



GAHC010126182014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4139/2014

HOTEL RADHA INTERNATIONAL
A PARTNERSHIP FIRM INCORPORATED UNDER THE PROVISIONS OF THE
PARTNERSHIPS ACT, 1932 AND HAVING ITS PRINCIPAL PLACE OF
BUSINESS AT 54, CENTRAL ROAD, AGARTALA TRIPURA, WEST PIN- 799001
IN THE STATE OF TRIPURA AND REP. BY SRI PANKAJ BEHARI SAHA, ONE
OF THE PARTNERS OF THE PETITIONER COMPANY AND RESIDENT
UDAIPUR, BADAR ROAD, P.O. R.K. PUR, DIST. GOMTI, TRIPURA, -799120.

VERSUS

EMPLOYEE STATE INSURANCE ESI CORPORATION and 5 ORS
NORTH EAST REGION, GUWAHATI.

2:LABOUR COMMISSIONER

GOVT. OF TRIPURA.

3:THE REGIONAL DIRECTOR

ESI CORPORATION
NE REGION
GUWAHATI.

4:THE ASSISTANT DIRECTOR
REGIONAL OFFICE ESI CORPORATION NE REGION
GUWAHATI-21.

5:THE ASSISTANT DIRECTOR INSURANCE
REGIONAL OFFICE-TRIPURA
ESI CORPORATION.

6:RECOVERY OFFICER



ESI CORPORATION
BAMUNIMAIDAN
GUWAHATI- 781021

Advocate for the Petitioner : MR.P BARUAH, MR.A GOYAL,MR.K CHOUDHURY,DR.ASHOK SARAF,MR.Z ISLAM

Advocate for the Respondent : MR.K K NANDI, SC, E S I,,,

Linked Case : WP(C)/5903/2014

HOTEL RADHA INTERNATIONAL
A PARTNERSHIP FIRM INCORPORATED UNDER THE PROVISIONS OF THE
PARTNERSHIPS ACT
1932 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 54
CENTRAL ROAD
AGARTALA
TRIPURA WEST PIN-799001
STATE - TRIPURA
AND REP. BY SRI PANKAJ BEHARI SAHA
ONE OF THE PARTNERS OF THE PETITIONER COMPANY AND R/O UDAIPUR
BADAR ROAD
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GHY-21

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REGIONAL OFFICE- TRIPURA
ESI CORPORATION

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BAMUNIMAIDAN
GHY-21

Advocate for : MR.Z ISLAM
Advocate for : SC
ESIC appearing for EMPLOYEE STATE INSURANCE ESI CORPORATION and 5
ORS

Linked Case : WP(C)/4140/2014

GEMIMI DISTRILLERIES TRIPURA PVT LTD.
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE PROVISIONS
OF THE COMAPNIES ACT
1956 AND HAVING ITS PRINCIPAL PLACE OF BUSINESS AT INDUSTRIAL
GROWTH CENTRE
BUDHJANGNAGAR
P.O. R.K. NAGAR
KHEYERPUR
AGARTALA-8
WEST TRIPURA IN THE STATE OF TRIPURA AND REP. BY SRI PANKAJ
BEHARI SAHA
ONE OF THE DIRECTORS OF THE PETITIONER COMPANY AND RESIDENT
UDAIPUR
BADARPUR ROAD
P.O. R.K. PUR
DIST. GOMTI
TRIPURA- 799120.

VERSUS

EMPLOYEE STATE INSURANCE ESI CORPORATION and 5 ORS
NORTH EAST REGION



GUWAHATI.

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ESI CORPORATION.

6:RECOVERY OFFICER

ESI CORPORATION
BAMUNIMAIDAN
GUWAHATI- 781021.

