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**First Commodities Exchange of India and2 Vs. Union of India and Ors**

**First Commodities Exchange of India and2 Vs. Union of India and Ors**

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**Court** : Kerala

**Decided On :** Jan-29-2015

**Judge** : Honourable the Ag.Chief Justice Mr.Ashok Bhushan

**Appellant** : First Commodities Exchange of India and2

**Respondent** : Union of India and Ors

**Advocate for Pet/Ap.** : Shri. Bechu Kurian Thomas

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE29H DAY OF JANUARY20159TH MAGHA, 1936 WA.NO. 1289 OF2011---------- AGAINST THE

ORDER
IN WP(C) 19880/2011 OF HIGH COURT OF KERALA DATED2508-2011 APPELLANT(S)/PETITIONERS: ---------- 1. FIRST COMMODITIES EXCHANGE OF INDIA &2 A COMPANY REG.UNDER THE INDIAN COMPANIES ACT & HAVING ITS REGISTERED OFFICE AT2D FLOOR, VEE YEM TOWER, PALARIVATTOM, KOCHI KERALA-682 025., REPRESENTED BY ITS DIRECTOR, A.A.HAN2 A.A.HANEEFA, DIRECTOR, FIRST COMMODITIES EXCHANGE OF INDIA LIMITED SURYA TRADERS, BLDG.NO.VIII/333B,

KAITHAKAD PATTIMATTOM, ERNAKULAM-683 562.

3. K.K.NIZAM, DIRECTOR, FIRST COMMODITIES EXCHANGE OF INDIA LIMITED KAIRALI TRADERS KALAPURACKAL, MANATHUPADAM, CHANGAMPUZHA NANGAR KALAMASSERY, COCHIN-682 033. BY ADVS.SRI.BECHU KURIAN THOMAS SRI.PAUL JACOB (P) SRI.ROSHEN.D.ALEXANDER RESPONDENT(S)/RESPONDENTS: ---------- 1. UNION OF INDIA & ORS SECRETARY, MINISTRY OF CORPORATE AFFAIRS, `A' WING SHASTRI BHAVAN, RAJENDRA PRASAD ROAD NEW DELHI-110 001. W.A.NO. 1289 OF20112. FORWARD MERKETS COMMISSION, `EVEREST' 3RD FLOOR, 1OO, MARINE DRIVE MUMBAI-400 002, REPRESENTED BY ITS DEPUTRY DIRECTOR.

3. K.V.KRISHNAKUMAR, AGED37YEARS, S/O.VISHWANATHAN, SREE KRISHNA OILS, TC201358 KARAMANA P.O., THIRUVANANTHAPURAM-2.

4. NAVAS.P.A., AGED36YEARS, S/O.P.S.ABDUL GAFOOR, PALLIVEETI HOUSE, YENDERYAR P.O. KOTTAYAM-686 514.

5. K.K.KUNJIKOMU, AGED73YEARS, S/O.KUNGU SEETHI HAJI, SEETHI OIL MILLS, ERYAD P.O. KODUNGALLUR-680 066.

6. M.P.KRISHNAN, DEPUTY DIRECTOR, FORWARD MARKETS COMMISSION, `EVEREST', 3RD FLOOR100 MARINE DRIVE, MUMBAI-400 002. R6 IS DELETED AS PER

ORDER
DATED122.2013 IN I.A. NO.109 OF 2013 IN W.A. NO.1289 OF 2011 ADDL.R7. FIRST COMMODITIES EXCHANGE INDIA LTD., 2ND FLOOR,VEE YEM TOWER, PALARIVATTOM KOCHI, KERALA, 682 025 REPRESENTED BY ITS CHAIRMAN, SHOMY GEORGE ADDITIONAL R7 IS IMPLEADED AS PER

ORDER
DATED2008.2013 IN I.A. NO.426 OF 2013 IN W.A. NO.1289 OF2011R,R1,2 BY ADV. SHRI PHILIP MATHEW R,R3-5 BY ADV. SRI.P.K.IBRAHIM R BY ADV. SRI.BABU KARUKAPADATH R BY ADV. SMT.M.A.VAHEEDA BABU R BY ADV.

SRI.K.A.NOUSHAD R BY ADV. SRI.KANDAMPULLY RAHUL R BY ADV. SRI.J.RAMKUMAR R BY ADV. SRI.MITHUN BABY JOHN THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON0801.2015 ALONG WITH W.P(C) NO.19880 OF 2011 AND CONNECTED CASES, THE COURT ON2901.21015 DELIVERED THE FOLLOWING: "C.R." ASHOK BHUSHAN, Ag. C.J.

**And A.M. SHAFFIQUE, J.**

========== W.A. No.1289 of 2011, W.P(C) No.19880 of 2011, W.P(C) No.20743 of 2011, Cont. Court (C) No.1053 of 2011 and Cont. Court (C) No.79 of 2012 ========== Dated this the 29th day of January, 2014

## JUDGMENT

Ashok Bhushan, Ag. C.J.

All these cases have been heard together and are being decided by this Common judgment. W.P(C) No.19880 of 2011 in which pleading is complete is being treated as the leading case. Brief facts giving rise to all the above cases are:

2. W.P(C) No.19880 of 2011 (First Commodities Exchange of India Ltd and others v. Union of India and Others) has been filed by three petitioners: first petitioner is the First Commodities Exchange of India Limited, which is a registered W.A. No.1289 of 2011, etc. -:

2. :- Company under the Indian Companies Act, 1956 (for short, "the 1956 Act") claimed to be represented by its Director, Shri A.A. Haneefa who is also the 2nd petitioner (Petitioner No.2 and 3 claim to be Directors of the Company). In the Writ Petition prayer has been made to quash Ext.P13 notice dated 21.06.2011 issued by the Forward Markets Commission, Ext.P14 show cause notice issued by the Forward Markets Commission to petitioners 2 and 3, Acting Chairman of the Company and CEO and Ext.P15 by which direction was issued by the Forward Markets Commission that Shri P.A.Navas, Shri K.K.Kunji Komu and Shri K.V. Krishna Kumar (respondents 4, 5 and 3, respectively) who have been duly elected

Directors as per the procedure followed by the Exchange be taken on the Board of Directors of the Exchange with immediate effect.

3. Background facts leading to issuance of Exts.P13, 14 and 15 are: First Commodities Exchange of W.A. No.1289 of 2011, etc. -:

3. :- India Limited is a Company incorporated under the 1956 Act in the year 2000. The Board of Directors of the Company as per the Articles of Association of the Company consists of (i) two non-retiring Directors nominated by the First Commodities Clearing Corporation of India and Oil Merchants Association. (ii) Five Directors are nominated by the Forward Markets Commission (hereinafter referred to as "the Commission"). (iii) Six Directors are elected from among the shareholders out of which 1/3rd is to retire in each annual general body meeting by rotation. The Directors are of four categories (i) Traders or Brokers (ii) Growers or Cultivators (iii) Processors of Manufacturers and (iv) Banks and Financial Institutions. On 25.11.2010, the Chief Executive Officer appointed a Returning Officer. The CEO on 26.11.2010 issued a notice informing that in the annual general body meeting of the Exchange to be held on 11.12.2010 W.A. No.1289 of 2011, etc. -:

4. :- vacancies arise for the post of three Directors who retire by rotation. Nomination was invited from Equity Members to be elected as Directors. The 3rd respondent filed nomination from Growers Pannel and respondents 4 and 5 filed nominations from Manufacturers' Pannel. One more person, Shri Ketty Cherian also filed nomination. Nomination of Shri Ketty Cherian was rejected by the Returning Officer and by notice dated 03.12.2010 the Returning Officer declared that the nominations of respondents 3, 4 and 5 are valid nominations and they are elected Directors unopposed. On 03.12.2010 the above declaration was also put on web site of the Company. Annual general meeting was held on 11.12.2010. In the minutes of the annual general meeting which was signed by petitioner No.3 as the Acting Chairman and put in the website it was mentioned that nominations of respondents 3 to 5 are not being treated as valid since such nomination along W.A. No.1289 of 2011, etc. -:

5. :- with the prescribed fee of Rs.500/- specified in Section 257 of the 1956 Act should have been deposited not less than 14 days before the meeting.

4. After the above minutes were put on the website, 57 shareholders of the Company out of total of 93 filed a complaint before the Commission on 07.01.2011 raising serious objection regarding the minutes of the annual general body meeting as issued by the 3rd petitioner. The complaint alleges that in the meeting dated 11.12.2010 election of three Directors, respondents 3, 4 and 5 was approved and they were taken in the Board and further, against petitioners 2 and 3 serious objections were raised that they have not remitted the share amount within time, hence petitioners 2 and 3 resigned from Directorship and thereafter the meeting of the newly constituted Ad-hoc Board was also held on the same day in which Shri Vidyasagar was elected as Chairman. Serious W.A. No.1289 of 2011, etc. -:

6. :- allegations of oppression and mismanagement were made against petitioners 2 and 3 regarding the affairs of the Company. Petition before the Company Law Board was also filed by the shareholders making almost similar allegations. Petition before the Company Law Board with the permission of the Board was withdrawn on memo filed by petitioners where it was stated that complaint has already been submitted before the Commission and with liberty to approach the Company Law Board again in the event petitioners did not get relief from the Commission. The Commission on receipt of the complaint appointed an Enquiry Committee to enquire the complaint. The Enquiry Committee visited the Company's head office at Kochi and heard petitioner Nos.2 and 3, Chairman, CEO and some other Directors and the shareholders. It is relevant to note that petitioners had convened another meeting of the general body on 30.12.2010. In the meeting dated W.A. No.1289 of 2011, etc. -:

7. :- 30.12.2010 it was claimed that petitioner Nos.2 and 3 resigned from the post of Managing Director and Acting Chairman and one Vidyasagar was elected as Chairman. In the complaint dated 07.01.2011 the meeting dated 30.12.2010 was also challenged as illegal and unauthorised.

