Gangavva Vs. Udachappa

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SooperKanoon Citation : sooperkanoon.com/375003

Court : Karnataka

Decided On : Oct-30-1961

Reported in : AIR1964Kant107; AIR1964Mys107; (1963)2MysLJ403

Judge : H. Hombe Gowda, ;K.S. Hegde and ;B.M. Kalagate, JJ.

Acts : Land Acquisition Act, 1894 - Sections 10, 18, 18(1), 18(2), 19, 20, 21 and 45; Hyderabad Land Acquisition Act, 1309 - Sections 14, 14(1), 16 and 17; Indian Land Acquisition Act - Sections 18

Appeal No. : Civil Revn. Petn. (H) No. 75 of 1956

Appellant : Gangavva

Respondent : Udachappa

Advocate for Def. : Bheemaswarachari Astrit, Adv.

Advocate for Pet/Ap. : K. Jagannath Setty, Adv.

Judgement :

1. The question referred for the decision of the Full Bench is:

'Whether the Acquisition Court can go behind a reference made by the Collector under Section 14 of the Hyderabad Land Acquisition Act, if the application on which the reference has been made is beyond the period of limitation?'

Section 14(1) of the Hyderabad Land Acquisition Act provides that:

'Every person interested, who is displeased with the Taluqdar's award may, within two months from the date of receiving notice of the award, apply to the Taluqdar in writing to refer the case to the Court for determination whether his objection be to the measurement of the land, or to the amount of the compensation, or to the persons to whom it is payable or to the apportionment of the compensation among the persons interested.'

It is conceded that for our present purpose Section 14(1) of the Hyderabad Land Acquisition Act is in pari materia with the corresponding provisions in the Indian Land Acquisition Act, i.e. Section 18. Hence hereinafter reference will be made only to the provisions contained in the Indian Land Acquisition Act and the same shall be referred to as the 'Act.'

2. Judicial opinion is divided on the question whether the L.A. Court (Land Acquisition Court) could examine the validity of a reference made to it under S. 18. The preponderance of judicial opinion is that the L.A.O. (Land Acquisition Officer) being a statutory authority, his powers are those conferred by the 'Act', exercise of those powers should be in accordance with the provisions contained in the 'Act' and that failure to comply with the requirements of the law would make his reference under Section 18 an incompetent reference.

3. The Judicial Committee held in Pramatha Nath Mullick v. Secretary of State that the L.A. Court being a special tribunal, its powers are strictly limited by the terms of Sections 18 20 and 21; it can act only when a specific objection has been taken to the Collector's award, and its jurisdiction is confined to a consideration of that objection. But in that case there was no occasion to consider the scope of the powers of the L.A.O. There can be no doubt that if the reference made by the L.A.O. is a valid reference, the L.A. Court which is a statutory tribunal is bound by that reference; its duties and functions are those set out in the 'Act'. But can it be said that the L.A. Court has no competence to find out whether it has jurisdiction to try the matter referred to it? The scope and powers of specially constituted tribunals came up for consideration in R. v. Commissioners for Special Purposes of the Income-tax, (1888) 21 QBD 313. Dealing with that question Lord Esher M.R.

observed:

'When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide 'whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they acted without jurisdiction. But there is another state of things which may exist. The legislature may in trust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that if does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction, they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine ail the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.'

The law as explained by Lord Esher, M.R. has found acceptance at the hands of the Supreme Court in Jagdish Prasad v. Ganga Prasad : AIR 1959 SC492 wherein it was laid down, after referring to Lord Esher's observations noticed above, (see para 17 of the judgment) that:

'These observations which relate to inferior Courts or tribunals with limited jurisdiction show that there are two classes of cases dealing with the power of such a tribunal (i) where the legislature entrusts a tribunal with the jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of its jurisdiction depends exists and (2) where the legislature

confers jurisdiction on such tribunals to proceed in a case where a certain state of facts exists or is shown to exist. The difference is that in the former case the tribunal has power to determine the facts giving it jurisdiction and in the latter case it has only to see that a certain state of facts exists.'

