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IN THE HIGH COURT OF BOMBAY & GOA AT PANAJI

WRIT PETITION NO.351 OF 2017

Mrs.Elmas Fernandes)
d/o Thomas de Aquino Fernandes,)
Indian National, Aged 36, residing at Flat)
No.8B, 53 Models Legacy, Taleigao,)
P.O. Caranzalem, Goa – 403 002.) ...Petitioner

….Versus....

1). State of Goa, through the)
Chief Secretary, Secretariat,)
Porvorim, Goa.)
)
2). Patriarchal Tribunal of the)
Archdiocese of Goa And Daman,)
Archbishop House, with office at)
Archbishop's House, Altinho,)
Panaji, Goa – 403 001.)
)
3). The Metropolitan Tribunal of the)
Archdiocese of Mumbai, Archbishops)
House, 21, N. Parekh Marg,)
Mumbai – 400 001.)
)
4). Mr.Elvis Alban Afonso, son of)
Filipe Afonso, resident of H.N. 286/2)
Manxebhat, Britona, Penha)
de Franca, Goa – 403 101.)
)
5). Civil Registracum Sub-Registrar)
Of Bardez, Mapuca, Goa.) ...Respondents

Mr.M.B. D'Costa, Senior Advocate with Ms.Karishma Betquecar for the Petitioner.

Mr.D. Lawande, Advocate General with Mr.A. Jamadar, Additional Government Advocate for the Respondent Nos.1 and 5.

Mr.Coelho Pereira, Senior Advocate with Mr.V. Braganza and Mr.B. Fernandes for the Respondent No.2.

Mr.Sudesh Usgaonkar with Ms.Rosette Pereira for the Respondent No.4.

WITH
WRIT PETITION NO.691 OF 2013

Isabela Menino Godad)
d/o Mr.Menino Cosa Godad,)
aged 34 years, Homeopathic Doctor,)
Indian National, residing at H.No.207/4)
Oxel, Siolim, Goa.) ...Petitioner

….Versus....

1). Alfredo Pedro de Almeida)
son of Mr.Pedro Anthony Almeida,)
aged 38 years, businessman,)
Indian National, H.No.437,)
Shantinagar, Vasco-da-gama, Goa.)
)
2). State of Goa, through the)
Chief Secretary, Secretariat,)
Porvorim, Goa.)
)
3). Patriarchal Tribunal of the)
Archdiocese of Goa And Daman,)
Archbishop House, with office at)
Archbishop's House, Altinho,)
Panaji, Goa – 403 001.)
) ...Respondents

Mr.Bhargav Khandeparkar for the Petitioner.

Mr.D. Lawande, Advocate General with Ms.Amira Razaq, Government Advocate for the Respondent No.2.

Mr.Coelho Pereira, Senior Advocate with Mr.V. Braganza and Mr.B. Fernandes for the Respondent No.3.

CORAM : R.D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.
RESERVED ON : 3RD MAY, 2019
PRONOUNCED ON : 15TH OCTOBER, 2019

JUDGMENT (Per R.D. Dhanuka, J.) :-

1. The petitioner in Writ Petition No.351 of 2017 filed under Article 226 and 227 of the Constitution of India has prayed for striking down Article 19 of Decree No.35461 as unconstitutional, illegal, null

and void, for a declaration that the order passed by this Court upon request by the Patriarchal Tribunal and Metropolitan Tribunal (hereinafter referred to as 'Tribunals' for short) to enforce their decision, without revision or confirmation, and directing that an endorsement be made in the Books of the Civil Registration Office in the margin next to the entry of the Marriage Register is null and void.

2. The petitioner has also prayed for a declaration that the endorsement made by the Civil Registrar pursuant to the order passed under Article 91 of Decree No.35461 cancelling the marriage registration is illegal, null and void. The petitioner has prayed for a writ of mandamus commanding the respondents to forbear from acting in pursuance of such order made by this Court or in pursuance to the endorsement made in the Marriage Register. Without prejudice to the aforesaid prayers, the petitioner has also prayed for passing and setting aside the decision of Patriarchal Tribunal and of the Metropolitan Tribunal, Exhibit P-2 collectively.

3. Insofar as Writ Petition No.691 of 2013 is concerned, the petitioner has filed this writ petition under Article 226 and 227 of the Constitution of India *inter-alia* praying for a writ of certiorari and for quashing and setting aside the order of Patriarchal Tribunal of Archdiocese of Goa and Daman dated 22nd March, 2012 for declaring Article 19 of the Decree No.35461 as unconstitutional and null and void. The petitioner has also prayed for a declaration that the marriage between the petitioner and the respondent no.1 is valid, for

a direction against the Registrar of Civil Marriages to cancel the endorsement of nullity in the Book of Registration of Marriages. By consent of both the parties, these petitions were heard together finally and are being disposed of by a common judgment.

4. Insofar as Writ Petition No.351 of 2017 is concerned, the case of the petitioner is as under :-

a). The petitioner and and the respondent got married on 26th September, 2009 in the Church of Our Lady of Penha da Franca, Goa which marriage was duly registered in the office of Civil Registrar of Bardez at Mapuca against entry No.420/09 in the Book of Marriage Register of the year 2009.

b). The petitioner and the respondent no.4 proposed to each other and after they decided to get married, after about 14 days, the respondent no.4 went back on board the ship where he was working. The respondent no.4 came down to Goa about three months before the marriage. During these three months, the petitioner and the respondent no.4 would meet and talk to each other. The petitioner was working in Goa.

c). The respondent no.4 was deeply in love with the petitioner. The respondent no.4 through his advocate's notice admitted that he took a liking for the petitioner in the very first meeting and accorded his consent to marry the petitioner. The

petitioner also had liking for the respondent no.4 and gave her consent to marriage. On 26th September, 2009, the petitioner and the respondent no.4 got married. After the marriage, differences arose between the petitioner and the respondent no.4. The parties made attempts for conciliation before Parish Priest, however, were unable to work out their differences. It is the case of the petitioner that the mother, sister and aunt of the respondent no.4 interfered with the decision of the respondent no.4.

d). After a period of three years of married life, the respondent no.4 filed a petition before Patriarchal Tribunal for annulment of marriage with the petitioner. It was alleged in the said petition that the petitioner had superiority complex as she was a graduate wife, whereas the respondent no.4 was not a graduate. She was domineering and also could not stand his mother and sister. However, it was the case of the petitioner that the reason for break down was attachment of the respondent no.4 to another girl and interference of mother, sister and aunt.

e). It is the case of the petitioner that the respondent no.4 had addressed a letter to Rev. Fr. Rosario Oliveira who was the Judge of Patriarchal Tribunal of Archdiocese of Goa and Daman that he was in love with the petitioner. In his letter dated 25th January, 2014, the respondent alleged before the Tribunal that prior to his marriage when a month was left, the petitioner picked up an argument with his married sister, when she happened to ask her if she was happy

getting married to respondent no.4. It was further alleged that his sister, aunt and mother visited the place of the petitioner and tried to clarify, the petitioner insulted his sister and aunt and at that point they decided not to go ahead with the marriage between the respondent no.4 and the petitioner. The respondent no.4 however, insisted his mother that he loved and liked the petitioner and wanted to marry her.

f). It is the case of the petitioner that the Patriarchal Tribunal consist of sole Judge who recorded the evidence of the petitioner on 22nd March, 2014 and recorded the evidence of the respondent no.4 on 27th March, 2014. The petitioner was summoned to appear for judicial examination on 22nd July, 2014 at 2:00 p.m. and she was examined on 22nd July, 2014 at 2:30 p.m. The Patriarchal Tribunal did not record the answers given by the petitioner correctly.

g). It is the case of the petitioner that the sole Judge appointed by Bishop was biased. By her letter dated 21st March, 2015, after inspecting the records, the petitioner pointed out distortions in reply of the petitioner recorded by the Tribunal. It is the case of the petitioner that additional evidence of the respondent no.4 was recorded behind the back of the petitioner without giving any opportunity to the petitioner to cross-examine the respondent no.4. The petitioner accordingly requested the Bishop to transfer the said proceedings to another Judge. The Bishop accepted the said request made by the petitioner and transferred the matter to a new Judge. It

is the case of the petitioner that the sole Judge appointed earlier however, recorded unfair observations in the record about the alleged behavior of the petitioner which would prejudice the mind of a new Judge appointed by the Bishop.

h). By her letter dated 21st March, 2015, the petitioner made various allegations against the sole Judge and more particularly about the conduct of the proceedings, the alleged false recording of evidence of the sole Judge etc.

i). On 4th March, 2016, the sole Judge of the Patriarchal Tribunal passed an order holding that the marriage between the petitioner and the respondent no.4 was nullity on the ground of

(i) partial simulation, contra *bonum fidei*, on the part of the respondent no.4 herein in accordance with canon 1101, CIC 1983 and;

(ii) lack of due discretion of judgment concerning the essential matrimonial rights and duties on the part of the petitioner herein, in accordance with canon 1095, 2º CIC 1983, having been proved.

5. Being aggrieved by the said order dated 4th March, 2016, passed by the sole Judge of the Patriarchal Tribunal, the petitioner filed an appeal before the Metropolitan Tribunal at Mumbai. It is the case of the petitioner that by an order dated 14th October, 2016, the

said Metropolitan Tribunal *suo-moto* absolved the respondent no.4 and held that the consent of the petitioner to marry the respondent no.4 was vitiated due to lack of due discretion of judgment. The Appellate Tribunal held that the couple had never really bonded emotionally and psychologically to form a partnership of life and love. The behavior of the petitioner before and after marriage showed that she did not have maturity to understand the meaning of marriage and its obligations. She tried to delay the process by asking for more time.

6. The Appellate Tribunal however, observed that the Defender of the Bond of the second instance found the ground of Partial Simulation (contra *bonum fidei*) doubtful. He has not raised any objection of marriage to be declared as null and void on the ground of lack of due discretion on the part of the petitioner. The Appellate Tribunal accordingly by the said decree dated 14th October, 2016, declared the marriage of the petitioner and the respondent no.4 null and void only on the ground of “Lack of Discretion of Judgment on the part of the Petitioner” (canon 1095, 2º).

7. The decrees of the said Tribunals below were then forwarded to this Court to enforce them. The petitioner lodged a caveat dated 24th November, 2016 in this Court under section 148-A of the Code of Civil Procedure, 1908. The matter was placed before the Senior Judge / Administrative Judge of this Court at Goa for

enforcement and transmitted the decree to the Registrar of Marriage for endorsement. The Senior most Administrative Judge of this Court at Goa thereafter made an endorsement for enforcement and transmitted the decree to the Registrar of Marriage for endorsement. On 9th March, 2017, the petitioner wife filed Petition No.351 of 2017.

8. Insofar as Writ Petition No.691 of 2013 is concerned, the petitioner married the respondent no.1 by canonical marriage on 2nd January, 2007 at Vasco-da-gama, Goa which marriage was duly registered. A child was born out of the wedlock on 1st October, 2007. Differences arose between the petitioner and the respondent no.1. The respondent no.1 filed an application for nullity before the Patriarchal Tribunal of the Archdiocese of Goa and Daman. On 18th November, 2010, the Tribunal issued a notice to the petitioner intimating about the said petition filed by he respondent no.1 and to ask the petitioner to remain present on the date of the next hearing. The Bishop appointed Rev. Fr. Lino Florindo as “Defender of the Bond of marriage”. By an order dated 22nd March, 2012, the said Tribunal declared the marriage between the petitioner and the respondent no.1 (original applicant) as nullity as per Article 19 of the Decree No.35461 of 1946 on the ground of inability on the part of respondent no.1 to assume and fulfill the obligations of the marriage having been proved.

9. On 1st August, 2012, the Patriarchal Tribunal informed the petitioner that the Metropolitan Tribunal of the Archdiocese of

Bombay acting in the second instance by its decree dated 21st July, 2012 has ratified the said affirmative sentence of the Patriarchal Tribunal on the ground of "Inability on the part of the respondent no.1 (original applicant)to assume and fulfill the obligations of marriage. By a letter dated 4th September, 2012 by Patriarchal Tribunal, the petitioner and the respondent no.1 were informed that the said Tribunal had received a letter dated 30th August, 2012 from the Assistant Registrar of this Court stating that they have already ordered 'Civil Registration Office of Mormugao, Goa' to cancel the civil registration of Marriage registered under Entry no.22 of the year 2007. On 3rd October, 2013, the petitioner filed this writ petition for various reliefs, including for a writ of certiorari for setting aside the order of the Patriarchal Tribunal dated 22nd March, 2012 and for further reliefs.

10. Mr. D'Costa, learned Senior Counsel for the petitioner invited our attention to various documents annexed to the writ petition, pleadings filed by the parties before the Tribunal, compilation of documents filed by the parties and various provisions from the Decree No. 35461. It is submitted by the learned Senior Counsel that the petitioner and the respondent no.4 were married in the months of September, 2009, which marriage was duly registered in the office of Civil Registrar of Bardez at Mapuca. The respondent no.4 had come down to Goa about three months before the marriage with the petitioner. During these three months, the petitioner and the respondent no.4 used to talk to each other. His client was working in

Goa at that time. Respondent no.4 was very deeply in love with the petitioner and declared his love for the petitioner in no uncertain words.

11. It is submitted by the learned Senior Counsel that even the respondent no.4 had admitted the fact that he was in love with the petitioner in his letter dated 15th March, 2013 addressed by him to Rev. Fr. Rosario Oliveira, who was then Judge of the Patriarchal Tribunal of Archdiocese of Goa and Daman (hereinafter for the sake of brevity referred to as "Patriarchal Tribunal"). The respondent no.4 filed a petition before the said Tribunal for annulment of their marriage. In his letter dated 25th February, 2014, the respondent no.4 alleged that prior to his marriage, with a month left, the petitioner picked up an argument with his married sister, when she happened to ask her, if she was happy getting married to the respondent no.4. In the said letter, the respondent no.4 alleged that on another occasion the petitioner had insulted his sister, aunt and mother to such an extent that they decided not to go ahead with the said marriage but the respondent no.4 insisted his mother to let go of the incident and not to cancel the marriage thinking that things would change later after marriage.

