IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CIVIL APPEALS NO. 279, 280, 281 ,284 & 289 OF 2024.

Civil Misc. Nos.307, 309, 318, 313 & 315 OF 2024.

(On appeal from the consolidated judgment of the High Court dated 20.08.2024, passed in Writ Petitions No. 4216 of 2022 & 441 of 2023).

Muhammad Mehfooz Shafique s/o Muhammad Shafique Khan, r/o Kharick Tehsil Rawalakot District Poonch, Azad Jammu & Kashmir & another.
(In civil appeal No. 279 of 2024)

Mohsin Majeed Raja s/o Raja Gul Majeed Khan District Youth Councilor Muzaffarabad r/o Nagni Mujhaidabad Tehsil & District Muzaffarabad.
(In civil appeal No. 280 of 2024)

Sajjad Hussain s/o Ch. Manzoor Hussain Youth Councilor Union Council Pangali Tehsil Barnala District Bhimber AJ&K.
(In civil appeal No. 289 of 2024)

Muhammad Farooq s/o Muhammad Zaman Local Youth Councilor of Local Bodies Rajpayan r/o Rajkot Tehsil Patikka Naseerabad District Muzaffarabad, Azad Jammu and Kashmir.
(In civil appeal No. 28 of 2024)

Naeem Farooq Youth Councilor, of District Council Bagh, Azad Jammu and Kashmir & 2 others.
(In civil appeal No. 284 of 2024)

…Appellants

VERSUS

Bilal Nawaz s/o Sardar Muhammad Nawaz Khan r/o Pothi Bala, Post Office Rawalakot, Tehsil Rawalakot District Poonch, Azad Jammu and Kashmir & others.
(In all the appeals)

…Respondents

Appearances:

For the Appellants:	Ch. Amjad Ali, Advocate *(in civil appeal No.279/24).*
	Raja Ayaz Ahmed Khan, Advocate *(in civil appeal No.280/24).*
	Muhammad Khalid Naqshbandi, Advocate. *(in civil appeal No. 289/24).*
	Mr. Mudassar Hussain Abbasi, Advocate *(in civil appeal No.281/24.)*
	Ch. Shoukat Aziz and Miss Noshaba Iqbal, Advocates *(in civil appeal No.284/24.)*
For Respondent No.1:	Barrister Humayun Nawaz Khan, Advocate *(in all the appeals).*
For Election Commission:	Mr. Tahir Aziz Khan, Advocate.
Date of hearing:	02.10.2024

JUDGMENT:

***Raza Ali Khan, J*:-** The titled appeals by leave of the Court are addressed against the consolidated judgment of the High Court dated 20.08.2024, which invalidated the election of Youth Councilors above the age of 35 and directed the authorities to conduct fresh election for the vacated seats within fifteen days.

2. The appellants, who were *not parties before the High Court (except appellants in appeal No. 279/24)*, have now challenged the legality and validity

of the impugned judgment, specifically, the judgment declared null and void the elections of Youth Councilors above the age 35, elected during the statutory period of the Azad Jammu and Kashmir Local Government (Amendment) Ordinance 2022 (Ordinance VII of 2022). This Ordinance amended Section 2, Clause xviii of the Azad Jammu and Kashmir Local Government Act 1990 (Act VIII of 1990), raising the age qualification for Youth Counselors from "35" with figure "40." Despite the lawful election of the appellants under the said Ordinance, the impugned judgment annulled their elections and declared their seats as vacant. The appellants contend that the High Court's decision unjustly penalized them for circumstances beyond their control, particularly the expiration of the Ordinance and the disregard the vested rights and legitimate expectations lawfully conferred upon them during the statutory life of the Ordinance. Moreover, they assert that the procedural requirements of Order I, Rule 8 Code of Civil Procedure (CPC) were violated in rendering the impugned judgment, as no notice was issued to all the parties sharing the same interest, a procedural requirement under the aforementioned rule of CPC.