5. The Enquiry Committee submitted a report on 06.04.2011 where opinion was expressed that three Directors, respondents 3 to 5 were duly elected whose election was approved in the annual general body meeting held on 11.10.2010. Petitioners 2 and 3 had orally announced their resignation from the Board on 11.12.2010. One more fact which need to be noted is that the petitioner again convened a general body meeting on 23.06.2011 by notice dated 20.05.2011. Complaint was submitted before the Commission that the meeting of extraordinary general body is unauthorised, the Commission issued a letter dated W.A. No.1289 of 2011, etc. -:

8. :- 21.06.2011 staying holding of the meeting. After receipt of the report, the Commission issued a show cause notice dated 27.06.2011 to petitioners 2 and 3, Acting Chairman and the CEO. Commission fixed 11.07.2011 as the date for personal hearing. The Commission heard the 3rd petitioner who appeared for hearing. The 2nd petitioner did not appear for hearing. The Acting Chairman and CEO were also heard and the Commission issued a direction holding that respondents 3 to 5 were duly elected as Directors of the Exchange and they be taken on the Board. Petitioners aggrieved by Ext.P13 show cause notice dated 21.06.2011 and Ext.P14, and P15 have filed the Writ petition.

6. Prayers made in the Writ Petition are the following: (i) Issue a writ of certiorari or other appropriate writ, order or direction quashing Exts.P1, Ext.P14 and Ext.P15. (ii) Issue a writ in the name of declaration declaring that 2nd respondent has no authority to W.A. No.1289 of 2011, etc. -:

9. :- interfere with the administrative and functional affairs of the 1st petitioner company." 7. In W.P(C) No.19880 of 2011 a detailed counter affidavit has been filed by the 2nd respondent, Forward Markets Commission. Respondents 3 to 5 who claimed to be elected Directors of the Company have also filed their separate counter affidavits. The 6th respondent, Shri M.P.Krishnan, Deputy Director has been deleted from the array of party on the petition filed by the petitioners themselves. By the order of the Court, additional 7th respondent, First Commodities of India Ltd., through its Chairman, Shri T.Vidyasagar has been impleaded who has also filed counter affidavit and three additional counter

affidavits opposing the Writ Petition. In the Writ Petition petitioners have also prayed for interim relief for staying Exts.P13 to P15 pending disposal of the Writ Petition. Learned Single Judge by his order dated 25.08.2011 has declined the interim prayer sought for by the petitioners. W.A. No.1289 of 2011, etc. -:

10. :- 8. W.A. No.1289 of 2011 (First Commodities Exchange of India Limited and others v. Union of India and Others) has been filed by the petitioners in W.P(C) No.19880 of 2011 against the order dated 25.08.2011 passed by the learned Single Judge declining the interim relief prayed for by the petitioners. Petitioners in the leading Writ Petition (W.P(C) No.19880 of 2011) has prayed for the following interim relief: "For the reasons stated in the Writ Petition and accompanying affidavit thereto, it is humbly prayed that this Hon'ble Court may be pleased to stay Exts.P13, P14 and Ext.P15 pending disposal of the Writ Petition". Learned Single Judge after considering the submissions made in support of the petition has opined that the order passed by the Commission was within its jurisdiction and no grounds have been made out to grant the interim prayer. A Division Bench of this Court while hearing I.A. No.759 of 2011 in the Writ Appeal passed an order refusing to stay the meeting of the annual general W.A. No.1289 of 2011, etc. -:

11. :- body. However, the Division Bench directed that any decision which will be taken in the annual general body meeting shall be subject to the result of the Writ Appeal. Prior to passing of the aforesaid order, on 31.08.2011 while admitting the Writ Appeal, the Division Bench directed the parties to maintain status quo obtaining as on that date until further orders. The Division Bench on that day also summoned the record of W.P(C) No.19880 of 2011 along with the Writ Appeal for hearing. Since the issues raised in both the Writ Appeal and W.P(C) No.19880 of 2011 are the same, the Writ Appeal shall follow the decision in W.P(C) No.19880 of 2011.

9. W.P(C) No.20743 of 2011 (K.V. Krishna Kumar and Others v. Registrar of Companies and Others) has been filed by respondents 3 to 5 in W.P(C) No.19980 of 2011 in this Court on 28.07.2011 claiming themselves to be the Directors of the First Commodities W.A. No.1289 of 2011, etc. -:

12. :- Exchange of India Limited. It was alleged that petitioners 2 and 3, K.K.Nizam and A.A. Haneefa are functioning as Directors of the Company despite their disqualification and the 1st respondent, Registrar of Companies, is not taking any action. It was pleaded that petitioners 2 and 3 did not pay the call money in respect of the shares within the last date fixed for payment of call money in shares, hence they have become disqualified to function as Directors and could not have continued as Directors of the Company. In the general body meeting held on 11.12.2010 issue of their illegal continuance was raised on which both respondents 3 and 4 offered to resign which was accepted by the general body. It is further pleaded that proceedings of the annual general body meeting held on 11.12.2010 were not correctly recorded and incorrect minutes were uploaded in the Website. In the Writ Petition the following prayer is made: "Issue a writ of mandamus commanding the 1st W.A. No.1289 of 2011, etc. -:

13. :- respondent company and the question of disqualification of respondents 3 and 4 under Section 274(1)(e) of the Companies Act and direct to take penal action against respondents 3 and 4 for their illegal continuance as provided under Section 283(2A) of the Companies Act in accordance with law forthwith".

10. Contempt Case (C) No.1053 of 2011 (A.A.Haneef and Another v. K. V. Krishnakumar and Others) has been filed by two petitioners who are petitioners 2 and 3 in W.P(C) No.19880 of 2011. Prayer for interim relief was rejected by the order of the learned Single Judge dated 25.08.2011 in W.P(C) No.19880 of 2011 against which order W.A. No.1289 of 2011 was filed by the Writ petitioners. In the Writ Appeal the following order was passed by the Division Bench: "Admit. Issue notice. Call W.P(C) No.19880 of 2011 along with this appeal on 02.09.2011 for hearing. All the parties are directed to maintain status quo obtaining as on today until further orders. 31.08.2011" The Contempt Case was filed against 7 persons which W.A. No.1289 of 2011, etc. -:

14. :- includes respondents 3 to 5 of W.P(C) as respondents 1 to 3, Chief Executive Officer, 4th respondent, Chairman, 5th respondent, of the Company and two more Directors alleging disobedience of the interim order dated 31.08.2011 passed in W.A.No.1289 of 2011. It is alleged that despite the interim order dated

31.08.2011 a notice for calling a meeting on 30.09.2011 was issued which is clear defiance of the interim order. An order was passed in the Contempt Case to list the case along with W.A. No.1289 of 2011 and connected cases. Respondents 4 and 5 have filed counter affidavits.

11. Contempt Case (C) No.1053 of 2011 (A.A.Haneefa and Another v. K. V. Krishnakumar and Others) has been filed by two petitioners who are petitioners 2 and 3 in W.P(C) No.19880 of 2011 alleging violation of the interim order dated 31.08.2011 passed in W.A.No.1289 of 2011. It was alleged that despite the interim order dated 31.08.2011, respondents issued W.A. No.1289 of 2011, etc. -:

15. :- notice to conduct annual general body meeting on 05.11.2011. In W.A. No.1289 of 2011 the matter came up for consideration on 04.11.2011 where the appellants prayed for staying the annual general body meeting to be held on 05.11.2011. The Division bench in W.A. No.1289 of 2011 refused to stay holding of the annual general body meeting proposed to be held on 05.11.2011. However, the Division bench observed that decision if any taken in the meeting will be subject to result of the Writ Appeal. The Division Bench left open the question as to whether holding of the annual general body meeting would be in violation of the status quo order passed on 31.08.2011 in the Writ Petition. Another notice was issued calling for the Board meeting on 27.11.2011. Several decisions were taken in the Board meeting held on 27.11.2011. The Contempt Case has been filed alleging non-compliance of the order dated 31.08.2011. W.A. No.1289 of 2011, etc. -:

16. :- 12. We have heard Shri Bechu Kurian Thomas, learned counsel appearing for the petitioners in W.P(C) No.19880 of 2011 as well as for the appellants in W.A. No.1289 of 2011 and the petitioners in the Contempt Cases. Shri Philip Mathew, Central Government Standing Counsel has appeared on behalf of respondents 1 and 2, Union of India and the Forward Markets Commission. Advocate Shri Babu Karukapadath has appeared for the additional 7th respondent, i.e., First Commodities Exchange of India Limited in W.P(C) No.19880 of 2011 as well as in the Writ Appeal. Advocate Shri P.K.Ibrahim has appeared for respondents 3 and 5 in W.P(C) No.19880 of 2011 and W.A.No.1289 of 2011.