Advocate for : MR.A GOYAL

Advocate for : MR.K K NANDI appearing for EMPLOYEE STATE INSURANCE ESI
CORPORATION and 5 ORS

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. K. Choudhury, Advocate.
For the Respondents	: Mr. M. Smith, Advocate
Date of Hearing	: 15.07.2024, 22.07.2024,
Date of Judgment	: 22.08.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. K. Choudhury, learned counsel for the petitioners. Also heard Mr. M. Smith, learned counsel for the respondent Nos. 1 and 3 to 6.
2. These three writ petitions are taken up together for final disposal as they involve similar issues and cause of action.
3. By way of these batch of writ petitions, the action of authorities under Employee State Insurance Act, 1948 (hereinafter referred to as Act, 1948) has been challenged.
4. The facts and sequence of events which is gathered from the pleadings of the parties, necessary for determination of the writ petitions are recorded herein below:

A. WP(C) No. 4139/2014:

I. According to the respondents, they carried out an inspection in the premises of the petitioner on 20.12.2008 in exercise of their power under the Act, 1948. On 01.01.2009, a notification under Sub Section 3 of Section of the Act, 1948 was issued notifying 1st January, 2009 as the appointed date on which the provision of Chapter-IV (except Section 44 and 45 of the Act, 1948 which was already brought into force) and Chapter-V and VI (except Sub Section 1 of Section 76 and Sections 77,78,79 and 81, which have already been brought into force), was notified to be applicable in the areas in the State of Agartala which falls with in the Revenue Village- Agartala, Jogandranagar, Khayrpur Mdhuban Village, Lankamura, Barjala, Kunjaban, Badharghat Revenue Village in Agartala.

II. On 16.03.2010, a notification was issued by the Labour

Department, Government of Tripura in exercise of power under Sub Section 5 of Section 1 of the Act, 1948 whereby 15.03.2010 has been declared as the appointed date on which all the provisions of the ESI Act, was extended to various establishments as enumerated and specified in Schedule-I of the said notification, which included hotels or restaurants wherein 20 or more persons were employed at any of the preceding 10 months from the date of notification.

III. On 20.07.2011, another notification under Sub Section 5 of Section 1 of the Act, 1948 was issued appointing 07.07.2011 as the date on which all the provisions of the ESI Act was extended to various establishments which also included hotels and restaurants wherein 10 or more persons are employed or were employed, on a day preceding 12 months of such effective date.

IV. On 01.10.2012, a show cause notice was issued to the petitioner demanding payment of contribution under ESI Act, 1948 for the period with effect from January 2009 to August, 2012. In the aforesaid show cause notice, it was reflected that the total numbers of employee are 11, against whom the contributions were asked from the petitioner.

V. Though in the affidavit, a stand has been taken that inspection was carried out on 20.12.2008, however, in the show cause notice dated 01.10.2012, no date of visit was reflected and it was kept blank.

VI. Thereafter, on 12.11.2013, Regional Office, ESI, Tripura, issued a letter to the Recovery Officer, ESI, Bamunimaidan, Guwahati to recover an amount of Rs. 3,08,439/- (Rupees Three Lakh Eight Thousand Four Hundred Thirty Nine Only).

VII. In the meantime, on 11.12.2013, another show cause notice was issued for period from September, 2012 to September, 2013.

VIII. Pursuant to a communication dated 12.11.2013, the



Recovery Officer, Bamunimaidan, Guwahati passed a Prohibitory Order on 11.12.2013 asking the Branch Managers of HDFC Bank, Agartala Branch and Axis Bank, Agartala Branch wherein the petitioner was maintaining its account.

IX. The petitioner also received a communication dated 20.12.2013 issued by the Chief Manager of the UCO Bank communicating the petitioner that they have received a Prohibitory Order from the ESI to recover an amount of Rs. 3,10,602/- and they have marked lien in the account of the petitioner.

X. Thereafter, the petitioner filed an reply to the show cause notice dated 23.11.2013 inter alia taking a stand that the petitioner were not aware of the fact that they are covered under the ESI Act, 1948 and they are required to be registered. They also took a stand that the total number of employee were less than 10

XI. On 31.12.2013, a meeting was held in the chamber of Labour Commissioner, wherein 15 numbers of different establishments including the petitioner were present. The representative of different establishments raised their ignorance as regards ESI facilities. After consultation, it was suggested by the competent authorities of ESI establishments to apply to the Regional Director of Guwahati for exemption with a copy to the Labour Commissioner of Labour Directorate of Government of Tripura so that the issues may be resolved and accordingly, the owners of the establishments agreed to pay the subscription of December to regularize their registration by 15th of January, 2014.