3. The learned counsel for the appellants, in all the appeals, adopted position that the appellants were directly impacted by the impugned consolidated judgment, but except three individuals, they were neither made parties to the original proceedings nor given an opportunity to be heard. This, they argue, constitutes a blatant violation of the fundamental principle of natural justice, *audi alteram partem* which dictates that no one should be condemned unheard. Consequently, the judgment rendered in their absence

is legally flawed and must be set aside, as it disregards their legitimate interests and violates their legal rights.

4. Barrister Humayun Nawaz Khan, learned Advocate representing Bilal Nawaz (*the respondent in all the appeals*), submitted that an application under Order I, Rule 8, read with Rule 7 CPC, had been filed on behalf of the respondent, to implead all Youth Councilors above the age of 35 at the time of the elections. These individuals were impleaded in a representative capacity through Rizwan Khadam, s/o Khadam Hussain. The application was accepted by the learned High Court, and an amended writ petition was duly filed. After following the due legal process of law, the petition was accepted. Therefore, the objection regarding the alleged failure to hear individual Youth Councilors over the age of 35 years is untenable and no longer available to the appellants.

5. We have heard the learned counsel for the parties and carefully examined the record of the case. The appellants, (*except those in appeal No. 279/24*), who were neither parties to the High Court proceedings nor served with notices, have filed these appeals challenging the validity of the consolidated judgment of the High Court on the grounds that it was passed without affording them an opportunity to be heard. The primary issue that arises in this case is whether, under Order I, Rule 8 CPC, all the Youth Councilors above the age of 35 years could be sued in a representative capacity through one of them, and, consequently, whether the issuance of notice under the said provision of CPC was mandatory. For a comprehensive examination of the matter, it is

essential to reproduce the statutory provisions of Order I, Rule 8 of the CPC: -

> **"8. *One person may sue or defend on behalf of all in same interest*.** – (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expensive, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
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> (2) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit."

6. A plain reading of Order I, Rule 8 of the CPC clarifies that when numerous persons have a common interest in a suit, one or more of those persons may, with the Court's permission, sue or be sued, or may defend on behalf of all similarly interested persons. However, the Court must ensure that notice of the suit's institution is given to all such persons, either through personal service or public advertisement, as the Court deems appropriate. Ordinarily, all interested persons should be made parties to a suit so that the decision may bind them as *res judicata*. However, when the number of interested persons is too large to join as parties, the rule provides for the alternative procedure of a representative suit, which is an exception to the general rule of joining all parties. The provisions of Order I Rule 8 CPC are enabling and permissive rather than mandatory, meaning it is not

compulsory to institute a suit as a representative action even when numerous parties share a common interest. Instead, Rule 8 offers an alternative procedure to avoid multiple lawsuits on the same issue. This provision serves as a clear exception to the general principle that no action should proceed in absence of affected parties. The rule is founded on considerations of policy, aiming to save time, effort, and expenses. The following conditions must be fulfilled to properly institute a representative suit:

- Parties must be numerous,
- they must have the same interest in the suit,
- Court permission under rule must be obtained, and;
- Notice be given to the parties whom it is proposed to represent the suit.

7. The learned counsel for the respondent emphasizes that all the conditions outlined in Rule 8 of Order I CPC have been fully met. The issue before us concerns the manner in which these conditions are to be fulfilled. In some Courts, permission is grated at the outset, provided that the necessary averments and prayers are included in the plaint, and an application has been made by the plaintiff for such leave. Other courts may not be as precise in issuing these orders. In some instances, the plaintiff may apply for leave to file the suit in a representative capacity, and courts may grant tentative or conditional permission before issuing notice to other interested parties. In certain cases, notice may be issued without an express grant of tentative permission, and the court might grant full permission only after notice has been served personally. In this context, the key question arises: does this kind of procedural approach satisfy the requirements of Order I, Rule 8 CPC, and

constitute substantial compliance, or do such omissions undermine the representative nature of the suit? The answer hinges on whether the procedure followed is adequate in protecting the rights of all parties and ensuring that the representative character of the suit remains intact, despite any deviation from the strict procedural norms.