13. Writ Petition No.19880 of 2011 having been treated as the leading Writ Petition, it shall be sufficient to note the respective submissions made by the learned counsel for the parties in the said Writ Petition to decide all the above cases. W.A. No.1289 of 2011, etc. -:

17. :- 14. Shri Bechu Kurian Thomas appearing for the petitioners submitted that Ext.P15, by which the Commission has directed the Exchange that Shri P.A.Navas, K.K. Kunjikomu and K.V.Krishnakumar who claimed to be elected as per the procedure followed by the Exchange be taken on the Board of Directors of the Exchange with immediate effect is without any jurisdiction. It is submitted that the Commission has no jurisdiction or authority to interfere with the internal management of the Exchange. It is submitted that internal management of the Exchange which is a registered company under the 1956 Act has to be made in accordance with the provisions of the 1956 Act. It is submitted that the Commission at best has jurisdiction to issue directions with regard to the trading activities of the Exchange and power cannot be used for issuing any direction with regard to election of Directors of the Company. It is submitted that the W.A. No.1289 of 2011, etc. -:

18. :- directions issued by the Commission on 11.07.2011, Ext.P15, is ultra vires of the provisions of the Forward Contracts (Regulation) Act, 1952 (for short, "the 1952 Act"). It is submitted that the powers of the Commission have been enumerated in Section 4 of the 1952 Act and the power exercised by the Commission in issuing directions dated 11.07.2011 is not referable to any of the powers and functions as mentioned in Sec.4 of the 1952 Act. Declaring respondents 3 to 5 as elected unopposed by the Returning Officer was against the procedure prescribed under Section 257 of the 1956 Act. It is submitted that the Commission is only a regulatory body governed by the Statutes which cannot go beyond the spheres allotted to it under the 1952 Act. The Commission is designated to effectuate the regulation to forward trading in goods and not the internal arrangement or management of the Company. Powers of the Commission is only recommendatory or advisory. W.A. No.1289 of 2011, etc. -:

19. :- It cannot issue any positive direction nor it can exercise any executive or administrative power.

15. Learned counsel for the petitioners further contended that directions dated 11.07.2011 are also factually incorrect since the annual general body meeting held on 11.12.2010 respondents 3 to 5 were never approved as elected Directors.

16. Shri Philip Mathew, learned Standing Counsel for the Central Government and the Commission refuting the submissions of the learned counsel for petitioners contended that the Commission is fully empowered to issue directions dated 11.07.2011. It is submitted that the Exchange is registered with the Commission and as per the condition of registration and renewal, the Exchange is obliged to follow the directions of the Commission. It is submitted that the Commission is empowered under the 1952 Act to direct for enquiry. It is submitted that various powers under the 1952 Act W.A. No.1289 of 2011, etc. -:

20. :- to be exercised by the Central Government has been delegated on the Commission in exercise of powers under Section 26 of the 1952 Act. It is submitted that the Association is obliged to submit annual return giving all details which also includes details regarding the governing body. It is submitted that power of the Commission cannot confine only to the trading activity of the Exchange but it extends to all affairs conducted by the Exchange.

17. Directions issued in Ext.P15 are based on the enquiry which was got conducted by the Commission on complaints submitted by 57 shareholders and directions were issued in the light of facts which have been found correct on the basis of the enquiry report. Directions dated 11.07.2011 are nothing but recognition of actual facts which transpired with regard to election of Directors. Submission of the learned counsel that the directions are factually incorrect is baseless. Directions W.A. No.1289 of 2011, etc. -:

21. :- are based on actual facts and directions were well within the jurisdiction of the Commission under the 1952 Act. It is further submitted that the Writ Petition filed alleging to be at the instance of the Exchange which is arrayed as petitioner No.1 is not maintainable. There is no resolution of Board of Directors to file the

Writ Petition by the Exchange. The Writ Petition as framed is not maintainable. Shri A.A. Haneefa, Director has no authority or jurisdiction to file Writ Petition on behalf of the Exchange. The Writ Petition is liable to be rejected on this ground alone.

18. Shri P.K. Ibrahim, learned counsel appearing for respondents 3 to 5 submitted that the Writ Petition filed by the petitioners is not maintainable. Petitioners have no authority or jurisdiction to file the Writ Petition on behalf of the Exchange. There being no resolution of the Board of Directors, Writ Petition cannot be filed. It is submitted that petitioners 2 and 3 are no more W.A. No.1289 of 2011, etc. -:

22. :- Directors of the Exchange and they have wrongly described themselves as Directors whereas they had resigned from their office which resignation was accepted in the annual general body meeting dated 11.12.2010. The Writ Petition is not clearly maintainable. It is submitted that respondents 3 to 5 were duly elected as Directors as per the procedure which was followed by the Exchange in earlier years. There being only three valid nominations against three vacancies of Directors, the Returning Officer declared respondents 3 to 5 elected unopposed on 03.12.2010 which was also published in the website. It is submitted that election was approved in the meeting of the annual general body dated 11.12.2010. Minutes of the proceedings dated 11.12.2010 as published in the website by petitioners 2 and 3 are fabricated and false. It is submitted that complaints were filed by 57 shareholders of the Commission highlighting the W.A. No.1289 of 2011, etc. -:

23. :- misdeeds of petitioners 2 and 3. The Commission directed for enquiry by a Committee and the Committee heard petitioners 2 and 3 as well as shareholders and CEO of the Exchange and submitted report which clearly proves the misdeeds and falsification made by petitioners 2 and 3. It is submitted that petitioners 2 and 3 were disqualified to continue as Directors they having not paid the call money within the time prescribed, the Commission has every jurisdiction to issue directions dated 11.07.2011, Ext.P15.

19. Shri Babu Karukapadth, learned counsel appearing for the 7th respondent has strenuously contended that the Writ Petition is not maintainable and be dismissed

since petitioners have no locus to file the Writ Petition. It is submitted that Writ Petition which is filed on behalf of the Exchange is not maintainable since the Writ Petition on behalf of the Exchange can be filed only with the resolution of the Board of Directors as W.A. No.1289 of 2011, etc. -:

24. :- per bye laws of the Exchange. It is submitted that at no point of time any resolution has been passed authorising petitioners 2 and 3 to file Writ Petition. Petitioner Nos.2 and 3 are no more Directors of the Exchange and have no right to file the Writ petition. Petitioners have no locus to file Writ Petition, the Writ Petition be dismissed on this ground alone.

20. Learned counsel for the parties have referred to and relied on various judgments of the Apex Court and High Courts which shall be referred to while considering the submissions in detail.

21. We have considered the submissions of learned counsel for parties and perused the records. From the submissions of the learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration in the leading Writ Petition: (i) Whether the Writ Petition is W.A. No.1289 of 2011, etc. -:

25. :- maintainable and whether petitioners 2 and 3 have any locus to file the Writ Petition? (ii) Whether directions contained in Ext.P15 dated 11.07.2011 issued by the Commission are beyond the scope of jurisdiction of the Commission and ultra vires to the 1952 Act? (iii) Whether the Commission has no jurisdiction to issue any direction pertaining to election of Directors of the Exchange? (iv) Whether the directions issued on 11.07.2011 are perverse being factually incorrect? 22. The first issue is with regard to the maintainability of the Writ Petition at the instance of petitioners. Writ Petition has been filed by three petitioners who are described as follows: "1. First Commodities Exchange of India Limited, A Company registered under the Indian Companies Act and having its registered office at 2nd floor, Vee Yem Tower, Palarivattom, Kochi, Kerala - 682 025., represented by its Director, A.A. Haneefa.

2. A.A. Haneefa, Director, First Commodities W.A. No.1289 of 2011, etc. -:

26. :- Exchange of India Limited, Surya Traders, Bldg. No.VIII/333B, Kaithakad, Pattiamattom, Ernakulam - 683 562.

3. K.K. Nizam, Director, First Commodities Exchange of India Limited, Kairali Traders, Kalapurackal, Manathupadam, Changampuzha Nagar, Kalamassery, Cochin - 682 033". There is registered bye-law for the Exchange which is a registered Company for governing its affairs. Article 163p of the Articles of Association of the Exchange provides that power to institute/conduct suit, legal proceedings, etc., by or against the Company is vested with the Board of Directors. Article 163p is quoted as below: "Specific powers of the Board of Directors 163. Without prejudice to the generality of the powers conferred by the immediately preceding Article and the other powers conferred by these presents, the Board may manage the business of the Company/Exchange through one or more Managing Directors or Chief Executive Officers in such manner as the Board may from time to time determine. It is hereby expressly declared that the Board shall, subject to these presents and to the provisions of the Act have the following powers: xxx xxx xxx xxx xxx p. To institute, conduct, defend, compound or abandon W.A. No.1289 of 2011, etc. -:

27. :- any actions, suits and legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound or compromise or submit to arbitration the same actions, suits and legal proceedings". It has been specifically pleaded in the counter affidavit filed by the 2nd respondent as well as the 7th respondent that no resolution was passed by the Board of Directors for filing Writ Petition on behalf of the Exchange challenging the decision of the Commission. There is no reference to any resolution of the Board of Directors in the Writ Petition or in the affidavit filed by the petitioners. In the counter affidavit filed by the 2nd respondent reference has been made to a query made by the Commission to the Acting Chairman and Chief Executive Officer of the Exchange dated 29.07.2011 as "whether the Board of Directors of the First Commodities Exchange of India Limited has passed any resolution to file Writ Petition against the Union of India and Forward Markets Commission before the High Court". Reply to W.A. No.1289 of 2011, etc. -:

28. :- the said letter was sent by the Acting Chairman which is Ext.R2(b) where the Commission was informed that no Board meeting was held to file Writ Petition in the High Court. Thus it is held that the Writ Petition on behalf of the the Exchange cannot be filed and Writ Petition on behalf of petitioner No.1 is not maintainable.

