

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

% Reserved on : 27.02.2013
Date of decision: 22.03.2013

+ **W.P.(C) 4527/2010**

MAHARASHTRA HYBRID SEEDS CO LTD Petitioner

versus

UOI AND ORS Respondents

+ **W.P.(C) 640/2012**

NUZIVEEDU SEEDS (P) LTD Petitioner

versus

UOI AND ORS Respondents

Through: Mr. Sanjay Jain, Sr. Adv. with Mr. Anil Dutt, Ms. Ruchi Jain,
Mr. Sudershan Shekhawat & Ms. Namisha Gupta, Advs. for the
Petitioner in WP (C) No.4527/2010 and
for Respondent No.3 in WP (C) No.640/2012.
Mr. Jayant Bhushan, Sr. Adv. with Mr. Abhishek Saket,
Mr. Amarjeet Kumar & Mr. Manish Madhukar, Advs.
for Respondent No.3 in WP (C) No.4527/2010 and
for the Petitioner in WP (C) No.640/2012.
Mr. Rajeeve Mehra, ASG with Mr. Sachin Datta, CGSC
with Mr.Ashish Virmani, Ms.Ritika Jhurani and Ms.Sapna
Chauhan, Advocates for Respondents 1 & 2
in WP (C) No.4527/2010 & WP (C) No.640/2012.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MS. JUSTICE INDERMEET KAUR

SANJAY KISHAN KAUL, J.

1. The variety of crops both edible and for commercial purposes has grown as the size and need of the human population has grown. This has resulted in experimentation of plant varieties and a need was felt for protection of the plant varieties and the right of the farmers and plant breeders to encourage development of the new varieties of plants. This is essential for accelerated agricultural development. It is towards this objective that India ratified the agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994 requiring it to make provisions for giving effect to various articles of the agreement relating to protection of plant varieties. The Protection of Plant Varieties and Farmers' Rights Act, 2001('the Act') was thus born. The Act received the assent of the President of India on 30.10.2001, but it was not till four years later on 11.11.2005 that some of the provisions i.e. Sections 2 to 13 and Sections 95 to 97 came into force. However, these Sections only dealt with the creation of the Authority and the Registry as also the power to make Regulations and Rules. Substantive provisions being Section 1 and Section 14 to Section 94 came into force on 19.10.2006. Thus, there was a hiatus period of five years between receiving

the assent of the President and the provisions of the Act effectively coming into force.

2. This has some significance which we will discuss later. We may, however, add that in exercise of a right conferred under Section 96 on the Central Government to make Rules, the Protection of Plant Varieties and Farmers Rights Rules, 2003 were enacted and were published in the Gazette on 12.09.2003. Chapter VIII of the Act envisages setting up of an Appellate Tribunal. This chapter consists of Sections 54 to 59. Section 59 is a transitional provision requiring the Intellectual Property Appellate Board ('IPAB') established under Section 83 of the Trade Marks Act, 1999 to exercise jurisdiction of the Tribunal till the Tribunal is established under Section 54 of the said Act but requiring a technical member to be appointed under the said Act who would be deemed to be a Technical Member for constituting a Bench under Section 84(2) for the purposes of this Act. Despite the lapse of almost six and a half years, there is no sight of this Tribunal being constituted or implementation of the transitional provision. This is in addition to the hiatus period of five years from bringing into force the provisions of the said Act.
3. It is in these circumstances that this court was constrained to entertain this petition under Article 226 of the Constitution of India in view of neither any duly constituted Tribunal nor even the transitional provision being implemented. The rules for such an appellate Tribunal were brought into force only on 21.09.2010. Since we found an unexplained inaction in

implementing the mandate of the Parliament, we called upon the Union of India to file an affidavit setting out the steps taken for constitution of the Tribunal for the implementation of the transitional provision from 2001 till date and to produce the relevant records in respect thereof. An affidavit affirmed by the Assistant Commissioner (Seeds), Department of Agriculture and Cooperation, Ministry of Agriculture referred to only the aforesaid dates and the factum of the Ministry of Agriculture being the Nodal Ministry for Protection of Plant Varieties and Farmers' Rights Authority. It appears that the first communication in this behalf was addressed only vide letter dated 02.07.2009 to the Department of Industrial Policy and Promotion requesting to take note of Section 59 of the said Act and intimate the modalities for operationalization of the transitional provision. A request was also made to the IPAB to suggest the procedure for appointment of the Technical Member. Almost four years hence there appears to be no development. Not only that, even now no date was specified before us as to when the transitional provision of Section 59 of the said Act would be given effect to. One of the reasons stated before us was that the IPAB was reluctant to take up the work especially on account of lack of infrastructure even for its existing work. We thus called upon the Secretary of the two concerned Ministries to discuss the matter and to file an affidavit before us setting out the details of what prevented them from bringing into force at least the transitional provision through properly constituted consisting of a technical member.

4. An affidavit was filed by the Assistant Commissioner (Seeds) affirmed on 21.02.2013 itself. It is stated that the Act deals with sensitive issues pertaining to farmers rights; determination of “extant varieties”, “farmer’s variety” and “varieties of common knowledge”. The criteria for registration of the plant/seed varieties requires a lengthy process that includes field testing of the plant/seeds varieties in different conditions and it is after completing this extensive process, that the government formulated the Protection of Plant Varieties and Farmers’ Rights (Criteria for Distinctiveness, Uniformity and Stability for Registration) Regulations, 2009, which were notified on 29.06.2009 and came into force with effect from 30.06.2009. The Ministry of Agriculture being the Nodal Ministry addressed a communication dated 02.07.2009 as referred to aforesaid for the transitional provision to be implemented and the Department of Industrial Policy and Promotion in turn is stated to have referred the matter to IPAB on 26.08.2009. It furnished its comments on 14.09.2009. The Department of Industrial Policy and Promotion vide a communication dated 15.10.2009 furnished the requisite information to the Ministry of Agriculture. The Plant Varieties Protection Appellate Tribunal (Applications and Appeals) Rules, 2010 are stated to have been notified on 21.09.2010. The Protection of Plant Varieties and Farmers’ Rights Rules (Recognition and Reward from the Gene Fund) Rules, 2012 were notified on 31.07.2012 while the Protection of Plant Varieties and Farmers’ Rights (Use of Denomination and

Registered Variety) Rules, 2012 were notified on 17.12.2012. The aspect of implementation of Section 59 of the said Act is stated to be receiving the attention of the concerned Ministry, but there is stated to be some circumspection of this being uncharted territory.