8. In the case *Shiri Ram Krishna Mishan vs. Primanand & Others*[1], the learned Single Bench clarified the consequences of the procedure to be followed by the Court under Order I, Rule 8 CPC. The Court highlighted that when a plaint contains averments indicating that the plaintiffs are filing the suit in a representative capacity, and an application under Order I, Rule 8 CPC is subsequently made, the Court may either grant conditional permission, subject to objections raised by the parties to whom notice is issued, or may issue notice immediately without expressly granting such conditional permission. Once notice has been served, either by personal delivery or public advertisement, if objections are filed and an application for impleadment is made, or if no such application is submitted, the Court must, after considering any objections, pass a final order either granting or refusing permission. Crucially, if no express order granting permission is made at any stage, the suit will not acquire a representative character.

9. In order to ensure that the provisions of Order I rule 8 CPC are mandatory in nature and must be strictly complied with, that otherwise the judgment

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[1] (AIR 1977 all. 421)

in action will bind only those persons, whose names are actually on the record. In a case reported as *Mst. Seema & others vs. M/S Millenium Developers & others*[2], a similar view has been taken wherein it has been observed that rule 8 of Order I CPC is mandatory in nature and all the conditions mentioned in it must be fulfilled. The relevant excerpt of the judgment is reproduced here under:

> "I have heard Mr. Naeemur Rehman, learned counsel for the plaintiffs and Mr. Farogh Nasim, learned counsel for the defendant.
> Rule 8, Order 1, C.P.C. provides that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiffs' expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
> Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.
> The underlying principle incorporated in the provisions of Order 1, rule 8, C.P.C. is to avoid fresh litigation over the same matter. Obviously Order I, rule 8 of the Code constitutes glaring exceptions to the general rule and if not strictly complied with may result in frequent departure from solitary practice of not proceedings in absence of the parties affected thereby. This rule prescribes condition upon which person even though not made a party to the suit may still be bound by the proceedings therein, which is far-reaching

[2] [2003 CLC 632]

consequences in case the decree is passed. What is described in law as representative suit, it is necessary that the eleventh provisions must be treated as pre-emptor and mandatory. It has been held that obtaining judicial permission and compliance with the provisions of Order I, rule 8 are formal condition on which further proceedings in the suit becomes binding on persons other than the actual parties thereto. In deciding whether leave is to be granted or in considering whether suit already instituted under this rule is maintainable the principal consideration that should be weighed with Court whether it is satisfied that there is sufficient community of interest as parties, plaintiff or defendant as the case may be to justify adoption of procedure prescribed under this rule. Rule is one of convenience based upon reasons and good policy and to save trouble and expenses which would otherwise have to be incurred in such cases. The conditions for the applicability of this rule are as under

(i) Parties must be numerous.

(ii) They must have same interest in the suit.

(iii) Court permission under Rule must be obtained, and

(iv) Notice be given to the parties whom it is proposed to represent the suit."

10. Similar view has been taken in the case reported as *Dattari Construction Co. (Pvt.) Ltd. vs. A. RAZAK ADAMJEE & others*[3], wherein, it has been held that: -

"The first point raised by Mr. M. Naimur Rahman is that the case of the plaintiffs was not dealt with as public interest litigation.

Rule 8 of Order I of the Code of Civil Procedure provides that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the

[3] [95 CLC 846]

> Court, sue or be sued, or may defend, in such suit on behalf of or for the benefit of all persons so interested. But the Court shall in such case give at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
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> The above rule deals with what are known as "representative suits". Under this rule, where there are numerous persons having the same interest in one suit, one or more of them, with the permission of the Court, sue or be sued or defend such suit, on behalf of all of them, the other persons, of course, to be notified, and can apply to be made a party to the suit. It constitutes an exception to the general principle that all persons interested in a suit shall be parties thereto. This rule is an enabling provision and does not compel any one to represent many if, by himself he has a right of suit.
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> For the applicability of the above rule, the essential conditions are: (i) the represented parties must be numerous; (ii) they must have the same interest in the suit; (iii) the permission of the Court must be obtained by an application to the Court; and (iv) on permission being given under Rule 8, notice must be given to the parties sought to be represented in the suit.
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> In *Kumaravelu Chettiar and others v. T.P. Ramaswami Ayyar and others*[4], their Lordship of the Privy Council laid down that the provisions of Order I, Rule 8 CPC must be strictly complied with, otherwise the judgment in action will bind only those persons whose names are actually on the record. It was observed:

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[4] [AIR 1933 P.C. 183]

> ".....the obtaining of the judicial permission and compliance with the succeeding orders as to notice, are, as it seems to their Lordships quite clearly the conditions on which the further proceedings in the suit become binding on persons other than those actually parties thereto and their privies".