23. Then the question arises is as to whether the Writ Petition is maintainable at the instance of petitioners 2 and 3 who have filed the Writ Petition describing themselves as Directors of the Company. Petitioners 2 and 3 being Members/Shareholders were elected as Directors. Petitioners 2 and 3 claim to be continuing as Directors of the Exchange whereas according to the respondents they have resigned on 11.12.2010, and are not continuing and cannot claim continuance as Directors. Petitioners 2 and 3 asserting to be Directors challenge the decision of the Commission in which proceedings also they participated and were W.A. No.1289 of 2011, etc. -:

29. :- heard by the Commission, we see no reason as to why they cannot challenge the decision in which decision they were permitted participation by the Commission itself. Learned counsel appearing for the 7th respondent in support of the submission that the Writ Petition is not maintainable at the instance of petitioners 2 and 3 has placed reliance on the judgment of the Apex Court in Charanjit Lal Chowdhury v. The Union of India and others (AIR 1951 SC41. In the above case before the Supreme Court petitioner who was a shareholder of the Company filed a Writ Petition under Article 32 of the Constitution of India. One of the questions which arose in the case was as to whether one individual shareholder can under the circumstances of the case and when one of the respondents is the Company which opposes the petitioner challenge the validity of the Act on the ground that it is a piece of discriminatory legislation. Mukherjea, J while W.A. No.1289 of 2011, etc. -:

30. :- considering the locus for enforcement of right under Article 32 has laid down the following in paragraph 44:

"4. The application before us under Art. 32 of the Constitution is on behalf of an individual shareholder of the Company. Article 32, as its provisions show, is not directly concerned with the determination of constitutional validity of particular

legislative enactments. What it aims at, is the enforcing of fundamental rights guaranteed by the Constitution, no matter whether the necessity for such enforcement arises out of an action of the executive or of the Legislature. To make out a case under this Article, it is incumbent upon the petitioner to establish not merely that the law complained of is beyond the competence of the particular Legislature as not being covered by any of the items in the legislative lists, but that it affects or invades his fundamental rights guaranteed by the Constitution, of which he could seek enforcement by an appropriate writ or order. The rights that could be enforced under Art. 32 must ordinarily be the rights of the petitioner himself, who complains of infraction of such rights and approaches the Court for relief. This being the position, the proper subject of our investigation would be what rights if any, of the petitioner as a shareholder of the Company have been violated by the impugned legislation. A discussion of the fundamental rights of the Company as such would be outside the purview of our enquiry. It is settled law that in order to redress a wrong done to the Company, the action should W.A. No.1289 of 2011, etc. -:

31. :- prima facie be brought by the Company itself. It cannot be said that this course is not possible in the circumstances of the present case. As the law is alleged to be unconstitutional, it is open to the old Directors of the Company, who have been ousted from their position by reason of the enactment to maintain that they are Directors still in the eye of law, and on that footing the majority of shareholders can also assert the rights of the Company as such. None of them, however, have come forward to institute any proceeding on behalf of the Company. Neither in form nor in substance does the present application purport to be one made by the Company itself. Indeed, the Company is one of the respondents, and opposes the petition". In paragraph 44 itself it was laid down that it is open to the old Directors of the Company, who have been ousted from their position by reason of the enactment to maintain that they are Directors still in the eye of law, and on that footing the majority of shareholders can also assert the rights of the Company as such. In the above case one of the shareholders has challenged the validity of the enactment whereas the Company was opposing the Writ Petition. In the said background it W.A. No.1289 of 2011, etc. -:

32. :- was held that the Writ Petition is not maintainable at the instance of such petitioner. The following was laid down in paragraph 7: "7. It has been held in a number of cases in the United States of America that no one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. This principle has been very clearly stated by Hughes J.

in McCabe v. Atchison, (1914) 235 U. S. 151 in these words: "It is an elementary principle that in order to justify the granting of this extraordinary relief, the complainant's need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured are persons of the sums race or occupation. It is the fact, clearly established, of injury to the complainant-not to others-which justifies judicial interference." On this statement of the law, with which I entirely agree, the scope of the discussion on this petition is greatly restricted at least in regard to the first two fundamental rights. The Company and the shareholders are in law separate entities, and if the allegation is made that any property belonging to the Company has been taken possession of without compensation or the right enjoyed by the Company under Art. 19 (1) (f) has been infringed, it would be for the Company to come forward to assert or vindicate its own rights and not for any individual shareholder to do so. In this view, the only question which has to he answered is whether the petitioner has W.A. No.1289 of 2011, etc. -:

33. :- succeeded in showing that there has been an infringement of his rights as a Shareholder under Arts. 31 and l9 (1) (f) of the Constitution. This question has been so elaborately dealt with by Mukherjea J.

that I do not wish to add anything to what he has said in his judgment, and all that is necessary for me to say is that I adopt his conclusions, without committing myself to the acceptance of all his reasonings". The above judgment does not help the 7th respondent.

24. The next judgment relied on by the 7th respondent is Mrs. Bacha F. Guzdar, Bombay v. Commissioner of Income Tax, Bombay (AIR 1955 SC74. In the said case the Apex Court had occasion to consider the position of a shareholder with

respect to tax assessed in the context of the provisions of the Income Tax Act, 1922. The said case has no application to the facts of the present case since the issue as to whether the Writ Petition under 226 is maintainable at the instance of shareholder was not even involved or gone into. We thus are of the considered opinion that though the Writ Petition is not maintainable at the W.A. No.1289 of 2011, etc. -:

34. :- instance of 1st petitioner, the Writ Petition is maintainable at the instance of petitioners 2 and 3. Hence we proceed to decide the Writ Petition on merits.

25. Issue Nos.(ii) to (iv) being interconnected are taken together. For answering the above issues which relate to the scope and ambit of jurisdiction of the Commission, it is necessary to look into the scheme of the 1952 Act and the Rules framed thereunder. Relevant provisions of the Act and Rules thus has to be noted first before proceeding to answer the issues.

26. The 1952 Act has been enacted to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters concerned therewith. Section 2 is the definition clause. Section 2(a) defines "association" which is to the following effect: "2(a) "association" means any body of individuals whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or W.A. No.1289 of 2011, etc. -:

35. :- purchase of any goods". The First Commodities Exchange of India Limited, a registered Company under the 1956 Act is an association within the meaning of Sec.2(a) of the 1952 Act. Section 4 of the Act deals with functions of the Commission which is as follows: "4. Functions of the Commission.- The functions of the Commission shall be (a) to advise the Central Government in respect of recognition of or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of this Act; (b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act; (c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and

prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods; (d) to make recommendations generally with a W.A. No.1289 of 2011, etc. -:

36. :- view to improve the organisation and working of forward markets; (e) to undertake the inspection of the accounts and other documents of any recognised association or registered association or any member of such association whenever it considers necessary; and (f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act or as may be prescribed". Section 4A deals with Powers of the Commission. Section 5 provides for application of recognition of association. Section 5(2) refers to particulars as may be prescribed and accompany while submitting an application for registration of recognition of the association which is quoted below: "5(2). Every application made under sub- section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular to- (a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted; (b) the powers and duties of the office bearers of the association; W.A. No.1289 of 2011, etc. -:

37. :- (c) the admission into the association of various class of members, the qualifications of members, and the exclusion, suspension, expulsion and re-admission of members therefrom or therein to; (d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks". Section 6 deals with grant of recognition to association. Section 7 deals with withdrawal of recognition. Section 8 deals with the power of the Central Government to call for periodical returns or direct inquiries to be made. Section 8 which is relevant for the case is quoted below: "8. Power of Central Government to call for periodical returns or direct inquiries to be made.- (1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs of its members, or his affairs, as the case may be prescribed. (2) Without prejudice to the provisions contained in sub-section (1) where the Central Government

considers it expedient so to do, it may by order in writing.- (a) call upon a recognised association to or a member thereof furnish in writing such information or explanation relating to its affairs or the affairs of any of its members or his affairs, as the case may be as the Central Government may require, or (b) appoint one or more persons to make an enquiry in relation to the affairs of such association or the W.A. No.1289 of 2011, etc. -:

38. :- affairs or any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representative of the Central Government; and (3) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2)- (a) every director, manager, secretary or other Officer of such association; (b) every member of such association; (c) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm; and (d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clause (a), (b) and (c) shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified. (4) Evey recognised association and every member thereof shall maintain such books of accounts and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for a period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission." Section 9 provides for furnishing of annual reports to the Central Government by registered association. W.A. No.1289 of 2011, etc. -:

39. :- Section 9A deals with power of recognised association to make rules respecting grouping of members, restricting voting rights, etc. Section 10 deals with power of the Central Government to direct rules to be made or to make rules.