12. On 21st March, 2015, the petitioner addressed a letter to the Rev. Fr. Rosario Oliveira, Judge of the said Patriarchal Tribunal requesting for transfer of the marriage case filed by the respondent no.4 to another Judge on various grounds. The sole Judge appointed

by the Bishop recorded that he had examined the petitioner on 22nd March, 2014 and the respondent no.4 on 27th March, 2014. It is the case of the petitioner that she was summoned to appear for judicial examination on 22nd July, 2014 at 2:00 p.m. and was examined at 22nd July, 2014 at 2:30 p.m. The said Tribunal did not record the answers given by the petitioner correctly.

13. It was the case of the petitioner that the sole Judge appointed by Bishop was biased. The petitioner after inspecting the records, issued a letter dated 25th March, 2015 and pointed out the distortions in the replies recorded by the sole Judge. The petitioner also found that additional evidence of respondent no.4 was recorded behind the back of the petitioner without giving an opportunity to the petitioner to cross-examine the respondent no.4. The Bishop appointed another Judge on the said complaint filed by the petitioner. It is the case of the petitioner that though the Judge was replaced by the Bishop on the complaint filed by the petitioner, he made various false and incorrect observations against the petitioner, which prejudiced the mind of the successor Judge against the petitioner.

14. It is submitted by the learned Senior Counsel that though the petitioner had pointed out various incorrect statements recorded by the earlier Judge in the letter dated 25th March, 2015, the successor Judge did not consider those issues raised by the petitioner and the corrections pointed out in the statements recorded by the earlier Judge. The petitioner had also requested the

Patriarchal Tribunal to permit the petitioner to engage an Advocate and to cross-examine the respondent no.4. The Tribunal however neither permitted the petitioner to engage an advocate nor permitted to cross-examine the respondent no.4. The said Patriarchal Tribunal passed an order on 4th March, 2016 declaring the marriage between the petitioner and the respondent no.4 as nullity.

15. Being aggrieved by the said order dated 4th March, 2016 declaring the marriage of the petitioner with respondent no.4 as nullity, the petitioner filed an appeal to the Metropolitan Tribunal at Mumbai. It is submitted by the learned Senior Counsel that the said Metropolitan Tribunal passed an order on 14th October, 2016 declaring the marriage of the petitioner with the respondent no.4 as null and void only on the ground of “Lack of Discretion of Judgment on the part of the petitioner (Canon 1095, 2o)”. The said decision of the Patriarchal Tribunal and the Metropolitan Tribunal were forwarded to the High Court to enforce them.

16. The petitioner filed a caveat before the Goa Bench of this Court. The learned Senior Counsel submits that the said caveat filed by the petitioner was totally ignored by the Registrar. The matter was simply placed before the senior most Administrative Judge for enforcement and for making an endorsement in the Marriage Register. The then senior most Administrative Judge passed an Administrative Order on the said orders passed by the two of the tribunals and forwarded the papers to the Registrar of Marriage for

enforcement and endorsement in the Marriage Register.

17. Learned Senior Counsel invited our attention to Canon 1419, 1421, 1432, 1438 and 1442 of the New Code of Canon Law, which was enacted on 25th June, 1983. The Code was amended in so far as Canon 1971 to 1691 are concerned on 15th August, 2015, providing for hierarchy of the Tribunals to decide on the annulment of marriages. He submits that under Canon 1683, the diocesan Bishop himself was competent to Judge cases of the nullity of marriage.

18. Under Canon 1673, each Bishop is the Judge in the first instance for deciding the cases of nullity for which the law does not expressly make an exception is the diocesan Bishop, who can exercise power personally or through others according to the norm of law. Canon 1419 provides that a Tribunal of the first instance in each diocese is the Bishop. Learned Senior Counsel placed reliance on the Canon 1687, para 3, which provides for an appeal against the sentence of Bishop before the Roman Rota or the Supreme Tribunal of Apostolica Signatura.

19. It is submitted by the learned Senior Counsel that right to have the evidence of the opposite parties taken in presence of such party and to cross-examine the opposite party is an integral part of the principles of rules of natural justice. The petitioner was not allowed to remain present when the depositions of the respondent and his witnesses were recorded, to engage her own private lawyer

or to cross-examine the respondent and his witness, which has caused tremendous prejudice and injustice to her. Such averments made in the writ petition by the petitioner are not denied by the respondents. It is submitted that amended Canon 1677 para 2 which provides that the parties cannot remain present at the examination of the other party, his witnesses and experts, is in gross violation of principle of natural justice. The decisions arrived at by the tribunals is contrary to and in violation of principles of natural justice.

20. It is submitted by the learned Counsel that the Patriarchal Tribunal had not recorded the depositions of the petitioner properly. The petitioner was thus compelled to make a complaint to the Bishop and to appoint a new Judge. It is submitted by the learned Senior Counsel that the rules of natural justice, which are an integral part of Article 21 of the Constitution of India, constitutes its basic structure. The old distinction between judicial act and administrative act has withered away. Even an administrative order, which involves civil consequences must be consistent with the rules of natural justice.

21. Learned Senior Counsel placed reliance on the following Judgments in support of the aforesaid submissions:-

i). In the Judgment of Supreme Court in case of ***State of West Bengal vs. Committee for Protection of Democratic Rights, 2010(3) SCC 571*** and in particular para 63.

ii). In the Judgment of Supreme Court in case of ***Suresh***

Chandra Nanhorya vs. Rajendra Rak and Ors., 2006(7) SCC 800 and in particular paras 7, 8, 9, 10 and 11.

iii). In the Judgment of Supreme Court in case of ***Uma Nath Pandey and others vs. State of Uttar Pradesh and Anr., 2009(12) SCC 40*** and in particular para 3.

iv). In the Judgment of Supreme Court in case of ***Dharampal Satyapal Ltd. vs. CCE, 2015 (8) SCC 519*** and in particular paras 24, 26, 27, 28, 32 and 33.

v). In the Judgment of Supreme Court in case of ***Maneka Gandhi vs. Union of India, 1978(1) SCC 248*** and in particular paras 7, 9, 10 and 12.

vi). In the Judgment of Supreme Court in case of ***Aayubkhan Noor Khan Pathan vs. State of Maharashtra, 2013(4) SCC 465*** and in particular paras 24,26,27,28,31 and 36.

vii). In the Judgment of Supreme Court in case of ***Union of India T.R. Varma, AIR 1961 S.C. 1623*** and in particular para 10.

viii). In the Judgment of Supreme Court in case of ***State of Madhya Pradesh vs. Chintaman Sadashiva Waishapayan, AIR 1961 SC 1623*** and in particular para 11.

22. It is submitted by the learned Senior Counsel that

annulment by the Tribunal has civil consequences *inter-alia* on the personal status of the parties, on their property rights and on their reputation. Learned Senior Counsel placed reliance on Article 30, 33, 35, 68 and 69 of the Law of Marriage as a Civil Contract. Law of Divorce, which deals with “Inventory Proceedings”. It is submitted by the learned Senior Counsel that the Patriarchal Tribunal in para 10 and 11 of the impugned order has enumerated instances of alleged lack of discretion of Judgment on the part of the petitioner. It is held by the Tribunals that the petitioner’s consent to marry was vitiated due to lack of due discretion of Judgment (Canon 1095). He submits that being deeply or madly in love is no ground to annul the marriage. He submits that in any event this was not the ground raised by the respondent in the original complaint for seeking annulment of marriage against the petitioner.

23. It is submitted that it is *ex-facie* evident from the decision of Patriarchal Tribunal that no expert was appointed in the present case. The decision of the Patriarchal Tribunal was given on 4th March, 2016 and the decision of the Metropolitan Tribunal was given on 14th October, 2016 i.e. much after the Third General Assembly of the Extraordinary Synod of Bishops had given clear guidelines. He submits that the expression “lack of due discretion of Judgment” is not an elastic expression, which embraces fanciful and arbitrary surmises. He submits that the findings rendered by the two tribunals are thus *ex-facie* perverse.

24. Learned Senior Counsel placed reliance on the New Commentary on the Code of Canon Law edited by John P. Beat, James A. Coriden and Thomas J. Green, which explains the expression “lack of due discretion of Judgment” as under :-

> “Since the marriage can be declared invalid only if a party is truly incapable of assuming essential marital obligations and not merely because the party experienced difficulty in fulfilling them, the underlying disorder or disturbance must be severe. Identifying the nature of the disorder and assessing its severity usually require the services of a psychological expert. Practically all recent rotal sentences speak of the necessity of using experts in cases of consensual incapacity.”

25. It is submitted by the learned Senior Counsel that the decisions of Tribunals have cast a stigma on the petitioner. Findings rendered by the two Tribunals against the petitioner that the petitioner lacked due discretion of Judgment would mean that the petitioner has a severe underlying disorder or disturbance. Such stigma cast on the petitioner would gravely affect her future relationships.

26. It is submitted by the learned Senior Counsel that the parties in this case are concerned with “Canonical Marriage Between

Non-Natives". He submits that the legislature has considered the decisions of Tribunals in respect of "annulment of marriage of non-natives" to be of merely theological or ecclesiastical value so much so that to make the decisions effective in civil law, Tribunals have to seek the assistance of the High Court. It is submitted that by virtue of the provisions of Concordat, the Missionary Accord and Decree No. 35641, the Church is closely connected with the State. Its provisions indicate that the State and the Church are not totally separated. They may not have created a theocratic State but the Church and State are intertwined.

27. It is submitted by the learned Senior Counsel that those Tribunals have substituted civil court in the matter of annulment of "canonical marriage between non-natives" in view of the main provision in Article 19 of Decree No. 35461 and the decision of such Tribunals particularly after compliance of Article 19 of the Decree would have civil consequences. He submits that the fact that the Judgments and Decrees of the said Tribunals have to be sent to the High Court to make them enforceable indicates that those Tribunals are subordinate to the High Court.

28. It is submitted by the learned Senior Counsel that no canonical marriage shall be solemnized unless a certificate issued by the Civil Registrar is produced declaring that the proposed marriage may be contracted under the civil law. After the solemnization of the marriage in the church, the priest is bound to send to the competent

office of the Civil Registrar the records of the marriage so that they may be transcribed in the Register of Marriages. Upon receipt of the records from the priest, the Civil Registrar shall do the transcription. A marriage solemnized as per canonical laws shall have all the civil effects, once the respective record is transcribed in the Office of Civil Registrar vide Articles 7 to 18 of Decree No. 35461. The interconnection between the religious authorities and the civil authorities is patent. This is repugnant to the concept of secularism, which is one of the basic features of the Constitution of India.

29. It is submitted by the learned Senior Counsel that the Tribunals discharge public functions and satisfy the "public function test". Learned Senior Counsel invited my attention to Article 19 of Decree no. 35461 and would submit that the said provision reserves the jurisdiction to decide on nullity of canonical marriages to the competent Tribunals and Offices and subordinates their decisions to the High Court. Under the civil law, Civil Courts have the power to annul the marriages as provided in the Law of Marriage as a Civil Contracts vide Articles 65 to 68. The jurisdiction of the Civil Courts, which perform the duty of administering justice, is thus transferred to the Tribunals in so far as nullity of canonical marriages are concerned. Learned Senior Counsel placed reliance on the Judgment of Supreme Court in case of ***Supreme Court Advocates on Record Association and Others v/s. Union of India, 1993(4) SCC 441*** in support of the submission that the functions of Tribunals satisfy the public function test and therefore a writ petition under Article 226 of

the Constitution of India would be maintainable. He submits that without the order of this Court, the Civil Registrar would not be bound by the decision of the Tribunals and consequently they would not be enforceable.

30. Learned Senior Counsel submits that even if the order of this Court under Article 19 of the Decree is considered to be merely administrative, it would be an order, which has civil consequences and therefore, the rules of natural justice would have to be followed. Though, the petitioner had filed a caveat in this case so that petitioner could satisfy this Court that rules of natural justice had been patently disregarded by the Tribunals, no cognizance of such caveat filed by the petitioner was taken by the senior most Administrative Judge of the Goa Bench of the Bombay High Court.

31. It is submitted by the learned Senior Counsel that para 1 of Article 19 of the Decree No. 35461 would be applicable only when the decisions and judgments of the Tribunals are forwarded to Rome for verification that is to the Supreme Tribunal or Roman Rota to examine their correctness and thereafter respective decrees of the Supreme Tribunal would be transmitted through diplomatic channel to the territorially competent High Court. He submits that in the present case, the decisions of the Patriarchal Tribunal and Metropolitan Tribunal were not sent to the Supreme Tribunal or Roman Rota. The procedure laid down in Article 19 para 1 is not applicable where the decision and Judgments are not forwarded to

Rome for verification that is to the Supreme Tribunal or Roman Rota to examine their correctness. The decree has not been amended after the change in the Canon Law.

32. It is submitted by the learned Senior Counsel that Article 19 thus does not confer powers on the Chief Justice of the High Court or the senior most Administrative Judge of a bench of the High Court to make the decisions and judgments of the Tribunals enforceable and to order that they be endorsed in the books of the Civil Registrar. Article 19 provides that the decisions shall be transmitted to the High Court. There is no provision in the Statute nor are there any rules framed by this Court, which empowers or empower the Chief Justice or for that matter, the senior most Administrative Judge of bench to exercise the powers conferred on the High Court. He submits that where the Bishop acts as Court of first instance, the decision would be sent through diplomatic channels to the High Court.

33. It is submitted by the learned Senior Counsel that the requirement under para 1 of Article 19 cannot be read down because when the Bishop exercises jurisdiction of the Court of first instance in accordance with Canon Law vide Canon 1419 and Canon 1687 para 3, the decision or judgment may go to Rome in appeal and the decision passed by the Supreme Tribunal or the Roman Rota may be transmitted in terms of para 1 to the High Court.