5. In view of our order dated 21.02.2013, the same officer has filed another affidavit affirmed on 28.02.2013 stating that the IPAB has given its consent for invoking the transitional provision under Section 59 of the said Act and the Chairman and Vice Chairman of the IPAB will act as judicial members along with the Technical Member to be appointed under the said Act for purposes of exercising the transitional power and authority conferred on the Appellate Tribunal under the said Act. Earnest efforts are stated to be made by the Ministry of Agriculture for appointment of the Technical Member. However, it appears that the same is also at the stage of approval of the Expenditure Finance Committee whereafter the Search-cum-Selection Committee would decide the modalities of recruitment of the Technical Member. The time schedule laid down is of one year apart from the time required for approval of the Appointments Committee of the cabinet for which no time limit can be assigned. Thus, we are talking about a period of more than a year, which is stated to be realistic. So much for the interest in ‘protection of plant varieties and rights of farmers’!
6. We need to only emphasize what we have observed in our order dated 21.02.2013. Prior to the introduction and passage of a

Bill in the Parliament, a number of steps are taken and considerable ground work is required. This ground work envisages not only the legislative drafting but the legislative impact of the legislation. The legislative impact in turn includes the litigation which it will generate, provisions for appropriately strengthening the judiciary to face the increase in litigation, creation of infrastructure and where specialized tribunals are envisaged, taking steps towards establishment of the same. The assent of the President is the culmination of this process. The will of the Parliament as reflected in the enactment of the said Act, which received the assent of the President, remained unimplemented for five years when only the basic provisions were brought into force without really the substantive provisions, which in turn were brought into force after six and a half years. Was this time not sufficient to analyze all aspects? Since the disputes would have aspects of scientific knowledge, the Appellate Tribunal envisaged a Technical Member. Leave aside the constitution of the Tribunal, even the transitional provision has not been brought into force. The absence of any such specialized Tribunal implies that it is the regular courts, which are already short of adequate number of judges to handle matters apart from technical issues which may arise, that will have to examine the controversy. The result is that neither are these specialized tribunals being brought into force nor is the existing judicial system strengthened to take care of the extra workload, a painful aspect to note. We would end this chapter with a

sanguine hope that at least the transition policy is implemented on an urgent basis!

7. Now coming to the factual matrix of the dispute in question, there are two writ petitions before us. The first writ petition, being WP (C) No.4527/2010, has been filed by the petitioner assailing the impugned order of respondent No.2/Registrar. The notice of opposition had been filed by respondent No.3. The said respondent No.3 has filed a separate writ petition, being WP (C) No.640/2012 subsequently to challenge the *vires* of Rule 32 of the said Rules. For convenience of reference throughout this judgement, though respondent No.3 in WP (C) No.4527/2010 is the petitioner in WP (C) No.640/2012, the said party has been referred to as respondent No.3 hereinafter (for short 'R-3'). We are concerned with what is claimed to be a novel variety of cotton C-5193. The petitioner, a limited company, incorporated and registered under the Companies Act, 1956 is stated to be engaged in the research and development of novel varieties of seeds and plants and their commercialization. The petitioner filed an application under the said Act to register its novel variety of cotton, which application was published by the Protection of Plant Varieties and Farmers' Rights Authority ('the said Authority' for short) in the Plant Variety Journal dated 01.09.2008. Chapter 3 of the said Act deals with registration of plant varieties. Section 14 refers to the application for registration while Section 15 defines 'registrable varieties'. A person who can make an application for registration is specified in Section 16 while the

form of the application is set out in Section 18. Section 19 refers to the tests to be conducted while Section 20 refers to the acceptance of an application or amendment thereof. Once an application for registration of a variety is accepted, the same has to be advertised under Section 21(1). In terms of Section 21(2), a notice of opposition can be made by any person within three months from the date of advertisement of the application. The remaining provisions thereafter refer to the procedure as to how such an opposition application is to be dealt with while Section 22 requires the Registrar to consider the opposition and to pass order on the same.

8. It is in view of these provisions that R-3 filed an opposition to the application, but beyond the stipulated period of three months as prescribed. The delay was of 86 days in filing the notice of opposition. The opposition was considered by R-2 and the delay in filing the notice of opposition was condoned *ex parte* vide the order dated 11.06.2009. The condonation of delay was assailed by the petitioner before the Delhi High Court by filing WP(C) No. 10938/2009. The petitioner succeeded in the same and the impugned order was set aside by the High Court vide Order dated 03.11.2009 on the ground that the condonation of delay was granted without notice to the petitioner. The matter was thus remanded back for re-consideration before R-2 which thereafter proceeded to hear both the petitioner and R-3 and vide order dated 09.03.2010 condoned the delay.

9. A perusal of the order dated 09.03.2010 shows that undisputedly on 02.04.2008 an application was filed for registration which was published in the Plant Variety Journal of India (Vol. 2, No. 9) under Section 21 (1) and (2) of the Act on 01.09.2008 while an application for extending the time for filing notice of opposition was filed on 12.02.2009. The proposed opponent filed the said notice of opposition on 26.02.2009 with the requisite fee and it is their case that the description of C-5193 cotton given in the Plant Variety Journal and the copy of the application for registration give contradictory statements; copy of the journal was received by the opponents only on 24.10.2008; copy of the application for registration was provided to them only on 27.01.2009.
10. On the other hand, the case of the petitioner was that there was no provision conferring power on the Registrar to extend the time for filing of notice of opposition and that there was no discrepancy in the material published in the advertisement. The impugned order notes in detail the rival contentions and thereafter proceeds to determine what it perceives to be the three material aspects.
11. On the first aspect as to whether the advertisement published in the Plant Variety Journal was valid or not, it found in favour of the petitioner. On the second issue, as to what would be the date of advertisement, i.e., whether the date born out on the Journal was the date of dispatch to the subscriber or the date of knowledge, it found that time for filing of notice of opposition should be computed from the date of dispatch of journal to the

subscriber and thus found that there was a delay of 44 days. However, on the third aspect, as to whether the Registrar has the power to extend the time limit for filing notice of opposition, it found that such a power existed and was exercisable in favour of R-3 as sufficient cause was found to condone the delay.