If the case falls under the former category, the decision of the tribunal as to the existence of the facts in question is final unless the same is made appealable or revisable by law, whereas in cases falling in the second category the jurisdiction of the tribunal is conditional on the existence of the jurisdictional facts.

To put it differently: In setting up a tribunal the Legislature may follow one of two methods. It may provide that a tribunal shall have jurisdiction provided certain conditions exist and those conditions would be jurisdictional conditions going to the very jurisdiction of the tribunal. It would not be then for the tribunal to decide whether those conditions exist or not, because the very existence of its jurisdiction, its very authority, depends upon those conditions existing. Or the Legislature may set up a tribunal and confer upon that tribunal jurisdiction to decide all questions which arise in respect of a particular subject-matter for which the tribunal has been set up. In such a case it is not possible to contend that it is left to the Civil Court to decide whether certain conditions exist so that the tribunal can exercise its jurisdiction -- see Baburao K. Pai v. Dalsukh M. Pancholi : AIR1955 Bom89 . Bearing in mind these well accepted principles we shall now proceed to examine the scope of the powers conferred on the L.A.O.

4. The provisions that bear, on the powers of the L.A.O. are found in Sections 18 and 19 of the 'Act'. Section 18 stipulates certain restrictions on the powers of the L.A.O. Those restrictions are: (i) For making a reference under Section 18, the L.A.O. should he moved by a written application; (2) the person applying should be one interested in the subject-matter of the reference and he should not have accepted the award; (3) the grounds of objection must relate to the measurement or the amount of compensation, the persons to whom it is payable or the apportionment of the compensation amongst the persons interested and those objections must have been stated in the application made by the 'interested person'; and (4) the application should be filed within the period stipulated in the

provision. If these conditions are not considered as limiting and controlling the jurisdiction of the L. A. O. then he can ignore those conditions and ask the L. A. Court to decide on whatever matter he pleases and when ever he pleases. This is placing the L.A. Court in an intolerable position.

Nothing so bad could have been intended by the Legislature. There are no specific provisions requiring the L. A. O. to examine or decide whether the conditions laid down are complied with or not, much less an appeal is provided against his decision; nor is it laid down that his decision on those points is final. The powers of the L.A.O. in this regard clearly fall within the first category of cases mentioned in the decision in (1888) 21 QBD 313 and the second category of cases mentioned in Jagdish Prasad's casef : AIR 1959 SC492 . This Court had to consider the scope of the powers of L.A.O. in the State of Mysore v. Gurushankaraiah, 1958-36 Mys LJ 211. Therein one of us observed:

'The L.A.O. is a statutory authority. His powers are those conferred by the Act and the exercise of those powers should be in accordance with the provisions of the Statute. The very Statute which confers powers on him, also limits his jurisdiction and regulates the exercise of those powers. If he fails to comply with the provisions of the Statute then his decision will be ultra vires of the powers conferred on him.'

In other words the conclusion arrived at was that the L.A.O. has no absolute powers in the matter of making a reference under Section 18 and the exercise of his power is conditional. Several Courts have taken the view that the power of the L. A. O. to refer a matter to the L. A. Court for decision is a conditional power and if the conditions set out in the 'Act' are not complied with, the reference made by him would be an incompetent reference. In other words such a reference, in the eye of the law, is non est. But, some decisions have taken the view that it is within the jurisdiction of the L.A.O. to make a reference or not and if he chooses to make a reference the L.A. Court which is a statutory authority has no jurisdiction to go behind the reference and examine its correctness or validity.

According to those decisions while the L.A.O. could ignore the provisions of the 'Act', and act as he pleases, the L.A. Court should not travel outside the 'Act' to

find out its powers; the Court haying not been conferred with specific powers to examine the validity of the reference made to it, it must proceed to dispose the reference according to the provisions contained in the 'Act'.