34. It is submitted by the learned Senior Counsel that the changes in the Canon Law do not exclude altogether the possibility of the decision being given by a foreign Tribunals. The Diocesan Bishop himself is competent to judge cases of the nullity of marriage with the briefer process. An appeal against decision of the Bishop may be made to the Roman Rota. If the decision is given by Roman Rota, the decision can only come via diplomatic channel.

35. It is submitted by the learned Senior Counsel that the High Court does not merely transmit or forward the decision of the Tribunals to the Civil Registrar but make them enforceable, directing the Civil Registrar to make the required endorsement in the Books of Civil Registration. It is submitted that in view of the present constitutional requirements, the parties would have to be heard before any such order is passed by the High Court. Learned Senior Counsel placed reliance on Section 13(d) of the Code of Civil Procedure, 1908 and would submit that an oral judgment would not be conclusive where the proceedings in which the Judgment obtained are opposed to rules of natural justice.

36. It is submitted that unless it is reviewed and confirmed, Article 1102 provides that for the Judgment to be confirmed, it is necessary that it does not contain decisions contrary to principles of Portuguese public order. It is submitted by the learned Senior Counsel that unlike in the rest of India or in England where religion and in the State are totally independent from each other, in Goa the

provisions of the Concordat and the Missionary Accord and Decree No. 35461 show that the State and Church are closely connected. Article 19 requires that the High Court and the Civil Courts should intervene in the ecclesiastical trials, decisions and Judgments. The jurisdiction to enforce them is exclusively of the High Court.

37. It is submitted by the learned Senior Counsel that the powers of High Court under Articles 226 and 227 of the Constitution to Review cannot be taken away. He submits that it is difficult to conceive that this Court, which has power to review under Article 226 and 227 of the Constitution of India would for all practical purposes grant its seal of approval to a patently illegal, unconstitutional and perverse decisions rendered by the Patriarchal Tribunal and the Metropolitan Tribunal. He submits that this Court is vested with powers under Articles 226 and 227 of the Constitution of India, which is the basic feature of the Constitution of India.

38. Learned Senior Counsel submits that Article 19 of the Decree, which provides that the High Court shall without revision or confirmation i.e. without exercising powers of review give its imprimatur to the decisions of the Tribunals is violative of the basic structure of the Constitution of India. Without Prejudice to the aforesaid submissions, it is submitted by the learned Senior Counsel that even if Article 19 of the Decree is to be saved by reading it down and reading into it the principles of natural justice, then also Article 19 of the Decree No. 35461 has not been complied with by the

Patriarchal Tribunal as well as the Metropolitan Tribunal and by this Court while transmitting the orders passed by the Tribunals to the Registrar of Marriages for recording an entry in the marriage register.

39. It is submitted by the learned Senior Counsel that annulment of marriages which are registered in the book of marriages with the Civil Registrar are not the matters of religion. He submits that secularism means that the State will not give any preference to a particular religion. It implies neutrality. He submits that thus all decisions, orders and endorsements made in gross violation of rules of natural justice and the fundamental rights of the petitioner be declared null and void and be set aside, if necessary by moulding the reliefs. He submits that the constitutional validity of Article 19 of Decree No. 35461 has to be decided in the light of provisions of Constitution of India and the well settled principles laid down by the Hon'ble Supreme Court of India on powers of judicial review.

40. In support of this submission, learned Senior Counsel placed reliance on the following Judgments:-

i). In the Judgment of Supreme Court in case of ***L. Chandra Kumar vs. Union of India 1997(3) SCC 261*** and in particular para 62, 65, 69 and 99.

ii). In the Judgment of Supreme Court in case of ***State of***

West Bengal vs. Committee for Protection of Democratic Rights 2010 (3) SCC 571 and in particular paras 51, 67 and 68(iii).

iii). In the Judgment of Supreme Court in case of ***Madras Bar Association vs. Union of India 2014 (10) SCC 1*** and in particular paras 106 and 108.

iv). In the Judgment of Supreme Court in case of ***State of Haryana vs. Haryana Cooperative Transport Ltd. (1977) SCC 271*** and in particular para 14.

41. Learned Advocate General on behalf of State of Goa at the first instance submits that Article 19 need not be struck down as unconstitutional and can be saved from the vice being constitutional by reading down in a manner in which principles of natural justice, the judicial review and the aspects as regards civil consequences could be read into Article 19.

42. It is submitted that by virtue of the provisions of the Goa, Daman and Diu (Administration) Act, 1962 which provides that all laws in force immediately before the "appointed day" i.e. 20th December 1961 in Goa, Daman and Diu or any part thereof shall continue to be in force therein until amended or repealed by competent legislature or other competent authority including the Decree No.35461 re "Marriage in the Portuguese Colonies" dated 22nd January 1946 promulgated by the Minister of Colonies of the

Portuguese Government. It is submitted that Decree has not been repealed by the State Legislature and continues to remain in force in Goa.

43. Learned Advocate General submits that the said Decree No.35461 is pursuant to a treaty, which is known as 'Concordat' in Portuguese language entered into between the Portuguese Government and the Holy See of Vatican City in the year 1940. It is submitted that though the Tribunals under the Decree had complete freedom and power in respect of acts that have religious consequences, in such case, principles of natural justice will have to be necessarily read in and the courts in India cannot be excluded to enforce constitutional statutory provisions.

44. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Baldev Singh and Ors. Vs. State of Himachal Pradesh, AIR 1987 SC 1239*** and in the case of ***S.L. Kanpoor Vs. Jagmohan, AIR 1981 SC 136*** and would submit that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. He placed reliance on the judgment of the Supreme Court in the case of ***D.K. Yadav Vs. J.M.A. Industries Ltd. (1993) 3 SCC 259*** in support of his submission that an order involving civil consequences must be made consistent with the rules of natural justice. The procedure prescribed for depriving a person of livelihood

must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14.

45. Learned Advocate General placed reliance on the judgment of the High Court in the case of ***Sohanlal Vs. Smt. Manju w/o Shri Sohanlal, ILR (2010) MP 1672*** and would submit that Madhya Pradesh High Court in the said judgment had refused to interfere with the order passed by the Family Court, whereby an *ex parte* Decree of Divorce had been set aside. ***Debasis Das, 2003 (1) SCC 557*** was adverted to which provided that even an order involving civil consequences must be made consistently with the rules of natural justice. Rules of natural justice may be implied from the nature of the duty to be performed under a statute. He submits that appeal preferred by an aggrieved party against the said judgment in the case of ***Sohanlal*** (supra) was dismissed by the Division Bench of the Madhya Pradesh High Court.

46. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Indian Young Lawyers Association and Ors. Vs. The State of Kerala and Ors., 2018 (13) SCALE 75*** and would submit that what is an essential practice in a religion and in the backdrop held that Article 25 merely protects the freedom to practice rituals, ceremonies, etc. which are an integral or essential part of a religion. It is held by the Supreme Court in the said judgment that the nature of the religion itself would be fundamentally altered if the so called essential

practice was struck down. Supreme Court in that case considered the issue whether the women shall be allowed to enter into the Sabarimala temple which was held to be non-essential practice.

47. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Mohinder Singh Gill and Ors. Vs. The Chief Election Commissioner, New Delhi & Ors., (1978) 1 SCC 405*** and would submit that to the extent that any acts or orders of Ecclesiastical Courts, the principles of natural justice will have to be read in and Courts will have the power to test such acts and orders to ensure conformity with constitutional and statutory provisions.

48. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Guruvayur Devaswom Managing Commit. & Ors. Vs. C.K. Rajan and Ors., AIR 2004 SC 561*** and would submit that Supreme Court in the said judgment has held that any right other than the fundamental rights contained in Articles 25 and 26 of the Constitution of India may either flow from a statute or from the customary laws.

49. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Shayara Bano & Ors. Vs. Union of India & Ors., AIR 2017 SC 4609.*** He submits that even though matters of faith and belief are protected by Article

25 of the Constitution, yet law relating to marriage and divorce were matters of faith and belief, were also liable to be tested on grounds of public order, morality and health as well as on the touchstone of the other provisions of Part III of the Constitution.

50. Learned Advocate General placed reliance on the judgment of this Court in the case of ***Noorjehan Safia Niaz and Ors. vs. State of Maharashtra and Ors., 2016 (5) ABR 660*** and would submit that non-essential religious practices do not have protection under Articles 25 and 26 and the same are considered secular in nature and can be "regulated by the State" and that "the rights of religious denomination" under Article 26 of the Constitution is subject to public order, morality and health and other rights under Chapter III. The State has power to "regulate" the affairs if the same affects the fundamental rights of any person guaranteed under Chapter III of the Constitution of India.

51. It is submitted by the learned Advocate General that the powers vested on the Ecclesiastical Courts which have civil consequences, including powers under Article 19 cannot in any manner be treated as essential religious practice. He placed reliance on Article 19 of the Decree No. 35461 and would submit that the said Article seeks to exclude the jurisdiction of the High Court from reviewing or considering judgment passed by the Ecclesiastical Courts (Tribunals) on merits. It would thus in effect seek to create a parallel authority ostensibly outside the purview of

the High Courts or the Supreme Court of India, even while performing non-administrative judicial functions, which appears *ex facie* untenable and unlawful.

52. It is submitted by the learned Advocate General that such decree which breaches the principles of natural justice is amenable to the judicial review under Article 226 of the Constitution of India. A sentence passed by the Ecclesiastical Court and transmitted to the High Court which requires without any exceptions to enforce them without revision and confirmation and which takes away the power of judicial review of Constitutional Court is *void ab initio*. He submits that Article 19 in as much as it forecloses the power of the judicial review of the High Court is pro tanto unconstitutional.

53. It is submitted by the learned Advocate General that Cannon law is an integral part of the law of the land and thus it conforms to the principles laid down under the Constitution of India and thus it must be made available for challenge under Article 226 of the Constitution of India. He placed reliance on the judgment of the Supreme Court in the case of ***Sujitendra Nath Singh Roy Vs. State of West Bengal and Ors., 2015 (12) SCC 514*** and would submit that power of the judicial review of the High Court under Articles 226 and 227 of the Constitution of India cannot be taken away by a law or even by constitutional amendments. He submits that the stand taken by the respondent no.3 that the Patriarchal

Tribunal is not amenable to the supervisory jurisdiction of this Court being an Ecclesiastical Court is not the correct position in law.

54. It is submitted that such Tribunals are in effect a creation (by extension) of State and have the power to determine conclusively, the rights of two or more contending parties, they satisfy the test of an authority vested with judicial powers of the State and ought to fall within the terms "authority" within the meaning of Article 226 and/or "court or tribunal" within the meaning of Article 227. He submits that Article 19 itself uses the phrases "courts", "decisions and judgments", enforcement of the said judgments, "service of summons or notice to the parties, experts, witnesses." He submits that each of those expressions in the given context supports the propositions advanced by him.

55. Learned Advocate General strongly placed reliance on the order passed by this Court on 4th October 2018 in this writ petition holding that reading of Article 19 of the Decree and the judgment in Joao Azavedo Vicente Paulo Fernandes does not indicate that powers under Articles 226 and 227 of the Constitution of India is any way affected. It is settled position of law that Articles 226 and 227 of the Constitution of India are basic structure of the constitution. He submits that this Court had adverted to the judgment of the Supreme Court in the case of ***L. Chandra Kumar vs. Union of India and Ors., (1997) 3 SCC 261.*** He submits that in the case of Joao Azavedo Vicente Paulo Fernandes (supra), this

Court did not consider the constitutionality of any provision of Decree No.35461.

56. Learned Advocate General placed reliance on the judgment of the Supreme Court in the case of ***Molly Joseph and Ors. vs. George Sebastian and Ors., 1996 6 SCC 337*** and would submit that Supreme Court had considered the provisions of Divorce Act, 1869 in the said judgment and has held that the provisions of the said Act purports to prescribe not only the grounds on which a marriage can be dissolved or declared to be nullity, but also provided the forum which can dissolve or declare the marriage to be nullity. Such powers have to be vested either in the District Court or the High Court. It is submitted by the learned Advocate General that there is thus no scope for any other authority including Ecclesiastical Tribunal to exercise power in connection with matrimonial matters which are covered by the provision of the Divorce Act.

57. It is submitted that in the said judgment, Supreme Court held that the High Court had rightly pointed out that even in cases where Ecclesiastical Court purports to grant annulment or divorce, the Church Authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force. He submits that Supreme Court in the said judgment has held that it cannot be held that any declaration of marriage to be void by such Tribunal shall be binding on the District

Court or the High Court. Such Tribunals cannot exercise a power parallel to the power of the District Court or the High Court which have been vested in the District Court and the High Court by the provisions of the Divorce Act.

58. It is submitted by the learned Advocate General that it cannot be said that the provisions of the Decree would operate independent of Article 226 of the Constitution or would not be subject to the inherent powers of the High Court. Any provision of the Decree which suggests otherwise and considers the role of the Courts to only be administrative, will need to be either struck down or read down. He placed reliance on the Report of the Law Commission of the Government of Goa i.e. Report No.21 published in March 2012 titled "Protection of Institution of Marriage" which recommended that Civil Courts alone should be competent to declare and grant separation, divorce or annulment of marriage, thus overriding the Decree.

59. Learned Advocate General in his alternate submission, strongly placed reliance on the judgment of the Supreme Court in the case of ***Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & Ors., AIR 1991 SC 101*** in support of his submission that Article 19 can be saved from the vice being constitutional by reading down in a manner in which principles of natural justice, the judicial review and the aspects as regards civil consequences could be read into Article 19 of Decree No.35461 of 1946.