12. On a discussion of the provisions of Section 96 of the said Act, Rule 32 and Rule 33 of the said Rules, it has been opined that since Rule 33 (6) provides for extension of time limit for filing of evidence, there is no reason why the same principle should not be applied for pleadings more particularly notice of motion. On sufficiency of cause, it has been held that R-3 may have been misled as stated by them though there was no invalidity in the advertisement published. It is this order which is sought to be assailed by the petitioner in WP(C) No.4527/2010 under Article 226 of the Constitution of India to the extent that it has been held that power is available for condonation of delay in filing the opposition under the provisions of the said Act. A further prayer is made to read down the headnote of Rule 33 in the light of Section 21(2) r/w Section 96 (xviii), 96 (xx) and Rule 33 to restrict its application only to submission of evidence. The other writ petition bearing No. 640/2012 has been filed by R-3 in WP(C) No. 4527/2010 seeking a declaration that Rule 32 of the said Rule is illegal and void being *ultra vires* the Act and the rule making power of the Central Government. A further direction is sought that the provisions of Section 5 of the Limitation Act, 1963 should be

held to be applicable in case of notice of opposition under Section 21(2) of the said Act and / or a direction to make necessary amendments in the Act and rules incorporating the provision for extension of time for notice of opposition, counter evidence in view of what was sought to be urged on behalf of Union of India in WP(C) No.4527/2010 to the effect that such an amendment was under contemplation.

13. In order to appreciate rival submissions, it is necessary to first deal with the provisions which are required to be interpreted. We have already discussed aforesaid the provisions relating to the application for registration. In that context, the main Section with which we are concerned is Section 21 which reads as under:

“21. Advertisement of application

... ..

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fee, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.”

(emphasis supplied)

14. The power of the Central Government to make rules is conferred under Section 96 of the said Act and the relevant portion is extracted as under:

“96. Power of Central Government to make rules –

1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

... ..

... ..

(xviii) the manner of giving notice and the fee payable therefor under section (2) of section 21;

(xx) the manner of submitting evidence and the time within which such evidence may be submitted under subsection (6) of section 21;”

15. Now coming to the sub-rules enacted in pursuance to the power conferred by sub-section (1) of Section 96 of the said Act, Chapter III of the Protection of Plant Varieties and Farmers’ Rights Rules, 2003 deals with registration of plant variety and consists of Rule 24 to 36.

We reproduce the relevant rules as under:

“30. Advertising of application for registration under section 21.-(1) Every application for registration of a variety which has been accepted and the details thereof including specifications shall, upon such acceptance under sub-section (1) of section 20, be advertised by the Registrar in the manner specified in Form01 of the Third Schedule.

(2) In every such advertisement under sub-rule (1), the Registrar shall mention that place or places where a specimen of the variety may be inspected.

(3) The contents of such advertisement shall include-

(a) name, passport data and source of parental line or initial variety used to develop the variety in respect of which an application for registration has been made;

- (b) description of the variety bringing out its character profile as specified under the DUS test Schedule;
- (c) essential characteristics conferring distinctiveness to the variety;
- (d) important agronomic and commercial attributes of the variety;
- (e) photographs or drawings, if any, of the variety submitted by the applicant; and
- (f) claim, if any, on the variety.

31. Notice of opposition under sub-section (2) of section 21.-

(1) Any interested person, may within three months from the date of advertisement of an application for registration, may give a notice of opposition to the registration of a plant variety in Form PV -3 of the First Schedule.

(2) The fee payable for filing an opposition referred to in sub-rule (1) shall be as specified in column (3) of the Second Schedule:

Provided that no such fee shall be payable in respect of an opposition made by a farmer or group of farmers, or village community

(3) A copy each of the notice of opposition received against a specific application shall be referred to the applicant by the Registrar within three months from the last date of filing of opposition.

(4) An applicant shall be entitled to submit point-wise counter statement to the opposition not later than two months from the date of service of the copy of the

notice of opposition, failing which the Registrar shall decide the merits of the opposition and notify his decision by giving reasons therefor.

(5) Every counter-statement under sub-rule (4) shall be in Form PV-4 of the First Schedule.

(6) The copies of counter to opposition submitted by the applicant within the time specified in sub-rule (4), shall be conveyed to the person opposing the application, within a period of thirty days of its receipt, requiring the opposing person to submit the final opposition within a period of thirty days from the date of service of the counter from the applicant.

(7) The Registrar, may at his discretion, allow any correction of error or amendments in the notice of opposition or counter statement if such alteration is requested by the persons concerned in writing.

(8) (a) The security referred to in sub-section (8) of section 21 shall be payable as an amount decided by the Authority.

(b) In case the opposition is found to be frivolous, the Registrar may direct payment of cost as determined by him to the applicant from out of the security amount received and the balance of the security amount shall be deposited in the Authority.

(c) In case the opposition succeeds, the security amount shall be refunded to the opposition party.

32. Compliance with time schedule.-(1) The time schedule provided for advertisement, opposition, defence, hearing and amendment of specification under these rules shall not be extended and failure in compliance with these time schedules shall forfeit the opportunity granted.

33. Manner of submitting evidence and time limit for filing notice of opposition, counter-statement or producing evidences under section 21.

... ..

(2) Any evidence upon which the applicant may rely shall be submitted in duplicate to the Registrar with a copy to the opponent within thirty days from the date of receipt of opponent's evidence.

... ..

(6) The time-limit for filing the evidence shall not ordinarily be extended except by a special order of the Registrar given on an application filed by the person seeking extension of time and on payment of the fee specified in the Second Schedule and such an application for extension shall be in Form PV -5 of the First Schedule.”

