STRIDEWELL LEATHERS (P) LTD. AND ORS. A

v.

BHANKERPUR SIMBHAOLI BEVERAGES (P) LTD. AND ORS.

OCTOBER 5, 1993

[J.S. VERMA AND N.P. SINGH, JJ.] B

Companies Act, 1956: Section 10F—Appeal against orders of Company Law Board—High Court—Jurisdiction of—Whether in relation to registered Office of the company or place at which the board makes the order under appeal. C

The appellants filed a petition under Section 397/398 of the Companies Act, 1956 before the Company Law Board in respect of a Company having its registered office at Madras. The Delhi Bench of the Company Law Board made an order against which an appeal was filed under Section 10F of the Companies Act. 1956 in the Delhi High Court by a shareholder, D Respondent No. 1. The Company also filed an appeal against the same order in the Madras High Court. The appellant raised a preliminary objection regarding maintainability of the appeal, filed in the Delhi High Court. The Delhi High Court rejected the preliminary objection and admitted the appeal. E

Being aggrieved by the Delhi High Court's decision the appellant preferred the present appeal, contending that the appeal under Section 10F of the Companies Act would lies in the Madras High Court instead of the Delhi High Court, since the registered office of the concerned company situated in Madras. It was contended on behalf of the respondents that F Section 10F must be construed as conferring jurisdiction on the High Court having jurisdiction in relation to the place at which the Company Law Board made the order under appeal.

Allowing the appeal, the Court G

HELD : 1.1. The expression "the High Court" in Section 10F of the Companies Act means the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated as indicated by Section 2(11) read with Section 10(1)(a) of the Companies Act. [p. 658-E-F] H

A 1.2. The Parliament, While inserting Section 10F in the Companies Act, 1956 appears to have merely emphasised that the appeal provided therein continues to lie to the High Court, as earlier, notwithstanding transfer of the original jurisdiction from the Company Judge of the High Court to the Company Law Board resulting in inapplicability of the Letters Patent. Express provision would have been made in the amendment to B indicate a different or substituted appellate forum than the existing appellate forum if that was the intention of the amendment or jurisdiction of the court for the purpose of appeal had been altered in any manner. The absence of any indication in the amendment to suggest any change or substitution in the appellate forum is a pointer in the direction that the C same continued unaltered and the expression "the High Court" instead of "the Court" was used for the reason indicated by providing that the concerned High Court continued to be the forum of appeal notwithstanding transfer of the original jurisdiction from the concerned High Court to the Company Law Board. The substitution of a new forum of appeal in place of D the existing forum in the concerned High Court cannot be inferred merely from the transfer of the original jurisdiction to the Company Law Board in the absence of clear provision to that effect. [657-B; 654-G-H; 655-A-E]

1.3. Use of the word 'the' before High Court is clearly intended to specify a particular High Court identified by Section 10F itself and, E therefore, it cannot be a High Court indicated by the subsequent act of the Company Law Board choosing the place of its sitting for making the order under appeal. It is also indicative of the clear intention of the legislature that the indication of the particular High Court has to be found in the existing provisions of the enactment and not by inference from any outside F provision or any subsequent act of the Company Law Board or any other authority. It further lends assurance to the view that it excludes the possibility of any ambiguity in the expression and refers to a particular High Court envisaged by other provisions of the Act. [655-E-G]

G 1.4. The jurisdiction of the High Court under Article 226, if it be excercisable in respect of an order made by the Company Law Board, would be determined by the place where the cause of action, or any part of it arises and the Delhi High Court alone would not be the High Court for that purpose. The High Court, within whose jurisdiction the registered office of the company concerned lies giving rise to at least a part of the H cause of action, would be entitled to exercise the writ jurisdiction under

Article 226 of the Constitution. It is a different matter that the existence of the efficacious remedy of statutory appeal under Section 10F would justify refusal of interference under Article 226. It is difficult to accept that even though the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate may be entitled to entertain a writ petition against an order made by the Company Law Board, it would have no jurisdiction to entertain the statutory appeal under Section 10F of the Companies Act in respect of the same company, except in the case of the Delhi High Court. No such distinction between High Courts can be envisaged. It was precisely to remove such an anomaly in respect of the order made by the Central Government or the other authorities situate in Delhi that the amendment was made in Article 226 as originally enacted in the Constitution. [657-B-F] A B C

1.5. In the instant case, the appeal against the order of the Company Law Board would lie in the Madras High Court which has jurisdiction in relation to the place at which the registered office of the company concerned is situate and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi. [658-F-G] D

***Arjun Prasad* v. *Shantilal Shankarlal Shah and others,* [1962] Supp. 2 SCR 402; and *Shankarlal Aggarwal and Ors.* v. *Shankarlal Poddar and Ors.,* [1964] 1 SCR 717, referred to.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5267 of 1993.