60. It is submitted by the learned Advocate General that on 25th December 1910, a separate Law of Marriages and Divorce was enacted allowing for Divorce to take place. For the first time, the dissolution of marriage was permitted by divorce, including by mutual consent. Portugal was a Monarchy till 1910 which was then replaced by Republic leading to these changes in succession. On 4th November 1912, the Code of Civil Registration was enacted by the Decree dated 4th November 1912 and was enforced with effect from 1st January 1914. The Registration of Marriages, Births and Deaths was made compulsory by virtue of the said enactment. On 16th December 1930, an amended version of the Portuguese Civil Code came to be published by the Portuguese Government bringing all these changes under one roof.

61. Learned Advocate General also placed reliance on the 'Concordat' (treaty) entered into on 7th May 1940 by the Portuguese Republic and the Holy See of Vatican City introducing changes in relation to Catholic in Portugal and its Territory. In pursuance of the same a new enactment Decree No.35461 was passed dated 22nd January 1946 (w.e.f. 4th September 1946) whereby the Christian marriages could be performed before the Church authorities upon the production of a no objection certificate from the Registration Officer, appointed under Code of Civil Registration and such a marriage would have civil effects if transcribed in the office of Civil Registration. These canonical marriages were declared indissoluble

by Article 4 of the said Decree. Two Catholics married canonically could not divorce, but the same relief was available to two Catholics married before the Civil Registration Officer. By virtue of the Goa, Daman and Diu (Administration) Act, 1962, Section 5(1) thereof, these provisions are maintained which have not been repealed specifically by competent legislature.

62. Mr.Coelho Pereira, learned senior counsel for the respondent no.2 (Patriarchal Tribunal of the Archdiocese of Goa, Daman and Diu) submits that it is well settled principle of law that a provision of law is presumed to be constitutionally valid. It is for the petitioner to assail the provisions of law to plead, prove and/or establish that the impugned provision is violative of any of the provisions of the Constitution. He submits that in this case, though it could perhaps be Article 14 of the Constitution of India, as a fact, petitioner did not plead what Article of the Constitution of India, is violated by Article 19 of the Decree No.35461. He submits that prayer clause (a) of the writ petition thus deserves to be rejected on this ground alone.

63. Insofar as submission of the learned senior counsel for the petitioner that the impugned order passed by the respondent no.3 was in violation of principles of natural justice and was based on the bias against the petitioner is concerned, it is submitted by the learned senior counsel that the writ petition filed by the petitioner is upon misconception of law and lacks the necessary foundation for a

challenge to the constitutional validity of Article 19 and is devoid of material facts and particulars for such a challenge. Learned senior counsel invited our attention to the Article 19 of the Decree Law No.35461 and would submit that the said article was enacted as law by the said Decree No.35461 on 25th July, 1940 in order to confer legal sanctity to canonical marriages and the provisions of Article 19 is one such provision which was incorporated in order to give legal effect to the annulment of marriages as effected under canon law by such Tribunals.

64. It is submitted that the said provision was incorporated in the decree pursuant to the Concordat between the Holy See of Rome and the Portuguese Republic whereby in terms of Article 22 of the said agreement the Portuguese Government recognized the civil effects of marriages celebrated in conformity with canonical laws provided that the record of marriage was transcribed in competent Civil Registers of the State in the manner stipulated in the said Article 22 of the said Decree No.35461. He placed reliance on Articles 23, 24 and 25 of the said Decree and would submit that by the very fact of celebration of the canonical marriage, the spouses renounced the civil right of applying for divorce and for that reason the divorce could not be granted by civil courts to the catholic marriages. Such power based only with competent Ecclesiastic Tribunals and offices and that the decisions and sentences of the said offices and Tribunals when final would go to Supreme Tribunal for Apostolica Signatura for verification and thereafter with the respective decrees of that

supreme tribunal would be transmitted by the diplomatic channel to the High Court of the State, territorially competent and who in turn would direct that the said decision be recorded in the civil register of the State by the side of the record of the marriage. He also relied upon Article 4 of the said decree in support of the aforesaid submission.

65. Learned senior counsel placed reliance on the judgment of the Judicial Commissioner Court in case of ***Speciosa Nunes vs. Teotonio Fernandes, AIR 1974 Goa 46*** and would submit that by the said judgment, Article 4 of the decree law was struck down. Goa was liberated on 19th December, 1961 and by virtue of the Goa Daman Diu Administration Act of 1962, all laws which were in force prior to appointed date in terms of section 5(1) of the said Act are stated to continue to be in force until amended or repealed by competent legislature or a competent authority. He submits that Article 19 was incorporated as a law to give legal effect to the annulment of canonical marriages by such Tribunals after review of the annulment decision rendered by such Tribunals confirmed by then the Supreme Ecclesiastic Tribunal of Rome which would mean an ecclesiastic judicial review.

66. It is submitted by the learned senior counsel that Article 19 was enacted to give recognition to judgments of annulment of marriage with respect to Catholics by such Tribunals and give civil effect to have such decision being transmitted by the High Court to

the concerned Registrar of Marriages for cancellation. He submits that the said act of transmission of judgment would be an administrative act.

67. It is submitted by the learned senior counsel that Article 19 being in the statute book in view of the provisions of law in force insofar as the personal law of the Catholic as relating to marriage and divorce which gives legal effects to the personal law of Catholics in Goa who are religious denomination. Learned senior counsel placed reliance on Article 26(b) of the Constitution of India and would submit that under the said Article, subject to public order, morality and health every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion. Learned senior counsel placed reliance on the judgment of this court in case of ***Joao Azavedo Vincent Paul Fernandes vs. Clara Rodrigues, (1996) 5 Bom.C.R.155*** and in particular paragraphs 6 and 7 and would submit that this court has construed Article 19 of the said decree and has held that the language of Article 19 of the decree clearly suggests that the judgment and decision of the tribunal are to be placed before the administrative side of the High Court.

68. It is submitted that Article 19 has to be considered as proceedings on the administrative side of the High Court and post the said decision as it had been a practice followed in the High Court to place the matter before the Senior most Judge on the

administrative side ruled that there is no indication that the powers under Articles 226 and 227 of the Constitution of India are anyway effected.

69. Learned senior counsel for the respondent no.2 placed reliance on the judgment of Supreme Court in case of ***L.Chandra Kumar vs. Union of India and others, (1997) 3 SCC 261*** and would submit that it cannot be said that Article 19 intends to take away the power of judicial review. Even if it is meant to take away the power under Articles 226 and 227 of the Constitution of India, such provision would be unconstitutional on the face of it. He submits that the provisions of Article 19 cannot be declared as null and void on the ground that the said Article conferred administrative powers on the High Court to transmit the decisions rendered by the ecclesiastic courts in matters of declaring the nullity of a canonical marriage in the light of the view already taken by this court in this petition itself. He submits that the plenary powers of Article 226 of this court are not taken away, if they are invoked by any party.

70. It is submitted by the learned senior counsel that since the ecclesiastic court are not courts and/or tribunals subject to the jurisdiction of this court Article 227 of the Constitution of India cannot be invoked. Article 227 of the Constitution of India confers power of superintendence over all courts by the High Court and Tribunals throughout the territories in relation to which it exercises jurisdiction. He submits that Article 19 of the Decree law acknowledges the

jurisdiction of Tribunals to adjudicate cases of nullity of marriages of Christians and create machinery for its enforceability. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Molly Joseph alias Nish vs. Goerge Sebastian alias Joy, (1996) SCC 337*** and would submit that in that case the Supreme Court was called upon to adjudicate the judgment of the High Court of annulment done by order of Tribunals after the Divorce Act, 1899.

71. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Naresh Shridhar Marajkar & others vs. State of Maharashtra and another, AIR 1967 SC 1*** in which the Supreme Court followed the judgment of Kings Bench in case of ***Rex vs. Chancellor S. Edmund Berry Elwich, 1945 Kings Bench 195*** in which it is held that a writ of certiorari would not go to Ecclesiastical Court. It is submitted by the learned senior counsel that by enacting Article 19 in the Decree Law No.35461, the Legislature expressly recognized the decision rendered by such Tribunals and restricted the jurisdiction of the High Court to provisions of Article 19 of the said law to its confines keeping it out of the purview of the judicial review.

72. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Radhey Shyam and another vs. Chhabi Nath and others, (2015) 5 SCC 423*** and would submit that the judgment of Supreme Court in case of ***Naresh Shridhar Marajkar & others*** (supra) had been relied upon in the said

judgment in case of ***Radhey Shyam and another*** (supra) where the Hon'ble Supreme Court considered the powers of High Court under Articles 226 and 227 of the Constitution of India, over the subordinate courts.

73. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Clarance Pais vs. Union of India, 2017 SCC OnLine SC 1625*** and would submit that in the context of the prayers in the petition in that matter, the Supreme Court observed that the High Court had rightly pointed out that even in cases where Ecclesiastic Tribunal purports to grant annulments or divorce, the church authorities would still continue to be under disability to perform or solemnize a second marriage for any of the parties until the marriage is dissolved or annulled in accordance with the statutory law in force. He submits that in this case, Article 19 gives legal enforcement to the annulment by such Tribunals.

74. It is submitted by the learned senior counsel that the powers under Article 226 of the Constitution of India, at the instance of a petitioner to challenge a cancellation effected in terms of the provisions of Article 19 of the decree would not be ousted on the ground of violation of the principles of natural justice or the provisions of the Canon Law within the confines of procedure set up by the Canon Law for deciding such cases. He submits that the judicial review under Article 226 would be restricted to ascertain whether the provisions of natural justice within the provisions of the Canon Law

have been violated or not. The jurisdiction of the civil courts under section 9 of the Code of Civil Procedure would not be ousted to challenge an annulment under Article 19 if it is tainted with fraud and vices.

75. It is submitted that the Canon law has a complete set of procedure right from appointment of Judges, appointment of the defender of the bond advocates, their qualifications and procedure for trial. The Ecclesiastic Courts are constituted under Article 1419 of the Canon Law. He submits that in this case, the petitioner has not set out any provision of Canon Law and has not challenged the concerned provisions of Canon Law to show how it is violative of the principles of natural justice prescribed under the Canon Law. He submits that the pleadings filed by the petitioner being totally vague, no interference with the decisions of the courts below is warranted.

76. In his alternate submission, learned senior counsel for the respondent no.2 submits that the Legislature in deference to the Personal Law of Catholics has given acknowledgment to the decision of the Ecclesiastical Tribunals insofar as nullity of marriage of the Catholic is concerned and kept out of the pale of challenge. He submits that in any event, the Canon Law is complete code providing for adequate procedure and has all the trappings of a valid procedure *vis-a-vis* the principles of natural justice. He submits that all the provisions of Canon Law were fully complied with by two tribunals

below.

77. Learned senior counsel distinguishes the judgment relied upon by Mr.D'costa, learned senior counsel for the petitioner and would submit that none of those judgments would apply to the facts of this case. He placed reliance on the judgment of Supreme Court in case of ***K.L.Tripati vs. State Bank of India, AIR 1984 SC 273*** and would submit that the Supreme Court in the said judgment held that the principles of natural justice depends on the facts and circumstances of each particular case. In quasi-judicial adjudication neither cross examination nor opportunity to lead evidence is an integral part.

78. It is submitted by the learned senior counsel that in this case, in view of the complaint filed by the petitioner against the erstwhile Ecclesiastic Court, the Bishop had changed the Judge and appointed another Judge. Learned senior counsel placed reliance on the Canon 1055 and 1056 of the Canon Law of Catholic providing for the provisions regarding marriage and divorce of Catholic and also placed reliance on Canon 1402, 1407, 1419, 1420, 1421, 1432, 1435, 1476, 1483, 1513, 1526 to 1529, 1560 to 1571. He submits that there is no right of cross examination provided in any of the provision of the said Code of Canon. He submits that the fact remains that both the parties were substantially heard by the Ecclesiastic Court. Since there was no prejudice caused to the petitioner by not allowing the petitioner to cross examine the

respondent no.4 and the principles of natural justice being no straight jacket formula, the judgment delivered by the two courts below cannot be interfered with. He submits that since the petitioner has not disputed, the facts in the matter, the opportunity to cross examine the respondent no.4 by the petitioner would be of no significance.

79. It is submitted by the learned senior counsel that the procedure provided by the Canon Law permits recording of the statement. Though the petitioner was not allowed to remain present when the statement of the respondent no.4 was recorded and vice-versa defender of board was allowed to remain present.

80. Mr.Sudesh Usgaonkar, learned counsel appearing for the respondent no.4 submits that the petitioner is not entitled to seek relief of striking down Article 19 of Decree No.35461 as unconstitutional, illegal, null and void on the basis of pleadings at para 15 to the writ petition or otherwise. He submits that Article 19 of Decree No.35461 is not unconstitutional. The said Article contemplates that Ecclesiastical Tribunals can alone take cognizance of the cases for annulment of canonical marriage. High Court is only an administrative authority under the said decree and does not act as judicial authority. High Court is designated as the confirming authority of such order when it is final, for enforcement as contemplated under Article 19. Learned counsel placed reliance on the judgment of this Court in case of ***Joao Azavedo Vincent Paulo Fernandes*** (supra) in support of this submission.

81. Learned counsel for the respondent no.4 however, submits that the role of the High Court as a confirming authority does not in any event abridge the power of the High Court prescribed under the Constitution of India. He submits that this Court has already observed in paragraphs 6 and 7 of the order dated 4th October, 2018 passed by this Court in this writ petition that Article 19 of Decree does not affect and take away the powers of the judicial review of this Court. He submits that in view of the said order already passed by this Court, the challenge to Article 19 on that ground cannot be sustained.

82. Insofar as the consequential relief in paragraph 36(b) of the writ petition is concerned, it is submitted that since the relief in terms of paragraph (a) cannot be granted by this Court, relief in prayer (b) seeking declaration that order of the High Court confirming the order of Annulment by Tribunals and directing cancellation endorsement in the Book of the Civil Registration, is null and void, cannot be granted and has to be rejected. He submits that the similar reliefs in prayer clauses (c) and (d) also cannot be granted for the said reasons.