(emphasis supplied)

16.The controversies raised *inter se* the parties are being dealt with hereinafter:

i) Whether the power under Rule 33 (6) can be imported into Rule 32 to extend the time for filing of notice of opposition

17.The submission of learned counsel for the petitioner is that in the impugned order, reliance has been placed on Rule 33 which relates to the manner of submitting of evidence and the time limit for filing notice of opposition, counter statement or producing evidence under Section 21. However, this rule appears to have a misleading heading as undisputedly it deals only with the aspect of submission of evidence, the time limit of which is fixed as 30 days in sub-Rule (2). Sub-Rule (6) proscribes extension of time ordinarily except if the Registrar on a given application seeking extension of time passes a special order. Such an application has

to be filed in format PV-5. The said format PV-5 is reproduced herein as under:

“FORM PV-5 [See rule 3j(6)]
THE PROTECTION OF PLANT VARIETIES AND
FARMERS'
RIGHTS ACT, 2001

REQUEST FOR EXTENSION OF TIME

I/We¹
hereby request for extension of time for months
under rule 33 for filing notice of opposition/evidence/counter-
statement.

In respect of application No
The reason for making this application is/are follows:-
1
2

My / address for service in India is as follows:-
Dated this day of 20

Signature²

To
The Registrar
The Plant Varieties Registry
At

1. Insert the Name (in full), address and nationality of the Applicant.
2. To be signed by the Applicant(s).”

18. A reading of this format shows that even in this format, the request for extension of time is sought with reference to filing notice of opposition, evidence, counter statement, but in the context of Rule 33; while Rule 33 deals only with the aspect of filing of evidence.

19. Learned counsel for the petitioner thus submitted that Rule 33 has to be necessarily confined to the extension of time for producing evidence in view of the wording of various clauses of the rules, irrespective of the heading.
20. On the other hand, Rule 32 specifically states that the time schedule for advertisement, opposition, defence, hearing and amendment of specification under the rules shall not be extended and the failure to comply would result in forfeiture of the opportunity granted. Thus, there is an absolute prohibition against extension of time under Rule 32 as distinct from Rule 33 where sub-Rule (6) specifically provides for the extension of time for submission of evidence.
21. In a nutshell, the submission was that the power to extend time under sub-Rule (6) of Rule 33 meant only for producing evidence could not be used to extend time for other purposes when such extension of time was clearly prohibited by Rule 32.
22. The submissions of learned counsel for R-3 as also on behalf of UOI were more or less in agreement with the submission of the learned counsel for the petitioner in this behalf i.e. Rule 33 could not be imported into Rule 32. Thus the conclusion in the impugned order was sought to be justified by the respondents though for different reasons.
23. The stand of R-3 was that the rules as they stood could create an impediment in taking on record the notice of opposition beyond the time prescribed in view of Rule 32 and that is the reason they had filed a separate petition for striking down Rule 32. In the alternative, the submission was on parity with what was the

submission of UOI's counsel i.e. Rule 32 should be read down as not completely proscribing extension of time. Thus, in the given factual situation, the Registrar was within his rights to have come to the conclusion that it was a fit case for grant of extension of time. The submission was that the word "shall" should be read as "may" under Rule 32. A crucial difference between the stand taken by UOI & R-3 was that while the stand of UOI was that the Limitation Act, 1963 did not apply to the said Act, as per learned senior counsel for R-3, it would apply. But, in the alternative, even if it would not apply, it would not make any difference.

24. In our view, qua this plea suffice to say that it is quite obvious that Rule 33 deals with a particular subject matter i.e. the submission of evidence. The head note is clearly deceptive and an obvious mistake as no part of Rule 33 deals with the issue of filing of notice of opposition or counter statement. Once the sub rules do not deal with this subject, the headnote cannot make the same applicable. The Petitioner had relied on Raichurmatham Prabhakar & Anr. V. Rawatmal Dugar, (2004) 4 SCC 766 and Nalinakhya Bysack v. Shyam Sundar Haddar 1953 SCR 533 in the pleadings (though not in the oral arguments) to contend that the marginal note cannot be used to control the meaning of a provision when the language employed therein is clear. The reliance placed upon the aforementioned decisions would be of no avail to the Petitioner and, in fact, further reaffirms our observation insofar as this mistake in the headnote of Rule 33 is clearly carried forward in form PV-5, the format of which appears to have been taken on the basis of the headnote of Rule 33.

25. We are thus of the view that Rule 33 could not have been imported to the aspect of extension of time for filing of notice of opposition. As to whether Rule 32, which deals with the aspect of notice of opposition, is *ultra vires* the Act or whether it has to be read down, will be dealt with hereinafter.

ii) Whether Rule 32 is ultra vires the rule making power of the Central Government and thus liable to be struck down.

26. The common case of the petitioner and the UOI is that Rule 32 is not liable to be struck down while R-3 has argued to the contrary. However, as to the import of rule 32, there is divergence of views amongst the petitioner and R-3. It is the case of the petitioner that Rule 32 has to be read strictly while the case of UOI is that the said Rule is liable to be read down by reading the word “shall” as “may” or “shall not ordinarily”.

27. Insofar as the rule making authority of the Central Government is concerned, the same emanates from Section 96 (1), sub-section (2) of Section 96 begins with the following : “In particulars, **without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-**”. It is thus the submission of both the petitioner and UOI that the aspects dealt with under sub-section (2) are only illustrative and not exhaustive as the sub-section itself states that it is without prejudice to the generality of the powers mentioned therein. Not only that, clause (lxviii) further provides as under:

“(lxviii) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision

is, in the opinion of the Central Government, necessary for the proper implementation of this Act.”

28. A reading of the aforesaid along with main sub-section (2) is, thus, submitted to have conferred the rule making power qua all subjects enlisted or not enlisted.