Section 11 deals with power of recognised association to make bye-laws. Section 12 enumerates the power of the Central Government to make, or amend bye-laws of recognised association. Section 12B deals with power of the Commission to suspend member of recognised association or to prohibit him from trading. Section 13 deals with power of the Central Government to supersede governing body of recognised association. Section 14A provides for obtaining certificate of registration by association from the Commission, which is quoted below:

"4. Certificate of registration too be obtained by all associations.- (1) No association concerned with the regulation and control of business relating to forward contracts shall after the commencement of the Forward Contracts W.A. No.1289 of 2011, etc. -:

40. :- (Regulation) Amendment Act, 1960 (62 of 1960) (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission. (2) Every association referred to in sub-section (1) which is in existence at such commencement, before the expiry of six months from such commencement, and every association referred to in sub-section (1) which is not in existence at such commencement, before commencing such business, shall make an application for a certificate of registration to the Commission in such form and obtaining such particulars as may be prescribed: Provided that the Commission may in its discretion extend from time to time the period of six months aforesaid upto one year in the aggregate. (3) Nothing in this section shall be deemed.- (a) to prohibit an association in existence at such commencement from carrying on its business until the disposal of the application made by it under sub-section (2); or (b) to require a recognised association in existence at such commencement to make an application under sub-section (2); and every such association shall, as soon as may be after such commencement be granted free of cost by the Commission a certificate of registration." Section 14C provides that Sections 8 and 12B shall apply in relation to registered association as they apply to any association. Section 26 contains the delegation W.A. No.1289 of 2011, etc. -:

41. :- clause which is quoted below:

"6. Power to delegate.- The Central Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified by such officers or authority, including any State Government or officers or authorities thereof as may be specified in the direction." Section 28 deals with power of the Central Government to make Rules for the purpose of carrying into effect the objects of the Act.

27. In exercise of the powers under Section 26 of the 1952 Act, the Central Government by notification has delegated powers under Section 6(2)(a), 6(2)(b), 8 (1), 8(2)(a), 8(2)(b), 10, 11 and 12, 14, 14C with Sec.8(1) to the Commission. Copy of the notification issued by the Central Government has been filed in the counter affidavit filed by the 2nd respondent as R2(e).

28. In exercise of power under Section 28 of the Act, 1952, the Rules have been framed, namely, the W.A. No.1289 of 2011, etc. -:

42. :- Forward Contracts (Regulation) Rules, 1954 (hereinafter referred to as 'the Rules, 1954'). The Rules provide the format for an application for recognition as well as format for submission of periodical returns. The Rules also provide for particulars to be included in annual report, format for issuing the recognition as well as for registration. The Rules shall be referred to in detail hereinafter.

29. The submission made by learned counsel for the petitioners challenging the very jurisdiction of the Commission to issue the direction impugned is that the Commission at best can issue any order or direction with regard to forward trading and it has no jurisdiction to issue any direction pertaining to the internal management of the exchange or the election of Directors. The submission is that the directions dated 11.7.2011 is not referable to any power conferred to the Commission under the Act, 1952 or the Rules, 1954. W.A. No.1289 of 2011, etc. -:

43. :- Replying to the above submission, one of the arguments raised by the respondents is that the Exchange which had been recognised and registered

under the Act, 1952 is obliged to follow the directions issued by the Commission as per the terms and conditions of recognition/registration, hence it does not lie in the mouth of the petitioners to contend that the Commission cannot issue any direction in the above regard.

30. Section 14A of the Act, 1952, which was inserted by Act 62 of 1960 requires certificate of registration to be obtained by all Associations (Exchange). Section 14A(1) further provides that after the Amendment Act, 1960, the Association shall carry on such business in accordance with the conditions of certificate of registration granted under the Act by the Commission. Section 14A(1) of the Act, 1952 is quoted as below: W.A. No.1289 of 2011, etc. -:

44. :-

"4. Certificate of registration to be obtained by all associations.- (1) No association concerned with the regulation and control of business relating to forward contracts shall after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960) (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission." 31. Rule 7A also deals with certificate of registration, which is as follows: "7-A. Certificate of registration.- The certificate of registration granted to an association under sub-clause (b) of Cl.(3) of Sec.14-A of the Act shall be in form E and the certificate of registration granted to an association under Sec.14-B of the Act shall be in Form F; and in each case, the certificate shall incorporate the conditions, if any, subject to which it is granted." Rule 7A provides that certificate of registration shall incorporate the conditions subject to which it is granted. According to statutory Form F to the Rules, 1954, the registration is granted subject to the conditions mentioned therein. W.A. No.1289 of 2011, etc. -:

45. :- 32. It is relevant to note that the Certificate of Recognition was granted to the petitioner, copy of which is produced as Exhibit R2(d). Registration was granted with reference to seven conditions. One of the conditions of the Certificate of Registration, i.e., condition No.I is as follows: "2. The registration hereby granted is subject to the conditions- i) that the said association shall comply with such

directions as may from time to time, be given by the Forward Markets Commission;....." 33. From the above, it is clear that one of the conditions for grant of certificate of registration by the Commission to the Exchange (Association) is that it shall comply with such directions as may from time to time be given by the Forward Markets Commission. In substance, the submission of learned counsel for the first respondent is that the Exchange having obtained registration with the condition attached, it has to W.A. No.1289 of 2011, etc. -:

46. :- comply with the directions by the Commission issued from time to time and it is not open to the petitioners to contend that the directions issued by the Commission were without jurisdiction or ultra vires to the Act. Issuance of the directions by the Commission to the Association is statutorily recognised and the recognition by the Central Government is also on the condition that the Association will comply with the directions issued by the Commission. In this context, reference to Rule 7(2) is relevant, which is to the following effect: "7. Grant of recognition.- (1) xx xx xx (2) The recognition granted to an association shall be in Form B, specify the goods or the classes of goods with respect to which, in which forward contracts may be entered into between the members of such association or through or any such member and be subject to the following conditions, namely: (a) that the recognition granted shall be for such period not less than one year as may be specified in the recognition; (b) that the association shall comply with such directions as may from time to time be given by the Forward Markets Commission." W.A. No.1289 of 2011, etc. -:

47. :- 34. Thus, the recognition as well as registration of the Association, i.e., the Exchange is with the statutory condition that the Association shall comply with the directions issued by the Commission from time to time. Thus, we are not persuaded to accept the submission that the Commission has no jurisdiction to issue any direction under the Act, 1952 or the directions issued by the Commission are ultra vires.

35. Although from the above it is clear that the directions are binding on the Association, i.e., Exchange as per the statutory provisions and the submission cannot be accepted that the Commission cannot issue any direction to the

Association but the further argument of learned counsel for the petitioners that the direction cannot be issued with regard to internal management of the Association also needs to be considered. It is submitted by learned counsel for the petitioners that direction at best can be issued with W.A. No.1289 of 2011, etc. -:

48. :- regard to trading activity.

36. As noted above, Section 4 enumerates the functions of the Commission. Section 4(f) provides as follows: "4. Functions of the Commission.- xx xx (f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed." Section 4(f) provides that the Commission shall perform such other duties and exercise such other powers as may be assigned to the Commission by or under the Act, or as may be prescribed. The word 'prescribed' has been defined in Section 2(h), which means prescribed by Rules made under the Act. When Rule 7-A contemplates that the Association shall comply with "such directions as may be from time to time be given by the Forward Markets Commission", issuance of direction by the Commission to the Association is thus statutorily prescribed. Issuance of direction, thus, has to be W.A. No.1289 of 2011, etc. -:

49. :- accepted as one prescribed by the Statute. Thus, the functions of the Commission shall also enumerate issuance of directions by virtue of Section 4(f) read with Rules 7 and 7-A. When Rule 7-A contemplates conditions subject to which registration is granted and the conditions are statutorily prescribed in Form F to the effect that the Association shall comply with such directions as may from time to time be given by the Forward Markets Commission, issuance of direction by the Commission is, thus, statutorily prescribed and issuance of direction is one of the statutory functions recognised under the Act and the Rules and the submission of learned counsel for the petitioners that the directions dated 11.7.2011 are ultra vires to the Act cannot be accepted. The Commission is statutorily authorised to issue directions under the Act and the Rules as noted above, hence, the submission that the said directions are without jurisdiction has to be W.A. No.1289 of 2011, etc. -:

50. :- rejected.

37. Sri.Bechu Kurian Thomas, learned counsel for the petitioners has emphasised that the Commission has no authority to issue executive or administrative direction to the Association. He submits that under Section 4(f) of the Act, Commission's decision can only be advisory and recommendatory. The above submission came up for consideration before the Apex Court in Dr.Indramani Pyarelal Gupta and others v. W.R.Natu and others (AIR 1963 SC274. In the above case the Apex Court had occasion to consider the scope of power and functions entrusted to the Commission under Section 4 of the Act. Section 4(f) specifically came up for consideration before the Apex Court. Before the Apex Court the argument raised was that power and duties dealt with in clauses (a) to (e) of Section 4 are either recommendatory or advisory, hence "the other duties" or "other powers" which may be assigned to the W.A. No.1289 of 2011, etc. -:

51. :- Commission under clause (f) must be either ejusdem generis with advisory or recommendatory powers or of a nature similar to those enumerated in the previous sub- clauses." In paragraph 13 of the judgment the following has been noted:

"3. ....The argument on this part of the case was briefly this: The Forward Markets Commission is a statutory body specially created for the purposes of the Act. The powers which may be conferred upon the Commission and the duties which it may be called on to discharge are therefore subject to the provisions of the Act. No more power can be conferred upon this body than what the Act allows and the power under the amended bye-law 52AA is not one which is contemplated by the Act as conferrable on it. Section 4 defines the functions of the Commission under five general heads (a) to (e) with a residuary clause contained in cl.(f). The powers or duties dealt with in cls.(a) to (e) are in their essence either recommendatory or advisory. In the context therefore "the other" duties or "other" powers which may be assigned to the Commission under cl.(f) must be either ejusdem generis with advisory or recommendatory powers or of a nature similar to those enumerated in the previous sub-clauses...." Rejecting the above argument, the Apex Court has held W.A. No.1289 of 2011, etc. -:

52. :- that the expression occurring in clause (f) should receive the construction that it is intended to comprehend the administrative or executive functions also. The following was laid down in paragraph 14 of the judgment:

"14. ..... Any limitation therefore would have to be deduced from outside cl. (f) of S.4. Taking each of the clauses (a) to (e), it is not possible to put them positively under one genus in order that there might be scope for the application of the ejusdem generis rule of construction. Negatively, no doubt it might be said that none of these five clauses confer an executive power such as has been vested in them by the amended bye-law 52AA but this cannot be the foundation for attracting the rule of construction on which learned Counsel relies. On the other hand, if there is no common positive thread running through cls.(a) to (e) such as would bring them under one genus and negatively they do not expressly include any administrative or executive functions, that itself might be a reason why the expression "other" occurring in cl.(f) should receive the construction that it is intended to comprehend such a function. Learned Counsel further suggested that even if the rule of ejusdem generis did not apply, the allied rule referred to at p.76 of the report (SCR) : (at p.588 of AIR) of Western India Theatres Ltd. v. Municipal Corporation of Poona, 1959 (Supp) 2 SCR71: (AIR 1959 SC586, that the matters expressly referred to might afford some indication of the kind and nature of the W.A. No.1289 of 2011, etc. -:

53. :- power, might be invoked, but we consider that, in the context, there is no scope for the application of this variant either. What we are here concerned with is whether it is legally competent to vest a particular power in a statutory body, and in regard to this the proper rule of interpretation would be that unless the nature of the power is such as to be incompatible with the purpose for which the body is created, or unless the particular power is contra-indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it. Judged by this test, it would be obvious that the power conferred by the bye-law is one which could be validly vested in the Commission." 38. Thus, the submission of the petitioners that no administrative or executive direction can be issued by the Commission cannot be accepted.

39. There is one more reason due of which the direction has to be treated to be intra vires to the Act. Section 9 of the Act provides that every recognised association shall furnish to the Commission three copies of its annual report and such annual report shall contain such particulars as may be prescribed. Section 9 of the W.A. No.1289 of 2011, etc. -:

54. :- Act, 1952 is quoted as below: "9. Furnishing of annual reports to the central government by recognised association.- (1) Every recognised association shall furnish to the Commission three copies of its annual report. (2) Such annual report shall contain such particulars as may be prescribed." 40. Rule 12 of the Rules, 1954 enumerate the particulars to be included in the annual report. Rule 12 is quoted as below:

"2. Particulars to be included in annual reports.- The annual report of a recognised association shall inter alia contain particulars relating to the following matters, namely; (a) a survey of the year giving an analysis of the movement of prices and mentioning special benefits, if any, conferred by the forward market on the trade, during the year; (b) changes in rules and by-laws, if any; (c) changes in the composition of the governing body; (d) sub-committees set up, changes in the composition of existing ones and the work done by the sub- committees; (e) admissions, re-admissions, deaths or resignations of members and the total number of members and their distribution among the different classes and W.A. No.1289 of 2011, etc. -:

55. :- panels, if any, as at the end of the year; (f) disciplinary action taken against members; (g) arbitration of disputes relating to quality (number passings and rejections); (h) arbitration of other disputes (nature, number and manner of disposal) (i) defaults committed by members such as non- payment of difference, failure to tender and the like; (j) forward and ready prices during the year; (k) settlement rates, amounts of differences cleared, due date rates and tendering differences; (l) rates of margin and amount of margin deposited from time to time; (m) allowances payable by the seller in the event of mofussil delivery, fixed or altered during the year; (n) volume of transactions and quantity delivered against forward contracts." 41. From the above, it is clear that the particulars relating to

"changes in the composition of the governing body" have also to be sent to the Commission. The strength of the Board of Management is also required to be communicated. Different informations as required to be submitted for recognition is statutorily prescribed in Form A of the Rule 1954. Part III of the Rules, 1954 deals W.A. No.1289 of 2011, etc. -:

56. :- with the Board of Management. It is useful to quote Form A, Part III, which is to the following effect: "Part III Board of Management (19) What is the present strength of your Board of Management/Directors? (20) Does the constitution of your Board of Management/Directors truly represent the different trade interests, such as "sellers", "buyers", "brokers", "growers", "consumers", etc.? If no, are you willing to amend your constitution so as to make the board fairly representative. (21) Are there any representatives of State Government/Commodity Committees on your Board of Management/Directors? If so, please furnish their names and the interest represented by them." 42. Further, under Section 8 of the Act, 1952, the Central Government is empowered to call for periodical returns or direct enquiries to be made. The power of Section 8 has been delegated to the Commission as noted above. Section 8 of the Act is as follows: "8. Power of Central Government to call for periodical returns or direct inquiries to be made. (1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs of its members, or his affairs, as the case may be, as ,may be prescribed. (2) Without prejudice to the provisions contained in sub-section (1) where the Central government W.A. No.1289 of 2011, etc. -:

57. :- considers it expedient so to do, it may by order in writing- (a) calls upon a recognised association to or a member thereof furnish in writing such information or explanation relating to its affairs or the affairs of any of its members or his affairs, as the case may be as the Central Government may require, or (b) appoint one or more persons to make an enquiry in relation to the affairs of such association or the affairs or any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made and the report to be submitted, by the governing body of such association acting jointly with one or

more representative of the Central Government and (c) direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government. (3) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2)-

"43. The periodical returns, which are contemplated under Section 8 of the Act, returns relating to its affairs. The word 'affairs' used in Section 8 cannot be confined to only trading affairs. The phrase "its affairs" is a comprehensive phrase, which includes all the affairs of the Association/Exchange including election of Directors. The word 'affair' has been defined in the Law W.A. No.1289 of 2011, etc. -:

58. :- Lexicon by P.Ramanatha Aiyar in the following words: "Affair. Business of any kind, commercial, professional or public; something to be transacted; matter; concern." 44. As noted above, Rule 12, which prescribes the particulars to be sent in the annual report also contemplates details regarding "changes in the composition of the governing body". Thus, the statute requires submission/sending of all details to the Commission, including the changes in the governing body, if any.

45. Section 8(2) is another relevant provision, which needs to be considered while considering the issue. Under Section 8(2)(a) of the Act, 1952, the Commission is empowered to call upon a recognised Association such information or explanation relating to its affairs or the affairs of any of its members. Thus, the Commission is also empowered to call for explanation of any of its affairs. The show cause W.A. No.1289 of 2011, etc. -:

59. :- notice, Exhibit P14 dated 27.6.2011 which was issued to the petitioners on the basis of the complaint dated 7.1.2011 was, thus, well within its jurisdiction. When the regulatory body, i.e., the Commission is empowered to call for explanation regarding the affairs of the Association or of any of its members, it is obvious that after considering the explanation, directions can be issued by the Commission. Denying such power to the Commission to issue direction after calling for explanation shall not advance the object of the Act and to hold that it

has no jurisdiction to issue any direction regarding the subject matter for which explanation is called for is to make the power of calling explanation futile and redundant. Section 8(2)(b) further empowers the Central Government/Commission to make an enquiry in relation to the affairs of such association or the affairs of any of its members. The provisions further contemplate the submission of W.A. No.1289 of 2011, etc. -:

60. :- report after enquiry. In the present case, as noted above, the enquiry was directed by the Commission after receiving the complaint dated 7.1.2011 from 57 shareholders. The two member Enquiry Committee gave opportunity to the petitioners, Director and shareholders on 17th and 18th March, 2011 and has submitted a detailed report dated 6th April, 2011, which has been produced as Exhibit R2(h) along with the counter affidavit of the second respondent. It is useful to quote the opinion expressed by the Enquiry Committee in Part-III, which is to the following effect:

7. 1 In view of the facts mentioned in the preceding paragraphs and on verification of records shown to us by the CEO of the Exchange and discussions held with the shareholders, we are of the following opinion that: (a) The result of election of Board of Directors was announced by the Exchange and names of (i) Shri.K.V. Krishna Kumar, (ii) Navas P.A. and (iii) K.K. Kunjikumu were elected as Directors unopposed. The shareholders approved the same in the AGM held on 11.12.2010. (b) During the AGM, Shri.Nizam and Shri.Haneefa W.A. No.1289 of 2011, etc. -:

61. :- had orally announced their resignation from the Board, when shareholders questioned their conduct for not having paid their part of call paid on time and the acceptance of the same by the supreme body i.e. the general body is ultimate and therefore there is no need of any written communication to that effect. (c) Shareholders constituted an Ad hoc Board comprising of newly elected 3 Directors and other nominated Directors as per Article 117 and 118 of FCIE. The said Board held a meeting immediately after AGM and elected Shri.Vidyasagar as Acting Chairman and Shri.Shomy George as Acting Managing Director and passed resolution for signing of cheques. As per the existing practice, the meeting of the re-constituted Board held after the AGM, appears to be in order. There is no need

to cancel the decisions taken in the said meeting. (d) The Board Meeting held on 30.12.2010 and decisions taken in the said meeting needs to be declared to be non est because the meeting was attended by Shri Nizam and Shri.Haneefa as they have no moral rights as they face disqualification charges and also announced their resignation in the AGM. Moreover, none of the newly elected Directors by the AGM attend the said meeting. (e) The conduct of the CEO in the entire episode is not in the interest of the Exchange and the welfare of the Shareholders. We may ask the Adhoc Board constituted by the shareholders in the AGM held on 11.12.2011 to call for explanations from the CEO for his conduct and submit a report to the Commission within a period of 30 days." W.A. No.1289 of 2011, etc. -:

62. :- 46. After receipt of the above opinion of the two member Enquiry Committee, a show cause notice was issued to the petitioners, Exhibit P14, fixing the date of hearing on 11.07.2011. The third petitioner, K.K.Nizam was also present before the Commission and was heard. The Commission, after giving an opportunity to the petitioners, issued the direction dated 11.07.2011. The Commission in its direction has only directed to take respondents 3, 4 and 5 on the Board of Directors of the Exchange, who were found to have been duly elected as per the procedure followed by the Exchange. The Enquiry Committee had clearly opined that all the above three persons were duly declared elected unopposed 03.12.2010, which was also approved by the annual general meeting dated 11.12.2010. Thus, the Commission directed to give effect to the said election, which was held to be valid as per the practice of the Association. W.A. No.1289 of 2011, etc. -:

63. :- 47. In the event, it is held that the Commission is not empowered to issue any direction even after conducting an enquiry and asking for explanation from the Association as empowered under Section 8(2) of the Act, 1952, the whole purpose and object of giving power to the Commission to call for explanation and to direct enquiry shall be defeated. When a statute grants a power to an authority, the power is granted to effectuate the purpose of the Act.