83. Insofar as the prayer clauses (e) i.e. to quash and set aside the decisions of the Patriarchal Tribunal or Metropolitan Tribunal prayed by the petitioner is concerned, it is submitted that the said prayer also cannot be granted for the reason that this Court

exercises its power of judicial review of the orders passed by administrative, quasi judicial authorities of the State by issuing writ of certiorari under Article 226 or direction under Article 227 of the Constitution of India. There is no scope for exercising the writ jurisdiction or Supervisory jurisdiction in the present case. It is submitted that none of these Tribunals are created by the State conferring its inherent judicial powers nor are they created under any Statute. Both these Tribunals are adjudicating bodies set up under the Code of Canon Law dealing with the cases of annulment of marriage under Canon Law. No writ thus can be issued under Article 226 nor any direction or order under Article 227 of the Constitution of India. There is no judicial review of the decision of the Tribunal set up under the Canon Law except provided by paragraph 2 of Article 38 of Decree. Thus these Tribunals are not set up under Decree No.35461. The said decree only provides for enforceability of orders passed in the cases of Civil Registration.

84. In his alternate submission learned counsel for the respondent no.4 submits that the petitioners has not made out any case that any of those Tribunals had no jurisdiction to pass an order or that there is any case of illegal exercise of jurisdiction. A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned findings. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the

said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. He submits that none of these Tribunals are amenable to jurisdiction under Article 227 because they are not “Courts” and “Tribunals” as specified in the said Article. These Tribunals are also made akin to Arbitrators appointed under the Statute.

85. It is submitted by the learned counsel that since those Tribunals had jurisdiction to decide whether the marriage between the petitioner and the respondent no.4 shall be annulled or not and once the Tribunal had exercised such jurisdiction and decided the said issue, whether the said issue is illegally decided or not under Canon Law cannot be decided in a writ petition. The powers under Article 227 can be exercised only in case the order passed by the Tribunal is without jurisdiction or there was no evidence to justify the conclusion drawn by the Tribunals or if no reasonable person could have possibly come to a conclusion when it is said to be perverse. He submits that this Court under Article 227 cannot re-appreciate the fact as Appellate Court. Even if the judgment of the Tribunals below is erroneous, it would not fall within the scope of jurisdiction of this Court exercising writ jurisdiction.

86. Insofar as the issue whether Article 14 of the Constitution of India was attracted in the facts of this case or not, learned counsel would submit that the pleading in this regard is totally vague and more particularly in paragraphs 11 and 18 and is not sufficient to

support the submission of the petitioner that there was violation of principles of natural justice in this case and would attract Article 14 of the Constitution of India.

87. Learned counsel for the respondent no.4 placed reliance on Article 2 of Decree No.35461 which provides for solemnization of marriage before Ministers of Catholic Church as per Canonical laws. The said Article provides for procedure for registration of marriage with Civil Registration and for confirmation of orders of annulment of marriage by the Patriarchal Tribunal and the Metropolitan Tribunal and for cancellation of entries in the Records of Sub-Registrar of Marriage.

88. Learned counsel for the respondent no.4 placed reliance on Canon 1095 which provides for disqualification to give consent. Learned counsel invited our attention to prayer clauses (e) and various grounds raised by the petitioner in the writ petition and more particularly at paras 10, 11, 14 to 18 of the petition and would submit that the petitioner had filed her application to transfer her case on the ground of bias of the appointed Judge. On such application of the applicant, Bishop had appointed a new Judge on 29th August, 2015. The petitioner had made a grievance on 21st March, 2015 that her evidence was not properly recorded by the Patriarchal Tribunal. She has also raised the grounds about lack of opportunities to cross-examine and not having an opportunity to engage an advocate. He submits that the petitioner has suppressed the contents of the letter

dated 3rd October, 2014 addressed to the Patriarchal Tribunal and the explanation furnished to the petitioner by the Patriarchal Tribunal. The petitioner was already told by the Patriarchal Tribunal that she could appoint a Ecclesiastical advocate in accordance with law. The Patriarchal Tribunal had given a list to the petitioner and had suggested that since the Tribunal did not have any advocate, one of the Ecclesiastical Judges not involved in her case can be appointed to assist her.

89. Learned counsel for the respondent no.4 placed reliance on Canon 1678 , 2481 and 1663 and would submit that there was no violation of the principles of natural justice. Both the parties were duly heard by the Patriarchal Tribunal before the impugned order was passed. No prejudice of any nature whatsoever was caused to the petitioner.

90. It is submitted by the learned counsel that though the petitioner was aware of the alleged incorrect recording of evidence by the Patriarchal Tribunal on 21st March, 2015 i.e. a year before the impugned order came to be passed, the petitioner participated before the Patriarchal Tribunal and invited the order. The petitioner thus cannot be allowed to set up a ground to attack the procedure now. He submits that the petitioner had preferred an appeal before the Appellate Court against the order passed by the Patriarchal Tribunal but did not raise any ground that the petitioner was not allowed to engage the services of any advocate or that the principles

of natural justice were violated or that the cross-examination of the respondent no.4 was not permitted. The petitioner thus cannot be allowed to raise any such issue in this writ petition.

91. It is submitted by the learned counsel that the Patriarchal Tribunal has rendered various findings based on evidence which findings being not perverse, cannot be interfered with by this Court in this writ petition. The Patriarchal Tribunal had based its conclusion on the basis of the statement of the petitioner made herself. The arguments advanced by the petitioner are in the realm of appreciation of evidence which cannot be permitted by this Court. He strongly placed reliance on the order passed by the Metropolitan Tribunal and would submit that the findings rendered by the Patriarchal Tribunal has been confirmed by the Metropolitan Tribunal. The findings rendered by the two Tribunals below being concurrent, cannot be interfered with by this Court under Article 227 of the Constitution of India.

92. It is submitted by the learned counsel for the respondent no.4 that the petitioner has not invoked any other Article of Constitution of India in this writ petition. Prayer clause (e) in the writ petition is not a consequential relief to prayer clause (a) and thus in exercise of notification dated 9th October, 2014, the relief in terms of prayer clause (e) i.e. the petitioner challenging the judicial or quasi judicial order can be heard by the Single Judge of this Court and cannot be entertained by the Division Bench.

93. Insofar as the merits of the matter are concerned, it is submitted by the learned counsel that during the period of three months, referred in paragraph 3 of the petition, the petitioner had met the respondent no.4 only on few occasions. Even the correspondence referred to and relied upon by the petitioner in the writ petition would not be sufficient to interfere with the findings and the evidence recorded by the Patriarchal Tribunal. The family members of the respondent no.4 did not interfere with the petitioner. The differences between the petitioner and the respondent no.4 were not due to alleged intervention of the family members. There was no possibility of any reconciliation between the parties in view of the fact that the differences between the parties had commenced even before the marriage and also after the marriage which shows irretrievable break down of the marriage.

94. It is submitted by the learned counsel for the respondent no.4 that the petitioner cannot be allowed to raise an issue after one year of recording of evidence of the petitioner by the Patriarchal Tribunal that her evidence was not recorded properly. No additional evidence was recorded by the Patriarchal Tribunal behind the back of the petitioner. He submits that under the said Decree No.35461, there is no provision permitting the cross-examination of any witness to the knowledge of the petitioner. None of the parties had thus cross-examined each other before the Patriarchal Tribunal.

95. It is submitted that the findings of the Patriarchal Tribunal that there was lack of due discretion of the judgment concerning essential matrimonial rights and duties on the part of the petitioner is based on evidence led by both the parties. The petitioner could not point out any perversity in the said findings rendered by the two Tribunals below. The marriage of the petitioner and the respondent no.4 has been duly annulled by competent Ecclesiastical Courts. The registration of marriage of the petitioner with the respondent no.4 has been already cancelled. Any further declaration in terms of prayer clauses (a), (b) or (c) will not affect the effect of cancellation of marriage because it was based on valid provisions of the existing laws.

96. Insofar as the issue raised by the petitioner that this Court, did not consider the caveat filed by the petitioner against the orders passed by the Tribunals below is concerned, it is submitted that since both the orders were against the petitioner, there was no scope of filing a caveat by the petitioner. Both the Tribunals had followed due procedure under Article 19 of Decree.

97. It is submitted by the learned counsel that the petitioner was not mature to be conscious of matrimonial obligations and thus the consent for marriage was vitiated on that ground itself. The Tribunals below have rendered the findings of fact that the petitioner had not at all exercised due discretion of the judgment concerning essential matrimonial obligation. The petitioner has already filed a

case for domestic violence against the respondent no.4 and has obtained an order of injunction restraining the respondent no.4 from entering a flat of the respondent no.4 which is occupied by the petitioner.

98. Insofar as the submission of the learned senior counsel for the petitioner that the judgments given by the Tribunal have only theological value is concerned, learned counsel for the respondent no.4 placed reliance on the Canon 1055, clause 2, Canon 1121 and 1122 and would submit that the marriage under Canon Law is also a contract and thus nullity of contract of marriage is also contemplated under Canon Law. The said Canon Law empowers the Tribunal to pronounce upon issue of nullity of marriage contract. The order of nullity if any is required to be registered in Register of Marriages and Baptism. Learned counsel also placed reliance on Canon 1684 and would submit that under the said Canon Law, the rights of those whose marriages are declared invalid are entitled to remarry upon decree being notified to them.

99. It is submitted by the learned counsel that Article 2 of Decree No.35461 brought into powers on 4th September, 1946 recognizes Catholic marriages solemnized before Catholic Church as per Canonical laws. He relied upon Articles 8, 9 and 11 of the said decree regarding the procedure for registration of marriage and cancellation of entry of marriage in the Register of Marriages before Civil Registration Office.

100. Insofar the submission of the petitioner that the Defender of the Bond has not defended the bond is concerned, learned counsel placed reliance on Article 1432 to 1434 of Decree and would submit that the defender of the bond in this case had made the observations which are recorded at page 216 of the record of proceedings before the Tribunal. He submits that insofar as the grievance made in paragraph 9(b) of the writ petition is concerned, there was no evidence led by the petitioner on that point which is now raised in the petition.

101. Insofar as the submission of the petitioner that no expert was examined by the respondent no.4 in support of his case, that there was grave lack of discretion of judgment, learned counsel placed reliance on Canon 1095 of Decree and would submit that such principles are not akin to the ground in Canon 1095 which is psychological defect in which there may be need to examine an expert. It is subjective satisfaction of the Judge based on evidence which was sufficient to come to such a conclusion.

102. Insofar as the submissions made by the learned Advocate General on behalf of the respondent no.1 is concerned, learned counsel for the respondent no.4 submits that there is no challenge to Article 19 made by the petitioner on the ground that it has to be read down in as much as principles of natural justice or that Article 14 of the Constitution of India has to be read into it. The petitioner has

challenged the validity of Article 19 of decree on the ground summarized in paragraph 25 of the petition. He submits that in any event such grounds raised by the petitioner are without any merit. There is no power of review of the order passed under Article 19 of the Decree and thus there is no scope of any hearing being offered to the petitioner or any of the parties. Article 14 is not attracted at the stage of confirmation of the order of the High Court. There is thus no question of reading down Article 19 on that ground.

103. Insofar as the submission of the petitioner that the marriage is registered and as such its solemnization and annulment gives rise to Civil effects as per Article 20 of the decree is concerned, it is submitted by the learned counsel that Article 20 of the decree does not deal with either solemnization or annulment. It only provides that Civil law regarding separations of persons and properties shall also apply to canonical marriages which are transcribed in the records of office of the Registrar of Marriages. He relied upon Articles 1096 to 1177 of the decree.

104. Insofar as reliance placed on Article 13 of the Constitution of India by the learned Advocate General is concerned, it is submitted by the learned counsel for the respondent no.4 that once it is demonstrated that Article 19 does not abridge or restrict the power under Articles 226 and 227 of the Constitution of India, there is no scope for further submission on Article 13(1) of the Constitution of India.

105. Insofar as reliance on Articles 25 and 26 relied upon by the learned Advocate General is concerned, it is submitted by the learned counsel that the said submission is totally misconceived. Article 25 speaks about right of the State or operation of existing law regulating the activities referred to at clause (a) of Article 25(2). Similarly Article 26 is also not relevant for the same reasons. There is no complaint that there is any restriction on the freedom to manage religious affairs.

106. Learned counsel for the respondent no.4 placed reliance on the following judgments in support of his submission :-

i). Supreme Court in case of ***Madanlal & Ors. vs. State of J & K & Ors. (1995) 3 SCC 486*** and in particular paragraph 9,

ii). Supreme Court in case of ***Union of India & Anr. vs. B.C. Chaturvedi, (1995) 6 SCC 750***, and in particular paragraph 12,

iii). Court of Appeal in case of ***Russell vs. Duke of Norfolk & Ors. 109, All England Law Reports, Volume – I***, and in particular paragraph 11,

iv). Supreme Court in case of ***Syed Yakoob vs. K.S. Radhakrishnan & Ors. AIR 1964 SCC 477***, and in particular paragraph 7 and 8, and

v). Supreme Court in case of ***Chandavarkar Sita Ratna Rao vs. Ashalata S. Guram, (1986) 4 SCC 447*** and in particular paragraphs 16 and 20.

107. Mr.D'Costa, learned counsel for the petitioner in rejoinder submits that irretrievable break down of marriage is not the ground of annulment of marriage under Canon law. If the petitioner would have remained absent before the Patriarchal Tribunal, who was a priest, he would have proceeded with the matter *ex-parte* against the petitioner. The petitioner had specifically asked for permission to engage a lawyer which was not granted. Admittedly, there was no opportunity granted to the petitioner to cross-examine the respondent no.4 nor was allowed to remain present when the evidence of the respondent no.4 was recorded. The petitioner was not granted opportunity to defend her case. He submits that the Civil Court is not precluded from annulling the marriage within its jurisdiction.