29. To support the said plea, a reference has been made to **Gone Rajasimha Rao and Ors. V. The State of Andhra Pradesh and Ors.**; AIR 1973 AP 236 advancing the plea that when general provisions are followed by certain particular provisions and when it is categorically provided that the latter are without prejudice to the former, particular provisions do not cut down the generality of the meaning of the preceding general provisions. The power conferred even under clause (lxviii) is to frame rules where the Act makes no provisions or makes insufficient provisions and such a provision is necessary in the opinion of the Central Government for proper implementation of the said Act. Since the Government was of the view that it was necessary to have a fixed time frame within which notice of opposition was required to be filed, Rule 32 was so enacted with the consequences of forfeiture of opportunity in case the notice of opposition was not given within this specified period of time.

30. We have already noticed the stand of the Central Government that the provision should be read down though it is *intra vires* the Act, an aspect which will be dealt with while dealing with that contention. On the other hand, learned senior counsel for R-3 has drawn our attention to clauses (xviii) and (xx) of Section 96 (2)

which are once again reproduced below for convenience of comparison.

“(xviii) the manner of giving notice and the fee payable therefor under section (2) of section 21;

... ..

(xx) the manner of submitting evidence and the time within which such evidence may be submitted under subsection (6) of section 21;”

31.It is thus the submission that clause (xviii) mentions the manner of giving notice and the fee payable therefor under Section 21(2), but the words “the time within which” notice can be given are conspicuously absent. This is in contrast to clause (xx) which relates to the evidence to be submitted under Section 21(6), which not only provides the manner of submitting the evidence but also the time within which such evidence may be submitted. Thus, the provision as to time has been specifically mentioned. It is thus the submission that the legislature in its wisdom has deliberately worded the two clauses differently as under one the power to make rules qua time period was conferred, while under the other, it was not so conferred. Thus, it was pleaded that the rule making power did not include within it, the power to prescribe any time for notice of opposition and while on the one hand, no provision was made for prescribing time, under Rule 32 a bar was sought to be created for extension of time for such notice of opposition and thus was clearly beyond the rule making authority.

32.In order to appreciate this plea, learned senior counsel has relied upon Sales Tax Officer v. K.I.Abraham; 1967 3 SCR 518. The matter pertains to the assessment to sales tax under the Central

Sales Tax Act, 1956 where the appellant sought to contend that the assessee had failed to file the declaration in the requisite format and before the prescribed date according to the rules and thus could not take advantage of a lower rate of assessment under Section 8(1) of that Act. The decision on this question in turn was dependent on the construction of the words “in the prescribed manner” in Section 8(4) which was held to confer powers on the rule making authority to prescribe rules stating what particulars are to be mentioned in the prescribed format, the nature and value of the goods sold, the parties to whom they are sold and to which authority the format is to be furnished. The phrase was, however, held not to include in it the time element. It was thus held that the Section does not authorize the rule making authority to prescribe a time limit within which the declaration is to be filed by the registered dealer. This view was buttressed by the language of Section 13(4)(g) of that Act which stated that the State Government may make rules for the time within which, the manner in which and the authorities to whom any change in the ownership of any business or in the name, place or nature of any business carried on by any dealer was to be furnished. Thus, the legislature was held to be conscious of the fact that the expression “in the manner” would denote only the mode in which the Act was to be done, and if any time limit was to be prescribed for doing of the Act, specific words such as “the time within which” were also necessary to be put in the statute.

33. In our view the submission of the learned counsel for R-3 is based only on a selective reading of the said clauses of Section 96 of the

said Act. No doubt, there is a difference in the wording of clause (xviii) and (xx) while dealing with conferment of power under sub-section (2) and sub-section (6) of Section 21 of the said Act respectively. However, what cannot be ignored is the substantive part of sub-section (2) which clearly mentions what is being enlisted therein is without prejudice to the generality of the powers conferred under sub-section (1) of Section 96 to make rules. This coupled with clause (xviii) leaves no doubt that the power to make rules is qua any matter which may or may not have been specifically prescribed in the different clauses or in respect of which the Act makes no provision or insufficient provisions, but in the opinion of the Central Government is necessary for proper implementation of the Act. The powers are thus extremely wide and the legislative intent is obvious. The said Act was dealing with a new subject matter and all ramifications may not have been known when the different provisions were being framed. Thus, a much wider power has been given by the Parliament to achieve the intent of the Act if Section 96 is read as a whole.

34. The restrictive meaning as enunciated by the Supreme Court in Sales Tax Officer v. K. I. Abraham's case (supra), is in the context of the provisions of that act which cannot be read into the present Act in view of the comprehensive powers and the wording of the clauses and sub-sections of Section 96, which give wide powers to the Central Government to make rules.

35. We are thus of the view that the Central Government was not denuded of the power to make Rule 32 and that the same is not *ultra vires* the provisions of the said Act.

(iii) **Whether the time period of three months to file notice of opposition under Section 21 (2) is incapable of extension in view of Rule 32:**

36. Section 21 (2) of the said Act gives right to “any person” to file a notice of opposition. The same is reproduced hereinbelow:

“21. Advertisement of application. –

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fees, give notice in writing in the prescribed manner, to the Registrar of his opposition to the registration.”

37. The significance of the aforesaid provision is that it is not applicable to any class of persons but talks about “any person”. It is a general term followed by the expression “may”. The notice of opposition has to be filed within three months from the date of advertisement of the application for registration on payment of the prescribed fee.

38. The submission of the learned counsel for the petitioner is that while dealing with the aspect of issuance of certificate of registration under Section 24 in Chapter IV, the mandate is that the Registrar “shall” register the variety. This is preceded by possibly two events – (a) the application has not been opposed and the time of notice of opposition has expired; and (b) the application has been opposed and the opposition has been rejected. It was, thus, submitted that non-filing of notice of opposition within time results in the mandatory consequence of registration of the variety. If this is read with Rule

31 (1) it is in conformity with the requirement of the option available to give a notice of opposition in terms of Form PV-3 of the First Schedule. Rule 32 makes it clear that the time period whether it be for advertisement, opposition, defence, hearing or amendment of specification under these rules, shall not be extended and failure in compliance of these time schedules would result in forfeiture of the opportunity granted.