In another case reported as *Adam Khan vs. Gulla Meer & others*[5], wherein it was held as under:

> "Ordinarily all persons interested in a suit ought to be joined as parties is against this rule 8 of order I of the CPC is a rule of convenience based on reason and good policy and saves the trouble and expense which would otherwise have to be incurred in such cases. A suit filed with the permission to sue for on behalf of numerous persons having the same interest under order I, rule 8 is still a suit filed by the person who is permitted to sue as the plaintiff, and the persons represented by him do not by virtue of the permissions become plaintiffs in the suit such other persons would be bound by the decree in the suit but that is because they are represented by the plaintiffs and not because they are parties to the suit unless by express order of the Court they are permitted to be impleaded as such in their own capacity and or not allowed to sue in a representative capacity. Conversely and similarly it will be clear that the persons who are all sued in a representative capacity will not become parties to the suit as defendants, and if, therefore, they are not on record as such, the question of bringing on record a legal representative in case of demise of any one of them does not arise. The proposition seems to us to be unexceptionable and support for it is available from copious case-law though for our purpose reference may be made to Udmi & others v. Hira & others (1) Khuda Baksh & another v. Ahmad & others (2), Ram Diyal v. Muhammad Raju Shah &

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[5] [PLD 1982 SC 120]

> others (3), Afzal-un-Nisa v. Fayaz-ud-Din (4) and Mehtab & others vs. Ahmad Khan & others (5).
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> It may be pointed out that we have not embarked upon the exercise of comparing one case with another or others and notice their inter se distinction as such but have interpreted the law on the subject in hand from the text of order I, rule 8 keeping in view its purpose and object as above explained."

11. Referring to the substantial questions of law involved in the instant case, it falls within the fourth condition enumerated in Order I, Rule 8 of the CPC, which states that notice must be given to all persons whom it is sought to represent. The issuance of a notice regarding the institution of the suit is mandatory and must be provided to all interested parties when notice has been given by the Court of first instance. It is not necessary to serve all represented persons again at the appellate or later stage. If the number of such persons is substantial, personal service may be effectuated based on a list containing the names and addresses of those individuals, which should be supplied by the plaintiff. In the present case, the learned counsel for the respondent asserted during the course of arguments that he furnished a comprehensive list of all persons to be represented. However, if the number is large, notice may be given via public advertisement, specifying the names of the interested parties, provided those names are known. Compliance with the requirement of giving notice is a critical aspect that cannot be overlooked, as stipulated in Section 99 of the CPC, which emphasizes that any irregularity in this regard may significantly affect the merits of the

case unless the litigation is bona fide and the omission constitutes only a technical irregularity.

12. As stated above, the provisions of Order I, Rule 8 of the CPC are mandatory rather than directory, and the issuance of notice under this provision is an essential precondition for the trial of the suit. The notice must clearly disclose the nature of the suit and the relief claimed therein, thereby enabling interested parties to seek impleadment either to support or oppose the case. It should specify the reasons for the suit's filing, the relief being sought, and identify the individuals selected to represent the cause.The purpose of enacting Order I, Rule 8 CPC is to facilitate the resolution of issues affecting a large number of individuals without necessitating the conventional procedure that requires each individual to maintain separate actions. In the present case, the counsel for the respondent alleged that a list of the persons to be represented was furnished before the High Court along-with the application under Order I Rule 8 CPC for suing on behalf of all the Youth Councilors in representing capacity. The learned High Court also accepted the application and ordered for issuance of the notices to all of them but the same were not issued. In our view, notice should have been served on those whom the appellants sought to represent. Alternatively, if personal service on every individual was impractical, notice could have been given through public advertisement, specifying the names of the interested parties. However, neither method of issuing notices nor any other alternate mode was adopted by the High Court prior to delivering the impugned judgment, which raises concerns regarding

compliance with the procedural requirements established by the CPC.

