (in

paragraph 51 of the report) or the petition cites such an exceptional case that the Court is persuaded to entertain the petition as one under Article 226 despite availability of equally efficacious and more appropriate remedy under Article 227 of the Constitution of India. Moreover, the point of maintainability or entertainability of the petition under Article 226 of the Constitution of India was not raised in any of the aforesaid cases and the effect of **Shalini Shyam Shetty** (supra) has accordingly not been considered by any of the said cases.

- 41.** Insofar as the judgments in the case of **Haji Hanif Hakam** (supra) and **Bhowanipore Gujrati Education Society** (supra) are concerned, the same hold that an order passed by a statutory Tribunal can be challenged before the Court under Article 226 of the Constitution of India. There is no quarrel with such proposition at all. The question here is a little different. The question is whether in the wake of the pronouncement of **Shalini Shyam Shetty** (supra) a writ petition under Article 226 of the Constitution of India can be maintained even if all the respondents are private persons. The said question did not arise in any of the aforesaid two cases. The said two judgments therefore cannot help the petitioners at all.
- 42.** The judgments in the cases of **Shamsul Haque** (supra) and **The Estate Officer HSVP Sonipat & Another** (supra) also cannot help the petitioners since the question as regards maintainability or entertainability of a writ petition under Article 226 of the Constitution of India in a case where all respondents are private persons did not fall for consideration in either of the cases.

43. *Rajeev Chaturvedi* (supra) decided by the Hon'ble Rajasthan High Court cannot be said to be good law in view of the binding authorities of *Ibrat Faizan* (supra) and *Siddhartha S. Mookerjee & Another* (supra).

44. As regards the judgments of the Hon'ble Supreme Court rendered in the cases of *Mumbai International Airport Private Limited* (supra), *Sudhamayee Pattanaik & Others* (supra) and *J. N. Real Estate Shalini Shyam Shetty* (supra) the same lay down salutary principles to be followed by a Court while exercising jurisdiction to add or implead a 'proper party' to a proceeding but the said judgments do not aid the petitioners in the case at hand inasmuch as in the instant case even if NCDRC is added as a respondent, then also, in the considered view of the Court, the most appropriate remedy for the petitioners would be to invoke this Court's jurisdiction under Article 227 of the Constitution of India. The second question is also answered in the negative.

45. It is noticed that the petitioners have styled the petition as one under Article 226/227 of the Constitution of India. Since this Court has held that a petition under Article 226 of the Constitution of India would not be entertainable in the facts of the present case, what would be the way forward?

46. The answer is there in a recent judgment of the Hon'ble Supreme Court in the case of *Neeta Singh vs. State of U.P*²⁰. Certain paragraphs of the said judgment may be noticed:-

"12. It has been held in Pepsi Foods (supra) and Kiran Devi (supra) that nomenclature is not relevant and, as noted above, these decisions have been heavily relied upon by Mr. Nagamuthu. In fact, the argument of nomenclature not being

²⁰ 2024 SCC OnLine SC 5761

relevant is the sheet-anchor of his alternative argument. However, we need to ascertain under what circumstances did this Court say that nomenclature is not relevant.

13. *In Pepsi Foods (supra), the relevant high court was approached with a petition under Articles 226 and 227. Interference was declined by the high court on the ground that the petitioners could not have invoked the jurisdiction under Article 226. However, this Court was of the view that the petition, filed in the high court under Articles 226 and 227, could well be treated solely under Article 227 of the Constitution and decided. The observation that nomenclature is not relevant was made on the logic that if the high court otherwise does possess jurisdiction to decide, nomenclature would not debar the court from exercising its jurisdiction unless there is a special procedure prescribed which procedure is mandatory*

14. *Bearing the aforesaid dictum in mind, it would be useful at this stage to refer to the decision of a Division Bench of the High Court at Calcutta in *Sohan Lal Baid v. State of West Bengal*. Speaking through Hon'ble P.D. Desai, CJ., the Division Bench held that adjudication of a matter by a learned Judge without allocation made of such matter to such Judge by the Chief Justice would be void. The aforesaid view was approved by this Court in *State of Rajasthan v. Prakash Chand*. Upon survey of a number of precedents, it was held by this Court as follows:*

"59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

- (1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.*
- (2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.*
- (3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.*
- (4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.*
- (5) ****
- (6) That the puisne Judges cannot 'pick and choose' any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.*

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

***"

15. In view of the decision in *Prakash Chand* (*supra*), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A Judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of paragraph 26 of *Pepsi Foods* (*supra*) to be of extreme significance."

[Emphasis supplied]

CONCLUSION:

- 47.** This Bench does not have the determination to deal with matters under Article 227 of the Constitution of India and as such it would not be possible for this Court to take up the matter and adjudicate the same by treating it as a petition under Article 227 of the Constitution of India.
- 48.** In such view of the matter, WPA 2580 of 2025 stands converted into an application under Article 227 of the Constitution of India for being placed before the appropriate Bench according to the convenience of the Hon'ble Judge. The Registry and relevant department shall take appropriate steps for such conversion as aforesaid.
- 49.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)