From the Judgment and Order dated 29.7.93 of the Delhi High Court in Company Appeal No. 21 of 1993. F

Dr. F.S. Nariman, Soli J. Sorabjee, Arjun Jaitley, Dushyant Dave, Ms. Bina Gupta, Ms. Monika Mohil and S.C. Sharma for the Appellants.

Shanti Bhushan, A.K. Sen, A.K. Aggarwala, Anup Bose, Asod Alvi and Balraj Dewan for the Respondents. G

The Judgment of the Court was delivered by

VERMA, J. Leave granted.

The main question for decision in this appeal is the meaning of the H

A expression "the High Court" in Section 10F of the Companies Act, 1956 which has been inserted in the principle Act by the Companies (Amendment) Act, 1988 with effect from 31.5.1991. The controversy is whether the High Court to which the appeal lies under Section 10F from an order of the Company Law Board is the High Court having jurisdiction in relation to the place at which the registered office of the company is situate or it B is the High Court having jurisdiction in relation to the place at which the Company Law Board makes the order under appeal.

The material facts giving rise to the above question are only a few, as stated hereafter. A petition under Section 397/398 of the Companies C Act, 1956 was filed on behalf of the appellant, Stridewell Leathers Private Ltd. before the Company Law Board in respect of the company known as Shoe Specialities Pvt. Ltd. having its registered office at Madras. On 28.5.1993, the Company Law Board in the Principal Bench at Delhi made an order in that petition against which an appeal was filed under Section D 10F in the Delhi High Court by a shareholder, respondent No. 1. The Company, Shoe Specialities Pvt. Ltd. also filed an appeal against the same order of the Company Law Board in the Madras High Court (CMA No. 793-93) which is pending. A preliminary objection to maintainability of the appeal in the Delhi High Court was raised by the present appellants in the appeal filed in the Delhi High Court. The Delhi High Court rejected the E preliminary objection on 29.7.1993 and admitted that appeal. This appeal by special leave is against the Delhi High Court's order dated 29.7.1993 rejecting the preliminary objection and holding the appeal to be maintainable in the Delhi High Court.

F The contention of Shri F.S. Nariman, learned counsel for the appellants is that the expression "the High Court" in Section 10F must mean the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate and, therefore, in the present case, the appeal under Section 10F of the Companies Act lies in the Madras High Court instead of the Delhi High Court, since the G registered office of the concerned Company is situate in Madras. In short, the submission of Shri Nariman is that the scheme of the Companies Act gives this clear indication which is not nullified by any thing contained in Section 10F or the object for making this amendment. In reply, Shri A.K. Sen and Shri Shanti Bhushan, on behalf of the respondents contended, that H Section 10F must be construed as conferring jurisdiction on the High Court

having jurisdiction in relation to the place at which the Company Law Board makes the order under appeal. Shri Sen contended that Section 10(1)(a) does not provide any aid to the construction of the expression "the High Court" in Section 10F since Section 10 relates to the original jurisdiction and not to the forum of appeal provided by Section 10F. On behalf of the respondents, it was contended that the transfer of original jurisdiction from the High Courts to the Company Law Board in certain matters results in conferment of jurisdiction in such matters only in the Company Law Board instead of several High Courts is indicative of the scheme that the appeal under Section 10F from an order of the Company Law Board must also lie only to the centralised forum, namely, the High Court having jurisdiction over the Company Law Board at the place of its location where the order under appeal is made. Shri Shanti Bhushan also placed reliance on clause 11 of the Letters Patent of the Lahore High Court which by the historical process continues to be applicable to the Delhi High Court as a further argument to support this submission and to contend that the appeal in the present case lie to the Delhi High Court since the order was made by the Company Law Board at Delhi.

In view of the significance of this question which is bound to arise in several cases hereafter and the fact that no clear indication is found in Section 10F of the Companies Act to indicate which High Court is meant as the forum of appeal in such situations, we heard elaborate arguments of both sides for deciding the point in controversy. The point was debated with considerable ability by the learned counsel for the parties which has focused attention on the several nuances of the two points of view. It is with this assistance, we proceed to consider and decide this controversy.