5. The question whether the L.A. Court can go behind the reference to find out the validity of the reference made was considered by a Division Beach of this Court (of which one of us was a Member) in Boregowda v. Subbaramiah AIR 1959 Mys 265. The judgment of the Bench was delivered by Sreeniyasa Rau, J. (as he then was). This is what his Lordship stated on the point in question:

'It is urged however that the Court to which a reference is made cannot go behind the reference and consider its competency. In Secretary of State v. Bhagwan Prasad : AIR1932 All597 there are no doubt observations in support of that contention, but there, are other decisions which take a contrary view: (Vide: Sukhbir Singh v. Secy. of State, ILR 49 All 212 : : AIR1926 All766 ; Sitaram v. Kalandi Patra, 13 Ind Cas 127 (Cal); Ghulam Mohyuddin v. Secy. of State, 24 Ind Cas 379 : AIR 1914 Lah 394; Collector of Akola v. Anand Rao, 11 Ind Cas 690 (Nag); In re: Land Acquisition Act, ILR 30 Bom 275. The case reported in Venkata Rao v. Devaraya Gowda, 7 Mys LJ 355 and the cases referred to in it also support the same view though it may be mentioned that the question of competency arose in all these cases while considering whether the reference had been made within the times prescribed in Section 18.

But they all proceed on the footing that it is open to the Court to go behind the reference and see whether it is competent. That appears to us to be the correct view. When the power given to the Deputy Commissioner to make a reference is governed by statutory provisions, such a reference has to be made in conformity with those provisions and it stands to reason that the Court to which the reference is made, before, embarking on the proceedings consequent on the reference, should be able to satisfy itself that the reference is in accordance with law, for the question is as much one of the Deputy Commissioner's jurisdiction to make the reference as of the Court to entertain the reference.'

This decision does not appear to have been brought to the notice o the learned Judges who made the present reference to the Full Bench. There is no reference

to this decision in the order of reference. The view taken in Boregowda's Case AIR 1959 Mys 265 is in accordance with the preponderance of judicial opinion in this country. The said view had commended itself to Chanda-varkar, J., as long back as 1905. See ILR 30 Bom 275. Therein his Lordship held that the conditions prescribed by Section 18 of the Act are the conditions to which the power of the Collector to make the reference is subject, and those conditions must be fulfilled before the Court can have jurisdiction to entertain the reference.

6. The Bombay High Court has stood by that view consistently. In Mahadeo Krishna v. Mamlatdar of Alibag AIR 1944 Bom 200, a Bench of the Bombay High Court presided by Beamount, C. J., (who spoke for the Bench) observed :-

'On a reference under Section 18 the Court is bound to satisfy itself that the reference made by the Collector complies with the specified conditions so as to give the Court jurisdiction to hear the reference. It is not a question of the Court sitting in appeal or revision on the decision of the Collector; it is a question of the Court satisfying itself that the reference made under the Act is one which it is to hear. If the reference does not comply with the term of the Act, then the Court cannot entertain it. It is the duty of the Court to see that the statutory conditions have been. complied with and the reference is within time.' (As summarised in the Head Note).

This view was again reiterated in G. J. Desai v. Abdul Mazid : AIR1951 Bom156 . The judgment of the Bench in that case was delivered by Chagla, C. J. He stated the law on the point thus:

'The power of the Collector to make a reference is circumscribed by the conditions laid down in Section 18 and one important condition is the condition regarding limitation to be found in the proviso ..... Therefore in order to decide the petition under Section 45 the Court would have to consider the question of limitation and take a contrary view to the view taken by the Collector if the Collector was wrong in his decision .....'

(as summarised in the head note).

The same view was again expressed in Jehangir Bomanji v. C. D. Gaikwad : AIR1954 Bom419 . The view takes by the Madras High Court is identical with the view taken by the Bombay High Court. In A. K. Subramania Chettiar v. Collector of Coimbatore AIR 1946 Mad 184 it was held that in a reference made by a Collector under Section 18 of the Land, Acquisition Act, the Court has got power to go into the question of limitation. This very question came up for consideration again in K. N. N. Narayanappa Naidu, v. Revenue Divisional Officer, Sivakasi : AIR1955 Mad23 . It was held therein :

'The necessary 'sine qua non' of tbe reference by Collector under Section 18 is the basic fact that the application for such a reference must be made in accordance with the provisions of that section and within the period specified, in the proviso to that section. If those provisions are not complied with, there cannot be any valid application at all and necessarily if such an application does not exist, a positive reference is incapable of existence.