The Orissa High Court in the case reported as *Assasan Samal & others vs. Chandarmani Paradan (dead)*[6], observed as under:

> "7. Referring to the substantial questions of law on which the appeal has been admitted the learned counsel for the appellants submitted that though the suit was brought essentially against villagers, notice under Order 1, Rule 8(2), C.P.C. published at the instance of the plaintiffs did not meet the requirement of law and the defendants 1 to 6 were impleaded in their individual capacity and not as representatives of the villagers. According to the learned counsel, law on the question of notice under Order 1, Rule 8(2), C.P.C. has been well discussed by the learned Munsif and the decision of the learned Munsif in this regard was justified which did not call for any interference by the lower appellate Court. Learned counsel appearing for the respondents, on the other hand, submitted that notice was published in terms of Order 1, Rule 8(2), C.P.C. and the same meet all the requirements of law and the lower appellate Court was therefore justified in reversing the finding of the trial Court in this regard.
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> In order to appreciate the submissions of the learned counsel for the parties, it is necessary to look into the plaint. In para 8 of the plaint it is alleged that the suit property was never used as pathway by the villagers or defendants 1 to 6 at any point of time for going to and coming from river ghat. In para 10 of the plaint it is pleaded that there is a public panchayat road in the village for going to and coming from Gobari river ghat and the said road is used by all the villagers Including the defendants 1 to 6 as their passage. In the prayer portion declaration was sought for to the extent

[6] [AIR 2003 OR 1157] accessed on 03.10.2024 (https://indiankanoon.org/doc/29271/)

that the villagers nor the defendants used the property as passage for going to and coming from the river ghat. In view of such pleading in the plaint and the prayer as indicated above, there is no doubt in mind that the suit had essentially been filed against the villagers and therefore, notice under Order 1, Rule 8(2), C.P.C. was required to be published. As a matter of fact, from the order-sheet it appears that the said notice was published.

8. Now coming to the question as to whether notice indicates all the requirements or not, reference may be made to a decision of this Court in the case of Purna Chandra Panigrahi v. Baidya Jani, reported in (1992) 74 Cut LT 309. In the said decision this Court held that notice under Order 1, Rule 8(2), C.P.C. is mandatory in nature and is an essential pre-condition for trial of the suit. Notice under the provision must disclose the nature of the suit as well as reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the cause or opposite it. The notice must state about why the suit has been filed and what is the relief claimed therein, and it must also state who are the persons selected to represent the cause. Relevant portion of the judgment is quoted below:

It is not in dispute and indeed learned Single Judge has accepted the position that notice under Order 1, Rule 8, C.P.C. is of mandatory character. The provisions of Order 1, Rule 8, C.P.C. are mandatory and not directory in nature and notice under Order 1, Rule 8(2), C.P.C. is an essential pre-condition for trial of the suit. This view was succinctly expressed in Harihar Jena v. Bhagabat Jena, AIR 1987 Orissa 270 and Lakhana Nayak v. Basudev Swamy, AIR 1991 Orissa 33. The notice under the provision must disclose the nature of the suit as well as reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the cause or opposite it. The notice must state about why the suit

> has been filed and what is the relief claimed therein, and it must also state who are the persons selected to represent the cause. The object for which Order 1, Rule 8, C.P.C. has been enacted is really to facilitate the decision of question in which a large body of persons are interested without recourse to ordinary procedure where each individual has to maintain an action by a separate unit. Where there is community of interest amongst numerous persons to avoid expenses, trouble and multiplicity of proceedings, few of them are allowed to represent the whole. In a proceeding for a declaration that a particular institution does not have a hereditary trustee or has one, if the members of Hindu public are neither impleaded, nor the suit framed under Order 1, Rule 8, C.P.C. there can be no adjudication of the question whether the institution is a hereditary or not. It will be futile to declare that the public have no right in the institution without impleading the members of the public under Order 1, Rule 8, C.P.C. A similar view was expressed by the Patna High Court in Bihari Pd. Sinha v. Mahanth Ramswarath Das, AIR 1972 Pat 511 relating to a public charitable trust."