The Companies (Amendment) Act, 1988 which has inserted Section 10F with effect from 31.5.1991 and has also made some simultaneous changes in Section 10E brings about the establishment of an independent Company Law Board to exercise the judicial functions exercised earlier by the courts or the Central Government while providing an appeal to the High Court under Section 10F against such orders of the Company law Board. The power under Sections 397 and 398 of the Companies Act, exercised earlier by the court is one such power now exercised by the Company Law Board so constituted. In short, the original jurisdiction of the High Courts in respect of the matters under Sections 397 and 398 of the Companies Act is now transferred to the Company Law Board.

A Earlier when the original jurisdiction was in the High Court determined by Section 10(1)(a) of the Act as the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, admittedly the appeal from any order passed by the Company Judge of the High Court in exercise of the original jurisdiction was to a Division Bench of the same High Court. The question, therefore, B is whether with the transfer of the original jurisdiction of High Courts to the Company Law Board in such matters, there is a similar substitution of the appellate forum to a centralised High Court having jurisdiction over the place of sitting of the Company Law Board where the order under appeal is made or the forum of appeal remains unaffected by the change C of the forum of original jurisdiction. This is the precise point for determination in the present case.

Section 10F gives no indication of substitution of the earlier forum of appeal by a new forum unless the expression "the High Court" means only one High Court in all matters notwithstanding the fact that earlier the D original jurisdiction was in different High Courts instead of in on forum now. Ordinarily, substitution of a new forum for the existing forum of appeal should not be readily inferred in the absence of a clear provision to that effect of at least any incongruity resulting from that view. There does not appear to be any incongruity in the view that forum of appeal E remains unaltered even though the forum of original jurisdiction is now centralised by transfer of the same from the different High Courts to the Company Law Board alone. It is now to be seen whether this impression on first principles is negatived by the relevant statutory provisions. It is also significant that neither Section 10E nor section 10F indicates any territorial nexus by providing the location of the Company Law Board, or F otherwise.

In construing the meaning of the expression "the High Court" in Section 10F, it was urged by the learned counsel for the respondents, Section 10(1) of the Act does not furnish any aid since that relates to the G original jurisdiction of the Court and not to the appellate jurisdiction contemplated by Section 10F. It would be appropriate at this stage to quote the relevant provisions in the Companies Act which are as under :-

"*Definitions*

H 2. In this Act, unless the context otherwise requires,-

xxx xxx xxx A

(ii) "the Court" means,--

(a) with respect to any matter relating to a company (other than any offence against this Act), the Court having jurisdiction under this Act with respect to that matter relating to that company, B as provided in section 10;

xxx xxx xxx

"*Jurisdiction of Courts.*

C

10. (1) The Court having jurisdiction under this Act shall be---

(a) The High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High D Court in pursuance of sub-section (2) ; and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district. E

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the Court, not being F the jurisdiction conferred--

(a) in respect of companies generally, by sections 237, 391, 394, 395 and 397 to 407, both inclusive;

(b) in respect of companies with a paid-up share Capital of not G less than one lakh of rupees, by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest H

A been the registered office of the company during the six months immediately preceding the presentation of the petition of winding up."

"*Constitution of Board of company Law Administration*

B 10F. (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1988, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of company Law Administration.

C (1A) The Company Law Board shall exercise and discharge such powers and functions as may be conferred on it, by or under this Act or any other law, and shall also exercise and discharged such other powers and functions of the Central Government under this Act or any other law as may be conferred on it by the Central Government, by notification in the Official Gazette under the D provisions of this Act or that other law.

(2) The Company Law Board shall consist of such number of members, not exceeding(nine), as the Central Government deems fits, to be appointed by that Government by notification in the Official Gazette:

E

Provided that the Central Government may, by notification in the Official Gazette, continue the appointment of the chairman or any other member of the Company Law Board functioning as such immediately before the commencement of the Companies F (Amendment) Act, 1988, as the chairman or any other member of the Company Law Board, after such commencement of such period not exceeding three years as may be specified in the notification.

(2A) The members of the Company Law Board shall possess such G qualifications and experience as may be prescribed.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in H question on the ground only of any defect in the constitution of,

or the existence of any vacancy, in the Company Law Board. A

(4A) [Omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

(4B) The Board may, by order in writing, from one or more Benches from among its members and authorise each such Bench B to exercise and discharge such of the Board's powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board. C

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) discovery and inspection of documents of other material objects D producible as evidence;

(b) Enforcing the attendence of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents or other material E objects producible as evidence and impounding the same;

(d) examining witnesses on oath;

(e) granting adjournments; F

(f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before G the Bench shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code (45 of 1860), and for the purpose of section 196 of the Code.