39. In order to support the aforesaid contention reliance has been placed on the Full Bench judgement of this Court in Hastimal Jain Trading as Oswal Industries Vs. Registrar of Trademarks and connected matters 2000 PTC 24 (Del) (FB). A similar question is stated to have arisen qua the Trade & Merchandise Marks Rules, 1959. Section 21 of the Trade & Merchandise Marks Act, 1958 stipulates that the application for opposition to registration has to be made within three months from the date of advertisement or within such further period, not exceeding one month aggregate. Section 101 gives the power to the Registrar to extend the time on an application made to him. Such power was held to be circumscribed by the fact that he cannot extend the time which may have already been expressly provided in the Act. In the context of Rule 53 (2) of Rules therein it was observed that mere use of the word “shall” is not sufficient to treat the Rule as mandatory. Not only that, a court may ascertain the real intention of the Legislature by looking to the Statute as a whole. The intention of the Legislature was to minimize delay for which a fixed time period has been laid in the statute itself. It was, thus, held that for procedural matters like filing evidence, the legislature was not laying

down a fixed time in the statute but time could not be extended by the Registrar where it had been expressly provided in that Act.

40. A reference was also made to Sharif-ud-din Vs. Abdul Gani Lone (1980) 1 SCC 403. The use of the word “shall” itself was held to be inconclusive for determining the question i.e. whether a provision was mandatory or directory. If the object of law is to be defeated by non-compliance, it has to be regarded as a mandatory provision but when a provision relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it was enacted, then the performance of the duty is treated as directory. It was observed in para 9 as under:

“9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarized thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to sub-serve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such

provision should be treated as a directory one. **Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one.** A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”

(emphasis supplied)

41. We are unable, however, to appreciate how the first judgement would assist the learned counsel for the petitioner as the ratio is that the court may decipher as to what is the intent of the Legislature while using the expression “shall”. It appears that the second judgement is being relied upon only in the context that not only is there a prohibition to do certain acts under Section 21 (2) of the said Act but the consequences of not doing the same confers an immunity on the other side in view of Section 24 (1) of the said Act.
42. On the other hand, the plea of learned senior counsel for R-3 was that there was no specific time period provided for condonation of delay in Section 21 (2) of the said Act contrary to Trade & Merchandise Marks Act, 1958 discussed hereinabove. It was, thus, submitted that the benefit of Section 5 of the Limitation Act, 1963 (hereinafter referred to as the “Limitation Act”) can be availed of, subject to

satisfying the test of that Section for condonation of delay. It was submitted that Section 5 has neither expressly nor impliedly been excluded. If a period of condonation of delay was provided then it could have been held that the power to condone under Section 5 was excluded. In this behalf Section 29 (2) of the Limitation Act was referred to, to submit that in the present case there is no special law prescribing the period of limitation which could have excluded the provisions of Section 5 of the Limitation Act. Relying upon Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department & Ors. and connected matters (2008) 7 SCC 169, this very proposition was sought to be supported.

43. On this aspect, however, the Union of India is not *ad idem* with the submissions of learned counsel for R-3 as it was pleaded that the provisions of Section 5 of the Limitation Act would not be applicable to the proceedings before an authority constituted under Section 3 of the said Act. This is so as the provisions of the Limitation Act apply only to proceedings in “Court” and not to bodies other than courts such as quasi-judicial tribunals or executive authorities notwithstanding the fact that such authorities may be vested with certain specified powers conferred on courts [reference: Sakuru Vs. Tanaji (1985) 3 SCC 590; Birla Cement Works Vs. G.M. Western Railways (1995) 2 SCC 493; France B. Martins Vs. Mafalda Maria Teresa Rodrigues (1999) 6 SCC 627; and State of Jharkhand & Ors. Vs. Shivam Coke Industries, Dhanbad & Ors. (2011) 6 SCC 656].

44. In our view, this issue is no more *res integra* in view of the settled legal pronouncements and, thus, the endeavour of R-3 to import and take benefit of Section 5 of the Limitation Act cannot be acceded to. It is an extremely circuitous process through which R-3 seeks to

make the provisions of the Limitation Act applicable. In our view, the time period being clearly prescribed and the provisions of the Limitation Act not being applicable to such authorities, the benefit is not capable of being availed of by the petitioner. We may also usefully refer to two other judgements in Hukumdev Narain Yadav Vs. L.N. Mishra (1974) 2 SCC 133 and Zubeida Begum Vs. Indian Bank (2012) 6 MLJ 801 laying down the legal principle that provisions of the Limitation Act can be expressly or by implication excluded and, thus, cannot be extended to enlarge the time prescribed under special statutes. It is not in dispute that a specified time period of three months has been provided under Section 21 (2) of the said Act for filing a notice of opposition.

45. The plea of learned counsel for R-3 for making the Limitation Act applicable is, thus, without merit.
46. However, the real crux of the dispute is revolving around the question as to whether the so called prohibition contained in Rule 32 of the said Rules is to be read absolutely, i.e., is the expression “shall” to mean “shall” or “may”. We have already recorded the submissions of the learned counsel for the petitioner in this behalf at the inception. However, the submissions of learned counsel for R-3 were in the alternative to the plea of the Limitation Act applying, i.e., the expression “shall” should be read as “may”, an aspect emphasized even by learned counsel for the Union of India.
47. The basis of the aforesaid submission is that though Section 21 (2) of the said Act prescribes the period within which the notice of opposition has to be filed, the same should be read as directory and not mandatory since the consequence of penalty for not complying with the time limit is not provided under the said Act. This principle

of law is also sought to be supported by the plea that the prescription of such time period falls within procedural law and the nature of statute is such that it deals with rights of farmers and it is extremely inadvisable to give an interpretation that forecloses their rights on the time period expiring even if they are not fully aware of their legal rights in this behalf (of course respondent No.3 in the present case is not a farmer). The judgement in Kailash Vs. Nankhu & Ors. (2005) 4 SCC 480 has been relied upon in this behalf. The insertion of the Proviso to Order 8 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'said Code') and its consequences were being examined and in that context it was observed that all the rules of procedure are the handmaiden of justice. Thus, even if the language employed by the draftsman of a procedural law may either be liberal or stringent, the fact remains that the object of prescribing procedure is to advance the cause of justice in an adversarial system, and no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. While analyzing the Proviso which circumscribes the time period by the use of the expression "shall not be later than 90 days", it was observed that the consequences flowing from non-extension of time were not specifically provided for, though they may be read in by necessary implication. The Supreme Court went on to observe that merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions and the courts when called upon to interpret the nature of the provision may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in a negative form. The Supreme Court while considering the plea that grave

injustice may result if the time-limit of days prescribed by Order 8 Rule 1 of the said Code was rigidly followed as an insurmountable barrier, observed that a reasonable construction would imply that the provision has to be read as directory and not mandatory and, thus, in exceptional circumstances the court may extend the time for filing the written statement though period of 30 days and 90 days, referred to in the provision, has expired.