XII. Accordingly, the petitioner has also agreed to pay their subscription for the month of December, with a hope that his previous dues will be exempted and they will be allowed to use their bank accounts so as to

run their business smoothly.

XIII. An application before the Regional Director i.e. respondent No. 3 was filed on 01.02.2014. Thereafter, the Regional Director, asked the Branch Manager of the Bank by its communication dated 14.02.2024 to release the dues to the ESI Corporation.

XIV. According to the petitioner, having no alternative, they were compelled to make payment of all the demanded dues and after payments of the dues, the Prohibitory Orders were revoked. Prior to that, the writ petition was filed on 14.08.2014 raising their grievance.

B. WP(C) No.5903/2014:

I. On 12.11.2013, an order of recovery was passed by the Assistant Director, asking the Recovery Officer to recover an amount of Rs. 3,08,439/- payable under ESI contribution for the period from January, 2009 to August, 2013.

II. On 11.12.2013, the Recovery Officer passed a Prohibitory Order to the Branch Manager of HDFC Bank, Agartala Branch, UCO Bank, Agartala Branch and Axis Bank, Agartala Branch.

III. On 20.12.2013, the petitioner filed a reply to the show cause notice dated 23.11.2013 taking a similar stand that they were not aware about the fact that they are covered under ESI Corporation and that they are required to be registered. It was also a stand like the other case that total numbers of employees were less than 10 and they have no hotel facilities.

IV. In this case also, on 22.12.2013, the Chief Manager, UCO Bank communicated the petitioner as regards receiving prohibitory order to recover the amount.

V. Pursuant to meeting dated 31.12.2013, on 01.02.2014, the petitioner informed the Regional Director that they had made their



contribution and prayed for exemption from the earlier dues.

VI. Thereafter, on 14.02.2014, the Regional Director asked the Branch Manager, HDFC Bank and UCO Bank to pay the dues to the ESI Corporation with a further enquiry as regards any other accounts that are being maintained by the petitioner in their banks.

VII. According to the petitioner, in view of the aforesaid, the petitioner paid the amount on 05.03.2014 under compulsion and accordingly, the prohibitory order was revoked.

VIII. Thereafter, a show cause notice dated 15.05.2014 was issued asking them as to why damages to the tune of Rs. 1,77,535/- not be imposed and recovered from them for the period w.e.f. January, 2009 to August, 2012 for the reason of the default of the petitioner's company in making the payment of ESI contribution.

IX. Accordingly, on 27.10.2014, petitioner appeared before the Regional Director and explained that the writ petition is still pending before this Court and it would be appropriate to wait till the case is disposed of.

X. Thereafter, on 20.03.2015, a notice was issued under Section 85B of the Act, 1948 by the Assistant Director asking the Recovery Officer to recover an amount of Rs. 1,77,535/- which was assessed to be delayed payment of contribution.

XI. On 24.03.2015, a notice of demand treating the petitioner to be defaulter directing it to pay an amount of Rs. 1,77,535/- within 15 (fifteen) days of the receipt of the notice was issued.

C. WP(C) No.4140/2014:-

I. The events which are different from the WP(C) No. 4139/2014 are the following:-

II. Inspection was carried on 22.12.2012.

III. First show cause notice was issued on 22.07.2013 alleging that the petitioner had failed to pay contribution to ESI since April, 2012 to May, 2013.

IV. On 19.11.2013, the Assistant Director (Insurance) Regional Office-Tripura, passed an order confirming that the petitioner is liable to pay ESI contribution for the period April, 2012 to May, 2013.

V. This petitioner was also part of the meeting held on 31.12.2013 as recorded hereinabove.

VI. The contributions were made by this petitioner also and it was intimated to the Regional Director by communication dated 31.01.2014.

VII. The Assistant Director issued an order of recovery asking the Recovery Officer to recover the amount due to the tune of Rs. 12,92,865/- as an arrears by an order dated 07.04.2014.