48. The Apex Court in Tinsukhia Electric Supply Co.Ltd. v. State of Assam [(1989)3 SCC709 has laid down that the provisions of a Statute must be so construed as to make it effective and operative. The following was laid down in paragraphs 118, 119 and 120 of the judgment:

"18. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "ut res magis valeat quam pereat". It is, no doubt, true that if a W.A. No.1289 of 2011, etc. -:

64. :- statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Race-course Co. Farwell J.

said: (pp 360-61) "unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning and not to declare them void for uncertainty." 119. In Fawcett Properties Ltd. v. Buckingham Country Council Lord Denning approving the dictum of Farwell, J.

said (All ER p.516). "But when a Statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity" 120. It is, therefore the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a court to declare a statute unworkable. In Whitney v.IRC Lord Dunedin said: (AC p.52)" 49. Thus, taking an overall consideration of the W.A. No.1289 of 2011, etc. -:

65. :- scheme of the Act, it has to be held that the Commission, after calling for an explanation and holding an enquiry, has every jurisdiction to issue appropriate directions. Any other interpretation of the Act shall defeat the very purpose of the

enactment. It is also to be accepted that the directions issued by the Commission can relate to subject matter of explanation or enquiry, which has been directed by the Commission.

50. One more reason which weighed with us in upholding the direction of the Commission dated 11.7.2011 is that from the proceedings dated 11.7.2011 it is clear that the Association, which was represented by the Acting Chairman, did not object the taking of three Directors claimed to be elected on 3.12.2010 on the Board of Directors. As noted above, the Exchange, i.e., the Association is impleaded as the 7th respondent to the present Writ Petition which has supported the decision of the Commission. The Board of Directors, W.A. No.1289 of 2011, etc. -:

66. :- thus, is not challenging the direction dated 11.7.2011 of the Commission for taking three Directors on the Board, who were duly elected. The Board of Directors, thus, is accepting the decision of the Commission and is opposing the prayer of the writ petitioners.

51. It is further relevant to note that respondents 3 and 4 were elected as Directors on 3.12.2010 and approved in the annual general meeting dated 11.12.2010. Their term came to an end on 24.11.2012 and they have been re-elected. The term of the fifth respondent also came to an end in the year 2013 and in his place another Director has been elected.

52. Learned counsel for the petitioners has placed reliance on certain judgments of the Apex Court, which also need be considered. The judgment of the Apex Court in Indramani's case (supra) has already been referred to as above, which does not support the submission of learned counsel for the petitioners. W.A. No.1289 of 2011, etc. -:

67. :- 53. The next judgment relied on by learned counsel for the petitioners is Union of India and another v. Rajdhani Grains and Jaggery Exchange Ltd. and others [(1975)1 SCC676. In the above case the Apex Court had occasion to consider Sections 6, 14A and 14B and Rules 7A, of the Act, 1952. In the said case the Apex Court has laid down that the Commission is entitled to impose conditions

for conducting forward trading in any commodity. It is useful to quote paragraphs 6, 10, 11 and 13 of the judgment, which are to the following effect: "6. S.26 confers power upon Government to make rules for carrying out the object of the Act. The material rule for our purpose is R.7A of the Forward Contracts (Regulation) Rules, 1954, framed by the Government. It states that the certificate of registration granted to an association under sub clause (b) of clause (3) of S. 14A of the Act shall be in form B and the certificate of registration granted to an association under S.14B of the Act shall be in form F; and in each case, the certificate shall incorporate the conditions, if any, subject to which it is granted. The material portion of Form F states: W.A. No.1289 of 2011, etc. -:

68. :- "The registration hereby granted is subject to the conditions (i) that the said association shall comply with such directions as may from time to time be given by the Forward Markets Commission and (ii) that the said association shall not conduct forward trading in any commodity other than those specified hereunder except with the previous approval of the Forward Markets Commission." Conditions Nos.(i)and (ii) of the Certificate of Registration granted to respondent No. 1 are the same as those specified in Form F. xx xx xx 10. Recognition of an association under S.6 carries with it certain duties and confers certain rights on the association. S.8 states that every recognized association shall furnish to the Central Government such periodical returns as may be prescribed. S.9A provides that a recognised association may make rules with respect to matters specified therein. The fact that an association is recognised by the Central Government would not enable it to carry on the business in forward contract. For carrying on business in forward contract, a certificate of registration under S.14A is a sine qua non. The area covered by S.6 and 14A is different. The fact that Central Government has power to attach conditions as regards the commodities in respect of which the business of forward contract can be carried on is not in any way incompatible with the power of the Commission to impose conditions as respects the commodities in which the W.A. No.1289 of 2011, etc. -:

69. :- business can be conducted. The conditions in the market dealing with forward contract do not remain static. They change. And unless the Commission is invested with power to impose further condition with respect to the commodities in

which the business of forward contract can be carried on the object of constituting the Commission would be frustrated. The assumption by the High Court that when once conditions as to commodities in respect of which business can be carried on have been laid down at the time recognition was granted by Government, the power of the Commission to attach further conditions as to the commodities in which transactions in forward contract can be carried on, would be repugnant to the power of the Government, fails to take note of the changing conditions in the market. When S.14 A says that no association shall carry on business in forward contracts except in accordance with the conditions specified in the Certificate, there can be no doubt as to the nature of condition which might be attached to a certificate of registration. Under clause (f) of S.4, the Commission has "to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed." Dealing with the expression "by or under this Act or as may be prescribed" in S.4(f), this Court has said in I. P. Gupta v. W. R. Natu, AIR 1963 SC274that there was no limitation upon the nature of the power that might be conferred except that which might flow from its having to be one in relation to the regulation of forward trading in goods which the Act is W.A. No.1289 of 2011, etc. -:

70. :- designed to effectuate. The Court observed that where the Court is concerned with the question whether it is legally competent to vest a particular power in a statutory body, the proper rule of interpretation would be that unless the nature of the power is such as is incompatible with the purpose for which the body is created, or unless the particular power is contra indicated by any specific provision of the enactment bringing the body into existence, any power which would further the provisions of the Act could be legally conferred on it. And, as we already said, R.7A prescribes the conditions under which a certificate of registration can be issued and that authorises the incorporation of condition No. (ii) in the certificate of registration.

11. We think that the reasoning of the High Court that S.14A authorises only the imposition of conditions as to the manner in which the business in forward contracts can be carried on and that the section has nothing to do with the commodities with respect to which forward contacts can be carried on is fallacious.

We cannot read any such limitation in the language of S. 14A nor can we find any indication in the other provisions of the Act to the contrary. In other words, the power of the Commission is plenary as regards the nature of the conditions which it can attach for regulating and controlling the business of forward contracts of a particular Association. We see no reason to think that specification of the commodities in respect of which business can be carried on is not a condition concerned with the regulation and control of the W.A. No.1289 of 2011, etc. -:

71. :- business relating to forward contracts. xx xx xx 13. It is not a relevant consideration that the imposition of condition as to the commodities in respect of which business of forward contract can be carried on would have the effect of curtailing the area of business of an association for the very idea of setting up the Commission was to supervise and regulate the business of forward contract by imposing conditions subject to which alone the association can carry on business. Conditions are nothing but qualification restriction or limitation modifying or even destroying to a certain extent the right to carry on the business. The commodities in which the association can carry on the business of forward contract is an integral part of its business activity . They are the subject matter or media for carrying on the business and specification of commodities in which business can be carried on is a condition sounding only in the realm of regulation and control of that business." 54. In the said judgment Rule 7A was held to be intra vires and held that the condition No.(ii) under which a certificate of registration can be issued are valid. The said ratio shall also be fully applicable with regard to condition No.(i) imposed in the certificate of registration in Form F. Another judgment, which has W.A. No.1289 of 2011, etc. -:

72. :- been relied upon by learned counsel for the petitioner is Marathwada University v. Seshrao Balwant Rao Chavan [(1989)3 SCC132. The Apex Court had occasion to consider the power conferred to the Vice Chancellor of a University under Section 11(6)(a) of the Marathwada University Act. It was held that the power to "regulate the work and conduct of the officers does not imply power to take disciplinary action against officers". The said judgment was based on the provisions of the Marathwada University Act, 1974 and was on its own facts and has no relevance in the present controversy.