Similarly, this view was reiterated by Karnatika High Court India, in the case titled *Sri. Vidya Sheersha Thirtharu vs. Sri Siddalingaiah*[7], wherein it was held that; -

> "37. A careful perusal of the said provisions make it clear where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested ; the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested. Thus to proceed with the suit under Order 1 Rule 8 of the Code of Civil Procedure, Court's permission

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[7] accessed on 08.08.2019 (https://indiankanoon.org/doc/18047297/)

is mandatory. As per Order 1 Rule 8(2) of the Code of Civil Procedure, the Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense give notice of the institution of the suit to all the persons interested, either by personal service, or by public advertisement and under sub-rule (3) of Order 1 Rule 8 of the Code of Civil Procedure, any person on whose behalf, or for whose benefit, a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit. Under sub-rule (4) of Order 1 Rule 8 of the Code of Civil Procedure, no part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of Rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2). Under sub-rule (5) of Order 8 Rule 1 of the Code of Civil Procedure, where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit. Under Sub-rule (6), a decree passed in a suit under Order 1 Rule 8 shall be binding on all persons on whose behalf or for whose benefit, the suit is instituted, or defended, as the case may be. Explanation to order 1 Rule 8 of the Code of Civil Procedure clearly states that for the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.

46. In view of the aforesaid facts stated supra, it is clear that several devotees throughout the State of Karnataka and also Andhra Pradesh and Madras have filed separate suits against Sri Vyasaraj Mutt for the different reliefs before the different Courts. If the devotees are allowed to file

such suits in different Courts for different reliefs against the Peetadhipathi of Vyasaraj Mutt, the same is nothing but allowing the devotees misusing the provisions of Order 1 Rule 8 of the Code of Civil Procedure. After advertisement made under Order 1 Rule 8(2) of the Code of Civil Procedure, it is the duty of the aggrieved devotee or any person having interest to file necessary application under Order 1 Rule 8(3) of the Code of Civil Procedure.

13. In light of the above detailed discussion and the precedents set by the Courts of law, it is quite clear that the provisions of rule 8 Order I, CPC are mandatory in nature and before handing down the impugned judgment, it was enjoined upon the learned High Court to issue notice to the appellants, herein, and then proceed with the matter, however, the same has not been complied with which has resulted into miscarriage of justice. A fair dispensation of justice is the command of Allah Almighty. As regards Islam, absolute and unadulterated justice is its watchword, and the Holy Quran vehemently denounces all extraneous consideration that might in any way obstruct the course of justice. The Allah Almighty in Surah Nisah, Ayat No. 135, ordains as under: -

يٰٓاَيُّهَا الَّذِيْنَ اٰمَنُوْا كُوْنُوْا قَوّٰمِيْنَ بِالْقِسْطِ شُهَدَآءَ لِلّٰهِ وَلَوْ عَلٰٓى اَنْفُسِكُمْ اَوِ الْوَالِدَيْنِ وَالْاَقْرَبِيْنَ ۚ اِنْ يَّكُنْ غَنِيًّا اَوْ فَقِيْرًا فَاللّٰهُ اَوْلٰى بِهِمَا فَلَا تَتَّبِعُوا الْهَوٰٓى اَنْ تَعْدِلُوْا ۚ وَاِنْ تَلْوٗٓا اَوْ تُعْرِضُوْا فَاِنَّ اللّٰهَ كَانَ بِمَا تَعْمَلُوْنَ خَبِيْرًا.

"Believers! Be upholders of justice,[164] and bearers of witness to truth for the sake of Allah,[165] even though it may either be against yourselves or against your parents and kinsmen, or the rich or the poor: for Allah is more concerned with their well-being than you are. Do not, then, follow your own desires lest you keep away from justice. If you twist or turn away from (the truth), know that Allah is well aware of all that you do." (4:135)

Similarly, in Surah Maida, Ayat No.8, the Allah Almighty further commands as under: -

وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلٰٓى اَلَّا تَعْدِلُوْا ؕ اِعْدِلُوْا ۟ هُوَ اَقْرَبُ لِلتَّقْوٰى ۟ وَاتَّقُوا اللّٰهَ ؕ اِنَّ اللّٰهَ خَبِيْرٌۢ بِمَا تَعْمَلُوْنَ ﴿5:8﴾

(5:8) Believers! Be upright bearers of witness for Allah,[29] and do not let the enmity of any people move you to deviate from justice. Act justly, that is nearer to God-fearing. And fear Allah. Surely Allah is well aware of what you do.