48. In the same line of reasoning is the view of the learned Single Judge in Liberty Footwear Company Vs. Force Footwear Company & Ors. 2009 (41) PTC 474 (Delhi), once again, emphasizing that a prohibition or bar requires a penal consequence which should flow from non-compliance of such a procedural provision.

49. It has been emphasized that there is conspicuous absence of any such exclusionary words or a language which may carry a negative import requiring an application for opposition not be entertained after the expiry of the stipulated period. In fact, it was pointed out that the reference by the petitioner to Section 21 (2) of the Trade Marks Act, 1999 can be said to be misplaced as the language of that Act is quite different. Section 21 deals with opposition to registration and sub-section (2) reads as under:

“21. Opposition to registration.—

XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX

(2) The Registrar shall serve a copy of the notice on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter-statement of the grounds on

which he relies for his application, and **if he does not do so he shall be deemed to have abandoned his application.**”

(emphasis supplied)

50.If the language is compared, there is an expression used at the end “and if he does not do so he shall be deemed to have abandoned his application”. It was, thus, submitted that there is absence of any such negative connotation in sub-section (2) of Section 21 of the said Act. Though such a negative connotation is specified in Rule 32 of the said Rules, the said Rule must take colour from the substantive provisions of the Act where there is no such prohibition. Two other examples of such negative connotation have been stated to be the Proviso to Section 34 (2) of the Arbitration & Conciliation Act, 1996 and Section 20 (3) of the Sales Tax Act, 1956.

51.As far as the provision of Section 24 (1) (a) are concerned, the same is stated as only to contemplate the consequences of non-filing of opposition to an application within the permissible time but does not deal with the aspect of non-adherence to the time incorporated in Section 21 (2) of the said Act. In fact, the consequences, it was submitted, of a failure to file opposition “within permissible time”, would include even the extension of time as may be applicable.

52.On behalf of the Union of India, it was emphasized that the intent of the Act being brought into force cannot be lost sight of as was emphasized in B.P. Khemka Pvt. Ltd. Vs. Birendra Kumar Bhowmick&Anr. (1987) 2 SCC 407. Thus, the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not merely on the language in which the intent

is clothed. Thus, the meaning and intention of the legislature can be ascertained not only from the phraseology of the provision but also considering its nature, its design and the consequences which would follow from construing it one way or the other. To the same effect is the reliance on Shibu Chandra Dhar Vs. Pasupati Nath Auddya (2002) 3 SCC 617.

53. A further argument advanced on behalf of the Union of India is that *Casus Omissus* may be supplied in Rule 33 to extend the time for filing opposition. The heading of Rule 33 as well as Form PV-5 provide for extension of time for filing opposition. However, the same is absent in sub-Rule (6) of Rule 33. This sub-Rule, it was pleaded, must be read in the light of object sought to be achieved by the enactment and in the light of Section 21 (2) of the said Act. In this behalf, reliance was placed on Rajbir Singh Dalal (Dr.) Vs. Chaudhari Devi Lal University, Sirsa&Anr. (2008) 9 SCC 284, where it was observed in para 13 as under:

“13. No doubt, the ordinary principle of interpretation is that words should neither be added nor deleted from a statutory provision. However, there are some exceptions to the rule where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to supply the words (vide Principles of Statutory Interpretation by Justice G.P. Singh, 9th edn. Pp 71-76).”

54. The said Act being a beneficial legislation, it has been contended by the Union of India that, there has to be a liberal construction for achieving the object for which the enactment took place, i.e., to

protect the rights of farmers/interested persons. In Topline Shoes Ltd. Vs. Corporation Bank (2002) 6 SCC 33 while dealing with the Consumer Protection Act, 1986 it was held that the time limit comprising the initial period and the extended period prescribed for filing of the opposite parties' version was directory and not mandatory. The Statement of Objects & Reasons of that Act setting out that it was to promote the rights and interests of consumers by speedy and simple redressal mechanism was taken into account. No doubt time frames are fixed to expedite hearing of the matters and to avoid unnecessary adjournments but the expression "not exceeding 15 days" was held not to prescribe any kind of period of limitation despite its phraseology. The provision was treated as directory with object of achieving speedy justice.

55. A further aspect, submitted on behalf of the Union of India, is that the mode of service is by publication and not by any personalized service on any opposite party. This may result in a situation where the advertisement may escape the attention of an interested party and, thus, there should be power with the Registrar to extend the time period in appropriate cases.

56. On examination of the elaborate submissions in respect of the aforesaid, we are of the view that the word "shall" used in Rule 32 has to be read as "may". There are various reasons for arriving at such a conclusion, primary amongst them being that there are no penal consequences provided under Section 21 (2), which is the substantive provision prescribing three months' time period for a notice of opposition from the date of advertisement of the application. In fact, a complete line of judgements has been cited by

the respondents to support this conclusion including the Liberty Footwear Company case (supra) and Kailash Vs. Nankhu case (supra). If such a provision is compared with Section 21 (2) of the Trade Marks Act, 1999 the significance would be obvious, i.e., prescribing that the party shall be deemed to have abandoned its application. The line of reasoning is that such procedures fixing time limit are only to facilitate an early disposal and avoid unnecessary adjournments but procedure being handmaid of justice they should not be put in an absolute straightjacket. Thus, the intent of the legislature was directory and not mandatory in character.