108. Learned senior counsel placed reliance on Articles 65 to 68 of decree which are the provisions in respect of marriage and provides that the marriage is a civil contract. He submits that Patriarchal Tribunal thus steps into the shoes of a Civil Court and performs public functions. The orders are transmitted to this Court by the Tribunal below for forwarding the same to the Registrar of Marriage. The High Court does not act as a post office. The order passed by the High Court is enforceable as an order.

109. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of ***State of Haryana v/s. Haryana Cooperative Transport Ltd.*** (supra) and in particular paragraphs 9, 10 and 18 and would submit that the technicalities should not come in the way of administration of justice. Article 3 of Decree was not at all complied with by the Patriarchal Tribunal. He submits that the Matrimonial Canon Law gives right to engage an advocate of choice of the parties before the Patriarchal Tribunal. He placed reliance on Article 18 of the Matrimonial Canon Law allowing the parties and their advocates to remain present at the time of recording evidence and hearing.

110. Insofar as Writ Petition No.691 of 2013 is concerned, Mr.Bhargav Khandeparkar, learned counsel appearing for the petitioner invited our attention to some of the annexures to the writ petition filed by his client and also the written arguments filed by him and adopted the arguments advanced by Mr.D'Costa, learned senior counsel for the petitioner in Writ Petition No.351 of 2017. He has also annexed the copies of various judgments relied upon by him in the written arguments filed by him which would be considered in the later part of this judgment.

REASONS AND CONCLUSION :

111. We shall first decide whether High Court has any power of review or superintendence against the decree passed by the two tribunals below under Articles 226 and 227 of the Constitution of

India or not.

112. There is no dispute that in the year 1867, the Portuguese Civil Code was enacted which regulates aspects relating to marriage, inheritance, contracts, civil rights etc. Originally, the said Portuguese Civil Code did not have provisions of divorce, the Portuguese being a Roman Catholic Monarchy, and marriages in Canon Law being indissoluble. With effect from 1st July, 1870, the said Portuguese Civil Code was made applicable to Goa, Daman and Diu by Enactment dated 18th November 1869. On 25th December,1910, a separate Law of Marriages and Law of Divorce were enacted allowing for divorce to take place. For the first time the dissolution of marriage was permitted by divorce, including mutual consent. Portugal was a Monarchy till 1910 which was thereafter replaced by Republic leading to these changes in succession.

113. On 4th November, 1912, the Code of Civil Registration was enacted by the decree dated 4th November, 1912 and was enforced w.e.f. 1st January,1914. By virtue of the said Code of Registration, marriages, births and deaths was made compulsory. There is no dispute that on 16th December,1930, an amended version of the Portuguese Civil Code was published by the Portuguese Government bringing all these changes under one roof. On 7th May, 1940, Concordat (Treaty) was entered into by the Portuguese Republic and the Holy See of the Vatican City introducing changes in relation to Catholic in Portugal and its Territory. Concordat was an agreement

between the Portuguese State and the Holy See dated 7th May, 1940. In pursuance of the same, a new enactment Decree No. 35461 was passed dated 22nd January, 1946 w.e.f. 4th September, 1946. Under the said decree, the Christian marriages could be performed before the Church authorities upon the production of a no objection certificate from the Registration Officer, appointed under the Code of Civil Registration and such a marriage would have civil effects if transcribed in the Office of the Civil Registration.

114. Insofar as Ecclesiastic courts are concerned, it is the case of the respondent nos. 2 and 4 that the same are constituted under Article 1419 of the Canon Law. Under Article 4 of the Decree No.35461, it was provided that the canonical marriages were declared indissoluble. After coming into force of the decree by the very fact of solemnization of the canonical marriage, the spouses would renounce the civil rights of seeking divorce for which reasons the civil courts would not have the power to decree the same in relation to such marriage.

115. By virtue of Goa Daman Diu (Administration) Act, 1962, all laws which were in force prior to the appointed date in terms of section 5(1) of the said Act are stated to continue to be in force until amended or repealed by competent legislature or a competent authority in the State of Goa. Under Article 19 of the said decree, to give legal effect to the annulment of canonical marriages by Ecclesiastic courts after review of the annulment decision rendered

by Ecclesiastic court confirmed by the then Supreme Ecclesiastic Tribunal of Rome was provided.

116. The question that arises for consideration of this court is also whether the order passed by the Senior most and Administrative Judge of the Goa Bench of this court thereby directing the Registrar of Marriages to make an entry in the register of the Marriages would be an administrative order simplicitor without power of review or this court can set aside the decree passed by the two courts below on merits by exercising judicial power or power of review/superintendence under Articles 226 and 227 of the Constitution of India.

117. It was vehemently urged by Mr.Coelho Pereira, learned senior counsel for the respondent no.2 that by virtue of Article 19 of the Decree No. 35461, the exclusive jurisdiction, the authority or power of Ecclesiastic court, neither the District Court nor the High Court has power to declare a marriage performed under the provisions of the said Decree No. 35461 as nullity. It is also the case of the respondent nos. 2 and 4 that various articles in the said decree had statutory force of law and the decree passed by the Ecclesiastic Tribunal as well as the Metropolitan Tribunal had statutory force of law.

118. We will consider the issue on the basis of the submission advanced by the learned counsel for the parties at great length and

decide whether such decrees passed by the Ecclesiastic Tribunals declaring the marriage nullity would be the Tribunals within the supervisory jurisdiction of this High Court or not. We shall also decide the issue simultaneously whether the principles of natural justice were required to be followed by such Tribunal while declaring a marriage nullity, whether an opportunity to cross examine the opposite party or to engage an advocate before such Tribunal, right to engage an advocate before such Tribunal, examination of the witness by the other side in presence of other side, whether High Court can simplicitor transmit the decrees of these Tribunals to the Registration of the Marriage without hearing any of the parties and more particularly the party who had lost before such Tribunal or not.

119. This Court shall now decide whether Article 19 of the Decree No. 35461 deserves to be declared as unconstitutional on the ground that the power of review of High Court under Articles 226 and 227 of the Constitution of India whether are taken away and if taken away, such provision is *ultra vires* Articles 14 and 21 of the Constitution of India and thus should be declared as unconstitutional or on such ground the said Article 19 of Decree No. 35461 shall be read down and various principles of natural justice shall be read in the said Article or not.

120. This court passed an order on 4th October,2018 in one of these writ petitions and after construing of article of Decree No. 35461 and considering the judgment of this court in case of ***Joao***

Azavedo Vincent Paul Fernandes (supra) and judgment of Supreme Court in case of ***L.Chandra Kumar*** (supra) held that it cannot be said that Article 19 intend to take away the power of judicial review. Even if it is meant to take away the power under Articles 226 and 227 of the Constitution of India, such provision would be unconstitutional on the face of it. This court recorded the statement made by Mr.Coelho Pereira, learned senior counsel for the respondent no.2 that in the facts and circumstances, for the purpose of present matter, the respondent no.2 has no objection if the court seek to ascertain whether any effective relief could be granted to the petitioner in exercise of the power under Articles 226 and 227 of the Constitution of India.

121. After referring to paragraphs 7 and 8 of the judgment of this court in case of ***Joao Azavedo Vincent Paul Fernandes*** (supra), this court observed in the said order that in the said decision, Article 19 is treated as proceedings on the administrative side by the High Court. Post this decision, it has been practiced in the High Court to place the matter before the Senior most Judge on the administrative side. This court also observed that after reading of Article 19 of the decree, the judgment in case of ***Joao Azavedo Vincent Paul Fernandes*** (supra) does not indicate that the powers under Articles 226 and 227 of the Constitution of India are any way affected. Even otherwise it is settled position of law that Articles 226 and 227 of the Constitution of India are part of the basic structure of the Constitution.

122. Supreme Court in case of ***The State of Haryana vs. The Haryana Cooperative Transport Ltd. & Ors.*** (supra) has held that while construing section 9 of the Industrial Disputes Act, 1947, it is provided that no order of the appropriate Government or of the Central Government appointing any person as the chairman or any other member of a Board of Court as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in question in any manner and held that it is also impossible to construe the provision as in derogation of the remedies provided by Articles 226 and 227 of the Constitution.

123. It is held by the Supreme Court that the words "in any manner" which occur in Section 9(1) must therefore, be given a limited meaning so as to bar the jurisdiction of civil courts, in the ordinary exercise of their powers, to entertain a challenge to appointments mentioned in the sub-section (9) of section 9 of the Industrial Disputes Act, 1947. The rights conferred by Articles 226 and 227 can be abridged or taken away only by an appropriate amendment of the Constitution and their operation cannot be whittled down by a provision like the one contained in Section 9(1) of the Act. Supreme Court in the said judgment held that it is open to the High Court in the exercise of their writ jurisdiction to consider the validity of appointment of any person as a chairman or a member of a Board or Court or as a presiding officer of a Labour Court, Tribunal, or National Tribunal. The judgment of the Supreme Court in case of ***The State of***

Haryana (supra) squarely applies to the facts of this case.

124. Supreme Court in case of ***Syed Yakoob*** (supra) has held that the powers of High Court in issuing a writ of certiorari under Article 226 has been frequently considered by the Supreme Court. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. These are the cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly as for instance, it decides a question without giving any opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. It is further held in the said judgment that if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

125. Supreme Court held that where it is manifest and clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a Writ of Certiorari. It is not in dispute that the application for seeking a permission to engage an advocate and also to cross examine the respondent no.4 was

refused by the Patriarchal Tribunal. The evidence of the respondent no.4 was also recorded behind the back of the petitioners. The Patriarchal Tribunal as well as the Metropolitan Tribunal did not follow the principles of natural justice while passing the impugned decree against the petitioner. In our view, even in such circumstances, the High Court is empowered to issue a writ of certiorari under Articles 226 and 227 of the Constitution of India and to quash such decree on the ground of violation of principles of natural justice. The principles laid down by the Supreme Court in case of ***Syed Yakoob*** (supra) apply to the facts of this case.

126. In our view, Article 19 of Decree No. 35461 thus could not impose a bar against the High Court from exercising a power of review. Such powers enshrined under Articles 226 and 227 of the Constitution of India in the High Court can be whittled down only by a provision in the Constitution of India and not in such Article 19 of the Decree No. 35461. The said Article 19 of the Decree No. 35461, thus deserves to be declared as unconstitutional and *ultra-vires* Article 14 and 21 of the Constitution of India. The principles of law laid down by the Supreme Court in the case of ***The State of Haryana vs. The Haryana Cooperative Transport Ltd. & Ors.*** (supra) squarely applies to the facts of this case. We are respectfully bound by the said judgment.

127. Supreme Court in case of ***Sujitendra Nath Singh Roy*** (supra) has held that the powers of the judicial review of the High

Court under Articles 226 and 227 of the Constitution of India cannot be taken away by a law or even by constitutional amendments. In our view, since the Patriarchal Tribunal and Metropolitan Tribunal are created under law and have power to determine conclusively the rights of two or more contending parties and more particularly regarding annulment of the marriage, the said two Tribunals have to satisfy the test of an authority vested with judicial powers of the state and thus fall within the terms “authority” within the meaning of Articles 226 and/or “court or tribunal” within the meaning of Article 227. It is not the case of any of the respondents that the said two Tribunals do not play the role of Court’s or their decisions or judgments are not enforceable in law.

128. In so far as the submission of Mr.Coelho Pereira, learned Senior Counsel for the respondent no.2 that by the very act of celebration of the canonical marriage, the spouses renounce the civil right of applying for divorce and for that reason the divorce could not be granted by civil courts as far as the catholic marriages are concerned, there is substance in this submission made by the learned Senior Counsel. The question still arises as to whether the orders passed by such Tribunals constituted under the provisions of the said Decree No. 35461 and could be challenged before the High Court by exercising writ jurisdiction under Articles 226 or 227 of the Constitution of India or not. Mr. Coelho Pereira, learned Senior Counsel could not dispute that though the said Article 19 of the Decree No. 35461 provides that the orders passed by the two

Tribunals below have to be transmitted to the Registrar of Marriage without power of review, powers of High Court under Articles 226 and 227 of the Constitution of India cannot be taken away.

129. Though, Article 19 of the Decree No. 35461 was enacted to give recognition of judgments and annulments of marriage with respect to Catholics by Patriarchal Tribunal and Metropolitan Tribunal and to give civil effect to have such decision being transmitted by the High Court to the concerned Registrar of Marriages for cancellation, the said power restricting the power of review by the High Court under Articles 226 and 227 of the Constitution of India is *ex-facie* unconstitutional and *ultra-vires* provisions of the Articles 14 and 21 of the Constitution of India.

130. In so far as the reliance placed by the learned Senior Counsel for the respondent no.2 on the judgment of this Court in ***Joao Azavedo Vincent Paul Fernandes*** (supra) is concerned, in the said proceedings, no constitutional validity of Article 19 of the Decree No. 35461 was challenged in that matter. The said judgment thus would not assist the case of the respondent no.2.

131. In so far as judgment of Supreme Court in case of ***Naresh Shridhar Marajkar & others*** (supra) and judgment of Kings Bench in case of ***Rex vs. Chancellor S. Edmund Berry Elwich*** (supra) relied upon by the learned Senior Counsel for the respondent no.2 is concerned, in our view both these judgments would not apply to the

facts of this case. In this case, it is not the argument of the respondents that the said Patriarchal Tribunal or Metropolitan Tribunal were not constituted under provision of law. On the contrary, the respondents have canvassed that the said Decree No. 35461 has a force of law in the State of Goa and was statutory in nature. Judgment of Supreme Court in case of ***Clarance Pais*** (supra) relied upon by the leaned Senior Counsel for the respondent no.2 would also not assist the case of the respondent no.2 for the similar reason.

132. Supreme Court in case of ***Ayaaubkhan Noorkhan Pathan*** (supra) adverted to the judgment in case of ***New India Assurance Co. Ltd. Vs. Nusli Neville Wadia, (2008) 3 SCC 279*** in which it has been categorically held that the witness who intends to prove the fact has a right to cross examine the witness. This may not be provided under the statute, but it being a part of the principles of natural justice and thus should be held to be indefeasible right.