No Court can be compelled to adjudicate upon matters which do not come before it in strict conformity with the requirements of law. It is within the inherent power of the Court to find out whether the matter that comes before it, is in the proper form and in accordance with the requirements of particular statutes. A passive attitude which the Court is compelled to adopt in case it is asked to adjudicate upon invalid references cannot be founded on law or reason.

It is, thus, within the competency of the Court to which a reference is made by the Collector under Section 18 to reject the reference made to it by the Collector beyond the period of limitation laid down in proviso (a) to Sub-section (2) of Section 18 of the Land Acquisition Act.'

(As summarised in the Head Note).

The view taken by the Old Mysore High Court is in accordance with the view taken by the Bombay and Madras High Courts. The earliest decision of the old Mysore High Court read to us is the decision in 7 Mys LJ 355. Therein it was observed that:

'The Land Acquisition Officer's authority to make a reference is restricted by the statutory conditions prescribed in Section 18 of the Regulation; if the requirements of the section are not complied with; if he does make a reference notwithstanding the fact that the application for reference was barred by limitation the Court is not bound to accept the reference.'

This view was reiterated in Hosadurga Srinivasa Rao v. Treasury Asst. Commissioner and Land Acquisition Officer, Shimoga, 12 Mys LJ 517. The same was the view taken in T. Venkatarama Sastri v. Bangalore City Municipality, 16 Mys LJ 117 and Special Land Acquisition Officer, City Improvement Board, Bangalore v. B. Varadaraja ILR 1955 Mys 482. A Bench of the Lahore High Court in AIR 1914 Lah 394 held:

'It is always open to the Court to hold that an application to a Collector for reference could not form the basis of reference under Sections 18 and 19 inasmuch as it was barred by time.'

A Full Bench of the Lahore High Court in Abdul Sattar v. Mt. Hamida Bibi AIR 1950 Lah 229 took the same view. It held:

'The Court functioning under the Land Acquisition Act being a tribunal of special jurisdiction, it is its duty to see that the reference under that Act is made to it by an authority competent to make reference relates to a matter which can be referred to it under that Act.'

7. Now we shall proceed to examine the decisions that have taken the contrary view. Kuppuswami Ayyar, J., sitting singly in Venkateswaraswami Varu v. Sub-Collector, Bezwada AIR 1943 Mad 327 took the view that it is the duty of the Collector before he makes the reference to decide on the materials before him whether he should make the reference or not, and if he decides to make and does make a reference, it is not open to the Land Acquisition Court to go behind it; It is not open to the High Court or any other authority to interfere when the Land Acquisition-Officer, decides to make or not to make a reference. He further opined that in case of a reference under Section 18 it is not the application of the party which gives jurisdiction to the Civil Court, but it is the reference made by the

L.A.O.; an application may be given and the reference may not be made; consequently, if the application was not validly made, then it will only indicate that the reference was made without adequate grounds; but that will not make it any the less a reference which would give the Court jurisdiction to enquire into the question referred to.

In the view of his Lordship, the powers conferred on the L. A. O. are absolute powers and it was for him to decide whether the conditions stipulated in Section 18 are fulfilled or not. As noticed earlier, there is no provision in the 'Act' requiring the L. A. O. to decide the question of limitation. On the other hand, an application by one of the interested persons within the period of limitation is a condition precedent for making a reference under Section 18. For the reasons already mentioned, we are unable to accept the view expressed in Venkateswaraswami's case AIR 1943 Mad 327 as laying down the law correctly Moreover that decision was specifically overruled by a Division Bench of that Court in Narayanappa Naidu's case : AIR1955 Mad23 .

7a. This takes us to the decisions of the Allahabad High Court. The earliest decision cited before us is the decision in : AIR1926 All766 . In that case a Division Bench of that Court held:

'That the application did not comply withthe provisions of Section 18 and on a referencemade on such applications, the District Judge gotno jurisdiction.