In the same Surah Al-Mayda, Ayat 42, it was further commanded that: -

سَمَّٰعُونَ لِلْكَذِبِ أَكَّٰلُونَ لِلسُّحْتِ ۚ فَإِن جَآءُوكَ فَٱحْكُم بَيْنَهُمْ أَوْ أَعْرِضْ عَنْهُمْ ۖ وَإِن تُعْرِضْ عَنْهُمْ فَلَن يَضُرُّوكَ شَيْـًٔا ۖ وَإِنْ حَكَمْتَ فَٱحْكُم بَيْنَهُم بِٱلْقِسْطِ ۚ إِنَّ ٱللَّهَ يُحِبُّ ٱلْمُقْسِطِينَ ٤٢

"They eagerly listen to falsehood and consume forbidden gain. So if they come to you ˹O Prophet˺, either judge between them or turn away from them. If you turn away from them, they cannot harm you whatsoever. But if you judge between them, then do so with justice. Surely Allah loves those who are just."
(5: 42)

14. Indeed, the Holy Quran has repeatedly emphasized that no matter how hostile or mischievous or cruel the person with whom, we are dealing, it is impermissible to for us to deviate even slightly from the path of justice. The right to be heard i.e. *audi alteram partum*, is a divine rightl. Even Allah Almighty, who is *omni potent*, is so kind that He extend this right to his creatures. The Court while administering justice must always bear in mind the fundamental principles of natural justice and this principle originates from Islamic system of justice as evident from the historical perspective when on refusal of Satan (Iblis) to bow down to Adam on the command of Allah, he was

punished for his rebellious arrogance and jealous disobedience only after he was asked to explain his conduct. These facts are narrated in Sura A'raf Aayat Nos. 11 to 18. IN this very Sua the story of Adam and Eve is also narrated. When they at the persuasion of the Satan, tasted the fruit of the prohibited tree they too were asked to explain their conduct. They confessed their guilt and consequently they were expelled of the Heaven. However, another example of this principle found in Ayat No. 19 to 24 of the Holy Quran. Hatib- a Mohajir from Medina, who sent a secret letter to the Pagons at Makkah seeking protection for his family left behind in Makkah. The Holy Prophet (PBUH), though receiving divine inspiration about the letter and its contents, still called Hatib to explain his action before deciding on his guilt, thus, it is clear that the rule of natural justice stems from Islamic Jurisprudence. In a Muslim society, this principle must be followed as a divine command, akin to any other Quranic laws.

15. The principle of natural justice must be applied in all kinds of proceedings without exception and any departure therefrom subsequent actions illegal in the eye of law. With the passage of time, recognizing the importance and potential of the natural justice, States have recognized this principle as a fundamentally guaranteed Constitutional right and included it in the Constitution under the right to fair trial. The Latin maxim *audi-alteram partem,* which means 'to hear the other side embodies one of the principles of natural justice. It underscores the right of individual to be heard before a decision is made that may adversely affect their interests or rights'. The maxim however asserts that no one should be condemned unheard, ensuring

that legal or administrative proceedings are carried out in a fair and just manner. This principle is inherent in the concept of fairness which is the hall mark of civilized legal system. The right to be heard is not a privilege but necessary condition for the dispensation of justice. It requires that before any authority passes a decision that affects a person's legal rights or obligations, the effected party must be given an opportunity to present their case refute the evidence against them or present a defense. The Courts have long upheld the principle of audi-alteram partem, no one should be condemned unheard, as a safeguard against arbitrary and unjust decisions. In the case reported as *Muhammad Aslam vs. Member (Colonies) Board of Revenue Punjab Lahore and others*[8], the Court observed as under; -