(5) Without prejudice to the provisions of sub-sections (4C) and (4D), the Company Law board shall in the exercise of its powers H

A and the discharge of its functions under this Act or any other law be guided by the principles of natural justice and shall act in its discretion.

(6) Subject to the foregoing provisions of this section, the Company Law Board shall have power to regulate its own procedure.

B

Appeals against the orders of the Company Law Board.

10F. Any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court within sixty days from the date of communication of the decision or order of
C the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not
D exceeding sixty days."

"*Appeals from orders.*

483. Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same
E Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction".

There can be no doubt that in case the forum of appeal was indicated in Section 10F by use of the expression"the Court" instead of "the High
F Court" then by virtue of the definition of the expression "the Court" in Section 2(11), the concerned court would have to be determined as provided in Section 10 but there may have been some ambiguity whether that expression means "the High Court" or "the District Court" mentioned in clause (a) or clause (b) of sub-section (1) of Section 10. This ambiguity
G is removed by use of the expression "the High Court" in Section 10F which unmistakably points to clause (a) of sub-section (1) of Section 10 and this appears to be the reason for use of the expression "the High Court" instead of "the Court" in Section 10F. There is nothing in any of these provisions to exclude the application of Section 10(1)(a) for construing the meaning of the expression " the High Court" in Section 10F since the context does
H not require otherwise and such a construction prevents a hiatus. Care was

taken to define the expression " the Court" in Section 2(11) of the Act providing clearly that the meaning is as provided in Section 10 unless the context otherwise requires; and Section 10 providing for the jurisdiction of courts then says that the Court having jurisdiction under the Act would be the High Court or the District Court indicated therein. It is unlikely that with such care taken in the principal Act to define "the Court" and also specify the court having jurisdiction under the Act, any ambiguity would be left while amending the principal Act in this manner for any doubt about the forum of appeal if it was intended to be different from the existing appellate forum indicated by Section 10(1) (a). We have no doubt that express provision would have been made in the amendment to indicate a different or substituted appellate forum than the existing appellate forum if that was the intention of the amendment or jurisdiction of the court for the purpose of appeal had been altered in any manner. The absence of any indication in the amendment to suggest any change or substitution in the appellate forum is a pointer in the direction that the same continued unaltered and the expression "the High Court" instead of "the Court" was used for the reason indicated by providing that the concerned High Court continued to be the forum of appeal notwithstanding transfer of the original jurisdiction from the concerned High Court to the Company Law Board. It does appear to us that substitution of a new forum of appeal in place of the existing forum in the concerned High Court, as contended by the respondents cannot be inferred merely from the transfer of the original jurisdiction to the Company Law Board in the absence of clear provision to that effect.

Use of the word 'the' before High Court is clearly intended to specify a particular High Court identified by Section 10F itself and, therefore, it cannot be a High Court indicated by the subsequent act of the Company Law Board choosing the place of its sitting for making the order under appeal. It is also indicative of the clear intention of the legislature that the indication of the particular High Court to be found in the existing provisions of the enactment and not by inference from any outside provision or any subsequent act of the Company Law Board or any other authority. It further lends assurance to the view that it excludes the possibility of any ambiguity in the expression and refers to a particular High Court envisaged by other provisions of this Act.

The provision in Section 10E for the Company Law Board to have more than one Bench and the Company Law Board Regulations 1991

framed under Section 10E (6) of the Act providing for sitting of the Benches at different places in the country does not give any clue to the construction of the expression "the High Court " in Section 10F. On behalf of the respondents it was urged, that all appeals under Section 10F would lie to the Delhi High Court where the Principal bench of the Company Law Board ordinarily sits but if the order under appeal is made at any other place in the country where the Bench sits, then the High Court having jurisdiction over that place can entertain the appeal. In our opinion, this is too nebulous a concept for deciding the question of jurisdiction and determination of the forum of appeal and, if accepted would tend to empower the Company Law Board to determine the forum of appeal by the choice of place of sitting under the Regulations for making the order. We have no doubt that the forum of appeal indicated in Section 10F is a definite forum determined by the provisions of the Act and not by the Regulations framed by the Company Law Board under Section 10E (6) or the place of its sitting under the Regulations. These Regulations framed by the Company Law Board to regulate its own procedure are, therefore, of no assistance for decision of the controversy.