That the matter of the award should be referred for the determination of the District Judge, but they asked that the matter relating to compensation should be postponed until the final decision as to the propriety or legality of Government in acquiring the land had been settled by a competent Court and they mentioned that the amount of compensation awarded by the Collector was low and was not accepted;'

The ratio of this decision is in accordance with the view taken by majority of the High Courts. But a different view was taken by another Division Bench of that Court in Secy. Of State v. Bhagwan Prasad : AIR1929 All769 Therein their Lordships opined that making reference under Section 18 is an act within the

jurisdiction and authority of the Collector and the L. A. Court does not sit on appeal over the Collector and that 'Act' did not give authority to the Court either in express terms or by implication to go behind the reference. In the body of the judgment Mukherji, J., observed:-

'If the application is beyond time, the Collector need not make a reference.' but 'If he decides to make a reference, his act is within his jurisdiction for he is entitled to act either way, i. e., either to make a reference or not to make a reference.'

That was also the view of Niamatullah, J., the other Judge constituting the Bench. He observed :

'It was the province of the Collector alone to decide for himself whether he should make the reference or refuse to do so. If he decides the question of limitation one way or the other, the Act does not allow an appeal against his decision to the District Judge, the High Court or any other superior authority.'

The view taken in : AIR1929 All769 was again reiterated in : AIR1932 All597 , by a Bench consisting of Mukherji and Benett, JJ. The authority of these decisions has been rudely shaken by the decision of a Full Bench of the Allahabad High Court in Panna Lal v. Collector, Etah : AIR1959 All576 (FB). Therein the Full Bench held:

'The powers of the Collector to make the reference are not unlimited. Compliance with the conditions mentioned in Section 18 which are conditions precedent to the exercise of the power of reference is necessary before that power can be invoked. Before exercising the jurisdiction conferred upon him by the section, the Collector is bound to see whether the required conditions have been, complied with, and if they have not been complied with, he cannot exercise the jurisdiction. The making of the application within the prescribed time being one of the conditions laid down in the section itself, if the application is not made within time, the Collector can reject the application as incompetent and refuse to make the reference.'

(As summarised in the head note).

Even though the Full Bench did not in terms overrule the decision in : AIR1932 All597 and Kashi Prasad v. Notified Area Mahoba : AIR1932 All598 the ratio of the

decision in the Full Bench case clearly runs counter to the ratio of the decisions above noticed. We are of the opinion that the view taken by the Allahabad High Court in : AIR1929 All769 ; : AIR1932 All597 and : AIR1932 All598 is not the correct view.

8. The only other decision cited in support of the contention that the L. A. Court cannot go behind the reference is the decision in Hari Krishna Khosla v. State of Pepsu . This decision more or less, followed the decision of the Madras High Court in Venkateswaraswami's case AIR 1943 Mad 327, without noticing that, the same had been overruled by a Division Bench of the said High Court in Narayanappa Naidu's case, (: AIR1955 Mad23 which fact does not appear to have been brought to the notice of the learned Judges who decided Hari Krishna Khosla's case . As Sri Jagannatha Shetty, the learned Counsel for the petitioner, had placed great deal of reliance on that decision, it is necessary to examine the same in some detail.

It was held in that decision that Section 18 constitutes the Collector the sole authority for making the reference; in the statement, which he has to make under Section 19, the question of limitation is not one of these matters which he is required to state at all; he is not even bound to send the application which is to be made under Section 18 along with the reference which he makes all that the Court then has to do or can do under Section 20 is to thereupon cause a notice specifying the date on which the Court will proceed to determine the objection; in other words, as soon as the Collector makes a reference and states for the information of the Court the various matters set out in Section 19, the Court has to perform a ministerial act, namely, of causing a notice of the nature mentioned in Section 20; there is no other provision in the statute which entitles the Court to re-examine the question whether the Collector's order was correct on the question of the application having been made within the period of limitation; the Court's jurisdiction is confined to considering and pronouncing upon any one of the four different objections to an award under the 'Act' which may have been raised in the written application for the reference.