> "10. The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard. Audi alteram partem means 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order'. Meaning thereby the maxim itself says no person shall be condemned unheard. Hence, no case or judgment can be decided without listening to the point of another party. Natural justice means that justice should be given to both the parties in a just, fair and reasonable manner. Before the court, both the parties are equal and have an equal opportunity to represent them. Natural justice is the concept of common law which implies fairness, reasonableness, equality and equity. In our country, the principles of natural justice are the grounds of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution") which Article enshrines that every person should be treated equally. The law and procedure must be of a fair, just and reasonable kind. The principle of natural justice comes into force

[8] [2019 CLC 1141]

when prejudice is caused to anyone in any administrative action. The principle of audi alteram partem is the basic concept of the principle of natural justice. This doctrine states the no one shall be condemned unheard. This ensures a fair hearing and fair justice to both the parties. Under this doctrine, both the parties have the right to speak. No decision can be declared without hearing both the parties. The aim of this principle is to give an opportunity to both the parties to defend themselves. No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him. A party is not to suffer in person or in purse without an opportunity of being heard. This is the first principle of civilized jurisprudence and is accepted by laws of men. Generally, this maxim includes two elements: (A) Notice; and (B) Hearing. (A) Notice: Before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. It is a sine qua non of the right of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab initio. Before taking any action, it is the right of the person to know the facts. Without knowing the facts of the case, no one can defend himself. The right to notice means the right of being known. The right to know the facts of the suit or case happens at the start of any hearing. Therefore, notice is a must to start a hearing. A notice must contain the time, place and date of hearing, jurisdiction under with the case is filed, the charges, and proposed action against the person. All these things should be included in a notice to make it proper and adequate. Whenever a statute makes it clear that a notice must be issued to the party and if no compliance or failure to give notice occurs, this makes the act void. Non-issue of the notice or any defective service of the notice do not affect the jurisdiction of the authority but violates the principle of natural justice. (B) Hearing: -

> Oral or Personal Hearing- How Far Necessary: The second ingredient of audi alteram partam (hear the other side) rule is the rule of hea ring. If the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and must be set aside. The reasonable opportunity of hearing which is also well known as 'fair hearing' is an important ingredient of the audi alteram partem rule. This condition may be complied by the authority by providing written or oral hearing which is the discretion of the authority, unless the statue under which the action being taken by the authority provides otherwise. It is the duty of the authority who will ensure that the affected party may be given an opportunity of hearing. However, the above rule of fair hearing requires that the affected party should be given an opportunity to meet the case against him effectively. 11. Reliance in this regard can be placed on the Bank of Punjab case supra in which this Court while relying upon the principles enunciated by the Hon'ble Supreme Court of Pakistan, has held as follows: "Such principle is applicable to judicial as well as non-judicial proceedings and executive acts and it has to be read into every statute subject to certain exceptions. If right of hearing has not been expressly provided in a statute, provisions of the Constitution can be put into service."

14. For what has been stated above, we have concluded that the learned High Court failed to consider the provisions of Order I, Rule 8 of the CPC when passing the impugned judgment; therefore, the judgment is not maintainable and is liable to be set aside. During the pendency of these appeals, an application was filed seeking to challenge the notification dated 26.08.2024, which de-notified the appellants in compliance with the High Court's judgment. This application was allowed by order dated 05.09.2024. Given that the judgment of the High Court

is not in accordance with the law, we accept all the titled appeals and set aside the High Court's judgment. Exercising the inherent powers conferred upon this Court, we also set aside the notification dated 05.09.2024 which is a direct consequence of the High Court's judgment. The matter is hereby remanded to the High Court, directing to first issue notice to all concerned Youth Counselors, provide them with an opportunity to be heard, and then proceed in accordance with the law. As the matter pertains directly to the representation of Youth in Local Bodies, which has been subject to prolonged delays, therefore, it is directed that the learned High Court prioritize this matter and decide it expeditiously. A decision should ideally be rendered within three months from the communication of this judgment.

JUDGE JUDGE

Muzaffarabad,
14.10.2024