133. The Supreme Court in case of ***Radhey Shyam & Another vs. Chhabi Nath & Ors., (2015) 5 SCC 423*** has held that writ of certiorari may be issued against the inferior Court or judicial acts. All the Courts under the jurisdiction of High Court are subordinate to it and subject to its control and supervision under Article 227. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. Writ jurisdiction is constitutionally conferred on all the High Courts.

134. It is not in dispute that the Patriarchal Tribunal and Metropolitan Tribunal have passed the orders under Decree No.35461 thereby annulling the marriage between the petitioner and the respondent no.4. The said Portuguese Decree has not been amended by any civil law prevailing in the State of Goa and more particularly in respect of the Chapter relating to marriage and divorce performed under the Canon Law. It is not the case of the respondents that the said two Tribunals are private forum and not exercising statutory function. This Court in case of ***Especiosa Nunes of Bicholim & Anr. vs. Francisco Nicolau Fernandes of Merces & Anr., AIR 1974 Goa, Daman & Diu 46*** has held that Article 4 of the Decree has taken away the right of getting divorce under civil law only from those Catholics who had married canonically under Catholic rites and not from the Catholics who had married under common civil law. In the said judgment, Article 4 of the Decree is declared as *ultra-vires* and unconstitutional and has been struck down on the ground that the said Decree has taken away the right of getting divorce under the civil law only from those Catholics who had married canonically under Catholic rites and not from the Catholics who had married under common civil law and the same was violative of Article 14 of the Constitution of India.

135. We shall now deal with the issue whether Article 19 of the Decree No.35461 takes away the right of review of the High Court under Articles 226 and 227 of the Constitution of India or not and

whether the same violates Articles 14 and 21 of the Constitution of India or not. The plain reading of Article 19 of Decree No.35461 clearly indicates that it excludes the jurisdiction of the High Court from reviewing or considering the judgments passed by Patriarchal Tribunal and the Metropolitan Tribunal. The effect of such orders passed by those two Tribunals leads to civil consequences. The Decree of annulment of marriage by these Tribunals are transmitted through the High Court without power of review to the Registrar of Marriage for necessary rectification of the entry made in the record. Once such Decree is passed by these two Tribunals are transmitted through the High Court to the Registrar of Marriage, the marriage which was originally registered in the Registrar of Marriages stands deleted in view of the Decrees passed by these two Tribunals thereby annulling the marriage between the two Catholics governed by the said Decree No.35461.

136. In our view, the Constitution of India guarantees the fundamental right to constitutional remedies. The said Articles which forecloses the power of the High Court under Articles 226 and 227 of the Constitution of India and restricted the role of the High Court to simplicetor transmit the Decrees received from these two Tribunals to the Registrar of Marriages without power of review is pro tanto unconstitutional. There cannot be any exemption under Article 19 of the Decree from exercising the constitutional remedies available under Articles 226 and 227 of the Constitution of India. The Canon Law is integral part of law. It is not in dispute that High Court Rules

framed till date do not provide the role of High Court for transmitting the Decrees received from those two Tribunals to the Registrar of Marriage with or without review. In our view the services of the High Courts cannot be used as post office or for the purpose of transmitting these Decrees received from these two Tribunals to the Registrar of Marriages without any supervision or extraordinary jurisdiction of review under Articles 226 and 227 of the Constitution of India.

137. The Supreme Court in case of ***Baldev Singh & Ors.*** (supra) and in case of ***S.L. Kanpoor*** (supra) has held that where exercise of power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. The Supreme Court in case of ***D.K. Yadav vs. J.M.A. Industries Ltd.*** (supra) has held that an order involving civil consequences must be made consistent with the rules of natural justice. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14. The Supreme Court in case of ***Canara Bank vs. Debasis Das*** (supra) has held that even an order involving civil consequences must be made consistent with the rules of natural justice which are implied from the nature of the duty to be performed under a statute.

138. In our view, the learned Advocate General is right in his submission that if the jurisdiction of the High Court from reviewing or

considering the judgment passed by the Tribunals on merits is excluded, it would thus in effect create a parallel authority ostensibly outside the purview of the High Courts or the Supreme Court of India even while performing the non-administrative judicial function. In our view, Article 19 which takes away the power of judicial review of the High Court under Articles 226 and 227 of the Constitution of India and make an order passed by such Tribunals final and restricting the powers of the High Court to simplicetor transmit the Decrees to the Registrar of Marriages without review and confirmation amounts to taking away the power of judicial review of the constituted Courts thus deserves to be declared as void and *ultra-vires* under Article 14 of the Constitution of India. The rights of the judicial review prescribed under the Constitution of India cannot be taken away under such Article 19 and thus such Article deserves to be declared as pro tanto unconstitutional.

139. In our view, if the remedy of filing a writ petition under Article 226 or 227 of the Constitution of India is taken away as sought to be done under Article 19 of the Decree No. 35461, the consequences provided in the impugned orders passed by the two Tribunals below would have serious civil consequences. The marriage of the petitioner with the respondent no.4 has been annulled by the two Tribunals below. The ground on which the marriage is annulled by the two Tribunals below cast the stigma on the petitioner. In our view, right to life under Article 21 of the Constitution of India includes right to live a decent life. The petitioner

may be also deprived of her right in the property of the respondent no.4, in view of such orders passed by two Tribunals below. In our view, Article 19 of the said Decree No. 35641, thus is unconstitutional and *ultra vires* the Articles 14 and 21 of the Constitution of India.

140. Since, this Court is of the view that the Article 19 deserves to be declared as unconstitutional and *ultra vires* Articles 14 and 21 of the Constitution of India, we are not required to go into the issue whether Article 19 of the Decree No. 35641 can be read down and the principles of natural justice can be read in to the said article so as to save the said article.

141. In so far as the judgment of this Court in case of ***Joao Azavedo Vicente Paulo Fernandes*** (supra) relied upon by the learned Counsel for the respondent nos. 3 and 4 is concerned, the said judgment in our view would not assist the case of respondent nos. 3 and 4, since there was no challenge to the constitutional validity of Article 19 of the said Decree No. 35641 raised in the said writ petition.

142. In so far as the submission of the learned Counsel for the respondent no.4 that neither Article 226 nor Article 227 can be attracted to the facts of this case on the ground that none of the Tribunals i.e. Patriarchal Tribunal or Metropolitan Tribunal are amenable to the supervisory jurisdiction of this Court is concerned, in our view this submission of the learned Counsel is contrary to the

initial argument made by him that the remedy of filing of writ petition under Article 226 or 227 of the Constitution of India cannot be taken away and is already concluded by the order passed by this Court in case of ***Joao Azavedo Vicente Paulo Fernandes*** (supra) and in these petitions.

143. The submission made by the learned Counsel for the respondent no.4 that orders passed by the Patriarchal Tribunal or Metropolitan Tribunal are not amenable to the jurisdiction of this Court is concerned, also cannot be accepted for the reasons that it is the case of the respondent no.4 himself that both these Tribunals have been constituted under the provisions of the said Decree No. 35461, which is still in force in the State of Goa. It is not the case of the respondent no.4 that the said Decree No. 35461 does not have statutory force of law. In our view, since these Tribunals have been constituted under the said Decree No. 35461 having force of law, the orders passed by such Tribunals are amenable to jurisdiction of the Writ Court under Articles 226 and 227 of the Constitution of India.

144. In so far as the submission of the learned Counsel for the respondent that even if any writ petition is maintainable, the same would be only under Article 227 of the Constitution of India and thus has to be heard by the single Judge of this Court and thus the prayer of the petitioner for setting aside the order passed by the two Tribunals below cannot be decided in this petition by the Division Bench is concerned, in our view there is no substance in this

submission made by the learned Counsel for the respondent for the reason that the prayer for certiorari of the said two orders passed by the two Tribunals below is in consequential to the prayer for declaring Article 19 of the said Decree No. 35461 as unconstitutional. Since, this Court is of the view that the said Article is unconstitutional and *ultra vires* the provision of Articles 14 and 21 of the Constitution of India and in view of the fact that both the orders passed by the two Tribunals below are in gross violation of principles of natural justice, the relief sought by the petitioner for quashing the said two orders passed by the two Tribunals below can be considered by this Court even by the Division Bench in the facts of this case while considering the prayer for declaring Article 19 of the Decree No. 35461 as unconstitutional.

145. In so far as the submission of the learned Counsel for the respondent no.4 that a finding of fact recorded by the Tribunals below cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunals was insufficient or inadequate to sustain the impugned findings is concerned, this submission of the learned Counsel is devoid of merit. The findings rendered by the two Tribunals below are in gross violations of principles of natural justice and are perverse. Such perverse findings which are even otherwise rendered in gross violations of principles of natural justice can be set aside by a Writ Court exercising powers under Articles 226 and 227 of the Constitution of India.

146. We are not inclined to accept the submission of the learned Counsel for the respondent no.4 that the plea raised by the petitioner in the writ petition alleging violation of Article 14 of the Constitution of India is vague and not sufficient to support the submission of the petitioner that there was violation of principles of natural justice in this case and would attract Article 14 of the Constitution of India. The petitioner has sufficiently pleaded the violation of Article 14 and principles of natural justice in the writ petition filed by the petitioner. There is no substance in the submission of the learned Counsel for the respondent that in view of Canon 1678, 2481 and 1663, there was no violation of principles of natural justice. Hearing granted by the Patriarchal Tribunal was to be preceded by an opportunity to engage an advocate and to remain present at the time of recording of the evidence of the respondent no.4 and vice-versa and for an opportunity to cross-examine the respondent no.4 and vice-versa.

147. A perusal of the record indicates that the Patriarchal Tribunal had issued a common questionnaire to both the parties for their reply which was treated as examination-in-chief. The evidence of the respondent no.4 has been considered by the Tribunals below against the petitioner while declaring the marriage between the petitioner and the respondent no.4 as null and void without giving any opportunity to the petitioner to remain present before the Patriarchal Tribunal when the questions were answered by the respondent no.4

in response to the said questionnaire. Though, such evidence was against the petitioner, the petitioner was not given any opportunity to cross-examine the respondent no.4.

148. We are not inclined to accept the submission of the learned Counsel for the respondent no.4 that no prejudice was caused to the petitioner or that no such issue of violation of principles of natural justice could be raised by the petitioner on the ground that no opportunity to cross-examine the respondent no.4 was granted to the petitioner, since respondent no.4 was also not granted such opportunity to cross-examine the petitioner. The respondent no.4 not having applied for such an opportunity to cross-examine the petitioner admittedly would not conclude that even petitioner could not have been granted an opportunity to cross-examine the respondent no.4 who had specifically prayed for such opportunity before the Patriarchal Tribunal.

149. There is no substance in the submission of the learned Counsel for the respondent no.4 that for seeking any relief as sought in the writ petition, the petitioner has not invoked any particular Article of the Constitution of India in this writ petition. In our view, even if no particular Article is specifically mentioned in the writ petition, the Court has to consider the averments, submission and relief sought in the writ petition to ascertain whether any of the rights enshrined in the Constitution of India are violated or not. This Court cannot refuse to entertain the writ petition on such ground.

150. Supreme Court in case of ***Mangilal vs. State of M.P.*** (supra) has held that even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed and making it a requirement to follow a fair principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. It is held that the procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation.

151. It is held that it is always natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. The principles of natural justice have many facets. Two of them are : notice of the case to be made and opportunity to explain. The

principles laid down by the Supreme Court in the said judgment clearly applies to the facts of this case and we are respectfully bound by the said judgment.

152. Supreme Court in case of ***Dharampal Satyapal Ltd.*** (supra) has held that since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provided a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. It is held that this aspect of procedural fairness namely right to a fair hearing would mandate, what is literally known as “hearing the other side”. It is held that principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity for supplying the material, this is the basis for the decision.

153. In our view, right of a party to remain present when the evidence of the other party is being recorded and to cross-examine the other party whose evidence is prejudicial to the interest of the such party, which is part of principles of natural justice cannot be taken away even by making a provision in the said Decree No. 35461. The principles of law laid down in the case of ***Dharampal Satyapal Ltd.*** (supra) applies to the facts of this case. We are

respectfully bound by the said judgment.

154. Supreme Court in case of ***Uma Nath Pandey and others*** (supra) has held that principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. The principles of law laid down by the Supreme Court in case of ***Uma Nath Pandey and others*** (supra) applies to the facts of this case. We are respectfully bound by the said judgment.

155. Supreme Court in case of ***Union of India T.R. Varma, AIR 1961 S.C. 1623*** (supra) has held that rules of natural justice required that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity to cross-examine the witness examined by other party and that no materials should be relied on against him without he being given an opportunity to explain them. In our view, this principles of law laid down by the Hon'ble Supreme Court in the case ***Union of India T.R. Varma, AIR 1961 S.C. 1623*** (supra) would squarely apply to the facts of this case. The petitioner was deprived to remain present when the evidence of the respondent no.4 was recorded and was not allowed to cross-examine the respondent no.4

and to engage an advocate representing the petitioner before the two Tribunals below. There was thus gross violation of the principles of natural justice committed by two Tribunals below.

156. Supreme Court in case of ***Baldev Singh and Ors.*** (supra) adverting to the judgment in case of ***S.L. Kapoor Vs. Jagmohan, AIR 1981 SC 136*** in which it was held that certain position of law where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, rules of natural justices, would apply.

157. Supreme Court in case of ***D.K. Yadav*** (supra) has held that it is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first being informed of the case and given him or/and her an opportunity and to forward her case. An order involving civil consequences must be made consistent with the rules of natural justice. The law must therefore be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be decided on the anvil of Article 14.