From these conclusions, it follows that at any rate some of the conditions laid down are binding on the L. A. O. to wit a written application and objections only as regards the four specified. From a reading of that judgment, it appears that the Court regarded these conditions as pre-requisites for a valid reference. If that is so it is not known how the Court was able to separate those conditions from the remaining conditions set out in Section 18. The Court did not address itself to the question as to what would be the position if the application to the L. A. O. is made by a person other than the 'person interested'. Would the L. A. O. have authority to make a reference in such a case?

This question was left unanswered. The observation

'if the application was beyond, time, the Collector need not make a reference. For the purpose of determining as to whether the application is within time, the Collector has to consider the facts and come to a decision. If he decided that the application was within time and otherwise in order, he would make a reference. It was entirely for him to decide whether he would make a reference. A reference having been made, it was not open to the Collector or to the State to say that the reference had been wrongly made nor could the Court sit in appeal over the Collector' has no basis in the provisions contained in the 'Act'.

We have not been shown any provision under which the L. A. O. is required to decide the question of limitation. The conditions mentioned in Section 18 appear to us to be conditions limiting and controlling the jurisdiction of the L. A. O. They are not matters to be decided by the L. A. O. The discussion in the above cited decision as to whether the ,L. A. O. is an administrative officer or a judicial officer is besides the point for our present purpose. Therefore, we are not called upon to examine the implications of the decision of the Privy Council in Ezra v. Secy. of State for India, ILR 32 Cal 605 (PC).

9. We are firmly of the opinion that the powers conferred on tie L. A. O. do not fall within the second category mentioned by Lord Esher, M. R. in (1888) 21 QBD 313 viz.

'the legislature may in trust the tribunal or body with a jurisdiction, which includes the jurisdiction, to determine whether preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more.'

On the other hand, they fall within the first category mentioned by his Lordship viz., that

'if a certain state of facts exists and is shown to exist to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction but not otherwise.'

10. It was then observed in Hari Krishna Khosla's case that:

'In fact the proviso occurs in Sub-section (2) of Section 18 and merely lays down that the application which has to state on which ground objection to the award is taken, has to be presented within the period prescribed, but the real matters, on which the reference can be required, are stated in Sub-section (1). The provision made with regard to the period within which the application is to be presented is purely procedural and it is difficult to see how it can be regarded as a condition precedent.'

If this conclusion is correct, the L. A. O. can make a reference after the lapse of any number of years. Such a construction cannot be viewed with favour; it lends itself to mischief as well as misuse. With respect to the learned Judges who decided the above case, we do not think that their analysis of the scheme of Sections 18 and 19 is correct. Section 18(1) says as to who could make the application; how the application is to be made; and what objections could be raised in the application made. Section 18(2) says that:

'The application shall state the grounds on which objection to the award is taken.'

Section 18(2) is a corollary to Section 18(1). Now we come to the proviso. The proviso lays down that such an application (meaning the application contemplated in Section 18(2)) shall be made within the time prescribed in clauses (a) and (b) of that proviso. The conditions laid down in Section 18 are not matters of procedure. They are conditions precedent for a valid reference. Statement under Section 19 is

in the nature of a covering letter giving a brief summary of the relevant facts, to assist the L. A. Court to decide the points in issue. It serves the purpose of a plaint in a civil suit.

We are unable to subscribe to the view that the L. A. O. confers jurisdiction on the L. A. Court either by means of a reference under Section 18 or by his report under Section 19. In our judgment, the L. A. O. merely invokes the jurisdiction of the L. A. Court by taking steps under Sections 18 and 19 of the 'Act'.

11. For the reasons mentioned above, we hold that the L. A. Court can go behind the reference made by the Collector under Section 14 of the Hyderabad Land Acquisition Act (or under Section 18 of the Indian Land Acquisition Act) if the application on which the reference has been made is beyond the period of limitation.

12. The reference is answered accordingly. The case will now go back to the Division Bench for disposal according to law in the light of the above decision.

13. Reference answered.