It may be mentioned that the original jurisdiction to try a petition of winding up of a company continues to remain in the concerned High Court even though the original jurisdiction in respect of a petition under Sections 397 and 398 is transferred to the Company Law Board. It is obvious that the appeal against an order made by the Company Judge of the High Court in a winding up petition continues to lie before a Division Bench in the same High Court. If the construction suggested on behalf of the respondents be correct then that High Court would have no jurisdiction to entertain an appeal against the Company Law Board's order while appeal from the Company Judge's order in a winding up petition in respect of the same company would lie there. This appears to be incongruous. A possible anomaly of this kind would be prevented by taking the view which we have indicated.

In *Arjun Prasad* v. *Shantilal Shankarlal Shah and others,* [1962] Supp. 2 SCR 402, the question was whether the appeal provided by Section 153(7) of the Indian Companies Act, 1913 lay to the High Court or to the Supreme Court. It was held that an appeal from the order of the Company Judge lay to the High Court under clause 10 of the Letters Patent and not to the Supreme Court. In *Shankarlal Aggarwal and Ors.* v. *Shankarlal Poddar and*

Ors., [1964] 1 SCR 717, it was held that an appeal under Section 202 of the Indian Companies Act, 1913 lay from the decision of the Company Judge to the High Court. In this background, the Parliament, while inserting Section 10F in the Companies Act, 1956, appears to have merely emphasised that the appeal provided therein continues to lie to the High Court, as earlier, notwithstanding transfer of the original jurisdiction from the Company Judge of the High Court to the Company Law Board resulting in inapplicability of the Letters patent.

It is also noteworthy that the jurisdiction of the High Courts under Article 226, if it be excercisable in respect of an order made by the Company Law Board, would be determined by the place where the cause of action, or any part of it arises and the Delhi High Court alone would not be the High Court for that purpose. The High Court, within whose jurisdiction the registered office of the company concerned lies giving rise to at least a part of the cause of action, would be entitled to exercise the writ jurisdiction under Article 226 of the Constitution. It is a different matter that the existence of the efficacious remedy of statutory appeal under Section 10F would justify refusal of interference under Article 226. The Parliament could not have been unaware of this situation. This being so, it is difficult to accept that even though the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated may be entitled to entertain a writ petition against an order made by the Company Law Board, it would have no jurisdiction to entertain the statutory appeal under Section 10F of the Companies Act in respect of the same company, except in the case of the Delhi High Court. No such distinction between the High Courts can be envisaged. It was precisely to remove such an anomaly in respect of the orders made by the Central Government or the other authorities situate in Delhi that the amendment was made in Article 226 as originally enacted in the Constitution. It is difficult to accept that, after that experience, a retrograde step was taken while enacting Section 10F, as suggested by the respondents.

Both sides have placed reliance on Section 54 of the Foreign Exchange Regulation Act, 1973 (for short "FERA") which provides an appeal to the High Court from any decision or order of the Appellate Board constituted under the Act. An explanation has been added therein to give the meaning of the expression "High Court". The absence of a similar explanation in Section 10F of the Companies Act is relied on by both sides

A to support the rival contentions. In our opinion, the absence of a similar explanation in Section 10F does not support the respondents contention. In the absence of provisions like Sections 2(11) and 10(1) (a) of the Companies Act in the FERA, addition of explanation in Section 54 of the FERA, appears to have been considered necessary to remove any possible B ambiguity. The other provisions in the Companies Act, 1956 and the historical background did not require any such explanation in Section 10F.

We are also both impressed by the argument of Shri Shanti Bhushan based on clause 11 of the Letters Patent of the Lahore High Court. In the first place any general provision for appeal must given way to the special C provision made in the Companies Act. The provision of appeal by insertion of Section 10F is in substitution of the provision in the Letters Patent or similar enactment providing for appeal against orders of the Company Judge when the original jurisdiction was in the High Courts. If the construction made by us of Section 10F and the other relevant provisions of D the Companies Act is correct, the provision in the Letters Patent of the Lahore High Court would not be material for deciding which High Court has jurisdiction to entertain the appeal since the appeal would lie by virtue of the specific provision in Section 10F of the companies Act. In this context, any further discussion of the provision in the Letters Patent of any High Court cannot have any significance.

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For the aforesaid reasons, we are of the opinion that the expression "the High Court" in Section 10F of the Companies Act means the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate as indicated by Section 2(11) F read with Section 10(1)(a) of the Act. Accordingly, in the present case, the appeal against the order of the Company Law Board would lie in the Madras High Court which has jurisdiction in relation to the place at which the registered office of the company concerned is situate and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi. This appeal is allowed and the impugned order made by G the Delhi High Court is set aside resulting in acceptance of the preliminary objection raised by the appellants in the Delhi High Court. The Delhi High Court will now make the consequential order. No costs.

V.M. Appeal allowed.

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