158. Supreme Court in case of ***Canara Bank v/s. Debasis Das*** (supra) has held that concept of natural justice has undergone a great deal of change in recent orders. Rules of natural justice are not rules embodied always expressly in a statute or any rules framed thereunder. They may be implied from the nature of the duty to be

performed under a statute. In our view, both the Tribunals are performing the powers of a quasi-judicial authority empowered to exercise wide powers to annul the marriage of the petitioner with the respondent no.4, it was the duty of the Tribunals to comply with the procedure which had an element of principles of natural justice before passing any adverse order against the petitioner including an opportunity to engage an advocate, to remain present at the time of recording evidence of the respondent no.4 and a right of cross-examination of the respondent no.4. In our view, both the Tribunals below have failed to comply with their mandatory duty to comply with the principles of natural justice and thus those two orders thus deserve to be quashed and set aside on this ground also.

159. Supreme Court in case of ***Indian Young Lawyers Association and Ors.*** (supra) has held that Article 25 of the Constitution of India merely protects the freedom to practice rituals, ceremonies, etc. which are an integral or essential part of a religion. In doing so, one of the test to be considered is whether the nature of the religion itself would be fundamentally law altered if the so called essential practice was struck down. Supreme Court in case of ***Shayara Bano & Ors.*** (supra) has held that even though matters of faith and belief are protected by Article 25 of the Constitution, the law relating to marriage and divorce were matters of faith and belief, were also liable to be tested on grounds of public order, morality and health as well as on the touchstone of the other provisions of Part III of the Constitution. In our view, the learned Advocate General and

Mr. D'Costa, learned Senior Counsel are right in their submission that the powers vested on the Tribunals if not properly exercised, it may lead to civil consequences including powers under Articles 19 cannot in any manner be treated as essential religious practices which follow Articles 14 and 25 of the Constitution of India.

160. In so far as the judgment of Supreme Court in case of ***Molly Joseph and Ors.*** (supra) strongly relied upon by the learned Advocate General is concerned, the Supreme Court in the said judgment had considered provision of Divorce Act, 1869 and held that Tribunals cannot exercise a power parallel to the power of the District Court or the High Court which have been vested in the District Court and the High Court by the provision of the Divorce Act, 1869. The provisions of Portuguese Civil Code, which are applicable to Goa, Daman and Diu by Enactment dated 18th November 1869 or similar thereto were not under consideration in the said judgment. On 25th December,1910, a separate Law of Marriages and Law of Divorce was enacted allowing divorce to take place. On 16th December, 1930, an amended version of the Portuguese Civil Code was published by the Portuguese Government bringing all these changes under one roof.

161. It is not in dispute that on 7th May, 1940, Concordat (Treaty) was entered into by the Portuguese Republic and the Holy See Vatican City introducing changes in relation to Catholic in Portugal and its Territory. In pursuance of the new enactment Decree

No. 35461 was passed on 22nd January, 1946. Under the said decree, the Christian marriages could be performed before the Church authorities upon the production of a no objection certificate from the Registration Officer, appointed under the Code of Civil Registration and such a marriage would have civil effects if transcribed in the Office of the Civil Registration. After coming into force of the said Decree No. 35461, the spouses would renounce the civil rights of seeking divorce for reasons and the civil courts would not have the power to decree the same in relation to such marriage.

162. In our view, by virtue of Goa, Daman and Diu (Administration) Act, 1962 all laws which were in force prior to the appointed date in terms of section 5(1) of the said Act are stated to continue to be in force until amended or repealed by competent legislature or a competent authority in the State of Goa. The provisions thus constituted under the said Decree No. 35461 have statutory power to annul a marriage performed by the parties covered by the said Portuguese Civil Code, in view of the provision of Goa, Daman and Diu (Administration) Act, 1962. The judgment of the Supreme Court in case of ***Molly Joseph and Ors.*** (supra) thus would not apply to the facts of this case and is clearly distinguishable.

163. Supreme Court in case of ***Guruvayur Devaswom Managing Commit. & Ors.*** (supra) has held that any right other than the fundamental rights contained in Articles 25 and 26 of the Constitution of India either flow from a statute or from the customary

laws. This Court in case of ***Noorjehan Safia Niaz and Ors.*** (supra) has held that the non-essential religious practices do not have protection under Articles 25 and 26 and the same are considered secular in nature and can be regulated by the State. The rights of religious denomination under Article 26 of the Constitution of India are subject to public order, morality and health and other rights protected under Chapter III. The State has power to "regulate" the affairs if the same affect the fundamental rights of any person guaranteed under Part III of the Constitution of India. In our view, learned Advocate General is right in his submission that the order passed by the two Tribunals below since will have civil consequences, the same cannot be in any manner be treated as an essential religious practice.

164. The powers exercised by the two Tribunals below have been exercised under the said Decree No. 35461 and even on that ground cannot be treated as essential religious practice. The Canon law, which is placed in service by the respondents is an integral part of the law of the land and thus has to be in conformity with the provisions of the Constitution of India and the principles laid down therein. The Supreme Court in case of ***Sujitendra Nath Singh Roy*** (supra) has held that power of the judicial review of the High Court under Articles 226 and 227 of the Constitution of India cannot be taken away by a law or even by constitutional amendments.

165. In so far as the judgment of Supreme Court in case of

K.L.Tripati (supra) relied upon by the learned Senior Counsel for the respondent no.2 is concerned, there is no dispute about the proposition of law that the principles of natural justice depends on the facts and circumstances of each particular case. However, in the facts of this case, since the order of annulment of marriage had led to civil consequences and had affected the right to life, which includes right to live with dignity under Article 21 of the Constitution of India, following of principles of natural justice was mandatory. We are not inclined to accept the submission of Mr. Coelho Pereira, learned Senior Counsel for the respondent no.2 that for quasi-judicial adjudication, neither cross-examination nor opportunity to lead evidence is an integral part. There is no merit in the submission of the learned Senior Counsel that none of the Canons placed in service by him provided for a right of cross-examination. In our view the right to cross-examine a witness is part of natural justice and thus such right is vested and has to be read in such provisions dealing with the process of an enquiry and more particularly quasi-judicial or judicial enquiry.

166. In so far as the submission of Mr. Usgaonkar, learned Counsel for the respondent no.4 that the petitioner was allowed to engage an advocate at one point of time is concerned, there is no substance in this submission of the learned Counsel for the respondent no.4.

167. A perusal of the decree passed by the Patriarchal Tribunal

indicates that the said Tribunal has considered the evidence led by the respondent no.4 against the petitioner without giving any opportunity to cross-examine the respondent no.4. Various findings came to be rendered by the said Patriarchal Tribunal against the petitioner by accepting the evidence led by the respondent no.4 as if the same were uncontroverted. The petitioner in her evidence had also made several allegations against the respondent no.4. The Patriarchal Tribunal on one hand refused the petitioner to cross-examine the respondent no.4 and on the other hand refused to consider the evidence made by the petitioner.

168. A perusal of the finding rendered by the Patriarchal Tribunal indicates that the said Tribunal has held that the petitioner had shown from her behaviour, before and after marriage that she was not sufficiently and emotionally mature enough to understand what marriage truly was, with its essential rights and obligations. The petitioner was totally blinded by her love for the respondent no.4. It is held that the petitioner, despite seeing the odds and differences in the respondent no.4, still went ahead and got married to the respondent no.4, claiming that she highly and deeply loved the respondent no.4.

169. It is held that the petitioner thus at the time of marriage, owing to her emotional maturity was unable to possess true discretion or maturity of judgment and thus lacked due discretion of judgment concerning the essential rights and obligation of marriage

and thus was incapable of rendering a valid matrimonial consent. In our view, findings rendered by the Patriarchal Tribunal are *ex-facie* perverse. A spouse deeply in love with the partner cannot be considered as immature and would not lack due discretion of judgment concerning the essential rights and obligations of marriage or that such spouse is not incapable of rendering a valid matrimonial consent.

170. The respondent no.4 also in his evidence had admitted that he was also in love with the petitioner and though having observed about her alleged misbehaviour with the family members of the respondent no.4 had ignored such alleged misbehaviour and had still agreed to marry the petitioner. This part of the admission on the part of the respondent no.4 has been totally overlooked by the Patriarchal Tribunal while passing the said decree thereby annulling the marriage of the petitioner with the respondent no.4.

171. A perusal of the decree passed by the Metropolitan Tribunal indicates that finding is rendered that there was no sufficient and substantial evidence on the ground of partial simulation on the part of the respondent no.4. The Metropolitan Tribunal thus did not agree with the finding rendered by the Patriarchal Tribunal, in so far as the ground of partial simulation on the part of the respondent no.4 is concerned.

172. The Metropolitan Tribunal also did not give any

opportunity to the petitioner to represent her case before the Metropolitan Tribunal through an advocate and confirmed the decree on the ground of lack of due discretion of judgment on the part of the petitioner herein under Canon 1095, 2º. In our view, the findings rendered by the two Tribunals below are *ex-facie* perverse and in gross violation of principles of natural justice and thus both the decrees passed by the Tribunals below deserve to be set aside.

173. In so far as the Writ Petition No. 691 of 2013 is concerned, the petitioner in the said writ petition has raised similar submissions, which are canvassed by the petitioner in the Writ Petition No. 351 of 2017. In this writ petition, there is no dispute that the Canonical marriage was solemnized between the petitioner and the respondent no.1 on 2nd January, 2007. A child was conceived out of the said marriage between the parties on 1st October, 2007. The Patriarchal Tribunal passed a decree of nullity on 22nd March, 2012 on the ground of inability on the part of the respondent no.1 to assume and fulfill the obligation of marriage.

174. A perusal of the record indicates that the respondent no.1 had applied for annulment of marriage with the petitioner. On 18th November, 2010, the Patriarchal Tribunal informed the petitioner that the said Tribunal had already heard the respondent no.1 and now it was required to hear the petitioner and therefore petitioner shall remain present before the Patriarchal Tribunal on 16th December, 2010. On 22nd March, 2012, the Patriarchal Tribunal declared the

marriage nullity on the ground of “inability on the part of the respondent no.1 to assume and fulfill the obligation of marriage”. Though, the petition filed by the respondent no.1 did not indicate any particular ground for seeking declaration of marriage as nullity, the Patriarchal Tribunal examined the matter on ground of “inability on the part of the respondent no.1 to assume and fulfill the obligation of marriage”. In this case also there was no right of cross-examination rendered to the petitioner by the Patriarchal Tribunal.

175. The Metropolitan Tribunal ratified the said order in affirmative, on the ground that “inability on the part of the respondent no.1 herein to assume and fulfill the obligation of marriage”. In so far as the submission of law made by both the parties are concerned, they are identical. We have already dealt with the legal submissions made by the petitioner and the respondents in the earlier paragraphs of this judgment dealing with those legal submissions in great detail. Our reasons on those legal submission made in Writ Petition No. 351 of 2017 would also apply to the legal submissions made in Writ Petition No. 691 of 2013 by the parties in their respective pleadings. We have also considered the written arguments filed by the petitioner in Writ Petition No. 691 of 2013. The decrees passed by two Tribunals below in Writ Petition No. 691 of 2013 also deserve to be set aside.

176. We appreciate the valuable assistance rendered to this Court by the learned Counsel appearing for the parties in these

matters involving public importance and important questions of law.

177. We therefore pass the following order :-

Writ Petition No. 351 of 2017

a) Article 19 of Decree No. 35461 is declared as unconstitutional, illegal, null and void and *ultra vires* Articles 14 and 21 of the Constitution of India and is struck down.

b) Order passed by this Court directing an endorsement to be made in the books of Civil Registration Office in the margin next to the entry of the Marriage Register is set aside. Endorsement made by the Civil Registrar pursuant to the order passed by this Court under Article 19 of Decree No. 35461, cancelling the marriage registration of the petitioner with the respondent no.4 is declared as illegal, null and void and is set aside.

c) Respondents are restrained from acting in pursuance of the order passed by this Court on the Administrative Side or in pursuance of the endorsement made in the Marriage Register, in so far as the marriage of petitioner and respondent no.4 is concerned.

d) The decisions of the Patriarchal Tribunal dated 1st March, 2016 and decisions of the Metropolitan Tribunal dated 14th October, 2016, are quashed and set aside.

e) Application filed by the respondent no.4 for annulment of marriage with the petitioner is restored to file before the Patriarchal Tribunal for deciding the application afresh in accordance with the law after complying with the principles of natural justice including opportunity to engage an advocate,

right to remain present at the time of recording statement / evidence of other party and right of cross-examination. The Tribunal shall not be influenced by the observation made and the conclusion drawn in the impugned orders. The Tribunal shall make an endeavour to dispose off the application within six months from the date of communication of this judgment.

f) Rule is made absolute on aforesaid terms. No order as to costs.

Writ Petition No. 691 of 2013

a) Order dated 22nd March, 2012 passed by the Patriarchal Tribunal and the order dated 21st July, 2012 passed by the Metropolitan Tribunal against the petitioner are quashed and set aside.

b) Registrar of Civil Marriage is directed to cancel the endorsement in the book of registration of marriages, in so far as marriage between the petitioner and the respondent no.1 is concerned.

c) Application filed by the respondent no.1 for annulment of marriage with the petitioner is restored to file before the Patriarchal Tribunal for deciding the application afresh in accordance with the law after compliance with the principles of natural justice including opportunity to engage an advocate, right to remain present at the time of recording statement / evidence of other party and right of cross-examination. The Tribunal shall not be influenced by the observation made and the conclusion drawn in the impugned orders. The Tribunal shall make an endeavour to dispose off the application within six months from the date of communication of this judgment.

d) Rule is made absolute on aforesaid terms. There shall be no order as to costs.

(PRITHVIRAJ K. CHAVAN, J.) ***(R.D. DHANUKA, J.)***

At the request of Ms.R. Pereira, leaned counsel appearing for the respondent no.4, the Registrar of Marriage shall not give effect to the judgment delivered today for a period of six weeks from today. The Patriarchal Tribunal also shall not commence the hearing of the matter for a period of six weeks from today. If any Special Leave Petition is filed by the respondent no.4, a copy thereof shall be served upon the petitioner's advocate well in advance.

(PRITHVIRAJ K. CHAVAN, J.) ***(R.D. DHANUKA, J.)***