55. In V.Sudeer v. Bar Council of India and another [(1999)3 SCC176 the Apex Court had occasion to consider the Bar Council of India Training Rules, 1995. It was held that the Rules prescribing additional qualification of pre-enrollment training for enrollment of a candidate as an Advocate were ultra W.A. No.1289 of 2011, etc. -:

73. :- vires to the Advocate Act, 1961. The said judgment was on its own facts and has no relevance in the present case.

56. Kerala Samsthana Chethu Thozhilali Union v. State of Kerala and others [(2006)4 SCC327 was a case where the Apex Court has held that subordinate legislation must conform to not only the provisions of the parent Act but also to the provisions of other Acts. In the said case the Apex Court had occasion to consider the Kerala Abkari Shops Disposal Rules, 2002. There cannot be any dispute to the proposition laid down in the said case, the power to frame Rule and the power to impose terms and conditions are subject to the provisions of the Act and they should conform to the legislative policy. The following was laid down in paragraph 28 of the judgment, which is to the following effect:

"8. The Rules in terms of sub-section (1) of Section 29 of the Act, thus, could be framed only for the W.A. No.1289 of 2011, etc. -:

74. :- purpose of carrying out the provisions of the Act. Both the power to frame rules and the power to impose terms and conditions are, therefore, subject to the provisions of the act. They must fonform to the legislative policy. They must not be contrary to the other provisions of the Act. They must not be framed in contravention of the constitutional or statutory scheme." There cannot be any dispute to the above proposition laid down by the Apex Court. However, the said case in no manner helps the petitioners.

57. In LIC of India v. Retired LIC Officers Association [(2008)3 SCC321 the Apex Court has held that the delegatee cannot act in violation of a statute. The following was laid down in paragraph 28 of the judgment:

"8. Contention of Mr. Patwalia that the Chairman of the Corporation having power even to fix the cut off dates for different purposes, the jurisdiction exercised by him to do so for payment of gratuity, which has a direct nexus with the revised pay of scale cannot be accepted. Once he fixes a cut off date for the purpose of giving effect to the agreement vis a vis the payment of arrears in terms thereof, he cannot exercise further jurisdiction in respect of a matter which is not controlled by Chapter IV but is W.A. No.1289 of 2011, etc. -:

75. :- controlled by other provisions of statutes and Parliament Acts governing the field. A delegatee must exercise its powers within the four corners of the statute. The power of a sub delegatee is more restricted. A delegatee cannot act in violation of a statute. A sub delegatee cannot exercise any power which is not meant to be conferred upon him by reason of statutory provisions. It must conform not only to the provisions of the Regulations and the Act but also other Parliamentary Acts. (See - Kurmanchal Inst. of Degree and Diploma and Others v. Chancellor, M.J.P. Rohilkhand Univ. and Others, 2007 KHC3640:

2007. (6) SCC35: AIR 2007 SC2253 Kerala Samsthana Chethu Thozhilali Union v. State of Kerala and Others, 2006 KHC536:

2006. (4) SCC327:

2006. (2) KLT270: ILR2006(3) Ker. 65 : JT2006(5) SC41:

2006. (3) LLN124:

2006. (2) CLR15:

2006. SCC (L&S) 796, Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Others, 2006 KHC406:

2006. (3) SCC434: AIR 2006 SC1489: JT2006(3) SC235 State of Kerala and Others v. Unni and Another, 2007 (2) SCC365:

2007. (1) KHC73:

2007. (1) KLT151: AIR 2007 SC819:

2007. (1) KLJ97 State of Orissa and Another v. M/s. Chakobhai Ghelabhai and Company, 1961 (1) SCR719: AIR 1961 SC284:

1960. (11) STC716and M/s. Shroff and Co. v. Municipal Corporation of Greater Bombay and Another, 1989 Supp (1) SCC347:

1989. (72) STC150:

1989. (21) ECC24." There cannot be any dispute to the proposition as laid down by the Apex Court. In the present case the W.A. No.1289 of 2011, etc. -:

76. :- Commission, who has been delegated power of the Central Government, is not acting in violation of any statute, nor has it been shown that any of the provisions have been violated by the Commission while issuing direction dated 11.7.2011.

58. Sri.Philip Mathew, learned Central Government Standing Counsel has placed reliance on a Division Bench judgment of the Bombay High Court in National Commodity & Derivatives Exchange Ltd. and another v. Union of India and another (W.P(L). No.195 of 2009). The Division Bench had occasion to consider the provisions of the Act, 1952. The directions issued by the Commission were under challenge in the said Writ Petition. The directions were questioned on the ground that the Commission has no authority to issue any such direction. Rejecting the argument, the following was laid down in paragraphs 6, 7, 8 and 9 of the judgment: W.A. No.1289 of 2011, etc. -:

77. :- "6. This direction of respondent No.2 has been questioned by the petitioners in the present Writ Petition, primarily on the ground that respondent No.2 has no authority to issue such a directive inasmuch as the matter relating to transaction charges squarely falls in the exclusive jurisdiction of the petitioner. No rule or authority is vested in the resondents to interfere in the management of internal matters of the petitioner as it primarily controls the charges payable to it by its members for transacting the said trading business. It is further stated that the directives contained in the letter dated 28th January, 2009 are violative of Articles 14, 19(1) (g) and 21 of the Constitution of India and therefore, are liable to be

quashed and set aside.

7. On advance notice, the respndents have appeared, but no reply was filed. However, it was argued that under the provisions of the Act and the Rules framed thereunder, the respondents have full authority to issue such a directive. They have requested the petitioners to keep the Circular in abeyance and have called upon the petitioners to explain the matter to the competent Authority for issuance of further directives. It is further argued that it is a statutory obligation of respondents No.2 to ensure that economic and public interest as well as concept of fair competition are not prejudicially affected by any Association. No doubt, under its Rules and Bye-laws, the petitioners under Clause (2)(5)(l), the Board of Directors of petitioner No.1 has the power to make regulations in relation to charges for business to be W.A. No.1289 of 2011, etc. -:

78. :- transacted through them on their platform. This power is vested in the Board and the Board can take its decision on business principles and reulate and control actions prescribing rates relating to transaction charges. It had considered the matter and then a decision as has been communicated to respondent No.2 by the letter dated 28th January, 2009.

8. The question that arises for consideration is whether the power of the petitioner vested under its Bye- laws is absolute and free from any restrictions or whether it is controlled by other statutory provisions or regulatory authorities provided thereunder. In terms of Rule and Bye-laws (9) of the petitioner itself, it has been statyed that the regulatrion would mean and include rules framed under the directions of the Forward Markets Commission or any other similar related Authority and such other directives, as may be specified from time to time by the relevant authority. Not only this, in terms of rule 7 of the Forward Contracts (Regulation) Rules, 1954 framed by the Central government in exercise of its power under section 28 of the Act, grant of recognition is vested in the Central Government and is based upon the advice of the forward Markets Commission. Rule 7(2) of the said Rules reads as under:- "7... (2) The recognition hereby granted in subject to the condition that the said association shall comply with such direction as may from time to time, be given by the forward Markets Commission."

9. A bare reading of the above provision shows that W.A. No.1289 of 2011, etc. -:

79. :- recognition of an association in terms of Section 6 is vested in the respondents and they have the jurisdiction to withdraw the recognition. Recognition is subject to the conditions which have been stated in the certificate of registration, Form-B and Form-F respectively, in which the certificates are to be issued and further clearly postulate that the registration granted is subject to conditions stated therein and particularly that the said association shall comply with such directions as may, from time to time, be given by the Forward Markets Commission. In face of these statutory provisions, the contention raised on behalf of the petitioners that the respondents have no jurisdiction, and it is not obligatory upon the petitioners to carry out directives relating to transaction charges upon examination of the effect of transaction charges proposed and circulars issued by the petitioners cannot be gone into by the said authority, is not correct." The said judgment do support the submissions made by learned counsel for the respondents.

59. In view of the foregoing discussions, we are of the view that Exhibit P13 dated 21.6.2011 and Exhibit P15 dated 11.7.2011, by which directions were issued to the Exchange as well as Exhibit P14 show cause notice were well within the jurisdiction of the Commission. W.A. No.1289 of 2011, etc. -:

80. :- 60. In the result, the prayer of the petitioners to quash Exhibits P13, P14 and P15 cannot be granted. W.P (C).No.19880 of 2011 deserves to be dismissed and is hereby dismissed. W.A.No.1289 of 2011 61. W.P(C).No.19880 of 2011, out of which the Writ appeal has arisen, having already been dismissed, W.A.No.1289 of 2011 is also dismissed. W.P(C).No.20743 of 2011 62. Respondents 3 and 4, with regard to whom declaration was sought as Directors of Company having already resigned and their term having also come to an end, we see no necessity to enter into the issues raised, as virtually the Writ Petition for all practical purpose has become infructuous. Accordingly, the W.P(C).No.20743 of 2011 is dismissed as infructuous. Cont.Case (C).Nos.1053 of 2011 and 79 of 2012 63. These two contempt applications have been W.A. No.1289 of 2011, etc. -:

81. :- filed for non-compliance of interim order passed in W.A.No.1289 of 2011. W.P(C).No.19880 of 2011 as well as W.A.No.1289 of 2011 having already been dismissed, we see no good ground to proceed with these Contempt Cases. Accordingly, both the Contempt Cases are also dismissed. In the result, Writ Petitions, Writ Appeal and Contempt Cases are dismissed. The parties are directed to bear their costs. ASHOK BHUSHAN ACTING CHIEF JUSTICE A.M.SHAFFIQUE JUDGE vsv/vgs

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