VIII. The Recovery Officer passed notice of demand to the petitioner demanding the rest of amount on 22.04.2014.

5. The learned counsel for the respondent has raised two preliminary objections as to the maintainability of the present writ petition, firstly; on the ground that the writ petitions are hit by Article 226(2) of the Constitution of India and secondly; for the reason of the petitioners having efficacious alternative remedy of appeal under Section 82 of the Act, 1948 against the action/order impugned in the present writ petitions.

6. Therefore, let this Court first deal with the preliminary objections raised by the learned counsel for the respondents:

A. Article 226 (2) of the Constitution of India:-

I. According to the learned counsel for the respondents, the cause of action for filing the present writ petitions arose in the State of Tripura. The show cause notices as well as order passed under

Section 45A of the Act, 1948 which are under challenge in these present proceedings were issued at the Regional Office of the respondents at Tripura, the industries are situated at Tripura and therefore, according to the learned counsel for the respondents, the High Court of Tripura or the Employees Insurance Court at Tripura are the appropriate forum to adjudicate the issues raised by the petitioner in the writ petitions, in view of the mandate of Article 226(2) of the Constitution of India. In this context, the learned counsel for the respondents places reliance on the decision of the Hon'ble Apex Court in **Alchemist Ltd and Another –Vs- State Bank of Sikkim and Others** reported in **2007 11 SCC 335**. Para-19, 20,21,22,37 and 38.

B. **Availability of alternative remedy.**

I. The learned counsel for the respondents further argues that the challenge made in these batch of writ petitions are, show cause notices issued on different dates asking to pay the contribution and orders passed under Section 45A of the Act, 1948 and therefore, the appropriate forum to determine the dispute is an ESI Court under the Act, 1948.

II. The learned counsel for the respondents further contends that the dispute raised as regards the applicability of the Act can also be determined by an Employees Insurance Court constituted under Section 75 of the Act, 1948 or by the Appellate Authority under Section 45 A of the Act, 1948. Therefore, the petitioner is having efficacious alternative remedy and on this count alone, the writ petitions are liable to be dismissed. In support, the learned counsel places reliance on the decision of the Hon'ble Apex Court in the case of **E.S.I.C. –Vs- C. C. Santhakumar** reported in **2007 1 SCC**

584.

7. Countering such argument, Mr. K. Choudhury, learned counsel for the petitioner argues that the cause of action is a bundle of facts and in the present case in hand, the Recovery Officer, Guwahati, sitting at Guwahati had issued various prohibitory orders to different banks situated at Agartala. Therefore, a part of cause of action falls within the jurisdiction of this Court and therefore, the writ petitions shall be maintainable before this Court under Article 226 of the Constitution of India. In support of such contention, Mr. Choudhury, learned counsel places reliance on the decision of the Hon'ble Apex Court in **Rajendran Chingaravelu –VS- CIT** reported in **2010 1 SCC 457** and **Shanti Devi –Vs- Union of India** reported in **2020 10 SCC 766**.

8. **Determinations:**

- A. Now let this Court deal with the issue of maintainability of the present writ petitions on the ground that the writ petitions are hit by the Article 226(2) of the Constitution of India in the following paragraphs:-

I. The ratio laid down by the Hon'ble Apex Court in the judgments relied on by both the learned counsel for the parties on this point as well as settled proposition of law holding the field touching the issue can be summarized as follows:

- a. Cause of action in the context of Article 226 (2) of the Constitution of India shall be a bundle of facts giving rise to one or more bases for filing a writ petition i.e. certain fact situation that entitles the writ petitioners to opt a relief against an instrumentality of the State.
- b. In order to confer jurisdiction on the High Court, the petitioner must show that at least a part of cause of action had



arisen within the territorial jurisdiction of that High Court.

c. In determining lack of territorial jurisdiction, the court must take all the facts pleaded in support of the cause of action, of course without entering upon an enquiry, as to the correctness of such facts. Therefore, the averments made in the petitions are vital for determination and for that purpose, the consideration, whether such statement is correct or not is, immaterial.