57. There is also force in the contention that the very object and purpose of an Act must be taken into account while construing such provisions. This is what weighed with the Supreme Court while interpreting the provisions of the Consumer Protection Act, 1986 in Topline Shoes Limited case (supra). The present piece of legislation in question is also in the nature of a beneficial legislation to provide for an effective system for protection of plant varieties and the rights of the farmers and plant breeders. The fact that R-3 is not a farmer would not make a difference to the same as the construction of the provisions has to be made keeping in mind that all the parties were going to be affected by it.

58. To draw strength for a plea of absolute prohibition under Section 21 (2) of the said Act on the basis of Section 24 (1) (a), which only provides the consequence for registration of an application in the absence of any opposition, the reference to the expiry of time for

giving notice of opposition would obviously include any such time capable of being extended by the competent authority.

59. We are, however, unable to accept the plea that Rule 33 should be made applicable to such an application for extension of time for opposition merely on the basis of its heading when the substantive provision of the Rules made no reference whatsoever to the aspect of an application for opposition. It is not as if it is only in sub-Rule (6) of Rule 33 that there is absence of any reference to an application for opposition for this Court to supply *Casus Omissus* but every clause of it refers only to the aspect of evidence to be filed. Undoubtedly the headnote and the Form both have been an obvious mistake. It is, of course, possible that on a *pari materia* basis even on an application under Rule 32 of the said Rules (no Form having been prescribed), Form PV-5 of First Schedule as it exists may be utilized.

60. We may, in the end, also take note of a communication placed before us by the learned ASG appearing for the Union of India dated 25.2.2013 by the concerned Ministry. This communication informs that on a detailed discussion between the concerned Ministries it has been found that Rule 32 is not in alignment with the provisions of the said Act, were it to be read strictly. Rule 33, in fact, makes a reference not only to a notice of opposition but also a time schedule for advertisement, hearing and amendment of the specification whereas in any case no time schedule has been provided. Rule 32 is, thus, proposed to be amended to obviate any such confusion and bring it in line with the legislative intent. The aspect of the said Act being a beneficial legislation of farmers has been again set out in the

letter. It has been stated that the headnote of Rule 33 would also be omitted and Rule 32 would be properly worded in terms of the intent of the Act. This is, of course, a matter for the respondents to ensure that the confusion which has been created is obviated.

61. We, thus, conclude that in view of the aforesaid discussion the mandate of Rule 32 should be read as one which is directory and not mandatory and, thus, power can be exercised in an appropriate case by the Registrar to extend the time period for filing the application for opposition.

(iv) **What is the nature of opposition proceedings:**

62. In view of our finding aforesaid the controversy qua the nature of opposition proceedings has become academic in nature. However, some submissions were advanced in this behalf, we are noticing the same.

63. It is the plea of the petitioner that an opposition filed under Section 21 (2) is an entirely independent adjudicatory process which commences from filing of the opposition proceedings. It is in view thereof that, under Section 21 (4), a counter-statement, which is in the nature of reply, is permitted to be filed by the persons who have filed the application for registration whereafter a replication which is labeled as 'final opposition' is required to be filed, followed by the evidence to be filed by the opponent and counter-evidence to be filed by the applicant for registration. In this behalf reliance has been placed on the findings of the Madras High Court qua proceedings under the Trade Marks Act, 1999, where it has been held that such opposition is akin to filing of a plaint, in Allied Blenders & Distillers

Pvt. Ltd. Vs. Intellectual Property Appellate Board, The Deputy Registrar of Trade Marks and John Distilleries Limited AIR 2009 Madras 196. The SLP against this judgement bearing No.36505/2009 is stated to have been dismissed on 25.8.2011. Linked with this argument is the plea that an opponent is not devoid of remedy as revocation proceedings can be filed under Section 34 of the said Act as well as proceedings for cancellation/variation of registration can be taken up under Section 36 of the said Act. It has also been submitted that farmers' rights are protected under Section 39 of the said Act through a non-obstante clause providing that nothing shall prevent farmers from sowing, saving, using, resowing, exchanging, sharing and selling their farm seeds of a variety protected under the said Act.

64. We are, however, of the view that firstly, in view of our finding on the issue of how Rule 33 has to be read, these issues do not remain germane as noticed. Secondly, the nature of post registration opposition is different in character and rights would be available till registration. No doubt a party is not remediless but that will not imply that when the statute provides for an opportunity to file a notice of opposition at the pre-registration stage, the same should be defeated on the technical ground of not having been filed within time, if condonation is permissible.

Conclusion:

65. We may note that the issue of the advertisement of the application being proper or not is stated to have been assailed by respondent No.3 before the Andhra Pradesh High Court. The writ petition filed in the Andhra Pradesh High Court has, however, been dismissed on

the ground of *forum non-conveniens* against which a Special Leave Petition is stated to be pending. In any case the finding of the Registrar on this specific issue is that the advertisement is valid and in accordance with law. The written synopsis of respondent No.3 does contain a reference to the factum of the advertisement being erroneous. But we may note that no arguments really took place on this aspect in view of the learned senior counsel for the petitioner having confined his submissions to the single aspect which affected the petitioner, i.e., condoning the delay in filing notice of opposition while finding that there was no defect in the advertisement.

66. We are, thus, of the view that there is no need to strike down Rule 32 as framed at present though certainly Rule 32 and Rule 33 leave much to be desired, the proposal of Union of India to amend these Rules is a result of this. However, even if Rule 32 is examined as it is, keeping in mind the intent and purpose of the Act and the principles of law enunciated, the word “shall” in Rule 32 may be read as “may” and, thus, the conclusion in the impugned order where sufficient cause had been found to condone the delay and the power, thus, exercised cannot be faulted though we cannot agree with the reasoning adopted in the impugned order – an aspect with which even the respondents agree.

67. The result is that both the writ petitions are dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J

INDERMEET KAUR, J

MARCH 22, 2013/dm&bm