d. The High Court can exercise its jurisdiction under Article 226 of the Constitution of India, where the cause of action wholly or in part arises within its jurisdiction and it is not relevant that the seat of the authority, whose action is challenged, is outside the territorial jurisdiction of the High Court.

e. Insignificant event connected with the cause of action taking place within the territorial high Court, to which the litigant approaches at his own choice and convenience, shall not confer upon the jurisdiction upon High Court. Trivial and unconnected event connected with the cause of action, even if occurred within the jurisdiction of the Court, the High Court cannot assume in jurisdiction on such a given situation.

f. However, a small fraction of cause of action accrued within the jurisdiction of the High Court not being trivial or unconnected, shall confer jurisdiction in the matter and such determination can be made from the facts pleaded in the writ petitions and the prayer made thereof.

g. If such facts pleaded are not having any connection with the prayers made such fact pleaded shall not give rise to the cause of action and / or jurisdiction under Article 226 of the Constitution of India.

II. Now coming to the case in hand, as discussed and detailed hereinabove, an important fact is the issuance of order of recovery and the directions issued by the Recovery Officer from Guwahati to different banks at Tripura to do certain acts for recovery of the amounts. Such facts are not only specifically pleaded in the writ petitions but it is also not denied by the respondents authorities and that the competent recovery authority sits within the territorial jurisdiction of this Court. Specific pleadings in this regard have made in the writ petition.

III. Yet another aspect is that such action of the recovery officer is also impugned in the present writ petitions and specific payers are made seeking issuance of writ of certiorari to set aside such orders. Such facts pleaded, cannot, in the considered opinion of this Court, be said, either to be trivial or unconnected with the other action initiated within the jurisdiction of Tripura High Court, rather it is the considered opinion of this Court that the order of recovery is intrinsically connected with the notice demanding contribution.

IV. Therefore, this Court is of the unhesitant view that the facts pleaded in the writ petitions as regards the order of recovery issued by an authority who sits within the jurisdiction of this Court is having a nexus on the basis whereof, the prayer made can be considered by this Court. Therefore, in the considered opinion, this court shall have jurisdiction to entertain this writ petition. Accordingly, the first objection raised by the respondents stands rejected.

B. Alternative Remedy:

i. It is by now well settled that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. It is equally well settled that under Article 226 of the Constitution of India, the High Court, is having

discretion to entertain or not to entertain a writ petition, having regard to the facts and circumstances of the case. The availability of alternative remedy is a self imposed restriction and normally, High Court should not exercise its discretion under writ jurisdiction, when an effective and efficacious remedy is available. However, such alternative remedy shall not operate as a bar, where the writ petition has been filed for enforcement of any of the fundamental rights or where there has been violation of the principle of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged or an important legal issue is involved. It is also well settled that the power under Article 226 of the Constitution of India to issue a writ can be exercised not only for the enforcement of the fundamental right but also for any other purpose as well.

ii. It is also by now well settled that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This Rule of exercise of statutory remedy is a rule of policy and convenience and it is discretionary.

iii. The said principle also emphasises that in cases where there are disputed question of facts, the High Court may decide not to exercise its writ jurisdiction, except when an important question of law is involved.

iv. In the aforesaid context , now let this court first deal with the provision of the Act:

a. Section 45A of the Act, 1948 deals with the determination on contribution in certain cases. Sub Section 1 of Section 45A of the Act, 1948, the Corporation is empowered to determine, by order, the amount of contribution payable in respect of employees of the

establishment/factory etc. on the basis of information that may be gathered by an Officer under Section 45 of the Act, 1948. However, such determination is subject to the condition of giving a reasonable opportunity of being heard to the principal or immediate employer or the person in charge of the factory or the establishment as the case may be. Such determination is also subject to the condition that the no such order can be passed in respect of a period beyond 5 years from the date on which the contribution shall become payable.

b. Section 45A(A) of the Act, 1948 deals with the Appellate Authority. It provides that if an employer is not satisfied with the order passed under Section 45A of the Act, 1948, he can approach the appellate authority, as may be provided by regulation, within 60 days of the date of such order, after depositing 25% of the contribution, so directed or the contribution as per the own calculation of the employer, whichever, is higher. Proviso to Section 45A(A) of the Act, 1948, mandates that if the employer finally succeeds in the appeal, the Corporation is to refund the statutory deposit made under Section 45A(A) of the Act, 1948 to the appellant together with such interest as may be specified in the regulation.

c. Admittedly, in the case in hand, the challenge made under this batch of writ petitions are determination made under Section 45A of the Act, 1948 and notice issued under first proviso to Section 45A of the Act, 1948.

d. Chapter-VI of the Act, 1948 deals with adjudication of dispute and claims.

e. Section 74 under this Chapter mandates constitution of Employees' Insurance Court and such Court is to be constituted by the respective State Government by notification published in official

Gazette, for such local area as may be specified in the notification.

f. Section 75 of the Act, 1948 enumerates the nature of dispute that can be adjudicated by the Employee Insurance Court constituted under Section 74 of the Act, 1948. Amongst other, Clause-G of Sub Section 1 of Section 75 of the Act, 1948 prescribes that the Employee Insurance Court can decide any other matter beyond those subject matters enumerated under Clause-a to Clause- e.e of Sub Section 1 of Section 75 of the Act, 1948, which is in dispute between a principal employer and the corporation or between a principal employer or an immediate employer or between a person and a corporation or between an employee and principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act.

g. Thus, the jurisdiction of the corporation to issue the notice raised by the petitioner and/or the dispute as regards the number of the employees can very well be determined by such a Court.

h. It is clear that under the scheme of Act, 1948, there is provision for appeal under Section 45A. Thus, rights of appeal have statutorily been created. Such provision of appeal prescribes the remedy and procedure for enforcing right of an aggrieved party, who is aggrieved by an order passed by an adjudicating authority. An order passed under Section 45A of the Act, 1948, is an appealable order under Section 45AA of the Act, 1948. Section 75 of the Act, 1948 deals with matters to be decided by Insurance Court. Under Section 75, the Insurance Court is conferred jurisdiction to decide any question or dispute enumerated therein and therefore, the issue whether the petitioners are liable to pay contribution can also be adjudicated by a competent Insurance Court. That being the position, it is clear that the petitioners



are having an alternative efficacious remedy, which is statutorily created.

i. The Act, 1948 is one of the most important Legislation relating to social security measures for workers in independent India and it was created to provide financial support to the workers in times of medical distress etc. From the provisions as discussed hereinabove, the Act is a code unto itself and not only contains comprehensive procedure for recovery of dues but also emphasises quasi judicial and judicial bodies for redressal of grievances of any aggrieved person. Therefore, in the given facts of the present case, this court is not inclined to exercise its discretionary power under Article 226 of the Constitution of India, for the reason of the petitioner having efficacious and alternative remedies under the Act, 1948.

j. The petitioners have not been able to satisfy and establish that any of the fundamental rights protected by Part-III of the Constitution of India has been violated. Though it has been alleged that the petitioners shall not come within the definition of industry under the Act, 1948, however, such determination requires adjudication of the facts which can very well be dealt by the appellate authority under Section 45AA of the Act, 1948 or by the Insurance Court. In the considered opinion of this Court, the petitioners have also failed to demonstrate that there has been a violation of principles of natural justice in the adjudicating proceeding. Admittedly notices were issued and the petitioners had also filed reply to such notices.

k. The point of jurisdiction in issuing the notices, can also be decided by the appellate authority or the Insurance Court inasmuch as the petitioners have not alleged that orders are wholly without jurisdiction and the petitioners, had already made the payments, though according



to them, under compulsion.

I. There is also no challenge to the vires of any legislation in the present batch of writ petitions. Therefore, on this count also, this court is not inclined to exercise its discretion under Article 226 of the Constitution of India.

9. Accordingly, the writ petitions are dismissed, however, with liberty to approach the appropriate authority/Court permissible under law. The period spent in this court shall not be counted for the calculation of the prescribed period of limitation.

JUDGE

Comparing Assistant